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**VIA EMAIL: [Registry.Office@chrt-tcdp.gc.ca](mailto:Registry.Office@chrt-tcdp.gc.ca)**

September 9, 2022

Canadian Human Rights Tribunal  
c/o Judy Dubois, Registry Operations  
240 Sparks Street, 6th Floor West  
Ottawa, ON K1A 1J4

Dear Panel:

**Re: *FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA ET AL v ATTORNEY GENERAL OF CANADA – T#1340/7008 – Motion by AFN and Canada for Compensation Final Settlement Agreement Approval***

Pursuant to the schedule set by the Tribunal for the motion jointly brought by the Assembly of First Nations (“AFN”) and Canada on July 22, 2022, and relying on the materials filed on the motion, Nishnawbe Aski Nation (“NAN”) respectfully offers the below submissions.

### **Overview**

NAN supports the motion brought by the AFN and Canada. NAN understands that no agreement, including the Compensation Final Settlement Agreement (“FSA”), is perfect. However, NAN submits that the Compensation FSA reflects the spirit of the Tribunal’s compensation orders and respects the rights of its member First Nations’ citizens to receive meaningful compensation for harms they have suffered. Furthermore, NAN sees encouraging steps underway to address the vulnerabilities of remote First Nation communities by providing safeguards and supports throughout the compensation process.

### **Nishnawbe Aski Nation and its Concerns**

NAN is a political territorial organization representing 49 First Nations in Treaty 9 territory and the Ontario portion of Treaty 5 territory, including 34 fly-in only communities. It serves as the collective advocacy voice of remote communities in Ontario. In 2016, NAN was granted Interested Party standing in these proceedings on the basis of bringing that perspective and voice before the Tribunal.

Throughout its involvement, NAN has led the way in developing structures and vehicles to address the challenges faced by remote communities. Choose Life and the NAN-Canada Remoteness Quotient Table are products of NAN’s involvement in these proceedings and of the Tribunal’s support for addressing NAN’s concerns. Another prime example is the National Assembly of Remote Communities (“NARC”), which is co-chaired by NAN and the Federation of Sovereign Indigenous



Nations (“FSIN”). Other examples include the NARC-Canada Remoteness Table and the Remoteness Secretariat that were agreed to in the Agreement-in-Principle on Long-Term Reform of the First Nation Child and Family Services (“FNCFS”) Program and Jordan’s Principle, which was signed by the Parties on December 31, 2021.

NAN’s concerns with respect to compensation have focused on the unique vulnerabilities of remote communities when large sums of money are distributed to community members who are suffering from past trauma. History tells us that large settlement payouts, such as the Indian Residential School Settlement and other settlements, can attract predators and become death sentences for survivors. NAN heard from fellow NARC members that its concerns were shared by remote communities across Canada. From May 30 to June 1, 2022, NARC held its inaugural Symposium in Saskatoon, Saskatchewan. A full day was dedicated to addressing lessons learned from past payouts and best practices for payout safeguards. Representatives of the AFN and Canada participated as speakers and panelists on that day and answered questions from attendees. The Symposium concluded with a signing ceremony whereby Island Lake Anishinew Okimawin, representing remote communities in northern Manitoba, formally joined NARC. NAN submits the above to demonstrate how, in our experience, current processes can be used to address concerns.

### **Concerns of Other Parties**

We understand that the Tribunal awarded its maximum compensation of \$40,000 to all eligible recipients out of a principled respect for the severe and irreparable harms suffered by so many First Nations children, youth, and families as a result of Canada’s discriminatory conduct. We also understand that Canada simply would not agree to provide an unlimited amount of compensation. On that basis, we understand that the parties to the Compensation FSA made concerted efforts to ensure that the agreed upon \$20B in compensation would be allocated to eligible recipients in principled proportion to the harm they suffered. NAN submits that it is essential that those who suffered the greatest harm receive the greatest compensation, even if that proportional allocation leads to some less impacted recipients receiving less than the Tribunal’s \$40,000 award.

We understand that one party may argue for the continuation of the Tribunal’s jurisdiction over these compensation matters beyond its approval of the Compensation FSA. With respect to that concern, NAN submits that settlements require finality. It is not surprising that Canada sought finality in negotiating the Compensation FSA. As a rule, the fundamental function of settlement agreements is to resolve disputes and end litigation. This is no exception to that rule. On that basis, NAN accepts finality as part of this settlement. Furthermore, dispute resolution mechanisms are built into the Compensation FSA. Those mechanisms, together with the available processes described above with respect to NAN’s concerns regarding payout safeguards, create confidence in the agreement.

### **Conclusion**

With the above in mind, NAN respectfully submits that the Compensation FSA substantively satisfies the Tribunal’s compensation orders and hereby consents to and supports the motion being granted.

Thank you for your consideration.



Yours,

Falconers LLP



Julian Falconer

cc. Deputy Grand Chief Bobby Narcisse  
*Nishnawbe Aski Nation*

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