

Dispute Resolution Process

per the Draft Final Settlement Agreement on the Long-term Reform of the First Nations Child and Family Services Program

[Click here to read the Caring Society's proposed solutions information sheet*](#)

August 13, 2024

(A Glossary of terms is provided at the end of this document)

Key Questions	Parties' Dispute	Claimants' Dispute
Who initiates the dispute?	A Party to the Final Settlement Agreement (FSA): Assembly of First Nations (AFN), Chiefs of Ontario(COO), and/or (NAN) Nishnawbe Aski Nation	A First Nations Child and Family Services (FNCFS) Service Provider: a First Nation, FNCFS Agency, or an entity authorized by a First Nation to deliver services and receive funding under the Reformed FNCFS Program.
What can be disputed in this stream?	A dispute, controversy, disagreement, or claim of a Party that arises out of, relates to, or is in connection with: <ul style="list-style-type: none"> the FSA, including questions regarding its existence, validity, termination, implementation, application, and interpretation and/or breach, other than a Claimant Dispute; a decision by Canada as to whether or how any recommendations of the Reform Implementation Committee (RIC) will be implemented. 	A dispute, controversy, disagreement or claim of an FNCFS Service Provider which arises out of, relates to, or is in connection with: <ul style="list-style-type: none"> the failure to advance the allocation of a particular FNCFS Service Provider as set out in the FSA; the accuracy of an FNCFS Service Provider's funding allocation provided under the FSA; the entitlement of an FNCFS Service Provider to be funded for any amount under the FSA; Indigenous Services Canada's (ISC) decision to deny (in whole or in part) an FNCFS Service Provider's Service Provider Funding Adjustment Request; or ISC's decision to deny (in whole or in part) an FNCFS Service Provider's FNCFS capital funding request.
What cannot be disputed in this stream?	A Parties' Dispute does <i>not</i> include: <ul style="list-style-type: none"> disputes around Canada's decision about whether or how any recommendations contained in the Second Program Assessment Opinion will be implemented; a claim that Canada has failed to obtain or advance the Funding Commitment, or any claim for breach of contract, action in tort, or other claim that Canada has breached the FSA by failing to obtain, appropriate, or make available to FNCFS Service Providers the funding found in the Funding Commitment; a dispute concerning Canada's decision about whether or how to implement any recommendations from the RIC that require an amendment to the FSA. 	A Claimants' Dispute does <i>not</i> include a dispute, controversy, disagreement or claim of an FNCFS Service Provider, including one of the nature listed above, where general damages, damages for discrimination, or punitive damages are sought, or where the FNCFS Service Provider has not consented to resolve the Claimant Dispute by way of the Claimant Dispute Process.
Who are the decision makers?	The President of the DRT (appointed by the Governor in Council on the recommendation of the Minister of ISC following consultation with AFN, COO, and NAN) will appoint a three-person Adjudication Panel, which will be chaired by an Adjudicator who is a lawyer or retired judge. The President, in selecting the panel of Adjudicators, may give weight to Adjudicators' qualifications and expertise as it may relate to the issue brought forward in the dispute.	The President of the DRT will appoint a single Adjudicator whose expertise aligns with the issue brought forward in the dispute. The President of the DRT may choose to appoint an Adjudication Panel if they feel the circumstances, magnitude or importance of the dispute warrant it. In this case, the Adjudication Panel will also be chaired by an Adjudicator who is a lawyer or retired judge.
What is the process?	<ol style="list-style-type: none"> Within 60 days of the Party becoming aware of the circumstances giving rise to the Parties' Dispute, a Party can deliver a Parties' Dispute Notice to all other Parties and file it with the Dispute Resolution Tribunal (DRT). The Notice will indicate the issue being brought forward and the relief sought. Within 20 days of receiving the Parties' Dispute Notice, the President of the DRT will appoint the Adjudication Panel. Within 30 days of receiving the Parties' Dispute Notice, each other Party will deliver a written statement of its response with respect to the Parties' Dispute Notice or indicate that it will not participate. Participating Parties may choose to enter into mediation at any time. 	<ol style="list-style-type: none"> A Claimant can work with an appointed Navigator who can assist with technical and procedural information about the Claims process. Within 90 days of receipt of the action from ISC that has given rise to the Claimant Dispute, a Claimant must submit a written Claimant Dispute Notice to the DRT, which indicates the issue being brought forward and the relief sought. The President of the DRT, alongside the Administrative Team, will ensure duty counsel is in place for claimants, and will recommend, in writing, to Claimants to seek independent legal advice about the implications of filing a Claimant Dispute. After receiving independent legal advice (or signing a formal waiver of independent legal advice), the Claimant will provide written confirmation to the President of the DRT advising them of their intent to go forward with the Claimant Dispute and, in doing so, waiving their right to bring this complaint to the Canadian Human Rights Commission. ISC will have 30 days to deliver its response once the Claimant Dispute Notice has been delivered.

