



**ASSEMBLY OF FIRST NATIONS**  
**SPECIAL CHIEFS ASSEMBLY**  
**LONG-TERM REFORM OF THE FIRST NATIONS CHILD AND FAMILY SERVICES PROGRAM**  
**OCTOBER 16-18, 2024**  
**DRAFT RESOLUTIONS**

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#	Title
01	Our Children, Our Future – Draft Agreement on reforming the First Nations Child and Family Services Program
02	Addressing Long-Term Reform of the First Nations Child & Family Services Program and Jordan’s Principle
03	Direction to Provide Time for First Nations to Review Agreement(s) on Long-Term Reform of First Nations Child and Family Services Program and Jordan’s Principle
04	Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services
05	Renewed Capacity-Building Funding Commitment for An Act Respecting First Nations, Inuit and Metis children, youth and families
06	Ensuring Transparency, Fair Representation, and Accountability in the Settlement Implementation Committee (SIC)
07	Extending the Age of Eligibility for Jordan’s Principle from the Age of Majority to 30 Years of Age
08	Ensuring Justice for First Nations Children: Support for the CHRT Non-Compliance Motion on Jordan’s Principle



# DRAFT RESOLUTION # 01 / 2024

## AFN Special Chiefs Assembly, October 16-18, 2024, Calgary, AB

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<b>TITLE:</b>	<b>Our Children, Our Future – Draft Agreement on reforming the First Nations Child and Family Services Program</b>
<b>SUBJECT:</b>	Child and Family Services
<b>MOVED BY:</b>	Chief Dan Manuel, Upper Nicola Band, BC
<b>SECONDED BY:</b>	Chief Patsy Corbiere, Aundeck Omni Kaning First Nation, ON

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### WHEREAS:

- A.** The First Nations-in-Assembly honour all the children, youth and families who have experienced harm and Canada's discrimination in the First Nations Child and Family Services (FNCFS) Program and the legacy of Canada's colonial structures, the effects of which continue to be felt today. We dedicate ourselves to ensuring that future generations will never have to experience such harm again and will live free from any kind of discrimination within the provision of child and family services.
- B.** The United Nations on the Declaration on the Rights of Indigenous Peoples (UN Declaration) states:
- i. Article 2: Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the rights to be free from any kind of discrimination, in the exercise of their rights, in particular, that is based on their origin or identity.
  - ii. Article 7(2): Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.
  - iii. 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.
  - iv. Article 22(2): states shall take measures, in conjunction with Indigenous peoples, to ensure that Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.
  - v. Article 23: Indigenous Peoples have the right to determine and develop priorities and strategies for exercising their right to development, in particular, Indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.
- C.** The Assembly of First Nations (AFN) and the First Nations Child and Family Caring Society (Caring Society) filed a complaint with the Canadian Human Rights Tribunal (CHRT) in 2007 alleging that Canada's inequitable provision of FNCFS and its choice to not fully implement Jordan's Principle were discriminatory and resulted in harms.

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- D. The CHRT substantiated the complaint in 2016 CHRT 2, which ordered Canada to immediately cease its discriminatory conduct towards First Nations children and families, emphasizing the need for prevention services, and to take such efforts as necessary to prevent the recurrence of the discrimination.
- E. In December 2021, the AFN, Canada, Chiefs of Ontario (COO), Nishnawbe Aski Nation (NAN) and the Caring Society reached an Agreement-in-Principle (AIP) on long-term reform of the FNCFS Program and Jordan's Principle, valued at \$19.807 billion over five years. The AIP provided a road map to negotiate a final agreement.
- F. The First Nations-in-Assembly, by way of AFN Resolution 04/2022, *First Nations Determination of the Reforms to the First Nations Child and Family Services Program and Jordan's Principle Ordered through the 2022 Canadian Human Rights Tribunal Ruling 8*, directed the AFN to request that the CHRT support First Nations right to self-determination by ordering that all funding provided through the 2022 CHRT 8 ruling be disbursed to First Nations and self-governing First Nations in the Yukon in order for them to determine how to allocate this funding between their governments and FNCFS agencies.
- G. The First Nations-in-Assembly mandated the AFN by way of resolutions 40/2022 and 86/2023, *To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle*, to negotiate a final settlement on long-term reforms, conduct regional engagements on the Draft Agreement to ensure that First Nations leadership has an adequate opportunity to discuss the Draft Agreement, and return to the First Nations-in-Assembly for discussion and/or approval of the agreement.
- H. The AFN, alongside COO, NAN, and Canada participated in intensive negotiations towards a Draft Agreement that reflected direction from the First Nations-in-Assembly, and leveraged First Nations-led research, expert advice and recommendations to reform the FNCFS Program.
- I. Counsel for the AFN, COO, NAN and Canada endorsed a Draft Agreement for consideration and approval by their respective leadership on July 10, 2024.
- J. As mandated by way of resolutions 40/2022 and 86/2023, the AFN conducted engagement sessions with First Nations including regional engagement sessions, to seek feedback on the Draft Agreement and negotiate recommendations as advised by First Nations.
- K. The Draft Agreement represents a robust approach to the long-term reform of the FNCFS Program, with funding commitments in the amount of \$47.8 billion over 10 years, reflecting the principles of substantive equality and best interest of the child, while ensuring collaboration and accountability between First Nations and the service providers rendering services to their communities.
- L. The Draft Agreement will have a direct impact of unprecedented magnitude on the lives of First Nations children, their families, and their communities, and further to the AFN's mandates, has been the subject of extensive engagement with First Nations and child and family services experts, and aligns, to the greatest extent possible, with the mandates of the First Nations-in-Assembly, particularly in advancing sovereignty, inherent jurisdiction and nation-to-nation building.

