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Canadian Human Rights Tribunal on First Nations Child Welfare
Ottawa, Ontario

OPENING STATEMENT

REMARKS - CHECK AGAINST DELIVERY

Madame Chairperson, Tribunal Panel Members:

At the onset, I want to thank the Panel for accommodating the wishes of the Assembly of First Nations in allowing me, as National Chief, to make this Opening Statement. I realize that this is a legal process and this role is usually reserved for legal counsel. I hasten to add that we have utmost confidence in our counsel as well as counsel for the Caring Society and particularly the Commission counsel, who have graciously undertaken the main carriage of this case.

At the same time, I wanted, as National Chief, to be able to speak to you directly – to tell you how very important this case is to First Nations people, to the Chiefs, to our Elders, but more importantly to **First Nation children**. In all the learned discussion about the law and legal technicalities, I want to make sure that we do not lose sight of the human dimension of this case – **the kids**. They are the most vulnerable, but at the same time hold the greatest promise for our people, and the reconciliation of First Nation peoples with Canadian society.

This complaint is about discrimination, which arises in contemporary terms, but has historical origins. AFN takes the position and will advance the position in this Tribunal that the federal government discriminates against First Nation children on reserve. It does so through a federal program of funding that systematically under-funds and structures funding for child welfare services in ways that deny substantive equality to First Nations children on reserve. When considered in light of the historical disadvantage First Nation on reserve children face, as a result of more than a century of wrong-headed federal policies which aimed not at nurturing and supporting children as should be the case, but rather whose purpose was assimilation, the fundamental inequity in comparison to non-First Nation children that constitutes “discrimination” under the *Canadian Human Rights Act* is underscored.

In these Submissions, I will address the following points:

- First of all, I want to provide you with a background on the Assembly of First Nations and our mandate for bringing this human rights complaint;
- Secondly, I will highlight the importance of children to obtaining long term solutions to the challenges facing First Nations;
- Thirdly, I will address the Residential School issue and the implications today, Prime Minister Harper’s apology and reconciliation; and
- Fourth, I will briefly refer to the application of the *UN Declaration on the Rights of Indigenous Peoples*.



1. Assembly of First Nations: Background and Mandate

The Assembly of First Nations is a national organization that represents and advocates on behalf of First Nations in Canada. There are approximately 633 First Nation communities in Canada, with multiple languages, cultures and with high degree of diversity amongst them. Some are in urban areas, some in rural and remote areas. There is diversity in our economies as well, with some relying on traditional economies and others relying more heavily on the wage economy. Most communities have reserves, which are of varying sizes. Because of the constitutional history of Canada, the First Nation relationship, originally with the British Crown, is now primarily with the federal Crown. AFN takes the position that child welfare for First Nations, particularly on reserve, is a matter of federal rather than provincial responsibility.

Beyond their reserves, First Nations also have our traditional territories, over which we have Treaty rights or inherent Aboriginal rights, including the right of self-government - rights affirmed and protected under s. 35 of the *Constitution Act, 1982*. This unique constitutional status is one of the commonalities shared by First Nations peoples, along with Indigenous cultures, and a growing youth population. We also have in common a history of externally imposed attempts at assimilation and denial of our rights, responsibilities and cultures. This reality contributes directly to social conditions that have been obstinate to overcome.

The AFN was established pursuant to and operates under the *Charter of the Assembly of First Nations*. Under the AFN *Charter*, our principal objects are:

To protect our succeeding generations from colonialism;

To reaffirm our faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of our First Nations large and small;

To establish conditions under which justice and respect for the obligations arising from our international treaties and from international law can be maintained, and

To promote social progress and better standards of life among our peoples,

The AFN also derives authority from specific mandates provided from time to time by resolutions from First Nations in Assembly. It is pursuant to our broad *Charter* objects and Resolution No. 53/2006 that AFN was specifically mandated to pursue this complaint in 2006. That resolution directs as follows:

THEREFORE BE IT RESOLVED that the AFN Chiefs-in-Assembly approve the submission of a joint complaint by the AFN and the First Nation Child and Family Caring Society to the Canadian Human Rights Commission regarding the inequitable levels of child welfare funding provided to First Nations children and families on reserve pursuant to the Department of Indian and Northern Affairs Canada's (INAC) funding formula for First Nations Child and Family Services known as Directive 20-1 and the 1965 Welfare Agreement in Ontario.

As indicated in Resolution 53/2006, the mandate to file this complaint was given as a last resort. It was the culmination of a series of failed efforts made to resolve the child welfare issue in a collaborative fashion between First Nations, the AFN and with the federal government. This Panel will hear of this past collaborative work and studies.

