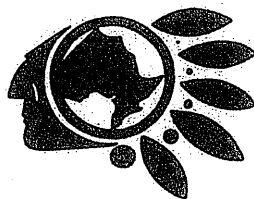


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## CHIEFS OF ONTARIO

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February 10, 2014

*Dear First Nations in Ontario:*

This letter to follow-up to the letter sent on February 6, 2014 which provided notification regarding an imminent announcement to be made by the Prime Minister and National Chief Atleo regarding new investments in education and a framework to support First Nations control of First Nations education. The February 6<sup>th</sup> letter was followed up with an email to the National Chief expressing grave concerns about the top-down approach of the announcement and the lack of information for First Nations on the contents of the announcement.

Following the February 7, 2014 announcement by National Chief Atleo, the Prime Minister and the Indian Affairs Minister it is now clear that there has been some kind of agreement forged between the AFN and Canada on the development of a new legislative framework to replace the First Nation Education Act that was proposed by Indian Affairs in October 2013. It seems they have agreed to proceed with a First Nations Control of First Nations Education Act (FNCFNEA) which includes a financial commitment of over \$1.9 billion.

Although there are many areas that still remain unclear, we are pleased to provide you with a preliminary analysis based on what little information has been provided on the FNCFNEA through the announcement, press releases and website postings of the AFN and Canada. Upon review of this analysis you will notice many areas of uncertainty that must be fully explored before First Nations in Ontario can be expected to provide consent and/or support for this new approach.

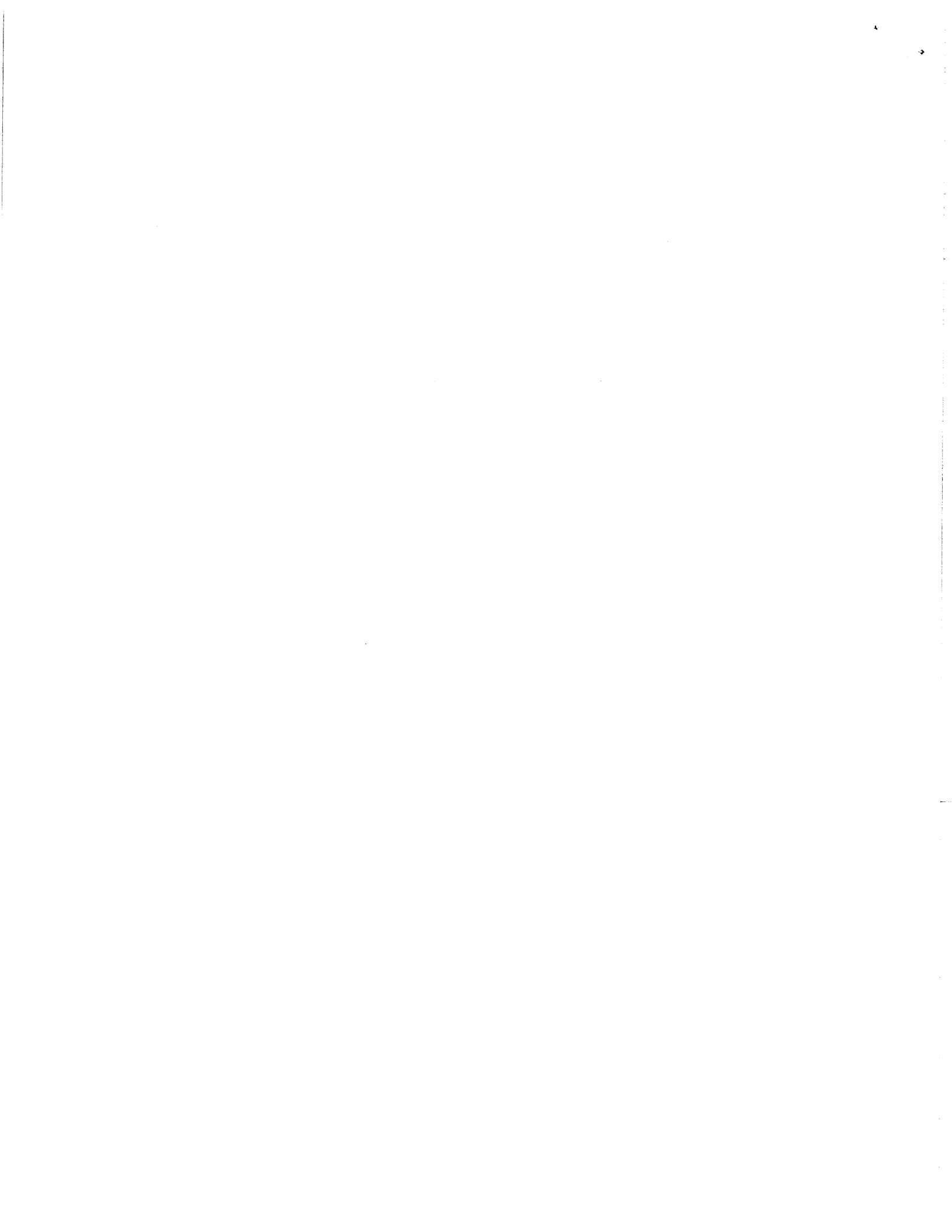
We will continue to provide you with updates as more information emerges.

