

**CANADIAN HUMAN RIGHTS TRIBUNAL**

BETWEEN:

**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 and Northern Affairs Canada)**

Respondent

– and –

**CHIEFS OF ONTARIO and NISHNAWBE ASKI NATION  
and AMNESTY INTERNATIONAL CANADA and GEORGINA ISLAND FIRST  
NATION and TAYKWA TAGAMOU NATION**

Interested Parties

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AND NISHNAWBE ASKI NATION - PUBLIC VERSION**

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## PART I – OVERVIEW

*It's not perfect....There will be some lack there, but that's the first step. You can make it better. We can make it better as we go on with this arrangement. That's what I believe in. I want to help my children that are affected in their families. I will have the financial resources to do it. I'm seeking your support so I can help my children, my granddaughters, and my grandchildren because I was impacted back in the 70's and 60's, you know from residential school... impacts of my family. I was a little boy. I was a little boy, you know standing outside in mid-Winter. My family having problems. I don't want to see, I don't want to see my children, my grandchildren go through this, and that's why I fight so hard to try to get this passed. Miigwetch, miigwetch.*

Chief Archie Wabasse of Wunnumin Lake First Nation speaking at the COO Special Chiefs Assembly on October 10, 2025 on the motion to ratify the *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario*<sup>1</sup>

1. Through years of negotiation, Chiefs of Ontario (“COO”), Nishnawbe Aski Nation (“NAN”), and Canada (collectively, the “Moving Parties”) have developed the *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario* (the Ontario Final Agreement or the “OFA”) and the *Trilateral Agreement in Respect of Reforming the 1965 Agreement* (the “Trilateral Agreement”).<sup>2</sup> The OFA and the Trilateral Agreement are a First Nations-led, evidence-informed, consensual path for remedying racial discrimination in on-reserve child and family services in Ontario and for preventing its recurrence.
2. The OFA and the Trilateral Agreement were developed through COO’s and NAN’s extensive engagement with First Nations over many years and received nearly

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<sup>1</sup> Chief Archie Wabasse's remarks at the Chiefs of Ontario Special Chiefs Assembly, "Special Chiefs Assembly: Strength in Unity" (10 October 2025), <https://www.youtube.com/live/BjpoRyvHEdQ?t=14266s> at 4:02:02 - 4:05:05 [Chief Wabasse's Remarks at the COO SCA, 10 Oct 2025].

<sup>2</sup> Hearing Exhibit 23, *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario*, dated 26 February 2025 at para 1 [OFA]; Hearing Exhibit 24, *Trilateral Agreement in Respect of Reforming the 1965 Agreement*, dated 26 February 2025 [Trilateral Agreement].

unanimous approval from the Chiefs at the assemblies where the agreements were voted upon.<sup>3</sup>

3. It has been 10 years since the Canadian Human Rights Tribunal's (the "Tribunal") groundbreaking decision 2016 CHRT 2 (the "Merit Decision").<sup>4</sup> During that time, the Tribunal's immediate and medium-term orders have greatly increased federal funding for on-reserve child and family services. Yet systemic and structural reform is incomplete. Remedyng systemic racial discrimination must go beyond injecting more funding into the existing First Nations Child and Family Services ("FNCFS") Program.<sup>5</sup> Meaningful systemic and structural reform must include First Nation-led, culturally appropriate solutions:<sup>6</sup> this is what the OFA offers.
4. Implementation of the OFA will bring about systemic and structural reform of the FNCFS Program in Ontario. These structural reforms are designed to eliminate discrimination in the FNCFS Program and to prevent it from recurring by embedding First Nations-led oversight and governance mechanisms; conducting ongoing research, monitoring, program assessment, data collection, and performance measurement; and reform of Indigenous Services Canada ("ISC").
5. Implementation of the OFA will replace the *ad-hoc* actuals funding regime with a comprehensive, holistic approach that delivers significantly increased federal funding

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<sup>3</sup> Hearing Exhibit 1a, Affidavit of Grand Chief Joel Abram, Vol 1, affirmed 6 March 2025 at para 106 [Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025].

<sup>4</sup> *First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, [2016 CHRT 2](#) [Merit Decision].

<sup>5</sup> *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2021 CHRT 41](#) at para [15](#).

<sup>6</sup> *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2025 CHRT 80](#) at para [75](#); see also *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2022 CHRT 41](#) at para [431](#).

for FNCFS, predictable funding for First Nations and FNCFS Agencies. The funding structure is flexible and provides needs-based funding allocations that are consistent with the achievement of substantive equality in on-reserve child and family services.

6. The OFA incorporates the best available evidence<sup>7</sup> and establishes forward-looking mechanisms for generating new data, conducting ongoing analysis, and adapting to emerging evidence.
7. Whether the OFA achieves its goals will only become clear once it is implemented. To protect against the risk of remedial failure and to ensure discrimination does not recur, the OFA establishes monitoring systems for ongoing course correction, provides enforceable and culturally appropriate dispute resolution processes, and incorporates safeguards to ensure funding shortfalls are addressed and the OFA has a lasting impact beyond its term.
8. The question before the Tribunal is not whether the OFA and the Trilateral Agreement are perfect, or whether there are other policy choices that could have been made. The key legal question the Tribunal must consider on this motion is whether the reforms contained in the OFA and the Trilateral Agreement end the discrimination found by the Tribunal in on-reserve child and family services in Ontario and prevent its recurrence.
9. This motion is the first time the Tribunal has evaluated a plan for long-term reform of the FNCFS Program. This case is highly complex and the remedies to fully and effectively eliminate the discrimination found and prevent its recurrence are similarly

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<sup>7</sup> *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2023 CHRT 44](#) at para 16.

complex.<sup>8</sup> In cases of this level of complexity, where there may be multiple potential remedies and where the constitutionally-protected rights of First Nations are involved, the perspectives, experiences, and ultimately, the choices of First Nations governments should be afforded significant weight.<sup>9</sup>

10. Crucially, the OFA is a concrete remedy to the discrimination that is ready to be implemented upon approval by the Tribunal. Timely reform of the discriminatory FNCFS Program is immeasurably valuable to the lives of First Nations children and families in Ontario: as Chief Wabasse of Wunnumin Lake First Nation expressed, “I don’t want to see my children, my grandchildren go through this, and that’s why I fight so hard to try to get this passed. Miigwetch, miigwetch.”<sup>10</sup>

## PART II – FACTS

### Brief Procedural History

11. On February 27, 2007, the Assembly of First Nations (the “AFN”) and the First Nation Child and Family Caring Society of Canada (the “Caring Society”) filed a complaint under the *Canadian Human Rights Act* (the “CHRA”)<sup>11</sup> alleging Canada was discriminating against First Nations children and families based on race, national or ethnic origin, by providing inequitable and insufficient funding for child and family services for First Nations on-reserve and in the Yukon and by failing to properly

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<sup>8</sup> *Liu (on behalf of IPCO) v Public Safety Canada*, [2025 CHRT 90](#) at para [21](#) [Liu]; *Canada (Attorney General) v Grover*, [1994 CanLII 18487](#) at paras [31-32](#) (FC) [Grover].

<sup>9</sup> “At the same time, they [courts] should be even more deferential than usual with respect to systemic remedies that will help shape the future” where these remedies are based on the exercise of Indigenous self-determination, Kent Roach, “9.1 Introduction” in *Remedies for Human Rights Violations: a Two-Track Approach to Supra-National and National Law* (Cambridge University Press, 2021) at p 455 [Roach]. See also: *Delgamuukw v British Columbia*, [\[1997\] 2 SCR 1010](#) at paras [81](#), [148](#); *R v Sparrow*, [\[1990\] 1 SCR 1075](#) at p 1112.

<sup>10</sup> [Chief Wabasse's Remarks at the COO SCA, 10 Oct 2025](#) at [4:04:19 - 4:05:06](#).

<sup>11</sup> *Canadian Human Rights Act*, [RSC 1985, c H-6](#) [CHRA].

implement Jordan's Principle (the "Complaint"). On October 14, 2008, the Canadian Human Rights Commission referred the Complaint to the Tribunal for an inquiry.<sup>12</sup>

12. In 2016, the Tribunal released the Merit Decision, which found that Canada's design, management, and control of the FNCFS Program, along with its implementation of the *Memorandum of Agreement Respecting Welfare Programs for Indians* (the "1965 Agreement"), resulted in the denial of services and created adverse impacts for First Nations children and families on-reserve.<sup>13</sup> The Tribunal also found Canada's definition of Jordan's Principle to be narrow and inadequate, resulting in service gaps, delays, and denials for First Nations children.<sup>14</sup> The Tribunal ordered Canada to immediately cease its discriminatory practices, reform the FNCFS Program and the 1965 Agreement, and implement the full meaning and scope of Jordan's Principle.<sup>15</sup>

13. Following the Merit Decision the Tribunal adopted a phased approach to remedies and made numerous orders for immediate and medium-term relief.<sup>16</sup>

### **Ontario-Specific Issues and COO's and NAN's Roles in these Proceedings**

14. In 2009, COO sought and obtained interested party status in these proceedings to ensure that the unique context of discrimination against First Nations children in Ontario was before the Tribunal and to ensure that First Nations in Ontario had a voice in these proceedings. In 2016, NAN sought and obtained interested party status in these proceedings to ensure remedies address the unique substantive equality needs of remote First Nations in NAN territory.

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<sup>12</sup> [Merit Decision](#) at para [6](#).

<sup>13</sup> [Merit Decision](#) at para [458](#).

<sup>14</sup> [Merit Decision](#) at para [381](#).

<sup>15</sup> [Merit Decision](#) at paras [458, 481](#).

<sup>16</sup> [Merit Decision](#) at para [483](#).

15. The child and family services system that is applied to First Nations in Ontario has three key unique features which have been the focus of COO's and NAN's submissions in these proceedings and of the Tribunal's Ontario-specific orders:

- (i) An expansive role of First Nations in provincial child and family services legislation through First Nation Representative Services.<sup>17</sup>
- (ii) The federal-provincial FNCFS Program funding arrangement, known as the 1965 Agreement.
- (iii) The experiences and substantive equality needs of remote First Nations.

These features shape how First Nations children and families in Ontario have experienced Canada's discriminatory funding of child and family services on-reserve.

### **The Tribunal's Ontario-Specific Findings and Immediate Relief Orders**

#### *Ontario Child and Family Services Laws and First Nation Representative Services*

16. First Nations in Ontario have a participatory or consultative role in virtually all steps of all proceedings and whenever a society, person, or entity seeks to provide a prescribed service or exercise a prescribed power in relation to a First Nations child.<sup>18</sup>

The role of First Nations in Ontario's child and family services law is typically exercised through First Nation Representative Services ("FNRS").<sup>19</sup> Throughout these proceedings, COO has consistently advocated for reforms to the FNCFS Program that centre and adequately fund FNRS.

17. The Tribunal has recognized FNRS as essential to a substantively equal child and family services system in Ontario, finding Canada's failure to fund FNRS was one of

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<sup>17</sup> First Nation Representative Services used to be referred to as Band Representative Services. Throughout the *Child, Youth and Family Services Act, 2017, SO 2017, c 14, Sch 1* [CYFSA] there are references to the role of the "representative" of the First Nations child's Band or First Nations community; this is the First Nation Representative.

<sup>18</sup> [CYFSA](#) at s. 73.

<sup>19</sup> [Official Record Document List October 14, 2008 to December 15, 2021, Exhibit HR-15, Amended Chiefs of Ontario Written Reply Submissions re Documents and Submissions Provided by Canada on March 4, 2020 in response to the Tribunal's February 20, 2020 Information Request, 14 April 2020](#) at paras 13-18.

the main adverse impacts of Canada's discrimination.<sup>20</sup> The Tribunal made the following additional findings with respect to FNRS:

The discordance between the objectives and the actual implementation of the program is also exemplified by the lack of funding in Ontario, for Band Representatives under the *1965 Agreement*. Not only does the Band Representative address the need for culturally relevant services, but it also addresses the goal of keeping families and communities together and is directly provided for in Ontario's *Child and Family Services Act*.<sup>21</sup>

[...]

...There is also discordance between Ontario's legislation and standards for providing culturally appropriate services to First Nations children and families through the appointment of a Band Representative and AANDC's lack of funding thereof. Tellingly, AANDC's position is that it is not required to cost-share services that are not included in the *1965 Agreement*.<sup>22</sup>

18. In 2018 CHRT 4, the Tribunal confirmed that Canada's failure to fund FNRS for First Nations in Ontario was discriminatory and ordered Canada to fund FNRS for First Nations in Ontario at their actual cost.<sup>23</sup>

19. In 2021 CHRT 41, the Tribunal ordered Canada to fund capital for FNRS for First Nations in Ontario at their actual cost.<sup>24</sup>

#### *The 1965 Agreement*

20. The 1965 Agreement is a cost-sharing agreement between Canada and the Government of Ontario that sets out how certain social services on-reserve delivered

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<sup>20</sup> [Merit Decision](#) at paras [425-426](#).

<sup>21</sup> [Merit Decision](#) at para [348](#).

<sup>22</sup> [Merit Decision](#) at para [392](#).

<sup>23</sup> *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2018 CHRT 4](#) at paras [324, 336, 427](#).

<sup>24</sup> [2021 CHRT 41](#) at paras [436, 480, 544\(G\)-544\(I\)](#).

pursuant to provincial law are funded, including child and family services. The 1965 Agreement is unique; there is no similar agreement elsewhere in Canada.

21. In the Merit Decision, the Tribunal made the following findings and orders with respect to the 1965 Agreement:

...The Panel finds the situation in Ontario falls short of the objective of the *1965 Agreement* "...to make available to the Indians in the Province the full range of provincial welfare programs".<sup>25</sup>

[...]

While seemingly an improvement on Directive 20-1 and more advantageous than the [Enhanced Prevention Focused Approach], the application of the *1965 Agreement* in Ontario also results in denials of services and adverse effects for First Nations children and families. For instance, given the agreement has not been updated for quite some time, it does not account for changes made over the years to provincial legislation for such things as mental health and other prevention services. This is further compounded by a lack of coordination amongst federal programs in dealing with health and social services that affect children and families in need, despite those types of programs being synchronized under Ontario's *Child and Family Services Act*. The lack of surrounding services to support the delivery of child and family services on-reserve, especially in remote and isolated communities, exacerbates the gap further...<sup>26</sup>

[...]

...AANDC is ordered to cease its discriminatory practices and reform the FNCFS Program and *1965 Agreement* to reflect the findings in this decision...<sup>27</sup>

### *Experiences of Remote Communities*

22. Throughout the remedial phase of these proceedings, NAN has advocated for reforms that address the challenges that affect the delivery of child and family services in remote First Nations. These challenges include: a lack of year-round road access and

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<sup>25</sup> [Merit Decision](#) at para [246](#).

<sup>26</sup> [Merit Decision](#) at para [392](#).

<sup>27</sup> [Merit Decision](#) at para [481](#).

the associated high cost and difficulty of travel; high staff turnover and shortages of accredited staff; chronic inadequate and unsafe housing; limited complementary social programs; larger case volumes and high rates of children-in-care; high costs of food, heat, and hydro; elevated rates of poor health and poverty; and suicide epidemics that disproportionately affect First Nations youth.<sup>28</sup>

23. The Tribunal has recognized that standardized funding models create adverse impacts for First Nations children and families and that effective and meaningful remedies must address the unique substantive equality needs of remote First Nations in NAN territory. In 2016 CHRT 16, the Tribunal ordered that a robust, empirically based remoteness quotient be developed.<sup>29</sup>
24. In 2017 CHRT 17, the Tribunal ordered Canada and NAN to work together to develop and implement an immediate relief formula that accounted for remoteness for the three NAN-mandated FNCFS Agencies.<sup>30</sup> NAN and Canada formed the bilateral NAN-Canada Remoteness Quotient Table to support this work in March 2017.<sup>31</sup>
25. Over several years, the NAN-Canada Remoteness Quotient Table oversaw extensive research resulting in three principal reports: the *Phase I RQ Report* (filed on September 8, 2017);<sup>32</sup> the *Phase II RQ Interim Report* (filed on August 22, 2018 along

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<sup>28</sup> Affidavit of Bobby Narcisse (filed as part of NAN's Motion to Intervene Record), affirmed 18 March 2016 at para 35; *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indian and Northern Affairs)*, [2016 CHRT 16](#) at para 81.

<sup>29</sup> [2016 CHRT 16](#) at paras 80-81.

<sup>30</sup> *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2017 CHRT 7](#) at para 24(2). Per the Examination-in-Chief of Dr. Martin Cooke, Transcript for 11 Dec 2025 Part 1, Transcript Brief at Tab 4, at p 192 at lines 20-24, the three NAN-mandated FNCFS Agencies are: Tikinagan Child and Family Services, Payukotayno James & Hudson Bay Family Services, and Kunuwanimano Child and Family Services.

<sup>31</sup> Hearing Exhibit 4a, Amended Affidavit of Grand Chief Alvin Fiddler, affirmed 7 March 2025 at para 22 [Hearing Exhibit 4a, Grand Chief Fiddler Affidavit, 7 Mar 2025].

<sup>32</sup> Hearing Exhibit 5, Nishnawbe Aski Nation Remoteness Quotient Reports (Phase I and Phase II), filed 7 March 2025 at Tab 1 [Hearing Exhibit 5, NAN RQ Reports (Phase I and II)]; Hearing Exhibit 6, Supplemental

with an Executive Summary);<sup>33</sup> and the *Phase II RQ Final Report* (filed on March 29, 2019).<sup>34</sup> The *Phase I RQ Report* and the *Phase II RQ Interim Report*, prepared by two experts commissioned by NAN, focused on the development of a remoteness quotient for use in NAN territory<sup>35</sup> by identifying 20<sup>36</sup> categories of key cost drivers affecting the three NAN-mandated FNCFS Agencies – such as travel, infrastructure, staffing, and case expenditures – and proposing a funding adjustment formula to address these increased costs in child and family services.<sup>37</sup> At Canada's request, Dr. Martin Cooke was engaged by NAN in early November 2018 to independently evaluate the *Phase II RQ Interim Report*. Dr. Cooke reran the underlying models and recommended revisions, all of which were incorporated into a third report: the *Phase II RQ Final Report*.<sup>38</sup>

26. The result of the above research was the development of the NAN Remoteness Quotient Factor, which is a First Nations-sighted approach to measure the additional costs attributable to remoteness, developed within an FNCFS context and grounded in highly detailed FNCFS Agency-level cost data.<sup>39</sup>

27. In May 2021, the NAN-Canada Remoteness Quotient Table's mandate expanded to develop a broadly applicable remoteness formula that adjusts child and family

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<sup>33</sup> Affidavit of Dr. Martin Cooke, affirmed 15 May 2025 at para 9 [Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025].

<sup>34</sup> Hearing Exhibit 5, NAN RQ Reports (Phase I and II) at Tab 2; Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025 at para 9.

<sup>35</sup> Hearing Exhibit 5, NAN RQ Reports (Phase I and II) at Tab 3; Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025 at para 9.

<sup>36</sup> Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025 at paras 8, 10-12.

<sup>37</sup> Examination-in-Chief of Dr. Martin Cooke, Transcript for 11 Dec 2025 Part 1, Transcript Brief at Tab 4, at p 179 at lines 11-13.

<sup>38</sup> Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025 at paras 10-12.

<sup>39</sup> Examination-in-Chief of Dr. Martin Cooke, Transcript for 11 Dec 2025 Part 1, Transcript Brief at Tab 4, at p 173 at lines 22-25 and at p 174 at lines 1-19.

<sup>39</sup> Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025 at para 17.

services funding to fully account for additional remoteness costs within NAN territory and beyond.<sup>40</sup> Building on its earlier research, the NAN-Canada Remoteness Quotient Table developed the Remoteness Quotient Adjustment Factor to quantify the additional costs of delivering services in remote First Nations.

### **Ontario-Specific Long-Term Reform**

28. As detailed above, the Tribunal has made numerous immediate and medium-term relief orders that have greatly benefitted First Nations and FNCFS Agencies in Ontario. Building on this important bedrock, the Moving Parties have worked together since 2021 to negotiate long-term solutions.

29. The first major step in long-term reform negotiations was the Agreement-in-Principle (the “AIP”), which was signed on December 31, 2021, between COO, NAN, the AFN, the Caring Society, and Canada.<sup>41</sup> The AIP contemplated a national approach to reform with Ontario-specific provisions. The AIP also included reform of Jordan’s Principle, but it was later decided, in 2023, to separate long-term reform of Jordan’s Principle and the FNCFS Program.<sup>42</sup>

30. In December 2023, the Caring Society withdrew from negotiations on long-term reform of the FNCFS Program.<sup>43</sup>

31. Between January and July 2024, COO, NAN, the AFN, and Canada negotiated a national final settlement agreement on long-term reform of the FNCFS Program (the “national final settlement agreement”). The national final settlement agreement was

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<sup>40</sup> Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025 at para 15.

<sup>41</sup> Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025 at paras 9, 40-43; Hearing Exhibit 4a, Grand Chief Fiddler Affidavit, 7 Mar 2025 at paras 35-37.

<sup>42</sup> Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025 at paras 69-71; Hearing Exhibit 4a, Grand Chief Fiddler Affidavit, 7 Mar 2025 at para 37.

<sup>43</sup> Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025 at para 73.

ratified by the Ontario Chiefs-in-Assembly and NAN Chiefs-in-Assembly at COO and NAN assemblies in October 2024.<sup>44</sup> The national final settlement agreement was not approved at the AFN Special Chiefs Assembly on October 17, 2024.

32. Following the failed process of the national final settlement agreement, COO was mandated by the Ontario Chiefs-in-Assembly to negotiate, in partnership with NAN, a regional settlement agreement for Ontario.<sup>45</sup>

33. COO and NAN's approach to reform of the child and family services system in Ontario has been informed by extensive engagement with First Nations from the immediate relief phase to present-day preparations for the implementation of the OFA.

34. COO's approach in these proceedings is informed by First Nations and their institutions and governing bodies such as the Ontario Chiefs-in-Assembly; COO Leadership Council; the Social Services Coordination Unit; the Chiefs Committee on Social Services; the AIP, Final Settlement Agreement, OFA Implementation, and 1965 Indian Welfare Agreement Reform Advisory Committees (all of which include representatives of FNCS Agencies); and other regional and First Nations representatives.<sup>46</sup> COO's engagement and information sharing takes place at Chiefs' assemblies, dialogue sessions, community meetings, and many other forums, with diverse participants.

35. COO's engagement on the OFA and the Trilateral Agreement is detailed in the affidavits of Grand Chief Joel Abram and COO Social Services Director Finn Simard,

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<sup>44</sup> Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025 at para 91.

<sup>45</sup> Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025 at para 94; Hearing Exhibit 4a, Grand Chief Fiddler Affidavit, 7 Mar 2025 at para 62.

<sup>46</sup> Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025 at paras 11-17; Hearing Exhibit 3, Reply Affidavit of Finn Simard, affirmed 17 October 2025 at paras 12-14 [Hearing Exhibit 3, Simard Reply Affidavit, 17 Oct 2025].

filed in this motion.<sup>47</sup> Between June 2016 and the ratification of the OFA and the Trilateral Agreement on February 26, 2025, COO engaged its institutions and governing bodies on FNCFS reform in more than 73 meetings, including 33 Leadership Council meetings, 12 Chiefs Committee on Social Services meetings, and 13 Chiefs assemblies.<sup>48</sup> During the same period, COO's Final Settlement Agreement Advisory Committee and Social Services Coordination Unit met 104 times.<sup>49</sup> These figures may not be comprehensive and may in fact underestimate the full scope of engagement undertaken by COO during this period.<sup>50</sup>

36. Between the ratification of the OFA on February 26, 2025 and October 17, 2025, COO took part in over 93 engagements, encompassing OFA implementation planning, 1965 Agreement reform planning, leadership briefings, and direct meetings with First Nations, FNCFS Agencies, and political territorial organizations.<sup>51</sup>

37. NAN's engagement on the OFA is described through the evidence of Grand Chief Alvin Fiddler and Chief Alex Batisse, filed in this motion.<sup>52</sup> NAN's approach is directed by the NAN Chiefs-in-Assembly; guided by the NAN Chiefs Committee on Children, Youth and Families; and informed by its participation in COO advisory and governance bodies. The Chiefs Committee on Children, Youth and Families – composed of Chiefs

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<sup>47</sup> Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025 at paras 36, 38, 40-54, 55-60, 62, 80-86, 89-92, 98, 100-106 and Appendices A and B; Hearing Exhibit 2, Supplemental Affidavit of Grand Chief Joel Abram, affirmed 21 May 2025 at para 26 [Hearing Exhibit 2, Grand Chief Abram Supplemental Affidavit, 21 May 2025]; Hearing Exhibit 3, Simard Reply Affidavit, 17 Oct 2025 at paras 7-9, 11-16, 19-25, 29-31 and Appendix A.

<sup>48</sup> Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025 at Appendix B.

<sup>49</sup> Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025 at Appendix A.

<sup>50</sup> Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025 at para 53.

<sup>51</sup> Hearing Exhibit 3, Simard Reply Affidavit, 17 Oct 2025 at Appendix A.

<sup>52</sup> Hearing Exhibit 4a, Grand Chief Fiddler Affidavit, 7 Mar 2025 at paras 39, 58-60; Hearing Exhibit 7, Reply Affidavit of Chief Alex Batisse, affirmed 17 October 2025 at paras 8-14, 16-19, 21, 26-29 [Hearing Exhibit 7, Chief Batisse Affidavit, 17 Oct 2025].

representing NAN's Tribal Councils and Independent First Nations, and representatives from the three NAN-mandated FNCFS Agencies – is accountable to the NAN Chiefs-in-Assembly, provides oversight of NAN's participation in the Tribunal process, and meets regularly and at least four times annually.<sup>53</sup> Since 2016, the Chiefs Committee on Children, Youth and Families has engaged in regular meetings with NAN's negotiation team, NAN Chiefs, and FNCFS Agency representatives.<sup>54</sup>

38. In addition to the years of formal and informal negotiations and consultations, COO's and NAN's contributions to the OFA rest on the untold hours of work of their community-based advisors who are directly accountable to the communities they serve.<sup>55</sup>

39. COO and NAN's joint engagement and information sharing on the OFA also include maintaining a public website, [FNCFSreform.ca](http://FNCFSreform.ca).

