Docket: T1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and ASSEMBLY OF FIRST NATIONS

Complainants

– and –

CANADIAN HUMAN RIGHTS COMMISSION

Commission

– and –

ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous Services Canada)

Respondent

– and –

CHIEFS OF ONTARIO,
AMNESTY INTERNATIONAL CANADA and
NISHNAWBE ASKI NATION

REPLY SUBMISSIONS OF THE COMPLAINANT, FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA

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PART I - PREFACE

1. Since commencing this proceeding, the Caring Society has had one overarching goal: to end the discrimination against First Nations children in Canada's First Nations Child and Family Services Program ("**FNCFS Program**") and in its implementation of Jordan's Principle, and to prevent its recurrence. The Caring Society has been consistent: achieving long-term reform is to be measured at the level of the child, based on evidence, and cannot be achieved by any dollar figure alone. Rather, the structure of funding and appropriate safeguards will be key to ensuring that the discrimination is resolved and does not recur.

2. There is a clear path forward. The research is now complete, First Nations positions regarding the progress required to move forward are clear, there is a discrete list of outstanding issues, and the parties—other than Canada—are ready to discuss those issues to make swift progress. There is also urgency to move forward in the best interests of First Nations children, for whom time is passing. Indeed, children born in 2016, the year of the Tribunal's Merits Decision (2016 CHRT 2), will be starting Grade 4 this year and are halfway through their childhood.

3. It has been over **three years** since the Tribunal's decision on the consent motion made by the Caring Society, the Assembly of First Nations ("**AFN**") and Canada in 2022 CHRT 8, which meant to set the path forward for long-term reform by providing for updated interim relief and research to provide the evidence to inform long-term reform. That part of remedial proceedings culminated in a Draft Final Settlement Agreement ("**Draft FSA**") that provided for approval by First Nations leadership prior to seeking approval by this Tribunal. Many but not all First Nations in Ontario accepted the agreement, while, by an overwhelming margin, First Nations outside of Ontario did not. It has now been more than **seven months** since First Nations leadership exercised the decision-making authority that Canada, the AFN, the Chiefs of Ontario ("**COO**") and the Nishnawbe Aski Nation ("**NAN**") agreed they should have. Yet Canada has refused to engage with the parties regarding the discrete areas for improvement that First Nations leadership has identified for further discussion or to seek direction from the Tribunal regarding the elements that Canada says exceed the scope of the complaint.

4. Instead, Canada responds to this motion by: misconstruing the relief the Caring Society seeks, pleading that it has discharged all of its obligations (despite long-term reform remaining

unachieved), casting aspersion against the Caring Society for its principled disagreement with the limitations in the Draft FSA, and pinning all of long-term reform for First Nations outside of Ontario to the Tribunal's decision on an agreement that many First Nations in one region were prepared to accept. This approach makes illusory the very choice that the authors of the Draft FSA purported to provide to First Nations leadership.

5. With this backdrop in mind, these reply submissions seek to distill what is at issue on this motion and the remedial options available to the Tribunal. They are organized in the following six parts: **(a)** Canada's mischaracterization of the relief sought; **(b)** Canada's failure to propose a viable way forward; **(c)** Canada's reliance on past consultation efforts; **(d)** the inconsistency of Canada's statements regarding the Consultation Protocol; **(e)** Canada's and COO's submissions regarding the honour of the Crown; **(f)** Canada's allegations regarding the Caring Society.

PART II - SUBMISSIONS IN REPLY

A. Canada mischaracterizes the relief that the Caring Society seeks

6. Throughout its factum, Canada suggests that it is being asked to "consult indefinitely or until the Complainants are satisfied and their desired outcome is reached."[1] It frames the Caring Society's approach as involving "an indefinite interim reform period with ongoing CHRT oversight, indefinite agency involvement, indefinite payment of actuals, indefinite consultations and uncapped consultation funding".[2] In so doing, Canada presents a false remedial choice to the Panel: to either order indefinite consultations or do nothing at all.