Sincerely,  
**CHIEFS OF ONTARIO**

Stan Beardy,  
Ontario Regional Chief.

Gordon Peters,  
Ontario Education Portfolio Holder.

c.c. Education Directors, Political Territorial Organizations, Tribal Councils in Ontario



# Chiefs of Ontario Preliminary Analysis

(February 10, 2014)

## Proposed 'First Nations Control of First Nations Education Act'

### Timeline and Background

<b>Dec 11, 2013</b>	<ul style="list-style-type: none"><li>○ At the AFN SCA in December 2013 there was a clear unanimous decision to reject the draft legislative proposal on the First Nations Education Act (FNEA) and conditions were outlined in Resolution 21/2013 for Canada to meet with regards to moving forward on First Nations education. Conditions included:<ul style="list-style-type: none"><li>● Respect and recognition of inherent rights and title, Treaty rights and First Nations control of First Nations education jurisdiction.</li><li>● Statutory guarantee of funding</li><li>● Funding to support First Nations education systems that are grounded in Indigenous languages and cultures.</li><li>● Mechanism to ensure reciprocal accountability and no unilateral federal oversight or authority.</li><li>● Ongoing meaningful dialogue and co-development of options.</li></ul></li></ul>
<b>Jan 15, 2014</b>	<ul style="list-style-type: none"><li>○ A message from AFN Education Portfolio Holder Chief Morley Googoo indicated to the AFN Chiefs Committee on Education (CCOE) and National Indian Education Council (NIEC):<ul style="list-style-type: none"><li>● AFN staff had been pulling together and synthesizing previous work done in education and had been conducting meetings and follow-up discussions with First Nation education experts. AFN efforts resulted in the AFN "Framework" document which was sent to the CCOE and the National Executive for review on January 21, 2014</li></ul></li></ul>
<b>Jan 27, 2014</b>	<ul style="list-style-type: none"><li>○ <u>Without obtaining advice, direction or consent from the AFN CCOE</u>, the National Chief, Regional Chief Googoo, Grand Chief Kelly and Chief Miskokomon (the movers of AFN Resolution 21/2013) met with Minister Valcourt to "to press for and confirm his concurrence with what is needed pursuant to the mandate in Resolution 21/2013".<ul style="list-style-type: none"><li>● The National Chief reported to the AFN Executive in an email dated January 27<sup>th</sup> that "the Minister signaled willingness to open the door to First Nations control including the opportunity for every Treaty area and/ or every region to drive their own negotiations based upon the pre-conditions set out in the resolution including an explicit commitment in the budget."</li></ul></li></ul>
<b>Feb 4, 2014</b>	<ul style="list-style-type: none"><li>○ AFN CCOE met in Toronto. Although the purpose of the meeting was to discuss options and next steps regarding First Nations education. The meeting centred on the outcomes of the January 27<sup>th</sup> meeting with the Minister. Chair (Regional Chief Morley Googoo) advised there was no point in discussing the way forward until the federal budget was announced on February 11, 2014.<ul style="list-style-type: none"><li>● There was no discussion on options moving forward.</li><li>● There was no indication that an announcement would be made by the Prime Minister and the National Chief on an agreed to process moving forward.</li></ul></li></ul>