40. After intensive negotiations between the Moving Parties, and further to COO's and NAN's continued engagement with First Nations across Ontario, the NAN Chiefs-in-Assembly and Ontario Chiefs-in-Assembly ratified the OFA and the Trilateral Agreement. The OFA and the Trilateral Agreement were ratified by the NAN Chiefs-in-Assembly on February 25, 2025<sup>56</sup> and by the Ontario Chiefs-in-Assembly on February 26, 2025.<sup>57</sup> The OFA and the Trilateral Agreement received nearly

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<sup>53</sup> Hearing Exhibit 7, Chief Batisse Affidavit, 17 Oct 2025 at para 8-11 and Exhibit A at p 2.

<sup>54</sup> Hearing Exhibit 7, Chief Batisse Affidavit, 17 Oct 2025 at paras 11-16, 29.

<sup>55</sup> For an overview of COO's many advisory bodies, see Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025 at paras 16, 17, 40-54; and Hearing Exhibit 3, Simard Reply Affidavit, 17 Oct 2025 at paras 19-23. For information on NAN's Chiefs Committee on Children, Youth, and Families, see Hearing Exhibit 4a, Grand Chief Fiddler Affidavit, 7 Mar 2025 at paras 14-17 and Hearing Exhibit 7, Chief Batisse Affidavit, 17 Oct 2025 at paras 8-10.

<sup>56</sup> Hearing Exhibit 4a, Grand Chief Fiddler Affidavit, 7 Mar 2025 at paras 72-73.

<sup>57</sup> Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025 at paras 97-106.

unanimous approval from the Chiefs who participated in both assemblies:<sup>58</sup> at both assemblies, 91% of the Chiefs who cast votes voted in favour of the OFA and the Trilateral Agreement.<sup>59</sup> This level of support for the OFA and the Trilateral Agreement reflects the extensive and detailed engagement undertaken by COO<sup>60</sup> and NAN to ensure that Chiefs were fully informed of the agreements prior to voting. COO and NAN acknowledge that Georgina Island First Nation and Taykwa Tagamou Nation did not support the OFA.

## **PART III – SUMMARY OF THE OFA AND THE TRILATERAL AGREEMENT**

### **Summary of the OFA**

41. The OFA was designed to eliminate the systemic discrimination in the FNCFS Program in Ontario identified by the Tribunal in the Merit Decision and subsequent rulings and prevent its recurrence.<sup>61</sup>

42. The OFA represents a commitment to long-term reform of on-reserve child and family services in Ontario anchored in guiding principles that prioritize the cultural safety and well-being of First Nations children, youth, young adults, and families; substantive equality; and the best interests of children. These principles call for holistic and culturally informed programming that accounts for the distinct realities of First Nations while respecting the inherent right of self-government recognized and affirmed by

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<sup>58</sup> Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025 at para 106.

<sup>59</sup> Cross-Examination of Kristin Murray, Transcript for 15 Dec 2025 Part 2, Transcript Brief at Tab 9, at p 628 at lines 1-13.

<sup>60</sup> As part of this effort, COO sent individualized funding profiles to each Chief in Ontario outlining the funding expected under the national final settlement agreement and under the OFA. These efforts ensured that Chiefs had access to community-specific information during deliberations on both negotiated agreements, contributing to the strong consensus reflected in the Chiefs-in-Assembly votes. See Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025 at paras 89, 105.

<sup>61</sup> OFA at para 1.

s. 35 of the *Constitution Act, 1982* and the right to self-determination under the *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”).<sup>62</sup>

*Term and Funding Commitment*

43. At the heart of the OFA is Canada’s commitment of \$8.5 billion over a nine-year term, from April 1, 2025 to March 31, 2034, to implement the reforms set out therein.<sup>63</sup> The OFA’s nine-year term is divided into two funding periods:

- (i) **Initial Funding Period:** April 1, 2025 to March 31, 2029, with approximately \$3.9 billion allocated;<sup>64</sup> and
- (ii) **Second Funding Period:** April 1, 2029 to March 31, 2034, with annual funding at least equal to the amount provided in 2028-29, and subject to any upward adjustments adopted further to the Initial Program Assessment (described at paragraphs 89 to 99).<sup>65</sup> This means that the guaranteed funding Canada must provide during the Second Funding Period will be no less than approximately \$4.6 billion.<sup>66</sup>

44. Canada’s funding obligation during the Initial Funding Period is \$3.9 billion. However, ISC must provide additional funding: where this amount is insufficient to fund approved Service Provider Funding Adjustment Requests (described at paragraph 82) or any Dispute Awards in relation to Service Provider Funding Adjustment Requests (described at paragraphs 100 to 111); to adjust for inflation and population; to fund certain activities at actual cost as set out in the OFA; to cover reasonable start-up costs of new FNCFS Agencies; to fund First Nations that become newly eligible under the Reformed FNCFS Program in Ontario (the “Reformed FNCFS Program”); or to reimburse the Government of Ontario for child and family services expenditures under

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<sup>62</sup> OFA at para 2(f)-(j).

<sup>63</sup> OFA at para 5.

<sup>64</sup> OFA at para 7.

<sup>65</sup> OFA at paras 11, 66.

<sup>66</sup> OFA at Appendix 1.

the 196 Agreement.<sup>67</sup> In other words, where the \$3.9 billion allocation proves insufficient to meet these obligations, ISC must provide funding above and beyond the amount.<sup>68</sup>

45. While the OFA does not require Canada to provide additional funding if the \$4.6 billion amount for the Second Funding Period is insufficient to fund the costs described above, that is not to say that ISC will not consider providing additional funding.<sup>69</sup> The OFA explicitly acknowledges that investments over and above the guaranteed \$4.6 billion for the Second Funding Period may be required to maintain long-term reform, including in relation to Service Provider Funding Adjustment Requests.<sup>70</sup>

46. Further, the OFA provides that if ISC denies a Service Provider Funding Adjustment Request, the requestor may take the denial to the Claimant Dispute Process (described at paragraphs 100 to 111).<sup>71</sup> In a Claimant Dispute, an Arbitral Tribunal has jurisdiction to order funding to a particular First Nation or FNCFS Agency as set out in the OFA.<sup>72</sup> These provisions apply in the Second Funding Period; meaning ISC must comply with Dispute Awards for Service Provider Funding Adjustment Requests even if doing so exceeds the \$4.6 billion guaranteed funding.<sup>73</sup>

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<sup>67</sup> OFA at para 9. The OFA's \$8.5 billion overall funding commitment already incorporates estimates for inflation and population adjustments, certain activities funded at actual cost, and reimbursement to the Government of Ontario for child and family services expenditures under the 1965 Agreement (see OFA, Appendix 1). However, no estimates are included for Service Provider Funding Adjustment Requests, reasonable start-up costs for new FNCFS Agencies, or funding for First Nations that become newly eligible under the Reformed FNCFS Program.

<sup>68</sup> Cross-Examination of Duncan Farthing-Nichol, Transcript for 11 Dec 2025 Part 2, Transcript Brief at Tab 5, at p 26 at lines 2-4, 15-20, 22-25; p 27 at lines 1-2; and at p 46 at lines 1-7.

<sup>69</sup> Cross-Examination of Duncan Farthing-Nichol, Transcript for 11 Dec 2025 Part 2, Transcript Brief at Tab 5, at p 31 at lines 17-25.

<sup>70</sup> OFA at para 12.

<sup>71</sup> OFA at para 199(d).

<sup>72</sup> OFA at para 209(f).

<sup>73</sup> Cross-Examination of Duncan Farthing-Nichol, 12 Dec 2025 Part 2 afternoon at 1:01:00-1:02:38 (no transcript).

47. Beyond the \$8.5 billion commitment and any additional amounts required to fund certain costs as described above, Canada has committed to fund administrative support for the Ontario Reform Implementation Committee (described at paragraphs 83 to 88), cultural humility training for ISC employees (described at paragraphs 120 to 121), and the contracts for one or more organizations to conduct two comprehensive Program Assessments (described at paragraphs 89 to 99).<sup>74</sup>

48. The OFA becomes effective once the Tribunal approves it without conditions, orders that it supersedes and replaces all prior orders related to the FNCFS Program in Ontario and the 1965 Agreement, and ends its jurisdiction over the complaint and associated proceedings in Ontario, save for Jordan's Principle (the "Effective Date").<sup>75</sup>

The Effective Date is defined as the latest of:

- (i) 60 days after the Tribunal issues the order ending its jurisdiction;
- (ii) 31 days after denial of any stay pending judicial review; or
- (iii) 31 days after dismissal of any judicial review application if a stay was granted.<sup>76</sup>

49. Given the above and the schedule for this motion – in particular, the fact that final oral argument will not conclude until February 27, 2026 – it is certain that the OFA will not come into effect during 2025-26 (i.e., on or before March 31, 2026). Unless otherwise agreed to by the Moving Parties, the OFA will not take effect in 2025-26, and the funding earmarked for that fiscal year cannot be recovered.<sup>77</sup> Until the OFA comes into effect, ISC will continue to fund the FNCFS Program in Ontario,<sup>78</sup> and funding secured by existing Tribunal orders (including 2018 CHRT 4, 2021 CHRT 41, and

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<sup>74</sup> OFA at para 14.

<sup>75</sup> OFA at para 294.

<sup>76</sup> OFA at paras 6, 294-296.

<sup>77</sup> OFA at Appendix 12.

<sup>78</sup> Cross-Examination of Duncan Farthing-Nichol, Transcript for 11 Dec 2025 Part 2, Transcript Brief at Tab 5, at p 42 at lines 7-11.

2022 CHRT 8) will continue to flow. If the OFA comes into effect between April 1, 2026 and March 31, 2027, the OFA will be fully implemented on April 1, 2027, unless the Moving Parties agree on an earlier implementation date.

50. All funding commitments under the OFA remain subject to annual appropriation by the Parliament of Canada.<sup>79</sup> However, the OFA provides a safeguard: if Parliament does not appropriate the funding committed under the OFA, COO or NAN may seek a court order confirming that it has been substantially deprived of the benefit of the OFA, without the need to prove monetary loss. This remedy enables COO or NAN to pursue relief.<sup>80</sup>

51. Canada's obligation to ensure that the discrimination found by the Tribunal in the FNCFS Program in Ontario has been eliminated and does not recur outlives the OFA's nine-year term.<sup>81</sup> The OFA requires ISC to engage with COO and NAN after the Second Program Assessment (described at paragraphs 89 to 99) to inform the design of a successor program. As part of this engagement, Canada must consider embedding the Reformed FNCFS Funding Approach in legislation.<sup>82</sup>

#### *Reforms Contained in the OFA*

52. Broadly, the reforms contained in the OFA fall into two interrelated categories:

- (i) **Reformed FNCFS Funding Approach** – The OFA introduces a new, multi-year funding approach that specifies how Canada will provide funding to First Nations and FNCFS Agencies in Ontario for child and family services.
- (ii) **Structural Reforms to Address Systemic Discrimination** – The OFA embeds numerous structural and governance measures designed to address the discrimination identified by the Tribunal and to prevent it from recurring.

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<sup>79</sup> OFA at para 297.

<sup>80</sup> OFA at paras 197(b), 298. Per paragraph 197(b), disputes about Canada's failure to obtain or advance the committed funding will not be addressed through the OFA's Dispute Resolution Process.

<sup>81</sup> OFA at para 74.

<sup>82</sup> OFA at paras 75-76.

(i) Reformed FNCFS Funding Approach

53. The OFA establishes the Reformed FNCFS Funding Approach consisting of several components: baseline funding; prevention funding; FNRS funding; post-majority support services (“PMSS”) funding; FNCFS capital funding; results funding; information technology (“IT”) funding; emergency funding; and household supports funding.<sup>83</sup>

54. **Baseline funding** is provided to FNCFS Agencies to support protection services, which include child protection, least disruptive measures, maintenance and operations.<sup>84</sup> The OFA defines least disruptive measures as “measures that flow from a child maltreatment assessment or investigation and are critical to safety planning for children and families involved with child and family services” and “services [that] seek to prevent separating children or youth from their families or [that] support reunification of families”.<sup>85</sup>

55. FNCFS Agencies can continue to claim intake, investigations, legal fees, and building repairs at their actual cost up until April 1 of the fiscal year following the fiscal year in which the OFA comes into effect<sup>86</sup> after which they will instead receive baseline funding.<sup>87</sup>

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<sup>83</sup> The OFA also commits ISC to provide \$258.4 million in housing funding to eligible First Nations in Ontario for the purchase, construction, and renovation of housing units aimed at preventing children from entering care and supporting reunification where housing is a barrier. This funding is excluded from this list because it is not a component of the Reformed FNCFS Funding Approach. Past allocations, the method for calculating First Nations’ housing funding allocations, and funding terms are detailed at: OFA at paras 81-85 and Appendix 9; Hearing Exhibit 8a, Affidavit of Duncan Farthing-Nichol, Vol 1, affirmed 7 March 2025 at paras 110-113 [Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025]; Hearing Exhibit 9, Supplemental Affidavit of Duncan Farthing-Nichol, affirmed 15 May 2025 at paras 29-31 [Hearing Exhibit 9, Farthing-Nichol Supplemental Affidavit, 15 May 2025].

<sup>84</sup> OFA at para 44(a).

<sup>85</sup> OFA at para 4(pp).

<sup>86</sup> OFA at paras 54(a), 55.

<sup>87</sup> OFA at para 54(a)(iii).

56. An FNCFS Agency's baseline funding is the sum of (a) the amount of operations and maintenance funding (which includes funding for least disruptive measures) that it receives directly from the Government of Ontario according to the Government of Ontario's child welfare funding model<sup>88</sup> and (b) the amount it receives directly from ISC, which is equal to its approved actual costs for intake and investigations (including least disruptive measures), legal fees, and building repairs in 2022-23 (adjusted for inflation and population growth between March 31, 2023 and March 31 of the fiscal year preceding the fiscal year in which the OFA comes into effect).<sup>89</sup> In fiscal years subsequent to the fiscal year in which the OFA comes into effect, the amount of baseline funding that FNCFS Agencies receive directly from ISC will be equal to the amount received in the preceding year, adjusted for inflation and population growth and not reduced.<sup>90</sup>

57. **Prevention funding** under the OFA is intended to support culturally adapted services that help keep children safely at home and reduce the need for child protection interventions. For 2025-26, it is calculated on a per capita basis at \$2,655.62 per registered First Nations person living on-reserve or Crown land, with a minimum of \$75,000 per First Nation. These amounts will be adjusted annually for inflation in subsequent years.<sup>91</sup>

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<sup>88</sup> For an explanation of how funding from Ontario is figured into Baseline Funding, see Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025 at paras 39-40; and Hearing Exhibit 9, Farthing-Nichol Supplemental Affidavit, 15 May 2025 at paras 15-18.

<sup>89</sup> OFA at para 18(a), (b)(i).

<sup>90</sup> OFA at para 18(b)(ii).

<sup>91</sup> OFA at paras 23-24.

58. For 2025-26, ISC allocated prevention funding between First Nations and their affiliated FNCFS Agencies using a population-weighted formula,<sup>92</sup> unless a First Nation had submitted a band council resolution requesting a different allocation.<sup>93</sup>

59. As of the Effective Date, a First Nation may give written notice directing ISC on how its prevention funding is allocated: either retaining all of it or directing some or all to its affiliated FNCFS Agency or another service provider. Any changes in allocation of prevention funding as directed by a First Nation will take effect with at least six months prior notice to its affiliated FNCFS Agency.<sup>94</sup> Until such notice is provided, funding will continue to be allocated using the population-weighted approach used in 2025-26.<sup>95</sup> First Nations not affiliated with an FNCFS Agency (“Non-Agency First Nations”) receive 100% of the prevention funding attributable to their population.<sup>96</sup>

60. **FNRS funding** supports First Nation Representatives in advocating for their communities in child welfare matters and fulfilling the duties required of them under legislation. Under the OFA, each First Nation will receive FNRS funding equal to its highest one-year amount between 2019-20 and 2023-24, adjusted for inflation and population growth between March 31, 2023 and March 31 of the fiscal year preceding the fiscal year in which the OFA comes into effect.<sup>97</sup> In fiscal years subsequent to the fiscal year in which the OFA comes into effect, a First Nation’s FNRS funding will be equal to the amount received in the preceding year, adjusted for inflation and population growth.<sup>98</sup>

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<sup>92</sup> Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025 at paras 55-58.

<sup>93</sup> Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025 at para 54.

<sup>94</sup> OFA at para 44(d)(ii).

<sup>95</sup> OFA at paras 44(d), 54(d), 55.

<sup>96</sup> OFA at para 62(a).

<sup>97</sup> OFA at paras 26, 44(g).

<sup>98</sup> OFA at para 26.

61. From 2018-19 through 2021-22, First Nations were able to claim FNRS at their actual cost. Beginning in 2022-23, ISC shifted to providing FNRS funding directly to First Nations without requiring an application. Each First Nation received the highest of: (1) its one-year amount in 2019-20, 2020-21, or 2021-22;<sup>99</sup> (2) a per capita amount calculated from the \$332.9 million commitment to fund FNRS in Ontario for five years agreed to during AIP negotiations; or (3) \$75,000. Beginning in 2022-23 and continuing today, First Nations may claim additional FNRS at their actual cost where it has spent 75% of its FNRS allocation.<sup>100</sup>
62. First Nations that did not claim FNRS at their actual cost during the OFA reference years (2019-20 to 2023-24) will not simply receive \$75,000. Under the OFA, they will receive funding calculated based on the per capita amount agreed to in the AIP negotiations (adjusted for inflation) or the \$75,000 minimum, whichever is greater. The \$75,000 minimum only applies where a First Nation's population is so small that its per capita amount would fall below \$75,000.
63. The OFA commits \$328.2 million in **PMSS funding**.<sup>101</sup> PMSS are supports to youth aging out of care and young adults formerly in care up to their 26<sup>th</sup> birthday. This amount was calculated by first estimating the cost of direct services to youth and young adults for one year using Statistics Canada's 2021 one-person household spending data<sup>102</sup> multiplied by the projected number of eligible youth and young adults

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<sup>99</sup> The inclusion of fiscal year 2021-22 started in 2024-25.

<sup>100</sup> Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025 at paras 75-77.

<sup>101</sup> OFA at paras 28, 72.

<sup>102</sup> Statistics Canada's 2021 "one-person household spending" data refers to estimates produced through the 2021 Survey of Household Spending. The Survey of Household Spending collects detailed information on household expenditures across Canada using a questionnaire. The 2021 dataset reports average spending by different household types, including one-person households. See Statistics Canada, "Survey of Household Spending, 2021" (18 October 2023) online <<https://www150.statcan.gc.ca/n1/daily-quotidien/231018/dq231018a-eng.htm>>.

over the OFA's term based on ISC's children-in-care data. That figure was then scaled to reflect a 75% uptake rate (which was chosen despite the research finding an approximately 54% uptake rate in 2022-23 and 2023-24 of PMSS at actual cost pursuant to the 2022 CHRT 8 process).<sup>103</sup> Finally, ISC applied an upward funding adjustment of approximately 53% to account for indirect service costs, including organizational, administrative, and staffing expenses necessary to deliver PMSS.<sup>104</sup>

64. PMSS allocations are calculated for each First Nation using a base amount of \$75,000 plus an allocation of the total annual funding available for PMSS based on the First Nation's on-reserve population aged 15-26 and an estimate of eligible youth and young adults derived from ISC's children-in-care data.<sup>105</sup>

65. The OFA provides that ISC will continue to fund PMSS at actual cost until the Effective Date. The deadline for the submission of all PMSS actual cost claims is the Effective Date, which occurs at least 60 days after the OFA's approval date, ensuring a clear and reasonable window for First Nations and FNCFS Agencies to prepare and submit claims.<sup>106</sup> On the Effective Date, if it falls within 2025-26, ISC will provide direct PMSS funding to First Nations equal to their allocation for 2025-26 minus any amounts already provided at actual cost for that year.<sup>107</sup> ISC will not claw back funds where the amount already provided at actual cost exceeds the allocation.

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<sup>103</sup> Cross-Examination of Duncan Farthing-Nichol, Transcript for 12 Dec 2025 Part 1, Transcript Brief at Tab 6, at p 502 at lines 3-25.

<sup>104</sup> Hearing Exhibit 9, Farthing-Nichol Supplemental Affidavit, 15 May 2025 at paras 7-11.

<sup>105</sup> OFA at para 44(f).

<sup>106</sup> OFA at para 54(g)(i).

<sup>107</sup> OFA at para 54(g)(ii). If the Effective Date does not fall within fiscal year 2025-26, Appendix 12 of the OFA sets out the applicable modifications. In essence, the same process will apply for 2026-27, provided the OFA is in effect by then.

66. The OFA allocates PMSS funding directly to First Nations, empowering them to design and deliver services or transfer funds to their affiliated FNCFS Agency or another service provider.<sup>108</sup>

67. The OFA allocates \$3.375 million to COO for an initiative to raise awareness of PMSS among eligible youth and young adults.<sup>109</sup>

68. The OFA commits up to \$455 million for **FNCFS capital funding** over its term (subject to any upward adjustments after the Initial Program Assessment) to support the delivery of protection services, prevention services, FNRS, and PMSS.<sup>110</sup> This amount was calculated by estimating the cost of every FNCFS Agency constructing an office appropriate to its size, every First Nation constructing a recreation or cultural/community centre,<sup>111</sup> and every Non-Agency First Nation constructing both types of buildings. The cost estimates were developed using a database that includes cost data for approximately 37,500 ISC-funded assets.<sup>112</sup> From this total, ISC subtracted the capital funding already provided pursuant to the 2021 CHRT 41 process in Ontario in 2021-22, 2022-23, and 2023-24. The final figure also reflects adjustments for inflation, population growth, remoteness, and city-centre cost differentials.<sup>113</sup>

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<sup>108</sup> OFA at paras 28-30, 44(f)(i).

<sup>109</sup> OFA at para 44(f)(ii).

<sup>110</sup> OFA at paras 27, 71.

<sup>111</sup> First Nations' capital assets funded under the OFA could include space(s) that can be rented out to their affiliated FNCFS Agency.

<sup>112</sup> Cross-Examination of Duncan Farthing-Nichol, Transcript for 12 Dec 2025 Part 2, Transcript Brief at Tab 7, at p 523 at lines 13-25, explains that this ISC database was used instead of 2021 CHRT 41 cost data because its larger dataset provides a more reasonable estimate of asset costs.

<sup>113</sup> Hearing Exhibit 9, Farthing-Nichol Supplemental Affidavit, 15 May 2025 at paras 20-27.

69. ISC will continue to fund approved capital projects at their actual cost under the 2021 CHRT 41 process until the Effective Date, after which funding flows under the OFA.<sup>114</sup>

Capital funding under the OFA is accessed through proposals assessed against standardized criteria.<sup>115</sup> The only exception to this proposal-based model is funding for operations and maintenance costs for owned assets, which are calculated using a specific ISC formula and which the OFA commits ISC to fund at 100%.<sup>116</sup>

70. **Results funding and IT funding** under the OFA flow entirely to First Nations<sup>117</sup> and is intended to support the development of data collection processes and IT systems necessary for collecting and reporting data on child and family services in accordance with the OFA's performance measurement framework.<sup>118</sup> The funding is calculated as a percentage of baseline funding – 5% for results and 6% for IT.

71. **Emergency funding** under OFA is intended to provide flexible funding to respond to unexpected events that could affect the delivery of child and family services (such as the introduction into care of a few children with very high needs). It is calculated as 2% of baseline funding.<sup>119</sup> ISC allocates this funding evenly between First Nations and FNCFS Agencies.<sup>120</sup> Non-Agency First Nations will receive the entirety of the funding.<sup>121</sup>

72. The OFA also provides **household supports funding** to First Nations to help families meet basic needs and address poverty-related challenges that, if unmet, could result

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<sup>114</sup> OFA at paras 54(f), 55.

<sup>115</sup> OFA at para 44(e).

<sup>116</sup> OFA at para 44(e)(ii). The formula considers asset type, quantity, city centre cost adjustments, and remoteness.

<sup>117</sup> OFA at para 44(b)(i)-(ii).

<sup>118</sup> OFA at paras 19-20.

<sup>119</sup> OFA at para 21.

<sup>120</sup> OFA at para 44(b)(iii).

<sup>121</sup> OFA at para 62.

in children being placed in care. Household supports funding for 2025-26 was set at \$5.3 million, adjusted for inflation in subsequent years.<sup>122</sup> Allocations to individual First Nations are determined based on their relative levels of poverty.<sup>123</sup>

73. For all of **results, IT, emergency, and household supports funding**, ISC will allocate funding for the fiscal year following the Effective Date, prorated to the number of days remaining in the fiscal year.<sup>124</sup>

74. The Reformed FNCFS Funding Approach is designed to adapt to changing circumstances by applying annual adjustments for **inflation** (indexed to the Consumer Price Index) and **population growth** (per First Nations' Indian Registration System populations).<sup>125</sup>

75. It is also designed to account for the increased cost of delivering services in remote First Nations. All prevention, FNRS, PMSS, results, IT, emergency, and household supports funding under the Reformed FNCFS Funding Approach is upwardly **adjusted for remoteness** where the First Nation's 2021 Statistics Canada's Index of Remoteness score is 0.40 or greater.<sup>126</sup>

76. The OFA uses the Remoteness Quotient Adjustment Factor, developed by the NAN-Canada Remoteness Quotient Table, to calculate remoteness adjustments.<sup>127</sup> The Remoteness Quotient Adjustment Factor is a hybrid of the NAN Remoteness Quotient Factor and the ISC Cost Adjustment Factor.<sup>128</sup>

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<sup>122</sup> OFA at paras 22, 44(c).

