

**SPECIAL CHIEFS ASSEMBLY****December 5,6,7, 2023, Ottawa, ON****Resolution no.91/2023**

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<b>TITLE:</b>	<b>Reform Exploitative Legal Fee Structures</b>
<b>SUBJECT:</b>	Justice, Discrimination
<b>MOVED BY:</b>	De-Anne Sack, proxy, We'koqma'q First Nation, NS
<b>SECONDED BY:</b>	Chief Wilfred King, Kiashe Zaaging Anishinaabek First Nation, ON
<b>DECISION</b>	Carried by Consensus

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**WHEREAS:**

- A.** The *United Nations 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 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 8 (2): States shall provide effective mechanisms for prevention of, and redress for (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources.
- B.** As First Nations litigation activities have increased over recent decades, certain law firms and lawyers have developed exploitative legal fee structures which allow them to receive exorbitant sums in exchange for legal work. These practices revictimize First Nations who are seeking justice and siphon off settlement funds which are intended to mitigate harm to Survivors, rather than overcompensate predatory lawyers.
- C.** Lawyers may use a number of fee arrangements in their work with First Nations, including highly inflated hourly rates and contingency fee agreements, wherein the lawyer's compensation is dependent on the successful completion of the matter for which they have been retained. Contingency fees can be particularly exploitative for First Nations who do not have the financial means to pay legal fees up front. Such fees have been subject to court scrutiny, where firms have charged up to 20 per cent of a settlement for legal services. They have been widely criticized for unfair outcomes, lack of transparency, and for resulting in legal fees which are out of proportion to typical market rates in other areas of law.

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**Certified copy of a resolution adopted on the 7th day of December 2023 in Ottawa, Ontario**

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**CINDY WOODHOUSE, NATIONAL CHIEF****91 – 2023***Page 1 of 2*

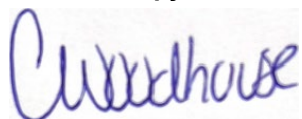
- D. There are a number of noteworthy allegations of lawyer exploitation of First Nations, including the Merchant Law Group, which the federal government accused of inflating bills for the Indian Residential Schools class action. In 2021, the Alberta Court of Queen's Bench reviewed Rath & Company's contingency fee agreement with the Tallcree First Nation, which entitled the firm to 20 per cent of the Nation's \$57.5 million agricultural benefits settlement payment. The Court found that Rath & Company was entitled to \$3 million, rather than the \$11.5 million sum claimed. Maurice Law has also been subject to claims of unfairness, as the Saskatchewan Court of Appeal ruled in 2017 that the firm's retainer agreement with Sakimay First Nation was unfairly obtained.
- E. In response to increasing incidents of conflict between lawyers and First Nations over financial arrangements, the Indigenous Bar Association (IBA) has called for changes to the Federation of Law Societies of Canada's model code of professional conduct to prevent lawyers from exploiting Indigenous clients. The IBA has also advocated for caps on the percentage firms can charge for work on Indigenous claims and developing mandatory training for lawyers working on disputes between law firms and Indigenous clients.
- F. Despite these advocacy efforts, exploitative legal fee structures have persisted. Discriminatory practices target First Nations, enabling lawyers to capitalize on First Nations in vulnerable financial and social positions and utilize power imbalances for their own profit.

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

1. Direct the Assembly of First Nations to call on the Federation of Law Societies and the 14 provincial and territorial law societies to develop and implement, in coordination and collaboration with First Nations, distinctions-based rules of professional conduct to address fair and reasonable legal fees for First Nations clients.
2. Call on the Government of Canada to take a strong stance against law firms who prey upon First Nations and utilize exploitative legal fee structures against them.

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CINDY WOODHOUSE, NATIONAL CHIEF