

Interim Report of the National Advisory Committee on First Nations Child and Family Services Program Reform

January 2018

An interim report and summary of draft recommendations delivered by the National Advisory Committee on First Nations Child and Family Services Program Reform.

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Introduction

This report will serve as the interim document containing the development and status of the National Advisory Committee on First Nations Child and Family Services Program, (herein referred to as the “NAC”). It provides key recommendations for medium- and long-term relief related to the Canadian Human Rights Tribunal (CHRT) decisions (CHRT 2016 4; CHRT 2017 14), and provides general advice on program reform, including the application of Jordan’s Principle. The NAC is a joint committee composed of First Nations child and family service experts appointed by AFN Regional Chiefs, the Assembly of First Nations (AFN), the First Nations Child and Family Caring Society (the Caring Society), and the Department of Indigenous Services Canada (DISC). Since being reinstated, the NAC has met six times since January 2017 and once as a First Nations Caucus (without representatives from DISC) in December 2016.

Background

The following is a concise history of the NAC, in addition to brief timeline of the Canadian Human Rights Tribunal (CHRT) orders 2016 CHRT 2, 2016 CHRT 10, 2016 CHRT 16 and 2017 CHRT 14. For a more detailed version of the history of inequality of First Nations child and family services in Canada, please see the Caring Society’s website:

<https://fncaringsociety.com/tribunal-timeline-and-documents>.

The NAC previously existed as a joint DISC (then known as the Department of Indian Affairs and Northern Development (DIAND)) and Assembly of First Nations (AFN) National Advisory Committee, which met regularly between 2001 and 2008. Its aim was to oversee the implementation of the National Policy Review’s (NPR) 17 recommendations to the DIAND Minister on changes to the First Nations child and family services policy, known as Directive 20-1. The NAC then released a series of reports, known as the *Wen:De Reports*, in 2004 and 2005 after inaction on the previous recommendations of the NPR. Since that time, many of these key recommendations still remain relevant and are included at the end of this report.

In 2007, as a result of continued inaction on reforming the federal First Nations child and family services program for First Nations children, the AFN and the First Nations Child and Family Caring Society filed a complaint at the Canadian Human Rights Commission (CHRC) and were referred to the Canadian Human Rights Tribunal (CHRT). The complaint was against the Government of Canada, and alleged that First Nations children on-reserve receiving child and family services are discriminated against based on their race, and are treated as inferior to other children in Canada.¹

¹ “Tribunal Timeline and Documents,” 2017, *First Nations Child and Family Caring Society of Canada*, <https://fncaringsociety.com/tribunal-timeline-and-documents>.

On January 26, 2016, the CHRT issued a landmark ruling on the case and substantiated the complaint (2016 CHRT 2), ruling that First Nations children living on-reserve and in the Yukon were in fact treated in a discriminatory manner by the federal government in its provision of child and family services.² The Tribunal ordered the federal government to completely overhaul its on-reserve child welfare program, cease applying a narrow definition of Jordan's Principle, and adopt measures to immediately implement the full meaning and scope of Jordan's Principle. Following this decision, there was an agreement made to re-establish the NAC to address issues pertaining to child and family services reform, including (but not limited to) funding, legislation, immediate relief, and Jordan's Principle. Since the initial ruling, three compliance orders have been issued as a result of inaction on the ruling by the federal government (2016 CHRT 10 on April 26, 2016; 2016 CHRT 16 on September 14, 2016; and 2017 CHRT 14 on May 26, 2017).³

The re-establishment of the NAC has also been supported by the AFN Chiefs through two Resolutions. At the 2016 AFN Annual General Assembly in Niagara Falls, Ontario, the Chiefs-in-Assembly passed by consensus Resolution #62/2016, *Full and Proper Implementation of the historic Canadian Human Rights Tribunal decisions in the provision of child welfare services and Jordan's Principle*. This Resolution supported "the revitalization of the AFN National Advisory Committee on child and family services with equal representation of First Nations across the country."⁴ (See Appendix A for Resolutions). This was further supported by AFN Resolution #83/2016, *National Advisory Committee on INAC's Child Welfare Reform Engagement Strategy*, passed at the 2016 Special Chief's Assembly in Gatineau, Quebec. This Resolution called for "Canada to affirm that the National Advisory Committee (NAC) and Regional Tables process proposed by Assembly of First Nations and the First Nations Child and Family Caring Society is the legitimate process to provide advice to the Chiefs and federal government on First Nations child and family services reform and the implementation on Jordan's Principle,"⁵ and called "on Canada to immediately provide the information, resources and support necessary for the NAC and Regional Tables process to convene and complete their work."⁶

The NAC met first in January 2016 and finalized its Terms of Reference in March 2017. The Terms of Reference stipulate the membership of the NAC is composed of a national Chair, three representatives of the federal government, one representative of the AFN, one representative

² *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada*, 2016, 2016 CHRT 2, T1340/7008, <https://fncaringsociety.com/sites/default/files/2016%20CHRT%20Ruling%20on%20FN%20child%20welfare%20case.pdf>.

³ "Tribunal Timeline and Documents."

⁴ Assembly of First Nations. 2016. AFN Resolution #62/2016.

⁵ Assembly of First Nations. 2016. AFN Resolution #83/2016.

⁶ Ibid.

of the Caring Society, ten regional representatives (one from each AFN region), one youth representative, and one Elder(s) representative.⁷ The NAC members, AFN, Caring Society, and Indigenous Services have agreed to and appointed Grand Chief Edward John as the national impartial chair of the NAC.

The Terms of Reference also speaks to the various mandates that structure the purpose and work of the NAC. For example, the NAC was officially mandated to provide advice and input to assist in child and family services policies and programs reform for on-reserve First Nations children and families to First Nations leadership, agencies and the Minister of DISC. Additionally, the NAC is mandated to, among other items, address issues of broad reforms of federal authorities, policies, and practices; to oversee the potential development of a national framework to support First Nations child and family services agencies; to advocate for the needs of First Nations children and families; and to review mechanisms to ensure communication, accountability and dispute resolution among all parties.⁸ The Terms of Reference are accompanied by a number of recommendations that stem from a series of reports and research conducted on child and family services that will ultimately guide the work of the NAC (See Appendix B for the complete NAC Terms of Reference). The NAC is mandated to complete this work and provide recommendations between January 2017 and January 31, 2018.

In an effort to organize their work plan, the NAC has since looked at breaking tasks into Action Tables, each with its own area of focus. At present, the areas of focus for the Action Tables include:

- i. Practice & Community Needs (Children, Youth & Families);
- ii. Agency & Administration;
- iii. Governance & Legislation;
- iv. Jordan's Principle; and
- v. Internal DISC/GOC reform, Training, Education and Communication.

Much of the work goals of the Action Tables are supported by a number of recommendations found from within the NAC Terms of Reference, The Truth and Reconciliation Calls to Action, Wen:de : Coming into the Light of Day (2005), Wen:de : The Journey Continues, (2005), VOLUME 3, Gathering Strength: Report of the Royal Commission on Aboriginal Peoples (1995), Orders from Canadian Human Rights Tribunal (2016 CHRT 2), First Nations Child and Family Services Joint National Policy Review Final Report (2000), and reports of the Auditor General of

⁷ Ibid.

⁸ National Advisory Committee on First Nations Child and Family Services Program Reform (NAC), 2017, *Terms of Reference*.

Canada (2008 May) and (2011). The Action Tables meet separately from the larger NAC, and may involve non-NAC members, such as experts and advisors to assist in mobilizing their work upon consensus of the NAC.

Regional Work

It is important to highlight some of the key contributions that regional representatives have shared with the NAC regarding regional efforts to reform First Nations child and family services. Most notably, Manitoba, Quebec, and Saskatchewan have shared reports based on key findings and recommendations from the engagement that was conducted in their regions that focused on the advancement of child and family services reform. These reports include:

- *Keewaywin: Our Way Home, Manitoba First Nations Engagement*
Prepared by The Assembly of Manitoba Chiefs and the First Nations Family & Child Advocate Office;
- *Another Step Toward Self-Determination and Upholding the Rights of First Nations Children and Families: Final report - Quebec region*
Prepared by the First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC);
- *Voices for Reform: Options for Change to Saskatchewan First Nations Child Welfare*
Prepared by Saskatchewan First Nations Family and Community Institute Inc.

Activities to date

NAC Activities

Since being reinstated, the NAC has convened several times to discuss the path toward reforming First Nations child and family services. The NAC and its Action Tables have developed strong work plans to bring the NAC to its anticipated deadline of January 31, 2018.

