

FIRST NATIONS STRATEGIC BULLETIN

FIRST NATIONS STRATEGIC POLICY COUNSEL

The Re-Election of Trudeau Liberals vs. AFN's Healing Path Forward: Is AFN Moving Trudeau's "Reconciliation Agenda" Forward or a First Nations Agenda Forward?



L to R: Terry Teegee, AFN-BC Regional Chief, Wayne Christian, Chairman of Shuswap Nation Tribal Council, Roseanne Archibald, AFN National Chief, Prime Minister Justin Trudeau, Cheryl Casimir, Chief of Tk'emlúps, during visit of Tk'emlúps to Secwepemc Nation on Oct. 18, 2021 (Photo courtesy of Allen Douglas/KTW)

By Russ Diabo

Prime Minister Justin Trudeau has named a new post-election **Cabinet** and he has shuffled his government's Indigenous Ministers, he demoted **Carolyn Bennett** to Associate Minister of Health for Mental health and Addictions. Prime Minister Trudeau has also promoted his close personal friend, **Marc Miller**, to Minister of Crown-Indigenous Relations and laterally moved **Patty Hajdu** from being Health

Minister to Minister of Indigenous Services Canada. Trudeau has kept **Dan Vandal**, a Metis, as Minister of Northern Affairs while adding the responsibilities for **Prairies Economic Development Canada & Canadian Northern Economic Development Agency**.

These three Ministers (Miller, Hajdu, Vandal) will be mainly responsible for the government-wide approach to continuing the Trudeau government's top-down, Indigenous Reconciliation agenda to convert Indigenous Peoples into 4th level ethnic "*Indigenous governments*", using the three National Indigenous Organizations for First Nations, Metis and Inuit.

For First Nations, this means the **Assembly of First Nations (AFN)**—as the largest most populous Indigenous constituency among the three National Indigenous Organizations—will continue to be central to the federal government's pan-Indigenous approach to "*Reconciliation*".

That's why it is important to review this **AFN Healing Path Forward** document and what the Indian Act leadership across the country have identified as priorities in this document and how these priorities fit with the Trudeau "*Reconciliation*" agenda to continue to expand the

Special points of interest:

- **What Trudeau's Re-Election Means for AFN's "Healing Path Forward"**
- **Feds Launch last Minute Court Appeal of Federal Court CHRT Ruling & Suspension to Negotiate**
- **Statement of ISC & Reactions from Cindy Blackstock & AFN Nat'l Chief**

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Logo from Russ Diabo 2018 AFN National Chief Campaign & now a Public Education & Advocacy Campaign.

“AFN supported the Trudeau government’s “Reconciliation Agenda” for the past six years, including AFN’s support for **Bill C-92**, the **Indigenous Child and Family Services Act**, which maintains to the status quo system where provinces control the substantial mounts of money, jobs and authority the First Nations Child Welfare industry provides, **Bill C-92** doesn’t change that, it only offers a promise to give First Nation’s control someday in the future”



PM Justin Trudeau & AFN Nat'l Chief Perry Bellegarde, December 2015.

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creation of 4th level ethnic “*Indigenous governments*” using the existing “*Modern Treaties*” and “*Self-Government*” Agreements as templates.

The election of **AFN’s** first female National Chief, **Roseanne Archibald**, was a positive step and she is a much better communicator than the previous National Chief, but a new female National Chief will not change the fact that **AFN** supported the Trudeau government’s “*Reconciliation Agenda*” for the past six years, including AFN’s support for **Bill C-92**, the **Indigenous Child and Family Services Act**, which maintains to the status quo system where provinces control the substantial mounts of money, jobs and authority the First Nations Child Welfare industry provides, **Bill C-92** doesn’t change that, it only offers a promise to give First Nation’s control someday in the future.

AFN also supported **Bill C-15**, the **United Nations Declaration on the Rights of Indigenous Peoples Act**, which provides a domestic “*Framework*” and process to implement Canada’s version of **UNDRIP** through an “*action-plan*” where the federal government controls the pen, process and agenda, just like the **2017 MOU on Joint Priorities** AFN signed with Canada in 2017.

Canada-AFN MOU’s on Fiscal Relations & Joint Priorities

The first thing to note about the **AFN “Healing Path Forward”** document is that it is silent about the two **Memorandums of Understanding** (2016 & 2017) that the previous **AFN** National Chief, Perry Bellegarde, signed with the Trudeau government (with the apparent approval of a quorum of the **AFN Executive Committee**), the **2016 Fiscal Relations MOU** signed with **Carolyn Bennett**, Minister of Indigenous Affairs (then changed to Crown-Indigenous Relations) and the **2017 Joint Priorities MOU** signed by **Prime Minister Justin Trudeau** and is now the basis of AFN’s role with the federal government and its federal funding.

In my opinion, the **AFN “Healing Path Forward”** document cannot be read in isolation of the **Canada-AFN MOU’s** since the current **AFN National Chief Roseanne Archibald** has not publicly announced **AFN** is either ending or renegotiating the terms of these **MOU’s**!

The first question we should ask is what do these two **MOU’s** do?

2016 Fiscal Relations MOU:

- Purpose is to “*jointly undertake a comprehensive review of the existing fiscal relationship, research, and develop proposals and recommendations for the design of a new fiscal relationship*”.
- The MOU set out the structure, membership, mandate and reporting for the joint process creating a “*new fiscal relationship*”.

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- The result has been the development of **10-year or less, grants** to Indian Act Bands (with no increased funding) and a new **“Self-Government” Fiscal Policy**, which is connected to the 1995 so-called **“Inherent Right Policy”** imposed by then Prime Minister Jean Chretien.
- The **“Self-Government Fiscal Policy”** is based in part on linking federal transfer payments to revenue generating powers (fiscal capacity) meaning **“own source revenue”** which is Ottawa’s code for taxation.
- **Section 87** of the Indian Act says property on-reserve cannot be taxed and the courts have extended the interpretation of *“property on-reserve”* to income earned on-reserve and some activities off-reserve that fit the meaning of *“connecting factors”*. That’s how **AFN Executive and staff**, as well as other political advocacy organizations, including Band Councils, are exempt from paying personal income tax.
- The federal objective is to get rid of **section 87** of the Indian Act and it is a federal pre-condition to finalizing *“self-government”* agreements. According to a 2019 internal federal document from **Finance Canada**:

*“Tax Policy Branch officials have been leading engagement processes with both the **Assembly of First Nations and self-governing Indigenous groups** on tax matters related to the new fiscal relationship with Indigenous peoples...Finance Canada officials led engagement processes with **self-governing Indigenous groups** (18 in total) and **Indigenous groups in self-government negotiations** (approximately 80, with varying levels of participation) on tax matters related to the new fiscal relationship in late 2016 and 2017...Terms of reference and a work plan for a technical working group...which provide for participation by federal officials (led by Finance Canada), the Assembly of First Nations, and the **First Nations Tax Commission**, were collaboratively prepared and agreed to by all participants. The first meeting of the technical working group took place on September 5, 2018.”* [emphasis added]
- The Finance Canada document refers to **“self-governing Indigenous groups”** and **“Indigenous groups in self-government negotiations”**, because **“self-government”** negotiations and agreements include Metis and Inuit, not just First Nations!



