

Sent by e-mail

January 24, 2025

Cindy Blackstock, PhD
Executive Director
First Nations Child & Family Caring Society
E-mail: CBlackst@fncaringsociety.com

Dear Dr. Blackstock:

RE: Caring Society's January 14, 2025 motion directing Canada to continue negotiations

I. Introduction and Overview

I write on behalf of the National Children's Chiefs Commission (the "**NCCC**") to express its support for the Caring Society's January 14, 2025 motion to the Canadian Human Rights Tribunal ("**CHRT**") seeking orders requiring Canada to continue negotiations on the national long-term reform of the First Nations Child and Family Services Program, federal child and family services, and Jordan's Principle (the "**LTR Agreements**").

As you know, the NCCC is a regionally-representative Commission that has been established by resolutions of the First Nations-in-Assembly to assist First Nations in conducting further negotiations in relation to the LTR Agreements.

In this letter, I describe the following matters:

- a) the mandate, structure, and purpose of the NCCC;
- b) the work of the NCCC on this matter so far; and
- c) the NCCC's views on the Caring Society's January 14, 2025 motion to the CHRT.

II. Discussion

a) Mandate, structure, and purpose of the NCCC

As described in more detail below, the NCCC was established by the First Nations-in-Assembly and provided with a mandate to oversee and move forward with further negotiations in relation to the LTR Agreements. Fundamentally, the NCCC's purpose and role is to assist in acting on the will of the First Nations-in-Assembly to take a fresh approach toward negotiations for the LTR Agreements.

The First Nations-in-Assembly established the NCCC by way of [Resolution No. 60/2024](#), which was passed at the Special Chiefs Assembly in October 2024 concurrently with the

rejection of the *Final Settlement Agreement on Long-Term Reform of the First Nations Child & Family Services Program*. Through Resolution No. 60/2024, the First Nations-in-Assembly expressed the desire to adopt a new negotiation approach in relation to the LTR Agreements. In particular, in Article 2 of that Resolution under the heading “Governance and Transparency of the LTR Agreements for the FNCFS Program and Jordan’s Principle”, the First Nations-in-Assembly directed the AFN Executive Committee “to adopt the following approach to the LTR Agreements negotiations”:

- a) establish the NCCC, which is to have representation appointed by every region, to “provide strategic direction and oversight of the LTR Agreements negotiations, reporting back to the First Nations-in-Assembly”;
- b) direct the NCCC to establish a regionally-representative negotiation team responsible for carrying out the negotiations under the direction of, and reporting to, the NCCC;
- c) require the NCCC to provide the terms of reference for the negotiation team to the First Nations-in-Assembly by December 2024; and
- d) require the NCCC to report to the First Nations-in-Assembly in December 2024 about its anticipated timeframes for the completion of negotiations.

Resolution No. 60/2024 also sets out the following aspects of the NCCC’s mandate and consequential changes to the negotiation direction of the AFN:

- **Article 3:** the AFN Executive Committee and the NCCC must ensure that governance structures set out in a new agreement will “uphold the sacredness of children, youth, and families, be transparent, open, and accountable to First Nations, preserve First Nations decision-making, and include the guidance of youth, youth in care and formerly in care, and First Nations child and family service experts”;
- **Article 4:** the AFN Executive Committee and the NCCC must develop an open and transparent process for the First Nations-in-Assembly to suggest and make changes to new agreements before they are put to a vote;
- **Article 5:** the NCCC must provide a detailed report to the First Nations-in-Assembly on suggested amendments, the decisions made on amendments, and negotiation outcomes, before the First Nations-in-Assembly proceed with any decision-making to approve further agreements;
- **Article 6:** going forward, the AFN must refrain from making efforts to procure support from First Nations leadership on any agreement, arrangement, protocol, or similar instrument that has not been approved by First Nations-in-Assembly;

- **Article 7:** the AFN Executive Committee and the NCCC must take “positive and effective measures” throughout the negotiation, review, and approval process for a new draft agreement to seek out and incorporate the expertise of: First Nations, child and family service providers, Jordan’s Principle experts, Elders and Youth, the National Advisory Committee, the Jordan’s Principle Operations Committee, and regional experts; and
- **Article 10:** calls on Canada “to obtain a new negotiation mandate to address the matters in this resolution.”

I have included Resolution 60 as **Schedule “A”** to this letter for ease of reference.

[Resolution 61/2024](#), which was also passed by the First Nations-in-Assembly in October 2024, provides more detailed negotiation directions from the First Nations-in-Assembly to the NCCC as to the content of new LTR Agreements, calls upon Canada “to obtain a new negotiation mandate to address the matters in this resolution” (including fully and unconditionally implementing the principle of predictable, stable, sustainable, needs-based funding), and directs the NCCC to ensure that any further draft agreement does not abrogate or derogate from First Nations’ title or treaty rights, or in any way diminish Canada’s duty to consult, fiduciary obligations to First Nations, or the honour of the Crown.

