Tribunal File No. T-1340/7008

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 Services Canada)

Respondent

and

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA, NISHNAWBE ASKI NATION, TAYKWA TAGAMOU NATION and CHIPPEWAS OF GEORGINA ISLAND

Interested Parties

WRITTEN REPLY SUBMISSIONS OF THE ATTORNEY GENERAL OF CANADA RESPECTING THE MOTION TO APPROVE THE ONTARIO FINAL AGREEMENT

Department of Justice Canada
Prairie Regional Office
601 – 400 St. Mary Avenue
Winnipeg, Manitoba R3C 4K5
Fax: 204-983-3636

Per: Dayna Anderson
Counsel for the Respondent

Tel.: 204-294-5563

Email: dayna.anderson@justice.gc.ca

Department of Justice Canada
Civil Litigation Section
50 O'Connor Street
Ottawa, Ontario K1A 0H8

Per: Paul Vickery, Sarah-Dawn Norris, Meg Jones, Aman Owais and Adam Lupinacci
Counsel for the Respondent

Tel.: 604-754-7013 / 343-999-6195 / 343-549-4233 / 343-553-8838

Email: paul.vickery@justice.gc.ca / sarah-dawn.norris@justice.gc.ca / meg.jones@justice.gc.ca / aman.owais@justice.gc.ca adam.lupinacci@justice.gc.ca

TABLE OF CONTENTS

OVERVIEW 1

PART I – FACTS 2

PART II – POINT IN ISSUE 2

PART III – SUBMISSIONS 2

A. Legal framework to end remedial jurisdiction *2*

B. Burden of proof at the remedial stage *3*

C. Ongoing Tribunal supervision is unnecessary *4*

D. Reconciliation is a relevant factor *4*

E. The OFA provides more funding security than legislation *5*

F. The OFA offers reform for generations to come *6*

G. GIFN will receive adequate funding while work on ferry-connected communities continues *7*

H. The OFA's approach to prevention funding and agency funding is sound *9*

I. The OFA and Trilateral Agreement address the discrimination with respect to the 1965 Agreement *10*

J. "Exemption" from the reformed FNCFS Program not available or warranted *11*

K. Canada does not seek an end to the Tribunal's final cease and desist order *13*

L. Canada's litigation positions are not evidence of discrimination *14*

M. Conclusion *14*

PART IV – ORDER SOUGHT 15

PART V – LIST OF AUTHORITIES 19

OVERVIEW

1. The Moving Parties have crafted a comprehensive and transformative reform of the First Nations Child and Family Services (FNCFS) Program (Program) in Ontario firmly grounded in years of extensive collaboration, evidence gathering, and First Nations-led research. The *Final Agreement on Long-Term Reform of the FNCFS Program in Ontario* (OFA), together with the *Trilateral Agreement respecting reform of the 1965 Agreement* (Trilateral), fully addresses the discrimination identified by the Tribunal and establishes a durable, forward-looking framework designed to prevent its recurrence.

2. Two of the Tribunal's three core remedial objectives—ceasing the discriminatory practice and redressing its impacts—have already been achieved. Interim measures have stopped the discriminatory removal of First Nations children and substantially improved the Program, while an historic $23.34-billion compensation package has been approved to redress past harms. The OFA delivers the final objective—meaningful, lasting reform. It replaces the pre-2016 discriminatory funding regime with a culturally grounded, enforceable, and sustainable Program capable of protecting First Nations children and families for generations to come.

3. Arguments seeking ongoing Tribunal supervision, individualized exemptions, or definitive proof of future success misconstrue both the law and nature of systemic reform. The Tribunal's mandate is to craft orders requiring a responding party to cease the discriminatory practice and take measures to prevent its recurrence. The Tribunal's mandate does not extend to indefinite supervision of government programming or the crafting of custom funding regimes for specific First Nations. First Nations desiring distinct approaches may pursue meaningful alternative pathways to reformed child and family services through coordination agreements under *An Act respecting First Nations, Inuit and Métis children, youth and families* or through self-government arrangements—avenues grounded in self-determination, not the Tribunal's remedial jurisdiction.

4. Canada's position reflects its commitment to giving full effect to the Tribunal's final order that Canada cease discrimination, which Canada does not seek to displace. The OFA is the realization of this objective—bringing together years of evidence-based work, collaboration and strong First Nations leadership. It replaces temporary interim measures with a comprehensive, sustainable, and lasting reform that fully aligns with the Tribunal's mandate under the *Canadian*

Human Rights Act and supports meaningful, long-term change for First Nations children and families in Ontario.

PART I – FACTS

5. Canada continues to rely on the facts as set out in the January 19, 2026 Written Submissions of the Attorney General of Canada Respecting the Motion to Approve the Ontario Final Agreement and paragraphs 41 to 128 of the January 16, 2026 Joint Written Submissions of the Moving Parties, Chiefs of Ontario (COO) and Nishnawbe Aski Nation (NAN).[1]

PART II – POINT IN ISSUE

6. The only point in issue is whether the reforms contained in the OFA and the Trilateral Agreement remedy the discrimination found by the Tribunal and take measures to prevent its recurrence in Ontario. As set out in Canada's Written Submissions, and further explained below, Canada's position is that they do.