First Nations Tax Commission Logo

“This Finance Canada-AFN process has led to the 2019 “Self-Government Fiscal Policy”, which is now connected to the 1995 “Inherent Right Policy” negotiations and agreements across Canada”



Manny Jules, Chief Commissioner, First Nations Tax Commission



Cover of 2021 Liberal Indigenous Electoral Platform.

“The 2017 Joint Priorities MOU was essentially a take over of AFN by the Trudeau government’s Prime Minister’s Office and the Privy Council Office through “the establishment of a permanent, ongoing Cabinet-level process for First Nations leadership and members of the federal Cabinet (“AFN-Canada Working Group”)”



Canadian Parliament

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- This **Finance Canada-AFN process** has led to the 2019 “**Self-Government Fiscal Policy**”, which is now connected to the 1995 “**Inherent Right Policy**” negotiations and agreements across Canada.

2017 Joint Priorities MOU:

- The purpose is to:
 - **discuss options** to advance First Nation priorities;
 - **to promote opportunities** for First Nations rights holders;
 - **to assess progress** in rights implementation;
 - **to facilitate** relationship building;
 - **to support** the renewal of the Nation-to-Nation relationship between Canada and First Nations on the basis that the **First Nations are holders of Treaty rights, inherent rights, title, jurisdictions and Aboriginal rights**;
 - **to support** the **establishment of mechanisms and processes** to ensure the full and meaningful **enforcement and implementation of Aboriginal and Treaty rights and Aboriginal title**;
 - **to support the full and meaningful implementation** of the *Truth and Reconciliation Commission’s Calls to Action*;
 - **to support the full and meaningful implementation** of the *United Nations Declaration on the Rights of Indigenous Peoples*;
 - **to promote cooperation between Canada and First Nations** including the review, reform and development of federal laws, regulations, procedures, policies and practices that respect First Nations rights;
 - **to jointly identify measures and priorities** for closing the socio-economic gap between First Nations and other Canadians; and to establish transparent and accountable processes to jointly communicate activities and results.
- The **2017 Joint Priorities MOU** was essentially a take over of **AFN** by the Trudeau government’s **Prime Minister’s Office** and the **Privy Council Office** through “*the establishment of a permanent, ongoing Cabinet-level process for First Nations leadership and members of the federal Cabinet (“AFN-Canada Working Group”)*”.
- Using the **2017 Joint Priorities MOU** the Trudeau government:
 - Imposed a **Two-Track approach**, using 1867 and 1982 constitutional provisions (section 91.24 & section 35) and **Memorandums of Understanding (MOU’s)** creating three “**Bilateral Mechanisms**” (Federal-Indigenous Organizations Cabinet Committees) with the three National Indigenous Organizations

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(AFN, MNC, ITK) to implement a pan-Indigenous approach to move forward on the federal objective to water down and erode (limit & restrict) the costly Inherent, Aboriginal and original Treaty Rights of First Nations.

Imposed **10 Principles for Indigenous Relationships** for shaping policies, legislation and negotiations to re-colonize First Nations, since the principles are based on Canada’s constitutional division of federal-provincial powers and a domestic interpretation of **UNDRIP** (2007 version containing **Article 46.1**).

Imposed a **new federal legislative structure** in 2019, through an 800-page omnibus **Budget Bill**, simultaneously maintaining the Indian Act while dissolving the **Department of Indian Affairs** by creating two new “**Indigenous**” Departments (**Indigenous Services & Crown-Indigenous Relations**).

Instituted a **pan-Indigenous (First Nations, Metis Inuit) approach, Indigenous Services Canada** (ISC) now delivers programs to “**Indigenous**” individuals and “**Indigenous Governing Bodies**”, not just “**Indians**”, “**Bands**” and “**Band Councils**”. Now Metis and Inuit are included in the federal definitions of “**Indigenous**” individuals and “**Indigenous Governing Bodies**”.

The mandate of the Minister of Indigenous Services is to take the lead for the federal government to off-load or “**give effect to the gradual transfer to Indigenous organizations of departmental responsibilities with respect to the development and provision of those services**” through agreements with “**Indigenous organizations and other entities**” with mandates on section 35 rights from “**Indigenous Governing Bodies**”.

Once this gradual process of transferring program delivery to “**Indigenous organizations or entities**” is complete the **Department of Indigenous Services Canada** will dissolve leaving only the **Department of Crown-Indigenous Relations & Northern Affairs Canada** to implement the (pre and post 1975) Treaty and Self-Government Agreements.

The **Minister of Crown-Indigenous Relations** is responsible for negotiating a pan-Indigenous approach to (pre and post 1975) Treaties and Self-Government Agreements with First Nations, Metis and Inuit.

Imposed a Canadian legislative “**Framework for the Government of Canada’s implementation of the Declaration**” (Bill C-



Front: PM Trudeau.

Back L to R: AFN Nat’l Chief Bellegarde, MNC President David Chartrand, ITK President Natan Obed, December 2016.

“Once this gradual process of transferring program delivery to “**Indigenous organizations or entities**” is complete the **Department of Indigenous Services Canada** will dissolve leaving only the **Department of Crown-Indigenous Relations & Northern Affairs Canada** to implement the (pre and post 1975) Treaty and Self-Government Agreements”



AFN Nat’l Chief Archibald & Prime Minister Trudeau at Kamloops Reserve.



“The federal “Inherent Right Policy” is the umbrella framework used in all discussions and negotiations with First Nations (Indian Act Bands), Metis and Inuit and the policy has pre-conditions to negotiations that define the “rights, title and jurisdiction” of “Indigenous Peoples”, which includes First Nations”

‘Trudeau vs. AFN’ continued from page 5

15) to define the 2007 Version (includes **Article 46.1**) of the **United Nations Declaration on the Rights of Indigenous Peoples** “*in accordance with the Constitution of Canada*” through a still to be defined “*action-plan*”.

As stated above, in my opinion the AFN “Healing Path Forward” document cannot be read separately from the **2016-2017 Canada-AFN MOU’s**.

REVIEW OF AFN HEALING PATH FORWARD DOCUMENT

While the **AFN Healing Path Forward (HPF)** document introduction says it is a “*strategic direction toward evolutionary and positive change*”, it refers to the federal “*unprecedented investments*”, which the 2021 Liberal Platform says is almost \$25 billion in new money for “*Indigenous Priorities*” (First Nations, Metis, Inuit).

The **AFN** reference to “*investments*” instead of federal fiscal Treaty and fiduciary obligations and responsibilities is telling. This is the language of the federal government, which has shifted over the past two decades from Indian monies to “*investments*” as the federal government seeks to transfer, or off-load, its constitutional obligations and responsibilities to provinces and onto First Nation Governments (Indian Act Band Councils) themselves.

