



October 10, 2023

VIA EMAIL: Registry.Office@chrt-tcdp.gc.ca

Judy Dubois
Registry Operations
Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
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**

Nishnawbe Aski Nation (“NAN”) has reviewed Canada’s letter, dated September 21, 2023, in response to the Panel’s instructions requesting an update on the implementation of its past orders, dated August 21, 2023. NAN has also reviewed the Panel’s response to Canada’s letter, dated October 4, 2023. We write to provide NAN’s response to that recent correspondence, which is further to the updates provided earlier this year. Please bring this letter to the Panel’s attention.

The Path Forward and Canada’s Outstanding Instructions

NAN remains committed to working collaboratively with the other parties to negotiate settlement of this proceeding by way of final settlement agreement(s) (“FSA”) on long-term reform of the First Nations Child and Family Services (“FNCFS”) program and Jordan’s Principle.

Early this year, NAN became concerned about the delay in FSA negotiations that resulted from the Assembly of First Nations (“AFN”) and the First Nations Child and Family Caring Society of Canada (“Caring Society”) jointly developing their “Path Forward” proposal. NAN, Chiefs of Ontario (“COO”), and Canada received the Path Forward proposal on March 16, 2023.

Since March, FSA negotiations have been essentially stalled. NAN is growing increasingly concerned by the delay in FSA negotiations that is now resulting from Canada’s outstanding instructions in response to the Path Forward proposal. NAN and the other parties have been waiting for Canada to receive and convey its instructions for over six (6) months. NAN is concerned that this continuing delay is jeopardizing the possibility of concluding FSA negotiations, specifically before the next federal election but also generally.



Furthermore, NAN is seriously concerned about the consequences of this delay for the First Nation children, youth, and families who continue to suffer discrimination while certain reforms of the FNCFS program and Jordan's Principle remain outstanding. NAN First Nations cannot afford to keep waiting for this long-term reform. Their communities must not be forced to endure continuing discrimination while Canada ponders its response to the Path Forward.

Remoteness Indexing of FNCFS Funding

Prior to the current stall in FSA negotiations, NAN was engaged with Canada in discussions about how FNCFS funding would be indexed to account for the increased costs of delivering services in remote First Nation communities. Those discussions have paused pending Canada's outstanding instructions. At this time, FNCFS funding is not being indexed to account for remoteness.

NAN understands that remoteness indexing represents the largest amount of funding in the agreed-upon Reformed FNCFS Funding Approach that has not yet been implemented. However, NAN is concerned that the remoteness indexing of FNCFS funding that was committed to in the Agreement-in-Principle on Long-Term Reform ("AIP") must be evidence-based and not arbitrary.

NAN understood that the purpose of the NAN-Canada Remoteness Quotient Table, established by order of the Tribunal in 2017 (2017 CHRT 7) and whose fruitful work continues, was to develop methods to allow for evidence-based funding adjustments for remoteness. To the credit of Indigenous Services Canada ("ISC") and NAN's ongoing collaboration, the NAN-Canada Remoteness Quotient Table has generated, and continues to generate, evidence-based approaches to quantifying increased costs due to remoteness, which could now be implemented. Those approaches include NAN's Remoteness Quotient ("RQ"), ISC's Cost Adjustment Factor ("CAF"), and the Remoteness Quotient Adjustment Factor ("RQAF") currently in co-development.

These approaches offer robust, evidence-based ways to address discrimination against remote First Nation communities with respect to FNCFS funding, which was identified by the Tribunal in its past rulings. NAN remains strongly committed to the full application of this important work to FNCFS funding. This critical reform must not be held hostage to delayed FSA negotiations.

Re-negotiation of the 1965 Agreement

NAN is preparing to participate in the re-negotiation of the 1965 Agreement. NAN will do so with a view to addressing the discrimination against remote communities and NAN First Nations associated with that agreement, as identified by the Tribunal in its past rulings.

NAN has worked collaboratively with COO to establish a structure for First Nation participation in those discussions, which includes a dedicated seat at the table for NAN. This structure reflects the Tribunal's past rulings as well as the mandate NAN received from its Chiefs-in-Assembly.

We understand that Canada currently has a mandate to re-negotiate the entire 1965 Agreement. We also understand that Ontario is currently seeking its mandate. NAN hopes and expects that these important and long overdue discussions will commence without further delay.



Choose Life Table and Jordan's Principle Concerns

NAN and Canada committed in the AIP to establish the Choose Life Table, pursuant to agreed-upon Terms of Reference, to inform the long-term funding and reform of Jordan's Principle. NAN and Canada signed the Terms of Reference for the NAN-Canada Choose Life Table in late 2022. Meetings of the Choose Life Table commenced in 2023 and the work of the table continues.

NAN is highly concerned about Choose Life funding issues, including increased restrictions and denials, increased application requirements and administrative burden on applicants, funding decision backlogs and delays beyond the agreed-upon timeline, and especially streamlined access to the capital required to support Choose Life initiatives. These issues specific to Choose Life reflect concerns raised by the Caring Society and other parties with respect to Jordan's Principle.

NAN continues making efforts to work collaboratively with Canada to address its Choose Life concerns through the Choose Life Table. NAN is also engaged in ongoing discussions with the other parties with respect to resolving Jordan's Principle concerns.

National Assembly of Remote Communities

NAN co-founded the National Assembly of Remote Communities ("NARC") in late 2021 in partnership with political territorial organizations representing remote First Nation communities across Canada. NARC is currently developing draft Terms of Reference for the NARC-Canada Remoteness Table, which Canada committed in the AIP to establish. NARC is likewise exploring possibilities for the establishment of the associated Remoteness Secretariat, also committed to in the AIP. These envisioned (but not yet implemented) reforms are intended to address, at a national level, the discrimination against remote communities identified by the Tribunal in its past rulings.

We hope this update is helpful and would be pleased to provide further information at your request.

Yours very truly,



Christopher Rapson

cc Deputy Grand Chief Bobby Narcisse, Nishnawbe Aski Nation
Counsel for the Parties

