
Assembly of First Nations

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**SPECIAL CHIEFS ASSEMBLY
DECEMBER 6, 7, & 8, 2016; GATINEAU, QC**

Resolution no. 83/2016

TITLE: National Advisory Committee on INAC's Child Welfare Reform Engagement Strategy

SUBJECT: Child Welfare

MOVED BY: Chief Lynn Acoose, Sakimay First Nation, SK

SECONDED BY: Chief Arnold Paul, Temagami First Nation, ON

DECISION Carried by Consensus

WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:
- i. Article 15 (2): States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.
 - ii. Article 17 (2): States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
- B. The Truth and Reconciliation Commission of Canada Calls to Action #1 and #3 affirm the need to address First Nation child welfare reform and to fully implement Jordan's Principle. The Prime Minister of Canada has formally agreed to implement all of the Calls to Action.

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- C. In 2007, the First Nations Child and Family Caring Society of Canada (the Caring Society) and the Assembly of First Nations (AFN) filed a complaint pursuant to the *Canadian Human Rights Act* alleging that Indigenous and Northern Affairs Canada's (INAC) provision of First Nations child and family services to over 163,000 First Nations children is discriminatory and that implementation of Jordan's Principle is flawed, inequitable and thus discriminatory under the *Canadian Human Rights Act* (CHRT 1340/7008).
- D. On January 26, 2016, the Canadian Human Rights Tribunal (CHRT) issued its decision (2016 CHRT 2) regarding the complaint filed in February 2007 by the Caring Society and the AFN. The CHRT substantiated the complaint and concluded that First Nations children and families living on reserve and in the Yukon are discriminated against in the provision of child and family services by INAC and further found that Canada's implementation of Jordan's Principle is discriminatory. In its decision, the CHRT made several orders, including:
- i. Cease its discriminatory practices, and reform the First Nation Child and Family Services program (FNCFS).
 - ii. Cease applying a narrow definition of Jordan's Principle.
 - iii. Take measures to immediately implement the full meaning and scope of Jordan's Principle.
- E. Shortly after the CHRT January 26, 2016 decision, the AFN and the Caring Society initiated discussions with INAC to re-establish the National Advisory Committee (NAC) and Regional Tables to oversee recommendations for medium and long term relief related to the CHRT decision and to provide general advice on program reform. The NAC and Regional Tables is a joint committee composed of First Nations child and family service experts appointed by AFN Regional Chiefs, the AFN, the Caring Society, and INAC. This process was used for the Joint National Policy Review of First Nations Child and Family Services (2000) and the Wen:de reports in 2005. INAC agreed to the process in general but failed to respond to correspondence in a timely fashion resulting in substantial and unnecessary delays in establishing the NAC.
- F. On both April 26, 2016, and September 14, 2016, INAC was issued with two supplemental rulings from the CHRT. The CHRT found that INAC compliance to the rulings was inadequate. The CHRT made further specific orders regarding FNCFS funding and ordered Canada to apply Jordan's Principle to all First Nations children on and off reserve, to cease case conferencing before the child receives the service and apply it to all jurisdictional disputes.
- G. In response to Canada's failure to fully comply with the CHRT orders, the NDP tabled an opposition motion on October 27, 2016 calling on the government to comply with the historic rulings of the CHRT ordering the end of discrimination against First Nations children. On November 1, 2016, the NDP motion was unanimously passed by the House of Commons. The motion specifically called for the government to:

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- i. Immediately investing an additional \$155 million in new funding for the delivery of child welfare – the identified shortfall for this year – and establish a funding plan for future years that will end the systemic shortfalls in First Nations child welfare.
 - ii. Implement the full definition of Jordan's Principle as outlined in a resolution passed by the House on December 12, 2007.
 - iii. Fully complying with all orders made by the CHRT and stop fighting Indigenous families in court who are seeking access to services covered by the federal government.
 - iv. Make public all pertinent documents related to the overhaul of child welfare and the implementation of Jordan's Principle.
- H. On October 27, 2016, without consulting with the AFN or the Caring Society, INAC Minister Carolyn Bennett appointed a Ministerial Special Representative on First Nations child and family services (MSR) whose role is to advise the government as it executes its engagement strategy with provinces, territories and child welfare agencies to overhaul the FNFCs program.
- I. To date, these engagement processes have been led by the MSR, without consultation with the AFN or the Caring Society. To date, the engagement process appears to have been conducted in an ad hoc manner, absent any terms of reference or accountability mechanisms, needed to clarify the goals and outcomes of the MSR and ensure the work is conducted in a manner consistent with the UN Declaration and domestic law.
- J. In the spirit of Article 15 (2) and 17 (2) of the UN Declaration, accountable engagement processes should be meaningful and guided by clear terms of reference developed in consultation with First Nations and First Nations child and family service agencies that clearly outline the intent, scope, impacts and accountability mechanisms of the engagement. Such procedures have been lacking throughout INAC's engagement plan.

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

1. Express deep concern regarding Canada's failure to immediately and fully comply with the Canadian Human Rights Tribunal (CHRT) decision.
2. Call on Canada to immediately comply with any and all orders issued by the CHRT without reservation.
3. Fully support the opposition motion passed in the House of Commons on November 1, 2016 and call on Canada to take immediate steps to fully comply with the motion.
4. Call on Canada to affirm that the National Advisory Committee (NAC) and Regional Tables process proposed by Assembly of First Nations and the First Nations Child and Family Caring Society is the legitimate process to provide advice to the Chiefs and federal government on First Nations child and family services reform and the implementation on Jordan's Principle.

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5. Call on Canada to immediately provide the information, resources and support necessary for the NAC and Regional Tables process to convene and complete their work.
6. Inform Canada that the Ministerial Special Representative on First Nations child and family services (MSR) engagement process is not a replacement for the NAC and Regional Tables process and in no way should prejudice Canada's full and proper compliance with the CHRT decisions.
7. Call on Canada to immediately refocus the mandate of the MSR to enhance the internal capacity of INAC and other federal departments to implement the CHRT decisions (2016 CHRT 2; 2016 CHRT10; 2016 CHRT 16 and any further orders) and the Truth and Reconciliation Commission of Canada Calls to Action. This includes, but is not limited to, shifting Indigenous and Northern Affairs Canada operating culture to promote non-discrimination, reconciliation, and observance of the United Nations Declaration on the Rights of the Indigenous Peoples and the Organization of American States American Declaration on the Rights of Indigenous Peoples, by designing and delivering professional training and performance measures for every member of the civil service up to and including Deputy Ministers along with any of its agents, successors or assigns related to the provision of services to First Nations peoples on and off reserves.

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