<sup>123</sup> Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025 at paras 83-88.

<sup>124</sup> OFA at paras 54(b)-(c).

<sup>125</sup> OFA at paras 35-36.

<sup>126</sup> OFA at para 33.

<sup>127</sup> For an explanation of the RQAF methodology, see OFA at Appendix 10; Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025 at paras 102-103.

<sup>128</sup> Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025 at paras 19-20.

77. The ISC Cost Adjustment Factor is a general, national-level tool that estimates the effects of remoteness using two categories of Canada-wide, community-level data: (1) the cost of transportation of goods and (2) the cost of people (i.e., the additional employment-related costs that arise when compensating and supporting workers in remote areas).<sup>129</sup> It is calculated for all communities in Canada, including 619 First Nations<sup>130</sup> and relies on Statistics Canada's Index of Remoteness.<sup>131</sup> Importantly, the ISC Cost Adjustment Factor distinguishes between road-connected and non-road-connected communities by incorporating a factor that adjusts for a lack of road access.<sup>132</sup>

78. While the NAN Remoteness Quotient Factor provides values for NAN First Nations, it does not generate adjustment factors for First Nations outside NAN territory. The ISC Cost Adjustment Factor, however, provides estimates for all communities. To create a formula that works nationally, the NAN-Canada Remoteness Quotient Table first compared ISC Cost Adjustment Factor values and NAN Remoteness Quotient Factor values for NAN communities to determine how much the ISC Cost Adjustment Factor needed to be scaled to align with NAN Remoteness Quotient Factor outputs.<sup>133</sup> This

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<sup>129</sup> Examination-in-Chief of Dr. Martin Cooke, Transcript for 11 Dec 2025 Part 1, Transcript Brief at Tab 4, at p 179 at lines 7-13.

<sup>130</sup> Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025 at para 18.

<sup>131</sup> The Index of Remoteness assigns each community a score between zero and one, where zero represents the least remote communities closest to population centres. The Index of Remoteness incorporates three key factors: (1) the distance to population centres, (2) the size of those centres, and (3) a "fly-in factor" that identifies whether a community lacks connection to the main road network. See Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025 at paras 18, 21; Cross-Examination of Dr. Martin Cooke, Transcript for 11 Dec 2025 Part 1, Transcript Brief at Tab 4, at p 50 at lines 14-17.

<sup>132</sup> Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025 at para 18.

<sup>133</sup> Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025 at paras 25-26; Cross-Examination of Dr. Martin Cooke, Transcript for 11 Dec 2025 Part 1, Transcript Brief at Tab 4, at p 241 at lines 15-18.

step ensures that remoteness quotients can be calculated consistently for all First Nations, including those outside NAN territory.

79. The adjustment formula distinguishes between communities that are connected by all-weather roads and those that are not (which the NAN Remoteness Quotient Factor does not account for). To reconcile this difference, the NAN-Canada Remoteness Quotient Table introduced an additional layer of adjustment. This involved calculating tailored multipliers based on population-weighted comparisons of NAN Remoteness Quotient Factor values and ISC Cost Adjustment Factor values for NAN communities.<sup>134</sup> These tailored adjustments ensure that the hybrid Remoteness Quotient Adjustment Factor accurately reflects cost realities for both road-connected and non-road-connected communities.

80. Implementation of the Remoteness Quotient Adjustment Factor results in an average remoteness adjustment of approximately 41.3%<sup>135</sup> with some First Nations seeing increases of up to 120%.<sup>136</sup>

81. The Reformed FNCFS Funding Approach uses a flexible funding mechanism, called the **FNCFS Funding Mechanism**, that allows First Nations and FNCFS Agencies to reallocate funds across most funding components (for example, a recipient could use

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<sup>134</sup> Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025 at paras 27-29; OFA at Appendix 10. For road-connected NAN First Nations, the values were found to be slightly higher than NAN Remoteness Quotient Factor values, so a 1.089 multiplier is used. For NAN communities without all-weather road access, the values were found to be slightly lower than NAN Remoteness Quotient Factor values, so for non-road-connected NAN First Nations and all other First Nations, a 0.879 multiplier is used.

<sup>135</sup> Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025 at para 102.

<sup>136</sup> Hearing Exhibit 4a, Grand Chief Fiddler Affidavit, 7 Mar 2025 at para 70.

their IT funding for prevention or their PMSS funding for FNRS) and carry forward unexpended funds within the term of their agreements.<sup>137</sup>

82. The OFA contains a mechanism to address funding shortfalls that may arise during implementation: the **Service Provider Funding Adjustment Request**. The OFA permits an FNCFS Agency to submit a Service Provider Funding Adjustment Request if it is unable within its current funding, for reasons beyond its reasonable control, to deliver services required by law or that are least disruptive measures.<sup>138</sup> Similarly, a First Nation may request a funding adjustment where its prevention funding is insufficient to provide services to respond to a need created by an unforeseen event that is beyond its reasonable control.<sup>139</sup> If there is disagreement over ISC's determination of a Service Provider Funding Adjustment Request, the Claimant Dispute Process (described at paragraphs 100 to 111) – is available to resolve the matter.

(ii) Structural Reforms to Address Systemic Discrimination

*a. Ontario Reform Implementation Committee*

83. The Ontario Reform Implementation Committee (the “ORIC”) is the central governance feature of the OFA, created to oversee and monitor the implementation

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<sup>137</sup> OFA at paras 48-53. Reallocation is subject to key limits: prevention funding cannot be reallocated to protection services except for least disruptive measures (a safeguard to ensure that flexibility does not compromise the program’s prevention-focused objectives), and FNCFS capital funding cannot be reallocated without an approved plan.

<sup>138</sup> OFA at paras 166, 169-170. Per paragraph 170, FNCFS Agency requests must be accompanied by evidence of written support of the leadership of the FNCFS Agency’s affiliated First Nation(s) that are affected.

<sup>139</sup> OFA at paras 167, 169. Note that paragraphs 172-174 of the OFA set out the timelines and procedural requirements for ISC’s response to requests, including standard and urgent cases.

of the Reformed FNCFS Program.<sup>140</sup> ORIC's purpose is to ensure accountability, transparency, and responsiveness throughout the life of the OFA.

84. The ORIC is comprised of eight members: one appointed by each of Canada, COO, and NAN, and five appointed by the Ontario Chiefs-in-Assembly, with at least one intended to be a youth with lived experience in the child and family services system.<sup>141</sup>

85. The ORIC will operate as the hub for information and decision-making related to implementation of the OFA. It receives reports from key bodies and can make recommendations to Canada at any time for improvements to the Reformed FNCFS Program.<sup>142</sup>

86. The ORIC has many responsibilities in addition to its comprehensive oversight role and recommendation function, such as supervising two Program Assessments (described at paragraphs 89 to 99), publishing annual public reports on implementation progress, and establishing the Systemic Review Committee and Technical Advisory Committee.<sup>143</sup>

87. The Systemic Review Committee (a subcommittee of the ORIC comprised of ORIC members) monitors trends in Service Provider Funding Adjustment Requests and Claimant Dispute outcomes and makes remedial recommendations to the ORIC with respect to any trends of concern.<sup>144</sup> The Technical Advisory Committee is an external committee comprised of technical experts that provides expert guidance on

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<sup>140</sup> OFA at paras 120, 126(a).

<sup>141</sup> OFA at para 123.

<sup>142</sup> OFA at paras 121, 122, 126(a), 126(c)-(d). Paragraph 121 provides that the OFA's Dispute Resolution Process is not available with respect to recommendations of the ORIC that require amendment to the OFA or significant structural change to the Reformed FNCFS Program except where such recommendations arise in the context of the Initial Program Assessment.

<sup>143</sup> OFA at paras 126(b), (e), 129, 133, and Appendix 7 at 6.1(c), (j), (l).

<sup>144</sup> OFA at paras 130-132.

implementation to the ORIC. It also facilitates youth participation, creating opportunities for young people with lived experience in the child and family services system to inform implementation.<sup>145</sup>

88. The OFA commits Canada to cover reasonable insurance costs for ORIC members and provide up to \$17.4 million over the term of the OFA to fund participation costs for the ORIC (including the Systemic Review Committee) and the Technical Advisory Committee.<sup>146</sup>

***b. Program Assessment Process***

89. The OFA establishes a structured process for two independent Program Assessments during its term. These assessments are intended to evaluate the implementation and effectiveness of the Reformed FNCFS Program and to inform future funding decisions.<sup>147</sup> The OFA requires that the Initial Program Assessment be completed by March 31, 2028, and the Second Program Assessment by March 31, 2033.<sup>148</sup> These timelines ensure that the first assessment occurs toward the end of the Initial Funding Period and the second near the expiry of the OFA's term.

90. The purposes of the Program Assessments are to review and document whether the Reformed FNCFS Program: (i) achieves its goal of eliminating discrimination and preventing its recurrence; (ii) provides funding in a sufficient amount and in a manner consistent with the purposes and principles of the OFA; (iii) is effective and advances program outcomes; and (iv) improves the well-being and best interests of First Nations

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<sup>145</sup> OFA at paras 133-135.

<sup>146</sup> OFA at paras 127-128.

<sup>147</sup> OFA at paras 136, 139.

<sup>148</sup> OFA at paras 136, 137, and Appendix 3.

children, youth, and families.<sup>149</sup> The scope of the Program Assessments includes all aspects of the Reformed FNCFS Program.<sup>150</sup>

91. COO, in consultation with the ORIC, will select the organization responsible for conducting each Program Assessment through a request-for-proposals process (the "Program Assessment Organization"). The organization must be independent, qualified, and capable of meeting the timeline and budget requirements.<sup>151</sup> COO will oversee the Program Assessment Organization and may provide guidance on methodology, relevant research, and participation of First Nations and experts.<sup>152</sup> The Program Assessment Organization will solicit input from First Nations, FNCFS Agencies, the Moving Parties, and other relevant entities.<sup>153</sup> It may also consider First Nations-defined indicators of well-being, research on remoteness, and other contextual factors.<sup>154</sup> Upon request, the Moving Parties must provide the Program Assessment Organization with timely access to relevant information, data, reports, and agreements.<sup>155</sup>

92. If an urgent issue affecting service delivery arises during an assessment, the Program Assessment Organization shall notify COO, who will inform the ORIC, and may recommend a solution.<sup>156</sup>

93. Each Program Assessment will result in a detailed report and an executive summary, which COO will make public.<sup>157</sup> These reports must include evidence-based

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<sup>149</sup> OFA at para 139.

<sup>150</sup> OFA at para 140.

<sup>151</sup> OFA at paras 141-143.

<sup>152</sup> OFA at para 147.

<sup>153</sup> OFA at para 148.

<sup>154</sup> OFA at para 149.

<sup>155</sup> OFA at para 150.

<sup>156</sup> OFA at para 151.

<sup>157</sup> OFA at paras 152, 154, 156.

recommendations for improving the program and addressing any shortcomings that are identified. Recommendations may include immediate priority actions and subregional variations where necessary.<sup>158</sup>

94. Following receipt of the reports, ORIC will prepare Program Assessment Opinions for Canada's consideration, which may include recommendations to increase funding for subsequent fiscal years ("ORIC Program Assessment Opinions"). The ORIC Program Assessment Opinions and executive summaries of those opinions must also be made public.<sup>159</sup>

95. Canada is required to respond to ORIC Program Assessment Opinions within 120 days, confirming which recommendations it will implement and providing detailed reasons for any variations or refusals. Canada's responses will also be made public.<sup>160</sup>

96. Recommendations from the initial ORIC Program Assessment Opinion that are related to funding levels and that are accepted by Canada must be implemented no later than April 1, 2029.<sup>161</sup>

97. Disagreements about Canada's decision on whether or how to implement recommendations from the initial ORIC Program Assessment Opinion may be brought to arbitration under the OFA's Dispute Resolution Process (described at paragraphs 100 to 111), specifically the Parties' Dispute Process, subject to limitations set out in the OFA.<sup>162</sup> This includes recommendations that would require an amendment to the OFA or significant structural changes, including changes to funding.<sup>163</sup>

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<sup>158</sup> OFA at para 153.

<sup>159</sup> OFA at paras 159-162.

<sup>160</sup> OFA at paras 163-164.

<sup>161</sup> OFA at para 165.

<sup>162</sup> OFA at paras 196(b), 197(c), 205.

<sup>163</sup> OFA at para 121; Cross-Examination of Duncan Farthing-Nichol, Transcript for 12 Dec 2025 Part 1, Transcript Brief at Tab 6, at p 470 at lines 18-25 and at p 102 at lines 1-19.

98. Under the OFA's Dispute Resolution Process, an Arbitral Tribunal or Appeal Tribunal considering a dispute about Canada's decision on whether or how to implement recommendations from the initial ORIC Program Assessment Opinion may grant any remedy that would ordinarily be available on judicial review (including quashing Canada's decision and remitting it to Canada with reasons for redetermination), subject to the limits set out in the OFA.<sup>164</sup>

99. The OFA's Dispute Resolution Process does not apply to disputes concerning Canada's decision on whether or how to implement recommendations from the second ORIC Program Assessment Opinion.<sup>165</sup> Instead, ISC will engage with COO and NAN to consider their recommendations and how they may inform the Reformed FNCFS Program or any successor program that may take effect after the OFA expires.<sup>166</sup>

***c. Dispute Resolution Process***

100. The OFA's Dispute Resolution Process applies as of the Effective Date and is arbitration-based.<sup>167</sup> The OFA provides that its Dispute Resolution Process will address two categories of disputes: (a) Parties' Disputes, which are disagreements between the Moving Parties regarding implementation or interpretation of the OFA or decisions by Canada with respect to ORIC recommendations;<sup>168</sup> and (b) Claimant

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<sup>164</sup> OFA at para 205. Paragraph 211 provides that an Arbitral Tribunal or Appeal Tribunal may not: amend the OFA, award damages, determine issues relating to failure of the Parliament of Canada to appropriate funding committed under the OFA, expand its jurisdiction, reduce funding commitments, introduce systemic changes, order Canada to fund new components of the Reformed FNCFS Funding Approach or increase funding for existing components unless otherwise set out in the OFA, or introduce additional indexation factors.

<sup>165</sup> OFA at para 197(a).

<sup>166</sup> OFA at para 75.

<sup>167</sup> OFA at paras 191-193.

<sup>168</sup> OFA at paras 195-197.

Disputes, which are disputes brought by First Nations or FNCFS Agencies concerning funding allocations, entitlement to funding, or decisions on a Service Provider Funding Adjustment Request or FNCFS capital funding proposal.<sup>169</sup>

101. The Claimant Dispute Process includes supports to ensure accessibility and cultural appropriateness. Cultural Officers guide arbitrators on Indigenous legal traditions and culturally-rooted procedures.<sup>170</sup> Fully funded duty counsel will provide independent legal advice and help Claimants navigate the process.<sup>171</sup> Claimants may seek an order requiring Canada to pay their legal fees.<sup>172</sup>

102. A First Nation or FNCFS Agency, however, is not obligated to resolve disputes using the Claimant Dispute Process. They may seek remedies through any other avenue available to them, including filing a claim in a court of competent jurisdiction or pursuing a complaint under the CHRA.<sup>173</sup>

103. The OFA's Dispute Resolution Process is the exclusive procedure for resolving Parties' Disputes.<sup>174</sup>

104. The OFA sets out detailed procedures for commencing disputes, timelines for filing Notices to Arbitrate, and requirements for Claimant Arbitration Agreements in Claimant Disputes.<sup>175</sup> It also permits the parties to a dispute to agree to mediation at any time, with Canada covering the mediator's reasonable fees and expenses.<sup>176</sup>

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<sup>169</sup> OFA at paras 195, 199-200.

<sup>170</sup> OFA at paras 275-282.

<sup>171</sup> OFA at paras 269-271.

<sup>172</sup> OFA at para 272.

<sup>173</sup> OFA at para 202.

<sup>174</sup> OFA at para 198.

<sup>175</sup> OFA at paras 243-249.

<sup>176</sup> OFA at paras 256-257.

105. At first instance, disputes are heard by a single arbitrator; appeals are heard by a three-member Appeal Tribunal.<sup>177</sup> Arbitrators are selected from a roster and must meet qualifications including adjudication training and cultural safety training.<sup>178</sup>

106. The OFA requires that Arbitral Tribunals decide disputes in accordance with the OFA's purposes and principles and conduct proceedings in a just, expeditious, and cost-effective manner that is culturally appropriate.<sup>179</sup>

107. An Arbitral Tribunal reviews Canada's decision in both Parties' Disputes and Claimant Disputes by assessing its reasonableness based solely on the materials before the decision-maker and any written reasons; if no decision exists in a Parties' Dispute, it considers the circumstances giving rise to the dispute.<sup>180</sup>

108. An Arbitral Tribunal or Appeal Tribunal has jurisdiction to: resolve disputes, make procedural and substantive decisions, adjust timelines, decide evidentiary questions, order interim measures, and grant remedies permitted under the OFA. Remedies permitted under the OFA include funding adjustments, interim measures, and costs.<sup>181</sup>

109. An Arbitral Tribunal or Appeal Tribunal may not: amend the OFA, award damages, determine issues relating to the failure of the Parliament of Canada to appropriate funding committed under OFA, expand its jurisdiction, reduce funding commitments, introduce systemic changes, order Canada to fund new components of

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<sup>177</sup> OFA at paras 250-251.

<sup>178</sup> OFA at paras 233-236, 240.

<sup>179</sup> OFA at paras 212-213.

<sup>180</sup> OFA at paras 204, 207. Note that paragraph 208 creates an exception to paragraph 207 (Claimant Disputes) by allowing the Arbitral Tribunal to consider additional evidence and contextual factors beyond the original record.

<sup>181</sup> OFA at paras 204, 209.

the Reformed FNCFS Funding Approach or increase funding for existing components unless otherwise set out in the OFA, or introduce additional indexation factors.<sup>182</sup>

110. On appeal, an Appeal Tribunal conducts a *de novo* review of Canada's decision based on the record before the Arbitral Tribunal. An Appeal Tribunal has the same jurisdiction as an Arbitral Tribunal and in addition may uphold Canada's decision or substitute its own decision.<sup>183</sup>

111. The OFA specifies that certain provisions of its Dispute Resolution Process survive the expiry of the OFA, including the requirement to resolve disputes initiated prior to expiry using the OFA's Dispute Resolution Process.<sup>184</sup>

***d. Performance Measurement of the Reformed FNCFS Program***

112. The OFA requires measurement of the performance of the Reformed FNCFS Program to monitor outcomes and report on progress. To measure whether it is achieving this objective, ISC must analyze internal data and require First Nations and FNCFS Agencies to report on indicators directly related to their activities.<sup>185</sup> These indicators are set out in the OFA.<sup>186</sup> The OFA provides that ISC may revise the performance measurement indicators and outcomes chart in Appendix 2, in consultation with COO and NAN and taking into account recommendations of the ORIC.<sup>187</sup>

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<sup>182</sup> OFA at para 211.

<sup>183</sup> OFA at paras 206, 210. Per paragraphs 224-225, an Appeal Tribunal's decision shall be final and binding unless set aside or varied by the Ontario Superior Court of Justice under the *Arbitration Act, 1991*, [SO 1991, c 17](#) and any appeal to that court may be made without leave on a question of law or mixed fact and law, but not on a question of fact.

<sup>184</sup> OFA at paras 221, 291, 308.

<sup>185</sup> OFA at paras 77-78.

<sup>186</sup> OFA at Appendix 2.

<sup>187</sup> OFA at para 320(a).

113. Canada will continue to report publicly through ISC's Departmental Results Report on indicators consistent with the Measuring to Thrive framework developed by the Institute of Fiscal Studies and Democracy ("IFSD"), including access to safe housing, potable water, family reunification, livable income, and mental health services within the community.<sup>188</sup>

**e. Ontario FNCFS Data Secretariat**

114. To support data collection and analysis, the OFA establishes an Ontario FNCFS Data Secretariat. COO and NAN will select a data institution or establish such an organization to act as the Ontario FNCFS Data Secretariat, which will be independent from Canada.<sup>189</sup> The Ontario FNCFS Data Secretariat will act as the central hub for data activities, synthesize relevant data, and report findings and recommendations to the ORIC.<sup>190</sup> The Ontario FNCFS Data Secretariat will also provide synthesized data and analysis to the Program Assessment Organization, and the Program Assessment Organization is required to solicit and consider input from the Ontario FNCFS Data Secretariat when conducting its evaluations.<sup>191</sup> The Ontario FNCFS Data Secretariat will receive data directly from FNCFS Agencies and ISC (subject to an information-sharing agreement).<sup>192</sup>

**f. FNCFS Agency Accountability and Community Wellness Reporting**

115. The OFA establishes accountability requirements for FNCFS Agencies to ensure transparency and collaboration with the First Nations they serve. Each FNCFS

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<sup>188</sup> OFA at para 80.

<sup>189</sup> OFA at paras 87-88.

<sup>190</sup> OFA at para 90.

<sup>191</sup> OFA at paras 90, 148(d).

<sup>192</sup> OFA at paras 91-92.

Agency must co-develop a Child and Community Well-Being Plan with its affiliated First Nations, to be submitted within six months of the Effective Date.<sup>193</sup>

116. The Child and Community Well-Being Plan must include planned activities and associated expenditures, multi-year financial forecasts, risk management strategies, provisions for regular reporting to affiliated First Nations, mechanisms for information sharing, and an integrated approach to prevention services that delineates the roles of FNCFS Agencies and First Nations.

117. FNCFS Agencies are required to report annually to ISC and their affiliated First Nations on implementation of the Child and Community Well-Being Plan and to provide updates as necessary. ISC may take compliance measures, including audits or default remedies, where an FNCFS Agency fails to meet these requirements.<sup>194</sup>

118. The OFA also requires FNCFS Agencies to collect and report data on community wellness indicators in relation to children in care.<sup>195</sup> These indicators, which are drawn from the Measuring to Thrive framework, include: knowledge of Indigenous languages, connection to land, family reunification, placement within community, stability in care, incidence of abuse, housing conditions, and referrals to health and social services.

#### ***g. Remoteness-related Research and Tables***

119. The OFA establishes and continues processes for ISC to engage with representatives of remote First Nations in Ontario to address issues of remoteness.<sup>196</sup>

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<sup>193</sup> OFA at para 108. Per paragraph 109 of the OFA, after the expiry of the initial Child and Community Well-Being Plan, each FNCFS Agency must submit a subsequent plan co-developed with its affiliated First Nations at least 90 days before the previous plan expires, and the updated plan must follow the same requirements and approval process as the original plan.

<sup>194</sup> OFA at paras 111-112, and Appendix 6, Part B, s.10.2.

<sup>195</sup> OFA at paras 113-115.

<sup>196</sup> OFA at paras 93-94.

It maintains the NAN-Canada Remoteness Quotient Table as a collaborative forum for policy and technical work on remoteness, including refining methodologies such as the Remoteness Quotient Adjustment Factor and exploring partnerships with Statistics Canada to improve its Index of Remoteness.<sup>197</sup> The NAN-Canada Remoteness Quotient Table will also create an Ontario Remoteness Secretariat to serve as a centre of expertise on the impacts of remoteness, responsible for coordinating research, data collection, and analysis, and for sharing best practices with First Nations and FNCFS Agencies.<sup>198</sup> ISC will provide \$13.5 million over the term of the OFA to support the NAN-Canada Remoteness Quotient Table and the Ontario Remoteness Secretariat.<sup>199</sup>

***h. Cultural Humility Training for ISC Employees***

120. The OFA requires mandatory cultural humility training for all ISC employees who support implementation of the OFA. Employees must complete at least 15 hours annually, and up to 30 hours annually for those in management or executive positions or whose responsibilities involve regular interaction with First Nations.<sup>200</sup>

121. Within 120 days of the Effective Date, ISC and the ORIC must jointly develop and implement a trauma-informed cultural humility training program. The program will include topics such as the history and impacts of Canada's policies on First Nations children and families, the UNDRIP, the Truth and Reconciliation Commission's reports, systemic factors contributing to overrepresentation in child welfare, and the

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<sup>197</sup> OFA at paras 95-96.

<sup>198</sup> OFA at paras 98, 100-102.

<sup>199</sup> OFA at para 104.

<sup>200</sup> OFA at para 175.

findings of the Missing and Murdered Indigenous Women and Girls Inquiry.<sup>201</sup> Training may include experiential learning such as Elders' teachings, ceremonies, First Nations-led workshops, research seminars, and community visits, including visits to remote communities.<sup>202</sup> ISC must track compliance with the cultural humility training program and report results to the ORIC.<sup>203</sup>

***i. Mechanisms for Funding Security and Flexibility for First Nations***

122. The OFA provides that First Nations in Ontario exercising jurisdiction over child and family services will not receive less funding than they would under the Reformed FNCFS Program for the services covered by their jurisdictional agreement.<sup>204</sup>
123. The OFA also provides flexibility for dialogue between First Nations or subregional organizations and Canada about modifications to the Reformed FNCFS Program, including the Reformed FNCFS Funding Approach.<sup>205</sup>

**Summary of the Trilateral Agreement**

124. The Trilateral Agreement reflects the Moving Parties' desire to enter discussions with the Government of Ontario on comprehensive reform of the 1965 Agreement (i.e., for all social services covered under the 1965 Agreement, not just child and family services). It commits the Moving Parties to work together to engage the Government of Ontario in such discussions<sup>206</sup> and requires Canada to make best efforts to agree with the Government of Ontario on a reformed 1965 Agreement by March 31, 2027.<sup>207</sup>

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<sup>201</sup> OFA at para 176.