To this end, the **HPF document** states it is “*about creating a unified effort on longstanding issues*”. This is where **AFN** indirectly accepts the federal definition of “*Indigenous Governing Bodies*”, which is the transitional term used to cover Indian Act Band Councils (First Nation Governments), “**Indigenous Governments**” (First Nations, Metis, Inuit) who have signed Self-Government Agreements or “**Modern Treaties**” and/or an entity “*that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the Constitution Act, 1982.*”

The **HPF document** states “*First Nations...have rights, title, and jurisdiction, as well as self-government agreements (or Modern Treaties), all of which are recognized under Canadian law*”. Those groups who have signed “**self-government agreements or modern treaties**” include Metis and Inuit “*Indigenous Peoples*”.

The federal “**Inherent Right Policy**” is the umbrella framework used in all discussions and negotiations with First Nations (*Indian Act* Bands), Metis and Inuit and the policy has pre-conditions to negotiations that define the “*rights, title and jurisdiction*” of “*Indigenous Peoples*”, which includes First Nations.

The **HPF document** places the “*self-governing*” First Nations—who have compromised their constitutional rights by signing onto Canada’s section

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35 policy framework and agreements—as the template for the rest of the Indian Act Bands (First Nations) across Canada, whether they have pre-1975 treaties or not.

The **HPF document** boldly asserts “***The Healing Path Forward: 2021 Federal Priorities for Strengthening and Rebuilding First Nations plan reflects a shared vision and expression of First Nations’ collective priorities at the national level!***”. [emphasis added]

The **HPF document** states “***Building First Nations economies will translate into certainty for investment and increase self-sufficiency and the self-determination of First Nations. It will promote a fairer and stronger Canada for everyone.***” [emphasis added]

The “***certainty for investment***” comes about as “***self-governing***” First Nations accept federal “***Indigenous***” policies and agreements written to limit and restrict “***self-governing***” First Nations to the local level with largely delegated jurisdiction by federal and provincial governments. What in 2016, Prime Minister Justin Trudeau called “***fourth level***” governments in Canada, lower in status than the federal, provincial and municipal levels of government in the Canadian Federation.

This has the effect of placing the Provincial laws and jurisdiction in domination over “***self-governing***” First Nations, as provincial health, education, infrastructure, etc. standards are applied and **Indian Reserves** are replaced with lands that are gradually privatized into fee simple lands and the tax exemption/immunity is removed.

There are plenty of examples where this has already happened to “***self-governing***” First Nations, or is currently being negotiated, or for those First Nations (Indian Act Bands) that have opted out of the Indian Act into the federal laws designed to assimilate **Indian Bands and Reserves** into Canada’s property and tax systems (First Nations Land Management Act & First Nations Fiscal Management Act).

The AFN document lists 5 priority areas:

1. **Truth, Reconciliation and Healing for First Nations and all Canadians**
2. **Climate and Conservation Leadership with First Nations**
3. **Economic Growth, Prosperity and Wealth Building for First Nations**
4. **Promoting Peace by Respecting First Nations’ Jurisdiction**
5. **Rebuilding and Strengthening First Nations**
6. **Truth, Reconciliation and Healing for First Nations and all Ca-**



Marc Miller replaces Carolyn Bennett as Minister of Crown-Indigenous Relations.

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Joe Wild, Senior ADM, Crown-Indigenous Relations.



AFN Nat'l Chief
Roseanne Archibald

“There should be international Human Rights bodies brought in to develop a “framework” to examine the Canadian Residential School system and the harms it has caused to First Nations for generations. AFN National Chief Archibald has correctly already called for international involvement”



United Nations Logo

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nadians

It is not surprising that since the horrifying discovery of a mass burial of 215 at the site of the former Kamloops Indian Residential School and other sites, the first section of the **HPF document** focuses on what a federal government should do to “*heal the trauma*” that First Nation Peoples have experienced for generations.

On this matter the **2021 Liberal Indigenous Platform** has committed to:

Build a national monument in Ottawa to honour residential school survivors and all the children who were taken from their families and communities.

Appoint a Special Interlocutor who will work with Indigenous communities, provincial and territorial governments, to develop the necessary legal and regulatory framework to advance justice regarding unmarked graves and make recommendations relating to federal laws, regulations, policies, and practices surrounding unmarked and undocumented graves and burial sites at residential schools.

Commit an additional \$1.4 billion for a distinctions-based mental health and wellness strategy with First Nations, Inuit, and the Métis Nation, expanding on our recent commitment of \$597.6 million, for a total investment of \$2 billion over five years.

Provide the necessary supports for communities who wish to continue to undertake the work of burial searches at the former sites of these institutions.

Provide funding towards the construction of a permanent home for the National Centre for Truth and Reconciliation.

Provide sustained financial support for the Centre for core operations in fulfilling the mandate issued by the Truth and Reconciliation Commission with dedicated support for the work on Missing Children and Unmarked Graves.

While the money the **Liberal Party** has committed will no doubt help those still searching to recover the children who never came home from Canada’s genocidal institutions called “*Residential Schools*”, however, the appointment of a “*Special Interlocutor*” by the **federal Liberal government** to develop a “*legal and regulatory framework to advance justice*” is totally suspect because the federal government is in a conflict-of-interest having used religious orders to implement the Indian Act Residential School policy.

There should be international Human Rights bodies brought in to develop

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a “*framework*” to examine the Canadian Residential School system and the harms it has caused to First Nations for generations. **AFN National Chief Archibald** has correctly already called for international involvement.

The limited mandate of the **Truth and Reconciliation Commission** negotiated by **AFN**, has not sufficiently addressed the ongoing impacts of the genocidal Residential School policy of the government of Canada and the **TRC Calls to Action**—which the federal government hasn’t seriously addressed—and are insufficient to confront the ongoing colonialism of First Nations and the genocidal policies impacting Indigenous Women and Girls, as the conclusions of the **Murdered and Missing Indigenous Women and Girls Commission** (MMIWG) has stated.

It will be interesting to see if **AFN** does move forward on getting international Human Rights bodies involved in reviewing the mass graves and the genocidal Indian Act Residential Schools Policy or if **AFN** succumbs to only federal proposed “*Special Interlocutor*” process.

2. Climate and Conservation Leadership with First Nations

The **HPF document** states this section “*means addressing climate change, biodiversity loss, and its structural drivers, in order to rebalance the relationship with all of creation*” to “*Reduce emissions in Canada by 60% below 2010 levels by 2030 and reach net-zero emissions by 2050.*”

The role for First Nations (Indian Act Bands) in climate change and biodiversity is impacted by the constitutional division of federal and provincial powers in Canada’s Constitution Act 1867, “*environment*” is a shared jurisdiction between both levels of government. However, the recent **Supreme Court of Canada** decision ruling that the “Greenhouse Gas Pollution Pricing Act” is constitutional because “*global warming causes harm beyond provincial boundaries and that it is a matter of national concern under the “peace, order and good government” clause of the Constitution.*”

The role of First Nations in climate change and biodiversity is also affected by the federal Environmental Impact Assessment Act, **Bill C-69**, which defines “*federal lands*” as including “*reserves, surrendered lands and any other lands that are set apart for the use and benefit of a band and that are subject to the Indian Act, and all waters on and airspace above those reserves or lands.*”

Consistent with the federal pan-Indigenous objective of transitioning Indian Act Bands (First Nations) into 4th level ethnic “*Indigenous*” governments **Bill C-69** also sets out the following “*Indigenous*” definitions:

Indigenous governing body means a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and



Steven Guilbeault is the new Environment Canada Minister.

