



October 4, 2024

The Right Honourable Justin Trudeau
Office of the Prime Minister
80 Wellington Street
Ottawa, Ontario K1A 0A2
October 4, 2024

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Dear Prime Minister Trudeau, National Chief Woodhouse Nepinak, and Minister Hajdu:

Re: Follow-Up Request for Consultation on Draft Final Agreement for Long-Term Reform of First Nations Child and Family Services

I am writing to follow up on my letter dated August 12, 2024, to which we have yet to receive a response. As outlined in that letter, we have significant concerns about the draft long-term reform settlement agreement (FSA) on First Nations child and family services. In particular, we are deeply worried about its potential to perpetuate systemic discrimination and its failure to address long-standing issues within the child welfare system.

The FSA's provisions must not only end current discriminatory practices but also ensure that such injustices never occur again. We are concerned about the FSA's structural weaknesses and poor enforceability, particularly in the areas of funding, decision-making, and accountability. Without robust safeguards, there is no guarantee that the allocated funds will meet the needs of First Nations children and families, nor that these funds will be distributed equitably across regions.

Key Concerns:

1. Inadequate Compliance with Legal Standards and Human Rights

In order to effectively eliminate systemic discrimination, it is crucial that measures are created with the input of victims of human rights violations. However, the current structure of the FSA lacks the necessary level of inclusion. It fails to meet the standards set by international law, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Furthermore, the negotiation process does not align with resolutions passed by both the Assembly of First Nations (AFN) and BC AFN, which demand stronger accountability and meaningful consultation. Consultation with rights-holders is necessary in order for the FSA to meet these important standards.

2. Ongoing Potential for Discrimination

The current funding commitments outlined in the FSA are inadequate and require improvement. With a limited 10-year timeframe and no provisions for necessary adjustments, there is a high likelihood that funding shortfalls will persist and contribute to ongoing discrimination. The CHRT has already ordered Canada to pay approximately \$45 billion over 10 years to address



systemic discrimination. If the FSA is not revised, these CHRT orders will remain in effect, leading to continued enforcement measures. Therefore, it is imperative that the FSA guarantees funding that not only meets but also surpasses the CHRT orders in order to prevent the repetition of discriminatory practices.

3. Prevention Funding Allocation: Risks and Concerns

The planned allocation of prevention funding, which will take effect on April 1, 2026, presents significant risks, particularly for First Nations communities outside of Ontario. The current plan involves Indigenous Services Canada (ISC) allocating funding for prevention, while the responsibility for service delivery is transferred to First Nations without adequate resources, capacity, or support. This reflects past discriminatory practices that have been identified in rulings by the Canadian Human Rights Tribunal (CHRT). There are several crucial concerns regarding the fairness and feasibility of this approach, such as the lack of adequate support from Canada for transferring prevention responsibilities and whether First Nations have been adequately consulted on their capacity and liability for managing prevention services.

4. Concerns for First Nations Outside Ontario

As stated, the current allocation system seems to put First Nations communities outside of Ontario at a disadvantage. They will receive less funding under the current model, which also does not take into account the provisions in the Federal Act and the participatory requirements of provincial child welfare legislation. For instance, British Columbia's Child, Family, and Community Services Act (RSBC 1996 c.46) requires consultation and cooperation with Indigenous governing bodies, but the current allocation framework ignores these principles. It is crucial for families and communities to be informed and involved in decisions that affect them, but the FSA's prevention allocation model does not guarantee this level of engagement. Additionally, once the FSA is signed, there is no decision-making role for British Columbia and other regions.

6. Accountability and Dispute Resolution

Another key concern is the accountability of ISC and the federal government in ensuring that prevention services are delivered equitably and effectively. The current framework does not provide sufficient mechanisms for holding Canada accountable if prevention services fail to meet legal standards or if funding is insufficient. The Alternative Dispute Resolution (ADR) process under the FSA



has less power and authority than the CHRT, potentially leaving First Nations without a clear path for seeking redress in cases of non-compliance.

7. Incomplete Aspects of the Agreement

Key aspects of the FSA, such as capital funding and post-majority support services, remain incomplete. Until these are fully developed, the agreement cannot comprehensively address the needs of First Nations children and families.

8. Emerging Challenges

The federal government appears to be shifting responsibility and liability onto First Nations, particularly regarding the delivery of prevention services. The prevention funding allocation for First Nations outside Ontario raises questions of equity and fairness, as these communities will receive less than their counterparts. Additionally, the FSA lacks sufficient measures to ensure accountability. If Parliament fails to appropriate adequate funding, First Nations will have no choice but to return to the CHRT.

Recommendations

To prevent a recurrence of discriminatory practices, the FSA must be revised to:

- Ensure that First Nations are properly consulted on prevention funding allocation and provided with adequate resources and capacity to deliver these services.
- Guarantee equitable funding across all regions, including those outside Ontario, and comply with provincial and federal child welfare legislation.
- Establish strong accountability mechanisms to hold the federal government responsible for providing necessary funding and support.
- Address the structural flaws in the prevention allocation model to prevent the diversion of critical resources from communities already in crisis.

Conclusion

The FSA, in its current form, does not meet the necessary legal and human rights standards to eliminate systemic discrimination in child welfare services. The agreement's structural flaws, vague funding commitments, lack of accountability, and inadequate consultation leave room for the continuation of



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harmful practices. We urge the federal government to reconsider the FSA's terms and work in partnership with First Nations communities to develop a fairer, more equitable framework.

Thank you for your attention to this urgent matter. We hope that the government will take the necessary steps to address these concerns and ensure that the FSA upholds the principles of justice, equity, and respect for Indigenous rights.

On behalf of the Squamish Nation Council,

Chairperson Khelsilem
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CC: Minister Patty Haidju - Minister of Indigenous Services,
National Chief Cindy Woodhouse Nepinak – Assembly of First Nations,
AFN Executive Committee
BC AFN Regional Chief Terry Teegee