Docket: T1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and ASSEMBLY OF FIRST NATIONS

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous Services Canada)

Respondent

- and -

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA NISHNAWBE ASKI NATION, TAYKWA TAGAMOU NATION and CHIPPEWAS OF GEORGINA ISLAND

Interested Parties

AFFIDAVIT OF VICTOR LINKLATER

I, Victor Linklater, of the Town of Porcupine, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a member of Taykwa Tagamou Nation ("**TTN**"). Pursuant to an order of this Tribunal, dated September 2, 2025, TTN was granted limited status as an interested party to participate in the joint motion of the Chiefs of Ontario ("**COO**"), the Nishnawbe Aski Nation ("**NAN**") and the Government of Canada for approval of the Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario (the "**OFA**") and Trilateral Agreement in Respect of Reforming the *1965 Agreement* (the "**Trilateral Agreement**") (the "**OFA Joint Motion**"). As such, I have knowledge of the matters contained in this affidavit. Where I do not have direct knowledge, I have identified the person from whom I obtained the information in the affidavit and believe it to be true.

2. TTN opposes the OFA Joint Motion. Our community has serious concerns regarding the OFA and the Trilateral Agreement. We urge this Tribunal not to approve the OFA and Trilateral Agreement. In the alternative, we seek an order exempting TTN from the OFA.

Taykwa Tagamou Nation

3. TTN is a band within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5, and an Aboriginal people within the meaning of s. 35 of the *Constitution Act, 1982*.

4. TTN is an Ojibwe and Cree First Nation with traditional territory situated in northern Ontario along the Abitibi River. The name Tahquatagama (from which TTN derives its name) means "water on high ground" and reflects the spirit and landscape of our territory within the Moose River Basin. It was formerly known as "New Post First Nation".

5. TTN has two Reserves. The original Reserve, New Post Reserve #69, was set aside at Taykwata Lake, 173 kilometers northwest of TTN. New Post Reserve 69A was established in Brower Township in the 1980s, along the Abitibi River, about 20 kilometers east of the town of Cochrane, Ontario. Through the enforcement of colonial and discriminatory laws and policies, our people were displaced and dispossessed of their lands, foods, culture, language, and traditions. This caused significant disruption and immeasurable trauma and attachment injuries to our family systems. Our leadership and our frontline staff witness the ongoing impacts of this trauma and attachment injury every day.

6. In 2017, while I was the Deputy Chief of TTN and the social portfolio holder, TTN began exploring formal development of band representative services. TTN formally established its Band Representative Program in 2018 following this Tribunal's decision. TTN has been accessing funding at the actual cost of its services since 2018.

7. TTN is a signatory to Treaty 9 and signed with our oral understanding in mind. TTN is a member of the Mushkegowuk Council, NAN, COO, and the Assembly of First Nations ("**AFN**").

8. In 2022, TTN enacted the Taykwa Tagamou Nation Child Wellbeing Law, asserting its inherent jurisdiction over child and family services. As of September 30, 2024, TTN has formally provided notice of its intention to exercise legislative authority and has initiated a request to enter into a coordination agreement.

9. TTN is a founding member of Kunuwanimano Child and Family Services, a child welfare agency that provides services for eleven First Nations across Northern Ontario.

10. TTN has about 700 registered members. Of those members, roughly 190 currently reside on the reserve. Of the TTN members, about 150 are children; 80-90 children live on the reserve.

My Background

11. I am currently a Child Wellbeing Law Negotiator with TTN. From August 2021 until August 2024, I served as one of the Deputy Grand Chiefs of NAN.

12. Prior to that, I was the Deputy Chief of TTN from 2017 to 2021.

13. I also sat on the NAN Chiefs Committee on Children, Youth and Families for the Agreement in Principle, first as a technician and then as a Deputy Chief.

14. My career in First Nations child welfare also includes my time as a director of Payukotayno James and Hudson Bay Family Services from August 2008 to July 2012, and then again from December 2013 to July 2019. In addition, I served as the chair from July 2014 to July 2019.

The OFA was not Developed Through Meaningful Engagement

15. I do not believe that TTN or other First Nations in Ontario were provided with a meaningful opportunity to engage with and be consulted on the OFA and have our suggestions for improvement considered. Rather, it felt like NAN and COO leadership, staff, and legal counsel were trying to "sell" the OFA to the First Nations as something that could not be changed.

16. In my view, proper engagement and consultation would have included the ability for the negotiators to receive comments and feedback from the First Nations, as well as an opportunity for the First Nations to propose and vote on potential amendments. This did not occur. Instead, the draft national final settlement agreement (the "**Draft FSA**"), and then the OFA, were simply presented to us as "take it or leave it" finalized agreements.

17. TTN participated in many of the information sessions surrounding the OFA, with either myself or Kayla Viau, TTN's child wellbeing law lead and former TTN social services director, attending. I am advised by Ms. Viau, and believe it to be true, that she agrees that this affidavit accurately describes what occurred in these information sessions concerning the OFA. In particular, between us, we attended sessions on the following dates:

a. January 9, 2025 - COO meeting scheduled from 10:30 to 12:30. Ms. Viau and I attended as TTN technicians.

b. February 25, 2025 - NAN Special Chiefs Assembly to ratify the OFA. I attended as proxy for TTN.

c. February 26, 2025 - COO Special Chiefs Assembly to ratify the OFA. I attended as proxy for TTN.

18. Throughout the process, it appeared to me that NAN and COO underestimated the amount of consultation and engagement that was necessary for the First Nations to understand the details and implications of such a large and potentially monumental agreement and be comfortable to vote on whether to adopt or reject it. Instead, the attitude of NAN and COO leadership and legal counsel was that it should be sufficient for them to just provide a brief synopsis of the agreement and their views of its benefits, and then the First Nations should move quickly to approve it. What occurred was not meaningful consultation or any real attempt to gather feedback and input from impacted communities, but instead an effort to sell the already drafted agreement to the communities.

The process leading to the OFA

19. Once the Chiefs at the AFN Special Chiefs Assembly rejected the Draft FSA on October 17, 2024, COO and NAN pivoted quickly to negotiating, and then presenting, the OFA to its members. The OFA was negotiated and signed in a matter of months in late 2024 and early 2025.

