
Assembly of First Nations

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Assemblée des Premières Nations

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SPECIAL CHIEFS ASSEMBLY
December 6,7,8, 2022, Ottawa, ON

Resolution no. 28/2022

TITLE: Final Settlement Agreement on Compensation for First Nations Children and Families

SUBJECT: Child and Family Services

MOVED BY: Council Chairperson Khelsilem, Squamish Nation, BC.

SECONDED BY: Chief Patsy Corbiere, Aundeck Omni Kaning First Nation

DECISION Carried by consensus

WHEREAS:

- A.** The Assembly of First Nations (AFN) Chiefs-in-Assembly honour all the children, youth, and families, those with us and those lost, who experienced egregious harms by Canada and its colonial structures, the impacts of which continue to be felt today. We dedicate ourselves to ensuring justice for all affected children and families.
- B.** The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states that:
- 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 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.

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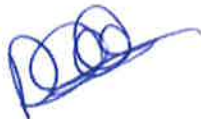
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- iv. Article 40: Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.
- C. The First Nations Child and Family Caring Society (Caring Society), as represented by Cindy Blackstock, and AFN, as represented by the former National Chief Phil Fontaine, filed a human rights claim in 2007 alleging that Canada's inequitable provision of First Nations child and family services and its choice not to implement Jordan's Principle was discriminatory.
- D. The Canadian Human Rights Tribunal (CHRT) substantiated the claim in 2016 CHRT 2 and ordered Canada to immediately cease its discriminatory conduct towards First Nations children and families.
- E. Consistent with the direction of the First Nations-in-Assembly *AFN Resolution 85/2018, Financial Compensation for Victims of Discrimination in the Child Welfare System* pursuant to the Canadian Human Rights Act, the CHRT ordered Canada to pay \$40,000.00 per eligible victim for Canada's "willful and reckless" discrimination of the worst kind.
- F. On September 28, 2021, the Federal Court dismissed the Government of Canada's application for judicial review of the Canadian Human Rights Tribunal's compensation orders.
- G. The Government of Canada then appealed the 2021 Federal Court Decision and announced it wished to address the human rights damages within two larger class actions: *Moushoom et al. v. Attorney General of Canada* and the Assembly of First Nations class action.
- H. In 2022, the AFN and Canada engaged in negotiations and concluded a settlement of \$20 billion for compensation to be paid to victims of Canada's discrimination. The agreement provided additional compensation above that which the CHRT awarded and deviated from the CHRT orders in some regards.
- I. Canada and AFN filed a joint motion to have their Final Agreement approved by the Tribunal, and on October 24, 2022, the CHRT issued a letter decision confirming that the Final Settlement Agreement on compensation signed by Canada, the AFN, and other class action parties does not fully satisfy its orders.

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

1. Support compensation for victims covered by the proposed Final Settlement Agreement (FSA) on compensation and those already legally entitled to \$40,000 plus interest under the Canadian Human Rights Tribunal (CHRT) compensation orders to ensure that all victims receive compensation for Canada's willful and reckless discrimination.
2. Direct Canada to fund post-majority supports tailored to the specific needs of each child and young adult victims up to age 26 who are eligible for compensation until such time that community-based supports funded by Canada can adequately support all victims for the duration of the compensation period.
3. Direct the Assembly of First Nations (AFN) to immediately seek a minimum of 12 months following the announcement of a revised Final Settlement Agreement for claimants to determine whether they will participate in the class action. Persons entitled to compensation shall determine whether they will participate in the class action based on complete information, including the terms of any settlement.
4. Call upon Canada to immediately place the minimum of \$20 billion earmarked for compensation in an interest-bearing account held by an independent and reputable major financial institution and immediately pay the compensation to all victims of Canada's discrimination, including those eligible under the class action and under the CHRT orders.
5. Support the principles on which the FSA is built, including taking a trauma-informed approach, employing objective and non-invasive criteria, and ensuring a First Nations-driven and culturally-informed approach to compensating individuals.
6. Continue to support the Representative Plaintiffs and all victims of Canada's discrimination by ensuring that compensation is paid as quickly as possible to all those who can be immediately identified and to continue to work efficiently to compensate those who may need more time.
7. Ensure that the AFN returns to the First Nations-in-Assembly to provide regular progress reports and seek direction on any outstanding implementation issues.

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