Court File No T-3594-25

FEDERAL COURT

B E T W E E N :

ATTORNEY GENERAL OF CANADA

Applicant

and

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA, ASSEMBLY OF FIRST NATIONS, CANADIAN HUMAN RIGHTS COMMISSION, CHIEFS OF ONTARIO, NISHNAWBE ASKI NATION and AMNESTY INTERNATIONAL CANADA

Respondents

AFFIDAVIT OF DUNCAN FARTHING-NICHOL

I, DUNCAN FARTHING-NICHOL, of the Municipality of Dysart et al, in the Province of Ontario, AFFIRM AND SAY THAT:

I. Introduction

1. I am employed by Indigenous Services Canada (**ISC**) as the Director of the Litigation Management Directorate within the Children, Families and Learning Sector. I started work in the Litigation Management Directorate in June 2021 and have been in my current role since

October 2022. I hold a Juris Doctor from Harvard Law School and a Bachelor of Arts from the University of Manitoba.

2. I am responsible for managing litigation related to the First Nations Child and Family Services Program (**FNCFS Program**) and *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24. I played a significant role in national negotiations on long-term reform of the FNCFS Program as well as in advancing the *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario* (**Ontario Final Agreement**) and the *Trilateral Agreement in Respect of Reforming the 1965 Agreement* (**Trilateral Agreement**) between the Chiefs of Ontario (**COO**), Nishnawbe Aski Nation (**NAN**), and Canada.

3. In my capacity as Director, I have personal knowledge of the facts and matters deposed to in this affidavit. Where my information came from someone else, I identify the source of my information and I believe the information to be true. I am authorized to give evidence on behalf of Canada in support of the application for judicial review.

4. In this affidavit, I summarize the background of proceedings before the Canadian Human Rights Tribunal (**Tribunal**) with respect to this matter, being the file number T1340/7008, and specifically the events that have taken place since October 2024 which led to the Tribunal's decision in 2025 CHRT 80.

II. Background of Proceedings

5. In February 2007, the First Nations Child and Family Caring Society (**Caring Society**) and the Assembly of First Nations (**AFN**) filed a complaint (**Complaint**) with the Canadian Human Rights Commission (**Commission**) under the *Canadian Human Rights Act* (***Act***) against the Attorney General of Canada representing the Minister of Indigenous and Northern Affairs Canada (**Canada**). The Complaint alleged that Canada's funding formula, used to fund First Nations child and family services, resulted in discriminatorily inequitable levels of child welfare services to First Nations children living on reserve, as compared to Canadian children living off-reserve. It also alleged that jurisdictional disputes between the Canada and the provinces resulted in discriminatory delays or denials of child welfare services to First Nations children living on reserve. A copy of the Complaint is attached hereto and marked as **Exhibit "A"**.

6. On October 14, 2008, the Commission referred the Complaint to the Tribunal for an inquiry pursuant to the *Act*. In 2009, COO and Amnesty International Canada (**Amnesty**) were granted interested party status in the proceedings.

7. In *First Nations Child and Family Caring Society of Canada and Assembly of First Nations v Attorney General of Canada (representing the Minister of Indian Affairs and Northern Development)*, 2011 CHRT 4, the Tribunal dismissed the Complaint on the basis that the issues raised were outside the Tribunal's jurisdiction. This decision was overturned by the Federal Court in *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2012 FC 445. Canada's appeal of the Federal Court's decision was dismissed by the Federal Court

of Appeal in *Canada (Attorney General) v Canada (Canadian Human Rights Commission)*, 2013 FCA 75.

8. A new panel of the Tribunal was subsequently appointed to re-determine the matter (**Panel**). The Panel dismissed Canada's motion to re-hear the jurisdictional issue and ruled that the Complaint would be dealt with on its merits. On January 26, 2016, following a series of interlocutory rulings and a hearing, the Panel ruled that the Complaint was substantiated on its merits in *First Nations Child and Family Caring Society of Canada v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 (**Merit Decision**).

9. Shortly after the Merit Decision, in 2016, NAN was granted interested party status in the proceedings.

10. Since the Merit Decision, the Panel has retained remedial jurisdiction over the Complaint. The Panel has issued approximately thirty-five summary or detailed remedial rulings since 2016. A list of the Panel's remedial rulings in this matter, to date, is attached hereto and marked as **Exhibit "B"**.

III. The Consultation Motion

11. On January 14, 2025, the Caring Society filed a notice of motion with the Panel, and on January 27, 2025, an amended notice of motion (**Consultation Motion**). The Consultation Motion asked the Panel to provide an expedited determination and order consultations between Canada, the AFN and the Caring Society on "national long-term reform of the FNCFS Program, First Nations federal child and family services and Jordan's Principle". The

Consultation Motion also seeks an order whereby the Panel would retain its jurisdiction until such time as measures are in place to end the discrimination and prevent its recurrence. Attached hereto and marked as **Exhibit "C"** is a copy of the Caring Society's amended notice of motion.

12. In line with the schedule and page limits set out by the Panel, the parties and interested parties filed written submissions and affidavit evidence in response to the Consultation Motion, including:

    a) On January 14, 2025, the Caring Society filed an affidavit from Katherine Quintana-James, an amended version of which was filed on February 13, 2025; the amended affidavit and its exhibits totaled 48 pages and is attached hereto and marked as **Exhibit "D"**;

    b) On March 3, 2025, the AFN filed an affidavit from Amber Potts; the affidavit and its exhibits totaled 58 pages and is attached hereto and marked as **Exhibit "E"**;

    c) On March 13, 2025, Canada filed my affidavit, which outlined changes to the FNCFS Program since 2016 CHRT 2, background on ISC's consultative efforts and negotiations, and summaries of research, studies and external consultations towards long-term FNCFS Program reform. My affidavit and its exhibits totaled 51 pages and is attached hereto and marked as **Exhibit "F"**;

    d) On March 17, 2025, the Caring Society filed a factum, which is attached hereto and marked as **Exhibit "G"**;

    e) On March 31, 2025, COO filed a factum, which is attached hereto and marked as **Exhibit "H"**;

f) On April 7, 2025, NAN filed a factum, which is attached hereto and marked as **Exhibit "I"**;

g) On May 15, 2025, Canada filed a factum, which is attached hereto and marked as **Exhibit "J"**; and

h) On May 22, 2025, the Caring Society filed a reply factum, which is attached hereto and marked as **Exhibit "K"**.

13. The Panel decided that no oral hearing would be held for the Consultation Motion. As of the date of this affidavit, the Consultation Motion remains under reserve with the Panel.

IV. Procedural background regarding 2025 CHRT 80

a. The Panel's February Direction

14. On February 10, 2025, the Panel, on its own initiative, wrote to the parties and interested parties (**February Direction**). The Panel stated that it had "outstanding questions for the parties that go beyond the Caring Society's motion for consultation." The Panel noted its orders in 2018 CHRT 4 and 2022 CHRT 8 and informed the parties and interested parties that it was "seriously considering options to move forward with the long-term remedial phase" of the proceedings with respect to the FNCFS Program. The Panel stated that it was giving the parties and interested parties the opportunity to "share their views" on the Panel's statements "before it decides next steps". The Panel noted that completing the "long-term remedial phase shortly" would be better for children and that "[r]eform may take longer but can be projected with the assistance of the studies". The Tribunal also set out a schedule for the parties and interested parties to respond, directing that the Caring Society, AFN, COO and NAN share their views by February 24, 2025; the Commission by March 3, 2025; and Canada by March 17, 2025. Although served with the February Direction, Amnesty was not directed to provide its views

and did not provide a response. A copy of the February Direction is attached hereto and marked as **Exhibit "L"**.

b. The Parties' Responses

15. On February 19, 2025, counsel for the Caring Society wrote to the Panel requesting that Canada be directed to share its views first, with all other parties and interested parties to respond thereafter. The AFN supported the Caring Society's request. A copy of the email thread from the Caring Society and the AFN to the Panel, dated February 19, 2025, is attached hereto and marked as **Exhibit "M"**.

16. On February 24, 2025, NAN filed a letter with the Panel in response to the Caring Society's request and the February Direction, a copy of which is attached hereto and marked as **Exhibit "N"**. NAN took no position on the issue of scheduling, set out a brief history of its efforts towards long-term reform of the FNCFS Program, and stated that Canada, COO and NAN had reached provisional agreements for long-term FNCFS Program reform in Ontario, being the Ontario Final Agreement and the Trilateral Agreement.

17. COO filed a similar letter with the Panel on February 24, 2025, in response to the Caring Society's request and the February Direction, a copy of which is attached hereto and marked as **Exhibit "O"**. COO also took no position on the issue of scheduling, set out a brief history of its efforts towards long-term reform of the FNCFS Program, and stated that Canada, COO and NAN had reached provisional agreements for long-term FNCFS Program reform in Ontario. COO also asked for an opportunity to update the Panel by February 28, 2025 on the status of the ratification of the two draft agreements.

18. Also on February 24, 2025, in response to the Caring Society's request and the February Direction, Canada wrote to the Panel stating:

> …we note that the purpose of the Panel's request is simply to gather the parties' views about the extended length of time taken to implement final long-term FNCFS Program reforms. Our understanding of the Tribunal's request is that it does not call for argument or rebuttal. It is simply intended to inform the Panel's management of these proceedings.

Canada also stated that if it would be of assistance to the Panel, Canada was willing to "share its views in advance of the other parties." A copy of Canada's February 24, 2025 email is attached hereto and marked as **Exhibit "P"**.

19. On February 27, 2025, the Panel emailed the parties and interested parties with an amended schedule for responses to the February Direction. The Panel agreed to receive an update on the ratification status of the two Ontario draft agreements by February 28, 2025, but did not address Canada's understanding of the February Direction, as set out in Canada's February 24, 2025 email. A copy of the Panel's February 27, 2025 emailed scheduling amendment is attached hereto and marked as **Exhibit "Q"**.

20. On February 28, 2025, COO wrote to the Panel, advising that the Ontario Final Agreement and Trilateral Agreement were ratified by the NAN Chiefs on February 25, 2025, and the Ontario Chiefs-in-Assembly on February 26, 2025. These agreements represented agreed-upon long-term reform of the FNCFS Program in Ontario and addressed the need for reform of the 1965 Canada-Ontario *Memorandum of Agreement Respecting Welfare Programs for Indians*. A copy of COO's February 28, 2025 letter is attached hereto and marked as **Exhibit "R"**.

21. On March 17, 2025, Canada wrote to the Panel in response to the February Direction. Canada's letter included an explicit reference to, and reliance upon, my affidavit which was filed with

the Panel on March 13, 2025 with respect to the Consultation Motion (**Exhibit "F"**). A copy of Canada's March 17, 2025 response is attached hereto and marked as **Exhibit "S"**.

22. Other parties and interested parties provided their responses to the February Direction as follows:

    a) On March 24, 2025, the Caring Society filed a letter response and also included a copy of the March 19, 2025 letter from the National Children's Chiefs' Commission (**NCCC**) to the Prime Minister and materials related to Jordan's Principle, including the Institute of Fiscal Studies and Democracy's interim briefing on Jordan's Principle and print outs of two ISC Jordan's Principle websites. A copy of the letter and enclosures is attached hereto and marked as **Exhibit "T"**;

    b) On March 24, 2025, the AFN filed a letter, which was later retracted and replaced with a different letter dated March 31, 2025, followed by a clarification letter on April 4, 2025. On April 25, 2025, the Tribunal confirmed that it would remove AFN's March 24, 2025 response from the Tribunal's official record. Copies of the March 31, 2025, April 4, 2025, and April 25, 2025 correspondence are attached hereto and marked respectively as **Exhibits "U"**, **"V"** and **"W"**;

    c) On March 24, 2025, NAN filed an email response indicating that it was making no submissions. A copy of the March 24, 2025 email is attached hereto and marked as **Exhibit "X"**;

    d) On March 24, 2025, COO filed an email response indicating it was making no submissions but reserved the right to file further submissions should new interested

parties be added to the proceedings and make submissions concerning Ontario. A copy of the March 24, 2025 email is attached hereto and marked as **Exhibit "Y"**; and

e) On March 31, 2025, the Commission filed a letter response. A copy of the March 31, 2025 letter is attached hereto and marked as **Exhibit "Z"**.

c. July Case Management Conference Call

23. I have been informed by Department of Justice legal counsel, Dayna Anderson, and do verily believe that on July 25, 2025, the Panel held a case management conference call (**July CMCC**). At the July CMCC, the Panel:

a) discussed the schedule for a motion brought by COO, NAN and Canada to approve the Ontario Final Agreement, the next steps for interested party motions, and issues related to Jordan's Principle;

b) asked whether Canada would consider voluntarily meeting with the NCCC, but indicated that it did not require a response from Canada at the CMCC and did not ask Canada to report back to the Panel with its position; and

c) indicated that it had intended to discuss at the CMCC how best to advance long-term reform, but due to time constraints, a further CMCC would be scheduled for this purpose.

A copy of the Panel's summary of the July CMCC is attached hereto and marked as **Exhibit "AA"**. A copy of the Panel's opening remarks at the July CMCC, as shared by the Panel, is attached hereto and marked as **Exhibit "BB"**.

d. The Panel's Decision, 2025 CHRT 80

24. On August 20, 2025, the Panel issued 2025 CHRT 80, with respect to its February Direction and the parties' and interested parties' responses (**Decision**). A copy of the Panel's Decision is attached hereto and marked as **Exhibit "CC"**.

e. Canada's Letters, the Panel's Supplemental Reasons and Amended Decision

25. On August 29, 2025, Canada sent a letter to the Panel, seeking clarification on the Decision. A copy of Canada's August 29, 2025 letter is attached hereto and marked as **Exhibit "DD"**.

26. On September 12, 2025, the Panel responded to Canada's August 29, 2025 letter with additional reasons and clarifications (**September 12 Supplemental Reasons**). A copy of the Panel's September 12 Supplemental Reasons are attached hereto and marked as **Exhibit "EE"**.

27. On September 17, 2025, the Panel issued:

    a) an amended Decision, removing the words "some of" from paragraph 113 of the Decision (**Amended Decision**), a copy of which is attached hereto and marked as **Exhibit "FF"**;

    b) an email, where the Panel explained its reasons for issuing the Amended Decision (**September 17 Supplemental Reasons**), a copy of which is attached hereto and marked as **Exhibit "GG"**; and

    c) a letter, where the Panel provided excerpts from prior rulings relied on when making the Amended Decision (**September 17 Additional Supplemental Reasons**), a copy of which is attached hereto and marked as **Exhibit "HH"**.

28. On September 22, 2025, the Caring Society filed its monthly update with the Tribunal as ordered in the Decision, which is attached hereto and marked as **Exhibit "II"**.

29. On September 25, 2025, Canada filed its monthly update with the Tribunal as ordered in the Decision, which is attached hereto and marked as **Exhibit "JJ"**.

30. On October 3, 2025, the Panel issued a Direction on the scope of the proceedings "[i]n advance of the upcoming case management conference" and "with a view to advancing these proceedings in a timely, orderly and constructive manner" (**October 3 Direction**). The October 3 Direction indicated that:

    a) the Complaint and subsequent rulings did not include the Northwest Territories or First Nations children living off-reserve, except for children living off reserve being included under Jordan's Principle within the parameters explained in the Tribunal's rulings and orders;

    b) while the Tribunal respects the Chiefs-in-Assembly's resolutions to include First Nations children off reserve and in the Northwest Territories, neither the Chiefs nor the NCCC can confer additional jurisdiction upon the Tribunal; and

    c) the Chiefs-in-Assembly encouraging additional First Nations to participate in these proceedings "does not assist the Tribunal in fulfilling its mandate" and "risks undermining the work of all parties within the dialogical process".

A copy of the October 3 Direction is attached hereto and marked as **Exhibit "KK"**.

31. I make this affidavit in support of Canada's position on the application for judicial review and for no other or improper purpose.

AFFIRMED by Duncan Farthing-Nichol stated as being located in the Municipality of Dysart et al, Ontario, before me at the City of Ottawa, Ontario on this 22nd day of October, 2025, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely)

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
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Location: Ottawa, Ontario
Date: 2025.10.22 10:10:36-04'00'
Foxit PDF Editor Version: 13.1.6

Shireen Sultan Adatia, Commissioner for Taking Affidavits
LSO No.: P14203

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

FarthingNichol, Duncan

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Date: 2025.10.22 10:08:30 -04'00'

DUNCAN FARTHING-NICHOL

This is **Exhibit A** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

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Date: 2025.10.22 10:19:01-04'00'
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A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

Human Rights Commission Complaint Form

Your Name(s):
Regional Chief Lawrence Joseph, Assembly of First Nations
Cindy Blackstock, Executive Director, First Nations Child & Family Caring Society of Canada

Name of Organization that your Complaint is Against:
Indian and Northern Affairs Canada

Summary of Complaint:
On behalf of the Assembly of First Nations and the First Nations Child and Family Caring Society of Canada, we are writing to file a complaint pursuant to the Human Rights Act regarding the inequitable levels of child welfare funding provided to First Nations children and families on reserve pursuant to the Indian and Northern Affairs Canada (INAC) funding formula for First Nations child and family services known as Directive 20-1, Chapter 5 (hereinafter called the Directive). This formula provides funds in two primary envelopes: 1) Maintenance (costs of children in care) and 2) Operations (personnel, office space, prevention services etc.). Maintenance is paid every time a child comes into care whereas operations funding is paid on the basis of exceeding certain population thresholds of status Indian children on reserve. There is also an adjustment in the formula for remoteness. There is substantial evidence spanning over ten years that inequitable levels of funding are contributing to the over representation of Status First Nations children in child welfare care. Moreover, we invite your office to review the Wen:de series of reports which identify the scope and nature of the over representation of First Nations children in care, documents the inequality in funding, and provides a detailed evidence-based solution to redress the inequity which is within the sole jurisdiction of the federal government to implement. Ensuring a basic level of equitable child welfare service for First Nations children on reserve and thus the observance of their human rights pursuant to the Human Rights Act, the Convention on the Rights of the Child, The Covenant on Economic, Social and Cultural Rights and the Charter of Rights and Freedoms would represent an investment of 109 million dollars in year one of the proposed multi-year funding formula. This cost represents less than one percent of the current federal surplus budget estimated at over $13 billion. As the following summary notes, the moral, economic, and social benefits of full and proper implementation of the Wen:de report recommendations are significant.

Status Indian children are drastically over represented in child welfare care. A recent report found that the 0.67% of all non Aboriginal children were in child welfare care as of May of 2005 in three sample provinces as compared to 0.31% of Métis children and 10.23% of Status Indian children. Year End Data collected by INAC (2003) indicates that 9031 status Indian children on reserve[1] were in child welfare care at the close of that year representing a 70% increase since 1995. Unfortunately, there is poor data on the numbers of status First Nations children in care off reserve as provinces/territories collect child welfare data differently but best estimates are that 30-40% of all children in care in Canada are Aboriginal. This represents approximately 23,000- 28,000 Aboriginal children and means that there are three times as many Aboriginal children in state care today than there was at the height of the residential school operations in the late 1940's.

First Nations child and family service agencies (FNCFSAs) have developed over the past 30 years to provide child welfare services to First Nations children on reserve in an effort to stem the mass removals of First Nations children from their communities by provincial child welfare authorities. These agencies, which have been recognized by the United Nations Committee on the Rights of the Child, operate pursuant to provincial child welfare statutes and are funded by INAC using the Directive 20-1[2]. FNCFSAs have long reported concerns about drastic under funding of child welfare services by the federal government particularly with regards to the statutory range of services intended to keep maltreated children safely at home known as least disruptive measures. As Directive 20-1 included an unlimited amount of funds to place children in foster care, many First

[1] Typically this data does not include children in care of First Nations operating under self government agreements
[2] With the exception of First Nations child and family FNCFSAs in Ontario which are funded under a separate funding agreement

Nations felt the lack of investment in least disruptive measures contributed to the over representation of First Nations children in care. Directive 20-1 was studied in a joint review conducted by Indian and Northern Affairs Canada (INAC) and the Assembly of First Nations in 2000. This review, known as the *Joint National Policy Review on First Nations Child and Family Services* (NPR, MacDonald $ Ladd) provides some insight into the reasons why there has been such an increase in the numbers of Registered Indian children entering into care . The review found that INAC provides funding for child welfare services only to Registered Indian children who are deemed to be "eligible children" pursuant to the Directive. An eligible child is normally characterized as a child of parents who are normally resident on reserve. Importantly, the preamble to the Directive indicates that the formula is intended to ensure that First Nations children receive a "comparable level" of service to other children in similar circumstances. Moreover, there was no evidence that the provinces step in to top up federal child welfare funding levels if the federal funding level is insufficient to meet statutory requirements of provincial child welfare legislation or to ensure an equitable level of service. There were, however, occasions where provinces provided management information or training support but there were no cases identified where the province systematically topped up inequitable funding levels created by Directive 20-1. Overall the Directive was found to provide 22% less funding per child to FNCFSAs than the average province. A key area of inadequate funding is a statutory range of services, known as least disruptive measures, that are provided to children and youth at significant risk of child maltreatment so that they can remain safely in their homes. First Nations agencies report that the numbers of children in care could be reduced if adequate and sustained funding for least disruptive measures was provided by INAC (Shangreaux, 2004). The NPR also indicates that although child welfare costs are increasing at over 6% per year there has not been a cost of living increase in the funding formula for FNCFSAs since 1995. Economic analysis conducted last year indicates that the compounded inflation losses to FNCFSAs from 1999-2005 amount to $112 million nationally.

In total, the *Joint National Policy Review on First Nations Child and Family Services* included seventeen recommendations to improve the funding formula. It has been over six years since the completion of NPR and the federal government has failed to implement any of the recommendations which would have directly benefited First Nations children on reserve. As INAC documents obtained through access to information in 2002 demonstrate, the lack of action by the federal government was not due to lack of awareness of the problem or of the solution. Documents sent between senior INAC officials confirm the level of funding in the Directive is insufficient for FNCFSAs to meet their statutory obligations under provincial child welfare laws – particularly with regard to least disruptive measures resulting in higher numbers of First Nations children entering child welfare care (INAC, 2002.)

Despite having apparently been convinced of the merits of the problem and the need for least disruptive measures, INAC maintained that additional evidence was needed to rectify the inequitable levels of funding documented in the NPR. Therefore, the First Nations Child and Family Services National Advisory Committee, co-chaired by the Assembly of First Nations and INAC, commissioned a second research project on the Directive in September of 2004. This three part research project which was completed by the First Nations Child and Family Caring Society of Canada in 2005 involved over 20 researchers representing some of the most respected experts from a variety of disciplines including: economics, law, First Nations child welfare, management information systems, community development, management and sociology. This review is documented in three volumes: 1) *Bridging Econometrics with First Nations Child and Family Service Agency Funding* 2) *Wen:de: We are Coming to the Light of Day* 3) *Wen:de: the Journey Continues,* which are all publicly available on line at www.fncfcs.com.

Findings of the Wen:de series of reports include:

- The primary reason why First Nations children come to the attention of the child welfare system is neglect. When researchers unpack the definition of "neglect", poverty, substance misuse and poor housing are the key factors contributing to the over representation of First Nations children in substantiated child welfare cases.
- The formula drastically under funds primary, secondary and tertiary child maltreatment intervention services, including least disruptive measures. These

services are vital to ensuring First Nations children have the same chance to stay safely at home with support services as other children in Canada.

- Additional funding is needed at all levels of FNCFSAs including governance, administration, policy and practice in order to provide a basic level of child welfare services equitable to those provided off reserve by the provinces.
- Overall an additional $109 million is needed in year one to redress existing funding shortfalls – representing approximately a 33% increase in the operations funding (funding not directly related to children in care) currently provided pursuant to the Directive. This represents a minimum investment to provide a basic level of equitable services comparable to those available to other Canadians, meaning that to provide anything short of this funding level is to perpetuate the inequity.
- Jurisdictional disputes between and amongst federal and provincial governments are a substantial problem with 12 FNCFSAs experiencing 393 jurisdictional disputes this past year alone. These disputes result in First Nations children on reserve being denied or delayed receipt of services that are otherwise available to Canadian children. Additionally, these disputes draw from already taxed FNCFSAs human resources as FNCFSAs staff spend an average of 54 hours per incident resolving these disputes. Jordan's Principle, a child-first solution to resolving these disputes, has been developed and endorsed by over 230 individuals and organizations. This solution is cost neutral and would ensure that children's needs are met whilst still allowing for the resolution of the dispute.
- Agencies serving less than 1000 children (and thus receive only a portion of the operations budget depending on populations levels) and agencies in remote communities require upwards adjustments in the funding formula.

INAC recently announced it will provide $25 million per year in additional First Nations child and family service funding for each of five years, which held some promise of relieving some of the cost pressures for FNCFSAs. Unfortunately, instead of targeting those dollars to benefit children, INAC allocated over $15 million per year to fund its own costs arising from increased billings for children in care (due largely to lack of investments in least disruptive measures) and to hire staff. It did allocate an additional $8.6 million per year for inflation relief for FNCFSAs, but this represents only a small portion of what is required to offset inflation losses. INAC has also stated that until it completes an evaluation of maintenance funding (funds to keep children in care) to satisfy a treasury board requirement it will not release the inflation funds for agencies. Upon questioning, INAC audit and evaluation unit was not able to identify a standard upon which it would evaluate the maintenance budget and was clearly not aware that measuring outcomes in child welfare is in the very early stages of development – even in non Aboriginal child welfare in Canada. The idea that child welfare funding to address a glaring inequality should be held back to satisfy such a poorly supported administrative requirement raises significant concerns.

The cost of perpetuating the inequities in child welfare funding are substantial – INAC maintenance costs for children in care continue to climb at over 11% per annum as there are no other options provided to agencies to keep children safely at home. Additionally, as Canada redresses the impacts of residential schools it must take steps to ensure that old funding policies which only supported children being removed from their homes are addressed.

We allege that Directive 20-1 is in contravention of Article 3 of the *Human Rights Act* in that Registered First Nations children and families resident on reserve are provided with inequitable levels of child welfare services because of their race and national ethnic origin as compared to non Aboriginal children. The discrimination is systemic and ongoing. INAC has been aware of this problem for a number of years and was presented with an evidence base of this discrimination in June of 2000 with the two *Wen:de* reports being delivered in August and October of 2005 respectively. These reports were followed by the Canadian Incidence Study Report (Mesnmimk Wasatek) in June of 2006.

Regional Chief Lawrence Joseph
Assembly of First Nations

Guy Lonechild, Vice-Chief

Cindy Blackstock, Executive Director
First Nations Child & Family Caring Society of Canada

This is **Exhibit B** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, Ontario
Date: 2025.10.22 10:19:31-04'00'
Foxit PDF Editor Version: 13.1.6

A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

Tribunal Remedial Rulings in File Number T1340/7008 (Since 2016 CHRT 2)

Number	Date	Neutral Citation
1.	2016-04-26	2016 CHRT 10
2.	2016-05-05	2016 CHRT 11
3.	2016-09-14	2016 CHRT 16
4.	2017-03-29	2017 CHRT 7
5.	2017-05-26	2017 CHRT 14
6.	2017-11-02	2017 CHRT 35
7.	2018-02-01	2018 CHRT 4
8.	2018-09-17	2018 CHRT 27
9.	2019-01-07	2019 CHRT 1
10.	2019-02-21	2019 CHRT 7
11.	2019-03-04	2019 CHRT 11
12.	2019-09-06	2019 CHRT 39
13.	2020-04-16	2020 CHRT 7
14.	2020-05-28	2020 CHRT 15
15.	2020-06-12	2020 CHRT 17
16.	2020-07-17	2020 CHRT 20
17.	2020-08-11	2020 CHRT 24
18.	2020-10-08	2020 CHRT 31
19.	2020-11-25	2020 CHRT 36
20.	2021-02-11	2021 CHRT 6

Number	Date	Neutral Citation
21.	2021-02-12	2021 CHRT 7
22.	2021-03-17	2021 CHRT 12
23.	2021-11-16	2021 CHRT 41
24.	2022-03-24	2022 CHRT 8
25.	2022-09-02	2022 CHRT 26
26.	2022-12-20	2022 CHRT 41
27.	2023-09-26	2023 CHRT 44
28.	2024-07-30	2024 CHRT 92
29.	2024-08-02	2024 CHRT 95
30.	2024-08-09	2024 CHRT 96
31.	2025-01-29	2025 CHRT 6
32.	2025-05-29	2025 CHRT 58
33.	2025-09-02	2025 CHRT 85
34.	2025-09-02	2025 CHRT 86
35.	2025-09-03	2025 CHRT 87

This is **Exhibit C** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, Ontario
Date: 2025.10.22 10:19:41-04'00'
Foxit PDF Editor Version: 13.1.6

A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

Docket: T1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

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

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

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

Respondent

- and -

CHIEFS OF ONTARIO,
AMNESTY INTERNATIONAL CANADA and
NISHNAWBE ASKI NATION

Interested Parties

AMENDED NOTICE OF MOTION FOR RELIEF OF THE COMPLAINANT FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA

David P. Taylor

CONWAY BAXTER WILSON LLP/s.r.l.
Suite 400 – 411 Roosevelt Avenue
Ottawa, ON K2A 3X9
Tel: 613-691-0368
Email: dtaylor@conway.pro

Sarah Clarke | Robin McLeod

CLARKE CHILD & FAMILY LAW
Suite 950 – 36 Toronto Street
Toronto, ON M5C 2C5
Tel: 416-260-3030
Email: sarah@childandfamilylaw.ca
robin@childandfamilylaw.ca

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

NOTICE OF MOTION

TAKE NOTICE THAT THE COMPLAINANT, THE FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA (the "**Caring Society**") makes this motion in writing to the Canadian Human Rights Tribunal located at 240 Sparks Street, 6th Floor West, Ottawa, Ontario.

This motion is for relief to ensure that this Tribunal's Orders of 2016 CHRT 2, 2016 CHRT 10, 2016 CHRT 16, 2018 CHRT 4, 2022 CHRT 8 and all other orders related to First Nations Child and Family Services and Jordan's Principle are effective, specifically regarding Canada's legal obligation to consult with the co-complainants regarding the long-term reform of the First Nations Child and Family Services Program ("**FNCFS Program**") and Jordan's Principle.

AND TAKE NOTICE THAT THIS MOTION IS FOR:

1. An Order directing consultation between Canada, the Assembly of First Nations (the "**AFN**") and the Caring Society on the national long-term reform of the FNCFS Program, First Nations federal child and family services and Jordan's Principle in line with the Tribunal's Order of February 1, 2018 (2018 CHRT 4) and its related consultation orders.

~~2. An Order directing consultation between Canada, the AFN and the Caring Society on the Ontario-specific long-term reform announced January 7, 2025, in line with the Tribunal's Order of February 1, 2018 (2018 CHRT 4) and its related consultation orders.~~

3. An Order that the Tribunal retain jurisdiction until such time as measures are in place to end the discrimination and prevent its recurrence.

4. Such further relief as the Caring Society may advise and this Tribunal may permit.

AND TAKE NOTICE THAT THE GROUNDS FOR THE MOTION ARE:

1. The Tribunal has made clear in all its rulings that a dialogic approach to crafting remedies is a critical tool in eliminating discrimination identified by the Tribunal in 2016 CHRT 2 (and Canada's subsequent non-compliance) and preventing its recurrence. This approach was upheld and endorsed by the Federal Court in its September 29, 2021 order in 2021 FC 969.

2. On January 26, 2016, (2016 CHRT 2 – the "**Merits Decision**") the Tribunal substantiated the complaint brought by the Caring Society and the AFN, determining that the FNCFS Program, corresponding funding formulas and other related child and family services provincial/territorial agreements, discriminated against First Nations children and families, contrary to s. 5 of the *Canadian Human Rights Act*. The Tribunal ordered Canada to (i) cease its discriminatory practices and reform the FNCFS Program and *1965 Agreement* to reflect the findings in this decision; (ii) cease applying its narrow definition of Jordan's Principle and to take measures to implement the full meaning and scope of Jordan's Principle; and (iii) take measures to prevent the recurrence of the discrimination found by the Tribunal.

3. On February 1, 2018 (2018 CHRT 4 – the "**Actuals Decision**") the Tribunal found that Canada was not in compliance with the Merits Decision and its previous orders and had not moved quickly enough in taking meaningful steps to cease its discriminatory practices under the FNCFS Program. The Tribunal made findings with respect to the ongoing lack of prevention services, including that "the current manner in which prevention funds are distributed while unlimited funds are allocated to keep children in care is harming children, families, communities and Nations in Canada. […] This is a striking example of a system built on colonial views perpetuating historical harm against Indigenous peoples, and all justified under policy" (Actuals Decision at paras. 119 and 121). In the result, the Tribunal ordered Canada to pay the actual costs of, *inter alia*, prevention/least disruptive measures, intake and investigate, legal fees and building repairs by fully reimbursing First Nations Child and Family Services Agencies ("**FNCFS Agencies**"), retroactive to January 26, 2016.

4. In the Actuals Decision, the Tribunal also ordered Canada to "consult not only with the Commission, but also directly with the AFN, the Caring Society, the [Chiefs of Ontario ("**COO**")] and the [Nishnawbe Aski Nation ("**NAN**")] on the orders made in this ruling, the [*Merits*] *Decision* and its other rulings. [Canada] is ordered to enter into a protocol with the AFN, the Caring Society, the COO, the NAN and the Commission on consultations to ensure that consultations are carried out in a manner consistent with the honor of the Crown and to eliminate the discrimination substantiated in the *Decision* with the complainants [emphasis added]" (para. 400).

5. Pursuant to the Tribunal's consultation order made in the Actuals Decision, on March 2, 2018, the Parties agreed to a consultation protocol, which, among other things, established the Consultation Committee on Child Welfare ("**CCCW**"). The consultation protocol contemplated consultation on both immediate relief measures and long-term reform: "The mandate of the CCCW is to oversee the development and implementation relief measures ordered by the Canadian Human Rights Tribunal (CHRT) and encompassed by the Consultation Protocol, including those relating to Jordan's Principle, and its role shall be extended to mid and long term relief measures unless otherwise agreed to by the parties [emphasis added]".

6. Between 2018 and 2020, the parties participated in the CCCW, and consultation took place on a number of important immediate measures, as well as the compensation framework in relation to 2019 CHRT 39.

7. In 2021, the parties negotiated an Agreement in Principle on long-term reform of the FNCFCS Program and Jordan's Principle (the "**AIP**"), which was signed on December 31, 2021. However, it was necessary for the Caring Society to end its involvement in the AIP in December 2023 to bring a motion for non-compliance in relation to Jordan's Principle, to ensure that Canada fully complies with this Tribunal's Jordan's Principle orders and ends the resulting discrimination for First Nations children, youth and families. The parties were unable to agree to terms for the Caring Society's return to negotiations outside the AIP framework.

8. On July 11, 2024, Canada, the AFN, COO and NAN released a draft final agreement on long-term reform of the FNCFS Program (the "**Draft FSA**"). Throughout August, September and October 2024, the Caring Society attempted to reconvene the CCCW to allow for consultation on the Draft FSA. In keeping with the consultation protocol, the Caring Society also shared with Canada (and with AFN, COO and NAN) its suggested amendments to the Draft FSA in an effort to directly engage with Canada on long term solutions in relation to the discrimination identified by the Tribunal. Canada refused to consult with the Caring Society on the long term reform solutions set out in the Draft FSA, in breach of the consultation order in the Actuals Decision, contrary to the consultation protocol, and contrary to the dialogic approach underscored by this Panel.

9. In October 2024, the First Nations-in-Assembly did not accept the Draft FSA and directed further negotiations to bring amendments to the Draft FSA in order to end Canada's discrimination in First Nations child and family services and Jordan's Principle and to prevent its recurrence, as set out in AFN Resolutions 60/2024 and 61/2024.

10. In December 2024, the First Nations-in-Assembly reiterated their commitment to a new negotiation process to seek amendments to the Draft FSA and called on Canada to obtain a new mandate by early January 2025, as set out in AFN Resolutions 88/2024, 89/2024, and 90/2024. AFN Resolution 90/2024 called on Canada to obtain a new negotiation mandate within thirty (30) days in full alignment with AFN Resolutions 60/2024 and 61/2024.

11. On December 9, 2024, the Caring Society sent a letter to Canada, the AFN, COO and NAN extending an invitation to meet to discuss returning to the negotiation table in light of, and in line with, the resolutions passed by the First Nations-in-Assembly.

12. On January 7, 2025, in response to the Caring Society's December 9, 2024, letter, Canada advised that Canada will negotiate an agreement on long-term reform of the FNCFS Program with COO and NAN, and that Canada does not currently have a mandate to negotiate a long term reform agreement on a national basis.

13. On January 8, 2025, the Caring Society wrote to Canada asking that it commit to return to the negotiation table, in line with the Actuals Decision, the CCCW Protocol and the resolutions passed by the First Nations-in-Assembly and requested a response by January 10, 2025. The Caring Society underlined that Canada's approach to negotiating only with COO and NAN raises serious concerns regarding the Honour of the Crown and retaliatory conduct pursuant to the *Canadian Human Rights Act*.

14. On January 10, 2025, Canada wrote to the Caring Society and advised it could not answer whether it would come back to the table.

15. On January 14, 2025, Canada wrote again to the Caring Society to advise that it was not prepared to negotiate long term reform of the FNCFS Program based on the First Nations-in-Assembly's resolutions. Canada's correspondence did not propose any path towards the identification and implementation of long term reforms outside of Ontario.

16. Section 53(2) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6;

17. Rules 1(6), 3(1), and Rule 3(2) of this Tribunal's Rules of Procedure; and

18. Such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will accompany this motion:

(a) The affidavit of Katherine Quintana-James, affirmed January 14, 2025; and

(b) Such further and other materials as counsel may advise and this Tribunal may permit.

Dated: January 14, 2025, Amended January 27, 2025



Sarah Clarke
David P. Taylor
Robin McLeod

Counsel for the Caring Society

ORIGINAL TO: **Canadian Human Rights Tribunal**
c/o Judy Dubois, Registry Officer
240 Sparks Street, 6th Floor West
Ottawa, ON K1A 1J4

Paul Vickery, Sarah-Dawn Norris and Meg Jones
Department of Justice Canada
50 O'Connor Street
Ottawa, ON K1A 0H8

Counsel for the Respondent, Attorney General of Canada

ASSEMBLY OF FIRST NATIONS
Stuart Wuttke and Adam Williamson
55 Metcalfe Street, Suite 1600
Ottawa, ON K1P 6L5

Counsel for the Co-complainant Assembly of First Nations

CANADIAN HUMAN RIGHTS COMMISSION
Anshumala Juyal and Khizer Pervez
344 Slater Street, 8th Floor
Ottawa, ON K1A 1E1

Counsel for the Canadian Human Rights Commission

OLTHUIS KLEER TOWNSHEND LLP
Maggie E. Wente, Jessie Stirling and Ashley Ash
250 University Avenue, 8th Floor
Toronto, ON M5H 3E5

Counsel for the Interested Party, Chiefs of Ontario

FALCONERS LLP
Julian N. Falconer, Meaghan Daniels and Shelby Percival
10 Alcorn Avenue, Suite 204
Toronto, ON M4V 3A9

Counsel for the Interested Party, Nishnawbe Aski Nation

STOCKWOODS LLP
Justin Safayeni, Stephen Aylward and Taskeen Nawab
TD North Tower
77 King Street West, Suite 4130
Toronto, ON M5K 1H1

Counsel for the Interested Party, Amnesty International

This is **Exhibit D** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, Ontario
Date: 2025.10.22 10:19:53-04'00'
Foxit PDF Editor Version: 13.1.6

A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

Docket: T1340/7008

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 and NISHNAWBE ASKI NATION

Interested Parties

AFFIDAVIT OF KATHERINE QUINTANA-JAMES

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1. I am employed as a legal assistant at Clarke Child & Family Law, counsel for the complainant First Nations Child and Family Caring Society of Canada (the "**Caring Society**") in this matter. Part of my responsibilities involve assisting with the Caring Society file with respect to proceedings before the Canadian Human Rights Tribunal. As such, I have knowledge of the facts hereafter deposed to except for those matters which are stated to be based upon information provided by others, all of which information I believe to be true.

2. I am advised by Sarah Clarke, counsel for the Caring Society and do verily believe, that the Caring Society, as well as the other Parties and Interested Parties to this proceeding, are each a member of the Consultation Committee on First Nations Child Welfare (the "**CCCW**"). The CCCW was constituted as a result of a Consultation Protocol entered into by the parties on March 2, 2018 (the "**Consultation Protocol**"), pursuant to an order made by the Tribunal on February 1, 2018.

3. I am advised by Ms. Clarke and do verily believe that on July 11, 2024, Canada, the AFN, COO and NAN released a draft final agreement on long-term reform of the FNCFS Program (the "**Draft FSA**"). On August 7, 2024, Raymond Shingoose, President of the Caring Society, wrote to Minister Hajdu, Minister of Indigenous Services. Minister Hajdu responded to Mr. Shingoose's letter on October 17, 2024. A copy of this correspondence is attached hereto at **Exhibit "A"**.

4. Between September 12, 2024, and September 26, 2024, Ms. Clarke wrote to counsel for Canada and the other parties regarding consultation. On September 26, 2024, Ms. Clarke and Christopher Rupar (counsel for Canada) had an email exchange wherein Mr. Rupar indicated he would get back to the Caring Society regarding its proposed meeting. Ms. Clarke provided Mr. Rupar with a copy of the Caring Society's proposed amendments to the Draft FSA. Ms. Clarke also shared the proposed amendments with the other Parties and Interested Parties on the same date. A copy of this correspondence, without the proposed amendments are attached hereto as **Exhibit "B"**.

5. On October 2, 2024, Ms. Clarke received a letter from Maggie Wente, counsel for Chiefs of Ontario, who wrote to the Caring Society on behalf of the AFN, COO, NAN and Canada. On October 4, 2024, Mr. Rupar wrote to David Taylor, co-counsel for the Caring Society, stating that Canada was willing to meet with the Caring Society under the parameters set out in Ms. Wente's letter of October 2, 2024. A copy of the October 2, 2024 correspondence and October 4, 2024 correspondence is attached hereto as **Exhibit "C".**

6. I am advised by Ms. Clarke and do verily believe that during the Special Chiefs Assembly in October 2024, the First Nations-in-Assembly passed a number of resolutions, including Resolutions 60/2024 and 61/2024. A copy of Resolutions 60/2024 and 61/2024 were filed with the Tribunal by the AFN on December 9, 2024.

7. I am advised by Ms. Clarke and do verily believe that during the Special Chiefs Assembly in December 2024, the First Nations-in-Assembly passed a number of resolutions, including Resolutions 88/2024, 89/2024, and 90/2024. A copy of Resolutions 88/2024, 89/2024, and 90/2024 are attached hereto as **Exhibit "D"**.

8. On October 29, 2024, Ms. Clarke wrote to counsel for Canada, the Parties and the Interested Parties, following the Special Chiefs Assembly in Calgary. A copy of this correspondence is attached hereto as **Exhibit "E"**. The Caring Society received no response from Canada to this correspondence.

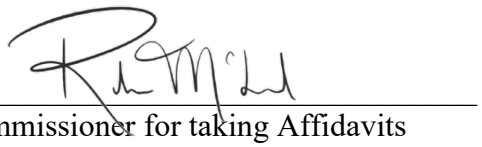
9. On December 9, 2024, Ms. Clarke wrote to counsel for Canada, the Parties and the Interested Parties, following the Special Chiefs Assembly in Ottawa. A copy of this correspondence is attached hereto as **Exhibit "F"**.

10. On January 7, 2025, Ms. Clarke received correspondence from Paul Vickery, counsel for Canada. A copy of that correspondence (dated January 6, 2025 but received by email January 7, 2025) is attached hereto as **Exhibit "G"**.

11. On January 8, 2025, Ms. Clarke responded to Mr. Vickery's letter. A copy of Ms. Clarke's responding letter is attached hereto as **Exhibit "H"**.

12. On January 10, 2025, Mr. Vickery responded to Ms. Clarke's letter. On January 14, 2025, Mr. Vickery sent further correspondence to Ms. Clarke. A copy of Mr. Vickery's letters are attached hereto as **Exhibit "I"**.

AFFIRMED before me via video conference on this 13th day of February, 2025 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*. The Commissioner was in Toronto, Ontario and the affiant was in Toronto, Ontario.



Commissioner for taking Affidavits
Robin McLeod
LSO #91164M



KATHERINE QUINTANA-JAMES

This Exhibit “A” to the Affidavit of Katherine Quintana-James affirmed before me this 13th day of February, 2025



A Commissioner for taking Affidavits etc.

Robin McLeod
LSO #91164M

From: Caring Society Reception <reception@fncaringsociety.com>
Date: Thursday, January 9, 2025 at 12:12 PM
To: Stephanie Wellman <wellmans@fncaringsociety.com>
Subject: FW: Letter to Minister Hajdu

From: Caring Society Reception <reception@fncaringsociety.com>
Date: Wednesday, August 7, 2024 at 4:43 PM
To: Patty.Hajdu@parl.gc.ca <Patty.Hajdu@parl.gc.ca>, randi.anderson@sac-isc.gc.ca <randi.anderson@sac-isc.gc.ca>
Cc: Cindy Blackstock <cblackst@fncaringsociety.com>
Subject: Letter to Minister Hajdu

Dear Minister Hajdu,

Further to Dr. Blackstock's text conversation, please see attached letter regarding the Draft Final Settlement Agreement on First Nation Child and Family Services.

Dr. Blackstock looks forward to discussing this matter further with you.

Thank you,

Harmony Eshkawkogan
Administrative Assistant
First Nations Child and Family Caring Society
Reception@fncaringsociety.com
613-230-5885

First Nations Child & Family Caring Society | Société de soutien à l'enfance et à la famille des Premières Nations

fncaringsociety.com

August 7, 2024

Dear Minister,

I am writing to provide advance notice of the First Nations Child and Family Caring Society's (Caring Society) response to the draft Final Settlement Agreement (FSA) on long-term reform of the First Nations Child and Family Services (FNCFS) program.

The Caring Society remains steadfast in our deep commitment to reforming the FNCFS program and are dedicated to achieving a long-lasting solution that is in the best interests of First Nations children for generations to come.

We have been closely reviewing the draft FSA since its public release and the Caring Society is now in a position to share our feedback with First Nations leadership and their technicians. There are many positive aspects of the draft FSA, including Canada's acknowledgment that the discrimination in the FNCFS program must end; however, the Caring Society has significant concerns with the current draft of the FSA and will be publicly voicing these concerns.

Our concerns include the funding of the 10-year agreement being subject to annual parliamentary decision and the reality that the decision of one government and Parliament does not bind future ones. The Caring Society also has deep concerns with the closed nature of the governance structure proposed in the draft FSA and the lack of regional First Nation participation in the ongoing governance of the reformed program provided for in the draft FSA. We are also concerned with the efficacy of the Alternative Dispute Resolution process, and the lack of clarity regarding funding amounts, allocations, and recipients. Based on what we have reviewed, the Caring Society is not confident that the draft FSA will end the discrimination against First Nations children and prevent it from happening again.

The Caring Society would also like to remind you of your government's duty and obligation under the United Nations Declaration on the Rights of Indigenous Peoples, enshrined in federal law by the *United Nations Declaration on the Rights of Indigenous Peoples Act*, to consult with First Nations rights holders on a nation-to-nation basis. This responsibility of free, prior and informed consent cannot be offloaded to the Assembly of First Nations or any Party to the draft FSA. We would also like to remind you of the Caring Society's standing at the Canadian Human Rights Tribunal for this matter and urge you to meaningfully consult with us, as you have been ordered to do.

Consistent with our constructive, solutions-based approach, we are developing suggested amendments to the draft FSA and wish to discuss these with you and the other Parties with the assistance of a mediator and a commitment to a constructive process.

We currently stand at the doorstep for the eradication of discrimination against First Nations children in child and family services and we must get it right for them, so they have a chance to grow up safely with their families and Nations, proud of who they are with the confidence to reach their full potential.

Respectfully,

Raymond Shingoose,
President, First Nations Child and Family Caring Society

Ministre des Services aux Autochtones et ministre responsable de l'Agence fédérale de développement économique pour le Nord de l'Ontario

Minister of Indigenous Services and Minister responsible for the Federal Economic Development Agency for Northern Ontario

Ottawa, Canada K1A 0H4

October 17, 2024

Raymond Shingoose
President
First Nations Child and Family Caring Society
350 Sparks Street, Suite 202
OTTAWA ON K1R 7S8

info@fncaringsociety.com

Dear Raymond Shingoose:

Thank you for your correspondence of August 7, 2024, regarding the proposed Final Agreement on Long-Term Reform of the First Nation Child and Family Services Program. We are now in receipt of the Caring Society's proposed amendments to the Final Agreement. I would like to take this opportunity to respond to your proposal.

First, we would like to recognize the Caring Society's contributions in advancing reform of the First Nations Child and Family Services Program. This has been an incremental undertaking spanning many years, and it has benefitted from the input and efforts of many stakeholders, including the Caring Society. The Caring Society's latest vision for the First Nations Child Family Services Program, however, would see Canada, the Assembly of First Nations, the Chiefs of Ontario and Nishnawbe Aski Nation adopt an approach that is not consistent with the terms accepted by all parties in the Agreement-in-Principle.

The Agreement-in-Principle's purpose was to set out the framework for reform, which would be further detailed in a Final Agreement. Significant incremental resources have been provided to support the Agreement-in-Principle's reforms. The draft Final Agreement respects the Agreement-in-Principle, and builds upon it to replace current interim funding approaches with evidence-based, stable and long-term approaches. The Program's constant change and claims-based processes under the Tribunal's orders will be replaced by a Program that gives First Nations the tools, the funding and the predictability to make child and family services work better for their communities.

In contrast, the changes proposed by the Caring Society would retain claims-based interim funding approaches. Not only would such retention be contrary to the Agreement-in-Principle, it would not be in keeping with the Tribunal's finding that the First Nations Child and Family Services Program needs "a full-scale reform not just

…/2

support pillars (band-aid, unsustainable short-term solutions) put in place" (2022 Canadian Human Rights Tribunal 8, paragraph 34). The Caring Society's proposals to maintain funding at actuals and Canadian Human Rights Tribunal oversight are incompatible with the objective of developing long-term solutions for comprehensive reform.

Canada, the Assembly of First Nations, Chiefs of Ontario and Nishnawbe Aski Nation negotiated an agreement that respects the inherent right of First Nations to self-determination in the area of child and family services, including by providing significant flexibility to align resources with community priorities. The Caring Society proposes a model that does not advance this objective. The Caring Society's proposal that prevention funding be allocated entirely to agencies fails to recognize the expressed direction of rights holders to play a more active role in decisions surrounding the delivery of child and family services.

Canada shares the Caring Society's commitment to a long-lasting solution that is in the best interest of First Nation families and children, and that is what this Final Agreement would achieve. The Final Agreement sets out a ten-year commitment that will provide greater stability and opportunity to those delivering services to First Nations children and families. It contains the comprehensive reform required for the Canadian Human Rights Tribunal's oversight to come to an end, and a reform that aligns with First Nations' inherent right to self-determination in child and family services.

Canada remains willing to meet with the Caring Society, the Assembly of First Nations, Chiefs of Ontario and Nishnawbe Aski Nation for confidential discussions on the Final Agreement.

We look forward to continuing our work together to realize a better future for First Nations children.

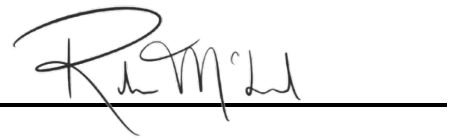
Yours sincerely,



The Honourable Patty Hajdu P.C., M.P.

c.c.: Ontario Regional Chief Abram Benedict
Grand Chief Alvin Fiddler
Deputy Grand Chief Bobby Narcisse
Vice Chief David Pratt
Stuart Wuttke
Adam Williamson

This Exhibit “B” to the Affidavit of Katherine Quintana-James affirmed before me this 13th day of February, 2025



A Commissioner for taking Affidavits etc.

Robin McLeod
LSO #91164M

From:	Sarah Clarke
To:	Vickery, Paul; Rupar, Christopher; Norris, Sarah-Dawn
Cc:	David Taylor; Kiana Saint-Macary; Robin McLeod; Katherine Quintana-James
Subject:	Draft FSA - Consultation Meetings
Date:	September 12, 2024 11:54:23 AM

Good morning,

Thank you for sharing the Draft FSA with us on July 11, 2024. We have now had an opportunity to thoroughly review the agreement and have connected with communities and service providers about many aspects of the agreement. We are continuing our review and are developing amendments that, in our view, will strengthen the agreement in the best interests of First Nations children, in line with the findings and guidance of the Tribunal. We hope to share those with you soon, as they are currently a work in progress. To that end, the Caring Society is seeking to engage in dialogue with Canada, as suggested in its August 7, 2024, letter to Minister Hajdu.

Pursuant to the consultation protocol and the direction from the Tribunal regarding consultation with the Caring Society, we would like to schedule a meeting with you and your team to discuss the Draft FSA. We propose that we meet in Ottawa over two days to allow for a full consultation, with time built in for reflection and consideration of the various aspects of the agreement. We invite you and your team to meet with us at the Caring Society offices (350 Sparks Street, Suite 202) on any of the following two days, from 9:30am-4:30pm.

- October 1-2, 2024;
- October 2-3, 2024; or
- October 3-4, 2024

We can provide lunch so please let me know if anyone on your team requires any dietary accommodations. We look forward to hearing from you.

Thanks,
Sarah

Sarah Clarke
CLARKE CHILD & FAMILY LAW
36 Toronto Street, Suite 950
Toronto, ON M5C 2C5

Tel: 416.260.3030
Fax: 647.689.3286

This message is intended only for the persons to whom it is addressed. It should not be read by or delivered to any person, as it may contain privileged or confidential information. If you have received this message in error, please notify me immediately at sarah@childandfamilylaw.ca

From: Rupar, Christopher (he him il lui)
To: Sarah Clarke; Vickery, Paul; Norris, Sarah-Dawn (she her elle la)
Cc: David Taylor; Kiana Saint-Macary; Robin McLeod; Katherine Quintana-James; Rupar, Christopher (he him il lui)
Subject: RE: Draft FSA - Consultation Meetings
Date: September 17, 2024 10:16:30 AM

Sarah, we would ask that you extend this invitation to counsel and representatives from AFN, COO and NAN.

Chris

From: Sarah Clarke
To: Rupar, Christopher (he him il lui); Vickery, Paul; Norris, Sarah-Dawn (she her elle la)
Cc: David Taylor; Kiana Saint-Macary; Robin McLeod; Katherine Quintana-James
Subject: RE: Draft FSA - Consultation Meetings
Date: September 25, 2024 4:45:52 PM

Good afternoon Chris,

We have not received any positive responses to our invitation to involve the other parties in the meeting for next week. The Caring Society would still like to meet with Canada. Please indicate which days work best for you and your team.

Thanks,
Sarah

Sarah Clarke
CLARKE CHILD & FAMILY LAW
36 Toronto Street, Suite 950
Toronto, ON M5C 2C5

Tel: 416.260.3030
Fax: 647.689.3286

This message is intended only for the persons to whom it is addressed. It should not be read by or delivered to any person, as it may contain privileged or confidential information. If you have received this message in error, please notify me immediately at sarah@childandfamilylaw.ca

From: Sarah Clarke
To: Rupar, Christopher (he him il lui); Vickery, Paul; Norris, Sarah-Dawn (she her elle la)
Cc: David Taylor; Kiana Saint-Macary; Robin McLeod; Katherine Quintana-James
Subject: RE: Draft FSA - Consultation Meetings
Date: September 26, 2024 2:32:27 PM

Hi again Chris,

Are you able to let me know today please? We are trying to make travel arrangements as Dr. Blackstock will becoming to Ottawa specifically for this meeting.

Many thanks,
Sarah

Sarah Clarke

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This message is intended only for the persons to whom it is addressed. It should not be read by or delivered to any person, as it may contain privileged or confidential information. If you have received this message in error, please notify me immediately at sarah@childandfamilylaw.ca

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From: Rupar, Christopher (he him il lui)
To: Sarah Clarke; Vickery, Paul; Norris, Sarah-Dawn (she her elle la)
Cc: David Taylor; Kiana Saint-Macary; Robin McLeod; Katherine Quintana-James; Rupar, Christopher (he him il lui); Jones, Meg (she her elle la)
Subject: RE: Draft FSA - Consultation Meetings
Date: September 26, 2024 3:25:36 PM

Sarah, we will get back to you as soon as we can, but it may not be this afternoon. Also, please note that I will be out of the office until Tuesday morning so another member of our team will follow up. Please include Meg Jones in any further emails.

Chris

From: Sarah Clarke <sarah@childandfamilylaw.ca>
Sent: September 19, 2024 5:10 PM
To: Vickery, Paul <Paul.Vickery@justice.gc.ca>; Rupar, Christopher <Christopher.Rupar@justice.gc.ca>; Norris, Sarah-Dawn <Sarah-Dawn.Norris@Justice.gc.ca>; Stuart Wuttke <swuttke@afn.ca>; 'Adam Williamson' <AWilliamson@afn.ca>; 'lkassis@afn.ca' <LKassis@afn.ca>; Maggie Wente <MWente@oktlaw.com>; Jessie Stirling <jstirling@oktlaw.com>; Ashley Ash <aash@oktlaw.com>; meaghand@falconers.ca; Sameha.Omer@chrc-ccdp.gc.ca; Justin Safayeni <JustinS@stockwoods.ca>; Julian Falconer <julianf@falconers.ca>
Cc: David Taylor <DTaylor@conwaylitigation.ca>; Robin McLeod <robin@childandfamilylaw.ca>; Kiana Saint-Macary <ksaintmacary@conwaylitigation.ca>; Katherine Quintana-James <Katherine@childandfamilylaw.ca>
Subject: Invitation for a CCCW Meeting - Draft FSA

Good afternoon everyone,

Further to the Caring Society's direct client communications, and pursuant to the consultation protocol, the Caring Society invites you and your clients to a discussion regarding the draft FSA. We have prepared some suggested amendments to the agreement in line with the findings and guidance of the Tribunal, with some further amendments coming soon. We hope to share those with you in advance of the meeting.

To that end, we are inviting you to meet with us in Ottawa over two days to allow for a full engagement, with time built in for reflection and consideration of the various aspects of the agreement. I am attaching our proposed agenda. We invite you and your team to meet with us at the Caring Society offices (350 Sparks Street, Suite 202) on any of the following two days, from 9:30am-4:30pm. For those who are unable to attend in person, we are happy to host those people virtually.

- October 1-2, 2024;
- October 2-3, 2024; or
- October 3-4, 2024

We can provide lunch so please let me know if anyone on your team requires any dietary accommodations. We look forward to hearing from you and request that you provide your availability by no later than September 25, 2024.

Many thanks,
Sarah

Sarah Clarke

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From: Maggie Wente <MWente@oktlaw.com>
Sent: September 19, 2024 5:24 PM
To: Sarah Clarke <sarah@childandfamilylaw.ca>; Vickery, Paul <Paul.Vickery@justice.gc.ca>; Rupar, Christopher <Christopher.Rupar@justice.gc.ca>; Norris, Sarah-Dawn <Sarah-Dawn.Norris@Justice.gc.ca>; Stuart Wuttke <swuttke@afn.ca>; 'Adam Williamson' <AWilliamson@afn.ca>; 'lkassis@afn.ca' <LKassis@afn.ca>; Jessie Stirling <jstirling@oktlaw.com>; Ashley Ash <aash@oktlaw.com>; meaghand@falconers.ca; Sameha.Omer@chrc-ccdp.gc.ca; Justin Safayeni <JustinS@stockwoods.ca>; Julian Falconer <julianf@falconers.ca>
Cc: David Taylor <DTaylor@conwaylitigation.ca>; Robin McLeod <robin@childandfamilylaw.ca>; Kiana Saint-Macary <ksaintmacary@conwaylitigation.ca>; Katherine Quintana-James <Katherine@childandfamilylaw.ca>
Subject: RE: Invitation for a CCCW Meeting - Draft FSA

Dear Sarah,

I obviously will need to ask my client for instructions but I am not available at all during that week to attend.

Maggie

From:	Sarah Clarke
To:	Maggie Wente; Vickery, Paul; Rupar, Christopher; Norris, Sarah-Dawn; Stuart Wuttke; "Adam Williamson"; "lkassis@afn.ca"; Jessie Stirling; Ashley Ash; meaghand@falconers.ca; Sameha.Omer@chrc-ccdp.gc.ca; Justin Safayeni; Julian Falconer
Cc:	David Taylor; Robin McLeod; Kiana Saint-Macary; Katherine Quintana-James
Subject:	RE: Invitation for a CCCW Meeting - Draft FSA
Date:	September 26, 2024 3:44:55 PM
Attachments:	Caring.Society.FSA.Proposed.Amendments.Sept25.docx

Good afternoon everyone,

Further to my email on September 19, 2024, attached please find the Caring Society's draft FSA proposed amendments working document.

Many thanks,
Sarah

Sarah Clarke
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This Exhibit “C” to the Affidavit of Katherine Quintana-James affirmed before me this 13th day of February, 2025



A Commissioner for taking Affidavits etc.

Robin McLeod
LSO #91164M

Maggie Wente
mwente@oktlaw.com
T: 416-981-9340
75558

October 2, 2024

SENT VIA EMAIL *(sarah@childandfamilylaw.ca)*

Sarah Clarke
CLARKE CHILD & FAMILY LAW
36 Toronto Street, Suite 950
Toronto, ON M5C 2C5

Subject: Invitation to CCCW meeting

Dear Sarah,

I am responding to your correspondence of September 19th and September 26, 2024. I write this letter on behalf of Assembly of First Nations, Chiefs of Ontario, Nishnawbe Aski Nation and Canada, all of whom have reviewed and approved of the content.

The Caring Society has requested to reconvene the members of the CCCW to discuss its proposed changes to the Final Agreement. The First Nations Parties and Canada are of the view that the consultation processes contained in the CCCW Protocol evolved into and have been superseded by the AIP's negotiation process. Canada and the First Nations Parties repeatedly invited the Caring Society to continue to participate in the AIP's process, from which the Caring Society chose to remove itself. One party's discontent with the agreed upon framework for negotiations does not serve to revive a process which was clearly rendered obsolete.

Nevertheless, the First Nations Parties and Canada are willing to consider a meeting with the Caring Society for confidential discussions on the Final Agreement. However, while we continue to welcome suggestions that will enhance or improve the Final Agreement, we wish to advise that changes that seek to significantly alter the substance of the Final Agreement will not be adopted.

Sincerely,



Maggie Wente

Cc: Counsel for Canada, Assembly of First Nations, Nishnawbe Aski Nation

From:	Rupar, Christopher (he him il lui)
To:	David Taylor; Sarah Clarke; Vickery, Paul; Norris, Sarah-Dawn (she her elle la)
Cc:	Kiana Saint-Macary; Robin McLeod; Katherine Quintana-James; Jones, Meg (she her elle la); Rupar, Christopher (he him il lui)
Subject:	RE: Draft FSA - Consultation Meetings
Date:	October 4, 2024 11:47:55 AM

David, that is correct, we are willing to meet with the Caring Society under the parameters set out in Maggie's letter of October 2, 2024.

Chris

From: David Taylor <DTaylor@conwaylitigation.ca>
Sent: Thursday, October 3, 2024 4:33 PM
To: Rupar, Christopher (he him il lui) <Christopher.Rupar@justice.gc.ca>; Sarah Clarke <sarah@childandfamilylaw.ca>; Vickery, Paul <Paul.Vickery@justice.gc.ca>; Norris, Sarah-Dawn (she her elle la) <Sarah-Dawn.Norris@Justice.gc.ca>
Cc: Kiana Saint-Macary <ksaintmacary@conwaylitigation.ca>; Robin McLeod <robin@childandfamilylaw.ca>; Katherine Quintana-James <Katherine@childandfamilylaw.ca>; Jones, Meg (she her elle la) <Meg.Jones@justice.gc.ca>
Subject: Re: Draft FSA - Consultation Meetings

Chris,

As you'll see from our response to the group just now, we received Maggie's October 2, 2024 letter. I note that you have not substantively responded to Sarah's latest correspondence dated September 26, 2024, requesting a direct meeting between the Caring Society and Canada. Indeed, we took your earlier correspondence to mean that you would be providing dates for such a meeting.

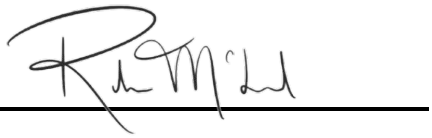
Given Maggie's letter, can you please confirm our understanding that Canada is not prepared to meet directly with the Caring Society beyond the parameters suggested in that letter? If so, this would be most unfortunate and not in keeping with the Tribunal's consultation order set out in 2018 CHRT 4.

Thanks,

David

From: Rupar, Christopher (he him il lui) <Christopher.Rupar@justice.gc.ca>
Sent: Thursday, September 26, 2024 3:25 PM
To: Sarah Clarke <sarah@childandfamilylaw.ca>; Vickery, Paul <Paul.Vickery@justice.gc.ca>; Norris, Sarah-Dawn (she her elle la) <Sarah-Dawn.Norris@Justice.gc.ca>

This Exhibit “D” to the Affidavit of Katherine Quintana-James affirmed before me this 13th day of February, 2025



A Commissioner for taking Affidavits etc.

Robin McLeod
LSO #91164M

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SPECIAL CHIEFS ASSEMBLY
December 3, 4, 5, 2024, Ottawa, ON **Resolution no. 88/2024**

TITLE:	**Implementing the Chiefs' Direction to End Canada's Discrimination in First Nations Child and Family Services**
SUBJECT:	Children and Families
MOVED BY:	Chief Trevor Prince, Sandy Bay Ojibway First Nation, MB
SECONDED BY:	Chief Jason Daniels, Swan Lake First Nation, MB
DECISION	Carried; 70 opposed; 6 abstentions

WHEREAS:

A. First Nations affirm the love we have for our children and our collective goal of ensuring that they grow up proud of who they are, able to speak their languages and free of the multi-generational burden of Canada's discrimination;

B. First Nations honour the Residential School Survivors and the Truth and Reconciliation Commissioners who included child and family services and Jordan's Principle as the top Calls to Action;

C. First Nations honour the Murdered and Missing Women and Girls and Members of the 2SLGBTQAI community who identified child and family services and Jordan's Principle as priorities in the MMIWG Final Report Calls to Justice;

D. Canada's widespread and ongoing discrimination towards First Nations children through Residential Schools, the 60's Scoop and its contemporary underfunding of vital public services for First Nations fuel factors such as multi-generational trauma, addictions, poverty, poor housing and domestic violence that contribute to First Nations children going into care at 19.2 times higher rates than non-Indigenous children and other harms.

E. The *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) states:

i. Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions.

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Woodhouse.

CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF

ii. Article 19: States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them.

iii. Article 37: Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honor and respect such treaties, agreements, and other constructive arrangements.

F. In 2016 CHRT 2, the Canadian Human Rights Tribunal (CHRT) substantiated a human rights complaint filed by the First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) in 2007 regarding Canada's discriminatory and inequitable First Nations Child and Family Services (FNCFS) and its repeated failure to respect and implement Jordan's Principle named after Jordan River Anderson of Norway House Cree Nation. Canada was ordered to immediately cease its discriminatory conduct. Canada failed to do so and over 20 procedural and non-compliance orders have been issued to date.

G. 2016 CHRT 2 and subsequent CHRT orders have confirmed that Canada must take account of the distinct circumstances of the child and family and ensure services are culturally appropriate.

H. The parties (CHRT Parties) to the 2007 Canadian Human Rights Act complaint included:

i. Complainant: AFN;

ii. Complainant: Caring Society;

iii. Commission: Canadian Human Rights Commission; and

iv. Interested Parties: Amnesty International (granted in 2009 to address international human rights law), Chiefs of Ontario (granted in 2009 respecting the 1965 Indian Welfare Agreement), Nishnawbe Aski Nation (NAN): (Granted in 2016 regarding remoteness in NAN territory) and the BC Leadership Council (Granted 2024 respecting Jordan's Principle affecting First Nations in British Columbia).

I. In December of 2023, Canada entered into confidential negotiations with some of the CHRT Parties hereinafter referred to as the FSA Parties: AFN, Chiefs of Ontario, Nishnawbe-Aski Nation to complete an FSA on child and family services while other CHRT Parties are not included (Caring Society, Canadian Human Rights Commission, and Amnesty International).

J. The Caring Society was not a party as Canada had breached the Agreement in Principle (AIP) providing a framework for the negotiations by not complying with Jordan's Principle resulting in tragic harms and deaths of children. The Caring Society filed a non-compliance motion against Canada to address its failure to follow through on CHRT orders on Jordan's Principle – a step that was prohibited under the AIP framework.