20. On October 29, 2024, TTN Chief Bruce Archibald wrote to NAN Grand Chief Alvin Fiddler to raise his concerns in respect of the process related to the Draft FSA (as well as substantive issues regarding the Draft FSA). As part of that letter, TTN expressly stated that if NAN sought to negotiate an Ontario specific agreement (such as the OFA) based on the Draft FSA, then TTN expected to be directly consulted before any further agreements were reached, and that TTN expected to be able to opt out of any such agreements if TTN and NAN could not agree. A true copy of TTN's October 29, 2024 letter is attached hereto and marked as **Exhibit "A".**

21. These requests were important to TTN, given how we felt that we were improperly excluded from the process surrounding the Draft FSA before being presented with the final version of the agreement to approve. Unfortunately, TTN's requests were ignored and the OFA repeated the same flaws as the process surrounding the Draft OFA, as well many of its substantive shortcomings.

22. NAN's and COO's consultation and engagement with First Nations regarding the OFA repeated many of the same issues and messaging that I experienced – and objected to – regarding the process for the Draft FSA.

23. When NAN and COO began conducting information sessions and outreach in 2025 supporting the OFA, they were clear to us that the OFA was largely just the same as the previous Draft FSA that would simply apply to Ontario only.

24. While the information sessions often did include some opportunities to ask questions or express views, there was never any opportunities to put forward amendments or suggest changes. In fact, at multiple information sessions, when Maggie Wente, counsel to COO, presented to the group, she would make explicit comments that the purpose of the meeting was not to receive suggestions or proposed amendments. She had made similar comments during sessions for the Draft FSA as well. In particular, I recall Ms. Wente being very clear during the COO meeting on January 9, 2025, that the OFA was a finalized agreement and they were not going to be amending it or changing it.

25. Further, most of the information sessions were virtual meetings that were scheduled for two hours and contained more than 100 participants from various member First Nations. As a result, you would be lucky if you had the opportunity to ask a single question — let alone offer actual feedback or engage in dialogue on issues of concern. These meetings were certainly not conducive to a detailed discussion of the merits and/or shortcomings of the proposed agreements.

26. Nevertheless, even with the limited time for questions or comments, myself and Ms. Viau took every opportunity to state TTN's concerns, including on the floor at the Special Chiefs Assemblies for COO and NAN.

27. Throughout the process, the leadership of NAN and COO expressed the view that the FNCFS agencies should not participate in the process, and their executive directors ought to be excluded. I am personally aware of numerous executive directors of FNCFS agencies that NAN representatives asked not to participate in the engagement process, or for whom NAN representatives took steps to prevent them from acting as the proxies for First Nation Chiefs at the meetings. These include: Kristin Murray, executive director of Kunuwanimano Child and Family

Services; Thelma Morris, executive director of Tikinagan Child and Family Services; and Irene Tomatuk, executive director of Payukotayno James and Hudson Bay Family Services.

28. In my view, this position overlooked the fact that these agencies were designated by the First Nations themselves and often had crucial on-the-ground experience of delivering services to First Nations children and families. These executive directors were on the front lines of delivering child welfare services to Indigenous children, youth, and families. Their voices should have been embraced in the process to determine the best way to protect and care for our children.

29. At both the January 9, 2025 information session and the February 25, 2025 Special Chiefs Assembly, NAN and COO leadership and legal counsel continued to assert that this was the best possible agreement that Canada would ever agree to, and that the alternative to adopting the OFA was a worse situation being imposed upon us, particularly by a new federal government after the 2025 election.

30. On January 9, 2025, Ms. Viau and I tried to join the COO information session hosted over the Zoom videoconferencing platform, but we were repeatedly ejected from the virtual meeting by the host. As a result, Ms. Viau reached out to COO staff via email in an attempt to resolve the issue and get admitted to the meeting. After one hour of emailing, we had still not been admitted to the meeting. Instead, COO staff eventually claimed that the meeting was only for Chiefs, and then told us that we were being disrespectful in insisting that we should be admitted so we could participate. Ultimately, we were finally admitted to the meeting after the meeting was more than half over.

31. The statement from COO staff that the meeting was reserved for Chiefs was incorrect. In the invitations for the meeting, they clearly indicated that the meeting was for "First Nations Leadership, Leadership Council, Technicians & Community Members" (emphasis added). A copy of the email invitation, with attachment, from COO's general email address, dated January 7, 2025, is attached as **Exhibit "B"**.

32. My belief is that they attempted to keep us out of the meeting because they knew that we (and TTN more broadly) was vocally opposed to the OFA. I do not know how many other representatives from First Nations were similarly improperly excluded from participating in this or other information sessions.

33. TTN decided to vote against the OFA at the NAN Special Chiefs Assembly on February 25, 2025, and at the COO Special Chiefs Assembly on February 26, 2025.

34. My concerns about the OFA are further heightened because Indigenous Services Canada ("**ISC**") is already cutting other sources of funding that directly impact the well-being of our children. For example, last year TTN received over $900,000 in funding in respect of a "Choose Life" request, which is intended to ensure First Nations children have access to substantively the same level of services as other children in Canada — particularly when it comes to issues relating to life promotion. For 2024-25, however, TTN's Choose Life request for $1,132,041 in funding was largely denied, resulting in only $381,451.80 in funding. TTN is appealing that decision.

The Process Surrounding the Draft FSA

35. As noted above, the message from COO and NAN regarding the OFA was that it was

simply an Ontario-only version of the Draft FSA, despite the two agreements being separate and distinct. As such, I expect the moving parties on this motion may rely on sessions leading up to the Draft FSA as relevant to the degree of consultation and/or engagement regarding the OFA.

36. Even assuming that the Draft FSA and OFA are similar enough in substance for the process leading up to the Draft FSA to be relevant when assessing whether meaningful consultation and engagement occurred with respect to the OFA, the lead-up to the final vote on the Draft FSA suffered from many of the same key flaws I have identified above with respect to the OFA process.

