



Maggie Wentz

mwentz@oktlaw.com

416.981.9340

416.981.9350

74466

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Canadian Human Rights Tribunal
Senior Advisor, Program Delivery – Canadian Human Rights Tribunal
Government of Canada
240 Sparks Street, 6th floor West, Ottawa ON K1A 1J4
registry.office@chrt-tcdp.gc.ca

Attention: Judy Dubois

Dear Ms. Dubois

Re: T/1340/7008 - Supplementary Report as to Implementation of the CHRT Orders

This letter is Chiefs of Ontario's response to the correspondence from the Tribunal in the above matter dated October 4, 2023 as well as Chiefs of Ontario's response to Canada's supplementary report filed on September 21, 2023. We trust that you will relay this letter to the Panel.

Response to Tribunal's letter of October 4, 2023

From Chiefs of Ontario's perspective, progress in moving toward a final settlement agreement derived from the Agreement in Principle has been essentially at a standstill since April 1, 2023, when the Assembly of First Nations and the Caring Society delivered a proposal for how to come to a final settlement agreement by the end of 2023. Since that time, Canada's negotiators have had no mandate to proceed in negotiations and Canada says it has sought a new mandate. However, without a mandate to negotiate on the basis of the terms proposed by the Caring Society and the AFN, the parties have merely been discussing implementing existing CHRT orders and not full scale long-term reform of the FNCFS Program.

Not only has this delay disrupted the negotiations to a final settlement agreement, it also has resulted in parts of the funding that are part of the Agreement in Principle being held back. Canada's position is that it will not release the funding until a Final Settlement Agreement is concluded. Significantly for First Nations in Ontario, this has meant the delay of needed remoteness funding, and therefore ongoing inequality as a result of high costs in remote communities and for the agencies that serve them. Those communities and agencies are being

required to deliver all programs without remoteness funding, putting them at a significant disadvantage in delivering those programs on an equal basis with other communities. This is of concern to Chiefs of Ontario who supports NAN, and for the other non-NAN communities which would receive remoteness funding.

Chiefs of Ontario very much wants to proceed with full implementation of all the promised reforms and all the funding that accompanies them. At this point, we are almost at the 2 year mark since the AIP was finalized, and approaching halfway into the five year funding commitment that was made. However, the funding has not all been released, resulting in a piecemeal approach to reform, and delaying the ability to fully implement a new program. The successful implementation of a reformed funding approach and program within the 5 years contemplated by the AIP is at significant jeopardy because of delays. Even if negotiations resumed immediately, it would be some time before a Final Settlement Agreement will be reached.

Response to Canada's September 21 letter and Tribunal's request for detailed reports

With respect to the implementation of Jordan's Principle, Chiefs of Ontario can confirm that there are significant issues with processing times, service coordination and other barriers to accessing funding and services through Jordan's Principle. Chiefs of Ontario generally supports the concerns about Jordan's Principle as raised by the Caring Society, although solutions to these concerns will need to be tailored to the Ontario context. While the problems exist all over Canada, they are magnified and exacerbated in Ontario, no doubt due to Ontario's large First Nations population and therefore larger volume of requests. While some discussions about remedying these problems have been ongoing, so far no proposal for reform has been concluded.

With respect to more detailed reporting on various of the Tribunal's orders, COO can report that it appears that Ontario, Canada and Chiefs of Ontario are all in a position to commence negotiations on reform of the 1965 Agreement. Without revealing specific negotiation positions, it is Chiefs of Ontario's goal that a reformed 1965 Agreement will provide a needs-based substantively equal child welfare system that respects and supports First Nations' rights, jurisdiction, and ability to deliver services alongside the agencies that serve them. COO expects that the discussions should commence in the coming months.

COO has also noted that with the passage of time since the Tribunal requested an update and the parties replied in successive rounds, COO has further concerns regarding Canada's proposed approaches for capital claims and post-majority support services. In both cases, Canada proposes to move away from an actuals-based approach as of March 31, 2024. In the case of post-majority support services, Canada proposes to move to a formula-based approach. In the case of capital claims, currently processed at actuals pursuant to 2021 CHRT 41, Canada proposes to move to a "recapitalization" model under a reformed funding approach. Although this approach may have been supportable at the time of the AIP, it has become evident that both capital requests and post-majority support services have been sparingly accessed. COO is concerned that this means that there is not enough evidence from the actuals process to assess needs and to arrive at an evidence-based formulaic approach. Although generally COO finds that an actuals-based process

can exacerbate existing inequalities by favouring those that have the capacity to apply, COO believes that it may be too soon to move to a formula-based system.

COO looks forward to discussing these matters at the case management hearing in November. Should you require any clarification please contact the undersigned.

Yours truly,
Olthuis, Kleer, Townshend LLP
Per:

Maggie Wente
Partner

MW/

cc: All Parties' Counsel

Ruby Miller and Fallon Andy, Chiefs of Ontario

Grand Chief Joel Abram, Social Portfolio Holder, Chiefs of Ontario