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## **AFN Special Chiefs Assembly, October 16-18, 2024, Calgary, AB**

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

- 1.** Fully support and approve the Draft Agreement on Long-Term Reform of the First Nations Child and Family Services (FNCFS) Program as amended based on engagement with First Nations and authorize the Assembly of First Nations (AFN) negotiators to make the necessary minor edits to complete a Final Agreement.
- 2.** Support the AFN in seeking an order from the Canadian Human Rights Tribunal (CHRT) confirming that the Final Agreement on long-term reform fully satisfies its orders related to reforming the FNCFS Program.
- 3.** Direct the Reform Implementation Committee to return to the First Nations-in-Assembly to provide regular progress reports on implementation of the reforms to the FNCFS Program.



# DRAFT RESOLUTION # 02 / 2024

## AFN Special Chiefs Assembly, October 16-18, 2024, Calgary, AB

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<b>TITLE:</b>	<b>Addressing Long-Term Reform of the First Nations Child &amp; Family Services Program and Jordan's Principle</b>
<b>SUBJECT:</b>	Children and Families
<b>MOVED BY:</b>	Khelsilem, Council Chairperson, Squamish Nation, British Columbia
<b>SECONDED BY:</b>	Chief Ira McArthur, Pheasant Rump Nakota First Nation, Saskatchewan

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### WHEREAS:

- A. Recognizing 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 without delay;
- 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 irreparable harms;
- C. The parties ("CHRT Parties") to the 2007 Canadian Human Rights Act complaint included:
  - i. AFN
  - ii. Chiefs of Ontario
  - iii. Nishnawbe-Aski Nation
  - iv. Caring Society
  - v. Canadian Human Rights Commission, and
  - vi. Amnesty International
- 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. Between 2016 and 2024, the CHRT Parties were required to hold Canada accountable and return to the Tribunal on multiple occasions, resulting in 24 non-compliance and procedural orders;
- F. On December 31, 2021, an Agreement in Principle ("AIP") was signed as a framework for the negotiations of a Final Settlement Agreement ("FSA") on First Nations child and family services, Jordan's Principle, and the reform of Indigenous Services Canada;
- G. The Final Settlement Agreement will have a direct impact of unprecedented magnitude on the lives of First Nations children, youth, their families, and their communities for generations to come,

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- H. 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;
- I. Canada has entered negotiations with some of the CHRT Parties (AFN, Chiefs of Ontario, Nishnawbe-Aski Nation) to complete an FSA on child and family services whilst other CHRT Parties are not included (Caring Society, Canadian Human Rights Commission and Amnesty International);
- J. In 2022 CHRT 8, the CHRT ordered the creation of the Expert Advisory Committee ("EAC") composed of independent and multidisciplinary experts to develop and oversee the implementation of an evidence-informed workplan to prevent the recurrence of discrimination by ISC;
- K. The CHRT ordered the federal government to work with the Parties to completely overhaul the on-reserve child and family services program and fully implement Jordan's Principle.
- L. As a result, an agreement was made to re-establish the **National Advisory Committee First Nations Child and Family Services Program Reform** ("the NAC") to address issues pertaining to child and family services reform, including funding, legislation, immediate relief, Jordan's Principle and other reforms.
- M. The NAC was mandated by the First Nations-in-Assembly to provide expert advice on long-term reform of First Nations Child & Family Services.
- N. The NAC has not:
  - i. completed its review of the proposed funding model for First Nations agencies;
  - ii. begun to review the proposed funding model for First Nations without agencies;
  - iii. met since February 8, 2024
- O. The AFN has not set any further NAC meetings despite requests to do so;
- P. The AFN and the Caring Society requested that the Institute of Fiscal Studies and Democracy (IFSD) conduct community-based research to Inform the reform of the FNCFS program and Jordan's Principle.
- Q. Canada, AFN, Chiefs of Ontario and Nishnawbe-Aski Nation have copies of the draft FSA.
- R. Copies of the draft FSA have not been shared with all First Nations, their technical experts or the other CHRT parties;
- S. Recalling and reaffirming Resolution 40/2022, directing:
  - i. The Parties to develop evidence-and policy-based options for the long-term reform of Jordan's Principle that will include mechanisms to enable and support self-determination and to return to the First Nations-In-Assembly for review and approval;
  - ii. Canada to extend the timeframes for signing the Final Settlement Agreement (FSA) on long-term reform. The First Nations-In-Assembly must approve the FSA on long-term reform;
  - iii. Canada to fund the Assembly of First Nations National Advisory Committee on First Nations Child and Family Services Program Reform and regional and other technical experts to Inform the FSA.



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- T. In light of these legal proceedings and their outcomes, it is critical to ensure that any reforms are driven by community-led processes and reflect the needs of First Nations children and families.

