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*Via Email*

November 9, 2020

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

Dear Ms. Dubois:

**Re: First Nations Child and Family Caring Society, et al. v Attorney General of Canada (Tribunal File: T1340/7008)**

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On behalf of the Assembly of First Nations and the Caring Society, we are providing the joint response of the Parties to three of the four questions posed by the Panel concerning the Compensation Framework (questions 2-4). We would ask you to bring our responses to the Panel's attention.

**Section 8.4**

The Tribunal has expressed concern that one clause of this section may go beyond the terms of what the Tribunal has ordered. It is important to look at the section as a whole:

8.4 The entities noted in section 8.3 will also, based on the judgment of the social worker at the time of the removal as recorded in the file, list parents or caregiving grandparents who sexually, physically or psychologically abused their children on an "Exclusion List". Generally, both parents or grandparents will be denied compensation in these circumstances. However, where a non-offending parent or grandparent did not know the abuse was occurring, or was incapable of stopping it, they may be entitled to compensation where, for example:

- *a non-offending parent or grandparent was also a victim of abuse by the other parent;*
- a non-offending parent or grandparent was absent from the home for extended periods for unavoidable reasons (e.g. military service);
- a non-offending parent or grandparent suffers from a disability that either prevented them from intervening or of being aware of the abuse.

The general scheme of this section is that where a child has been abused, the parents or grandparents will be denied compensation: “Generally, both parents or grandparents will be denied compensation in these circumstances.” The three bulleted circumstances represent possible exceptions. People who may fall within the exceptions do not automatically receive compensation; the language preceding these sections says only that they “may be entitled.”

Thus, the Framework contemplates that there may be some circumstances in which a non-offending parent or grandparent may be considered. Leaving open the possibility of a payment in exceptional circumstances is not unreasonable, nor should it be seen as inconsistent with the Tribunal’s Compensation decision.

The Tribunal should be aware that the proposed text at issue was intended by the parties to take into account the impact of intergenerational trauma on First Nations families.

It has been demonstrated that the residential school system greatly affected First Nations survivors and their children’s ability to develop parenting skills, which has been recognized as “one of the factors that contributed to the grossly disproportionate incidence of violence and child apprehension in Aboriginal families”.<sup>1</sup> The impacts are also reflected in a behaviour described as “traumatic bonding”, a survival strategy wherein victims of terror and abuse develop strong attachments to their abusers who not only represent the source of their pain, but ultimately their relief from same.<sup>2</sup> “Trauma re-enactment” is also common in these relationships, wherein trauma is re-enacted on family members<sup>3</sup>, as is “lateral violence”, a learned behaviour that allows oppressed and vulnerable people to feel more powerful by turning their anger against each other by way of shaming, humiliating, damaging, belittling or violent behaviour.<sup>4</sup> The net effect of these factors is that abuse behavior has effectively been normalized in some families.

Thus, the parties have tried to be sensitive to the intergenerational impacts of the residential school system in drafting the Framework.

As pointed out above, the Framework contemplates the preparation of an exclusion list. The parties want to ensure that preparation of the list will be sensitive to the impacts of intergenerational trauma. Where the documentary evidence reveals a history of intergenerational trauma, the non-offending parent/grandparent would not be automatically excluded. In these exceptional cases, the Central Administrator may have to make a decision about the appropriateness of compensation.

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<sup>1</sup> Canada’s Residential Schools: The Legacy The Final Report of the Truth and Reconciliation Commission of Canada Volume 5 at pg. 32

<sup>2</sup> Aboriginal Peoples and Historic Trauma: The process of intergenerational transmission, April 2015 at pg. 10-11.

<sup>3</sup> *Ibid.*

<sup>4</sup> Reclaiming Connections: Understanding Residential School Trauma Among Aboriginal People Prepared for the Aboriginal Healing Foundation By Deborah Chansonneuve 2005 at 58-59

## **Section 9.6**

This section contemplates that denials of compensation may be reviewed by the Tribunal. The question was directed to the Commission, and the Commission was kind enough to share their proposed submission with all of the parties. We agree with the conclusion the Commission reaches.

## **Notice Plan Annex A**

The Tribunal has suggested changing the words “stayed there,” to “stayed separate from their families, communities and Nations.” We agree that the proposed wording change would enhance the clarity of the sentence.

Yours truly,



Robert Frater, Q.C.  
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