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

November 9, 2020

Dear Ms. Dubois:

**Re: First Nations Child and Family Caring Society of Canada et al. v. Attorney
General of Canada; Tribunal No. 1340/7008**

This correspondence is written in response to the Panel’s correspondence of October 20th in which it posed several questions in relation to the compensation framework filed with the Tribunal on October 2, 2020 (“the Framework”). The majority of the questions were directed specifically at the Assembly of First Nations (“AFN”) and the Caring Society, sometimes alongside Canada, and one question was highlighted specifically for the Canadian Human Rights Commission. The Panel nonetheless welcomed submissions from all parties. I provide the following brief response on behalf of Nishawbe Aski Nation (“NAN”):

Trust Arrangement

It is NAN’s understanding that the Framework contemplates that a child who reaches the age of majority yet never gains capacity to manage their own affairs will continue to have their compensation funds managed by an appointed trustee until exhaustion of the funds or death of the beneficiary. It is NAN’s understanding that the Trust Agreement contemplated at section 10.5 of the Framework would set out when/how the funds can be used.

NAN is supportive of the idea of a process by which a parent, grand-parent, uncle, aunt, or other legal guardian could have input into the use of the trust funds and make requests on behalf of the beneficiary. NAN believes this could be worked out within the Trust Agreement.

Exclusion List

NAN notes that the concern raised by the Tribunal about the potential of introducing an adjudicative element into the compensation process echoes a concern raised by the Parties and the Tribunal last May. This earlier concern was raised in response to the request by NAN and Chiefs of Ontario to expand the category of caregivers entitled to compensation to include caregivers other than parents and grandparents. NAN is supportive of ensuring there are exceptions carved out of the “Exclusion



List” as contemplated at section 8.4 of the Framework, but defers to the Caring Society, the AFN, and Canada on the specific question about process outlined in the Panel’s correspondence of October 20, 2020.

Trusts

NAN has had the benefit of receiving an advance copy of the Commission’s submissions on the question posed by the Tribunal about its jurisdiction to act as an appeals body, as contemplated at section 9.6 of the Framework. NAN relies upon and adopts the Commission’s analysis: the Tribunal’s broad remedial powers include the power to retain jurisdiction to resolve disputes that may arise regarding implementation of its remedial orders, including its compensation orders.

Amendment to Language in Notice

The Panel asked whether the last sentence of the first paragraph of Annex A to the Framework (the Notice Plan) might be changed as follows:

... The Government of Canada’s (“Canada”) provision of inequitable child and family services and other public services via Jordan’s Principle made it more difficult for families to address risk factors and thus more First Nations children were placed in care and ~~stayed there~~ stayed separated from their families, communities and Nations.

NAN is agreeable to this change being made. The change places more emphasis on the harm to a child of being separated from their family, community, and First Nation.

Yours very truly,



Julian N. Falconer

cc. **Robert Frater, Q.C., Jonathan Tarlton, Patricia MacPhee, Kelly Peck, Max Binnie, and Meg Jones**

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