K. The negotiations failed to implement the direction of the First Nations-in-Assembly who adopted AFN Resolution 40/2022, *To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordans Principle*, requiring that the CHRT parties retain the right to return to the Tribunal to address

Canada's discrimination, regional experts inform the draft FSA and that the Parties return with options for First Nations Leadership to consider.

L. On July 11, 2024, the FSA Parties released an incomplete draft of the FSA (draft FSA) in English only. The French version followed about a month later. The FSA Parties did not entertain substantive amendments, and the proposed approach had significant flaws in governance, funding durability and security, and ensuring non-discrimination. Paragraph 45 of the draft FSA also provided for regional approaches, but Canada was not obligated to provide additional funding to ensure those regional variations that are essential to taking full account of the distinct circumstances of the child and ensure services are culturally appropriate.

M. Contrary to Canada's obligations under Inherent rights, the UN Declaration and Treaty Rights, the draft FSA also required that First Nations cede their decision making over the reformed funding approach that would directly affect First Nations children to a secret committee.

N. Paragraph 379 of the draft FSA required approval by First Nations Leadership. After conducting due diligence by consulting independent legal and child and family services experts, the First Nations-in-Assembly rejected the draft FSA and voted to reset the negotiation process.

O. The Assembly of First Nations has not yet publicly and clearly agreed to implement the direction in the resolutions adopted by the First Nations-in-Assembly.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

1. Call on Canada and direct the Assembly of First Nations (AFN) to publicly and fully commit to respecting and following the direction of the First Nations-in Assembly arising from the rejection of Draft Resolution 01-2024, and adoption of Resolutions 60-2024 and 61-2024 at the Special Chief's Assembly held on Treaty 7 Territory on October 16-18, 2024.

2. Direct the AFN Executive to adopt an approach that:

- **a.** Ensures that any new proposal for long term reform in First Nations child and family services provide for a national umbrella agreement to ensure non-discrimination with regional agreements that take full account of the distinct circumstances, cultures and the Inherent rights of the children and the First Nations they belong to; and
- **b.** Ensures that such regional agreements are funded in a manner that safeguards First Nations children, youth and families from discrimination now and forever.

3. Urge Canada to discharge its duty to consult and AFN to reject any proposal to supplant and/or adversely affect Canada's duty to consult, Honor of the Crown and other obligations to First Nations.

Safeguarding First Nations rights and approval processes:

4. Direct the AFN to ensure that First Nations Chiefs and Proxies can vote on the Long-Term Reform (LTR) Agreements virtually, in-person, or by another means (via specific accommodation to a Chief or Proxy); to accommodate First Nations Leadership who are unable to attend in person due to community circumstances or emergencies; to ensure that no changes are to be made to the voting procedure, including quorum or approval thresholds; and not to undertake other measures that adversely affect the

direction given by the First Nations-in-Assembly at the meeting on October 16-18, 2024 on Treaty 7 territory.

5. Direct the AFN Executive to support the First Nations Child and Family Caring Society to lead any process to achieve non-discrimination (also known as long term reform) for child and family services and Jordan's Principle in keeping with the Resolutions passed at the Special Chiefs Assembly on October 16-18, 2024.

Respect

6. Call on AFN to withdraw and apologize for any and all public statements that suggested or implied that First Nations Child and Family Service Agencies led the campaign to defeat the draft Final Settlement Agreement (FSA). Such comments are disrespectful of our front-line workers and of the Chiefs who exercised their due diligence to review the text of the draft FSA and rejected it on that basis alone.

7. Require AFN to get approval for any further public statements from the Children's Chief's Commission once established and by a public and majority vote of the Executive in the interim.

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Woodhouse.

CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF **88 – 2024**

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SPECIAL CHIEFS ASSEMBLY
December 3, 4, 5, 2024, Ottawa, ON **Resolution no. 89/2024**

TITLE:	**Renewing Negotiations Toward Long-Term Reform of First Nations Child and Family Services and Jordan's Principle**
SUBJECT:	Children and Families
MOVED BY:	Khelsilem, Council Chairperson, Squamish Nation, BC
SECONDED BY:	Chief Erica Beaudin, Cowessess First Nation, SK
DECISION	Carried; 74 opposed; 10 abstentions

WHEREAS:

A. The *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) states:

- **i.** Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
- **ii.** Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.
- **iii.** Article 37: Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements, and other constructive arrangements.

B. First Nations recognize the sacredness of First Nations children, youth and families and Jordan's Principle, a child-first legal requirement ensuring substantively equal and culturally appropriate access to products, services and supports for First Nations children and that the government entity of first contact pays for the support thereof without delay.

C. The First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) filed a Canadian Human Rights Act complaint in 2007 alleging Canada's inequitable provision of First

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CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF

Nations Child and Family Services (FNCFS) and its choice not to implement Jordan's Principle were discriminatory resulting in serious and irremediable harms.

D. The Canadian Human Rights Tribunal (CHRT) substantiated the discrimination claim in 2016 CHRT 2 and ordered Canada to cease its discriminatory conduct immediately.

E. On December 31, 2021, an Agreement in Principle (AIP) was signed as a framework for the negotiations of a Final Settlement Agreement (FSA) on the FNCFS Program, Jordan's Principle, and the reform of Indigenous Services Canada.

F. The CHRT Parties have agreed to split the FSA negotiations with a child and family services agreement to come first and an agreement on Jordan's Principle to follow.

G. Canada, the AFN, Chiefs of Ontario (COO) and Nishnawbe-Aski Nation (NAN) completed a draft Final Settlement Agreement, which was made public on July 11, 2024 in English only and on August 14, 2024 in French, and which was rejected by First Nations-in-Assembly on October 17, 2024.

H. On October 18, 2024, the First Nations-in-Assembly rejected the resolution to adopt the draft FSA and adopted AFN Resolution 60/2024, *Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle* and AFN Resolution 61/2024, *Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services*.

I. Resolution 60/2024 directs the AFN Executive Committee to adopt the following approach to the negotiation of agreements related to the FNCFS Program and Jordan's Principle (the LTR Agreements):

- **i.** Establish a national Children's Chiefs Commission with representation from all regions to oversee and provide strategic direction in relation to the LTR Agreement negotiations, reporting back to the First Nations-in-Assembly;
- **ii.** The Children's Chiefs Commission will establish a negotiation team, with regional representation and a new legal team, that will be responsible for carrying out the negotiations for the LTR Agreements under the direction of, and reporting to, the Children's Chiefs Commission;
- **iii.** The negotiation team's Terms of Reference for the FNCFS Program will be provided to the First Nations-in-Assembly for approval no later than December 2024; and
- **iv.** The Children's Chiefs Commission will report to the First Nations-in-Assembly in December 2024 as to its anticipated timeframes for the completion of negotiations in relation to the FNCFS Program and on the anticipated timeframes for the Terms of Reference for Jordan's Principle.

J. The 2021 Agreement-in-Principle (AIP) includes provisions that conflict with the negotiation priorities and directives established by the First Nations-in-Assembly, specifically:

- **i.** the AIP's reliance on a population-based funding formula for prevention is inconsistent with the First Nations-in-Assembly's call for a needs-based funding structure to ensure equitable resource allocation;
- **ii.** the AIP's proposed conflict resolution mechanism excludes the unconditional participation of the First Nations Child and Family Caring Society, contrary to the First Nations-in-Assembly's directive to include the Caring Society in all negotiations; and

iii. the AIP's stipulation that, upon signing a Final Settlement Agreement, the Parties will seek to terminate the jurisdiction of the CHRT directly opposes the First Nations-in-Assembly's call for the CHRT to retain jurisdiction to oversee and ensure the effective implementation of any agreement.

K. A draft terms of reference for the Children's Chiefs Commission's has been developed, key elements of which include:

i. **Accountability:** the Children's Chiefs Commission will be accountable to First Nations-in-Assembly, First Nations youth, and to First Nations who are not members of the AFN, through processes that it establishes;

ii. **Objectives:** the draft terms of reference set out certain substantive objectives that must be met through the negotiation of the LTR Agreements to fully eliminate Canada's systemic discrimination in FNCFS and Jordan's Principle and ensure it does not reoccur;

iii. **Guiding principles:** the draft terms of reference set out principles that will guide the Children's Chiefs Commission's work;

iv. **Composition:** the Children's Chiefs Commission will be comprised of: (i) one (1) regional representative, an alternate, and their technician(s) from each of the 11 AFN regions; (ii) one (1) regional representative, an alternate, and their technician(s) for every region not represented by AFN; (iii) an Elder/Knowledge Keeper representative; and (iv) and a youth representative;

v. **Inclusion and representation:** the Children's Chiefs Commission will take positive and effective measures to seek out the input and expertise of: (i) First Nations and their rightsholders; (ii) First Nations child and family service providers; (iii) Elders and Youth; (iv) The National Advisory Committee (NAC) and Expert Advisory Committee (EAC); (v) regional and independent experts, including the Jordan's Principle Operations Committee Caucus; and (vi) non-AFN member First Nations;

vi. **Reporting and accountability:** the Children's Chiefs Commission will regularly report to First Nations-in-Assembly, First Nations not represented by the AFN, and the AFN Executive on its progress in relation to the LTR Agreements;

vii. **Meetings:** the Children's Chiefs Commission will meet monthly or more frequently as and when required;

viii. **Decision-making:** the Children's Chiefs Commission will operate by consensus wherever possible in providing strategic direction and oversight of the LTR Agreements negotiations, respecting traditional First Nations decision-making processes;

ix. **Deliverables:** the Children's Chiefs Commission will present key deliverables to the First Nations-in-Assembly and First Nations who are not members of the AFN for their review, consideration, and approval; and

x. **Funding:** the Children's Chiefs Commission will work with Indigenous Services Canada to secure funding for their work including independent legal and technical assistance, ensuring all First Nations have adequate resources to understand and contribute to the LTR Agreements.

L. A draft terms of reference for the negotiation team has also been developed, key elements of which include:

i. **Accountability:** the negotiation team will operate under the direction of the Children's Chiefs Commission and will be accountable to the First Nations-in-Assembly and First Nations not represented by the AFN;

ii. **Objectives:** the draft terms of reference set out certain substantive objectives that must be met through the negotiation of the LTR Agreements to fully eliminate Canada's systemic discrimination in FNCFS and Jordan's Principle and ensure it does not reoccur;

iii. **Deliverables:** the negotiation team will present key deliverables to the Children's Chiefs Commission for its review and consideration;

iv. **Composition and qualifications:** the draft terms of reference set out required qualifications for persons the Children's Chiefs Commission will appoint to the negotiation team;

v. **Inclusion and representation:** the negotiation team will take positive and effective measures to seek out the input and expertise of: (i) First Nations and their rightsholders; (ii) national and regional FNCFS and Jordan's Principle service providers and experts; (iii) Youth in and from Care; (iv) the National Advisory Committee (NAC) and Expert Advisory Committee (EAC); and (v) non-AFN member First Nations;

vi. **Roles and responsibilities:** the draft terms of reference sets out roles and responsibilities for a lead negotiator, assistant negotiator, legal team, technical experts, support team, and secretarial support;

vii. **Decision-making:** the negotiation team will operate by consensus wherever possible;

viii. **Reporting:** the draft terms of reference set out various reporting requirements and mechanisms for the negotiation team to report to the Children's Chiefs Commission;

ix. **Final draft approval process**: the draft terms of reference set out a process the negotiation team must follow to prepare draft LTR Agreements for review by the First Nations-in-Assembly as well as First Nations not represented by AFN to ensure compliance with Resolutions 60/2024 and 61/2024; and

x. **Conflicts of interest**: the draft terms of reference set out a process for addressing conflicts of interest.

M. A number of AFN regions have appointed their representatives to the Children's Chiefs Commission, but the Commission has not yet met with all representatives present to review and discuss the draft terms of reference for the Children's Chiefs Commission and the negotiation team.

N. The AFN Executive has raised certain legal concerns about the interpretation of Resolution 60/2024 that the First Nations-in-Assembly may wish to clarify.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

1. Reject all sections of the Agreement in Principle (AIP) on Long-Term Reform (LTR) of the First Nations Child and Family Services (FNCFS) Program and Jordan's Principle completed on December 31, 2021 that are in conflict with resolutions passed by the First Nations-in-Assembly as described above.

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2. Clarify that, by way Therefore Be It Resolved clause 2 of Resolution 60/2024, the First Nations-in-Assembly called for, and themselves established, the national Children's Chiefs Commission rather than directing the AFN Executive Committee to establish the Commission.

3. Support the Children's Chiefs Commission in establishing a negotiation team, pursuant to Resolution 60/2024, to carry out the negotiations for the LTR Agreements. That negotiation team will work with the following guidelines:

- **a.** **Accountability**: The negotiation team will report to the Children's Chiefs Commission, First Nations-in-Assembly and represent the interests of all First Nations, and First Nations youth, including those not connected to the AFN; and
- **b.** **Mandate**: The negotiation team's goal is to eliminate discrimination by Canada and ensure it never happens again, promote fairness, uphold First Nations' rights to self-determination, and respect their jurisdiction over their own affairs. They will ensure their work aligns with international standards affirmed by the *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Convention on the Rights of the Child*, complies with orders from the Canadian Human Rights Tribunal (CHRT), and maintains a clear, open process that meaningfully involves First Nations communities and First Nations youth.

4. Approve, in principle, the draft terms of reference for the Children's Chiefs Commission and the negotiation team, summarized in the Whereas clauses above, and direct the Children's Chiefs Commission to meet as soon as practicable to: (i) immediately commence its work on the LTR Agreements; and (ii) review the terms of reference and thereafter recommend them to the First Nations-in-Assembly for final approval, including any potential amendments.

5. Direct the Children's Chiefs Commission to report to First Nations-in-Assembly at every Assembly until their work is complete.

Certified copy of a resolution adopted on the 5th day of December, 2024 in Ottawa, ON

Woodhouse.

CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF **89 – 2024**

Assembly of First Nations

50 O'Connor Street, Suite 200
Ottawa, Ontario K1P 6L2
Telephone: (613) 241-6789 Fax: (613) 241-5808
www.afn.ca

Assemblée des Premières Nations

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SPECIAL CHIEFS ASSEMBLY
December 3, 4, 5, 2024, Ottawa, ON **Resolution no. 90/2024**

TITLE:	**Safeguarding First Nations Children and Holding Canada Accountable for its Canadian Human Rights Tribunal Legal Obligations**
SUBJECT:	Child Welfare
MOVED BY:	Chief Vicky Chief, Timiskaming First Nation, QC
SECONDED BY:	Aaron Nicholas, Proxy, Tobique First Nation, NB
DECISION	Carried; 9 opposed; 12 abstentions

WHEREAS:

A. The *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) states:

i. Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

ii. Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them.

iii. Article 37: Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements, and other constructive arrangements.

B. The First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) filed a *Canadian Human Rights Act* complaint in 2007 alleging Canada's inequitable provision of First Nations Child and Family Services (FNCFS) and its choice not to implement Jordan's Principle were discriminatory resulting in serious and irremediable harms.

Certified copy of a resolution adopted on the 5th day of December, 2024 in Ottawa, ON

Woodhouse.

CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF

C. The Canadian Human Rights Tribunal (the Tribunal) substantiated the human rights complaint in 2016 and ordered Canada to cease its discriminatory practices, reform the FNCFS program and immediately implement the full scope of Jordan's Principle.

D. The Tribunal has retained jurisdiction over the human rights complaint and has provided numerous additional orders to guide a dialogic process through which the Parties to the complaint negotiate long-term reform that will end Canada's discrimination and prevent any reoccurrence of the discrimination.

E. Since 2016, the Tribunal has issued 31 procedural and non-compliance orders.

F. On December 12, 2023, the Caring Society filed a non-compliance motion with the Tribunal to address Canada's chronic breaches of existing orders on Jordan's Principle, causing serious harms to First Nations children, youth and families. The matter was heard on September 10-12, 2024.

G. First Nations-in-Assembly voted to reject a draft final settlement agreement (FSA) on long-term reform of the FNCFS program and called for a process to end Canada's discrimination in First Nations child and family services and Jordan's Principle and make sure it does not happen again in AFN Resolutions 60/2024 and 61/2024.

H. On November 21, 2024, the Tribunal issued a letter decision, with reasons to follow, on the Caring Society's non-compliance motion filed in December 2023 regarding the Government of Canada's breaches of existing Tribunal orders on Jordan's Principle.

I. In its November 21, 2024 ruling, the Tribunal affirmed the presumption of substantive equality as a right owed to First Nations children and ordered Canada to, among other measures, immediately address the backlogs in Jordan's Principle cases, set uptriaging for urgent cases, confirm that First Nations who have taken on Jordan's Principle work have the sufficient resources to do so, reimburse approved Jordan's Principle requests in a timely manner, report on its progress in coordinating federal programs and work with the Parties to install an interim and independent national complaints mechanism.

J. The Tribunal also ordered Canada to consult with the Parties on several issues, with the goal of reaching consent order requests, and recognized that it would be beneficial to have all Parties at the table, including First Nations who are not a part of the proceedings.

K. The British Columbia First Nations Leadership Council (FNLC), which was granted interested party status and intervened in the non-compliance motion, can only participate in these consultations with the consent of all Parties. On December 4, 2024, Canada has responded that they do not consent to the FNLC participation in the consultations.

L. The cumulative total of the Tribunal's orders on FNCFS is estimated at $45 billion to fund FNCFS and is the minimum amount to ensure non-discrimination and prevent its recurrence.

M. All First Nations children on and off reserve and living in self-governing First Nations have a right to receive substantively equal and culturally based child and family services and/or Jordan's Principle and live free of Canada's discrimination now and forever.

Certified copy of a resolution adopted on the 5th day of December, 2024 in Ottawa, ON

Woodhouse.

CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF **90 – 2024**

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

1. Support the November 21, 2024, Canadian Human Rights Tribunal (Tribunal) letter decision on Jordan's Principle to address Canada's non-compliance.
2. Confirm that the $47.8 billion is only the floor for negotiations to achieve long-term reform of First Nations Child and Family Services (FNCFS).
3. Direct Canada to obtain a new negotiation mandate within thirty (30) days of this resolution passing to achieve Long Term Reform of FNCFS and Jordan's Principle in full alignment with Assembly of First Nations (AFN) Resolutions 60/2024 and 61/2024.
4. Support regions, parties and the National Children's Chiefs Commission (NCCC) to undertake any legal action should Canada fail to obtain an adequate new negotiation mandate within thirty (30) days, in which case the First Nations-in-Assembly will deem Canada to be dishonorably in violation of the duty of diligent implementation flowing from the honour of the Crown constitutional principle.
5. Call on Canada to provide adequate funding, including reimbursement of legal fees at actual cost, to an entity(ies) determined by the NCCC to support its work.
6. Call on Canada to not seek judicial review of the November 21, 2024 Tribunal letter decision on Canada's non-compliance on Jordan's Principle.
7. Call on Canada to take immediate and effective measures to fully implement all Tribunal orders including the November 21, 2024 Tribunal letter decision on Jordan's Principle.
8. Support the NCCC participation in further legal proceedings, including before the Tribunal, to ensure First Nations children, youth and families receive the full benefit of existing Tribunal orders and to seek additional remedies as required.
9. Fully and publicly support the British Columbia First Nations Leadership Council (FNLC) participation in the consultations ordered in the November 21, 2024 Tribunal letter decision on Canada's non-compliance on Jordan's Principle, as well as any request, from any other regions, to seek interested party status in this Canadian Human Rights Tribunal case.
10. Call on Canada to retract their opposition, and to support the FNLC participation in the consultations ordered by the Tribunal in the November 21, 2024 letter decision on Jordan's Principle.

Certified copy of a resolution adopted on the 5th day of December, 2024 in Ottawa, ON

Woodhouse.

CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF **90 – 2024**

This Exhibit “E” to the Affidavit of Katherine Quintana-James affirmed before me this 13th day of February, 2025



A Commissioner for taking Affidavits etc.

Robin McLeod
LSO #91164M

CLARKE
Child & Family Law
36 Toronto Street, Suite 950, Toronto, Ontario M5V 2E5 Tel: (416) 260-3030 Fax: (647) 689-3286

October 29, 2024 *Sent via e-mail*

Christopher Rupar, Paul Vickery
Sarah-Dawn Norris
Justice Canada
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

Dear Counsel:

Re: Child and Family Services Long Term Reform

As you know, the Chiefs-in-Assembly, as rights holders, passed Resolutions 02 and 04 at the Calgary Special Chiefs' Assembly calling for a re-negotiation of the Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program (the "**Draft FSA**"). In particular, rights holders are directing a new approach and a reset to the negotiations in an open and transparent manner. They are calling on Canada to consult with rights holders directly and to unconditionally include the Caring Society in the negotiations going forward.

The Caring Society welcomes the direction and guidance of rights holders and is looking forward to a new approach to negotiating a long-term solution for child and family services and Jordan's Principle in a manner that is fully consistent with their direction. We presume that the federal government has a plan to move forward, given that an endorsement from First Nations leadership was not certain. The Caring Society has done extensive work and is ready to engage in a new approach to negotiations set out by the rights holders in Resolutions 02 and 04, with the support of the Children's Chiefs Commission. We are also prepared to meet with you in advance to discuss our suggested amendments and positions documents. Given that these are public documents and consistent with rights holders' direction for openness, these discussions would not be covered by settlement privilege.

We also ask that you confirm, given that the Draft FSA was rejected, that the Terms and Conditions of the FNCFS Program and the Terms and Conditions for the Expert Advisory Committee and related materials are not going to be unilaterally imposed by the federal government.

Finally, we want to address some important statements made over the last 10 days in relation to the Draft FSA, including statements made by the federal government. First, it was never a foregone conclusion that the Draft FSA could be implemented by April 1, 2025, contrary to public statements made by Indigenous Services Canada. While the Draft FSA had a start date of April 1, 2025, the agreement required the signatories to bring a motion seeking the approval of the Canadian Human Rights Tribunal (the "**CHRT**") before it could be implemented. No agreement between the parties can bind the CHRT – only the CHRT can approve a long-term reform approach.

Second, there have been multiple media reports incorrectly identifying the representative plaintiffs who attended the AFN as representatives in the CHRT proceeding; those same reports also noted that the representative plaintiffs are disappointed in the outcome. Please ensure that any information shared by ISC and the federal government with the public makes clear that the representative plaintiffs are connected to the Class Action and not the CHRT proceeding; the Class Action settlement and the Draft FSA have no bearing on one another (other than research that suggests that class action compensation processes may result in an increased need for child and family services in communities around the time payments are distributed) and there is no threat to the beneficiaries under the Class Action of losing entitlement to their compensation as a result of the Draft FSA being rejected by rights holders at the AFN.

As a final point, we are heartened by ISC statements identifying First Nations rights holders as key decision makers. The First Nations rights holders voted 96% in favour of Resolutions 02 and 04 and we welcome your confirmation that Canada will reset negotiations pursuant to the approach set out by the Chiefs-in-Assembly. Much like compensation, the Caring Society is optimistic that a negotiated resolution can be reached between all parties.

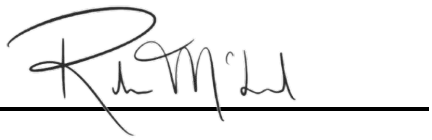
Yours truly,



Sarah Clarke

cc. David Taylor – *Counsel for the First Nations Child and Family Caring Society of Canada*

This Exhibit “F” to the Affidavit of Katherine Quintana-James affirmed before me this 13th day of February, 2025



A Commissioner for taking Affidavits etc.

Robin McLeod
LSO #91164M

CLARKE
Child & Family Law
36 Toronto Street, Suite 950, Toronto, Ontario M5V 2E5 Tel: (416) 260-3030 Fax: (647) 689-3286

December 9, 2024

Sent via e-mail

Christopher Rupar, Paul Vickery
Sarah-Dawn Norris, Meg Jones
Justice Canada
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

Stuart Wuttke, Adam Williamson
Lacey Kassis
Assembly of First Nations
50 O'Connor Street, Suite 200
Ottawa, ON K1P 6L2

Maggie Wente, Jessie Sterling
Ashley Ash
Olthuis Kleer Townshend LLP
250 University Avenue, 8th Floor
Toronto, ON M5H 3E5

Julian Falconer, Meaghan Daniels
Shelby Percival
Falconers LLP
10 Alcorn Avenue, Suite 204
Toronto, ON M4V 3A9

Dear Counsel:

Re: Reform of Child and Family Services and Jordan's Principle

First Nations-in-Assembly have passed several resolutions that set out a new path to achieve long term reform of Jordan's Principle and First Nations child and family services. The Caring Society recognizes this direction and reiterates its commitment to do its part to achieve a negotiated settlement with provisions to ensure full and proper implementation thereof. Indeed, the Caring Society has repeatedly forwarded evidence informed proposals for reform including amendments to the previous draft FSA on First Nations child and family services that has now been rejected by the First Nations-in-Assembly.

In keeping with the various resolutions passed at the AFN Special Chiefs Assembly in Calgary (October 16-18, 2024) and Ottawa (December 3-5, 2024), the Caring Society welcomes the calls from leadership to reject portions of the Agreement in Principle that conflict with resolutions passed by the First Nations-in-Assembly and the establishment of a new negotiation approach, led by the National Children's Chiefs Committee. We also echo Emergency Resolution #02 passed on December 5, 2024, calling on Canada to obtain a new negotiation mandate within thirty (30) days to achieve long-term reform. The Caring Society is of the view much progress can be made on items within the scope of Canada's existing mandate informing the "Draft FSA" pending approval of a new mandate.

We now have an opportunity to develop and implement long term solutions that will fundamentally improve outcomes for First Nations children, ensuring that we establish a durable, equitable and sustainable structure that ends Canada's discrimination, meets the needs of First Nations children, youth and families, and redresses the structural drivers of child welfare.

The Caring Society is eager to return to the negotiation table in line with the resolutions passed by the First Nations-in-Assembly, namely Resolutions 60/2024, 61/2024, 38/2024, 41/2024 and Emergency Resolution 02/2024. To this end, (and mindful of the work that must be accomplished in relation to Jordan's Principle) we suggest a preliminary virtual meeting of the parties before the holidays to discuss next steps. We suggest a virtual meeting on December 16 or December 23, 2024, at a time convenient for all of you.

Yours truly,



Sarah Clarke

cc. David Taylor – *Counsel for the First Nations Child and Family Caring Society of Canada*

Crystal Reeves / Dawn Johnson – *Counsel for the First Nations Leadership Council*

This Exhibit “G” to the Affidavit of Katherine Quintana-James affirmed before me this 13th day of February, 2025



A Commissioner for taking Affidavits etc.

Robin McLeod
LSO #91164M

Department of Justice Canada | Ministère de la Justice Canada

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Section du contentieux civil
Secteur national du contentieux
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Telephone/Téléphone:
Fax /Télécopieur:
Email/Courriel: Paul.Vickery@justice.gc.ca

Confidential and Settlement Privileged

Via Email

January 6, 2025

Sarah Clarke
Clarke Child & Family Law
36 Toronto Street, Suite 950
Toronto, ON M5V 2E5

Dear Sarah Clarke,

Re: Long-Term Reform of the First Nations Child and Family Services Program

I would like to inform you of Canada's next steps with respect to the long-term reform of the First Nations Child and Family Services Program. The Chiefs of Ontario and Nishnawbe Aski Nation, whose First Nations approved the Final Agreement at their respective assemblies, have asked Canada to negotiate an agreement specific to Ontario based on the Final Agreement's terms. Canada, the Chiefs of Ontario and Nishnawbe Aski Nation will begin those negotiations shortly.

At this time, Canada's mandate does not permit further negotiations on reform of the First Nations Child and Family Services Program on a national basis. Canada is not currently in a position to engage in any negotiations beyond those with COO and NAN.

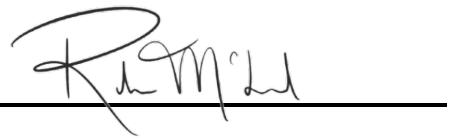
Sincerely,

Paul Vickery
Legal Agent and Counsel

cc: Maggie Wente, Jessie Sterling and Ashley Ash – *counsel for the Chiefs of Ontario*
Julian Falconer, Meaghan Daniels and Shelby Percival – *counsel for Nishnawbe Aski Nation*

Canada

This Exhibit “H” to the Affidavit of
Katherine Quintana-James affirmed
before me this 13th day of February,
2025



A Commissioner for taking Affidavits etc.

Robin McLeod
LSO #91164M

CLARKE
Child & Family Law
36 Toronto Street, Suite 950, Toronto, Ontario M5V 2E5 Tel: (416) 260-3030 Fax: (647) 689-3286

January 8, 2025

Sent via e-mail

Paul Vickery
Justice Canada
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

Dear Mr. Vickery:

Re: Long-Term Reform of the First Nations Child and Family Services Program

We acknowledge receipt of your January 7, 2025, letter, in which you advise that Canada will negotiate an agreement on long-term reform of the FNCFS Program with the Chiefs of Ontario and Nishnawbe Aski Nation and that Canada does not currently have a mandate to negotiate a long term reform agreement on a national basis.

Canada's position to announce a resumption of negotiations to remedy discrimination against First Nations children and families in only one region to the exclusion of the rest of the country is contrary to the Tribunal's 2016 Order that Canada "cease its discriminatory practices and reform the FNCFS Program and *1965 Agreement* to reflect the findings in this decision" (2016 CHRT 2 at para 481). As has been clear from the Panel's multiple rulings over the last nine years, long-term reform is a key component of achieving this order.

Such an approach is also in breach of the Tribunal's 2018 Consultation Order requiring Canada to consult with the co-complainants regarding the Merits Decision and its other rulings in a manner consistent with the Honour of the Crown (2018 CHRT 4 at para. 400). The 2018 Consultation Order gave rise to March 2, 2018, Consultation Protocol, which requires all parties to work jointly to develop strategies to address and implement long-term reforms to the FNCFS Program (paragraph 21). The Consultation Protocol remains in place, as recently pointed out by the Panel in its December 18, 2024 directions.

Importantly, Canada's decision to restrict its negotiations to the one region where a majority, but not all First Nations, supported the draft Final Settlement Agreement ("**FSA**") on First Nations Child and Family Services raises serious concerns related to the Honour of the Crown and is inconsistent with the direction of First Nations Rights Holders set out in First Nations in Assembly Resolution 90/2024, calling on Canada to obtain a new and adequate negotiation mandate within thirty days of the resolution passing. Overall, Canada's conduct to date raises significant concerns about retaliatory conduct pursuant to the *Canadian Human Rights Act*.

A refusal to make progress on reform of the FNCFS Program for the tens of thousands of First Nations children living outside of Ontario is beyond disappointing and stands in stark contrast to the good faith efforts exemplified by First Nations Rights Holders in their repeated efforts to

remedy the shortcomings of the previous draft FSA, exemplified by their amendments set out in Resolutions 60/2024 and 61/2024 as well as the resolutions in December of 2024.

We also note the significant good faith efforts by the Caring Society to join the negotiations in a manner consistent with Resolution 40/2022 and the Caring Society's proposed amendments to the draft FSA shared with Canada in the summer and fall of 2024.

In the wake of the Tribunal's uncontested decision that Canada has discriminated against First Nations children and families across the country, Canada cannot, as the wrongdoer, determine which aspects of the discrimination it will redress, or which First Nations children will be included in long term reform.

The Caring Society is calling on Canada to immediately obtain a new mandate and return to the negotiation table, in keeping with the Resolutions 60/2024, 61/2024, 88/2024 and 90/2024. In the event that Canada does not provide written confirmation of a negotiation mandate on long-term reform of First Nations Child and Family Services and Jordan's Principle consistent with the direction of First Nations in the Assembly by 4 p.m. Eastern Time on January 10, 2024, the Caring Society will seek direction from the Tribunal.

Consistent with its commitment to transparency and accountability, the Caring Society does not assert any confidentiality or settlement privilege over this letter and does not agree that your January 7, 2025 letter is either confidential or settlement privileged, as that letter contains no offers and there have been no negotiations ongoing between Canada and the Caring Society for quite some time. As such, we reserve the right to rely on this exchange of correspondence should proceedings before the Tribunal be necessary.

Please provide a response to this letter by Friday, January 10, 2025.

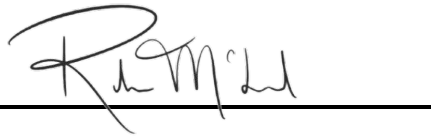
Yours truly,



Sarah Clarke

cc. David Taylor – Counsel for the First Nations Child and Family Caring Society

This Exhibit “I” to the Affidavit of
Katherine Quintana-James affirmed
before me this 13th day of February,
2025



A Commissioner for taking Affidavits etc.

Robin McLeod
LSO #91164M

Department of Justice Canada | Ministère de la Justice Canada

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Telephone/Téléphone:
Fax /Télécopieur:
Email/Courriel: Paul.Vickery@justice.gc.ca

Via Email

January 10, 2025

Sarah Clarke
Clarke Child & Family Law
36 Toronto Street, Suite 950
Toronto, Ontario M5C 2C5

Dear Ms. Clarke,

Re: Reform of Child and Family Services and Jordan's Principle

Thank you for your letter dated January 8, 2025, which we received via email at 5:23 pm on January 8, seeking our response by January 10. Thank you as well for your subsequent email correspondence dated January 9, 2025, received at 10:36 am on January 9 (all times Eastern).

We are not in a position to provide a substantive response to the inquiries and assertions in your January 8 letter prior to the unreasonably brief deadline of January 10, 2025. We will, however, respond as quickly as possible.

In the meantime, and to our knowledge, no "draft Final Settlement Agreement under discussion between Canada, COO and NAN" has been shared with the media. Any settlement discussions that Canada may undertake with COO and NAN are both confidential and subject to settlement privilege. Accordingly, we are unable to share further details with you.

Sincerely,

For: Paul Vickery
Legal Agent and Counsel

cc. David Taylor, Counsel for the First Nations Child and Family Caring Society

Canada

Department of Justice Canada | Ministère de la Justice Canada

Civil Litigation Section
National Litigation Sector
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

Section du contentieux civil
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Telephone/Téléphone:
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Email/Courriel: Paul.Vickery@justice.gc.ca

Via Email

January 14, 2025

Sarah Clarke
Clarke Child & Family Law
36 Toronto Street, Suite 950
Toronto, Ontario M5C 2C5

Dear Ms. Clarke,

Re: Long-Term Reform of the First Nations Child and Family Services Program

This letter is in response to your letter of January 8, 2025 in which the Caring Society calls upon Canada to immediately obtain a new mandate and return to the negotiation table on long-term reform of the First Nations Child and Family Services (FNCFS) Program and Jordan's Principle consistent with the direction of the First Nations-in-Assembly by January 10, 2024.

Canada has made every effort to work with the parties to the Tribunal complaint to reform the FNCFS Program, informed by experts, and to reach a fair, equitable and comprehensive resolution to the complaint outside of litigation. Since 2016, Canada has worked with the parties to develop and implement many new funding approaches in support of FNCFS Program reform to ensure First Nations and FNCFS service providers have rapid and streamlined access to unprecedented levels of funding which have increased the Program's overall budget fivefold.

The Agreement-in-Principle on Long-Term Reform of the FNCFS Program and Jordan's Principle (the AIP) was a key milestone in the work toward improving the lives of First Nations children and families across the country. Collectively agreed upon by the Assembly of First Nations (AFN), the Caring Society, Chiefs of Ontario (COO), and Nishnawbe Aski Nation (NAN), it established the foundation for long-term reform of the FNCFS Program.

In signing the AIP, all parties agreed that the reforms contemplated within it would be sufficient to end the discrimination and consequently, the Tribunal's jurisdiction over the FNCFS Program. The goal of the final agreement was to establish more detailed parameters of the reformed FNCFS Program based on that foundation.

From the outset of negotiations Canada was determined to achieve a negotiated resolution. This determination is evidenced by the ultimate increase of the AIP's five year $19.8 billion commitment for a reformed FNCFS Program to a ten year $47.8 billion commitment in the draft Final Agreement on Long-Term Reform of the FNCFS Program (Final Agreement).

Even before a final agreement had been concluded, Canada worked with the parties to roll out millions in funding to communities as soon as possible based on the commitments set out in the AIP. For example, Canada worked with the parties on the consent motion that resulted in 2022 CHRT 8. This order, made on consent of all parties, ensured that First Nations children and families benefited as soon as possible from enhancements contemplated under the AIP's new funding model.

Further, in an effort to continue negotiations with all parties following the AFN and Caring Society's "Path Forward" proposal for continued negotiations, Canada agreed with the AFN and Caring Society's request to bifurcate negotiations so as to focus first on long-term FNCFS Program reforms, prior to negotiating any long-term reform of Jordan's Principle. For that reason, the Final Agreement did not address Jordan's Principle reforms.

Despite Canada's efforts, in January 2024 the Caring Society chose to remove itself from the long-term reform negotiations under the AIP process. Canada and the remaining parties repeatedly invited the Caring Society to continue to participate in the AIP's process, which the Caring Society refused. Negotiations nevertheless continued and the draft Final Agreement on Long-Term Reform of the FNCFS Program was reached with the AFN, COO, and NAN, based on the AIP's vision for reform.

While choosing not to participate in the negotiations, the Caring Society nonetheless published a number of critiques of the negotiated Final Agreement. The Caring Society's latest vision for the FNCFS Program, much of which was subsequently adopted by First Nations-in-Assembly at the AFN's Special Chief's Assemblies in October and December 2024, goes well beyond the framework for reform endorsed by all parties in the AIP.

The October and December 2024 AFN resolutions would expand the FNCFS Program to off-reserve funding and maintain the Tribunal's jurisdiction over the Program indefinitely. Canada is not prepared to negotiate in line with resolutions that exceed both the AIP's framework and the complaint on which the Tribunal made its findings of discrimination.

It is disappointing that the First Nations-in-Assembly rejected the Final Agreement, which would have legally bound Canada to provide $47.8 billion in stable and predictable funding over 10 years for a fully reformed Program. The Final Agreement would have resulted in a Program that gives First Nations the tools, the funding and the predictability to make child and family services work better for their communities. Maintaining funding at actuals and Tribunal jurisdiction over the FNCFS Program are incompatible with the objective of developing long-term solutions for comprehensive reform.

Canada is negotiating an agreement with COO and NAN for First Nations in Ontario because they have asked for an agreement for FNCFS Program reforms specific to Ontario that reflects what was proposed in the Final Agreement.

Canada disagrees with your assertion that, in negotiating a separate agreement with COO and NAN for FNCFS Program reform in Ontario, Canada is acting contrary to the Tribunal's 2016 order to reform the FNCFS Program. In fact, the FNCFS Program has undergone extensive and incremental reform since the Tribunal's 2016 ruling on the merits, developed and implemented in consultation with the parties to the complaint. The negotiation of an agreement specific to Ontario First Nations responds to the desires of those First Nations to adopt the negotiated terms of the Final Agreement following the refusal of others to accept that Agreement.

Canada also disagrees with any suggestion of retaliatory conduct under the Canadian Human Rights Act. Canada continues its efforts to work collaboratively with the parties, for example in the context of the current Jordan's Principle mediation.

Sincerely,

Paul Vickery
Legal Agent and Counsel

cc. David Taylor, Counsel for the First Nations Child and Family Caring Society

This is **Exhibit E** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, Ontario
Date: 2025.10.22 10:20:02-04'00'
Foxit PDF Editor Version: 13.1.6

A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

Tribunal File: T1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

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

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ATTORNEY GENERAL OF CANADA (representing the Minister of Indigenous and Northern Affairs Canada)

Respondent

- and -

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA and NISHNAWBE ASKI NATION

Interested Parties

AFFIDAVIT OF AMBER POTTS
(Affirmed March 3, 2025)

I, AMBER POTTS, of the City of Ottawa, in the Province of Ontario, AFFIRM:

1. I am the Vice-President of Strategic Policy Integration for the Assembly of First Nations (AFN), a co-complainant in this matter and, in this capacity, I have personal knowledge of the matters to which I hereinafter affirm, unless the matters are stated to be on my information and belief, in which case, I verily believe them to be true.

2. I have been working at the AFN since 2017 and I've held several senior management positions, including acting as the Chief Executive Officer, the Senior Director of the

Social Branch, as well as the Director of Policy and Research Coordination. Before joining the AFN, I spent more than twenty (20) years as a federal public servant, where I worked for Indigenous and Northern Affairs Canada and Human Resources and Skills Development Canada.

3. The AFN is a not-for-profit corporation, incorporated pursuant to the *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23. First and foremost, it is a national advocacy organization for First Nations across Canada.

4. The AFN advances the aspirations of First Nations in Canada, which includes more than 1,048,400 people living in 634 First Nations communities and in cities and towns across the country. The AFN is mandated to protect the rights and interests of First Nations peoples in Canada, as set out in its Charter.

5. The AFN functions according to a democratic process. At least twice a year, the Chiefs of all member First Nations across Canada gather to examine and vote on issues of interest to their constituents. Together, these representatives are referred to as the "First Nations-in-Assembly." They provide direction to the AFN and define its mandate by way of formal Resolutions.

6. The AFN Executive Committee, which also functions as the Board of Directors for the AFN Secretariat, is comprised of the AFN's Regional Chiefs and the National Chief and is responsible for implementing the directions of the First Nations-in-Assembly, as well as tending to the regular operations of the AFN further to their Charter derived responsibilities and authorities.

7. The AFN has been actively involved in the child welfare space and the proceedings before the Tribunal for a significant period time, culminating in the Tribunal's landmark decisions on the Merits and Compensation (2016 CHRT 2 and 2019 CHRT 39). The following outlines the AFN's participation in advancing long-term reform efforts of the First Nations Child and Family Services ("FNCFS") Program.

The Consultation Protocol

8. Further to the directions of the Panel in 2018 CHRT 4, the AFN, along with the First Nations Child and Family Caring Society of Canada ("Caring Society"), Canada, the Chiefs of Ontario ("COO"), the Nishnawbe Aski Nation ("NAN") and the Canadian Human Rights Commission (the "Commission") engaged on the development of a Consultation Protocol, which was completed by these parties on March 2, 2018.

9. The Consultation Protocol established funding commitments to facilitate the parties efforts, and the creation of a Consultation Committee and its role in overseeing the development and implementation of immediate relief measures, noting that said role would be extended to mid and long term relief measures unless otherwise agreed by the parties. The Consultation Protocol further noted that as the Tribunal had yet to rule on mid and long term relief issues, a final Protocol on same may be premature, however provided room for the Consultation Protocol to be amended by the parties for the purposes of its application to mid and long term relief.

Mediation (1)

10. The Consultation Committee met regularly, until in and around December of 2020, at which point in time the AFN, Caring Society and Canada entered into mediation before the Honourable Justice Leonard Mandamin following the Canadian Human Rights Tribunal decision in 2019 CHRT 39 ("Compensation Decision") which was released in September of 2019. The scope of the mediation, the discussions of which were and remain privileged, sought to resolve both the issue of compensation, as well as long-term reform of the FNCFS Program.

11. Intensive mediation took place regularly before Justice Mandamin, with the AFN participating in same with the Caring Society and Canada at the long-term reform table from December 2020 until in and around September of 2021. At said time, the AFN Executive Committee was asked to consider potential terms of resolution of relating to compensation and rejected same. The mediation before Justice Mandamin was paused in the interim, with the Consultation Committee engaging in its last recorded meeting in or around October of 2021.

12. During this period of time, the AFN and other parties to the proceedings before the CHRT also continued to engage on supporting efforts derived from the Panel's capital order (2021 CHRT 41).

13. Parallel to these processes, Canada had proceeded with its judicial review of the Tribunal's Compensation Decision, the hearing of which proceeded in June of 2021. The Federal Court released its decision on the matter in September of 2021, upholding the Tribunal's Compensation Decision. Canada, while filing for judicial review, highlighted its intention publicly to seek a resolution of Compensation and Long-Term reform by way of Agreement by December of 2021.

Mediation (2) and the Agreement-in-Principle

14. Further to Canada's commitments, the AFN, Caring Society and Canada, joined by COO and NAN, thereafter engaged into a second round of intensive mediation on the issue of long-term reform, which proceed in parallel to discussions regarding compensation. These sessions were led by the Honourable Justice Murray Sinclar, another eminent First Nations person, and the parties engaged in an intensive mediation schedule with an eye to reaching some level of agreement on the issue of both compensation and long-term reform by the December deadline.

15. Ultimately, the Agreement-in-Principle on long-term reform of the FNCFS Program ("AIP") was endorsed by each of the parties to the mediation on December 31, 2021, which reflected a $19.807 billion dollar commitment by the Government of Canada and the broad strokes which would inform ongoing negotiations between the parties to the AIP in developing a Final Settlement Agreement. While the full AIP was not made public, an Executive Summary was, outlining the Parties intention that it would act as a framework for the long-term reform of the FNCFS Program, i.e. the basis for a comprehensive settlement and necessary actions. The AIP also provided for capacity for the parties' participation, including funding by Canada for the necessary legal expertise and other associated participation costs. The AIP also contemplated a Final Settlement Agreement being finalized by December 31, 2022.

Post-AIP Discussions and Engagement

16. Following the execution of the AIP, the AFN, Caring Society, Canada, COO and NAN (the "AIP Parties") launched into regular settlement privileged discussions and negotiations relating to terms associated with a Draft Final Settlement Agreement. Said discussions occurred over the full 2022 calendar year. As part of these efforts, and further to the commitments under the AIP, the AIP Parties endorsed a joint-motion before the Tribunal culminating in the consent order as provided for within 2022 CHRT 8. During 2022, the AFN also proceeded in both regional and national level engagements in relation to the ongoing work based on the AIP.

17. With respect to regional engagement, the AFN provided each of the AFN regions with funding to conduct regional engagement on long-term reform of the FNCFS Program and Jordan's Principle in 2022. These engagements and reports informed the AFN's positions on long-term reform. The AFN participated in several of the regional engagement sessions during 2022, both virtually and in-person, to share information about long-term reform, hear input from leadership and technicians and identify next steps. To support engagements, the AFN developed a Workbook providing an overview of long-term reform and providing questions for consideration. Several regions, technicians and working groups provided feedback utilizing the Workbook to inform the AFN's positions on long-term reform.

18. With respect to National Engagement, on October 18-20, 2022, the AFN hosted the "Virtual National Townhall on First Nations Child and Family Services and Jordan's Principle Long-Term Reform". The Townhall provided First Nations leadership and their technicians with information about long-term reform of the FNCFS Program and Jordan's Principle, including goals, priorities and next steps, and facilitated feedback from First Nations to inform the AFN's ongoing efforts in relation to the development of a Final Settlement Agreement. Speakers at the Townhall included representatives of the AFN, Caring Society, Indigenous Services Canada, the Institute for Fiscal Studies and Democracy (IFSD), and Youth and Elders.

19. In July 2022, at the AFN Annual General Assembly, the AFN held plenary and dialogue sessions on long-term reform, and held further sessions at the December 2022 Special Chiefs Assembly. These plenary sessions provided opportunities for

the AFN to share information on the state of negotiations and related research, as well as for First Nations leadership and their technicians to provide feedback on the path forward.

20. At the December 2022 SCA, the Chiefs in Assembly provided further direction by way of mandate to the AFN as it pertained to long-term reform of the FNCFS Program and Jordan's Principle by way of Resolution 40/2022 *To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle*, which reflected on the AIP being signed as "a framework for the negotiation of a Final Settlement Agreement on First Nations child and family services, Jordan's Principle, and the reform of Indigenous Services Canada. While providing direction on some long-term reform measures, it also highlighted a desire the creation of evidence and policy-based options for the long-term reform of Jordan's Principle, and returning to the First Nations-in-Assembly for review and approval. It further called on Canada to extend the timeframe for the signing of a Final Settlement Agreement on long-term reform. A copy of Resolution 40/2022 is attached hereto as **Exhibit "A".**

21. As the AIP Parties continued to work towards a Final Settlement Agreement on long-term reform, Canada secured a mandate extending the negotiations to March 31, 2023.

Bifurcation and a new negotiation mandate

22. While the negotiations continued to proceed into the beginning of 2023, the Caring Society and the AFN ultimately advised the parties in March of 2023 of a proposed redirection of the long-term reform negotiations, proposing the bifurcation of long-term reform of Jordan's Principle and of the FNCFS Program. The Joint-Proposal reflected on the mandates of securing evidence informed solutions for Jordan's Principle, as noted in Resolution 40/2022. As the evidence behind reform relating to the FNCFS Program was more advanced than Jordan's Principle, it was proposed that efforts should be concentrated on securing a Final Settlement Agreement on

FNCFS, after which the parties could focus on Jordan's Principle once additional evidence became available further to the ongoing work of the IFSD.

23. The AIP Parties were advised that Canada would have to seek out a new mandate on long-term reform as a result of the Joint-Proposal on bifurcation. While such a mandate was sought, the AIP Parties continued to meet regularly in an effort to push matters forward that were not necessarily subject to the obtainment of a revised mandate by Canada.

24. The AIP Parties continued to meet regularly until October of 2023, at which point Canada advised that it had secured a mandate to move ahead on the bifurcation of Jordan's Principle, and seek a Final Settlement Agreement on long-term reform of the FNCFS Program by March 31, 2024, and Jordan's Principle by December 31, 2024.

25. While the AIP Parties contemplated efforts at moving forward with negotiations on a Final Settlement Agreement, it became apparent that issues were arising with respect to a backlog of cases in Jordan's Principle. The Caring Society announced in December of 2023 that it would removing itself from the AIP process in order to advance its non-compliance motion on Jordan's Principle, which was filed in or around December 12, 2023.

Intensive FSA Negotiations

26. While the AIP Parties had always made efforts to meet regularly to advance the work associated with a Final Settlement Agreement, it became apparent that an extremely intensive schedule of negotiations would be necessary to achieve a Final Settlement Agreement and expedite resolution in the best interest of First Nations children and families, with consideration also being given for the window of Canada's revised mandate and for the AFN's governance obligations to seek approval from the First Nations-in-Assembly.

27. Following the Caring Society's withdrawal from negotiations under the AIP process, the remaining AIP Parties (AFN, Canada, COO and NAN) prepared an exhaustive

schedule for negotiations, culminating in full week-long sessions at times between January and April 2024, and additional discussions between May and July of 2024.

28. The Caring Society advised the remaining AIP Parties that it remained available for discussion on the Final Settlement Agreement at various times during these intensive negotiations, but affirmed that it would not return under the rubric of the AIP, which was not agreeable to the remaining AIP Parties who had been operating under that settlement privileged space for over 2 years. The door was left open for the Caring Society's return under the terms of the AIP, and it was provided with copies of the draft agendas associated with the ongoing negotiations between the remaining AIP Parties on a weekly basis, with a standing invitation to attend to provide perspectives. Further, a copy of the Draft Final Settlement Agreement, which was renamed the Draft Final Agreement, was provided to the Caring Society for consideration and comment in or around April 12, 2024.

29. I have been advised by AFN counsel, and do verily believe, that the Caring Society expressed its views to Canada during this period of an ongoing obligation for Canada to engage the Caring Society in ongoing discussions further to the Consultation Protocol and the CHRT's consultation orders in 2018 CHRT 4. The Caring Society also sought to reconvene the Consultation Committee, and a response was provided by COO on behalf of the remaining AIP Parties identifying that the First Nations Parties (COO, NAN and the AFN) and Canada were of the view that the Consultation Process identified in the Consultation Protocol had evolved and been superseded by the AIP's negotiation process (See Exhibit "C" of the Affidavit of Katherine Quintana-James affirmed the13th day of February, 2025).

30. The Draft Final Agreement was finalized and announced on July 11, 2024, with First Nations being notified that engagements would be taking place during the course of the summer of 2024. The Draft Final Agreement remained subject to approval by the First Nations-in-Assembly further to the direction from the First Nations-in-Assembly in Resolution 86-2023 *To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle*, which called for regional engagement on the Draft Final Agreement and its approval by the First Nations-in-

Assembly. The Draft Final Agreement was scheduled to be advanced at a Special Chiefs Assembly ("SCA") convened for these purposes on or around September 17-18, 2024. A copy of Resolution 86-2023 is attached hereto as **Exhibit "B".**

Intensive Engagement

31. The AFN thereafter proceeded to participate in an extensive series of engagements on the Draft Final Agreement with First Nations across the country to explain scope of the agreement, as well as seek feedback which could inform potential amendments. These engagements occurred at the national, regional and individual First Nations level, between July 28 to October 8, 2024, and were conducted both virtually and in-person and frequently were accompanied by representatives of Indigenous Services Canada. A copy of Appendix A of the AFN's Regional Engagement Summary on First Nations Child and Family Services Long-Term Reform dated September 17, 2024, reflecting the scope of these engagements prior to this date and a summary of regional results is attached hereto as **Exhibit "C".**

32. As a result of the feedback heard during the course of the engagement with First Nations on the Draft Final Agreement, the Special Chiefs Assembly was pushed back to allow the AFN to engage in further discussions with First Nations on the terms of the Draft Final Agreement. The SCA was rescheduled to October 16-18, 2024, and the September date originally scheduled for the SCA was repurposed and proceeded on September 18, 2024, as a national level virtual engagement session, led by presentations from the AFN, COO, NAN and ISC. The Draft Agenda for this virtual information and dialogue session is attached hereto as **Exhibit "D".**

33. The First Nations-in-Assembly were presented with the Draft Final Agreement on October 17, 2024. While the AFN was hopeful that its lengthy efforts in advancing a Draft Final Agreement and engaging on same would culminate in the endorsement of the Draft Final Agreement, and its advancement to the Panel for consideration comparably to the process observed in the context of the Compensation Final Settlement Agreement, the First Nations-in-Assembly ultimately rejected same.

34. The Chiefs noted several concerns, including the settlement privileged nature of the negotiations, an unfortunate reality of the litigation process, as well as their desire for the negotiation mandate to be expanded beyond the terms of the Agreement-in-Principle and the Draft Final Agreement. This revised mandate included issues such as ensuring funding was made available for children residing off-reserve, which were not covered by the FNCFS Program nor the proposed reforms to same, the indefinite continuation of the actuals process for a variety of the funding streams beyond the recommendations of the Institute for Fiscal Studies and Democracy, as well as the retention of oversight of the CHRT with respect to the implementation of any Final Agreement.

35. The Chiefs ultimately called for the formation of a National Children's Chief Committee ("NCCC") to advance these new mandates, as outlined in Resolutions 60-2024 *Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle* and resolution 61-2024 *Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services.* A copy of these resolutions are attached hereto as **Exhibit "E"**.

36. In accordance with the direction of the Chiefs, the National Chief wrote to the Honourable Patty Hajdu, Minister of Indigenous Services, confirming the rejection of the Draft Final Agreement and reflecting on the Chiefs new mandates. The letter called upon Canada to respect the new governance structure relating to reforms, and to obtain a new negotiation mandate aligned with the resolutions, in addition to further resources to advance this work. A copy of the National Chiefs letter to the Minister dated October 25, 2024, is attached hereto as **Exhibit "F".**

37. The AFN thereafter held a Special Chiefs Assembly on December 3-5, wherein the First Nations-in-Assembly adopted several additional resolutions affirming their rejection of the Draft Final Agreement, rejecting all elements of the AIP not in alignment with their resolutions, and calling on Canada to confirm its new mandate within thirty (30) days consistent with the directions of the Chiefs. Copies of these relevant resolutions can be found within the Affidavit of Katherine Quintana-James affirmed the 14th day of January, 2025, at Exhibit D therein.

38. On January 6, 2025, the AFN received correspondence from Paul Vickery, counsel for Canada, that Canada did not have a mandate to continue to pursue a national level agreement on the long-term reform of the FNCFS Program effectively derailing any efforts by the AFN or the new independent NCCC at advancing the expanded mandates of the First Nations-in-Assembly on long-term reform.

39. On January 21, 2025, the AFN Executive Committee passed a motion detailing its commitment to engaging with the NCCC on how the AFN and the NCCC would work collaboratively on the implementation of the First Nations-in-Assemblies resolutions. A draft of same was initially provided by the Caring Society for proposal to the Regional Chiefs. A copy of the correspondence and Final Motion are attached hereto as **Exhibit "G".**

40. The AFN has invited and considered the recommendations of the NCCC. The NCCC, while not a party in these proceedings, did provide a letter of support to the Caring Society outlining its positions on the matter, which we attach hereto as **Exhibit "H".**

41. The AFN has, and continues, to call on Canada to return to the negotiation table further to the will of the Chiefs. Examples of such calls include AFN press releases dated December 1, 2024, December 13, 2025, January 7, 2025, and February 26, 2025, attached hereto as **Exhibit "I".**

42. Despite these calls, Canada has yet to provide notice of a revised mandate or a willingness to engage in negotiations relating to long-term reform of the FNCFS Program, further to the mandates of the First Nations-in-Assembly.

43. I make this affidavit in support of the AFN's forthcoming written submissions on the within motion and for no other purpose.

AFFIRMED BEFORE ME
In the City of Ottawa, in the Province of
Ontario, this 3rd day of March, 2025.

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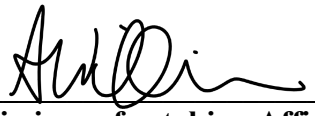


Notary Public, Commissioner of Oaths.



Amber Potts

This is Exhibit "A" referred to in the Affidavit of Amber Potts, Affirmed before me, on this 3rd day of March, 2025



A commissioner for taking Affidavits

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SPECIAL CHIEFS ASSEMBLY
December 6,7,8, 2022, Ottawa, ON

Resolution no. 40/2022

TITLE:	**To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle**
SUBJECT:	Child and Family Services
MOVED BY:	Kukpi7 Judy Wilson, Neskonlith Indian Band, BC
SECONDED BY:	Kevin Hart, Proxy, Little Grand Rapids First Nation, MB
DECISION	Carried by consensus

WHEREAS:

A. The First Nations Child and Family Caring Society ('Caring Society') and the Assembly of First Nations (AFN) filed a discrimination claim in 2007 alleging Canada's inequitable funding of First Nations child and family services and its choice not to implement Jordan's Principle were discriminatory, which resulted in harms including the removal of children from their families and communities and those delayed and denied in receiving services.

B. The Canadian Human Rights Tribunal (CHRT) substantiated the discrimination claim in 2016 CHRT 2 and ordered Canada to immediately cease its discriminatory conduct towards First Nations children and families.

C. The CHRT ruling establishes that First Nations children and families are legally entitled to receive prevention services and the least disruptive measures.

D. Between 2016 and 2021, the First Nation parties were required to hold Canada accountable and return to the Tribunal on multiple occasions, resulting in 21 non-compliance orders.

E. In the wake of First Nations and public pressure related to the children in unmarked graves near Residential

Certified copy of a resolution adopted on the 8th day of December, 2022 in Ottawa, Ontario

ROSEANNE ARCHIBALD, NATIONAL CHIEF

Head Office / Siège Social
46 Irene Roundpoint Lane, Akwesasne, ON K6H 0G5 Tel. / Tél.: 613-241-6789 Fax / Téléc.: 613-932-0415

Schools and the Federal Court's dismissal of two of Canada's appeals, the federal government finally admitted that the discrimination was ongoing and asked the parties to negotiate a resolution.

F. In fall 2021, the complainants (the Caring Society and AFN), the interested parties (Chiefs of Ontario & Nishnawbe Aski Nation) and Canada entered into negotiations to resolve outstanding discrimination pursuant to the CHRT orders.

G. On December 31, 2021, an Agreement in Principle (AIP) was signed as a framework for the negotiation of a Final Settlement Agreement on First Nations child and family services, Jordan's Principle, and the reform of Indigenous Services Canada.

H. The CHRT issued an order (2022 CHRT 8) by consent of the parties providing funding for prevention, post-majority services, and other measures. This funding, combined with an order on capital (2021 CHRT 41) and other previous CHRT orders, amounts to over 75% of the $19.807 billion over 5 years announced as part of the AIP.

I. Community-driven research to inform long-term funding solutions for child and family services for First Nations with and without agencies is not due to be completed until the Spring of 2023, and dates for a final funding approach on Jordan's Principle are still being defined.

J. The Final Settlement Agreement will have a direct impact of unprecedented magnitude on the lives of First Nations children, their families, and their communities.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

1. Direct Canada to ensure that funding and other mechanisms related to long-term reform measures regarding child and family services enable First Nation Child and Family Services (FNCFS) Agencies and First Nation child and family service providers to deliver services based on substantive equality, best interests of the child, that is culturally appropriate and takes into full account the distinct circumstances of their communities.

2. Direct Canada to ensure that any interim and long-term reform measures, including the Reformed CFS Funding Approach, do not reduce or disrupt current funding levels and are sufficiently flexible to respect First Nations authorized service providers to deliver child and family services at a level that protects and promotes the best

interests of their children in keeping with the principles of sovereignty, inherent jurisdiction, and nation-to-nation building.

3. Direct the Parties to develop evidence-and policy-based options for the long-term reform of Jordan's Principle that will include mechanisms to enable and support self-determination and to return to the First Nations-in-Assembly for review and approval.
4. Call upon Canada to extend the timeframes for signing the Final Settlement Agreement (FSA) on long-term reform. The First Nations-in-Assembly must approve the FSA on long-term reform.
5. Call upon Canada to increase funding commitments above the currently allocated $19.807 billion, over 5 years and beyond, that is needs-based to ensure substantive equality, the best interests of the child, and services that are culturally appropriate and reflective of the distinct needs and circumstances of individual First Nation communities.
6. Direct Canada to fund the Assembly of First Nations National Advisory Committee on First Nations Child and Family Services Program Reform and regional and other technical experts to inform the FSA.
7. Call upon Canada to ensure Chiefs shall be provided with all available options and related supporting financial resources and materials to ensure First Nations can exercise their Free, Prior and Informed Consent on long-term reforms.
8. Ensure that the FSA does not detract from the right of the Parties to the current complaint before the CHRT from seeking orders from the Tribunal to ensure that all First Nations children, youth, and families will be free from discrimination and its recurrence for all generations to come.
9. Call upon Canada to develop legislative protections to ensure that First Nations have sufficient liability coverage over the services they provide.
10. Call upon Canada to continue funding capital at actual costs for First Nations, FNCFS Agencies and First Nation Service Providers, pursuant to 2021 CHRT 41, until otherwise ordered by the Tribunal.

Certified copy of a resolution adopted on the 8th day of December, 2022 in Ottawa, Ontario

ROSEANNE ARCHIBALD, NATIONAL CHIEF

This is Exhibit "B" referred to in the Affidavit of Amber Potts, Affirmed before me, on this 3rd day of March, 2025



A commissioner for taking Affidavits

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SPECIAL CHIEFS ASSEMBLY

December 5,6,7, 2023, Ottawa, ON **Resolution no.86/2023**

TITLE:	**To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle**
SUBJECT:	Child and Family Services
MOVED BY:	Chief Brian Perrault, Couchiching First Nation, ON
SECONDED BY:	Chief Mark McCoy, Ojibways of Batchewana First Nation, ON
DECISION	Carried by Consensus

WHEREAS:

A. The First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) filed a discrimination claim in 2007 alleging Canada's inequitable provision of First Nations Child and Family Services (FNCFS) and its choice not to implement Jordan's Principle were discriminatory which resulted in harms including the removal of children from their families and communities and those delayed and denied in receiving services.

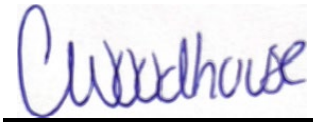
B. The Canadian Human Rights Tribunal (CHRT) substantiated the discrimination claim in 2016 CHRT 2 and ordered Canada to immediately cease its discriminatory conduct towards First Nations children and families.

C. The CHRT ruling established that First Nations children and families are legally entitled to receive prevention services and the least disruptive measures.

D. Between 2016 and 2021, the First Nations parties were required to hold Canada accountable and return to the Tribunal on multiple occasions, resulting in 21 non-compliance orders.

E. In the wake of First Nations and public pressure regarding the children in unmarked graves near Residential Schools and the Federal Court's dismissal of two of Canada's appeals of rulings from the CHRT, the federal government finally agreed to negotiate a resolution.

Certified copy of a resolution adopted on the 7th day of December 2023 in Ottawa, Ontario



CINDY WOODHOUSE, NATIONAL CHIEF

F. In Fall 2021, the complainants (the Caring Society and AFN), the interested parties (Chiefs of Ontario & Nishawbe Aski Nation) and Canada entered into negotiations to resolve outstanding discrimination pursuant to the CHRT orders.

G. The CHRT issued an order (2022 CHRT 8) by consent of the parties providing funding for prevention, post-majority services, and other measures. This funding, combined with an order on capital (2021 CHRT 41) and other previous CHRT orders, amounts to over 75% of the $19.807 billion over five years announced as part of the Agreement-in-Principle (AIP).

H. The Institute of Fiscal Studies and Democracy's research to inform long-term funding solutions for FNCFS for First Nations with and without agencies is not due to be completed until March 2024, and Jordan's Principle in December of 2024.

I. Community-driven research to inform long-term funding solutions for FNCFS for First Nations with and without agencies is not due to be completed until the Fall of 2023 and Jordan's Principle in the spring of 2024.

J. Under the reformed FNCFS funding model, Canada has proposed that a 2% inflation adjustment be provided, which mirrors the discriminatory funding cap imposed on First Nations' budgets for nearly two decades. The 2% inflation adjustment does not reflect the higher costs of living nor the impact of inflation on First Nations, nor the record-high rates of inflation being observed in Canada.

K. Canada has also imposed using the Indian Registry to identify the number of people in a First Nation for the purposes of calculating prevention. This excludes many citizens who are eligible for registration but aren't currently registered, and particularly disadvantages communities in remote areas.

L. Canada has been imposing an unnecessarily heavy burden on First Nations and First Nations child and family service providers and Jordan's Principle service providers to access the capital funding that Canada is legally compelled to provide pursuant to Canadian Human Rights Tribunal Order 2021 CHRT 41.

M. The Final Settlement Agreement will have a direct impact of unprecedented magnitude on the lives of First Nations children, their families, and their communities.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

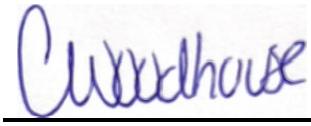
1. Support regional-specific, independent, First Nations-led secretariats to support First Nations in implementing and transitioning to a reformed First Nations Child and Family Services (FNCFS) approach, including data, best practices, tools, and research.

2. Call upon the Assembly of First Nations (AFN) to consult with the National Advisory Committee on FNCFS Program Reform to provide expert advice on long-term reform of FNCFS.

3. Call upon the AFN to provide an update to First Nations leadership on the implementation of AFN-Resolution 40/2022, *To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle.*

4. Call upon the AFN to ensure the establishment of an Alternative Dispute Resolution process under long-term reform that is apolitical, independent, properly resourced, culturally sensitive, trauma-informed, and accessible to safeguard the rights of First Nations children, youth, and families are respected and upheld.

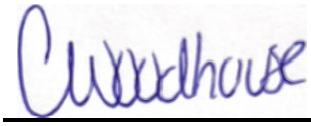
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CINDY WOODHOUSE, NATIONAL CHIEF

5. Call upon the AFN to work with regional First Nations leadership and FNCFS experts to strengthen the role of regional experts within the FNCFS and Jordan's Principle negotiations.
6. Call upon Canada to ensure that the population count used to calculate FNCFS services reflect the actual number of people who are the residents and citizens of a First Nation.
7. Call upon Canada to provide its negotiating mandates and any relevant information in a timely manner to facilitate good faith negotiations.
8. Call upon the AFN to advocate for the use of the Consumer Price Index, with a minimum of 2% per annum adjusted upwards if the Consumer Price Index exceeds 2% for any given year, to account for inflation in the reformed FNCFS funding model and the provision of funding respecting Jordan's Principle.
9. Call on the AFN to conduct and support regional engagement on the Final Settlement Agreement on long-term reform to ensure that First Nations leadership has an adequate opportunity to discuss and approve the Final Settlement Agreement.