PART III – SUBMISSIONS

A. Legal framework to end remedial jurisdiction

7. The Tribunal's remedial power exists within the confines of the *Canadian Human Rights Act* (*CHRA*), which authorizes the Tribunal to make creative orders against a respondent intended to: (i) cease a discriminatory practice; (ii) compensate the victim; and (iii) take measures to prevent recurrence, including adopting a "special program, plan or arrangement."[2]

8. In this case, the first two of the *CHRA*'s purposes have already been effected. As of April 1, 2022, the Tribunal found that the unnecessary removal of First Nations children as a result of the discrimination in this case has ceased.[3] Further, the Tribunal approved a transformative $23.34

---

[1] Adopted in paragraph 11 of the Written Submissions of the Attorney General of Canada Respecting the Motion to Approve the Ontario Final Agreement. *Contra* the Caring Society's incorrect statement that Canada made no submissions on whether an Arbitral Tribunal's jurisdiction extends to ordering funding beyond $8.5 billion in the OFA's second funding period. See in particular paragraphs 44 to 46 of COO and NAN's Joint Written Submissions.
[2] *Canadian Human Rights Act*, RSC, 1985, c H-6, s. 53 **[*CHRA*]**.
[3] *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 8 at paras 144 and 172 [**2022 CHRT 8**].

billion compensation settlement to provide life-changing relief to hundreds of thousands of First Nations youths and families.[4]

9. What remains is the "complete reform" to effectively eliminate discrimination and prevent its recurrence, protecting generations to come.[5] This is what the OFA and Trilateral Agreement offer.

B. Burden of proof at the remedial stage

10. At the remedial stage, the process is focused on gathering the necessary information to craft effective orders.[6] Where the evidentiary record allows the Panel to draw conclusions of fact supported by the evidence, the question of who has the onus of proving a given fact is immaterial.[7]

11. COO, NAN and Canada are breaking new ground, having developed an innovative new Program as set out in the OFA, informed by years of First Nations-led or commissioned research,[8] the actual costs of delivering services,[9] and ongoing collaboration.[10] To ensure that the discrimination does not recur, they have built measures into the new Program to provide First Nations with a meaningful voice in its implementation and ongoing improvement, as well as a culturally appropriate dispute resolution process for First Nations and FNCFS Agencies.

---

[4] *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 **[2023 CHRT 44]**; *Moushoom v. Canada (Attorney General)*, 2023 FC 1533 at para 1.
[5] 2023 CHRT 44 at para 6.
[6] *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 paras 21 and 23 **[2021 CHRT 41]**.
[7] *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 30 **[2017 CHRT 14]**.
[8] See e.g. the IFSD reports including *Enabling First Nations Children to Thrive* ("IFSD Phase One"), Exhibit C, Affidavit of Duncan Farthing-Nichol dated March 7, 2025; *Funding First Nations child and family Services (FNCFS): A performance budget approach to well-being* ("Phase Two Report"), Exhibit B, Affidavit of Duncan Farthing-Nichol affirmed March 7, 2025; and *Interim update: First Nations child and family Services (FNCFS) – Phase 3*, Exhibit F, Affidavit of Duncan Farthing-Nichol affirmed March 7, 2025. See also the remoteness research as described generally in the Supplemental Affidavit of Dr. Martin Cooke affirmed May 15, 2025.
[9] Informed by data gathered through the implementation of the Tribunal's actual costs orders in *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; 2021 CHRT 41 and the consent orders in 2022 CHRT 8.
[10] See e.g. Affidavit of Duncan Farthing-Nichol affirmed March 7, 2025 at paras 10-30.

12. Now, the Tribunal must consider whether the OFA is a meaningful and effective remedy that addresses the discriminatory practices identified and takes measures to prevent its recurrence.[11] The Moving Parties are not required to meet the impossible burden of proving that the new approach will be effective absolutely and forever. Rather, they have gathered the necessary information and worked to craft a fully reformed, evidence-based Program in the collaborative manner proposed by the Tribunal.[12]

C. Ongoing Tribunal supervision is unnecessary

13. Once a remedial plan such as the OFA satisfies the *CHRA*'s statutory purpose and the record supports its adequacy, continued Tribunal supervision exceeds the parameters of s. 53 of the *CHRA*. The Tribunal is not an enforcement body.[13] Ongoing supervision as sought by Taykwa Tagamou Nation (TTN) and Chippewas of Georgina Island First Nation (GIFN)[14] is wholly unnecessary, particularly given that Tribunal orders can be filed with the Federal Court for the purpose of enforcement.[15]

14. Further, this Tribunal recently stated that supervising the detailed implementation of its final remedial orders is outside the scope of its expertise and mandate.[16] Nothing in the *CHRA* confers an open-ended mandate to supervise government programming once an adequate remedial plan is in place. Instead, implementation will be governed by the agreement that was mutually determined by the Moving Parties and which includes provisions for Program assessments.

