



March 16, 2021

The Honourable Marc Miller, MP  
Minister of Indigenous Services  
Indigenous Services Canada  
10 Wellington Street, 28th Floor  
GATINEAU QC K1A 0H4  
Mailstop 2738BH

Dear Minister Miller:

I am writing to draw your attention to an urgent matter regarding the implementation of *An Act respecting First Nations, Inuit and Metis children, youth, and families* (the Act). It has been brought to my attention that officials within Indigenous Services Canada (ISC) have indicated that orders of the Canadian Human Rights Tribunal (CHRT) requiring Canada to provide funding to ensure substantive equality will not be applied or extended to First Nations exercising their authority under the Act. This crucial position has not been publicly communicated to First Nations and it is essential that ISC be fully transparent with First Nations seeking to drawdown its jurisdiction. This lack of information serves to frustrate a First Nation's ability to make an informed choice and may be impeding First Nations' rights to Free, Prior and Informed Consent when considering their decision to assert jurisdiction under the Act.

In 2016, the CHRT ruled that Canada was discriminating against First Nations children and families by underfunding the First Nations Child and Family Services (FNCFS) Program on reserves and in the Yukon and ordered the immediate reform of the FNCFS Program and Jordan's Principle. Four years later, the Act was established as one element of long-term reform to address the high number of First Nations children in care, by affirming First Nations jurisdiction in the realm of FNCFS. The principles of substantive equality espoused by the CHRT should also translate to fair and equitable funding for First Nations that choose to assert jurisdiction under the Act and said equitable funding is essential to the proper implementation of the Act and reducing the number of First Nations children in care. While ISC is of the view that the Act falls outside the jurisdiction of the CHRT orders regarding FNCFS, funding levels should not be reduced or adversely affected where First Nations exercise their jurisdictions.

Given this recent development, First Nations have raised concerns that ISC intends to use the Act as a mechanism to curtail their responsibilities to provide equitable and needs-based funding for FNCFS as ordered by the CHRT. Furthermore, where Canada reduces funding levels to First Nations exercising their jurisdictions, the current discriminatory funding mechanisms and inequities faced by First Nations children and families will be perpetuated well into the future. This is an urgent matter as First Nations are already providing notice under the

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Act to assert their jurisdiction over child and family services, without knowledge of Canada's position that funding commitments ordered by the CHRT may not be readily transferred. There has been a lack of information being shared with First Nations on how ISC will provide funding to First Nations who pass laws pursuant to the Act.

The AFN requests that ISC provide immediate clarification and communication materials for First Nations leadership about the funding streams to consider when asserting jurisdiction under the Act. It is critical that ISC provide accurate, transparent information and communication materials on any legal implications of funding not based on the substantive equality findings from CHRT to First Nations seeking to transition under the Act. Furthermore, in order to support the proper implementation of the Act, it is critical that Canada commits to providing First Nations with fair and equitable funding to those First Nations who choose to assert their jurisdiction over child and family services under the Act. Proper funding is essential in order to provide First Nations with the resources necessary to meaningfully assert their jurisdiction and to address current funding gaps and fund new prevention programs, early intervention, and post-majority care services, which are needed in order to reduce to number of children in care.

As affirmed in our joint Protocol, Canada and the AFN have a shared commitment to support the affirmation and recognition of the rights of First Nations peoples as they relate to child and family services. In the Protocol, we agreed to seek to reduce the over-representation of First Nations children in care, to address gaps in prevention and other child and family services, to promote substantive equality for First Nations children and youth, and to commit to encouraging and increasing First Nations peoples' direct input, engagement, and control in relation to child and family services. I implore you to follow through with these commitments by committing to provide fair and equitable funding for First Nations seeking to transition under the Act and by acting in good faith, providing clear and transparent information and communication materials regarding funding under the Act.

I look forward to continuing our work together to support First Nations children, youth, and families.

Sincerely,



Perry Bellegarde  
National Chief

c.c AFN Executive Committee  
Chiefs Committee on Child and Family Services and Self-Determination  
Christiane Fox, Deputy Minister of Indigenous Services  
Dr. Valerie Gideon, Associate Deputy Minister of Indigenous Services