

Assembly of First Nations

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

Resolution no. 90/2024

TITLE: Safeguarding First Nations Children and Holding Canada Accountable for its Canadian Human Rights Tribunal Legal Obligations

SUBJECT: Child Welfare

MOVED BY: Chief Vicky Chief, Timiskaming First Nation, QC

SECONDED BY: Aaron Nicholas, Proxy, Tobique First Nation, NB

DECISION Carried; 9 opposed; 12 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. 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 Nations Child and Family Services (FNCFS) and its choice not to implement Jordan's Principle were discriminatory resulting in serious and irremediable harms.

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- C. The Canadian Human Rights Tribunal (the Tribunal) substantiated the human rights complaint in 2016 and ordered Canada to cease its discriminatory practices, reform the FNCFS program and immediately implement the full scope of Jordan's Principle.
- D. The Tribunal has retained jurisdiction over the human rights complaint and has provided numerous additional orders to guide a dialogic process through which the Parties to the complaint negotiate long-term reform that will end Canada's discrimination and prevent any reoccurrence of the discrimination.
- E. Since 2016, the Tribunal has issued 31 procedural and non-compliance orders.
- F. On December 12, 2023, the Caring Society filed a non-compliance motion with the Tribunal to address Canada's chronic breaches of existing orders on Jordan's Principle, causing serious harms to First Nations children, youth and families. The matter was heard on September 10-12, 2024.
- G. First Nations-in-Assembly voted to reject a draft final settlement agreement (FSA) on long-term reform of the FNCFS program and called for a process to end Canada's discrimination in First Nations child and family services and Jordan's Principle and make sure it does not happen again in AFN Resolutions 60/2024 and 61/2024.
- H. On November 21, 2024, the Tribunal issued a letter decision, with reasons to follow, on the Caring Society's non-compliance motion filed in December 2023 regarding the Government of Canada's breaches of existing Tribunal orders on Jordan's Principle.
- I. In its November 21, 2024 ruling, the Tribunal affirmed the presumption of substantive equality as a right owed to First Nations children and ordered Canada to, among other measures, immediately address the backlogs in Jordan's Principle cases, set up triaging for urgent cases, confirm that First Nations who have taken on Jordan's Principle work have the sufficient resources to do so, reimburse approved Jordan's Principle requests in a timely manner, report on its progress in coordinating federal programs and work with the Parties to install an interim and independent national complaints mechanism.
- J. The Tribunal also ordered Canada to consult with the Parties on several issues, with the goal of reaching consent order requests, and recognized that it would be beneficial to have all Parties at the table, including First Nations who are not a part of the proceedings.
- K. The British Columbia First Nations Leadership Council (FNLC), which was granted interested party status and intervened in the non-compliance motion, can only participate in these consultations with the consent of all Parties. On December 4, 2024, Canada has responded that they do not consent to the FNLC participation in the consultations.
- L. The cumulative total of the Tribunal's orders on FNCFS is estimated at \$45 billion to fund FNCFS and is the minimum amount to ensure non-discrimination and prevent its recurrence.
- M. All First Nations children on and off reserve and living in self-governing First Nations have a right to receive substantively equal and culturally based child and family services and/or Jordan's Principle and live free of Canada's discrimination now and forever.

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

1. Support the November 21, 2024, Canadian Human Rights Tribunal (Tribunal) letter decision on Jordan's Principle to address Canada's non-compliance.
2. Confirm that the \$47.8 billion is only the floor for negotiations to achieve long-term reform of First Nations Child and Family Services (FNCFS).
3. Direct Canada to obtain a new negotiation mandate within thirty (30) days of this resolution passing to achieve Long Term Reform of FNCFS and Jordan's Principle in full alignment with Assembly of First Nations (AFN) Resolutions 60/2024 and 61/2024.
4. Support regions, parties and the National Children's Chiefs Commission (NCCC) to undertake any legal action should Canada fail to obtain an adequate new negotiation mandate within thirty (30) days, in which case the First Nations-in-Assembly will deem Canada to be dishonorably in violation of the duty of diligent implementation flowing from the honour of the Crown constitutional principle.
5. Call on Canada to provide adequate funding, including reimbursement of legal fees at actual cost, to an entity(ies) determined by the NCCC to support its work.
6. Call on Canada to not seek judicial review of the November 21, 2024 Tribunal letter decision on Canada's non-compliance on Jordan's Principle.
7. Call on Canada to take immediate and effective measures to fully implement all Tribunal orders including the November 21, 2024 Tribunal letter decision on Jordan's Principle.
8. Support the NCCC participation in further legal proceedings, including before the Tribunal, to ensure First Nations children, youth and families receive the full benefit of existing Tribunal orders and to seek additional remedies as required.
9. Fully and publicly support the British Columbia First Nations Leadership Council (FNLC) participation in the consultations ordered in the November 21, 2024 Tribunal letter decision on Canada's non-compliance on Jordan's Principle, as well as any request, from any other regions, to seek interested party status in this Canadian Human Rights Tribunal case.
10. Call on Canada to retract their opposition, and to support the FNLC participation in the consultations ordered by the Tribunal in the November 21, 2024 letter decision on Jordan's Principle.

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