D. Reconciliation is a relevant factor

15. The Federal Court previously confirmed that these proceedings are about individual human rights and do not involve constitutional issues or collective section 35 Aboriginal rights.[17] However, the Tribunal and the parties have discussed the concept of reconciliation throughout the

---

[11] 2021 CHRT 41 at para 21; 2017 CHRT 14 at para 28; *CHRA* at s. 53(2)(a).
[12] 2021 CHRT 41 at para 23.
[13] *Starr et al v. Stevens*, 2024 CHRT 127 at para 158 **[*Starr*]**.
[14] Responding Factum of the Interested Parties, Taykwa Tagamou Nation and Chippewas of Georgina Island First Nation at paras 31-32.
[15] *Federal Courts Act*, R.S.C. 1985, c. F-7 at s. 57; *Starr* at para 158.
[16] *Starr* at para 158.
[17] *Canada (Attorney General) v First Nations Child and Family Caring Society of Canada*, 2021 FC 969 at paras 146-147 and 297 **[2021 FC 969]**.

proceedings, acknowledging that it is a relevant factor in the remedial stage.[18] To that end, Canada has made extensive efforts to collaborate, consult and negotiate with all parties towards a complete reform of the FNCFS Program and Jordan's Principle, while providing funding of over $47.5 million to the parties to gather the information necessary to craft a meaningful and effective remedy.[19]

16. This Panel previously stated that it will revisit its retained jurisdiction once long-term reform has been addressed, ideally through an agreement that eliminates systemic racial discrimination and ensures discrimination will not reoccur.[20] Courts similarly encourage negotiated settlements by parties.[21] Collective First Nations and/or individual consent is not required in respect of the final systemic reforms. However, COO and NAN's participation, engagement and leadership in crafting a meaningful and effective remedy, as well as Ontario First Nations' overwhelming support for the OFA, are important and relevant factors to be considered.

E. The OFA provides more funding security than legislation

17. The OFA includes a clear, meaningful and effective enforcement mechanism. If Parliament does not appropriate sufficient funding to meet Canada's funding commitment under the OFA, COO or NAN may seek an order from a court on the basis that the parties have been substantially deprived of the benefits of the OFA. The party seeking the order need not have suffered monetary loss nor is it necessary for the party to prove that it is unable to perform its obligations under the OFA as a result of Parliament's decision not to appropriate sufficient funding.[22] Once the order is made, the party who sought the order may seek to pursue remedies through the Tribunal or through any other available approach.

---

[18] 2021 FC 969 at para 297.
[19] For a summary of these efforts see *Factum of the Attorney General of Canada in response to the First Nations Child and Family Caring Society of Canada's Consultation Motion*, dated May 15, 2025 at para 79. See also Affidavit of Duncan Farthing-Nichol, affirmed March 13, 2025, in its entirety.
[20] *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 para 592 **[2025 CHRT 6]**.
[21] 2021 FC 969 at para 300; *R. v. Desautel*, 2021 SCC 17 at paras 88 - 89; *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at paras 20 and 25; *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43 at paras 34, 35.
[22] OFA at para 298.

18. Any order against Canada for the payment of monies that Parliament did not appropriate may be certified by the Federal Court, in which case the Minister of Finance must authorize the ordered payment out of the Consolidated Revenue Fund.[23] The OFA thus provides a binding contractual commitment coupled with a statutory enforcement mechanism.

19. Further, TTN and GIFN's submission that there is no evidence that appropriation clauses are standard in Government of Canada contracts and that this would be "absurd in any commercial contract" is wrong in law.[24] The *Financial Administration Act* specifically provides that it is a deemed term of every contract providing for payment by the Crown that such payment is subject to appropriation.[25]

F. The OFA offers reform for generations to come

20. This Panel has long discussed the need to reform the FNCFS Program for generations to come.[26] Most recently, the Panel articulated this as a requirement that long-term reform remedies "have lasting effects, be adequately resourced, and remain sustainable for present and future generations."[27]

21. All of this is accomplished through the OFA, which ensures that continued data, research and collaboration will inform the future of the reformed FNCFS Program, ensuring multi-generational impacts. As just a few examples, lasting multi-generational effects are anticipated to result from the OFA provisions that:

a. provide prevention services funding to First Nations where they wish to deliver those services themselves, apart from least disruptive measures, with a view to ultimately reducing the need for child and family services;[28]

---

[23] *Crown Liability and Proceedings Act,* R.S.C., 1985, c. C-50 at s. 30(1); *Crown Liability and Proceedings (Provincial Court) Regulations*, SOR/91-604 at s. 6.
[24] Responding Factum of the Interested Parties, Taykwa Tagamou Nation and Chippewas of Georgina Island at para 36.
[25] *Financial Administration Act*, R.S.C., 1985, c. F-11 at para 40(1).
[26] See for example *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 40.
[27] *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 113 **[2025 CHRT 80]**.
[28] OFA at paras 23-24, 44(d).