The NAC convened on January 24–25, 2017 in Ottawa, Ontario where the Terms of Reference were reviewed, the unilateral appointment of a Ministerial Special Representative on child and family services reform by DISC (formerly INAC) was discussed, a review of engagement on child and family services programs and policies by DISC to date was conducted, and regional updates on child and family services and Jordan’s Principle were delivered. Additionally, the operationalization of Jordan’s Principle by the federal government was discussed and an update on literature reviews on child and family services being conducted by students at the University of Ottawa was delivered by DISC. Finally, NAC members worked to create a strategic workplan to guide their work over the next year.

The NAC met again on March 20–21, 2017 in Ottawa where regional updates were delivered, identifying key areas where NAC can support child and family services efforts and activities in the regions. The Terms of Reference for the NAC were finalized, and an update on the CHRT was given. DISC provided an update on the progress of planning for a National Youth Summit, and an update on the Jordan’s Principle Oversight Committee (JPOC) was given. On behalf of the Caring Society, Dr. Cindy Blackstock provided a presentation on the Wen:De survey instruments and the possibility of using these instruments to provide an update on the funding amounts recommended by the original Wen:De reports. The Action Tables met and discussed objectives, goals and work plans to guide their work during the mandate of the NAC.

Using funding from INAC for the activities and work of the NAC, Dr. John Loxley and Marina Puzyreva completed an update to the 2004/2005 Wen:De Reports to adjust the initial recommendations for inflation. The final report, released in April 2017, showed that the actual funding levels distributed or anticipated by the federal government, even with the inclusion of new investments and immediate relief funding in 2016, fall far short of the investment levels recommended by Wen:De. Budget 2016 identified \$634.8 million over five years for First Nations child welfare, and a separate notice in July 2016 from INAC announced \$382.5 million over three years for Jordan’s Principle implementation over three years.⁹

The NAC convened on May 17–18, 2017 in Ottawa and received an overview of federal financial authorities and a project currently underway on alternative funding models for First Nations children and youth from Kevin Page and Helaina Gaspard of the Institute of Fiscal Studies and Democracy (IFSD) at the University of Ottawa. The NAC members met with their respective Action Tables to discuss a draft list of 84 recommendations made by previous reports and studies on First Nations child and family services. The 84 recommendations were drawn from 8 key documents, and Action Tables summarized priority areas for interim recommendations. Some of these recommendations are highlighted in the “Recommendations” discussion below. The remainder of the meeting was spent delivering regional updates and reviewing the Loxley and Puzyreva (2017) report “Adjusting the Wen:De Recommendations for Inflation.”

The NAC met on July 18–19, 2017 in Ottawa, ON and focused their discussions on funding gaps and reform needed to best serve First Nations children and families in need of services. The Action Tables met to continue discussing interim recommendations, and these discussions are captured by the following “Recommendations” discussion.

⁹ John Loxley and Marina Puzyreva, “Adjusting the Wen:De Recommendations for Inflation,” draft document, April 5, 2017.

During the September 2017 NAC meeting, the NAC approved a letter addressed to the Honourable Minister Philpott. This letter proposed short term immediate recommendations that included:

1. Secure Treasury Board Authority to amend budget 2016 allocations and move the year 5 (2020-2021) amount (\$176.8 million), to fiscal year 2018-2019. This will assist in addressing some of the immediate fiscal needs of the agencies while the longer term work is undertaken.
2. Training on the CHRT rulings for all Public Service employees who will be directly or indirectly involved in the implementation of the CHRT rulings. The training should be mandatory and implementation of the orders should form part of the regular employee evaluation process. The training will be culturally relevant and be co-developed in consultation with the Assembly of First Nations and the First Nations Child and Family Caring Society of Canada (Caring Society).
3. In keeping with the NAC Terms of reference, INAC make available in a timely way all necessary, statistics, data and other relevant information identified by the NAC as necessary to inform the reform process.
4. INAC acknowledges that the work of the NAC will extend beyond December 2017 and agree to provide adequate financial resources for the work.

On November 23, 2017, the Honourable Minister Jane Philpott presented to the NAC. It was during this meeting whereby the Minister spoke to some of the concerns around the dissolution of INAC and the movement of the First Nations Inuit Health Branch (FNIHB) into Indigenous Services. Minister Philpott had indicated that, while parts of INAC and FNIHB would be merging into what is now the Department of Indigenous Services Canada (DISC), this would not impact the NAC's work as part of child and family services reform. The Minister also spoke of the importance of reform and of forging a new relationship with the NAC while this work continues to move forward.

Jordan's Principle Action Table

The Jordan's Principle Action Table (JPAT) has met three times since its inauguration. It has met in Ottawa on June 22–23, 2017, September 6–7, 2017, and most recently, November 21–22, 2017. Chaired by the AFN, membership includes: representatives from AFN's Social Development, Education and Health Secretariats; DISC and Health Canada; AFN Elders and Youth Councils; the National First Nations Health Technicians Network; child and family services Agencies; the Non-Insured Health Benefits Navigators Network; and the National Indian Education Council; as well as experts within the field of service delivery and Jordan's Principle.

The JPAT has been looking at the co-development of policy options for the long-term implementation of Jordan's Principle, which includes the contemplation of new federal program authorities, different service delivery models and approaches to funding. This work continues to be informed by regional engagement sessions, sharing of data/evidence options and costing in preparation to return to Cabinet by Fall 2018 and Treasury Board by Winter 2019. JPAT members have been attending various regional engagement sessions to share information, receive feedback and answer questions. To date, members of the Action Table have been invited to attend a variety of meetings and conferences with particular focus on Jordan's Principle. These include:

- September 25–27, 2017: Service Coordinators and Service Providers Gathering in Winnipeg, MB;
- October 10–12, 2017: New Brunswick, Education Summit in St. Andrews, NB;
- October 10–12, 2017: CFS First Nations Agency Directors in Regina, SK;
- October 16–18, 2017: Delegated First Nations Agency (DFNA) West Summit on Jordan's Principle in Calgary, AB;
- October 24–26, 2017: Health and Social Service Directors meeting in Quebec City, QC;
- November 14, 2017: Atlantic Service Coordinators via Videoconferencing; and
- November 14–16, 2017: First Nations Health Managers Association (FNHMA) Conference in Toronto, ON.

The Action Table will continue to meet to further refine policy options based on engagement with stakeholders. JPAT will continue to present at meetings where and when members are invited to do so, but may also expand engagement in Winter 2018 to include focus groups and informant interviews. The JPAT is also looking to identify potential experts to support costing exercises associated with the implementation of proposed policy options.

Agency and Administration Action Table

The Agency and Administration Action Table has been meeting consistently since August 2017 to discuss the topic of funding. The NAC Agency & Administration Action Table has been working with Kevin Page, former Parliamentary Budget Officer and now President and CEO of the Institute of Fiscal Studies and Democracy (IFSD), and his team at the University of Ottawa to assist the NAC in gathering information to inform DISC on the financial needs of agencies. This work will assist in determining how to fund the following:

- Building and vehicle repairs to ensure they meet health, safety and fire regulations
- Staff salaries and benefits
 - Retention, other compensation (e.g. housing)
- Travel costs

- Prevention services and least disruptive measures
 - Could include Elders in programming, Elder’s Councils, Youth Councils
- Inflation
- Legal costs

In an effort to measure the funding gaps between agencies and what provinces/non-Indigenous service providers fund their staff, the Action Table has been working with the IFSD to develop and administer a salary and benefits exercise that has been administered to agencies across Canada.

At the November 23, 2017 meeting held in Ottawa, the IFSD delivered their preliminary results from their survey findings. Overall, the IFSD was able to garner a high participation rate of 50% (or greater) across all provinces with exception to Saskatchewan. Of their findings on budgets and costs, most agencies had indicated that they had budgets between \$1M and \$10M, and there is little connection between an agency’s budget and the scope and breadth of its services, i.e. larger budgets do not mean more services. Further, they identified that there is significant variance in the ability of agencies to remunerate social workers at the levels of provincial salary scales. They concluded that evidence from the survey is primarily baseline, in that they suggest that greater information on cases (i.e. instigation, number and type per social worker, cost variance based on location) is needed.

Next Steps include: reformulating the survey questions, developing a line of promising practices and administering the survey annually to develop a longitudinal database for planning and decision-making.

Challenges

Within the past year, the effectiveness of the NAC has been met with some considerable challenges that extend from an impeded relationship between some NAC members and the Department of Indigenous Services Canada (DISC). Many of the more contentious issues that have evolved from these meetings are due to processes and decisions deemed by some NAC members as both unilateral and in breach to the agreed upon Terms of Reference. These issues have therefore, not only contributed to both a delay in the work intended to be conducted by the NAC as a result of being focal pieces of discussion, but also an overall distrust in the working relationship among members of the group. Some of these issues pre-date the inauguration of the NAC in January 2017, whereby the group was unable to form due to the significant delay in the negotiating the Terms of Reference.