The first attempt was the Joint National Policy Review, completed in 2000, on behalf of the AFN and the Department of Indian and Northern Affairs Canada, known now as Aboriginal Affairs and Northern Development Canada. This report found that federal child welfare funding for First Nation children on reserves was 22% less than that received by other children served by the province. This was followed by the *Wen:de* series of reports beginning in 2005, where experts found that the funding on reserve needed



to be substantially increased to achieve basic equity. Resolution 53/2006 noted that, by 2006, very little progress was made to implement the recommendations in these reports, which resulted in a failure to address the deficiencies in services provided to First Nation children on-reserve. In fact, Resolution 53/2006 expressed concern that the "number of First Nations children entering the care of the child welfare system continues to rise at an alarming rate with an estimated 27,000 First Nations children currently in care.

Therefore, to pursue their fundamental human rights, the Assembly of First Nations, in partnership with the First Nation Child and Family Caring Society of Canada, filed this human rights complaint on behalf of all First Nations children who want the same opportunity to live safely with their families, in their homes, in their own communities and to obtain the same services as other children off-reserve.

2. The Importance of First Nation Children to the Future

My *raison d'être* as National Chief has been first and foremost to focus on our children. I have the great privilege of spending time in communities from across this country. Moments spent with the children and their families are the most precious – moments clouded by the deep challenges and stresses that they face on a daily basis. But moments equally filled with rich potential – the spark in the child's eye that is achieving success in school despite incredible odds and the pride-filled response of a grandparents' embrace – are what give me hope and inspire our Nations to push forward to a better day.

As National Chief and together with the National Executive, we have brought focus to nurturing and supporting children – **in every way** – as the central underpinning of the work needed to **end** the seemingly never-ending cycles of poverty and dire social conditions that have plagued First Nations peoples for decades upon decades.

The problems facing First Nations people are so numerous and complex it is hard to know where to begin. Indeed many – are so discouraged by this complexity that change becomes imperiled and the status quo merely reinforced. I refuse to accept this.

In my heart, I know the solutions lie with the children. As adults who were once children ourselves, as parents, as grandparents, we know how important it is for a child to have a happy, healthy and secure home-life growing up. We know how important it is to have food, a warm bed and to have loving parents. We know how important it is to be nurtured at home by our parents and aunts, uncles and grandparents, even before we begin our lives at school. We know the importance of having a good education. We also know that the watchful eye of caring adults, reinforcing our culture and identity, builds the confidence needed to succeed.

There is an intuitive logic to this. At the same time, it was apparently self-evident to the architects of assimilation that the focus of their efforts to disrupt First Nation cultures and societies had to be on the child – "to kill the Indian in the child". It is a bitter irony, but the focus today must be on the children to reverse the damage created by federal assimilation policies, the most noxious aspect of which was the Indian Residential School system.

We know that even having the basic necessities, such as a food, a warm bed and nurturing parents, is no guarantee that our kids are going to make it. Imagine the odds against you if you are denied these basic things. This is the unfortunate situation of many First Nation children on reserves in Canada. The evidence in this case will describe the situation of First Nation children on reserve and identify some of the root causes for this situation.

And while increased federal funding, better services and more appropriate program terms and conditions will not, in and of themselves solve all these problems, such improvements would be tremendously helpful. More importantly for this Tribunal, doing so will move towards alleviation rather than perpetuation



of discrimination against First Nation children on reserves. Currently, federal funding programs do not provide comparable levels of funding to programs offered by provinces.

This Panel will be provided with evidence that demonstrates the federal government provides First Nation agencies with less funding for child welfare services on reserve, even though First Nations children have higher needs than non-First Nation children. The reports by the Auditor General, the Standing Committee on Public Accounts and numerous expert reports all confirm this fact.

This Panel will hear evidence of funding deficiencies from witnesses who run child welfare services on and off reserve. You will hear that there are not the resources on reserve to keep the children safely in their homes when their family goes through a crisis to the same degree as they are available for off-reserve families.

Provincial statutes stipulate least disruptive measures are to be employed. This means that social workers must do everything possible to keep the child in the family home before they consider removal. However, these services are not available on-reserve. This Panel will be provided with federal government's own documents, which link its funding formula to growing numbers of First Nations children going into state care.

With regard to funding levels, provincial comparability ought to be a minimum. Indeed, to achieve substantive equality, federal child welfare funding and services ought to be sensitive and responsive to the disadvantaged situation of First Nations children, given the history and impact of federal assimilation policies and residential schools.