37. TTN participated in many of the sessions and meetings leading up to the Draft FSA. On behalf of TTN, I or Ms. Viau (or both) attended the following sessions:

a. May 22-23, 2024 – NAN Special Chiefs' Assembly. Ms. Viau attended as proxy for Chief Archibald of TTN and I attended as Deputy Grand Chief NAN.

b. May 31, 2024 – COO dialogue session scheduled from 10am to 1pm to discuss health equity, mining, the duty to consult, and the mining lands administration system, as well as child welfare long-term reform. I attended this meeting.

c. June 11-13, 2024 – COO meeting and election. I attended as proxy for Chief Bruce Archibald.

d. October 9-10, 2024 – NAN and COO Special Chiefs Assemblies. Ms. Viau attended as the proxy for Chief Archibald of TTN. I attended as a proxy for Chief Corston of Chapleau Cree First Nation.

e. October 17, 2024 – AFN Special Chiefs Assembly for ratification vote.

38. The flaws with the engagement and consultation process originated with the Draft FSA in the spring of 2024, as the negotiating parties, including Canada, COO, and NAN, were reaching a final draft.

39. Even though I was a Deputy Grand Chief of NAN until August 2024, which included part of the period after the Draft FSA was negotiated by NAN, I was not even provided with any information about the agreement before it was presented to all NAN member nations, as it did not fall within my mandate at NAN. The first time I truly received any meaningful details about the substance of what was in the Draft FSA was in May 2024. For two days in late May 2024, I attended the NAN Special Chiefs Assembly in Thunder Bay, which had a focus on the Draft FSA. I attended in my capacity as Deputy Grand Chief of NAN. Ms. Viau was also in attendance, as the proxy for Chief Archibald of TTN.

40. At that meeting, the draft version of the Draft FSA had just been released and was made available for the Chiefs and their proxies to review. However, the document was only available in the room in print form and attendees were specifically told that they were prohibited from removing any copies from the room, in order to maintain confidentiality. NAN had even taken measures to ensure that no one took any copies with them, including by marking everyone's copy with an individual number and collecting them at the end of the meeting.

41. Despite the fact that the text of the Draft FSA was only made available to the Chiefs at that

meeting, that the agreement was more than 100 pages long, and that the Chiefs could not take the agreement with them to review, NAN included on the agenda a scheduled vote to approve the Draft FSA, alongside a draft resolution to do so. I considered this to be completely improper because it did not provide nearly enough time for the Chiefs to review the lengthy agreement, much less consult with their councils, technicians, and legal counsel.

42. Several of the Chiefs and proxies in attendance were very upset about the rushed process and expressed their opposition to holding a vote on the Draft FSA due to the lack of time to review and consult. As a result, NAN agreed to cancel the scheduled vote. In response, NAN leadership claimed that they were in fact looking for input from the Chiefs in the process to follow. However, in subsequent meetings, they changed their tone, making clear that they would not be accepting any input and that they would answer questions but would not adopt any suggested changes.

43. On May 31, 2024, I attended a "COO dialogue session" regarding the Draft FSA. At that meeting I spoke out and expressed my concerns about the Draft FSA. Specifically, I raised concerns relating to discrimination of off-reserve children with no concrete plan to ensure they continue to receive services and supports and the short duration of the agreement with no long-term plan. I also noted what I viewed as a gap in the Draft FSA if a child has complex needs that requires significant financial resources but the resources provided under the agreement were insufficient. Such a child would potentially be left without the care that they need.

44. Following that meeting, on June 9, 2024, I received a letter from three Chiefs, on behalf of NAN's Chiefs Committee on Children, Youth, and Families (the "**CCYF**"), which I interpreted as a reprimand for my comments at the earlier COO meeting. The letter expressed a concern that I did not clearly identify that I was not speaking on behalf of NAN and that I should not speak on the issue because child welfare was not within my mandate as Deputy Grand Chief. In particular, the letter requested that I "confine [my] work to [my] portfolio and cease speaking publicly on matters that [I was] not given a mandate by the NAN Chiefs or by the CCYF to speak on". I did not consider this reprimand to be fair. While my mandate as NAN Deputy Grand Chief did not include the child welfare portfolio, I believed that I should be able to express my views on the flaws of the Draft FSA, particularly as a member of TTN with extensive experience in First Nations child welfare.

45. On June 3, 2024, Chief Bobby Cameron, of the Federation of Sovereign Indigenous Nations in Saskatchewan, wrote to the AFN executive committee regarding the Draft FSA on behalf of himself and the regional Chiefs from BC and Quebec. In the letter, Chief Cameron raised urgent concerns regarding the Draft FSA, including a lack of transparency - given that Chiefs outside of Ontario had still not even seen a draft of the agreement – and a lack of engagement and consultation with First Nations. A true copy of Chief Cameron's letter, dated June 3, 2024, is attached as **Exhibit "C"**.

46. COO's Ontario Regional Chief Glen Hare responded to Chief Cameron's letter on June 7, 2024. Chief Hare stated that he disagreed with Chief Cameron's concerns and provided the vague statement that "it seems to me that many of your interests will be met in the coming months at the AFN Annual General Assembly and their consultation and information process which will occur over the summer leading to voting on the agreement".

47. On July 24, 2024, NAN sent a briefing note to its Chiefs, proposing an "engagement action plan" on the Draft FSA. This draft proposed hosting the Special Chiefs Assembly to ratify the Draft FSA on August 28, 2024, only one month later. NAN's plan also included information sessions where its executive could "provide support" for the Draft FSA. However, nowhere in the action plan does it provide any opportunities for members to propose changes or amendments. A true copy of the NAN briefing note, dated July 24, 2024 is attached as **Exhibit "D"**.

48. On August 20, 2024, the Chiefs from the First Nations who were members of Tikinagan Child and Family Services sent a joint letter to NAN leadership regarding the Draft FSA. At the time, NAN had scheduled its vote to ratify the Draft FSA for August 28, 2024. The Chiefs raised a concern that "[the Draft FSA] was negotiated in secret, and the approval process is rushed without sufficient time for Chiefs and community members to be properly briefed and consulted". They recommended that NAN defer its vote to allow more time for the Chiefs to consider and consult on the agreement. A true copy of this correspondence is attached as **Exhibit "E"**. Ultimately, NAN did move its ratification vote to early October.