7. Neither the Caring Society nor the other parties have sought the relief with which Canada takes issue. The Caring Society does not seek endless consultations and, in fact, opposed this type of delaying tactic, advanced by Canada in the motion that led to 2021 CHRT 41 and at other times during this complaint.[3] The Caring Society wants to see the issues related to long-term reform resolved as soon as possible and believes a revised national agreement is within reach.[4] It has brought this motion precisely because Canada's abandonment of long-term reform outside of Ontario will result in indefinite interim reform and the maintenance of the *status quo*. As it has

[1] AGC Factum at para 43.
[2] AGC Factum at para 85.
[3] See e.g. 2021 CHRT 41 at paras 113-114, 118-120, and the Panel's conclusion at paras 176, 181 and 215.
[4] Letter from Caring Society to Panel dated March 24, 2025, p. 9.

been throughout this proceeding, the Caring Society remains focused on ending the discrimination against First Nations children and families and preventing its recurrence.

8. **First,** the Tribunal's orders can set parameters on consultation that ensure that long-term reform progresses swiftly. In its Notice of Motion, the Caring Society sought a consultation order in line with the Tribunal's Order of February 1, 2018 (2018 CHRT 4). The proposed consultation order gives the parties space to set the parameters for dialogue, but sets clear reporting deadlines on progress and leaves room for the Tribunal to determine discrete outstanding issues that the parties cannot agree on. This is consistent with the Tribunal's reflection in 2021 CHRT 41 that consultations (in that context, regarding major capital) could take place with "a plan with specific targets and deadlines to complete those consultations."[5]

9. It is, of course, the Caring Society's hope that a renewed round of dialogue can result in a modified agreement that will achieve long-term reform in line with the Tribunal's requirements—as it did for the final agreement on compensation. But at the very least, these discussions can allow the parties to **(a)** reach agreement on some or most of the outstanding issues; and **(b)** reduce what issues remain outstanding, so that if there is an impasse, the parties can seek a determination from the Tribunal on the remaining discrete issues.

10. The foregoing approach is in keeping with how the Panel has managed the remedial phase of this proceeding in the past and with the dialogic approach approved of by the Federal Court.[6] Such an approach is preferable to requiring the Panel to decide whether to entrench one party's contested comprehensive proposal or to choosing between competing versions of holistic, wholly contested proposals presented by each party.

11. By contrast, Canada's inertia is inconsistent with Prime Minister Carney's public statement on April 25, 2025 that:

> We recognize that ongoing reform of the First Nations child and family services program is critical to ensuring the next generation of First Nations children no not experience the same harms that have occurred for too long. […] I think we need to get back to the table with determination to achieve those two fundamental

[5] 2021 CHRT 41 at para 304.
[6] 2021 FC 969 at para 136.

> objectives, long-term funding and long-term reform of the system. There is a way to get there. We're going to be at the table and be there to serve it.[7]

12. **Second**, a return to the table does not mean restarting from scratch. In its letter to the Panel dated March 24, 2025, the Caring Society highlighted that "[m]uch of the work… has been completed".[8] Indeed, the Chiefs in Assembly raised discrete concerns with the Draft FSA, which as noted in the March 17, 2025 factum, have been distilled to ten high-level outstanding issues by the National Children's Chiefs Commission ("**NCCC**"), with associated proposals on how to address them.[9]

13. The parties have effective tools to address these issues. In particular, the research is now complete: the Institute of Fiscal Studies and Democracy ("**IFSD**") completed its final phase of research in relation to FNCFS and shared the pre-production draft on March 3, 2025.[10] Moreover, the First Nations-in-Assembly have established a representative negotiating structure that will allow for efficient, transparent discussions—thereby avoiding the delays incurred by years of confidential negotiations toward a draft agreement that did not reflect First Nations' concerns.[11]

14. The Caring Society is requesting an order from the Tribunal so that Canada engages in dialogue on the readily identifiable outstanding issues, based on the existing research. This is not open-ended, indefinite consultation. Canada's complaints are similar to its characterization of the Tribunal's decisions as an "'open-ended series of proceedings'", a characterization that Favel J. soundly rejected.[12]

B. Canada asks for the Tribunal to liberate it from further consultation, but it has not proposed a viable path forward

15. Canada's factum is most noteworthy for what it does not say. While spending much of its time arguing against relief that is not actually being sought and making bald allegations about the

