



May 5, 2020

VIA EMAIL

Judy Dubois
Registry Operations
Canadian Human Rights Tribunal
160 Elgin Street, 11th Floor
Ottawa, ON K1A 1J4

Dear Ms. Dubois:

RE: *FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA ET AL. V. ATTORNEY GENERAL OF CANADA* T#1340/7008

I write as counsel for the First Nations Child and Family Caring Society (the “**Caring Society**”) as Mr. Taylor has started his parental leave.

Please find below the response of the Caring Society, the Assembly of First Nations (the “**AFN**”) and the Attorney General of Canada (“**Canada**”) to the submissions delivered by the Nishnawbe Aski Nation (“**NAN**”) on April 30, 2020 and by the Chiefs of Ontario (“**COO**”) on May 1, 2020. A draft of this letter has been shared with counsel for the AFN and counsel for Canada.

The Caring Society, the AFN and Canada wish to clarify the proposed process for the completion of the Tribunal’s orders on Compensation. As Mr. Frater outlined in his April 30, 2020 letter, the Complainants and the Respondent are submitting the Compensation Framework and Notice Plan for the Tribunal’s approval-in-principle. Once the Tribunal releases its decision on the outstanding Compensation Process matters, the Compensation Framework will be adjusted to reflect said orders and will undergo a final copyedit to ensure consistency in terms. The Complainants and the Respondent will then consider the document final and will provide a copy to the Tribunal to be incorporated into its final order.

With respect to NAN’s submission,¹ the intention is not for “discussions to continue” on any substantive issues outlined in the Compensation Framework, Notice Plan and accompanying products prior to or after the final rulings. For greater clarity, the Complainants and the Respondent have not filed the Compensation Framework, Notice Plan and accompanying products subject to any right by NAN to return before the Tribunal “should an issue of concern arise”. It is the view of the Caring Society, the AFN and Canada that this was not the process envisioned by the Tribunal.

¹ NAN’s April 30, 2020 submission on the Compensation Process at para 3. See also NAN’s May 1, 2020 submission in response to the Panel’s April 22, 2020 questions at paras 13 and 28.

A. COO's and NAN's involvement in the Compensation Framework since February 21, 2020

Since the first draft of the Compensation Framework was filed on February 21, 2020, the Complainants and the Respondent incorporated feedback from the Commission and the Interested Parties. In addition to numerous email exchanges, all parties met on February 26, 2020, March 20, 2020 (by videoconference), and on April 2, 2020 (by videoconference).

The feedback from the Commission, COO and NAN was very useful and welcome. A significant number of their suggestions were incorporated into the Compensation Framework filed jointly by the Complainants and the Respondent. However, as reflected in their submissions, not all of COO's and NAN's proposals were accepted and thus the Caring Society, AFN and Canada provide the following reply to the COO and NAN submissions below.

B. Reply to COO's submissions

COO submits at paragraphs 4-6 that section 6.1(c) of the Framework should be amended to remove the reference to the specific developmental needs of children and young people in relation to mental health supports.

In reply to COOs submission, the Complainants and the Respondent are mindful of the recommendation by Youth in Care Canada that youth mental health supports be provided. It is also important to recall that ISC's 2018 Service Gaps Report showed that ISC is unable to disaggregate supports for children and young people from those available to adults. There is no debate that children's developmental stages require mental health assessments and interventions that are distinct from adults. As this case includes a large number of children and youth it is important that the Framework directly express a commitment to providing child and youth mental health services.

The Complainants and the Respondent agree with COO that adults ought to also have access to mental health services and have addressed this point in the Framework. More specifically, Section 6 addresses three forms of beneficiary supports throughout the Compensation Process. First, it provides for the establishment of a "toll-free line" for receiving information on the Compensation Process and accessing mental health supports. Second, it provides for navigators to assist persons in making a claim and accessing supports-including mental health supports. Funding will also be made available to First Nations organizations providing navigator services Third, Section 6.1 specifies that Canada will ensure that mental health resources will be provided free of charge to all claimants.

The Complainants and the Respondent are concerned that the deletion proposed by COO will dilute the quality and quantity of supports available to child and youth claimants, as it will lead to one-size-fits-all approach. As such, we urge the Tribunal to reject this proposed amendment.

