

February 21, 2025

Sent by e-mail

Right Honourable Justin Trudeau
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Ottawa, ON K1A 0A2
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Honourable Patty Hajdu
Minister of Indigenous Services Canada
10 rue Wellington
Gatineau, QC K1A 0H4
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Honourable Gary Anandasangaree
Minister of Crown Indigenous Relations
and Northern Affairs Canada
10 rue Wellington, Gatineau QC K1A 0H4
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Dear Prime Minister and Ministers Hajdu and Anandasangaree:

RE: Follow-up to the NCCC's January 24, 2025 letter proposing to negotiate a letter of commitment in advance of March 24, 2025

I write in my capacity as Chair of the National Children's Chiefs Commission ("NCCC") to follow up with you in relation to the NCCC's January 24, 2025 letter proposing that we work collaboratively on a letter of commitment in relation to a national agreement on long-term reform of First Nations child and family services ("LTR Agreement") and a process to address Jordan's Principle.

In our January 24 letter, the NCCC highlighted our views that: (i) the overall funding envelope which is required to end discrimination in First Nations child and family services and ensure it never happens again is in the ballpark of the \$47.8B that Canada previously proposed; (ii) there is a pathway that would, at some point in the future, end the Canadian Human Rights Tribunal's ("CHRT") jurisdiction; and (iii) the NCCC is ready, willing, and able to immediately proceed with completing negotiation of a national LTR Agreement.

We closed our letter by requesting a meeting with you, the AFN Executive, and the Caring Society at the earliest opportunity to discuss entering into a binding letter of commitment before March 24, 2025.

The purpose of this letter is to provide you with additional details about what is needed, from the NCCC's perspective, to finalize the LTR Agreement. In this regard, we have enclosed a table which outlines: (i) the ten high-level, outstanding issues with the LTR Agreement which must be addressed before the LTR Agreement is finalized; (ii) Canada's position on each outstanding issue, as set out in the draft LTR Agreement; (iii) the NCCC's proposal on how to resolve each outstanding issue; and (iv) the NCCC's view on whether

each outstanding issue can be readily resolved. The NCCC proposes to use the enclosed table to guide our discussions to develop a binding letter of commitment which secures existing commitments and charts a pathway forward to resolving the remaining outstanding issues in relation to the LTR Agreement.

The enclosed table confirms the NCCC's view that a national LTR Agreement is within reach, and merely requires Canada to return to the negotiation table to work with the NCCC, the AFN Executive, and the Caring Society in good faith to deliver the justice that all First Nation children and families deserve.

The honour of the Crown is paramount in these negotiations. Canada has constitutional and statutory duties, which have been affirmed by the Supreme Court of Canada and enshrined in an *Act respecting First Nations, Inuit and Métis children, youth and families* and the *United Nations Declaration on the Rights of Indigenous Peoples Act* to act honourably, negotiate in good faith, and avoid conduct that undermines reconciliation. This includes respecting the inherent right of self-determination as expressed through First Nations-in-Assembly. Canada cannot unilaterally impose solutions or adopt an intransigent approach, especially when addressing the systemic discrimination the CHRT has determined is occurring here.

Canada's recent conduct in this matter disregards the CHRT's orders, the principles of reconciliation, statutory duties, and the victims' right to participate in the design and implementation of an effective remedy. In particular, Canada's termination of consultations after the First Nations-in-Assembly declined to endorse the draft Final Settlement Agreement raises serious concerns. The First Nations-in-Assembly, exercising their inherent rights, identified legitimate shortcomings with that agreement. Canada's duty was to return to the negotiating table, not to unilaterally end the process.

The NCCC is deeply concerned that Canada's current approach risks perpetuating the injustices that the CHRT's orders, statutory duties, and reconciliation itself are meant to remedy. A return to good-faith negotiations, grounded in the honour of the Crown and a genuine commitment to collaboration, is urgently needed.

We have asked our officials to follow up with your offices to schedule a meeting between us as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read 'Pauline Frost', with a stylized, cursive script.