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[7] Leanne Sanders, Sav Jonsa & Fraser Needham, "Carney tells AFN he's 'committed' to reforming discriminatory First Nations child welfare system" (25 April 2025), online: *APTN*.
[8] Letter from Caring Society to Panel dated March 24, 2025, p. 9.
[9] Caring Society Factum dated March 17, 2025 at para 41, citing Letter from Chief Frost to PM Trudeau, Minister Hadju and Minister Anandasangaree (February 21, 2025), Exhibit "F" to Affidavit of Duncan Farthing-Nichol ["Farthing-Nichol Affidavit"].
[10] Letter from Caring Society to Panel dated March 24, 2025, p. 4.
[11] See e.g. AFN Resolution 60/2024, Exhibit "E" to Affidavit of Amber Potts.
[12] 2021 FC 969 at para 62.

Caring Society, Canada offers no meaningful discussion of an alternative path forward. Canada's proposal is clearest in its final paragraph: it suggests that it has discharged its consultation obligations, that the Tribunal should not order any more discussion, and that "[i]t is time to move forward with long-term reform, starting with COO and NAN's joint motion to approve the Ontario Final Agreement."[13]

16. Canada asks to be discharged from future consultation, yet it proposes to take no action on long-term reform in the rest of Canada until some unstated future time, after moving forward with long-term reform in Ontario. This is consistent with a recent letter sent from ISC's Deputy Minister, suggesting that future discussions between the parties should focus on "the implementation of the Tribunal's existing orders".[14] This approach is both troubling and perplexing. Canada expressly provided for First Nations decision-making in the Draft FSA and obliged all parties to that agreement to make best efforts to secure the endorsement of First Nations leadership. It was readily foreseeable that First Nations would have feedback on the first draft that was put to a vote. Yet when leadership exercised its due diligence and raised discrete issues within the draft, Canada turned its back on them and now asserts that any further consultation would be "unproductive".[15]

17. It is unclear how far long-term reform in Ontario will have to progress before Canada is prepared to turn back to the rest of the country. Canada effectively proposes to place long-term reform on ice for an indeterminate period. Nor is it clear how Ontario's progress will impact the rest of Canada.[16]

18. Regardless of its intentions, Canada's decision to make any progress on long-term reform in the rest of Canada conditional on the outcome in Ontario necessarily raises the stakes of the motion regarding the Ontario Final Agreement. This approach is not consistent with good faith

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[13] AGC Factum at para 88; see also paras. 4, 48.
[14] Letter from Deputy Minister of ISC to CS, AFN, COO and NAN (February 6, 2025), Exhibit "H" to Farthing-Nichol Affidavit.
[15] AGC Factum at para 4.
[16] In a footnote to its factum, Canada recognizes that the Panel would not be asked to determine the applicability of the Ontario Final Agreement outside of Ontario. Yet it remains vague on how it will use the Panel's decision. In its factum, it simply suggests that the Panel could provide advice on "whether the unanimous consent of every First Nation is required before the parties can move forward" (AGC Factum, fn 1). Yet, in its prior letter to the Panel, dated March 17, 2025, Canada suggested that the Panel's substantive analysis of the Ontario Agreement would inform next steps on national reform (AGC Letter, at p 2, 3).

negotiations, nor is it fair to those outside of Ontario, which may then be forced into having to justify regional derogations from Canada's preferred framework, as opposed to seeking a framework that is designed with their circumstances in mind. This is the opposite of what the Tribunal contemplated in 2016 CHRT 16 when it ordered Canada to "determine budgets for each individual FNCFS Agency based on an evaluation of its distinct needs and circumstances".[17] Further, due to this uncertainty, it is no surprise that a number of First Nations outside of Ontario have sought intervener status to underscore how principles in the Ontario FSA may not be appropriate or effective in other regions.

19. In light of Canada's factum, the Panel is faced with competing approaches: on the one hand, a proposed order for Canada to re-engage on long-term reform to narrow the outstanding issues in the rest of Canada, resulting either in a deal that ends Canada's discrimination and prevents recurrence or in discrete issues being directed to the Panel for resolution, consistent with the dialogic approach; and on the other hand, a greenlight for Canada to only assist the First Nations that voted in favour of its preferred agreement, while ignoring First Nations children, youth and families in the rest of Canada until some unstated point in the future.