General reporting on First Nation programs tends to focus on how much money First Nations people receive yet they do so without the context of what comparably non-First Nations peoples receive from three levels of government and services. Such references fail to appreciate both the complexity of social issues our people face and the fundamental inadequacies of federal funding. This case will give you as Panel members an opportunity to obtain an in-depth understanding of the challenges confronting our people, particularly our front-line workers, and the depth of underfunding to the communities.

You will get a sense of the tragic assessment that that the AFN and the Caring Society have come to: that our children keep being taken away from First Nation families on reserve perhaps in even greater numbers today than during the Residential School era. The reasons for the removal today are different and relate more to the poverty and social conditions on reserve. The removal appears not to be driven directly by an intention "to kill the Indian in the child", but the consequences are nonetheless the same.

3. Intergenerational Impact of Residential Schools, the Prime Minister's Apology and Reconciliation

I have alluded to the contention that the current situation of First Nation children on reserve is related to the legacy of Indian Residential schools. The Panel will hear evidence on residential schools, its intergenerational impacts and the connection to child welfare.

But the impact of the Residential School system was confirmed by the Prime Minister in his historic apology delivered in the House of Commons on June 11, 2008. I want to take the time to quote from this apology because it is so important, not just for survivors, but also for reconciliation between First Nations and Canada and to the role of this Tribunal in that reconciliation process.

On June 11th 2008 - the Prime Minister said:

For more than a century, Indian Residential Schools separated over 150,000 Aboriginal children from their families and communities. ... Two primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions



and cultures, and to assimilate them into the dominant culture. These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some sought, as it was infamously said, "to kill the Indian in the child". Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country.

.....

The government now recognizes that the consequences of the Indian Residential Schools policy were profoundly negative and that this policy has had a lasting and damaging impact on Aboriginal culture, heritage and language.

The legacy of Indian Residential Schools has contributed to social problems that continue to exist in many communities today.

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To the approximately 80,000 living former students, and all family members and communities, the Government of Canada now recognizes that it was wrong to forcibly remove children from their homes and we apologize for having done this. We now recognize that it was wrong to separate children from rich and vibrant cultures and traditions that it created a void in many lives and communities, and we apologize for having done this. We now recognize that, in separating children from their families, we undermined the ability of many to adequately parent their own children and sowed the seeds for generations to follow, and we apologize for having done this. We now recognize that, far too often, these institutions gave rise to abuse or neglect and were inadequately controlled, and we apologize for failing to protect you. Not only did you suffer these abuses as children, but as you became parents, you were powerless to protect your own children from suffering the same experience, and for this we are sorry.

The burden of this experience has been on your shoulders for far too long. The burden is properly ours as a Government, and as a country. There is no place in Canada for the attitudes that inspired the Indian Residential Schools system to ever prevail again. You have been working on recovering from this experience for a long time and in a very real sense, we are now joining you on this journey. The Government of Canada sincerely apologizes and asks the forgiveness of the Aboriginal peoples of this country for failing them so profoundly.

The tragedy of Indian Residential School system continues to reverberate through First Nation communities and across this country. Just last week a report was released on the 3000 confirmed deaths of children that occurred in Residential Schools. This report is a painful reminder to all Canadians of a dark past, but it hits the headlines and then goes away. First Nation peoples live those reminders each and every day – the legacy of residential schools.

In filing our human rights complaint, the AFN and the Caring Society are saying that the impact of Indian Residential School system is reverberating through the First Nations child welfare system. And rather than relieving the burden on the shoulders of First Nations communities, the federal government is reverting to the same old patterns that prevailed during the Residential School era: underfunding and the removal of First Nations children from their homes and communities.

The Prime Minister in his apology mentioned "reconciliation"; but how do we achieve reconciliation? How do we overcome the impacts? How do we turn the page? In my submission, it will take more than an apology and it will take more than cash compensation. It means more than short term healing programs. It will take fundamental change in the way government approaches First Nations.



In the area of child welfare, it will involve more listening on the part of federal officials; more respect; more mutuality in the development and implementation of federal child welfare programs for First Nations, and better resourcing. Ultimately, it will involve restoring First Nation self-determination in full accordance with our rights and responsibilities through a process supported and facilitated by the federal government.