b. establish a fully reformed and flexible funding approach;[29]

c. implement a ground-breaking remoteness formula to address the increased costs of delivering services in remote areas;[30]

d. embed First Nations governance into the Program through the Ontario Reform Implementation Committee, the Systemic Review Committee and the Technical Advisory Committee;[31]

e. require two meaningful Program Assessments to inform ongoing Program improvements;[32]

f. establish an independent data secretariat to collect and analyze child and family services data and make recommendations for Program improvement;[33]

g. continue to undertake remoteness research;[34]

h. require cultural humility training of ISC employees;[35]

i. develop an innovative and culturally sensitive dispute resolution process;[36] and

j. protect funding, including through a special purpose allotment and an effective enforcement mechanism.[37]

G. GIFN will receive adequate funding while work on ferry-connected communities continues

22. There is no merit to GIFN's argument that the OFA is "significantly worse than the status quo" because they will no longer receive funding at actuals for First Nations Representative Services (FNRS) (formerly Band Representative Services) which indirectly accounted for remoteness.[38] Under the OFA, GIFN's FNRS funding is based on its actuals funding in fiscal year 2023-24, adjusted for inflation and population.[39] This approach therefore continues to account for

---

[29] OFA, Parts V (The Reformed FNCFS Funding Approach: Initial Funding Period) and VI (The Reformed FNCFS Funding Approach: Second Funding Period).
[30] OFA at paras 10, 17, 33, 44 and 54, and Appendix 10 (Remoteness Quotient Adjustment Factor Methodology).
[31] OFA, Part XIV (Governance of the Reformed FNCFS Program).
[32] OFA, Parts VII (The Reformed FNCFS Funding Approach: Following the Expiry of the Term of this Final Agreement), VIII (Measuring the Performance of the Reformed FNCFS Program) and XV (Reformed FNCFS Program Assessments).
[33] OFA, Part X (Ontario FNCFS Data Secretariat).
[34] OFA, Part XI (Remoteness Research and Related Items).
[35] OFA, Part XVII (Cultural Humility Training and Reform of ISC and Successor Departments).
[36] OFA, Parts XVIII (Interim Dispute Resolution Process) and XIX (Dispute Resolution Process).
[37] OFA at paras 16 and 298; Reply Affidavit of Duncan Farthing-Nichol affirmed October 31, 2025 at para 10.
[38] Responding Factum of the Interested Parties, Taykwa Tagamou Nation and Chippewas of Georgina Island at para 131.
[39] OFA at para 36; Affidavit of Duncan Farthing-Nichol affirmed October 17, 2025 at para 16.

GIFN's geography – geography inherently accounted for by the nature of funding at actual costs – but provides that funding up front at the beginning of the fiscal year, eliminating the need for an application process.

23. By 2023-24, GIFN had accessed actuals-based FNRS funding for six consecutive years. During this period, its approved claims increased more than six-fold from $191,708 in 2018-2019 to $1,312,586 in 2023-24.[40] By 2023-24, GIFN had increased from having one employee[41] to seven employees working on FNRS to serve a total on-reserve population of 207.[42] This demonstrates GIFN had time to build its capacity as reflected in the significant funding it will receive under the OFA.

24. Canada recognizes that the Remoteness Quotient Adjustment Factor does not explicitly address the unique circumstances of ferry-connected communities. However, GIFN has also acknowledged that the specific costs related to its geography are unknown.[43] This is why Canada is continuing to support research on three different fronts to better understand costs in ferry-connected communities: (1) the proposed research project with GIFN and Beausoleil First Nation (the only two ferry-connected communities that will not receive remoteness funding under the OFA);[44] (2) Statistics Canada research on the Index of Remoteness and ferry-connected communities;[45] and (3) ongoing research by the NAN-RQ Table and, once established, the Remoteness Secretariat.[46] Such research can be considered by the Program Assessment Organization and may result in a recommendation to adjust the OFA's remoteness approach.[47] In the interim, the OFA will provide GIFN with substantial funding.[48]

---

[40] Affidavit of Duncan Farthing-Nichol affirmed October 17, 2025 at para 16.
[41] Affidavit of Shannon Crate affirmed October 2, 2025 at para 27.
[42] Affidavit of Duncan Farthing-Nichol affirmed October 17, 2025 at para 17. For on reserve population number see Hearing Exhibit 28, Chippewas of Georgina Island FNCFS Funding Profile for 2026-27 under Ontario FA (COO Feb 2025).
[43] Responding Factum of the Interested Parties, Taykwa Tagamou Nation and Chippewas of Georgina Island at para 127.
[44] Affidavit of Duncan Farthing-Nichol affirmed October 17, 2025 at para 6.
[45] Cross examination of Dr. Martin Cooke on December 11, 2025, part 1 at p 49, lines 5-13, p 50, lines 11-25.
[46] OFA at paras 126(d) and 149(c).
[47] OFA at para 149(c); Affidavit of Duncan Farthing-Nichol affirmed October 17, 2025 at para 14.
[48] For specific funding amounts, see Hearing Exhibit 28, Chippewas of Georgina Island FNCFS Funding Profile for 2026-27 under Ontario FA (COO Feb 2025).