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

### **Final Settlement Agreement:**

1. The First Nations-in-Assembly reject the draft Final Settlement Agreement on Addressing Long-Term Reform of the First Nations Child & Family Services Program dated July 11, 2024, until further amendments and changes are made to the draft agreement and directs the AFN to negotiate amendments based on the spirit and intent of this resolution.

### **Governance and Transparency**

2. Direct the AFN to ensure governance of any long-term reform must uphold the sacredness of children, youth and families, be transparent, open and accountable to First Nations, and respect the guidance of First Nations child and family service experts;
3. Direct the AFN to obtain approval of the First Nations-in-Assembly to establish any mechanisms relating to the FSAs, including their implementation and governance, and to confirm any related appointment procedures and appointments.
4. Direct the AFN to refrain in the future from committing to support or otherwise make efforts to procure support from First Nations Leadership on an agreement, arrangement, protocol or other similar instrument that has not been approved by First Nations-in-Assembly.

### **Inclusion and Representation**

5. Direct the AFN to take positive and effective measures throughout the respective FSA negotiations, review and approval processes (including at the negotiation tables) to seek out and incorporate the expertise of:
  - a. First Nations,
  - b. First Nations child and family service providers,
  - c. Jordan's Principle experts,
  - d. Elders and Youth,
  - e. the National Advisory Committee (NAC), and
  - f. Jordan's Principle Operations Committee (JPOC).
6. Direct the AFN to ensure that each Regional Representative to the NAC is appointed by the corresponding Regional Chief or is a representative of the CHRT parties;
7. Call upon Canada and direct the AFN to unconditionally include all the CHRT Parties in negotiations toward long-term reform of the FNCFS program and Jordan's Principle and conduct long-term reform negotiations, including on any FSA(s) in a manner that is open, transparent and accountable to First Nations.

### **Communication and Feedback**

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8. Call on Canada to fulfill its obligation to consult with First Nations on the long-term reform of the First Nations Child and Family Services program.
9. Direct the AFN to postpone any votes on Draft Final Settlement Agreements until all First Nations have had sufficient time to review the complete agreement, available in both official languages, and until a clear, transparent, and accountable process for submitting and incorporating amendments has been established.
10. Instruct the AFN to provide a detailed report to the First Nations-in-Assembly on all suggested amendments, the decisions made on each amendment, and the outcomes of negotiations, before the Chiefs-in-Assembly proceed with any decision-making on the Draft Final Settlement Agreement.
11. Call on Canada to ensure that First Nations who are not AFN members are given a formal opportunity to express their views on the Draft Final Settlement Agreement, and for both Canada and the AFN to fully consider and incorporate those perspectives into the final decision.

### Voting:

12. Direct the AFN to ensure that First Nations Chiefs and Proxies can vote on the Draft Settlement Agreement by mail, virtually or in-person to accommodate First Nations Leadership who are unable to attend in person due to community circumstances or emergencies;
13. Direct the AFN to provide all drafts of the FSA and all supporting documents to the First Nations, AFN Regional Offices, and their regional experts at least 90 days prior to any Assembly where an FSA will be voted upon.
14. Direct the AFN is to develop, implement and publicize effective and timely mechanisms for First Nations and their designated expert(s) to ask questions, provide feedback on drafts FSA, and be informed of any changes to the respective draft FSA.
15. Direct the AFN to support the EAC to conduct its work freely as an independent expert body and invite the EAC Members and NAC Members to present their findings to the First Nations-in-Assembly prior to any vote draft FSAs.

### Support and Resources

16. Call on Canada to provide funding for First Nations to secure independent legal and technical advice, ensuring that all communities can review Draft Final Settlement Agreement with a full understanding of its implications.

### Long Term Reform of Jordan's Principle

17. Direct the AFN must include the following in the Long-Term Reform of Jordan's Principle and negotiations of any agreements with regard to the Long-Term Reform of Jordan's Principle:
  - a. A Negotiation Mandate, Protocol, and Terms of Reference for the long-term reform of Jordan's Principle, to be approved by the First Nations-in-Assembly. These should be developed with

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input from the National Advisory Committee (NAC), Expert Advisory Committee, and the Chiefs Committee on Child Welfare and Development.

- b.** A negotiation team with regional representation whose Terms of Reference are approved by the First Nations-in-Assembly. This team should regularly receive input from the NAC, EAC, Chiefs Committee on Child and Family Services and Self-Determination, and any other relevant bodies as identified by these committees.
- c.** A request for proposals (RFP) to hire a new legal firm for the negotiation team, ensuring there are no conflicts of interest. The selected firm must be approved by the First Nations-in-Assembly.
- d.** Reform approaches developed by the Institute for Fiscal Studies and Democracy (IFSD), reviewed by the NAC, and based on community-driven research. These reforms must aim to end discrimination and prevent its recurrence.