C. Canada cannot rely on past consultation as a license to do nothing

20. With regard to the idea that Canada has sufficiently consulted the parties, Canada cannot rely on past actions to deflect from its responsibility for the current impasse: Canada agreed to subject the Draft FSA to a vote of First Nations-in-Assembly. First Nations considered the draft agreement and, after deciding on a process to seek revisions to the Draft FSA, raised ten discrete points for discussion. In response, Canada has, for months now, refused any substantive discussion of these concerns while proposing no other path forward. Such an approach is irreconcilable with the need to "act in such a way as to maximize the chances of success".[18]

21. Moreover, Canada's list of consultation efforts is misleading. While it cites various venues for consultation, the reality is that the National Advisory Committee has not met for 15 months[19]

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[17] 2016 CHRT 16 at para 160(A)(1)(2).
[18] *Takuhikan* at para 191.
[19] As is noted in First Nations in Assembly Resolution 60/2024, at preamble recital O, "[t]he NAC has not: i. completed its review of the proposed funding model for First Nations agencies; ii. begun to review the proposed funding model for First Nations without agencies; or iii. met since February 8, 2024" (filed with the Tribunal by the AFN on December 9, 2024, see Affidavit of K. Quintana-James at para 6 ["Quintana-James Affidavit"].

and the Consultation Committee on Child Welfare has not met for several years. Concerns regarding the Expert Advisory Committee's ability to function are reflected in First Nations-in-Assembly Resolution 60/2024, which calls on the AFN Executive Committee "to support the EAC to conduct its work freely as an independent expert body".[20]

22. Finally, insofar as Canada seeks to deflect blame by criticizing the Caring Society's conduct, these submissions are addressed at Section F.

D. Canada's position on its contractual commitments is inconsistent with its own statements

23. Canada suggests that the Consultation Protocol has been superseded by the Agreement-in-Principle ("**AIP**") and that it has already satisfied its obligations under the Protocol.[21] This is not consistent with its own prior communications. For example, in February, ISC's Deputy Minister committed to fulfilling its obligations under the Consultation Protocol, albeit while seeking to narrow the scope of the protocol to the implementation of the Tribunal's existing orders.[22] Accordingly, even on ISC's most senior official's view, Canada remains contractually bound to engage in discussions.

24. Regardless of whether Canada has breached its contractual obligations, it remains the case that Canada has not fulfilled the obligations directed by the Tribunal to cease discrimination, going as far back as 2016 CHRT 2. Accordingly, it is within the Tribunal's remedial jurisdiction to order additional consultation on outstanding issues, so as to move the parties closer to the objectives that it has repeatedly set out in its decisions.

E. Canada and COO have taken a narrow view of the honour of the Crown

25. At the outset, it is worth distilling the role of the honour of the Crown on this motion. The parties agree that the ultimate source of the Tribunal's orders is its jurisdiction under the *CHRA*. Moreover, the Tribunal has already identified the role of the honour of the Crown in this proceeding. In its unchallenged Merits Decision (2016 CHRT 2), the Panel recognized that the

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[20] First Nations in Assembly Resolution 60/2024 at para 15 (filed with the Tribunal by the AFN on December 9, 2024, see Quintana-James Affidavit at para 6).
[21] AGC Factum at paras 51–52.
[22] Letter from Deputy Minister of ISC to CS, AFN, COO and NAN (February 6, 2025), Exhibit "H" to Farthing-Nichol Affidavit.

honour of the Crown was relevant to the "context of the Panel's analysis".[23] It also previously ordered Canada to "enter into a protocol… on consultations to ensure that consultations are carried out in a manner consistent with the honor of the Crown".[24] That order was also uncontested. The parties' disagreement concerns whether any duties flowing from the honour of the Crown form part of the context of the present motion and, more generally, how the honour of the Crown should guide the Panel's exercise of its remedial authority on this motion.