H. The OFA's approach to prevention funding and agency funding is sound

25. The OFA allows First Nations to allocate prevention funding in the way they determine is most appropriate. As explained in Canada's previous submissions, the OFA continues the approach generally taken pursuant to 2022 CHRT 8 where funding has been divided between First Nations and affiliated agencies, unless a First Nation elects otherwise.[49] Concerns with respect to First Nations' readiness are entirely speculative. To the extent any First Nation feels they are not prepared to deliver prevention services, they may allocate all or a portion of their prevention funding to their affiliated FNCFS agency or other service providers, either until they are ready to provide prevention services themselves or on a long-term basis.[50]

26. Providing prevention funding in this manner and directly to First Nations does not, as the Caring Society suggests, incentivize apprehension.[51] It provides First Nations with the flexibility to provide services, or delegate prevention to agencies or other service providers, as appropriate. The Caring Society's argument appears to suggest that, to remain funded, agencies will resort to apprehensions in order to receive additional funding. The Caring Society's arguments do not, however, present an accurate picture of the funding that agencies would receive under a reformed Program, of the complete legislative landscape, or of the role of some First Nations in providing prevention services.

27. In addition to baseline funding provided to agencies both directly from ISC and by the Province of Ontario and reimbursed by ISC under the 1965 Agreement,[52] Service Provider Funding Adjustments Requests (SPFAR) are available to agencies in the event they are unable to provide legislated services or least disruptive measures (services to prevent separating a child from their family where the child is at risk or to support a child's reunification with their family) within their current funding envelope.[53] Agencies will, considering all the available funding, be able to meet their legislated mandate under Ontario's *Child Youth and Family Services Act, 2017* (CYFSA)

---

[49] Canada's factum at para 44.
[50] OFA at para 44 (d) and Appendix 8 (First Nations Child and Family Services Terms and Conditions, Appendix A, A.6.1.1.).
[51] Responding Factum of the First Nations Child and Family Caring Society at paras 90 – 91.
[52] OFA at paras 18, 44.
[53] OFA at para 166.

which requires that least disruptive measures be considered.[54] The CYFSA does not require that agencies directly deliver other prevention services.

28. There is also no evidence to suggest that agencies would be unable to meet any standards applicable to them under the federal *Act respecting First Nations, Inuit and Métis children, youth and families* (the Act).[55] While the Act speaks to the prioritization of preventative care to support a child's family and to prenatal care, it does not specify that agencies must be the entities to deliver that preventative or prenatal care. The Act therefore does not support the argument that prevention funding under the OFA must be given directly to agencies. This argument also problematically presupposes that First Nations, whose inherent right of self-government in relation to child and family services was affirmed in the Act, are unable to determine how to best meet the Act's objectives.

29. Finally, there is no merit to the Caring Society's conjecture that baseline funding is insufficient because FNCFS Agencies did not seek actuals funding for least disruptive measures in 2022-23.[56] To the contrary, Mr. Farthing-Nichol testified during cross-examination that, in 2022-23, "My understanding is that least disruptive measures have been – or expenditures related to them have been available for claim and actual costs under intake and investigations."[57] As addressed during the cross-examination, there is no evidentiary basis for the Caring Society's speculation and subsequent argument on this point.[58]

I. The OFA and Trilateral Agreement address the discrimination with respect to the 1965 Agreement

30. The Caring Society, TTN and GIFN focus on what they say is the failure of the OFA to address the discrimination in the 1965 Agreement, as found by the Tribunal in its Merits Decision.[59] These arguments suggest, wrongly, that the only way to address this portion of the

---

[54] *Child, Youth and Family Services Act*, 2017, S.O. 2017 c. 14, Sch 1 ("CYFSA"), Part 1.
[55] *An Act Respecting First Nations, Inuit and Métis children, Youth and Families*, S.C. 2019, c. 24.
[56] CS Factum, para 104.
[57] Cross examination of Duncan Farthing-Nichol on December 11, 2025, Part 2 (Transcript Brief, Tab 5, p 398, lines 6-20. Full questioning on the issue is located at pp 393-419).
[58] Cross examination of Duncan Farthing-Nichol on December 11, 2025, Part 2 (Transcript Brief, Tab 5, p 414, line 5 to p 416, line 5; and p 417, line 11 to p 418, line 24).
[59] Responding Factum of the Interested Parties, Taykwa Tagamou Nation and Chippewas of Georgina Island at paras 132 – 134; Responding Factum of the First Nations Child and Family Caring Society at paras 83 – 89.

Panel's decision is to produce an amended agreement or unspecified evidence of efforts to do so. This narrow view does not consider the manner in which the OFA itself, as well as developments over the last ten years, address the Tribunal's concerns in this regard. This view also minimizes the Trilateral Agreement's clear path forward, and the central role it establishes for COO and NAN in 1965 Agreement reform.