49. During the NAN and COO information sessions and calls from June 2024 to October 2024 regarding the Draft FSA, NAN and COO leadership and counsel spent a great deal of time expressing the view that the agreement being presented was the best that we could get. They did not provide specifics regarding the details of the negotiations with Canada and merely asserted repeatedly that the draft agreement was the best that they would be able to achieve and that Canada would never provide a better deal.

50. As part of this messaging, COO and NAN leadership and their legal counsel all insisted that a change in government at the federal level from the Liberal Party of Canada to the Conservative Party of Canada was very likely, and that if this occurred, the proposed deal would disappear and the First Nations would get a worse deal. It was clear to me that the view being expressed was that we either had to accept the agreement as proposed or get nothing (or something much worse). I considered this messaging to be fear-mongering.

51. NAN presented the same arguments to its members to convince them to support the Draft FSA. For example, during NAN information sessions on the Draft FSA, NAN staff provided an information sheet on the pros and cons of accepting the agreement. It was clear to me that the chart on the document was intended to push members to vote in favour of the agreement. In particular, for the "pros", the chart contains a column for "Positive Effects of Accepting"; whereas the cons are listed under "Potential Downsides of Accepting" (emphasis added). Thus, the "positive effects" of accepting the agreement are presented as certain, whereas any negative effects are only presented as "potential downsides". The list of "pros" is also about a page longer than the list of "cons", which leaves the impression that there are far more positives to accepting the agreement.

52. Further, in the "pros" column, the chart states that an advantage of the Draft FSA is that it is a negotiated settlement as opposed to an "imposed program". It goes on to state: "Many things could happen if the FSA doesn't go forward, but unlikely amongst them are complex renegotiations". This was emblematic of the "take the deal or get nothing" attitude that we received from NAN and COO in trying to sell the Draft FSA, and later the OFA. The messaging from NAN here was that rejecting the Draft FSA would result in an "imposed program" on the First Nations. A true copy of the NAN information sheet, that I received in September or October, 2024, is

attached as **Exhibit "F"**.

53. The NAN and COO leadership and counsel would later use this same messaging regarding the OFA after the AFN rejected the Draft FSA in October 2024, and NAN and COO switched to pushing an Ontario specific version of the agreement.

54. Ultimately, TTN voted against the Draft FSA at the NAN and COO assemblies on October 9-10, 2024, and at the AFN Special Chiefs Assembly on October 17, 2024.

Deferring Renegotiation of 1965 Agreement Delays Necessary Substantive Reform

55. Band representatives (also known as First Nations Representative Services ("**FNRS**")) play a critical role in the delivery of child welfare services for children living on and off-reserve: they are the critical liaison between children's aid societies and Indigenous Child Wellbeing Agencies and First Nations when it comes to consulting about providing services to off-reserve children (including the apprehension of children, placement of children in care, provision of family support services, and preparing plans of care); they provide cultural training and advice to agencies; they attend and participate in court proceedings; and they ensure that the cultural needs of First Nations children are being addressed by societies or agencies.

56. On February 1, 2018, this Tribunal released its ruling in 2018 CHRT 4 (the "**Actuals Order**"), requiring Canada to address the actual needs of First Nations family and children by reimbursing/funding various services at their actual cost. Subsequently, the Tribunal released additional orders requiring Canada to provide funding for the actual costs of services, including: 2021 CHRT 41 (ordering funding at the actual cost of capital projects that support the delivery of child welfare) and 2022 CHRT 8 (ordering funding at the actual cost of providing supports and services for youth from 18 to 26 years old who were formerly in care).

57. After the Actuals Order was issued by this Tribunal in 2018 and until approximately 2023, TTN received funding from Canada for band representative funding, largely without "bifurcation" as between on and off-reserve children. In particular, through the Agreement in Principle on Long Term Reform of the FNCFS Program and Jordan's Principle, concluded on December 31, 2021, Canada committed to a process that allowed First Nations in Ontario to access funding at actual rates through Jordan's Principle to support the unmet need for FNRS for children off-reserve.

58. As a result, TTN submitted claims for reimbursement for FNRS for those years that did not distinguish between services delivered to children off-reserve as opposed to services for on-reserve children. ISC agreed to reimburse these claims without issue.

59. However, that changed in 2024. TTN submitted its claim for reimbursement for FNRS to ISC for fiscal year 2023/2024 on September 5, 2024. On September 11, 2024, Oksanna Mish, Regional Senior Program Officer at ISC, wrote back requesting that we bifurcate our reimbursement claim between on-reserve and off-reserve services. This was the first time since 2018 that ISC had made such a request. Specifically, she stated: "Based on the supporting documentation provided, it appears that this reimbursement request includes expenses related to both on and off-reserve activities. While these expenses are eligible under the First Nation Representative Services (FNRS) program, please note that separate funding is available to support Taykwa Tagamou Nation's off reserve activities and operations". As these services were not fully

differentiated in our database at the time, Ms. Viau could only provide a rough estimate that about 35% of clients were on-reserve. ISC agreed to a proration method to determine the percentage of claimed expenses to be designated for on-reserve services and TTN provided revised claim forms (one for on-reserve services and one for off-reserve services).

60. On May 30, 2024, TTN received two approval letters from ISC for 2022-2023: one approving the claim for on-reserve services and one approving the claim for off-reserve services. In order to bifurcate the services, ISC pro-rated the entire claimed amount based on the overall population of TTN members living on-reserve vs. off-reserve. Thus, even though ISC required TTN to bifurcate its reimbursement claims for 2023-2024, it still fully reimbursed the FNRS, including those provided to children living off-reserve.

61. The OFA and the Trilateral Agreement provide no funding whatsoever for FNRS for children residing off-reserve. In this way, the new arrangements under the OFA and the Trilateral Agreement leave TTN and its children in a worse position than the *status quo* when it comes to FNRS funding. I am aware that alongside the OFA, Canada has committed to funding First Nation band representatives at "actual" rates for off-reserve members until March 31, 2027. After that point, however, there is no commitment in place — in the OFA, in the Trilateral Agreement, or anywhere else — to fund band representative services for off-reserve members of First Nations.