**DRAFT RESOLUTION #03/2024**  
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<b>TITLE:</b>	<b>Direction to Provide Time for First Nations to Review Agreement(s) on Long-Term Reform of First Nations Child and Family Services Program and Jordan’s Principle</b>
<b>SUBJECT:</b>	Child and Family Services
<b>MOVED BY:</b>	Chief Ross Perley, Neqotkuk (Tobique) First Nation, NB
<b>SECONDED BY:</b>	Chief Aaron Sock, Elsipogtog First Nation, NB

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**WHEREAS:**

- A. The United Nations Declaration on the Rights of Indigenous Peoples – specifically, articles 2, 3, 4, 5, 7(2), 11(1), 13(1), 15(2), 18, 19, 22(2), 37(1) and 43 – affirms the rights of Indigenous peoples to self-determination, including self-governance, in relation to children and their families, the right to free, prior and informed consent, and the right to be free from discrimination.
- B. The Truth and Reconciliation Commission of Canada (“TRC”) Calls to Action #1 to #5 call on federal, provincial and territorial governments to take actions to improve First Nations child and family services.
- C. The health, safety and well-being of children are fundamental to our self-determination and integral to our Nations and our societies. Children shall be protected from harms to their health, well-being, cultures, languages, identities, and safety and be provided with the support and resources they need to realize their dreams and their full potential with substantive equality.
- D. The overrepresentation of First Nations children and youth in care in the child welfare system is a crisis that requires immediate action and needs-based funding to address this crisis.
- E. While an Act Respecting First Nations, Inuit and Métis children, youth and families, SC 2019 c 24 says that fiscal arrangements are to be sustainable, needs-based, and consistent with substantive equality in order to secure long-term positive outcomes for our children, families and society, in practice, Canada is exhibiting a pattern of conduct, decisions, actions and omissions that bring the honour of the Crown into disrepute and demonstrate a breach of the Crown’s fiduciary duty to Neqotkuk children and families. This pattern includes applying paternalistic, discriminatory and inadequate funding formulas, engaging in delay-tactics and failing to provide needs-based fiscal transfers for culturally appropriate services that will allow our children and families to obtain substantive equality.
- F. Needs-based child and family services, especially in prevention and least-disruptive-measures, must be financed at actual cost, else the system will likely perpetuate the discrimination against our children and families.
- G. There are concerns about the current negotiations between the Assembly of First Nations (“AFN”), Canada, the Nishnawbi-Aski Nation and the Chiefs of Ontario, regarding the Final Settlement Agreement on Long-Term Reform of the First Nations Child and Family Services Program and Jordan’s Principle (“Agreements”). The concerns include:

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- i. the proposed reforms potentially deleteriously impact on the self-determination, sovereignty and autonomy of First Nations in administering child and family services.
- ii. Canada's practice of underfunding will preclude First Nations who are exercising their inherent rights to self-determination to legislate in relation to child and family services from being able to fully implement their laws thus constituting an unjustifiable infringement, and possible extinguishment, of constitutionally protected Aboriginal and Treaty rights and responsibilities.

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

1. Direct the AFN not to approve or sign the Agreements until all First Nations have 90 days to review the final drafts of the Agreements and all supporting materials, seek amendments to the Agreements and AFN to respond to any suggested amendments to the Agreements.
2. Direct Canada to fully implement the funding principle of predictable, stable, sustainable, needs-based funding in the form of an unconditional grant consistent with the principles of substantive equality and cultural continuity to secure long-term positive outcomes for First Nations children, families and societies.

**DRAFT RESOLUTION #04/2024**  
**AFN Special Chiefs Assembly, October 16-18, 2024, Calgary, AB**

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<b>TITLE:</b>	<b>Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services</b>
<b>SUBJECT:</b>	Child Welfare
<b>MOVED BY:</b>	Proxy, Judy Wilson, Osoyoos Indian Band, BC
<b>SECONDED BY:</b>	Chief Carolyn Wahobin, Nekaneet First Nation, SK

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**WHEREAS:**

- A.** The United Nations Declaration on the Rights of Indigenous People (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 Chiefs are elected by the citizens of their Nations to make informed decisions on their behalf.
- C.** The Assembly of First Nations, Chiefs of Ontario, Nishnawbe Aski Nation and Canada have reached a counsel endorsed draft Final Settlement Agreement (FSA) on long-term reform of the First Nations Child and Family Services Program.
- D.** The draft Settlement Agreement, if accepted by the First Nations-in-Assembly and the Canadian Human Rights Tribunal, will have a direct impact of unprecedented magnitude on the lives of First Nations children, youth, their families, and their communities for generations to come.
- E.** First Nations Chiefs and their advisors need adequate time to review, consider, comment, and give direction to make amendments to the draft FSA.
- F.** A failure to provide adequate time for Chiefs to review and consider the draft FSA contravenes article 18 of the UN Declaration and impedes Chiefs in discharging their responsibility to make the best, fully-informed decisions possible on behalf of their citizens.