Certified copy of a resolution adopted on the 7th day of December 2023 in Ottawa, Ontario



CINDY WOODHOUSE, NATIONAL CHIEF

86 – 2023

This is Exhibit "C" referred to in the Affidavit of Amber Potts, Affirmed before me, on this 3rd day of March, 2025



A commissioner for taking Affidavits

First Nations Child and Family Services Long-Term Reform

Regional Engagement Summary

Draft

Appendix

Regional Engagements

The AFN participated in the following regional and community-based engagements on the Draft Agreement:

Region	Date	Location	Participants
Alberta (AB)	August 6, 2024	Edmonton	Treaty 6 Chiefs, Technicians
	August 7, 2024	Edmonton	Treaty 8 Chiefs, Technicians
	August 8, 2024	Calgary	Stoney Nakoda and Tsuut'ina First Nations Chiefs, Technicians
	August 19, 2024	Calgary	Blackfoot Confederacy Chiefs, Technicians
British Columbia (BC)	August 7, 2024	Merritt	Upper Nicola Band Chief, Technicians
	August 13, 2024	Virtual	BC Tripartite Working Group
	August 22, 2024	Virtual	First Nations Leadership Council Chiefs, Technicians
	September 3, 2024	Vancouver	Musqueam First Nation, Lower Mainland Chiefs
	September 4, 2024	Kamloops	Secwepemc Territory Chiefs
	September 5, 2024	Merritt	Nicola Valley Chiefs
	September 6, 2024	Kelowna	Okanagan First Nations Chiefs
	September 10, 2024	Victoria	South Island Coast Salish Chiefs
	September 11, 2024	Port Alberni	Nuu-chah-nulth First Nations Chiefs
	September 12, 2024	Abbotsford, BC	Fraser Valley Chiefs
Manitoba (MB)	August 6, 2024	Norway House Cree Nation	
	August 14, 2024	Winnipeg	Regional Chief, Keewatin Tribal Council Chiefs, Technicians, Anishinaabe Pimadiziwin Inc. Agency Directors
	August 19-21, 2024	Winnipeg	Regional Chief, Chiefs, Technicians, Agency Directors
	August 27, 2024	Winnipeg	Manitoba Keewatinowi Okimakinak Chiefs, Councillors, Technicians

Draft

New Brunswick (NB)	August 14, 2024	St. Andrews-by-the-Sea	Regional Chief, Chiefs, Technicians
Newfoundland (NL)	August 26, 2024	Virtual	Miawpukek First Nation Chief, Technicians
	August 29, 2024	Virtual	Innu Round Table Chiefs, Technicians
	September 9, 2024	Virtual	Innu Nation Chiefs, Technicians
Nova Scotia (NS)	August 13, 2024	Millbrook First Nation	Regional Chief, Chiefs, Technicians
Ontario (ON)	August 7, 2024	Shoal Lake 40	
	August 22, 2024	Grand Council Treaty 3	
	September 9, 2024	Virtual	Nishnawbe Aski Nation Chiefs, Technicians
Prince Edward Island (PE)	August 15, 2024	Virtual	Regional Chief, Chiefs, Technicians
	August 29, 2024	Virtual	Mi'kmaq Confederacy of PEI Chiefs, Technicians
Quebec (QC)	August 29, 2024	Quebec City	Regional Chief, Chiefs, Technicians
Saskatchewan (SK)	August 8, 2024	Cowessess First Nation	Cowessess First Nation Chief, Technicians
	August 20-21, 2024	Saskatoon	Regional Chief, Chiefs, Technicians
Yukon (YT)	August 1, 2024	Virtual	Regional Chief, Chiefs
	August 20, 2024	Virtual	Yukon Federal Provincial Territorial (ICYC)

***Note:** Engagements were not held in the Northwest Territories as the First Nations Child and Family Services Program does not operate in this region.

Draft

Regional Engagement Summary

Alberta

Participants at the regional engagements expressed gratitude for the work that has been undertaken on long-term reform and in securing a significant and historic sum of money for First Nations to advance reforms. Participants raised concerns about the sufficiency of the funding, what will happen after the 10-year term of the Draft Agreement expires, and using the 2022-23 fiscal year as the reference point for baseline funding. Additional concerns were raised about liability and capacity-building needs, representation on the Reform Implementation Committee, oversight of Canadian Human Rights Tribunal ending, why the Ontario region seemed to be treated differently under the Draft Agreement, and the timeframe for making an informed decision.

British Columbia

Participants at the regional engagements were generally supportive of the reforms. Participants raised concerns about the timing of the decision required and how funds would be distributed. Concerns were also expressed regarding regional representation in the Draft Agreement.

Manitoba

Participants expressed concerns about the timeline to approve the reforms, the next steps if the Draft Agreement was not approved, and what a change in government would mean for the funding. Participants also emphasized the need to prevent children from being apprehended for reasons of poverty, which it was noted that the Draft Agreement aims to support. Concerns were raised about the use of the 2022-23 fiscal year as the reference point for baseline funding and what will happen after the end of the 10-year term of the Draft Agreement. Concerns about lack of transparency in the drafting of the agreement were noted, along with concerns about the imbalance of Ontario representation on the governance committees. A request for the Reform Implementation Committee to reflect regional diversity was made.

New Brunswick

Participants at the regional engagement expressed concerns about using the Indian Registration System as the source of population as a large population of First Nations in New Brunswick receive services in their community but reside off-reserve. Concerns were raised that the Draft Agreement only reforms some elements of the FNCFS Program and does not reform the program in its entirety. Participants expressed that more funding is needed, and that for instance $2,500 per capita for prevention is not sufficient. Participants recommended that the governance mechanisms and committees should include Chiefs and community members to ensure regional diversity.

Newfoundland

Participants expressed interest in participating in further engagements on long-term reform. Participants also raised questions about funding and requested further information on the regional breakdown.

Draft

Nova Scotia

Participants expressed concerns regarding transparency of the negotiations process. Participants also raised concerns about post-majority services, noting that, in some cases, other federal programs extend to age 35. Participants were also seeking additional information on infrastructure provisions in the Draft Agreement and how the funding for housing is calculated and will be allocated. Participants noted that the Draft Agreement is not "user friendly," and recommended that the term "reform" not be used, as this connotates negativity. Participants emphasized that the housing funds should be easily accessible. Participants also expressed dissatisfaction with the reliance on the Indian Registration System for population-based funding.

Ontario

Participants raised questions about the impact of the Draft Agreement on various settlements, including the FNCFS compensation settlement and the water claim settlement, and those First Nations exercising jurisdiction under *The Act respecting First Nations, Inuit and Metis children, youth and families*. Participants also inquired about what would happen should there be a change in government and the AFN informed participants that once signed, the Agreement would become a legally binding document.

Prince Edward Island

Participants at the regional engagements commended the work that the AFN undertook to reach this agreement. Participants raised significant concerns about the timeline and expressed the need for more time to review to make an informed decision on the proposed reforms. Concerns were also noted about the composition of the Reform Implementation Committee and the need for an advisory body for this Committee. Participants expressed concerns about the end of the Canadian Human Right Tribunal's oversight and perceived this as lack of protection for First Nations under the Draft Agreement, including the lack of an opt-out provision. Clarification was provided that there are mechanisms in the Draft Agreement that offer protections, including the ability to seek additional funds and the Alternative Dispute Resolution mechanism.

Québec

Participants expressed concerns regarding lack of regional representation in the Governance mechanisms, specifically the Reform Implementation Committee. Participants also noted frustration about receiving the French language version of the Draft Agreement several weeks after the English language draft was released. Participants inquired about the safeguards in the Draft Agreement that would ensure a future government is not able cancel the funding for reforms, noting their experience with Québec's Supreme Court Challenge of An *Act Respecting First Nations, Inuit, Metis children, youth and families.* Participants expressed the need for the Draft Agreement to reflect and address regional variation. Participants recommended strengthening sections on the ability to develop regional variations for implementation, and Chiefs proposed developing a Québec-specific recommendation. Participants also spoke to the importance of prioritizing French language in the AFN's processes and recommended the President of the Dispute Resolution Tribunal be bilingual in French and English.

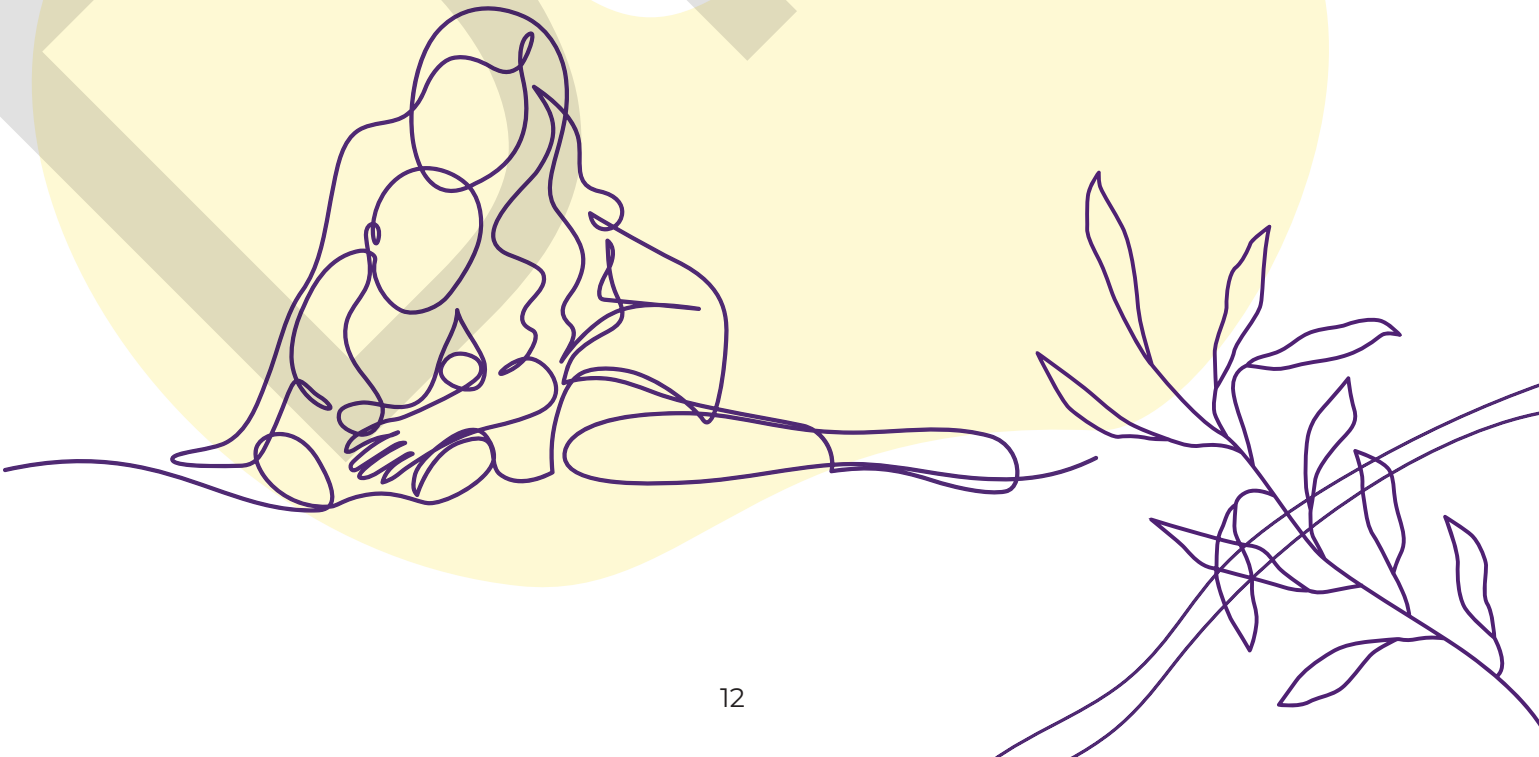
Draft

Saskatchewan

Participants noted concerns relating to the lack of regional representation on the Reform Implementation Committee. While some participants expressed support for the Draft Agreement, others noted they could not speak in favour of an agreement they are not represented in and could not depend on other regions to speak on their behalf. Concerns were also noted relating to the polarization between the lawyers during the negotiation process. Participants noted the problematic use of the population count through the Indian Registration System and whether this will lead to continued underfunding. Participants also expressed concerns with the exclusion of off-reserve members from the Draft Agreement and noted its continued discrimination. Participants also questioned what would occur following the 10-year mark.

Yukon

Participants at the regional engagements were eager to learn about the Draft Agreement, the impact the Draft Agreement would have on First Nations without Agencies, and those exercising jurisdiction under the *Act respecting First Nations, Inuit and Metis children, youth and families.* Participants expressed concern about the timeline for approvals, noting the need for additional time to contemplate the reforms and next steps.



Draft

This is Exhibit "D" referred to in the Affidavit of Amber Potts, Affirmed before me, on this 3rd day of March, 2025



A commissioner for taking Affidavits

Virtual Information and Dialogue Session on Long-Term Reform of First Nations Child and Family Services

Date: September 18, 2024
Time: 11:00am to 4:00pm ET



Draft Agenda

September 18, 2024	
Time	**Activity**
11:00am	**Opening** • Opening Prayer • Welcoming Remarks • Review of Agenda
11:20am	**Overview of the Draft Agreement and Political Perspectives** • Assembly of First Nations • Chiefs of Ontario • Nishnawbe Aski Nation
11:50am	**Key Elements of the Draft Agreement** • Presentation of the key elements of the Draft Agreement: ◦ Baseline Funding Model/Regional Allocations ◦ Prevention ◦ Protection and Agency Funding ◦ Governance and Accountability ◦ Performance Measurement and Secretariats ◦ Remoteness ◦ First Nations Representative Services ◦ Dispute Resolution
12:50pm	**Discussion, Question and Answers**
1:45pm	**What We Heard: Feedback from Regional Engagement Sessions** • Overview of strengths, concerns and recommendations from Regional Engagement Sessions • Proposed changes to the Draft Agreement
2:15pm	**Indigenous Services Canada Presentation** • Implementation of the Draft Agreement
2:45pm	**Discussion, Questions and Answers**
3:45pm	**Closing** • Review of Discussion and Next Steps • Closing Remarks • Closing Prayer
4:00pm	**Session Adjourns**

This is Exhibit "E" referred to in the Affidavit of Amber Potts, Affirmed before me, on this 3rd day of March, 2025



A commissioner for taking Affidavits

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SPECIAL CHIEFS ASSEMBLY
October 16, 17, 18, 2024, Calgary, AB **Resolution no. 60/2024**

TITLE:	**Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle**
MOVED BY:	Khelsilem, Council Chairperson, Squamish Nation, BC
SECONDED BY:	Chief Ira McArthur, Pheasant Rump Nakota First Nation, SK
DECISION	Carried; 7 opposition; 10 abstention

WHEREAS:

A. The *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) states:

- **i.** Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions;
- **ii.** Article 19: States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them; and
- **iii.** Article 37: Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements, and other constructive arrangements.

B. Recognizing the sacredness of First Nations children, youth and families and Jordan's Principle, a child-first legal requirement ensuring substantively equal and culturally appropriate access to products, services and supports for First Nations children, and that the government entity of first contact pays for the support without delay.

C. The First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) filed a Canadian Human Rights Act complaint in 2007 alleging Canada's inequitable provision of First Nations Child and Family Services (FNCFS) and its choice not to implement Jordan's Principle were discriminatory resulting in serious and irremediable harms.

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D. The parties ("CHRT Parties") to the 2007 Canadian Human Rights Act complaint included:

- **i.** The AFN;
- **ii.** The Chiefs of Ontario;
- **iii.** The Nishnawbe-Aski Nation;
- **iv.** Caring Society;
- **v.** The Canadian Human Rights Commission; and
- **vi.** Amnesty International;

E. The Canadian Human Rights Tribunal (CHRT) substantiated the discrimination claim in 2016 CHRT 2 and ordered Canada to cease its discriminatory conduct immediately.

F. Between 2016 and 2024, the CHRT Parties were required to hold Canada accountable and return to the Tribunal on multiple occasions, resulting in 24 non-compliance and procedural orders.

G. On December 31, 2021, an Agreement in Principle (AIP) was signed as a framework for the negotiations of a Final Settlement Agreement (FSA) on First Nations child and family services, Jordan's Principle, and the reform of Indigenous Services Canada.

H. The Final Settlement Agreement will have a direct impact of unprecedented magnitude on the lives of First Nations children, youth, their families, and their communities for generations to come.

I. The CHRT Parties have agreed to split the FSA negotiations with a child and family services agreement to come first and an agreement on Jordan's Principle to follow.

J. Canada has entered negotiations with some of the CHRT Parties (AFN, Chiefs of Ontario, Nishnawbe-Aski Nation) to complete an FSA on child and family services while other CHRT Parties are not included (Caring Society, the Canadian Human Rights Commission, and Amnesty International).

K. In 2022 CHRT 8, the CHRT ordered the creation of the Expert Advisory Committee (EAC) composed of independent and multidisciplinary experts to develop and oversee the implementation of an evidence-informed workplan to prevent the recurrence of discrimination by ISC.

L. The CHRT ordered the federal government to work with the Parties to completely overhaul the on-reserve child and family services program and fully implement Jordan's Principle.

M. As a result, an agreement was made to re-establish the National Advisory Committee on First Nations Child and Family Services Program Reform (the NAC) to address issues pertaining to child and family services reform, including funding, legislation, immediate relief, Jordan's Principle and other reforms.

N. The NAC was mandated by the First Nations-in-Assembly to provide expert advice on long-term reform of FNCFS.

O. The NAC has not:

- **i.** completed its review of the proposed funding model for First Nations agencies;
- **ii.** begun to review the proposed funding model for First Nations without agencies; or
- **iii.** met since February 8, 2024.

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P. The AFN has not set any further NAC meetings despite requests to do so.

Q. The AFN and Caring Society requested that the Institute of Fiscal Studies and Democracy (IFSD) conduct community-based research to inform the reform of the FNCFS Program and Jordan's Principle.

R. Recalling and reaffirming Resolution 40/2022, *To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle*, directing:

- **i.** the Parties to develop evidence-and policy-based options for the long-term reform of Jordan's Principle that will include mechanisms to enable and support self-determination and to return to the First Nations-in-Assembly for review and approval;
- **ii.** Canada to extend the timeframes for signing the FSA on long-term reform. The First Nations-in-Assembly must approve the FSA on long-term reform; and
- **iii.** Canada to fund the AFN National Advisory Committee on First Nations Child and Family Services Program Reform and regional and other technical experts to inform the FSA.

S. In light of these legal proceedings and their outcomes, it is critical to ensure that any long-term reforms of the FNCFS Program and Jordan's Principle are driven by community-led processes that reflect the needs of First Nations children and families, and that any agreements related to the FNCFS Program and Jordan's Principle (the LTR Agreements) shall meet the needs of First Nations children, youth and families.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

Final Settlement Agreement

1. Reject the draft Final Settlement Agreement on Long-Term Reform of the First Nations Child & Family Services Program dated July 11, 2024 and the "Proposed Amendments on the Draft Agreement on Long Term Reform" released on or about October 7, 2024, and call for a new negotiation process for agreements related to the First Nations Child and Family Services (FNCFS) Program and Jordan's Principle (the LTR Agreements) to be developed and approved by the First Nations-in-Assembly based on the spirit and intent of this resolution.

Governance and Transparency of the LTR Agreements for the FNCFS Program and Jordan's Principle

2. Direct the Assembly of First Nations (AFN) Executive Committee to adopt the following approach to the LTR Agreements negotiations:

- **a.** establish a national Children's Chiefs Commission with representation appointed by every region (including regions not represented by the AFN) that will work openly and transparently to provide strategic direction and oversight of the LTR Agreements negotiations, reporting back to the First Nations-in-Assembly;
- **b.** the Children's Chiefs Commission will establish a negotiation team, with regional representation and a new legal team, that will be responsible for carrying out the negotiations for the LTR Agreements under the direction of, and reporting to, the Children's Chiefs Commission;

c. the negotiation team's Terms of Reference for the FNCFS Program will be provided to the First Nations-in-Assembly for approval no later than December 2024 ; and

d. the Children's Chiefs Commission shall report to the First Nations-in-Assembly in December 2024 as to its anticipated timeframes for the completion of the negotiations in relation to the FNCFS Program and on the anticipated timeframes for the Terms of Reference for Jordan's Principle.

3. Direct the AFN Executive Committee and the Children's Chiefs Commission to ensure that governance structures set out in an LTR Agreement shall uphold the sacredness of children, youth, and families, be transparent, open, and accountable to First Nations, preserve First Nations decision-making, and include the guidance of youth, youth in care and formerly in care, and First Nations child and family service experts.

4. Direct the AFN Executive Committee and the Children's Chiefs Commission to develop an open and transparent amendment process for the First Nations-in-Assembly to suggest changes, allow for consideration of those changes, and make changes to the LTR Agreements before being put to a vote, such process to be approved by the First Nations-in-Assembly.

5. Direct the Children's Chiefs Commission to provide a detailed report to the First Nations-in-Assembly on all suggested amendments, the decisions made on each amendment, and the outcomes of negotiations, before the First Nation-in-Assembly proceed with any decision-making on the LTR Agreements.

6. Direct the AFN to refrain in the future from committing to support or otherwise make efforts to procure support from First Nations leadership on an agreement, arrangement, protocol or other similar instrument that has not been approved by First Nations-in-Assembly.

Inclusion and Representation

7. Direct the AFN Executive Committee and the Children's Chiefs Commission to take positive and effective measures throughout the respective LTR Agreement negotiations, review, and approval processes (including at the negotiation tables) to seek out and incorporate the expertise of:

a. First Nations;

b. First Nations child and family service providers;

c. Jordan's Principle experts;

d. Elders and Youth;

e. the National Advisory Committee ("NAC");

f. Jordan's Principle Operations Committee (JPOC), and;

g. Regional experts.

8. Direct the AFN Executive Committee and the Children's Chiefs Commission to review and approve the Terms of Reference for the NAC no later than December 2024.

9. Call upon Canada and direct the AFN Executive Committee to unconditionally include the Caring Society in negotiations of the LTR Agreements on the FNCFS Program and Jordan's Principle, and to conduct those negotiations pursuant to a negotiation protocol developed in collaboration with the Caring Society,

including the requirement that those negotiations be conducted in a manner that is open, transparent, and accountable to First Nations.

10. Call upon Canada to obtain a new negotiation mandate to address the matters in this resolution.

Communication and Feedback

11. Call on Canada to fulfill its obligation to consult with First Nations on any long-term reform approaches of the FNCFS Program and Jordan's Principle in a manner consistent with honour of the Crown.

12. Direct the AFN Executive Committee to postpone any votes on the LTR Agreements or any other agreements until all First Nations have had at least 90 days to review the complete agreement with appendices, available in both official languages.

13. Call on Canada to ensure that First Nations who are not AFN members are given a formal opportunity to express their views on the LTR Agreements, and for Canada, the AFN Executive, and the Children's Chiefs Commission to fully consider and incorporate those perspectives into the LTR Agreements.

Voting

14. Direct the AFN to ensure that First Nations Chiefs and Proxies can vote on the LTR Agreements virtually, in-person, or by another means (via specific accommodation to a Chief or Proxy), to accommodate First Nations leadership who are unable to attend in person due to community circumstances or emergencies.

15. Direct the AFN Executive Committee to support the EAC to conduct its work freely as an independent expert body and invite the EAC Members and NAC Members to present to the First Nations-in-Assembly in December 2024 and prior to any vote on the LTR Agreements.

Support and Resources

16. Call on Canada to provide funding for First Nations to secure independent legal and technical advice, ensuring that all communities can review the LTR Agreements with a full understanding of its implications.

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CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF

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SPECIAL CHIEFS ASSEMBLY
October 16, 17, 18, 2024, Calgary, AB **Resolution no. 61/2024**

TITLE:	**Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services**
MOVED BY:	Proxy, Judy Wilson, Skawahlook First Nation, BC
SECONDED BY:	Chief Carolyn Wahobin, Nekaneet First Nation, SK
DECISION	Carried; 6 opposition; 4 abstention

WHEREAS:

A. The *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) states:

- **i.** Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions;
- **ii.** Article 19: States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them; and
- **iii.** Article 37: Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements, and other constructive arrangements.

B. First Nations Chiefs are elected by the citizens of their Nations to make informed decisions on their behalf.

C. The Assembly of First Nations, Chiefs of Ontario, Nishnawbe Aski Nation and Canada have reached a counsel-endorsed draft Final Settlement Agreement on long-term reform of the First Nations Child and Family Services Program (FSA).

D. The draft FSA, if accepted by the First Nations-in-Assembly and the Canadian Human Rights Tribunal, will have a direct impact of unprecedented magnitude on the lives of First Nations children, youth, their families, and their communities for generations to come.

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E. First Nations Chiefs and their advisors need adequate time to review, consider, comment, and give direction to make amendments to the draft FSA.

F. A failure to provide adequate time for Chiefs to review and consider the draft FSA contravenes article 18 of the UN Declaration and impedes Chiefs in discharging their responsibility to make the best, fully-informed decisions possible on behalf of their citizens.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

1. Reject the draft Final Settlement Agreement (FSA) on Long-Term Reform of the First Nations Child and Family Services program dated July 11, 2024 and the "Proposed Amendments on the Draft Agreement on Long-Term Reform" released on or about October 7, 2024, and direct the Children's Chiefs Commission (as defined in Assembly of First Nations (AFN) Draft Resolution 02/2024) to renegotiate the draft FSA in keeping with the directions of First Nations-in-Assembly including but not limited to:

- **a.** Amend the purpose and associated text of the agreement to clarify that the agreement is intended to hold Canada accountable to stop the discrimination and prevent its recurrence;
- **b.** Restore First Nations Chiefs as the key decision-makers on long-term reform;
- **c.** Expand the principles to include honour of the Crown, Canada's responsibility to fully end discrimination and ensure it never happens again, intergenerational equity, transparency, accountability and inclusivity;
- **d.** Make governance of long-term reform transparent and accountable to First Nations Chiefs;
- **e.** Incorporate ongoing and meaningful oversight by, and consultation with, the National Advisory Committee on Long-Term Reform of the First Nations Child and Family Services (FNCFS) Program;
- **f.** Preserve the mandate and independence of the Expert Advisory Committee to reform Indigenous Services Canada (ISC);
- **g.** Expand the scope and strengthen the role of the Dispute Resolution Tribunal and ensure the remedies available to the Canadian Human Rights Tribunal (CHRT) are also available to the Dispute Resolution Tribunal;
- **h.** Strengthen the Regional Modifications provisions to align with the CHRT orders that First Nations children must have access to and receive needs based, substantively equal, culturally appropriate services that account for the distinct circumstances of their communities;
- **i.** Ensure that the definition of "First Nations child" as defined in 2020 CHRT 36 is considered and incorporated into the FSA;
- **j.** Ensure that prevention funding is allocated as follows:
    - **i.** to First Nations to develop and deliver prevention programming in line with their self-determined service delivery model(s); and

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CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF

ii. to FNCFS agencies to ensure they can deliver prevention in a substantively equitable manner in keeping with legislative requirements to meet the needs of First Nations children and their unique cultural circumstances.

k. Ensure there is an evidence-informed, needs-based funding structure that is responsive to the distinct circumstances and needs of First Nations children and their families and can be upwardly adjusted to address those needs and circumstances on a First Nations, regional or sub-regional basis;

l. Ensure there is a region-specific, independent First Nations-led technical secretariat for each province/territory;

m. Ensure that Canada puts in place sufficient liability coverage and statutory immunity for First Nations and FNCFS Agencies in relation to the services they provide, and ensuring that Canada shall be the insurer of last resort for First Nations and FNCFS Agencies that have exercised good-faith decision-making;

n. Ensure that Canada discloses all federal-provincial-territorial service level agreements during the negotiation process and consults with those affected First Nations throughout the negotiation process; and

o. Ensure the CHRT retains jurisdiction over implementation of any FSA.

2. Call upon Canada to obtain a new negotiation mandate to address the matters in this resolution.

3. Direct Canada to fully implement the funding principle of predictable, stable, sustainable, needs-based funding in the form of an unconditional grant consistent with the principles of substantive equality and cultural continuity in line with the CHRT orders to secure long-term positive outcomes for First Nations children, families and societies.

4. Direct Canada and the AFN to refrain from bringing any motions or seeking direction from the CHRT to set aside existing CHRT orders, including but not limited to 2018 CHRT 4, 2021 CHRT 41 and 2022 CHRT 8, without the prior approval of First Nations-in-Assembly.

5. Direct the Children's Chiefs Commission to ensure that any FSA does not abrogate or derogate from First Nations' title rights, treaty rights or in any way limit or diminish Canada's duty to consult, fiduciary obligations to First Nations or the honour of the Crown.

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CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF **61 – 2024**

This is Exhibit "F" referred to in the Affidavit of Amber Potts, Affirmed before me, on this 3rd day of March, 2025



A commissioner for taking Affidavits

OFFICE OF THE NATIONAL CHIEF

Assembly of First Nations

BUREAU DU CHEF NATIONAL

Assemblée des Premières Nations

October 25, 2024

The Honourable Patty Hajdu, P.C., M.P.
Minister of Indigenous Services
10 Wellington Street
Gatineau, QC K1A 0H4

Dear Minister:

On behalf of the Assembly of First Nations (AFN), I am writing to you regarding the results of the Special Chiefs Assembly on the long-term reform of the First Nations Child and Family Services (FNCFS) Program held on October 16-18, 2024.

I would like to start by thanking you for the good work that we have achieved together on this file. While there were many Chiefs in support of the Draft Agreement on Long-Term Reform of the FNCFS Program, ultimately it was rejected by First Nations-in-Assembly stating that more work is needed.

During the Assembly, the First Nations-in-Assembly provided us a new mandate to move forward via Resolution #02/2024, *Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle*, and Draft Resolution #04/2024, *Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services*.

These resolutions reject the Draft Agreement and provide us with a new mandate, and direction on reforms, including a new governance structure to oversee the reform. The resolutions call for extensive engagements, revised negotiation processes, and funding principles to be embedded in the process and revised Draft Agreement. Through these resolutions, we call on Canada to obtain a new negotiation mandate aligned with the resolutions and provide the resources to advance the work.

We look forward to advancing this work in a collaborative way, keeping our children at the forefront. We would appreciate a response from you in the coming week.

50 O'Connor Street, Suite 200, Ottawa, Ontario K1P 6L2 • 50, rue O'Connor, Suite 200, Ottawa (Ontario) K1P 6L2
Tel. / Tél.: 613-241-6789 • Fax / Téléc.: 613-241-5808 • www.afn.ca

Head Office / Siège Social
46 Irene Roundpoint Lane Akwesasne, Ontario K6H 0G5 • 46, voie Irene Roundpoint Akwesasne (Ontario) K6H 0G5
Fax / Téléc.: 613- 932-0415

Megwetch,

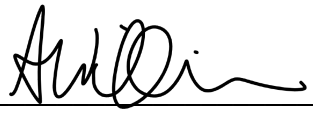


Cindy Woodhouse Nepinak
National Chief
Assembly of First Nations

Encl. Resolution #02/2024, *Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle,* and Resolution *#04/2024, Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services.*

c.c.: AFN Executive Committee

This is Exhibit "G" referred to in the Affidavit of Amber Potts, Affirmed before me, on this 3rd day of March, 2025



A commissioner for taking Affidavits

Assembly of First Nations
Executive Committee Meeting
Virtual Meeting
January 21, 2025

MOTION #3: Direction on Jordan's Principle Litigation

Whereas the Assembly of First Nations ("AFN") implements the decisions and mandates of the First Nations-in-Assembly, as adopted by resolution, reflecting the collective sovereign will of First Nations;

Whereas in implementing the decisions of the First Nations-in-Assembly, the AFN Executive Committee must comply in all cases with the true spirit and intent of the resolutions passed by First Nations-in-Assembly;

Whereas the National Chief and the AFN Secretariat act under the direction and authority of the AFN Executive;

Whereas First Nations children are in an emergency situation and at immediate risk because of high-medical and specialized needs and are waiting for Jordan's Principle decisions, and their number is growing;

Whereas the October Resolutions 60/2024 & 61/2024 and December Resolutions 87/2024, 88/2024, 89/2024 & 90/2024, passed by the First Nations-in-Assembly ("First Nations-in-Assembly Resolutions"), notably, establish the National Children's Chiefs Commission ("NCCC") and direct it to establish a negotiation team, with regional representation, and a new legal team;

Whereas it is essential for the physical, spiritual, emotional, and cognitive well-being of First Nations' children that Long-Term Reform Negotiations on First Nations Child and Family Services and on Jordan's Principle (together, the "LTR Negotiations"), and all the related legal proceedings, including at the Canadian Human Rights Tribunal ("CHRT") in *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada* ("*FNCFCS et al. v. Canada*"), move forward without delay; and

Whereas on December 18, 2024, the NCCC adopted in principle, by consensus, its terms of reference.

Therefore, the AFN Executive Committee hereby:

1. **Directs** that: (i) the new process for the LTR Negotiations and the related legal proceedings, including at the CHRT (*FNCFCS et al. v. Canada*) proceed without any delay; and (ii) the AFN not take any actions whatsoever that seek to, or cause, delay in those matters;

2. **Instructs** that the AFN: (i) immediately withdraw its request to extend the CHRT deadlines, including those referenced in the CHRT letter decision of November 21, 2024, thereby rescinding any request by, or support from, AFN to delay implementation of the CHRT orders beyond the current deadlines set by the CHRT; and (ii) oppose any motions by, or requests from, Canada seeking to delay, in any way, the implementation of the CHRT orders;

3. **Directs**: (i) the National Chief, acting pursuant to Article 18(9) of the AFN Charter and in collaboration with the AFN Executive, to forthwith assign or re-assign the portfolio relating to First Nations Children

and Families, including matters pertaining to the LTR Negotiations and the CHRT hearing (*FNCFCS et al. v. Canada*) to [**Regional Chief XXXX**] and to [**Regional Chief YYYY**] and an alternate portfolio holder (collectively, the "Portfolio Holders"); and (ii) the Portfolio Holders to meet with the NCCC to determine how the AFN Executive and the NCCC will work collaboratively to implement this resolution and the First Nations-in-Assembly Resolutions;

4. **Directs** the Portfolio Holders to, on behalf of the AFN, with support of legal counsel in coordination with the NCCC, retain new, external legal counsel to represent AFN in coordination with internal counsel to represent AFN at the CHRT hearing and provide instructions to the new, external legal counsel that are in accordance with the First Nations-in-Assembly Resolutions and the positions the NCCC is taking in the LTR Negotiations;

5. **Directs** the Portfolio Holders to work collaboratively with the NCCC to ensure that any position the AFN takes in the CHRT hearing (*FNCFCS et al. v. Canada*) is consistent with: (i) the First Nations-in-Assembly Resolutions; and (ii) the positions of the NCCC in relation to the LTR Negotiations;

6. **Directs** that all of NCCC's costs and expenses, general and legal, be included in AFN billings under the Consultation Protocol entered into pursuant to 2018 CHRT 4 and/or any other funding arrangements with Canada;

7. **Decides** that any NCCC costs and expenses, which are not covered by the Consultation Protocol entered into pursuant to 2018 CHRT 4 and/or under any other funding arrangements with Canada, will be paid for with funds from AFN's unrestricted financial reserves and other monies within AFN's control.

Moved by:	Regional Chief Joanna Bernard
Seconded by:	Regional Chief Kluane Adamek
In favour:	Regional Chief Joanna Bernard, NB Regional Chief Bobby Cameron, SK Regional Chief Kluane Adamek, YT Regional Chief George Mackenzie, NT Regional Chief Ghislain Picard, QL Regional Chief Terry Teegee, BC Regional Chief Wendell LaBobe, PEI
Opposed:	Regional Chief Brendan Mitchell, NL Regional Chief Andrea Paul, NS
Abstentions:	Regional Chief Willie Moore, MB

Motion carried.

DRAFT

From:	Andrew Bisson
To:	Stuart Wuttke; Adam Williamson; Amber Potts; Jonathan Thompson
Subject:	FW: Executive Motions
Date:	Monday, 13 January, 2025 12:58:08 PM
Attachments:	Motion for AFN Executive - Jan 13.2025.docx Motion 2 for AFN Executive - Jan 13.2025 .docx

Motions seek to fund NCCC work via the Consultation Protocol and the unreserved funds at the AFN.

ANDREW BISSON
Chief Executive Officer | Chef de la direction
CEO | Direction générale
Assembly of First Nations | Assemblée des Premières Nations
(613) 241-6789 - Ext/Poste | ABisson@afn.ca
50 O'Connor Street, Suite 200 | 50, rue O'Connor Bureau 200
Ottawa, Ontario K1P 6L2
www.afn.ca

From: Regional Chief Joanna Bernard <JBernard@afn.ca>
Sent: Monday, 13 January, 2025 12:51 PM
To: Andrew Bisson <ABisson@afn.ca>; Regional Chief Brendan Mitchell <bmitchell@afn.ca>; Regional Chief Terry Teegee <regionalchief@bcafn.ca>; Regional Chief Andrea Paul <apaul@afn.ca>; Regional Chief Bobby Cameron <bcameron@afn.ca>; Regional Chief Ghislain Picard <gpicard@apnql.com>; Regional Chief Abram Benedict <orc.benedict@coo.org>; Regional Chief Kluane Adamek <KAdamek@afn.ca>; Regional Chief Wendell Labobe <wlabobe@peiorc.ca>; Regional Chief Willie Moore <wmoore@afn.ca>
Subject: FW: Executive Motions

Hi Andrew,

I would like to add these two motions to the agenda

RC Joanna

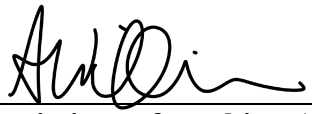
From: Stephanie Wellman <wellmans@fncaringsociety.com>
Date: Monday, January 13, 2025 at 1:44 PM
To: Regional Chief Joanna Bernard <JBernard@afn.ca>
Subject: Executive Motions

Hi RC,

Please see attached two motions

Stephanie

This is Exhibit "H" referred to in the Affidavit of Amber Potts, Affirmed before me, on this 3rd day of March, 2025



A commissioner for taking Affidavits

Sent by e-mail

January 24, 2025

Cindy Blackstock, PhD
Executive Director
First Nations Child & Family Caring Society
E-mail: CBlackst@fncaringsociety.com

Dear Dr. Blackstock:

RE: Caring Society's January 14, 2025 motion directing Canada to continue negotiations

I. Introduction and Overview

I write on behalf of the National Children's Chiefs Commission (the "**NCCC**") to express its support for the Caring Society's January 14, 2025 motion to the Canadian Human Rights Tribunal ("**CHRT**") seeking orders requiring Canada to continue negotiations on the national long-term reform of the First Nations Child and Family Services Program, federal child and family services, and Jordan's Principle (the "**LTR Agreements**").

As you know, the NCCC is a regionally-representative Commission that has been established by resolutions of the First Nations-in-Assembly to assist First Nations in conducting further negotiations in relation to the LTR Agreements.

In this letter, I describe the following matters:

a) the mandate, structure, and purpose of the NCCC;

b) the work of the NCCC on this matter so far; and

c) the NCCC's views on the Caring Society's January 14, 2025 motion to the CHRT.

II. Discussion

a) Mandate, structure, and purpose of the NCCC

As described in more detail below, the NCCC was established by the First Nations-in-Assembly and provided with a mandate to oversee and move forward with further negotiations in relation to the LTR Agreements. Fundamentally, the NCCC's purpose and role is to assist in acting on the will of the First Nations-in-Assembly to take a fresh approach toward negotiations for the LTR Agreements.

The First Nations-in-Assembly established the NCCC by way of Resolution No. 60/2024, which was passed at the Special Chiefs Assembly in October 2024 concurrently with the

rejection of the *Final Settlement Agreement on Long-Term Reform of the First Nations Child & Family Services Program*. Through Resolution No. 60/2024, the First Nations-in-Assembly expressed the desire to adopt a new negotiation approach in relation to the LTR Agreements. In particular, in Article 2 of that Resolution under the heading "Governance and Transparency of the LTR Agreements for the FNCFS Program and Jordan's Principle", the First Nations-in-Assembly directed the AFN Executive Committee "to adopt the following approach to the LTR Agreements negotiations":

a) establish the NCCC, which is to have representation appointed by every region, to "provide strategic direction and oversight of the LTR Agreements negotiations, reporting back to the First Nations-in-Assembly";

b) direct the NCCC to establish a regionally-representative negotiation team responsible for carrying out the negotiations under the direction of, and reporting to, the NCCC;

c) require the NCCC to provide the terms of reference for the negotiation team to the First Nations-in-Assembly by December 2024; and

d) require the NCCC to report to the First Nations-in-Assembly in December 2024 about its anticipated timeframes for the completion of negotiations.

Resolution No. 60/2024 also sets out the following aspects of the NCCC's mandate and consequential changes to the negotiation direction of the AFN:

- **Article 3**: the AFN Executive Committee and the NCCC must ensure that governance structures set out in a new agreement will "uphold the sacredness of children, youth, and families, be transparent, open, and accountable to First Nations, preserve First Nations decision-making, and include the guidance of youth, youth in care and formerly in care, and First Nations child and family service experts";

- **Article 4**: the AFN Executive Committee and the NCCC must develop an open and transparent process for the First Nations-in-Assembly to suggest and make changes to new agreements before they are put to a vote;

- **Article 5**: the NCCC must provide a detailed report to the First Nations-in-Assembly on suggested amendments, the decisions made on amendments, and negotiation outcomes, before the First Nations-in-Assembly proceed with any decision-making to approve further agreements;

- **Article 6**: going forward, the AFN must refrain from making efforts to procure support from First Nations leadership on any agreement, arrangement, protocol, or similar instrument that has not been approved by First Nations-in-Assembly;

- **Article 7**: the AFN Executive Committee and the NCCC must take "positive and effective measures" throughout the negotiation, review, and approval process for a new draft agreement to seek out and incorporate the expertise of: First Nations, child and family service providers, Jordan's Principle experts, Elders and Youth, the National Advisory Committee, the Jordan's Principle Operations Committee, and regional experts; and

- **Article 10**: calls on Canada "to obtain a new negotiation mandate to address the matters in this resolution."

I have included Resolution 60 as **Schedule "A"** to this letter for ease of reference.

Resolution 61/2024, which was also passed by the First Nations-in-Assembly in October 2024, provides more detailed negotiation directions from the First Nations-in-Assembly to the NCCC as to the content of new LTR Agreements, calls upon Canada "to obtain a new negotiation mandate to address the matters in this resolution" (including fully and unconditionally implementing the principle of predictable, stable, sustainable, needs-based funding), and directs the NCCC to ensure that any further draft agreement does not abrogate or derogate from First Nations' title or treaty rights, or in any way diminish Canada's duty to consult, fiduciary obligations to First Nations, or the honour of the Crown.

I have included Resolution 61 as **Schedule "B"** to this letter for ease of reference.

The First Nations-in-Assembly also passed additional, related resolutions at the December 3-5, 2024 Special Chiefs' Assembly, which also have a bearing on the mandate of the NCCC, as follows:

- Resolution No. 88/2024: calling on Canada to "publicly and fully commit to respecting" the rejection of the draft agreement and the new direction represented by Resolutions 60 and 61/2024 (among other things);

- Resolution No. 89/2024: supporting the NCCC in establishing its negotiating team, approving in principle the draft terms of reference for the NCCC and the negotiation team, and directing the NCCC to report to First Nations-in-Assembly at every Assembly until its work is complete (among other things); and

- Resolution No. 90/2024: directing Canada to obtain a new negotiation mandate within 30 days "in full alignment with" Resolutions 60 and 61/2024, and supporting the NCCC in legal proceedings, including before the CHRT, to ensure First Nations children, youth and families receive the full benefit of existing CHRT orders, and to seek additional remedies as required (among other things).

I have included Resolutions 88, 89, and 90 as **Schedule "C", "D", and "E"** to this letter for ease of reference.

b) Work of the NCCC to date

Consistent with the resolutions of the First Nations-in-Assembly summarized above, the following steps have been taken to establish the NCCC structure and to get it up and running:

- Commissioners of the NCCC from every region (other than Ontario, whose First Nations leadership is pursuing a separate negotiation strategy) have been appointed, consistent with Article 2(a) of Resolution 60/2024;

- the NCCC is the process of establishing a regionally-representative negotiation team with legal support, consistent with Article 2(b) of Resolution 60/2024;

- the terms of reference for the NCCC and the negotiation team were conditionally approved by the First Nations-in-Assembly in December 2024; and

- the NCCC has met several times and is getting up to speed on the Commission's mandate, and it is now in the process of attempting to plan meetings with the AFN Executive Team to coordinate efforts.

c) The NCCC's views on the January 14, 2025 motion

The NCCC has reviewed the Caring Society's January 14, 2025 motion materials.

The NCCC fully supports the Caring Society moving the motion forward to get Canada back to the table, and shares the Caring Society's concern that Canada has expressed it no longer has a mandate to negotiate a national final settlement agreement for long-term reform. The NCCC's view is that Canada is yet again flouting its legal and constitutional obligations toward First Nations children, in clear violation of the CHRT's numerous orders and the honour of the Crown.

In particular, Canada's decision to abruptly and unilaterally withdraw from the national LTR Agreement negotiations is inconsistent with:

- the clear order of the CHRT that Canada is required to "consult not only with the Commission, but also directly with the AFN, the Caring Society, the [Chiefs of Ontario], and the [Nishinawbe Aski Nation] on the orders made in this ruling, the [merits decision], and its other rulings", as well as to enter a consultation protocol with the above-noted parties "to ensure that consultations are carried out in a manner consistent with the honour of the Crown and to eliminate the discrimination substantiated in the [merits decision]" (2018 CHRT 4 at para. 400); and, relatedly,

- the terms of the consultation protocol itself, developed pursuant to the CHRT's direction. In particular, Article 18 of the consultation protocol makes explicit that "[t]he purpose and objectives in this Protocol, as well as the principles and parameters [described therein] apply equally to mid and long term relief." Canada

has unlawfully gutted the consultation protocol by withdrawing entirely from national negotiations for LTR Agreements.

The NCCC is therefore of the view that the CHRT should grant the relief sought by the Caring Society. In addition to being clearly compelled by the CHRT's past rulings and the terms of the consultation protocol, it is consistent with the directions of the First Nations-in-Assembly surrounding the establishment of the NCCC summarized above. Those directions repeatedly call for Canada to acknowledge the new negotiation direction of the first Nations-in-Assembly expressed in Resolutions 60 and 61/2024, and to obtain a new mandate accordingly.

III. Closing and Next Steps

The NCCC looks forward to working with the Caring Society and the other parties to advance work on these important matters.

Please feel free to share this letter with the CHRT and/or the other parties to the CHRT proceedings.

Sincerely,

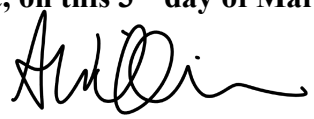
National Children's Chiefs Commission



Chief Pauline Frost, Chair

c: NCCC
AFN Executive
Scott A. Smith and Liam A. Smith, interim legal counsel to the NCCC

This is Exhibit "I" referred to in
the Affidavit of Amber Potts, Affirmed
before me, on this 3rd day of March, 2025



A commissioner for taking Affidavits

ASSEMBLY OF FIRST NATIONS
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Assembly of First Nations (AFN) Calls on Canada for New Mandate to Advance Long-Term Reform of the First Nations Child and Family Services Program

(December 1, 2024 – Unceded Algonquin Territory, Ottawa, Ontario) — Assembly of First Nations (AFN) National Chief Cindy Woodhouse Nepinak is urging Canada to return to the table with a new mandate to advance long-term reform of the First Nations Child and Family Services (FNCFS) Program.

"Chiefs have given us clear direction. We've told Canada that they need to come back with a new mandate, one that aligns with what our Chiefs are asking for, as outlined in AFN Resolution #60/2024, *Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle*, and AFN Resolution #61/2024, *Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services*," said AFN National Chief Woodhouse Nepinak.

Following the new mandate provided by First Nations-in-Assembly at the Special Chiefs Assembly in October 2024, National Chief Cindy Woodhouse Nepinak informed the Government of Canada of the mandate and called on Canada to return to the negotiating table with a revised mandate aligned with Chiefs' direction. The Minister of Indigenous Services Canada, Patty Hajdu, has been invited to speak at this week's AFN Special Chiefs Assembly in Ottawa, Ontario. The AFN Executive Committee continues to meet regularly to review the status of this critical file.

—30—

The Assembly of First Nations (AFN) is a national advocacy organization that works to advance the collective aspirations of First Nations individuals and communities across Canada on matters of national or international nature and concern.

For more information, please contact:

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Director of Communications
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Jamie Monastyrski
Press Secretary
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Assembly of First Nations (AFN) Concludes Productive Special Chiefs Assembly

(December 13, 2024 – Unceded Algonquin Territory, Ottawa, Ontario) — The Assembly of First Nations (AFN) successfully concluded its Special Chiefs Assembly (SCA) held from December 3 to 5, 2024, on the traditional unceded territory of the Anishinabe Algonquin Nation in Ottawa, Ontario. The gathering brought together thousands of Chiefs, Proxies, youth, Elders, Knowledge Keepers, veterans, and other delegates to deliberate on critical issues and priorities for First Nations across Canada.

"The SCA provides a critical forum for dialogue and collective decision-making; the foundation on which the AFN was built," said National Chief Cindy Woodhouse Nepinak. "This year's Assembly saw thousands of delegates participate in meaningful dialogue and collective decision-making, while contributing their perspectives and expertise. Together, we adopted 34 resolutions that will guide our collective work moving forward."

Among the resolutions passed was a call for a National Inquiry into Systemic Racism in Policing, reflecting the urgent need to address systemic injustices and ensuring the safety and protection of First Nations citizens. Chiefs and Proxies also advanced critical discussions on the Long-Term Reform of First Nations Child and Family Services, including the establishment of the Children's Chiefs Commission. Additionally, the Assembly reiterated the call for Canada to secure a new negotiation mandate within the 30-day period outlined in the AFN Resolution, *Safeguarding First Nations Children and Holding Canada Accountable for its Canadian Human Rights Tribunal Legal Obligations*.

"The Chiefs have provided clear direction, and we are focused on ensuring that this work advances in the way they have outlined," added National Chief Woodhouse Nepinak. "We look forward to the important role the Children's Chiefs Commission will play in the work ahead."

"The Assembly was forward-looking and a clear reflection of the dedication of First Nations leadership and delegates. The contributions and discussions at the SCA set a clear path forward on critical issues like systemic racism, justice, child welfare, climate action, and more. As we move forward, the AFN Executive Committee will remain focused on following the direction provided by First Nations-in-Assembly and driving meaningful progress for First Nations across Canada. We have come a long way in just one year, and it is truly inspiring to see us come together in unity," concluded National Chief Woodhouse Nepinak.

—30—

The Assembly of First Nations (AFN) is a national advocacy organization that works to advance the collective aspirations of First Nations individuals and communities across Canada on matters of national or international nature and concern.

For more information, please contact:

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National Chief Cindy Woodhouse Nepinak Responds to Canada's Decision on the Long-Term Reform of First Nations Child Welfare

(January 7, 2025 – Unceded Algonquin Territory, Ottawa, Ontario) — Assembly of First Nations (AFN) National Chief Cindy Woodhouse Nepinak issued the following statement today in response to correspondence from the Government of Canada regarding calls for a new mandate to negotiate long-term reform of First Nations Child and Family Services (FNCFS):

"Since October of last year, we have repeatedly called on Canada to seek a new mandate for negotiations of long-term reform, in accordance with Resolutions #60/2024, *Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle*, and #61/2024, *Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services*, passed by First Nations-in-Assembly," said National Chief Cindy Woodhouse Nepinak. "Canada has now confirmed in a letter that its mandate on reform of FNCFS, 'does not permit further negotiations at a national level', which is a very disappointing decision. The well-being of First Nations children and families remains our top priority, and we will continue to advocate for fair and equitable supports to ensure our children thrive, wherever they live. The AFN Executive Committee will continue its discussions to determine how best to support First Nations leadership to pursue resolution to long term reform either through negotiations or litigation."

"Canada has indicated that it will move forward with regional negotiations with the Chiefs of Ontario (COO) and Nishnawbe Aski Nation (NAN)," continued National Chief Woodhouse Nepinak. "We support the Chiefs in these discussions, which have the potential to bring meaningful changes for children and families in Ontario. We lift up the dedication of the Ontario Chiefs in advancing this critical work."

—30—

The Assembly of First Nations (AFN) is a national advocacy organization that works to advance the collective aspirations of First Nations individuals and communities across Canada on matters of national or international nature and concern.

For more information, please contact:

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Director of Communications
Assembly of First Nations
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Assembly of First Nations Congratulates Nishnawbe Aski Nation and Chiefs of Ontario on Ratifying Final Agreement on Long-Term Reform of First Nations Child and Family Services Program in Ontario

(February 26, 2025 – Unceded Algonquin Territory, Ottawa) – National Chief Cindy Woodhouse Nepinak released the following statement today after Chiefs of Ontario and Nishnawbe Aski Nation ratified a Final Agreement on Long-Term Reform of First Nations Child and Family Services Program in Ontario at a separate Special Chiefs Assembly this week.

"Ontario's Final First Nations Child Care Agreement will create sweeping positive changes for children and families across the Territory, starting within the next 45 days," said National Chief Woodhouse Nepinak. "We lift up Ontario Regional Chief Abram Benedict, Nishnawbe Aski Nation Grand Chief Alvin Fiddler and all Ontario Chiefs for their leadership to help end discrimination in Canada's racist child welfare system. They have been good relatives to the next generations of First Nation children."

"We also continue to remind Canada that it has not met its obligations under the Canadian Human Rights Tribunal Orders," continued National Chief Woodhouse Nepinak. "That order is to end discrimination for *all* First Nation children on-reserve and in Yukon, and we repeat our call for Canada to come back to the table to negotiate a new agreement with the National Children's Chiefs Commission (NCCC), as mandated by the First Nations-in-Assembly. The AFN will continue supporting the NCCC and all regions as they pursue a long-term reform agreement nationally or regionally that ends discrimination once and for all. The AFN will also continue to take all measures, including litigation, if necessary, to advance these needed long-term reforms."

—30—

The Assembly of First Nations (AFN) is a national advocacy organization that works to advance the collective aspirations of First Nations individuals and communities across Canada on matters of national or international nature and concern.

For more information, please contact:

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Kelly Reid
Senior Communications Officer
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kreid@afn.ca

This is **Exhibit F** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, Ontario
Date: 2025.10.22 10:20:11-04'00'
Foxit PDF Editor Version: 13.1.6

A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

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

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

Respondent

And

CHEIFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA,
NISHNAWBE ASKI NATION and
FIRST NATIONS LEADERSHIP COUNCIL OF CANADA

Interested Parties

AFFIDAVIT OF DUNCAN FARTHING-NICHOL
Affirmed March 13, 2025

Department of Justice Canada
Prairie Regional Office
601-400 St. Mary Avenue
Winnipeg, Manitoba R3C 4K5

Per: Paul Vickery, Dayna Anderson,
Sarah-Dawn Norris and Meg Jones
Tel: 204-294-5563/343-999-6195/343-549-4233
Fax: (204) 983-3636
Email: paul.vickery@justice.gc.ca /dayna.anderson@justice.gc.ca/
sarah-dawn.norris@justice.gc.ca/ meg.jones@justice.gc.ca

Counsel for the Respondent,
the Attorney General of Canada

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

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

Respondent

And

CHEIFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA,
NISHNAWBE ASKI NATION and
FIRST NATIONS LEADERSHIP COUNCIL OF CANADA

Interested Parties

AFFIDAVIT OF DUNCAN FARTHING-NICHOL

I, **Duncan Farthing-Nichol**, federal public servant, of the Municipality of Dysart et al, in the Province of Ontario, **AFFIRM AS FOLLOWS:**

A. Introduction

1. I am employed by Indigenous Services Canada (**ISC**) as the Director of the Litigation Management Directorate within the Child and Family Services Reform Sector. I started work in the Litigation Management Directorate in June 2021 and have been in my current role since October 2022. I hold a Juris Doctor from Harvard Law School and a Bachelor of Arts from the University of Manitoba.

2. I am responsible for managing litigation related to the First Nations Child and Family Services Program (**FNCFS Program**) and *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c. 24. I played a significant role in national

negotiations on long-term reform of the FNCFS Program as well as in advancing the *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario* (**Ontario Final Agreement**) between Chiefs of Ontario (**COO**), Nishnawbe Aski Nation (**NAN**), and Canada.

3. In my capacity as Director, I have personal knowledge of the facts and matters deposed to in this affidavit regarding the FNCFS Program. Where my FNCFS Program information came from someone else, I identify the source of my information and I believe the information to be true. Unless stated otherwise, the facts and matters herein deposed by me regarding Jordan's Principle are based on information and belief from Julien Castonguay, acting Assistant Deputy Minister, Jordan's Principle, First Nations and Inuit Health Branch (FNIHB), ISC and Tasha Stefanis, Director General, Jordan's Principle, FNIHB, ISC, and I believe the information to be true. I am authorized to give evidence on behalf of Canada in response to this motion.

4. In preparing this affidavit evidence, I have reviewed the First Nations Child and Family Caring Society of Canada's (**Caring Society**) notice of motion dated January 14, 2025 and amended notice of motion dated January 27, 2025, the affidavit of Katherine Quintana-James affirmed February 13, 2025 (the **Quintana-James Affidavit**), the affidavit of Amber Potts affirmed March 3, 2025 and all documents referenced in this affidavit.

5. In this affidavit, I will summarize the steps that ISC has taken since the Canadian Human Rights Tribunal's decision in 2016 CHRT 2 (the **Merit Decision**) to consult and negotiate towards long-term reforms of the FNCFS Program and Jordan's Principle to eliminate the discrimination found by the Tribunal in this complaint and prevent its recurrence. My evidence is necessarily limited by the application of settlement privilege which, for clarity, Canada does not waive. My evidence is also necessarily limited in order to comply with the page limit.

B. Overview of results and incremental reforms following the Merit Decision

6. Since the Merit Decision, the FNCFS Program has undergone extensive incremental reforms, developed and implemented based on research and evidence, and in consultation with the Caring Society, the Assembly of First Nations (**AFN**), COO and NAN. Meanwhile, Canada has continued to scale up implementation of the interim model of Jordan's Principle in line with the orders of the Canadian Human Rights Tribunal (**Tribunal**) and based on input from the Caring Society, the AFN, COO, NAN and others. While not possible to detail all of this progress within the confines of this affidavit, some examples include:

a) substantial increases to funding for the FNCFS Program, from $676.8 million in the 2015-16 fiscal year to over $3.6 billion in the 2023-24 fiscal year, as the Program shifted from a protection focus to a focus on prevention and on the well-being of children, youth, young adults and families;

b) implementation of the actual costs orders set out in 2018 CHRT 4;

c) outside the Tribunal's orders, creation of the Community Well-Being and Jurisdiction Initiatives funding stream (through which approximately $941 million flowed to First Nations from 2018-19 to 2022-23, including approximately $394 million under 2021 CHRT 12 to First Nations not served by an FNCFS agency);

d) implementation of the consent order in 2021 CHRT 12 on prevention funding for First Nations not served by an FNCFS agency;

e) in advance of a final agreement on long-term reform of the FNCFS Program, implementation of a consent order on prevention funding and post-majority support services funding under the FNCFS Program;

f) in advance of a final agreement on long-term reform of the FNCFS Program and outside the Tribunal's orders, implementation of funding for First Nation Representative Services across the country;

g) substantial increases to access to Jordan's Principle, including $8.8 billion announced since 2016 and support for 8.7 million products, services and supports for First Nations children;

h) creation of the 2018 Standard Operating Procedures for Jordan's Principle requests; and

i) creation of a requirement on all ISC staff to complete at least 15 hours annually of mandatory Indigenous cultural competency training.

7. ISC's consultative efforts have also led to negotiations, resulting in:

a) the December 31, 2021 Settlement Agreement in Principle (Compensation) to resolve compensation for the discrimination found in the Merit Decision and discrimination alleged in other proceedings. This Agreement in Principle resulted in a final $23.34 billion First Nations-led settlement. The settlement was approved by both the Federal Court and the Tribunal in 2023.[1] The claims process for members of the Removed Child and the Removed Child Family Classes opened on March 10, 2025;

b) the December 31, 2021 *Agreement-in-Principle on Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle* (the **AIP**), between Canada, the Caring Society, the AFN, COO and NAN, which is further discussed below;

c) the draft *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program* (the **Draft Final Agreement**), conditionally approved by Canada, the AFN, COO and NAN on July 10, 2024, discussed further below;

d) the draft Ontario Final Agreement, conditionally approved by Canada, COO and NAN on February 7, 2025, and ratified by the NAN Chiefs and the Ontario Chiefs-in-Assembly on February 25 and 26, 2025 respectively; and

e) the *Trilateral Agreement in Respect of Reforming the 1965 Agreement* (**Trilateral Agreement**) between Canada, COO and NAN, which was ratified by the NAN Chiefs and the Ontario Chiefs-in-Assembly on February 25 and 26, 2025 respectively, and will come into effect on April 1, 2025.

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[1] *Moushoom v Canada (Attorney General)*, 2023 FC 1533; 2023 CHRT 44.

C. Overview of consultation activities

i. The Minister's early consultations

8. From autumn 2016 to March 2017, ISC engaged with First Nations leadership, communities, youth, agencies, service providers, provinces and Yukon on how to reform the FNCFS Program. Dr. Cynthia Wesley-Esquimaux, a Special Representative for the Minister of ISC (the **Minister**) who was appointed to lead this engagement process, released her final summary report in September 2017.

9. In January 2018, the Minister hosted an emergency national meeting with provincial and territorial governments, First Nations, Inuit and Métis leaders, Elders, youth, community service organizations and advocates to address the over-representation of Indigenous children in care and chart a path towards systemic reform. Celeste McKay Consulting Inc prepared a detailed report of the sessions on ISC's behalf, called A Report on Children and Families Together: An Emergency Meeting on Indigenous Child and Family Services. The report included six points of action, one of which was to shift programming focus to prevention and early intervention.

ii. The National Advisory Committee (NAC)

10. In response to the Merit Decision, Canada, the Caring Society and the AFN agreed to re-establish the NAC as a joint committee comprised of representatives from the AFN, the Caring Society and ISC, and of First Nations child and family service experts appointed by the AFN and representing the AFN's ten regions. The NAC was mandated to provide technical advice on the design and implementation of reforms to the FNCFS Program. The NAC met eight times in 2016; six times a year between 2017 and 2020; at least twice in 2021; and five times in 2022. I am informed from a review of ISC's meeting notes, and verily believe, that discussion items included implementation of the Tribunal's orders, prevention, First Nation Representative Services, post-majority support services, a First Nations secretariat, an alternative dispute resolution mechanism, capital funding, the FNCFS Program's funding review, federal-provincial and federal-Yukon agreements, and departmental reform of ISC. The NAC also discussed the terms and conditions of the FNCFS Program.

11. The last NAC meeting was held in February 2024. I am informed from a review of ISC's meeting notes, and verily believe, that ISC officials were invited to participate as observers for part of the meeting, but were asked to leave while other members discussed a compensation update, a Phase 3 research update by the Institute for Fiscal Studies and Democracy (**IFSD**), FNCFS funding mechanisms, an update from the Expert Advisory Committee on ISC's departmental reform, and the 2023 AFN resolutions on the FNCFS Program and Jordan's Principle.

iii. Jordan's Principle Action Table (JPAT)

12. JPAT is a consultation sub-committee of the NAC. It is chaired by the AFN and includes First Nations representatives from across Canada. JPAT was created with the intent to co-develop a long-term approach to Jordan's Principle. Canada began to engage with JPAT in 2017. In 2018, the AFN, JPAT and ISC co-developed a paper entitled "Proposed Policy Options for the Long Term Implementation of Jordan's Principle" (the **Jordan's Principle Storyline**). This proposal included policy options for a long-term approach that supported First Nations control over Jordan's Principle. The AFN First Nations-in-Assembly supported the policy options via AFN Resolution 27/2018.

13. In 2022, the AFN initiated consultations with ISC to update the Jordan's Principle Storyline, which could serve as the basis of a future long-term approach. However, JPAT has not met regularly in the last few years. Following the AIP, discussed further below, the majority of discussions on long-term reform of Jordan's Principle and the FNCFS Program were re-directed to a dedicated long-term reform negotiation table involving Canada, the Caring Society, the AFN, COO and NAN.

iv. NAN-Canada Remoteness Quotient Table

14. In March 2017, NAN and ISC established the NAN-Canada Remoteness Quotient Table (the **RQ Table**) which was implemented through a consent order (2017 CHRT 7). The RQ Table developed the Remoteness Quotient Adjustment Factor to determine evidence-based funding adjustments to account for the increased costs to deliver child and family services in remote communities. Further details on the RQ Table's progress are below.

v. **Choose Life Table**

15. In 2017, Canada agreed to fund and participate in the Choose Life Implementation Working Group for the purpose of operationalizing the Choose Life initiative developed by NAN and Canada. The initiative is intended to support youth at risk of suicide in NAN communities in Ontario. As committed in the AIP, Canada and NAN established the Choose Life Table in 2022 to support discussions on a long-term approach to the Choose Life initiative. Canada continues to provide funding through Jordan's Principle for the Choose Life initiative while these discussions are ongoing. Despite the bifurcation of Jordan's Principle long-term reform discussions, discussed below, ISC and NAN agreed that discussions at the Choose Life Table would continue. The most recent meeting was held in mid-2024.

vi. **The Consultation Protocol**

16. In response to 2018 CHRT 4, Canada entered into a Consultation Protocol with the Caring Society, the AFN, COO, NAN and the Canadian Human Rights Commission (**Commission**) to guide Canada's consultations with those parties respecting the development and implementation of immediate relief measures in relation to the FNCFS Program and Jordan's Principle, with the expectation that the Consultation Protocol could eventually be applied and the process expanded upon for the purpose of mid- and long-term reform. Ultimately, discussion on long-term reforms flowed into negotiations towards the AIP and Draft Final Agreement, discussed further below. The Consultation Protocol was signed by all parties on March 2, 2018.

vii. **The Consultation Committee on Child Welfare (CCCW)**

17. In accordance with the Consultation Protocol, Canada, the Caring Society, the AFN, COO, NAN and the Commission (collectively the **Parties to the Complaint**) established the Consultation Committee on Child Welfare (**CCCW**) and finalized its Terms of Reference in August 2018.

18. Between May 2018 and October 2021, the CCCW formally met approximately 23 times. I am informed from a review of ISC's meeting notes, and verily believe, that discussions included implementation of the CHRT's orders and reforms, the development of recipient guides for the claims process, the process for administering claims for actual costs under the FNCFS Program, recipient communications, revised terms and conditions for the FNCFS Program, compensation, training for ISC staff, Ontario-specific implementation issues, and the retention of experts to undertake studies to inform long-term reform of the FNCFS Program.

19. In addition to formal meetings, there has been regular email communication between ISC and the other members of the CCCW, including to share data on claims for actual costs and to seek feedback on draft communications for recipients.

20. The CCCW stopped meeting following adoption of the AIP, which provided a new confidential negotiation process towards long-term FNCFS Program reform (discussed further below).

viii. <u>The Jordan's Principle Operations Committee (JPOC)</u>

21. JPOC became operational in November 2018, initially reporting to the CCCW. JPOC is comprised of First Nations regional representatives and representatives from the Caring Society, the AFN, COO, NAN and ISC. It is not a decision-making body, but a venue to consult on and discuss the operational implementation of Jordan's Principle. JPOC's mandate includes providing input and advice on Canada's implementation of Jordan's Principle.

22. JPOC meetings were initially scheduled about every six weeks, with strong attendance from all members. Following the Caring Society's December 2023 non-compliance motion regarding Jordan's Principle, operational matters became the subject of litigation and were no longer discussed at JPOC. JPOC meetings were then scheduled on an *ad hoc* basis. Since May 2024, there have been four JPOC meetings, with the most recent meeting taking place on February 25, 2025.

23. ISC routinely shares data analyses with JPOC, including monthly compliance reports and annual deep dive analyses on Jordan's Principle. These reports contain details on approvals, expenditures and the types of products, services and supports funded through Jordan's Principle.

ix. <u>The Expert Advisory Committee (EAC)</u>

24. Canada, the Caring Society, the AFN, COO and NAN agreed in the AIP that reform of ISC and any successor departments would be required to address systemic discrimination and the "old mindset" identified by the Tribunal to prevent the recurrence of discrimination. ISC and the other parties agreed to jointly establish the EAC to support the design and implementation of an independent third-party evaluation that would identify and provide recommendations to redress internal departmental processes, procedures, and practices that contribute to the discrimination identified by the Tribunal. Recommendations from the independent third-party evaluation would lead to the development of a workplan for the implementation of departmental reforms to prevent the recurrence of discrimination. The EAC would also provide advice on departmental policies, including ISC's mandatory cultural competency training and performance commitments for employees within ISC.

25. The AFN, the Caring Society and Canada sought a consent order on this commitment, which was ordered in 2022 CHRT 8. Canada, the Caring Society and the AFN worked together to identify experts from across the country. The Committee has nine core members. Eight leading experts across various fields, including individuals with lived experiences, were identified as members and subsequently contracted by ISC to carry out the EAC's work. The EAC later confirmed the nomination of a youth member, who joined the EAC in spring 2024. ISC acts as the Secretariat to the EAC to provide administrative support.

26. The EAC began to meet in April 2022. The EAC is co-chaired by the Caring Society, the AFN and ISC and has two *ex officio* members representing NAN and COO.

27. The EAC has had twelve formal meetings since April 2022, with the last formal meeting held in April 2024. In addition, there have been numerous sub-working group and *ad hoc* meetings.

28. ISC has worked in a collaborative manner with its co-chairs and the EAC members to develop an evaluation framework, a monograph (200-page literature review and synthesis report), a draft statement of work for the third-party evaluators, draft terms of reference, and a draft confidentiality agreement.