Upon the announcement of Ministerial Special Representatives appointment, questions were

raised by NAC members regarding her appointment, purpose as it pertains to the intended work to be completed by the NAC, and concern over her lack of a Terms of Reference while engaging with First Nations child and family service agencies and communities. When questioned about this at the January 2017 NAC meeting, DISC officials had indicated that not all the Department's decisions being made regarding child and family services reform would go through the NAC. It was during this time that many NAC members felt that statements such as these delegitimize the NAC's role within the reform process as part of the 2016 CHRT 14 ruling.

These kinds of contentions and unilateral decision making began to overlap into a number of meetings, most notably with the decision to appoint the NAC Chair, Grand Chief Ed John. While it should be noted that it was unanimously agreed upon by all NAC members that the concern was not of who was appointed as NAC chair,¹⁰ but rather the process DISC took to appoint the independent Chairperson without proper consultation of the NAC members.

While many of these issues did prove to be problematic for the group, it is important to note that for many, these are in the process of either being resolved or have found some sort of resolution. For example, at the January 2017 NAC meeting, the DISC announced the development of a Youth Summit, which would involve youth who are currently within or have aged out of the child and family services system, despite the NAC's advice against it. In keeping with advice from the NAC, youth who participated were provided with health/social supports at the meeting. A final report was produced and shared. Given changes within the department, at this time, there are no plans to hold a national youth summit. However, the youth who participated in the planning meeting will be invited to attend the Emergency Meeting on First Nations, Inuit and Métis Nation Child and Family Services. Lastly, another area of concern for the group and item #3 in the letter addressed to the Honourable Minister Philpott is the Department's resistance to disclose key documents to the NAC that are deemed necessary to the work of child and family services reform. Since the release of the letter, the DISC has made considerable effort to make available statistics, data and other relevant information identified by the NAC as necessary to inform the work of the NAC at and before meetings in a timely fashion.

¹⁰ On February 23rd, 2017 during question period at the House of Commons, the Honourable Carolyn Bennett, Minister of INAC, announced that Grand Chief Edward John had accepted the role of chair of the NAC. Following this announcement, Minister Bennett then sent out a letter to all NAC members addressing their nomination. On February 22nd, 2017 the AFN Joint Executive passed a resolution supporting the appointment of GC Edward John as the independent chairperson of the NAC. It was not until these motions were made whereby, NAC members unanimously voted in favour of the appointment of Grand Chief Ed John at the March 20-21, 2017 meeting in Ottawa, ON.

Recommendations

The following section will present 38 recommendations made by the NAC, organized thematically by each Action Table's area of focus. The recommendations are drawn largely from the Action Table discussions at the May 17–18, 2017, July 18–19, 2017 and September 23, 2017 meetings of the NAC, including the letter to Minister Philpott. It is important to note that the short term recommendations as noted in the letter to Minister Philpott have been included in a number of recommendations being put forward as they remain imperative to the ongoing effort to oversee child and family services reform.

Practice and Community Needs (Children, Youth and Families)

The purpose of this Action Table is to provide recommendations for federal and provincial/territorial (to the extent that it relates to a federal mandate) policy/practice reform to support sustainable culturally and community based approaches to support healthy families and children. This will require multi-disciplinary and holistic systems of care that account for multi-generational trauma arising from residential schools, the 60s scoop and Canada's discriminatory provision of First Nations child and family services per the Canadian Human Rights Tribunal (CHRT) and other relevant legal instruments such as Treaties, self-government agreements and court decisions. The Action Table will focus on items including, but not limited to the identification of conditions to support the development, case related legal, operation and evaluation of culturally based service continuums with a focus on child maltreatment prevention and least disruptive measures.

The Practice and Community Needs Action Table did not meet at the July 18–19, 2017 meeting of the NAC. Based on the May 17–18, 2017 and September 23, 2017 meeting, the following recommendations are made:

1. Prevention must be adequately practiced and funded in each community. Prevention must be developed and mobilized to the standards that communities set, and at the levels that communities decide. First Nations decide what prevention looks like based on the culture and priorities of the community. Prevention services include all family members, including parents, siblings, aunts and uncles, grandparents, and other family support networks. Prevention services are culturally-based and culturally-appropriate, as determined and designed by communities. Children and families are able to access culturally-based prevention and support services including all relevant health, education and social services to adequately address all areas of concern.
2. Adequate and Sustainable Prevention Funding must be provided for services and programs as decided and required by agencies and communities. Funding must **not** be formula driven,

and is not based on the number of children in care, but is needs-based and fully covers the costs of delivering services. Prevention services are provided with adequate, sustainable and predictable multi-year funding. Funding for culturally-based services and programming is embedded in legislation.

3. Child placements must be set within the community. In the event that a child is removed from their family, ensuring that there are connections to family members is paramount. Where family-based placements are not possible, culturally-based and culturally-appropriate training is provided to First Nations foster parents. Family group conferencing is used to divert child protection concerns from entering the court system. Elders and all family members are included in this process to make holistic family-based decisions that are required by families. This includes Elders being included in organizing placements, where necessary, and in arranging prevention and support services. Communities must be able to establish protocol for kinship care and customary care placements, and are provided adequate training, funding and support during these placements.
4. Service Coordination must be holistic, including wrap around services to best support families and children. Agencies must provide supervision and follow-up on services and programs, and are constantly supporting the family and child during their involvement with child and family services and beyond. Agencies must coordinate wrap-around services to best support families and children.
5. Communities and agencies design and implement training and education programs for family support workers and social workers, including partnerships with post-secondary education institutions to train First Nation social workers. Community members are also given adequate support and training to take on roles within child and family services agencies. Placements for First Nations social workers take place in First Nation communities or with First Nation agencies.
6. Ensure that Indigenous Services and the NAC collaborate to develop a strategy to distribute additional program dollars to community based family and child wellness programs including Band Representatives.

Agency and Administration

The purpose of this Action Table is to recommend federal funding, policy and practice reforms to support culturally-based and needs-informed agency administration and operations. Items to be considered include, but are not limited to: staff salaries, benefits, and training; information, administration related travel, negotiation and maintenance of agreements with First Nations, provinces/territories and the federal government, technology and management systems,

financial management, insurance, inflation, accountability/audits, communications, human resource management, capital (buildings, equipment, vehicles), corporate legal, janitorial, utilities, security, agencies serving multiple First Nations, liability, small agencies and First Nations not served by an agency, added costs related to remoteness or operating in a high cost urban environment, child population thresholds for funding, claw-back of the CSA and other related tax credits.

The Agency and Administration Action Table made nine recommendations at the July 18–19, 2017 and September 23, 2017 meeting of the NAC. The following recommendations are made:

7. Amend Budget 2016 allocations and move the year 5 (2020-2021) amount (\$176.8 million), to fiscal year 2018-2019. The entire budget will be used for increasing funding to First Nations child and family service providers, with the funding allocation being informed by regional discussions/agreement.
8. Provide multi-year funding agreements with FNCFS service providers and change other tools (e.g., program guidelines) to allow for long-term planning, prevention and culturally-based services, and ensure that existing and new funding is provided in a flexible way as to meet the requirements and needs of FNCFS service providers.
9. Conduct a review of existing agreements with non-Indigenous child and family services agencies/provincial governments receiving funding to deliver services to First Nations not served by a FNCFS agency. The purpose of this activity is to ensure that First Nation children's needs are being met and that First Nation communities have an opportunity to participate in service reform and associated budget discussions and allocations.
10. Develop a base-line funding methodology including fixed and variable components for FNCFS agencies/services with the assistance of experts, including those at IFSD. The goal is to ensure that all FNCFS agencies/services receive funding that is equitable and consistent with their legislated and non-legislated mandates.
11. AFN to seek a legal opinion on behalf of NAC to determine the legality of the provincial/territorial practice of clawing back the Child Tax Benefit for children in care serviced by First Nations child and family service agencies. Specific attention should be paid to situations where provinces/territories deposit the Child Tax Benefit funds into general revenue versus keeping it in a child specific trust to ensure the funds are used for specific children.

Governance and Legislation

This Action Table will propose policy and funding changes to support the expansion of jurisdictional and governance models eligible for government funding. Traditionally, DISC (formerly INAC) has restricted funding for First Nations child and family services to provincially delegated agencies. Proposed federal and provincial/territorial (where relevant to national context) policy and funding changes will account for Treaties and self-government agreements, distinct contexts, rights and needs of First Nations, their children, youth and families as well as the historic disadvantage wrought by residential schools, the 60s scoop and Canada's discriminatory First Nations Child and Family Services Program. This Action Table will explore national legislation expanding the range of jurisdictional models and including standards to ensure the cultural, linguistic and human rights of First Nations children and youth, including how funding would support the legislative models. In addition, the federal relationship with provinces and territories will be studied, including Yukon, where federal funds are not restricted to reserves, federal funding of provincial or partially delegated agencies to strengthen accountability of service providers, including evaluations and business plans.