<sup>202</sup> OFA at para 177.

<sup>203</sup> OFA at paras 178-179.

<sup>204</sup> OFA at para 106.

<sup>205</sup> OFA at para 47.

<sup>206</sup> Trilateral Agreement at art 2.02(1).

<sup>207</sup> Trilateral Agreement at art 2.02(3).

If no agreement is reached by that date, the Moving Parties will meet to discuss next steps, including alternative reform mechanisms or termination of the 1965 Agreement, and may invite the Government of Ontario to participate.<sup>208</sup>

125. The Trilateral Agreement outlines the shared principles that will guide the Moving Parties in discussions on reform of the 1965 Agreement. The principles articulated in Part II of the OFA will guide the Moving Parties in discussing reform of child and family services.<sup>209</sup> A lengthy list of principles will guide the Moving Parties in discussing the broader reform of the 1965 Agreement; this includes the principles that services to First Nations people on-reserve should be flexible, culturally appropriate, advance substantive equality, and available at a level and delivered in a manner at least comparable to that of services to non-First Nations people and to First Nations people living off-reserve.<sup>210</sup>

126. The Trilateral Agreement also provides for COO's and NAN's involvement in 1965 Agreement reform. Canada has agreed not to amend, replace, terminate, or enter into a reformed 1965 Agreement without consultation with COO and NAN.<sup>211</sup> Additionally, Canada will take the position that COO and NAN should fully participate in the discussions between Canada and the Government of Ontario on reform.<sup>212</sup>

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<sup>208</sup> Trilateral Agreement at art 2.02(6).

<sup>209</sup> Trilateral Agreement at art 2.04(1).

<sup>210</sup> Trilateral Agreement at art 2.04(2). An additional key principle is recognizing the importance of First Nation Representative Services for children and families (see art 2.04(2)(e)). Consistent with art 2.03 of the *Agreement Respecting Funding for First Nations Representative Services Off-Reserve in Ontario* dated February 26, 2025, COO, NAN, and Canada will jointly approach Ontario to seek provincial funding for FNRS off-reserve and will use discussions on reforming the 1965 Agreement to emphasize FNRS funding as a significant priority. The *Agreement Respecting Funding for First Nations Representative Services Off-Reserve in Ontario* is found at Exhibit F to Hearing Exhibit 3, Simard Reply Affidavit, 17 Oct 2025.

<sup>211</sup> Trilateral Agreement at art 2.02(2).

<sup>212</sup> Trilateral Agreement at art 2.02(4).

Should COO and NAN decide during these discussions that they would like to become parties to a reformed 1965 Agreement, Canada will support that request.<sup>213</sup>

127. The Trilateral Agreement requires the Moving Parties to make best efforts to agree to a work plan outlining steps for outreach to the Government of Ontario and substantive subjects for discussion with the Government of Ontario. It sets out a detailed list of subjects that may be included in the work plan.<sup>214</sup> Canada has agreed to provide funding to COO and to NAN to carry out the activities identified in the work plan.<sup>215</sup>

128. The Trilateral Agreement does not require Tribunal approval to go into effect. It has been in effect since April 1, 2025 and will terminate on March 31, 2030, unless otherwise agreed by the Moving Parties.<sup>216</sup>

## **PART IV – ISSUE**

129. Do the reforms contained in the OFA and the Trilateral Agreement end the discrimination found by the Tribunal in on-reserve child and family services in Ontario and prevent its recurrence?

## **PART V – THE LAW AND ANALYSIS**

### **Law Governing the Appropriate Remedial Approach**

*The Tribunal’s Broad Remedial Authority Allows Flexibility and Creativity in Crafting Remedies*

130. The Tribunal’s authority to approve the OFA flows from s. 53(2) of the CHRA.<sup>217</sup> It is well established that this remedial authority is to be interpreted broadly and

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<sup>213</sup> Trilateral Agreement at art 2.02(5).

<sup>214</sup> Trilateral Agreement at art 2.03(2).

<sup>215</sup> Trilateral Agreement at art 3(1).

<sup>216</sup> Trilateral Agreement at art 5(1).

<sup>217</sup> [CHRA](#) at s. 53(2).

liberally,<sup>218</sup> with a view to achieving the purposes of the CHRA, which is to eliminate and prevent discrimination.<sup>219</sup>

131. In the Merit Decision, the finding of discrimination was grounded in denial of services as well as adverse impacts.<sup>220</sup> The adverse impacts identified by the Tribunal included perpetuating historical disadvantage and an “incentive to take children into care” with the result that “many” First Nations children and families were denied an opportunity to remain together or be reunited in a timely manner.<sup>221</sup> While not necessary, the Tribunal found comparability to provincial services to be a useful metric in assessing discrimination,<sup>222</sup> a frame of analysis also endorsed by the Federal Court in the context of on-reserve police services.<sup>223</sup>

132. To eliminate and prevent discrimination, the Tribunal’s remedial orders must be meaningful and effective.<sup>224</sup> A meaningful remedial order is “relevant to the experience of the claimant” and “address[es] the circumstances in which the right was infringed or denied”.<sup>225</sup> An effective remedial order should minimize delay and difficulty<sup>226</sup> and yield concrete action that verifiably ameliorates the discrimination identified.

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<sup>218</sup> The Tribunal has affirmed this principle throughout its jurisprudence on many occasions, for example: [Merit Decision](#) at para 469 and [2018 CHRT 4](#) at para 217.

<sup>219</sup> [CHRA](#) at s. 2; [CN v Canada \(Canadian Human Rights Commission\)](#), [\[1987\] 1 SCR 1114](#) at pp 1134, 1136; [Ontario Human Rights Commission v Simpsons-Sears](#), [\[1985\] 2 SCR 536](#) at para 12.

<sup>220</sup> [Merit Decision](#) at para 24.

<sup>221</sup> [Merit Decision](#) at paras 349, 458-459.

<sup>222</sup> [Merit Decision](#) at para 111.

<sup>223</sup> [Canada \(Attorney General\) v Dominique](#), [2025 FCA 24](#) at para 93.

<sup>224</sup> [Doucet-Boudreau v Nova Scotia \(Minister of Education\)](#), [2003 SCC 62](#) at para 25 [Doucet-Boudreau], while the comments of the Supreme Court were in relation to the *Charter*, the same reasoning has been applied to human rights legislation; see [Ball v Ontario \(Community and Social Services\)](#), [2010 HRTO 360](#) at paras 164-170.

<sup>225</sup> [Doucet-Boudreau](#) at para 55.

<sup>226</sup> [Doucet-Boudreau](#) at para 55.

133. Crafting meaningful and effective remedies in complex systemic discrimination cases may require “flexibility and imagination” on the part of the Tribunal.<sup>227</sup> Since the Merit Decision, the Tribunal has adopted a flexible and creative iterative remedial approach with immediate relief addressing the worst sting of discrimination while medium and long-term relief are to be developed relying on research and negotiations, pursuant to the dialogic approach.

134. The Tribunal has set out parameters for what long-term reform must achieve – namely, that it must:<sup>228</sup>

1. Have lasting effects, be adequately resourced, and remain sustainable for present and future generations;
2. Be flexible and improve upon the Tribunal’s previous orders;
3. Incorporate regional and local First Nations perspectives;
4. Be evidence-based, relying on the best currently available research and studies, without delay for additional studies;
5. Align with the spirit of the Tribunal’s findings and rulings in a non-rigid manner;
6. Be First Nations-centered and respectful of their distinct needs and perspectives;
7. Be culturally appropriate, respect substantive equality, reflect the best interests of the child through an Indigenous lens and respect the specific needs of First Nations children and families;
8. Comply with domestic and international human rights, especially the *United Nations Convention on the Rights of the Child* (“UNCRC”), the UNDRIP, and the *United Nations Declaration on the Rights of Indigenous Peoples Act*; and,
9. Strive for excellence rather than perfection, without narrowing the Tribunal’s findings and orders.

135. COO and NAN submit that the OFA adequately responds to these parameters.

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<sup>227</sup> *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Communauté urbaine de Montréal*, [2004 SCC 30](#) at para [26](#); [Grover](#) at para [40](#); *First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, [2016 CHRT 10](#) at para [15](#).

<sup>228</sup> [2025 CHRT 80](#) at para [113](#).

*The Dialogic Approach Requires Respect for First Nations' Self-Determination*

136. The Tribunal has continually promoted a dialogic approach for the parties,<sup>229</sup> which was endorsed by the Federal Court: "The parties must decide whether they will continue to sit beside the trail or move forward in the spirit of reconciliation".<sup>230</sup> The Moving Parties embraced the Tribunal's dialogic approach and negotiated long-term reform in Ontario over many years.<sup>231</sup>

137. The dialogic approach rests on the premise that the ultimate remedy for Canada's discrimination should be a negotiated resolution, as this is most responsive to First Nations' aspirations and needs and reflective of all parties' realities and solemn commitments.<sup>232</sup> This approach has been repeatedly urged by the Supreme Court of Canada:

While Aboriginal claims can be and are pursued through litigation, negotiation is a preferable way of reconciling state and Aboriginal interests.<sup>233</sup>

The reconciliation process differs from the conflict driven, adversarial litigation process that is often antithetical to meaningful and lasting reconciliation. As the Court noted in *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, [2017 SCC 40](#), [2017] 1 S.C.R. 1069, at para 24, "[t]rue reconciliation is rarely, if ever, achieved in courtrooms." The Court has repeatedly emphasized the importance of reconciliation between Indigenous peoples and the Crown outside of the courts.<sup>234</sup>

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<sup>229</sup> [2022 CHRT 41](#) at paras [123](#), [233](#); *First Nations Child & Family Caring Society of Canada and Assembly of First Nations v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2025 CHRT 6](#) at paras [39-41](#), [47](#), [552](#), [566-573](#), [577-581](#), [583-586](#); [2025 CHRT 80](#) at paras [65-68](#).

<sup>230</sup> *Canada (Attorney General) v First Nations Child and Family Caring Society of Canada*, [2021 FC 969](#) at para [301](#), see also paras [135-138](#), [281](#), [302](#).

<sup>231</sup> For more information on the negotiations, see Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025 at paras 36-107.

<sup>232</sup> Roach, "9.5.1 Indigenous Self-determination and Negotiated Remedies" at p 504; [Doucet-Boudreau](#) at para [120](#); [2025 CHRT 6](#) at para [586](#).

<sup>233</sup> *Haida Nation v British Columbia (Minister of Forests)*, [2004 SCC 73](#) at para [14](#), cited by *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, [2024 SCC 5](#) at para [88](#) and *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, [2017 SCC 40](#) at para [24](#); see also *R v Desautel*, [2021 SCC 17](#) at para [87](#).

<sup>234</sup> *Shot Both Sides v Canada*, [2024 SCC 12](#) at para [71](#) (citations omitted).

138. The Tribunal has affirmed First Nations' inherent rights of self-governance and self-determination<sup>235</sup> and recognized the interconnection between the dialogic approach and respect for First Nations self-determination, stating that "long-term orders must be informed by First Nations' perspectives and guided by First Nations-led solutions".<sup>236</sup>

139. In evaluating whether the OFA adequately responds to the parameters set out in 2025 CHRT 80, the Tribunal should respect First Nations' self-determination and remedial choice. The principle of remedial choice recognizes that discrimination can be addressed through multiple effective methods.<sup>237</sup> The Tribunal has adopted this principle, affirming that: "There may be multiple effective methods for remedying discrimination, and flexibility is permitted in selecting among them, provided that the discrimination is fully and effectively addressed".<sup>238</sup> Respect for remedial choice is a fundamental principle reflecting that "[r]emedies are often subject to a balancing of competing interests and rights".<sup>239</sup>

140. In practical terms, on this motion, respect for the self-determination of First Nations in Ontario, expressed through their representative organizations COO and NAN and the votes of their respective Chiefs-in-Assembly, means that the Tribunal

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<sup>235</sup> For examples of the Tribunal's statements recognizing First Nations' right of self-determination, see [2018 CHRT 4](#) at para [440](#); *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2019 CHRT 7](#) at para [23](#); [2022 CHRT 41](#) at paras [1, 13, 431](#).

<sup>236</sup> [2025 CHRT 80](#) at para [75](#); see also [2022 CHRT 41](#) at para [431](#).

<sup>237</sup> Roach, "1.2.5 Choice of Remedies and Proportionality" at p 15.

<sup>238</sup> [2025 CHRT 80](#) at para [67](#); see also *Eldridge v British Columbia (Attorney General)*, [\[1997\] 3 SCR 624](#) at para [96](#).

<sup>239</sup> Roach, "1.2.5 Choice of Remedies and Proportionality" at p 15.

should recognize that First Nations are in the best position to determine their own futures and they have chosen the OFA.<sup>240</sup>

### **The OFA Improves Upon the Tribunal’s Previous Orders**

141. The OFA replaces the *ad-hoc* actuals funding regime, which was always intended as a temporary measure,<sup>241</sup> with the Reformed FNCFS Funding Approach: a comprehensive, forward-looking approach that delivers predictable, accessible, and substantially increased funding for First Nations and FNCFS Agencies.

142. The OFA introduces long-term funding predictability that is absent under the actuals funding regime. For nine years, Canada is bound to maintain funding at no less than the initial level, with potential increases following the Initial Program Assessment.<sup>242</sup> This stability allows First Nations and FNCFS Agencies to plan services knowing that funding will not fluctuate based on short-term spending patterns or ISC’s administrative discretion.

143. Under the actuals funding regime, First Nations and FNCFS Agencies had to apply for reimbursement of eligible costs. This process tends to advantage higher-capacity First Nations and FNCFS Agencies – those able to spend upfront and navigate the complex reimbursement process or submit advance claims – while leaving others behind.<sup>243</sup> The OFA corrects this inequity by using actual cost data to

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<sup>240</sup> Roach, “9.6 Conclusion” at p 515.

<sup>241</sup> [2025 CHRT 6](#) at paras [47-48](#); [2021 CHRT 41](#) at para [353](#).

<sup>242</sup> OFA at paras 5-11.

<sup>243</sup> Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025 at para 107; Hearing Exhibit 2, Grand Chief Abram Supplemental Affidavit, 21 May 2025 at paras 21-22. These concerns were also identified by Chippewas of Georgina Island First Nation’s affiants: see Hearing Exhibit 12, Affidavit Brief of the Interested Parties, Affidavit of Chief Donna Big Canoe, affirmed 2 October 2025 at Exhibits A and B; Hearing Exhibit 12, Affidavit Brief of the Interested Parties, Affidavit of Shannon Crate, affirmed 2 October 2025 at paras 16, 27, 32 [Hearing Exhibit 12, Crate Affidavit, 2 Oct 2025]. The Tribunal has also made similar findings, see *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing*

model needs but removing the administrative burden associated with submitting claims. Funding will be delivered through direct allocations for all components of the Reformed FNCFS Funding Approach except capital, ensuring that every community receives its share without having to compete or overcome procedural hurdles. This shift eliminates uncertainty and guarantees access for First Nations and FNCFS Agencies that may not have secured adequate funding under the actuals funding regime.

144. The OFA does not merely stabilize funding – it dramatically expands it. By 2026-27, annual funding in Ontario will reach approximately \$913 million, an increase of roughly 633% over the \$124.5 million provided for in the FNCFS Program at the time of the Merit Decision in 2015-16.<sup>244</sup> The OFA also protects against future reductions by obligating Canada to maintain total funding during the Initial Funding Period<sup>245</sup> and, thereafter, to fund at levels no lower than those provided in 2028-29.<sup>246</sup>

145. Importantly, the Tribunal's existing orders do not include structural reforms, making the OFA's approach a significant improvement. The Tribunal has held that achieving substantive equality and remedying systemic discrimination requires more than increased funding; it demands structural change that is practical, meaningful, and effective.<sup>247</sup> The OFA delivers on this directive through reforms that embed First Nations perspectives into implementation and oversight of the OFA, establish robust monitoring systems for ongoing course correction, provide enforceable dispute

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*the Minister of Indigenous and Northern Affairs Canada), 2022 CHRT 8 at paras 121, 125; First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada), 2020 CHRT 24 at paras 34, 36.*

<sup>244</sup> Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025 at para 9.

<sup>245</sup> OFA at para 8.

<sup>246</sup> OFA at para 11.

<sup>247</sup> [2021 CHRT 41](#) at para 15.

resolution processes, and incorporate safeguards to sustain the OFA's impact beyond its term.

### **The OFA Strives for Excellence Rather than Perfection**

146. The OFA does not need to meet a standard of perfection. As the Tribunal has accepted: "no settlement is perfect".<sup>248</sup>

147. It may not be perfect, but the OFA meaningfully responds to the Tribunal's findings, addresses the discrimination that was identified, and provides a new pathway forward that can achieve substantive equality in on-reserve child and family services.

148. The *status quo* under the Tribunal's immediate and medium-term relief orders is imperfect, too,<sup>249</sup> as expressed by Chief Joe Miskokomon of Chippewas of the Thames First Nation at the COO Special Chiefs Assembly on October 10, 2025, where the Ontario Chiefs-in-Assembly voted to ratify the OFA:

It is risky it may not always be perfect. We need to build capacity internally. The hard work begins at home. [...] We can no longer give our responsibilities to someone else and then blame later, their failures. It is our turn. It is our turn. I look at this Mr. Chairman and I say, is there risks? Is there risks by accepting this? And of course there is, but I would rather put the faith in our people, not in some other agency that is non-accountable to us. We've done that for far too long and look what it's gotten us. Nothing but heartache and heartbreak. It is time we put the faith in our own people.<sup>250</sup>

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<sup>248</sup> [2022 CHRT 41](#) at para [479](#). The idea that an effective remedy may be imperfect was considered by the Tribunal in *Closs v Fulton Forwarders Incorporated and Stephen Fulton*, [2012 CHRT 30](#) at para [67](#): "[t]he aim in making an order under subsection 53(2) is not to punish the person found to have engaged in the discriminatory practice, but to eliminate - as much as possible - the discriminatory effects of the practice".

<sup>249</sup> Hearing Exhibit 2, Supplemental Affidavit of Grand Chief Joel Abram, affirmed 21 May 2025 at para 22 [Hearing Exhibit 2, Grand Chief Abram Supplemental Affidavit, 21 May 2025]. The Tribunal has also found evidence of issues with the actuals funding regime, see [2022 CHRT 8](#) at paras [121](#), [125](#) and [2020 CHRT 24](#) at paras [34](#), [36](#).

<sup>250</sup> Chief Joe Miskokomon's remarks at the Chiefs of Ontario Special Chiefs Assembly, "Special Chiefs Assembly: Strength in Unity" (10 October 2025), <https://www.youtube.com/live/BjpoRyvHEdQ?t=13741s> at [3:52:07-3:53:33](#) [Chief Miskokomon's Remarks at the COO SCA, 10 Oct 2025].

149. Recognizing that no single approach can meet every First Nation's needs, the OFA supports First Nations to chart their own course in child and family services outside of the OFA in two ways:

- a. First, the OFA provides flexibility for dialogue between First Nations or subregional organizations and Canada about modifications to the Reformed FNCFS Program.<sup>251</sup>
- b. Second, the OFA provides that the Reformed FNCFS Program shall not apply to First Nations that exercise jurisdiction over child and family services under the Federal Act or another recognized jurisdictional process.<sup>252</sup> The OFA further guarantees that First Nations exercising jurisdiction will not receive less funding than they would under the Reformed FNCFS Program for the services covered by their jurisdictional agreement.<sup>253</sup>

**The OFA is Resourced Adequately and in a Manner that is First Nations-Centered and Respectful of the Distinct Needs and Perspectives of First Nations**

150. The Tribunal has found that funding reforms must eliminate systemic discrimination and prevent its recurrence by ensuring the provision of sufficient resources.<sup>254</sup> Funding decisions should be driven by the specific needs of First Nations children and families, with support for the FNCFS Agencies that serve them considered secondary to meeting those needs.<sup>255</sup>

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<sup>251</sup> OFA at para 47.

<sup>252</sup> OFA at para 106.

<sup>253</sup> OFA at para 106. In [2022 CHRT 8](#) at paras [16-18](#), the Tribunal confirmed that the inclusion of such a safety-net in a final settlement agreement would address its concerns on this point.

<sup>254</sup> *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2022 CHRT 26](#) at para [5](#); [2025 CHRT 6](#) at para [602](#).

<sup>255</sup> *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2020 CHRT 7](#) at para [24](#).

151. The OFA fully aligns with the Tribunal's orders. It replaces the discriminatory funding framework with the Reformed FNCFS Funding Approach, which ensures First Nations and FNCFS Agencies are adequately funded to deliver services, prioritizes prevention, and supports a First Nations-led approach to services. The reforms are aimed at ending the mass removal of children from their homes, families, and communities.<sup>256</sup>

152. Listed below and described in detail starting at paragraph 158 are the components of the Reformed FNCFS Funding Approach:

- (i) Baseline funding
- (ii) Prevention funding
- (iii) PMSS funding
- (iv) FNRS funding
- (v) FNCFS capital funding
- (vi) Results, IT, household supports, and emergency funding
- (vii) Remoteness adjustment funding

153. To understand how the Reformed FNCFS Funding Approach works in practice, it is helpful to highlight a defining aspect of its design. The Reformed FNCFS Funding Approach recognizes First Nations as central actors in service delivery (except for protection services, which remain with FNCFS Agencies) and empowers them to design and deliver culturally informed services that meet community priorities. This approach responds to longstanding calls from First Nations for greater control over child and family services, recognizing that First Nations' meaningful involvement is essential to ensure culturally appropriate services and to reduce child apprehensions and address the systemic overrepresentation of First Nations children-in-care.<sup>257</sup> It

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<sup>256</sup> [2022 CHRT 26](#) at para [5](#).

<sup>257</sup> Cross-Examination of Grand Chief Joel Abram, Transcript for 10 Dec 2025 Part 1, Transcript Brief at Tab 2, at p 78 at lines 11-25, at p 79 at lines 1-8, and at p 81 at lines 8-13.

also aligns with the principles of *An Act respecting First Nations, Inuit and Métis children, youth and families* (the “Federal Act”),<sup>258</sup> including cultural continuity and First Nations’ rights to exercise jurisdiction over child and family services.<sup>259</sup>

154. This approach reflects the Tribunal’s recognition that culturally appropriate services will vary from one First Nation to another and that communities are best placed to determine what those services should look like.<sup>260</sup> It also aligns with the Tribunal’s findings that the best interests of children must be interpreted through an Indigenous lens and remain the primary concern in decisions affecting them.<sup>261</sup> By increasing the role of First Nations (at their election) while maintaining the responsibility of FNCFS Agencies for protection services, including maintenance and care and least disruptive measures, the OFA ensures that funding supports a model grounded in culture and the best interests of First Nations children and families as defined by the First Nations themselves.

155. First Nations have made significant progress in delivering prevention services and where they determine they have the capacity to deliver these services, they can do so under the OFA. First Nations have received prevention funding since 2018 and have been delivering community-based programs that go beyond standard FNCFS Agency prevention services – drawing on their deep connections to their communities and cultures to provide supports that meet their communities’ unique needs. As explained by Finn Simard, COO Director of Social Services, evidence of readiness

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<sup>258</sup> *An Act respecting First Nations, Inuit and Métis children, youth and families*, [SC 2019, c 24](#).

<sup>259</sup> Cross-Examination of Grand Chief Joel Abram, Transcript for 10 Dec 2025 Part 1, Transcript Brief at Tab 2, at p 79 at lines 20-24.

<sup>260</sup> [2018 CHRT 4](#) at para [163](#).

<sup>261</sup> *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2020 CHRT 20](#) at paras [115, 180](#).

cannot be measured solely by academic research reports; First Nations' collective political will and expressions of nationhood also provide strong proof of readiness.<sup>262</sup> These expressions must be afforded weight in decision-making because they reflect the deliberate choices of First Nations to reclaim authority over child and family services.

156. At the same time, the OFA respects the unique circumstances of each First Nation by allowing First Nations that determine they are not ready or that choose not to deliver prevention services to redirect some or all of their funding to their affiliated FNCFS Agencies.<sup>263</sup>

157. The OFA funds First Nations and FNCFS Agencies differently, but in ways that complement one another. The OFA's reforms aim to ensure differences in how First Nations and FNCFS Agencies are funded do not translate into disparities in outcomes; every First Nation and FNCFS Agency is able to provide high-quality, substantively equal, culturally grounded services.

#### *Baseline Funding*

158. Baseline funding for FNCFS Agencies under the OFA has two parts: (1) operations and maintenance funding provided by the Government of Ontario directly to FNCFS Agencies according to the Government of Ontario's child welfare funding model and reimbursed by Canada under the 1965 Agreement; and (2) an additional allocation provided directly to FNCFS Agencies by ISC.<sup>264</sup>

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<sup>262</sup> Cross-Examination of Finn Simard, 10 Dec 2025 Part 2 afternoon at 1:11:21-1:11:36 (no transcript).

<sup>263</sup> Re-Examination of Finn Simard, 10 Dec 2025 Part 2 afternoon at 1:27:12-1:27:27 (no transcript); and Cross-Examination of Grand Chief Joel Abram, Transcript for 10 Dec 2025 Part 1, Transcript Brief at Tab 2, at p 79 at lines 10-15, at p 80 at lines 11-25, and at p 68 at lines 1-13.

<sup>264</sup> OFA at para 18.

159. The part of baseline funding that ISC provides directly to FNCFS Agencies replaces the actuals funding regime with a direct allocation model. Each FNCFS Agency receives an amount equal to its approved actual costs for intake and investigations (including least disruptive measures), legal fees, and building repairs in 2022-23, indexed for inflation and population growth.<sup>265</sup> If the OFA had come into effect in 2025-26, FNCFS Agencies in Ontario were estimated to receive \$96.5 million in funding directly from ISC in 2026-27.<sup>266</sup>

160. The Tribunal found in 2018 CHRT 4 that FNCFS Agencies require adequate funding to comply with their statutory obligations and deliver culturally appropriate services.<sup>267</sup> The OFA addresses this by providing baseline funding designed to meet FNCFS Agencies' statutory protection-related obligations under the *Child, Youth and Family Services Act* (the "CYFSA"), as well as least disruptive measures-related obligations under both the CYFSA and the Federal Act.