29. The EAC's terms of reference have not been ratified due to a difference of opinion between ISC, the Caring Society and the EAC members. The EAC members have sought a broad mandate, including the ability to make recommendations outside of and in advance of the third-party evaluation. There is also a disagreement related to confidentiality requirements to support information-sharing and open dialogue between the co-chairs and EAC members.

30. In the Draft Final Agreement, Canada, the AFN, COO, and NAN proposed terms of reference for the EAC with a focus on the third-party evaluation and on mandatory cultural competency training and performance commitments for ISC employees. This was in keeping with the original intent of the EAC.

31. To date, the third-party evaluation has not been launched and there are no formal EAC meetings scheduled. The EAC members, however, have been meeting without notifying or inviting ISC. ISC is currently pursuing efforts to advance the work with the EAC while managing the differing opinions on the EAC's mandate.

D. Overview of negotiations

i. <u>The AIP</u>

32. With the assistance of the late Honourable Murray Sinclair, in fall 2021, Canada, the Caring Society, the AFN, COO and NAN (collectively the **AIP Parties**) negotiated a detailed outline of a reformed FNCFS Program, high-level principles and process for long-term reform of Jordan's Principle, and commitments from Canada towards immediate reforms. These were captured in the AIP. While the AIP itself is confidential and subject to settlement privilege, publicly available information on the AIP, including a publicly available summary, was previously filed with the Tribunal in Exhibit 61 of the January 12, 2024 Affidavit of Cindy Blackstock.

33. As part of the AIP negotiations, ISC committed to immediate reforms of the FNCFS Program and measures related to Jordan's Principle. Those reforms and measures, which were incorporated into 2022 CHRT 8 on consent, include:

a) FNCFS Program funding for prevention and post-majority support services, which began to flow in the 2022-23 fiscal year;

b) funding for Jordan's Principle research, including a data assessment and a needs assessment from IFSD;

c) funding for IFSD's FNCFS Program Phase 3 and non-agency First Nations research;

d) creation of the EAC; and

e) consultation with the Parties on mandatory cultural competency training and performance commitments for employees within ISC.

34. Though not part of 2022 CHRT 8, ISC also began in the 2022-2023 fiscal year to implement the AIP's commitment to fund First Nation Representatives Services across the country, rather than just in Ontario.

35. In the 2023-2024 fiscal year, outside the FNCFS Program, ISC began distributing to First Nations the $2 billion over five years committed in the AIP and announced in Budget 2022 to support the purchase, construction, and renovation of housing units in their communities. That time-limited funding assists First Nations in addressing housing as a cause of children coming into care and remaining in care.

36. Regarding Jordan's Principle, the AIP Parties agreed to discuss options for First Nations to take on a larger role in approving and delivering products, services and supports under Jordan's Principle. The AIP Parties also agreed that, following a needs assessment and feedback from First Nations and service providers, they would negotiate towards a long-term approach to Jordan's Principle.

37. The AIP established the foundation for long-term reform of both the FNCFS Program and Jordan's Principle. Based on this foundation, the AIP Parties engaged in negotiations starting in 2022 towards long-term reform of both Jordan's Principle and the FNCFS Program in accordance with the AIP approach.

38. The AIP Parties negotiated over the course of many months, generally meeting weekly or twice weekly. The AIP Parties also held a number of full-day and multi-day in-person negotiation sessions, such as in April 2022, August 2022 and March 2023.

ii. The Caring Society and the AFN's "Joint Path Forward"

39. On March 15, 2023, the AFN and the Caring Society proposed the *Joint Path Forward* to guide ongoing negotiations under the AIP. In it, they proposed bifurcation of the long-term reform negotiations so that negotiations on the FNCFS Program would be completed first, while negotiations on Jordan's Principle would be deferred to a later date.

40. In October 2023, ISC secured a revised negotiation mandate so that it could continue negotiations in accordance with the AFN and the Caring Society's wishes.

41. On December 19, 2023, the Caring Society filed a non-compliance motion with respect to Canada's implementation of the Tribunal's Jordan's Principle orders. The motion did not call into question Canada's compliance with the orders on the FNCFS Program. Canada took the position that, given the bifurcation of the negotiations, the Caring Society could continue as a full participating party in the negotiations on the FNCFS Program.

42. Despite this, the Caring Society progressively withdrew from those negotiations. Ultimately, on February 13, 2024, the Caring Society advised ISC, the AFN, COO and NAN that it would not participate in the ongoing negotiations on the FNCFS Program, but nonetheless expected to continue to be engaged to discuss specific topics.

43. Canada, the AFN, COO and NAN remained actively and intensively engaged in negotiations towards long-term reform of the FNCFS Program, and repeatedly invited the Caring Society to participate in the negotiations. For example, in a letter dated February 29, 2024 and in response to the Caring Society's concerns over limited resources, Canada, the AFN, COO, and NAN offered to provide a forward negotiation agenda to the Caring Society so that the Caring Society could focus its resources by identifying topics on which it would like to share its views. On March 19, 2024, the Caring Society attended an in-person negotiation session with the other AIP Parties, where it presented its positions, also published on its website, on two topics it had identified in the forward agenda.

44. Also in the February 29, 2024 letter, Canada, the AFN, COO and NAN invited the Caring Society to return as a full participant in the negotiations. However, the Caring Society would not agree to adhere to the negotiations' confidentiality, stating that it would make public its positions on long-term reform of the FNCFS Program.

45. In a March 25, 2024 letter to the Caring Society, Canada reiterated its commitment to completing a final agreement on the long-term reform of the FNCFS Program based on the parameters set out in the *Joint Path Forward*. Canada explained that because of the bifurcation of discussions on Jordan's Principle from those on the FNCFS Program, Canada did not see an impediment to the Caring Society's full participation in negotiations. Canada raised issue with the Caring Society's continued assertion that it would publicly post its positions, noting that information or positions that Canada provided to the Caring Society could be discerned by inference from the Caring Society's public statements, which would breach the confidential nature of the discussions. Canada repeated that it remained interested in an approach to sharing information with the Caring Society while abiding by its obligations to maintain settlement privilege.

46. On April 5, 2024, COO shared a draft of the Draft Final Agreement with the Caring Society on behalf of Canada, the AFN, COO and NAN, following the Caring Society's agreement to maintain settlement privilege with respect to the draft. The Caring Society returned its comments on the draft on April 22 and April 25, 2024. Canada provided a response to the Caring Society's comments on the draft on June 29, 2024.

iii. <u>The Draft Final Agreement</u>

47. On July 11, 2024, Canada, the AFN, COO, and NAN announced the Draft Final Agreement had been reached. The Draft Final Agreement, negotiated based on the AIP's evidence-informed vision for reform, was subject to approval by First Nations and the Tribunal.

48. The reforms contained within the Draft Final Agreement more than doubled the financial commitment Canada had made in the AIP. The Draft Final Agreement would have legally bound Canada to provide $47.8 billion in stable and predictable funding over ten years for a fully reformed FNCFS Program. The Draft Final Agreement was intended to be a comprehensive settlement and record of the necessary steps and actions, and the embodiment of the best efforts of Canada, the AFN, COO and NAN, to eliminate the discrimination found by the Tribunal in relation to the FNCFS Program and prevent its recurrence. It articulated a comprehensive, prevention-focused funding approach aimed at empowering First Nations to decide on and deliver services to children and families in their communities.

iv. First Nations engagement on the Draft Final Agreement

49. On July 11, 2024, the AFN provided First Nations with the Draft Final Agreement and undertook regional engagement sessions with First Nations leaders. The AFN planned a Special Chiefs Assembly for September 2024 to enable First Nations to vote on the Draft Final Agreement. On August 27, 2024, the AFN announced that it was postponing the September 2024 Special Chiefs Assembly to October 16-18, 2024, to allow Chiefs more time to consider the Draft Final Agreement.

50. ISC officials participated in approximately 27 engagement sessions across the country from July to October 2024. Other engagement sessions also took place, to which ISC was not invited.

51. Canada supported the AFN, COO and NAN in their engagement with First Nations by providing information materials to participants, such as a deck on the Draft Final Agreement and information sheets on the funding components of the reformed FNCFS Program. ISC representatives, including myself, attended the sessions and gave presentations on the Draft Final Agreement, focused on clarifying implementation details. Counsel from Justice Canada also attended the engagement sessions to assist ISC representatives in responding to legal questions that arose.

52. ISC provided funding to facilitate participation in the engagement sessions to ensure First Nations, First Nation regional organizations and others were informed about the Draft Final Agreement and had the opportunity to ask questions and provide feedback.

53. Following the AFN's engagement sessions, ISC attended follow-up in-person and virtual meetings with First Nations organizations; engaged with individual First Nations that contacted ISC directly; provided regional funding profiles; and provided detailed financial breakdowns for 2025-26 to each individual First Nation to ensure they had an understanding of their estimated FNCFS Program funding under the Draft Final Agreement in advance of the October 2024 Special Chiefs Assembly.

54. In September 2024, the AFN, with the consent of COO and NAN, proposed revisions to the Draft Final Agreement to Canada as a result of concerns raised during the engagement sessions. ISC agreed to the revisions. On October 9, 2024, the AFN released an amended Draft Final Agreement. The amended Draft Final Agreement made a number of improvements, including broadening the composition of the Reform Implementation Committee to ensure regional representation, requiring that the President of the Dispute Resolution Tribunal be a First Nations person with judicial or adjudication experience, and revising the definition of "FNCFS Service Provider" such that First Nations were not defined as service providers.

v. The Caring Society's interventions in opposition to the Draft Final Agreement

55. Despite its refusal to participate in the negotiations towards the Draft Final Agreement, the Caring Society wrote multiple opinions critiquing the Draft Final Agreement, including:

FSA Report Card (August 2, 2024)

Final Agreement Myths and Realities (August 9, 2024)

Letting Canada off the Hook (August 12, 2024)

Proposed Amendments to the Final Agreement (September 24, 2024)

56. I am advised by Lisa Legault, Director General, Program and Partnerships Branch, Child and Family Services Reform Sector, ISC, and do verily believe, that she attended engagement sessions on the Draft Final Agreement at which the Caring Society was also present, although I was not personally present at those sessions. I am further advised by Ms. Legault, and do verily believe, that in those engagement sessions, the Caring Society urged First Nations to vote against the Draft Final Agreement.

57. On August 7, 2024, the Caring Society wrote to the Minister to express concerns related to the Draft Final Agreement (filed as Exhibit A of the Quintana-James Affidavit). The Caring Society proposed a meeting with Canada, the AFN, COO, and NAN, with the assistance of a mediator, to discuss its proposed amendments to the amended Draft Final Agreement. The Caring Society followed up with a counsel-to-counsel letter on September 12, 2024, proposing a two-day meeting with Canada, the AFN, COO and NAN to discuss amendments to the amended Draft Final Agreement. The Caring Society then made a request to all Parties to the Complaint on September 19, 2024, to reconvene the CCCW for a non-confidential meeting to discuss the Caring Society's proposed changes to the amended Draft Final Agreement (Exhibit B of the Quintana-James Affidavit contains both communications).

58. On October 2, 2024, COO responded to the Caring Society on behalf of itself, the AFN, NAN and Canada. A copy of this letter is filed as Exhibit C of the Quintana-James Affidavit. COO advised that, in the view of parties to the Draft Final Agreement, the CCCW consultation process had been superseded by the AIP negotiation process, and that Canada, the AFN, COO and NAN had made repeated efforts to re-engage the Caring Society in that negotiation process. COO reiterated that the parties to the Draft Final Agreement remained willing to meet with the Caring Society for confidential discussions on the Draft Final Agreement.

59. On October 17, 2024, the Minister responded to the Caring Society's August 7, 2024 letter. A copy of the Minister's letter is filed as Exhibit A of the Quintana-James Affidavit. The Minister recognized the Caring Society's contributions in advancing reform of the FNCFS Program through the incremental progress that had been made over many years. The Minister stated that the Caring Society's proposed changes to the amended Draft Final Agreement - including retaining claims-based interim funding approaches and having the Tribunal retain its oversight of the FNCFS Program - were incompatible with the objective of developing long-term solutions for comprehensive reform. She also noted that the amended Draft Final Agreement was built on the AIP's framework to which all AIP Parties had agreed, including the Caring Society.

vi. First Nations' votes on the amended Draft Final Agreement

60. The Chiefs of COO and NAN ratified the amended Draft Final Agreement during their assemblies on October 9 and 10, 2024, respectively.

61. On October 17, 2024, after two days of discussions at the AFN's Special Chiefs Assembly in Calgary, Alberta, the First Nations-in-Assembly voted to reject the amended Draft Final Agreement. The vote was 147 in favour and 267 opposed, with one abstention.

62. On October 18, the First Nations-in-Assembly adopted two resolutions – 60/2024 and 61/2024 - calling for Canada to renegotiate the Draft Final Agreement through a public negotiation process that would include the Caring Society and the National Children's Chiefs Commission (**NCCC**), a newly constituted body to be composed of First Nations leadership. Resolution 61/2024 lists substantive elements required by the Chiefs in a new agreement, some of which go beyond the AIP's framework for reform and the scope of the complaint that underlies these proceedings. The Caring Society filed a copy of these resolutions with the Tribunal on January 3, 2025, and they were subsequently filed in evidence as Exhibit E to the March 3, 2025 Affidavit of Amber Potts.

63. On December 5, 2024, the First Nations-in-Assembly adopted Resolution 90/2024, a copy of which was filed as Exhibit D to the Quintana-James Affidavit. The Resolution stated in part that the First Nations-in-Assembly:

a) confirm that the $47.8 billion is only the floor for negotiations on long-term reform of the FNCFS Program; and

b) direct that Canada obtain a new negotiation mandate within thirty days of the resolution.

vii. Subsequent correspondence with the AFN, the Caring Society and the NCCC

64. Following the First Nations-in-Assembly's rejection of the amended Draft Final Agreement, the Caring Society, the AFN and the NCCC wrote to Canada, expressly seeking that Canada obtain a new negotiation mandate to achieve long-term reform on the terms approved by the First Nations-in-Assembly. As noted above, these terms are well outside the framework of the AIP, including, for example, indefinite Tribunal oversight. This correspondence includes:

a) An October 29, 2024 letter from the National Chief of the AFN to the Minister, expressing thanks for the "…good work that we have achieved together on this file" and calling on Canada "to obtain a new negotiation mandate aligned with the resolutions and provide the resources to advance the work". A copy of this letter is filed as Exhibit F to the Affidavit of Amber Potts and is dated October 25, 2024, although the version received by ISC is dated October 29, 2024.

b) An October 29, 2024 letter from the Caring Society's counsel to Canada's counsel, filed as Exhibit E to the Quintana-James Affidavit, stating "The Caring Society has done extensive work and is ready to engage in a new approach to negotiations set out by the rights holders in Resolutions 02 and 04, with the support of the Children's Chiefs Commission…these discussions would not be covered by settlement privilege".

c) A November 12, 2024 letter from the President of the Caring Society to the Minister, attached hereto and marked as Exhibit "**A**", discussing the AFN resolutions "to reset the negotiations".

d) A December 9, 2024 letter from the Caring Society's counsel to counsel for Canada, the AFN, COO and NAN, filed as Exhibit F to the Quintana-James Affidavit, stating the Caring Society is committed to "…achieve a negotiated settlement…"; welcoming "..the calls from leadership to reject portions of the Agreement in Principle…and the establishment of a new negotiation approach…"; and calling on Canada to "…obtain a new negotiation mandate within thirty (30) days".

e) A January 8, 2025 letter from the Caring Society's counsel to Canada's counsel, filed as Exhibit H to the Quintana-James Affidavit, "…calling on Canada to immediately obtain a new mandate and return to the negotiation table…". This was followed by a January 9, 2025 email from the Caring Society's counsel to Canada's counsel, seeking a copy of the draft agreement under discussion between Canada, COO and NAN. Canada's counsel responded on January 10 and January 14, 2025, advising that the draft agreement with COO and NAN was confidential and subject to settlement privilege, and that Canada has made every effort to work with the Parties to the Complaint to reform the FNCFS Program and reach a comprehensive, fair and equitable resolution to the complaint, informed by experts, outside of the litigation. Copies of Canada's January 10 and 14 communications are filed as Exhibit I to the Quintana-James Affidavit.

f) A January 22, 2025 letter from counsel for the NCCC to Canada's counsel, attached hereto and marked as Exhibit "**B**", advising that the NCCC was established "…with the mandate to oversee and move forward with further negotiations" and "is the new interface through which Canada will deal with AFN in relation to all matters concerning the LTR Agreements". In response, Canada's counsel wrote to the AFN's counsel on January 24, 2025, seeking clarification as to whether the NCCC's counsel now represents the AFN. The AFN's counsel responded on January 28, 2025, confirming that they remain counsel of record for the AFN and were awaiting instructions respecting long-term reforms, but that the NCCC's counsel does not represent the AFN. Canada's counsel then responded to the NCCC's counsel on February 14, 2025, advising that because the NCCC's counsel does not represent the AFN, Canada is unable to meet with them. Due to page limits, I have not attached copies of the January 24, January 28 and February 14, 2025 letters as exhibits.

g) A January 24, 2025 letter from the Chair of the NCCC to the Prime Minister, the Minister and others, attached hereto and marked as Exhibit "**C**", seeking "…further negotiations" and "…a binding letter of commitment before March 24, 2025, to secure existing commitments and to chart a pathway forward". The Minister responded by way of letter dated February 25, 2025, attached hereto and marked as Exhibit "**D**", stating that Canada "remains committed to the implementation of the Canadian Human Rights Tribunal's orders, and to ending the discrimination identified by the Tribunal and preventing its recurrence." The Minister also stated that there has been confusion regarding the role of the NCCC and whether it speaks on behalf of the AFN. The Minister encouraged the NCCC to work directly with the AFN to clarify the situation as to "whether you and the committee are the body that Canada should be working with".

h) A January 28, 2025 letter from the President and the Executive Director of the Caring Society to the Prime Minister, the Minister and others, attached hereto and marked as Exhibit "**E**", expressing their "…interest in supporting the development of a letter of commitment on long-term reform of First Nations child and family services and Jordan's Principle" to "…set the stage for negotiations".

i) A February 21, 2025 letter from the Chair of the NCCC to the Prime Minister, the Minister and others, attached hereto and marked as Exhibit "**F**", stating that the $47.8 billion commitment by Canada in the Draft Final Agreement was "in the ballpark"; alleging that "Canada's duty was to return to the negotiating table…"; and providing a chart of required expansions to the Draft Final Agreement that, in the NCCC's view, are mostly "solvable with minimal discussion".

j) A March 4, 2025 letter from the AFN National Chief to the Minister, attached hereto and marked as Exhibit "**G**", urging Canada to seek a revised mandate to negotiate a final agreement on long-term reform of the FNCFS Program and confirming AFN's support for the NCCC's "work on advancing the mandates of the First Nations-in-Assembly in relation to negotiating final agreements on long-term reform of the FNCFS Program and Jordan's Principle".

65. In addition, legal counsel for the AIP Parties have exchanged correspondence that is subject to settlement privilege and cannot be shared as evidence.

viii. Negotiations towards long-term FNCFS Program reform in Ontario

66. On October 25, 2024, Ontario Regional Chief Abram Benedict wrote to the Minister to express interest in pursuing an Ontario-specific approach to long-term reform of the FNCFS Program, based on the terms of the amended Draft Final Agreement. Starting in early January 2025, Canada engaged in intensive negotiations with COO and NAN towards such an agreement.

67. On February 7, 2025, Canada, COO, and NAN reached a draft Ontario Final Agreement. As contemplated in the Ontario Final Agreement, Canada, COO, and NAN also concluded separately a draft Trilateral Agreement with respect to reform of the 1965 Canada-Ontario *Memorandum of Agreement Respecting Welfare Programs for Indians* (the **1965 Agreement**).

68. NAN First Nations approved the Ontario Final Agreement and the Trilateral Agreement on February 25, 2025. On February 26, 2025, Ontario First Nations-in-Assembly approved both agreements, with 76 First Nations in favour, four opposed and three abstaining. That same day, COO, NAN and Canada signed the Ontario Final Agreement and the Trilateral Agreement.

E. Research, studies and external consultations

69. To support both consultation and negotiations towards long-term reform of the FNCFS Program and Jordan's Principle, ISC has financially supported research and studies in a number of areas, generally set out below.

i. Alternative Funding Methodology for FNCFS Program

70. Further to 2018 CHRT 4 and as approved by the CCCW, ISC provided funding to the AFN to contract IFSD at the University of Ottawa. IFSD was tasked with conducting an analysis of existing agency needs assessments, as well as a cost analysis of agency needs, to inform the development of an alternative funding system for the FNCFS Program. The IFSD provided its Phase 1 report on December 15, 2018, and its Phase 2 report on July 31, 2020. The IFSD's Phase 1 and Phase 2 reports informed the revised funding methodology agreed to by all AIP Parties in the AIP.

71. During negotiations towards the AIP, Canada agreed to fund additional research to inform the development of the final long-term funding approaches for the FNCFS Program. Accordingly, Canada entered into the 2022 CHRT 8 consent order noted above, requiring that Canada fund two additional IFSD studies.

72. First, Canada funded the AFN to contract IFSD to undertake Phase 3 research to model the reformed methodology and provide additional recommendations and data tools for service providers and communities. The AFN shared an interim Phase 3 report, in draft form, with Canada on March 4, 2024. It included recommendations that the reformed FNCFS funding approach include a new 3% top-up to baseline funding to cover increasing maintenance costs and that the effectiveness of splitting prevention funding between FNCFS agencies and First Nations (as opposed to providing all prevention funding to FNCFS agencies) be assessed. Canada received a further draft Phase 3 report from IFSD on March 4, 2025.

73. Second, Canada funded the Caring Society to contract IFSD to undertake needs assessments for First Nations not affiliated with a FNCFS agency. The Caring Society shared this final report with Canada, AFN, COO, and NAN on April 7, 2024. The report presents a scenario in which ISC would provide per capita funding of $3,123 for non-affiliated First Nations, based on "average per capita expenditure from [non-affiliated First Nations] questionnaire data" and another scenario in which ISC would provide per capita funding of $3,859, based on "average per capita expenditure of integrated [health and social] service providers in Quebec from questionnaire data".

ii. <u>Remoteness research</u>

74. As noted above, Canada entered into a consent order with NAN to establish the RQ Table and provide funding to NAN to conduct research and develop a remoteness quotient. The remoteness quotient was to account for the increased costs of delivering child and family services in remote communities.

75. Phase I and Phase II of the Remoteness Quotient reports were filed with the Tribunal on September 8, 2017 and March 29, 2019. In January 2020, Canada and NAN agreed to continue the RQ Table to discuss the Final Phase II RQ Report and how to address issues related to remoteness in Ontario. The RQ Table developed the Remoteness Quotient Adjustment Factor (RQAF), which was proposed as part of the Draft Final Agreement to adjust the FNCFS Program's funding to account for higher costs in remote communities across Canada. The Ontario Final Agreement will use the RQAF for that same purpose.

iii. Ontario Special Study

76. In 2017, ISC and the Government of Ontario co-funded the Ontario Special Study to review the 1965 Agreement that provides federal funding to Ontario for a suite of social services, including child and family services, to First Nations people on-reserve in Ontario. The Study was also to provide options for reform of the 1965 Agreement. The Ontario Special Study, released in 2020, recommended that Canada, Ontario and First Nation representatives begin exploratory discussions to develop proposed terms for a new or amended 1965 Agreement.

77. The AIP specified that COO and Canada would reach out to the Government of Ontario to advance discussions on a reformed 1965 Agreement. The Trilateral Agreement concluded between Canada, COO, and NAN on February 7, 2025 lays out principles for preliminary discussions with the Government of Ontario on reform of the 1965 Agreement and commits Canada to use best efforts to reach a reformed 1965 Agreement with the Government of Ontario by March 31, 2027.

iv. Jordan's Principle Research

78. ISC also provided funding to IFSD to undertake a data assessment and a needs assessment to support the AIP Parties' negotiations on long-term reform of Jordan's Principle. The data assessment, entitled *Data Assessment and Framing of an Analysis of Substantive Equality through the Application of Jordan's Principle*, is dated September 1, 2022 and was shared with the Tribunal by the Caring Society in November 2022.

79. ISC has funded the Caring Society to support IFSD's needs assessment. The IFSD needs assessment, the final report for which remains outstanding, is to include: recommendations for the development of a policy framework; review of existing programs and services; identification of gaps; costs of closing gaps to achieve formal equality and/or substantive equality across relevant program areas; recommendations for reforming the operationalization of Jordan's Principle; and financial analysis and costing of the baseline and any proposed reforms.

80. In addition, ISC has begun an internal assessment and mapping of Jordan's Principle requests to ISC federal programs through the Service Alignment Initiative, to better understand trends in and connections between ISC-funded community-based programs and Jordan's Principle requests. A preliminary analysis is expected in the summer of 2025.

v. External consultations on Jordan's Principle

81. Canada has committed to region-specific Jordan's Principle engagement and consultation work with First Nations partners outside of the Tribunal's orders. For example, in June 2024, Canada and the Assembly of Manitoba Chiefs signed a Memorandum of Understanding, committing to work together to enhance the implementation of Jordan's Principle in Manitoba, including by exploring First Nations-led delivery models. A working group was established in 2024 with representatives from Manitoba First Nations and Canada to guide this work. Terms of reference are being finalized.

82. Canada also supports and engages First Nations and service delivery organizations directly through regional consultation activities and through service coordinator gatherings related to operational matters. As part of regular operational practices, regional tables have been established with First Nations to support engagement, priority setting, planning and service delivery related to Canada's initiatives, including Jordan's Principle. The AFN has also previously hosted in-person service coordinator gatherings. Canada has participated in these and supports the continuation of these gatherings.

F. Funding to support the AIP Parties' participation in consultations and negotiations

83. Canada has provided millions of dollars in funding to the AIP Parties towards their consultation and negotiation activities, in accordance with the Consultation Protocol and later the AIP. Funds provided pursuant to the Consultation Protocol were intended to fund the AIP Parties' consultations with Canada on immediate relief, and ultimately, pending expansion of the Consultation Protocol, mid- and long-term relief. Funds that ISC provided under the AIP were intended to support the AIP Parties' negotiations with Canada towards a final agreement on long-term reform of the FNCFS Program and Jordan's Principle.

84. Through the Consultation Protocol, Canada agreed to fund the AIP Parties for the envisaged work through an agreed upon workplan. Expenses were to include disbursements for experts and legal counsel, excluding work on litigation.

85. ISC funded the AFN, COO and NAN's participation principally through annual plans and budgets submitted to ISC to support their consultation and negotiation activities. Until February 2025, ISC funded the Caring Society's participation in consultation and negotiations through uncapped reimbursement, without any annual plans or budgets. On February 6, 2025, the Deputy Minister of ISC wrote to all of the AIP parties, advising that it remains committed to fulfilling its consultation obligations, but effective immediately will no longer accept invoices for reimbursement and will instead follow the funding process set out in the Consultation Protocol. Per the Consultation Protocol, ISC will provide each party with a yearly budget forecast on an annual basis, setting out the allotment of funding for the coming year based on an agreed upon workplan. A copy of ISC's letter is attached hereto and marked as Exhibit "**H**". The Caring Society responded with a letter dated March 10, 2025, a copy of which is attached hereto as Exhibit "**I**". Also on March 10, 2025, the Caring Society filed an application for judicial review in Federal Court file T-814-25, challenging the Deputy Minister's decision.

86. From 2018-19 to 2024-25 (to December 16, 2024), the Caring Society received approximately $7.6 million from Canada towards their consultation and negotiation activities. This includes approximately $2.8 million to fund IFSD research contracts.

87. From 2018-19 to 2024-25, the AFN received approximately $26.4 million from Canada towards consultation and negotiation activities, primarily related to the FNCFS Program, including:

a) $10.3 million for Program reform and the CCCW;

b) $6.5 million for engagement and the October 2024 Special Chiefs Assembly; and

c) $8.8 million for IFSD research contracts.

88. From 2018-19 to 2024-25, COO received approximately $5.4 million from Canada towards consultation and negotiation activities, primarily related to the FNCFS Program, including:

a) $4.5 million for consultation, negotiation and engagement; and

b) $0.9 million in 2018-19 for the Ontario Special Study.

89. From 2018-19 to 2024-25, NAN received approximately $8.1 million from Canada towards consultation, policy and engagement activities, primarily related to the FNCFS Program.

90. ISC has also funded EAC members in the amount of $0.5 million.

91. In addition to the amounts above, ISC has provided funding to the AFN, COO, NAN and other partners to support the implementation of Jordan's Principle, including for their participation in the various committees noted above.

G. Conclusion

92. I make this affidavit *bona fide* and in support of Canada's position in response to the Caring Society's amended notice of motion dated January 27, 2025.

AFFIRMED before me at the)
City of Ottawa in the)
Province of Ontario)
this 13th day of March, 2025)
)

Barrister and Solicitor in and
for the Province of Ontario
LSO #: 86635B

DUNCAN FARTHING-NICHOL

First Nations Child & Family Caring Society | Société de soutien à l'enfance et à la famille des Premières Nations

fncaringsociety.com

This is **Exhibit A** to the Affidavit of **Duncan Farthing-Nichol**, affirmed before me on March 13, 2025

A Barrister and Solicitor in and for the Province of Ontario
LSO #: 86658

November 12, 2024

Dear Minister Hajdu,

I confirm receipt of your correspondence dated October 17, 2024, and write to encourage Canada's full cooperation and participation in implementing First Nations rights holder's direction per First Nations-in-Assembly Resolutions, including Assembly of First Nations (AFN) Resolution 40/2022, *To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle*, Resolution 60/2024, *Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle*, and Resolution 61/2024, *Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services*. I would also like to use this opportunity to clarify some of the incorrect and incomplete statements in your letter.

We agree with Canada's deference to First Nations rights holders and remind Canada that the Rights holders are First Nations children, youth, families, and the Nations they belong to. On October 18, 2024, First Nations rights holders voted overwhelmingly in favour of AFN Resolutions 60/2024 and 61/2024 and directed to reset the negotiations on the draft Final Settlement Agreements on First Nations Child and Family Services and Jordan's Principle. Included in these resolutions, is express direction for a reset that includes the Caring Society in an open and transparent manner to ensure that discrimination against children, youth, and families stops and does not recur. We are ready and eager to implement the direction of First Nations leadership and we fully expect that Canada is as well. We reiterate our invitation to discuss our feedback and suggested amendments in a non-confidential setting, as aligned with First Nations-in-Assembly direction. I would also like to remind you of the Canadian Human Rights Tribunal's orders requiring Canada to consult with the Caring Society on long-term reforms. We believe this cooperation is crucial and can bring about positive change and a brighter future for First Nations children, youth and families.

Your October 17th letter makes several incorrect and incomplete statements about the Caring Society's positions and conduct, which deserve special correction. First, you suggest that the Caring Society's positions is for prevention funding to be solely directed to First Nations Child and Family Service Agencies, which is contrary to our proposed amendments that have been shared with your department and have been publicly available on our website. For the Caring Society, it's a "yes and" approach whereby First Nations are provided with sufficient capacity to deliver services if they choose, and Agencies receive adequate funding to discharge their responsibilities. Second, you imply that the Caring Society's suggestion of continuing reimbursement at

actual costs are out of alignment with the Tribunal's orders. However, to clarify, where there is insufficient evidence to project costing, such as with capital, post-majority services and tertiary prevention, it is entirely consistent with the Tribunal's orders to continue with actuals to ensure non-discrimination until such a time that sufficient data and evidence is available to project funding to ensure non-discrimination. Indeed, the draft Final Settlement Agreement (FSA) offered no evidence of how the fixed capital amounts were calculated and the calculations of other fixed amounts in Appendix 1 were also unclear or not provided.

While the Agreement in Principle (AIP) was signed in good faith by the Caring Society, we were very disappointed to see Canada breach that negotiated agreement and backsliding in compliance with the Tribunal's orders. The Caring Society left the AIP to bring the non-compliance motion to remedy Canada's discrimination, which was causing serious and, in some cases, life-ending consequences for First Nations children. The AIP was not modified to reflect the direction of AFN Resolution 40/2022, which explicitly directed Parties to seek relief at the Tribunal if necessary. Moreover, the Caring Society repeatedly expressed its desire and readiness to participate in negotiating the draft FSA outside the AIP process, however this was continuously refused by Canada.

Finally, I remind you of the Indigenous Services Canada Act, which mandates your department to support First Nations with achieving their goals of self-determination, however, Canada must not offload or underfund as a means to undermine the promises of self-determination and self-government. For instance, several First Nations delivering Jordan's Principle services to their citizens have contacted the Caring Society to report serious financial deficits flowing from Canada's long reimbursement delays, causing significant reductions and delays in providing other services. First Nations-in-Assembly have provided clear direction that safeguards must be in place to forever protect First Nations children from discrimination.

The clarifications herein are made for the record; our primary message is that we remain steadfast in our commitment to ending the discrimination found by the Tribunal and prevent its recurrence. This commitment is unwavering, and we urge Canada to share this commitment and work with us towards this shared goal.

Please confirm Canada's commitment to implementing the direction provided by First Nations-in-Assembly through AFN Resolutions 60/2024 and 61/2024 and advise when Canada will be prepared to meet with the Caring Society to discuss how we can collaborate on a path to end the discrimination and prevent its recurrence.

Respectfully,

Raymond Shingoose, President
First Nations Child and Family Caring Society

AIRD BERLIS

Scott A. Smith*
*Denotes Law Corporation
Direct: 778.371.2243
ssmith@airdberlis.com

January 22, 2025

This is **Exhibit B** to the Affidavit of **Duncan Farthing-Nichol**, affirmed before me on March 13, 2025

A Barrister and Solicitor in and for the Province of Ontario
LSO#: 86655B

Sent by E-mail

Justice Canada
c/o Paul Vickery
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8
E-mail: paul.vickery@justice.gc.ca

Dear Mr. Vickery:

Subject: Request for Meeting to discuss Long-Term Reform Negotiations

Liam A. Smith and I have been appointed interim legal counsel to the National Children's Chiefs Commission ("**NCCC**"). I am writing to you in relation to the January 7, 2025 letter in which you advised that Canada does not currently have a mandate to negotiate a national long-term reform agreement.

The NCCC has recently been established by the First Nations-in-Assembly, which provided the NCCC with the mandate to oversee and move forward with further negotiations in relation to the national long-term reform of the First Nations Child and Family Services Program, federal child and family services, and Jordan's Principle (the "**LTR Agreements**") on behalf of the First Nations-in-Assembly. The NCCC is the new interface through which Canada will deal with AFN in relation to all matters concerning the LTR Agreements.

In that regard, the NCCC requests that we immediately schedule a meeting with you and your client to discuss the position set out in your January 7 letter, and the path to negotiating new LTR Agreements. As you know, the Canadian Human Rights Tribunal ("**CHRT**") ordered Canada to consult with, among other groups, the AFN and the First Nations Child and Family Caring Society of Canada on the LTR Agreements. The NCCC has been mandated to undertake this work on behalf the First Nations-in-Assembly in collaboration with the AFN.

In particular, First Nations-in-Assembly directed the establishment of the NCCC in October 2024, through AFN Resolution no. 60/2024. In December 2024, the First Nations-in-Assembly approved in principle the draft terms of reference for the NCCC in AFN Resolution no. 89/2024. Both resolutions were passed by an overwhelming majority of Chiefs and proxies at the Special Chiefs Assemblies. In particular, the First Nations-in-Assembly mandated the NCCC to provide strategic direction and oversight of the negotiations for long-term reform, reporting back to the First Nations-in-Assembly. The

purpose of those negotiations is to eliminate discrimination by Canada against First Nations children and families, ensure it never happens again, promote substantive equality, and uphold First Nations' rights to self-determination.

The NCCC is comprised of: (i) one regional representative, an alternate, and their technician(s) from each of the eleven AFN regions; (ii) one regional representative, an alternate, and their technician(s) for every region not represented by AFN; (iii) an Elder or Knowledge Keeper representative; and (iv) a youth representative. All regions except for Ontario have appointed their NCCC representatives through their regional processes, and the NCCC began to convene regular meetings in December 2024.

In keeping with the sovereign will of the First Nations-in-Assembly to establish the NCCC, dialogue between the NCCC and Canada will be essential to achieving needs-based long-term reform that will eliminate the discrimination identified by the CHRT and ensure the physical, spiritual, emotional and cognitive well-being of First Nations, children, youth and families for generations to come, consistent with the honour of the Crown.

We look forward to your prompt response and to scheduling a meeting as soon as possible.

Sincerely,

Scott A Smith*
Partner
*Denotes Law Corporation

c: Liam A. Smith, Co-Counsel for the NCCC

63116965.4

January 24, 2025

Sent by e-mail

Right Honourable Justin Trudeau
Prime Minister of Canada
80 Wellington St.
Ottawa, ON K1A 0A2
E-mail: pm@pm.gc.ca

Honourable Patty Hajdu
Minister of Indigenous Services Canada
10 rue Wellington
Gatineau, QC K1A 0H4
E-mail: ministresa-ministeris@sac-isc.gc.ca

Honourable Gary Anandasangaree
Minister of Crown Indigenous Relations and Northern Affairs Canada
10 rue Wellington, Gatineau QC K1A 0H4
E-mail: gary.anandasangaree-p@rcaanc-cirnac.gc.ca

This is **Exhibit C** to the Affidavit of **Duncan Farthing-Nichol**, affirmed before me on March 13, 2025

A Barrister and Solicitor in and for the Province of Ontario
LSO #: 84655B

Dear Prime Minister and Ministers Hajdu and Anandasangaree:

RE: Proposal to negotiate a letter of commitment in advance of March 24, 2025

I write in my capacity as Chair of the National Children's Chiefs Commission (the "**NCCC**") to propose that we work collaboratively over the next two months on a letter of commitment in relation to a national agreement on long-term reform of First Nations child and family services (**"LTR Agreement"**) and a process to address Jordan's Principle. We believe that delivering justice for all First Nations children isn't just the right thing to do – it is the necessary thing to do for our children, for our Nations, and for Canada. Doing so is also consistent with the Canadian Human Rights Tribunal's ("**CHRT**") merits decision (*First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs*, 2016 CHRT 2) and subsequent orders.

The Chiefs, sitting together as the First Nations-in-Assembly, voted overwhelmingly on behalf of rights holders to establish the NCCC and mandated it to oversee further negotiations in relation to the LTR Agreement and Jordan's Principle, all while working collaboratively with the Assembly of First Nations Executive.

The NCCC, which is supported by skilled First Nations technical experts from across Canada, is comprised of: (i) one regional representative, an alternate, and their technician(s) from each of the eleven AFN regions; and (ii) one regional representative, an alternate, and their technician(s) for every region not represented by AFN. All regions except for Ontario have appointed their NCCC representatives through their regional processes, and the NCCC began to convene regular meetings in December 2024. The Commissioners bring considerable expertise in child and family services, Jordan's Principle, governance, inter-governmental relations, and negotiations.

We were pleased to hear the Prime Minister's remarks during Special Chiefs Assembly in December 2024 confirming that the $47.8B earmarked in the draft final settlement agreement is still there and that Canada remains committed to reaching an agreement. Similar sentiments were echoed by the Minister of Indigenous Services Canada. These remarks confirm our shared interest and duty to ensure that this generation of First Nation children grows up free of all forms of discrimination and is able to live the lives that they wish to have and that their ancestors prayed for.

Canada's public statements in the wake of the AFN Special Chiefs Assembly in October 2024 suggest that the government has questions about: (i) the scale of funding required to satisfy the orders on First Nations child and family services; (ii) whether First Nations would consider a pathway that would, at some point in the future, end the CHRT's jurisdiction; and (iii) whether First Nations outside of Ontario are ready to proceed with a negotiated settlement.

In relation to the first issue, the NCCC is committed to an evidence-informed approach. Our experts have informed us that while there is a need for capacity building funds to ensure First Nations are set up for success and some expenditures such as capital, post-majority services, and band-representative services may need to continue at actuals for a limited time because there is insufficient evidence to project future costs, the overall funding envelope that is required to end discrimination in First Nations child and family services and ensure it never happens again is in the ballpark of what Canada previously proposed. This assumes a fair and equitable distribution among regions related to relevant factors such as the rates of over-representation of First Nations children in care, including in Ontario.

The NCCC is committed to maximizing the value of every dollar to deliver measurable outcomes for our First Nation children, youth, and families. We see important opportunities to re-allocate funding in the draft final settlement agreement in ways that will more directly benefit children and improve accountability to First Nations Leadership.

In relation to the second issue, the NCCC sees a pathway that would, at some point in the future, end the CHRT's jurisdiction.

In relation to readiness, the First Nations-in-Assembly passed clear resolutions directing a reset of negotiations. The NCCC is established and is supported by skilled First Nations technical experts from across Canada. We also benefit from the evidence-based research that has been completed that can inform the way forward. We are ready to discharge the sacred responsibilities we have been entrusted with by First Nations in our respective 11 regions.

The NCCC would like to meet with you, the AFN Executive, and the Caring Society at the earliest opportunity to gauge Canada's interest in entering into a binding letter of commitment before March 24, 2025, to secure existing commitments and to chart a pathway forward to resolve the CHRT proceeding on child and family services. We would

also welcome discussions to set a pathway to address current challenges and the long-term reform of Jordan's Principle. We will send more specific proposals on how we can address the outstanding issues next week to help inform our meeting.

Sincerely,

Chief Pauline Frost
Chair, NCCC

c: NCCC

AFN Executive

Dr. Cindy Blackstock, Executive Director, Caring Society

Pierre Poilievre, Leader of the Conservative Party

Michelle Ferreri, Shadow Minister for Families, Children, and Social Development

Marilyn Gladu, Shadow Minister for Civil Liberties

Larry Brock, Shadow Minister for Justice and Attorney General of Canada

Jagmeet Singh, Leader of the NDP

Niki Ashton, Critic for Indigenous Services

Charlie Angus, Deputy Critic, Crown-Indigenous Relations

Lori Idlout, Critic, Indigenous Services

Yves-François Blanchet, Leader of the Bloc Québécois

Scott A. Smith and Liam A. Smith, interim legal counsel to the NCCC

Jenica Atwin, Parliamentary Secretary for Minister of ISC

Jaime Battiste, Parliamentary Secretary for Minister of CIRNAC

Deliah Bernard, Indigenous affairs advisor office of the Prime Minister of Canada

Ministre des Services aux Autochtones et ministre responsable de l'Agence fédérale de développement économique pour le Nord de l'Ontario

Minister of Indigenous Services and Minister responsible for the Federal Economic Development Agency for Northern Ontario

Ottawa, Canada K1A 0H4

This is **Exhibit D** to the Affidavit of **Duncan Farthing-Nichol**, affirmed before me on March 13, 2025

A Barrister and Solicitor in and for the Province of Ontario
LSO#: 86655B

February 25, 2025

Chief Pauline Frost
National Children's Chiefs Committee
Our Children Our Way Secretariat
200-100 Park Royal South
WEST VANCOUVER BC V7T 1A2

pauline.frost@vgfn.ca

Dear Chief Frost:

Thank you for your correspondence of January 24, 2025, sent to the Right Honourable Justin Trudeau, Prime Minister, the Honourable Gary Anandasangaree, Minister of Crown-Indigenous Relations and Northern Affairs, and myself in relation to a national agreement on long-term reform of the First Nations Child and Family Services Program.

The Agreement-in-Principle on Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle signed by the Assembly of First Nations, Caring Society, Chiefs of Ontario, and Nishnawbe Aski Nation in December 2021, was an evidence-informed approach that provided a foundation for improving the lives of First Nation children and families across the country.

Canada remained committed to a First Nations-led approach to reforming the First Nations Child and Family Services Program, and developed a fully reformed Program in the Final Agreement with the rights holder Parties to the Canadian Human Rights Tribunal's complaint. The robust framework of reforms contained within the Final Agreement would have legally bound Canada to provide $47.8 billion in stable and predictable funding over ten years for a fully reformed First Nations Child and Family Services Program that would have reduced the number of First Nation children in care and kept children connected to their families, communities, and cultures.

.../2

Canada remains committed to the implementation of the Canadian Human Rights Tribunal's orders, and to ending the discrimination identified by the Tribunal and preventing its recurrence.

There has been confusion regarding the role of the National Children's Chiefs Committee and whether you and the committee are the body that Canada should be working with, as the Assembly of First Nations has yet to clarify their role in relation to long-term reform of the First Nations Child and Family Services Program. Attached is the most recent correspondence from the Assembly of First Nations' counsel indicating that they are awaiting instructions on this issue. I would encourage the National Children's Chiefs Commission to work directly with officials from the Assembly of First Nations with respect to long-term reform of the First Nation Child and Family Services Program to clarify this situation.

Yours sincerely,



The Honourable Patty Hajdu, P.C., M.P.

Encl.

First Nations Child & Family Caring Society | Société de soutien à l'enfance et à la famille des Premières Nations

fncaringsociety.com

January 28, 2025

Right Honourable Justin Trudeau
Prime Minister of Canada
80 Wellington St.
Ottawa, ON K1A 0A2
E-mail: pm@pm.gc.ca

Honourable Patty Hajdu
Minister of Indigenous Services Canada
10 rue Wellington
Gatineau, QC K1A 0H4
E-mail: ministresa-ministeris@sac-isc.gc.ca

Honourable Gary Anandasangaree
Minister of Crown Indigenous Relations and Northern Affairs Canada
10 rue Wellington, Gatineau QC K1A 0H4
E-mail: gary.anandasangaree-p@rcaanc-cirnac.gc.ca

This is **Exhibit E** to the Affidavit of **Duncan Farthing-Nichol**, affirmed before me on March 13, 2025

A Barrister and Solicitor in and for the Province of Ontario
LSO#: 86635B

Dear Prime Minister and Ministers Hajdu and Anandasangaree:

Subject: First Nations Child and Family Services and Jordan's Principle

Recognizing your commitment to the Truth and Reconciliation Commissions Calls to Action, numerous resolutions from First Nations rights holders which prioritize First Nations child and family services and Jordan's Principle, and correspondence from the National Children's Chiefs Commission (NCCC) inviting you to co-develop a letter of commitment to set the stage for negotiations to address the requirements set out in the Canadian Human Rights Tribunal (CHRT) decisions in *First Nations Child and Family Caring Society et al v. Attorney General of Canada T1340/7008*, we write to express our interest in supporting the development of a letter of commitment on long-term reform of First Nations child and family services and Jordan's Principle.

We currently stand at a pivotal moment to ending discrimination through long-term reform of First Nations child and family services and Jordan's Principle. The Caring Society remains deeply committed to reforming child and family services and we are dedicated to achieving long-lasting solutions that are in the best interests of First Nations children for generations to come.

We are greatly encouraged by the direction First Nations-in-Assembly have provided, including clear direction to establish the National Children's Chiefs Commission to oversee negotiations on First Nations child and family services and Jordan's Principle in collaboration with Assembly of First Nations Executive Committee. First Nations leadership have entrusted the NCCC with the sacred work of ensuring an inclusive,

transparent, and evidence-based approach that will lead to better results for their children and families. First Nations across Canada are ready to begin negotiations and we hope Canada will take measures to do so as well.

Developed through First Nations-driven research with the Institute of Fiscal Studies and Democracy (IFSD), the groundwork has been laid and we have an evidence-informed approach to reforming First Nations child and family services and Jordan's Principle. The IFSD and First Nations have developed a vision for child and family services that includes a change in structure and resources to an outcome-based approach based on well-being for thriving First Nations children and transformation of organizational strategy, people, processes, and systems. First Nations rights holders have affirmed that the approach to child and family services must be one that is needs-based and prioritizes substantive equality, best interests of the child, culturally appropriate and distinct community circumstances. With these evidence-informed solutions and the support of skilled First Nation technicians and leaders across Canada, the Caring Society is confident that we can progress quickly to develop a reformed approach that is in the best interests of First Nations children and families.

Through good faith negotiations and respect for First Nations rights holders, we can chart a pathway forward to resolve the CHRT proceedings. While litigation remains an option, the Caring Society believes that negotiation is a preferred pathway. We invite your government to return to the negotiation table to achieve a national agreement on long-term reform of First Nations child and family services and a process to address Jordan's Principle. We are willing to make history together. This is a key moment for you to show your deep commitment to advancing reconciliation with First Nations so we welcome your response to our invitation to work on a letter of commitment to be completed by March 15, 2025 that will set a pathway to more detailed negotiations on long term reform.

Respectfully,

Raymond Shingoose
President, First Nations Child & Family Caring Society

Cindy Blackstock
Executive Director, First Nations Child & Family Caring Society

CC:
National Children's Chiefs Commission
AFN Executive

February 21, 2025

Sent by e-mail

Right Honourable Justin Trudeau
Prime Minister of Canada
80 Wellington St.
Ottawa, ON K1A 0A2
E-mail: pm@pm.gc.ca

Honourable Patty Hajdu
Minister of Indigenous Services Canada
10 rue Wellington
Gatineau, QC K1A 0H4
E-mail: ministresa-ministeris@sac-isc.gc.ca

Honourable Gary Anandasangaree
Minister of Crown Indigenous Relations and Northern Affairs Canada
10 rue Wellington, Gatineau QC K1A 0H4
E-mail: gary.anandasangaree-p@rcaanc-cirnac.gc.ca

This is **Exhibit F** to the Affidavit of **Duncan Farthing-Nichol**, affirmed before me on March 13, 2025

A Barrister and Solicitor in and for the Province of Ontario
LSUC#: 86358

Dear Prime Minister and Ministers Hajdu and Anandasangaree:

RE: Follow-up to the NCCC's January 24, 2025 letter proposing to negotiate a letter of commitment in advance of March 24, 2025

I write in my capacity as Chair of the National Children's Chiefs Commission ("**NCCC**") to follow up with you in relation to the NCCC's January 24, 2025 letter proposing that we work collaboratively on a letter of commitment in relation to a national agreement on long-term reform of First Nations child and family services ("**LTR Agreement**") and a process to address Jordan's Principle.

In our January 24 letter, the NCCC highlighted our views that: (i) the overall funding envelope which is required to end discrimination in First Nations child and family services and ensure it never happens again is in the ballpark of the $47.8B that Canada previously proposed; (ii) there is a pathway that would, at some point in the future, end the Canadian Human Rights Tribunal's ("**CHRT**") jurisdiction; and (iii) the NCCC is ready, willing, and able to immediately proceed with completing negotiation of a national LTR Agreement.

We closed our letter by requesting a meeting with you, the AFN Executive, and the Caring Society at the earliest opportunity to discuss entering into a binding letter of commitment before March 24, 2025.

The purpose of this letter is to provide you with additional details about what is needed, from the NCCC's perspective, to finalize the LTR Agreement. In this regard, we have enclosed a table which outlines: (i) the ten high-level, outstanding issues with the LTR Agreement which must be addressed before the LTR Agreement is finalized; (ii) Canada's position on each outstanding issue, as set out in the draft LTR Agreement; (iii) the NCCC's proposal on how to resolve each outstanding issue; and (iv) the NCCC's view on whether

each outstanding issue can be readily resolved. The NCCC proposes to use the enclosed table to guide our discussions to develop a binding letter of commitment which secures existing commitments and charts a pathway forward to resolving the remaining outstanding issues in relation to the LTR Agreement.

The enclosed table confirms the NCCC's view that *a* national LTR Agreement is within reach, and merely requires Canada to return to the negotiation table to work with the NCCC, the AFN Executive, and the Caring Society in good faith to deliver the justice that all First Nation children and families deserve.

The honour of the Crown is paramount in these negotiations. Canada has constitutional and statutory duties, which have been affirmed by the Supreme Court of Canada and enshrined in an *Act respecting First Nations, Inuit and Métis children, youth and families* and the *United Nations Declaration on the Rights of Indigenous Peoples Act* to act honourably, negotiate in good faith, and avoid conduct that undermines reconciliation. This includes respecting the inherent right of self-determination as expressed through First Nations-in-Assembly. Canada cannot unilaterally impose solutions or adopt an intransigent approach, especially when addressing the systemic discrimination the CHRT has determined is occurring here.

Canada's recent conduct in this matter disregards the CHRT's orders, the principles of reconciliation, statutory duties, and the victims' right to participate in the design and implementation of an effective remedy. In particular, Canada's termination of consultations after the First Nations-in-Assembly declined to endorse the draft Final Settlement Agreement raises serious concerns. The First Nations-in-Assembly, exercising their inherent rights, identified legitimate shortcomings with that agreement. Canada's duty was to return to the negotiating table, not to unilaterally end the process.

The NCCC is deeply concerned that Canada's current approach risks perpetuating the injustices that the CHRT's orders, statutory duties, and reconciliation itself are meant to remedy. A return to good-faith negotiations, grounded in the honour of the Crown and a genuine commitment to collaboration, is urgently needed.

We have asked our officials to follow up with your offices to schedule a meeting between us as soon as possible.

Sincerely,



Chief Pauline Frost
Chair, NCCC

c: NCCC

AFN Executive

Dr. Cindy Blackstock, Executive Director, Caring Society

Mark Carney, Candidate for Liberal Leader and Prime Minister

Chrystia Freeland, Candidate for Liberal Leader and Prime Minister

Pierre Poilievre, Leader of the Conservative Party

Michelle Ferreri, Shadow Minister for Families, Children, and Social Development

Marilyn Gladue, Shadow Minister for Civil Liberties

Larry Brock, Shadow Minister for Justice and Attorney General of Canada

Jagmeet Singh, Leader of the NDP

Niki Ashton, Critic for Indigenous Services

Charlie Angus, Deputy Critic, Crown-Indigenous Relations

Lori Idlout, Critic, Indigenous Services

Yves-François Blanchet, Leader of the Bloc Québécois

Scott A. Smith and Liam A. Smith, interim legal counsel to the NCCC

Jenica Atwin, Parliamentary Secretary for Minister of ISC

Jaime Battiste, Parliamentary Secretary for Minister of CIRNAC

Deliah Bernard, Indigenous affairs advisor office of the Prime Minister of Canada

Outstanding issue	Canada's position on the FSA	FNCCC's proposal to resolve outstanding issue	Solvable with Minimal Discussion	Elevated Levels of Discussion Potentially Required
1. Funding commitments	1. $47.8 B over 10 years	1 (a) The overall funding envelope required to end discrimination in First Nation child and family services and ensure it never reoccurs exists in the ballpark of the $47.8 B Canada announced.	✓	
		1 (b) Review of funding in draft FSA for governance. Some of these funds can be moved to the front lines.	✓	
		1 (c) Funding commitments that speak to distinct First Nations circumstances, that will include but are not limited to, remoteness issues, capacity building, actual and science-based needs, start-up funding for new agencies	✓	
	2. Annual claim-end	2 (a) Capital and post-majority all subsets for another 5 years, subject to review. Recognition that actuals during COVID-19 are not accurate. There are still knowledge gaps on required expenditures which may lead to marginal increases in funding envelope.	✓	
	3. Subject to annual appropriations and other approval processes required by Canada	3. Funding provided through guaranteed process such as statutory measures or special purpose statements (i.e. not subject to annual appropriations or other federal approval processes).	✓	
	4. Canada not required to provide any funding after 10-year term expires	4. Clarification that the funding responsibility does not disappear at the 10 year mark. Canada's obligation is to ensure the discrimination is eliminated and does not re-occur.	✓	
	5. The funding methodology does not eliminate the discrimination	5. (a) Use of FNIGC's measuring-to-thrive framework (see report) as a starting point needs-based funding approaches that prioritize substantive equality, and which address any adverse effects related to per capita funding approaches consistent with the CHRT's funding principles, including substantive equality, best interests of the child, culturally appropriate, distinct community circumstances		✓
		5 (b) Creation of pools of funding for regional approaches and capacity building	✓	
		5 (c) First Nations and Agencies can use surpluses for capacity building based on a exemption and they can become eligible for the capacity building fund as well. This will reduce the exposure for Canada and ensure dispersed funds are able to be put to use. Funding must be sufficient to meet the principles of the Agreement and other legislative and regulatory requirements that are consistent with the principles of this Agreement (e.g., the language Act).	✓	
	6. Relied on per capita and Indian Registry System (IRS) population-based funding model, similar to the one deemed discriminatory by the CHRT. Prevention services were capped at an arbitrary amount based on incomplete study - $2,000	6. First Nations and Agencies provide services to children and families wherever they reside (as per C-92 minimum standards). IRS does not capture the entire population served. Funding must not rely solely on the per capita formulae, especially those tied to the IRS. Parties must work towards a population framework, such as a First Nations-led census, to estimate the actual population served.	✓	
	7. Does not apply to First Nation children and families off-reserve	7. Extension of services of similar nature to those children who are First Nations who have been forced off-reserve due to lack of housing and services. See also 9(d).		
2. CHRT's jurisdiction	CHRT jurisdiction ends, including CHRT orders. Dispute Resolution Tribunal does not have jurisdiction to order Canada to fund new components or increase funding for existing ones	Stage 1: CHRT baseline orders stay in place and CHRT retains jurisdiction until the later of: (i) 5 years; or (ii) the Dispute Resolution Tribunal is established to monitor implementation of the FSA to ensure discrimination stops and never happens again.	✓	
			✓	
		Stage 2: Upon CHRT jurisdiction ending, Dispute Resolution Tribunal has ability to issue legally binding orders that require Canada to take additional measures (including providing additional funding) and make systemic changes if FSA measures are insufficient to end discrimination and ensure it never happens again. First Nations legal orders and laws must be recognized and incorporated into the dispute resolution process.		✓
3. Governance	1. No decision-making role for Chiefs	1. Collapse all proposed committees in the FSA into a National Body composed of the chiefs	✓	
	2. Membership in National Secretariat is limited to AFN, CCCS, and NWAC	2. National technical secretariat, which includes NAC and SAC, to provide support to the National Body (many of these entities already exist - those do the actual implementation work)	✓	
	3. Reform Implementation Committee members appointed by parties and required to carry out work in confidential process	3. Regional technical secretariats to support work of National technical secretariat	✓	
	4. Continues to rely on ISC to administer program and deliver funds	4. This will add to administrative costs. The Nations have existing organizations that can be engaged to support delivery	✓	
4. Departmental reform	The Expert Advisory Committee is bound by confidentiality and was not sufficiently independent of ISC.	Canada's internal accountability mechanisms needs to be reviewed (accountability framework). The work of the EAC in reforming ISC and developing an accountability framework must be transparent and independent.		✓
5. Accountability measures	1. Canada requires FNCFS agencies to co-develop child and community well-being plan with the affiliated First Nation to be submitted to ISC under a deadline and subject to annual updates. There are also provisions that allow ISC to trigger audits, annual reporting, and funding reviews	1. Agreement should respect accountability processes that already exist between First Nations and Agencies and agree to develop an accountability framework including development of planning and measurement provisions that at minimum, ensures the nations are informed of agency activities, promote reciprocal accountability, consistent with the Act.	✓	
	2. Canada has a facultative option to report to First Nations and the Reform Implementation Committee on an agency's compliance with the terms in its funding agreement.	2 (a) See 1, above. Accountability measures in Agreement must also recall that ISC, not Agencies, also hold liable for discrimination. Reforms must ensure that ISC is accountable to rights holders.	✓	
		2 (b) The Honour of the Crown extends to provincial governments as well on this issue. There can be no actual long-term reform without including accountability to Nations from other service providers (i.e. provinces and territories for non-delegated Nations)		✓
	3. The Reform Implementation Committee, which is confidential, is the sole entity charged with making recommendations to Canada and is also responsible for overseeing and monitoring the implementation of the reforms. It is staffed by ISC.	3. National Secretariat/Regional-FNIGC - hold ISC accountable for data collected to ensure compliance. Need solid program evaluation focused on ISC compliance. Governance mechanisms must operate openly and transparently	✓	
6. Regional variations	Regional variations for Ontario only	1. Agreement must recognize and allow for funding that matches distinct community circumstances		✓
		2. Cultural appropriateness		
		3. Allocation for children's needs above IRSD funding.		
		4. Regional Secretariats. ISC will respect regional processes in the governance, administration and delivery of First Nations child and family services as determined by First Nations rights holders, consistent with C92	✓	
7. C-92, treaty, and self-government	Funding will not be less than what would be provided for services funded under the FSA	1. Canada required to recognize the right to jurisdiction, and Crown responsibilities. Canada must ensure that any agreement (C-92, treaty, or self-government agreement) signed with First Nations discharges Canada's obligation to stop the discrimination and ensure it does not reoccur		
		2. Must recognize different pathways to jurisdiction.		
		3. Canada cannot contract out of its human rights obligation.		
		4. Canada must discharge its Honour of the Crown		
8. Confidentiality	1. Information from FSA implementation must be kept confidential.	1. ANSI 5. The starting principle for long-term reform must be openness and transparency. All negotiations and information relating to implementation of an Agreement should be, to the maximum extent possible, transparent. Transparency ensures accountability. Transparency and accountability, together, help end discrimination and prevent its reoccurrence.	✓	
	2. Confidentiality extends to discussions and communications surrounding negotiations according to the agreement in principle			
9. Definitions and Principles	Principles did not include the Honour of the Crown, intergenerational equity	Add to the Principles and definitions.	✓	
10. Term	Proposal: Canada confirms that the Honour of the Crown applies to the negotiation of long-term reform and the implementation of the ultimate agreement	This should be an evergreen agreement with a statutory basis. It is understood Canada has standard procedures for financial commitments in place. Treaty is by definition not a standard operating procedure.	✓	

OFFICE OF THE NATIONAL CHIEF
Assembly of First Nations

BUREAU DU CHEF NATIONAL
Assemblée des Premières Nations

This is **Exhibit G** to the Affidavit of **Duncan Farthing-Nichol**, affirmed before me on March 13, 2025

A Barrister and Solicitor in and for the Province of Ontario
LSO #: 86635B

March 4, 2025

The Honourable Patty Hajdu, P.C., M.P.
Minister of Indigenous Services
10 Wellington Street
Gatineau, QC K1A 0H4

Dear Minister:

On behalf of the Assembly of First Nations (AFN), I write to you again to urge the Government of Canada to seek a revised mandate to negotiate a Final Agreement regarding the long-term reform of the First Nations Child and Family Services (FNCFS) Program.

As you are aware, the First Nations-in-Assembly provided the AFN with several new mandates on long-term reform by way of resolution in October and December of 2024. These mandates direct a new process for pursuing reform, including a new governance and oversight structure. The resolutions additionally call for extensive engagements, revised negotiation processes, and funding principles to be embedded in the process and revised Draft Agreement. Through these resolutions, we once again call on Canada to obtain a new negotiation mandate aligned with the resolutions, and to provide resources to advance the work.

We also want to be clear that the AFN supports the National Children's Chiefs Commission (NCCC) in its work on advancing the mandates of the First Nations-in-Assembly in relation to negotiating Final Agreements on long-term reform of the FNCFS Program and Jordan's Principle. We therefore also call on Canada to duly consider the NCCC's recent correspondence and take the necessary measures to facilitate the NCCC's critical role in long-term reform, as directed by the Chiefs.

We must continue to collaboratively advance this necessary and critical work for the benefit of First Nations children and families. I trust you remain committed to these efforts and would appreciate an update on the Government of Canada's mandate at your earliest convenience.

Megwetch,

Cindy Woodhouse Nepinak
National Chief

Cc: AFN Executive Committee
National Children's Chiefs Commission

Services aux Autochtones Canada
Indigenous Services Canada

Sous-ministre
Deputy Minister

Ottawa, Canada
K1A 0H4

February 6, 2025

This is **Exhibit H** to the Affidavit of **Duncan Farthing-Nichol**, affirmed before me on March 13, 2025

A Barrister and Solicitor in and for the Province of Ontario
LSO#: 86635B

National Chief Cindy Woodhouse Nepinak
Assembly of First Nations
50 O'Connor Street, Suite 200
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Raymond Shingoose
President, First Nations Child and Family Caring Society
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info@fncaringsociety.com

Regional Chief Abram Benedict
Chiefs of Ontario
468 Queen Street East, Suite 400
TORONTO ON M5A 1T7
Orc.benedict@coo.org

Grand Chief Alvin Fiddler
Nishnawbe Aski Nation
100 Back Street, Unit 200
THUNDER BAY ON P7J 1L2
afiddler@nan.ca

Dear Parties:

This letter is to inform you of how Indigenous Services Canada will be using the principles from the Consultation Protocol entered into by all parties on March 2, 2018 to ensure oversight in the payment of consultation-related activities.

Canada remains committed to fulfilling its consultation obligations pursuant to 2018 Canadian Human Right's Tribunal 4, and as outlined in the Consultation Protocol. Effective immediately, invoices for a Party's consultation related work, including legal fees, will no longer be accepted for reimbursement. As per paragraph 24 of the Consultation Protocol, Indigenous Services Canada will provide each party with a "yearly budget forecast on an annual basis setting out the allotment of funding for the

.../2

coming year, based on an agreed upon workplan." We would suggest that for the time being, the consultation workplan focus on matters pertaining to the implementation of the Tribunal's existing orders on the First Nations Child and Family Services Program. In line with Indigenous Services Canada's obligation for financial oversight, Parties may be asked to report on expenditures annually for the Department to ensure that expenditures are not related to litigation.

I invite you or your officials to contact Lisa Legault, Director General, Child and Family Services Reform Sector, via email at lisa.legault@sac-isc.gc.ca, and Liliana Gutierrez, Acting Director General, First Nations and Inuit Health Branch, via email at liliana.gutierrez@sac-isc.gc.ca to schedule a meeting to develop the consultation workplan.

Yours sincerely,



Gina Wilson

First Nations Child & Family Caring Society | Société de soutien à l'enfance et à la famille des Premières Nations

fncaringsociety.com

This is **Exhibit I** to the Affidavit of **Duncan Farthing-Nichol**, affirmed before me on March 13, 2025

A Barrister and Solicitor in and for the Province of Ontario

March 10, 2025

Gina Wilson
Deputy Minister
Indigenous Services Canada
10 Wellington Street
Gatineau, QC K1A 0H4

Re: Funding for consultation regarding implementation of the Canadian Human Rights Tribunal's Orders, pursuant to 2018 CHRT 4

I am writing in response to your letter received at 7:23 PM Eastern Time on February 6, 2025 informing the Assembly of First Nations (AFN), Chiefs of Ontario (COO), Nishnawbe Aski Nation (NAN) and the First Nations Child and Family Caring Society of Canada (Caring Society) that ISC has unilaterally decided that "effective immediately" it will no longer accept invoices for consultation-related work for reimbursement. Without making any concrete proposal regarding how ISC will uphold its obligations under the Tribunal's orders, your letter requests that the parties contact the two Director Generals to establish a consultation workplan. Your letter also purports to limit consultation-related activities to the implementation of the Tribunal's existing orders on the First Nations Child and Family Services Program (FNCFS), despite the fact that the letter was sent in the midst of Tribunal-assisted mediation regarding the implementation of the Tribunal's orders on Jordan's Principle (Tribunal-assisted mediation is ongoing). Your letter also states that ISC may ask for unspecified annual reports related to ensuring that expenditures are not related to litigation.

Despite the Caring Society's surprise with Canada's unilateral decision changing ISC's practice, dating back to April 2018, of reimbursing the Caring Society's consultation related work, we are providing the workplan below to ensure that the parties' important work regarding the Tribunal-assisted mediation related to Jordan's Principle may continue uninterrupted.

In order to streamline matters, I request that you identify one official (and an alternate to contact during that employee's leave) in your office who has the authority to process and approve the Caring Society's invoices related to this workplan. Since ISC unilaterally changed what was an efficient payment process to a cumbersome one, whereby separate invoices had to be issued to the FNCFS Program and Jordan's Principle, there have been significant payment delays and concerns related to client-solicitor privilege as ISC demands more detail on Caring Society legal invoices. Before these measures were introduced, ISC payments were efficient and professionally managed. However, since October of 2024, ISC has been chronically late paying invoices, with some payments remaining outstanding for over 100 days. There are currently four outstanding invoices, three of which are over 65 days late and the remaining is over 35 days late.

Workplan Part One: Tribunal-assisted mediation regarding consultations under 2025 CHRT 6

On November 21, 2024, the Tribunal issued a letter decision granting a non-compliance motion brought by the Caring Society regarding Jordan's Principle in part and granting a cross-motion brought by Canada in part. The letter decision directed consultations between the parties in a manner of the parties' choosing to propose options for implementing a large number of remedial measures to address the issues identified in the decision. In December 2024, Canada advised that its preferred forum for addressing these issues was in Tribunal-assisted mediation with Member Harrington, who had been assigned by the Tribunal Chairperson to assist the parties in September 2024 in advance of the motion and cross-motion being argued.

The parties have met in twelve plenary sessions with the mediator since January 9, 2025, with more meetings scheduled for March and April 2025 and beyond. The Caring Society has also had six caucus sessions with the AFN, COO, NAN and the Canadian Human Rights Commission to discuss proposals and counterproposals related to the items under discussion.