31. In 2016, the FNCFS Program in Ontario was funded almost exclusively through the 1965 Agreement. Under the OFA, ISC will provide funding directly to First Nations and FNCFS Agencies at levels notably above what is provided to Ontario through the 1965 Agreement, in addition to continuing to fund through the 1965 Agreement.[60] The concerns and funding issues related to the 1965 Agreement are therefore remedied through the OFA itself.

32. To the extent that funding for mental health services is required in order to ensure that children receive appropriate services, considering the principle of substantive equality and the scope of services otherwise available, the OFA provides for significant additional funding outside of the 1965 Agreement that can be used to support a child's mental well-being. Notably, prevention funding is available for a broad range of services, including access to services and programming that promote mental and emotional safety and well-being.[61]

33. Moreover, while Ontario is not subject to the Tribunal's jurisdiction, Canada, COO and NAN have developed an approach to negotiating changes to the 1965 Agreement and that approach is advancing. The Trilateral Agreement is necessarily prospective in nature, but provides a clear path forward. The Caring Society and TTN and GIFN's singular focus on the 1965 Agreement fails to take into account jurisdictional reality: Ontario cannot be forced to comply with the Tribunal's orders, nor can Canada unilaterally amend the 1965 Agreement.

J. "Exemption" from the reformed FNCFS Program not available or warranted

34. TTN and GIFN ask that, in the alternative, they be exempted from the OFA and continue to have access to the existing orders of the CHRT. This, however, is not legally or logistically

[60] See Canada's Submissions at paras 34 – 38.
[61] See OFA Appendix 8, First Nations Child and Family Services Terms and Conditions, A.2 Program services.

sustainable, and in any event is unnecessary. There are other avenues for self-determination that are available to TTN and GIFN to pursue.

35. The interim orders were made in relation to the FNCFS Program as a temporary solution while the parties worked toward long-term reform of the program. The proceeding before the Tribunal will determine whether the measures in the OFA satisfy this Panel's order to cease discrimination. If approved by this Panel, reform will be implemented as set out in the OFA. In essence, the relief TTN and GIFN seek is not "opting out" of a settlement agreement to which they did not agree, but rather an exemption from the terms of a federal government program for child and family services on-reserve, in favour of previous, interim orders. Individual First Nations cannot choose to continue under the interim orders once the reformed program is implemented.[62]

36. This is not a class action settlement or proceeding.[63] TTN and GIFN are not receiving "less rights" because they cannot "opt out" of the OFA;[64] they are receiving the rights that all First Nations in Ontario will have under a reformed program. While there is a right to non-discriminatory services and programs, there is no general right to previous government programs.[65] There is no right to preferred program terms or parameters.

37. Moreover, such an approach to reform is not supported by this Panel's previous decisions recognizing the impossibility of consulting each and every First Nation with respect to program reform.[66] Proceeding in this manner is unsustainable; it creates a precedent for individual First Nations to "opt out" of any reformed Program, resulting in a situation where the Panel would continue to retain jurisdiction in perpetuity for specific First Nations, undermining the Panel's parameters for reform and effectively undermining the purpose of having a Program at all.

---

[62] Cross Examination of Duncan Farthing-Nichol, December 12, 2025, p. 6, lns. 14 – 24.
[63] In any event, TTN and GIFN's reliance on the *Class Proceedings Act* and the principles of class proceedings is misguided. Although class members may object to a settlement, they will be bound to it unless they opted out during the prescribed period to do so, even if it is before settlement approval (See, for example, *Urlin Rent a Car v Furukawa Electric*, 2016 ONSC 7965 at para 22)
[64] Responding Factum of the Interested Parties, Taykwa Tagamou Nation and Chippewas of Georgina Island at para 140.
[65] *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, 2004 SCC 78 at para 41.
[66] *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 11 at para 14; 2025 CHRT 80.

38. TTN and GIFN, and other First Nations, do have other meaningful options by which to pursue self-determination with respect to child and family services outside of the FNCFS Program. These were directly addressed on cross examination.[67] A First Nation could seek to exercise jurisdiction under the framework of the Act and enter into a coordination agreement with Canada and Ontario. Three First Nations in Ontario have already done so, and a number of others are in the process of doing so.[68] TTN has, in fact, already asserted jurisdiction and initiated a request to enter into a coordination agreement with Ontario and Canada.[69]

39. The other option available for First Nations wishing to exercise self-determination is to enter negotiations that ultimately result in a self-government agreement. Self-government agreements take a range of forms and may include provisions with respect to child and family services.[70]

K. Canada does not seek an end to the Tribunal's final cease and desist order

40. The Caring Society has mischaracterized the orders sought by Canada, despite them being clearly set out in Canada's written submissions dated January 19, 2026.[71] Canada does not seek an order vacating the final cease and desist order set out in the Merit Decision, the purpose of which is to eliminate the mass removal of children from their respective Nations and to protect First Nations children, families, and Nations for generations to come.[72] Rather, Canada seeks to satisfy the Merit Decision through the OFA and the Trilateral Agreement, and to replace interim remedial orders respecting the FNCFS Program in Ontario in favour of the fully reformed approach set out in the OFA. For clarity, the Moving Parties do not request that the Tribunal approve or order the

