

Backgrounder to the Thunderchild Judicial Review

On December 3, 2014, Thunderchild will be challenging INAC in court concerning the Contribution Funding Agreement (CFA) and the subsequent third party management regime Indian and Northern Affairs Canada (INAC) has imposed upon the Nation for refusing to sign the 2014-15 CFA. This backgrounder is intended to inform you of what CFA's are and the position Thunderchild has assumed in taking this matter into court.

Contribution Funding Agreements are a means by which the federal government, through Indian and Northern Affairs Canada, transfers funds to First Nations for programs and services within a legal framework. Without a CFA, INAC is unable to transfer funds. The funds that are transferred to First Nations are those that are appropriated by Treasury Board from the Parliament of Canada. Contrary to popular belief, the funds are not taxpayer dollars but Indian monies that have been derived from Indian lands that are retained in capital accounts in Ottawa. Essentially, First Nations must account for their own monies that are rationed to keep them subjected under federal power.

Annually, INAC sends out a CFA either as a new multi year agreement or part of a continuation of a multi year agreement for First Nations to sign. When the First Nation signs they agree to all the terms and conditions that have been outlined in the CFA including all the attachments. Since its inception in the early 1970's the CFA has been amended without the consent of First Nations and that practice remains the same today. First Nations sign the CFA under a multitude of pressures, including that INAC threatens not to flow funds unless the First Nation signs the CFA, as well as the pressure from the community to ensure that programs and services continue. However, despite the pressures, some First Nations are taking INAC to task and have refused to not only agree with the terms and conditions but the continued amendments and have chosen not to sign the CFA.

On December 3, 2014, the Federal Court will be hearing an application for judicial review of the decision of the Minister of INAC to place a First Nation under third party management for refusing to sign a new multi year CFA. The Thunderchild First Nation is challenging the Minister's legal authority to place them under third party management; a remedy under the CFA for those First Nations who are experiencing financial difficulty. Such is not the case for Thunderchild. Although Thunderchild has not signed the CFA, they still receive all their funds with one difference; that is a Third Party Manager administers and not Thunderchild.

Thunderchild is not alone in their refusal. There are other First Nations that have chosen not to sign their amending agreements to their multi year CFA and they still receive their funds. First Nations are calling out INAC and are proving that INAC is ill prepared to deal with any challenges.

Are there alternatives to a CFA to transfer funds?

Other alternatives can include transfer agreements that currently exist between the federal and provincial government. These transfers do not come with onerous reporting requirements and respects the lines of authority that divide the two jurisdictions. Fiscal transfer agreements for First Nations will not only respect the jurisdiction of our governments, but will also restore the relationship that we originally had and must have with the Crown.

While First Nations challenge INAC on the imposition of the terms and conditions and imposed amendments to the CFA, it is important not to lose sight of the larger issue of chronic underfunding cloaked within the CFA. While First Nations are combating poverty-like conditions within their communities, the federal government continues to ration Indian monies, quite like the Indian agents rationing food to starving people on the reserves in the early to mid 1900s, to keep them subjected to their power and control.