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

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1. Call on Canada to fulfill its duty to consult with First Nations regarding long-term reform of First Nations Child and Family Services
2. Call on Canada to ensure First Nations that are not members of the AFN are able to formally express their positions on the Draft Final Settlement Agreement and for Canada and AFN to take those views into full account.
3. Direct the AFN to ensure that First Nations Chiefs and Proxies can vote on the Draft Settlement Agreement by mail, virtually or in person to accommodate First Nations Leadership who are unable to attend in person due to community circumstances or emergencies.
4. Call on Canada to fund First Nations to obtain independent legal and technical advice on the Draft Final Settlement Agreement, given the Parties are bound by paragraphs 379-382 to promote the agreement and make best efforts to secure the endorsement by First Nations Leadership.
5. Direct the AFN to refrain in the future from committing to support or otherwise make efforts to procure support from First Nations Leadership on an agreement, arrangement, protocol or other similar instrument that has not been approved by First Nations-in-Assembly.
6. Direct the AFN to renegotiate the draft Final Settlement Agreement in keeping with the directions of First Nations-in-Assembly including but not limited to:
  - a. Amend the purpose and associated text of the agreement to clarify that the agreement is intended to hold Canada accountable to stop the discrimination and prevent its recurrence.
  - b. Restore First Nations chiefs as the key decision-makers on long-term reform.
  - c. Expand the principles to include honour of the Crown, Canada's responsibility to fully end discrimination, intergenerational equity, transparency, accountability and inclusivity.
  - d. Make governance of long-term reform transparent and accountable to First Nations Chiefs.
  - e. Incorporate ongoing and meaningful oversight by and consultation with the National Advisory Committee on Long-Term Reform of the FNCFS Program.
  - f. Preserve the mandate and independence of the Expert Advisory Committee to reform ISC.
  - g. Expand the scope and strengthen the role of Dispute Resolution Tribunal and ensure the remedies available to the Canadian Human Rights Tribunal are also available to the Dispute Resolution Tribunal.
  - h. Strengthen the Regional Modifications provisions to align with the CHRT' orders that First Nations children must have access to and receive substantively equal, culturally appropriate services that account for the distinct circumstances of their communities.
  - i. Provide for amendments to the final agreement to ensure non-discrimination and fulfillment of the of the purpose and principles set out in the final agreement.
  - j. Expand the definitions of "child", "FNCFS Agency".



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- k. Specify that prevention funding will be allocated to FNCFS agencies in keeping with federal and provincial legislation, with provisions for capacity building funds so that First Nations can deliver some prevention programming.
- l. Ensure there is an evidence-informed funding structure that is responsive to the distinct circumstances and needs of First Nations children and their families and can be upwardly adjusted to address those needs and circumstances on a First Nations, regional or sub-regional basis.



# DRAFT RESOLUTION # 05 / 2024

## AFN Special Chiefs Assembly, October 16-18, 2024, Calgary, AB

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<b>TITLE:</b>	<b>Renewed Capacity-Building Funding Commitment for <i>An Act Respecting First Nations, Inuit and Metis children, youth and families</i></b>
<b>SUBJECT:</b>	Child Welfare
<b>MOVED BY:</b>	Chief Simon Denechezhe, Northlands Dene First Nation, MB
<b>SECONDED BY:</b>	Chief David Monias, Pimicikamak Cree Nation, MB

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### WHEREAS:

- A. Co-developed with First Nations, the federal law, *An Act respecting First Nations, Inuit and Métis children, youth and families* (the Act), came into effect on January 1, 2020.
- B. The purpose of the Act is to:
  - i. Affirm the inherent right of self-government for Indigenous peoples, which includes jurisdiction in relation to child and family services.
  - ii. Contribute to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.
  - iii. Set out principles, as well as minimum national standards that must be adhered to in the delivery of child and family services for all Indigenous children in Canada regardless of their residence.
  - iv. Provide a framework and pathway for Indigenous peoples to establish their own laws for child welfare.
- C. The Act is intended to address the overrepresentation of Indigenous children and youth in the child welfare system in Canada. Indigenous children make up 53.8% of the children in foster care, but they account for only 7.7% of the total child population in Canada (Census 2021).
- D. In July 2020, Canada announced a funding commitment of \$542 million over five years, starting in the 2020-21 fiscal year, to support the implementation of the Act. This includes \$425 million over five years for capacity-building funding for Indigenous Nations.
- E. In March 2021, Indigenous Services Canada (ISC) issued a call for proposals for capacity building funding. This funding is meant to support Nations in building capacity in preparation for exercising jurisdiction over child and family services prior to entering into coordination agreement discussions.
- F. As of February 25, 2024, through the proposal process, ISC reported that nationally 231 Indigenous governing bodies received \$220,957,851 million in funding for capacity-building activities under the Act.
- G. The 2024-25 fiscal year is the final year of Canada's five-year commitment to provide capacity-building funding.

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- H. In the 2024 federal budget, the government has committed to invest \$1.3 billion over five years, starting in the 2023-24 fiscal year, to continue supporting Indigenous Nations to implement the Act. However, this funding commitment does not include any mention of capacity-building funding.
- I. To ensure that Indigenous Nations continue to build capacity in preparation for exercising jurisdiction in child welfare, it is imperative that Canada continue to provide capacity-building funding.

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

- 1. Call on the federal government to renew its commitment to provide capacity-building funding to Indigenous Nations over five years, beginning in the 2025-26 fiscal year, to support the implementation of the Act.
- 2. Call on the Minister of Indigenous Services Canada to commit to provide capacity-building funding to Indigenous Nations.
- 3. Direct the AFN to advocate to the Minister of Indigenous Services Canada to ensure that Canada commits to provide capacity-building funding to Indigenous Nations.