26. The duties flowing from the honour of the Crown serve as context for the stakes of this motion and the severity of Canada's conduct. Indeed, the ultimate beneficiaries of the consultation that the Caring Society seeks on this motion are First Nations children, families and communities; this connection to First Nations rightsholders is all the more clear given the involvement of the NCCC, comprised of Chiefs delegated by the First Nations-in-Assembly.[25]

27. This being said, the Caring Society makes the following submissions to address certain of Canada's and COO's statements regarding the duties flowing from the honour of the Crown.

28. ***The duty to consult and accommodate.*** COO and Canada argue that the "duty to consult and accommodate" is not engaged in this case.[26] To avoid confusion, the duty to consult and accommodate is the name of a specific duty that arises when Canada contemplates conduct that might adversely affect a potential Aboriginal or treaty right.[27] Canada's and COO's arguments are a red herring, as this is not a duty that was raised by the Caring Society. Rather, Canada's obligation to engage on long-term reform arises from other duties rooted in the honour of the Crown.

29. ***The duty of diligent implementation***. Canada and COO do not address the Caring Society's submissions on the duty of diligent implementation flowing from the honour of the Crown, except indirectly. Irrespective of the source of the duty, Canada has conceded that it "must act in good faith and diligently implement the Tribunal's orders".[28] Whether this duty is sourced solely in the

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[23] 2016 CHRT 2.
[24] 2018 CHRT 4 at para 400.
[25] Letter from AFN to Panel dated March 31, 2025.
[26] AGC Factum at para 61; COO Factum at para 43–44, 46–52.
[27] *Haida Nation v British Columbia (Minister of Forests),* 2004 SCC 73 at para 35.
[28] AGC Factum at para 62.

Tribunal's orders or strengthened by the context of the honour of the Crown, the outcome is the same: Canada must diligently implement the Tribunal's order to eradicate discrimination. The question, therefore, is whether Canada's refusal to take any action on long-term reform in most of Canada until some unstated point in the future constitutes diligent implementation of the Tribunal's orders. It does not.

30. ***Duties arising from contractual agreements that attract the honour of the Crown.*** Canada suggests that the negotiation of a draft agreement on long-term reform does not meet the two-part test in *Takuhikan* because, regarding the first element, "the basis for consultations is not Indigenous difference with a collective dimension. This matter concerns individual rights under the *Canadian Human Rights Act*, not collective rights as asserted by s. 35 rights holders".[29] The suggestion that there is no collective dimension to the negotiation of an agreement on long-term reform is untenable. As the Panel noted, "[i]ndividual and collective rights are not mutually exclusive in nature."[30]

31. The consultation sought will undoubtedly concern remedying violation to individual human rights, but long-term reform necessarily entails systemic shifts that are designed to give effect to each group's "Indigenous difference, which reflects its distinctive philosophies, traditions and cultural practices"[31] or, as the Tribunal put it in its Merits Decision (2016 CHRT 2) "to consider the distinct needs and circumstances of First Nations children and families living on-reserve – including their cultural, historical and geographical needs and circumstances – in order to ensure equality in the provision of child and family services to them."[32] The bright line that Canada now seeks to draw does not reflect the spirit of what the parties were seeking to achieve in negotiating long-term reform.

32. Moreover, Canada suggests that because the prospective agreement would address individual rights, it "would not be the basis for furthering collective rights concerning self-government" under the second element in *Takuhikan.*[33] With respect, Canada's own public summary of the agreement on long-term reform indicates that the reforms to the FNCFS program

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[29] AGC Factum at para 69.
[30] 2022 CHRT 41 at para 464.
[31] *Quebec (Attorney General) v. Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 at para 161.
[32] 2016 CHRT 2 at para 465.
[33] AGC Factum at para 69.

are designed to "respect the right to self-determination of Indigenous peoples".[34] It is also astonishing for Canada to suggest that its negotiation of reforms to the child welfare system does not, per *Takuhikan,* "relate to an Indigenous right of self-government" when, by statute, it has affirmed that First Nations have a right of self-government in the very area under discussion.[35]

33. In sum, the duties flowing from the honour of the Crown serve as context for why Canada's current conduct requires the Tribunal's involvement. As the Caring Society made clear in its initial factum, the lens of the honour of the Crown reinforces that Canada's refusal to engage regarding long-term reform outside of Ontario "is incompatible with the letter and spirit of the Tribunal's orders".[36]

34. As noted above, Canada cannot rely on earlier consultation, including committing to seeking approval of the Draft FSA from First Nations-in-Assembly, when it now jeopardizes all further progress by refusing to respond to First Nations' concerns arising from that process. Canada also relies on cases regarding the reciprocal duties on Indigenous groups involved in consultation, in order to suggest that the Caring Society frustrated consultations. These submissions are addressed below.

