



ANISHINABEK NATION

February 18, 2020

Opinion: Response to Hayden King's Article on the Anishinabek Nation Fiscal Agreement.

Mr. Hayden King's article, "The Rise of the Anishinabek Nation, Part II: The Fiscal Agreement", which was posted on the Yellowhead Institute's website, contains a number of misconceptions regarding the *Anishinabek Nation Fiscal Agreement* ("Agreement").

First, Mr. King asserts that the seven-fold increase in governance funding is confusing since the source of funding cannot be identified. In fact, the increase in funding negotiated for the purposes of the *Anishinabek Nation Government Agreement* ("ANGA") is contained in a hard-fought and hard-won global fiscal offer made by Canada to Anishinabek member First Nations. Within that global offer, each member First Nation has been made its own specific offer. Each First Nation's offer has been communicated to Chief and Council, as well as to citizens during community information sessions. There has been no attempt by the Anishinabek Nation to hide the figures. However, it must be readily realized and acknowledged that First Nations possess the right to classify any aspect or portion of their financial matters as private. The fact that each First Nation's offer has not been the subject of broad publication does not negate the existence of the offer.

Related to this first assertion is the criticism that the Agreement does not explicitly contain the fiscal offer. In truth, the Agreement has been structured for the insertion of the fiscal offers of those First Nations that ratify the ANGA. Thus, prior to the vote on the ANGA, that portion of the Agreement pertaining to the fiscal offers of First Nations would appropriately be blank. Upon acceptance of the fiscal offer by way of a "yes" vote, a First Nation's fiscal offer would be inserted into the Agreement.

It would be useful at this point to set out a few facts regarding the structure of the fiscal offer. At the present time, Anishinabek member First Nations are woefully underfunded for governance activities, with many subsisting on less than \$250,000 per year pursuant to Canada's Band Support Funding and Band Employee Benefits funding "envelopes". The Agreement replaces those amounts, for member First Nations that ratify the ANGA, with funding that in all instances is above \$1.7 million per year. In fact, no Anishinabek member First Nation is set to receive \$1.7 million per year - that amount is simply the "floor" on which no First Nation covered by the

fiscal offer “sits”. In most instances, the fiscal offer specific to a First Nation outstrips the “floor” by a few to many hundreds of thousands. The result is that, on average, Anishinabek member First Nations are receiving a seven-fold increase in funding. At an individual First Nation level however, some particularly seriously underfunded communities are set to receive as much as a ten-fold and a twelve-fold increase.

Second, Mr. King asserts that the adequacy of the implementation funds, in the amount of \$548,000 per First Nation, is questionable given what is expected to be done with the amount. This, it is worth noting, is a subjective assessment unsupported by data regarding the actual cost of undertaking the various activities the amount is intended to support. In truth, implementation is a shared activity between Anishinabek member First Nations and the Anishinabek Nation. The Anishinabek Nation will receive a separate amount to support member First Nations, and to ensure that those activities that do not need duplication can be done singularly. Further, the ANGA has been drafted to ensure that the initial activities required of Anishinabek member First Nations are minimal. For instance, the ANGA requires that member First Nations pass laws “as soon as is practicable” rather than “within the first year of the agreement”. The result is that member First Nations can proceed with implementation at a pace that suits them, and the \$548,000 they will receive in the first year are single-year start-up funds to ensure critical activities outside of the main, ongoing fiscal offer can be undertaken.

Third, it must be noted regarding Mr. King’s indication that it is unclear what role the province will play in funding future negotiated jurisdictional areas, that this is the very reason why negotiations matter. The provinces future position as it sits at the table with Anishinabek member First Nations, and how that position might evolve based on input from those First Nations, cannot be guessed at presently. However, what is clear is that in the absence of the ANGA, no one would be in a position to press the province to fund any aspect of a self-government recognition agreement for the benefit of Anishinabek member First Nations.

Fourth, Mr. King’s article inaccurately opined that Anishinabek member First Nations would be required to contribute towards the costs associated with the ANGA pursuant to a formula in the Agreement. In addition, he misconstrued the operation of the formula. In truth, as D.36 to D.38 of the Agreement sets out, Anishinabek member First Nations are not required to make any such contributions until such a time that they agree - by way of an amendment to the Agreement - that those contributions should be made. This, also, is a hard-fought and hard-won position. Considered in light of 8.1 of the ANGA, which explicitly indicates that the parties will maintain a financial relationship consistent with that agreement, and the present understanding that such a financial relationship can include funding to the average tune of seven-times current funding, this position effectively commits Canada to ongoing funding while ensuring that Anishinabek member First Nations must first agree with Canada before any contribution-type formula can be implemented. I can indicate based on my travels to almost all Anishinabek member First Nations that this

is a valued position. I can also indicate that no First Nation appears interested in an agreement with Canada on the implementation of its contribution-type formula at any point in the near future.

Canada's contribution-type formula is included in the Agreement as a measure of due diligence by Canada, satisfying its obligations regarding the informed consent of First Nations. It was important for Canada to know that, should its contribution-type formula be agreed upon for implementation at some point in the future, First Nations would already be aware of the manner in which it would function. As a side note, it must be noted that contrary to Mr. King's assertion, that manner would not commit First Nations to contributing half of the expenditures required for governance. It is true, however, that the formula is complex. That said, it can be explained, and it has been explained in many fora involving the leaders, technicians, and citizens of member First Nations. More importantly, as made clear above, it is not set to apply to the ANGA. That, it should be noted, also means that the "status Indian populations" portion of that formula are also not set to apply to the ANGA. Funding for the ANGA is not based on "status Indian populations".

In closing, it is true that the ANGA is based on a "single window" approach in which Canada transfers funds to the Anishinabek Nation. However, the Anishinabek Nation is set to be separately funded within the ANGA, and it will not be taking any amount "off the top" of funds intended for member First Nations. In fact, the Implementation Plan for the ANGA reiterates this point. As a result, for each First Nation that ratifies the ANGA, Canada's fiscal offer amount will be the amount received.

Respectfully,
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Fiscal Negotiator of the *Anishinabek Nation Governance Agreement*