62. My understanding – based on the information sessions and materials from NAN and COO surrounding the OFA and the Trilateral Agreement – is that NAN and COO intend to address funding for band representative services for off-reserve members at some point in the future as part of negotiations with Ontario. They intend to use the renegotiation of the 1965 Agreement between Canada and Ontario as a forum to raise the issue of funding for FNRS off-reserve. However, my understanding is that discussions have not even commenced with Ontario regarding the renegotiation of the 1965 Agreement (or funding for off-reserve FNRS).

63. TTN believes that we cannot agree to not provide services to our children living off reserve now, on the hope that they will be covered by some future agreement that has not even been negotiated yet (much less finalized). This will create a gap in services for this population while the renegotiations occur and provides no certainty that they will actually be meaningfully addressed in any future hypothetical agreement. This creates far too much uncertainty and creates a very real and untenable risk that our off-reserve children will continue to suffer the kind of discriminatory impacts and effects documented by this Tribunal.

SWORN by Victor Linklater of the Town of Porcupine, before me at the City of Toronto, in the Province of Ontario, on October 2, 2025

Commissioner for Taking Affidavits

JUSTIN SAFAYENI
LSO#58427U

VICTOR LINKLATER

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October 29, 2024

This is Exhibit 'A' to the Affidavit of Victor Linklater sworn October 2, 2025.

JUSTIN SAFAYENI
LSO NO.58427U

GRAND CHIEF ALVIN FIDDLER
Nishnawbe Aski Nation - Administrative Office
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Email: afiddler@nan.ca

Dear Grand Chief Fiddler:

Re: Child Welfare Final Settlement Agreement

We acknowledge the good work of the Nishnawbe Aski Nation ("**NAN**") in bringing forward the draft Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program (the "**Draft FSA**"). We recognize the hard work of your team and the passionate approach with which the Draft FSA was shared with First Nations across our territory. Our children and families deserve every ounce of our efforts to ensure we are protecting them from the harmful impacts of a colonial child welfare system and a federal program that has resulted in direct discrimination to our people.

Taykwa Tagamou Nation ("**TTN**") opposed the Draft FSA at the Special Chiefs Assembly hosted by NAN on October 9, 2024, at the Special Chiefs Assembly hosted by COO on October 10, 2024, and at the Special Chiefs Assembly hosted by the Assembly of First Nations in Calgary. We were not directly consulted by any of these organization or the federal government regarding the Draft FSA. In our view, it will have detrimental impacts on our children, youth and families, leaving generations behind after so many years of litigation.

We are concerned there remains no clear commitment for funding our off-reserve members under the band representative program, as the status of the trilateral agreement remains unknown. As a small First Nation, many of our members live off territory. Up until last fiscal, ISC did not question or deny our claims because we were supporting our off-reserve members. In fact, the *Child, Youth and Family Services Act* makes no distinction in our roles and responsibilities to our members based on residency. Under the Draft FSA there remains no long-term commitment to fund off-reserve band representative services, to the detriment of our community.

Ultimately, we are concerned that implementation of the Draft FSA, as currently structured, will result in harm and discrimination to our community and create disparities across the

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province. These concerns are compounded by the dispute resolution process that has no jurisdiction to fix structural defects in the agreement or address systemic issues should they arise once implementation begins.

The Draft FSA states that approval by First Nations leadership is required for the agreement to take effect (para. 380). We recognize that many First Nations in Ontario support the Draft FSA and view it as a positive step for their communities. We respect and honour the choices of those First Nations. However, TTN rejects the Draft FSA and **TTN will not be bound by the Draft FSA.** At this time, TTN will continue to rely on the current orders of the Canadian Human Rights Tribunal (including but not limited to 2018 CHRT 4, 2021 CHRT 41 and 2022 CHRT 8). To the extent that NAN seeks to negotiate an Ontario specific agreement with the federal government based on the Draft FSA, we respectfully request the following:

1. Please directly consult with TTN regarding any plan to move forward with the Draft FSA before any further agreements are reached with the federal government and before any steps are taken at the CHRT.
2. To the extent that NAN and TTN cannot agree on a path forward, please ensure that we will have the ability to opt out of the Draft FSA and that any agreement with the federal government will not derogate from our rights as a sovereign Nation to decide when we are ready for change.

We believe there is a path forward to negotiate an agreement on child welfare, in line with the approach set out in Resolutions 02 and 04 at the AFN last week. TTN supported those resolutions, in favour of a new approach to the negotiations. We hope that NAN considers resetting the negotiations and following an open and transparent process, as set out by the Chiefs at the Calgary AFN meeting. We are committed to ensuring we get the best deal possible for generations to come. We also welcome further discussions regarding next steps.

Again, I wish to thank you for your attention and hard work on behalf of all First Nations in our territory and I would be happy to speak with you directly regarding these important matters.

Thank you,

Chief Bruce Archibald

This is Exhibit 'B' to the Affidavit of Victor Linklater sworn October 2, 2025.

JUSTIN SAFAYENI
LSO NO.58427U

From: Chiefs of Ontario <coomail@coo.org>
Sent: Tuesday, January 7, 2025 8:55:59 AM
Subject: FNCFS FA Meeting Materials

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Greetings Leadership,

The Chiefs of Ontario Social Services Sector is hosting a Long-Term Reform of the First Nations Child and Family Services (FNCFS) Program – Final Agreement Update meeting on **Thursday, January 9, 2025.**

The meeting will offer insights into the current status of the agreement, including, progress made, recent developments, and challenges faced during the reform process. This meeting is an opportunity for First Nations Leadership, technicians, and community members to stay informed and actively engaged in the ongoing efforts related to the agreement.

Date Thursday, January 9, 2025

Time: 10:30 a.m. - 12:30 p.m. EST

Location: Virtual Online

Who Should Attend: First Nations Leadership, Leadership Council, Technicians & Community Members

Registration: http://coo.smudging.ca/Meeting/Register/23c4e886-8475-4302-8356-fc04f7a8f8c2

- Upon registration, you will receive a Zoom link to participate.