F. Canada's arguments regarding the Caring Society are unhelpful and unsupported by the record

35. In its factum, Canada repeatedly deflects blame onto the Caring Society. This focus pays no heed to First Nations leadership's independent decision to require revisions to the process by which the Draft FSA was negotiated, to its content and to the calls in the various resolutions for Canada to come back to the table. Nor does it explain why Canada continues to refuse to consult with anyone regarding Long-Term Reform outside Ontario, including the AFN and the NCCC. Canada's conduct is not consistent with its own asserted pretenses.

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[34] "Executive summary of the Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program", Exhibit "6" to Affidavit of Brittany Matthews affirmed January 12, 2024.
[35] *Takuhikan* at para 163; *An Act Respecting First Nations, Inuit and Métis children, Youth and Families*, SC 2019, c 24, s. 18(1).
[36] Caring Society Factum dated March 17, 2025 at para 93.

36. While various vague allegations are interwoven throughout, Canada's four criticisms of the Caring Society are set out at paragraph 83 of its factum. To correct the record, each will be addressed in turn.

37. **First,** Canada faults the Caring Society for "imposing unreasonable conditions on the negotiations, including refusing to adhere to the negotiations' confidentiality".[37] The only evidence cited is paragraphs 44–45 of the affidavit of Duncan Farthing-Nichol, which reference the Caring Society's intention to post its positions on long-term reform publicly, and a corresponding concern from Canada that such posting could reveal Canada's positions "by inference".[38] As the record before the Tribunal shows, particularly in the remedial proceedings leading to 2025 CHRT 6, the Caring Society has been committed to respecting settlement privilege throughout this proceeding. Rather, it has been other parties who have selectively breached settlement privilege in order to cast aspersions on the Caring Society. In any event, the Caring Society does not agree that publicly discussing its own policy views on long-term reform (which are already in the public discourse by virtue of this litigation), including regarding research in which community members participated, would in any way breach the confidentiality interests of other parties.

38. **Second,** Canada accuses the Caring Society of "abandoning negotiations and refusing to return to the negotiation table, despite repeated encouragement from Canada and the other parties".[39] This does not reflect the Caring Society's reason for to exiting the AIP, nor how it continued to seek to contribute constructively to long-term reform. The Caring Society followed the AIP's express terms, which provided that it could not continue under the AIP process while simultaneously bringing the non-compliance proceedings regarding Jordan's Principle implementation that led to 2025 CHRT 6 (which substantiated many of the Caring Society's concerns). As covered in detail in other submissions,[40] the Caring Society advised the AIP parties of its interest in continuing to participate in long-term reform negotiations outside of the AIP. While terms of its participation were not agreed to, the Caring Society continued to provide its positions to the AIP Parties, including by providing feedback on the Draft FSA in April 2024 prior

[37] AGC Factum at para 83a.
[38] Farthing-Nichol Affidavit at paras 44–45.
[39] AGC Factum at para 83b.
[40] See e.g. Caring Society Factum dated March 17, 2025 at paras 30-36.

to the Draft FSA being made public and keeping an updated positions document that reflected expert views on long-term reform and could assist efforts toward an agreement.[41] It is not necessary for the Panel to wade into this debate. Indeed, these discussions substantially occurred behind closed doors under settlement privilege, meaning that the Panel does not have a record upon which to determine what occurred.

39. **Third,** Canada alleges that the Caring Society developed "their own new approach to long-term FNCFS Program reform that repudiated the Agreement in Principle's approach, and a new set of demands that would have required a significant expansion of Canada's negotiation mandate beyond the terms of the Agreement in Principle, the Draft Final Agreement or even the scope of the complaint".[42] Canada has provided nothing concrete to substantiate the suggestion that the Caring Society's proposed amendments to the FSA would require a "significant expansion of Canada's negotiation mandate". Rather, the Caring Society provided constructive points to ensure that the ultimate FSA would remedy discrimination and reflect the concerns from First Nations, First Nations service-providers and agencies on the ground. Canada chose never to engage with those suggestions.

