

OUR LAND IS OUR FUTURE

UNION OF BRITISH COLUMBIA INDIAN CHIEFS

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UNION OF B.C. INDIAN CHIEFS CHIEFS COUNCIL FEBRUARY 21ST – 22ND, 2024 VIRTUAL MEETING

Resolution no. 2024-17

RE: Ensuring Free, Prior and Informed Consent for FNCFS Long-Term Reform and Compensation Distribution

WHEREAS the First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) filed a discrimination at the Canadian Human Rights Tribunal in 2007 alleging Canada's inequitable provision of First Nations child and family services and its choice to not implement Jordan's Principle were discriminatory;

WHEREAS the Canadian Human Rights Tribunal substantiated the discrimination in 2016 CHRT 2 and ordered Canada to immediately cease its discriminatory conduct towards First Nations children and families, including those who are members of First Nations in British Columbia (B.C.);

WHEREAS consistent with the direction of the AFN Chiefs-in-Assembly (AFN resolution no. 85/2018) pursuant to the Canadian Human Rights Act, Canada has been ordered to pay \$40,000.00 per eligible victim for Canada's "willful and reckless" discrimination of the "worst order." In 2019 CHRT 30 and 2021 CHRT 7 as upheld by the Federal Court (T-1621-19 in 2021 FC 969);

WHEREAS on December 31, 2021, two Agreements-in-Principle (AIP) were signed, providing the frameworks for negotiations of the Final Settlement Agreements (FSA) on (1) Long-Term Reform of the FNCFS Program, Jordan's Principle, and Indigenous Services Canada (ISC) and (2) Compensation for victims of Canada's discrimination;

WHEREAS on April 3, 2023, the parties announced a revised FSA on compensation totaling \$23.34 billion, which was endorsed by the AFN Chiefs-in-Assembly (Resolution 04/2023); and approved by the Federal Court in a Settlement Approval Hearing on October 24, 2023;

WHEREAS AFN resolution 40/2022 ‘Final Settlement Agreement on Compensation for First Nations Children and Families’ calls on 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.

WHEREAS the *United Nations Declaration on the Rights of Indigenous Peoples*, which the government of Canada has adopted without qualification, and has, alongside the government of B.C., passed legislation committing to implement, affirms:

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.

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.

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 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 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;

WHEREAS at the direction of the First Nations-in-Assembly, the AFN Social Development Sector has been mandated to advance First Nations control and jurisdiction over social development programs and services as the foundation for the wellbeing of First Nations children, families and communities;

WHEREAS AFN Resolution 40/2022 directed Canada to fund the Assembly of First Nations National Advisory Committee (NAC) on First Nations Child and Family Services Reform and regional and other technical experts to inform the FSA;

WHEREAS the Federal Court of Canada, with the approval of the AFN, appointed Stuart Wuttke, Derek Nepinak, Duke Peltier, David Sterns and Robert Kugler to serve on the Settlement Implementation Committee to oversee the implementation of the FSA on Compensation in November 2023;

WHEREAS First Nations have been requested to provide input on compensation distribution by the end of February 2024 without yet receiving a draft distribution protocol to review, inhibiting the ability to provide free, prior, and informed consent; and

WHEREAS AFN Resolution 28/2022 directed for the AFN to return to the AFN First Nations-in-Assembly to provide regular progress reports and seek direction on any outstanding implementation issues.

THEREFORE BE IT RESOLVED the UBCIC Chiefs Council calls on the Assembly of First Nations (AFN) Settlement Implementation Committee to provide the draft compensation distribution protocol prior to

consultation, and to extend engagement timelines to allow for thorough consultation with Nations in B.C. and ensure free, prior, and informed consent;

THEREFORE BE IT FURTHER RESOLVED the UBCIC Chiefs Council calls on the federal government to provide funding for regional engagement on the draft compensation distribution protocol to ensure free, prior, and informed consent; and

THEREFORE BE IT FINALLY RESOLVED the UBCIC Chiefs Council calls 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 and compensation distribution.

Moved: Judy Wilson, Osoyoos Indian Band (Proxy)
Seconded: Katisha Paul, UBCIC Youth Representative
Disposition: Carried
Date: February 22, 2024