The Governance and Legislation Action Table recommendations are based on discussions from the May 18–19, 2017, July 17–18, 2017 and September 23, 2017 meetings of the NAC. The following recommendations are made:

12. Recognize the inherent right and vested authority of First Nations and communities to provide for their children, as is affirmed in the Creator's laws, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Truth and Reconciliation Commission's (TRC) Calls to Action.
13. In partnership with provincial and territorial governments, conduct a review of all laws, policies and practices related to First Nations child and family services to ensure that any changes to benefit children and families are made on a Nation-to-Nation basis.
14. Financially support the NAC processes related to assessing the need for, the direction of, and the design and creation of a national framework on First Nations child and family services legislation should this be expressed as a need by communities through comprehensive engagement processes which are led by the regional representatives of the NAC, and which are consistent with the UNDRIP.
15. In order to affirm the direction and political will for a national framework, a comprehensive regionally-based engagement process to assess the need and desire for national framework

for legislation on First Nations child and family services, consistent with the UNDRIP should be undertaken.

16. Undertake a review and evaluation of the 1965 Canada-Ontario Indian Welfare Services Agreement in partnership with the federal and provincial governments, and First Nation communities in Ontario.
17. The new policy or Directive must be supportive of the goal of First Nations to assume full jurisdiction over child welfare. The principles and goals of the new policy must enable self-governance and support First Nations leadership to that end, consistent with the policy of the Government of Canada as articulated in Gathering Strength.
18. The new policy or directive must support the governance mechanisms of First Nations and local agencies. Primary accountability back to community and First Nations leadership must be recognized and supported by the policy.

Jordan's Principle

The work of the Jordan's Principle Action Table is to co-develop policy options for the long-term implementation of Jordan's Principle, following the expiry of the Child-First Initiative (CFI) on March 31, 2019. The Action Table intends to have fully prepared, tested, validated and costed strategies to implement Jordan's Principle as a seamless follow-up to the interim CFI ready for April 1, 2019. The Action Table members also provide support and direction on regional and grassroots engagement with First Nations partners, as well as provincial/territorial governments. In addition, the Action Table meetings are an opportunity to share data/evidence, promising practices, evaluation and research findings, as well as information about the progress and performance of the CFI.

The Jordan's Principle Action Table recommendations are based on discussions from the May 18–19, 2017, July 17–18, 2017 and September 23, 2017 meetings of the NAC. The following recommendations are made:

19. Investigate the feasibility of a "Jordan's Principle Authority" that can be accessed/used by multiple federal departments to address gaps in existing authorities.
20. Explore the possibility of enshrining Jordan's Principle in legislation.
21. Make every effort to gather and share data, research and qualitative information that will inform the actual cost of implementing Jordan's Principle, keeping in mind the 2019 expiry

of the CFI authorities.

22. Indigenous Services, Health Canada and other government departments should engage with provinces and territories to encourage the full adoption and implementation of Jordan's Principle.
23. Continue to work with NAC and the Jordan's Principle Action Table to engage First Nations communities and regions, as well as other relevant stakeholders, on the design and implementation of a post-2019 strategy to seamlessly transition from the CFI to a long term strategy to ensure the implementation Jordan's Principle, which could include:
 - exploring the possible policy options for discussion in the engagement process, including increased funding to existing community-based programs;
 - a community-based continuum of care for children and families with adequate funding and appropriate authorities attached; continuing the Service Coordination model;
 - working with established or establishing regional First Nations organizations to support the delivery of service to communities;
 - developing an "exceptionalities" fund and authority to address complex cases; and,
 - other ideas as identified by stakeholders through ongoing engagement.
24. Develop transition programming for children and youth with ongoing complex needs who age out of Jordan's Principle.
25. Work with medical associations, educational associations and other medical or social regulatory bodies to enhance cultural competency for staff working with First Nations children and communities (e.g. Canadian Pediatric Association, Canadian Nurses Association, Canadian Association of Pediatric Hospitals, etc.) and promote cultural safety training.

Internal Indigenous Services/Government of Canada Reform, Training, Education and Communication

The purpose of the Internal Indigenous Services/ Government of Canada Reform, Training, Education and Communication Action Table is to provide recommendations to help identify and mitigate any philosophical, policy or practice barriers within the federal government that perpetuate discrimination and fail to account for the best interests and safety of First Nations children, youth and families. Issues to be explored at this Action Table include, but are not limited to, reforms in federal government staff training, performance incentives, credentials; government transparency, accountability and oversight, communications, mechanisms to

ensure federal relations with the provinces/territories, consultants and other stakeholders respecting First Nations children and families are compliant with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), etc.

The Internal Indigenous Services/Government of Canada Reform, Training, Education and Communication Action Table did not meet at the July 17–18, 2017 meeting of the NAC. Based on the May 17–18, 2017 and September 23, 2017 meeting, the following recommendations are made:

26. Ask the Parliamentary Budget Officer to cost out all inequities in services affecting First Nations children, youth and families to provide a baseline cost of the aggregate shortfalls to inform a comprehensive and public plan to be developed in consultation with First Nations to fix the inequities. This plan will provide for Nation to Nation discussions on substantive equity to meet unique community needs and make adjustments to ensure culturally based equity is maintained over time.
27. A comprehensive 360 evaluation of DISC's First Nations Child and Family Services Program and Jordan's Principle must be completed immediately to ensure it is fulfilling the Treasury Board Authorities and is compliant with the law and Canada's commitment to the Truth and Reconciliation Commission (TRC) Calls to Action. Such an evaluation should include consultation with First Nations leadership, First Nations child and family service agencies and experts such as provincial/territorial child advocates. The evaluation can inform the reformulation of the Departments of Indigenous Services and the Indigenous and Crown Relations. This evaluation should be made public and inform the overall reform of the program. The evaluation team/group will be selected jointly by First Nations leadership and the Government of Canada. These evaluations should be done every 4 years to ensure ongoing compliance.
28. Mandatory training for all Government of Canada officials interacting with First Nations children, youth and families on First Nations peoples and reconciliation including a truth telling component on how Canada's past and contemporary actions impact First Nations children, youth and families with the goal of identifying and remediating colonial philosophies, practices and policies that continue to exist. Training shall include but not be limited to: UNDRIP (what it means and implementation), TRC, United Nations Committee on the Rights of the Child (UNCRC) General Comment 11, children's development, child and family services and Jordan's Principle). Such training should include experiential learning relevant to the First Nations served by the officials such as Elder's teachings, ceremonies, the KAIROS Blanket Exercise, training on the Touchstones of Hope and attendance at First

Nations research seminars and Elder's gatherings to ensure ongoing professional development. Urgent priority should be given to senior officials at DISC and the Department of Indigenous and Crown Relations. Such training should include evaluation to ensure officials have understood the information and can translate that into practice effectively.

29. Linking performance measures and rewards for all Government of Canada employees interacting with First Nations children, youth and families with compliance with the TRC Calls to Action and the UNDRIP. Performance measures for senior management should be rated on the degree to which they create conditions for staff to engage in reconciliation (i.e.: number of employees who have received training, results of 360 evaluations).
30. Canada's consultation with First Nations on child and family services and other matters relating to child and family wellbeing must be conducted consistent with the UNDRIP, UNCRC General Comment 11, and OCAP principles (Ownership, Control, Access and Possession).
31. The Government of Canada commits to ensuring First Nations have access to all relevant information in a timely manner and have adequate resources and capacity to meaningfully participate in consultation and negotiations processes regarding First Nations children, youth and families. Moreover, Canada must ensure any descriptors it uses to describe its information sharing, engagement, discussions with First Nations comply with the requirements of the UNDRIP. Canada must not use semantics to obfuscate Canada's responsibility to consult with First Nations on a Nation to Nation basis and to ensure free, prior and informed consent.
32. The best interests of the child per the UNCRC General Comment 11 and the UNDRIP must be made an explicit paramount consideration in all Government of Canada authorities, agreements, programs and services. This will include a vetting of all existing and future policies through this lens. Due consideration must be given to First Nations Declarations on the Rights of Children or similar First Nations frameworks where they exist.
33. The Government of Canada commits to providing adequate and sustained resources for First Nations to develop and implement comprehensive culturally based and community based plans for healthy First Nations children, youth and families that include revitalization of First Nations cultures, oral histories and languages (for example, using the Touchstones of Hope process).