---

[67] Cross Examination of Duncan Farthing-Nichol, December 12, 2025, p. 5, ln 12 – p. 6, ln. 10.
[68] Cross Examination of Duncan Farthing-Nichol, December 12, 2025, p. 5, lns 20 – 23.
[69] Responding Factum of the Interested Parties, Taykwa Tagamou Nation and Chippewas of Georgina Island at para 11, citing to Affidavit of Victor Linklater, sworn October 2, 2025, at para 8, Ex. 12.
[70] See, for example Déline Final Self-Government Agreement, Chapter 11 (https://www.rcaanc-cirnac.gc.ca/eng/1431539095870/1543243484163#chap11), supported by *Déline Final Self-Government Agreement Act*, S.C. 2015, c. 24; A Self-Government Treaty Recognizing the Whitecap Dakota Nation / Wapaha Ska Dakota Oyate, chapter 22, supported by *Self-Government Treaty Recognizing the Whitecap Dakota Nation / Wapaha Ska Dakota Oyate Act*, S.C. 2023, c. 22.
[71] Canada's Written Submissions dated January 19, 2026, at paras 92, 110 and 111.
[72] 2025 CHRT 6 at para 592.

Trilateral Agreement, which is already in effect without Tribunal approval. However, the Trilateral Agreement does form part of Canada's actions to end discrimination and prevent its recurrence.

L. Canada's litigation positions are not evidence of discrimination

41. The Crown is entitled to invoke procedural defences, discretionary or statutory.[73] Yet the Caring Society continues to hold out Canada's litigation positions prior to 2016, and even today, as indicative of discrimination or some other future *mala fides*.[74]

42. There is no dispute that the Tribunal found systemic discrimination in the Merit Decision. Canada has since taken extraordinary steps to address that discrimination.[75] It is time to move ahead with a final remedy in Ontario, which all three Moving Parties agree eliminates discrimination and takes careful measures to prevent recurrence.

M. Conclusion

43. The OFA proposes reform that places greater control in the hands of First Nations with respect to their own children, built on years of research, consultation, negotiation and collaboration. In their main submissions, the Moving Parties explained how the OFA makes changes that address the Tribunal's findings of discrimination, transforming the way the FNCFS Program is funded in Ontario. Rather than engaging with many of these arguments, the Caring Society and TTN and GIFN have focused largely on unsubstantiated and unproven shortcomings in the agreement.

44. Reform, however, cannot be continually delayed in search of perfection or in favour of indefinite supervision by the Tribunal. Recognizing that adjustments may be necessary, the OFA includes safeguards and review mechanisms that work to address the uncertainties that may necessarily exist.[76] The OFA and Trilateral Agreement fully address the discrimination identified

---

[73] *Canada v Stoney Band,* 2005 FCA 15 at paras 26-27; *Wewaykum Indian Band v. Canada*, 2002 SCC 79 at para 135.
[74] Written Submissions of the First Nations Child and Family Caring Society of Canada at section (B)(1), B(2) and paras 119 and 139.
[75] See May 15, 2025 Factum of the Attorney General of Canada in response to the First Nations Child and Family Caring Society of Canada's Consultation for a summary of these steps.
[76] See Canada's Written Submissions dated January 19, 2026 at para 90.

by the Tribunal and establish a sustainable, forward-looking framework designed to prevent its recurrence in Ontario. The time to move forward with reform is now.

PART IV – ORDER SOUGHT

45. Canada seeks orders as set out in paragraphs 110 to 111 of its Written Submissions:

> 110. 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.
>
> 111. Canada respectfully requests 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 2016 CHRT 2 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.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Winnipeg, in the Province of Manitoba, this 9th day of February, 2026.

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
Prairie Regional Office
601 – 400 St. Mary Avenue
Winnipeg, Manitoba R3B 4K5
Per: Dayna Anderson, Paul Vickery, Sarah-Dawn Norris, Meg Jones, Aman Owais and Adam Lupinacci

Tel.: 204 294-5563 / 604-754-7013 / 343-999-6195 /
343-549-4233 / 613-558-1451 / 343-553-8838

Email: dayna.anderson@justice.gc.ca
paul.vickery@justice.gc.ca
sarah-dawn.norris@justice.gc.ca
meg.jones@justice.gc.ca
aman.owais@justice.gc.ca
adam.lupinacci@justice.gc.ca

Counsel for the Respondent, Attorney General of Canada

TO: **Canadian Human Rights Tribunal**
c/o Judy Dubois, Registry Officer
240 Sparks Street, 6th Floor West
Ottawa, ON K1A 1J4
Email: Registry.Office@chrt-tcdp.gc.ca
judy.dubois@tribunal.gc.ca

