

OUR LAND IS OUR FUTURE

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UNION OF B.C. INDIAN CHIEFS
56TH ANNUAL GENERAL ASSEMBLY
SEPTEMBER 24TH TO 26TH, 2024
MUSQUEAM COMMUNITY CENTRE, X^WMƏƏK^WƏY^ƏM (MUSQUEAM TERRITORY)

Resolution no. 2024-49

RE: Address Shortcomings in the July 11th Draft Final Settlement Agreement on Long-Term Reform of the First Nations Child & Family Services Program

WHEREAS Canada has discriminated against First Nations children and families for decades through its design, management, control and chronic underfunding of the First Nations Child & Family Services (FNCFS) Program;

WHEREAS First Nations title and rights holders have the inherent right to self-determination, which includes jurisdiction over our children and families. These rights are constitutionally protected under section 35 of the *Constitution Act*, 1982, and are upheld and affirmed in the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration), and *An Act respecting First Nations, Inuit and Métis children, youth and families*, the constitutional validity of which was confirmed by the Supreme Court of Canada in *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5;

WHEREAS on February 23, 2007, 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 Commission alleging that Canada was discriminating against First Nations in the provision of child and family services on reserve by providing insufficient and inequitable funding for those services;

WHEREAS in *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 (the Merit Decision),

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the Canadian Human Rights Tribunal (the Tribunal) found Canada was discriminating against First Nations children and their families by denying First Nations children the equal provision of child and family services, and ordered Canada to stop its discriminatory policies and practices;

WHEREAS since the 2016 Merit Decision, the Tribunal has issued numerous procedural and non-compliance orders against Canada. The case is ongoing, and the Tribunal retains jurisdiction over these orders;

WHEREAS the AFN, Canada and interested parties (the Chiefs of Ontario and Nishnawbe Aski Nation) completed a draft Final Settlement Agreement (FSA) on long-term reform of the FNCFS program and presented it to Chiefs on July 11th, 2024 at the 2024 AFN Annual General Assembly in Montreal;

WHEREAS the AFN has conducted regional engagements on the July 11th Draft FSA since its release and is recommending to advocate for changes to the July 11th Draft FSA related to regional representation on the reform implementation committee, the president of the dispute resolution tribunal, and the reconsideration of the population data to include off-reserve members and move away from the Indian Registration System;

WHEREAS the AFN intends to seek endorsement of an updated draft FSA (“Updated Draft FSA”) from First Nations leadership at the October 16-18, 2024 Special Chiefs Assembly;

WHEREAS the UN Declaration, which the government of Canada has adopted without qualification, and has, alongside the government of B.C., passed legislation committing to implement, affirms:

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.

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.

Article 21(2): States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of [indigenous peoples’] 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.

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.

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.

Article 24(2): Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right;

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WHEREAS the Updated Draft FSA would replace the existing Tribunal orders regarding the FNCFS and end the Tribunal's jurisdiction with respect to the implementation of FNCFS;

WHEREAS by Resolution 2016-04, 2022-67 and 2024-02, the UBCIC Chiefs Council called on Canada to uphold the Merit Decision and subsequent orders, and to ensure that the FSA includes provisions to cease Canada's operational and administrative discrimination in the FNCFS Program;

WHEREAS by Resolution 2024-17, the UBCIC Chiefs Council called on the AFN to ensure direction and approval is sought from the AFN Chiefs-in-Assembly and the AFN Social Development Sector, and that such direction is adhered to in decision-making regarding long-term reform;

WHEREAS by AFN Resolution no. 40/2022, the First Nations-in-Assembly have called for specific parameters in the negotiation of an FSA, including (1) ensuring that the Reformed CFS Funding Approach do not reduce or disrupt current funding levels; (2) funding the Assembly of First Nations National Advisory Committee and other regional and technical experts to inform the FSA; (3) providing Chiefs 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; and (4) ensuring the FSA does not detract from the right of the Parties to the complaint before the Tribunal to seek additional Tribunal orders;

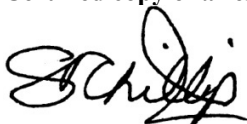
WHEREAS some Chiefs, technical experts, service providers, and legal experts identified numerous shortcomings in the July 11th Draft FSA, including relating the lack of respect for the inherent right of self-government held by First Nations; the lack of transparency and accountability in the governance processes; the numerous funding issues; the short-term nature of the agreement, the weaknesses in the Dispute Resolution Tribunal; and the duty to seek the free, prior and informed consent of First Nations before concluding an agreement that will carry profound consequences for First Nations children and families; and

WHEREAS the UBCIC Executive, working with the First Nations Summit and the B.C. Assembly of First Nations as the First Nations Leadership Council have, on September 19th, 2024, sent a letter to the AFN and Canada outlining their main concerns with the July 11th Draft FSA and making recommendations for the Updated Draft FSA.

THEREFORE BE IT RESOLVED the UBCIC Chiefs-in-Assembly reject the July 11th Draft Final Settlement Agreement (FSA) on Long-Term Reform of First Nations Child and Family Services (FNCFS) as currently drafted, as it did not respect First Nations rights holders, nor did it stop Canada's discrimination toward First Nations children and families or prevent it from happening again;

THEREFORE BE IT FURTHER RESOLVED the UBCIC Chiefs-in-Assembly direct the UBCIC Executive to advocate for amending the July 11th Draft FSA to address shortcomings relating to the lack of respect for the inherent right of self-government held by First Nations; the lack of transparency and

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accountability in the governance processes; the numerous funding issues; the short-term nature of the agreement; the weaknesses in the Dispute Resolution Tribunal; and the lack of inclusiveness of Modern Treaty Nations;

THEREFORE BE IT FURTHER RESOLVED the UBCIC Chiefs-in-Assembly direct the UBCIC Executive to ask the First Nations Health Authority to review the Updated Draft FSA once it is made public, and assess impacts on First Nations including how it addresses First Nations health issues and multigenerational trauma, and provide a report to First Nations in B.C.;

THEREFORE BE IT FURTHER RESOLVED the UBCIC Chiefs-in-Assembly reject any efforts by Canada now or at any time in the future, to abandon or delegate its legal duty to consult, to the Assembly of First Nations (AFN) or to any other entity; and

THEREFORE BE IT FINALLY RESOLVED the UBCIC Chiefs-in-Assembly urge the AFN to respect the negotiation mandates articulated in AFN resolutions when negotiating on behalf of First Nations regarding FNCFS and/or Jordan's Principle.

Moved: Judy Wilson, Osoyoos Indian Band (Proxy)

Seconded: Miranda Kimbasket, Splatlin (Proxy)

Disposition: Carried

Date: September 25, 2024

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