“*Bill C-69 also makes it clear that Indian Act Bands (First Nations)—since they aren’t considered “self-governing” by the federal government—don’t have any off-reserve status under Bill C-69, while those “Indigenous” groups who have signed section 35 agreements (self-government or modern treaties) must be consulted by the federal Minister of Environment*”





“The federal **Indigenous Guardian Project** is also consistent with the federal pan-Indigenous approach to respect the constitutional federal-provincial divisions of powers and First Nations, Inuit and Métis are eligible to apply for funding for activities on “**federal, provincial or territorial**” lands”



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affirmed by section 35 of the Constitution Act, 1982.

Indigenous knowledge means the Indigenous knowledge of the Indigenous peoples of Canada.

Indigenous peoples of Canada has the meaning assigned by the definition aboriginal peoples of Canada in subsection 35(2) of the Constitution Act, 1982

Bill C-69 also makes it clear that Indian Act Bands (First Nations)—since they aren’t considered “*self-governing*” by the federal government—don’t have any off-reserve status under **Bill C-69**, while those “*Indigenous*” groups who have signed section 35 agreements (self-government or modern treaties) must be consulted by the **federal Minister of Environment**.

The definition of “*jurisdiction*” under **Bill C-69** includes federal authority, agencies and bodies; provincial governments and their bodies, but not Indian Act Bands (First Nations). The federal **Bill C-69** definition of “*jurisdiction*” does include:

- e) *any body — including a co-management body — established under a **land claim agreement** referred to in section 35 of the Constitution Act, 1982 and that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project;*
- f) *an **Indigenous governing body** that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project*
 - i) *under a **land claim agreement** referred to in section 35 of the Constitution Act, 1982, or*
 - ii) *under an Act of Parliament other than this Act or under an Act of the legislature of a province, including a law that implements a **self-government agreement**;*
 - g) *an **Indigenous governing body** that has entered into an agreement or arrangement referred to in paragraph 114(1)(e); [emphasis added]*

The last reference to section 114(1)(e) in **Bill C-69** involves “*Minister’s Powers*” and provides as follows:

- e) *if authorized by the regulations, enter into agreements or arrangements with any **Indigenous governing body** not referred to in paragraph (f) of the definition jurisdiction in section 2 to*
 - i) *provide that the **Indigenous governing body** is considered to be a jurisdiction for the application of this Act on the lands specified in the agreement or arrangement, and*
 - ii) *authorize the **Indigenous governing body**, with respect to those lands, to exercise powers or perform duties or functions in relation to impact assessments under this Act — except for those*

‘Trudeau vs. AFN’ continued from page 10

set out in section 16 — that are specified in the agreement or arrangement; [emphasis added]

The federal and provincial constitutional division of powers also affect the **AFN HPF recommendations** is a call to “Support the establishment and maintenance of Indigenous Protected and Conserved Areas and embed permanent support for Indigenous Guardians”.

The establishment of protected and conservation areas is done through federal or provincial laws. The three types of federal protected areas are: **National parks, Migratory Bird Sanctuaries, National Wildlife Areas** and areas of **marine protection**. The provinces have also established **parks and protected areas**.

The federal **Indigenous Guardian Project** is also consistent with the federal pan-Indigenous approach to respect the constitutional federal-provincial divisions of powers and First Nations, Inuit and Métis are eligible to apply for funding for activities on “federal, provincial or territorial” lands.

The **eligible activities** are definitely needed for First Nations information management:

The kinds of activities eligible for funding under the Pilot include:

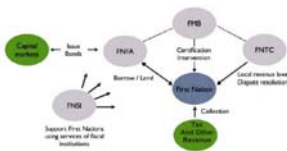
- Research
- Surveys
- inventories and monitoring
- collection and gathering of Indigenous Traditional Knowledge
- conservation planning
- outreach and education
- best management land-use practices
- capacity building
- Training
- species management/restoration
- species protection
- species and habitat threat abatement
- habitat improvement
- habitat management for maintenance and improvement of ecosystem services

However, keep in mind these activities are taking place on lands considered provincial, territorial or federal lands many “Indigenous” recipients of funding have either signed **land claim agreements**, or they are at federal **land claims negotiation tables**. The First Nations (Indian Act Bands) who are recipients are considered to be carrying out these federally funded activities on provincial lands.



“keep in mind these activities are taking place on lands considered provincial, territorial or federal lands many “Indigenous” recipients of funding have either signed land claim agreements, or they are at federal land claims negotiation tables. The First Nations (Indian Act Bands) who are recipients are considered to be carrying out these federally funded activities on provincial lands”





Nat'l First Nations Fiscal Institutions Chart

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The **2021 Federal Liberal Indigenous Platform** commits to:

Continuing to work in partnership with First Nations on addressing climate change, specifically in tracking the impacts of climate change on their traditional lands and waters and charting collaborative strategies forward.

3. Economic Growth, Prosperity and Wealth Building for First Nations

The **HPF document** states that "*The Healing Path Forward means recognizing that health and resiliency are tied to prosperity and wealth building*".

The **HPF document** also states that:

*First Nations governments require the **fiscal capacity** to exercise their **jurisdiction, rights and title**, to*

***improve the quality of programs and services** offered to their citizens, to **improve governance systems** that help ensure the most effective use of the **fiscal capacity** that does exist, and to close the gap in socio-economic outcomes between First Nations citizens and others in Canada. [emphasis added]*

"The term "**fiscal capacity**" is a federal term and like the term "**own source revenue**" is code for taxation and originates in the so-called 1995 federal "**Inherent Right Policy**", which has not been replaced and remains the **federal umbrella policy** for all First Nation and Indigenous discussions, negotiations and legislation"

The term "*fiscal capacity*" is a federal term and like the term "*own source revenue*" is code for taxation and originates in the so-called 1995 federal "*Inherent Right Policy*", which has not been replaced and remains the federal umbrella policy for all First Nation and Indigenous discussions, negotiations and legislation.

As the conservative right-wing **Fraser Institute** puts it fiscal capacity "*refers to a province's ability to raise own-source revenues at tax rates set to the national average, plus any additional revenues from natural resource royalties*", or in this case a First Nations (Indian Act Band's) ability to raise own-source revenues from **taxation** or **revenue sharing agreements** with provincial governments, or **Impact Benefit Agreements** with corporations.