34. The Government of Canada provide adequate and sustained resources for a First Nations statistical institution to collect and prepare annual public reports on the number of First Nations who are in care and children at risk in the care of their families, the trajectories for children in care and in their homes and the total spending on prevention and care services by child welfare agencies and the effectiveness of various child welfare interventions. In addition, the institute will collect data on the incidence, nature, outcomes and impacts of all Jordan's Principle cases and publish annual public reports on the data.
35. In light of the under-developed scholarship and research on First Nations children, youth and families, the Government of Canada provides adequate and sustained funding for a minimum of ten years to fund and promote research and scholarship relating to the provision of culturally based child welfare services for First Nations children and families along with the intertwined issues such as, but not limited to, control over the access to education, revitalization of Indigenous laws and governance, access to the economy and control over lands and resources. Such research and scholarship funding must be managed by a scholar-based oversight body that is selected by First Nations and independent from the Government of Canada. Such funding will include provisions for knowledge sharing (i.e.: conferences, Elders gatherings, First Nations journals, community information media).
36. Canada will provide mandatory training for members of the judiciary on the Truth and Reconciliation Commission, the impacts of residential schools and other colonial activities on First Nations children, youth and families and child development, child welfare and Jordan's Principle. Such training should also include information on how to support First Nations and non-Indigenous children to participate in systemic cases respecting children as provided for in the United Nations Convention on the Rights of the Child Article 12.
37. The Government of Canada will provide adequate and sustained funding for the development and operation of a First Nations national ethics review panel which will review all national Government of Canada evaluations, research and discussion papers to ensure compliance with First Nations ethical standards.
38. Immediately and fully comply with the orders of all three Tribunal decisions (2016 CHRT 2; 2016 CHRT10; 2016 CHRT 16; 2017 CHRT 14) and any related orders.

Conclusions

The NAC supports and approves these recommendations as they are intended to be responsive to the needs of Agencies and work towards the improvement of the lives of children and families in contact with child and family services. While the recommendations are extensive

and are imperative to the overall success of child and family services reform, they are an indication of the work to come and the time required to completely overhaul the First Nations Child and Family Services as Program as directed in the CHRT ruling (2016 CHRT 2). The NAC has just begun to scratch the surface of the systemic discrimination that exists within First Nations child and family services, and therefore, their role to advise and oversee recommendations during the transformation process must endure beyond its 2017 expiry date until work is complete. The NAC looks forward to continuing their successful work and continuing to rebuild their relationship with the Federal and Provincial governments.

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Appendices

Appendix A: Resolutions

Resolution #29/2015

Assembly of First Nations

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**ANNUAL GENERAL ASSEMBLY
JULY 7, 8 & 9, 2015, MONTRÉAL, QC**

Resolution no. 29/2015

TITLE:	Recommendation to Create a National First Nations Children's Commissioner
SUBJECT:	Child Welfare
MOVED BY:	Chief R. Donald Maracle, Mohawks of the Bay of Quinte First Nation, ON
SECONDED BY:	Chief Aubrey Norman Whitehawk, Cote First Nation 366, SK
DECISION	Carried by Consensus

WHEREAS:

- A. First Nations have the Inherent rights and responsibilities to protect our children and families.
- B. These rights and responsibilities include the jurisdiction to develop governance structures, systems and processes including advocacy supports.
- C. The Federation of Saskatchewan Indian Nations Health and Social Development Commission recommends and supports the creation of a National First Nations Children's Commissioner for Child Welfare under the direction and control of First Nations.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

- 1. Support the creation of a National First Nations Children's Commissioner for Child Welfare to specifically address the national concerns of overrepresentation of First Nations children in care and to support children and families receiving services from the 133 First Nations Child and Family Services Agencies across Canada.
- 2. Direct that the National First Nations Children's Commissioner for Child Welfare include the appointment of regional representatives to gather regional information and formulate collective strategies to reduce the number of First Nations children in care and that the regional representatives be allocated by the equal distribution of the number of children in care.
- 3. Direct the Assembly of First Nations to allocate funding from the funds in the National Indian Brotherhood Trust for this position until additional resourcing becomes available.

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**SPECIAL CHIEFS ASSEMBLY
DECEMBER 8, 9, & 10, 2015; GATINEAU, QC**

Resolution no. 77/2015

TITLE: Call for Action for Change in Child Welfare System

SUBJECT: First Nations Child Welfare

MOVED BY: Chief Maureen Chapman, Skawahlook First Nation, BC

SECONDED BY: Chief Michael LeBourdais, Whispering Pines/Clinton First Nation, BC

DECISION Carried by Consensus

WHEREAS:

- A. The federal government has continually compromised the inherent and Treaty rights of First Nations children and families in the current imposed child welfare system.
- B. Historically, the federal government has unilaterally imposed policies and legislation on First Nations families and communities with the intent of removing children.
- C. The Truth and Reconciliation Commission of Canada's (TRC) Executive Summary of its final report entitled *Honouring the Truth, Reconciling for the Future*, calls upon the federal, provincial, territorial and municipal governments to:
 - i. change the child welfare system; and
 - ii. fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation.
- D. On December 8, 2015 at the Assembly of First Nations Special Chiefs Assembly, Prime Minister Justin Trudeau committed to work with the Indigenous nations and Treaty partners on a "Nation-to-Nation" basis, and to implement the TRC's Calls to Action and to review and potentially repeal all legislation unilaterally imposed on Indigenous peoples by the previous government.

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THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Call upon the federal, provincial and territorial governments to work in collaboration with First Nations communities, to develop strategies that enable and empower them to address the intergenerational damage that has been perpetuated and continues with the current era of removing our children in the child welfare system.
2. Call on the federal, provincial, and territorial governments across Canada to review the laws, policies, and operational practices to ensure that Nation-to-Nation relationships motivate the necessary changes needed in the child welfare system in consultation with First Nations communities.
3. Call on the federal and provincial government to work with First Nations with territories located in the region of Ontario to examine the 1965 Canada-Ontario Indian Welfare Services Agreement (the Agreement).
4. Direct the Assembly of First Nations Executive Committee and Secretariat to engage the federal, provincial and territorial governments across Canada, in partnership with First Nations, to undertake an evaluation of the agreements made with First Nations regarding the Agreement.

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**ANNUAL GENERAL ASSEMBLY
JULY 12, 13, & 14, 2016; NIAGARA FALLS, ON**

Resolution no. 62/2016

TITLE: Full and Proper Implementation of the historic Canadian Human Rights Tribunal decisions in the provision of child welfare services and Jordan's Principle

SUBJECT: Child Welfare

MOVED BY: Cheryl Casimer, Proxy, Tobacco Plains Indian Band, BC

SECONDED BY: Chief Ian Campbell, Squamish Nation, BC

DECISION Carried by Consensus

WHEREAS:

- A. The Federal Government of Canada funds First Nations child and family services on reserve through Indigenous and Northern Affairs Canada (INAC).
- B. Jordan's Principle is a child-first principle which provides, in the matter of public services available to all other children, that where jurisdictional disputes arise between Canada and a province or territory, or between government departments in the same government, the government or department of first contact pays for the service, and can seek reimbursement from another government or department after the fact.
- C. As an example, First Nations children in British Columbia are funded in accordance with Directive 20-1 which provides the lowest level of child welfare funding among INAC's four funding approaches. This means that culturally based prevention services to keep children safely at home are not available, contributing to growing numbers of children in foster care.
- D. In 2007, the First Nations Child and Family Caring Society of Canada (the Caring Society) and the Assembly of First Nations (AFN) filed a complaint pursuant to the *Canadian Human Rights Act* alleging that INAC's provision of First Nations child and family services to over 163,000 First Nations children is discriminatory and that implementation of Jordan's Principle is flawed, inequitable and thus discriminatory under the *Canadian Human Rights Act* (CHRT 1340/7008).