I have included Resolution 61 as **Schedule “B”** to this letter for ease of reference.

The First Nations-in-Assembly also [passed additional, related resolutions](#) at the December 3-5, 2024 Special Chiefs’ Assembly, which also have a bearing on the mandate of the NCCC, as follows:

- Resolution No. 88/2024: calling on Canada to “publicly and fully commit to respecting” the rejection of the draft agreement and the new direction represented by Resolutions 60 and 61/2024 (among other things);
- Resolution No. 89/2024: supporting the NCCC in establishing its negotiating team, approving in principle the draft terms of reference for the NCCC and the negotiation team, and directing the NCCC to report to First Nations-in-Assembly at every Assembly until its work is complete (among other things); and
- Resolution No. 90/2024: directing Canada to obtain a new negotiation mandate within 30 days “in full alignment with” Resolutions 60 and 61/2024, and supporting the NCCC in legal proceedings, including before the CHRT, to ensure First Nations children, youth and families receive the full benefit of existing CHRT orders, and to seek additional remedies as required (among other things).

I have included Resolutions 88, 89, and 90 as **Schedule “C”, “D”, and “E”** to this letter for ease of reference.

b) Work of the NCCC to date

Consistent with the resolutions of the First Nations-in-Assembly summarized above, the following steps have been taken to establish the NCCC structure and to get it up and running:

- Commissioners of the NCCC from every region (other than Ontario, whose First Nations leadership is pursuing a separate negotiation strategy) have been appointed, consistent with Article 2(a) of Resolution 60/2024;
- the NCCC is the process of establishing a regionally-representative negotiation team with legal support, consistent with Article 2(b) of Resolution 60/2024;
- the terms of reference for the NCCC and the negotiation team were conditionally approved by the First Nations-in-Assembly in December 2024; and
- the NCCC has met several times and is getting up to speed on the Commission's mandate, and it is now in the process of attempting to plan meetings with the AFN Executive Team to coordinate efforts.

c) The NCCC's views on the January 14, 2025 motion

The NCCC has reviewed the Caring Society's January 14, 2025 motion materials.

The NCCC fully supports the Caring Society moving the motion forward to get Canada back to the table, and shares the Caring Society's concern that Canada has expressed it no longer has a mandate to negotiate a national final settlement agreement for long-term reform. The NCCC's view is that Canada is yet again flouting its legal and constitutional obligations toward First Nations children, in clear violation of the CHRT's numerous orders and the honour of the Crown.

In particular, Canada's decision to abruptly and unilaterally withdraw from the national LTR Agreement negotiations is inconsistent with:

- the clear order of the CHRT that Canada is required to "consult not only with the Commission, but also directly with the AFN, the Caring Society, the [Chiefs of Ontario], and the [Nishinawbe Aski Nation] on the orders made in this ruling, the [merits decision], and its other rulings", as well as to enter a consultation protocol with the above-noted parties "to ensure that consultations are carried out in a manner consistent with the honour of the Crown and to eliminate the discrimination substantiated in the [merits decision]" (2018 CHRT 4 at para. 400); and, relatedly,
- the terms of the consultation protocol itself, developed pursuant to the CHRT's direction. In particular, Article 18 of the consultation protocol makes explicit that "[t]he purpose and objectives in this Protocol, as well as the principles and parameters [described therein] apply equally to mid and long term relief." Canada

has unlawfully gutted the consultation protocol by withdrawing entirely from national negotiations for LTR Agreements.

The NCCC is therefore of the view that the CHRT should grant the relief sought by the Caring Society. In addition to being clearly compelled by the CHRT's past rulings and the terms of the consultation protocol, it is consistent with the directions of the First Nations-in-Assembly surrounding the establishment of the NCCC summarized above. Those directions repeatedly call for Canada to acknowledge the new negotiation direction of the first Nations-in-Assembly expressed in Resolutions 60 and 61/2024, and to obtain a new mandate accordingly.

III. Closing and Next Steps

The NCCC looks forward to working with the Caring Society and the other parties to advance work on these important matters.

Please feel free to share this letter with the CHRT and/or the other parties to the CHRT proceedings.

Sincerely,

National Children's Chiefs Commission

A handwritten signature in black ink, appearing to be 'Pauline Frost', written in a cursive style.

Chief Pauline Frost, Chair

c: NCCC
AFN Executive
Scott A. Smith and Liam A. Smith, interim legal counsel to the NCCC