AND TO: **Conway Baxter Wilson LLP/s.r.l**
Suite 400 – 411 Roosevelt Avenue
Ottawa, Ontario K2A 3X9

Per: David P. Taylor / Kiana Saint-Macary
Tel: 613-691-0368
Email: dtaylor@conwaylitigation.ca
kasaintmacary@conwaylitigtation.ca

AND TO: **Clarke Child & Family Law**
Suite 950 – 36 Toronto Street
Toronto, Ontario M5C 2C5

Per: Sarah Clarke / Robin McLeod
Tel: 416-260-3030
Email: sarah@childandfamilylaw.ca
robin@childandfamilylaw.ca

Counsel for the First Nations Child
and Family Caring Society of Canada

AND TO: **Fasken Martineau DuMoulin LLP**
55 Metcalfe Street, Suite 1300
Ottawa, Ontario K1P 6L5

Per: Peter N. Mantas / Gabrielle Cyr / Clive Ngan
Tel: 613-236-3882
Email: pmantas@fasken.com
gcyr@fasken.com
cngan@fasken.com

Counsel for the Co-complainant Assembly of First Nations

AND TO: **Canadian Human Rights Commission**
Per: Anshumala Juyal / Khizer Phervez
244 Slater Street, 8th Floor
Ottawa, Ontario K1A 1E1
Email: anshumala.juyal@chrc-ccdp.gc.ca
khizer.pervez@chrc-ccdp.gc.ca

Counsel for the Canadian Human Rights Commission

AND TO: **Olthuis Kleer Townshend LLP**
Per: Maggie E. Wente / Jessie Stirling /Ashley Ash / Katelyn Johnstone
250 University Avenue, 8th Floor
Toronto, Ontario M5H 3E5
Email: mwente@oktlaw.com
jstirling@oktlaw.com
aash@oktlaw.com
kjohnstone@oktlaw.com

Counsel for the Interested Party, Chiefs of Ontario

AND TO: **Falconers LLP**
Per: Julian N. Falconer / Asha James / Shelby Percival / Meaghan Daniel
10 Alcorn Avenue, Suite 204
Toronto, Ontario M4V 3A9
Email: julianf@falconers.ca
ashaj@falconers.ca
shelbyp@falconers.ca
meaghand@falconers.ca

Counsel for the Interested Party, Nishnawbe Aski Nation

AND TO: **Stockwoods LLP**
Per: Justin Safayeni / Stephen Aylward
TD North Tower
77 King Street West, Suite 4130
Toronto, Ontario M5K 1H1
Email: justins@stockwoods.ca
stephenA@stockwoods.ca

Counsel for the Interested Party, Amnesty International

AND TO: **Stockwoods LLP**
Per: Justin Safayeni / Spencer Bass
TD North Tower
77 King Street West, Suite 4130
Toronto, Ontario M5K 1H1
Email: justins@stockwoods.ca
spencerb@stockwoods.ca

Counsel for the Interested Party, Chief of Chippewas of Georgina Island (CGI) and Taykwa Tagamou Nation (TTN)

PART V – LIST OF AUTHORITIES

Statutes and Regulations	
1.	*An Act Respecting First Nations, Inuit and Métis children, Youth and Families*, S.C. 2019, c. 24
2.	*Canadian Human Rights Act*, R.S.C., 1985 c H-6
3.	*Child, Youth and Family Services Act*, 2017, S.O. 2017 c. 14, Sch 1
4.	*Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50
5.	*Crown Liability and Proceedings (Provincial Court) Regulations*, SOR/91-604
6.	*Federal Courts Act*, R.S.C. 1985, c. F-7
7.	*Financial Administration Act*, R.S.C., 1985, c. F-11
Case Law	
8.	*Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, 2004 SCC 78
9.	*Canada (Attorney General) v First Nations Child and Family Caring Society of Canada*, 2021 FC 969
10.	*Canada v Stoney Band*, 2005 FCA 15
11.	*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
12.	*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 11
13.	*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
14.	*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
15.	*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

16.	*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 8
17.	*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
18.	*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
19.	*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
20.	*Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73
21.	*Moushoom v. Canada (Attorney General)*, 2023 FC 1533
22.	*R. v. Desautel*, 2021 SCC 17
23.	*Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43
24.	*Starr et al v. Stevens*, 2024 CHRT 127
25.	*Urlin Rent a Car v Furukawa Electric*, 2016 ONSC 7965
26.	*Wewaykum Indian Band v. Canada*, 2002 SCC 79
OTHER SOURCES	
27.	A Self-Government Treaty Recognizing the Whitecap Dakota Nation / Wapaha Ska Dakota Oyate, chapter 22
28.	Déline Final Self-Government Agreement, Chapter 11 (https://www.rcaanc-cirnac.gc.ca/eng/1431539095870/1543243484163#chap11)
29.	*Déline Final Self-Government Agreement Act*, S.C. 2015, c. 24
30.	*Self-Government Treaty Recognizing the Whitecap Dakota Nation / Wapaha Ska Dakota Oyate Act*, S.C. 2023, c. 22