For additional information, please visit www.chiefsmeeting.com/fncfs or email Tyler Gary, Communications Officer at tyler.gary@coo.org

Chiefs of Ontario

Phone: (416) 597-1266

Toll-free: (877) 517 6527

Fax: (416) 597 8365

468 Queen Street E Suite 400

Toronto, Ontario M5A 1T7

www.chiefs-of-ontario.org

This email has been sent to the following groups, Ontario FN Leadership, PTO's Grand Chiefs, PTO Deputy Grand Chiefs, PTO Executive Directors, Tribal Councils; Women's Council, Youth Council, Knowledge Keepers Council, Leadership Council, LC Executive Assistants, Board of Directors and Staff.

Chiefs of Ontario

SAVE THE DATE

Long-Term Reform of the FNCFS Program - Final Agreement Update

The Chiefs of Ontario Social Services Sector is hosting a Long-Term Reform of the First Nations Child and Family Services (FNCFS) Program – Final Agreement Update meeting. The meeting will offer insights into the current status of the agreement, including, progress made, recent developments, and challenges faced during the reform process. This meeting is an opportunity for First Nations Leadership, technicians, and community members to stay informed and actively engaged on the ongoing efforts related to the agreement.

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For additional information, please visit www.chiefsmeeting.com/fncfs or email Tyler Gary, Communications Officer, Social Services Sector at tyler.gary@coo.org.

@ChiefsofOntario

FSIN

This is Exhibit 'C' to the Affidavit of Victor Linklater sworn October 2, 2025.

JUSTIN SAFAYENI
LSO NO.58427U

FSIN OFFICES

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Saskatoon, SK S7R 0M9
Business (306) 665-1215

AFN Executive Committee
Assembly of First Nations
50 O'Connor Street, Suite 200
Ottawa, Ontario K1P 6L2

June 3, 2024

Attention: Assembly of First Nations Executive Committee

Subject: Urgent Demands from the Regional Chiefs

We, the undersigned Regional Chiefs, write to you with a sense of urgency and purpose to address critical matters that demand immediate attention and action from the Assembly of First Nations Executive Committee. Our collective mandate is to ensure the well-being and prosperity of our respective regions, and we believe that the following issues must be prioritized to fulfil our mandate.

1. Overstepping of Mandate by the Assembly of First Nations (AFN):

The AFN has exceeded its mandate in advocacy for First Nations and is now making decisions that will directly impact First Nations children and families and assuming a policy and practice oversight role without the consent of First Nations or fulfilling the duty to consult them. Indeed, AFN appears to be consolidating its control over child and family services and Jordan's Principle contrary to UNDRIP and without authorization by First Nations.

2. Lack of Transparency in Negotiations:

The AFN, Chiefs of Ontario, and Nishnawbe Aski Nation have negotiated a draft Final Settlement Agreement (FSA) on First Nations child and family services. However, they have not shared drafts of this agreement with First Nations Leadership outside Ontario, First Nations child and family service experts in other regions, or the National Advisory Committee (NAC), which is contrary to AFN Resolution 40/2022.

3. Inexperienced Negotiation Team and Lack of Consultation with Experts:

The AFN negotiation team lacks experience in First Nations child and family services. Moreover, contrary to First Nations in Assembly resolution 40/2022, the AFN has refused to call NAC meetings since February 8, 2024, which are crucial to ensure that First Nations Leadership has the best technical advice incorporated

into the draft FSA. Additionally, AFN has imposed terms of reference that interfere with the independent Expert Advisory Committee (EAC) charged with developing and implementing a work plan to reform Indigenous Services Canada (ISC) and Canada is now only prepared to fund the EAC for AFN authorized activities.

4. Refusal to Include Regional Representation:

Saskatchewan Chiefs have called for a more inclusive process from the AFN in administering this settlement, but these calls have been refused by AFN's legal counsel.

5. Exclusion of First Nations Child and Family Caring Society:

AFN's legal counsel is attempting to exclude the First Nations Child and Family Caring Society from the process despite being the original initiator of the claim with the Canadian Human Rights Tribunal. The Caring Society and the NAC have valuable technical expertise to contribute to ensure any agreement is child and family centered and can be implemented on the ground.

6. Impending Compensation Payments:
The upcoming release of compensation payments from the Moushoom/AFN class action is likely to increase demands for services in First Nations, including child and family services. Compensation is expected later this year, yet recent court documents show that a support plan has not been completed. Moreover, an AFN technical committee that was providing some input into the process has been disbanded (without the courtesy of a notice to the regional and national participants) and replaced with a subcommittee of the Settlement Implementation Committee chaired by AFN lead legal counsel.

Given these concerns, we take the following positions and demand immediate action:

1. Respect for Free, Prior, and Informed Consent:

The Portfolio Holder for First Nations child and family services and the Portfolio Holder for Jordan's Principle must ensure that the AFN negotiation team and legal counsel respect First Nations technical experts and the free, prior, and informed consent of First Nations Rightsholders include regional representation directly in the negotiations of the Final Settlement Agreement.

2. Immediate Disclosure of Negotiation Status:

The Portfolio Holder must immediately disclose the draft Final Settlement Agreement, the status of the negotiations, and all supporting materials to all First Nations Leadership in a manner that facilitates free, prior, and informed consent. More specifically, this means that First Nations Leadership can share the draft FSA and consult others to inform their decision making.

3. Mandate Respect and Duty to Consult:

The Portfolio Holder and Executive must ensure AFN's legal counsel remains within their mandate and respects the duty to consult with First Nations Rightsholders, especially in negotiations that will directly impact the lives of First Nations children and families.

4. Inclusive Negotiations:

The Portfolio Holder and Executive must include all the Canadian Human Rights Tribunal (CHRT) Parties in the negotiations of the Final Settlement Agreement for First Nations Child and Family Services without condition and in any Final Settlement Agreement negotiations on Jordan's Principle without condition.