Chief Pauline Frost
Chair, NCCC

c: NCCC

AFN Executive

Dr. Cindy Blackstock, Executive Director, Caring Society

Mark Carney, Candidate for Liberal Leader and Prime Minister

Chrystia Freeland, Candidate for Liberal Leader and Prime Minister

Pierre Poilievre, Leader of the Conservative Party

Michelle Ferreri, Shadow Minister for Families, Children, and Social Development

Marilyn Gladue, Shadow Minister for Civil Liberties

Larry Brock, Shadow Minister for Justice and Attorney General of Canada

Jagmeet Singh, Leader of the NDP

Niki Ashton, Critic for Indigenous Services

Charlie Angus, Deputy Critic, Crown-Indigenous Relations

Lori Idlout, Critic, Indigenous Services

Yves-François Blanchet, Leader of the Bloc Québécois

Scott A. Smith and Liam A. Smith, interim legal counsel to the NCCC

Jenica Atwin, Parliamentary Secretary for Minister of ISC

Jaime Battiste, Parliamentary Secretary for Minister of CIRNAC

Deliah Bernard, Indigenous affairs advisor office of the Prime Minister of Canada

Outstanding issue	Canada's position in the FSA	NCCC's proposal to resolve outstanding issue	Solvable with Minimal Discussion	Elevated Levels of Discussion Potentially Required
1. Funding commitments	1. \$47.8 B over 10 years	1 (a) The overall funding envelope required to end discrimination in First Nation child and family services and ensure it never happens again is in the ballpark of the \$47.8 B Canada proposed.	✓	
		1 (b) Review of funding in draft FSA for governance. Some of these funds can be moved to the front lines.	✓	
		1 (c) Funding commitments that speak to distinct First Nations circumstances, that will include but are not limited to, remoteness issues, capacity building, actual and evidence-based needs, start-up funding for new agencies	✓	
	2. Actual costs end	2 (a) Capital and post-majority at actuals for another 3 years, subject to review. Recognition that actuals during COVID-19 are not accurate. There are still knowledge gaps on required expenditures which may lead to marginal increases in funding envelope.	✓	
	3. Subject to annual appropriations and other approval processes required by Canada	3. Funding provided through guaranteed proceeds such as statutory measures or special purposes allotments (i.e. not subject to annual appropriations or other federal approval processes).	✓	
	4. Canada not required to provide any funding after 10-year term expires	4. Clarification that the funding responsibility does not disappear at the 10 year mark. Canada's obligation is to ensure the discrimination is eliminated and does not re-occur.	✓	
	5. The funding methodology does not eliminate the discrimination	5. (a) Use of IFSD's measuring-to-thrive framework (see report) as a starting point: needs-based funding approaches that prioritize substantive equality, and which address any adverse effects related to per capita funding approaches consistent with the CHRT's funding principles, including substantive equality, best interests of the child, culturally appropriate, distinct community circumstances		✓
		5 (b) Creation of pools of funding for regional approaches and capacity building	✓	
		5 (c) First Nations and Agencies can use surpluses for capacity building based on a workplan and they can become eligible for the capacity building fund as well. This will reduce the exposure for Canada and ensure dispensed funds are able to be put to use. Funding must be sufficient to meet the principles of the Agreement and other legislative and regulatory requirements that are consistent with the principles of this Agreement (e.g., the language Act).	✓	
		6. Relied on per capita and Indian Registry System (IRS) population-based funding model, similar to the one deemed discriminatory by the CHRT. Prevention services were capped at an arbitrary amount based on incomplete study :--\$2,500	✓	
	7. Does not apply to First Nation children and families off-reserve	7. Extension of services at similar levels to those children who are First Nations who have been forced off-reserve due to lack of housing and services. See also 5(a).		
2. CHRT's jurisdiction	CHRT jurisdiction ends, including CHRT orders. Dispute Resolution Tribunal does not have jurisdiction to order Canada to fund new components or increase funding for existing ones	Stage I: CHRT baseline orders stay in place and CHRT retains jurisdiction until the later of: (i) 5 years; or (ii) the Dispute Resolution Tribunal is established to monitor implementation of the FSA to ensure discrimination stops and never happens again.	✓	
			✓	
		Stage II: Upon CHRT jurisdiction ending, Dispute Resolution Tribunal has ability to issue legally binding orders that require Canada to take additional measures (including providing additional funding) and make systemic changes if FSA measures are insufficient to end discrimination and ensure it never happens again. First Nations legal orders and laws must be recognized and incorporated into the dispute resolution process.		✓