161. Since 2018, FNCFS Agencies have accessed funding from Canada for intake and investigation (including least disruptive measures), legal fees, and building repairs at their actual cost, and continued to do so in 2022-23. The part of baseline funding that ISC provides directly to FNCFS Agencies is based on their 2022-23 actual cost claims, adjusted for inflation and population, thus ensuring that funding is grounded in real costs, is reflective of FNCFS Agencies' needs, and remains adequate over time. The 2022-23 year was chosen as it was the fifth full fiscal year in which FNCFS

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<sup>265</sup> OFA at para 18(b)(i).

<sup>266</sup> Hearing Exhibit 10, Reply Affidavit of Duncan Farthing-Nichol, affirmed 17 October 2025 at para 21 [Hearing Exhibit 10, Farthing-Nichol Reply Affidavit, 17 Oct 2025]. Paragraphs 19-20 of this affidavit provide exact figures for the amount of funding that FNCFS Agencies in Ontario received from the FNCFS Program, broken down into funding received through the Government of Ontario under the 1965 Agreement and funding received directly from ISC.

<sup>267</sup> [2018 CHRT 4](#) at para 116.

Agencies could make actual cost claims, making it a mature, stable reference period.<sup>268</sup> Because ISC's benchmark captured remoteness-related costs, no separate adjustment is required.<sup>269</sup>

162. The OFA contains the following safeguards to ensure it can respond effectively should the part of baseline funding that ISC provides directly to FNCFS Agencies prove insufficient:

- a. As of May 15, 2025, ISC financial reports indicate that FNCFS Agencies in Ontario hold \$90.5 million in unexpended funding.<sup>270</sup> Under the OFA, FNCFS Agencies (and First Nations) may carry forward unexpended funding from prior fiscal years for use during the OFA term.<sup>271</sup>
- b. If an FNCFS Agency is unable within its current funding, for reasons beyond its reasonable control, to deliver services required by law or that are least disruptive measures, they may submit a Service Provider Funding Adjustment Request.<sup>272</sup>
- c. The Program Assessments will review the adequacy of the ISC component of baseline funding to FNCFS Agencies.<sup>273</sup>

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<sup>268</sup> Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025 at para 41; and Hearing Exhibit 9, Farthing-Nichol Supplemental Affidavit, 15 May 2025 at para 15.

<sup>269</sup> Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025 at para 42.

<sup>270</sup> Hearing Exhibit 9, Farthing-Nichol Supplemental Affidavit, 15 May 2025 at para 19. Further, the Hearing Exhibit 10, Farthing-Nichol Reply Affidavit, 17 Oct 2025 at para 23 states that as of March 19, 2025, Kunuwanimano Child and Family Service (directed by Taykwa Tagamou Nation affiant, Kristin Murray) reported unexpended FNCFS Program funding of approximately \$8.5 million.

<sup>271</sup> OFA at para 50.

<sup>272</sup> OFA at para 166.

<sup>273</sup> OFA at para 139(a)(ii).

### *Prevention Funding*

163. Prevention is the highest-funded component under the OFA,<sup>274</sup> reflecting the Tribunal's finding that eliminating systemic discrimination requires a fundamental shift from reactive services that bring children into care to preventive services developed and delivered by First Nations communities.<sup>275</sup> This approach also fulfills the Tribunal's requirement for adequately funded, sustainable prevention programs tailored to the distinct needs of First Nations children, families, and communities.<sup>276</sup>

164. The OFA gives First Nations the authority to decide how their prevention funding is allocated: whether to retain all of it or transfer some or all to their affiliated FNCFS Agency or another service provider. This shift in control reflects the Tribunal's finding that prevention must be developed to the standards communities set, avoiding a one-size-fits-all approach.<sup>277</sup> This approach is consistent with the Tribunal's recognition that First Nations-led and designed prevention programs are essential to eliminating systemic discrimination and ensuring services reflect the best interests of children through an Indigenous lens.<sup>278</sup>

165. For FNCFS Agencies who may be affected by a shift of prevention services provider, transitional provisions exist to ensure that any changes in allocation of prevention funding as directed by a First Nation will take effect with at least six months of notice to its affiliated FNCFS Agency,<sup>279</sup> after co-developed Child and Community Well-Being Plans are in place.<sup>280</sup> These plans, developed jointly by First Nations and

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<sup>274</sup> OFA at Appendix 1.

<sup>275</sup> [2022 CHRT 26](#) at para [5](#); [2022 CHRT 8](#) at para [150](#).

<sup>276</sup> [2022 CHRT 8](#) at para [149](#).

<sup>277</sup> [2022 CHRT 41](#) at para [223](#), citing [2022 CHRT 8](#) at paras [108-109](#).

<sup>278</sup> [2022 CHRT 41](#) at para [227](#); [2022 CHRT 8](#) at para [150](#); [2020 CHRT 20](#) at para [115](#).

<sup>279</sup> OFA at para 44(d)(ii).

<sup>280</sup> OFA at para 108.

the FNCFS Agencies that serve them, define roles and responsibilities, encourage collaboration, and help prevent service gaps.

166. Regardless of any changes a First Nation may make in respect of who receives prevention funding, FNCFS Agencies will continue to receive baseline funding for least disruptive measures.<sup>281</sup>

#### *PMSS Funding*

167. The OFA replaces the PMSS actuals process under 2022 CHRT 8 with formula-based allocations to First Nations: a \$75,000 base (to ensure even the smallest First Nations can provide PMSS) plus amounts tied to eligible youth and young adult population.<sup>282</sup> Under the OFA, all First Nations would receive guaranteed, predictable PMSS funding and have the flexibility to deliver these services themselves or engage another provider.<sup>283</sup> This marks a departure from the 2022 CHRT 8 applications-based process that funded services to both First Nations and FNCFS Agencies at their actual cost. This interim model was always intended as a temporary measure and is plagued by the same issues with capacity described at paragraph 143.<sup>284</sup>

168. This reform directly addresses the Tribunal's observation that all First Nations young adults aged 18-25 who were placed in care under the FNCFS Program experienced harms arising from Canada's discrimination and that Canada has a positive moral obligation to provide supports to mitigate those harms.<sup>285</sup> The Tribunal

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<sup>281</sup> Hearing Exhibit 9, Farthing-Nichol Supplemental Affidavit, 15 May 2025 at para 19.

<sup>282</sup> OFA at para 44(f).

<sup>283</sup> OFA at para 44(f); Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025 at para 68.

<sup>284</sup> [2025 CHRT 6](#) at para [48](#); [2021 CHRT 41](#) at para [353](#), citing *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2017 CHRT 35](#) and [2018 CHRT 4](#).

<sup>285</sup> [2022 CHRT 8](#) at para [43](#).

also accepted compelling evidence that youth leaving care face heightened risks of homelessness, poverty, addiction, and even human trafficking, and that these risks are linked to Canada's systemic underfunding and discriminatory practices.<sup>286</sup>

169. Moving to formula-based, direct allocations provides stability and broad access to PMSS funding. All First Nations in Ontario will now receive guaranteed PMSS funding without applications – an important shift given that only 45 First Nations in Ontario (approximately 34%) accessed PMSS funding under the actuals process.<sup>287</sup> This approach ensures predictable support and eliminates barriers that left many youth and young adults without PMSS.

170. While FNCFS Agencies will no longer receive PMSS funding directly, they may continue to provide PMSS where First Nations choose to transfer funds to them for that purpose. ISC will support FNCFS Agencies through this transition by providing guidance and assisting with the wind-down of programs funded under the actuals model to ensure continuity.<sup>288</sup> Roles for PMSS delivery will be defined in co-developed Child and Community Well-Being Plans, preventing gaps and supporting long-term collaboration.<sup>289</sup>

171. PMSS is not the only source of funding FNCFS Agencies may have to support youth: FNCFS Agencies will still have access to provincial funding for youth transitioning out of care through the Government of Ontario's Ready, Set, Go program

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<sup>286</sup> [2022 CHRT 8](#) at paras [47](#), [56](#).

<sup>287</sup> Hearing Exhibit 10, Farthing-Nichol Reply Affidavit, 17 Oct 2025 at para 18.

<sup>288</sup> Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025 at paras 72-73.

<sup>289</sup> OFA at para 110(g).

– the standard available to all youth transitioning out of care in Ontario.<sup>290</sup> Under the OFA, PMSS funding is provided *in addition to* the supports available through the Ready, Set, Go program, meaning that First Nations youth in Ontario will receive both Ready, Set, Go supports and PMSS supports.

#### *FNRS Funding*

172. Under the OFA, each First Nation will receive FNRS funding equal to its highest one-year amount received by each First Nation between 2019-20 to 2023-24, adjusted for inflation and population growth between March 31, 2023 and March 31 of the fiscal year preceding the fiscal year in which the OFA comes into effect.<sup>291</sup> In all later fiscal years, a First Nation’s FNRS funding will equal the previous year’s amount, adjusted for inflation and population growth.<sup>292</sup>

173. As described at paragraphs 60 to 62, this approach builds on six years of actual cost data. Under the OFA, First Nations that did not claim FNRS at their actual cost during 2019-20 to 2023-24 will receive funding based on the inflation-adjusted per-capita amount negotiated in the AIP or the \$75,000 minimum, whichever is higher.

174. The OFA consolidates these data points into a stable, formula-based model that ensures continuity after years of the actuals funding regime. Using each First Nation’s highest one-year amount between 2019-20 and 2023-24 ensures the model captures

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<sup>290</sup> Re-Examination of Duncan Farthing-Nichol, 12 Dec 2025 Part 2 afternoon at 1:07:27-1:07:49 (no transcript). The Ready, Set, Go program provides supports to eligible youth until their 23rd birthday. More information about the Ready, Set, Go program is available on the Ontario government website: Government of Ontario, Ministry of Children, Community and Social Services Government of Ontario “Ready, Set, Go Guide” (October 2024), online <<https://www.ontario.ca/document/ready-set-go-guide>>.

<sup>291</sup> OFA at paras 26, 44(g).

<sup>292</sup> OFA at para 26.

the real investments and program growth First Nations achieved during the FNRS transition period.

175. The OFA's FNRS funding methodology responds directly to the Tribunal's findings that FNRS are essential and that the failure to fund these services was "one of the main adverse impacts of Canada's discrimination".<sup>293</sup> As an interim measure, the Tribunal ordered Canada to fund these services in Ontario at their actual cost and emphasized that funding must be flexible and responsive to First Nations' specific needs, not constrained by rigid administrative deadlines or one-size-fits-all formulas.<sup>294</sup> By providing for direct FNRS allocations grounded in historical actual cost data, the OFA ensures adequate, guaranteed funding for FNRS services over the long-term without reverting to discriminatory practices that undermine access to these essential services.

#### *FNCFS Capital Funding*

176. The Tribunal has found that access to FNCFS capital funding is critical and that denying such funding perpetuates systemic discrimination.<sup>295</sup> Under the OFA, First Nations and FNCFS Agencies continue to access capital funding for infrastructure supporting protection services, prevention services, FNRS, and PMSS. The OFA replaces the current process for accessing capital funding at actual cost (i.e., the 2021 CHRT 41 process) with a \$455 million envelope (\$264.1M in the Initial Funding Period and \$190.9M in the Second Funding Period), with the latter subject to upward adjustment after the Initial Program Assessment.<sup>296</sup>

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<sup>293</sup> [2020 CHRT 24](#) at paras [2-4](#); [Merit Decision](#) at paras [348](#), [389](#), [425-426](#).

<sup>294</sup> [2020 CHRT 24](#) at paras [36](#), [40](#).

<sup>295</sup> [2021 CHRT 41](#) at para [425](#).

<sup>296</sup> OFA at paras 11, 27, 71.

177. FNCFS capital funding remains application-based but uses a new process designed to be more user-friendly, accessible, and transparent compared to the complex 2021 CHRT 41 process.<sup>297</sup> Operations and maintenance costs for approved assets are fully covered through formula-based allocations, eliminating applications and ensuring long-term sustainability<sup>298</sup> – an improvement over the 2021 CHRT 41 process.

178. For FNCFS Agencies, proposed capital projects must be included in their co-developed Child and Community Well-Being Plans, ensuring alignment with First Nations' priorities and reflecting the OFA's emphasis on collaboration and accountability in planning and service delivery.<sup>299</sup>

179. The OFA's FNCFS capital funding methodology aligns with the Tribunal's finding that capital funding must be needs-based, timely, and responsive to First Nations priorities – not delayed by rigid processes or capped at arbitrary amounts.<sup>300</sup> The OFA's capital funding commitment is grounded in detailed, Ontario-specific modelling<sup>301</sup> that considered the distinct capital needs of First Nations and FNCFS Agencies and reflects the Tribunal's repeated insistence on a needs-based funding model informed by community-specific data rather than standardized formulas.<sup>302</sup>

180. By replacing the complex 2021 CHRT 41 process with a streamlined one and automatically providing full coverage of operations and maintenance costs, the OFA

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<sup>297</sup> OFA at para 44(e)(i)-(ii); Hearing Exhibit 1b, Affidavit of Grand Chief Joel Abram, Vol 2, affirmed 6 March 2025 at Exhibits Y and II. Per the Cross-Examination of Duncan Farthing-Nichol, Transcript for 12 Dec 2025 Part 2, Transcript Brief at Tab 7, at p 533 at lines 15-17, the CHRT 41's phased approach currently used by ISC will not be required under the OFA.

<sup>298</sup> OFA at para 44(e)(iii).

<sup>299</sup> OFA at paras 44(e)(i), 108-110.

<sup>300</sup> [2021 CHRT 41](#) at paras [181-184](#), [188](#).

<sup>301</sup> Hearing Exhibit 9, Farthing-Nichol Supplemental Affidavit, 15 May 2025 at paras 20-28.

<sup>302</sup> [2021 CHRT 41](#) at paras [188](#), [251](#).

eliminates unnecessary administrative barriers and helps ensure timely access to critical infrastructure.

*Results, IT, Household Supports, and Emergency Funding*

181. Results and IT funding flows entirely to First Nations to strengthen data systems and reporting capacity, closing technology gaps and supporting their expanded role in service delivery.<sup>303</sup>
182. Household supports funding (identified as “poverty” in the IFSD research) also flows directly to First Nations to address poverty-related needs that, if unmet, could lead to child removals, ensuring culturally appropriate, community-driven solutions.<sup>304</sup> This responds to the Tribunal’s finding that poverty is one of the underlying risk factors affecting First Nations children and families.<sup>305</sup>
183. Emergency funding provides flexibility to respond to unexpected events that could disrupt the delivery of child and family services (such as the introduction into care of a few children with very high needs). This funding is shared evenly between First Nations and their affiliated FNCFS Agencies, recognizing shared responsibility for responding to emergencies.<sup>306</sup>

*Remoteness Adjustment Funding*

184. The OFA introduces a Remoteness Quotient Adjustment Factor (developed by the NAN-Canada Remoteness Quotient Table)<sup>307</sup> to ensure funding reflects the extraordinary costs of delivering services in remote First Nations communities. Under

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<sup>303</sup> OFA at paras 44(b)(i)-(ii).

<sup>304</sup> OFA at paras 22, 44(c).

<sup>305</sup> [Merit Decision](#) at para [422](#).

<sup>306</sup> OFA at paras 21, 44(b)(iii).

<sup>307</sup> Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025 at paras 95-98; Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025 at para 20.

the OFA, funding is adjusted for First Nations with a 2021 Statistics Canada's Index of Remoteness score of 0.40 or higher.<sup>308</sup> This adjustment applies across prevention, PMSS, FNRS, results, IT, household supports, and emergency funding.<sup>309</sup>

185. 85 of the 133 First Nations in Ontario will receive remoteness funding adjustments: 43 NAN First Nations and 42 outside NAN. Implementation of the Remoteness Quotient Adjustment Factor results in an average remoteness adjustment of approximately 41.3%<sup>310</sup> with some First Nations seeing increases of up to 120%.<sup>311</sup> This marks the first remoteness adjustment methodology grounded in a First Nations-developed, statistically valid remoteness model, moving away from the “one-size-fits-all” approach and advancing substantive equality.<sup>312</sup>

186. The Tribunal found that a robust, empirically based remoteness costing approach was required and that adjustments reflecting the realities of remoteness should be immediately employed.<sup>313</sup> The Remoteness Quotient Adjustment Factor approach responds to the Tribunal’s findings that standardized funding models fail remote communities and create adverse impacts for First Nations children and families.<sup>314</sup>

### **The OFA’s Funding Approach is Flexible and Responsive to Evolving Needs**

187. The Tribunal has repeatedly emphasized that long-term reform must be responsive to the distinct circumstances of First Nations children and families,

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<sup>308</sup> For an explanation of the 0.40 threshold and its empirical basis, please see Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025 at paras 22-23.

<sup>309</sup> OFA at paras 19-23, 26, 32, and Appendix 10. Appendix 10 codifies the RQAF methodology, including calculation procedures for road-connected NAN communities and other First Nations.

<sup>310</sup> Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025 at para 102.

<sup>311</sup> Hearing Exhibit 4a, Grand Chief Fiddler Affidavit, 7 Mar 2025 at para 70.

<sup>312</sup> Hearing Exhibit 4a, Grand Chief Fiddler Affidavit, 7 Mar 2025 at para 44.

<sup>313</sup> [2016 CHRT 16](#) at para [81](#).

<sup>314</sup> [2016 CHRT 16](#) at para [81](#).

avoiding rigid formulas that ignore local realities.<sup>315</sup> The OFA responds to these findings by embedding mechanisms that make funding adaptable and capable of adjusting to unforeseen needs. Flexibility and adaptability are essential to ensure reforms can address evolving needs.

188. Through the FNCFS Funding Mechanism, First Nations and FNCFS Agencies can reallocate funds across components (subject to defined limits for FNCFS Agencies)<sup>316</sup> and carry forward unspent funds,<sup>317</sup> reducing administrative burden and ensuring funding operates as a single adaptable resource rather than in rigid silos, supporting holistic, community-driven solutions.<sup>318</sup> All FNCFS Agencies and First Nations in Ontario, except for one First Nation, qualify for the FNCFS Funding Mechanism.<sup>319</sup>

189. Co-developed terms and conditions expand eligible expenditures beyond the narrow categories of the old regime that perpetuated inequities.<sup>320</sup> Under the OFA, ISC may amend the terms and conditions after consulting COO and NAN and considering recommendations from the ORIC.<sup>321</sup> However, this authority is narrowly

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<sup>315</sup> [2016 CHRT 16](#) at para [33](#); and [2021 CHRT 41](#) at paras [251, 353, 389](#).

<sup>316</sup> Reallocation of funding by FNCFS Agencies is subject to certain limits described in the OFA at para 51 and Appendix 8, s. A.6.3.1 at p 167: redirection of prevention funding to protection services is not permitted, except to fund least disruptive measures, and redirection of protection services funding is not permitted. These limits ensure that flexibility does not compromise the program's prevention-focused objectives (see Cross-Examination of Duncan Farthing-Nichol, Transcript for 11 Dec 2025 Part 2, Transcript Brief at Tab 5, at p 329 at lines 15-25 and at p 330 at lines 1-7; Cross-Examination of Duncan Farthing-Nichol, Transcript for 12 Dec 2025 Part 1, Transcript Brief at Tab 6, at p 466 at lines 21-25 and at p 467 at lines 1-6) and to ensure that child protection services funding supports mandated legislated services, which include operations, maintenance, and least disruptive measures, as intended.

<sup>317</sup> Carry forward of unexpended funding at year end is subject to ISC's review and approval of unexpended funding plans submitted by funding recipients. OFA at Appendix 8 at s. A.6.3.1 at p 168.

<sup>318</sup> OFA at para 50.

<sup>319</sup> Cross-Examination of Duncan Farthing-Nichol, Transcript for 11 Dec 2025 Part 2, Transcript Brief at Tab 5, at p 335 at lines 21-25 and at p 336 at lines 1-10.

<sup>320</sup> OFA at Appendix 8. For example, FNRS now includes broader cultural reconnection activities, and PMSS now covers housing stability, education enhancements, cultural supports, transportation, health navigation, and practical needs such as financial literacy and ID acquisition.

<sup>321</sup> OFA at para 320.

circumscribed: any amendments to the terms and conditions must not alter the OFA, conflict with its provisions, or depart significantly from its principles and purposes.<sup>322</sup> If a disagreement arises about any amendment made by ISC, COO, or NAN may initiate a dispute under the OFA's Parties' Dispute Process.<sup>323</sup>

190. Furthermore, as described at paragraph 82, to ensure funding remains adequate when unforeseen needs beyond a First Nation's or FNCFS Agency's reasonable control arise, the OFA introduces the Service Provider Funding Adjustment Request process, allowing First Nations and FNCFS Agencies to seek additional prevention or baseline funding, respectively.<sup>324</sup> If ISC denies or limits a Service Provider Funding Adjustment Request, the First Nation or FNCFS Agency has recourse to the Claimant Dispute Process,<sup>325</sup> and the Arbitral Tribunal can order Canada to fund the Service Provider Funding Adjustment Request.<sup>326</sup>

191. The Systemic Review Committee monitors trends in Service Provider Funding Adjustment Requests and Claimant Dispute outcomes to identify systemic issues and recommend corrective measures.<sup>327</sup>

192. Finally, the two independent Program Assessments will both evaluate whether funding remains sufficient to uphold substantive equality and produce enforceable recommendations,<sup>328</sup> ensuring that flexibility and responsiveness are not aspirational but actionable.

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<sup>322</sup> OFA at para 318.

<sup>323</sup> OFA at para 196(a).

<sup>324</sup> OFA at paras 166-174.

<sup>325</sup> OFA at paras 199-203.

<sup>326</sup> Cross-Examination of Duncan Farthing-Nichol, Transcript for 12 Dec 2025 Part 1, Transcript Brief at Tab 6, at p 54 at lines 16-25 and at p 55 at lines 1-11.

<sup>327</sup> OFA at paras 129-132.

<sup>328</sup> OFA at para 139(a)(ii).

**The OFA is Culturally Appropriate, Respects Substantive Equality, and Reflects the Best Interests of the Child Through a First Nations Lens**

193. Substantive equality is at the heart of the Tribunal's jurisprudence on child and family services. In the Merit Decision, the Tribunal held that substantive equality means not perpetuating historical disadvantages, addressing intergenerational trauma caused by Residential Schools, narrowing gaps between First Nations and the rest of Canadian society, meeting real needs of First Nations, providing culturally appropriate services, breaking cycles of outside control, and services of comparable quality.<sup>329</sup> The Tribunal has consistently placed substantive equality at the forefront of its analysis<sup>330</sup> and emphasized that eliminating systemic discrimination requires embedding the distinct circumstances and needs of First Nations children, families, and communities into the design of the FNCFS Program itself.<sup>331</sup>

194. The OFA gives effect to this substantive equality obligation by replacing the rigid, discriminatory funding model previously found to violate the CHRA with a comprehensive, evidence-informed approach grounded in actual cost data. Its methodologies incorporate inflation, population growth, and adjustment to account for remoteness, ensuring that funding is adequate, predictable, and responsive to need over time.

195. The OFA also ensures culturally appropriate, community-driven services by prioritizing prevention and by empowering First Nations to determine who is best placed to design and deliver services in their communities. This directly responds to the Tribunal's findings regarding the harms of externally imposed systems and the

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<sup>329</sup> [Merit Decision](#) at paras [403](#), [422](#), [425-426](#), [455](#).

<sup>330</sup> [2023 CHRT 44](#) at para [224](#).

<sup>331</sup> [2022 CHRT 41](#) at para [227](#); [2021 CHRT 41](#) at para [389](#).

need to support First Nations authority, laws, and cultural practices in the delivery of child and family services. The OFA moves decisively away from imposed, non-Indigenous service models and toward approaches grounded in each First Nation's culture, values, and realities.

196. In place of one-size-fits-all programming, the OFA provides structural flexibility so that funding and service delivery and design can be tailored to each community's unique context.

197. The OFA further reflects the best interests of the child through a First Nations lens. It does so by empowering First Nations to design and deliver services in ways that reflect their own unique contexts, histories, and conceptions of the best interests of the child, rather than defaulting to provincial or federal standards that may not align with First Nations' worldviews. It also prioritizes prevention and robust FNRS to maintain children's connections to family, community, language, and identity, which are fundamental to the well-being of First Nations children and essential to the cultural survival of First Nations themselves.<sup>332</sup>

### **The OFA Incorporates First Nations' Perspectives into Oversight and Implementation of the OFA**

198. The Tribunal's oversight of this matter has been essential to ensure that its immediate and medium-term remedies have been effectively implemented. Approval of the OFA will end the Tribunal's oversight, but this does not mean that all oversight will end or that ISC will be immunized from accountability. The OFA starts from the premise that the Reformed FNCFS Funding Approach is substantively equal and

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<sup>332</sup> *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, [2024 SCC 5](#) at para [113](#).

contains mechanisms to ensure that it is regularly monitored and updated. This is consistent with the direction in *Ontario v Association of Ontario Midwives* that “governments have a proactive human rights duty to prevent discrimination which includes ensuring that their funding policies, programs and formulas are designed from the outset based on a substantive equality analysis and are regularly monitored and updated”.<sup>333</sup> But the OFA goes beyond what was anticipated in that case: it takes oversight of the Reformed FNCFS Funding Approach out of the exclusive purview of the government and places it into the hands of the ORIC.<sup>334</sup>

199. The Tribunal has stressed that long-term reform must be First Nations-led.<sup>335</sup> The OFA responds by embedding First Nations governance at the core of implementation through the ORIC, which provides oversight in a way unprecedented for a federal program serving First Nations:<sup>336</sup> all but one member is either a representative of COO or NAN or is appointed by the Ontario Chiefs-in-Assembly, ensuring First Nations hold a majority of seats and a decisive voice in guiding implementation of the OFA.<sup>337</sup> ORIC is supported by a Technical Advisory Committee, which brings specialized expertise and youth perspectives, reinforcing the Tribunal’s finding that reforms must reflect First Nations’ priorities and perspectives.<sup>338</sup>

200. Additionally, the Tribunal has called for structural changes within ISC, including mandatory cultural competency training, to prevent the recurrence of discrimination.<sup>339</sup> The OFA addresses this by requiring ISC staff involved in OFA implementation to

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<sup>333</sup> *Ontario v Association of Ontario Midwives*, [2020 ONSC 2839](#) at para [189](#).

