

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and
ASSEMBLY OF FIRST NATIONS**

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous and Northern Affairs Canada)

Respondent

- and -

**CHIEFS OF ONTARIO and
AMNESTY INTERNATIONAL CANADA AND NISHNAWBE ASKI NATION**

Interested Parties

REPLY TO CANADA'S REPORT TO THE TRIBUNAL (DATED MAY 24, 2016)

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Introduction

1. The Tribunal ordered the Respondent to report to the Tribunal with respect to the Respondent's 2016 budget allocation for the FNCFS program as follows:

*INAC will then provide a comprehensive report, which will include detailed information on every finding identified above and explain how they are being addressed in the short term to provide immediate relief to First Nations children on reserve. The report should also include information on budget allocations for each FNCFS Agency and timelines for when those allocations will be rolled-out, including detailed calculations of the amounts received by each agency in 2015-2016; the data relied upon to make those calculations; and, the amounts each has or will receive in 2016-2017, along with a detailed calculation of any adjustments made as a result of immediate action taken to address the findings in the Decision.*¹

2. The Tribunal, in its April 26, 2016 order, stated that the Tribunal will make orders pertaining to the 1965 Agreement and immediate relief flowing from it after the decision on Nishnawbe-Aski Nation (NAN)'s application for Interested Party status, and after NAN's submissions on remedy.
3. The Respondent has to this point provided some information to the Tribunal and to the Interested Party Chiefs of Ontario about its plans for immediate relief for Ontario.
4. The information provided by the Respondent re Ontario does not provide sufficient information to comply with the Tribunal's order to provide detailed reporting on its immediate relief funding for Ontario. These submissions detail the particular ways in which the Respondent's report and its plans for immediate relief are deficient.

Information Provided by Respondent Regarding Planned Immediate Relief

5. In a May 9, 2016 letter to Regional Chief Day and to Ontario, the Respondent stated it would contribute \$5,830,000.00 in 2016-2017 for prevention services in Ontario and asked Ontario to consider supplying its corresponding share under the 1965 Agreement

¹ *First Nations Child and Family Caring Society et al., v. A-G (INAC)* 2016 CHRT 10 ("April 2016 decision"), at para 23

formula. In that letter, the Respondent proposed that there were a variety of allocation possibilities for this “immediate investment”, including general funding across all agencies, or specific funding to address particular gaps. The Regional Director General requested a meeting with both Regional Chief Day and with Ontario to “consider next steps” in the immediate investments.

6. The May 9, 2016 letter also stated that funding for Band Representatives “will be considered as part of the FNCFS reform process”.
7. In the Respondent’s May 24, 2016 submissions, the Respondent repeated the immediate relief funding commitment of \$8M and reported to the Tribunal that:
 - (a) INAC will actively work with Ontario and “stakeholders” such as First Nations agencies, organizations, to achieve necessary reforms.
 - (b) There had been meetings between INAC and the Government of Ontario to discuss the need to review the 1965 Agreement. The meetings had “set the stage for further and more substantive discussions”.
 - (c) The Band Representative program would be considered as part of the FNCFS program reform process.
 - (d) INAC is considering options for engagement on the reform of the 1965 Agreement.
8. In Annex “B” to the Respondent’s May 24, 2016 submissions, the Respondent stated that while the funding for prevention services for Akwesasne was calculated based on Quebec’s EPFA model, the Ontario portion of the immediate relief funding was calculated to “enable a more equitable allocation across all agencies as well as potential new prevention services”, with no further details. The Respondent also said that the immediate relief funding amounts to approximately \$1000.00 per First Nations child on reserve, and is based on the “current provincial investment” of two programs, Akwe:go and Wasa: Nabin, delivered by the Province of Ontario.
9. Finally, in the Respondent’s June 3 2016 submissions replying to NAN’s submissions on remedy made on June 3, 2016, the Respondent again repeated the immediate relief funding commitment of \$8.0M including Akwesasne and made assertions about matters that would be addressed in the national program reform process.

COO Response to Letter of May 9, 2016

10. COO is concerned about the wording of the letter from Indigenous and Northern Affairs Canada to Regional Chief Day and Ontario seeking Ontario's agreement to contribute the Ontario portion of immediate relief funding pursuant to the formula under the 1965 Agreement. COO submits that the immediate relief funding should be provided regardless of Ontario's concurrence in order to provide immediate relief to children in Ontario to prevent discrimination.
11. COO repeats its submissions and proposal made in its reply submissions to NAN dated June 3, 2016 regarding the need for a deadline for the distribution of immediate relief funding to Ontario. The Respondent's letter of May 9, 2016 demonstrates no commitment to distribute funding on any particular timeframe, proposes no method of distribution, and COO understands the invitation to a meeting to discussion "next steps" to be an invitation to discuss allocation and/or seek agreement among parties for the allocation of the immediate relief.
12. We advise COO has made requests for further information to the Respondents as a result of this letter as well as raising the concern that the immediate relief funding be distributed through the 1965 Agreement formula, and is in the process of arranging meetings to discuss the Respondent's planned immediate relief funding.
13. COO is not opposed to discussing methods of distribution of the immediate relief funding and agrees there is likely benefit to so doing, in order to address the acknowledged service gaps in some agencies, the patchwork pattern of mandate and funding, and to address remoteness factors. However, COO is not prepared to participate in an open-ended process without deadline. Therefore COO would like to see a deadline imposed after which the funding will flow, regardless of agreement, as stated in its June 3 2016 submissions to the Tribunal:
 - (a) There should be a deadline for agreement to be reached on the allocation of immediate relief funding for prevention. COO submits that the deadline should be no later than August 31, 2016;
 - (b) If no agreement is reached by the deadline, the allocation of the funding committed by the Respondent should be made on a per-population basis, with the

caveat that additional funding may be ordered to address remoteness and to ensure that services are provided equally throughout Ontario;