In 2018, according to an internal federal document **AFN** and the **Department of Finance's** "*Tax Policy Branch officials have been leading engagement processes with both the **Assembly of First Nations** and **self-governing Indigenous groups** on tax matters related to the new fiscal relationship with Indigenous peoples*". [emphasis added]. The internal document also stated:

***Finance Canada** and the **Assembly of First Nations** have now agreed on a process for discussions related to tax matters... **Terms of reference** and a **work plan** for a **technical working group** (attached), which provide for participation by federal officials (**led by Finance Canada**), the **Assembly of First Nations**, and the **First Nations Tax Commission**, were collaboratively*



AFN Nat'l Chief Bellegarde & INAC Minister Carolyn Bennett sign MOU on Fiscal Relations at 2016 Niagara Falls AFN Assembly.

‘Trudeau vs. AFN’ continued from page 12

prepared and agreed to by all participants. The first meeting of the technical working group took place on September 5, 2018.

As set out in the terms of reference, the **purpose of the technical working group** is to contribute to the **establishment of a new fiscal relationship** between the federal government and First Nations through frank and open discussions of both short-term and long-term matters relating to the **tax elements of the fiscal relationship** between the federal government and First Nations.

Finance Canada officials led engagement processes with **self-governing Indigenous groups** (18 in total) and **Indigenous groups in self-government negotiations** (approximately 80, with varying levels of participation) on tax matters related to the new fiscal relationship in late 2016 and 2017. [emphasis added]

The internal federal document refers to “self-governing Indigenous groups” because the federal pan-Indigenous approach to “self-government” includes First Nations (Indian Act Bands), Metis and Inuit.

The federal objective is to eliminate **section 87** of the Indian Act, which provides that property on-reserve cannot be taxed. The courts have extended this to income earned on-reserve as being property on-reserve. The courts have even extended the tax exemption to off-reserve activities through a “connecting factors” test.

Eliminating **section 87** of the Indian Act is a federal pre-condition in negotiations for a “self-government” agreement as evidenced by section 15 of Canada’s **2019 collaborative self-government fiscal policy**, which states “**Access by Indigenous Governments to tax revenues is an important component of the renewed fiscal relationship.**” [emphasis added]

The **2019 collaborative self-government fiscal policy** is likely an outcome from the **Finance Canada-AFN “engagement process”**.

This is what the **HPF document** means when it refers to “fiscal capacity”.

The **HPF document** also recommends that a federal government:

*Support and coordinate community-driven **legislative and regulatory forward-looking solutions** that can assist First Nations to **move beyond a government funded economic base** to true economic self sufficiency for First Nations that is **based on their surrounding economies and resources.***

This recommendation is consistent with the federal status quo, pan-Indigenous approach to First Nations (Indian Act Bands)—where eligible—offers three ways out of the Indian Act:

- 1) **Modern Treaties** (mainly in BC but other parts of Canada where there are no pre-1975 land Treaties);



“The federal objective is to eliminate **section 87** of the **Indian Act**, which provides that property on-reserve cannot be taxed. The courts have extended this to income earned on-reserve as being property on-reserve. The courts have even extended the tax exemption to off-reserve activities through a “**connecting factors**” test”





Fathers of Colonization—1867.

“all of these actions will be through the constitutional division of federal and provincial powers allowing only 4th level ethnic **“Indigenous governments”** as the way out of the **Indian Act”**

‘Trudeau vs. AFN’ coninued from page 13

- 2) **Self-Government Agreements** (creating 4th level ethnic “*Indigenous governments*” through negotiations under the federal “*Inherent Right Policy*”);
- 3) **Alternative Federal legislation** (such as the First Nations Land Management Act, First Nations Fiscal Management Act, etc.)

As the **2021-2022 Crown-Indigenous Relations Departmental Plan** puts it under the section “**Accelerating the renewal of the relationship with Indigenous peoples**”:

*CIRNAC will continue discussions to co-develop **modern treaties, self-government agreements and other constructive arrangements**, and explore new ways of working with **First Nations, Inuit and Métis communities**.*

*CIRNAC will advance ongoing work with **First Nations, Inuit and Métis to redesign the Comprehensive Land Claims and Inherent Right policies**.*

*Canada, as represented by CIRNAC and other federal departments, will progress in the implementation of the Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia, in partnership with the other Principals of the British Columbia treaty process (the First Nations Summit and the Province of British Columbia). **Where there is interest, Canada is ready to discuss using the approaches found in this policy with negotiation partners elsewhere in the country.** [emphasis added]*

A re-elected Liberal government will continue with the **2021 Liberal Indigenous Platform** commitments to the following First Nation Priorities among others:

*Continue to support Indigenous-led processes for **rebuilding and reconstituting nations, advancing self-determination** and work in partnership on **implementation of treaties, land claim and self-government agreements** with appropriate oversight mechanisms to hold the federal government accountable.*

*Continue to support First Nations-led processes **to transition away from the Indian Act**.*

*Accelerate resolution of **outstanding land claims**.*

*Continue to advance the priorities of Indigenous communities **to reclaim full jurisdiction** in the areas that matter to them such as child and family services, education, health care, policing, tax, and the administration of justice.*

*Further support and fund the **revitalization of Indigenous laws**,*



‘Trudeau vs. AFN’ continued from page 14

legal systems, and traditions.

Host a **First Ministers Meeting** on First Nations, Inuit, and Métis Nation priorities.

Continuing to **develop a new national benefits-sharing framework** to ensure that First Nations communities directly benefit from major resource projects in their territories.

We will continue to work in partnership with First Nations through the **economic recovery to support the growth of First Nation economies.**

Continuing ongoing work with First Nations to **redesign federal policies on additions-to-reserves, and the Specific Claims process** to provide just and timely resolution.

Fully implementing An Act respecting the **United Nations Declaration on the Rights of Indigenous Peoples** and co-developing the **Action Plan** to achieve the objectives of the Declaration. [emphasis added]

Keep in mind, that all of these actions will be through the constitutional division of federal and provincial powers allowing only 4th level ethnic “Indigenous governments” as the way out of the Indian Act.

4. Promoting Peace by Respecting First Nations’ Jurisdiction

The **HPF document** states “*The Healing Path Forward means committing to Peace with First Nations*”.

The **HPF document** goes on to state that a federal government should follow through with its:

commitments to recognize, respect and promote First Nations rights while, at the same time, providing justice for First Nations citizens both within Canada’s legal framework and through the recognition of First Nations laws. By doing so, conflict is lessened, investor confidence is restored, and Canada’s economic future brightens, for everyone. [emphasis added]

This **HPF statement** is also consistent with the federal status quo **section 35 policy negotiations framework of modern treaties or self-government agreements.**

It should be noted that most of the contemporary land/resource conflicts involving First Nations have been led mostly by First Nation land defenders/water protectors—rights holders, the Peoples, not Indian Act Band Councils (First Nation Governments), with a few exceptions, examples are: Lubicon Lake, Oka, Ipperwash, Gustafson Lake, Barriere Lake, Burnt Church, Grassy Narrows, Caledonia, Kitchenuhmaykoosib Inninuwug First Nation (Big Trout Lake)”



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1989, SQ arrest Barriere Lake Chief Matchewan at a logging blockade on Algonquin Territory.