<sup>334</sup> OFA at paras 120-126.

<sup>335</sup> [2022 CHRT 26](#) at para [5](#).

<sup>336</sup> Hearing Exhibit 2, Grand Chief Abram Supplemental Affidavit, 21 May 2025 at para 32.

<sup>337</sup> OFA at para 123.

<sup>338</sup> OFA at paras 133-135.

<sup>339</sup> [2022 CHRT 8](#) at paras [88-104](#).

complete cultural humility training,<sup>340</sup> particularly those reviewing Service Provider Funding Adjustment Requests and FNCFS capital funding requests.<sup>341</sup> This requirement ensures that implementation is informed by First Nations' perspectives and addresses the Tribunal's concern about entrenched "old mindset" thinking, helping to make implementation culturally informed, equity-driven, and sustainable.

### **The OFA Contains Flexible Mechanisms to Monitor Implementation and Respond to Problems that Arise, Including Disputes Between Parties**

201. The Tribunal has emphasized that the ultimate goal of reform is to ensure remedies are effective in the long-term and that ongoing monitoring and adjustments are essential to "doing it right".<sup>342</sup> The OFA adopts this guidance by embedding processes that continuously monitor implementation and address problems as they arise, including mechanisms for timely course correction and enforceable dispute resolution. The OFA's foundational model is that of collaboration and co-operation between the Moving Parties, with dispute resolution as the backstop when disputes arise.

202. Oversight begins with the ORIC, which monitors implementation, receives recommendations from the Technical Advisory Committee, the Systemic Review Committee, the Ontario Remoteness Secretariat, the NAN-Canada Remoteness Quotient Table, and the Ontario FNCFS Data Secretariat and may recommend program adjustments to Canada at any time.<sup>343</sup> The Ontario FNCFS Data Secretariat

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<sup>340</sup> Cultural competency refers to developing the knowledge and skills to interact effectively with people from different cultural backgrounds, often framed as something that can be "achieved." Cultural humility, by contrast, emphasizes an ongoing process of self-reflection and learning, recognizing one's own biases and committing to respectful, equitable relationships rather than mastery.

<sup>341</sup> OFA at para 175.

<sup>342</sup> [2025 CHRT 6](#) at para [47](#).

<sup>343</sup> OFA at para 120-122, 126.

plays a critical role in continuous monitoring by analyzing child, family, and community well-being using data from First Nations, FNCFS Agencies, ISC, and the Government of Ontario.<sup>344</sup> Some of this data comes from the OFA's performance measurement framework, which requires First Nations and FNCFS Agencies to report on key Reformed FNCFS Program outcomes. This data informs the Ontario FNCFS Data Secretariat's and the ORIC's recommendations for adjustments and provides a foundation for evidence-based decision-making.

203. The two Program Assessments provide formal reviews of whether the Reformed FNCFS Program is meeting objectives of substantive equality, adequate funding, and the best interests of children, and serve as a critical safeguard against the recurrence of discrimination.<sup>345</sup> The performance measurement data collected under the OFA also forms part of the evidence base for these Program Assessments.<sup>346</sup> ORIC reviews each Program Assessment report and prepares ORIC Program Assessment Opinions for Canada, which may include recommendations such as funding adjustments for future fiscal years.<sup>347</sup>

204. Disputes between the Moving Parties, including disputes relating to the implementation of ORIC recommendations stemming from the Initial Program Assessment, are resolved through the Parties' Dispute Process.<sup>348</sup>

205. All funding commitments under the OFA remain subject to annual appropriation by the Parliament of Canada.<sup>349</sup> Should a dispute arise relating to failure of the

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<sup>344</sup> OFA at paras 78, 80, 85, 91(b), 113.

<sup>345</sup> OFA at paras 139-140; Hearing Exhibit 2, Grand Chief Abram Supplemental Affidavit, 21 May 2025 at paras 42-47.

<sup>346</sup> OFA at para 139(a)(iii).

<sup>347</sup> OFA at paras 157-162.

<sup>348</sup> OFA at paras 196-198.

<sup>349</sup> OFA at para 297.

Parliament of Canada to appropriate the funding committed under OFA,<sup>350</sup> the OFA provides that COO or NAN may seek a court order confirming that it has been substantially deprived of the benefit of the OFA, without the need to prove monetary loss.<sup>351</sup>

206. Lastly, the NAN-Canada Remoteness Quotient Table and the Ontario Remoteness Secretariat provide essential technical inputs to the ORIC. Both bodies will perform specialized work on remoteness, including refining the tools and methodologies that underpin the OFA's approach to accounting for remoteness. Details of the technical work these bodies will perform are described in detail at paragraphs 119 and 234 to 235.

### **The OFA is Evidence-Based and Relies on the Best Available Research**

207. The Tribunal has repeatedly emphasized that long-term reform must be grounded in evidence, informed by expertise, and supported by data to ensure remedies are effective and sustainable.<sup>352</sup> It has taken an evidence-based approach to assessing compliance and anticipated that long-term reforms would evolve through new data, research, and best practices – while making clear that reform cannot be delayed for additional studies.<sup>353</sup> The OFA's funding and structural reforms are built on the best available research, including research by IFSD, the Ontario Special Study (“OSS”), and remoteness quotient research.

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<sup>350</sup> OFA at para 197(b).

<sup>351</sup> OFA at para 298.

<sup>352</sup> [2023 CHRT 44](#) at para [16](#).

<sup>353</sup> [2025 CHRT 80](#) at para [113\(4\)](#).

208. The OFA goes a step further and embeds mechanisms for continuous monitoring, data generation, and adaptation as new information becomes available and circumstances shift on the ground.

209. In this context, “evidence-based” does not mean unquestioning acceptance of all research; rather, it reflects a principled approach that critically evaluates available studies, incorporates aspects of the studies that align with the Tribunal’s findings and the parties’ practical realities and aspirations, and embeds ongoing mechanisms to adapt as new evidence emerges.

210. The OFA also draws on the experiences, expertise, and advice of First Nations leadership and technicians, which must be afforded significant weight.<sup>354</sup> Although not documented through a formal study, this input emerged from the extensive, detailed technical meetings with advisory committees, leadership, and technicians who supported the negotiations described at paragraphs 33 to 38.

*The OFA’s Reformed FNCFS Funding Approach and Structural Reforms are Substantially Aligned with IFSD Recommendations*

Comparison of OFA’s Reformed FNCFS Funding Approach against IFSD Recommended Funding Model

211. In 2018 CHRT 4, the Tribunal ordered that Canada analyze and conduct a cost-analysis of the real needs of FNCFS Agencies in consultation with the other parties to these proceedings, interested parties, and other experts.<sup>355</sup> The AFN and the Caring Society contracted with IFSD conduct this research.<sup>356</sup> Three IFSD reports were published: *Enabling First Nations Children to Thrive* (“Phase 1”) on December 15

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<sup>354</sup> Re-Examination of Finn Simard, 10 Dec 2025 Part 2 afternoon at 1:27:12-1:27:27 (no transcript).

<sup>355</sup> [2018 CHRT 4](#) at paras [408](#), [418](#).

<sup>356</sup> [2022 CHRT 8](#) at para [24](#).

2018;<sup>357</sup> *Funding First Nations Child and Family Services (FNCFS): A Performance Budget Approach to Well-Being* (“Phase 2”) on July 31, 2020;<sup>358</sup> and *Funding First Nations Child and Family Services (FNCFS): A Blueprint for Program Reform* (“Phase 3”) on April 7, 2025.<sup>359</sup>

212. Phase 1 established a bottom-up analysis of FNCFS expenditures and identified systemic funding gaps. Phase 2 built on the Phase 1 findings by introducing a performance framework and a need-based block funding model to reorient the system from protection-focused funding toward the well-being of children, families, and communities. Phase 3 modelled the approach outlined in Phase 2, working with a group including 20 FNCFS Agencies and First Nations exercising or contemplating exercising jurisdiction under the Federal Act.<sup>360</sup>

213. The OFA’s Reformed FNCFS Funding Approach substantially aligns with IFSD recommendations. The following table sets out how the OFA aligns with IFSD recommendations, where it departs, and why those departures are justified.

IFSD Recommendation	OFA Approach
<b>Predictable and Flexible Funding</b> – FNCFS funding should be predictable, transparent, and delivered using a block contribution approach that permits service providers to adjust allocations within their block and carry forward unspent funds. <sup>361</sup>	The OFA establishes multi-year funding with guaranteed minimums, sets out calculation and allocation methods transparently, and delivers annual funding through the flexible FNCFS Funding Mechanism, which allows reallocation and carry-forward of unspent funds. <sup>362</sup>

<sup>357</sup> [Institute of Fiscal Studies and Democracy, \*Enabling First Nations Children to Thrive\* \(December 2018\)](#) [IFSD Phase 1].

<sup>358</sup> [Institute of Fiscal Studies and Democracy, \*Funding First Nations child and family services \(FNCFS\): A performance budget approach to well-being\* \(July 2020\)](#) [IFSD Phase 2].

<sup>359</sup> [Institute of Fiscal Studies and Democracy, \*Funding First Nations child and family services \(FNCFS\): A blueprint for program reform\* \(April 2025\)](#) [IFSD Phase 3]; also at Hearing Exhibit 13, Affidavit of Jasmine Kaur, affirmed 2 October 2025 at Exhibit A.

<sup>360</sup> [IFSD Phase 3](#) at p 7.

<sup>361</sup> [IFSD Phase 3](#) at pp 22-24, 26, 27.

<sup>362</sup> OFA at para 50.

IFSD Recommendation	OFA Approach
<p><b>Baseline</b> – IFSD recommended maintaining FNCFS Agency operations through baseline funding equal to actual expenditures (2018-19 in Phase 2; expenditures self-reported by FNCFS Agencies for 2021-22 in Phase 3), adjusted for inflation and population.<sup>363</sup></p>	<p>The OFA adopts baseline funding as a core component but calculates the amount FNCFS Agencies receive directly from ISC – which is in addition to the amount for operations and maintenance they receive from the Government of Ontario – using actual 2022-23 cost data (not self-reported), adjusted for inflation and population, providing greater precision and reliability.</p>
<p><b>Maintenance</b> – IFSD Phase 3 proposed a maintenance funding component equal to 3% of baseline funding to address rising child maintenance costs beyond inflation.<sup>364</sup></p>	<p>The OFA does not include this funding component because it was not part of the AIP<sup>365</sup> and the Moving Parties rejected IFSD's premise that a separate allocation was needed. The OFA sufficiently funds FNCFS Agencies to manage "maintenance"-related cost pressures and maintenance funding is set by the Government of Ontario's child welfare funding model.</p>
<p><b>Prevention</b> – Phase 2 recommended \$800-\$2,500 per person living on-reserve; Phase 3 confirmed \$2,500 as appropriate.<sup>366</sup></p>	<p>The OFA funds prevention at \$2,500 per person, indexed annually for inflation, consistent with IFSD's upper-range recommendation.</p>
<p><b>FNRS</b> – Phase 3 discussed FNRS without proposing a model to ensure that these services are properly funded.<sup>367</sup></p>	<p>The OFA includes FNRS funding based on historic actual cost data of Ontario First Nations.</p>
<p><b>PMSS</b> – Phase 3 estimated \$11,000 per capita using provincial data from Alberta, British Columbia, New Brunswick, and Quebec.<sup>368</sup></p>	<p>The OFA rejects IFSD's approach because it relies on cost assumptions that are not Ontario-specific and are based on general provincial data rather than First Nations-specific information. The OFA uses Ontario-specific and First Nations-specific modelling<sup>369</sup> and funds PMSS at a per youth rate of approximately \$46,000 –</p>

<sup>363</sup> [IFSD Phase 2](#) at p 141; [IFSD Phase 3](#) at pp 31-35.

<sup>364</sup> [IFSD Phase 3](#) at pp 33, 35 and Appendix H.

<sup>365</sup> See "Elements of the Reformed CFS Funding Approach" section of the AIP summary, Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025 at Exhibit A at p 35.

<sup>366</sup> [IFSD Phase 2](#) at pp 158-163; [IFSD Phase 3](#) at pp 33-34.

<sup>367</sup> [IFSD Phase 3](#) at p 32 and Appendix B3.

<sup>368</sup> [IFSD Phase 3](#) at p 32 and Appendix C.

<sup>369</sup> Hearing Exhibit 9, Farthing-Nichol Supplemental Affidavit, 15 May 2025 at paras 6-13.

IFSD Recommendation	OFA Approach
	more than four times Phase 3's recommended rate of \$11,000. <sup>370</sup>
<b>FNCFS Capital</b> – Phase 2 proposed (i) funding operations and maintenance at 1-2% of asset value and (ii) a 10-year application-based pool for major projects totalling \$133-200 million, nationally, calculated based on the cost of building new FNCFS Agency offices. Phase 3 recommended an uncapped national pool. <sup>371</sup>	The OFA guarantees formula funding for 100% of operation and maintenance costs and commits \$455 million over nine years for capital needs, replacing IFSD's national estimates and uncapped pool with a fixed, evidence-based envelope calculated by estimating the cost for each FNCFS Agency to build an office, each First Nation to construct a recreation or cultural/community centre, and for Non-Agency First Nations to build both types of facilities. <sup>372</sup>
<b>Results, IT, and Emergency</b> – Phase 2 and Phase 3 recommended funding results at 5% of baseline funding, IT at 5.5%, and emergency at 2%. <sup>373</sup>	The OFA funds results at 5% of baseline funding, IT at 6%, and emergency at 2%, matching or exceeding IFSD's recommendations.
<b>Household Supports</b> – Phase 2 proposed funding "poverty" at 3-7% of the poverty gap using Market Basket Measure. <sup>374</sup>	The OFA adopts an amount within IFSD's range <sup>375</sup> but uses Low-Income Measure After Tax to allocate that funding. <sup>376</sup>
<b>Remoteness</b> – Phase 2 acknowledged the Statistics Canada's Index of Remoteness as a reliable measure for remoteness but found no national standard for quantifying remoteness compensation. It developed scenarios using 0.25%, 0.5%, and 1% compensation factors that were not informed by FNCFS cost data. <sup>377</sup> Phase 3 recommended a 15% average adjustment applied uniformly across all First Nations,	The OFA applies the Remoteness Quotient Adjustment Factor, a hybrid of the NAN Remoteness Quotient Factor and the ISC Cost Adjustment Factor, which results in an average adjustment of approximately 41.3% for First Nations with a Statistics Canada's Index of Remoteness score of 0.40 or greater – significantly exceeding Phase 3's proposed average adjustment. <sup>379</sup>

<sup>370</sup> Cross-Examination of Duncan Farthing-Nichol, Transcript for 12 Dec 2025 Part 1, Transcript Brief at Tab 6, p 503 at lines 21-25 and p 505 at lines 21-23.

<sup>371</sup> [IFSD Phase 2](#) at pp 141-155; [IFSD Phase 3](#) at p 32 and Appendices D1 and D2.

<sup>372</sup> Hearing Exhibit 9, Farthing-Nichol Supplemental Affidavit, 15 May 2025 at paras 20-27.

<sup>373</sup> [IFSD Phase 2](#) at pp 141 (IT), 170-171 (results), and 171-176 (emergency); and [IFSD Phase 3](#) at pp 33-35 and Appendix G (emergency).

<sup>374</sup> [IFSD Phase 2](#) at pp 155-158.

<sup>375</sup> Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025 at para 85.

<sup>376</sup> See Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025 at paras 86-87 for an explanation of this deviation.

<sup>377</sup> [IFSD Phase 2](#) at p 167.

<sup>379</sup> Hearing Exhibit 8a, Farthing-Nichol Affidavit, 7 Mar 2025 at paras 102-104.

IFSD Recommendation	OFA Approach
regardless of their level of remoteness, using the ISC Cost Adjusted Factor. <sup>378</sup>	
<b>Inflation and Population</b> – Phase 3 recommended indexing inflation using the Consumer Price Index and population using the Indian Registration System. <sup>380</sup>	The OFA applies annual Consumer Price Index-based inflation adjustments and Indian Registration System-based population adjustments. <sup>381</sup>
<b>Fixed Funding</b> – Phase 3 supports moving away from actuals-based funding to fixed budgets for predictability and planning. <sup>382</sup>	The OFA ends the actuals funding regime, adopting a predictable, fixed-funding approach.

214. Phase 3 urges that the components of its proposed funding model should not be split between First Nations and FNCFS Agencies<sup>383</sup> on the basis that these components are meant to supplement FNCFS Agencies' baseline funding, not operate as separate streams. IFSD warns that dividing the funding could leave FNCFS Agencies under-funded and stresses that funding integrity is critical for effective service delivery.<sup>384</sup> It recommends directing all funding to "the service provider able to continue to or immediately deliver child and family services in First Nations" – which IFSD consistently implies in Phase 3 to be FNCFS Agencies.<sup>385</sup>

215. IFSD explicitly recommends allocating all prevention funding to FNCFS Agencies,<sup>386</sup> noting that prevention and protection services are integrated and should be delivered in a coordinated way.<sup>387</sup> Phase 3 also clarifies that the \$2,500 per capita

<sup>378</sup> [IFSD Phase 3](#) remoteness approach at pp 33-34 and Appendix F, which replaced IFSD Phase 2's approach to remoteness (or "geography"), described at [IFSD Phase 2](#) at pp 163-170.

<sup>380</sup> [IFSD Phase 3](#) at pp 33, 35.

<sup>381</sup> OFA at paras 35-36.

<sup>382</sup> [IFSD Phase 3](#) at p 28.

<sup>383</sup> [IFSD Phase 3](#) at pp 22, 26, 31.

<sup>384</sup> [IFSD Phase 3](#) pp 31, 33-34.

<sup>385</sup> [IFSD Phase 3](#) at p 31.

<sup>386</sup> [IFSD Phase 3](#) at p 33.

<sup>387</sup> [IFSD Phase 3](#) at pp 34 (footnote 11), 36-37. Misipawistik Cree Nation, a First Nation in Manitoba and one of the 20 collaborators who contributed to the development of Phase 3, expressly rejects IFSD's

amount was part of its broader model, not a standalone stream; separating it misrepresents IFSD's recommendation.<sup>388</sup>

216. The OFA takes a different approach. Its Reformed FNCFS Funding Approach distributes funding components between First Nations and FNCFS Agencies as follows:

Reformed FNCFS Funding Approach Component	Recipient of Component
Baseline funding	FNCFS Agencies
Prevention funding	Allocated to First Nations and FNCFS Agencies using a population-weighted approach, with First Nations having authority to determine the allocation of funding beginning October 1, 2026; however, FNCFS Agencies continue to receive funding for least disruptive measures from the Government of Ontario and ISC.
PMSS funding	First Nations
FNRS funding	First Nations
FNCFS capital funding	First Nations and FNCFS Agencies
Results funding	First Nations
IT funding	First Nations
Household supports funding	First Nations
Emergency funding	Split 50/50 between First Nations and FNCFS Agencies
Remoteness adjustment funding	FNCFS Agencies' prevention and emergency funding is adjusted for remoteness. First Nations' prevention, PMSS, FNRS, results, IT, household supports, and emergency funding is adjusted for remoteness.

217. The OFA's approach reflects the principle that funding should flow to the provider best positioned to deliver services – but unlike IFSD, the OFA prioritizes First Nations' choice of service provider and enables First Nations to take on a greater role

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recommendation that prevention funding flow to FNCFS Agencies rather than First Nations, arguing that only direct First Nation control over funding aligns with their sovereignty, laws, and treaty-based worldview and that FNCFS Agency- or ISC-centered models perpetuate colonialism and discrimination. See [IFSD Phase 3](#), pp 9-13.

<sup>388</sup> [IFSD Phase 3](#) at p 18, footnote 4.

in service delivery if they so choose. The OFA operates from the principle that First Nations control of funding results in services that are more culturally appropriate, locally responsive, accountable to the people, and aligned with self-determination. This shift to greater First Nations control has long been the directive of the Ontario Chiefs-in-Assembly.<sup>389</sup>

218. This principle has guided COO's work since prevention funding at a \$2,500 per capita rate became available pursuant to 2022 CHRT 8. COO collaborated with its advisory and governance bodies to determine how to allocate that funding between First Nations and FNCFS Agencies,<sup>390</sup> resulting in a strong consensus to split the funding between First Nations and FNCFS Agencies to empower First Nations to deliver prevention services.<sup>391</sup> Ratification of the OFA in February 2025 signals that First Nations want even greater control over the allocation of prevention funding and over services generally.

219. The OFA's departure from IFSD's funding model reflects that IFSD's assumptions do not represent the realities and aspirations of First Nations in Ontario. Phase 2 relied primarily on FNCFS Agency data.<sup>392</sup> The Phase 3's collaborator group consisted of 20 FNCFS Agencies and First Nations exercising or contemplating exercising jurisdiction under the Federal Act.<sup>393</sup> Neither Phase 1 or Phase 2 research was broadly representative: the studies focused on FNCFS Agencies and excluded First Nations that are not on the jurisdiction path and who therefore remain under the

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<sup>389</sup> Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025 at paras 18-25.

<sup>390</sup> Hearing Exhibit 2, Grand Chief Abram Supplemental Affidavit, 21 May 2025 at para 23.

<sup>391</sup> Cross-Examination of Finn Simard, 10 Dec 2025 Part 2 afternoon at 1:20:56-1:21:49 (no transcript).

<sup>392</sup> [IFSD Phase 3](#) at p 9.

<sup>393</sup> [IFSD Phase 3](#) at p 7.

FNCFS Program for the foreseeable future. Moreover, IFSD did not meaningfully involve COO or NAN in its research on reforms.<sup>394</sup>

220. IFSD's recommendations are FNCFS Agency-centric and overlook First Nations' role in service design and delivery. COO asked IFSD for the Phase 2 data to assess whether FNCFS Agencies in Ontario were adequately represented in its Phase 2 findings, but IFSD denied the request.<sup>395</sup> Substantive equality requires services aligned with community priorities, which First Nations are best positioned to define. IFSD acknowledges that "First Nations care and control of delivery" is essential to uphold the Tribunal's orders<sup>396</sup> and that "there should be a space for a variety of approaches to service delivery".<sup>397</sup> The approach to IFSD's model in the OFA ensures funding reflects Ontario's transformed child and family services landscape where First Nations are now central actors.

221. The OFA's approach to prevention is directly responsive to the Tribunal findings. The Tribunal has made clear that eliminating systemic discrimination requires a fundamental shift from reactive child apprehension to preventive services developed and delivered by First Nations communities<sup>398</sup> and that First Nations-led prevention programs are essential to ensuring services reflect the best interests of children through an Indigenous lens.<sup>399</sup> By empowering First Nations to design and control prevention services, the OFA fulfills these directives and advances substantive

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<sup>394</sup> Cross-Examination of Finn Simard, 10 Dec 2025 Part 2 afternoon at 1:21:49-1:22:28 (no transcript).

<sup>395</sup> Cross-Examination of Finn Simard, 10 Dec 2025 Part 2 afternoon at 1:22:10-1:22:28 (no transcript).

<sup>396</sup> [IFSD Phase 3](#) at pp 20-21.

<sup>397</sup> [IFSD Phase 3](#) at p 23.

<sup>398</sup> [2022 CHRT 26](#) at para [5](#); and [2022 CHRT 8](#) at para [150](#).

<sup>399</sup> [2022 CHRT 41](#) at para [227](#); [2020 CHRT 20](#) at para [115](#).

equality by providing culturally appropriate, community-driven services tailored to the distinct needs of First Nations children, families, and communities.<sup>400</sup>

#### Comparison of OFA's Structural Reforms against IFSD Recommendations

222. IFSD rightly observes that “writing a cheque” or simply adding money to a broken system will not deliver sustainable change or better outcomes for children; structural reform is imperative.<sup>401</sup> IFSD’s recommendations address how a reformed FNCFS Program should function: it should clearly define its purpose and guiding principles; adopt an improved performance measurement approach; implement standardized reporting obligations; establish First Nations-led data governance; and require program evaluation. These recommendations are fully reflected in the OFA as follows:

IFSD Recommendation	OFA Approach
<b>1) Purpose and Principles</b> – Define objectives in alignment with the Federal Act, prioritizing cultural safety, the best interests of the child, and least disruptive measures, and to reflect a commitment to ending discrimination. <sup>402</sup>	The OFA fully satisfies this by embedding cultural safety, substantive equality, and anti-discrimination commitments, and requiring compliance with the Federal Act’s minimum standards. <sup>403</sup>
<b>2) Improved Performance Measurement</b> – Use indicators aligned with program goals and a framework like Measuring to Thrive <sup>404</sup> that include five core child welfare metrics <sup>405</sup> and that incorporate five	The OFA adopts the Measuring to Thrive framework and performance indicators include all five core metrics. <sup>407</sup> The OFA requires Canada to publicly report on the

<sup>400</sup> [2022 CHRT 8](#) at para [149](#).

<sup>401</sup> [IFSD Phase 3](#) at pp 22,147.

<sup>402</sup> [IFSD Phase 3](#) at pp 22-23.

