

# FIRST NATIONS LEADERSHIP COUNCIL

September 19, 2024

Assembly of First Nations  
50 O'Connor Street, Suite 400  
Ottawa, Ontario K1P 6L2

VIA EMAIL - [cwoodhouse@afn.ca](mailto:cwoodhouse@afn.ca)

Honourable Patty Hajdu  
Minister of Indigenous Services  
House of Commons  
Ottawa, Ontario K1A 0A6

VIA EMAIL - [patty.hajdu@parl.gc.ca](mailto:patty.hajdu@parl.gc.ca)

**RE: Draft Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program**

Dear National Chief Woodhouse:  
Dear Honourable Patty Hajdu:

We are writing regarding concerns and issues we have identified in the draft Final Agreement on Long-Term Reform of the First Nations Child and Family Services (“FNCFS”) Program (the “Draft Agreement”), which was provided to the AFN Chiefs-in-Assembly for the first time on July 11, 2024.

We are pleased to hear that the AFN has made the decision to postpone the Special Chiefs Assembly. As we had previously advised AFN, much more time is needed for First Nations in BC to review and consider the Draft Agreement and its implications.

We hope that the AFN and the other Parties will ensure that this time is used to meaningfully engage and consult with First Nations on the Draft Agreement, and to ensure that concerns raised by First Nations and First Nations’ leadership are addressed in the next version that is presented to the Chiefs-in-Assembly.

The concerns outlined in this letter have been identified by the First Nations Leadership Council (“FNLC”) through initial discussions with First Nations in BC, experts in the area of FNCFS reform, and our legal counsel. We intend to further engage in discussions with First Nations in BC and with First Nations leadership, through our respective processes and Chiefs assemblies, over the next weeks. However, we wanted to ensure that certain issues and concerns we have identified with the Draft Agreement are tabled with the AFN and the parties in writing at the earliest possible stage.

We would like to note that the “Regional Engagement Summary” produced by the AFN indicates that First Nations in BC ‘were generally supportive of the reforms’. However, the concerns outlined in the summary report do not adequately represent the concerns that have been raised by First Nations in BC. We outline these issues and concerns below, with the expectation that they will be considered and addressed through further discussion and dialogue with First Nations and First Nations leadership, including the FNLC.



BRITISH COLUMBIA  
ASSEMBLY OF  
FIRST NATIONS

1004 Landooz Rd.  
Prince George, BC  
V2K 5S3

Ph: 778-945-9910  
Fx: 778-945-9916



FIRST  
NATIONS  
SUMMIT

1200-100 Park Royal South  
West Vancouver, BC  
V7T 1A2

Ph: 604-926-9903  
Fx: 604-926-9923

Toll Free: 866-990-9939



UNION OF  
BRITISH COLUMBIA  
INDIAN CHIEFS

401 – 312 Main Street  
Vancouver, BC  
V6A 2T2

Ph: 604-684-0231  
Fx: 604-684-5726

## **1. First Nations must be recognized as governments and inherent rights holders in all aspects of the Final Settlement Agreement**

We have significant concerns regarding the inclusion of First Nations governments in the definition of “Service Providers” in the Draft Agreement. This does not recognize First Nations as governments and inherent rights holders, and it is inconsistent and contradictory to the stated purpose of the Draft Agreement to respect the inherent right of self-government held by First Nations.

The Draft Agreement must be amended to create a clear delineation between First Nations who are delivering child and family services to their members and FNCFS Agencies and other organizations that have been established or delegated by First Nations to deliver services on their behalf.

## **2. Governance Structures**

In alignment with the inherent rights to self-government and self-determination held by First Nations, the governance structures in the Draft Agreement must be amended to ensure there is regional representation on all high-level governance tables, including the National Secretariat and the Reform Implementation Committee.

The approach of having the AFN, COO and NAN as the designated First Nations representatives on the National Secretariat and Reform Implementation Committee, to represent the interests of all First Nations, does not respect the right of First Nations to be self-determining, nor does it ensure regional differences and distinctions are adequately represented in the implementation of the reformed FNCFS program. Such an approach is also not currently within the mandate of the AFN. It is imperative that the Draft Agreement is amended to ensure that appointments to the National Secretariat and the Reform Implementation are done in accordance with regional processes.

Additionally, Regional Secretariats must be self-determined and led by First Nations in each respective region. Under the current structure, the establishment and role of Regional Secretariats is determined and dictated by the AFN.

It is First Nations in each region that are best positioned to determine whether and how a Regional Secretariat should be established, including whether it should be established within an existing organization and if so, which one. Therefore, the Draft Agreement must be amended to provide that the establishment of Regional Secretariats will be self-determined by First Nations in each region, in accordance with regional processes, not as determined by the AFN.

## **3. Capital Funding**

The Draft Agreement indicates that as of April 1, 2025, capital projects will no longer be funded at-cost, pursuant to the direction of the Canadian Human Rights Tribunal in 2021 CHRT 41. Furthermore, a reformed process for funding capital projects has not yet been finalized or included within the Draft Agreement.