The parties are presently discussing the following items pursuant to the Tribunal's orders:

1. Objective criteria to be used to identify urgent Jordan's Principle requests;
2. Definition of "no access to basic necessities" for the purposes of urgent Jordan's Principle requests;
3. Objective criteria and guidelines for cases involving caregivers and children fleeing from domestic violence (a category the Tribunal has included in the definition of urgent cases);
4. Guidelines for coordination between Jordan's Principle and other emergency services meant to support fire evacuation, including how to triage and respond to multifaceted requests that involve Jordan's Principle and other services;
5. Objective criteria to determine who is a "qualified professional" with relevant competence and training to identify urgent cases;
6. Guidelines on when the determination clock [for deciding requests] starts to run, in keeping with 2017 CHRT 14 and 2017 CHRT 35;
7. Interim practical and operational solutions supported by a rationale and available evidence to redress the hardship imposed on individuals and families (requestors) by reimbursement and payment delays;
8. Solutions to reduce and eventually eliminate the backlog that are efficient, effective and can work within government context; and
9. Options supported by rationale and available evidence in regards to timelines for non-urgent Jordan's Principle requests.

Canada has provided at least one round of proposals on all the items above except item #7 (payment timelines). Some of the items have involved multiple rounds of exchanges of proposals between the parties (items #1, #2, #3 and #5). At the present pace, discussions on these nine items can be anticipated to extend into the spring.

In addition to the items above, 2025 CHRT 6 also requires the parties to consult regarding:

10. Sufficiency of resources, including funding, for First Nations organizations receiving and/or determining and/or funding Jordan's Principle requests;
11. Development of an effective mechanism for referring First Nations children and families with Jordan's Principle requests to other services (including a culturally appropriate streamlined risk management system to ensure requestors referred to First Nations for Jordan's Principle services have their needs met in a timely manner and without barriers); and
12. Establishment of an interim independent, non-complex but effective, credible, national Jordan's Principle complaints mechanism.

The Caring Society counsel working on the Tribunal-assisted mediation and their associated hourly rates payable to the Caring Society for its non-profit purposes, are as follows:

<u>Caring Society Counsel</u>

a.	Sarah Clarke (Clarke Child & Family Law):	$505.00/hr
b.	David Taylor (Conway Baxter Wilson LLP):	$460.00/hr
c.	Kiana Saint-Macary (Conway Baxter Wilson LLP):	$235.00/hr
d.	Conway Baxter Wilson Articling Student:	$185.00/hr

The Caring Society has already incurred expenses of $85,906.43[1] related to the Tribunal-assisted mediation in January 2025 and $66,182.20[2] related to the Tribunal-assisted mediation in February 2025, for a total of $152,088.63, payable to the Caring Society for its non-profit purposes. We are addressing these months together with this workplan, given that your letter was received prior to the billing related to work in January 2025 being complete, and as work was underway for February 2025.

[1] Caring Society: $14,640.00; Clarke Child & Family Law: $34,767.22; Conway Baxter Wilson LLP: $36,499.21.
[2] Caring Society: $13,910.00; Clarke Child & Family Law: $27,481.69; Conway Baxter Wilson LLP: $24,790.51.

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This is broken down as follows:

	January Hours	February Hours	Total Hours
Caring Society Staff	54	63.5	117.5
Sarah Clarke	58.44	45.4	103.84
David Taylor	54.5	26.9	81.4
Kiana Saint-Macary	26.8	40.7	67.5
Articling Student	4.9	-	4.9

The amounts for January and February 2025 also include travel-related expenses for Ms. Clarke ($1,418.43 in January 2025 and $1,574.18 in February 2025).

Based on the progress to this point, the Caring Society projects monthly expenditure on Tribunal-assisted mediation (including time preparing and reviewing proposals, caucus sessions with the AFN, COO, NAN and Commission, plenary sessions with all parties and the mediator, and discussions with community experts) to be $91,800. This figure is calculated as follows:

Item	**Amount**
Caring Society Staff Time	$14,000
Clarke Child & Family Law Fees	$31,500 (est. 55 hours for Ms. Clarke)
Conway Baxter Wilson LLP Fees	$35,000 (est. 45 hours each for Mr. Taylor and Ms. Saint-Macary)
Travel	$1,500 (Ms. Clarke, Toronto -> Ottawa)
Subtotal	$82,000
12% provision for unexpected work volume/travel	$9,800
Total	**$91,800.00**

Given the pace of the Tribunal-assisted mediation, a provision should be made for a total of $540,000.00 on account of future work, payable to the Caring Society for its non-profit purposes. This is additional to the $152,088.63 attributable to work in January and February 2025, and which should be funded irrespective of these workplan discussions.

To satisfy any concerns on ISC's part regarding the funds going towards consultation and in order to enable ISC to keep track of expenditures in the mediation envelope, we propose to continue providing monthly invoice summaries to a single point of contact at ISC.

Workplan Part Two: Supporting Canada in its ongoing activities to fully implement the Tribunal's orders

The Consultation Protocol dated March 2, 2018 contains several provisions regarding the importance of supporting Canada in its ongoing activities to immediately implement the full meaning and scope of the Tribunal's orders, including:

- Article 2(c): The objectives of the parties in pursuing the consultations contemplated by this Protocol are as follows [...] To ensure that all the parties work in a cooperative fashion to assist Canada in ensuring that it ceases its discriminatory practices and reforms the FNCFS Program and *1965 Agreement* to reflect the findings in the *Decision*, and ceases applying its narrow definition of Jordan's Principle and takes measures to immediately implement the full meaning and scope of Jordan's Principle;

- Article 8(a): The Parties agree to engage in good faith consultations with Canada on immediate relief measures, to the extent of their respective interests, mandates and constituencies. Without limiting the generality of the foregoing [...] The Caring Society will promote the interests of First Nations families and children as well as FNCFS Agencies;

- Article 9: The Complainants, Interested Parties and the Commission each agree to work with their respective constituencies to facilitate consultations on the development and implementation of immediate relief measures, to the extent possible given the urgency of these measures.

- Article 10: The other Parties will jointly review Canada's proposed policy changes, strategies, standards and communication materials to help ensure that Canada complies with the Tribunal's Decision and

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Rulings, and that the policies are in keeping with the best interests of the child under the United Nations Convention on the Rights of the Child, including as interpreted by the UN Committee on the Rights of the Child in General Comment #11, and the United Nations *Declaration on the Rights of Indigenous Peoples*. Alternatively, the Parties can offer alternatives where Canada's proposed policies, strategies, standards and/or communication materials fall short of compliance or meeting the best interests of First Nations children and their families.

- Article 22: Canada will provide the Complainants and Interested Parties with sufficient and adequate funding to ensure that their organizations can fully participate in the implementation of the Consultation Protocol, and in the consultation process itself, which includes the involvement of their respective legal counsel.

For Caring Society staff, this work includes:

i. Communicating with Jordan's Principle requesters experiencing delays, disruptions or denials related to requests for products, services or supports from ISC pursuant to Jordan's Principle CHRT orders (including misidentification of urgent requests, requests for supporting documents, determination delays and reimbursement delays, and escalations to headquarters);
ii. Escalation of individual and, on occasion, group requests to ISC's attention;
iii. Communication with requesters providing information on the Jordan's Principle appeals process;
iv. Technical guidance to FNCFS Agencies and to First Nations regarding implementation of the Tribunal's orders;
v. Participation in committees, including the Jordan's Principle Operations Committee; and
vi. Seeking legal advice from counsel regarding application of the Tribunal's orders.

Caring Society counsel periodically provide advice regarding the items above.

If legal counsel are called upon, they provide advice at the following rates:

a. Sarah Clarke (Clarke Child & Family Law): $505/hr
b. David Taylor (Conway Baxter Wilson LLP): $460/hr

For 2025, the Caring Society has submitted invoices totaling $42,770 ($21,360 January; $21,410 February), payable to the Caring Society for its non-profit purpose.[3] The Caring Society staff hours are broken down as follows:

	January Hours	February Hours	Total Hours
Caring Society Staff	42	45	87

The Caring Society projects a need for monthly funding of $19,500, payable to the Caring Society for its non-profit purpose, to support staff work related to the Consultation Protocol activities noted above related to First Nations families, First Nations service providers and FNCFS Agencies, which includes provision for an approximate average of 3.5 hours of legal advice per month.

Future Activities (consultations on long-term reform of the FNCFS Program and of Jordan's Principle)

This workplan does not address long-term reform regarding either the FNCFS Program or Jordan's Principle. As you know, the Tribunal is currently seized of a motion regarding Canada's refusal to engage in further consultations following the First Nations-in-Assembly's decision to reset negotiations on the Revised Final Settlement Agreement regarding the FNCFS Program in October 2024. ISC's refusal to negotiate is particularly puzzling given that paragraph 379 of the draft Final Settlement Agreement on FNCFS specifically provided for choice by First Nations-in-Assembly. Furthermore, the Tribunal issued directions in November 2024 and January 2025 regarding Canada's conduct respecting Jordan's Principle. The parties just received further research regarding FNCFS reform and completion of research to inform long-term reform for Jordan's Principle is expected soon.

The Caring Society proposes to revise this workplan upon the completion of the Jordan's Principle research or the Tribunal's decision on the motion noted above.

[3] Per the description of work appended to the invoices, the January and February invoice total includes Tribunal-assisted mediation, such that some of this amount is reflected in the mediation-related information noted above.

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Single Point of Contact

As indicated, the Caring Society requests one point of contact for funding related to consultation activities. The experience in 2024 regarding divided responsibilities was administratively challenging for the Caring Society and, it seemed from our experience, for ISC. Given that this correspondence has come from your office, it seems to us that it would be practical for an official in your office or in the office of Associate Deputy Minister Kovacevic to be responsible for discussions regarding the Caring Society's consultation funding.

I look forward to receiving a response by Friday, March 21, 2025.

Sincerely,

Cindy Blackstock, Ph.D.
Executive Director, First Nations Child & Family Caring Society

Copy to: Michelle Kovacevic, Associate Deputy Minister
Lisa Legault, Director General
Liliana Gutierrez, Acting Director General

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This is **Exhibit G** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
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Date: 2025.10.22 10:20:21-04'00'
Foxit PDF Editor Version: 13.1.6

A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

Docket: T1340/7008

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 and NISHNAWBE ASKI NATION

Interested Parties

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TABLE OF CONTENTS

PART I - STATEMENT OF FACTS 1

A. OVERVIEW 1
B. BACKGROUND 2
1) The Complaint and the Findings of Discrimination by the Tribunal 4
2) Canada's Unilateral Decision-Making and the Genesis of the Consultation Protocol 6
3) The Road to the Draft FSA and the Caring Society's Attempts to Consult 7
4) The First Nations-in-Assembly's Call for a New Approach and Efforts to Engage in Further Consultation 10

PART II - ISSUES 13

PART III - SUBMISSIONS 14

A. DOES CANADA HAVE AN OBLIGATION TO CONSULT WITH THE CO-COMPLAINANTS REGARDING THE LONG-TERM REFORM OF FIRST NATIONS CHILD AND FAMILY SERVICES AND JORDAN'S PRINCIPLE? 14
1) The Tribunal's orders require Canada to consult with the parties 14
2) Canada has contractually bound itself to ongoing consultation 16
3) The Honour of the Crown requires meaningful consultation in remedying discrimination 17
i. The honour of the Crown assists in evaluating compliance with consultative orders and shaping future consultation 18
ii. Canada's statutory affirmations engage the honour of the Crown and entail a duty of diligent implementation that is intertwined with this litigation 19
iii. Consultations towards reforming the First Nations child and family services engage the honour of the Crown 21
B. HAS CANADA BREACHED ITS CONSULTATION OBLIGATIONS? 23
1) Re-centering what is at issue on this motion 23
2) Canada's (in)actions are in breach of its obligations 26
C. WHAT IS THE PATH FORWARD TO SECURE MEANINGFUL CONSULTATION? 27
D. CONCLUSION 29

PART IV - ORDER SOUGHT 30

PART V - LIST OF AUTHORITIES 31

PART I - STATEMENT OF FACTS

A. Overview

1. Canada concedes that the Consultation Protocol exists and remains in effect.[1] First Nations-in-Assembly have adopted resolutions clearly identifying the path forward on long-term reform for First Nations Child and Family Services and Jordan's Principle.[2] What remains in dispute is whether Canada, the discriminator, can dictate the scope, terms and timing of the consultations required by the Consultation Protocol—including by refusing to negotiate on the long-term reform of First Nations child and family services outside of Ontario, which negotiations have been called for by First Nations rights holders.

2. The answer is no. For the reasons that follow, the Caring Society argues that Canada must consult with the Caring Society and AFN on a good faith basis and in a manner that is in keeping with the Tribunal's clear orders, Canada's contractual commitments, its obligations to First Nations rights holders pursuant to the honour of the Crown, and the guidance expressed in rights holders' direction for long-term reform as reflected in the First Nations-in-Assembly's Resolutions.

3. The honour of the Crown is engaged in this litigation and entails positive duties towards reconciliation. First, it provides a lens through which to assess Canada's compliance with the Tribunal's orders. Second, it gives rise to a duty of diligent implementation that attaches to Canada's own promises in the *Act respecting First Nations, Inuit and Métis children, youth and families* and the *United Nations Declaration on the Rights of Indigenous Peoples Act*. Third, it sets the parameters for implementing the Consultation Protocol and exchanging with parties in the pursuit of a final settlement agreement, which falls within the ambit of the agreements considered in *Quebec (Attorney General) v. Pekuakamiulnuatsh Takuhikan*. In this case, Canada's attempts to dictate the terms of the Consultation Protocol and its refusal to

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[1] Letter from Deputy Minister of ISC to CS, AFN, COO and NAN (February 6, 2025), Exhibit "H" to Affidavit of D. Farthing-Nichol, affirmed March 13, 2025 [**Farthing-Nichol Affidavit**]: "Canada remains committed to fulfilling its consultation obligations pursuant to 2018 Canadian Human Right's Tribunal 4 [sic], and as outlined in the Consultation Protocol."

[2] AFN Resolutions 2024/60 and 2024/61, Exhibit "E" to Affidavit of A. Potts affirmed March 3, 2025 [**Potts Affidavit**]; AFN Resolutions 2024/88, 2024/89, 202490, Exhibit "D" to Affidavit of K. Quintana-James affirmed Feb. 13, 2025 [**Quintana-James Affidavit**].

consult with the Caring Society and AFN in a manner consistent with the direction of First Nations rights holders runs afoul of Canada's obligations pursuant to the honour of the Crown.

4. Seven years after Canada signed a Consultation Protocol aiming to facilitate inter-party discussions consistent with the dialogic approach and three years after the Panel's expression of hope that reform would come quickly,[3] it is time for Canada to be directed to consult with the AFN and the Caring Society in good faith so that the important work of nationwide long-term reform of the FNCFS Program can be completed.

5. The Caring Society acknowledges that First Nations children, youth and their families are waiting for Canada to end its discriminatory conduct and ensure it does not happen again. The Tribunal's retention of jurisdiction to ensure its orders are fully satisfied has been essential. The over 25 procedural and non-compliance orders made since the decision on the merits demonstrate the Tribunal's commitment to reconciliation and Canada's slow progress in ending its discriminatory conduct. First Nations children are entitled to reform that is grounded in evidence-informed solutions, that exceeds the status quo, that entrenches their rights to substantive equality and that places their best interests at the forefront for generations to come. The Caring Society is confident that this is achievable—if Canada discharges its obligations under the Consultation Protocol and works with the AFN and the Caring Society in good faith.

B. Background

6. Before providing a more detailed description of the events preceding this motion, a brief summary is in order. Three years ago, in concluding remarks in 2022 CHRT 8, the Panel Chairperson noted that "[t]here is a real need to study the past to change minds and ways informed by the whole truth. The real goal is that minds and ways are changed to create a true shift giving birth to transformative justice and lasting change. This is a minimal requirement to honour the children and their families who were harmed and those who lost their lives."[4] This echoed the hope expressed in the Panel's closing remark that "reform and real transformative change which will be the hallmarks of true justice will now be swift and future issues that may arise will be resolved expeditiously."[5]

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[3] 2022 CHRT 8 at para 170.
[4] 2022 CHRT 8 at para 171.
[5] 2022 CHRT 8 at para 170.

7. Much work has been done in the three years since these concluding remarks. However, Canada has not yet reached what the Panel has identified as "[t]he ultimate objective" of these proceedings, which is "to achieve sustainable long-term reform informed by the many studies, expert committees, First Nations, the parties, etc. for generations to come."[6]

8. *The Final Agreement on Long Term Reform of the First Nations Child and Family Services Program* ("**Draft FSA**") negotiated on a confidential basis by Canada, Assembly of First Nations ("**AFN**"), Chiefs of Ontario ("**COO**") and Nishnawbe Aski Nation ("**NAN**") was released on the last day of the 2023 summer AFN Special Chiefs Assembly, in English only. It was released in French in mid-August, following advocacy from First Nations.[7]

9. The Draft FSA is not before the Tribunal for determination, nor is the process leading to its drafting material to this motion. Therefore, the Caring Society will not reiterate its positions on the Draft FSA (which are already a matter of public record), save where Canada's conduct regarding the Draft FSA and text is material to this motion and Canada's duties related to the honour of the Crown.

10. It is sufficient to note that in October of 2024, First Nations rights holders exercised their right to not approve the Draft FSA as it did not achieve the purpose of the draft FSA, namely to eliminate the discrimination found by the Tribunal and prevent its recurrence. First Nations overwhelmingly directed a reset of negotiations with Canada, overseen by a regionally representative National Children's Chiefs Commission ("**NCCC**") in collaboration with AFN Executive and the Caring Society.[8]

11. Canada then refused to return to the negotiating table to discuss long-term reform on First Nations child and family services outside of Ontario. It proceeded to only negotiate reform of First Nations child and family services agreement in Ontario with COO and NAN. This runs afoul of the objects of the Action Plan required by the *United Nations Declaration on the Rights of Indigenous Peoples Act* to eliminate all forms of discrimination.[9] It is not enough for Canada

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[6] 2025 CHRT 6 at para 237.
[7] Affidavit of M. Sioui in support of CSSSPNQL & AFNQL's Motion to Intervene.
[8] AFN Resolutions 2024/60 and 2024/61, Exhibit "E" to Potts Affidavit; AFN Resolution 2024/88, Exhibit "D" to Quintana-James Affidavit.
[9] The *United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan: 2023-2028* at p. 26.

to take measures to relieve the discrimination for some of its victims—it must take measures to relieve the discrimination for all of its victims.

12. Progress towards the ultimate objective of stopping Canada's discrimination and preventing its recurrence for every child is now at an impasse. Despite multiple orders requiring Canada to eliminate discrimination within the FNCFS Program and prevent its recurrence, Canada now states that it will not take further steps to consult on long-term reform, citing its lack of a "mandate". This refusal reflects Canada's old mindset, as it fails to recognize that the Tribunal's orders have provided substantial direction regarding the need for timely action. Canada is subject to orders under quasi-constitutional federal legislation and must act in a manner consistent with the honour of the Crown.

13. The following subsections describe (1) the Complaint and the Tribunal's findings; (2) the rationale for the Consultation Protocol; (3) consultation efforts in the lead-up to the Draft FSA; (4) Canada's rejection of further consultation after First Nations-in-Assembly rejected the Draft FSA and proposed a path forward.

1) The Complaint and the Findings of Discrimination by the Tribunal

14. On February 27, 2007, the Caring Society and the AFN filed a human rights complaint pursuant to s. 5 of the *Canadian Human Rights Act* ("***CHRA***"), alleging that Canada was discriminating against First Nations children and families based on race and national and/or ethnic origin. The Complaint alleged that Canada's FNCFS Program discriminated against First Nations children, youth and families, in all provinces and the Yukon and that its failure to implement Jordan's Principle discriminated against First Nations children and youth. The discrimination was described as "systemic and ongoing".

15. The Complaint was filed as a last resort. For the preceding decade, both the AFN and the Caring Society advocated for reform by conducting research, which Canada participated in and commissioned. This research showed that First Nations children received less child welfare and social services than all other Canadian children and provided recommendations to end the discrimination. Canada chose not to implement the recommendations despite its knowledge that the under-funding was linked to growing numbers of children in care, leaving the Caring Society and the AFN with no other choice but to bring the Complaint.

16. After years of delay occasioned by Canada's procedural litigation and technical arguments, this Panel was appointed on July 10, 2012, to hear this case.[10] Repeatedly, the Tribunal heard compelling and largely uncontradicted evidence of Canada's discriminatory conduct, and the perpetuation of harm and trauma through its provision of First Nations child and family services ("**FNCFS**") and its failure to implement Jordan's Principle.

17. The evidence underscored Canada's abject failure to take action to redress the discrimination of which it was fully aware. In the Merits Decision, the Tribunal upheld the key allegations of discrimination made in the Complaint. It determined that Canada's FNCFS and approach to Jordan's Principle discriminated against First Nations children and families on the prohibited grounds of race and national or ethnic origin contrary to s. 5 of the *CHRA*.[11] The Tribunal ordered Canada to cease its discriminatory practices, reform FNCFS, and to take measures to immediately implement the full meaning and scope of Jordan's Principle.

18. The Tribunal also found that Canada knew about: (i) its discriminatory conduct; (ii) the inequality in the FNCFS; (iii) the harm caused to First Nations children; (iv) the disparity facing First Nation children in accessing essential services; and (v) the harmful impacts of misconstruing Jordan's Principle.[12] It further ruled that Canada had evidence-based solutions to remediate these adverse impacts, as reflected in reports it funded and participated in.[13] Despite having opportunities to act, the Tribunal found Canada failed to make any substantive change to alleviate the discrimination, further exacerbating the harm to First Nations children across the country.[14] This wilful and reckless disregard by Canada was later held by the Tribunal to be the "worst-case scenario under our *Act*."[15]

19. The Tribunal took great care in reviewing and setting out the evidence of harm experienced by First Nations children, youth, and families resulting from Canada's discriminatory conduct. At all times, the Tribunal's analysis was focused on the experiences of the children as opposed to the government's particular mechanism for underfunding or its reasons for failing to fund equitable services.

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[10] 2012 CHRT 16.
[11] Merits Decision at paras 456-467.
[12] Merits Decision at paras 168, 362-372, 385-386, 389 and 458.
[13] Merits Decision at paras 150-185, 270-275, 362-372, 389 and 481.
[14] Merits Decision at para 461.
[15] 2019 CHRT 39 at para 234.

20. In addition to making orders directing Canada to cease its discriminatory conduct, the Tribunal stated that the discrimination was ongoing, and that further orders and remedies would follow. These decisions document Canada's ongoing discriminatory conduct against First Nations children, and its failure to comply with the Merits Decision.

2) Canada's Unilateral Decision-Making and the Genesis of the Consultation Protocol

21. Canada's failure to meaningfully consult with, and properly implement guidance from, First Nations, experts, and stakeholders has been a consistent theme in this proceeding. Indeed, Canada's unilateral decision-making and piecemeal approach to evidence-based solutions resulted in this proceeding, serious harms to countless children, youth and families, and the need for the parties to consistently return to the Tribunal in instances of Canada's non-compliance with the Tribunal's orders.

22. In 2016 CHRT 2, the Tribunal underscored that the FNCFS Program and the provincial and territorial agreements "were undertaken and are controlled by the Crown" and that Canada has "discretionary control over the FNCFS Program through policy and other administrative directives".[16] The Tribunal found that this unilateral decision-making had detrimental impacts on First Nations children, youth and families.[17]

23. In 2016 CHRT 16, the Tribunal outlined that "Immediate relief is a temporary measure to remove as many adverse impacts as possible with the understanding that consultation, studies and data collection will translate into a more comprehensive and effective change of the FNCFS Program" [emphasis added].[18]

24. In 2018 CHRT 4, the Tribunal stated that despite Canada advancing that it cannot make unilateral decisions, it did on many occasions.[19] The Tribunal found that Canada's unilateral decision-making was harming First Nation children, particularly in relation to: i) providing

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[16] Merits Decision at para 105.
[17] See e.g. Merits Decision at paras 136, 185, 236-237, 392 and 425, 461.
[18] 2016 CHRT 16 at para 31.
[19] 2018 CHRT 4 at para 438. See also para 176.

incremental funding for all agencies in budget 2016;[20] ii) funding children in care rather than prevention programs;[21] and iii) not fully examining the gaps in mental health services.[22]

25. By 2018 it was clear that Canada could not (or would not) take meaningful steps to change its approach, in keeping with the guidance and orders of the Tribunal. As a result, in 2018 CHRT 4, Canada was ordered to consult with the Commission, the AFN, the Caring Society, COO and NAN and to enter into a consultation protocol with the parties to ensure consultation would be consistent with the honour of the Crown and eliminate the discrimination identified by the Tribunal in 2016.[23] The Consultation Committee on First Nations Child Welfare (the "**CCCW**") was constituted as a result of a consultation protocol entered into by the parties on March 2, 2018.[24]

26. The Tribunal's order for consultation and the work of the CCCW has resulted in significant progress in this case, particularly as it relates to compensation and the consent order in 2022 CHRT 8. In tandem with the consultation orders, a dialogic approach has developed, ensuring that the rights of First Nations children are placed at the centre of decision-making by allowing the Parties to work together in an accountable manner and to return to the Tribunal for guidance and tailored remedies when necessary.

3) The Road to the Draft FSA and the Caring Society's Attempts to Consult

27. The CCCW met regularly until the Caring Society, the AFN and Canada entered into mediation on compensation and long-term reform, following the Tribunal's 2019 CHRT 39 Order, from December 2020 to September 2021.[25] A second round of mediation was entered into on long-term reform regarding the FNCFS Program and Jordan's Principle, which concluded on December 31, 2021 with the parties, including COO and NAN, entering into the Agreement-in-Principle ("**AIP**").

28. In December 2022, First Nations-in-Assembly adopted Resolution 40/2022 directing that the Parties return with options and supporting evidence for decision-making by First Nations-in-Assembly and noting that the FSA should not preclude parties "from seeking orders

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[20] 2018 CHRT 4 at paras 140-143.
[21] 2018 CHRT 4 at paras 119 and 150.
[22] 2018 CHRT 4 at para 295.
[23] 2018 CHRT 4 at para 400.
[24] Quintana-James Affidavit at para 2; see also Potts Affidavit at paras 8-9.
[25] Potts Affidavit at paras 10-11.

from the Tribunal to ensure that all First Nations children, youth and families will be free from discrimination and its recurrence for all generations to come."[26]

29. The Caring Society, AFN, COO, NAN and Canada worked confidentially to develop a long-term reform agreement in 2022 and 2023, while the Institute of Fiscal Studies and Democracy's ("**IFSD**") research work was ongoing. Reforms related to Jordan's Principle were ultimately bifurcated from this process, as research on child and family services was more advanced than that on Jordan's Principle. The discussions related to FNCFS did not progress for several months in 2023, due to Canada's stating that it required a new "mandate".[27]

30. As detailed in the evidence and submissions on the Caring Society's non-compliance motion related to Jordan's Principle and Canada's cross-motion, the Caring Society left the AIP in order to file the non-compliance motion on Jordan's Principle against Canada as such action was not permissible under the AIP. The Caring Society rejects the bald assertion in Canada's affidavit that "the Caring Society progressively withdrew from […] negotiations."[28] To the contrary, and as described in Dr. Blackstock's March 27, 2024 reply affidavit affirmed in the context of the above-noted motion, the Caring Society clearly advised the AIP Parties of its interest in participating in negotiating long-term reform outside of the AIP, which had abetted Canada's discriminatory conduct regarding Jordan's Principle. Terms of the Caring Society's participation were not agreed to and the remaining AIP Parties, Canada, AFN, COO and NAN continued to negotiate the Draft FSA.[29]

31. Despite this impasse, the Caring Society continued providing its positions to the AIP Parties consistent with its practice of providing constructive evidence-informed advice. This included providing feedback on the draft FSA in April 2024.[30] In addition, the Caring Society published its positions document and updated it based on the strength of advice from First Nations and First Nations experts. When the Draft FSA was made public, the Caring Society continued to provide its views to the AIP Parties, as explained below.[31]

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[26] AFN Resolution 40/2022 at paras 3-9, Exhibit "A" to Potts Affidavit.
[27] Potts Affidavit at paras 22-24; Farthing-Nichol Affidavit at paras 39-40.
[28] Farthing-Nichol Affidavit at para 42.
[29] Affidavit of C. Blackstock affirmed March 27, 2024 at paras 88-89. See also Affidavit of C. Blackstock affirmed January 12, 2024 at paras 19, 34, 39, 74, and 175.
[30] Farthing-Nichol Affidavit at para 46.
[31] Correspondence from S. Clarke to Canada, COO, NAN (September 12, 2024), Exhibit "B" to Quintana-James Affidavit; Letter from S. Clarke to Canada (October 29, 2024), Exhibit "E" to Quintana-James Affidavit.

32. AFN, COO, NAN and Canada's confidential AIP discussions led to the Draft FSA being released on July 11, 2024. Once the Draft FSA was released, the Caring Society attempted to engage with Canada and the other parties, in line with the Tribunal's consultation orders set out in 2018 CHRT 4.

33. On September 12, 2024, the Caring Society wrote to Canada and the other parties proposing a meeting to discuss the Draft FSA, in line with the Consultation Protocol entered into by the parties and the direction from the Tribunal. On September 19, 2024, the Caring Society wrote again to canvas possible dates to meet and advised that the Caring Society would be sending a working document of suggested amendments to the Draft FSA in advance of meeting. On September 26, 2024, the Caring Society wrote to Canada and the parties with their proposed amendments to the Draft FSA.[32] Indeed, the Caring Society saw then, and sees now, a path forward to long-term reform of the FNCFS Program and First Nations child and family services across the country – the parameters set down by the Tribunal in 2016 CHRT 2 and its subsequent orders are achievable for First Nations children.

34. On October 2, 2024, COO wrote to the Caring Society in response to its correspondence of September 19, 2024 and September 26, 2024, and advised that AFN, COO, NAN and Canada would consider a confidential meeting on the Draft FSA and that while these parties welcomed suggestions to the Draft FSA, they would not adopt any significant changes to the agreement.[33]

35. Canada wrote to the Caring Society on October 4, 2024, to advise that they would meet with the Caring Society under the same parameters as COO's correspondence of October 2, 2024.[34] A confidential meeting of this nature is not in keeping with the open and transparent process set out in the consultation protocol nor was it warranted given that the Caring Society's materials that would be the focus of the discussion were public.

36. As noted above, the Draft FSA is not before the Tribunal on this motion. The Caring Society's review of the Draft FSA is a matter of public record and, after doing their own due diligence, First Nations-in-Assembly chose to not adopt it. Nor is this motion about the process leading up to the Draft FSA, except insofar as it assists the Panel in providing appropriate

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[32] Correspondence from S. Clarke to Canada, COO, NAN (September 12, 2024), Exhibit "B" to Quintana-James Affidavit.
[33] Letter from M. Wente to S. Clarke (October 2, 2024), Exhibit "C" to Quintana-James Affidavit.
[34] On those parameters, see Letter from M. Wente to S. Clarke (October 2, 2024), Exhibit "C" to Quintana-James Affidavit.

guidance on prospective consultation. Rather, this motion concerns Canada's refusal to negotiate with First Nations outside of Ontario after the First Nations-in-Assembly exercised their right to disagree with the draft FSA and to call for improvements. In particular, this refusal impugns Canada's commitment to good faith negotiations, undermines its obligations under the honour of the Crown and raises the spectre of retaliation.

4) The First Nations-in-Assembly's Call for a New Approach and Efforts to Engage in Further Consultation

37. On October 16-18, 2024, the AFN hosted a Special Chiefs Assembly ("**SCA**").[35] The First Nations-in-Assembly were presented with the Draft FSA for decision-making in keeping with the terms of the Draft FSA. The Draft FSA was not approved as it did not satisfy the object of the agreement—namely to end Canada's discriminatory conduct and prevent its recurrence.[36]

38. Instead, the First Nations-in-Assembly passed several resolutions including 60/2024: *Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle* and 61/2024: *Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services* directing a reset of negotiations to stop Canada's discriminatory conduct and prevent recurrence.[37]

- Resolution 60/2024 rejected the Draft FSA, outlined several action items, and directed the AFN to establish a National Children's Chiefs Commission ("**NCCC**") to provide strategic direction and oversight of negotiations on long-term reform. The resolution further called upon Canada and directed the AFN Executive Committee to unconditionally include the Caring Society in the long-term reform agreement negotiation processes.[38]

- Resolution 61/2024 also outlined amongst several action items, including directing the NCCC to renegotiate the draft FSA in keeping with the direction of the First Nations-in-Assembly. The resolution further called upon Canada to seek a new negotiation mandate to address the matters identified in the resolution.[39]

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[35] Quintana-James Affidavit at para 6. See also Potts Affidavit at para 32.
[36] Potts Affidavit at para 33.
[37] Quintana-James Affidavit at para 6.
[38] AFN Resolution 60/2024, Exhibit "E" to Potts Affidavit.
[39] AFN Resolution 61/2024, Exhibit "E" to Potts Affidavit.

39. Following the resolutions adopted by the First Nations-in-Assembly in October 2024, the Caring Society wrote to Canada to discuss the direction for "a new approach and a reset to the negotiations in an open and transparent manner" and asking to meet with Canada "to discuss our suggested amendments and positions documents."[40]

40. On December 3-5, 2024, the AFN hosted another SCA.[41] The First Nations-in-Assembly adopted several resolutions including the following:

- 88/2024: *Implementing the Chiefs' Direction to End Canada's Discrimination in First Nations Child and Family Services* - calling on Canada and directing the AFN to fully and publicly commit to respecting the direction of the First Nations-in-Assembly as it relates to the rejection of the Draft FSA, and resolutions 60/2024 and 61/2024.[42]

- 89/2024: *Renewing Negotiations Toward Long-Term Reform of First Nations Child and Family Services and Jordan's Principle* - supporting the NCCC's mandate to establish a negotiation team for long-term reform.[43]

- 90/2024: *Safeguarding First Nations Children and Holding Canada Accountable for its Canadian Human Rights Tribunal Legal Obligations* - further directing Canada to obtain a new mandate for negotiation within thirty (30) days of the passing of Resolution 90/2024.[44]

41. First Nations in eleven regions moved quickly to give effect to the direction of First Nations-in-Assembly by appointing representatives to the National Children's Chiefs Commission which held preparatory meetings as early as December of 2024 and is now fully

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[40] Letter from S. Clarke to Canada (October 29, 2024), Exhibit "E" to Quintana-James Affidavit.
[41] Potts Affidavit at para 37.
[42] AFN Resolution 88/2024, Exhibit "D" to Quintana-James Affidavit.
[43] AFN Resolution 89/2024, Exhibit "D" to Quintana-James Affidavit. Resolution 89/2024 also noted that the draft terms of reference for both the NCCC and its negotiation team contemplate seeking the input and expertise of: (i) First Nations and their rights holders; (ii) national and regional FNCFS and Jordan's Principle service providers and experts; (iii) Youth in and from Care; (iv) the National Advisory Committee and Expert Advisory Committee; and (v) non-AFN member First Nations.[43] Canada's affiant's statements regarding the Expert Advisory Committee ("EAC") note a "difference of opinion" over the EAC's mandate and the attempt to impose terms of reference on the EAC in the Draft FSA.[43] The Caring Society's position in this matter is that the EAC ought to be independent of the parties, should not be bound by the terms of reference in the Draft FSA, and should be free to meet on its own and when needed to formulate recommendations to bring about the departmental reforms contemplated in 2022 CHRT 8.
[44] AFN Resolution 90/2024, Exhibit "D" to Quintana-James Affidavit.

operational and, nearly two months ago, advised Canada of its readiness to discharge its responsibilities to First Nations rights holders.[45] Despite this state of readiness, Canada has refused to negotiate with the NCCC as directed by First Nations-in-Assembly. Nonetheless, the NCCC has identified ten high-level outstanding issues on long-term reform and has put forward proposals on how to address them.[46]

42. Following the First Nations-in-Assembly's resolutions, the Caring Society again wrote to AFN, COO, NAN and Canada to make progress in light of the resolutions and highlight the "opportunity to develop and implement long-term solutions that will fundamentally improve outcomes for First Nations children, ensuring that we establish a durable, equitable and sustainable structure that ends Canada's discrimination, meets the needs of First Nations children, youth and families, and redresses the structural drivers of child welfare."[47]

43. In January 2025, Canada provided two responses to the Caring Society.

- First, it advised that "Canada's mandate does not permit further negotiations on reform of the First Nations Child and Family Services Program on a national basis. Canada is not currently in a position to engage in any negotiations beyond those with COO and NAN."[48]

- Second, Canada sent a lengthy, expository, letter providing its view of the path to the rejection of the draft agreement by the First Nations-in-Assembly, and the Caring Society's role in that process, but that failed to provide any sense of Canada's intended next steps.[49]

44. In February 2025, ISC's Deputy Minister sent a letter to the Caring Society, AFN, COO and NAN to indicate its view that consultation activities should "focus on matters pertaining to the implementation of the Tribunal's existing orders on the First Nations Child and Family

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[45] Letter from Chief Frost to PM Trudeau, Minister Hadju and Minister Anandasangaree (January 24, 2025), Exhibit "C" to Farthing-Nichol Affidavit.
[46] Letter from Chief Frost to PM Trudeau, Minister Hadju and Minister Anandasangaree (February 21, 2025), Exhibit "F" to Farthing-Nichol Affidavit.
[47] Letter from S. Clarke to Parties (December 9, 2024), Exhibit "F" to Quintana-James Affidavit.
[48] Letter from P. Vickery to S. Clarke (January 6, 2025), Exhibit "G" to Quintana-James Affidavit.
[49] Letter from P. Vickery to S. Clarke (January 10, 2025), Exhibit "I" to Quintana-James Affidavit.

Services Program",[50] which excludes both FNCFS long-term reform and all Jordan's Principle discussions (on which Tribunal-assisted mediations are ongoing).[51]

45. On March 4, 2025, AFN National Chief Cindy Woodhouse wrote to Minister Hajdu recalling the Resolutions by First Nations-in-Assembly and calling on Canada "to seek a revised mandate to negotiate a Final Settlement Agreement on First Nations Child and Family Services (FNCFS)." The National Chief went on to state: "We want to be clear that the AFN supports the National Children's Chiefs Commission (NCCC) in advancing the mandates of First Nations-in-Assembly in relation to negotiating Final Agreements on FNCFS Program and Jordan's Principle."[52]

46. It is important to note that Canada previously worked with the CHRT parties when its own mandate has been challenged. For example, Canada worked with the parties to develop the Compensation Framework, notwithstanding its judicial review of the Tribunal's compensation entitlement order in 2019 CHRT 39. Canada consulted with the Caring Society (and the AFN) following the Tribunal's initial refusal to approve the compensation final settlement agreement in 2022 CHRT 41. Good things can happen for First Nations children when Canada comes to the table and works with the parties in a principled manner, consistent with good faith negotiations, the honour of the Crown and the Tribunal's orders and reasons.

PART II - ISSUES

47. The Caring Society submits that this Motion raises the following issues:

a) Does Canada have an obligation to consult with the co-complainants regarding the long-term reform of First Nations child and family services and Jordan's Principle?

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[50] Letter from Deputy Minister of ISC to CS, AFN, COO and NAN (February 6, 2025), Exhibit "H" to Farthing-Nichol Affidavit.

[51] At paragraph 85 of his affidavit, Mr. Farthing-Nichol notes that the Caring Society has filed an application for judicial review regarding the Deputy Minister's February 6, 2025 decision. Mr. Farthing-Nichol does not note that counsel for the Caring Society has communicated to counsel for Canada that this was a protective application for judicial review given the deadline in the *Federal Courts Act*. In preserving this procedural right, the Caring Society makes no concession regarding this Tribunal's jurisdiction over the terms of consultation regarding the implementation of its orders. As noted in Exhibit "I" to Mr. Farthing-Nichol's affidavit, the Caring Society is presently engaging ISC to attempt to resolve this matter in a mutually-agreeable manner.

[52] Letter from Chief Woodhouse to Minister Hadju, Exhibit "G" to Farthing-Nichol Affidavit.

b) Is Canada's conduct consistent with its obligations arising from the Tribunal's orders, its contractual commitments and the honour of the Crown?

c) What is the appropriate path forward to secure meaningful consultation?

PART III - SUBMISSIONS

A. Does Canada have an obligation to consult with the co-complainants regarding the long-term reform of First Nations child and family services and Jordan's Principle?

1) The Tribunal's orders require Canada to consult with the parties

48. Canada's refusal to consult the AFN and the Caring Society regarding the nationwide reform of FNCFS and Jordan's Principle is irreconcilable with the Tribunal's clear orders.

49. In 2018 CHRT 4, the Tribunal ordered Canada, under section 53(2)(a) of the *CHRA*[53], to consult "directly with the AFN, the Caring Society, the COO and the NAN".[54] This consultation order related not only to the ruling at issue, but to "the *Decision* and its other rulings."[55] In order to implement this obligation, the Tribunal ordered Canada to "enter into a protocol" in order to "ensure that consultations are carried out in a manner consistent with the honor of the Crown and to eliminate the discrimination substantiated in the *Decision* [emphasis added]".[56] Importantly, Canada did not seek judicial review of 2018 CHRT 4.[57]

50. In subsequent decisions, the Tribunal has repeatedly underscored the necessity of consultation in both its analysis and its orders. In 2021 CHRT 41, the Tribunal highlighted the substantial work accomplished through the Collaborative Committee on Child Welfare and its effectiveness in resolving several issues.[58] Importantly, the Tribunal linked consultation to its overall remedial approach, which "has been to provide guidelines to encourage the parties to work out between themselves the details of the remedy".[59] It underscored that the parties' expertise was "invaluable" and that it enabled them to "make recommendations to improve the cultural appropriateness of Canada's response".[60] It also emphasized that Canada has a trust-

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[53] 2018 CHRT 4 at para 431.
[54] 2018 CHRT 4 at para 400.
[55] Ibid.
[56] Ibid.
[57] 2021 FC 969 at para 47.
[58] 2021 CHRT 41 at para 5.
[59] 2021 CHRT 41 at para 23.
[60] 2021 CHRT 41 at para 24.

like relationship with Indigenous peoples that manifests itself in the honour of the Crown, as well as corollary duties such as the duty to consult.[61] Finally, it noted that consultation was consistent with Canada's own stated remedial approach.[62]

51. In 2023 CHRT 44, the Tribunal reflected on the success of consultation in the compensation context. It commended AFN's leadership and Canada's Ministers for receiving the Tribunal's criticism of the compensation FSA and, importantly, to "consult the Chiefs-in-Assembly, bring the Caring Society back to the negotiation table and arrive at this transformative and unprecedented Revised Settlement Agreement."[63] The Tribunal underscored that even if these renewed negotiations took time, it was well worth it for the victims and survivors of discrimination.[64]

52. Most recently, in 2025 CHRT 6, the Tribunal again reiterated its reasons in 2017 CHRT 14 and 2018 CHRT 4 regarding consultation when it ordered the parties to consult on several issues to remedy the backlog of Jordan's Principle requests across the country.[65] It is noteworthy that on that motion, Canada itself was arguing for an approach in which the parties co-developed solutions.[66] The Tribunal emphasized the "importance and its commitment to the dialogic approach to resolving matters" and its strong belief the parties are best positioned to resolve issues amongst themselves rather than through litigation.[67]

53. The Tribunal's approach—including with respect to consultation and negotiation—was endorsed by the Federal Court in 2021 FC 969. There, Favel J. highlighted that the Tribunal's approach is consistent with precedent, contributes to the goal of reconciliation, and "gives the parties opportunities to provide input, seek further direction from the Tribunal if necessary, and access information about Canada's efforts to bring itself in compliance with the decisions."[68]

54. Through the exercise of its authority, the Tribunal has repeatedly indicated Canada is not merely encouraged to consult if it wishes to do so but is *obliged* to consult with the parties

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[61] 2021 CHRT 41 at para 24.
[62] Ibid.
[63] 2023 CHRT 44 at para 2.
[64] 2023 CHRT 44 at para 3.
[65] 2025 CHRT 6 at para 35.
[66] 2025 CHRT 6 at para 148.
[67] 2025 CHRT 6 at para 576.
[68] 2021 FC 969 at paras 132–136.

as a foundational component of the Tribunal's remedial approach. The Tribunal could not have been clearer in its orders.

55. It is therefore deeply concerning that Canada has restricted its "mandate" in a way that "does not permit further negotiations on reform of the First Nations Child and Family Services Program on a national basis."[69] Canada cannot simultaneously suggest that it is "committed to fulfilling its consultative obligations pursuant to 2018 [CHRT] 4", while refusing to engage in the very consultation that the Tribunal has ordered.

2) Canada has contractually bound itself to ongoing consultation

56. Canada itself has, for years, relied on its consultative efforts before the Tribunal. Moreover, it consensually agreed to a framework for implementing its consultative obligations in the Consultation Protocol signed March 2, 2018. This protocol "covered significant principles governing the parties' discussions."[70] The Consultation Protocol remains in full force and imposes duties upon Canada.

57. While the framework in the AIP provided a forum through which the parties could focus their efforts towards achieving long-term reform, it did not terminate the principles and obligations set out in the Consultation Protocol. Indeed, participation in the AIP was funded *through* the Consultation Protocol.[71] To that end, it is noteworthy that Canada itself has recognized the ongoing force of the Consultation Protocol. On February 6, 2025, ISC's Deputy Minister indicated that Canada was committed to fulfilling its consultation obligations "pursuant to 2018 Canadian Human Right's Tribunal 4, and as outlined in the Consultation Protocol", though this is belied by Canada's having shown no willingness to consult on long-term outside of Ontario and intention to limit the scope of consultation to the implementation of the Tribunal's existing orders regarding the FNCFS Program.[72]

58. In any event, the AIP did not portend to—nor had the effect of—allowing Canada to regress from its ongoing consultative obligations relating to long-term reform on a national

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[69] Letter from P. Vickery to S. Clarke (January 6, 2025), Exhibit "G" to Quintana-James Affidavit.
[70] 2021 FC 969 at para 48.
[71] Farthing-Nichol Affidavit at para 84.
[72] Letter from Deputy Minister of ISC to CS, AFN, COO and NAN (February 6, 2025), Exhibit "H" to Farthing-Nichol Affidavit.

basis. Accordingly, Canada continues to have contractual obligations to consult that buttress the Tribunal's orders.

3) The Honour of the Crown requires meaningful consultation and negotiation in remedying discrimination

59. Canada must approach consultation and negotiation in a manner that upholds the honour of the Crown. The honour of the Crown is a "grounding postulate of Canadian constitutional law" that gives rise to a variety of duties.[73] It underpins "an ongoing project that seeks the "reconciliation of Aboriginal and non-Aboriginal Canadians in a mutually respectful long-term relationship".[74] The Truth and Reconciliation Commission's top Calls to Action included reform of child and family services and Jordan's Principle, thereby placing this litigation at the heart of Canada's honour of the Crown obligations to promote reconciliation. In a very real sense, the Crown's honour is and has always been at stake in the parties' efforts to establish long-term reform to end Canada's discriminatory conduct and prevent its recurrence in FNCFS and Jordan's Principle.

60. From the very beginning, the Tribunal has interwoven the honour of the Crown within its analytical and remedial approach. Indeed, as early as 2016 CHRT 2, the Tribunal highlighted that the honour of the Crown "must form part of the context of the Panel's analysis".[75] In 2018 CHRT 4, the Tribunal explicitly ordered Canada to enter into a protocol to "ensure that consultations are carried out in a manner consistent with the honor of the Crown [emphasis added]".[76] In 2021, Favel J. recognized the link between this proceeding and the honour of the Crown in his concluding remarks. After considering the Supreme Court's dictum on the importance of negotiation in *R v Desautel,* he highlighted that "[w]hen there is good will in the negotiation process, that good will must be encouraged and fostered before the passage of time makes an impact on those negotiations."[77]

61. In the present motion, the honour of the Crown is engaged in three main ways. **First**, the honour of the Crown provides an interpretive lens through which to evaluate Canada's compliance with the Tribunal's orders and to chart the Tribunal's next steps in the exercise of its remedial authority. **Second**, the honour of the Crown is engaged through the Crown's

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[73] *Southwind v Canada,* 2021 SCC 28 at para 55, citing Brian Slattery, "The Aboriginal Constitution" (2014), 67 *S.C.L.R.* (2d) 319, at p. 320 [***Southwind***]; *Ontario (Attorney General) v Restoule*, 2024 SCC 27 at paras 219–21.
[74] *Southwind* at para 55, citing *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53, para. 10 [***Beckman***]; see also *R v Desautel,* 2021 SCC 17 at para 30.
[75] Merits Decision at para 95.
[76] 2018 CHRT 4 at para 400.
[77] 2021 FC 969 at para 300.

affirmations in the *Act respecting First Nations, Inuit and Métis children, youth and families* and the *United Nations Declaration on the Rights of Indigenous Peoples Act* ("***UNDRIPA***").[78] **Third**, the process of negotiating a final settlement agreement respecting long-term reform engages the specific duties flowing from the honour of the Crown, and meets the test set out by the Supreme Court of Canada in *Quebec (AG) v. Pekuakamiulnuatsh Takuhikan*.

62. The Caring Society argues that Canada's efforts to restrict the Consultation Protocol and its refusal to consult on ending its discriminatory conduct outside of Ontario run afoul of those obligations. Canada cannot, on the one hand, provide that First Nations' approval was a condition precedent for the draft Final Agreement and,[79] on the other, refuse to consult with First Nations outside of Ontario after they did not approve the Draft FSA. The Caring Society also objects to Canada seeking to unilaterally narrow the scope of the Consultation Protocol in a way not aligned with the direction from First Nations rights holders as expressed in AFN resolutions, as set out in Deputy Minister Wilson's February 6th correspondence.[80]

i. The honour of the Crown assists in evaluating compliance with consultative orders and shaping future consultation

63. The Tribunal has favoured a dialogic approach to its remedies. Unlike courts' traditional approach of setting out orders and requiring litigants to use the rigid test of contempt of court to return and allege non-compliance, the Tribunal's approach has pushed all parties to negotiate and bring forward solutions for the Tribunal to entrench in its orders. This has enabled the Tribunal to "do what they do best" and "respond to dynamic contexts in a procedurally fair and evidence-based manner."[81] The cornerstone of the dialogic approach is the Tribunal's imposition of a duty upon Canada to consult with the other parties. The honour of the Crown is the proper interpretive principle through which to evaluate whether Canada is complying with these consultative orders.

64. Through its orders, the Tribunal has effectively required Canada to engage in a "process of fair dealing and reconciliation"[82] that necessarily engages the Crown's honour. It has set Canada on a path whereby it *must* deal with the equality rights of First Nations children and

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[78] *United Nations Declaration on the Rights of Indigenous Peoples Act*, 2021, c 14 [**UNDRIPA**].
[79] Farthing-Nichol Affidavit at para 47.
[80] Letter from Deputy Minister of ISC to CS, AFN, COO and NAN (February 6, 2025), Exhibit "H" to Farthing-Nichol Affidavit
[81] Kent Roach, Remedies for Human Rights Violations: A Two-Track Approach to Supra-National and National Law (Cambridge: Cambridge University Press, 2021), ch 7 at p. 389, BOA, Tab 1 [**Roach, Remedies for Human Rights Violations**].
[82] *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at para 32.

families, which it has infringed for decades. And as the Supreme Court has repeatedly emphasized, "the honour of the Crown is 'always at stake' when it deals with Indigenous peoples".[83] In this sense, the Tribunal's orders exist side-by-side with the jurisprudence on the honour of the Crown, which assists in interpreting the parameters for *how* Canada must deal with Indigenous peoples during consultation and negotiation.

65. The honour of the Crown is a particularly useful interpretive principle because the Tribunal's consultation orders reflect a duty of *means.* When assessing compliance, the question is therefore about *how* Canada has engaged (or refused to engage) with the other parties. The honour of the Crown provides interpretive assistance because it speaks directly "to *how* obligations that attract it must be fulfilled."[84]

66. Evaluating Canada's implementation of the Tribunal's consultation orders through the lens of the honour of the Crown reinforces that Canada's must return to the table to on long-term reform.

ii. Canada's statutory affirmations engage the honour of the Crown and entail a duty of diligent implementation that is intertwined with this litigation

67. In the *Act respecting First Nations, Inuit and Métis children, youth and families*, Canada affirmed that Indigenous people enjoy an inherent right of self-government over child and family services. The combined operation of section 7, 8(a) and 18(1) of that *Act* engages the honour of the Crown in the area of child and family services. As the Supreme Court explained:

> [65] … Under the Act, the government formally undertakes to act in accordance with the position that this right has constitutional status (see *Manitoba Metis*, at paras. 69-70). The honour of the Crown is not a mere "incantation", but rather "finds its application in concrete practices"; it "gives rise to different duties in different circumstances" (*Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 S.C.R. 511, at paras. 16 and 18, quoted in *Mikisew Cree*, at para. 24). As the Court stated in *Manitoba Metis*, "the honour of the Crown requires that the Crown: (1) takes a broad purposive approach to the interpretation of the promise; and (2) acts diligently to fulfill it" (para. 75).
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> [66] The fact that s. 7 of the Act requires the Crown to act as though the right of self-government described in s. 18(1) had been proved therefore implies that the Crown must take a broad approach to the interpretation of this right and must act diligently to implement it, as long

[83] *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 at para 63 [***Reference re C-92***].
[84] *Manitoba Metis Federation Inc. v Canada (Attorney General),* 2013 SCC 14 at para 73.

> as this affirmation is part of the law in force. The fact is that the legislative affirmation regarding the scope of s. 35 "represents a promise of rights recognition, and '[i]t is always assumed that the Crown intends to fulfil its promises'", in this case the promise to act as though Indigenous peoples' right of self-government in relation to child and family services were recognized, while awaiting a formal court ruling on the question (*Haida Nation*, at para. 20, quoting *Badger*, at para. 41).[85]

68. Canada has reinforced these affirmations through its adoption of the *UNDRIPA*, including its recognition of "the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child".[86]

69. This proceeding squarely concerns Canada's discriminatory incursions into First Nations child and family services and Jordan's Principle and as such Canada must fulfil its duties in the Tribunal's dialogic process in such a way that upholds the honour of the Crown. Conversely, it is precluded, by its own statutory undertaking, from arguing that the honour of the Crown is not engaged.

70. Moreover, as the Supreme Court highlighted, Canada's affirmations engage a duty of diligent implementation: Canada must "act diligently" to implement First Nations' right of self-government over child and family services. For present purposes, this duty is connected to the CHRT litigation in two ways.

71. First, by their very nature, the Tribunal's orders are necessary to undo the discrimination that has hindered First Nations' autonomy in the area of child and family services. It follows that Canada's overarching duty to diligently implement the promise of First Nations self-government in this area, free from discriminatory incursions, attaches directly to the Tribunal's orders and entails a duty to implement them with diligence.

72. Second, respect for First Nations self-government entails respect for First Nations' voices. Pursuing long-term reform efforts without any *consultation* with First Nations — or walking away from long-term reform altogether when First Nations voice do not adhere to Canada's preferred solution — is inconsistent with an understanding of First Nations as self-governing bodies which are owed respect.

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[85] *Reference re C-92* at paras 65–66.
[86] *UNDRIPA*, preamble.

iii. Consultations towards reforming the First Nations child and family services engage the honour of the Crown

73. Finally, the honour of the Crown is engaged by the substance of the parties' discussions pursuant to the dialogic approach. Whether under the Consultation Protocol or the AIP, the parties have, for years, been engaged in the process of negotiating a binding agreement on long-term reforms to Canada's First Nations child welfare system. This process engages concrete duties flowing from the honour of the Crown.

74. In *Takuhikan,* the Supreme Court confirmed that the honour of the Crown can apply to agreements between the Crown and an Indigenous group and set out a two-part test for whether it is engaged. First, "the agreement in question must be entered into by the Crown and an Indigenous group by reason and on the basis of the group's Indigenous difference".[87] To that end, the agreement must be based on the Crown's "special relationship" with Indigenous peoples and the agreement must have a collective dimension.[88] Second, the agreement must "relate to an Indigenous right of self-government, whether the right is established or is the subject of a credible claim."[89]

75. In the present case, the honour of the Crown is engaged in consultation and negotiation in pursuit of long-term reform of the FNCFS Program and any related agreement. Both parts of the *Takuhikan* test can be examined in turn.

76. First, the entire project of long-term reform of the FNCFS Program arises by reason of, and on the basis of, the distinct needs, cultures and traditions of First Nations peoples. This reform resides in the context of these proceedings, which are expressly about Canada's discrimination on the basis of First Nations difference and disregard for its undertakings to provide "culturally appropriate child and family services". Any contractual agreement that seeks to *rectify* this discrimination is necessarily negotiated on the basis of First Nations' difference. It is squarely concerned with the "negotiation and the just settlement of Indigenous claims" that is the foundation of the honour of the Crown.[90] Moreover, such an agreement clearly has a collective dimension. The consultation process was intended to establish *systemic* reforms that would reset and rebuild Canada's special relationship with First Nations in the area of child welfare. Accordingly, the first part of the test is met.

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[87] *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 at para 161 [***Takuhikan***].
[88] *Takuhikan* at para 162.
[89] *Takuhikan* at para 163.
[90] *Takuhikan* at para 148.

77. Second, the agreement being negotiated relates to a right of self-government. Such a right does not have to be recognized by courts to meet the second part of the test.[91] Here, Canada itself has statutorily recognized the right of self-government in relation to child welfare in the *Act respecting First Nations, Inuit and Métis children, youth and families*, by which Canada affirmed that First Nations' "inherent right of self-government… includes jurisdiction in relation to child and family services". The *Act* was one component of giving effect to that right. Any agreement on long-term reforms to Canada's First Nations child welfare system is another component that is just as closely linked to respecting First Nations rights.

78. The fact that the parties have not yet succeeded in reaching a final settlement agreement that garners First Nations' approval at the national level reinforces, rather than negates, that the honour of the Crown is engaged. While *Takuhikan* concerned the implementation and renegotiation of an existing policing arrangement, the Court's framework applies to precontractual negotiations towards an agreement where the subject matter of the agreement being negotiated meets the two-part test. Indeed, the Court specifically highlighted the duties involved in precontractual negotiations as distinct from the additional duties that come to bear if an agreement is entered into. Prior to a final agreement, the Crown must, *inter alia,* "come to the negotiating table with an open mind and with the goal of engaging in genuine negotiations with a view to entering into an agreement [emphasis added]."[92] Moreover, Canada has *already* concluded a Consultation Protocol and AIP whose performance engages the honour of the Crown for the same reasons as those outlined above.

79. It follows that Canada's approach to consultation and negotiation must respect the duties that flow from the honour of the Crown. These are most clearly set out at paragraph 190 of *Takuhikan*:

> When the Crown decides to enter into a contractual relationship that engages its honour, it must act honourably, with integrity and in such a way as to avoid even the appearance of "sharp dealing" (*Haida Nation*, at para. 19; *Badger*, at para. 41). As the expression "sharp dealing" suggests, this standard of conduct demands more than the mere absence of dishonesty. In particular, it requires the Crown not to adopt an intransigent attitude. The Crown must therefore come to the negotiating table with an open mind and with the goal of engaging in genuine negotiations with a view to entering into an agreement. The Crown should not enter into negotiations without intending to keep its promises, nor should it attempt to coerce or unilaterally impose an outcome (A. F. Martin and C. Telfer, "The Impact of the Honour of the Crown on the Ethical Obligations of Government Lawyers: A Duty of Honourable Dealing" (2018), 41 *Dal.*

[91] *Takuhikan* at para 164.
[92] *Takuhikan* at para 190.

> *L.J.* 443, at p. 459). Similarly, the Crown cannot change its position for the sole purpose of delaying or ending negotiations (*Kaska Dena Council v. Canada*, 2018 FC 218, at para. 43).

80. These duties can inform the Tribunal's assessment of Canada's conduct, and how it must undertake consultation and negotiation going forward.

81. Taken together, Canada has an ongoing duty to consult that is rooted in the Tribunal's orders, Canada's own contractual commitments, and the honour of the Crown. The next question is the parameters of those consultations and, in particular, whether Canada can unilaterally decide how consultation ought to take place and when that consultation is over.

B. Has Canada breached its consultation obligations?

82. The focus of Canada's consultation obligations must centre on the rights underpinning this proceeding and what is at stake for all First Nations children. As the Tribunal has recognized, individual and collective rights are not mutually exclusive,[93] just as the rights and interests of some collectives coexist with those of others. Canada's engagement with Ontario First Nations can—and must—co-exist with continued engagement with individuals and groups in the rest of Canada. To evaluate Canada's conduct, it is important to centre the discussion on what is at issue on this motion; to apply the principles set out in the prior section; and to propose a clear path forward that respects this Tribunal's remedial role.

1) Re-centering what is at issue on this motion

83. In its letter of January 14, 2025, Canada set out its position respecting its consultation obligations. First, the letter attempts to redirect blame for its own lack of a "mandate" to negotiate away from its own choices and onto the Caring Society. Second, the letter takes issue with the approach set out in the October and December 2024 AFN resolutions—effectively blaming the First Nations-in-Assembly for rejecting the Draft FSA. The contours of Canada's position are replicated in the affidavit of Duncan Farthing-Nichol, which speaks about the Caring Society's role in negotiations at length. Each of these points will be addressed, but only so far as necessary to redirect attention back to what is actually at issue on this motion. There are no cross-examinations on this motion given that it is being heard on an expedited basis in writing. The lack of cross-examination, or of qualifying points in this page-limited submission, should not be taken as an indication of agreement with Mr. Farthing-Nichol's statements.

84. The paragraphs in Mr. Farthing-Nichol's affidavit that relate to the Caring Society's participation in negotiations provide Canada's one-sided perspective regarding the Caring

[93] 2022 CHRT 41 at para 465.

Society. As noted above, the Caring Society does not agree with Canada's characterization of events. For the purposes of this motion, however, those paragraphs ought to be disregarded because their probative value is outweighed by their prejudicial effect. The discussions that the Caring Society had with the other parties, and the efforts it made to maintain a role in negotiations to reach an agreement, are covered by settlement privilege. In his affidavit, Mr. Farthing-Nichol expressly confirms that Canada does not waive settlement privilege. However, his affidavit nonetheless seeks to selectively waive that privilege in order to tarnish the Caring Society. Canada cannot be permitted to wield settlement privilege as a sword when it suits its purpose and to find shelter in it when it does not. Accordingly, Mr. Farthing-Nichol's evidence on this point must be given no weight.

85. Elsewhere, Mr. Farthing-Nichol also appears to fault the Caring Society for critiquing the Draft FSA and suggests that the Caring Society urged First Nations to vote against the agreement. Insofar as this is an allegation that the Caring Society, as opposed to the substantive content of the Draft FSA, somehow persuaded First Nations to oppose the agreement, the vote margin of Chiefs in Assembly speaks for itself. After what Mr. Farthing-Nichol characterizes as extensive engagement sessions by Canada and AFN to provide First Nations with a clear understanding of the agreement, those First Nations rejected the draft FSA in its current form based on their own concerns.

86. On that point, Canada's reflections on the Chiefs in Assembly are most troubling. In Canada's January 16 letter, it wrote as follows:

> The October and December 2024 AFN resolutions would expand the FNCFS Program to off-reserve funding and maintain the Tribunal's jurisdiction over the Program indefinitely. Canada is not prepared to negotiate in line with resolutions that exceed both the AIP's framework and the complaint on which the Tribunal made its findings of discrimination.
>
> It is disappointing that the First Nations-in-Assembly rejected the Final Agreement, which would have legally bound Canada to provide $47.8 billion in stable and predictable funding over 10 years for a fully reformed Program. The Final Agreement would have resulted in a Program that gives First Nations the tools, the funding and the predictability to make child and family services work better for their communities. Maintaining funding at actuals and Tribunal jurisdiction over the FNCFS Program are incompatible with the objective of developing long-term solutions for comprehensive reform.
>
> Canada is negotiating an agreement with COO and NAN for First Nations in Ontario because they have asked for an agreement for FNCFS Program reforms specific to Ontario that reflects what was proposed in the Final Agreement.

> Canada disagrees with your assertion that, in negotiating a separate agreement with COO and NAN for FNCFS Program reform in Ontario, Canada is acting contrary to the Tribunal's 2016 order to reform the FNCFS Program. In fact, the FNCFS Program has undergone extensive and incremental reform since the Tribunal's 2016 ruling on the merits, developed and implemented in consultation with the parties to the complaint. The negotiation of an agreement specific to Ontario First Nations responds to the desires of those First Nations to adopt the negotiated terms of the Final Agreement following the refusal of others to accept that Agreement [emphasis added].[94]

87. It is open to Canada to move forward with COO and NAN to adopt the negotiated terms of the Draft FSA, subject to the Tribunal's evaluation of the agreement. It is also open to Canada to engage in dialogue on mutually agreeable parameters for new negotiations if it has concerns about the AFN resolutions. It is not, however, open to Canada to close the door to negotiations with all other First Nations because they refused to endorse the only form of agreement Canada was willing to consider, due to their concerns about aspects of it.

88. Canada's conduct is reminiscent of the conduct criticized by the Federal Court in *Indigenous Police Chiefs of Ontario v. Canada (Public Safety)*.[95] Although this decision came in the context of an interlocutory injunction, the court's analysis at the irreparable harm stage is apposite. In that case, Canada argued that any harms to the applicant Indigenous Police Chiefs could have been avoided had it accepted to abide by the Terms and Conditions for funding and retreated from its own preconditions. The Court took issue with this position:

> It is true that Canada is ready and willing to renew the funding agreements for the T3PS, APS, and UCCM police services, including with significant new, additional money. However, [Public Safety Canada] is only ready and willing to do so on its own terms, and more specifically on the basis of the Terms and Conditions that it has itself determined, and that IPCO and the Three Police Services consider offending.[96]

89. In the present motion, Canada has effectively argued that it is ready and willing to implement long-term reform at the national level, but only so long as it occurs on the terms of the Final Agreement that it supports, but that many First Nations consider deeply flawed. Canada cannot shift blame onto First Nations for expressing criticism of the agreement presented to them. The present case is arguably more preoccupying, because it concerns

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[94] Letter from P. Vickery to S. Clarke (January 10, 2025), Exhibit "I" to Quintana-James Affidavit.
[95] 2023 FC 916 [***IPCO***].
[96] *IPCO* at para 135.

Canada's conduct after it has *already* been found to be engaged in ongoing discrimination and after Canada has been expressly ordered to consult with the parties.

90. Put simply, Canada cannot blame the Caring Society, or the First Nations-in Assembly, for its own actions. Efforts to do so are red herrings antithetical to reconciliation, which the Tribunal should not entertain.

2) Canada's (in)actions are in breach of its obligations

91. Canada's refusal to return to the table is a clear breach of the Tribunal's orders. The Tribunal ordered Canada to consult with the parties "to eliminate the discrimination substantiated in the *Decision*".[97] The parties have not yet reached a final agreement that would eliminate the discrimination at the national level. Yet, Canada is no longer consulting with the complainants. Importantly, while Canada attempts to shift the blame for the impasse onto the AFN resolutions, it has offered no alternative path forward for consultations. Accordingly, Canada's suggestion that it continues to respect the Tribunal's consultation orders is untenable.

92. Canada is also in breach of its obligations under the Consultation Protocol. Despite conceding that the protocol is still in force, Canada has recast its scope in a way that allows Canada to dictate when it is willing to consult and on what terms. In particular, in her February 6th letter, Deputy Minister Gina Wilson suggested that "for the time being, the consultation workplan focus on matters pertaining to the implementation of the Tribunal's existing orders on the First Nations Child and Family Services Program."[98] She did not invite a dialogue on this regression, which is fundamentally at odds with the Tribunal's staged approach to remedying discrimination. The Consultation Protocol is a consensual, multilateral agreement that is designed to provide a foundation for both immediate, medium-term and long-term solutions. Canada is therefore in breach of its obligations by showing no willingness to consult on long-term outside of Ontario and by acting to limit the scope of consultation to the implementation of the Tribunal's existing orders regarding the FNCFS Program.

93. Finally, and as explained above, Canada's conduct ought to be evaluated through the lens of the honour of the Crown. This lens reinforces that Canada's conduct is incompatible with the letter and spirit of the Tribunal's orders. Canada has also breached the duty of diligent fulfillment—which flow from Canada's affirmation of the right of self-government in the area of child and family services—and the duties set out in *Takuhikan*—which flow from the performance of the Consultation Protocol and the exchanges toward a final agreement on long-

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[97] 2018 CHRT 4 at para 400.
[98] Letter from Deputy Minister of ISC to CS, AFN, COO and NAN (February 6, 2025), Exhibit "H" to Farthing-Nichol Affidavit.

term reform. Following the decision of the Chiefs-in-Assembly to reject the Draft FSA (an outcome that this document should be taken to have been open to, given that endorsement by the Chiefs-in-Assembly as a condition precedent was integral to the agreement's essence), Canada has adopted an "intransigent attitude".[99] Despite its prior undertakings in relation to consultation — which it has referenced before this Tribunal and in the Consultation Protocol — it now refuses to come to the table or engage in any discussion or dialogue at all on the issues set out in the constructive feedback of the Chiefs in Assembly.