* fncaringsociety.com/publications/letting-canada-hook

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	<p>5. Within 20 days of receiving the Participating Parties' responses, the Adjudication Panel will convene a pre-hearing meeting of the Participating Parties to reach an agreement on procedure, including timelines, sharing documents, etc.</p> <p>6. No later than 30 days before a hearing commences, the Participating Parties will exchange a list of all documents they will each introduce at the hearing and the name and contact information of any witness, with a summary or statement of the witness's evidence.</p> <p>7. The hearing will take place. Parties can choose to settle if they all agree.</p> <p>8. If Parties do not settle, the Adjudication Panel will make its final Parties' Dispute Decision as soon as possible, and in any event, no later than 60 days after the conclusion of the Parties' Dispute hearing.</p>	<p>5. Within 20 days of the Claimant confirming their intention to proceed, the President will appoint an Adjudicator. If all parties to the Claimant Dispute agree, they may enter into mediation as opposed to resolution via the Adjudicator.</p> <p>6. Within 20 days of the delivery of Canada's response, the Adjudicator will convene a pre-hearing meeting of the Parties to reach an agreement on procedure, including timelines, sharing documents, etc.</p> <p>7. The hearing will take place. The Adjudicator will examine Canada's decision giving rise to the Claimant Dispute, based only on the information Canada had, and will consider the views of the Claimant and any associated First Nation, as well as their distinct community circumstances.</p> <p>8. The Adjudicator may seek the advice via a written report of one or more appointed, independent experts on the specific issues of the Claimant Dispute. This will be shared with the Claimant and ISC, who can reply to it and cross-examine the expert.</p> <p>9. The Adjudicator will make its Claimant Dispute Decision as soon as possible, and in any event, not later than 60 days after the conclusion of the hearings. Canada will maintain a public registry of Claimant Dispute Decisions, subject to confidentiality orders by the Adjudicator.</p>
Is the hearing public?	Parties' Disputes are presumptively open to the public; however, an Adjudication Panel may order that all or part of a hearing be closed to the public.	The Adjudicator or Adjudicating Panel will determine the level of confidentiality, taking into account recommendations from the Cultural Officer, whose role it is to ensure proceedings are culturally appropriate.

Structure of the Dispute Resolution Tribunal

President of the Dispute Resolution Tribunal

- Appointed by Governor in Council on the recommendation of the Minister of ISC following consultation with AFN, COO and NAN.



Adjudicators

- Appointed by the President of the DRT.
- Persons who have experience in the matters addressed in the FSA; experience with First Nations governments or social programs, child welfare, child wellbeing; practicing lawyers in good standing or retired judges; or persons who have demonstrated objectivity, reliability, and sound judgement.

EXEMPTIONS IN THE DRT'S JURISDICTION

The DRT does not have jurisdiction to:

- amend any provision of this FSA;
- award general damages, punitive damages, or damages for discrimination;
- determine a claim alleging that the Parliament of Canada has not appropriated sufficient funding to satisfy the funding commitment of this FSA;
- expand its own jurisdiction;
- reduce the existing funding of any FNCFS Service Provider or the funding entitlement of an FNCFS Service Provider under this FSA;
- reduce the level of the overall funding commitment;
- make orders in the Claimant Dispute Process that requires or results in systemic change;
- order Canada to fund new components of the Reformed FNCFS Funding Approach or increase funding for existing components of the Reformed FNCFS Funding Approach, unless otherwise set out in this FSA; or
- introduce additional indexation factors (for example, new methods of calculation of population growth or inflation).

Glossary

- AFN** Assembly of First Nations
COO Chiefs of Ontario
DRT Dispute Resolution Tribunal
FNCFS First Nations Child and Family Services
FSA Final Settlement Agreement
ISC Indigenous Services Canada
NAN Nishnawbe Aski Nation
RIC Reform Implementation Committee