Idle No More March.
(Photo courtesy of Red-works)

“all of the **HPF document** is consistent with the two main federal policies defining section 35 Aboriginal and Treaty rights: “**self-government**” and “**comprehensive land claims**”. There is no challenge to this federal one-sided **section 35 policy framework** likely because **Indian Act leadership** across Canada, either have signed agreements under these two policies defining section 35 rights, or they are currently funded to negotiate under one or both policies”



‘Trudeau vs. AFN’ continued from page 15

Church, Grassy Narrows, Caledonia, Kitchenuhmaykoosib Inninuwug First Nation (Big Trout Lake).

5. Rebuilding and Strengthening First Nations

This section of the **HPF document** states:

*“The Healing Path Forward means that all sectors of First Nation communities are supported through guarantees of equality and equity. The **AFN has worked on legislation co-development processes with respect to Indigenous languages, child and family well-being.**”* [emphasis added]

AFN’s “co-development” of legislation on **Indigenous languages** (Bill C-91) and **Indigenous Child and Family Services** (Bill C-92) is consistent with the federal “*Inherent Right Policy*”. Now AFN points to “*working with the Government of Canada to co-develop First Nations’ distinction-based health legislation.*”

While it may be AFN’s priority to develop “*distinctions-based health legislation*” it is a federal objective to develop pan-Indigenous legislation as evidenced by Bills C-91 and C-92.

This section of the **HPF document** fails to mention that AFN supported Bill C-15, the United Nations Declaration on the Rights of Indigenous Peoples Act and tries to deflect and mislead by stating:

*“More recently, Bill C-15 was passed on the United Nations Declaration on the Rights of Indigenous Peoples. **These are all part of the ongoing effort to confirm Canada’s commitment to re-design its legal framework whereby First Nations governments can control the programs and services offered to their citizens.**”* [emphasis added]

The **AFN statement** fails to complete the point that Canada is redesigning its “*legal framework*” so that First Nation governments (Indian Act Bands) will be converted into 4th level ethnic “*Indigenous governments*” that can “*control the programs and services*” through their limited, largely delegated, jurisdiction as set out in the “**2019 collaborative self-government fiscal policy**” for “*self-governing*” First Nations with their federal transfer payments being tied to their own source revenues (taxation).

Conclusion

In conclusion, all of the **HPF document** is consistent with the two main federal policies defining section 35 Aboriginal and Treaty rights: “*self-government*” and “*comprehensive land claims*”. There is no challenge to this federal one-sided **section 35 policy framework** likely because Indian Act leadership across Canada, either have signed agreements under these two policies defining section 35 rights, or they are currently funded to negotiate under one or both policies.

'Trudeau vs. AFN' conclusion from page 16

In any case, the federal government is using the existing “*Modern Treaties*” and “*Self-Government*” Agreements as templates to use on the remaining First Nations (Indian Act Bands) and it is a combination of the Leaders who are from “*Modern Treaty*” or “*Self-Government*” groups who remain members of AFN as “*First Nations*” defined by the **AFN Charter** and those Chiefs who are at federal discussion or negotiation tables under the two main section 35 policies, that the **AFN Executive Committee** and the **AFN National Chief** will be directed by as AFN tries to advocate policy or legislative reforms with the Trudeau government using this “*Healing Path Forward*” document.

The federal government doesn't make a decision without a plan!

For example, while the Prime Minister was in Europe, the launching of an 11th hour **federal court appeal of the First Nations Child Compensation Case** on a late Friday afternoon, on October 30, 2021, followed by an immediate announcement of an **agreement to negotiate** with the main parties to the case—**AFN** and the **First Nations Child and Family Services** organization—gives the federal government sufficient time to pressure the constituents of these two organizations to accept a deal in an out-of-court settlement, since the deadline for negotiations is December 21, 2021.

An **AFN Virtual Special Assembly** is scheduled for December 7-9, 2021, well before the December 21, 2021, deadline for negotiations.

In December 2020, the **Trudeau government**, with the help of **AFN**, manipulated the December 2020 **AFN Virtual Special Assembly** to block a Draft Resolution to put conditional support for **Bill C-15** from hitting the floor of the December 2020 **AFN Virtual Special Assembly**.

Virtual AFN Assemblies are easier to for **AFN** appointed Co-Chairs, Staff, **AFN National Chief and Executive Committee** to manipulate. Chiefs cannot walk up to a microphone on the floor of an Assembly where they can be seen. In **Virtual AFN Assemblies** the procedures and microphones are much easier to control in an online virtual platform. Many of us witnessed that in December 2020.

How the **AFN Virtual Special Assembly** handles the federal offer and pressure to settle the **First Nations Child Compensation for Discrimination Case** will be a good test of how the rest of **AFN's** “*Healing Path Forward*” Priorities vs. the Trudeau “*Reconciliation Agenda*” will likely go.



“Virtual AFN Assemblies are easier to for AFN appointed Co-Chairs, Staff, AFN National Chief and Executive Committee to manipulate. Chiefs cannot walk up to a microphone on the floor of an Assembly where they can be seen. In Virtual AFN Assemblies the procedures and microphones are much easier to control in an online virtual platform. Many of us witnessed that in December 2020”



AFN Nat'l Chief
Roseanne Archibald
holding copy of AFN
Healing Path Forward
Document.



Dr. Cindy Blackstock,
Executive Director, First
Nations Child and Family
Caring Society of
Canada.

“the Caring
Society will not
negotiate
below the
\$40,000
compensation
order – every
victim is
entitled to
what the
Tribunal has
ordered and
what the
Federal Court
has upheld”



Our Statement on Canada's Decision to Appeal the Compensation Decision (2019 CHRT 39)

From First Nation Child and Family Caring Society of Canada

The **First Nations Child and Family Caring Society** is disappointed that today the Federal Government filed its appeal of the Federal Court's Decision upholding the decision of the **Canadian Human Rights Tribunal** to compensate the victims of Canada's discrimination in the provision of First Nations child and family services and implementation of Jordan's Principle. Victims of discrimination are entitled to and should receive compensation without delay.

While the Caring Society is disappointed that the appeal was filed, we have consented to Canada's request to pause the appeal for a very short period of time to allow for focused and intense negotiations to try and reach an agreement to end the Federal Government's discrimination and prevent its recurrence in the provision of child and family services and Jordan's Principle. These discussions will be open only until December 2021. This is an important opportunity for the government to do the right thing: end its discriminatory practices, implement enforceable measures to prevent its recurrence, and compensate every victim of discrimination. If there is no resolution, the appeal will be back in court on an expedited basis starting in January 2022 and the Caring Society will continue to vigorously defend the rights of First Nations children, youth and families to be compensated for the discrimination they have experienced. We will not step away from the Tribunal's compensation order.

The Caring Society is prepared to give this government a limited opportunity to end its discrimination, prevent its recurrence and compensate the victims. We have made clear that the Caring Society will not negotiate below the \$40,000 compensation order – every victim is entitled to what the Tribunal has ordered and what the Federal Court has upheld.