94. Actions speak louder than words. Canada's correspondence since its January letter has paid lip service to consultation in the same way as, in *Takuhikan,* Quebec argued that its approach involved "'transparency', 'respect' and 'appreciation.'"[100] Regardless of the tone of communications, Canada's *actions* are harming the children, youth and families in First Nations that did not agree to the terms set out in Canada's preferred proposed agreement. By refusing to respect the legitimate criticisms raised by the First Nations-in-Assembly and instead turning its back on long-term reform consultations, Canada is no longer dealing with the parties "on an equal footing"[101] and has backed out of seeking to build a "mutually respectful long-term relationship" in the long-term reform of the FNCFS Program.[102]

95. Consistent with the direction of First Nations-in-Assembly Resolution 90/2024, it would be inconsistent with Canada's duties flowing from the honour of the Crown for it to seek to exclude, cause to exclude or otherwise limit the participation of Parties and interested parties (operating within the scope of their interested party status) that are acting on the expressed authority of First Nations. Consultation is an empty promise if it is limited to only those parties who have already accepted Canada's preferred approach to long-term reform.

C. What is the path forward to secure meaningful consultation?

96. Consistent with the dialogic approach favoured by the Tribunal, it is up to the parties to determine the precise modalities of consultation and negotiation. However, it may be helpful to reaffirm three core principles that ought to inform the parties' forward-looking approach.

97. First, Canada is the discriminator in this proceeding. It cannot impose a consultation process solely on its terms and decide when to provide a "mandate" at its whim. In order for

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[99] *Takihikan* at para 190, 214.
[100] *Takuhikan* at para 97.
[101] *Takuhikan* at para 216.
[102] *Beckman* at para 10.

dialogue to occur, the *modalities* of that dialogue must, themselves, be the product of collaboration.

98. Second, consultation must respect the Tribunal's recognition that Canada's discriminatory conduct impacts both rights-holding individuals and rights-holding collectives. It must act consistently with the spirit of the Tribunal's consultation orders, which sought "to ensure that the voices of First Nations and those with significant expertise could be heard via representative organizations in order to inform immediate and long-term relief."[103] Indeed, the views of one First Nation do not bind those of another. Canada cannot prioritize consulting exclusively with organizations which approve of an agreement, while refusing to consult with those representing individuals and First Nations who have concerns. Similarly, it cannot outright refuse the directions provided by the AFN resolutions, while refusing to engage in dialogue on a path forward.

99. Third, the parameters of consultation must allow for transparency. In this respect, the Caring Society echoes that consultations and negotiations must occur in the context of an "open and transparent process".[104] This principle is directly related to the quality and efficiency of consultation.[105]

100. As to quality, the ultimate beneficiaries of long-term reform are First Nations and First Nations children, youth and families themselves. Ensuring that First Nations have input within the process, and not *ex post facto* when they are handed a finalized agreement that can accommodate only minimal amendments, will enhance discussions and decision-making throughout consultation. An approach that eschews secrecy in favour of transparent communications with rights holders is more respectful of the spirit of free, prior and informed consent, which Canada has affirmed through the *UNDRIPA*.[106] As Professor Roach explains, systemic remedies must bear in mind "those that the remedy is supposed to benefit", so that "participatory mechanisms can respond to the danger that institutional litigants […] may not always represent the priorities and immediate interests of those who have suffered a rights violation."[107] While the Complainants each bring a wealth of internal expertise, in order to

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[103] 2022 CHRT 41 at para 465.
[104] Letter from Chief Frost to C. Blackstock (January 24, 2025), Exhibit "H" to Potts Affidavit.
[105] Letter from Panel re "First Nations Child and Family Caring Society et al. v. Attorney General of Canada Tribunal File: T1340/7008" (February 10, 2025) at p. 2.
[106] *UNDRIPA*, Schedule, art. 19.
[107] Roach, Remedies for Human Rights Violations, ch 7 at p. 401, BOA, Tab 1.

meaningfully participate in consultation, they must be able to seek the input and expertise of First Nations and experts working on the ground.

101. As to efficiency, when consultations and negotiations occur in private over a period of years, the parties open themselves to the risk that they will be sent back to the drawing board to rectify concerns that would have been raised at the outset had information been shared on an ongoing basis. This is, in part, what occurred with the rejection of the Draft FSA. It explains the emphasis on *ongoing* reporting to First Nations in the AFN Resolutions.

102. The Caring Society shares the Panel's concerns regarding the multi-year delay following the AIP. In the context of the present motion, emphasizing dialogue and transparency can ensure that the parameters of future consultations and negotiations serve to "maximize the chances of success."[108]

103. While the aforementioned principles can help to inform the Tribunal's guidance, the Caring Society submits that the Tribunal's ultimate orders should follow the model of 2018 CHRT 4.

D. Conclusion

104. In 2022 CHRT 41, the Tribunal stated that it supports First-Nations-led solutions to eliminating discrimination as it relates to long-term reform.[109]

105. The Caring Society has welcomed the flexibility the Tribunal has shown in its remedial approach to this case. Since rendering the decision on the merits, the Tribunal has retained jurisdiction to ensure that its orders are effectively implemented, rule upon outstanding remedial requests when needed, and foster dialogue between the parties.[110] The Federal Court has commended the Tribunal for its dialogic approach to this case, stating that it was "necessary considering the scope of the discrimination and the corresponding efforts to remedy or prevent future discrimination"[111]. The Caring Society wholeheartedly supports this view.

106. The Caring Society agrees and respects that the Tribunal is the master of its own house. Indeed, balancing the retention of the Tribunal's jurisdiction over this process[112] with the human rights of victims solidified in a final order is critical to supporting and safeguarding the

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[108] *Takuhikan* at para 191.
[109] 2022 CHRT 41 at para 503.
[110] 2016 CHRT 10 at paras 36-37; See also 2021 FC 969 at para 136.
[111] 2021 FC 969 at para 281.
[112] 2021 CHRT 6 at paras 127–30.

human rights regime and the hard-fought gains already made in this case. As the conduct that led to this motion demonstrates, the Tribunal's retention of jurisdiction contributes to the goal of reconciliation in that it seeks to hold Canada accountable, works to end Canada's long history of discrimination that has plagued generations of First Nations children and families, and refocuses the parties on moving diligently toward long-term reform.

107. Protecting the integrity of human rights regimes must be a guiding principle in determining this motion. The potential for setting a dangerous precedent is significant and could have widespread impacts on the human rights system. To that end, the Caring Society urges the Tribunal to consider the broader and precedential implications of this motion on the integrity of human rights regimes throughout Canada, including its specific impact on other First Nations human rights cases. If Canada can unilaterally decide if and when it engages in consultation, victims of discrimination face detrimental impacts.

PART IV - ORDER SOUGHT

108. The Caring Society requests the following relief:

(a) An Order directing consultation between Canada, the AFN and the Caring Society on the national long-term reform of the FNCFS Program, First Nations federal child and family services and Jordan's Principle in line with the Tribunal's Order of February 1, 2018 (2018 CHRT 4) and its related consultation orders

All of which is respectfully submitted, this 17th day of March, 2025.



David P. Taylor, Logan Stack
Sarah Clarke and Robin McLeod

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

PART V - LIST OF AUTHORITIES

STATUTES	
1.	*An Act Respecting First Nations, Inuit and Métis children, Youth and Families*, SC 2019, c 24
2.	*United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14
CASE LAW	
3.	*Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53
4.	*Canada (Attorney General) v First Nations Child and Family Caring Society of Canada*, 2021 FC 969
5.	*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)*, 2012 CHRT 16
6.	*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
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)*, 2016 CHRT 10
8.	*First Nations Child & Family Caring Society of Canada et al. v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2016 CHRT 16
9.	*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
10.	*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
11.	*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
12.	*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
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)*, 2019 CHRT 1

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)*, 2019 CHRT 7
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)*, 2019 CHRT 39
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)*, 2020 CHRT 7
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)*, 2020 CHRT 15
18.	*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
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)*, 2020 CHRT 24
20.	*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 36
21.	*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 6
22.	*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 7
23.	*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 12
24.	*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
25.	*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
26.	*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

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),* 2023 CHRT 44
28.	*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 6
29.	*Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73
30.	*Indigenous Police Chiefs of Ontario v Canada (Public Safety),* 2023 FC 916
31.	*Manitoba Metis Federation Inc. v Canada (Attorney General),* 2013 SCC 14
32.	*Ontario (Attorney General) v Restoule*, 2024 SCC 27
33.	*Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan,* 2024 SCC 39
34.	*R v Desautel,* 2021 SCC 17
35.	*Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5
36.	*Southwind v Canada,* 2021 SCC 28
OTHER SOURCES	
37.	Kent Roach, *Remedies for Human Rights Violations: A Two-Track Approach to Supra-National and National Law* (Cambridge: Cambridge University Press, 2021), BOA, Tab 1
38.	Government of Canada, *United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan: 2023-2028*

This is **Exhibit H** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

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A Commissioner for taking Affidavits

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Docket: T1340/7008

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 and Northern Affairs Canada)

Respondent

- and -

CHIEFS OF ONTARIO and
AMNESTY INTERNATIONAL CANADA and NISHNAWBE ASKI NATION

Interested Parties

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PART I – STATEMENT OF FACTS 3
A. Overview 3
B. Background 4
COO's involvement in the long-term reform of the FNCFS program 4
The originating complaint and the Merit Decision 5
The Consultation Protocol 6
The Agreement-in-Principle 6
The Ontario Final Agreement 8
PART II – ISSUES 9
PART III – SUBMISSIONS 9
A. The consultation orders support the Tribunal's statutory mandate 10
Canada's consultation obligations arise from the CHRA 12
B. The honour of the Crown is at stake in Crown dealings with Aboriginal peoples 13
The duty to consult and accommodate arises from the honour of the Crown 14
Consultation informed by UNDRIP 15
Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan 16
C. Indigenous Police Chiefs of Ontario v Canada (Public Safety) 17
D. No position on Canada's obligations pursuant to the Tribunal's orders or contract 19
PART IV – ORDER SOUGHT 19
PART V – LIST OF AUTHORITIES 21

PART I – STATEMENT OF FACTS

A. Overview

1. This motion concerns consultations between Canada, the Assembly of First Nations (the "**AFN**"), and the First Nations Caring Society of Canda (the "**Caring Society**") on the national long-term reform of the First Nations Child and Family Services ("**FNCFS**") Program and Jordan's Principle.

2. First Nations in Ontario organize and govern themselves through the Chiefs of Ontario ("**COO**") and Nishnawbe Aski Nation ("**NAN**"), in line with their rights to participate in decision-making on matters that affect their rights, through representatives chosen by themselves in accordance with their own procedures, as recognized and affirmed in Article 18 of the *United Nations Declaration on the Rights of Indigenous Peoples* ("**UNDRIP**").

3. The negotiation and ratification of the Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario (the "**Ontario Final Agreement**") and Trilateral Agreement in Respect of Reforming the 1965 Agreement (the "**Trilateral Agreement**") is the collective expression of the self-governance and self-determination rights of the First Nations in Ontario through COO and NAN.

4. The Ontario Final Agreement and Trilateral Agreement and their contents are not at issue or before the Tribunal in this motion. While the Caring Society has made its views public on the reforms proposed in the defeated national agreement, and therefore by extension on the reforms proposed in the Ontario Final Agreement, COO is pleased to see the Caring Society acknowledge in its materials that the dispute concerning negotiations on long-term reform nationally does not concern First Nations in Ontario, who have concluded their consultations and approval processes.

5. COO supports the efforts of First Nations leadership outside Ontario to reach an agreement that addresses their unique needs and aspirations. It is not for COO to determine what happens in other regions, and the inverse is also true: other regions should not interfere with COO's aspirations nor the will of the Ontario Chiefs-in-Assembly.

6. As such, at this time and while COO pursues its own goals and directions, COO takes no position on the consultations between Canada, the AFN, and the Caring Society on the national long-term reform of the FNCFS Program or the path towards negotiations resuming on a national level. Since Jordan's Principle consultations have not commenced, COO understands the motion to be primarily about the FNCFS reform. COO expects to fully participate in Jordan's Principle reforms, including any consultations.

7. COO instead takes this opportunity to submit its views on the duty to consult, the honor of the crown, the recent Supreme Court decision *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan* ("***Pekuakamiulnuatsh Takuhikan***") and the recent Federal Court decision *Indigenous Police Chiefs of Ontario v Canada (Public Safety)*, as requested by the Tribunal through its correspondence dated February 10, 2025. These are matters that are of considerable interest to COO and COO is pleased to provide its views to the Tribunal about these subjects.

B. Background

COO's involvement in the long-term reform of the FNCFS program

8. COO is a political advocacy group for the 133 First Nations in Ontario. COO's activities and advocacy are mandated through Resolutions passed by the Ontario Chiefs-in-Assembly. Guided by the Ontario Chiefs-in-Assembly, COO upholds the self-determination efforts of the Anishinaabek, Mushkegowuk, Onkwehonwe, and Lenape Peoples.

9. The implementation of adopted Resolutions is guided by the COO Leadership Council and the elected Ontario Regional Chief. The position of Ontario Regional Chief is currently held by Ontario Regional Chief Abram Benedict.

10. Children are the priority of the First Nations that belong to COO. COO has held many and varied mandates to address the discrimination against children resulting from Canada's unequal funding of on-reserve First Nations child and family services.

11. Guided by the authority of the All Ontario Chiefs Conference Resolution #09/21 and informed by their vision for First Nations child and family services reform, COO sought and obtained interested party status in the Tribunal proceedings in September 2009.[1]

12. COO was granted interested party status to address the particulars of on-reserve child welfare services in Ontario, which are funded in a way distinct from the funding under the FNCFS program in the rest of Canada, owing to The Memorandum of Agreement Respecting Welfare Programs for Indians (the "**1965 Agreement**").

The originating complaint and the Merit Decision

13. In 2007, the Caring Society and the AFN filed a human rights complaint with the Canadian Human Rights Commission (the "**Commission**"). They alleged that the Department of Indian and Northern Affairs Canada ("**Canada**") was violating the *Canadian Human Rights Act*[2] (the "***CHRA***") by discriminating against First Nations children and families on-reserve through the underfunding of child and family services and the failure to implement Jordan's Principle.[3]

14. On January 26, 2016, the Tribunal released its decision in *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 (the "***Merit Decision***").[4] The Tribunal found that Canada violated s. 5 of the *CHRA*'s prohibition against discrimination on the basis of race and nation or ethnic origin.[5] The Tribunal found that Canada's underfunding and implementation of the FNCFS Program and their narrow approach for eligibility for Jordan's Principle resulted in systemic discrimination.

15. The Tribunal ordered Canada to cease its discriminatory practices, implement actions to remedy and prevent its recurrence, and reform the FNCFS Program and the 1965 Agreement.[6] Canada accepted the Tribunal's decision, and committed to working with the

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[1] Affidavit of Grand Chief Joel Abram affirmed March 6, 2025 at Exhibit K.
[2] *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 [*CHRA*].
[3] *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 at para 6 [Merit Decision].
[4] Merit Decision.
[5] Merit Decision at paras 456-459.
[6] Merit Decision at para 481.

Complainants; First Nations organizations, leadership, and communities; child and family service agencies and providers; and the provinces and territories on steps to meaningful change and program reform.[7]

The Consultation Protocol

16. In February 2018, the Tribunal ordered that Canada was to consult, not only with the Commission, but directly with the AFN, the Caring Society, COO, and NAN (collectively, the "**Parties**") on the implementation of orders made in that ruling, the *Merit Decision*, and other Tribunal rulings.[8] The Tribunal ordered that Canada enter into a consultation protocol with the Parties to ensure consultations would occur in a manner consistent with the honour of the Crown and to eliminate the discrimination found.[9]

17. Following this order from the Tribunal, the Parties developed and completed a Consultation Protocol on March 2, 2018.[10]

The Agreement-in-Principle

18. On December 31, 2021, the Parties signed the Agreement-in-Principle on Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle (the "AIP").[11] The AIP committed $19.807 billion towards reform of the FNCFS Program, major capital relating to the FNCFS Program and Jordan's Principle, and was also meant to inform Final Settlement Agreement negotiations between the Parties. The AIP contemplated a Final Settlement Agreement being completed by December 31, 2022.[12]

19. After the AIP was signed, the Parties began negotiating a Final Settlement Agreement on long-term reform of the FNCFS Program and Jordan's Principle.

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[7] *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 6 [2016 CHRT 10].
[8] *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 para 400 [2018 CHRT 4].
[9] 2018 CHRT 4 at para 400.
[10] Affidavit of Amber Potts affirmed March 3, 2025 at para 8 [Potts Affidavit].
[11] Government of Canada, "Executive Summary of Agreement-in-Principle on Long-Term Reform" (updated September 13, 2023), online: <https://sac-isc.gc.ca/eng/1644518166138/1644518227229>.
[12] Government of Canada, "Executive Summary of Agreement-in-Principle on Long-Term Reform" (updated September 13, 2023), online: <https://sac-isc.gc.ca/eng/1644518166138/1644518227229>.

20. The negotiations continued until early 2023 when the Caring Society and the AFN advised the other parties in March 2023 of their joint proposal advocating for bifurcation of long-term reform of the FNCFS Program and Jordan's Principle.[13]

21. Negotiations were paused when Canada advised the Parties that it would need to seek a new mandate on long-term reform as a result of the joint proposal.[14]

22. In October 2023, Canada advised the Parties that it had secured a mandate to move ahead with the bifurcation and reach a Final Settlement Agreement on long-term reform of the FNCFS Program by March 31, 2024.[15]

23. In December 2023, the Caring Society announced to the other parties that it was removing itself from the AIP process to advance its non-compliance motion on Jordan's Principle.[16]

24. The remaining parties (COO, NAN, AFN and Canada) decided to carry on with negotiations. They established an intensive negotiation schedule with weekly meetings occurring from January until April 2024, with additional discussion happening between May and July 2024.[17]

25. The remaining parties shared their meeting times and agendas with the Caring Society. Although the Caring Society advised they were available for negotiations, they also confirmed to the remaining parties that they would not return to the negotiation table under the terms of the AIP. This made their involvement in the negotiations with the remaining parties, who wanted to continue under the AIP terms, practically infeasible.[18]

26. On July 11, 2024, COO, NAN, the AFN, and Canada finalized and announced a draft Final Agreement (the "national agreement"). Immediately thereafter, COO, NAN, and the AFN

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[13] Potts Affidavit at para 22.
[14] Potts Affidavit at para 23.
[15] Potts Affidavit at para 24.
[16] Potts Affidavit at para 25.
[17] Potts Affidavit at para 27.
[18] Potts Affidavit at para 28.

organized and participated in a series of engagement sessions on the national agreement. Representatives from Indigenous Services Canada were often present at these sessions.

27. On October 9 and 10, 2024, respectively, NAN Chiefs-in-Assembly and Ontario Chiefs-in-Assembly ratified the national agreement at their Special Chiefs Assemblies.

28. On October 17, 2024, at an AFN Special Chiefs Assembly held in Calgary, after several days of discussion on the topic and many presentations from AFN, COO, NAN, other regional organizations, First Nations, FNCFS agencies, and the Caring Society, the national agreement was put to a vote by the First Nations-in-Assembly and was rejected. The First Nations-in-Assembly directed the AFN to take a series of steps to resume the negotiations on long-term reform and called upon Canada to obtain a new negotiation mandate to address the matters in its resolutions.[19] The First Nations-in-Assembly reconfirmed its resolutions from October 2024 in December 2024.[20]

The Ontario Final Agreement

29. Despite rejection of the national agreement by the First Nations-in-Assembly, First Nations in Ontario remained committed to reforming the FNCFS Program in Ontario. In November 2024, at COO's Annual General Assembly, the Ontario Chiefs-in-Assembly mandated COO to pursue an Ontario-specific agreement.

30. Shortly after, in a letter dated October 25, 2024, Ontario Regional Chief Abram Benedict and NAN Grand Chief Alvin Fiddler formally invited Canada to enter into negotiations to achieve a reformed FNCFS Program in Ontario.

31. On December 30, 2024, Canada announced it had received a mandate to negotiate with COO and NAN on long-term reform of the FNCFS Program in Ontario.

32. On February 7, 2025, after five weeks of negotiations, COO, NAN, and Canada reached a provisional Ontario Final Agreement and a provisional Trilateral Agreement.

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[19] Potts Affidavit at Exhibit E.
[20] Affidavit of Katherine Quintana-James affirmed Freburary 13, 2025 at Exhibit D.

33. COO and NAN made substantial efforts and worked extensively with First Nations, their leadership, political-territorial organizations in Ontario, and their appointed representatives and technicians to inform and seek feedback about the reforms outlined in the Ontario Final Agreement and Trilateral Agreement.

34. On February 25 and 26, 2025, the provisional Ontario Final Agreement and the provisional Trilateral Agreement were ratified by the NAN Chiefs-in-Assembly and the Ontario Chiefs-in-Assembly.

PART II – ISSUES

35. There are two issues that COO will address in these submissions:

a. The source of the existing consultation obligations in these proceedings is the *CHRA*; and

b. The honour of the Crown and how it is implicated in the Crown's dealings with Indigenous groups.

PART III – SUBMISSIONS

36. COO takes no position on the consultations between Canada, the AFN, and the Caring Society on the national long-term reform of the FNCFS Program and Jordan's Principle or the path towards negotiations resuming on a national level. Since Jordan's Principle consultations have not commenced, COO understands the motion to be primarily about the FNCFS reform. COO expects to fully participate in Jordan's Principle reforms, including any consultations.

37. These submissions will focus on clarifying that (1) the *CHRA*, including the Tribunal's statutory mandate to remedy discrimination and cease its recurrence, is the source of the consultation obligations in these proceedings; and (2) the honour of the Crown is a constitutional principle that is only engaged in Crown dealings with Aboriginal peoples as recognized under s. 35 of the *Constitution Act, 1982*.[21] As a result, the duties arising from the honour of the Crown—such as the duty to consult and accommodate and the duty to

[21] *Constitution Act, 1982*, Part II of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11., s 35.

negotiate and perform contracts with integrity, openness, and a genuine commitment to reconciliation (as discussed in *Pekuakamiulnuatsh Takuhikan*)—are only owed by the Crown to Aboriginal peoples holding s. 35 rights, not individuals.

A. The consultation orders support the Tribunal's statutory mandate

38. The Tribunal has described its statutory mandate as a "quasi-constitutional mandate to protect fundamental human rights."[22] The dominant purpose of the *CHRA* is to give effect to the principle that "all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices".[23]

39. In this case, the Tribunal has interpreted its statutory mandate broadly and purposively, in line with reconciliation and principles of domestic and international law—namely, substantive equality and the best interests of the child—in exercising its remedial discretion and crafting its orders. The Tribunal's purposive interpretation of the *CHRA* informed its decision to order Canada to consult with the other Parties.[24]

40. In constructing meaningful and effective remedies to uphold its statutory mandate, the Tribunal adopted a flexible and innovative approach given the complexity of the proceedings and its findings of systemic discrimination against First Nations children.[25] The Federal Court upheld this approach, including the Tribunal's use of the dialogic approach and its retention of jurisdiction, as a means of fulfilling the Tribunal's statutory mandate.[26]

41. In line with the Tribunal's remedial jurisdiction, the Tribunal ordered Canada to consult with the other Parties to inform reform and construct meaningful remedies in accordance with the Tribunal's rulings and orders so as to eliminate the discrimination substantiated in

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[22] 2018 CHRT 4 at para 44.
[23] 2016 CHRT 10 at paras 12-13, citing *CHRA*, s. 2.
[24] *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 115 [2017 CHRT 14].
[25] 2016 CHRT 10 at paras 15-16.
[26] *Canada (Attorney General) v First Nations Child and Family Caring Society of Canada*, 2021 FC 969 at paras 135-138.

the *Merit Decision*.[27] This order was contrary to the plain language of s. 53(2)(a) of the *CHRA* and the existing case law, which said that while the Tribunal has the authority to order consultation with the Commission under s. 53(2)(a) it "does not have the power to order consultation with other parties."[28] The Tribunal held that the factual matrix and unprecedented scope of this case required it to broaden its consultation requirements and order Canada to consult with the other Parties. It did so on the basis that, among other factors:

a. The individuals affected by this case are First Nations children;

b. The *CHRA* must be interpreted in light of its purpose;

c. The expertise of the other Parties is invaluable;

d. The provision of child welfare services to First Nations children and families is an area that directly affects the fundamental rights of First Nations children, families, and communities;

e. The best interests of the child are central to this case;

f. The honour of the Crown is at stake in Canada's dealings with Aboriginal peoples;

g. Canada's stated remedial approach;[29]

h. Consultation with Aboriginal peoples in the reform process is consistent with Canada's duty to consult.[30]

42. Throughout these proceedings, the Tribunal has relied on a range of mechanisms—including consultation orders, the retention of its jurisdiction, a dialogic and phased approach to remedies, and the interested party submissions—to ensure "the voices of First Nations and those with expertise could be heard via representative organizations" to inform immediate and long-term reform and to craft meaningful and effective remedies.[31] The consultation obligations imposed on Canada are one part of a complex, innovative, and

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[27] 2018 CHRT 4 at paras 399-400, citing to 2017 CHRT 14 at paras 113-120.
[28] 2017 CHRT 14 at para 114.
[29] 2018 CHRT 4 at paras 399-400, citing 2017 CHRT 14 at paras 113-120.
[30] See in particular, 2018 CHRT 4 at paras 399-400, citing 2017 CHRT 14 at para 116, citing *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 10 [2016 CHRT 16].
[31] *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 465 [2022 CHRT 41].

flexible approach designed and implemented by the Tribunal to uphold its mandate to safeguard human rights and remedy the discrimination found in the *Merit Decision* and cease its recurrence.

Canada's consultation obligations arise from the CHRA

43. The Tribunal's consultation orders, and Canada's ensuing consultation obligations, are grounded in the Tribunal's remedial jurisdiction and statutory mandate under the *CHRA* to safeguard human rights by constructing meaningful and effective remedial orders. While the Tribunal has recognized Aboriginal rights as human rights,[32] the Tribunal's mandate to safeguard human rights under the *CHRA* is distinct from the protection of s. 35 collective rights contemplated in the duty to consult and accommodate (discussed below beginning at paragraph 49). The duty to consult and accommodate is a constitutional duty, rooted in the honour of the Crown, owed only to Aboriginal peoples as defined in s. 35(2) of the *Constitution Act, 1982*. While the Tribunal has identified consultation with the other Parties to inform reform as "necessary and consistent with the federal government's duty to consult Indigenous peoples",[33] Canada's consultation obligations in these proceedings are not grounded in the duty to consult and accommodate framework.

44. For example, in the Tribunal's decision on whether the Class Action Final Settlement Agreement on individual compensation satisfied the Tribunal's orders, the Tribunal considered the collective rights of First Nations despite the fact the compensatory remedies concerned individual human rights.[34] The Tribunal found that while individual and collective rights are not mutually exclusive, "collective rights ought to be determined in other fora, where the full scope and context of the nature and source of the right can be weighed and determined."[35] Hence, while the honour of the Crown can inform the Tribunal's assessment of Canada's compliance with the Tribunal's consultation orders, the constitutionally owed duty to consult and accommodate that protects collectively-held s. 35 Aboriginal and treaty rights is not in issue.

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[32] 2022 CHRT 41 at para 434.
[33] 2016 CHRT 16 at para 10.
[34] 2022 CHRT 41.
[35] 2022 CHRT 41 at paras 462, 464.

45. Correspondingly, COO's role in these proceedings is to advocate for the interests of the 133 s. 35 rights-holding members as an advocacy forum and secretariat for collective decision-making in the reform of the FNCFS system and Jordan's Principle. COO's role is to share the perspectives of its 133 rights-holding members to inform the Tribunal's remedies in this case. COO's role as an advocate for the interests of its members was similarly defined in the Consultation Protocol,[36] and is also framed by resolutions of the Chiefs-in-Assembly.

B. The honour of the Crown is at stake in Crown dealings with Aboriginal peoples

46. The honour of the Crown is specifically at stake in the Crown's dealings with Aboriginal peoples as recognized under s. 35.[37] The Crown's historic assertion of sovereignty over Indigenous societies gives rise to continuing obligations to their successors as part of an ongoing process of reconciliation.[38] The honour of the Crown arises out of the "special relationship" between Aboriginal peoples and the Crown as a result of the Crown's superimposition of European laws and customs on pre-existing Aboriginal societies.[39] The honour of the Crown is a "constitutional principle" because of its connection with s. 35(1) of the *Constitution Act, 1982*.[40]

47. The Supreme Court has been clear that a group must be an "Aboriginal peoples of Canada" within the meaning of s. 35 in order to hold Aboriginal or treaty rights under s. 35.[41] This is because the two purposes of s. 35 are (1) to recognize the prior occupation of Canada by Aboriginal societies and (2) to reconcile their modern-day existence with the Crown's assertion of sovereignty over them.[42]

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[36] Consultation Protocol (Entered into pursuant to an order of the Tribunal), File no. T1340/7008, March 2, 2018 at pp 2, 10.
[37] *Ontario (Attorney General) v Restoule*, 2024 SCC 27 at para 73 [*Restoule*], emphasis added; citing *R v Badger*, [1996] 1 SCR 771 at para 41; *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at para 16 [*Haida*]; *Mikisew Cree First Nation v Canada (Governor General in Council)*, 2018 SCC 40 at para 23 [*Mikisew Cree* (2018)]; see also Merit Decision at paras 89, 95.
[38] *R v Desautel*, 2021 SCC 17 at para 22 [*Desautel*].
[39] *Desautel* at para 30; citing *Manitoba Metis Federation Inc v Canada (Attorney General)*, 2013 SCC 14 at para 67 [*Manitoba Metis*]; see also Merit Decision at para 89.
[40] *Restoule* at para 72; citing *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53 at para 42; *Manitoba Metis* at para 69; *Mikisew Cree* (2018) at para 24.
[41] *Desautel* at paras 19-20.
[42] *Desautel* at para 22.

48. The honour of the Crown imposes a high standard of honourable dealing with Aboriginal peoples.[43] It is not a cause of action in itself, but speaks to how obligations that attract it must be fulfilled.[44] The Tribunal found the honour of the Crown must form part of the context of the Panel's analysis because the FNCFS program impacts First Nations children and families on reserves.[45] But whether the honour of the Crown gives rise to specific duties in these circumstances is a separate question, which depends heavily on the context in which that honour is engaged and has not been raised in these proceedings.[46]

The duty to consult and accommodate arises from the honour of the Crown

49. As discussed above, Canada's consultation obligations arising pursuant to the Tribunal's mandate and the *CHRA* in these proceedings are not sourced in s. 35 constitutional rights nor the duty to consult and accommodate framework. Whether the duty to consult and accommodate exists or has been met in these proceedings has not been put into issue, though its principles may be instructive to the Tribunal's analyses and approaches to consultation.

50. The duty to consult and accommodate exists to protect the collective rights of Aboriginal peoples. For this reason, it is owed to the Aboriginal group that holds the s. 35 rights.[47] The duty is grounded in the honour of the Crown and is constitutionalized by s. 35 of the *Constitution Act, 1982*.[48] The ultimate legal responsibility for consultation and accommodation always rests with the Crown because the honour of the Crown cannot be delegated.[49] The Crown has a duty to consult and accommodate First Nations when it has knowledge, real or constructive, of the potential existence of an Aboriginal or treaty right and contemplates conduct that might adversely affect it.[50]

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[43] *Restoule* at para 219; citing *R v Sparrow*, [1990] 1 SCR 1075 at p 1109; *Manitoba Metis* at para 69.
[44] *Restoule* at para 220; citing *Manitoba Metis* at para 73.
[45] Merit Decision at para 95.
[46] *Restoule* at para 220; citing *Mikisew Cree* (2018) at para 24; *Manitoba Metis* at para 74; *Taku River Tlingit First Nation v British Columbia (Project Assessment Director)*, 2004 SCC 74 at para 25.
[47] *Behn v Moulton Contracting Ltd*, 2013 SCC 26 at para 30.
[48] *Haida* at paras 16, 25, 27.
[49] *Haida* at para 53.
[50] *Haida* at para 35.

51. The scope of the duty to consult and accommodate is proportionate (1) to a preliminary assessment of the case supporting the existence of the Aboriginal right or title at issue; and (2) to the seriousness of the potentially adverse effect upon the right or title claimed.[51] The effect of consultation may be to reveal a duty to accommodate.[52]

52. The controlling question in all situations is what is required to maintain the honour of the Crown and to effect reconciliation between the Crown and the Aboriginal peoples with respect to the interests at stake.[53] Good faith on both sides of consultation is required at all stages of the consultation.[54] There is no duty to agree; rather, the commitment is to a meaningful process of consultation,[55] which in itself advances reconciliation.

Consultation informed by UNDRIP

53. In the recent Federal Court case, *Kebaowek First Nation v. Canadian Nuclear Laboratories* ("***Kebaowek***"),[56] the Court held that UNDRIP is part of Canadian law and can be used to interpret Canadian law, including by administrative decision-makers.[57] The Court held that UNDRIP attracts the presumption of conformity, the presumption of conformity applies to s. 35, and so s. 35 should be interpreted in a manner consistent with UNDRIP.[58] Therefore, the s. 35 duty to consult and accommodate must be informed by UNDRIP and the UNDRIP principle of free, prior, and informed consent ("**FPIC**").[59] Interpreting the s. 35 duty to consult and accommodate in light of UNDRIP and FPIC requires the Crown to engage in reasonable efforts to alter their consultation processes to account for "Indigenous perspectives, laws, knowledge and practices" and aims to obtain—but does not require—mutual agreement.[60]

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[51] *Haida* at para 39.
[52] *Haida* at para 47.
[53] *Haida* at para 45.
[54] *Haida* at para 42.
[55] *Haida* at para 42.
[56] *Kebaowek First Nation v Canadian Nuclear Laboratories*, 2025 FC 319 (under appeal) [*Kebaowek* (under appeal)].
[57] *Kebaowek* (under appeal) at paras 78-80.
[58] *Kebaowek* (under appeal) at paras 81-82, 84-85.
[59] *Kebaowek* (under appeal) at para 177.
[60] *Kebaowek* (under appeal) at paras 130, 133, 140, 177.

54. While the Tribunal in this matter is not tasked with determining the adequacy of the Crown's consultation under the s. 35 duty to consult and accommodate framework, it is notable that the Tribunal designed a process of consultation that is consistent with the heightened standard of consultation contemplated in *Kebaowek*. The Tribunal recognized that UNDRIP is part of the legal framework in these proceedings and applied UNDRIP as an interpretive lens, finding that the *CHRA* should be interpreted to be harmonious with UNDRIP.[61] This interpretation informs the Tribunal's remedial discretion, statutory mandate, and consultation orders as part of a robust process.

Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan

55. The Supreme Court's recent decision in *Pekuakamiulnuatsh Takuhikan* elaborates on the nature of the honour of the Crown and remedies for breaches of the honour of the Crown in a contractual context.[62]

56. In *Pekuakamiulnuatsh Takuhikan*, the Supreme Court found that the honour of the Crown can apply to contractual agreements between the Crown and an Aboriginal group. The Court set out a two-part test to determine whether the enforcement or renewal of a contract would attract the honour of the Crown.

57. First, "the agreement in question must be entered into by the Crown and an Indigenous group by reason and on the basis of the group's Indigenous difference, which reflects its distinctive philosophies, traditions and cultural practices."[63] The Supreme Court further clarified that the honour of the Crown will only apply "if the contract has a collective dimension."[64] Second, "contractual agreements will engage the honour of the Crown where they relate to an Indigenous right of self-government, whether the right is established or subject of a credible claim."[65]

58. The Supreme Court again makes clear in *Pekuakamiulnuatsh Takuhikan* that the honour of the Crown applies solely to Aboriginal peoples because the honour of the Crown "arises

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[61] 2018 CHRT 4 at para 81.
[62] *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 [*Pekuakamiulnuatsh Takuhikan*].
[63] *Pekuakamiulnuatsh Takuhikan* at para 161.
[64] *Pekuakamiulnuatsh Takuhikan* at para 162.
[65] *Pekuakamiulnuatsh Takuhikan* at para 163.

from 'the Crown's assertion of sovereignty over an Aboriginal people and *de facto* control of land and resources that were formerly in the control of that people'".[66] The Court explained that the underlying purpose of the honour of the Crown is to facilitate the reconciliation of the Crown's interests and those of Aboriginal peoples, including by promoting negotiation and the just settlement of Indigenous claims.[67]

59. Further, the Supreme Court held that the honour of the Crown requires the Crown to act honourably when performing, interpreting and negotiating any amendments to the contractual agreement:

> Once an agreement has been entered into, the Crown must conduct itself with honour and integrity in performing its obligations. This means, among other things, that it must construe the terms of the agreement generously and comply with them scrupulously while avoiding any breach of them. The Crown must act honourably in any negotiations to change or renew the agreement. It must avoid taking advantage of the imbalance in its relationship with Indigenous peoples by, for example, agreeing to renew its undertakings on terms that are more favourable to it without having genuinely negotiated first.[68]

60. This decision makes it clear that the Crown must act honourably to negotiate, implement and perform contractual agreements with Aboriginal groups, if the agreement meets the test in *Pekuakamiulnuatsh Takuhikan*.

C. Indigenous Police Chiefs of Ontario v Canada (Public Safety)

61. The Federal Court's decision in *Indigenous Police Chiefs of Ontario v Canada (Public Safety)* raises two distinct points relevant to these proceedings:[69]

a. First, the Court emphasized it is important for all parties involved in consultation to refrain from unilaterally imposing conditions on consultation.

b. Second, the Court reiterated the fundamental principle that the honour of the Crown is at stake in the Crown's dealings with Aboriginal peoples.

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[66] *Pekuakamiulnuatsh Takuhikan* at para 147.
[67] *Pekuakamiulnuatsh Takuhikan* at para 148.
[68] *Pekuakamiulnuatsh Takuhikan* at para 192 (citations omitted).
[69] *Indigenous Police Chiefs of Ontario v Canada (Public Safety)*, 2023 FC 916 [*IPCO*].

62. The Indigenous Police Chiefs of Ontario ("**IPCO**") brought a motion seeking, among other things, to compel Public Safety Canada ("**PSC**") to continue funding three specific self-administered Indigenous police services (the "**Three Police Services**") and to suspend the effects of s. 6 of the Terms and Conditions – Funding for First Nations and Inuit Policing ("**Terms and Conditions**") or relieve the Three Police Services from compliance with this section.[70] IPCO had also filed a complaint with the Canadian Human Rights Commission, arguing PSC forces Indigenous communities to accept the discriminatory Terms and Conditions or else lose funding.[71] Prior to the expiry of the funding agreements, the Three Police Services sent a joint letter to PSC outlining three "preconditions" for negotiation, which PSC refused to accept.[72] The Court granted the motion in part, reinstating—on a temporary basis and on certain conditions—the funding of the Three Police Services.[73]

63. The relevant portions of the case arise from the Federal Court's analysis of the irreparable harm element of the *RJR-MacDonald* injunction test. PSC argued that IPCO could have avoided the irreparable harm caused by PSC ceasing to fund the Three Police Services if:

a. IPCO accepted to abide by the Terms and Conditions, including s. 6 of the Terms and Conditions, which was the subject to IPCO's complaint to the Canadian Human Rights Commission; and
b. The Three Police Services retreated from their insistence that PSC agree to their preconditions before renewing the funding agreements.[74]

64. The Federal Court rejected PSC's submissions. The Federal Court found that PSC's insistence on maintaining the existing Terms and Conditions became the determinative element leading to the cessation of the funding agreements.[75] However, the Federal Court also noted that "IPCO's harm would constitute avoidable harm if the cessation of the

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[70] *IPCO* at para 4.
[71] *IPCO* at para 25.
[72] *IPCO* at para 23.
[73] *IPCO* at para 8.
[74] *IPCO* at para 127.
[75] *IPCO* at para 134.

funding and police services of [the Three Police Services] was strictly due to their own insistence that [PSC] accept the three Preconditions."[76]

65. The Federal Court's comments suggest that either party's insistence that the other comply with unilaterally imposed conditions would make the insistent party responsible for the failure of the negotiations. In this case, PSC's insistence on the Three Police Service's compliance with the Terms and Conditions was the determinative factor which led to the failure of negotiations.

66. Finally, the Federal Court reiterated the fundamental principle that the honour of the Crown is implicated in "its dealings with Aboriginal peoples" as a result of the special relationship between First Nations and the Crown.[77]

67. COO submits that this case can inform the Tribunal's decision-making on this and other matters before it. It is instructive to parties involved in consultations that engage the honour of the Crown by providing some guidance about the conduct of negotiations and participation of parties in negotiations.

D. No position on Canada's obligations pursuant to the Tribunal's orders or contract

68. COO takes no position on whether Canada has discharged its obligations to the Caring Society or the AFN pursuant to any of the Tribunal's orders or any contract that may exist.

PART IV – ORDER SOUGHT

69. COO seeks no relief on this motion.

70. COO submits that COO and NAN's joint motion for approval of the Ontario Final Agreement filed March 7, 2025 should proceed without delay and on a separate track from this motion. Any prospective interested parties should not be permitted to delay the motion for approval of the Ontario Final Agreement. The Ontario Chiefs-in-Assembly's ratification of the Ontario Final Agreement on February 26, 2025 represents the collective will of the 133 First Nations that comprise COO's membership. Approval of the Ontario

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[76] *IPCO* at paras 131, 133.
[77] *IPCO* at paras 139-140, 142-143.

Final Agreement would bring about long-term reform of the FNCFS program in Ontario, which is essential to the First Nations children, families, and communities in Ontario.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of March, 2025.



Maggie Wente
Olthuis, Kleer, Townshend LLP

Counsel for the Interested Party, Chiefs of Ontario

PART V – LIST OF AUTHORITIES

STATUTES	
1.	*Canadian Human Rights Act*, R.S.C., 1985, c. H-6
2.	*Constitution Act, 1982*, Part II of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11., s 35
CASE LAW	
3.	*Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53
4.	*Behn v Moulton Contracting Ltd*, 2013 SCC 26
5.	*Canada (Attorney General) v First Nations Child and Family Caring Society of Canada*, 2021 FC 969
6.	*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
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
8.	*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
9.	*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
10.	*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
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 2
12.	*Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73
13.	*Indigenous Police Chiefs of Ontario v Canada (Public Safety)*, 2023 FC 916
14.	*Kebaowek First Nation v Canadian Nuclear Laboratories*, 2025 FC 319 (under appeal)
15.	*Manitoba Metis Federation Inc v Canada (Attorney General)*, 2013 SCC 14

16.	*Mikisew Cree First Nation v Canada (Governor General in Council)*, 2018 SCC 40
17.	*Ontario (Attorney General) v Restoule*, 2024 SCC 27
18.	*Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39
19.	*R v Badger*, [1996] 1 SCR 771
20.	*R v Desautel*, 2021 SCC 17
21.	*R v Sparrow*, [1990] 1 SCR 1075
22.	*Taku River Tlingit First Nation v British Columbia (Project Assessment Director)*, 2004 SCC 74
OTHER SOURCES	
23.	Consultation Protocol (Entered into pursuant to an order of the Tribunal), File no. T1340/7008, March 2, 2018
24.	Government of Canada, *Executive Summary of Agreement-in-Principle on Long-Term Reform*

This is **Exhibit I** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

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A Commissioner for taking Affidavits

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Tribunal File No.: T1340/7008

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 and Northern Affairs Canada)

Respondent

-and-

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA, and NISHNAWBE ASKI NATION

Interested Parties

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I. Statement of Facts 3

A. Overview 3

B. Background 4

II. Issues 5

III. Submissions 5

A. NAN Takes No Position on the Motion 5

B. The Duty to Consult Protects Established or Asserted Aboriginal and Treaty Rights as Grounded in the Honour of the Crown 5

C. The Honour of the Crown gives rise to Different Duties under Different Circumstances 6

IV. Order Sought 11

V. List of Authorities 12

I. Statement of Facts

A. Overview

1. The Ontario Final Agreement ("**OFA**") and the Trilateral Agreement in Respect of Reforming the 1965 Agreement (the "**Trilateral Agreement**") are not at issue or before the Tribunal on this motion. As the moving party's materials specifically provide, this motion concerns national or Canada-wide (excluding Ontario) negotiations on the long-term reform between the First Nations Child and Family Caring Society of Canada (the "**Caring Society**"), the Assembly of First Nations ("**AFN**"), and Canada. As such, it does not concern First Nations in the Ontario region.

2. Indeed, even as the OFA and Trilateral Agreement represent an expression of the political will of First Nations in Ontario for the long-term reform of the First Nations Child and Family Services ("**FNCFS**") Program, First Nations outside of Ontario have expressed their political will and will continue to do so, in their efforts to reach long-term reform of the FNCFS program.

3. The rights of self-determination and self-government direct non-interference and mutual respect in these efforts. For this reason, Nishnawbe Aski Nation ("**NAN**") takes no position on this motion.

4. This factum, therefore, only concerns the duty to consult, the honour of the Crown, the Supreme Court decision in the matter of *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan* ("***Pekuakamiulnuatsh Takuhikan***")[1] and the Federal Court decision in the matter of *Indigenous Police Chiefs of Ontario v Canada (Public Safety)* ("***IPCO v Canada***").[2]

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[1] *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 ["*Pekuakamiulnuatsh Takuhikan*"].
[2] *Indigenous Police Chiefs of Ontario v Canada (Public Safety)*, 2023 FC 916 ["*IPCO v Canada*"].

B. Background

5. NAN was established in 1973, as a political-territorial organization with a mandate to represent the socioeconomic and political interests of its forty-nine (49) First Nation communities to all levels of government on a nation-to-nation basis. NAN has a total population of membership (on- and off-reserve) estimated at around 45,000 people. NAN's territory encompasses James Bay Treaty No. 9 and Ontario's portion of Treaty No. 5, with a total land mass covering two-thirds of Ontario, spanning an area of 210,000 square miles. The Chiefs of the forty-nine (49) First Nations represented by NAN are the members of the NAN not-for-profit corporation. The NAN Chiefs-in-Assembly meet two (2) to three (3) times a year to mandate, by resolution, the direction and initiatives of NAN. NAN's Board of Directors is comprised of a Grand Chief and three (3) Deputy Grand Chiefs.

6. The Chiefs' Committee on Children, Youth and Families (the "**CCCYF**") was established by NAN to develop a NAN-specific Aboriginal Child and Youth Strategy. The CCCYF's mandate was later revised to include supporting the development of First Nations laws and governance mechanisms, as well as developing a Children and Youth Services Model. Under the direction of the CCCYF, NAN sought intervention as an interested party in the remedies phase of the *First Nations Child and Family Caring Society v Canada* proceedings before the Tribunal and was granted this status by the decision of 2016 CHRT 11.[3]

7. NAN sought standing as an interested party to address specific issues facing remote Indigenous communities in Northwestern Ontario. This work was soon seen to apply to remote Indigenous communities more generally.

[3] *First Nations Child and Family Caring Society et al. v Canada*, 2016 CHRT 11.

8. NAN adopts the facts as laid out in the factum of Chiefs of Ontario ("**COO**") on this motion, dated March 31, 2025, reflected by paragraphs 13 – 34. These paragraphs contain a timeline of events from the filing of the initial complaint by the Caring Society and the AFN with the Canadian Human Rights Commission in 2007, until the ratification of the then provisional OFA and provisional Trilateral Agreement by the NAN Chiefs-in Assembly and the Ontario Chiefs-in-Assembly on February 25 and 26, 2025.

II. Issue

9. The issue to be addressed in these submissions is the honour of the Crown, and its grounding of different duties in different circumstances.

III. Submissions

A. NAN Takes No Position on the Motion

10. NAN takes no position on the consultations between Canada, the AFN, and the Caring Society on the national long-term reform of the FNCFS Program. However, NAN expects to participate in any consultations about the long-term reform of Jordan's Principle when consultations on long-term reform have commenced.

B. The Duty to Consult Protects Established or Asserted Aboriginal and Treaty Rights as Grounded in the Honour of the Crown

11. In *Haida Nation v British Columbia (Minister of Forests)*[4] ("***Haida***") the Supreme Court extended the duty to consult as a protection for established rights, and to be a protection for asserted rights (pending negotiations of treaties or litigation to establish their validity). It has

[4] *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 ["*Haida*"].

been pointed out that the duty to consult, "resembles the administrative law duty of fairness imposed upon the Crown's dealings with all its subjects,"[5] but it is set apart as arising from a different source: the honour of the Crown.

12. As the Supreme Court set out in *Haida*:

> … the Honour of the Crown requires that [the rights protected by Section 35] be determined, recognized, and respected. This in turn, requires the Crown, acting honourably to participate in the processes of negotiation. While this process continues, the Honour of the Crown may require it to consult and, where indicated, accommodate Aboriginal interests.[6]

13. The honour of the Crown thus underpins the duty to consult. This is its general role in Aboriginal law. Thus, the honour of the Crown is not a distinct legal doctrine, or a body of law, but a constitutional principle.[7] As an anchor or at its foundation, the honour of the Crown gives rise to different duties under different circumstances: "a core precept that finds its application in concrete practices."[8]

C. The Honour of the Crown Gives Rise to Different Duties Under Different Circumstances

14. This current matter arises outside of the existing jurisprudence related to the duty to consult and accommodate, as there is no conduct that might adversely affect an established Aboriginal or Treaty right, a Treaty being implemented, or an asserted Aboriginal or Treaty right. For clarity, Section 35 of the *Constitution Act*, *1982*, has not been engaged here.

15. However, the honour of the Crown has been held to have application outside of these contexts. Of assistance is the *Pekaukamiulnuatsh Takuhikan* decision, which applied the honour of the

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[5] Thomas Isaac and Anthony Knox, "The Crown's Duty to Consult Aboriginal People" (2003) 41-1 Alta. L. Rev. 49.
[6] *Haida*, *supra* note 4, at para 25.
[7] *Ontario (Attorney General) v Restoule*, 2024 SCC 27, at para 72.
[8] *Haida, supra* note 4, at para 16.

Crown to certain contractual relationships. This case found that the Canadian and Quebec governments inadequately funded an Indigenous police service, the Sécurité Publique de Mashteuiatsh. More importantly, the Supreme Court found that by refusing to discuss increased funding during its negotiations, the government of Quebec breached the duty to act in good faith and the honour of the Crown.

16. The Supreme Court held for the first time that the honour of the Crown may arise in certain contract relationships, specifically, those contracts that are based on Indigenous differences and involve a right to self-government. In these circumstances, the honour of the Crown gave rise to different and specific duties in the contractual relationship, outlined below. It is of note that in considering what it might mean for the Crown to act with honour and integrity in negotiating and performing an agreement, the Supreme Court considered cases from the Treaty context.

17. The specific duties arising out of the honour of the Crown in a contract relationship were outlined as follows:

> When the Crown decides to enter into a contractual relationship that engages its honour, it must act honourably, with integrity and in such a way as to avoid even the appearance of "sharp dealing" (*Haida Nation*, at para. 19; *Badger*, at para. 41). As the expression "sharp dealing" suggests, this standard of conduct demands more than the mere absence of dishonesty. In particular, it requires the Crown not to adopt an intransigent attitude. The Crown must therefore come to the negotiating table with an open mind and with the goal of engaging in genuine negotiations with a view to entering into an agreement. The Crown should not enter into negotiations without intending to keep its promises, nor should it attempt to coerce or unilaterally impose an outcome (A. F. Martin and C. Telfer, "The Impact of the Honour of the Crown on the Ethical Obligations of Government Lawyers: A Duty of Honourable Dealing" (2018), 41 *Dal. L.J.* 443, at p. 459). Similarly, the Crown cannot change its position for the sole purpose of delaying or ending negotiations (*Kaska Dena Council v. Canada*, 2018 FC 218, at para. 43).
>
> Of course, the honour of the Crown does not require that the negotiations ultimately be successful; as is the case in any negotiation, either party may withdraw where an impasse is reached (*Chemainus First Nation v. British Columbia Assets and Lands*

> *Corp.*, 1999 CanLII 6298 (BC SC), [1999] 3 C.N.L.R. 8 (B.C.S.C.), at para. 26). However, when it is involved in such a process, the Crown must adopt a standard of conduct higher than the one it would adopt in the private law context and must act in such a way as to maximize the chances of success.
>
> Once an agreement has been entered into, the Crown must conduct itself with honour and integrity in performing its obligations. This means, among other things, that it must construe the terms of the agreement generously and comply with them scrupulously while avoiding any breach of them (*Badger*, at para. 41). The Crown must act honourably in any negotiations to change or renew the agreement (see, e.g., *Gitanyow First Nation v. Canada*, 1999 CanLII 6180 (BC SC), [1999] 3 C.N.L.R. 89 (B.C.S.C.)). It must avoid taking advantage of the imbalance in its relationship with Indigenous peoples by, for example, agreeing to renew its undertakings on terms that are more favourable to it without having genuinely negotiated first (see F. Hoehn, "The Duty to Negotiate and the Ethos of Reconciliation" (2020), 83 *Sask. L. Rev.* 1, at p. 20).[9]

18. In applying this precedent, to determine when the principle of the honour of the Crown is imposed on the state, the following reasoning from the Supreme Court is relevant. First, the principle of the honour of the Crown is itself anchored to the goal of reconciliation.[10] In fact, as the Supreme Court recognized, the common element underlying all contexts in which the Court has already recognized the honour of the Crown as being engaged relates to "the reconciliation of specific Indigenous claims, rights or interests with the Crown's assertion of sovereignty".[11] As the Supreme Court held:

> Regardless of the means used by the Crown to advance the process of reconciliation, whether it be negotiating treaties, drafting legislation or entering into a contract as in the present case, the principle of the honour of the Crown must be applicable when it is required, and in accordance with the terms of the instrument that engages it.[12]

19. Similar to the matter of *Pekaukamiulnuatsh Takuhikan, IPCO v Canada* arose out of a complaint to the Canadian Human Rights Commission under the *Canadian Human Rights Act*, RSC 1985, c H-6 ("**CHRA**"), alleging discrimination against the First Nations and Inuit

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[9] *Pekaukamiulnuatsh Takuhikan, supra* note 1, at paras 190-2.
[10] *Pekaukamiulnuatsh Takuhikan, supra* note 1, at para 6.
[11] *Pekaukamiulnuatsh Takuhikan, supra* note 1, at para 12.
[12] *Pekaukamiulnuatsh Takuhikan, supra* note 1, at para 13.

Policing Program (the "**Program**"), and the Terms and Conditions it imposes in respect of the funding for Indigenous police services.

20. The decision specifically concerned a request for declaratory and injunctive relief to compel Public Safety Canada ("**PSC**") to continue funding three (3) specific self-administered Indigenous police services pending the CHRA complaint and to relieve those services from certain restrictive, and allegedly discriminatory, Terms and Conditions imposed unilaterally by Canada. The Indigenous Police Chiefs of Ontario ("**IPCO**") claimed that the PSC refused to enter into good faith negotiations before the expiry of funding agreements. With the looming threat of losing funding and leading to the end of policing services in forty-five (45) Indigenous communities, interlocutory relief was sought to prevent that harm.

21. In their submissions, IPCO raised the issues of reconciliation and the honour of the Crown. Specifically, the conduct of PSC in its dealings with funding agreements for the three (3) specific Indigenous police services was not in keeping with the overarching principles of reconciliation and honour of the Crown. To this end, the Federal Court spoke to the applicability of the honour of the Crown as follows:

> The controlling question in all situations involving First Nations is "what is required to maintain the honour of the Crown and to effect reconciliation between the Crown and the Aboriginal peoples with respect to the interests at stake" (*Haida* at para 45). Canada always has an obligation to act in ways that maintain the honour of the Crown vis-à-vis Indigenous peoples and that are in line with the objective of reconciliation.[13]

22. IPCO's submissions were put forth in a motion for injunctive relief. Echoing prior decisions, Justice Gascon of the Federal Court observed that the "contextual analysis" on the injunctive relief test necessarily must take into account the Indigenous perspective, as well as the "historical, social, and legal context", observing that "…when reconciliation and the honour

[13] *IPCO v Canada*, *supra* note 2, at para 178.

of the Crown are involved, the injunction test has to be viewed through the lens of these guiding principles".[14]

23. With that in mind, the Court then considered the claim that Canada, in administering its First Nations and Inuit Policing Program, had failed to act honourably in its dealings with the First Nations beneficiaries of the Program. Finding the First Nations' allegations to be valid, the Court observed that "the readiness and willingness of PSC to determine IPCO's need for additional funding is one thing, but PSC's outright refusal to negotiate the Terms and Conditions of such funding is quite another,"[15] before reiterating the well-known maxim:

> Where the honour of the Crown applies, there is a special duty on Canada to negotiate honourably: "[t]his fiduciary relationship must form part of the context of the Panel's analysis, along with the corollary principle that in all its dealings with Aboriginal peoples, the honour of the Crown is always at stake" [emphasis added] (*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 at para 95).[16]

24. On the facts of the case, the Court went on to hold that Canada's "unwillingness… to negotiate or even discuss the Terms and Conditions" of funding under the Program was arguably "not an honourable conduct and encroaches on" the principles of reconciliation and honour of the Crown.[17]

25. Finally, emphasizing the public interest dimension of promoting reconciliation and the Crown's honourable duties, the Federal Court ultimately ordered the injunctive relief, requiring Canada to maintain funding for the three (3) specific First Nations police services, and relieving those police services from the most restrictive Terms and Conditions of the Program.[18]

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[14] *IPCO v Canada*, *supra* note 2, at para 140.
[15] *IPCO v Canada*, *supra* note 2, at para 142.
[16] *Ibid*.
[17] *IPCO v Canada*, *supra* note 2, at para 143.
[18] *IPCO v Canada*, *supra* note 2, at paras 175 and 198.

IV. Order Sought

26. NAN seeks no relief on this motion.

27. NAN adopts the submission of COO regarding NAN and COO's joint motion for approval as outlined at paragraph 70 of COO's factum on this motion, dated March 31, 2025.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of April, 2025.



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Counsel for the Interested Party,
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V. List of Authorities

STATUTES	
1.	*Canadian Human Rights Act*, RSC 1985, c H-6
2.	*Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 35
CASE LAW	
3.	*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 11
4.	*Haida Nation v British Columbia (Minister of Forests),* 2004 SCC 73
5.	*Indigenous Police Chiefs of Ontario v Canada (Public Safety)*, 2023 FC 916
6.	*Ontario (Attorney General) v Restoule*, 2024 SCC 27
7.	*Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39
OTHER SOURCES	
8.	Thomas Isaac and Anthony Knox, "The Crown's Duty to Consult Aboriginal People" (2003) 41-1 Alta. L. Rev. 49

This is **Exhibit J** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
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A Commissioner for taking Affidavits

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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 and
NISHNAWBE ASKI NATION

Interested Parties

FACTUM OF THE ATTORNEY GENERAL OF CANADA
in response to
the First Nations Child and Family Caring Society of Canada's
Consultation Motion

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TABLE OF CONTENTS

OVERVIEW **1**

PART I – STATEMENT OF FACTS **2**

A. Canada has meaningfully consulted and negotiated with the parties 2

B. Canada has discharged its consultation obligations 7

C. Reform of the FNCFS Program and Jordan's Principle is already well underway 9

PART II – POINTS IN ISSUE **10**

PART III - SUBMISSIONS **11**

A. Introduction 11

B. Canada engaged in the dialogic approach in good faith 12

C. Canada has discharged its obligations under the Consultation Protocol 13

D. Canada has fulfilled its obligations under the Agreement in Principle 15

E. Canada acted in accordance with the honour of the Crown, which does not give rise to any specific duties in this case 16

i. *The honour of the Crown* 16

ii. *Canada's consultation obligations arise from the Tribunal's orders, not the honour of the Crown* 17

iii. *No duty to continue negotiations arising from the honour of the Crown* 17

iv. *No contractual obligations engaging the honour of the Crown* 18

F. Canada has consulted and negotiated in good faith, with integrity and honour, fully discharging its consultation obligations 20

i. *Canada's good faith efforts towards a consensus final settlement agreement* 21

ii. *The Caring Society's conduct has detrimentally affected Canada's meaningful efforts towards finalizing long-term reform* 24

G. Next Steps 26

PART IV – ORDERS SOUGHT **27**

PART V – LIST OF AUTHORITIES **30**

1

OVERVIEW

1. Over the past seven years, Canada has made intensive and meaningful efforts towards achieving a final resolution of this complaint with the consent of all parties. Throughout these efforts, Canada has conducted itself with integrity, honour, and a genuine intention to eliminate discrimination, implement final reforms to Canada's First Nations Child and Family Services Program (FNCFS Program) and Jordan's Principle, and move forward towards reconciliation.

2. Canada has met its consultation obligations pursuant to the Tribunal's orders at all times, as evidenced first and foremost by its extensive outreach, discussions and negotiations with the parties to advance reforms to the FNCFS Program and Jordan's Principle. Canada funded extensive First Nations-led research on an alternative FNCFS Program funding methodology, remoteness and Jordan's Principle; resolved the compensation claims that evolved in part from these proceedings through a $23.34 billion First Nations-led settlement agreement; and consented to Tribunal orders that implemented important advancements to the FNCFS Program and Jordan's Principle, which in turn improved services and supports to First Nations children and families and advanced the elimination of discrimination. Further, Canada negotiated:

a. the December 31, 2021 *Agreement-in-Principle on Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle* (the Agreement in Principle) with the First Nations Child and Family Caring Society of Canada (the Caring Society), the Assembly of First Nations (AFN), Chiefs of Ontario (COO) and Nishnawbe Aski Nation (NAN);

b. the July 10, 2024 draft *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program* (Draft Final Agreement) with the AFN, COO and NAN;

c. the February 7, 2025 *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario* (Ontario Final Agreement) with COO and NAN, ratified by the NAN Chiefs and the Ontario Chiefs-in-Assembly on February 25 and 26, 2025 respectively; and

d. the February 7, 2025 *Trilateral Agreement in Respect of Reforming the 1965 Agreement* (Trilateral Agreement) with COO and NAN, ratified by the NAN Chiefs and the Ontario Chiefs-in-Assembly on February 25 and 26, 2025 respectively.

2

3. Despite Canada's best efforts, the dialogic approach with the Caring Society and the AFN (collectively the Complainants) is no longer working. Despite their agreement on long-term FNCFS Program reform principles reached through the Agreement in Principle - and subsequently negotiated into the Draft Final Agreement - the Complainants are now making extensive further demands. These are well outside the terms to which they previously agreed, and beyond what is required to meet the Tribunal's reform orders.

4. Canada has met its obligations under the Tribunal's consultation orders, which do not require that Canada consult indefinitely or until the Complainants obtain the variable outcomes they seek. Rather than continuing unproductive consultations, it is in the best interests of First Nations children to move forward with implementing long-term reforms, beginning with COO and NAN's joint motion to approve the Ontario Final Agreement.[1]

PART I – STATEMENT OF FACTS

5. Canada's consultation efforts have been extensive and have exceeded the requirements of the Tribunal's consultation orders. Since Canada entered into the Consultation Protocol in 2018, and even before then, Canada engaged in significant consultative efforts.

A. Canada has meaningfully consulted and negotiated with the parties

6. Since 2016, Indigenous Services Canada (ISC) has consulted with the Caring Society and others regarding the FNCFS Program and Jordan's Principle through numerous committees, all of which include the Caring Society. These include the National Advisory Committee (NAC), the Jordan's Principle Action Table (JPAT), the Jordan's Principle Operations Committee (JPOC), and the Expert Advisory Committee (EAC).[2]

7. In 2018 CHRT 4, the Tribunal ordered that:

> 400 Canada is ordered under section 53(2)(a) of the *Act*, to consult not only with the Commission, but also directly with the AFN, the Caring Society, the COO and the NAN on the orders made in this ruling, the *Decision* and its other rulings. INAC is ordered to enter into a protocol with the AFN, the Caring Society, the COO, the NAN and the Commission on consultations to ensure that consultations are carried

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[1] In the OFA motion, the Tribunal is not being asked to consider the potential applicability of the OFA outside Ontario. In determining whether to approve the OFA in Ontario, the Tribunal may, however, provide advice which will assist in the future, such as whether the unanimous consent of every First Nation is required before the parties can move forward with long-term reform.

[2] Affidavit of Duncan Farthing-Nichol (affirmed March 13, 2025), at paras 10–13, 21–31 **[Farthing-Nichol Affidavit]**.

3

> out in a manner consistent with the honor of the Crown and to eliminate the discrimination substantiated in the *Decision* by *February 15, 2018*.[3]

8. In response to this consultation order, Canada entered into a Consultation Protocol in March 2018 with the parties. The Consultation Protocol led to the establishment of the Consultation Committee on Child Welfare (CCCW) as a forum to discuss implementation of the Tribunal's orders and reform of the FNCFS Program and Jordan's Principle.[4] The CCCW stopped meeting following the signing of the Agreement in Principle in late 2021, which moved consultations into a new confidential negotiation process towards long-term reform of the FNCFS Program and Jordan's Principle.[5]

9. In addition to the consultations Canada carried out through the array of committees developed in response to the Tribunal's orders, Canada also undertook significant efforts to negotiate a final resolution of this complaint, working closely with the Complainants in that context. Initial mediation efforts respecting both compensation and long-term reform were held with former Federal Court Justice Mandamin over the course of many months in 2020 and 2021.[6]

10. Following these efforts, in late 2021, Canada, the Caring Society, AFN, COO and NAN engaged in an intensive negotiation process with the assistance of the late Honourable Murray Sinclair. These negotiations led to the December 31, 2021 Agreement in Principle, signed by all of the parties - including the Caring Society and the AFN.[7]

11. In the Agreement in Principle, Canada committed $19.8 billion in funding for a reformed FNCFS Program and for major capital related to the FNCFS Program and Jordan's Principle.[8] The Agreement in Principle, informed by First Nations-led research funded by Canada and led by the Caring Society and the AFN, included a detailed outline of a reformed FNCFS Program and laid the foundation for long-term reform of both the Program and Jordan's Principle.[9] Within four days

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[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)*, 2018 CHRT 4 at para 400.
[4] Farthing-Nichol Affidavit at paras 16–18.
[5] Farthing-Nichol Affidavit at paras 20.
[6] Affidavit of Amber Potts (affirmed March 3, 2025), at para 11 **[Potts Affidavit]**.
[7] Potts Affidavit at paras 14–15.
[8] Indigenous Services Canada, *Executive Summary of Agreement-in-Principle on Long-Term Reform* (September 13, 2023), in Affidavit of Cindy Blackstock (affirmed January 12, 2024), Exhibit 61.
[9] Farthing-Nichol Affidavit at paras 32, 70.

4

of signing the Agreement in Principle, the Caring Society announced that in their view, it was a non-binding agreement.[10]

12. Nevertheless, in early 2022, the parties to the Agreement in Principle began negotiating to entrench the Agreement in Principle commitments into a final agreement and establish more detailed parameters for the reformed FNCFS Program and Jordan's Principle, based on the Agreement in Principle's foundation. Canada met with the other parties once or twice a week and held a number of multi-day intensive in-person negotiation sessions throughout all of 2022 and into 2023.[11]

13. In 2023, the parties reached a $23.34 billion, First Nations-led settlement of the compensation claims that evolved in part from these proceedings. The settlement was approved by this Panel in 2023 CHRT 44 and subsequently by the Federal Court. The agreement represented a monumental step towards reconciliation and will provide life-changing relief to hundreds of thousands of marginalized First Nations youths and families.[12]

14. In March 2023, the AFN and Caring Society tabled their *Joint Path Forward,* which proposed a redirection of the long-term reform negotiations. As part of the redirection, the *Joint Path Forward* proposed the bifurcation of negotiations on the FNCFS Program and Jordan's Principle, such that the parties would negotiate a final agreement respecting the FNCFS Program before turning to Jordan's Principle.[13] This was a significant departure from the Agreement in Principle, which contemplated the negotiation of a single agreement covering long-term reform of both the FNCFS Program and Jordan's Principle by November 2022. It also effectively ended Canada's ability to consult with the parties on long-term reform of Jordan's Principle, absent an agreement on long-term FNCFS Program reform.

15. ISC required a revised mandate to proceed in accordance with the AFN and Caring Society's wishes. Between March and October 2023, Canada, the Caring Society, the AFN, COO and NAN continued to meet regularly to discuss operational matters related to the implementation of orders

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[10] First Nations Child & Family Caring Society of Canada, "First Nations Child & Family Caring Society statement: January 4, 2022" (4 January 2022), online: <fncaringsociety.com/sites/default/files/the_caring_society_statement_aip_4_jan_2022.pdf>.
[11] Farthing-Nichol Affidavit at paras 37–38; Potts Affidavit at paras 15–16.
[12] *Moushoom v Canada (Attorney General)*, 2023 FC 1533 at para 1 **[*Moushoom*]**; *First Nations Child and Family Caring Society of Canada et al v the Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2023 CHRT 44.
[13] Farthing-Nichol Affidavit at para 39; Potts Affidavit at para 22.