**DRAFT RESOLUTION #06/2024**  
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<b>TITLE:</b>	<b>Ensuring Transparency, Fair Representation, and Accountability in the Settlement Implementation Committee (SIC)</b>
<b>SUBJECT:</b>	Child Welfare
<b>MOVED BY:</b>	Chief Robert Michell, Stelat'en First Nation, BC
<b>SECONDED BY:</b>	Chief George Cote, Cote First Nation, SK

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**WHEREAS:**

- A. The First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) filed a discrimination claim 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 and resulted in harms including the removal of children from their families and communities and the delay/denial of critical services.
- B. The Canadian Human Rights Tribunal (CHRT) substantiated the discrimination claim in 2016 CHRT 2 and ordered Canada to immediately cease its discriminatory conduct.
- C. In 2019, the CHRT awarded \$40,000 to each eligible victim of Canada's discrimination.
- D. In 2019, two class actions were filed, including one by the Assembly of First Nations that dated back to 1991.
- E. On June 30, 2022, Canada and the class action parties, including AFN, announced a Final Settlement Agreement (FSA) in the amount of \$20 Billion.
- F. Upon a review of the FSA, it was found that while the FSA offered compensation to a wider range of victims dating back to 1991, it also disentitled some victims of their CHRT compensation and reduced the amounts for others;
- G. The CHRT dismissed a motion by AFN and Canada to approve the FSA as fully satisfying the Tribunal's compensation orders due to the derogations from the CHRT orders that adversely affected some victims.
- H. Through Resolution 28/2022, *Final Settlement Agreement on Compensation for First Nations Children and Families*, First Nations-in-Assembly provided direction that: the FSA be renegotiated to include all the victims to the value of the compensation they were entitled to and that the AFN return to the First Nations-in-Assembly to provide regular progress reports and seek direction on any outstanding implementation issues.
- I. In April of 2023, through Resolution 04/2023, *Revised Final Settlement Agreement on Compensation for First Nations Children and Families*, the First Nations-in-Assembly approved a Revised FSA and directed the AFN to expedite approval by the CHRT and Federal Court, as well as to ensure that compensation would be paid as quickly as possible to the victims of Canada's discrimination. It directed the AFN to return to the First Nations-in-Assembly to provide regular progress reports on supports, implementation and the claims process and seek direction where required.

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- J. The Revised FSA was subsequently approved by the CHRT and Federal Court.
- K. Article 12 of the Revised FSA provides for a Settlement Implementation Committee (SIC) composed of five persons: 2 First Nations members (Non-Counsel Members) selected through a solicitation of applications process conducted by the AFN Executive Committee and 3 Counsel Members - one of which is appointed by the AFN Executive Committee.
- L. The AFN conducted a Request for Proposals, culminating in the selection by the AFN Executive Committee for the AFN appointments of Stuart Wuttke, AFN General Counsel (Counsel Member), Derek Nepinak (Non-Counsel Member for an initial term of three years) and Duke Pelletier (Non-Counsel Member for an initial term of five years).
- M. On November 16, 2023, the Federal Court approved the AFN appointments, as well as non-AFN class Counsel Members David Sterns and Robert Kugler.
- N. The FSA is expected to have a direct impact of unprecedented magnitude on the lives of First Nations children, their families, and their communities and accordingly, the SIC should consider a diverse number of perspectives in the context of their decision-making.

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

1. Call on the Settlement Implementation Committee (SIC) to establish an Advisory Sub-Committee on Compensation (ASC) composed of diverse First Nations persons, including Elders, women, youth, 2SLGBTQQIA+ persons, and differently abled persons that are representative of AFN regions and who have expertise in Jordan's Principle administration, First Nations child, youth and family related services, or related health and wellness services.
2. Direct the Assembly of First Nations (AFN) Executive Committee to consider the principle of diversity including Elders, women, youth, 2SLGBTQQIA+ persons, and persons with different abilities in future appointments of AFN SIC members.

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<b>TITLE:</b>	<b>Extending the Age of Eligibility for Jordan’s Principle from the Age of Majority to 30 Years of Age</b>
<b>SUBJECT:</b>	Child and Family Services, Jordan’s Principle, Health, Social
<b>MOVED BY:</b>	Chief Shirley Ducharme, O-Pipon-Na-Piwin Cree Nation, MB
<b>SECONDED BY:</b>	Chief Betsy Kennedy, War Lake First Nation, MB

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**WHEREAS:**

- A. *The United Nations Declaration on the Rights of Indigenous Peoples* states:
- i. Article 2: Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.
  - ii. Article 7(2): Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.
  - iii. Article 21(1): Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
  - iv. Article 21(2): States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.
  - v. Article 22(1): Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
  - vi. Article 22(2): States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.
- B. Jordan’s Principle, named in memory of Jordan River Anderson, a Cree child from Norway House Cree Nation in Manitoba, is a legal rule that obligates the federal government to ensure First Nations children have substantive equality, and that there are no gaps in publicly funded health, social, and education programs, services, and supports.
- C. First Nations children from birth to the age of majority in the province or territory of their residence are currently eligible for Jordan’s Principle. However, there are currently no provisions for services and supports beyond the age of majority under Jordan’s Principle, which is a significant gap for youth transitioning into young adulthood.