The AFN believes that this Tribunal can be part of the reconciliation process. What contributed to the Indian Residential School debacle is the combined effect of the vulnerability of First Nations peoples at the time and the lack of accountability on the part of church and federal officials that were supposed to be managing the system. The *Canadian Human Rights Act* has the potential to cure the deficiencies that allowed the Indian Residential School to happen. It can provide a measure of power to First Nation communities and families and can play a tremendous role in ensuring federal accountability, so that the historic discrimination that prevailed in residential schools is not perpetuated by contemporary federal policies.

I submit that the Prime Minister's apology ought to be taken in its most meaningful and purposeful sense: as a message to this institution and all Canadian institutions that the federal government intends to bear the burden of the Indian Residential School legacy and that it will hold itself to account in making sure its programs do not perpetuate discrimination of the past, but instead promote reconciliation.

4. UN Declaration on the Rights of Indigenous Peoples

Before concluding I want to speak about the *UN Declaration on the Rights of Indigenous Peoples*, which the AFN considers to be an extremely significant and material development, not just for Indigenous peoples, but for all of Canada. It undoubtedly has a bearing on this case. The *Declaration* was adopted by the UN General Assembly on September 13, 2007. It was endorsed by Canada on November 12, 2010.

Canada's endorsement states: "The Government's vision is a future in which Aboriginal families and communities are healthy, safe, self-sufficient and prosperous within a Canada where people make their own decisions, manage their own affairs and make strong contributions to the country as a whole." The reference to healthy, safe and self-sufficient Aboriginal families and communities is consistent with the principles of the *Declaration*. The AFN submits that the federal government's child welfare funding programs for First Nation children on reserve ought to be assessed by this Tribunal against this vision and the principles in the *Declaration*.

The *Declaration*, especially now that it has been endorsed by Canada, may be used by Canadian courts in interpreting Indigenous peoples' rights and related State obligations. Within their respective mandates, federal, provincial and territorial human rights commissions and tribunals may also rely on the *Declaration* for interpretive purposes.

The AFN submits that the following provisions of the *Declaration* ought to be considered by this Tribunal in evaluating whether the federal government is discriminating against First Nation children on reserve in the funding and provision of child welfare services.

First of all, the preamble acknowledges that Indigenous peoples have suffered from historic injustices. It points to the need for States and Indigenous peoples to enter into processes of mutual respect and partnership. It also recognizes the right of Indigenous families and communities to retain shared responsibility for the upbringing and well-being of their children.

The substantive provisions of the *Declaration* also have application. Article 7 recognizes that Indigenous peoples have the right not to have their children forcibly removed; and Article 8 recognizes the right to be free from forced assimilation. Articles 21 and 22 obligate States to take measures, especially for children, to ensure continuing improvement of social and economic conditions, and to provide protection from violence and discrimination.



AFN submits that the current federal funding levels for First Nations child welfare on reserves fails to meet the vision and the provisions of the UN *Declaration*. Correspondingly, if the *Canadian Human Rights Act* is to be interpreted in a manner consistent with the *UN Declaration*, then, federal funding policies and programs also fail to meet the proscription in that *Act* against discrimination.

Conclusion

This case poses many important questions for First Nations people moving forward.

If the Respondent is successful in avoiding the application of the *Canadian Human Rights Act*, what will happen to these First Nations children who will continue to be affected by the intergenerational impacts of Indian Residential School? Where will they turn? Will there be no accountability for the denial of equitable treatment by the federal government?

What will the future hold if vulnerable children can be denied equitable government services simply because of their race, because the government feels that their funding is not a service? The implications of this case are far reaching. Will this apply to other areas as well?

The Assembly of First Nations believes in the equal treatment of all children. The discriminatory practices and continued federal policies to separate First Nation children from their parents, families and communities must come to an end once and for all. This destructive practice, dating back over 100 years, has no place in Canada in the 21st century. The principles of equality for First Nation children are enshrined in the *United Nations Convention on the Rights of the Child* and the *United Nations Declaration on the Rights of Indigenous Peoples*. **Let this panel ensure that First Nation children are treated with substantive equality to other children and to ensure that they are able to grow up in their families, and in their own communities.**

Let us be absolutely clear - children - all children - deserve the highest protection a society can offer. In the case of First Nations children, we believe, the duty is particularly acute given what I have explained here today and what this Panel will hear over the coming weeks.

Fairness today will lead to opportunity and success for First Nation children and ultimately for all of Canada.

This moment affords this rich opportunity - a moment to end the wrong, to end denial and to commit to a deliberate step forward in reconciliation.

A step that will recognize our peoples. A step that will support our children and their families.

A step *forward* that will allow all Canadians to feel pride and know with confidence, that justice has been served.

Kleco, Kleco. Thank you.