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JULY 12, 13, & 14, 2016; NIAGARA FALLS, ON**

RESOLUTION NO. 62/2016

- E. On January 26, 2016, the Canadian Human Rights Tribunal (the Tribunal) issued its decision (2016 CHRT 2) regarding the complaint filed in February 2007 by the Caring Society and the AFN, finding among other things that:
- i. Canada's design, management and control of the First Nations Child and Family Services Program (FNCFS), along with its corresponding funding formulas and the other related provincial/territorial agreements, have resulted in the denial of services to many First Nations children and families living on-reserve and that the FNCFS Program resulted in adverse impacts for them because it was based on flawed assumptions about First Nations communities that did not reflect the actual needs of those communities.
 - ii. The FNCFS Program's two main funding mechanisms incentivized removing First Nations' children from their families.
 - iii. INAC's narrow interpretation and implementation of Jordan's Principle results in service gaps, delays or denials, and overall adverse impacts on First Nations children and families on-reserve.
 - iv. The racial discrimination arising from Canada's provision of the First Nations Child and Family Services Program and failure to implement Jordan's Principle is widening the historical disadvantage of residential schools.
- F. Subsequent to the Tribunal's decision, Canada unilaterally announced the budget allotments for First Nations child and family services without meaningful consultation with First Nations and unilaterally made an announcement about Jordan's Principle without meaningful consultation with First Nations. Budget 2016 is a five year budgetary plan where \$71 million is provided for child and family services for fiscal 2016/2017 and 54% of the planned funding is allocated for the year of the next federal election or the year after. This incremental budget approach fails to adequately consider children's development and the severity of the harms posed to children by unnecessary removals from their families.
- G. Such actions and impacts are inconsistent with the *United Nations Convention on the Rights of the Child* and articles of the *United Nations Declaration on the Rights of Indigenous Peoples*, which 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 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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**ANNUAL GENERAL ASSEMBLY
JULY 12, 13, & 14, 2016; NIAGARA FALLS, ON**

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- iii. INAC's narrow interpretation and implementation of Jordan's Principle results in service gaps, delays or denials, and overall adverse impacts on First Nations children and families on-reserve.
 - iv. The racial discrimination arising from Canada's provision of the First Nations Child and Family Services Program and failure to implement Jordan's Principle is widening the historical disadvantage of residential schools
- H. In its decision, the Tribunal made several orders, including:
- i. Cease its discriminatory practices regarding the FNCFS Program and reform the program.
 - ii. Cease applying a narrow definition of Jordan's Principle.
 - iii. Take measures to immediately implement the full meaning and scope of Jordan's Principle.
- I. The Tribunal also retained jurisdiction over the complaint to allow for gathering of further information regarding the immediate and long-term remedies sought by the Caring Society and the AFN, and to seek further information regarding the compensation sought for First Nations children impacted by child welfare practices on-reserve between 2006 and January 26, 2016.
- J. On April 26, 2016, the Tribunal issued a second decision (2016 CHRT 10) expressing concern with Canada's compliance with 2016 CHRT 2 and compelling Canada to confirm implementation of Jordan's Principle by May 10, 2016 and file detailed reports regarding its compliance with the non-discrimination order regarding First Nations Child and Family Services funding.
- K. The Tribunal is expected to issue a third order on remedies in the coming weeks.
- L. Prime Minister Justin Trudeau committed to implement all 94 Calls to Action of the Truth and Reconciliation Commission. A number of Calls to Action urge all levels of government to reduce the number of Aboriginal children in care and to provide adequate resources to support communities and child-welfare organizations in keeping families together.
- M. The Tribunal's order coupled with the Government of Canada's commitment to reconciliation requires that the federal government take immediate action.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Respectfully call upon the Government of Canada to:
 - a. Honour its commitment to fully implement the Truth and Reconciliation Commission's recommendations regarding children and families.

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- b. Take immediate and concrete actions to implement and honor the Canadian Human Rights Tribunal findings in *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (2016 CHRT 2)* and all subsequent orders, and implement Jordan's Principle across all First Nations and all federal government services.
 - c. Allocate sufficient resources immediately to remedy the discrimination against children and their families, taking into full account the best interests of First Nations children, their vulnerability, development, and the significant harms posed by unnecessary placements in child welfare care resulting from insufficient and discriminatory prevention services.
 - d. Immediately and fully implement the measures outlined in the document entitled "First steps in fixing the inequities in First Nations child and family services: Immediate action reforms, Directive 20-1" and "First steps in fixing the inequities in First Nations child and family services: Immediate reforms, Enhanced Prevention Focused Approach" and "First steps in fixing the inequities in First Nations child and family services: Immediate reforms, 1965 Indian Welfare Agreement" to provide some immediate relief to the children's suffering while the longer-term issues are resolved.
 - e. Cease unilateral action without consultation with First Nations and cease engaging in bi-lateral discussions with provinces and/or territories regarding First Nations children without the participation of First Nations, and fully commit to full consultation with First Nations and First Nations child and family service agencies and the parties to *First Nations Child and Family Caring Society of Canada v. Attorney General of Canada (CHRT 1340/7008)* to fully remedy the discrimination.
2. Support the revitalization of the AFN National Advisory Committee on child and family services with equal representation of First Nations across the country.

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Resolution #83/2016

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**SPECIAL CHIEFS ASSEMBLY
DECEMBER 6, 7, & 8, 2016; GATINEAU, QC**

Resolution no. 83/2016

TITLE: National Advisory Committee on INAC's Child Welfare Reform Engagement Strategy

SUBJECT: Child Welfare

MOVED BY: Chief Lynn Acoose, Sakimay First Nation, SK

SECONDED BY: Chief Arnold Paul, Temagami First Nation, ON

DECISION Carried by Consensus

WHEREAS:

A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:

- i. Article 15 (2): States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.
- ii. Article 17 (2): States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

B. The Truth and Reconciliation Commission of Canada Calls to Action #1 and #3 affirm the need to address First Nation child welfare reform and to fully implement Jordan's Principle. The Prime Minister of Canada has formally agreed to implement all of the Calls to Action.

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**SPECIAL CHIEFS ASSEMBLY
DECEMBER 6, 7, & 8, 2016, GATINEAU, QC**

Resolution no. 83/2016

- C. In 2007, the First Nations Child and Family Caring Society of Canada (the Caring Society) and the Assembly of First Nations (AFN) filed a complaint pursuant to the *Canadian Human Rights Act* alleging that Indigenous and Northern Affairs Canada's (INAC) provision of First Nations child and family services to over 163,000 First Nations children is discriminatory and that implementation of Jordan's Principle is flawed, inequitable and thus discriminatory under the *Canadian Human Rights Act* (CHRT 1340/7008).
- D. On January 26, 2016, the Canadian Human Rights Tribunal (CHRT) issued its decision (2016 CHRT 2) regarding the complaint filed in February 2007 by the Caring Society and the AFN. The CHRT substantiated the complaint and concluded that First Nations children and families living on reserve and in the Yukon are discriminated against in the provision of child and family services by INAC and further found that Canada's implementation of Jordan's Principle is discriminatory. In its decision, the CHRT made several orders, including:
- i. Cease its discriminatory practices, and reform the First Nation Child and Family Services program (FNCFSS).
 - ii. Cease applying a narrow definition of Jordan's Principle.
 - iii. Take measures to immediately implement the full meaning and scope of Jordan's Principle.
- E. Shortly after the CHRT January 26, 2016 decision, the AFN and the Caring Society initiated discussions with INAC to re-establish the National Advisory Committee (NAC) and Regional Tables to oversee recommendations for medium and long term relief related to the CHRT decision and to provide general advice on program reform. The NAC and Regional Tables is a joint committee composed of First Nations child and family service experts appointed by AFN Regional Chiefs, the AFN, the Caring Society, and INAC. This process was used for the Joint National Policy Review of First Nations Child and Family Services (2000) and the Wen:de reports in 2005. INAC agreed to the process in general but failed to respond to correspondence in a timely fashion resulting in substantial and unnecessary delays in establishing the NAC.
- F. On both April 26, 2016, and September 14, 2016, INAC was issued with two supplemental rulings from the CHRT. The CHRT found that INAC compliance to the rulings was inadequate. The CHRT made further specific orders regarding FNCFSS funding and ordered Canada to apply Jordan's Principle to all First Nations children on and off reserve, to cease case conferencing before the child receives the service and apply it to all jurisdictional disputes.
- G. In response to Canada's failure to fully comply with the CHRT orders, the NDP tabled an opposition motion on October 27, 2016 calling on the government to comply with the historic rulings of the CHRT ordering the end of discrimination against First Nations children. On November 1, 2016, the NDP motion was unanimously passed by the House of Commons. The motion specifically called for the government to:

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**SPECIAL CHIEFS ASSEMBLY
DECEMBER 6, 7, & 8, 2016; GATINEAU, QC**

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- i. Immediately investing an additional \$155 million in new funding for the delivery of child welfare – the identified shortfall for this year – and establish a funding plan for future years that will end the systemic shortfalls in First Nations child welfare.
 - ii. Implement the full definition of Jordan's Principle as outlined in a resolution passed by the House on December 12, 2007.
 - iii. Fully complying with all orders made by the CHRT and stop fighting Indigenous families in court who are seeking access to services covered by the federal government.
 - iv. Make public all pertinent documents related to the overhaul of child welfare and the implementation of Jordan's Principle.
- H. On October 27, 2016, without consulting with the AFN or the Caring Society, INAC Minister Carolyn Bennett appointed a Ministerial Special Representative on First Nations child and family services (MSR) whose role is to advise the government as it executes its engagement strategy with provinces, territories and child welfare agencies to overhaul the FNFCs program.
- I. To date, these engagement processes have been led by the MSR, without consultation with the AFN or the Caring Society. To date, the engagement process appears to have been conducted in an ad hoc manner, absent any terms of reference or accountability mechanisms, needed to clarify the goals and outcomes of the MSR and ensure the work is conducted in a manner consistent with the UN Declaration and domestic law.
- J. In the spirit of Article 15 (2) and 17 (2) of the UN Declaration, accountable engagement processes should be meaningful and guided by clear terms of reference developed in consultation with First Nations and First Nations child and family service agencies that clearly outline the intent, scope, impacts and accountability mechanisms of the engagement. Such procedures have been lacking throughout INAC's engagement plan.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Express deep concern regarding Canada's failure to immediately and fully comply with the Canadian Human Rights Tribunal (CHRT) decision.
2. Call on Canada to immediately comply with any and all orders issued by the CHRT without reservation.
3. Fully support the opposition motion passed in the House of Commons on November 1, 2016 and call on Canada to take immediate steps to fully comply with the motion.
4. Call on Canada to affirm that the National Advisory Committee (NAC) and Regional Tables process proposed by Assembly of First Nations and the First Nations Child and Family Caring Society is the legitimate process to provide advice to the Chiefs and federal government on First Nations child and family services reform and the implementation on Jordan's Principle.