3. Governance	1. No decision-making role for Chiefs 2. Membership in National Secretariat is limited to AFN, COO, and NAN 3. Reform Implementation Committee members appointed by parties and required to carry out work in confidential process 4. Continues to rely on ISC to administer program and deliver funds	1. Collapse all proposed committees in the FSA into a <u>National Body comprised of the chiefs</u>	✓	
		2. National technical secretariat, which includes NAC and EAC, to provide to support to the National Body (many of these entities already exist - these do the actual implementation work)	✓	
		3. Reform technical secretariats to support work of National technical secretariat	✓	
		4. This will add to administrative costs. The Nations have existing organizations that can be engaged to support delivery.	✓	
4. Departmental reform	The Expert Advisory Committee is bound by confidentiality and was not sufficiently independent of ISC.	Canada's internal accountability mechanism needs to be reviewed (accountability framework). The work of the EAC in reforming ISC and developing an accountability framework must be transparent and independent.		✓
4. Accountability measures	1. Canada requires FNCFs agencies to co-develop child and community well-being plan with the affiliated First Nation to be submitted to ISC under a deadline and subject to annual updates. There are also provisions that allow ISC to trigger audits, annual reporting, and funding reviews. 2. Canada has a facultative option to report to First Nations and the Reform Implementation Committee on an agency's compliance with the terms in its funding agreement. 3. The Reform Implementation Committee, which is confidential, is the sole entity charged with making recommendations to Canada and is also responsible for overseeing and monitoring the implementation of the reform. It is staffed by ISC.	1. Agreement should respect accountability processes that already exist between First Nations and Agencies and agree to develop an accountability framework including development of planning and measurement provisions that at minimum, ensures the nations are informed of agency activities, promote reciprocal accountability, consistent with the Act.	✓	
		2 (a) See 1, above. Accountability measures in Agreement must also recall that ISC, not Agencies, was held liable for discrimination. Reform must ensure that ISC is accountable to rights holders.	✓	
		2 (b) The Honour of the Crown extends to provincial governments as well on this issue. There can be no actual long-term reform without including accountability to Nations from other service providers (ie. provinces and territories for non-delegated Nations)		✓
		4. National Secretariat/Regional/FNIGC - hold ISC accountable for data collected to ensure compliance. Need solid program evaluation focused on ISC compliance. Governance mechanisms must operate openly and transparently.	✓	
6. Regional variations	Regional variations for Ontario only.	1. Agreement must recognize and allow for funding that matches distinct community circumstances.		✓
		2. Cultural appropriateness.		
		3. Allocation for children's needs above IFSD funding.		
7. C-92, treaty, and self-government	Funding will not be less than what would be provided for services funded under the FSA	4. Regional Secretariats: ISC will respect regional processes in the governance, administration and delivery of First Nations child and family services as determined by First Nations rights holders, consistent with C92.	✓	
		1. Canada required to recognize the right to jurisdiction, and Crown responsibilities. Canada must ensure that any agreement (C-92, treaty, or self-government agreement) signed with First Nations discharges Canada's obligation to stop the discrimination and ensure it does not reoccur.		
		2. Must recognize different pathways to jurisdiction.		
		3. Canada cannot contract out of its human rights obligation.		
8. Confidentiality	1. Information from FSA implementation must be kept confidential. 2. Confidentiality extends to discussions and communications surrounding negotiations according to the agreement in principle.	4. Canada must discharge its Honour of the Crown		
		1. AND 2. The starting premise for long-term reform must be openness and transparency. All negotiations and information relating to implementation of an Agreement should be, to the maximum extent possible, transparent. Transparency ensures accountability. Transparency and accountability, together, help end discrimination and prevent its recurrence.	✓	
9. Definitions and Principles	Principles did not include the Honour of the Crown, Intergenerational equity	Add to the Principles and definitions.	✓	
10. Term	Proposal: Canada confirms that the Honour of the Crown applies to the negotiation of long-term reform and the implementation of the ultimate agreement	This should be an evergreen agreement with a statutory basis. It is understood Canada has standard procedures for financial commitments in place. Treaty is by definition not a standard operating procedure.	✓	