We owe it to every child, every youth and every family to try one more time and resolve every aspect of this complaint. The Caring Society is ready for this important work and is hopeful that the parties can address the past and ongoing discrimination together – to build a better future for First Nation children, youth and families and for Canada.

For more information about the case, please visit: fnwitness.ca. For Media requests and other inquiries, please e-mail: info@caringsociety.com.

Trudeau Files Last-Ditch Appeal Against Billions for Indigenous Children

Tribunal ordered Canadian government to pay compensation to children who suffered discrimination in welfare system

Justin Trudeau's government has launched a last-minute court appeal against a ruling that would require it pay billions of dollars to First Nations children who suffered discrimination in the welfare system.

Minutes before a court deadline on Friday afternoon, the government filed papers indicating it planned once again to fight a human rights tribunal decision ordering the compensation payment.

Soon after, however, the government released a statement saying it would pause litigation as it negotiated with First Nations groups to determine how compensation should be paid out.

The decision to fight the tribunal ruling – and the subsequent pause in litigation – was swiftly condemned by prominent Indigenous voices.

"Feds had years to sit and negotiate. Courts have told them to negotiate. Instead feds refused to abide by tribunal orders. Discrimination and harm continued to our kids. Now, before feds agree to negotiate, they wait till Friday 4.30pm and get their appeal in first. Wow," tweeted Pam Palmater, Mi'kmaw lawyer and chair in Indigenous governance at Ryerson University.

In 2019, the Canadian human rights tribunal argued the federal government had "willfully and recklessly" discriminated against First Nations children living on reserve by underfunding child and family services. Children were taken from their communities and put into government-run programs.

The tribunal had ordered Ottawa to pay C\$40,000, the maximum the tribunal can award, to each child as well as their parents and grandparents, but the federal government appealed the ruling.

That appeal was dismissed by a federal court judge who found that the government had failed to demonstrate the tribunal's decision was unreasonable.

The battle for compensation dates back 14 years, when Cindy Blackstock, executive director of the First Nations Child and Family Caring Society and the Assembly of First Nations, argued that by underfunding child welfare on reserve, Ottawa's conduct amounted to racial discrimination.

Indigenous leaders have long criticized the prime minister's decision to fight both of these rulings – but had recently expressed hope the Liberal government would end the multi-year battle.

In its submission, the government says it "acknowledges the finding of systemic discrimination and does not oppose the general principle that compensation to First Nations individuals who experienced pain and suffering" – but said it found the way compensation was determined was problematic.

In its statement on Friday, the government said it hoped to reach a settlement by December. **[Reprinted from the Guardian, October 29, 2021]**



Patty Hajdu & Marc Miller announce Federal Court Appeal on late Friday afternoon.

"The battle for compensation dates back 14 years, when Cindy Blackstock, executive director of the First Nations Child and Family Caring Society and the Assembly of First Nations, argued that by underfunding child welfare on reserve, Ottawa's conduct amounted to racial discrimination"



Marc Miller with David Lametti who filed the court case for Canada.



AFN Nat'l Chief Roseanne Archibald, during press conference on Kamloops Reserve. (Photo courtesy of Darryl Dyck/The Canadian Press)

“Talks set to start Monday between Indigenous leaders and the federal government about a possible settlement over court-ordered compensation to First Nations children could signal the clearing of the road to reconciliation, the Assembly of First Nations National chief said Saturday”



Compensation for Indigenous Children Removed From Homes Not Justice, says AFN

Some 54,000 children and families could qualify for compensation, meaning Ottawa could pay more than \$2B

The Canadian Press · Posted: Oct 31, 2021

Talks set to start Monday between Indigenous leaders and the federal government about a possible settlement over court-ordered compensation to First Nations children could signal the clearing of the road to reconciliation, the Assembly of First Nations National chief said Saturday.

RoseAnne Archibald said the talks are scheduled to last until December and Indigenous leaders are prepared to meet face-to-face with government representatives.

The federal government filed notice it plans to challenge in the Federal Court of Appeal a ruling ordering Ottawa to pay compensation to First Nations children removed from their homes, but also said the parties have agreed to work towards a resolution by December.

"We are closer than we have been previously," said Archibald.

"So, that's an important part of why the AFN executive committee, which is all the regional chiefs across Canada, has agreed to enter into these intense negotiations to see if we can get to a settlement that is fair."

In 2016, the Canadian Human Rights Tribunal found Ottawa discriminated against First Nations children by knowingly underfunding child and family services for those living on reserve.

In a joint statement Friday after the appeal was filed, Indigenous Services Minister Patty Hajdu, Crown-Indigenous Relations Minister Marc Miller and Justice Minister David Lametti said the parties "have agreed to pause litigation" on the tribunal's decision.

Archibald said she could not discuss in-depth details of the impending talks, but supported the human rights tribunal's statement that the children were eligible for \$40,000 in federal compensation.

The tribunal said each First Nations child, along with their parents or grandparents, who were separated because of this chronic underfunding were eligible to receive \$40,000 in federal compensation, which was the maximum amount it could award.

It has been estimated some 54,000 children and their families could qualify, meaning Ottawa could be in line to pay more than \$2 billion.

Archibald said any federal compensation paid to Indigenous children removed from their homes would be a recognition of the harms that were caused, but does not make amends for the damage done in the process.

She said compensation does not equate to justice.

‘AFN on Compensation’ conclusion from page 20

But the national chief said a compensation settlement would signal the government is on the path toward that goal as well as ending discrimination against First Nations children.

"Compensation is a legal recognition that you have been harmed and that you deserve to be compensated from that harm," Archibald said. "If we can get to a settlement, this will signal we are on the right path."

Archibald, elected national chief in July, said she has a "reasonable and fair" expectation the federal government and Indigenous nations will walk together toward reconciliation.

"That healing path forward together will be based upon concrete actions, more than it will be on discussions and words," she said.

Indigenous groups have been highly critical of the federal government's decision to appeal, with some welcoming the settlement talks, while others called it a stalling tactic.

"Our First Nations children are our most vital and valuable resource," said Chief Bobby Cameron in a statement from Saskatchewan's Federation of Sovereign Indigenous Nations.

"This federal government has taken them from their homes and communities and then dragged them through years of litigation and court," he said. "Enough is enough."

B.C.'s First Nations Leadership Council, representing the political wing of the province's three major Indigenous organizations, said in a statement the government must fulfill its obligations to the children.

"Nothing changes if nothing changes, and we demand this government put their money where their mouth is," said Grand Chief Stewart Phillip, of the Union of B.C. Indian Chiefs. "Stop fighting First Nations kids in court, uphold our rights, and take action that supports meaningful and real reconciliation."

[Reprinted from CBC News, Canadian Press Story, October 31, 2021]



Patty Hajdu, Min. of Indigenous Services Canada & Marc Miller, Min. of Crown-Indigenous Relations.