<sup>403</sup> OFA at paras 1-2 and at Appendix 8 (specifically sections 3 and A.1-A.2).

<sup>404</sup> [IFSD Phase 3](#) at pp 24, 40-41.

<sup>405</sup> [IFSD Phase 3](#) at pp 53-54.

<sup>407</sup> OFA at paras 77-80 and Appendix 2. The five core metrics identified by IFSD are captured by the following OFA indicators listed in Appendix 2: Reasons for entry and reason for exit (captures entries into care and context); percentage of First Nations children on-reserve in care and percentage of children who came into care for the first time (similar to rate of placement); percentage of First Nations children and youth re-entering care (matches IFSD’s re-entry indicator); percentage of First Nations children-in-care who are reunified with their families (matches IFSD’s family reunification indicator); average number of days in care

IFSD Recommendation	OFA Approach
structural drivers of contact with child protection services. <sup>406</sup>	five structural drivers through ISC's Departmental Results Report. <sup>408</sup>
<b>3) Standardized Reporting</b> – Establish clear, consistent reporting obligations for all recipients, aligned with indicators and service delivery roles. <sup>409</sup>	The OFA commits to standardized reporting for First Nations and FNCFS Agencies and clarifies the recipient type responsible for collecting data on each indicator. <sup>410</sup>
<b>4) First Nations-led Data Governance</b> – Create a national, apolitical First Nations-led data secretariat responsible for data collection/analysis and operational support. <sup>411</sup>	The OFA establishes an Ontario FNCFS Data Secretariat that is independent from Canada, funded for nine years, and aligned with Ownership, Control, Access and Possession principles, though regional in scope and focused solely on data collection/analysis. <sup>412</sup>
<b>5) Program Evaluation</b> – Conduct mid-term evaluation by year five to identify challenges and rebalance funding. <sup>413</sup>	The OFA exceeds this by mandating two structured, independent assessments in 2028 and 2033. The Initial Program Assessment can produce recommendations, the implementation of which is subject to the OFA's Dispute Resolution Process.

*The OFA's Reforms Align with the Ontario Special Study*

223. COO requested the OSS to determine the adequacy of the 1965 Agreement in achieving comparability of services, culturally appropriate services that account for historical disadvantage, and ensuring the best interests of the child are paramount.<sup>414</sup>

The final report of the OSS, *Our Children, Our Future: Transforming Child Welfare for*

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(matches length of stay); and average number of changes in placement type (adds nuance beyond IFSD's list).

<sup>406</sup> [IFSD Phase 3](#) at pp 40-41.

<sup>408</sup> OFA at para 80.

<sup>409</sup> [IFSD Phase 3](#) at pp 40, 42-43.

<sup>410</sup> OFA at Appendix 2.

<sup>411</sup> [IFSD Phase 2](#) at pp 176-177; [IFSD Phase 3](#) at pp 40, 43-49.

<sup>412</sup> OFA at paras 86-92.

<sup>413</sup> [IFSD Phase 3](#) pp 27, 40, 49-50.

<sup>414</sup> [2016 CHRT 16](#) at para [101](#).

*the Well-Being of Children and Families*,<sup>415</sup> was accepted by the Ontario Chiefs-in-Assembly on February 5-6, 2020 and filed with the Tribunal on February 27, 2020.<sup>416</sup>

224. The following table outlines the ways in which the OFA responds to, implements, and aligns with OSS recommendations:

OSS Recommendation	OFA Approach
Consolidating all FNCFS funding into fewer streams, ultimately one, directed to First Nations. <sup>417</sup>	The OFA allocates significant funding directly to First Nations, shifting toward First Nations-led service delivery.
IT funding for First Nations and FNCFS Agencies to support programming. <sup>418</sup>	The OFA provides IT and results funding for First Nations to build data systems <sup>419</sup> as FNCFS Agencies are ahead in this area.
Ongoing review of costs and systems by First Nations and the federal government to refine a long-term funding approach. <sup>420</sup>	The OFA's Reformed FNCFS Funding Approach will be reviewed in two Program Assessments, which may produce enforceable recommendations regarding improvements. <sup>421</sup>
Substantively equal funding that addresses the well-being of children and families. <sup>422</sup>	The OFA respects substantive equality by introducing a comprehensive, evidence-based funding approach tailored to meet the distinct needs of First Nations children, families, and communities, including the needs of remote communities.
Remoteness funding be provided to First Nations based on the community's level of remoteness. <sup>423</sup>	The OFA adjusts funding based on each First Nations' relative remoteness, ensuring support reflects the higher costs of delivering services in remote communities. <sup>424</sup>

<sup>415</sup> Hearing Exhibit 17, *Our Children, Our Future: Transforming Child Welfare for the Well-Being of Children and Families*, Susan McBroom et al, April 2019 [OSS].

<sup>416</sup> Hearing Exhibit 1a, Grand Chief Abram Affidavit, 6 Mar 2025 at para 118.

<sup>417</sup> OSS at xiv at Recommendation 20.

<sup>418</sup> OSS at xv at Recommendation 24.

<sup>419</sup> OFA at para 44(b)(i).

<sup>420</sup> OSS at xiv at Recommendation 21.

<sup>421</sup> OFA at paras 136, 139.

<sup>422</sup> OSS at p 5.

<sup>423</sup> OSS at p 113.

<sup>424</sup> OFA at para 33.

OSS Recommendation	OFA Approach
PMSS be available to youth up to the age of 25. <sup>425</sup>	The OFA provides PMSS funding to First Nations to support eligible youth up to age 26. <sup>426</sup>
First Nations be permitted to carry forward unspent FNCFS funding year-over-year. <sup>427</sup>	The OFA's FNCFS Funding Mechanism permits recipients to carry forward funding. <sup>428</sup>
Establishing an Ontario-based First Nations information institute that could serve as a data steward facilitating First Nations capacity in information governance. <sup>429</sup>	The OFA provides that an experienced data stewardship organization, with a track record of partnering with First Nations, will be selected to serve as the Ontario FNCFS Data Secretariat. <sup>430</sup>
Establishing a First Nations Working Group to develop outcome measures for system transformation and child and family well-being, allowing each Nation to contribute their own priority indicators. <sup>431</sup>	The OFA's performance measurement framework uses well-being indicators developed by IFSD in collaboration with FNCFS Agencies and some First Nations. <sup>432</sup> FNCFS Agencies must report on these indicators, <sup>433</sup> a list to which First Nations may add. <sup>434</sup>
Exploratory discussions take place on a new agreement that will supplement, update, or replace the child welfare provisions of the 1965 Agreement. <sup>435</sup>	The OFA and the Trilateral Agreement commit Canada to work with COO and NAN to pursue reform of all program areas covered under the 1965 Agreement with the Government of Ontario. <sup>436</sup>
FNCFS Funding will not be reduced, even if the number of protection cases decreases as a result of an increase in prevention services. <sup>437</sup>	The OFA provides that the portion of an FNCFS Agency's baseline funding that it receives directly from ISC will not be reduced during the Initial Funding Period. <sup>438</sup>
First Nations and FNCFS Agencies must be empowered to meet families' basic	The OFA's baseline, household supports, and prevention funding to First Nations

<sup>425</sup> OSS at p 61.

<sup>426</sup> OFA at para 30.

<sup>427</sup> OSS at xv at Recommendation 27.

<sup>428</sup> OFA at para 50.

<sup>429</sup> OSS at xiii at Recommendation 18.

<sup>430</sup> OFA at para 87.

<sup>431</sup> OSS at xiii at Recommendation 16.

<sup>432</sup> OFA at para 78 and Appendix 2.

<sup>433</sup> OFA at para 113.

<sup>434</sup> OFA at paras 116-117.

<sup>435</sup> OSS at xv at Recommendation 28.

<sup>436</sup> OFA at paras 57-58; Trilateral Agreement.

<sup>437</sup> OSS at xv at Recommendation 26.

<sup>438</sup> OFA at para 18(b)(ii). The only exception to this is set out in paragraph 44(a) of the OFA, which provides that the portion of an FNCFS Agency's baseline funding that it receives directly from ISC may be reduced in the Initial Funding Period if one or more of the FNCFS Agency's affiliated First Nations decides to withdraw from the FNCFS Agency.

OSS Recommendation	OFA Approach
needs and address poverty-related risks to reduce child apprehensions. <sup>439</sup>	and/or FNCFS Agencies is intended to help families meet needs and reduce apprehensions.
First Nations' inherent jurisdiction must be respected through opt-out provisions for First Nations with their own laws <sup>440</sup> and by supporting them to design and deliver their own child and family well-being programs. <sup>441</sup>	A First Nation may opt out of the OFA by exercising jurisdiction under a self-government agreement or the Federal Act process; funding for those First Nations that opt out will not be less than its OFA entitlement. <sup>442</sup> The OFA offers First Nations considerable discretion in the design and delivery of services under the FNCFS Program.

225. The research focus of the OSS extended beyond the adequacy of the 1965 Agreement, encompassing Jordan's Principle; First Nations perspectives on well-being and its determinants such as income, health, housing, education, water, employment, and food security; language revitalization; the cultural appropriateness of services provided by mainstream child protection agencies; and, most notably, the exercise of jurisdiction over child and family services by First Nations.

226. The OSS makes several recommendations in relation to a systemic "transformation process" (specifically Recommendations 7, 15, and 19-25), defined as a process grounded in First Nations self-determination and jurisdiction and focused on preparing First Nations to design and implement their own child and family well-being system.<sup>443</sup> The OSS recommends a 10-year transformation process that would precede First Nations implementing their own systems, during which First Nations would conduct comprehensive, fully-funded needs assessments.<sup>444</sup> These

<sup>439</sup> OSS at xi at Recommendations 9 and at xii at Recommendation 10.

<sup>440</sup> OSS at x at Recommendation 2 and 3.

<sup>441</sup> OSS at x at Recommendation 4.

<sup>442</sup> OFA at para 106.

<sup>443</sup> OSS at p 11.

<sup>444</sup> OSS at x at Recommendation 7 and at xiii at Recommendation 19.

assessments would cover system design, cost forecasting, and include a review of human resources capacity and staffing needs.<sup>445</sup> Transitional measures would ensure FNCFS costs are fully funded,<sup>446</sup> including capital costs,<sup>447</sup> throughout the transformation process. These OSS recommendations are framed as a preparatory step before a First Nation exercises jurisdiction and implements its own child and family well-being system. However, jurisdiction over child and family services falls outside the scope of the Complaint and, therefore, outside the scope of the OFA.

227. Should it be suggested that the transformation process set out in the OSS must precede long-term reform of the FNCFS Program, it is important to note that 10 years have passed since the Merit Decision – a period that may be considered the transformation process. Significant changes have occurred since 2016, including interim actuals funding for key FNCFS costs since 2018, FNCFS capital since 2021, other key FNCFS costs since 2022, and greater First Nations involvement in prevention and PMSS service delivery, all of which have reshaped the FNCFS Program landscape. While there is no complete body of First Nations needs-assessment data, the OFA relies on substantial evidence of need gathered through these years of transformation. In sum, the OFA represents the long-term solution at the end of this process.

228. Although the OSS offers useful Ontario-specific context, it is not an appropriate benchmark for assessing whether the OFA addresses the discrimination identified in the FNCFS Program. The OSS extends beyond the scope of the Complaint, focuses

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<sup>445</sup> OSS at xiii at Recommendation 15.

<sup>446</sup> OSS at x-xi at Recommendation 7 and at xiv at Recommendation 19.

<sup>447</sup> OSS at xiv at Recommendation 23.

on broader jurisdictional reform, and relies on outdated 2019 data. As such, its recommendations should be viewed as a vision for wider reform rather than a statement of what is required to achieve substantive equality in this case.

*The OFA Fully Adopts the Research of the NAN-Canada Remoteness Quotient Table*  
Adoption of the Remoteness Quotient Adjustment Factor in the OFA

229. The Remoteness Quotient Adjustment Factor described at paragraphs 76 to 79 was fully implemented in the OFA's approach to adjusting funding for remoteness. However, in the OFA, the Remoteness Quotient Adjustment Factor is applied only to communities with a 2021 Statistics Canada's Index of Remoteness score of 0.40 or greater. This threshold introduces a binary classification – remote versus non-remote – that was not inherent to the early remoteness quotient research (which produced the NAN Remoteness Quotient Factor) or in the ISC Cost Adjustment Factor.<sup>448</sup>

230. While a continuous scale of remoteness provides useful nuance, a practical funding approach requires a clear and consistent classification. The 0.40 threshold serves this purpose. It reflects a point of natural separation in the distribution of remoteness scores, distinguishing communities that share meaningful characteristics of isolation and limited access. This binary approach ensures that funding adjustments can be applied in a transparent and operationally feasible manner.<sup>449</sup>

231. The choice of 0.40 is not arbitrary. It is grounded in empirical analysis by Statistics Canada, which identified natural clustering patterns and population-based distinctions within its Index of Remoteness. These clusters provide a reasonable basis

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<sup>448</sup> Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025 at para 23.

<sup>449</sup> Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025 at paras 22-24.

for a uniform threshold, creating a consistent national standard.<sup>450</sup> By adopting this cut-off, the OFA achieves two objectives: (1) it applies remoteness adjustments equitably across Ontario, and (2) it preserves the precision of the Remoteness Quotient Adjustment Factor for communities above the threshold.

Limits of the OFA's Remoteness Adjustment Approach and Commitments to Further Research

232. Two admitted limitations of Remoteness Quotient Adjustment Factor are: (1) it uses cost data that is not based on actual costs in First Nations communities except for NAN communities,<sup>451</sup> and (2) Statistics Canada's Index of Remoteness' fly-in factor (which looks at whether a community is connected to the main road network) blends ferry and road access together.<sup>452</sup>

233. First Nations-specific child and family services cost data is very important to the remoteness quotient project, and its use in the Remoteness Quotient Adjustment Factor (and thereby in the OFA) would be ideal.<sup>453</sup> However, comprehensive real cost data for First Nations does not currently exist, and only a few isolated sources are available.<sup>454</sup> In the absence of such data, the methodology relies on the best available information and modelling, which includes the use of three NAN-mandated FNCFS Agencies' actual cost data. This approach is preferable to delaying implementation

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<sup>450</sup> Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025 at paras 22-23.

<sup>451</sup> Examination-in-Chief of Dr. Martin Cooke, Transcript for 11 Dec 2025 Part 1, Transcript Brief at Tab 4, at p 189 at lines 8-18.

<sup>452</sup> Cross-Examination of Dr. Martin Cooke, Transcript for 11 Dec 2025 Part 1, Transcript Brief at Tab 4, at p 209 at lines 18-19, at p 237 at lines 22-25, and at p 238 at lines 1-3.

<sup>453</sup> Examination-in-Chief of Dr. Martin Cooke, Transcript for 11 Dec 2025 Part 1, Transcript Brief at Tab 4, at p 189 at lines 13-14; Cross-Examination of Dr. Martin Cooke, Transcript for 11 Dec 2025 Part 1, Transcript Brief at Tab 4, at p 214 at lines 14-18.

<sup>454</sup> Examination-in-Chief of Dr. Martin Cooke, Transcript for 11 Dec 2025 Part 1, Transcript Brief at Tab 4, at p 189 at lines 8-18.

while waiting for or creating new datasets – a process that would take considerable time.<sup>455</sup>

234. The OFA also commits the NAN-Canada Remoteness Quotient Table to continue technical work to improve the Remoteness Quotient Adjustment Factor,<sup>456</sup> with the goal of creating detailed, First Nations-specific child and family services cost data – similar to that used in the development of the NAN Remoteness Quotient Factor – and incorporating such data as it becomes available.<sup>457</sup> To support this and other remoteness-related work, the NAN-Canada Remoteness Quotient Table will establish an Ontario Remoteness Secretariat.<sup>458</sup> These processes ensure that the remoteness adjustment evolves and remains responsive to First Nations' needs as research advances, with research findings reported to ORIC<sup>459</sup> and considered in Program Assessments.<sup>460</sup>

235. Statistics Canada's Index of Remoteness considers ferry-connected communities to be road-connected, which is indeed a limitation of the index and thus of the Remoteness Quotient Adjustment Factor employed in the OFA.<sup>461</sup> The Moving Parties acknowledge this limitation, and, in response, the OFA incorporates specific commitments to improve the methodology used to assess remoteness for communities connected to the main road network by ferry. The NAN-Canada

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<sup>455</sup> Examination-in-Chief of Dr. Martin Cooke, Transcript for 11 Dec 2025 Part 1, Transcript Brief at Tab 4, at p 180 at lines 10-16.

<sup>456</sup> OFA at para 96; Hearing Exhibit 6, Dr. Cooke Affidavit, 15 May 2025 at para 32.

<sup>457</sup> Cross-Examination of Dr. Martin Cooke, Transcript for 11 Dec 2025 Part 1, Transcript Brief at Tab 4, at p 241 at lines 22-25, at p 242 at lines 1-2, 22-25, and at p 243 at lines 1-2.

<sup>458</sup> OFA at paras 98-100.

<sup>459</sup> OFA at paras 97, 102, 122(a)-(b), 126(c)-(d).

<sup>460</sup> OFA at paras 148(e), 149(c).

<sup>461</sup> Cross-Examination of Dr. Martin Cooke, Transcript for 11 Dec 2025 Part 1, Transcript Brief at Tab 4, at p 209 at lines 18-19, at p 237 at lines 22-25, and at p 238 at lines 1-2.

Remoteness Quotient Table is required to report regularly to ORIC on its research with Statistics Canada on the index.<sup>462</sup> In addition, the Program Assessment Organization may consider research from the Ontario Remoteness Secretariat, Statistics Canada, and other sources, to make recommendations to ensure that funding adjustments reflect the unique circumstances of these ferry-connected communities.<sup>463</sup>

Georgina Island First Nation's Position on Remoteness and Service Accessibility under the OFA

236. Georgina Island First Nation is an island community located in southern Lake Simcoe. Georgina Island First Nation's funding under the OFA is not upwardly adjusted for remoteness. Georgina Island First Nation has raised concerns that its 2021 Statistics Canada's Index of Remoteness score (0.10)<sup>464</sup> is understated because ferry access is treated as equivalent to road access; arguing that this approach discriminates against Georgina Island First Nation and other similarly situated communities by failing to recognize their true remoteness.<sup>465</sup>

237. As noted above, the OFA commits to significant work to improve how remoteness is measured for ferry-connected communities. However, changes to Statistics Canada's Index of Remoteness cannot occur without systemic data; improvements under the OFA must follow the development of robust datasets rather

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<sup>462</sup> OFA at para 126(d).

<sup>463</sup> OFA at paras 148(e) and 149(c).

<sup>464</sup> Hearing Exhibit 12, Crate Affidavit, 2 Oct 2025 at para 19; and Cross-Examination of Dr. Martin Cooke, Transcript for 11 Dec 2025 Part 1, Transcript Brief at Tab 4, at p 220 at lines 21-24.

<sup>465</sup> Re-Examination of Shannon Crate, Transcript for 15 Dec 2025 Part 2, Transcript Brief at Tab 9, at p 605 at lines 21-24.

than precede them.<sup>466</sup> This process will take time, and there is no guarantee that any refinements will result in Georgina Island's Statistics Canada's Index of Remoteness score reaching or exceeding 0.40.

238. In any event, Georgina Island First Nation's assertion that Statistics Canada's Index of Remoteness is a "discriminating tool" is not substantiated.<sup>467</sup> The First Nation will receive substantial funding under other OFA components: the funding profile shared with Georgina Island First Nation in February 2025 by COO, based on ISC figures, estimated Georgina Island First Nation's total Reformed FNCFS Program funding for 2026-27 at approximately [REDACTED] (excluding any capital funding it could be approved for).<sup>468</sup> When asked whether Georgina Island First Nation views this funding as insufficient, Georgina Island First Nation's affiant, Ms. Shannon Crate, testified that she "wouldn't frame it that way", explaining that when she first saw the projected amount, she was "quite shocked", thought "it was a lot of money", and found it "very appealing".<sup>469</sup> While Ms. Crate expressed concern that Georgina Island First Nation's remoteness adjustment funding was set at zero,<sup>470</sup> there is no evidence of the amount of increased costs for child and family services attributable to the First Nation's geography contained in the affidavits of the Georgina Island First Nation

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<sup>466</sup> Cross-Examination of Dr. Martin Cooke, Transcript for 11 Dec 2025 Part 1, Transcript Brief at Tab 4, at p 233 at lines 11-15.

<sup>467</sup> Re-Examination of Shannon Crate, Transcript for 15 Dec 2025 Part 2, Transcript Brief at Tab 9, at p 605 at lines 21-24.

<sup>468</sup> Hearing Exhibit 28, Chippewas of Georgina Island FNCFS Funding Profile for 2026-27 under Ontario FA (COO Feb 2025).

<sup>469</sup> Cross-Examination of Shannon Crate, Transcript for 15 Dec 2025 Part 1, Transcript Brief at Tab 8, at p 583 at lines 12-19 and p 584 at lines 3-8.

<sup>470</sup> Cross-Examination of Shannon Crate, Transcript for 15 Dec 2025 Part 1, Transcript Brief at Tab 8, at p 584 at lines 12-13.

affiants (Chief Donna Big Canoe and Shannon Crate), nor did Ms. Crate provide any evidence of these costs during her cross-examination.

239. During cross-examination, Ms. Crate expressed concern that the OFA's Reformed Funding Approach could undermine prevention services by leaving her affiliated FNCFCS Agency, Dnaagdawenmag Binnooijiay Child and Family Services, underfunded for prevention work. Ms. Crate feared this would force Dnaagdawenmag Binnooijiay Child and Family Services to shift toward protection-only services, reversing decades of progress and replicating the failures of the mainstream system.<sup>471</sup> Under the OFA, First Nations have full control over the allocation of prevention funding, and it is well within Georgina Island First Nation's authority to reallocate any portion of its annual prevention funding – approximately \$532,000 in 2026–27 – to Dnaagdawenmag Binnooijiay Child and Family Services.

240. Georgina Island First Nation also raises concerns about the OFA's ability to improve access to services. As Ms. Crate explains, while the OFA increases funding, it does not address the longstanding barriers that limit community members' ability to obtain the services that funding is meant to support.<sup>472</sup> Ms. Crate emphasizes that essential programs and resources remain difficult to access due to factors such as limited infrastructure on Georgina Island and the challenges of transportation between the community and the mainland, noting that essential services and resources remain out of reach despite increased funding.<sup>473</sup>

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<sup>471</sup> Cross-Examination of Shannon Crate, Transcript for 15 Dec 2025 Part 1, Transcript Brief at Tab 8, at p 584 at lines 22-24, at p 585 at lines 23-25, and at p 586 at lines 1-7.

<sup>472</sup> Cross-Examination of Shannon Crate, Transcript for 15 Dec 2025 Part 1, Transcript Brief at Tab 8, at p 585 at lines 19-22.

<sup>473</sup> Hearing Exhibit 31, Shannon Crate Missing Transcript Portion, filed 16 December 2025.

241. While these concerns are legitimate, they reflect a misunderstanding of what the OFA is designed to do. The OFA does not claim – and could never be expected – to resolve every barrier to service access, such as infrastructure or transportation. The OFA does not solve every access issue for any First Nation, including those that are eligible for remoteness adjustment funding. At its core, the OFA is a funding agreement, albeit one that embeds structural reforms to address systemic discrimination in child and family services. It is not, and was never intended to be, a comprehensive solution to First Nations' infrastructure or access challenges.

*Adaptability to Future Evidence and Research*

242. The Tribunal has emphasized that reform must remain open to improvement as new evidence emerges, allowing adjustments as the quality of information increases<sup>474</sup> and has stressed the need for flexibility to incorporate studies and data to ensure reforms are effective and in the best interests of First Nations children.<sup>475</sup> However, the Tribunal has also made clear that reform cannot be delayed pending additional studies;<sup>476</sup> evidence-based adaptability must complement timely reform.

243. The OFA reflects this approach by embedding adaptability as a core principle. The OFA provides for continuous, evidence-driven improvement. It embeds mechanisms for ongoing data collection, independent assessments, and responsive review processes that make timely adjustments enforceable. These mechanisms are described in detail at paragraphs 187 to 192 and 201 to 206. These features ensure

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<sup>474</sup> [2018 CHRT 4](#) at para [415](#).

<sup>475</sup> [2025 CHRT 6](#) at paras [47-48](#); and [2023 CHRT 44](#) at para [16](#).

<sup>476</sup> [2025 CHRT 80](#) at para [113\(4\)](#).

reforms remain grounded in the best available information and that lessons learned shape future programs.

**The OFA is Consistent with the *Convention on the Rights of the Child*, the UNDRIP, and the *United Nations Declaration on the Rights of Indigenous Peoples Act***

244. From the Merit Decision onwards the Tribunal has been clear that Canada's international legal obligations will inform its interpretation and application of the CHRA.<sup>477</sup>

245. Indigenous children have the full gamut of human rights enshrined in all relevant international instruments,<sup>478</sup> as well as rights as Indigenous people under the UNDRIP<sup>479</sup> and as children under the UNCRC.<sup>480</sup> The entirety of the UNDRIP and the UNCRC are relevant to the rights of Indigenous children,<sup>481</sup> with the following provisions specifically mentioning their rights: UNDRIP preamble and Articles 7, 14, 17, 21, 22; and UNCRC Articles 17, 29, 30.

246. The international human rights of Indigenous peoples that are implicated in this complaint and in the OFA are numerous and a full analysis of all implicated rights is beyond the scope of this factum. There are, however, three rights in the UNDRIP and the UNCRC that are central to the current motion: (1) the right to culture, (2) the right

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<sup>477</sup> See, e.g.: [Merit Decision](#) at para 431; *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2017 CHRT 14](#) at para 117; [2018 CHRT 4](#) at para 81.

<sup>478</sup> Key relevant international instruments and treaty/monitoring bodies are listed at [Merit Decision](#) at paras 428-429.