There are two serious issues with this approach. First, the discontinuation of at-cost funding for capital projects will have detrimental impacts on First Nations and FNCFS

agencies delivering child and family services who have not had the opportunity to develop or repair much-needed capital infrastructure, who are in process of applying for capital project under 2021 CHRT 41, or whose applications are in process of being reviewed by Canada. Unless First Nations and FNCFS agencies are adequately resourced to build and repair necessary infrastructure, this will continue to exacerbate existing gaps and impact the implementation of a reformed FNCFS program, which will continue to create the systemic discrimination found by the Tribunal.

Secondly, the Draft Agreement provides no details respecting a reformed process for funding capital projects or how projects that are in process will be addressed. Without clarity on these issues, First Nations will not have the necessary details to know how they may be impacted when it comes to future funding of capital projects or those applications that are in process.

To ensure First Nations and FNCFS agencies are able to address immediate capital needs related to the delivery of child and family services, any Final Settlement Agreement must provide for adequate capital funding, as well as a reasonable transition period from at-cost funding to any reformed approach. This must also include clear confirmation that any applications received under 2021 CHRT 41 will be processed and funded at-cost, regardless of when they are finally approved by Canada.

In accordance with free, prior and informed consent, First Nations must also be provided with all information on the reformed funding approach for capital projects prior to being asked to approve it.

#### **4. Regional Fiscal Considerations**

The Institute for Fiscal Studies and Democracy has indicated that it is not possible to consider the adequacy of the funding provided in the Draft Agreement without it being broken out by region and recipient type.

It is important for First Nations in BC to understand how the amounts provided for in the Draft Agreement have been reached and will be allocated, prior to approving the agreement. Therefore, to ensure that First Nations are able to meaningfully consider the funding offered in the Draft Agreement, we request that all First Nations are provided with a breakdown of the funding allocations by region and recipient type.

Regional considerations are also critically important in the implementation of any reformed funding approach. On this basis, the Draft Agreement must be amended to ensure regional frameworks are included in the implementation and review process, and that Canada is committed to provide full and frank disclosure of the necessary disaggregated data needed to conduct adequate regional analyses.

#### **5. Dispute Resolution Tribunal**

During the presentation to the FNLC on August 13th, AFN representatives indicated that the AFN envisions the “President” of the proposed Dispute Resolution Tribunal would be a First Nations retired judge with experience in child and family services. Although it was then stated that a specific person had not yet been chosen, this statement suggests that

AFN already has an idea of who they may want to appoint to this role, and that this is being considered without consultation and engagement with First Nations.

The FNLC has a number of concerns about the proposed Dispute Resolution processes within the agreement. The first is that there is a top down appointment process rather than an appointment process through First Nations regional processes. Secondly, we are concerned that a person has already been identified to fill this role without consultation and engagement with First Nations, given the comments of the AFN representatives at the August 13th presentation to the FNLC.

The Draft Agreement must be amended to provide that the appointment of a President to the Dispute Resolution Tribunal is done following consultation with, and approval of, First Nations leadership.

We are also concerned about the development of a dispute resolution process that will be imposed on First Nations and FNCFS agencies, and which will be binding upon them, that has not been meaningfully or adequately informed by First Nations themselves.

Again, the Draft Agreement must make clear that any enabling legislation related to the Dispute Resolution Tribunal must be co-developed with First Nations, and the process for selecting adjudicators must be done in a transparent manner – with input from First Nations leadership.

## **6. Accountability**

Finally, to ensure that First Nations can hold Canada to account in the event that it fails to provide funding as outlined in any Final Settlement Agreement, the Draft Agreement must be amended to ensure that the process of returning to the Tribunal can be easily accessed by any First Nation, with the support of the AFN.

## **Conclusions**

We acknowledge the work of the AFN and the other parties in getting to this place with the Draft Agreement. This has been a long and challenging process. It is hopeful that we are now at a stage where the ongoing discrimination against First Nations children through the FNCFS program will end, while also recognizing and upholding our inherent rights as First Nations to care for and protect our children and families.

We look forward to seeing the issues we have identified being addressed in a revised Draft Agreement and that the revised draft be provided to First Nations leadership for review prior to the Special Chiefs in Assembly to be held in October.

We are also happy to meet to discuss our concerns at any time, so please do not hesitate to reach out to the FNLC for further discussion.

Sincerely,

**FIRST NATIONS LEADERSHIP COUNCIL**

**On behalf of the FIRST NATIONS SUMMIT**



Cheryl Casimer



Robert Phillips

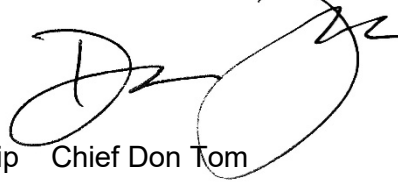


Hugh Braker

**On behalf of the UNION OF BC INDIAN CHIEFS**



Grand Chief Stewart Phillip



Chief Don Tom



Chief Marilyn Slett

**On behalf of the BC ASSEMBLY OF FIRST NATIONS:**



Regional Chief Terry Teegee

CC: AFN Executive Committee  
Stuart Wuttke, AFN General Counsel  
Chiefs of Ontario  
Nishnawbe Aski Nation