“That healing path forward together will be based upon concrete actions, more than it will be on discussions and words”



AFN & FNCFS will have to negotiate with a federal gov't where the PM took off on vacation on 1st Truth & Reconciliation Day



Statement From Indigenous Services Canada—Canada and the Parties will work together to reach a global resolution on compensation to First Nations children and long-term reform

Ottawa, Ontario (October 29, 2021) – the Honourable Patty Hajdu, Minister of Indigenous Services; the Honourable Marc Miller, Minister of Crown-Indigenous Relations; and the Honourable David Lametti, Minister of Justice and Attorney General of Canada, issued the following statement today:

"We have been unequivocal from the start: we will compensate those harmed by child and family services policies in order to mend past wrongs and lay the foundation for a more equitable and stronger future for First Nations children, their families and communities.

Today, the Government of Canada and the Parties, the First Nations Child and Family Caring Society and Assembly of First Nations, are announcing that we have agreed to sit down immediately and work towards reaching a global resolution by December 2021 on outstanding issues that have been the subject of litigation. This will include:

providing fair, equitable compensation to First Nations children on-reserve and in the Yukon who were removed from their homes by child and family services agencies, as well as those who were impacted by the government's narrow definition of Jordan's Principle, achieving long-term reform of the First Nations Child and Family Service program, and funding for the purchase and/or construction of capital assets that support the delivery of child and family services on-reserve and Jordan's Principle.

As we work to ensure that those who have been harmed are fairly compensated, we are also committing to significant investments to address long-term reform of the First Nations Child and Family Services and will work with the parties to put in place an approach that best serves these children. We will also continue this work through the ongoing implementation of An Act Respecting First Nations, Inuit and Métis Children, Youth and Families, which affirms and recognizes their jurisdiction over child and family services.

In order to allow the Parties time to have meaningful discussions and to reach a lasting agreement, Canada, the First Nations Child and Family Caring Society and Assembly of First Nations have agreed to pause litigation on the Canadian Human Rights Tribunal decision. Providing the space to reach agreement on compensation and funding for future reforms will help us reach the best outcome. This means that while Canada filed what is known as a protective appeal of the Federal Court decision of September 29, 2021, the appeal will be on hold and the focus will be squarely on reaching an agreement outside of court and at the table.

As part of our collective responsibility to end discrimination against Indigenous Peoples, we must redress past harms. We will continue to work with our provincial and territorial partners, and all Canadians, to stand together to fight racism at every level, in every part of our society.

Indigenous children and youth are at the centre of what we do; our commitment to their health and well-being is an essential part of our journey towards reconciliation.

Our investments represent our significant commitment to make amends for past actions, but also to invest in a fairer, healthier future. Our country will be stronger for it."

[Reprinted from webpage of Indigenous Services Canada, October 29, 2021]

From Assembly of First Nations—The Federal Court of Canada Upholds the CHRT's Ruling in Full on September 29, 2021

SUMMARY:

On September 29, 2021, the Federal Court of Canada upheld the Canadian Human Rights Tribunal's (CHRT) 2019 ruling ordering \$40,000 in compensation for First Nations children and families.

The Federal Court also agreed with the CHRT that all First Nations children should be eligible for Jordan's Principle, regardless of their Indian Act status or where they live.

Today's decision acknowledges the harm caused by Canada's discrimination and affirms that First Nations children and families deserve justice. This monumental decision comes one day before Orange Shirt Day, now also known as the National Day for Truth and Reconciliation.

Today, the Federal Court of Canada issued a decision to uphold the CHRT's 2019 order for compensation for First Nations children and families harmed by Canada's discriminatory practices in the First Nations Child and Family Services (FNCFS) Program and failure to uphold Jordan's Principle. It also upheld the CHRT's 2020 order for the application of Jordan's Principle to all First Nations children who are recognized by their First Nation government as citizens, regardless of their Indian Act status or where they live.

In 2007, the Assembly of First Nations (AFN) and the First Nations Child and Family Caring Society launched a complaint at the CHRT alleging discrimination against First Nations children and families in Canada's provision of FNCFS and Jordan's Principle. In January 2016, the CHRT found that Canada was in fact discriminating against First Nations children and families in its provision and funding of the FNCFS Program and narrow application of Jordan's Principle. The CHRT ordered Canada to immediately and completely overhaul the FNCFS Program and address the discriminatory funding that led to crisis levels of First Nations children in the child and family services system, and to fully implement Jordan's Principle.

In September 2019, the CHRT ordered Canada to pay \$40,000 in compensation to First Nations children, parents and/or grandparents (if the primary caregiver) affected by Canada's discriminatory funding of the FNCFS Program and narrow application of Jordan's Principle. This is the maximum allowable amount under section 53(2)(e) and 53(3) of the Canadian Human Rights Act (1985). The parties to the CHRT (the AFN, Caring Society and Canada, in consultation with Nishnawbe Aski Nation, Chiefs of Ontario and the Canadian Human Rights Commission) were ordered to work together to propose a framework for compensation. In February 2021, the CHRT approved the Framework for the Payment of Compensation under 2019 CHRT 39.

In July 2020, the CHRT issued a ruling clarifying who is eligible for consideration under Jordan's Principle, including children who would become



Paul Favel, Member Poundmaker Cree Nation & Federal Court Judge.

“On September 29, 2021, the Federal Court of Canada upheld the Canadian Human Rights Tribunal's (CHRT) 2019 ruling ordering \$40,000 in compensation for First Nations children and families”



Canadian Human Rights Tribunal

Advancing the Right of First Nations to Information

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The First Nations Strategic Policy Counsel is a collection of individuals who are practitioners in either First Nations policy or law. We are not a formal organization, just a network of concerned individuals.

This publication is a volunteer non-profit effort and is part of a series. Please don't take it for granted that everyone has the information in this newsletter, see that it is as widely distributed as you can, and encourage those that receive it to also distribute it.

Feedback is welcome. Let us know what you think of the Bulletin—Russell Diabo, Publisher and Editor, First Nations Strategic Bulletin.

For Back Issues Go To: http://epe.lac-bac.gc.ca/100/201/300/first_nations_strategic_bulletin/index.html

'AFN Summary of CHRT Court Decision' conclusion from page 23

eligible for Indian Act status under the implementation of Bill S-3, An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général). In November 2020, the CHRT confirmed this definition of eligibility, and Jordan's Principle now applies to First Nations children who:

Are registered or eligible to be registered under the Indian Act;

Have one parent or guardian who is registered or eligible to be registered under the Indian Act;

Is recognized by their Nation for the purposes of Jordan's Principle; or

Is ordinarily resident on reserve.

In October 2019, Canada filed for a Judicial Review of the CHRT's compensation order. In December 2020, Canada filed for a Judicial Review of the CHRT's Jordan's Principle eligibility order. In June 2021, the Honourable Justice Paul Favel heard arguments from the parties to the CHRT regarding the compensation order and Jordan's Principle eligibility.

Today's decision acknowledges the harm caused by Canada's discrimination and affirms that First Nations children and families deserve justice. This monumental decision comes one day before Orange Shirt Day, now also known as the National Day for Truth and Reconciliation.

More information will be available soon on the AFN website: www.afn.ca **[Reprinted from AFN Website]**