<sup>479</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA, 61st Sess, UN Doc [A/RES/61/295](#) (2007) GA Res 61/295 [UNDRIP]. Canada has also legislatively affirmed UNDRIP's application in domestic law through the *United Nations Declaration on the Rights of Indigenous Peoples Act*, [SC 2021, c 14](#).

<sup>480</sup> *Convention on the Rights of the Child*, 20 November 1989, [1577 UNTS 3](#) (entered into force 2 September 1990) [UNCRC].

<sup>481</sup> Elsa Stamatopoulou, "Indigenous Children and Children's Rights" in *Oxford Handbook of Indigenous Peoples and International Law*, online eds (Oxford University Press, 2025); UN Committee on the Rights of the Child, *General Comment No. 11: Indigenous children and their rights under the Convention*, 50th Sess, UN Doc [CRC/C/GC/11](#) (2009).

to live free from discrimination, and (3) the right of self-determination.<sup>482</sup> Each of these rights are binding international and customary law and convention through the presumption of conformity, and, for rights under the UNDRIP, their adoption into domestic legislation.<sup>483</sup>

247. The presumption of conformity requires domestic law to be construed consistently with international law, wherever possible.<sup>484</sup> On this motion, the presumption of conformity means that the CHRA should be construed consistently with the UNDRIP and the UNCRC. The remedies in the OFA must be consistent with the rights of Indigenous peoples generally and children specifically, in the UNDRIP and the UNCRC.

*The Right to Culture and the Right to Live Free from Discrimination*

248. The UNDRIP affirms a positive state obligation to protect Indigenous peoples' cultures (Article 15)<sup>485</sup> with an emphasis on the importance of maintaining Indigenous children's right to their cultural identities and belonging within their communities through the prohibition of forced removal (Article 7).<sup>486</sup>

249. The UNCRC also affirms a positive state obligation to protect the rights of Indigenous children to their cultures and languages (Article 30).<sup>487</sup>

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<sup>482</sup> In respect of the right to culture see [UNDRIP](#) at Art 15 and [UNCRC](#) at Art 30. In respect of the right to live free from discrimination see [UNDRIP](#) at Art 2 and [UNCRC](#) at Art 2. In respect of the right of self-determination see [UNDRIP](#) at Art 3 and Art 4.

<sup>483</sup> On the presumption of conformity generally, see *R v Hape*, [2007 SCC 26](#) at paras [53-54](#). Regarding UNDRIP's status in domestic law, see *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, [2024 SCC 5](#) at paras [4, 15](#). Regarding UNCRC's application in Canadian law, see *Baker v Canada (Minister of Citizenship and Immigration)*, [\[1999\] 2 SCR 817](#) at paras [69-71](#).

<sup>484</sup> *Gitxaala v British Columbia (Chief Gold Commissioner)*, [2025 BCCA 430](#) at para [126](#).

<sup>485</sup> [UNDRIP](#) at Art 15(1).

<sup>486</sup> [UNDRIP](#) at Art 7(1).

<sup>487</sup> [UNDRIP](#) at Art 30.

250. All Indigenous peoples have a right to live free from discrimination (UNDRIP Article 21(2),<sup>488</sup> UNCRC Article 2<sup>489</sup>). The right to live free from discrimination creates a positive state obligation to counter discriminatory attitudes and ensure culturally appropriate services to Indigenous peoples.<sup>490</sup>

251. Indigenous peoples' right to culture and right to live free from discrimination are interconnected; this interconnection is captured by the Tribunal in its finding that substantively equal child and family services must be culturally appropriate and that substantive equality is the measure for the elimination of discrimination.<sup>491</sup>

252. The OFA upholds First Nations' right to culture and to live free from discrimination in child and family services in the following ways, among others:

- a. The OFA shifts the focus of the FNCFS Program in Ontario from protection to culturally appropriate prevention services that reflect the cultural, historical, and geographical needs and circumstances of First Nations communities.<sup>492</sup> Prioritizing culturally appropriate prevention services aims to prevent the apprehension of children with its attendant harms including: loss of cultural identity and belonging and denial of access to traditional lands, waters, and languages.
- b. The OFA respects First Nations' right to culture through the provision of a culturally appropriate Claimant Dispute Process that includes access to justice in Indigenous languages (see paragraphs 100 to 111). Importantly, the OFA's

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<sup>488</sup> [UNDRIP](#) at Art 21(2).

<sup>489</sup> [UNDRIP](#) at Art 2(1).

<sup>490</sup> UN Human Rights Council, *Rights of the indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples*, 48th Sess, UN Doc [A/HRC/48/74](#) (2021) at para 16 [UNHRC]. See also [Merit Decision](#) at paras [448-449](#).

<sup>491</sup> [2025 CHRT 80](#) at para [113\(7\)](#).

<sup>492</sup> [Merit Decision](#) at paras [422](#), [425](#), [455](#).

Dispute Resolution Process also dramatically expands who may bring forward concerns: for the first time, First Nations and FNCFS Agencies can initiate and advance disputes in their own right.

- c. The OFA expands access to FNRS and PMSS to all First Nations in Ontario. The Tribunal has been clear that FNRS are necessary to provide culturally appropriate services to First Nations children.<sup>493</sup> The OFA provides needs-based funding for FNRS and PMSS, accounting for remoteness.<sup>494</sup>
- d. The OFA upholds the right to culture and the right to live free from discrimination of remote communities through the implementation of a robust, evidence-based approach to accounting for the additional costs related to delivering child and family services in remote First Nations (see paragraphs 75 to 80 and 184 to 186). This aims to eliminate discrimination in child and family services that is exacerbated by remoteness.
- e. The OFA corrects for decades of systemic discrimination in the FNCFS Program brought about by funding inequality and program design and delivery. The introduction of the substantively equal, non-discriminatory Reformed FNCFS Funding Approach and the FNCFS Funding Mechanism uphold First Nations' right to live free from discrimination.
- f. For individual funding recipients, the OFA protects against the risk of future discrimination through the opportunity to make Service Provider Funding

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<sup>493</sup> [Merit Decision](#) at paras [392](#), [426](#).

<sup>494</sup> [Merit Decision](#) at paras [348](#), [392](#), [425-426](#); [2018 CHRT 4](#) at para [324](#). The OFA will provide funding directly to First Nations for First Nation Representative Services and Post-Majority Support Services, moving away from the “actuals” application-based process, which has proven problematic, see, e.g.: Hearing Exhibit 2, Grand Chief Abram Supplemental Affidavit, 21 May 2025 at para 22, and as found by the Tribunal in [2022 CHRT 8](#) at paras [121](#), [125](#) and [2020 CHRT 24](#) at paras [34](#), [36](#).

Adjustment Requests and access to dispute resolution (see paragraph 82). At a broader level, the OFA protects against the risk of future discrimination through the Systemic Review Committee which monitors trends in Service Provider Funding Adjustment Requests and Claimant Disputes and makes recommendations to the ORIC if there are trends of concern (see paragraph 87).

253. The OFA accounts for the fact that the right to culture and the right to live free from discrimination are not static; these rights are contextual. Ongoing research and monitoring by the ORIC, the Technical Advisory Committee, the Systemic Review Committee, the Ontario Remoteness Secretariat, and the Ontario FNCFS Data Secretariat will contribute to the ongoing promotion and protection of First Nations' right to culture and to live free from discrimination by identifying and remedying any new or recurring discrimination under the OFA regime.

#### *The Right of Self-Determination*

254. The Tribunal has long recognized Indigenous peoples' right of self-determination as a fundamental right at international law.<sup>495</sup> Indigenous peoples' right of self-determination (UNDRIP Article 3 and Article 4)<sup>496</sup> is inextricably linked to other rights within the UNDRIP, the UNCRC, and other international instruments.<sup>497</sup> Although the UNDRIP provisions about self-determination do not mention children, the right to self-determination is linked to the ability to enjoy other rights that do affect

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<sup>495</sup> See, e.g. [2018 CHRT 4](#) at para [114](#); [2019 CHRT 7](#) at para [23](#).

<sup>496</sup> [UNDRIP](#) at Art 3.

<sup>497</sup> [UNHRC](#) at Art 13.

children, for example, the collective right to live in freedom and the right to retain shared responsibility for raising children (UNDRIP Article 7, Preamble).<sup>498</sup>

255. The OFA upholds First Nations' right of self-determination in child and family services in the following ways, among others:

- a. The right of self-determination in child and family services is interconnected with the right to culture and the right to live free from discrimination. The Tribunal has found that culturally appropriate services are those that meet the cultural, historical, and geographical needs and circumstances of unique First Nations communities.<sup>499</sup> In order to achieve this type of service design and delivery, First Nations themselves must exercise meaningful control over the services, as they are uniquely placed to understand and respect their own communities' cultural, historical, and geographical needs and circumstances. In this way, the right of self-determination is the bedrock of the right to culture and non-discrimination in services. The OFA brings together and upholds these rights through the emphasis on community-based service delivery and design in child and family services.
- b. The OFA accounts for First Nations' right of self-determination through the complete overhaul of the way the child and family services system is governed: moving from a top-down system managed exclusively by Canada to a First Nations-led governance mechanism, the ORIC (see paragraphs 83 to 88).

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<sup>498</sup> UNDRIP at Art 7; UNHRC at Art 13.

<sup>499</sup> *Merit Decision* at paras 422, 465.

- c. The OFA respects First Nations' right of self-determination by empowering First Nations to make their own choices about the design of child and family services and about who should be responsible for delivering some key services (see paragraphs 59, 156, 164, 195, and 239 regarding First Nations' choices of provider with respect to prevention services and paragraphs 66, 167, and 170 regarding First Nations' choice of provider with respect to PMSS).
- d. The OFA ensures that First Nations exercising jurisdiction pursuant to the Federal Act or other jurisdictional arrangements will have a guaranteed minimum level of funding. This supports the equal treatment of First Nations exercising jurisdiction, which is an act of self-determination.<sup>500</sup>

*Summary of the Intersection between International Law and the OFA*

256. This analysis is not a full consideration of the intersections between the rights of Indigenous peoples at international law and the OFA. These submissions have focused on how three key rights of Indigenous peoples at international law – the right to culture, the right to live free from discrimination, and the right of self-determination – are accounted for and upheld within the OFA in respect of child and family services.
257. Consideration of these rights at international law will form part of the Tribunal's framework for evaluating the OFA. Importantly, this is not a theoretical exercise: Indigenous peoples and Indigenous children have the right to remedies for the violation of their rights in international law (UNDRIP Article 40).<sup>501</sup> A rejection of the

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<sup>500</sup> OFA at para 106.

<sup>501</sup> [UNDRIP](#) at Art 40. The UNCRC does not contain explicit terms about the right to a remedy but the Committee on the Rights of the Child has affirmed that the right to a remedy is implicit within the UNCRC.

OFA would leave First Nations in Ontario with no realistic timely pathway to vindicate violations of their fundamental human rights enshrined in international law.

### **The OFA's Reforms Will Have a Lasting Effect and Remain Sustainable for Future Generations**

258. The Tribunal has repeatedly emphasized that long-term reforms must be durable and sustainable to protect First Nations children, families, and communities for generations to come.<sup>502</sup> The OFA recognizes its nine-year limit and includes measures requiring Canada to act after the OFA expires to ensure its reforms endure.

259. The OFA mandates ISC to work with the Parties after the Second Program Assessment to design a successor program.<sup>503</sup> Canada must also consider enshrining the Reformed FNCFS Funding Approach in legislation.<sup>504</sup> Canada's commitment to post-term engagement confirms the OFA's reforms are not temporary but part of a sustained effort toward substantive equality and reconciliation. While no agreement can be permanent, the OFA establishes a durable framework and benchmark for a non-discriminatory program against which future policy can be measured.

260. Canada's duty to eliminate discrimination in the FNCFS Program does not end with the OFA.<sup>505</sup> This obligation is rooted in binding findings of the Tribunal that remain in force indefinitely, regardless of the end of the OFA's term.

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See UN Committee on the Rights of the Child, *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child*, 34th Sess, UN Doc [CRC/GC/2003/5](https://www.refworld.org/docid/4970f9a84.html) (2003) at paras 24-25.

<sup>502</sup> [2025 CHRT 80](#) at para [113\(1\)](#); [2025 CHRT 6](#) at para [602](#).

<sup>503</sup> OFA at para 75.

<sup>504</sup> OFA at para 76.

<sup>505</sup> OFA at para 74.

**The OFA Aligns with the Spirit of the Tribunal's Findings in a Non-Rigid Manner while not Narrowing the Tribunal's Findings and Orders**

261. The OFA enhances rather than narrows the Tribunal's previous findings and orders by introducing unique features that are beyond the scope of what the Tribunal has the jurisdiction to order, this includes, for example:

- (i) co-developed terms and conditions for the Reformed FNCFS Program,
- (ii) a detailed plan for reform of ISC, including cultural humility training,
- (iii) a culturally appropriate dispute resolution process accessible to all First Nations and FNCFS Agencies,
- (iv) a regional First Nations-directed data secretariat, and,
- (v) First Nations-led governance and oversight of the program through the ORIC.

262. The OFA does not deprive any entity of rights that the Tribunal has previously found. The facts on this motion can thus be contrasted to the motion in 2022 CHRT 41, which asked the Tribunal to amend its orders for compensation made in 2019 CHRT 39 in a manner that would have denied compensation to individuals the Tribunal had previously determined were eligible for compensation. The Tribunal denied the motion on the basis that the requested order would deprive rights that the Tribunal had previously recognized.<sup>506</sup> That is not the case with the OFA; the OFA does not deprive any entity of rights that the Tribunal has previously found, and no party has led evidence of the denial of any rights or services.

263. Furthermore, COO and NAN adopt Canada's position on this motion that the commitments in the OFA and the Trilateral Agreement regarding reform of the 1965 Agreement adequately respond to – and do not narrow – the Tribunal's findings and orders on reform of the 1965 Agreement.

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<sup>506</sup> [2022 CHRT 41](#) at para [500](#).

## PART VI – CONCLUSION

264. It has been almost 20 years since the Complaint was filed. Now, for the first time, the Tribunal must decide about long-term reform: do the reforms contained in the OFA and the Trilateral Agreement end the discrimination found by the Tribunal in on-reserve child and family services in Ontario and prevent its recurrence? The legal standard for this determination is non-discrimination, not perfection. The importance of a timely resolution and respect for First Nations' rights of self-determination are paramount considerations for the Tribunal in making this determination.

265. The importance of a timely resolution is built into the CHRA: the Tribunal has a general obligation to act informally and expeditiously<sup>507</sup> and must seek the “timely resolution of discrimination complaints”,<sup>508</sup> even in cases of significant complexity.<sup>509</sup> As affirmed by the Tribunal: “It is far better for children to complete the long-term remedial phase shortly rather than wait for long periods of time”.<sup>510</sup> The CHRA requires the Tribunal to value that the OFA is ready to be implemented today.<sup>511</sup>

266. The importance of a timely resolution is well understood by the Tribunal but is felt most strongly by First Nations people in Ontario. This was expressed by Chief Miskokomon at the COO Special Chiefs Assembly where the Ontario Chiefs-in-Assembly voted to ratify the OFA:

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<sup>507</sup> [CHRA](#) at s. 48.9(1).

<sup>508</sup> *Malec et al v Conseil des Montagnais de Natashquan*, [2012 CHRT 8](#) at para 33.

<sup>509</sup> See [Liu](#) at para 21: “complaints alleging a systemic discriminatory practice, like other complaints, must be dealt with in a proportional manner” and there must be “reasonable and proportional limits on the time frame”.

<sup>510</sup> Letter from Canadian Human Rights Tribunal to Parties re Long-Term Reform, dated 10 February 2025 at para 2.

<sup>511</sup> For a detailed overview of the work COO and NAN have undertaken to prepare for implementation of the OFA, see Hearing Exhibit 3, Simard Reply Affidavit, 17 Oct 2025 at paras 12-16 and Appendix A.

[...] there's a simple choice to make. Do we throw away 10 years of hard work? Of commitment and dedication? Of instructions that have come from this very tables and floors?<sup>512</sup>

What happens if we say no? The '65 Welfare Agreement never gets amended. What happens if we say no? The remoteness discussion may die on a table. What happens if we say no? We lose control, we lose our sense of sovereignty, we lose our jurisdiction, and we lose a building block towards nationhood.<sup>513</sup>

267. Chief Miskokomon's observations connect the many real-world components of the Tribunal's dialogic approach: compromise, timely resolution, and self-determination. The OFA was built through years of engagement and dialogue facilitated through First Nations' own institutions; in this way, the OFA represents a practical exercise of First Nations' rights of self-determination that is part of a longer history of Crown-Indigenous relations, as characterized by the Tribunal: "indigenous peoples have always had the inherent power to make binding agreements between themselves and other polities".<sup>514</sup>

268. As a matter of international and domestic law,<sup>515</sup> the right of Chiefs in Ontario to make decisions in good faith for the best interests of their communities, including their own children and grandchildren, should be respected by the Tribunal. This self-determination is at the heart of the OFA, as expressed by COO Social Services Director Finn Simard:

First Nations have always taken care of their children, they have always had control and jurisdiction over their children, and they have never given that up. The OFA presents a move to enacting jurisdiction and autonomy

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<sup>512</sup> When Chief Miskokomon refers to "tables and floors" he is referring to the negotiation and advisory tables and the floor of the Assembly, which is the forum for First Nations leadership debate and decision-making.

<sup>513</sup> [Chief Miskokomon's Remarks at the COO SCA, 10 Oct 2025](#) at 3:53:35-3:54:09.

<sup>514</sup> [2022 CHRT 41](#) at para 431.

<sup>515</sup> [Reference re An Act respecting First Nations, Inuit and Métis children, youth and families, 2024 SCC 5](#) at para 14; [UNDRIP](#) at Art 3 and Art 4.

over their children and families and communities and that is an important piece. First Nations have never given that up.<sup>516</sup>

## **PART VII – ORDER SOUGHT**

269. The relief requested below is not intended to alter or replace the Tribunal's findings of fact or its reasons in these proceedings; it pertains solely to the remedial orders issued in connection with those findings.

270. COO and NAN respectfully request that the Tribunal orders that:

- a. The OFA is approved without condition;
- b. The OFA and the Trilateral Agreement satisfy the Tribunal's order in the Merit Decision that Canada cease its discrimination relating to the FNCFS Program in Ontario and the 1965 Agreement;
- c. The OFA supersedes and replaces all other remedial orders related to the discrimination found by the Tribunal in relation to the FNCFS Program in Ontario and the 1965 Agreement;
- d. For clarity, the orders of the Tribunal relating to Jordan's Principle shall continue to apply to Canada in Ontario; and
- e. The Tribunal ends its jurisdiction over all elements of the Complaint in Ontario and all associated proceedings, save for jurisdiction over those elements of the Complaint and associated proceedings related to Jordan's Principle.

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<sup>516</sup> Re-Examination of Finn Simard, 10 Dec 2025 Part 2 afternoon at 1:28:22-1:28:33 (no transcript); see also Re-Examination of Finn Simard, 10 Dec 2025 Part 2, Transcript Brief at Tab 3, at p 155 at lines 4-5.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of January, 2026.**



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## PART VIII – LIST OF AUTHORITIES

<b>CASE LAW</b>	
1.	<i>Baker v Canada (Minister of Citizenship and Immigration)</i> , <a href="#">[1999] 2 SCR 817</a>
2.	<i>Ball v Ontario (Community and Social Services)</i> , <a href="#">2010 HRTO 360</a>
3.	<i>Canada (Attorney General) v Dominique</i> , <a href="#">2025 FCA 24</a>
4.	<i>Canada (Attorney General) v First Nations Child and Family Caring Society of Canada</i> , <a href="#">2021 FC 969</a>
5.	<i>Canada (Attorney General) v Grover</i> , <a href="#">1994 CanLII 18487 (FC)</a>
6.	<i>Closs v Fulton Forwarders Incorporated and Stephen Fulton</i> , <a href="#">2012 CHRT 30</a>
7.	<i>Clyde River (Hamlet) v Petroleum Geo-Services Inc</i> , <a href="#">2017 SCC 40</a>
8.	<i>CN v Canada (Canadian Human Rights Commission)</i> , <a href="#">[1987] 1 SCR 1114</a>
9.	<i>Delgamuukw v British Columbia</i> , <a href="#">[1997] 3 SCR 1010</a>
10.	<i>Doucet-Boudreau v Nova Scotia (Minister of Education)</i> , <a href="#">2003 SCC 62</a>
11.	<i>Eldridge v British Columbia (Attorney General)</i> , <a href="#">[1997] 3 SCR 624</a>
12.	<i>First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)</i> , <a href="#">2016 CHRT 2</a>
13.	<i>First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)</i> , <a href="#">2016 CHRT 10</a>
14.	<i>First Nations Child &amp; Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indian and Northern Affairs)</i> , <a href="#">2016 CHRT 16</a>
15.	<i>First Nations Child &amp; Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2017 CHRT 7</a>
16.	<i>First Nations Child &amp; Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2017 CHRT 14</a>
17.	<i>First Nations Child &amp; Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2017 CHRT 35</a>
18.	<i>First Nations Child &amp; Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2018 CHRT 4</a>
19.	<i>First Nations Child &amp; Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2019 CHRT 7</a>
20.	<i>First Nations Child &amp; Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2020 CHRT 7</a>
21.	<i>First Nations Child &amp; Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2020 CHRT 20</a>

22.	<i>First Nations Child &amp; Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2020 CHRT 24</a>
23.	<i>First Nations Child &amp; Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2021 CHRT 41</a>
24.	<i>First Nations Child &amp; Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2022 CHRT 8</a>
25.	<i>First Nations Child &amp; Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2022 CHRT 26</a>
26.	<i>First Nations Child &amp; Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2022 CHRT 41</a>
27.	<i>First Nations Child &amp; Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2023 CHRT 44</a>
28.	<i>First Nations Child &amp; Family Caring Society of Canada and Assembly of First Nations v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2025 CHRT 6</a>
29.	<i>First Nations Child &amp; Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2025 CHRT 80</a>
30.	<i>Gitxaala v British Columbia (Chief Gold Commissioner)</i> , <a href="#">2025 BCCA 430</a>
31.	<i>Haida Nation v British Columbia (Minister of Forests)</i> , <a href="#">2004 SCC 73</a>
32.	<i>Liu (on behalf of IPCO) v Public Safety Canada</i> , <a href="#">2025 CHRT 90</a>
33.	<i>Malec et al v Conseil des Montagnais de Natashquan</i> , <a href="#">2012 CHRT 8</a>
34.	<i>Ontario Human Rights Commission v Simpsons-Sears</i> , <a href="#">[1985] 22 SCR 536</a>
35.	<i>Ontario v Association of Ontario Midwives</i> , <a href="#">2020 ONSC 2839</a>
36.	<i>Quebec (Commission des droits de la personne et des droits de la jeunesse) v Communauté urbaine de Montréal</i> , <a href="#">2004 SCC 30</a>
37.	<i>R v Desautel</i> , <a href="#">2021 SCC 17</a>
38.	<i>R v Hape</i> , <a href="#">2007 SCC 26</a>
39.	<i>R v Sparrow</i> , <a href="#">[1990] 1 SCR 1075</a>
40.	<i>Reference re An Act respecting First Nations, Inuit and Métis children, youth and families</i> , <a href="#">2024 SCC 5</a>
41.	<i>Shot Both Sides v Canada</i> , <a href="#">2024 SCC 12</a>
<b>STATUTES</b>	
42.	<i>An Act respecting First Nations, Inuit and Métis children, youth and families</i> , <a href="#">SC 2019, c 24</a>
43.	<i>Canadian Human Rights Act</i> , <a href="#">RSC 1985, c H-6</a>
44.	<i>Child, Youth and Family Services Act</i> , <a href="#">2017, SO 2017, c 14, Sch 1</a>
45.	<i>United Nations Declaration on the Rights of Indigenous Peoples Act</i> , <a href="#">SC 2021, c 14</a>

<b>LETTERS FROM THE CANADIAN HUMAN RIGHTS TRIBUNAL</b>	
46.	Letter from Canadian Human Rights Tribunal to Parties re Long-Term Reform, dated 10 February 2025
<b>INTERNATIONAL LAW AND UN COMMENTARY</b>	
47.	<i>Convention on the Rights of the Child</i> , 20 November 1989, <a href="#">1577 UNTS 3</a> (entered into force 2 September 1990)
48.	UN Committee on the Rights of the Child, <i>General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child</i> , 34th Sess, UN Doc <a href="#">CRC/GC/2003/5</a> (2003)
49.	UN Committee on the Rights of the Child, <i>General Comment No. 11: Indigenous children and their rights under the Convention</i> , 50th Sess, UN Doc <a href="#">CRC/C/GC/11</a> (2009)
50.	UN Human Rights Council, <i>Rights of the indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples</i> , 48th Sess, UN Doc <a href="#">A/HRC/48/74</a> (2021)
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54.	Kent Roach, "9.5.1 Indigenous Self-determination and Negotiated Remedies" in <i>Remedies for Human Rights Violations: a Two-Track Approach to Supra-National and National Law</i> (Cambridge University Press, 2021)
55.	Kent Roach, "9.6 Conclusion" in <i>Remedies for Human Rights Violations: a Two-Track Approach to Supra-National and National Law</i> (Cambridge University Press, 2021)
56.	Elsa Stamatopoulou, "Indigenous Children and Children's Rights" in <i>Oxford Handbook of Indigenous Peoples and International Law</i> , online eds (Oxford University Press, 2025)
<b>OTHER</b>	
57.	Chief Archie Wabasse's remarks at the Chiefs of Ontario Special Chiefs Assembly, "Special Chiefs Assembly: Strength in Unity" (10 October 2025), <a href="https://www.youtube.com/live/BjpoRyvHEdQ?t=14266s">https://www.youtube.com/live/BjpoRyvHEdQ?t=14266s</a>
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