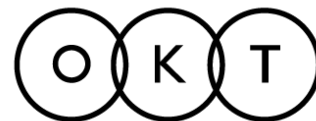


First Nation Representative Services & Dispute Resolution

Jessie Stirling, Counsel for Chiefs of Ontario

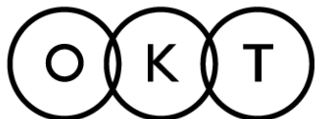


Your sovereignty. Your prosperity. Our mission.



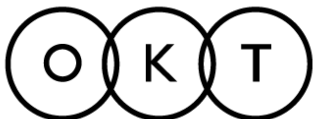
Overview

- **First Nation Representative Services (“FNRS”)**
 - Funding for FNRS under the Final Agreement
 - History of FNRS in Ontario
 - Role of First Nation Representatives
- **Dispute Resolution**
 - Overview of Dispute Resolution in the Final Agreement
 - Improvements on the Status Quo



Funding for FNRS under the Final Agreement

- Sections 25 and 26 of the Final Agreement set out how First Nations will be funded for FNRS
- Note: FNRS funding levels for Years 6-10 will be considered as part of the Initial Program Assessment
- In 2024-25, First Nations (except those in Ontario) are funded at \$294.72 per total on-reserve resident with every First Nation receiving a minimum of \$75,000
- Remote First Nations' FNRS funding is upwardly adjusted to account for the increased costs of delivering services in remote communities
- In subsequent years, both the per capita amount and the \$75,000 minimum amount will be adjusted upwardly for inflation (CPI)
- First Nations in Ontario are funded differently due to the unique history of FNRS in Ontario



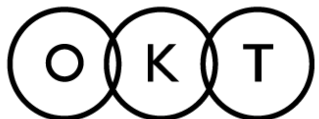
History of FNRS in Ontario

- FNRS is better known as “Band Representative Services” in Ontario
- For a long time, First Nations in Ontario have had legislated roles and responsibilities that are triggered when their children, youth, and families comes into contact with an agency or children’s aid society
- These roles and responsibilities are fulfilled by the Band Representative
- The role of Band Representatives was first defined in the old Ontario child welfare legislation – the *Child and Family Services Act, 1990*
- These roles increased with the introduction of the current child welfare legislation in Ontario, the *Child, Youth and Family Services Act* or the CYFSA, in 2017



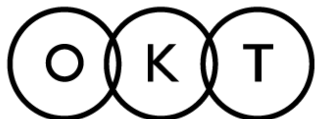
History of FNRS in Ontario

- Agencies and children's aid societies have long been required to consult with the First Nation of children at their attention
- ISC funded Band Representative Services on a claims basis, but cut that funding off in 2003
- Despite the fact it was Ontario's legislation that created the roles and responsibilities of Band Representatives, Ontario also didn't fund Band Representative Services
- First Nations who wanted to provide Band Representative Services used to try to squeeze it into current funding profiles
- Often Chiefs of communities would go to court to have the First Nation's voice heard where there was no Band Representative



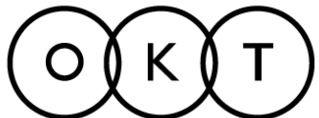
History of FNRS in Ontario

- Between 1987 and 2016, COO and the Chiefs in Assembly advanced **191 Resolutions** regarding law, policy, program, service, funding, and First Nation self-determination in the social services
- There have been **9 Resolutions** specific to Band Representative Funding
- For these reasons, COO applied to the CHRT for interested party status and was awarded this intervention to pursue reforms regarding Band Representative Services, the 1965 Indian Welfare Agreement, and children and youth mental health
- At the CHRT, COO advanced the unique concerns of First Nations in Ontario, which have been longstanding for Band Representative Services
- We were successful in getting findings and orders made with respect to Band Representative Services.



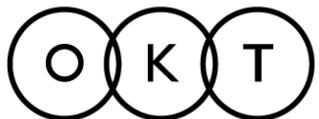
History of FNRS in Ontario

- The CHRT found that the failure to fund Band Representative Services was a key feature of the discrimination against children in Ontario, and ordered Canada to fund it in the 2018 CHRT actuals decision



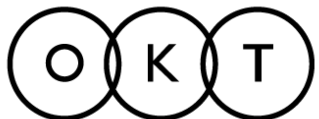
Role of First Nation Representatives

- In Ontario, the roles, rights, and responsibilities of First Nation (Band) Representatives are set out in the CYFSA. Some other provincial/territorial legislation provides for First Nation Representatives (e.g., Alberta and Newfoundland). Typically, First Nations are afforded the rights to participate, to be consulted, and to receive information at every stage of an agency/children's aid society's involvement
- Under *An Act Respecting First Nations, Inuit and Metis Children, Youth and Families* (C-92), the First Nation has a right to be informed of significant measures (s. 12) and to be heard in court (s. 13)
- But it is also for each First Nation to decide how to define the role in their community!