5

and to move forward items that were not impacted by the Complainants' request that Canada obtain a revised mandate.[14] In October 2023, ISC secured a revised mandate to proceed in accordance with the AFN and Caring Society's requested, bifurcated approach.[15]

16. Shortly thereafter, in December 2023, the Caring Society filed a non-compliance motion with respect to Canada's implementation of the Tribunal's Jordan's Principle orders. The Caring Society further announced that it would not be bound by the Agreement in Principle or the *Joint Path Forward*, citing its desire for a new approach.[16]

17. Canada took the position that, given the agreed bifurcation of negotiations, the Caring Society could continue participating in the negotiations on the FNCFS Program while pursuing its motion. At that time, the Caring Society indicated it would not participate in the ongoing negotiations on long-term reforms to the FNCFS Program, but nonetheless expected that it would continue to be engaged on specific topics.[17]

18. Between January and July 2024, Canada, the AFN, COO, and NAN undertook exhaustive negotiations towards a final agreement, including full week-long sessions at times. Canada, the AFN, COO and NAN repeatedly invited the Caring Society to participate in negotiations and to return to the table as a full participant. However, the Caring Society would not agree to adhere to the negotiations' confidentiality. As stated by COO, this made the Caring's Society's involvement in negotiations practically infeasible.[18]

19. Nonetheless, Canada, the AFN, COO and NAN continued to seek the Caring Society's views throughout this period, inviting the Caring Society to attend negotiation sessions to present its positions. In April 2024, the AFN, COO, NAN and Canada even shared a draft of the Draft Final Agreement with the Caring Society. The Caring Society provided comments on the draft, to which Canada provided responses.[19]

20. In July 2024, the AFN, COO, NAN and Canada successfully completed negotiations on the Draft Final Agreement, modeled on and exceeding the terms of the Agreement in Principle.[20]

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[14] Potts Affidavit at paras 23–24.
[15] Farthing-Nichol Affidavit at para 40.
[16] Amended Affidavit of Craig Gideon (affirmed March 22, 2024), at para 39 **[C Gideon Affidavit]**.
[17] Farthing-Nichol Affidavit at paras 41–42; Potts Affidavit at para 27.
[18] Farthing-Nichol Affidavit at paras 43–44; Potts Affidavit at para 28; Responding Factum of the Interested Party, Chiefs of Ontario (March 31, 2025), at para 25.
[19] Farthing-Nichol Affidavit at paras 43, 46.
[20] Farthing-Nichol Affidavit at paras 47–48.

21. Between July and October 2024, ISC participated in approximately twenty-seven engagement sessions held by the AFN for First Nations leaders across the country on the Draft Final Agreement. Other sessions also occurred to which ISC was not invited. ISC provided funding for these information sessions, prepared engagement materials, gave presentations, listened and answered questions at the sessions. ISC also provided detailed financial information to each individual First Nation and had follow up meetings and communications with a variety of First Nations and First Nations organizations.[21]

22. Throughout the engagement period, the Caring Society opposed the Draft Final Agreement and encouraged First Nations to oppose it as well, based on a new alternative model developed by the Caring Society that did not align with the Agreement in Principle.[22] The Caring Society publicly criticized the very reforms to which it had previously agreed, advocating in favour of their new approach to reform. This new approach went well beyond the framework for reform to which the Caring Society had agreed in the Agreement in Principle, for example by including indefinite Tribunal oversight.[23]

23. Following the engagement sessions, the AFN proposed revisions to Canada of the Draft Final Agreement, to address concerns raised during the engagement sessions. This included broadening the composition of the Reform Implementation Committee (the committee proposed to oversee and monitor the implementation of the Agreement and the reformed FNCFS Program) to ensure regional First Nations representation. Canada accepted these revisions.[24]

24. The Caring Society requested that the CCCW be reconvened in September of 2024, approximately nine months after it had abandoned negotiations. However, COO, NAN, the AFN and Canada responded that, in their view, the CCCW consultation process had been superseded by the confidential negotiation process agreed to in the Agreement in Principle, which by then had been in progress for over two years.[25]

25. In October 2024, First Nations belonging to COO and NAN ratified the amended Draft Final Agreement. However, at AFN's Special Chiefs Assembly later that month, the First Nations-in-

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[21] Farthing-Nichol Affidavit at paras 49–53.
[22] Farthing-Nichol Affidavit at paras 55–56.
[23] Farthing-Nichol Affidavit at para 55; Letter from Paul Vickery to Sarah Clarke (January 14, 2025) in Affidavit of Katherine Quintana-James (affirmed February 13, 2025), Exhibit I **[Quintana-James Affidavit]**.
[24] Farthing-Nichol Affidavit at para 54.
[25] Farthing-Nichol Affidavit at paras 57–58.

7

Assembly voted to reject the amended Draft Final Agreement. The First Nations-in-Assembly also passed two resolutions calling on Canada to negotiate a new agreement through a public negotiation process, to be further funded by Canada, that would include the Caring Society and a to-be-constituted body called the National Children's Chiefs Commission (NCCC).[26] The resolutions also set out the substantive elements the Chiefs would require in a new agreement, several of which go beyond the Agreement in Principle's framework and even the scope of the complaint.[27] For example, the Chiefs called for indefinite Tribunal oversight and FNCFS Program coverage off-reserve.[28]

26. Since that time, the Caring Society, the AFN, and the NCCC have each sent letters to various federal officials, including the ISC Minister and the Prime Minister, demanding that Canada enter new, public negotiations to reach an agreement in line with the resolutions.[29]

B. Canada has discharged its consultation obligations

27. Canada has consulted extensively with the parties since the Tribunal's consultation order in 2018, the impact of which is reflected in the FNCFS Program today. Beyond the consultations reflected in the section above, Canada has agreed with the parties upon a variety of consent orders to support incremental change to the FNCFS Program, including the non-agency consent order (2021 CHRT 12), amendments to the capital order (2021 CHRT 41), and prevention and post-majority support services orders (2022 CHRT 8). To suggest Canada has failed to discharge its consultation obligation under the orders ignores this work and abstracts the Caring Society's current demands from the many years of consultation and negotiation that have occurred, and from the impact of those activities on FNCFS Program reform.

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[26] Farthing-Nichol Affidavit at para 62; *Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle*, AFN Special Chiefs Assembly, Res 60/2024, arts 1, 2, 9, 16, in Potts Affidavit, Exhibit E **[Resolution 60/2024]**; *Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services*, AFN Special Chiefs Assembly, Res 61/2024, arts 1, 2, in Potts Affidavit, Exhibit E **[Resolution 61/2024]**.

[27] Potts Affidavit at para 34.

[28] Resolution 61/2024, art 1(i), 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)*, 2020 CHRT 36 which indicates that for the purposes of Jordan's Principle, a First Nations child includes children off-reserve, *contra* *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 para 280; Resolution, 61/2024, art 1(o).

[29] Farthing-Nichol Affidavit at para 64.

8

28. Canada has also supported the parties to undertake extensive research to inform reform on both the FNCFS Program and Jordan's Principle. Canada provided funding to the AFN for the Institute of Fiscal Studies and Democracy (IFSD) to complete three phases of research respecting the FNCFS Program and a non-agency needs assessment. Canada also funded COO to commission the Ontario Special Study and funded NAN to hire experts to conduct remoteness research.[30] This research has influenced the current FNCFS Program (for example, the prevention funding established by consent in 2022 CHRT 8) and the vision for long-term reform reflected in the Draft Final Agreement and later the Ontario Final Agreement, for which the Tribunal's approval is being sought.

29. Regarding Jordan's Principle, Canada funded the Caring Society to undertake research through IFSD. The IFSD data assessment is complete, but the final IFSD needs assessment (or gap analysis) remains outstanding. IFSD provided an Interim Briefing in March, 2025.[31] As a separate initiative, ISC implemented a Service Alignment Initiative in an effort to identify gaps in services to First Nations children.[32]

30. Canada has also provided extensive federal funding to the Caring Society, the AFN, COO and NAN to fund their participation in consultation, engagement, research and negotiations towards long-term reform of the FNCFS Program and Jordan's Principle. Collectively, from 2018-19 to 2024-25, the Caring Society, the AFN, COO, and NAN have received at least $47.5 million from Canada for these purposes, as follows:

a. $7.6 million to the Caring Society;

b. $26.4 million to the AFN;

c. $5.4 million to COO; and

d. $8.1 million to NAN.[33]

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[30] Farthing-Nichol Affidavit at paras 69–77.
[31] IFSD, *Interim Briefing: Considerations for the sustainability of Jordan's Principle* (March 7, 2025), in Schedule B, Letter from Sarah Clarke to the Tribunal re: long term reform (March 24, 2025).
[32] Farthing-Nichol Affidavit at para 80.
[33] ISC has provided funding for EAC members in the additional amount of $0.5 million. See Farthing-Nichol Affidavit at paras 83–90.

9

31. Canada negotiated these reforms with the Caring Society and the AFN for years. Canada has not refused to negotiate, as alleged by the Caring Society.[34] These negotiations led to the Agreement in Principle signed by both AFN and the Caring Society, outlining a shared vision on long-term reform. It also led to the Draft Final Agreement, tentatively agreed to by the AFN.

32. Canada has made every effort to reach a negotiated resolution with the parties. When the Caring Society and the AFN proposed the *Joint Path Forward,* Canada sought a new mandate and agreed to bifurcate the negotiations, even though it meant delaying consultations on Jordan's Principle long-term reforms.

33. In negotiating the Draft Final Agreement, Canada made meaningful compromises, including agreeing to move significantly beyond its original funding commitment in the Agreement in Principle. The Agreement in Principle's $19.8 billion in funding over five years was increased to $47.8 billion over ten years in the Draft Final Agreement.[35] The Caring Society's suggestion that the Draft Final Agreement was Canada's "preferred solution" does not reflect the extensive efforts and compromises Canada made to reach a resolution.[36]

C. Reform of the FNCFS Program and Jordan's Principle is already well underway

34. Canada has taken many progressive, significant steps, to reform the FNCFS Program and Jordan's Principle, in accordance with the Tribunal's orders and drawing on its consultative efforts. The result is that both the FNCFS program and Jordan's Principle are unrecognizable in comparison to their 2016 versions.

35. In advance of a final determination on long-term reform, a significantly reformed FNCFS Program is already in operation. Overall, FNCFS Program funding increased from $676.8 million in 2015-2016 to over $3.6 billion in 2023-2024. This represents a more than five-fold increase to the FNCFS Program budget. The FNCFS Program has shifted from a protection focus to a focus on prevention and on the well-being of children, youth, young adults and families. Prevention funding has increased substantially, first through the Tribunal's order in 2018 CHRT 4 and ISC's creation of the Community Well-Being and Jurisdiction Initiatives funding stream; then through the non-agency community consent order in 2021 CHRT 12; and finally through the reformed approach to

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[34] Written Submissions of First Nations Child and Family Caring Society of Canada (March 17, 2025), at para 48 **[Caring Society Written Submissions]**.
[35] Farthing-Nichol Affidavit at para 48; Potts Affidavit at para 15.
[36] Caring Society Written Submissions at para 72.

10

prevention funding agreed to in the Agreement in Principle and encapsulated in the Tribunal's order in 2022 CHRT 8.[37]

36. Additionally with respect to the FNCFS Program, Canada continues to implement the Tribunal's actuals orders, including those respecting intake and investigation, legal fees and building repairs in 2018 CHRT 4 and respecting capital in 2021 CHRT 41. Canada has also begun implementing several new funding streams in advance of a final approval of long-term reform of the FNCFS Program. Such funding streams include post-majority support services pursuant to the consent order in 2022 CHRT 8. They also include implementation of funding for First Nation Representative Services across the country.[38]

37. Regarding Jordan's Principle, this Tribunal has recognized that ISC made fundamental, foundational changes towards ending systemic discrimination against First Nations children, including through the establishment of an entire operational sector within ISC to deliver, administer, and support Jordan's Principle.[39] There has also been a significant increase in Jordan's Principle expenditures relative to 2018-19.[40] While administration has had challenges and there remains a backlog of requests, ISC now determines more requests on an annual and daily basis than ever before.[41] Canada has announced over $8.8 billion to Jordan's Principle since 2016, supporting First Nations children through the provision of 8.7 million products, services and supports as of March 2025.[42]

PART II – POINTS IN ISSUE

38. The only point in issue is whether the Tribunal's orders, the dialogic approach or the honour of the Crown require that Canada consult and negotiate indefinitely or until the Complainants obtain the variable substantive outcomes they seek.

39. Canada's position it has sufficiently discharged all of its consultation obligations, which arise solely pursuant to the Tribunal's orders. Regarding the FNCFS Program, Canada is not required by the Tribunal's orders, the dialogic approach or the honour of the Crown to continue consulting or

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[37] Farthing-Nichol Affidavit at paras 6–7, 33.
[38] Farthing-Nichol Affidavit at para 6.
[39] *First Nations Child and Family Caring Society of Canada et al v the Attorney General of Canada et al (representing the Minister of Indigenous and Northern Affairs Canada)*, 2025 CHRT 6 at para 53 [**2025 CHRT 6**].
[40] Affidavit of Valerie Gideon (affirmed March 14, 2024), at para 12.
[41] 2025 CHRT 6 at paras 53–54.
[42] Farthing-Nichol Affidavit at para 6.

11

negotiating at this time, and in particular is not required to consult until the Complainants are satisfied. Rather, Canada has fully discharged its consultation obligations to the Complainants through years of meaningful dialogue at remarkable financial cost, resulting in meaningful reforms. The Draft Final Agreement and compensation settlement not only met, but exceeded Canada's substantive equality obligations pursuant to the Tribunal's orders to remedy the proven discrimination at issue (i.e., cease, compensate, and prevent). Accordingly, no further consultations or negotiations with the Complainants are required at this time. None of the Tribunal's orders, the dialogic approach or the honour of the Crown require that Canada consult and negotiate indefinitely or until the Complainants obtain the variable substantive outcomes they seek

40. Regarding Jordan's Principle, it was the Complainants who sought to bifurcate and delay consultations on long-term Jordan's Principle reform. Canada is implementing the full scope and meaning of Jordan's Principle in accordance with the Tribunal's orders and is actively engaged in discharging the Tribunal's consultation orders on interim reforms set out in 2025 CHRT 6 through Tribunal-assisted mediation. Accordingly, no further consultations should be ordered at this time.

PART III - SUBMISSIONS

A. Introduction

41. Canada's good faith consultation and negotiation efforts, particularly since 2018, are highly relevant to this motion. The process leading to the Draft Final Agreement is entirely "material to this motion", not simply what has occurred since the Chiefs' rejection of the Draft Final Agreement.[43]

42. The Caring Society's conduct is similarly relevant, including the manner in which it hampered efforts to reach final agreed-upon reforms. The Caring Society agreed in the Agreement in Principle to an outline for long-term reform of both the FNCFS Program and Jordan's Principle;[44] then sought bifurcation of Jordan's Principle discussions, effectively discontinuing progress on Jordan's Principle consultations;[45] then abandoned FNCFS Program negotiations towards a final agreement based on the Agreement in Principle, while developing a new approach that rejected the

[43] *Contra* Caring Society Written Submissions at para 9.
[44] Farthing-Nichol Affidavit at para 32.
[45] Farthing-Nichol Affidavit at para 39.

12

Agreement in Principle's approach;[46] then advocated that First Nations reject the Draft Final Agreement in favour of its new FNCFS Program approach.[47]

43. All of the consultations and negotiations that have occurred to date demonstrate that Canada has already consulted extensively in good faith and has therefore discharged its consultation obligations, as set out below. The Tribunal's orders, the dialogic approach, the Consultation Protocol, the Agreement in Principle and the honour of the Crown do not require that Canada consult indefinitely or until the Complainants are satisfied and their desired outcome is reached.

B. Canada engaged in the dialogic approach in good faith

44. Despite Canada's years of consultations, negotiations and good will, resulting in "significant movements towards remedying this unprecedented discrimination,"[48] the parties have been unable to reach a final, First Nations ratified settlement agreement for approval. This has not been for lack of effort on Canada's part.

45. In *Canada v First Nations Child and Family Caring Society*, Justice Favel considered the dialogic approach in the context of this Tribunal's retained jurisdiction. He noted that while the dialogic approach allowed the Tribunal to foster dialogue between the parties and contribute to the goal of reconciliation, ultimately the approach is about ensuring that the Tribunal has the flexibility to craft effective remedies.[49] This interpretation is consistent with academic commentary and jurisprudence with respect to the more traditional "dialogue" metaphor, which speaks to the manner in which the Courts and legislative branches address constitutional remedies over time, particularly in the Charter context.[50]

46. Canada agrees with the Federal Court that a negotiated settlement of this matter is preferable,[51] and accordingly took extensive steps towards that goal. However, the Caring Society's actions have negatively affected efforts to achieve agreement, including their deviation from the

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[46] Farthing-Nichol Affidavit at paras 42, 55, 57; C Gideon Affidavit at para 39.
[47] Farthing-Nichol Affidavit at paras 55–56.
[48] *Canada (Attorney General) v First Nations Child and Family Caring Society of Canada*, 2021 FC 969 at para 301 [**2021 FC 969**].
[49] 2021 FC 969 at paras 135–38.
[50] A van Kraglingen, "The Dialogic of Saga of Same-Sex Marriage: EGALE, Halpern, and the Relationship Between Suspended Declarations and Productive Political Discourse About Rights" (2004) 62 UT Fac L Rev 149 at 152, 182, as cited in *Ontario (Attorney General) v G*, 2020 SCC 38 at para 257, Côté and Brown JJ, dissenting.
[51] 2021 FC 969 at para 300.

framework for reform to which they previously agreed in the Agreement in Principle, their abandonment of negotiations, and their interventions in opposition to the Draft Final Agreement that was based on the Agreement in Principle's approach.

47. The Caring Society's interpretation of the dialogic approach in this case presumes that any resolution and effective remedy must be based on an agreement with the Complainants, on terms acceptable to the Caring Society. However, the Caring Society's action are detrimental to reaching agreement. Their goal post is shifting, as demonstrated by their repudiation of the Agreement in Principle and adoption of a new approach.[52] As with the Compensation Settlement proceedings, Justice Aylen's comments are apt: it is not for the Caring Society to "dictate" what must be done and how it must be done.[53]

48. However, even if ultimately a negotiated settlement cannot be achieved, the dialogic approach adopted in this case has served the purpose recognized by Justice Favel: it has resulted in years of intensive consultation, negotiations, dialogue, research and engagement with and reporting to the Tribunal. The Tribunal and the parties have had space and time to conduct research, consider the issues and evidence and craft remedies. Disagreement as to the appropriate way forward does not mean that consultation has not occurred.[54] Consultation with the Complainants pursuant to this approach has been fulsome, but it must end in order to move ahead with implementing long-term reform on the FNCFS Program and Jordan's Principle.

C. Canada has discharged its obligations under the Consultation Protocol

49. The Consultation Protocol, which was entered into in 2018, provides a framework for consultation for short-term reform, on the understanding that those principles might be applied to consultation on medium- and long-term reform but with a different scope and process.[55] The Protocol does not oblige Canada to consult or negotiate indefinitely or until the Complainants are satisfied.

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[52] C Gideon Affidavit at para 39.
[53] *Moushoom v Canada (Attorney General)* (June 26, 2024), Ottawa T-402-19, T-141-20, T-1120-21 (FC), at paras 26–27, 43 **[Annex A]**.
[54] *Coldwater First Nation v Canada (Attorney General),* 2020 FCA 34 at para 171, leave to appeal to SCC refused, 43130 (July 2, 2020) **[*Coldwater*]**.
[55] *First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada* (March 2, 2018), Ottawa T1340/7008 (CHRT), at arts 18–19, in Consultation Protocol (entered into pursuant to an order of the Tribunal), March 2, 2018 **[Consultation Protocol]**.

14

50. To the contrary, the Consultation Protocol expressly states that Canada's commitment was to "consult in good faith with the Complainants, the Commission and Interested Parties… to the extent of their respective interests and mandates."[56] Canada has done precisely that, first through participation at various committees including the CCCW, and later by having obtained multiple mandates to respond to the parties' various positions throughout these proceedings and related consultation and negotiation processes. These include:

a. a mandate to enter into the Agreement in Principle;[57]

b. a mandate to extend negotiations in response to AFN Resolution 40/2022;[58]

c. a mandate to negotiate on the basis of bifurcating FNCFS Program reforms from Jordan's Principle reforms, in response to the Complainants' *Joint Path Forward*;[59]

d. a mandate to enter the Draft Final Agreement, which doubled the time commitment and more than doubled the financial commitment Canada made in the Agreement in Principle;[60] and

e. a mandate to agree to revisions to the Draft Final Agreement, proposed by the AFN in response to concerns raised during the engagement sessions.[61]

51. Further, the AFN, COO, NAN and Canada all previously took the position that the consultation process identified in the Consultation Protocol had evolved and been superseded by the Agreement in Principle's negotiation process.[62]

52. Canada has both consulted and negotiated to the fullest extent, more than satisfying its obligations under the Consultation Protocol. Further consultations with the Complainants at this stage will serve no practical utility, nor are they required by the terms of the Consultation Protocol.

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[56] Consultation Protocol, art 4.
[57] Potts Affidavit at para 15.
[58] Potts Affidavit at para 21.
[59] Potts Affidavit at paras 23–24; C Gideon Affidavit at paras 36–38.
[60] Farthing-Nichol Affidavit at para 48.
[61] Farthing-Nichol Affidavit at para 54.
[62] Potts Affidavit at para 29; Farthing-Nichol Affidavit at para 58; Letter from Maggie Wente to Sarah Clarke (October 2, 2024), in Quintana-James Affidavit, Exhibit C.

15

D. Canada has fulfilled its obligations under the Agreement in Principle

53. The Caring Society says that it is only now "ready" to negotiate towards long-term reform.[63] Canada, however, has been actively and intensively working to advance long-term reform since it entered into the Agreement in Principle in 2021 and before. Canada worked diligently with the parties, including the Caring Society, to reach a final agreement consistent with the Agreement in Principle.

54. The Caring Society announced that it would not be bound by the Agreement in Principle and abandoned long-term reform negotiations.[64] However, Canada and the remaining parties were able to reach meaningful consensus in the Draft Final Agreement on funding approaches for the reformed FNCFS Program, and on robust governance and accountability structures to ensure discrimination does not recur. In addition, the Draft Final Agreement went far above the initially agreed upon funding envelope, with a final funding commitment of $47.8 billion over ten years.

55. Following interventions by the Caring Society, the Draft Final Agreement was rejected by a majority of voting First Nations at the AFN Assembly. However, the Agreement in Principle does not require that Canada negotiate indefinitely or until the Complainants are fully satisfied with the result. Rather, it required that Canada negotiate towards a final agreement using the approach contemplated in the Agreement in Principle, which Canada did.

56. The Caring Society chose to abandon the Agreement in Principle, citing its desire for a new approach that was significantly different from that to which it had agreed.[65] Paradoxically, the Caring Society now seeks to invoke the Agreement in Principle against Canada, in an attempt to require that negotiations continue indefinitely, or until they are satisfied.

57. Rather than moving forward to long-term reform, the Caring Society's approach has brought progress to an impasse due to their fluctuating demands and unwillingness to compromise. For the Caring Society, this unpredictable approach has resulted in uncapped federal funding to them totaling over $7.6 million to date in respect of consultation, research and negotiation on long-term reform of the FNCFS Program and Jordan's Principle.[66]

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[63] Letter from Sarah Clarke to the Tribunal re: long term reform (March 24, 2025), p 1.
[64] C Gideon Affidavit at para 39.
[65] C Gideon Affidavit at para 39.
[66] Farthing-Nichol Affidavit at paras 85–86; Letter from Deputy Minister Gina Wilson to Cindy Woodhouse Nepinak, Raymond Shingoose, Abram Benedict and Alvin Fiddler (February 6, 2025), in Farthing-Nichol Affidavit, Exhibit H.

16

E. Canada acted in accordance with the honour of the Crown, which does not give rise to any specific duties in this case

i. The honour of the Crown

58. The parties and the Tribunal have discussed both the honour of the Crown and the concept of reconciliation throughout the proceedings.[67] Canada has approached its reconciliatory goal meaningfully and with respect, perhaps most visibly reflected in Canada's commitments, in the Draft Final Agreement, to facilitate First Nations authority over prevention services and to more than double Canada's Agreement in Principle funding commitment from $19.8 billion over 5 years to $47.8 billion over 10 years.

59. While reconciliation is at play, the Federal Court has noted that these proceedings do not involve constitutional issues or section 35 Aboriginal rights.[68] The honour of the Crown rests on the "special relationship" between the Crown and Indigenous peoples and is anchored to the goal of reconciliation.[69] It is always at stake in Crown dealings with Indigenous people.[70] It not a cause of action in and of itself but gives rise to different duties in different circumstances.[71] Not all interactions between the Crown and Indigenous people give rise to specific duties flowing from the honour of the Crown.[72]

60. Canada agrees with and adopts the submissions of COO in their factum dated March 31, 2025, at paragraphs 43-44 and 46-52, respecting the honour of the Crown and the specific duties that flow from it. In this particular factual context, the Caring Society's position does not align with the Supreme Court of Canada's guidance on the application of the honour of the Crown or the legal duties that arise from it. Instead, they mistakenly imply that the honour of the Crown gives rise in this case to legal duties on Canada to consult or negotiate indefinitely or until the Complainants are satisfied.

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[67] 2021 FC 969 at para 297–98.
[68] 2021 FC 969, at para 297.
[69] *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 at paras 12, 162 [***Takuhikan***].
[70] *Manitoba Metis Federation Inc v Canada (Attorney General)*, 2013 SCC 14 at para 68 **[*MMF*]**.
[71] *Ontario (Attorney General) v Restoule*, 2024 SCC 27 at para 220; *MMF* at para 73; *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at paras 16, 18 **[*Haida Nation*]**.
[72] *MMF* at para 68.

17

ii. Canada's consultation obligations arise from the Tribunal's orders, not the honour of the Crown

61. Canada agrees with COO that a duty to consult arising from the honour of the Crown is not owed to the Complainants in the context of this complaint. The criteria on which a duty would arise are not engaged in this case. In any event, the duty, where it arises, is owed to s. 35 rights holding Indigenous groups. Since the Caring Society does not have s. 35 rights, no duty to consult flowing from the honour of the Crown is owed directly to it.

62. In this case, the honour of the Crown does not give rise to any specific obligation to consult with the Complainants. Canada's obligations, rather, are defined by the Tribunal's orders and Canada's legal obligation to fulfil those orders. Canada takes these obligations seriously and agrees that it must act in good faith and diligently implement the Tribunal's orders.

iii. No duty to continue negotiations arising from the honour of the Crown

63. While the Caring Society claims it seeks an order directing "consultation,"[73] what it in fact seeks is an order requiring that Canada continue negotiating until the Complainants are satisfied. The Caring Society wrongly asserts that Canada is in breach of consultation orders because "the parties have not yet reached a final agreement."[74]

64. A duty to negotiate only arises in certain circumstances which are not applicable here, and even then, there is no duty to reach an agreement.[75] Negotiating honourably and with integrity does not imply a duty to agree to every demand made by a counterparty,[76] or to negotiate indefinitely until the counterparty is satisfied. There will be difficult judgment calls and reasonable minds can differ.[77]

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[73] Caring Society Written Submissions at para 108.
[74] Caring Society Written Submissions at para 91.
[75] *MMF* at para 73; *Haida Nation* at paras 25, 35, 42; *Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54 at para 77 **[*Ktunaxa Nation*]**; *Takuhikan* at paras 156, 191.
[76] *Takuhikan* at para 248, Côté J, dissenting.
[77] *Gitxaala Nation v Canada*, 2016 FCA 187 at para 182, leave to appeal to SCC refused, 37201 (February 9, 2017) **[*Gitxaala Nation*]**. See also *Tsleil-Waututh Nation v Canada (Attorney General)*, 2018 FCA 153 at paras 509, 762, leave to appeal to SCC refused, 38379 (May 2, 2019) **[*TWN*]**; *Ahousaht Indian Band v Canada (Minister of Fisheries & Oceans)*, 2008 FCA 212 at para 54 **[*Ahousaht First Nation*]**; *Canada (Attorney General) v Long Plain First Nation*, 2015 FCA 177 at para 133; *Yellowknives Dene First Nation v Canada (Minister of Aboriginal Affairs and Northern Development)*, 2015 FCA 148 at para 56.

65. In any event, Indigenous groups are not entitled to a one-sided process.[78] The honour of the Crown requires a meaningful process, but not a particular substantive result. Consultation does not require that an Indigenous group obtain the outcome they seek.[79] The question is whether the process is meaningful.[80]

66. Good faith is required on both sides. Hard bargaining by Indigenous groups is permissible, but they must not frustrate the Crown's reasonable good faith efforts, or take unreasonable positions to thwart moving forward where, despite meaningful consultation, agreement is not reached.[81]

iv. No contractual obligations engaging the honour of the Crown

67. There are no contractual obligations in this matter that engage the honour of the Crown. The elements set out by the Supreme Court of Canada in *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan* (*Takuhikan*) that would result in a duty flowing from the honour of the Crown are not met.

68. *Takuhikan* establishes that contractual undertakings that are not constitutional in nature may attract the honour of the Crown in specific circumstances. Not all agreements will attract the honour of the Crown.[82] The test for where the honour of the Crown will apply to a contractual undertaking between the Crown and an Indigenous group requires that the agreement: (1) is entered into by reason of and on the basis of the group's Indigenous difference and has a collective dimension;[83] and (2) relates to an asserted or established right of "self-government".[84] As with rights enshrined in the constitution, the honour of the Crown is engaged on account of its "special relationship" with the Indigenous group, which is different than its relationship with the public.

69. The prerequisites set out by the Supreme Court of Canada for such a duty to arise do not exist here. To the extent the Caring Society argues such a duty arises from an anticipated final agreement, the basis for consultations is not Indigenous difference with a collective dimension. This matter concerns individual rights under the *Canadian Human Rights Act*, not collective rights as

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[78] *Ktunaxa Nation* at para 80; *Chippewas of the Thames First Nation v Enbridge Pipelines Inc.*, 2017 SCC 41 at para 60 **[*Chippewas of the Thames*]**; *Haida Nation* at paras 42, 45, 48–50; *Coldwater* at para 195.
[79] *Ktunaxa Nation* at paras 79, 83; *Coldwater* at paras 51–54.
[80] *Haida Nation* at para 42.
[81] *Haida Nation* at para 42; *Ktunaxa Nation* at para 80; *Coldwater* at paras 195–96.
[82] *Takuhikan* at para 145.
[83] *Takuhikan* at paras 161–62.
[84] *Takuhikan* at para 163. The majority did not address, but also did not exclude the possibility, that other interests could engage the honour of the Crown in the contractual context.

19

asserted by s. 35 rights holders.[85] In addition, the second element of the test is not met as any agreement that would address such individual rights, while it may respect principles with respect to self-government, would not be the basis for furthering collective rights concerning self-government. To this end, it is important to distinguish the difference between the role of legislation such as *An Act respecting First Nations, Inuit and Métis children, youth and families* and the remedies which ultimately flow from this matter.

70. The dispute underlying the decision in *Takuhikan* concerned specific obligations arising from a long-term formal, contractual relationship. The majority noted that the *terms of the agreement* created an obligation to negotiate funding terms in good faith.[86] Here, the parties have not come to a binding agreement with respect to national reform. There are, therefore, no binding obligations flowing from such an agreement.

71. The Consultation Protocol and the Agreement in Principle, to the extent that they continue to operate, also do not meet the test set out in *Takuhikan* for the reasons set out above, and do not give rise to specific obligations arising from the honour of the Crown. Indeed, the Consultation Protocol was a process document concerning consultation that expressly acknowledges it does *not* engage s. 35 rights.[87]

72. In addition, the Agreement in Principle and the Consultation Protocol were entered into as interim measures in the context of ongoing litigation before the Tribunal with the parties to that litigation. In the case of the Consultation Protocol, this included both the Caring Society and the Commission, neither of whom are "Indigenous groups" with whom a contract could be entered into on account of their Indigenous difference or self-government rights.[88] The Agreement in Principle also included the Caring Society as a party, although they ultimately abandoned the agreement.

73. In any event, the Caring Society has not pointed to any specific contractual undertakings to support its assertions that Canada must continue to negotiate with them until such time as there is a final settlement.

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[85] *Takuhikan* at para 162; *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 434.
[86] *Takuhikan* at para 123.
[87] Consultation Protocol, art 27.
[88] *Takuhikan* at paras 161–62.

74. Similarly, the Federal Court's decision in *Indigenous Police Chiefs of Ontario v Canada (IPCO)*[89] is not of assistance and does not provide a basis on which to find specific obligations arising from the honour of the Crown in this case. It was, importantly, a decision on an injunction motion, subject to the tri-partite test of whether there was a serious issue to be tried, whether the moving party would suffer irreparable harm if the injunction was not granted and whether the balance of convenience was in their favour.[90] Therefore, no determinations were made on the merits of the matter, and indeed the Court's discussion of the honour of the Crown did not arise with respect to whether there was a serious issue to be tried. Rather, the Court referenced the honour of the Crown more generally as contextual analysis in the portions of the injunction test that considered irreparable harm and the balance of convenience.[91] Further, like *Takuhikan,* the *IPCO* case concerned specific factual circumstances and contractual obligations that do not arise here.[92]

F. Canada has consulted and negotiated in good faith, with integrity and honour, fully discharging its consultation obligations

75. Although Canada's consultation obligations in this case arise from the Tribunal's orders, the case law on the Crown's s.35 duty to consult is nonetheless instructive. Even on the higher standard of deep consultation owed to s.35 rights-holders, arising from the honour of the Crown, it is clear that Canada has more than discharged its consultation obligation.

76. To satisfy a constitutional duty to consult, consultation must be reasonable and meaningful.[93] Consultations are reasonable when the Crown considers and addresses the rights claimed by Indigenous peoples in a meaningful way.[94] The Crown must possess a state of open-mindedness about accommodation and exercise good faith. Two-way dialogue must lead to a demonstrably serious consideration of accommodation where necessary.[95]

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[89] *Indigenous Police Chiefs of Ontario v Canada (Public Safety)*, 2023 FC 916 **[*IPCO*]**.
[90] *IPCO* at para 69.
[91] *IPCO* at paras 138–44, 175–79.
[92] The court in *IPCO* referenced the Quebec Court of Appeal decision in *Takuhikan* at paras 57–62, 85–91, 97–99, 143–47, 173–74, considering similarities between the cases, as both concerned the First Nations and Inuit Policing Program. The *IPCO* decision, however, was released before the Supreme Court of Canada released its own decision in *Takuhikan*.
[93] *Coldwater* at para 40; *Haida Nation* at paras 62–63, 68; *Gitxaala Nation* at paras 8, 179, 182–85; *TWN* at paras 226, 508–09; *Squamish First Nation v Canada (Fisheries and Oceans)*, 2019 FCA 216 at para 31 **[*Squamish First Nation*]**.
[94] *Clyde River (Hamlet) v Petroleum Geo-Services Inc*, 2017 SCC 40 at para 41 **[*Clyde River*]**; *Squamish First Nation* at para 37; *Haida Nation* at para 42 .
[95] *Coldwater* at paras 40–41. See also *Takuhikan* at paras 190–91.

21

77. The duty to consult, however, is limited to addressing adverse impacts to rights flowing from the specific proposal at issue. The Crown is not obliged to resolve historical grievances or claims that are beyond the scope of the specific proposed Crown conduct.[96]

78. The following sets out how Canada discharged its consultative obligations in good faith and how, despite Canada's best efforts, the Caring Society's actions have frustrated Canada's goal of achieving consensus to move forward with long-term reforms.

i. Canada's good faith efforts towards a consensus final settlement agreement

79. Canada has made extensive, good faith, sincere efforts to fully and meaningfully discharge its consultation obligations and reach consensus on a final agreement on long-term reforms. Ultimately, as noted above, Canada negotiated the Draft Final Agreement which more than met Canada's substantive equality obligations pursuant to the Tribunal's orders to remedy the proven discrimination at issue (cease, compensate, and prevent). In addition, Canada has:

a. re-established, funded and participated in the National Advisory Committee, comprised of representatives from the AFN, the Caring Society and ISC, and of First Nations child and family service experts appointed by the AFN and representing the AFN's ten regions. NAC has a mandate to provide technical advice on the design and implementation of FNCFS Program reforms;[97]

b. engaged with JPAT, chaired by the AFN and including First Nations representatives from across Canada, towards co-development of a long-term approach to Jordan's Principle, including co-developing a paper entitled "Proposed Policy Options for the Long Term Implementation of Jordan's Principle" (Jordan's Principle Storyline) with the AFN and JPAT;[98]

c. established the NAN-Canada Remoteness Quotient Table (RQ Table), which developed the Remoteness Quotient Adjustment Factor to determine evidence-based funding adjustments for remote communities;[99]

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[96] *Chippewas of the Thames* at para 41; *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, 2010 SCC 43 at para 53.
[97] Farthing-Nichol Affidavit at paras 10–11.
[98] Farthing-Nichol Affidavit at paras 12–13.
[99] Farthing-Nichol Affidavit at para 14.

22

d. operationalized and funded the Choose Life initiative developed by NAN and Canada;[100]

e. established the Choose Life Table with NAN to support discussions on a long-term approach to the Choose Life initiative;[101]

f. entered into the Consultation Protocol with the AFN, the Caring Society, COO, NAN and the Commission to guide consultations on immediate relief measures and ensure adequate participant funding to the AFN, the Caring Society, COO and NAN;[102]

g. established and participated in the CCCW, comprised of Canada, the Caring Society, the AFN, COO, NAN and the Commission;[103]

h. with the assistance of Justice Mandamin, engaged in mediation respecting both compensation and long-term reform with the AFN and the Caring Society;[104]

i. entered into a $23.34 billion settlement agreement on compensation;[105]

j. established and participated in JPOC with First Nations regional representatives and representatives from the Caring Society, the AFN, COO and NAN, to consult on and discuss the operational implementation of Jordan's Principle;[106]

k. established and funded the EAC, co-chaired by the Caring Society, the AFN and ISC, and with two *ex officio* members representing NAN and COO, to support the design and implementation of an independent third-party evaluation that would:

   i. identify and provide recommendations to redress internal departmental processes, procedures, and practices that contribute to the discrimination identified by the Tribunal;

   ii. lead to the development of a workplan for the implementation of departmental reforms to prevent the recurrence of discrimination; and

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[100] Farthing-Nichol Affidavit at para 15.
[101] Farthing-Nichol Affidavit at para 15.
[102] Farthing-Nichol Affidavit at para 16.
[103] Farthing-Nichol Affidavit at paras 17–20.
[104] Potts Affidavit at para 11.
[105] *Moushoom* at para 1.
[106] Farthing-Nichol Affidavit at paras 21–23.

23

iii. provide advice on departmental policies, including ISC's mandatory cultural competency training and performance commitments for employees within ISC;[107]

l. with the assistance of the late Honourable Murray Sinclair, engaged in mediated discussions with the AFN, the Caring Society, COO and NAN towards the Agreement in Principle, which included immediate reforms and a $19.8 billion funding commitment informed by a revised funding methodology developed from IFSD research;[108]

m. financially supported research and studies, including with respect to the FNCFS Program, Jordan's Principle, remoteness, and the 1965 Agreement;[109]

n. engaged in intensive negotiations towards the Draft Final Agreement, including obtaining multiple mandates in response to shifting demands to extend negotiations, bifurcate negotiations and more than double the funding envelope to $47.8 billion over 10 years;[110]

o. repeatedly attempted to re-engage the Caring Society in negotiations towards the Draft Final Agreement following their announcement that they would not be bound by the Agreement in Principle and were withdrawing from negotiations;[111]

p. entered into the Draft Final Agreement to provide a fully reformed FNCFS Program with a 10-year funding commitment of $47.8 billion;[112]

q. funded and attended engagement sessions to help inform First Nations regarding the Draft Final Agreement;[113] and

r. provided funding to the AFN, the Caring Society, COO and NAN under the Consultation Protocol and the Agreement in Principle in the total amount of over $47.5 million to date.

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[107] Farthing-Nichol Affidavit at paras 24–31.
[108] Farthing-Nichol Affidavit at paras 32–38, 70.
[109] Farthing-Nichol Affidavit at paras 69–80.
[110] C Gideon Affidavit at paras 33–38; Potts Affidavit at paras 21, 23–24; Farthing-Nichol Affidavit at paras 48, 54.
[111] C Gideon Affidavit at para 39; Farthing-Nichol Affidavit at paras 41–46; Potts Affidavit at para 28.
[112] Farthing-Nichol Affidavit at paras 47–48.
[113] Farthing-Nichol Affidavit at paras 50–53, 87; Potts Affidavit at para 31.

24

80. While the parties were ultimately unable to reach consensus, Canada's consultation and negotiation efforts over the past seven years were a genuine attempt by Canada to consider and address the discrimination in a meaningful way. Canada possessed a state of open-mindedness about what would be required to eliminate discrimination, and exercised good faith at all times. Canada engaged in two-way dialogue that led to a demonstrably serious consideration of long-term reform to eliminate discrimination and prevent its recurrence.[114] The Draft Final Agreement not only satisfied the Tribunal's orders, but provided additional relief that is beyond this Panel's jurisdiction.

ii. The Caring Society's conduct has detrimentally affected Canada's meaningful efforts towards finalizing long-term reform

81. Canada has embraced change in line with the research done to date. Through the Agreement in Principle and subsequent negotiations, Canada has adopted an approach towards long-term reform of Jordan's Principle, and developed a new FNCFS Program funding formula and a movement to First Nations decision-making over and delivery of child and family services.

82. However, Canada's good faith efforts to consult and negotiate have been hindered by the Caring Society's conduct. Courts have found that Indigenous groups frustrated consultations and failed to consult in good faith when they: refused to meet;[115] imposed unreasonable conditions during the consultation process;[116] engaged in a delay exercise;[117] refused to attend group discussions;[118] refused to consult within reasonable timeframes;[119] maintained intractable positions

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[114] *Coldwater* at paras 40–41.
[115] *Halfway River First Nation v British Columbia (Ministry of Forests)*, 1999 BCCA 470 at para 161 **[*Halfway River*]**; *Ahousaht First Nation* at paras 52–53.
[116] *Halfway River* at para 161; *Ahousaht First Nation* at paras 52–53.
[117] *Coldwater* at paras 234, 242, 244.
[118] *R v Douglas et al*, 2007 BCCA 265 at para 45, leave to appeal to SCC refused, 32142 (November 15, 2007).
[119] *Prophet River First Nation v British Columbia (Minister of Forests, Lands and Natural Resource Operations)*, 2016 BCSC 2007 at para 181.

25

and confrontational approaches;[120] took positions that can be discerned as preventing a proposal from being approved;[121] and were only willing to consult on their own terms.[122]

83. Over the past seven years, the Caring Society has engaged in all of these actions, hindering Canada's good faith efforts to consult and negotiate long-term FNCFS Program and Jordan's Principle reforms to eliminate discrimination, including by:

a. imposing unreasonable conditions on the negotiations, including refusing to adhere to the negotiations' confidentiality;[123]

b. abandoning negotiations and refusing to return to the negotiation table, despite repeated encouragement from Canada and the other parties;[124]

c. developing their own new approach to long-term FNCFS Program reform that repudiated the Agreement in Principle's approach, and a new set of demands that would have required a significant expansion of Canada's negotiation mandate beyond the terms of the Agreement in Principle, the Draft Final Agreement or even the scope of the complaint;[125] and

d. despite refusing to participate in negotiations, intervening in opposition to the Draft Final Agreement, including by urging First Nations to vote against the Draft Final Agreement and advocating in favour of retaining claims-based interim funding approaches and having the Tribunal retain oversight of the FNCFS Program.[126]

84. To the extent that the Caring Society ultimately disagreed with the provisions of the Agreement in Principle, their concerns should have been shared at the negotiation table. Instead, the Caring Society refused to negotiate and then actively undermined the good faith Draft Final

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[120] *R v Tommy*, 2008 BCSC 1095 at para 115; *Ke-Kin-Is-Uqs v British Columbia (Minister of Forests)*, 2008 BCSC 1505 at para 251.
[121] *Pimicikamak v Her Majesty the Queen in Right of Manitoba*, 2016 MBQB 128 at para 44, aff'd 2018 MBCA 49, leave to appeal to SCC refused, 38221 (January 10, 2019); *Louis v British Columbia (Energy, Mines and Petroleum Resources)*, 2011 BCSC 1070 at paras 221–27, aff'd 2013 BCCA 412, leave to appeal to SCC refused, 35630 (February 27, 2014) **[*Louis 2013*]**.
[122] *Heiltsuk Tribal Council v British Columbia (Minister of Sustainable Resource Management)*, 2003 BCSC 1422 at para 118; *Louis 2013* at para 117.
[123] Farthing-Nichol Affidavit at paras 44–45.
[124] Potts Affidavit at paras 27–28; C Gideon Affidavit at para 39; Farthing-Nichol Affidavit at paras 42–46.
[125] C Gideon Affidavit at para 39; Potts Affidavit at para 34.
[126] Farthing-Nichol Affidavit at paras 55–59; Letter from Raymond Shingoose to the Minister of Indigenous Services (August 7, 2024), in Quintana-James Affidavit, Exhibit A.

26

Agreement that was reached by the remaining parties at the table and was based on the Agreement in Principle (to which all parties, including the Caring Society, had agreed). Canada was ready to proceed with implementing long-term reforms. But the Caring Society's actions have deeply disrupted and damaged the substantial progress made to date and have led to expectations by First Nations that Canada is obliged to meet the Caring Society's demands beyond the Agreement in Principle.

85. As described, Canada's approach over the past seven years has embraced change. Conversely, the Caring Society's approach involves an indefinite interim reform period with ongoing CHRT oversight, indefinite agency involvement, indefinite payment of actuals, indefinite consultations and uncapped consultation funding. In Canada's view, that approach is not in the best interests of First Nations children and families.

G. <u>Next Steps</u>

86. Canada has expended seven years of intensive efforts, and over $47.5 million in consultation and negotiation funding, to consult and attempt to reach consensus on a final agreement on both the FNCFS Program and Jordan's Principle.

87. Canada has repeatedly maintained its position that resolving the issues raised in these proceedings by way of collaboration is preferable to adjudication. Indeed, Canada engaged in negotiations honourably and with integrity. However, a negotiated resolution can only be achieved when parties are willing to dialogue respectfully, compromise towards agreement and respect agreements when reached. The Complainants' recent, new position on long-term reform is unreasonable and far beyond what they previously agreed is necessary to remedy discrimination and prevent its recurrence. There is therefore no practical utility in requiring that Canada continue to consult with the Complainants at this time.

88. Canada has discharged its consultation obligations and the Panel should not order additional consultations with the Complainants. It is time to move forward with long-term reform, starting with COO and NAN's joint motion to approve the Ontario Final Agreement.

27

PART IV – ORDERS SOUGHT

89. Canada respectfully requests an order dismissing the Caring Society's consultation motion in its entirety.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Winnipeg, in the Province of Manitoba, this 15th day of May, 2025.

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28

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30

PART V – LIST OF AUTHORITIES

	Case Law
1.	*Ahousaht Indian Band v. Canada (Minister of Fisheries & Oceans)*, 2008 FCA 212, 297 D.L.R. (4th) 722 (F.C.A.)
2.	*Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada*, 2021 FC 969, [2022] 2 FCR 614
3.	*Canada (Attorney General) v. Long Plain First Nation*, 2015 FCA 177, 388 D.L.R. (4th) 209 (F.C.A.)
4.	*Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41 [2017] 1 S.C.R. 1099
5.	*Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40, [2017] 1 S.C.R. 1069
6.	*Coldwater First Nation v. Canada (Attorney General)*, 2020 FCA 34, [2020] 3 FCR 3; *Coldwater Indian Band, et al. v. Attorney General of Canada, et al*, 2020 CanLII 43130 (SCC)
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)*, 2020 CHRT 20
8.	*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 36
9.	*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
10.	*First Nations Child and Family Caring Society of Canada et al v. the Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2023 CHRT 44
11.	*First Nations Child and Family Caring Society of Canada et al v. the Attorney General of Canada et al. (representing the Minister of Indigenous and Northern Affairs Canada)*, 2025 CHRT 6
12.	*Gitxaala Nation v. Canada*, 2016 FCA 187
13.	*Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 SCR 511
14.	*Halfway River First Nation v. British Columbia (Ministry of Forests)*, 1999 BCCA 470

31

15.	*Heiltsuk Tribal Council v. British Columbia (Minister of Sustainable Resource Management)*, 2003 BCSC 1422
16.	*Indigenous Police Chiefs of Ontario v. Canada (Public Safety)*, 2023 FC 916
17.	*Ke-Kin-Is-Uqs v. British Columbia (Minister of Forests)*, 2008 BCSC 1505
18.	*Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54, [2017] 2 SCR 386
19.	*Louis v. British Columbia (Energy, Mines and Petroleum Resources)*, 2011 BCSC 1070
20.	*Louis v. British Columbia (Minister of Energy, Mines, and Petroleum Resources)*, 2013 BCCA 412
21.	*Manitoba Metis Federation Inc. v Canada (Attorney General)*, 2013 SCC 14
22.	*Moushoom v. Canada (Attorney General)*, 2023 FC 1533
23.	*Ontario (Attorney General) v. G*, 2020 SCC 38
24.	*Ontario (Attorney General) v. Restoule*, 2024 SCC 27
25.	*Pimicikamak v. Her Majesty the Queen in Right of Manitoba*, 2016 MBQB 128; *Pimicikamak et al v. Manitoba*, 2018 MBCA 49; *Pimicikamak, et al. v. Her Majesty the Queen in Right of Manitoba, et al*, 2019 CanLII 400 (SCC)
26.	*Prophet River First Nation v. British Columbia (Minister of Forests, Lands and Natural Resource Operations)*, 2016 BCSC 2007
27.	*Quebec (Attorney General) v. Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39
28.	*R. v. Douglas et al*, 2007 BCCA 265; *Kelly Ann Douglas, Todd Kenneth Wood, Frederick William Quipp Jr. and Howard Glynn Victor v. Her Majesty the Queen*, 2007 CanLII 50084 (SCC)
29.	*R. v. Tommy*, 2008 BCSC 1095
30.	*Rio Tinto Alcan Inc v. Carrier Sekani Tribal Council*, 2010 SCC 43
31.	*Squamish First Nation v. Canada (Fisheries and Oceans)*, 2019 FCA 216, 436 D.L.R. (4th) 596
32.	*Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44
33.	*Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153
34.	*Yellowknives Dene First Nation v. Canada (Minister of Aboriginal Affairs and Northern Development)*, 2015 FCA 148, 474 N.R. 350 (F.C.A.)

32

	Secondary Sources
35.	Affidavit of Amber Potts affirmed March 3, 2025
36.	Affidavit of Cindy Blackstock affirmed January 12, 2024
37.	Amended Affidavit of Craig Gideon affirmed March 22, 2024
38.	Affidavit of Valerie Gideon affirmed March 14, 2024
39.	Affidavit of Duncan Farthing-Nichol affirmed March 13, 2025
40.	Affidavit of Katherine Quintana-James affirmed February 13, 2025
41.	Consultation Protocols: Article 4, page 7; Articles 18-19; Article 27
42.	Executive Summary of Agreement-in-Principle on Long-Term Reform
43.	First Nations Child & Family Caring Society statement: January 4, 2022
44.	Responding Factum of the Interested Party, Chiefs of Ontario
45.	A van Kraglingen, "*The Dialogic of Saga of Same-Sex Marriage: EGALE, Halpern, and the Relationship Between Suspended Declarations and Productive Political Discourse About Rights*"
46.	Unreported Reasons in *Moushoom v Canada (Attorney General)*, 2023 FC 1533
47.	Written Submissions of First Nations Child and Family Caring Society of Canada dated March 17, 2025
48.	January 14, 2025, Letter from Paul Vickery
49.	February 6, 2025, Letter from Deputy Minister Gina Wilson to all Agreement in Principle parties
50.	March 24, 2024, Letter from Caring Society to the Tribunal

ANNEX A

Federal Court Cour fédérale

Date: 20240626

Docket: T-402-19
T-141-20
T-1120-21

Ottawa, Ontario, June 26, 2024

PRESENT: The Honourable Madam Justice Aylen

CLASS PROCEEDING

BETWEEN:

XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige) AND JONAVON JOSEPH MEAWASIGE

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

T-141-20

BETWEEN:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON (by his litigation guardian, Carolyn Buffalo), CAROLYN BUFFALO AND DICK EUGENE JACKSON also known as RICHARD JACKSON

Plaintiffs

and

HIS MAJESTY THE KING
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

T-1120-21

BETWEEN:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

REASONS FOR ORDER

(Claims Approval Process – Removed Child Class and Removed Child Family Class)

[1] On June 19, 2024, the Court heard a motion brought by the Settlement Implementation Committee [SIC], on behalf of the Plaintiffs, for an order approving the proposed claims process for the Removed Child Class and the Removed Child Family Class, together with its associated draft claim forms [Claims Process]. The motion was brought on the consent of the Respondent and was, in part, opposed by the First Nations Child and Family Caring Society [Caring Society]. The Caring Society initially requested that the Court only approve the Claims Process if three additional orders were made imposing further obligations on the SIC. However, as detailed more fully below, the position of the Caring Society evolved as the hearing of the motion progressed,

with the Caring Society ultimately taking the position that it supported the approval of the Claims Process but sought directions from the Court as to whether the SIC should be compelled to submit additional items to the Court for approval.

[2] At the conclusion of the hearing of the motion, I advised the parties that I would be issuing an order approving the Claims Process, with reasons to follow, but that I would reserve on the issue of the relief sought by the Caring Society. My Order approving the Claims Process was issued on June 20, 2024, and I am now providing herein my reasons for doing so together with my determination on the relief sought by the Caring Society.

[3] By way of background, the Plaintiffs and the Defendant executed a Final Settlement Agreement in respect of the underlying class proceedings on April 19, 2023, which was amended by way of an Addendum dated October 10, 2023 [FSA], and approved by this Court on October 24, 2023, pursuant to Rule 334.29(1) of the *Federal Courts Rules*, SOR/98-106 [see *Moushoom c Canada (Procureur général)*, 2023 FC 1466]. My Reasons approving the settlement detail the nature of the class action proceeding and the key provisions of the FSA [see *Moushoom v Canada (Attorney General)*, 2023 FC 1533]. For the purpose of these Reasons, the capitalized terms set out herein shall have the same meanings as set out in the FSA.

[4] Due to the complexity of this proceeding, the FSA did not prescribe the manner in which the claims processes for the nine classes would be administered. Rather, the FSA left the determination of the claims processes for future development by the SIC and approval by the Court. The SIC has brought this motion seeking approval of the first of many claims processes.

The Claims Process before the Court on this motion relates to the Removed Child Class and the Removed Child Family Class, though it is the first of a number of processes for the Court's consideration, with other processes for these classes to follow.

I. Analysis

[5] The legal test to be applied in approving a claims process is analogous to the test applied by the Court when approving a class action settlement—namely, whether the claims process is "fair, reasonable and in the best interests of the class as a whole" [see *Wenham v Canada (Attorney General)*, 2020 FC 588 at para 96, aff'd 2020 FCA 186, leave to appeal ref'd 2021 CanLII 49683 (SCC) [*Wenham*]; *Brazeau v Canada (Attorney General)*, 2020 ONSC 7229 at para 73]. The test for approving claims processes is not perfection [see *Wenham*, *supra* at para 51; *McLean v Canada*, 2019 FC 1075 at para 76 [*McLean*]; *Merlo v Canada*, 2017 FC 533 at para 18].

[6] Like settlements, claims processes must be looked at as a whole. It is not open for this Court to rewrite the substantive terms of a claims process or assess the interests of the individual class members in isolation from the whole class [see *Tataskweyak Cree Nation v Canada (Attorney General)*, 2021 FC 1415 at para 62 [*Tataskweyak*]; *McLean*, *supra* at para 68]. Ultimately, when approving a claims process, this Court cannot modify or alter the claims process—it must approve it as is, or reject it [see *McLean v Canada (Attorney General)*, 2023 FC 1093 at para 37; *Tataskweyak Cree Nation*, *supra* at para 62].

A. ***The Claims Process is approved***

[7] In support of its request that the Court approve the Claims Process, the SIC has provided two affidavits from Dianne G. Corbiere, Class Counsel and counsel for the Assembly of First Nations [AFN]. Ms. Corbiere's evidence details: (a) the work that has been undertaken to develop the Claims Process over the last year; (b) the work that has gone into the preparation of the Indigenous Services Canada database [ISC Database]; (c) the piloting of the Claims Forms and financial literacy and options; (d) the engagement with First Nations on the Claims Process; and (d) the SIC's resolution endorsing the Claims Process.

[8] The SIC has also provided an affidavit from Joelle Gott, the engagement lead for Deloitte LLP in its role as Administrator of the FSA. Ms. Gott's evidence details the Administrator's work since the Court's approval of the FSA, with a focus on the efforts undertaken to develop the Claims Process and the steps taken by the Administrator to meet its obligations under the FSA.

[9] The Claims Process covers many topics including: (a) Claims Form completeness requirements; (b) adjudication on eligibility; (c) progressive disclosure; (d) the Administrator's communications with Claimants; (e) appeals to the Third-Party Assessor; (f) Claimants who are Class Members of more than one Class; (g) Claims periods and Claims Deadlines, together with Claims Deadline extensions; (h) Claims by representatives, including representatives claiming on behalf of minors, heirs, estates, Personal Representatives claiming on behalf of Living Persons Under Disability, representatives on behalf of deceased Removed Child Class Claimants, representatives of deceased approved Caregiving Parents and Caregiving Grandparents, public guardians and trustees and ISC estates; (i) assignment and garnishments of compensation; (j) non-

Class Counsel legal professionals; and (k) exceptional early payments of compensation funds to minors. While the Claims Process is detailed, it also recognizes that additional efforts remain ongoing and provides that the SIC will return to the Court to seek additional approvals in relation to other aspects of the claims process for the Removed Child Class and the Removed Child Family Class, such as in relation to the Incarcerated Class Members Process, caregiver Abuse and claims helpers.

[10] The evidence demonstrates that extensive efforts have been undertaken by the Administrator and the SIC over the last year to design and develop the Claims Process in a manner consistent with their respective obligations under the FSA. The SIC and the Administrator have consulted with a variety of stakeholders and experts including: (a) consultations and meetings with the Respondent and in particular, ISC; (b) consultations and meetings with the Caring Society; (c) regional consultations across Canada on the Claims Process with the AFN to present, answer questions and seek input on the proposed Claims Process and claims helper program; and (d) working with numerous experts to develop financial literacy information and investment vehicles for Claimants.

[11] The evidence demonstrates that, in addition to the SIC being First Nations-led, there has also been meaningful First Nations involvement at every stage of the development of the Claims Process. Counsel for the SIC has further advised that during these extensive consultations, not a single Class Member voiced opposition to the Claims Process.

[12] Having reviewed the Claims Process, I am satisfied that it meets the requirements of the FSA as a whole. Importantly, I find that it meets the requirements of Article 5.01(3) of the FSA in that, as designed, the Claims Process is expeditious, cost-effective, user-friendly, culturally sensitive, trauma-informed and non-traumatizing, with any necessary accommodations for persons with disabilities or vulnerabilities. Moreover, it meets the requirement of Article 6(2) of the FSA in that no member of the Removed Child Class will be required to submit to an interview, examination or other form of *viva voce* evidence taking.

[13] I am satisfied that the Claims Process is fair, reasonable and in the best interests of the Class as a whole. Accordingly, the Claims Process is approved.

B. *The directions sought by the Caring Society will not be issued*

[14] Before turning to the specific directions sought by the Caring Society, I want to begin by clarifying their standing on this motion and their role in the implementation of the FSA.

[15] The Caring Society is not a party to this class proceeding and they do not represent the interests of the Representative Plaintiffs or any Class Member. The Caring Society has also not been granted intervener status in this proceeding by the Court. To the contrary, the Caring Society was expressly denied intervener status on the motion to approve the FSA. In her Order dated September 23, 2022, Case Management Judge Molgat stated:

> [19] Considering the first criteria set out in *Sport Maska*, the Caring Society is a non-profit organization—it is not a member of the class of individuals who suffered as a result of Canada's discrimination on whose behalf these proceedings were brought. Nor does the Caring Society act for class members. Yet it is essentially seeking to make submissions on behalf of the class (or a

> sub-set of them) whose interests are already represented by Class Counsel and the Representative Plaintiffs.
>
> [20] The Court agrees with the reasoning of Justice Phelan in *McLean v Canada (Attorney General)* and finds that the Caring Society does not have a "direct interest" and that it may, at best, be "indirectly affected" by the outcome of the Settlement Approval Motion such that the first criteria of *Sport Maska* is not met (see *McLean v Canada (Attorney General)*, 2019 FC 515 at para 3).

[16] Instead, the Caring Society's standing to make submissions on this motion is grounded in Article 22.05(1) of the FSA, which provides:

> The Caring Society will have standing to make submissions on any applications brought for Court approval by the Settlement Implementation Committee or the Parties pertaining to the administration and implementation of this Agreement after the Settlement Approval hearing, including approval of the Claims Process and distribution protocol to the extent that issues impact the rights of the following classes:
>
> (a) Removed Child Class Members placed off-Reserve as of and after January 1, 2006, and Removed Child Family Class Members in relation to Children placed off-Reserve as of and after January 1, 2006, including deceased members of these classes;
>
> (b) Kith Child Class Members and Kith Family Class Members, including deceased members of these classes; and
>
> (c) Jordan's Principle Class Members and Jordan's Principle Family Class Members, including deceased members of these classes.

[17] As such, the Caring Society has a contractual right to make submissions on any applications brought by the parties, or the SIC, for approval before this Court pertaining to specific issues, as they impact specific classes, related to the administration and the implementation of the FSA.

[18] To be clear, Article 22.05(1) does not empower the Caring Society to bring its own motions before this Court. Rather, their contractual rights are limited to participating in specific motions

brought by the parties, or the SIC. Accordingly, there is no basis in the FSA for the Caring Society to be seeking orders from this Court.

[19] In their written representations, the Caring Society's support for approving the Claims Process was conditional on this Court issuing the following three orders:

A. An order that the SIC submit a companion claims process for identifying and approving Removed Child Class Members who have not been identified on the ISC Database, but are otherwise eligible for compensation under the FSA, by September 1, 2024.

B. An order that the SIC submit a safe, evidence-based and expert/clinically informed approach for Removed Child Class Members to identify Abuse in connection with their removal if they choose, including a safe and expert/clinically informed approach that may include the sharing of this information with the Administrator on behalf of the Removed Child Class Member by a trusted support person, by September 1, 2024.

C. An order that the SIC submit a detailed description of the supports set out in Schedule 1 of the FSA, the status of the hiring and training of claims helpers and the status of the Caring Society's suggestions regarding increasing surge capacity and measures to ensure that existing services such as mental health, addictions, domestic violence, cultural and child welfare services have the capacity to support Class Members before the launch date, throughout the claims process and after the claims process, by September 1, 2024.

[20] However, after the SIC raised objections in their written representations in reply as to the Caring Society's standing to seek orders from the Court, and following similar concerns raised by the Court at the commencement of the hearing, the Caring Society's position changed. The Caring Society stated that it was no longer seeking orders, but rather was asking for directions or guidance from the Court, which directions were conditional on their support for the approval of the Claims Process. However, by the end of the hearing, when pushed to clarify their position, the Caring Society stated that they did not want to delay the approval of the Claims Process and were simply looking for guidance or direction from the Court on the issues that they had raised.

[21] The Caring Society asserted that it was open to the Court to issue any directions it deems appropriate pursuant to the powers vested by Article 1.14 of the FSA, which provides:

> Notwithstanding any other provision of this Agreement, the Court will maintain exclusive jurisdiction to supervise the implementation of this Agreement in accordance with its terms, including the adoption of protocols and statements of procedure, and the Parties attorn to the jurisdiction of the Court for that purpose. The Court may give any directions or make any orders that are necessary for the purposes of this Article.

[22] I agree with the Caring Society that the Court retains an ongoing supervisory jurisdiction over the implementation of the FSA which includes the ability to issue directions. However, I find that it is not open to the Caring Society to independently apply to the Court for directions regarding the implementation of the FSA. Nonetheless, I will go on to consider the three directions requested by the Caring Society in the context of this motion.

[23] Briefly, before doing so, it is important to comment on the interactions between the Caring Society and the parties/the SIC in the administration of the FSA as it is apparent to the Court that

there is significant animosity between them which has resulted in a breakdown in communications. This animosity appears to be driven by a misapprehension of the role of the Caring Society in the administration of the FSA.

[24] Article 5.01(1) provides that:

> The design and implementation of the distribution protocol within the Claims Process will be within the sole discretion of the Plaintiffs, subject to the approval of the Court. The Plaintiffs will establish the Claims Process and may seek input from the Caring Society, as well as from experts and First Nations stakeholders as the Plaintiffs deem in the best interests of the Class Members. The Plaintiffs will finalize the distribution protocol within the Claims Process in accordance with this Agreement, and will submit same for approval of the Court.
>
> [Emphasis added.]

[25] The SIC, on behalf of the Plaintiffs, has sole discretion over the design and implementation of the Claims Process (subject to the Court's approval). The SIC may, but is not obligated to, seek input from the Caring Society over any aspect of the design and implementation of the Claims Process. The evidence before the Court is that the Caring Society has thus far been invited to participate in numerous meetings related to the Claims Process and has provided other written submissions.

[26] It must be stressed, however, that what the SIC chooses to do with the submissions received from the Caring Society is up to the SIC. There is no obligation on the part of the SIC to implement any suggestions made by the Caring Society. Rather, the obligation of the SIC is to design and implement a Claims Process that complies with the FSA. It is also not open to the Caring Society to demand reports or evidence from the SIC. While the Caring Society may be frustrated by the

lack of responsiveness from the SIC to certain submissions or inquiries, the manner in which the Caring Society has provided their submissions may, in large measure, be responsible for the reception that their submissions have received, as it is not open to the Caring Society to dictate to the SIC what must be done by the SIC or how the SIC should do it.

[27] It is evident to the Court that many of the concerns raised by the Caring Society, which resulted in the filing of extensive evidence on this motion and the cross-examination of two affiants, could have been addressed (and likely resolved) by better cooperation between the parties/SIC and the Caring Society. It is in none of the Class Members' best interests for the animosity between the Caring Society and the parties/SIC to continue, as the Caring Society undoubtedly has valuable insight to offer to the SIC to assist them with the design and implementation of the various claims processes. The Court expects that the dealings between the Caring Society and the parties/SIC will improve going forward.

(a) Direction regarding a companion claims process

[28] As stated above, the Caring Society seeks a direction that the SIC submit a companion claims process for identifying and approving Removed Child Class Members who have not been identified in the ISC Database, but are otherwise eligible for compensation under the FSA, by September 1, 2024.

[29] After extensive questioning at the hearing, it became evident that the Caring Society's underlying concern is based on the fact that the SIC has not expressly confirmed to the Caring Society that a further claims process will be developed and submitted to the Court to ensure that

an eligible Removed Child Class Member whose name does not appear in the ISC Database will be eligible for compensation. While the Caring Society filed extensive evidence regarding the completeness of the ISC Database, it is not their position that the ISC Database should not be used to approve the claims of the Removed Child Class Members; rather, the Caring Society is concerned that there is a possibility that an eligible Removed Child Class Member may not appear on the ISC Database and thus, not receive compensation. At this point, this concern is speculative, as the ISC Database remains under construction and no Claimant has yet to have their name run through the ISC Database. However, this issue is on the SIC's radar.

[30] By way of context, Article 5.01(10) of the FSA empowers the SIC to develop claims processes for the various classes in phases. The development of the claims process for some classes is more difficult, whereas for others, such as the Removed Child Class, it is more straightforward. By coming to the Court seeking approval of these processes in stages, the Administrator has an ability to ensure that settlement funds begin to flow as soon as possible to some Class Members while the claims process for others remains under development.

[31] In the case of the Removed Child Class, Article 6.02(3) of the FSA provides that eligibility for compensation (and Enhancement Factors) "will be based on objective criteria and data primarily from ISC and Supporting Documentation as the case may be." Accordingly, the FSA, as approved by the Court, does not limit Removed Child Class eligibility to only those Claimants who appear in the ISC Database.