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- D. When First Nations youth reach the age of majority, they may not have access to the same level of support and services as they may have been eligible to receive under Jordan's Principle. This may have a negative impact on their health, education, and overall well-being.
- E. The transition from adolescence to young adulthood can be challenging for First Nations youth, who often encounter systemic barriers and disparities. Extending eligibility for Jordan's Principle to 30 years of age would allow First Nations youth the ability to access the necessary supports and resources to achieve self-sufficiency and thrive as young adults.
- F. In 2016 CHRT 2, the Canadian Human Rights Tribunal (CHRT), ordered Canada to immediately cease its discriminatory practices regarding First Nations child welfare, to reform the First Nations child welfare program, to cease applying a narrow definition of Jordan's Principle, and to adopt measures to implement the full meaning and scope of Jordan's Principle.
- G. In 2017, the CHRT further ordered that the needs of each individual child must be considered, to ensure the following is taken into account under Jordan's Principle: substantive equality, providing culturally appropriate services, and safeguarding the best interests of the child.
- H. In 2021 CHRT 41, the CHRT found that the Government of Canada was discriminating against First Nations children by failing to provide them with the same level of services as other Canadian children. The CHRT ordered Canada to fund the purchase and construction of capital assets for the delivery of First Nations Child and Family Services and Jordan's Principle.
- I. Pursuant to the Agreement-in Principle on Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle, signed December 31, 2021, Canada agreed to:
  - i. fund post-majority support services for First Nations youth "aging out" of care to the age of 25 at the actual cost of delivering services/supports, as determined by the First Nation or First Nations Agency.
  - ii. assess the resources required to assist families with navigating access to additional supports past the age of majority for high needs youth accessing Jordan's Principle.
- J. Both of these funding commitments were further ordered on consent by the CHRT in 2022 CHRT 8.
- K. Recent Assembly of First Nations resolutions on Jordan's Principle include:
  - i. *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;*
  - ii. *Resolution 27/2018, Support for the long-term implementation of Jordan's Principle;*
  - iii. *Resolution 04/2022, First Nations Determination of the Reforms to the First Nations Child and Family Services Program and Jordan's Principle Ordered through the 2022 Canadian Human Rights Tribunal Ruling 8;*
  - iv. *Resolution 40/2022, To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle;*
  - v. *Resolution 83/2023, Continuation of Funding at Actuals for Capital for Child and Family Services and Jordan's Principle;*



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- vi. *Resolution 84/2023, Continuation of Funding at Actuals for Post-Majority Support Services and Support for High Needs Jordan's Principle Recipients; and*
  - vii. *Resolution 86/2023, To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle.*
- L. Jordan's Principle ensures that all First Nations children have access to necessary services. Cessation of services and resources for those over the age of majority to the age of 30 (without the provision of the necessary infrastructure for transition) will harm youth who reach the age of majority and are still in need. The provision of the necessary resources and supports under Jordan's Principle to First Nations for youth to the age of 30 supports the creation of infrastructure to support youth aging into adulthood.
- M. Other federal programs and services are often not adequate to meet the needs of First Nations youth aging out of Jordan's Principle, and reforms to better meet these needs outside of Jordan's Principle are necessary, for example enhancing the Non-Insured Health Benefits Program, or expanding funding for educational supports under the Post-Secondary Student Support Program.
- N. Failure to address these issues could lead to similar compensation requirements as seen in 2019 CHRT 39, where the Tribunal found that the Canadian government had discriminated against First Nations children by failing to provide them with the same level of services as other Canadian children and ordered Canada to pay the maximum allowable compensation.

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

1. Call on the Government of Canada to extend the age of eligibility for Jordan's Principle to the age of 30.
2. Call on the Government of Canada to continue to uphold their commitment for Jordan's Principle and end discriminatory practices against First Nations children as they transition into adulthood.
3. Call on the Government of Canada to provide long-term and sustainable funding for First Nations youth transitioning into young adulthood under Jordan's Principle, including funding for supports, navigation services within Indigenous Services Canada and First Nations, and capacity-building for Service Coordinators.



**DRAFT RESOLUTION #08/2024**  
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**TITLE:** Ensuring Justice for First Nations Children: Support for the CHRT Non-Compliance Motion on Jordan’s Principle

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**SUBJECT:** Children and Families

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**MOVED BY:** Proxy, Judy Wilson, Osoyoos Indian Band, BC

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**SECONDED BY:** Chief, George Cote, Cote First Nation, SK

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**WHEREAS:**

- A. Jordan River Anderson, a young boy from Norway House Cree Nation, lived all five years of his short life in hospital due to jurisdictional disputes between federal and provincial authorities over who would pay for his in-home care costs.
- B. Jordan’s Principle honours Jordan River Anderson and his family, ensuring First Nations children receive substantively equal and culturally appropriate services, supports, and products when needed.
- C. In 2006, The First Nations-in-Assembly passed AFN Resolution 53/2006, which approved AFN, together with the First Nations Child and Family Caring Society (Caring Society), jointly submitting a complaint to the Canadian Human Rights Tribunal (CHRT), alleging Canada’s inequitable provision of First Nations Child and Family Services (FNCFS) and its choice not to implement Jordan’s Principle were discriminatory on the prohibited grounds of race and national or ethnic origin. The Caring Society and the AFN subsequently filed the complaint in 2007.
- D. In 2016, the CHRT substantiated the complaint and ordered Canada to immediately implement the full meaning and scope of Jordan’s Principle for all First Nations children.
- E. The CHRT has subsequently issued nine further orders (2016 CHRT 10, 2016 CHRT 16, 2017 CHRT 14, 2017 CHRT 35, 2019 CHRT 7, 2020 CHRT 20, 2020 CHRT 36, 2021 CHRT 41, 2022 CHRT 8) with a further non-compliance motion hearing scheduled for September 10-12, 2024 to compel Canada to implement the full meaning and scope of Jordan’s Principle.
- F. In 2021, a work plan to address deficiencies in Canada’s implementation of Jordan’s Principle was attached to the Agreement in Principle (AIP) on Long-Term Reform. The "Back to Basics" approach is based on that work plan and includes the specific CHRT-ordered timelines for determining requests.
- G. In 2022, the First Nations-in-Assembly passed Resolution 40/2022, which includes the directives to:
  - i. Ensure that the First Nations-in-Assembly must approve the Final Settlement Agreement (FSA) on long-term reform;
  - ii. Ensure the FSA on long-term reform does not detract from the Parties' right to seek orders from the Tribunal in the current complaint before the CHRT to ensure that all First Nations children, youth, and families will be free from discrimination and its recurrence for generations to come.