5. Accurate Reflection of Research and Data:

The Portfolio Holder and AFN Executive must accurately reflect the research and data collected by the Institute of Fiscal Studies and Democracy, the National Advisory Committee, and the Expert Advisory Committee Recommendations in the negotiations of the Final Settlement Agreement. The IFSD, NAC and EAC should report directly to the First Nations in Assembly on a regular basis.

6. Support for First Nations Child and Family Caring Society:

The Portfolio Holder must fully support the First Nations Child and Family Caring Society's efforts to protect First Nations children and families, including their submission to the Canadian Human Rights Tribunal for Non-Compliance of Jordan's Principle by the Government of Canada and efforts before the Federal Court to ensure all eligible children in care receive the compensation they are entitled to and that adequate and culturally appropriate supports are available before, during and after the compensation process.

7. Review and Approval of Compensation Support Plans and future Distribution Protocols/Claims Processes:

The Portfolio Holder must ensure that the First Nations in Assembly can review and approve AFN's plan to provide support to the children and adults eligible for compensation under the AFN/Moushoom class action. Additionally, minutes from the Settlement Implementation Committee must be provided to First Nations Leadership.

We urge the Assembly of First Nations Executive Committee to convene an emergency meeting to discuss these demands and to develop a clear, actionable plan to address these critical issues. It is imperative that we work collaboratively and with urgency to implement solutions that will benefit our communities and uphold the rights and sovereignty of our Nations. Please acknowledge receipt of this letter and inform us of the proposed steps and timeline for addressing our demands.

We look forward to you working cooperatively with Canada and other First Nation parties and respecting our Inherent and Treaty Rights to care for, protect and bring home all our First Nation children no matter where they are residing.

chi-miigwech – kinanâskomitin – pilámayaye – marsı,

Chief Bobby Cameron
FEDERATION OF SOVERIEGN INDIGENOUS NATIONS
Indian Governments of Saskatchewan

cc: FSIN Chiefs
Quebec Chiefs
British Columbia Chiefs

BRIEFING NOTE

Nishnawbe Aski Nation

(807) 623-8228
[FAX] 807-623-7730
nan.ca
100 Back Street, Unit 200
Thunder Bay, ON P7J 1L2

TO: NAN Chief and Council & Tribal Councils

DATE: July 24, 2024

RE: Final Settlement Agreement Engagement Action Plan

FROM: Deputy Grand Chief Narcisse

This is Exhibit 'D' to the Affidavit of Victor Linklater sworn October 2, 2025.

ISSUE SUMMARY

This briefing note provides an overview of the Final Settlement Agreement ("FSA") Engagement Action Plan, for discussion and comment.

This plan is meant to balance competing needs. We need to ensure adequate engagement and information is provided, while avoiding a domineering or overwhelming schedule for Chiefs. This balance must take into account the COO, AFN and Canada engagement sessions (outlined further below)

NAN SPECIAL CHIEFS' ASSEMBLY FOR RATIFICATION

It is proposed that NAN have a virtual Special Chiefs Assembly ("SCA") to ratify the FSA on August 28, 2024. Having the SCA on August 28, virtually, allows for adequate engagement pre and post Keewaywin.

The below engagement sessions will work towards this SCA.

NAN-SPECIFIC ENGAGEMENT SESSIONS

It is proposed that NAN host a series of virtual information sessions followed by town hall sessions to provide space for a question-and-answer period.

First, there will be a ½ day information session where NAN Executive introduce and provide support for the FSA, followed by a comprehensive technical presentation by NAN technicians and legal counsel.

The goal of the information session is to provide a robust summary of the FSA, allowing the attendees to take that information back to their communities and advisors for internal discussion. Later in the week, after the information session, a town hall session will be held focused on answering questions that arose from the information session, and from participants engagement with their communities,

and other technicians. This format is contemplated to allow for adequate time to absorb the information, discuss it with their technicians, leaders, and advisors, and to prepare questions.

It is proposed that Canada be invited and available to answer questions related to the implementation of the agreement during the town hall sessions.

The sessions are planned to take place both before and after Keewaywin, to allow Keewaywin to proceed without the underlying influence of FSA discussions. Questions that arise during Keewaywin can be directed to the sessions following it.

July 29 Virtual- Information session 10AM EST.
August 1 Virtual- Town hall for questions stemming from July 29 session. 10AM

August 19 Virtual-Information session 10AM EST.
August 22 Virtual-Town hall for questions stemming from August 19 session.10AM

August 28- Virtual NAN SCA to approve the FSA.

These sessions will be recorded and posted on a website created for this purpose. In this way, anyone who cannot watch in real time will be able to watch at their leisure, or rewatch to review or refresh their memory. Further, these sessions will be supported technically by (insert company name here) to ensure that the logistics are smooth and technical support is readily available.

Finally, in the information package which gives notice of these sessions, it is suggested that communities may want to consider using a projector and screen to make viewing more widely accessible.

GOVERNANCE TARGETED STRATEGY

Further outreach is planned in two areas, targeting to reach certain Chiefs who have been identified as key voters.

First, those Chiefs who sit on agency boards or Committees related to agencies. Because this FSA contemplates a shift of power and funds from agencies to First Nations, it is anticipated that the employees and directors of agencies will not be in favor of ratification of the FSA. It is important to outline to the Chiefs the agency specific concerns, and how they can/may be addressed. Therefore, targeted outreach to those Chiefs will occur, through proactive information sharing, rather than hoping for their attendance at an engagement session.

Second, at a planned NARC event, designed for NARC members to get information on the FSA, I would attend to speak specifically on the provisions related to remoteness, and to the work that has been done in this area, with particular emphasis on the gains made. This will target those Chiefs in territories known for some opposition to the FSA, such as Saskatchewan, British Columbia, and Quebec.

INFORMATION PACKAGE

An information package will be created that can be widely shared, and available on the NAN website. It will include:

- An overview or explanation of i) the process of approving the FSA, and ii) the contents of the information package
- A briefing note containing a high level summary of the basic parts of the FSA
- The PowerPoint presentation containing more detail on the particular provisions of the FSA

- A copy of the draft FSA;
- The engagement schedule; and
- Links to all relevant documents.

