
Assembly of First Nations

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Assemblée des Premières Nations

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**SPECIAL CHIEFS ASSEMBLY
DECEMBER 4, 5, AND 6, 2018, OTTAWA, ON**

Resolution no. 85/2018

TITLE: Financial Compensation For Victims of Discrimination in the Child Welfare System

SUBJECT: Child Welfare

MOVED BY: Mary Teegee (Maoxw Gibuu) Proxy, Takla First Nation, BC

SECONDED BY: Jennifer Cox, Proxy, Paq'tnkek First Nation, NS

DECISION Carried by Consensus

WHEREAS:

- A. The overrepresentation of First Nations children and youth in care, and in the child welfare system, is a humanitarian crisis. This crisis requires immediate and urgent legislative policy and human rights action and compensation to address this crisis.
- B. The harmful legacies of residential schools, the disproportionate number of First Nations children in care, the consequences of involvement in child welfare systems, and the related loss of language and denial of culture and human rights has led to this humanitarian crisis.
- C. *The United Nations Declaration on the Rights of Indigenous Peoples* (the UN Declaration) is the framework for reconciliation and transformation of child welfare law. The UN Declaration must be an integral aspect of any legislation or policy to respond to the child welfare crisis in Canada for First Nations children and youth.
- D. *The United Nations Convention on the Rights of the Child*, and all relevant international human rights instruments and comments relevant to children and families should inform federal child welfare legislation.
- E. The Truth and Reconciliation Commission of Canada (TRC) Calls to Action #1 through #5 call on federal, provincial and territorial governments to take action to improve child welfare. Call to Action #4 calls upon the federal government to enact child welfare legislation.

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- F. The *Assembly of First Nations and the First Nations Child and Family Caring Society of Canada v. Attorney General of Canada* decision of the Canadian Human Rights Tribunal's 2016 (CHRT 2), and subsequent compliance rulings, found systemic discrimination due to longstanding and proven inequities in the federally-funded on-reserve First Nations Child and Family Services Program. The shortfalls in funding and lack of substantive equality for First Nations children, youth and families, were acknowledged by Canada.
- G. The Assembly of First Nations (AFN) has passed five resolutions directly related to child welfare reform: Resolution 01/2015, *Support for the Full Implementation of the Truth and Reconciliation Commission of Canada's Calls to Action*; Resolution 62/2016, *Full and Proper Implementation of the Historic Canadian Human Rights Tribunal Decisions in the Provision of Child Welfare Service and Jordan's Principle*; Resolution 83/2016, *National Advisory Committee on INAC's Child Welfare Reform Engagement Strategy*; Resolution 40/2017, *Call on Canada to Comply with the 2016 Canadian Human Rights Tribunal Orders* and Resolution 11/2018, *Federal Legislation on First Nations Child Welfare Jurisdiction*.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Call on Canada to ensure that any financial compensation or award owed to the First Nations children and youth in care, or other victims of discrimination, should be the maximum allowable under the *Canadian Human Rights Act*, based on the fact that the discrimination was willful and reckless, causing ongoing trauma and harm to children and youth, and resulted in a humanitarian crisis.
2. Call on Canada to ensure that financial compensation or awards also be provided to each sibling, parent or grandparent of a child or youth brought into care as a result of neglect or medical placements resulting from Canada's discriminatory policies, and such compensation should be the maximum allowable under the *Canadian Human Rights Act*.
3. Demand that Canada immediately inform the Human Rights Tribunal that the victims of discrimination—the First Nations children and youth in care between February 2006-2019 (or the date when the Tribunal finds there has been compliance with the human rights order)—are entitled to be considered for compensation up to the maximum amount available by law.
4. Demand that Canada accept that no further evidence from the Assembly of First Nations (AFN) or the First Nations Child and Family Caring Society of Canada (Caring Society) is required to support the maximum financial award for compensation to the victims of discrimination.
5. Call-upon the AFN National Chief and Executive Committee to work in collaboration with the Caring Society to ensure that the administration and disbursement of any payments to victims come from funds other than the awards to the victims so that no portion of the quantum awarded can be rolled back or claimed by lawyers or others administering or assisting victims.

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