



April 7, 2020

Via email: jean-francois.tremblay@canada.ca

Mr. Jean-Francois Tremblay, Deputy Minister
Indigenous Services Canada
10 Wellington Street, 28th Floor
Gatineau, QC
K1A 0H4

Dear Mr. Tremblay:

Re: COVID-19 - Indigenous Peoples Response

I am writing on behalf of the Canadian Bar Association Aboriginal Law Section (CBA Section) about Indigenous Services Canada's response to COVID-19, in particular as it pertains to Indigenous peoples in Canada. The CBA is a national association of 36,000 lawyers, notaries, law teachers and law students with a mandate to protect the rule of law, promote access to justice and equality, and seek improvements to the law and the administration of justice. The CBA Section includes lawyers specializing in the areas of Aboriginal and Indigenous law from all parts of Canada.

We appreciate ISC's quick action to address some pressing issues that have recently arisen for Indigenous peoples. We offer our suggestions for ongoing decision-making related to the COVID-19 pandemic, in hopes they will be helpful to both ISC and the people that it serves. The CBA Section also offers our timely feedback on future issues as they arise, if the nature of our law practices across Canada may be helpful to ISC planning and decision-making.

Election Requirements and Governance Gap

The CBA Section is concerned about the impact of the initial ISC response to the COVID-19 pandemic, which was to recognize a right to delay band elections but not to extend current office holders' terms in line with that delay.¹ This would create a "governance gap" for many First Nations under the *Indian Act* and *First Nations Elections Act*, and some have since felt pressured to proceed with their elections in spite of the pandemic.²

¹ This [March 26 CBC article](#) cited an acting director in ISC's Indigenous Governance Operations Directorate, saying that First Nations have the right to postpone their elections but not to extend terms of the current leaders. "At the end of the mandate, a First Nation will find itself dealing with a governance gap."

² *Ibid.*

The stringent requirements for the election process may not be feasible or practical for some Indigenous communities. Those requirements include obtaining a list of elderly or at-risk people from health clinics to provide mail-in ballots prior to polling day (which raises health privacy concerns), using more voting tables and enforcing a 10-foot distance between voters.

We appreciate that the ISC has recognized problems with the initial approach to delaying band elections, and is now consulting and supporting Indigenous peoples to develop better-tailored options. We are also aware of the Minister's statement on March 27, that election delays would not have negative financial repercussions for Indigenous peoples during the pandemic.

Self-Isolation

We share concerns about limited supports for Indigenous communities to make elections possible while self-isolating (i.e. support for returning citizens or citizens required to self-isolate). These concerns apply equally to communities exercising legislative authority under the *First Nations Land Management Act*, self-government agreements and other sources of jurisdiction, or settling or implementing claims or land exchanges, where membership voting is required.

There are limited travel options to many remote, northern or rural communities and some communities are now further prohibiting travel into their territory, with some exceptions. We commend the federal government's March 30 announcements, committing to certain measures in this regard for northern and arctic communities, and supporting residents who choose to live on the land during the pandemic.³

Travel options are limited for Indigenous people elsewhere, such as young people returning home from post-secondary schools, or those who cannot find safe housing. For example, Indigenous women and girls who experience violence in their home communities may have nowhere to safely self-isolate in those communities. Funding for safe housing options must be available so people can safely and securely self-isolate in accordance with public health best practices.

While ISC has announced funding to assist in mitigating some of the financial implications of these various impediments to self-isolation, important issues remain.

Self-Governance

We support self-governance for Indigenous communities, including the ability to act to protect their lands, resources and citizenship by limiting who may enter or return to their territories, and to declare states of local emergency.

We suggest changes be considered for the duly convened Council meeting requirements under the current circumstances. Support could be available to Indigenous communities and First Nations for participation in these meetings by conference call or video conference so they can more easily comply with the current public health requirements. Communities should have the flexibility to decide on appropriate measures in their particular circumstances.

For communities and First Nations with property taxation systems and financial administration laws under the *First Nations Fiscal Management Act*, there are concerns about missing deadlines for budgeting, annual reports, audits and other reporting mechanisms, which would put them in direct non-compliance with their laws. COVID-19 will have an impact on their taxpayers, raising questions of whether to extend deadlines for tax payments, even though this too would raise non-compliance issues. These issues are significant for many communities and should quickly and appropriately be addressed by the First Nations Tax Commission and First Nations Financial Management Board.

³ Feds to pay people to be on the land to fight COVID-19 in N.W.T., [National News, March 30](#)

For Indigenous communities that declare a state of local emergency, the federal government should ensure that any agreement with a province or territory to provide emergency management services is fully implemented and that ISC's Emergency Management Assistance Program is operational and running smoothly. At a minimum, we suggest that the federal government issue a statement of support for Indigenous communities' efforts to limit access and request Canadians to comply.⁴

"Real Time" Feedback

We commend the ISC for seeking to rectify the "governance gap" and self-isolation issues discussed above. Some process improvements might help to avoid such issues in future and improve speed and efficiency in finding appropriate resolutions. The CBA Section is willing to respond to further legal developments in this area, including proposed changes to policy, legislation or regulations.

We are pleased to assist ISC in whatever way we can, for example by designating a small group of members from different regions to be a "real-time" sounding board for future ISC proposals. The group could also be a conduit to relay local issues to ISC as they become apparent in our practices. Of course, this would not replace the federal government's obligation to engage directly and urgently with Indigenous leaders to address arising issues or to seek their input about best solutions to the practical problems facing Indigenous communities.

Thank you for your consideration of this letter and your efforts to facilitate and support an effective COVID-19 response as it pertains to Indigenous people in Canada.

Yours truly,

(original letter signed by Gaylene Schellenberg for Cindy Kieu)

Cindy Kieu
Chair, CBA Aboriginal Law Section

cc. Debra Ramsay, debra.ramsay@canada.ca; Nicole Wong Tomchuk, nicole.wongtomchuk@justice.gc.ca

⁴ As a recent illustration, see [online](#).