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**SPECIAL CHIEFS ASSEMBLY
DECEMBER 6, 7, & 8, 2016; GATINEAU, QC**

Resolution no. 83/2016

5. Call on Canada to immediately provide the information, resources and support necessary for the NAC and Regional Tables process to convene and complete their work.
6. Inform Canada that the Ministerial Special Representative on First Nations child and family services (MSR) engagement process is not a replacement for the NAC and Regional Tables process and in no way should prejudice Canada's full and proper compliance with the CHRT decisions.
7. Call on Canada to immediately refocus the mandate of the MSR to enhance the internal capacity of INAC and other federal departments to implement the CHRT decisions (2016 CHRT 2; 2016 CHRT10; 2016 CHRT 16 and any further orders) and the Truth and Reconciliation Commission of Canada Calls to Action. This includes, but is not limited to, shifting Indigenous and Northern Affairs Canada operating culture to promote non-discrimination, reconciliation, and observance of the United Nations Declaration on the Rights of the Indigenous Peoples and the Organization of American States American Declaration on the Rights of Indigenous Peoples, by designing and delivering professional training and performance measures for every member of the civil service up to and including Deputy Ministers along with any of its agents, successors or assigns related to the provision of services to First Nations peoples on and off reserves.

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Appendix B: NAC Terms of Reference

TERMS OF REFERENCE

National Advisory Committee on

First Nations Child and Family Services (FNCFS) Program Reform

Purpose:

The purpose of these Terms of Reference is to set out the mandate, membership and roles and responsibilities of the National Advisory Committee.

Background:

1. The Joint INAC/AFN NAC met regularly from 2001-2008, primarily to oversee implementation of the National Policy Review's 17 Recommendations to the Minister of INAC on changes needed to the DIAND policy governing the FNCFS Program. In 2004 and 2005, the NAC produced three reports regarding the FNCFS Program known as the *Wen:De* reports.
2. On January 26, 2016, the Canadian Human Rights Tribunal ("the Tribunal") released its decision (2016 CHRT 2 "Decision") in *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada* ("the Complaint"). The Complaint had been filed in 2007. The Tribunal determined that the federal government discriminated against First Nations children on the grounds of race and national ethnic origin by failing to ensure substantive equality in the provision of child and family services for First Nations peoples. The Tribunal also found that the federal government's definition, policies and application of Jordan's Principle to be discriminatory. The Tribunal has retained jurisdiction over the matter and issued a subsequent order on April 26, 2016 (2016 CHRT 10). A further Tribunal order is pending.
3. The Tribunal ordered Aboriginal Affairs and Northern Development Canada (now Indigenous and Northern Affairs Canada ("INAC"), to cease its discriminatory practices and reform the First Nations Child and Family Services ("FNCFS") Program and the *Memorandum of Agreement Respecting Welfare Programs for Indians* applicable in Ontario ("1965 Agreement") to reflect the findings in the Decision. INAC was also ordered to cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of the principle. In 2016 CHRT 10, the Tribunal further clarifies that the order is to "immediately implement" not immediately start discussions to review the definition in the long term. The Tribunal further "orders INAC to immediately consider Jordan's Principle as including all jurisdictional disputes (this includes disputes between federal departments) and involving all First Nations children (not only those children with multiple disabilities). Pursuant to the purpose and intent of Jordan's Principle the government organization that is first contacted should pay for the service without the need for policy review or case conferencing before funding is provided." In 2016 CHRT16, the Tribunal further noted that Jordan's Principle applies on and off reserve and ordered INAC to immediately implement several measures regarding child and family services funding.
4. INAC has committed to working with First Nations leadership and organizations; child and family services agencies; front-line service providers; the parties to the Complaint; and other stakeholders, on steps towards FNCFS Program reform and meaningful change for First Nations children and families.
5. The Tribunal has deferred consideration of medium- to long-term relief until its consideration of immediate relief has concluded. In their submissions to the Tribunal, both the AFN and the Caring Society sought the establishment of a joint policy development initiative

between INAC and the Complainants to reform the FNCFS Program, and which also may guide the Tribunal in determining appropriate Orders on mid-terms and long-term relief.

6. INAC has undertaken to immediately establishing and adequately resourcing a NAC, in order to begin the necessary and critical reform of the FNCFS Program. Establishing a NAC is a crucial first-step in addressing the medium to long-terms changes to the FNCFS Program.

Guiding Principles

7. The National Advisory Committee’s process will be guided by the following principles:
- a. Consistent with the United Nations Convention on the Rights of the Child, the United Nations Committee on the Rights of the Child General Comment 11, the United Nations Declaration on the Rights of Indigenous Peoples and the TRC’s Calls to Action, the best interests and well-being of First Nations children will be paramount.
 - b. Federal, provincial/territorial and First Nations’ decision-making processes must be respected.
 - c. Involvement of community, parents, and extended family as a corner stone of effective and culturally based child and family services.
 - d. INAC and other federal government departments engaged in the provision of services to First Nations children and families have a legal obligation not to discriminate against those children and families.
 - e. Policies, programs and services must be responsive and relevant to the distinct needs of children and to community needs and realities.
 - f. Whenever possible, families have the right to stay together. All services and preventative measures ought to be exhausted before a child is removed from the family.
 - g. First Nations have an interest in the well-being of all of their members, regardless of where they live.

Mandate

8. The NAC is mandated to provide advice, input into the design and assist in the development of reforms of First Nations child and family services policies and programs on-reserve to First Nations leaders and agencies and the Minister of INAC. The NAC shall review across-the-board reforms, including federal government authorities, policies and practices, to the national framework to support FNCFS Agencies, the greater needs of First Nation children, each First Nations community’s cultural vision of safe and healthy children and families, provincial/territorial variances, and mechanisms to ensure communication, accountability and dispute resolution.

9. The National Advisory Committee will provide advice on future reforms to the First Nations Child and Family Services Program in a way that promotes the safety and best interests of First Nations children, taking account of the distinct needs and circumstances of First Nations children and families – including historical and ongoing disadvantage and their cultural, linguistic and geographical needs and circumstances – in order to ensure substantive equality in the provision of child and family services to them.

10. Upon agreement by the members of NAC, NAC may select and retain experts to assist it in its work, on an as-needed basis. Preference will be given to experts with demonstrated expertise regarding First Nations child and family services.

11. In addition, the NAC may establish action tables to further the goals, work and

objectives of NAC, as appropriate.

12. The NAC will address, but will not be limited to, the elements of the current FNCFS Program. The NAC can provide advice to assist in the reform of the program on an interim basis throughout its term as well as producing reports or research as it sees fit.

13. The NAC's deliberations, and the information provided to and/or produced by the NAC, will be made available to the public.

14. The copyright of materials produced at the direction of the National Advisory Committee will be determined within the individual service contracts. Members of the NAC and participating member organizations respect the intellectual and moral property rights regarding Indigenous cultures, languages and traditional knowledge. All research will be conducted in keeping with the OCAP research principles (Ownership, Control, Access and Possession) and observe ethics review processes, including First Nations research ethics boards where they operate.

15. INAC agrees to provide documentation on an ongoing basis of all CFS and Jordan's Principle documents, reports, data, budgets and policies that it is legally able to provide to the NAC and the NAC will be provided with copies of documents requested (including portions of documents that are not redacted), in a timely manner, to enable the NAC to complete its work and mandate.

16. The members of the Committee agree to work together to achieve the mandate of the Committee and to collectively provide recommendations for the program reform of the FNFCFS program.

Term of the NAC

17. The NAC will commence its work in January 2017 and will complete its recommendations by January 31, 2018. Extension of time will be agreed to by the members of the Committee.