40. **Fourth** and finally, Canada takes issue with the Caring Society allegedly "intervening in opposition to the Draft Final Agreement, including by urging First Nations to vote against the Draft Final Agreement and advocating in favour of retaining claims-based interim funding approaches and having the Tribunal retain oversight of the FNCFS Program".[43] At the outset, there is nothing improper about the Caring Society providing its views on the weaknesses of the Draft FSA, particularly given that it provided those same views to the AIP parties both before and after the public release of the draft. To the contrary, it was necessary for First Nations to hear a range of viewpoints in order to make an informed decision. This is consistent with the Panel's own concerns at an earlier stage of these proceedings that First Nations members were not sufficiently

[41] Affidavit of C. Blackstock affirmed March 27, 2024 at paras 88–89; Affidavit of C. Blackstock affirmed January 12, 2024 at paras 19, 34, 39, 74, and 175; Farthing-Nichol Affidavit at para 46; correspondence from S. Clarke to Canada, COO, NAN (September 12, 2024), Exhibit "B" to Quintana-James Affidavit; Letter from S. Clarke to Canada (October 29, 2024), Exhibit "E"
to Quintana-James Affidavit.
[42] AGC Factum at para 83c.
[43] AGC Factum at para 83d.

informed about the whole truth of the first draft compensation settlement agreement in order to "assist them to make an informed decision."[44]

41. Further, Canada's allegations undermine the autonomy of First Nations and their capacity to make decisions for themselves. For example, Canada baselessly suggests that the Caring Society induced "expectations by First Nations that Canada is obliged to meet the Caring Society's demands beyond the Agreement in Principle".[45] It provides no citation for this assertion. In reality, Chief Frost's letter on behalf of the NCCC outlined First Nations' discrete areas of concern and their own expectations for dialogue going forward.

42. More generally, Canada's characterization of the Caring Society's conduct is not credible. For instance, at paragraph 11 of its factum, Canada accuses the Caring Society of treating the AIP as non-binding four days after it was signed, presumably to suggest that the Caring Society was not committed to achieving a final resolution. In support of this allegation, Canada cites to a January 4, 2022 press release from the Caring Society that is not in the record. A review of the press release hyperlinked at footnote 10 of Canada's factum reveals that that the Caring Society was emphasizing that the AIP was the first step toward a binding agreement on long-term reform and, indeed, that it called for action to ensure that a final binding agreement would be reached later in 2022. The Caring Society has consistently pushed to advance discussions on long-term reform in an evidence-based manner. Canada itself recognizes the non-binding nature of the AIP later in its submissions, at paragraph 70, where it argues against the application of duties arising from the honour of the Crown because "the parties have not come to a binding agreement with respect to national reform".[46]

43. It is now 2025 and First Nations children and families still do not have justice. The Caring Society remains steadfast in its belief that an agreement to eradicate discrimination and prevent its recurrence is within reach—if Canada comes back to the table and listens to the concerns raised by First Nations themselves.

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[44] 2022 CHRT 41 at para 407.
[45] AGC Factum at para 84.
[46] AGC Factum at para 70.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of May, 2025.

May 22, 2025

David Taylor
Sarah Clarke
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PART III - LIST OF AUTHORITIES

Legislation and Statues	
1.	*An Act Respecting First Nations, Inuit and Métis children, Youth and Families*, SC 2019, c 24
Case Law	
2.	*Canada (Attorney General) v FNCFCSC,* 2021 FC 969
3.	*FNCFCSC et al v Attorney General of Canada*, 2016 CHRT 2
4.	*FNCFCSC et al v Attorney General of Canada,* 2018 CHRT 4
5.	*FNCFCSC et al v Attorney General of Canada,* 2021 CHRT 41
6.	*FNCFCSC et al v Attorney General of Canada,* 2022 CHRT 41
7.	*Haida Nation v British Columbia (Minister of Forests),* 2004 SCC 73
8.	*Quebec (Attorney General) v. Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39
Other Sources	
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