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- iii. Direct the Parties to develop evidence- and policy-based options for the long-term reform of Jordan's Principle, including mechanisms to enable and support self-determination and to return to the First Nations-in-Assembly for review and approval.
  - iv. Direct Canada to fund the Assembly of First Nations National Advisory Committee on First Nations Child and Family Services Program Reform and regional and other technical experts to inform long-term reform of FNCFS, including the FSA.
  - v. Call upon Canada to ensure Chiefs shall be provided with all available options and related supporting financial resources and materials to ensure First Nations can exercise their Free, Prior and Informed Consent on long term reforms.
- H. Despite the First Nations Parties raising serious non-compliance issues and suggesting solutions for years to Indigenous Services Canada (ISC), including how to manage the growing volume of requests, Canada did not fully implement the AIP work plan or the Back-to-Basics approach. ISC only complied with the CHRT-ordered timeframes to adjudicate Jordan's Principle requests at rates of 33% for urgent individual requests, 36% for non-urgent individual requests, 30% for urgent group requests, and 66% for non-urgent group requests in the 2022-23 fiscal year.
- I. As of March 2024, Canada had an estimated backlog of between 40,000 and 82,000 Jordan's Principle requests that have either not been opened or not determined.
- J. There are also long backlogs in reimbursements to families, service providers, and First Nations, resulting in some families, First Nations, and service providers taking on debt while waiting for reimbursement and some service providers withdrawing their services after months of non-payment.
- K. Jordan's Principle requesters report chronic challenges in contacting ISC, particularly in the context of urgent requests or updating the urgency of requests.
- L. In December 2023, after months of attempting to address the issues noted above through processes outside the CHRT, the Caring Society filed a non-compliance motion before the CHRT regarding Canada's ongoing failure to fully implement Jordan's Principle and requested several remedies to address Canada's non-compliance.
- M. Since 2023, the CHRT Parties have split their negotiations toward long-term reform into two separate streams: one to reform the First Nations Child & Family Service program (where a Draft Agreement has been reached) and a second to reform Jordan's Principle (where negotiations are paused, pending research that is currently underway by the Institute of Fiscal Studies and Democracy).

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

1. Call on Canada to fully and immediately implement Jordan's Principle, including full implementation of the Back-to-Basics approach, full resolution of current backlogs, prevention of future backlogs and monthly reports on compliance rates and backlogs, prompt payment of approved requests and ensure children who have experienced the death of a parent, sibling or close family member or who are in the midst of a state of emergency are included in Canada's definition of urgent cases.
2. Direct the AFN to take all necessary steps, , to achieve remedies for Canada's ongoing failure to implement Jordan's Principle fully, including, but not limited to, full implementation of the back-to-basics approach, full resolution of current backlogs, prevention of future backlogs and monthly reports on

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compliance rates and backlogs, prompt payment of approved requests and ensure children who have experienced the death of a parent, sibling or close family member or who are in the midst of a state of emergency are included in Canada's definition of urgent cases.

3. Direct the AFN to consult with Jordan's Principle experts, including the Jordan's Principle Operations Committee, the Jordan's Principle Action Table, regional experts and other technical experts to develop evidence- and policy-based options for the long-term reform of Jordan's Principle, including mechanisms to enable and support self-determination and to return to the First Nations-in-Assembly for review and approval—as per Resolution 40/2022.
4. Direct the AFN to work with all CHRT Parties to develop a detailed process that fully respects Resolution 40/2022 to achieve long-term reform of Jordan's Principle through open, inclusive and transparent negotiations of an FSA.
5. Direct the AFN to return to the First Nations-in-Assembly for review and approval of an AFN Jordan's Principle FSA Agreement Negotiation Protocol, which clearly outlines the negotiation objectives, principles, structure and reporting, and a detailed consultation and amendment process prior to commencing any negotiations on long term reform of Jordan's Principle.
6. Direct the AFN to report on significant events during the negotiation, consultation and amendment processes to the AFN Chiefs Committee on Child and Family Services and Self-Determination and to seek guidance from the Committee regarding negotiations to reform Jordan's Principle.
7. Direct the AFN to provide regular updates on the negotiations to First Nations and ensure that First Nations-in-Assembly and First Nations who are not members of the AFN are supplied with and provided a reasonable time to review the complete draft FSA and all supporting documents, including financial documents, in both official languages prior to seeking approval of the First Nations-in-Assembly.