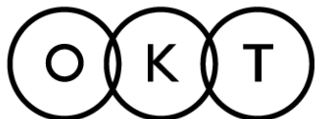
Role of First Nation Representatives under the FNCFS Program

- Per section 24 of the Final Agreement, funding for FNRS is intended to:
 - (a) support the cultural needs of First Nations children, youth, and families;
 - (b) support connecting First Nations children, youth, and families with the lands, languages, cultures, practices, customs, traditions, ceremonies and knowledge of their First Nation and helping families access supports;
 - (c) support repatriation of children to their communities; and
 - (d) ensure that the rights of First Nations children and youth and the rights of First Nations are respected in the child and family services system.



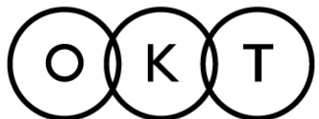
Role of First Nation Representatives under the FNCFS Program

- The Terms and Conditions of the FNCFS Program regarding FNRS will be flexible and allow for First-Nations defined services
- How much cooperation a First Nation gets from an agency where there is no legislation to require the agencies to engage beyond the C-92 requirements will depend on the First Nation's relationship with the agency
- Some First Nations may have protocol agreements with their agencies to define relationships and rights when children are in care/ at the attention of an agency



Dispute Resolution

- Once the CHRT approves the Final Agreement, its jurisdiction will end in relation to the FNCFS Program
- The CHRT will be replaced by the binding dispute resolution process detailed in the Final Agreement
- **Key Features of the Final Agreement's Dispute Resolution Process**
 - Establishes a Dispute Resolution Tribunal headed by a First Nations person with expertise in child welfare, human rights, or dispute resolution who is appointed by Canada in consultation with COO, NAN, and the AFN
 - Dispute Resolution Tribunal is comprised of adjudicators/decision-makers who are all First Nations persons with expertise in child welfare, human rights, or dispute resolution selected by the President with regional representation in mind
 - Dispute Resolution Tribunal handles 2 types of disputes:
 - Parties' Disputes
 - Claimant Disputes



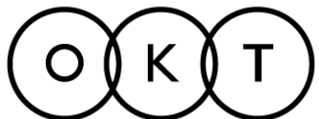
Types of Disputes

Parties' Disputes

- Disputes that arise between any of COO, NAN, the AFN, and Canada
- Mandatory process – no CHRT involvement
- Any/all of COO, NAN, and the AFN can take Canada to Dispute Resolution if it fails to adopt/implement recommendations for improving the FNCFS Program made by the Reform Implementation Committee

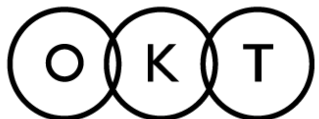
Claimant Disputes

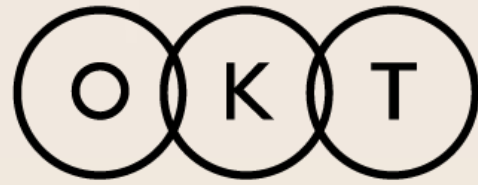
- Accessible by First Nations and Agencies
- Disputes re: accuracy of/entitlement to funding under the Final Agreement and ISC's decision to deny in whole/part a Service Provider Funding Adjustment Request
- Optional process – can choose to take the dispute to the CHRT or court instead
- Navigators to help claimants file disputes
- Cultural Officers to help ensure that the process is culturally appropriate
- Optional mediation process
- Duty counsel provided for, and Tribunal can order Canada to pay for a lawyer for unrepresented claimants in complex situations



Improvements on the Status Quo

- ❖ First Nations and Agencies will for the first time be able to have *disputes heard by an independent First Nations adjudicators with relevant expertise* (as opposed to the non-independent internal ISC appeals process)
- ❖ The Final Agreement's dispute resolution process will be *faster than going to the CHRT or judicial review and less expensive*
 - ❖ Right now, a JR could take months, and a fresh complaint to the Canadian Human Rights Commission would take years
 - ❖ Our view is that most of the time, the claimant will not be seeking human rights damages; they will be disputing a calculation error, their entitlement to certain funding, or ISC's decision to deny in whole/part its Service Provider Funding Adjustment Request
 - ❖ If the claimant *is* seeking human rights damages, the claimant would take their dispute to the CHRT or judicial review. This is the same as it is now – nothing changes.
- ❖ First Nations and Agencies will be *supported through the Claimant Dispute Process.*
 - ❖ Free navigators to assist with the forms and procedure
 - ❖ Free duty counsel to assist with claims





Thank You

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