

Assembly of First Nations

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SPECIAL CHIEFS ASSEMBLY
December 3, 4, 5, 2024, Ottawa, ON

Resolution no. 89/2024

TITLE:	Renewing Negotiations Toward Long-Term Reform of First Nations Child and Family Services and Jordan's Principle
SUBJECT:	Children and Families
MOVED BY:	Khelsilem, Council Chairperson, Squamish Nation, BC
SECONDED BY:	Chief Erica Beaudin, Cowessess First Nation, SK
DECISION	Carried; 74 opposed; 10 abstentions

WHEREAS:

A. The *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) states:

- i. Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
- ii. Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.
- iii. Article 37: Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements, and other constructive arrangements.

B. First Nations recognize the sacredness of First Nations children, youth and families and Jordan's Principle, a child-first legal requirement ensuring substantively equal and culturally appropriate access to products, services and supports for First Nations children and that the government entity of first contact pays for the support thereof without delay.

C. The First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) filed a Canadian Human Rights Act complaint in 2007 alleging Canada's inequitable provision of First

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Cindy Woodhouse

CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF

89 – 2024
Page 1 of 5

Nations Child and Family Services (FNCFS) and its choice not to implement Jordan's Principle were discriminatory resulting in serious and irremediable harms.

- D. The Canadian Human Rights Tribunal (CHRT) substantiated the discrimination claim in 2016 CHRT 2 and ordered Canada to cease its discriminatory conduct immediately.
- E. On December 31, 2021, an Agreement in Principle (AIP) was signed as a framework for the negotiations of a Final Settlement Agreement (FSA) on the FNCFS Program, Jordan's Principle, and the reform of Indigenous Services Canada.
- F. The CHRT Parties have agreed to split the FSA negotiations with a child and family services agreement to come first and an agreement on Jordan's Principle to follow.
- G. Canada, the AFN, Chiefs of Ontario (COO) and Nishnawbe-Aski Nation (NAN) completed a draft Final Settlement Agreement, which was made public on July 11, 2024 in English only and on August 14, 2024 in French, and which was rejected by First Nations-in-Assembly on October 17, 2024.
- H. On October 18, 2024, the First Nations-in-Assembly rejected the resolution to adopt the draft FSA and adopted AFN Resolution 60/2024, *Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle* and AFN Resolution 61/2024, *Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services*.
- I. Resolution 60/2024 directs the AFN Executive Committee to adopt the following approach to the negotiation of agreements related to the FNCFS Program and Jordan's Principle (the LTR Agreements):
 - i. Establish a national Children's Chiefs Commission with representation from all regions to oversee and provide strategic direction in relation to the LTR Agreement negotiations, reporting back to the First Nations-in-Assembly;
 - ii. The Children's Chiefs Commission will establish a negotiation team, with regional representation and a new legal team, that will be responsible for carrying out the negotiations for the LTR Agreements under the direction of, and reporting to, the Children's Chiefs Commission;
 - iii. The negotiation team's Terms of Reference for the FNCFS Program will be provided to the First Nations-in-Assembly for approval no later than December 2024; and
 - iv. The Children's Chiefs Commission will report to the First Nations-in-Assembly in December 2024 as to its anticipated timeframes for the completion of negotiations in relation to the FNCFS Program and on the anticipated timeframes for the Terms of Reference for Jordan's Principle.
- J. The 2021 Agreement-in-Principle (AIP) includes provisions that conflict with the negotiation priorities and directives established by the First Nations-in-Assembly, specifically:
 - i. the AIP's reliance on a population-based funding formula for prevention is inconsistent with the First Nations-in-Assembly's call for a needs-based funding structure to ensure equitable resource allocation;
 - ii. the AIP's proposed conflict resolution mechanism excludes the unconditional participation of the First Nations Child and Family Caring Society, contrary to the First Nations-in-Assembly's directive to include the Caring Society in all negotiations; and

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- iii. the AIP's stipulation that, upon signing a Final Settlement Agreement, the Parties will seek to terminate the jurisdiction of the CHRT directly opposes the First Nations-in-Assembly's call for the CHRT to retain jurisdiction to oversee and ensure the effective implementation of any agreement.
- K. A draft terms of reference for the Children's Chiefs Commission's has been developed, key elements of which include:
- i. **Accountability:** the Children's Chiefs Commission will be accountable to First Nations-in-Assembly, First Nations youth, and to First Nations who are not members of the AFN, through processes that it establishes;
 - ii. **Objectives:** the draft terms of reference set out certain substantive objectives that must be met through the negotiation of the LTR Agreements to fully eliminate Canada's systemic discrimination in FNCFS and Jordan's Principle and ensure it does not reoccur;
 - iii. **Guiding principles:** the draft terms of reference set out principles that will guide the Children's Chiefs Commission's work;
 - iv. **Composition:** the Children's Chiefs Commission will be comprised of: (i) one (1) regional representative, an alternate, and their technician(s) from each of the 11 AFN regions; (ii) one (1) regional representative, an alternate, and their technician(s) for every region not represented by AFN; (iii) an Elder/Knowledge Keeper representative; and (iv) and a youth representative;
 - v. **Inclusion and representation:** the Children's Chiefs Commission will take positive and effective measures to seek out the input and expertise of: (i) First Nations and their rightsholders; (ii) First Nations child and family service providers; (iii) Elders and Youth; (iv) The National Advisory Committee (NAC) and Expert Advisory Committee (EAC); (v) regional and independent experts, including the Jordan's Principle Operations Committee Caucus; and (vi) non-AFN member First Nations;
 - vi. **Reporting and accountability:** the Children's Chiefs Commission will regularly report to First Nations-in-Assembly, First Nations not represented by the AFN, and the AFN Executive on its progress in relation to the LTR Agreements;
 - vii. **Meetings:** the Children's Chiefs Commission will meet monthly or more frequently as and when required;
 - viii. **Decision-making:** the Children's Chiefs Commission will operate by consensus wherever possible in providing strategic direction and oversight of the LTR Agreements negotiations, respecting traditional First Nations decision-making processes;
 - ix. **Deliverables:** the Children's Chiefs Commission will present key deliverables to the First Nations-in-Assembly and First Nations who are not members of the AFN for their review, consideration, and approval; and
 - x. **Funding:** the Children's Chiefs Commission will work with Indigenous Services Canada to secure funding for their work including independent legal and technical assistance, ensuring all First Nations have adequate resources to understand and contribute to the LTR Agreements.
- L. A draft terms of reference for the negotiation team has also been developed, key elements of which include:

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- i. **Accountability:** the negotiation team will operate under the direction of the Children's Chiefs Commission and will be accountable to the First Nations-in-Assembly and First Nations not represented by the AFN;
 - ii. **Objectives:** the draft terms of reference set out certain substantive objectives that must be met through the negotiation of the LTR Agreements to fully eliminate Canada's systemic discrimination in FNCFS and Jordan's Principle and ensure it does not reoccur;
 - iii. **Deliverables:** the negotiation team will present key deliverables to the Children's Chiefs Commission for its review and consideration;
 - iv. **Composition and qualifications:** the draft terms of reference set out required qualifications for persons the Children's Chiefs Commission will appoint to the negotiation team;
 - v. **Inclusion and representation:** the negotiation team will take positive and effective measures to seek out the input and expertise of: (i) First Nations and their rightsholders; (ii) national and regional FNCFS and Jordan's Principle service providers and experts; (iii) Youth in and from Care; (iv) the National Advisory Committee (NAC) and Expert Advisory Committee (EAC); and (v) non-AFN member First Nations;
 - vi. **Roles and responsibilities:** the draft terms of reference sets out roles and responsibilities for a lead negotiator, assistant negotiator, legal team, technical experts, support team, and secretarial support;
 - vii. **Decision-making:** the negotiation team will operate by consensus wherever possible;
 - viii. **Reporting:** the draft terms of reference set out various reporting requirements and mechanisms for the negotiation team to report to the Children's Chiefs Commission;
 - ix. **Final draft approval process:** the draft terms of reference set out a process the negotiation team must follow to prepare draft LTR Agreements for review by the First Nations-in-Assembly as well as First Nations not represented by AFN to ensure compliance with Resolutions 60/2024 and 61/2024; and
 - x. **Conflicts of interest:** the draft terms of reference set out a process for addressing conflicts of interest.
- M. A number of AFN regions have appointed their representatives to the Children's Chiefs Commission, but the Commission has not yet met with all representatives present to review and discuss the draft terms of reference for the Children's Chiefs Commission and the negotiation team.
- N. The AFN Executive has raised certain legal concerns about the interpretation of Resolution 60/2024 that the First Nations-in-Assembly may wish to clarify.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

1. Reject all sections of the Agreement in Principle (AIP) on Long-Term Reform (LTR) of the First Nations Child and Family Services (FNCFS) Program and Jordan's Principle completed on December 31, 2021 that are in conflict with resolutions passed by the First Nations-in-Assembly as described above.

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Cindy Woodhouse

CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF

89 – 2024
Page 4 of 5

2. Clarify that, by way Therefore Be It Resolved clause 2 of Resolution 60/2024, the First Nations-in-Assembly called for, and themselves established, the national Children's Chiefs Commission rather than directing the AFN Executive Committee to establish the Commission.
3. Support the Children's Chiefs Commission in establishing a negotiation team, pursuant to Resolution 60/2024, to carry out the negotiations for the LTR Agreements. That negotiation team will work with the following guidelines:
 - a. **Accountability:** The negotiation team will report to the Children's Chiefs Commission, First Nations-in-Assembly and represent the interests of all First Nations, and First Nations youth, including those not connected to the AFN; and
 - b. **Mandate:** The negotiation team's goal is to eliminate discrimination by Canada and ensure it never happens again, promote fairness, uphold First Nations' rights to self-determination, and respect their jurisdiction over their own affairs. They will ensure their work aligns with international standards affirmed by the *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Convention on the Rights of the Child*, complies with orders from the Canadian Human Rights Tribunal (CHRT), and maintains a clear, open process that meaningfully involves First Nations communities and First Nations youth.
4. Approve, in principle, the draft terms of reference for the Children's Chiefs Commission and the negotiation team, summarized in the Whereas clauses above, and direct the Children's Chiefs Commission to meet as soon as practicable to: (i) immediately commence its work on the LTR Agreements; and (ii) review the terms of reference and thereafter recommend them to the First Nations-in-Assembly for final approval, including any potential amendments.
5. Direct the Children's Chiefs Commission to report to First Nations-in-Assembly at every Assembly until their work is complete.

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