Membership

18. The National Advisory Committee will be composed of the following members:

- a. One (1) national chair;
- b. Three (3) representatives of the Federal Government including one or more regional INAC representatives;
- c. One (1) representative of the AFN;
- d. One (1) representative of the First Nations Child and Family Caring Society of Canada;
- e. Ten (10) regional representatives, one representative from each of AFN's regions, with alternates available when needed;
- f. One (1) First Nation youth representative; and
- g. One (1) First Nation Elder(s) representative.

19. The ten (10) regional representatives/their alternates, youth and elder members will be selected by the AFN through its ordinary processes. Observers are also welcome to attend.

20. INAC will provide adequate funding that is necessary for the NAC to complete its work, activities and mandate.

21. The National Advisory Committee will be chaired by a person agreed to by INAC, the AFN, and the First Nations Child and Family Caring Society of Canada.

22. By consensus representatives of the Provinces and Yukon Government may be invited to

participate in the NAC's work, in order to provide assistance to the NAC and its members.

23. The Canadian Human Rights Commission may participate as an interested party.

Responsibilities of the National Advisory Committee

24. The Committee will be responsible for:

- a. Making recommendations, input into the design and assist in the development of FNCFS Program reform(s).
- b. Making recommendations on the design of engagement processes to assist in developing approaches for reform.
- c. Providing an advisory and support role to existing regional tables in the engagement processes and supporting the development and operation of regional tables in regions where they do not currently operate.
- d. Developing mechanisms for sharing information of the work and the activities of NAC, including with First Nations and Provincial Territorial Organizations, as appropriate.
- e. Developing and providing approval of a work plan for the work of the committee and the work of any advisory or expert action tables
- f. Overseeing processes for decision making, and recording decisions, understandings and minutes of NAC meetings.
- g. Making recommendations regarding implementation activities and following-up as appropriate.

Operating Principles

25. The NAC will operate on the basis of consensus and any dispute will be resolved by the Chair, with the assistance of an Elder.

26. The costs for regional representatives to participate in the work of the NAC shall be borne by the INAC/AFN.

Canadian Human Rights Tribunal (Tribunal)

27. These Terms of Reference shall be filed with the Tribunal. The Committee shall provide reports and/or minutes of its meetings to the Tribunal as long as the Tribunal retains jurisdiction over the complaint or until it orders otherwise or the parties to the complaint agree otherwise.

ANNEX A

Suggested Topics to be addressed by the National Advisory Committee (to be discussed once Committee is fully formed)

The National Advisory Committee may address the following elements of the FNCFS Program:

A. General

- i. Jurisdictional models eligible for funding under the FNCFS Program
- ii. General funding structure, stacking provision considerations, and considerations of eligible costs including funding arrangements between INAC and Provinces/Territories and non-Aboriginal service providers.
- iii. Provisions for First Nations children not served by a FNCFS Agency to ensure comparable and culturally appropriate services.
- iv. Provisions for extraordinary costs related to unusual occurrences that engage higher child welfare costs such as natural disasters, substantial increases in mental health or substance misuse, and unusual requirements for mandatory staff participation in inquiries.
- v. Provisions for organizational networking and learning to promote the sharing of research and best practices among FNCFS Agencies.
- vi. A process for economically modelling revisions to funding policy and formula and evaluating the efficacy of such changes on an ongoing basis to ensure they are non-discriminatory and safeguard the best interests of the children.
- vii. A funding structure that takes into account costs related to historic disadvantage and distinct cultures and languages of First Nations.
- viii. FNCFS Agency staff salaries, benefits, and training.
- ix. Training for public servants involved in the FNCFS Program to ensure proper training for management of the program, including professional development on child development, First Nations cultures/histories, the Truth and Reconciliation Commission, and the history of the FNCFS Program including the Tribunal decisions.
- x. Creating a new definition of “neglect” that takes into account First Nation norms, values and culture.
- xi. Mechanisms for ensuring that reforms do not reduce current funding levels or numbers of arrangements for FNCFS Agencies.
- xii. Levels of service provided by FNCFS service providers and INAC reporting requirements imposed on FNCFS service providers should be comparable to the level of service provided by or imposed on provincial territorial governments and not pose an undue burden on agency staff .
- xiii. FNCFS funding agreements should promote long term planning, sustainable service provision and evaluation.
- xiv. FNCFS services should be based on effective First Nations models, including jurisdictional models, for the design, delivery and evaluation of First Nations Child and Family Services and on sharing information and effective practices
- xv. FNCFS service providers serving small populations of eligible children should receive sufficient resources to allow them to provide culturally appropriate services that are comparable to those provided by FNCFS service providers serving large populations of eligible children.

- xvi. FNCFS funding for service providers serving more than 1000 children in care must account for the full population served.
 - xvii. There are to be no reductions or further restrictions in the level of FNCFS funding for any agency.
 - xviii. INAC approval criteria and processes for the development and operation of new First Nations child and family service agencies.
 - xix. First Nations efforts to exercise jurisdiction and/or initiatives to create separate self-governing child welfare regimes are to be supported and acknowledged
 - xx. The Touchstones of Hope framework for the design and implementation of community based visions of child safety and wellbeing.
- B. Creation of a new FNCFS regime*
- i. Creation of a new FNCFS regime to fully replace the existing programs and services.
 - ii. New regime shall consider the distinct needs and circumstances of First Nations children and families living on-reserve, including their cultural, historical and geographical needs and circumstances.
 - iii. Program shall address the higher service needs of First Nation children resulting from intergenerational impacts of Indian Residential School and effects of colonization, along with higher costs to deliver those services
 - iv. Ensure substantive equality in the provision of child and family services to First Nations children and families living on-reserve.
 - v. Develop enhanced funding mechanisms to ensure isolated, remote and northern communities serviced by agencies will be provided with equitable services and a full range of programs offered elsewhere.
- C. Maintenance*
- i. Calculation of yearly maintenance.
 - ii. Appeal mechanisms regarding eligible maintenance expenses.
 - iii. Reimbursement of legal costs.
 - iv. Funding of support services intended to reunite children in care with their family.
- D. Operations*
- i. Baseline assumptions of children in care for funding of FNCFS Agencies.
 - ii. Mechanisms to account for historical and ongoing inflation losses and annual adjustments going forward to ensure FNCFS Agency funding keeps pace with inflation.
 - iii. Corporate legal costs and costs for liability claims.
 - iv. Funding of remote agencies and agencies in urban areas to account for higher operations and maintenance costs.
 - v. Funding for records management, policy development and human resources management, liability insurance, audits, janitorial services, and security.
 - vi. Funding of costs related to the receipt, assessment and investigation of child welfare reports for all FNCFS Agencies that hold delegation for these functions including costs for after-hours service delivery.
 - vii. Funding of capital costs that takes into account increased need due to augmentation of prevention staff, services, and programs, and to ensure that

buildings, computers, and vehicles meet the applicable safety regulations, are child safe, accessible by persons with disabilities, and support comparable child and family services.

- viii. Funding of emergency repairs and maintenance of buildings.
 - ix. Funding for staff travel and travel costs related to children and families receiving child welfare services.
 - x. Definition of eligible child.
 - xi. Any changes to the funding structures to FNCFS Agencies or their reporting requirements.
- E. Prevention Funding*
- i. Funding for the adequate and sustained provision of primary, secondary, and tertiary prevention services.
 - ii. Funding for the development, operation and evaluation of culturally-based prevention programs and reforms based on those evaluations.
- F. Jordan's Principle*
- i. An approach to implement the full meaning and scope of Jordan's Principle in compliance with the CHRT orders across all children, all jurisdictional disputes and all federal services ensuring no delays in service provision related to the child's First Nations status.
 - ii. The creation of a non-discriminatory, accessible and transparent process for reporting of federal Jordan's Principle cases.
 - iii. The creation of non-discriminatory and transparent assessment criteria and assessment processes for reports of federal Jordan's Principle cases.
 - iv. The creation and implementation of an independent appeal process for federal Jordan's Principle cases.
 - v. Recommending mechanisms and required resources for public education regarding Jordan's Principle among First Nations, FNCFS Agencies, federal/provincial/territorial government officials and other stakeholders (such as: health professionals, teachers, and early childhood educators).
- G. Accountability*
- i. The creation of an independent permanent expert structure with the authority, resources and mandate to monitor and publicly report on INAC's performance in maintaining non-discriminatory and culturally-appropriate First Nations child and family services and in fully implementing Jordan's Principle.
 - ii. The creation of a mechanism to act as a national and publicly accessible repository for all non-privileged information relevant to the provision of FNCFS services.
 - iii. All proposed reforms will be presented to the AFN Chiefs-in-Assembly for consideration, discussion and input.
 - iv. INAC shall carry out its duty to consult with first Nation governments and accommodate any First Nation interests with regard to any final proposal for program reform.
 - v. Training and capacity building for INAC and other federal government officials to ensure non-discriminatory, culturally based and equitable child and family services and implementation of Jordan's Principle.