

First Nations Child & Family Caring Society Approach to Ending Canada's Discrimination and Preventing its Recurrence in First Nations Child and Family Services



The First Nations Child and Family Caring Society (the **Caring Society**) is a national non-profit organization dedicated to ensuring that First Nations children have a fair chance to live safely at home, get a good education, and be healthy and proud of who they are. The Caring Society is a co-complainant along with the Assembly of First Nations (the **AFN**) in a historic Canadian Human Rights Tribunal (the **Tribunal**) case related to Canada's discriminatory conduct in First Nations Child and Family Services and Jordan's Principle (*First Nations Child and Family Caring Society et al. v Attorney General of Canada T1340/7008*). This landmark case has resulted in \$23.43 billion in compensation for victims and an additional approximately \$5 billion per year in services for First Nations children. Canada's discrimination towards First Nations children is deep, severe, and widespread and the Tribunal retains jurisdiction to ensure Canada ceases its discrimination and does not do it again (sometimes called Long-Term Reform).

On December 31, 2021, the Caring Society joined the AFN, the Chiefs of Ontario (**COO**), and Nishnawbe-Aski Nation (**NAN**) in signing an Agreement-in-Principle (the **AIP**) with Canada aimed at ending Canada's discrimination and preventing recurrence through a negotiated settlement (called a Final Settlement Agreement [**FSA**]) which would be put to the First Nations in Assembly and the Tribunal for approval. Unfortunately, Canada continued to not comply with orders regarding Jordan's Principle in a manner that created serious and growing harms for First Nations children, youth, and families. The Caring Society exhausted all reasonable methods within the AIP to get Canada to comply. On December 12, 2023, the Caring Society left the AIP process and filed a non-compliance motion at the Tribunal regarding Jordan's Principle, as it could not ethically allow Canada to shield itself from accountability for its discriminatory conduct in an AIP process that specifically aimed to address that discriminatory conduct.

The Caring Society remains committed to reaching an agreement with the remaining AIP Parties (AFN, COO, NAN, and Canada) on as many matters as possible to end Canada's discrimination and prevent its recurrence. Ensuring Canada honours a potential FSA based on the AIP and its legal obligations is a key focus for the Caring Society. In the spirit of accountability and transparency, the Caring Society wishes to share its approach to Long-Term Reform to end Canada's discrimination and prevent its recurrence.

Background

- A. First Nations children and youth are sacred citizens of their distinct First Nations, and they have a right to fully enjoy their cultures, languages, territories, and rights, including their rights to live free of discrimination and participate in matters affecting them.

- B. We honour the sacred nature of Jordan's Principle named after Jordan River Anderson and thank his spirit and his family for gifting First Nations children, youth, and families with Jordan's Principle.
- C. We acknowledge the calls by residential school Survivors, Sixties Scoop Survivors and the families of Murdered and Missing Indigenous Women, Girls, and 2SLGBTQI+ people in and from the child welfare system, and families of children affected by Canada's discriminatory conduct in Jordan's Principle to honour them by ensuring the discrimination stops and does not harm future generations. These calls are echoed by the Tribunal.
- D. We acknowledge the First Nations Leadership, technical experts, service providers, citizens, and allies, including children and youth, who have worked for what the late Elder Elmer Courchene called "loving justice" for First Nations children over many centuries and set the foundation for the work we do today. We also honour the AFN, co-complainant in the Tribunal case, COO, NAN, and Amnesty International who are Interested Parties, and the Canadian Human Rights Commission (the **Commission**).
- E. The Caring Society takes notice of Canada's long-standing harms toward First Nations children including those in residential schools, the Sixties Scoop, and the past and ongoing discrimination towards First Nations children, youth, and families in this case. Those harms have fully been substantiated by the Tribunal in relation to Canada's conduct in First Nations Child and Family Services and its discriminatory definition and approach to Jordan's Principle in 2016 CHRT 2 and its subsequent orders.
- F. Canada has the sole onus of ceasing its discriminatory conduct in First Nations Child and Family Services and Jordan's Principle and not repeating its discriminatory conduct.
- G. Canada has been ordered, in 2018 CHRT 4, to consult with the Caring Society, the AFN, and the Commission, as well as the Interested Parties, COO and NAN, in a manner consistent with the honour of the Crown and to eliminate the discrimination substantiated in 2016 CHRT 2.
- H. As part of the AIP negotiation process, the Caring Society and the AFN collaborated on a joint document called the *Path Forward* to guide our future work on First Nations Child and Family Services, including the expectation that Canada adhere to the United Nations Declaration on the Rights of Indigenous Peoples' principles of Free, Prior and Informed Consent regarding proposed changes to Canada's First Nations Child and Family Services and Jordan's Principle. Although the Caring Society is now outside of the AIP, the *Path Forward* will continue to inform our approach.
- I. The important work to build a community-based funding approach for Child and Family Services undertaken by the Institute for Fiscal Studies and Democracy (**IFSD**) is nearing completion and is undergoing review by First Nations experts.