SUPPLEMENTARY NAN-SPECIFIC ENGAGEMENT

In addition to the sessions detailed above, and to maximize resources NAN will create electronic materials containing information about the agreement that would be widely available. These will be supported by an information package consisting of a technical presentation, and a link to all the relevant documents.

Further, NAN will send out notices and reminders with the relevant materials on the above engagement sessions to keep NAN First Nations informed and able to plan their attendance accordingly.

INDIVIDUAL REQUESTS FOR INFORMATION

In an effort to keep messaging consistent, it is recommended that any individual or organization who requests information or engagement on the FSA be provided with boilerplate language which directs them to the engagement sessions and town halls and provides them with the supplementary information package detailed above.

NATIONAL ENGAGEMENT PLAN (COO, AFN, CANADA)

AFN and Canada will be hosting national engagement sessions on the FSA, beginning around July 29, up until their SCA September 17-19 in Winnipeg. NAN will attend these sessions with an emphasis on speaking to the provisions related to remoteness.

The following are key dates in the national engagement:
August 28: Virtual NAN SCA
September 10-11: Virtual COO SCA
September 17-19: AFN SCA in Winnipeg.

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Niigaanshkaawin | Breaking Trail

August 20, 2024

This is Exhibit 'E' to the Affidavit of Victor Linklater sworn October 2, 2025.

JUSTIN SAFAYENI
LSO NO.58427U

Nishnawbe Aski Nation
100 Back Street, Unit 200
Thunder Bay ON P7J 1L2

Attention: **Grand Chief Alvin Fiddler**
Deputy Grand Chief Anna Betty Achneepineskum
Deputy Grand Chief Bobby Narcisse
Deputy Grand Chief Victor Linklater

Dear Grand Chief Fiddler, and Deputy Grand Chiefs:

RE: Final Settlement Agreement on Long-Term Reform of the First Nations Child & Family Services Program

The Tikinagan Child and Family Services ("Tikinagan") Chiefs Committee met on August 19, 2024, and was briefed on the pros and cons of the draft Final Settlement Agreement on Long-Term Reform of the First Nations Child & Family Services Program ("FSA" or "Agreement).

While the Assembly of First Nations ("AFN"), Chiefs of Ontario ("COO") and Nishnawbe Aski Nation ("NAN") are required to support and recommend this Agreement, we have been advised of a number of serious concerns about the proposed Agreement.

The FSA was negotiated in secret, and the approval process is rushed without sufficient time for Chiefs and community members to be properly briefed and consulted.

The NAN vote to approve the FSA is scheduled for a virtual meeting on August 28, 2024, with votes at COO & AFN to follow in September.

The Tikinagan Annual Chiefs Assembly is scheduled for September 4 & 5, 2024, and will provide an opportunity for the Chiefs to have a more fulsome briefing on the Agreement. Other organizations will be having their Annual General Meetings in the next month or so.

The Tikinagan Chiefs Committee recommends that NAN defer its vote to a later date so that better consultation can occur.

As Chiefs, we do not want to be pushed to approve an Agreement without a thorough understanding of its contents and implications.

Yours truly,

Chief Donny Morris, on behalf of the Chiefs Committee:
Chief Donny Morris
Chief Clifford Bull
Chief Delores Kakegamic
Chief Sonny Gagnon
Chief Lorraine Crane
Chief Chris Kakegamic

Nishnawbe Aski Nation
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Implications of the Final Agreement on the Long-Term Reform of the First Nations Child and Family Services Program

This is Exhibit 'F' to the Affidavit of Victor Linklater sworn October 2, 2025.

This document provides an overview of the implications associated with accepting the Final Agreement.

Positive Effects of Accepting	Potential Downsides of Accepting
Securing groundbreaking remoteness adjustments which result in an average of 101% upward adjustments to funding for NAN First Nations to account for the increased costs of delivering services in remote communities. Ongoing improvements to remoteness related research through the Remoteness Secretariat, and the National Assembly of Remote Communities. The FSA is the product of extensive negotiations between Canada and First Nations organizations over several years. The 10-year duration of the agreement is a significant funding commitment. Access to an Alternative Dispute Resolution Mechanism would be open to the Parties, as well as First Nations and service providers, unlike the Tribunal which is only available to the Parties in this complaint.	"Actuals" funding will end. The FSA would replace access to the Tribunal's orders for actuals with the funding formulas within the agreement. Potential increased liability. First Nations who want to develop and deliver services accept the good and the bad with that, the bad being, increased liability, potential staffing issues, and increased reporting requirements, etc. Application based model for capital funding. The jurisdiction of the Canadian Human Rights Tribunal would cease for the Parties, and the Parties would no longer have access to the Tribunal. The funding committed to in the Final Agreement will be subject to the annual appropriations process, where each year Parliament votes on appropriate legislation which authorizes the government to access funding for its programs and services. This is the

Increases in program funding including continued funding for prevention and band rep services, new top-up funding, all adjusted upwardly for remoteness. Funding is stable for 10 years, without the need to apply year over year, unlike in the actuals process. Increased accountability mechanisms for Agencies to their affiliated First Nations. Increased role for First Nations in service delivery if they so choose, with dedicated funding to deliver prevention, band rep services, and post-majority support services Flexible funding model which allows funding to be reallocated between line items and carried forward. Built in mechanisms for review. Two program assessments will be conducted, one at the 5-year mark, another after 10 years. New governance support including the establishment of secretariats that will provide data regarding. Negotiated Agreement rather than a potential of an imposed program: accepting means certainty about the terms of the FSA. Many things could happen if the FSA doesn't go forward, but unlikely amongst them are complex renegotiations. Housing funding for First Nations which was not ordered but was achieved through negotiations.	process most Government of Canada programs follow.

Limitations

In addition to the above list of positive effects and potential downsides, there are certain *limitations* to the FSA. Because the FSA is intended to settle a specific case, the settlement is mostly focused on the issues raised in that case.
These issues should not be confused as drawbacks to approving the FSA. Rather these things are not included at this time, and may be raised in the future or in other forums:

- Funding for off-reserve band members.
- Disputes around using the IRS as a population metric, such as low rates of registration.
- Funding to address all the social determinants that lead to contact with the child welfare system such as poverty, mental health, and lack of housing.