- (c) The funding should be released immediately after agreement of the parties or the passing of the deadline for agreement imposed by the Tribunal, whichever comes first;
- (d) The Tribunal shall remain seized of the order.
- (e) The Respondent should be required to report on the implementation of the order in a manner similar to that set out in the Tribunal's ruling of April 26, 2016.²

COO's Response to the Respondent's May 24, 2016 Submissions

14. COO notes that the Respondent has not provided the level of detail about the budget for immediate relief funding in Ontario as it has for other provinces. A gross dollar amount is not sufficient for COO to adequately respond to the information provided; disaggregated information on a per-agency basis would be more useful, as would population figures and all other data on which it based its funding decisions in accordance with the April 26, 2016 Decision.
15. The information provided by the Respondent does not satisfy the Tribunal's order about the level of detail required by the Tribunal's April 26, 2016 Decision.
16. COO is further concerned about the lack of specificity about how the Respondent determined the budget amount for immediate relief funding in Ontario. The Respondent says that the planned additional immediate relief funding amounts to approximately \$1000.00 per First Nation child, however provides no information about how it has made the calculation to support that assertion. The Respondent has not provided information about why this funding is a sufficient level of funding to address the Tribunal's findings.
17. The Respondent says the immediate relief funding for Ontario is based on "the current provincial investment" in two programs delivered by Friendship Centres in Ontario, Akwe: Go and Wasa-Nabin. It is unclear what the Respondent means by this statement or in what was the funding amount is based on the current provincial spending on these programs. Missing from the Respondent's submissions is information about how the Respondent arrived at the determination that this was an appropriate amount, about why

² April 2016 Decision at para. 23.

the Respondent chose these particular programs as the relevant comparison program for how much prevention services cost, and what data informed this funding amount. COO poses the following questions as examples about how the determination was made:

- (a) Is the immediate relief funding amount merely the same amount as the province provides for those two provincial programs?
- (b) Is the population of the potential recipients a factor that was taken into account when determining immediate relief funding (i.e., the off-reserve population versus the on-reserve population)?
- (c) Does the calculation take into account any concerns of remoteness raised by NAN? Does it take into account the different levels of funding that each FNCFS agency already receives? What else does it take into account?
- (d) Why is the cost of two off-reserve Friendship-Centre based youth programs relevant for cost comparison purposes?

18. Although the Respondent did not provide details of the programs on which it based its immediate relief funding for prevention services, according to the Government of Ontario's website, the two programs provide the following services in Friendship Centres:

Akwe:go and Wasa-Nabin promote healthy development in ways that respect cultural backgrounds and traditions. The programs are designed to meet the unique needs of each community. They provide:

- *a personalized plan of action for each child and youth*
- *teachings by elders, as well as other culturally relevant programs*
- *recreational and after-school programs, where youth can get peer support and help with homework*
- *health resources*
- *referrals to community resources and agencies*
- *public awareness and community outreach through events and local agencies*³

³ http://www.children.gov.on.ca/htdocs/English/topics/aboriginal/akwego_wasa-nabin.aspx, accessed June 6, 2016.

19. In contrast, in its January 2016 Decision, the Tribunal found the following activities are carried out under the category of prevention services:

Prevention services are divided into three main categories: primary, secondary and tertiary. Primary prevention services are aimed at the community as a whole. They include the ongoing promotion of public awareness and education on the healthy family and how to prevent or respond to child maltreatment. Secondary prevention services are triggered when concerns begin to arise and early intervention could help avoid a crisis. Tertiary prevention services target specific families when a crisis or risks to a child have been identified. As opposed to separating a child from his or her family, tertiary prevention services are designed to be “least disruptive measures” that try and mitigate the risks of separating a child from his or her family. Early interventions to provide family support can be quite successful in keeping children safely within their family environment, and provincial legislation requires that least disruptive measures be exhausted before a child is placed in care.⁴

20. COO submits that the programs on which the Respondent based its costing for immediate relief funding for prevention services are very different programs than prevention services that are provided by child welfare agencies. The Akwe:go and Wasa-Nabin programs are primary prevention services only. It is entirely unclear why these two off-reserve programs, however worthy, would be the basis on which to make a funding decision about prevention services for child welfare agencies serving on-reserve children. COO submits that the cost of prevention services already being provided in Ontario would be a more relevant starting point, or the cost of prevention services elsewhere in Canada provided by First Nations agencies.
21. COO further submits that the basis of immediate relief funding does not appear to account for the remoteness factors highlighted by NAN, nor does it account for the very different circumstances that the FNCFS agencies in Ontario find themselves in, even in relation to one another.

⁴ *First Nations Child and Family Caring Society et al., v. A-G (INAC)* 2016 CHRT 2 (“January 2016 Decision”) at para 116.

22. COO further notes that Canada has not committed any funding for the Band Representative program, despite this program being specifically mentioned by the Tribunal in the January 2016 Decision and again in the April 2016 Decision.
23. COO notes also that the Respondent has not committed to any immediate relief for mental health services in Ontario.

Jordan's Principle Reporting Letter

24. COO shares the concerns raised by the First Nations Child and Family Caring Society with respect to the reporting of the implementation of Jordan's Principle and asks also that further reporting on the questions posed by the FNCFCFS be ordered.

Ongoing Reporting

25. COO submits that further reporting by the Respondent is required to comply with the Tribunal's April 2016 Decision, to comply with future orders regarding the 1965 Agreement, and to assess the sufficiency of the immediate relief funding already committed by the Respondent.

All of which is respectfully submitted this 8th day of June, 2016.



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