<b>Feb 5, 2014</b>	<ul style="list-style-type: none"> <li>○ At 5:40 pm, National Chief's Administrative Assistant sent out an email on National Chief's behalf advising AFN Executive that an announcement of the federal investment and a framework to support First Nations control of First Nations education would take place on Friday February 7, 2014 the Kainai High School in Treaty 7 territory.</li> </ul>
<b>Feb 6, 2014</b>	<ul style="list-style-type: none"> <li>○ Regional Chief Beardy sent a letter to all First Nations, Provincial Territorial Organizations, Tribal Councils and Education Directors providing what little information existed on the announcement scheduled for February 7 in Alberta. <ul style="list-style-type: none"> <li>• The letter outlined the fact that neither Grand Chief Gordon Peters, a member of the AFN Chiefs Committee on Education, nor Regional Chief Beardy, a member of the National Executive had participated in any of the discussions leading up to the announcement and thus there was no clarity on what the contents of the announcement would be.</li> </ul> </li> </ul>
<b>Feb 7, 2014</b>	<ul style="list-style-type: none"> <li>○ Regional Chief Ghislain Picard sent an email to the AFN Executive expressing concerns regarding the process leading up to the announcement and lack of information</li> <li>○ Regional Chief Stan Beardy sent an email to the AFN Executive in support and agreement with Regional Chief Picard's observations</li> </ul>
<b>Feb 7, 2014</b>	<ul style="list-style-type: none"> <li>○ Prime Minister Harper, Indian Affairs Minister Valcourt and National Chief Atleo delivered some of the details on what they termed as an "historic agreement" including: <ul style="list-style-type: none"> <li>• The five conditions for success outlined in Resolution 21/2013 would be met.</li> <li>• Canada and AFN would proceed with the final drafting and introduction of the First Nations Control of First Nations Education Act (FNCFNEA) that will "set enabling framework and statutory guarantee."</li> <li>• Financial commitments of over \$1.9 billion to support the Act which will include language and culture programming.</li> <li>• Joint development of regulations to accompany the Act.</li> </ul> </li> </ul>

### Analysis

Analysis of what little information has been provided on the new approach (FNCFNEA) through the announcement, press releases and website postings of the AFN and Canada yields the following elements. All must be confirmed and clarified in order for First Nations in Ontario to determine if this new approach is viable.

### Overall

Overall the newly proposed FNCFNEA is an improvement over the FNEA in the following areas but it must be noted there is no draft FNCFNEA to facilitate a fulsome comparison.

- The FNCFNEA will be jointly developed – details of First Nation participation in this process are yet to be determined.
- Minister Valcourt indicated that day-to-day federal oversight would be replaced by a Joint Council of Educational Professionals. First Nations must be given the opportunity to determine if this is an effective means of oversight. First Nation involvement in establishing the mandate and composition of this Council must be considered.
- As per Chiefs of Ontario Resolution 13-46 the Chiefs-in-Assembly confirm our obligation to assert our inherent jurisdiction over the education of our Peoples – the proposed FNCFNEA purports to

respect and not hinder inherent and Treaty rights, which sidelines this jurisdiction rather than making it central to the Act – full analysis on this must ensue.

- Postings on the federal website indicate that the FNCFNEA will still establish minimum education standards consistent with provincial standards, establish roles and responsibilities for First Nation education administrators and repeal the provisions in the *Indian Act* related to residential schools – details on how much remains unchanged from the original proposal for the FNEA must be sought.

## Funding

According to the federal government website posting their commitment to adequate stable, predictable and sustainable funding includes:

- The replacement of the complex structures now in place with a statutory funding stream (which will provide funding for language and culture programming) that will have a reasonable rate of growth; transition funding to support the new legislative framework; and funding for long-term investments in on-reserve school infrastructure.

Specified funding commitments include:

- **\$1.252B over three years, beginning in 2016-17 and increasing annually thereafter by a 4.5% escalator.**
  - The lifting of the 2% funding cap is a welcome element of the federal funding commitment.
  - Note – this does not begin until 2016-17 – after the federal election tentatively scheduled for October 2015.
  - Question – will the funding be recycled funding from cuts to representative organizations and the sun-setting of proposal based programs such as the First Nations Student Success Program, Education Partnerships Program, New Paths for Education and High Cost Special Education Program?
  - More details on what this funding will cover and if it is over and above the current \$1.55B provided by the federal government to support First Nations education is required to determine if it will indeed close the funding gap as indicated in the announcement by the National Chief.
- **\$500M over seven years for infrastructure, beginning in 2015-16, when Budget 2012 investments expire.**
  - Question – will this be over and above the \$200M (on average) budgeted per year for on-reserve infrastructure?
  - If so this would provide approximately \$71M per year in additional funding to build and renovate schools across Canada.
  - A desktop analysis undertaken by the Ontario First Nation Technical Services Corporation (OFNTSC) in 2012 revealed that to bring existing First Nation schools in Ontario alone up to provincial standards would require \$242 - \$354 million. Thus the 71 million per year over 7 years will fall significantly short of meeting actual needs.
- **\$160M over four years, beginning in 2015-16 for Implementation Fund/ Education Enhancement Fund**
  - There were no specifics provided in the announcement about how and to whom these funds would be allocated.

## Conclusion

Although the announcement states that Canada and First Nations agree to work together on the passage of the FNCFNEA and jointly develop the associated regulations it is unclear how this agreement came about and how the joint work will be accomplished.

First Nations in Ontario have been adamant that the path forward is not federal legislation but implementation of First Nations' control of First Nations' education through negotiation of nation-to-nation jurisdictional agreements.

Moving forward, clarity must be sought on various elements outlined in this analysis before First Nations in Ontario can be expected to provide consent and/or support for this new approach.