C. Reply to NAN's submissions

NAN acknowledges that the Compensation Framework “is capable of being implemented in a way that is responsive to the unique needs and circumstances of remote First Nations, but that it is not sufficiently guaranteed.”² The current Compensation Framework recognizes the important role First Nations can play in supporting beneficiaries and includes mechanisms for First Nations to receive financial resources to support that work. Beyond suggesting the guiding principle, NAN does not provide details as to how a “guarantee” would manifest on a practical level, be resourced and/or implemented in a manner that did not delay the receipt of compensation by beneficiaries. The vague nature of NAN’s proposal may raise expectations among the 600+ First Nations that the Compensation Process could not deliver.

In addition, NAN suggests that its proposed guiding principle would ensure that “regional specificities” are taken into account “at every stage of the implementation of the Framework.” NAN does not provide clarity on what a “region” is and what of a region’s many “specificities” ought to be accounted for in a Compensation Process for individuals. The vague nature of this proposal risks creating confusion and delaying the provision of compensation.

Overall, the Caring Society, the AFN and Canada are of the view that the risks for confusion and delay implicit in NAN’s proposals outweigh any benefits to including the guiding principle and we therefore encourage the Tribunal to deny their request.

NAN also says that section 6.3 should be modified to make specific note of “particular needs and realities of remote First Nations with limited resources or infrastructure for providing support”. Section 6.3 already requires Canada to assist First Nations in providing support to beneficiaries. That assistance must be “adequate” and involves “reasonable” financial or other supports. These concepts can only be understood to include greater needs for rural and remote communities, as section 1.2 specifies that all applicable Tribunal orders prevail over the Framework. Singling out remote communities in the way proposed by NAN risks excluding the unique needs of other First Nations communities. As such, the Complainants and Respondent cannot agree to this amendment.

NAN also makes various submissions on the process related to training for individuals processing Jordan’s Principle claims.³ With respect, the detailed nature of these submissions are not appropriate for the Compensation Framework, which aims to set out a high-level outline for the Compensation Process. The Compensation Framework specifically contemplates the development of an implementation and distribution guide to govern the Central Administrator’s process for distributing compensation (the “**Guide**”). This Guide will include the training to be given to the Central Administrator and requirements for substantiating claims. The Complainants and Respondent will welcome proposals by NAN and the other interested parties as the Guide is developed.

Finally, at paragraph 22 of its May 1, 2020 submission, NAN raises the idea of including a section in the claim form for children (or adults who were youth in care) asking them to identify from

² NAN’s April 30, 2020 submission on the Compensation Process at para 6.

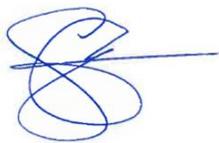
³ NAN’s April 30, 2020 submission on the Compensation Process at paras 42-45.

whom they were removed and who they saw as a parental figure at the time. The apparent aim of this provision is to identify the primary caregiver who ought to be eligible for compensation.

The Complainants and the Respondent have taken a trauma informed approach by keeping beneficiary information requirements to a minimum. A claim form should be as minimally intrusive as possible, particularly where the Compensation Entitlement Order is based on a child's removal, as opposed to anything that happened to them prior to their removal or while they were in care. We believe that asking children or former youth in care to provide information regarding who they saw as parental figures would place them in the untenable position of "choosing" one caregiver over another. Children ought not be engaged in resolving disputes among caregiving adults about entitlement to compensation.

We thank you for your consideration of these submissions.

Yours truly,



Sarah Clarke

Copy to: Robert Frater, Q.C., Peter Nostbakken, Jonathan Tarlton, Patricia MacPhee, Kelly Peck, Max Binnie, and Meg Jones
Co-counsel for the respondent Attorney General of Canada

David Nahwegahbow, Stuart Wuttke, and Julie McGregor
Co-counsel for the complainant Assembly of First Nations

Brian Smith and Jessica Walsh
Co-counsel for the Canadian Human Rights Commission

Maggie Wenté and Sinéad Dearman
Co-counsel for the interested party Chiefs of Ontario

Justin Safayeni and Ben Kates
Counsel for the interested party Amnesty International

Julian Falconer, Molly Churchill and Aliah El-Houni
Co-counsel for the interested party Nishnawbe Aski Nation

David Taylor, Anne Levesque, Barbara McIsaac, Q.C. and Marion Sandilands
Co-counsel for the complainant First Nations Child and Family Caring Society of Canada