- J. IFSD is beginning to work with First Nations and First Nations service providers to inform a robust approach to Jordan's Principle which will be the subject of a future stage of discussions.

1. Purpose and Guiding Principles to Eradicating Discrimination and Preventing Its Recurrence

- 1.1 The Caring Society's goal is to ensure Canada's discriminatory conduct ceases and does not recur so First Nations children, youth, and families who are at risk of, or are experiencing child maltreatment, receive culturally competent, effective, and substantively equal services, supports, and products from providers authorized under First Nations or provincial/territorial or federal legislation to ensure their safety and enable them to thrive.
- 1.2 The Caring Society adopts the following principles to guide Long-Term Reform:
- (i) Respect for First Nations rights and children's rights
 - (ii) Substantive equality (ending discrimination)
 - (iii) Culturally appropriate
 - (iv) Best interests of the Indigenous child
 - (v) Accounting for the distinct nature of the child's community
 - (vi) Needs-based approaches as data becomes available
 - (vii) Addresses the structural drivers of child maltreatment
 - (viii) Accountability and transparency
 - (ix) Enforceability and procedural fairness
 - (x) Accounting for extraordinary circumstances (e.g., extra service pressures associated with the forthcoming compensation roll out, climate disasters, etc.)
- 1.3 The Caring Society respects that this work affects the children belonging to First Nations across Canada and will continue to impact generations to follow. In light of the importance and sacred nature of this work, we will conduct ourselves with respect and dignity and welcome transparency and accountability.
- 1.4 The Caring Society's approach to achieving Long-Term Reform will be guided by evidence-based measures, developed in collaboration with First Nations and First Nations service providers and experts, that are durable and effective to end the discrimination and prevent its recurrence,
- 1.5 The Caring Society is committed to principled, evidence-informed negotiation processes that achieve the goals of non-discrimination towards First Nations children, youth, and families and preventing its recurrence. However, we recognize negotiations in

this case are occurring within the context of the direction of First Nations in Assembly (Resolution 2022 40/2022) and the Tribunal's binding legal orders that Canada is required to follow. Therefore, we will be careful to not compromise existing legal rights of First Nations children, youth, and families and will preserve and build on the gains that First Nations Leadership, children, youth, and families have collectively made via the hard-fought wins at the Tribunal.

- 1.6 The Caring Society, in developing its approach to Child and Family Services, will rely on the Tribunal's orders as a minimum standard and will propose solutions to eliminate discrimination based on evidence that "proves to eliminate the systemic discrimination found in an effective and sustainable manner that responds to the specific needs of First Nations children, families and also communities" (2022 CHRT 41 at paragraph 503).
- 1.7 The Caring Society welcomes the advice of the Expert Advisory Committee on Indigenous Services Canada Reform which has a specific focus of providing recommendations to ensure the discrimination does not recur, as ordered by the Tribunal in 2022 CHRT 8, paragraph 172(6):

Canada shall consult with the Parties and implement the mandatory cultural competency training and performance commitments for employees within Indigenous Services Canada. Canada shall also work with the Parties to establish an expert advisory committee within sixty (60) days of this order to develop and oversee the implementation of an evidence-informed work plan to prevent the recurrence of discrimination. Canada shall take reasonable measures to begin implementing the work plan.

- 1.8 Given Canada's profound record of discrimination and not following its agreements with First Nations (including treaties, legal orders in this case, etc.), the Caring Society will endeavour to ensure that any agreements/orders are sufficiently robust so that First Nations and First Nations service providers have multiple, effective, and accessible measures to address the recurrence of discrimination in a manner where the safety and wellbeing of the child is a paramount consideration and access to justice can be exercised, free from retaliation.

2. Structure and Process

- 2.1 Canada holds an obligation to consult with the Caring Society pursuant to 2018 CHRT 4, regarding the elimination of discrimination and the prevention of its recurrence and the Caring Society, as a co-complainant in the case with the AFN, retains its rights before the Tribunal.
- 2.2 The Caring Society will be guided by the expertise of Leadership and subject matter and technical experts, including through direct input from First Nations Leadership, First Nations youth in and from care, and the National Advisory Committee (which is composed of First Nations technical experts appointed by their respective AFN Regional Chief).

- 2.3 The Caring Society will seek to collaborate with the AIP Parties on the various topics, share its own positions, and welcome alternative views that better achieve the goals of ending Canada's discrimination and preventing its recurrence. In the spirit of transparency and accountability, the Caring Society positions will be presumptively public unless there is sufficient evidence to suggest that a limited confidential space on a specific matter(s) will provide a better outcome for First Nations children, youth, families, and their Nations.
- 2.4 Caring Society documents will be posted on fnwitness.ca.