[32] Article 4 of the Claims Process sets out how the Administrator will determine whether a Removed Child Class Claimant is eligible for compensation. As of the launch date of the Claims Process, all potential Removed Child Class Members may submit their applications. Those identified in the ISC Database will receive an eligibility decision. Those who are plainly not eligible (such as an individual claiming as a Removed Child Class Member verified to have been born in 1950) will receive a denial. Other Claimants who are not identified in the ISC Database but who are not plainly ineligible will receive an inconclusive eligibility letter from the Administrator. For those whose eligibility is inconclusive, the Administrator will continue to run the Claimant's name through the ISC Database against new additions thereto until such time as the construction of the ISC Database is complete (estimated to be the end of 2025). If a Claimant is later found in the ISC Database, they will receive an eligibility letter.

[33] Article 4.7(B) of the Claims Process addresses the situation of a Claimant who has received an inconclusive eligibility letter and is never found in the ISC Database. Article 4.7(B) provides:

> A process is under development for Claimants who will have received an Inconclusive Eligibility Letter. This process will provide direction on next steps for Claimants who, by the time it is finalized, are still awaiting an Eligibility Decision.

[34] By virtue of Article 4.7(B) of the Claims Process, I find that the SIC has committed to the Court that they will return with a further claims process to address claims made by eligible Removed Child Class Members whose names do not appear in the ISC Database. Whether or not there will be any such Claimants is a matter yet to be determined. However, in order for the SIC to comply with the FSA and, in particular, Article 6.02(3) thereof, there will have to be a process

implemented for an eligible Removed Child Class Member to receive compensation even if they do not appear in the ISC Database.

[35] In that regard, I would note that at the time that I approved the FSA, Class Counsel advised the Court that a further claims process would be developed to ensure that eligible Removed Child Class Members who were not in the ISC Database would receive compensation. Paragraph 109 of the affidavit of Robert Kugler, sworn October 16, 2023, stated:

> For those claimants whose claims cannot be verified through the ISC Database, the plaintiffs and the Administrator are working on a process intended to be as simple as possible to enable the claimant to substantiate their eligibility for compensation. This process will recognize that class members' circumstances may require flexibility in the type of documentation necessary to support their claims, and the timelines for doing so, as guided by the principles in the FSA. This involves communication with the provinces and agencies which are underway.

[36] As such, I am not satisfied that the Caring Society's requested direction is necessary, as the SIC is already obligated to return to the Court to submit a claims process for any eligible Removed Child Class Members not found in the ISC Database. With respect to the timing of this further claims process, I see no basis to require the SIC to return to the Court with such a process by September 1, 2024, or any other date in the near future. As noted above, the SIC is vested with the sole discretion to design the claims processes which are to be undertaken in stages. As such, it is in the SIC's discretion to determine when it is appropriate to return to the Court. Furthermore, no point is served in designing such a process prior to the conclusion of the construction of the ISC Database or the determination that there are, in fact, Claimants that require a further claims process and, if so, what identifiable characteristics such Claimants might have so as to guide the further claims process.

(b) Direction regarding Abuse

[37] As detailed above, the Caring Society requests that the Court direct the SIC to submit a "safe, evidence-based and expert/clinically informed approach for Removed Child Class Members to identify abuse in connection with their removal if they choose, including a safe and expert/clinically informed approach that may include the sharing of this information with the Administrator on behalf of the Removed Child Class Member by a trusted support person" by September 1, 2024.

[38] By way of context, the FSA provides for direct compensation of Caregiving Parents or Caregiving Grandparents of a Removed Child Class Member under the Removed Child Family Class. However, Article 6.04(4) of the FSA provides that a Caregiving Parent or Caregiving Grandparent who has committed Abuse that has resulted in the Removed Child Class Member's removal is not eligible for compensation in relation to that Child. The FSA defines "Abuse" as "sexual abuse (including sexual assault, sexual harassment, sexual exploitation, sex trafficking and child pornography) or serious physical abuse causing bodily injury, but does not include neglect or emotional maltreatment."

[39] Section 5.12 of the Claims Process addresses the issue of Abuse by a Caregiving Parent or Caregiving Grandparent. Subsection D provides that "[a] process is under development to address instances where a Claimant committed Abuse that resulted in the Associated Removed Child's removal." The Claims Process does not require a Removed Child Class Claimant to identify any abuser or to provide any particulars of any Abuse.

[40] The evidence before the Court from the Administrator is that they engaged in consultation with the Parties and the Caring Society on the issue of Abuse. Specifically, Ms. Gott's affidavit, sworn April 12, 2024, states at paragraph 14(m):

> (i) We collaborated with the plaintiffs to research and consult regarding the process to confirm that a child's removal was not due to Abuse (as defined under the FSA) by the Claimant caregiver, including the options of self-declaration by Family Class Member (in Claims Form), voluntary report by Removed Child, Child Welfare Agency confirmation or records, with consideration given to a trauma-informed approach.
>
> (ii) The work on the Abuse portion of the Claims Process is ongoing. Given that the Claims of Caregiving Parents or Caregiving Grandparents will not be processed before approximately four years following the launch of the Claims Process, after the expiration of the Claims Deadline (Article 6.05 1) [*sic*] of FSA), we continue to work with the plaintiffs to develop a trauma-informed approach to Abuse determination – one of the most sensitive and potentially traumatizing implementation points in the Settlement Agreement.

[41] When questioned at the hearing as to why the requested direction is required, the Caring Society asserted that the SIC had not provided the Court with any evidence to establish that the SIC's approach—which does not include an opportunity for Removed Child Class Members to voluntarily disclose Abuse—was trauma-informed based on consultations with experts. Moreover, the Caring Society asserted that it was possible that victims of Abuse could be more traumatized by waiting to address the issue of Abuse until later in the process, when the Removed Child Family Class Member determinations are made. While the Caring Society's written representations included a specific request that the Claims Form for the Removed Child Class Members be amended to include an opportunity for voluntary disclosure of Abuse, the Caring Society abandoned this request at the hearing.

[42] I see no basis to interfere with the SIC's work in determining how best to address the issue of Abuse, which remains ongoing and which will ultimately result in a further claims process that will be put before the Court for approval. I am satisfied that the work being undertaken by the Administrator, in consultation with the SIC, the parties and the Caring Society, is consistent with the Administrator's obligations under the FSA and properly recognizes the sensitive and traumatic nature of this issue. While the Caring Society is critical of the absence of expert evidence before this Court on this issue, the same criticism could be levied at the Caring Society, who advocates for the Court to impose a particular approach without themselves providing any evidence that their approach is, in fact, trauma-informed and the better approach to take.

[43] Again, as noted above, it is not the role of the Caring Society to dictate to the SIC and the Administrator how issues are to be addressed. The Caring Society has been given the opportunity to provide their submissions on this issue, which they have done, and it is up to the SIC to determine how to proceed (subject to Court approval). That said, I would note that the evidence before the Court is that, despite their participation in various consultations related to the issue of Abuse, the Caring Society did not raise with the SIC/Administrator the suggestion that the Claims Forms should be amended to permit the voluntary disclosure of Abuse by Removed Child Class Members. It should go without saying that it is not helpful to the development of the Claims Processes, for feedback to be provided for the first time only once the Claims Process is before the Court for approval.

[44] Accordingly, the direction requested by the Caring Society will not be granted.

(c) Direction regarding supports

[45] As detailed above, the Caring Society requests that the Court direct the SIC to submit a detailed description of the supports set out in Schedule 1 of the FSA, the status of the hiring and training of claims helpers and the status of the Caring Society's suggestions regarding increasing surge capacity and measures to ensure that existing services (such as mental health, addictions, domestic violence, cultural and child welfare services) have the capacity to support Class Members before the launch date, throughout the claims process and after the claims process, by September 1, 2024.

[46] There is a dispute between the Caring Society and the SIC as to whether what the Caring Society seeks is an expansion, and thus a renegotiation, of the supports agreed to in the FSA. The Caring Society denies that it is seeking to change the landscape of the supports required under the FSA. Rather, they stressed at the hearing that their concern is with respect to the timing of the availability of the supports. The Caring Society asserts that the supports prescribed by the FSA must be available to Class Members before, during and after the Claims Process and, despite the Caring Society's engagement with the SIC on the issue of supports, the Caring Society asserts that it has not received clear and cogent evidence that the robust supports prescribed by the FSA will be available to Class Members in a timely manner. The Caring Society states that the direction they seek will provide a level of comfort by requiring the SIC to assure stakeholders that the required supports will be in place, given that no such assurances have been provided by the SIC to the Caring Society.

[47] The Claims Process currently before the Court for approval does not prescribe supports for Claimants. Rather, the requirement to provide supports to Claimants is addressed in the FSA. As such, the Caring Society's requested direction does not have a direct nexus to the issue of whether the Claims Process should be approved. Rather, the Caring Society is raising a concern with the SIC's compliance with the FSA, which is not an issue properly before the Court on this motion.

[48] As set out in Article 3.02(1)(j) of the FSA, one of the duties of the Administrator is to provide:

> […] navigational supports to Class Members in the Claims Process as outlined out in Schedule I, Framework for Supports for Claimants in Compensation Process, including: (i) assistance with the filling out and submission of Claims Forms; (ii) assistance with obtaining Supporting Documentation; (iii) assistance with appeals to the Third-Party Assessor pursuant to this Agreement; (iv) reviewing Claims Forms, Supporting Documentation, and First Nations Council Confirmations; and (v) determining a Claimant's eligibility for compensation in the Class;

[49] Article 9 of the FSA identifies certain supports that will provided to Class Members in the Claims Process. Specifically, Article 9(1) states that:

> The Parties will agree to culturally sensitive health, information, and other supports to be provided to Class Members in the Claims Process, as well as funding for health care professionals to deliver support to Class Members who suffer or may suffer trauma for the duration of the Claims Process, consistent with Schedule I, Framework for Supports for Claimants in Compensation Process, and the responsibilities of the Administrator in providing navigational and other supports under Article 3.02.

[50] Contrary to the assertion of the Caring Society, Article 9 does not impose an obligation on the parties to have the required supports in place prior to the roll out of the Claims Process. Notwithstanding, there are certain supports that have already been implemented, such as the Hope

for Wellness Help Line. As such, there is no issue at this stage of the settlement implementation of any non-compliance with the obligation to provide supports as prescribed by the FSA.

[51] The evidence before the Court is that the Administrator and the SIC are working towards ensuring that all of the required supports are in place in time for the roll out of the Claims Process. While the Caring Society wants assurances that this will be done, and that the support providers will have the necessary training and capacity, there is no obligation on the SIC/Administrator to provide the Caring Society with those assurances. Moreover, there is also no obligation on the part of the SIC/Administrator to report to the Court at this time or to obtain the Court's approval of their planned supports. If there are any issues with the roll out of the required supports, the SIC confirmed at the hearing that they will advise the Court. In any event, the Court will be receiving a status report from the SIC in late October of 2024 as part of the SIC's annual reporting obligation as prescribed by Article 12.03(1)(l) and (m) of the FSA.

[52] As such, I am not satisfied that the requested direction related to supports is necessary or appropriate.

II. Conclusion

[53] For all of these reasons, I am satisfied that the Claims Process is fair, reasonable and in the best interests of the Class as a whole, and that the directions sought by the Caring Society should not be issued.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-402-19
STYLE OF CAUSE:	XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE v THE ATTORNEY GENERAL OF CANADA
DOCKET:	T-141-20
STYLE OF CAUSE:	ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON by his Litigation Guardian, Carolyn Buffalo, CAROLYN BUFFALO, and DICK EUGENE JACKSON also known as RICHARD JACKSON v THE ATTORNEY GENERAL OF CANADA
DOCKET:	T-1120-21
STYLE OF CAUSE:	ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JUNE 19, 2024
ORDER AND REASONS:	AYLEN J.
DATED:	JUNE 26, 2024

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This is **Exhibit K** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
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Foxit PDF Editor Version: 13.1.6

A Commissioner for taking Affidavits

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Licensed Paralegal
LSO No. 14203P

Docket: T1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

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

Complainants

– and –

CANADIAN HUMAN RIGHTS COMMISSION

Commission

– and –

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

Respondent

– and –

CHIEFS OF ONTARIO,
AMNESTY INTERNATIONAL CANADA and
NISHNAWBE ASKI NATION

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TABLE OF CONTENTS

PART I - PREFACE 1

PART II - SUBMISSIONS IN REPLY 2

A. Canada mischaracterizes the relief that the Caring Society seeks 2

B. Canada asks for the Tribunal to liberate it from further consultation, but it has not proposed a viable path forward 4

C. Canada cannot rely on past consultation as a license to do nothing 6

D. Canada's position on its contractual commitments is inconsistent with its own statements 7

E. Canada and COO have taken a narrow view of the honour of the Crown 7

F. Canada's arguments regarding the Caring Society are unhelpful and unsupported by the record 10

PART III - LIST OF AUTHORITIES 15

PART I - PREFACE

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

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

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

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

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

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

PART II - SUBMISSIONS IN REPLY

A. Canada mischaracterizes the relief that the Caring Society seeks

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



May 22, 2025

David Taylor
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Counsel for the Caring Society

PART III - LIST OF AUTHORITIES

Legislation and Statues	
1.	*An Act Respecting First Nations, Inuit and Métis children, Youth and Families*, SC 2019, c 24
Case Law	
2.	*Canada (Attorney General) v FNCFCSC,* 2021 FC 969
3.	*FNCFCSC et al v Attorney General of Canada*, 2016 CHRT 2
4.	*FNCFCSC et al v Attorney General of Canada,* 2018 CHRT 4
5.	*FNCFCSC et al v Attorney General of Canada,* 2021 CHRT 41
6.	*FNCFCSC et al v Attorney General of Canada,* 2022 CHRT 41
7.	*Haida Nation v British Columbia (Minister of Forests),* 2004 SCC 73
8.	*Quebec (Attorney General) v. Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39
Other Sources	
9.	Leanne Sanders, Sav Jonsa & Fraser Needham, "Carney tells AFN he's 'committed' to reforming discriminatory First Nations child welfare system" (25 April 2025), online: *APTN*

This is **Exhibit L** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, Ontario
Date: 2025.10.22 10:21:05-04'00'
Foxit PDF Editor Version: 13.1.6

A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
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Canadian Human Rights Tribunal
Tribunal canadien des droits de la personne
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February 10, 2025

By e-mail

(See Distribution List)

Dear Parties,

Re: First Nations Child and Family Caring Society et al. v. Attorney General of Canada
Tribunal File: T1340/7008

The Panel wishes to convey the following to the parties:

The Panel deliberated after the last CMCC and still has outstanding questions for the parties that go beyond the Caring Society's motion for consultation.

The Tribunal signaled in 2018 CHRT 4 that it had entered the long-term remedial phase. The Tribunal ordered studies to inform the long-term remedies.

> The Panel reminds Canada that it can end the process at any time with a settlement on compensation, immediate relief and long-term relief that will address the discrimination identified and explained at length in the Decision. Otherwise, the Panel considers this ruling to close the immediate relief phase unless its orders are not implemented. The Panel can now move on to the issue of compensation and long-term relief. (see 2018 CHRT 4 at, para. 385).

In 2022, the parties came back to this Tribunal asking for what it described as approximately 80% of the long-term remedial consent orders and that they would have a full reformed program by **March 2023**. This Tribunal issued its orders on consent of the parties in March 2022, **nearly 3 years ago** and has waited since and is still waiting.
2022 CHRT 8:

> 25. On December 31, 2021, the Parties announced that they had reached an Agreement-in-Principle on long-term reform. As part of that Agreement-in-Principle, the Parties committed to reforming the FNCFS Program by March 31, 2023, as well as improving compliance with and reforming Jordan's Principle. Also, in the Agreement-in-Principle, the parties have agreed that the Reformed CFS Funding Approach will accommodate First Nations and FNCFS service providers experiencing exceptional circumstances, to be defined in the Final Settlement Agreement, which may require a longer transition to the Reformed CFS.

> 26. In addition, the terms of the consent order sought in this consent motion (see paras 1-9 under "orders sought") were annexed to the Agreement-in-Principle. Following the execution of the Agreement-in-Principle, the Caring Society, the AFN, and Canada agreed to seek this order as soon as possible.
>
> VIII. Retention of Jurisdiction
>
> [175] Pending a complete and final agreement on long term relief on consent or otherwise and consistent with the approach to remedies taken in this case and referred to above, the Panel retains jurisdiction on the Consent Orders contained in this ruling. The Panel will revisit its retention of jurisdiction once the parties have filed a final and complete agreement on long-term relief or as the Panel sees fit considering the upcoming evolution of this case.

The Tribunal has been flexible and patient, however, is seriously considering options to move forward with the long-term remedial phase in accordance with its mandate under the *CHRA*, its rulings and in the best interest of First Nations children. The dialogic approach was adopted to move things forward in this case with an emphasis on consultation and reconciliation; however, the dialogic approach is not meant to be waiting for years and years of delay without finality. The Tribunal as master of its own house, has the power to control its own process and not idly wait for parties to unilaterally decide when and how to come back to the Tribunal and how many years to wait before the Tribunal can close the long-term remedial phase chapter.

It is far better for children to complete the long-term remedial phase shortly rather than wait for long periods of time. Reform may take longer but can be projected with the assistance of the studies. The Panel gave guidance on long-term remedy on multiple occasions and recently in 2025 CHRT 6. The Panel continues to rely on this rationale.

The Panel is giving an opportunity for the parties to share their views on the above for the Panel's consideration before it decides next steps. This question does not include Jordan's Principle for the time being. The parties will respond by:

Caring Society, AFN, COO and NAN by **February 24, 2025**
Commission by **March 3, 2025**
Canada by **March 17, 2025**

The Panel is also setting a schedule for the Caring Society's motion while reserving the right to place it on abeyance if the Tribunal deems it necessary. The same principle may apply for any other motion in these proceedings. The Panel does not believe that a hearing is required. The Panel accepts the 30 pages limit. There will be a limit of 50 pages total for all attachments for all affidavits from each party. If the Caring Society's affidavit exceeds this limit, they will refile a revised affidavit within a business week of this letter. The schedule below does not change if a revised affidavit is filed. Parties will also include in their factum submissions, their views on the duty to consult, the honor of the crown and the recent Supreme Court and Federal Court decisions for the Panel's consideration: *Quebec (Attorney General) v. Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39; 2023 FC 916 (CanLII).

January 14, 2025:	Caring Society Notice of Motion and Affidavit
February 17, 2025:	Caring Society's revised affidavit, if any.
March 3, 2025:	Responding Affidavits from the AFN and Interested Parties
March 10, 2025:	Responding Affidavits from the Commission, if any.
March 13, 2025:	Responding Affidavits from the AGC.
March 17, 2025:	Caring Society Factum
March 31, 2025:	AFN, COO and NAN Factums
April 7, 2025:	Commission Factum
April 14, 2025:	Canada Factum
April 21, 2025:	Caring Society Reply Factum

Should you have any questions, please do not hesitate to contact the Registry Office by e-mail at registry.office@chrt-tcdp.gc.ca by telephone at 613-878-8802 or by fax at 613-995-3484.

Yours truly,

Judy Dubois
Digitally signed by Judy Dubois
Location: Ottawa, Ontario Canada
Date: 2025.02.10 11:01:52-05'00'

Judy Dubois
Registry Officer

DISTRIBUTION LIST

TO:

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Paul Vickery, Sarah-Dawn Norris, and Meg Jones, Counsel
Dayna Anderson, General Counsel
Kevin Staska, Senior Counsel
Sarah Bird, Jon Kahn, David Shiroky, Alicia Dueck-Read, Counsel
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Ottawa ON K1A 1E1

Justin Safayeni, Partner
Stephen Aylward, Partner
Stockwoods LLP
Suite 2512 - 150 King Street West
Toronto ON M5H 1J9

This is **Exhibit M** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, Ontario
Date: 2025.10.22 10:21:14-04'00'
Foxit PDF Editor Version: 13.1.6

A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

From: Adam Williamson <AWilliamson@afn.ca>
Sent: February 19, 2025 3:39 PM
To: Sarah Clarke; CHRT Registry Office; 'David Taylor'; Kiana Saint-Macary; 'Anshumala.Juyal@chrc-ccdp.gc.ca'; khizer.pervez@chrc-ccdp.gc.ca; Rupar, Christopher (he him il lui); Vickery, Paul; Norris, Sarah-Dawn (she her elle la); Jones, Meg (she her elle la); Anderson, Dayna (she her elle la); Staska, Kevin; Bird, Sarah (she her elle la); Khan, Jon; Shiroky, David (he him il lui); Dueck-Read, Alicia (she her elle la); 'MWente@oktlaw.com'; 'dbaskatawang@oktlaw.com'; 'julianf@falconers.ca'; Asha James; Shelby Percival; meaghand@falconers.ca; 'justins@stockwoods.ca'; 'Stephen Aylward'; 'Jasmine Kaur'; Lloyd, Michelle (CHRC/CCDP); Darvill, Jillian (she her elle la); Perrault-Werner, Alisia (she her elle la); Anderson, Jackie (she her elle la); Wong, Theresa (she her elle la)
Cc: Robin McLeod
Subject: RE: Correspondence from the Panel on Long Term Reform - FNCFCSC and AFN v. AGC (CHRT File T1340/7008)

EXTERNAL EMAIL – USE CAUTION / COURRIEL EXTERNE – FAITES PREUVE DE PRUDENCE

Dear Ms. Dubois,

Further to the Caring Society's correspondence below, could you please advise the Panel that the Assembly of First Nations supports the Caring Society's request for a revised schedule in relation to the parties' responses to the Panel's comments on potentially moving forward with the long-term remedial phase. This would include Canada filing first, with the other parties responding, and the timeline for same as suggested below.

Best regards,

Adam S.R. Williamson
In-house Counsel | Assembly of First Nations
Avocat à l'interne | Assemblée des Premières Nations
(613) 241-6789 - Ext/Poste 139 | awilliamson@afn.ca
50 O'Connor Street, Suite 200 | 50, rue O'Connor Bureau 200
Ottawa, Ontario K1P 6L2
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CONFIDENTIALITY NOTICE: This email, including any attachments, may contain information that is confidential and subject to solicitor – client privilege. Any unauthorized disclosure, copying or use of this email and any attachments is strictly prohibited. If you are not the intended recipient, please notify us by reply email or telephone call and permanently delete this email and any copies immediately.

From: Sarah Clarke <sarah@childandfamilylaw.ca>
Sent: Wednesday, 19 February, 2025 4:16 PM
To: CHRT Registry Office <Registry.Office@chrt-tcdp.gc.ca>; 'David Taylor' <DTaylor@conwaylitigation.ca>; Kiana Saint-Macary <ksaintmacary@conwaylitigation.ca>; Adam Williamson <AWilliamson@afn.ca>; 'Anshumala.Juyal@chrc-ccdp.gc.ca' <Anshumala.Juyal@chrc-ccdp.gc.ca>; khizer.pervez@chrc-ccdp.gc.ca; 'christopher.rupar@justice.gc.ca' <Christopher.Rupar@justice.gc.ca>; 'Vickery, Paul' <Paul.Vickery@justice.gc.ca>; 'Norris, Sarah-Dawn' <Sarah-Dawn.Norris@Justice.gc.ca>; 'Jones, Meg' <Meg.Jones@justice.gc.ca>; 'Anderson, Dayna (she; her | elle; la)' <Dayna.Anderson@justice.gc.ca>; 'Staska, Kevin' <Kevin.Staska@justice.gc.ca>; Bird, Sarah (she her elle la) <Sarah.Bird@justice.gc.ca>; Khan, Jon <Jon.Khan@justice.gc.ca>; 'david.shiroky@justice.gc.ca'

<david.shiroky@justice.gc.ca>; Dueck-Read, Alicia (she her elle la) <Alicia.Dueck-Read@justice.gc.ca>; 'MWente@oktlaw.com' <MWente@oktlaw.com>; 'dbaskatawang@oktlaw.com' <DBaskatawang@oktlaw.com>; 'julianf@falconers.ca' <julianf@falconers.ca>; Asha James <ashaj@falconers.ca>; Shelby Percival <ShelbyP@falconers.ca>; meaghand@falconers.ca; 'justins@stockwoods.ca' <JustinS@stockwoods.ca>; 'Stephen Aylward' <StephenA@stockwoods.ca>; 'Jasmine Kaur' <JKaur@conwaylitigation.ca>; Lloyd, Michelle (CHRC/CCDP) <michelle.lloyd@chrc-ccdp.gc.ca>; Darvill, Jillian (she; her | elle; la) <Jillian.Darvill@justice.gc.ca>; Perrault-Werner, Alisia (she her elle la) <Alisia.Perrault-Werner@justice.gc.ca>; Anderson, Jackie (she her elle la) <Jackie.Anderson@justice.gc.ca>; Wong, Theresa (she her elle la) <Theresa.Wong@justice.gc.ca>
Cc: Robin McLeod <robin@childandfamilylaw.ca>
Subject: RE: Correspondence from the Panel on Long Term Reform - FNCFCSC and AFN v. AGC (CHRT File T1340/7008)

Good afternoon,

Please bring this correspondence to the attention of the Panel.

We are counsel for the First Nations Child and Family Caring Society (the "**Caring Society**"). We write in relation to the Panel's direction of February 10, 2025. In particular, the Caring Society is requesting an amendment to the schedule set down by the Panel regarding its comments on the long-term remedial phase and the timing of the dialogic approach and consultation.

The Tribunal has found that Canada has discriminated against First Nations children in the provision of child and family services and in its failure to implement Jordan's Principle. Following the First Nations-in-Assembly rejection of the draft Final Settlement Agreement and its calls for a new approach to negotiations on a national approach, the parties remain at a standstill. In January 2025, the Caring Society brought a motion seeking an order that Canada consult with the Assembly of First Nations and the Caring Society regarding the approach to the long-term reform of child and family services. Canada is opposing that motion. To date, Canada has not returned to the table and no consultation is underway in relation to child and family services outside of Ontario.

Given the current circumstances and given that Canada is ultimately responsible for remediating the discrimination and preventing its recurrence, the Caring Society is requesting that the Panel's schedule be amended, with Canada filing first and the other parties responding. It is challenging for the Caring Society to take an informed position given that it has no knowledge of Canada's views or plans in relation to the national long-term remedial phase for child and family services. The Caring Society suggests the following schedule:

Canada **by March 3, 2025**
AFN, COO, NAN, and Caring Society **by March 17, 2025**
Commission by **March 24, 2025**

In the event that the schedule is not amended, the Caring Society requests an extension to March 4, 2025 to file its position. Our client is currently dealing with a serious personal matter, making filing on Monday exceptionally challenging.

Thank you for your consideration.

Yours Truly,
Sarah

Sarah Clarke (she/her)

36 Toronto Street, Suite 950
Toronto, ON M5C 2C5
Tel: 416.260.3030

Fax: 647.689.3286
childandfamilylaw.ca

This message is intended only for the persons to whom it is addressed. It should not be read by or delivered to any other person as it may contain privileged or confidential information. If you have received this message in error please notify me immediately at sarah@childandfamilylaw.ca.

From: CHRT Registry Office <Registry.Office@chrt-tcdp.gc.ca>
Sent: February 10, 2025 11:05 AM
To: 'David Taylor' <DTaylor@conwaylitigation.ca>; Sarah Clarke <sarah@childandfamilylaw.ca>; Kiana Saint-Macary <ksaintmacary@conwaylitigation.ca>; 'awilliamson@afn.ca' <AWilliamson@afn.ca>; 'Anshumala.Juyal@chrc-ccdp.gc.ca' <Anshumala.Juyal@chrc-ccdp.gc.ca>; khizer.pervez@chrc-ccdp.gc.ca; 'christopher.rupar@justice.gc.ca' <Christopher.Rupar@justice.gc.ca>; 'Vickery, Paul' <Paul.Vickery@justice.gc.ca>; 'Norris, Sarah-Dawn' <Sarah-Dawn.Norris@Justice.gc.ca>; 'Jones, Meg' <Meg.Jones@justice.gc.ca>; 'Anderson, Dayna (she; her | elle; la)' <Dayna.Anderson@justice.gc.ca>; 'Staska, Kevin' <Kevin.Staska@justice.gc.ca>; Bird, Sarah (she her elle la) <Sarah.Bird@justice.gc.ca>; Khan, Jon <Jon.Khan@justice.gc.ca>; 'david.shiroky@justice.gc.ca' <david.shiroky@justice.gc.ca>; Dueck-Read, Alicia (she her elle la) <Alicia.Dueck-Read@justice.gc.ca>; 'MWente@oktlaw.com' <MWente@oktlaw.com>; 'dbaskatawang@oktlaw.com' <DBaskatawang@oktlaw.com>; 'julianf@falconers.ca' <julianf@falconers.ca>; Asha James <ashaj@falconers.ca>; Shelby Percival <ShelbyP@falconers.ca>; meaghand@falconers.ca; 'justins@stockwoods.ca' <JustinS@stockwoods.ca>; 'Stephen Aylward' <StephenA@stockwoods.ca>; 'Jasmine Kaur' <JKaur@conwaylitigation.ca>; Lloyd, Michelle (CHRC/CCDP) <michelle.lloyd@chrc-ccdp.gc.ca>; Darvill, Jillian (she; her | elle; la) <Jillian.Darvill@justice.gc.ca>; Perrault-Werner, Alisia (she her elle la) <Alisia.Perrault-Werner@justice.gc.ca>; Anderson, Jackie (she her elle la) <Jackie.Anderson@justice.gc.ca>; Wong, Theresa (she her elle la) <Theresa.Wong@justice.gc.ca>
Subject: Correspondence from the Panel on Long Term Reform - FNCFCSC and AFN v. AGC (CHRT File T1340/7008)

Dear Parties,

Please find attached correspondence from the Tribunal in the above noted matter.

Thank you.

Judy Dubois

Registry Officer – Canadian Human Rights Tribunal
Administrative Tribunals Support Service of Canada / Government of Canada
240 Sparks Street, 6th floor West, Ottawa ON K1A 1J4
registry.office@chrt-tcdp.gc.ca / Tel: 613-878-8802 / Facsimile: 613-995-3484

Agente du greffe – Tribunal canadien des droits de la personne
Service canadien d'appui aux tribunaux administratifs / Gouvernement du Canada
240, rue Sparks, 6e étage ouest, Ottawa ON K1A 1J4
registry.office@chrt-tcdp.gc.ca / Tél.: 613-878-8802 / Télécopieur: 613-995-3484

This is **Exhibit N** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, Ontario
Date: 2025.10.22 10:21:23-04'00'
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A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

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Falconers LLP – Northern Office
104 Syndicate Avenue North, Suite 200
Thunder Bay, ON P7C 3V7
PH: (807) 622-4900 **Fax:** (416) 929-8179

SENT VIA E-MAIL **February 24, 2025**

Judy Dubois, Registry Officer
Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, ON K1A 1J4

Dear Ms. Dubois,

Re: First Nations Child and Family Caring Society et al. v Attorney General of Canada Tribunal; File No.: T1340/7009

I am writing in response to the Panel's correspondence of February 10, 2025, to provide the views of Nishnawbe Aski Nation (NAN) in respect of long-term reform and ending the Tribunal's jurisdiction in the above-referenced file number. In addition, I write in response to the First Nations Child and Family Caring Society's (Caring Society) email of February 19, 2025, to provide NAN's views on the request for a change in the order of submissions and deadlines.

To briefly deal with the latter, NAN consents to an extension of time as requested by the Caring Society and takes no position as to the order of the submissions or other timelines on the motion.

With respect to the Panel's concerns regarding long-term reform, specifically the delay in reaching long-term reform through efforts towards consultation, we are pleased to advise as to the following.

The Assembly of First Nations (AFN), Chiefs of Ontario (COO), NAN, and Canada reached a draft Final Agreement on long-term reform in July 2024. In October 2024, NAN and COO each and separately held successful ratification votes on the draft Final Agreement. However, the draft Final Agreement was ultimately rejected by the First Nations in Assembly of the AFN in October 2024.

While the AFN, by majority, rejected the draft Final Agreement, Chiefs in the Ontario region were largely supportive. The Ontario region Chiefs therefore directed the leadership within NAN and COO to pursue a regionalized version of the reforms contained in the draft Final Agreement.

On December 30, 2024, Canada informed NAN and COO that it had a mandate to negotiate a regionalized version of the draft Final Settlement Agreement for long-term reform in Ontario only.

Between December 30, 2024, and February 10, 2025, Canada, NAN, and COO negotiated a provisional Ontario Final Agreement (OFA) and a Trilateral Agreement Respecting the 1965 Agreement. These two draft agreements will be voted on in a Special Chiefs Assembly by NAN Chiefs on February 25 and by Special Chiefs Assembly by Ontario Chiefs on February 26.

Without in any way pre-determining the will of the Chiefs in the above-noted Special Chiefs Assemblies; if so instructed, NAN, COO, and Canada intend to bring a joint motion to the Tribunal. The relief sought on this motion would be to end the Tribunal's jurisdiction over the long-term reform of the First Nation Child and Family Services Program in Ontario based on a new Ontario Final Agreement settlement.

As the Tribunal is aware, dating back to 2016, NAN has strongly advocated for the development of a remoteness quotient that would address the unique challenges faced by remote communities in the delivery of child and family services. This work has culminated in the development of a form of indexing for remoteness termed the Remoteness Quotient Adjustment Factor (RQAF). The RQAF indexing coupled with important terms around remoteness data collection and research represent gains that NAN, in partnership with COO and Canada, has sought to preserve in the new proposed OFA. If so mandated by the Chiefs, it is NAN's intention to file materials with the Tribunal that elaborate on these significant reforms.

The specific motion materials are the subject of discussions with COO and Canada but will reflect the context and factual foundation of the work that has been done to conclude long-term reform in Ontario.

We trust that the above is helpful and will notify the Tribunal further once the Chief's have made decisions at the Special Chiefs' Assemblies.

Yours very truly,



Julian Falconer

Main Office: 10 Alcorn Avenue, Suite 204, Toronto, ON M4V 3A9, **PH:** (416) 964-0495 **Fax:** (416) 929-8179
Northern Office: 104 Syndicate Avenue North, Suite 200, Thunder Bay, ON P7C 3V7, **PH:** (807) 622-4900 **Fax:** (416) 929-8179

This is **Exhibit O** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
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Date: 2025.10.22 10:21:35-04'00'
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A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

Maggie Wente
MWente@oktlaw.com
416.981.9340
75558a

February 24, 2025

Sent via E-mail

Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, ON K1A 1J4
Attention: Ms. Judy Dubois, Registry Officer

Dear Ms. Dubois:

Re: FNCFCS and AFN v. AGC
Your File No. T1340/7009

We write as counsel for Chiefs of Ontario ("COO") in response to the Panel's letter dated February 10, 2025 that sought the views of the Parties on issues relating to concluding long-term reform and ending the Tribunal's jurisdiction over the complaint, and further to the request of counsel for the First Nations Child and Family Caring Society (the "Caring Society") requesting a change in the order of submissions and deadlines, by email dated February 19, 2025.

Specifically, the Panel's letter indicated that while the Tribunal has been flexible thus far and while there has been an emphasis on consultation, in the face of years of delay other options may be considered to move forward with long-term reform in accordance with the best interest of First Nations children. The letter requested the Parties' views on this matter.

COO is amenable to an extension of time as to Caring Society's submissions, no matter what the Panel's decision is regarding timelines and order of submissions. COO takes no position as to order of submissions and timelines in the motion.

On behalf of our client, we provide an update and context to our participation in submissions on this matter, and as to the status of Long-Term Reform of the FNCFS program in Ontario for all parties' information and as context for our response to the Panel's query.

The Status of National Long-Term Reform of the FNCFS Program

In July 2024, the Assembly of First Nations, COO, Nishnawbe Aski Nation ("NAN"), and Canada reached a draft Final Agreement on Long-Term Reform of the FNCFS Program (the "national agreement"). The national agreement provided for $47.8 billion to implement national reforms to the FNCFS Program.

On October 9 and 10, 2024, NAN Chiefs-in-Assembly and Ontario Chiefs-in-Assembly ratified the national agreement at their Special Chiefs Assemblies. On October 17, 2024, the national agreement was voted on by the First Nations-in-Assembly of the AFN and rejected.

Since then, as the Caring Society has reported in its motion regarding Canada's consultation on Long-Term Reform, there have been no negotiations toward a new national agreement, and Canada has reported it has no mandate to enter into negotiations on the terms proposed.

The Status of Long-Term Reform of the FNCFS Program in Ontario

COO respects that the Chiefs in other regions were not agreeable to move ahead with the proposed reforms, as is their right. COO and NAN have been working closely together on long-term reform that suits the needs of First Nations in Ontario and as mandated by our respective Chiefs-in-Assembly to do so. Ontario Regional Chief Abram Benedict and Grand Chief Alvin Fiddler formally invited Canada to enter into negotiations to achieve reform to the FNCFS Program in Ontario. On December 30, 2024, Canada announced to COO and NAN it had received a mandate to negotiate with COO and NAN to implement the reforms contained in the rejected national agreement, but specifically in Ontario.

A provisional Ontario Final Agreement and the Trilateral Agreement Respecting the 1965 Agreement were reached on February 10, 2025 and will be the subject of ratification votes by the NAN Chiefs and Ontario Chiefs-in-Assembly on February 25 and 26, 2025 respectively.

If the draft agreements are ratified by the NAN and Ontario Chiefs, COO expects to bring a joint motion in March—along with NAN and Canada—seeking a Tribunal order that the draft Ontario Final Agreement and the Trilateral Agreement Respecting the 1965 Agreement meet the Tribunal's prior orders and consequently that the Tribunal's jurisdiction over the long-term reform of the FNCFS Program in Ontario (but not Jordan's Principal) is ended. We have conferred with counsel for NAN and Canada and anticipate that after the filing of the motion we can work with all Parties and the Panel to determine a filing schedule for evidence and the hearing of the motion.

COO's Position

So, it is provisionally and with great hope that I can convey that COO and NAN hope to present a plan for long-term reform of the FNCFS program in Ontario in the near future,

and as such COO does not take positions on the order or date of submissions in the matter of the Panel's request for submissions about long term reform at this time. COO reserves its right to make submissions on this question and will do so on any timeline set by the Panel.

COO would appreciate an opportunity to update the Panel by February 28, 2025 on the status of the ratification of the two draft agreements.

We trust the above is satisfactory. If there are any questions about COO's position, please advise and we will do our best to address them.

Yours truly,
Olthuis, Kleer, Townshend LLP



MAGGIE WENTE
PARTNER

MW/slz

c. Julian Falconer, Meaghan Daniel, Jordan Tully – *Counsel for Nishnawbe Aski Nation*
Dayna Anderson, Kevin Staska, Sarah-Dawn Norris, Meg Jones, Sarah-Dawn Norris
Samantha Gergely, Cara Verhaeghe, Paul Vickery - *Counsel for Canada*
Anushumala Juyal and Khizer Pervez - *Counsel for CHRC*
David Taylor, Sarah Clarke, Kiana Saint Macary - Counsel for *FNCFCS*
Adam Williamson- *Counsel for AFN*
Justin Safayeni and Stephen Aylward - *Counsel for Amnesty International*

This is **Exhibit P** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, Ontario
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Foxit PDF Editor Version: 13.1.6

A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

From: Darvill, Jillian (she her elle la)
Sent: February 24, 2025 2:45 PM
To: CHRT Registry Office
Cc: 'David Taylor'; 'sarah@childandfamilylaw.ca'; Kiana Saint-Macary; 'awilliamson@afn.ca'; 'Anshumala.Juyal@chrc-ccdp.gc.ca'; khizer.pervez@chrc-ccdp.gc.ca; Vickery, Paul; Norris, Sarah-Dawn (she her elle la); Jones, Meg (she her elle la); Anderson, Dayna (she her elle la); Staska, Kevin; Bird, Sarah (she her elle la); Khan, Jon; Dueck-Read, Alicia (she her elle la); 'MWente@oktlaw.com'; 'dbaskatawang@oktlaw.com'; 'julianf@falconers.ca'; Asha James; Shelby Percival; meaghand@falconers.ca; David Schwartz; Jordan Tully; 'justins@stockwoods.ca'; 'Stephen Aylward'; 'Jasmine Kaur'; Lloyd, Michelle (CHRC/CCDP); Darvill, Jillian (she her elle la); Perrault-Werner, Alisia (she her elle la); Anderson, Jackie (she her elle la); Wong, Theresa (she her elle la)
Subject: FNCFCSC and AFN v. AGC (CHRT File T1340/7008) - AGC response to February 20, 2025 correspondence

Categories: [SharePoint] This message was saved in 'LCMS Site > FNCFS CARING SOCIETY V AGC, T1340/7008 - POST FNCFS FINAL AGREEMENT (2024)(LEX-500219273) > Pleadings Facta and Other Court Documents > AGC', [SharePoint] This message was saved in 'LCMS Site > FNCFS CAR

Sent on behalf of Dayna Anderson

Dear Registry,

We write in response to the Panel's February 20, 2025 email, requesting that Canada file a response to the Caring Society's request for amendments to the Panel's schedule set out in its February 10, 2025 letter.

In so far as the basis for the request is due to a serious personal matter which impacts the Caring Society's ability to meet its deadline, we of course consent to any needed extension of the existing filing deadline. It follows that all other deadlines should be modified accordingly.

To the extent that the Caring Society requests that Canada file first for unrelated reasons, we note that the purpose of the Panel's request is simply to gather the parties' views about the extended length of time taken to implement final long-term FNCFS Program reforms. Our understanding of the Tribunal's request is that it does not call for argument or rebuttal. It is simply intended to inform the Panel's management of these proceedings. The Caring Society, the Assembly of First Nations and the Canadian Human Rights Commission should be able to share their views on this regardless of the other parties' views, including Canada's.

That said, if it would be of assistance to the Panel, Canada is prepared to share its views in advance of the other parties. However, we note that the next sessions of the ongoing Tribunal-assisted Jordan's Principle mediation-consultations are scheduled for February 27 and 28, 2025; Canada's affidavit evidence in response to the Caring Society's latest motion is under development and due March 13, 2025; and Canada is working with the Chiefs of Ontario and the Nishnawbe Aski Nation towards necessary approvals to advance long-term FNCFS Program reforms in Ontario. As such, Canada is not in a position to meet the Caring Society's proposed March 3, 2025 deadline. We instead request until at least our original filing deadline of March 17, 2025.

Thank you for considering our response.

Dayna Anderson
(she/her/elle)

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National Litigation Sector
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This is **Exhibit Q** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
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Date: 2025.10.22 10:22:04-04'00'
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A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

From: CHRT Registry Office <Registry.Office@chrt-tcdp.gc.ca>
Sent: February 27, 2025 9:54 AM
To: 'David Taylor'; 'sarah@childandfamilylaw.ca'; Kiana Saint-Macary; 'awilliamson@afn.ca'; 'Anshumala.Juyal@chrc-ccdp.gc.ca'; khizer.pervez@chrc-ccdp.gc.ca; Vickery, Paul; Norris, Sarah-Dawn (she her elle la); Jones, Meg (she her elle la); Anderson, Dayna (she her elle la); Staska, Kevin; Bird, Sarah (she her elle la); Khan, Jon; Dueck-Read, Alicia (she her elle la); Owais, Aman; 'MWente@oktlaw.com'; 'dbaskatawang@oktlaw.com'; 'julianf@falconers.ca'; Asha James; Shelby Percival; meaghand@falconers.ca; David Schwartz; Jordan Tully; 'justins@stockwoods.ca'; 'Stephen Aylward'; 'Jasmine Kaur'; Lloyd, Michelle (CHRC/CCDP); Darvill, Jillian (she her elle la); Perrault-Werner, Alisia (she her elle la); Anderson, Jackie (she her elle la); Wong, Theresa (she her elle la)
Subject: Revised schedule - FNCFCSC and AFN v. AGC (CHRT File T1340/7008)

Categories: [SharePoint] This message was saved in 'LCMS Site > FNCFS CARING SOCIETY V AGC, T1340/7008 - POST FNCFS FINAL AGREEMENT (2024)(LEX-500219273) > Pleadings Facta and Other Court Documents > CHRT', [SharePoint] This message was saved in 'LCMS Site > FNCFS CA

EXTERNAL EMAIL – USE CAUTION / COURRIEL EXTERNE – FAITES PREUVE DE PRUDENCE

Dear Parties,

The Tribunal has reviewed all the parties' correspondence related to the Caring Society's request for a revised schedule in relation to the parties' responses to the Panel's comments on potentially moving forward with the long-term remedial phase. The Tribunal agrees to modify the schedule as follows:

March 17, 2025: Canada's submissions;
March 24, 2025: Caring Society and the AFN's submissions, the COO and the NAN's additional submissions following Canada's submissions, if any;
March 31, 2025: Commission's submissions

If Canada wishes to reply, Canada should make a request to the Tribunal once all submissions have been filed.

The Tribunal agrees to receive an update on the status of the ratification of the two Ontario draft agreements from the Chiefs of Ontario by February 28, 2025.

Thank you.

Judy Dubois

Registry Officer – Canadian Human Rights Tribunal
Administrative Tribunals Support Service of Canada / Government of Canada
240 Sparks Street, 6th floor West, Ottawa ON K1A 1J4
registry.office@chrt-tcdp.gc.ca / Tel: 613-878-8802 / Facsimile: 613-995-3484

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Service canadien d'appui aux tribunaux administratifs / Gouvernement du Canada
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This is **Exhibit R** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
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A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
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Maggie Wente
MWente@oktlaw.com
416.981.9340
75558a

February 28, 2025

Sent via E-mail

Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, ON K1A 1J4
Attention: Ms. Judy Dubois, Registry Officer

Dear Ms. Dubois:

Re: FNCFCS and AFN v. AGC
Your File No. T1340/7009

We write further to our letter dated February 24, 2025 to update the Panel on the status of the ratification of the Ontario Final Agreement and Trilateral Agreement Respecting the 1965 Agreement.

We are pleased to report both draft agreements were ratified by the NAN Chiefs on February 25, 2025 and the Ontario Chiefs-in-Assembly on February 26, 2025.

In light of the ratification, COO expects to file a Notice of Motion in early March—along with NAN and Canada—seeking a Tribunal order that the draft Ontario Final Agreement and the Trilateral Agreement Respecting the 1965 Agreement meet the Tribunal's prior orders and consequently that the Tribunal's jurisdiction over the long-term reform of the FNCFS Program in Ontario (but not Jordan's Principal) is ended. We have conferred with counsel for NAN and Canada and anticipate that after the filing of the motion we can work with all Parties and the Panel to determine a filing schedule for evidence and the hearing of the motion.

We trust the above is satisfactory. If there are any questions about the above, please advise and we will do our best to address them.

Yours truly,
Olthuis, Kleer, Townshend LLP



MAGGIE WENTE
PARTNER

MW/slz

c. Julian Falconer, Meaghan Daniel, Jordan Tully – *Counsel for Nishnawbe Aski Nation*
Dayna Anderson, Kevin Staska, Sarah-Dawn Norris, Meg Jones, Sarah-Dawn Norris
Samantha Gergely, Cara Verhaeghe, Paul Vickery - *Counsel for Canada*
Anushumala Juyal and Khizer Pervez - *Counsel for CHRC*
David Taylor, Sarah Clarke, Kiana Saint Macary - Counsel for *FNCFCS*
Adam Williamson- *Counsel for AFN*
Justin Safayeni and Stephen Aylward - *Counsel for Amnesty International*

This is **Exhibit S** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

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A Commissioner for taking Affidavits

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Via Email

Our File Number: LEX-500219273

March 17, 2025

Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, Ontario K1A 1J4

Dear Registry,

Re: First Nations Child and Family Caring Society of Canada et al. v. the Attorney General of Canada et al.
Tribunal File: T1340/7008

We write in response to the Tribunal's request for the parties' views on proceeding with long term reform of the First Nations Child and Family Services (FNCFS) Program, and specifically options for moving forward in light of the Tribunal's observation as to the passage of time since the Tribunal's signal in 2018 CHRT 4 that the parties had entered the "long term remedial phase".

As the Tribunal is aware, Canada, the Chiefs of Ontario (COO) and the Nishnawkbe Aski Nation (NAN) recently entered into an agreement to reform the FNCFS Program in Ontario (Ontario Final Agreement), as well as a Trilateral Agreement respecting the 1965 Agreement. These agreements were ratified by the NAN Chiefs and the Ontario Chiefs-in-Assembly on February 25 and 26, 2025 respectively. On March 7, 2025, COO and NAN filed a joint motion for approval of the Ontario Final Agreement, which Canada has supported.

These agreements come after years of research, study, consultation and negotiation with the Assembly of First Nations (AFN), the First Nations Child and Family Caring Society of Canada (Caring Society), COO and NAN, all in an effort to secure agreement on the long-term reform of the FNCFS Program nationally, the specifics of which are set out in the Affidavit of Duncan Farthing-Nichol, filed on March 13, 2025 in response to the Caring Society's consultation motion. These specifics include:

- completion of the December 31, 2021 Agreement in Principle;
- the funding and work of multiple committees and tables to provide advice and consider general and specific reform issues;

- regular meetings between the parties, including multiple full day negotiation meetings;
- Indigenous Services Canada's (ISC) financial support of the development of research in a number of areas. This included funding, amongst other research, of contracts between the AFN and the Institute of Fiscal Studies and Democracy (IFSD), and between the Caring Society and IFSD, to inform the development of an alternative funding system.

It is of note that during most of the period of consultation and negotiation on long-term reform of the FNCFS Program, the Caring Society, the AFN, COO and NAN were active participants in either consultations or negotiations with Canada. The Caring Society ceased their participation in negotiations between December 2023 and February 2024. The AFN did not participate in the negotiation of the Ontario specific agreement in January 2025, but was otherwise an active participant in the negotiations.

With this context in mind, Canada respectfully submits that the best way to move forward with the long-term remedial phase is for the Tribunal to first consider the joint motion from COO and NAN respecting long-term reform of the FNCFS program in Ontario. This motion, if granted, would finally resolve and remedy all issues respecting the FNCFS Program in Ontario. For the benefit of First Nation children and families in Ontario, it is imperative that this motion proceed without delay. Further, the outcome of the joint motion is likely to inform the path forward in these proceedings, including the use of the dialogic approach and the completion of the long-term remedial phase outside of Ontario.

We respectfully urge the Tribunal to honour the effort and urgency expressed by COO and NAN to address the joint motion. We urge the Tribunal to facilitate the consideration of the Ontario Final Agreement, which is conditional on Tribunal approval, by placing the Caring Society's consultation motion temporarily into abeyance.

Consideration of national reform continues to be extremely important to Canada. It is Canada's perspective that the Tribunal's analysis of the Ontario Final Agreement will inform the next steps on national reform.

The FNCFS Program today is very different than it was in 2016. Canada has done significant work and has implemented important reforms. During consultations and negotiations, Canada made considerable reforms to the Program in keeping with the parties' recommendations and the orders from this Tribunal (including on consent). Canada has and continues to implement this Tribunal's orders. Further, Canada has and continues to provide funding beyond the Tribunal's orders, including with respect to housing and First Nations Representative Services outside Ontario. Recipients who are eligible to receive funding under the FNCFS Program continue to benefit from these reforms. Approximately $3.6 billion in funding was provided in 2023-2024, which stands in stark contrast with the $676.8 million in funding spent on the FNCFS Program in 2015-2016, when this complaint was substantiated. Effectively Canada is more than honouring the Tribunal's orders. As

such, Canada is asking the Tribunal to honour the urgency of COO and NAN's joint motion and focus first on Ontario Final Agreement. It is Canada's perspective that the work of final national reforms will benefit from and be informed by the Tribunal's review of the Ontario final reforms.

Sincerely,

Dayna Anderson
General Counsel

CC:

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This is **Exhibit T** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
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A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
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CHILD & FAMILY LAW

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March 24, 2025

Sent via email: Registry.Office@chrt-tcdp.gc.ca

Judy Dubois
Registry Operations
Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, ON K1A 1J4

Dear Ms. Dubois,

RE: First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada- T#1340/7008

The First Nations Child and Family Caring Society (the "**Caring Society**") writes further to the Panel's direction of February 10, 2025, and in response to Canada's submission of March 17, 2025, regarding the long term reform phase of this human rights complaint. It has been over nine years since the Merits Decision and much has been accomplished. The Tribunal's retention of jurisdiction remains essential, at this time, to ensuring that Canada's discriminatory conduct is eradicated from child and family services and Jordan's Principle and is not repeated for future generations.

First Nations-in-Assembly, the National Children's Chiefs Commission (the "**NCCC**"), and the Caring Society are ready, along with the research regarding First Nations child and family services ("**FNCFS**") and Jordan's Principle, to build, through dialogue with Canada, an enduring end to Canada's discriminatory conduct and ultimately resolve the complaint. Yet without Canada at the table, we cannot move forward. To this end, the Caring Society's view on the issues raised by the Panel in its February 10, 2025 letter centres on requiring Canada to consult on long-term reform solutions that are grounded in the evidence, which is now ready, with the co-complaints, and with the NCCC. Canada's suggestion that the Ontario Final Settlement Agreement form the basis for national long term reform of FNCFS is wholly inappropriate, given that many of the terms therein were considered and ultimately rejected by First Nations outside of Ontario.

1) First Nations and the National Children's Chiefs Commission are Ready

In October 2024, First Nations-in-Assembly passed resolutions directing a reset of work towards long-term reform, including the establishment of the NCCC and the inclusion of the Caring Society in FNCFS and Jordan's Principle negotiations and long-term reform. Since October 2024, the Caring Society has been working with technical experts across Canada to support the implementation of the direction of First Nations-in-Assembly, including collaboration with the NCCC when requested.

The First Nations-in-Assembly resolutions set out clear direction for FNCFS reform, guided by the NCCC, that is informed by evidence and protects First Nations children from discrimination now and forever. This is reflected in the correspondence from Chief Frost, the NCCC's Chair, to former Prime Minister Trudeau and Ministers Hajdu and Anandasangaree dated January 24, 2025 and follow-up correspondence to Prime Minister Carney on March 19, 2025. Through collective decision-making and affirmed resolutions, First Nation leaders have called for the development of a national umbrella agreement, with regional agreements that take full account of the distinct circumstances, cultures and the inherent rights of the children and the First Nations they belong to. First Nations-in-Assembly were clear in their expectations of a nation-to-nation relationship with the government of Canada and have repeatedly insisted on the importance of Canada fulfilling its obligations under the *United Nations Declaration of Indigenous People,* the honour of the Crown and asserting their right to Free, Prior and Informed Consent.

The Caring Society supports the approach set forth by the First Nations-in-Assembly and is confident that if (and when) Canada returns to the table in good faith, consistent with direction of the First Nations-in-Assembly, First Nations children, youth and families will be protected from discrimination now and into the future. Canada's refusal to continue consultations and meaningfully engage in the dialogic approach to end discrimination for all First Nations children evidences the need for the Tribunal to maintain its jurisdiction in this regard.

2) The Research is Ready

The Tribunal has consistently cautioned the Parties that it will not make orders absent strong and reliable evidence. In 2022 CHRT 41, the Tribunal stated that it will not make final orders in relation to long-term reform absent clear and cogent evidence supporting the options presented by the parties. As the Tribunal stated:

> [503] The case is quite different with long-term reform where not all issues have been adjudicated by the Tribunal. The Tribunal supports First Nations-led solutions to eliminate discrimination if the evidence advanced proves to eliminate the systemic discrimination found in an effective and sustainable manner that responds to the specific needs of First Nations children, families and also communities. The Tribunal reminds the parties that it is a Tribunal created by statute with a mandate to eliminate discrimination in Canada once findings are made, **always based on evidence and not opinion**. The Tribunal is still seized of the matter and will need to make findings before ending its jurisdiction to ensure the racial and systemic discrimination is eliminated and does not reoccur. The First Nations parties' expertise is key in this important task.

> [517] […] Canada cannot contract out the Tribunal's quasi-constitutional responsibility to eliminate the discrimination found and prevent similar discriminatory practices from arising. It has to occur after an **evidence-based finding that satisfies the Tribunal** that discrimination is eliminated and prevented from reoccurring or on consent of all, not just some, parties in the Tribunal proceedings and **based on compelling evidence** that the systemic racial discrimination will be eliminated. […] [Emphasis added]

In 2022 CHRT 8, the Tribunal granted the IFSD Jordan's Principle consent orders on the basis that the evidence and solutions to be identified in the research will support the long-term reform of Jordan's Principle, entrenching safeguards that will prevent the recurrence of discrimination:

> [74] In her March 4, 2022, affidavit, Dr. Blackstock affirms that: […]
>
> > *41. Research to inform evidence-based long-term reform recommendations for Jordan's Principle will be critical to ensuring that Jordan's Principle is equitable, sustainable, accessible and that Canada is held accountable for the full and proper implementation of the Tribunal's orders. The Caring Society strongly believes such research must inform a longer-term funding approach for Jordan's Principle that embeds the Measuring to Thrive framework indicators for children, families, and communities to promote more holistic and seamless funding. We also see value in underpinning Jordan's Principle with the Spirit Bear Plan, given the large number of Jordan's Principle requests that relate to formal equality.*
>
> [75] Further:
>
> > *42. IFSD has agreed to take on this Jordan's Principle research and, pursuant to this consent motion, Canada has agreed to fund it.*
>
> [76] The Panel agrees with the Caring Society and finds this is in line with the Panel's approach, findings and orders to eliminate systemic discrimination and prevent the same or similar discriminatory practices to emerge. Moreover, recently filed evidence in support of this motion substantiates Dr. Blackstock's assertions. **The Panel finds this order is necessary to achieve evidence-based meaningful and sustainable long-term reform informed by the real needs of children, youth and families. This is consistent with the Panel's orders to provide services according to the First Nations children's real needs.** [Emphasis added]

More recently, in 2025 CHRT 6, the Tribunal has underscored its expectations for evidence-informed long-term reform:

> [237] The ultimate objective is to achieve sustainable long-term reform informed by the many studies, expert committees, First Nations, the parties, etc. for generations to come. The Tribunal has always hoped for a settlement

> on long-term reform by way of consent order requests, if possible, similar to the compensation settlement agreement for both Jordan's Principle and the FNCFS Program. However, if this is not possible, the Tribunal can make systemic long-term orders informed by the parties to eliminate the systemic discrimination found. This is not optimal without the expert input of the parties including the First Nations Chiefs' knowledge and decisions expressed in the Chiefs-in-Assembly resolutions.
>
> [238] The Tribunal consistently found that reform must reflect the specific different needs of First Nations and that they are best positioned to determine what this should look like in the long-term.

a) *FNCFS Research and Collaboration*

The Institute of Fiscal Studies and Democracy ("**IFSD**") has now completed its final phase of research in relation to FNCFS. In December 2018, IFSD's Phase 1 report, *Enabling First Nations Children to Thrive*, made eight recommendations for funding and structural changes to the FNCFS program, as well as three recommendations for further research. Following the acceptance of IFSD's report by the National Advisory Committee (the "**NAC**"), IFSD was asked to undertake further research to identify options and plans for a change in structure and resources in FNCFS to transition agencies to an outcome-based approach based on well-being for thriving First Nations children.

In July 2020, IFSD's Phase 2 report, *Funding First Nations child and family services (FNCFS): A Performance Budget Approach to Well-Being*, proposed a new funding mechanism for FNCFS as well as an updated framework on child, family, and community well-being, Measuring to Thrive.

On March 3, 2025, IFSD shared the pre-production draft and executive summary of the final Phase 3 report.[1] Phase 3 focuses on the delivery of well-being for First Nations, families, and children and builds on previous phases of work (Phases 1 and 2), setting out discrete First Nation-based delivery models that transform organizational strategy, people, process, and systems.

In order to safeguard small population First Nations from disadvantage arising from population driven funding levels, the Caring Society, without funding or support from Canada, has contracted Engage First to analyze the funding needs of five small population First Nations contemplating or in the process of exercising jurisdiction over child and family services. Through qualitative and quantitative analysis, the study seeks to illustrate an evidence-based cost structure for small population First Nations to deliver the continuum of child and family services. This study will include data gathering and analysis of current and future operations, including First Nations' jurisdiction and delivery of child and family services, delivery of prevention, protection, and post majority supports

[1] Interim update: First Nations child and family services (FNCFS) - Phase 3 https://ifsd.ca/wp-content/uploads/2025/03/2025-02-28_Pre-Production-Draft-1.pdf

and services, as well as First Nations' business functions, including governance, service delivery, corporate operations, financial management, and operating costs. A final report with independent and objective analysis is expected by March 31, 2025.

The Caring Society has also been working collaboratively with the NCCC to build a pathway for sustainable and durable long-term reform. As set out in the letter of January 24, 2025, from Chief Frost (attached as Exhibit H to the affidavit of Amber Potts, dated March 3, 2025) progress is being made by the NCCC to prepare for a full engagement on the long-term reform of both FNCFS and Jordan's Principle. Moreover, on March 19, 2025, the NCCC wrote to the new Prime Minister, the Right Honourable Mark Carney, who was sworn in as Prime Minister on March 14, 2025, setting out a pathway forward on long-term reform, and included specific and targeted solutions to improving the draft final settlement agreement that was presented to the First Nations-in-Assembly in July 2024.[2] The Caring Society is strongly of the view that change, progress and lasting long-term reform is possible if Canada returns to the table.

b) Jordan's Principle Research and Collaboration

The IFSD has been contracted by the Caring Society to undertake additional research on Jordan's Principle, pursuant to 2022 CHRT 8. The work undertaken by IFSD includes proposing options for the long-term sustainability of Jordan's Principle through the: (i) development of a policy framework (e.g., approach to measuring/monitoring outcomes for children, evaluating Jordan's Principle, etc.); (ii) review of existing programs and services; (iii) definition of options and considerations for reforming the operationalization of Jordan's Principle; and (iv) financial analysis and costing of the baseline and any proposed reforms.

On March 3, 2025, IFSD shared its interim briefing on Jordan's Principle: Considerations for the sustainability of Jordan's Principle.[3] Their final report is anticipated in April 2025. This research will be critical to formulating a long-term approach to Jordan's Principle, particularly given IFSD's findings to date, which include:

- the current national administration of Jordan's Principle is untethered to the goal of substantive equality or the needs of children (p. 2);
- there is a need to reform data collection as the data gathered by ISC is "insufficient to demonstrate results for children or identify gaps in program areas" (p. 2);
- the largest share of all requests are for amounts below $5,000, and almost half (45%) are for $1,000 or less (p. 10); and

[2] March 19, 2025 letter from the NCCC to the Prime Minister, attached as Schedule "A".
[3] Interim update: interim briefing: Considerations for the sustainability of Jordan's Principle, attached as Schedule "B".

- poor implementation of Jordan's Principle is linked to administrative and operational considerations, requiring "clearer guidelines and tools" (p. 28).

IFSD has identified three clear considerations for improving the administration of Jordan's Principle: (i) reform ISC's intake process in a manner consistent with the goals of consistency and decency; (ii) invest in new technology; and (iii) focus on the First Nations child when gathering data. This research well-positions the Parties to begin their work on long-term reform for Jordan's Principle.

The Parties have been intensively meeting in relation to the Jordan's Principle mediation, in keeping with the direction of the Tribunal in 2025 CHRT 6. While the Caring Society is hopeful that an update will be provided to the Panel shortly, the Caring Society remains concerned that ISC has made little to no progress to remedy the service approval backlog to bring relief to children families who are waiting and has been unable to report on its reimbursement backlog, which is causing financial hardship to First Nations families and organizations that support them.

Although ISC unilaterally paused the meetings of the Jordan's Principle Operations Committee ("**JPOC**") after the Caring Society filed its non-compliance motion in December 2023, the committee has met four times in 2024 and 2025 (April 2024, May 2024, July 2024 and February 2025). Responding to a call from the Caring Society and other Parties, ISC has also planned for meetings throughout 2025. This development is welcomed by the Caring Society, with a view to ensuring that JPOC has the capacity to implement meaningful solutions as envisioned by the First Nations-in-Assembly's resolutions.

The Caring Society (on February 13, 2025 and March 7, 2025) and the Assembly of First Nations ("**AFN**") (on March 7, 2025) have also engaged directly with ISC regarding concerns about the information it shared in its Jordan's Principle Operational Bulletin on February 10, 2025 and changes made to the ISC Jordan's Principle website.[4] During active mediation, ISC unilaterally issued the bulletin and further measures on its website without consulting the Caring Society or the Parties. Both the Operational Bulletin and the website are vague and confusing, purporting to introduce new restrictions on Jordan's Principle that are not in keeping with the Tribunal's orders while at the same time suggesting Canada will consider, without any details, substantive equality. Such changes include requiring requestors to provide, for all requests, detailed cost breakdowns, proof of gaps in services or substantive equality considerations, as well as personally intrusive information such as assessments, official diagnoses, and treatment plans. This approach places the burden of proving Canada's discrimination back on the shoulders of its victims and is inconsistent with the Tribunal's recent affirmation in 2025 CHRT 6 of the presumption of substantive equality. ISC has also removed Elders and traditional healing as examples of eligible supports and services available to First Nations children and has

[4] Versions of the ISC Jordan's Principle website as at January 16, 2025 and February 10, 2025 are attached as Schedule "C1" and "C-2".

limited land-based activities and specialized programs based on cultural beliefs and practices to requests on-reserve only. The Operational Bulletin also appears to retroactively apply to requests that have not been processed, including those currently in the backlog. The Caring Society has raised concerns that this amounts to shifting goalposts, is procedurally unfair and risks further delaying or denying services to children. Both the Caring Society and the AFN have communicated their opposition to ISC's bulletin and website changes.

c) *The Expert Advisory Committee*

Pursuant to 2022 CHRT 8, the Expert Advisory Committee (the "**EAC**") is comprised of highly respected and leading experts in various fields, including Indigenous knowledge and culture, as well as legal, public finance, historical and academic experts.

In their interim report,[5] the EAC shared their frustration with the slow progress to date and highlighted the limitations of attempting to advance an independent forum for the EAC to complete their work. As a result of the differing positions on the role of the EAC, the EAC's terms of reference have not been approved by the AFN and Canada, and the EAC has not met with the Parties since April 2024.

Despite these challenges, the EAC remains deeply committed to supporting First Nations children and ensuring that discrimination does not recur:

> We are a group of people deeply concerned about the well-being of First Nations children and families, and we want to help. We want our relationship with Canada and the other parties to be fruitful. We do not want to give up on the promise of this expert advisory committee, nor do we want the parties to give up on us (EAC interim report, pg. 12).

The Caring Society highly values the EAC's expertise and is confident that once the process of consultation is underway, the EAC will be an invaluable tool to ensure that Canada's discriminatory conduct within the government structure will not be repeated for First Nations children.

3) The Caring Society is Ready

The Caring Society remains deeply committed to giving effect to the Panel's orders and the First Nations-in-Assembly resolutions (i.e.: 40/2022, 60/2024, 61/2024, 88/2024, 89/2024, 90/2024) by working with the AFN Executive, the NCCC, First Nations technical experts and others. The Caring Society has repeatedly demonstrated its commitment to providing evidence-informed solutions in an accountable and transparent manner. The

[5] Expert Advisory Committee for the Reform of Indigenous Services Canada Summary Report of Activities, Observations and Advice Spring 2022 to Spring 2024, https://fncaringsociety.com/sites/default/files/2024-06/EAC%20Summary%20Report%20Spring%202022%20to%20Spring%202024.pdf

Caring Society is currently actively engaging regional technical experts to analyze the evidence produced by the IFSD, the Expert Advisory Committee and will do so with respect to the forthcoming Engage First Report on small population First Nations. The Caring Society is also attending meetings of the NCCC when invited to share its views and positions.

The Caring Society shares the Panel's concerns regarding the delay in achieving long-term reform and recognizes that the Tribunal cannot indefinitely remain seized of this complaint. However, the Caring Society sees Canada's refusal to return to discussions with First Nations outside of Ontario and recent unilateral actions on Jordan's Principle, which appear to dramatically narrow the scope of the support Canada is willing to provide, as demonstrating that the progress since the Merits Decision is still not yet entrenched. As such, it is the Caring Society's position that a premature release of jurisdiction risks eroding the hard work undertaken over the last nine years, including from the lessons learned from First Nations outside of Ontario in their calls for a new approach to long term reform. The Caring Society remains ready to participate in meaningful consultations that achieve the ultimate goal of ending Canada's discriminatory conduct guided by the resolutions of First Nations in Assembly.

4) Path Forward for Long-Term Reform

Canada states in its March 17, 2025, submission that "**the Tribunal's analysis of the Ontario Final Agreement will inform the next steps on national reform**." Such an approach ignores the direction of First Nations rights holders across the country and directly contradicts the express direction of First Nations-in-Assembly. Canada cannot impose this agreement, which was rejected by First Nations outside of Ontario, as the blueprint for long term reform for FNCFS when First Nations have clearly indicated that such an approach will not achieve the purpose of the agreement – namely to end discrimination and prevent it from happening again.

Moreover, it is important that Canada be effectively deterred from using the Ontario FSA as a template for national reform as it does not consider the needs of First Nations children, youth and families across the country. Given its importance to First Nations children in Ontario, the determination of the Ontario Final Agreement should not be rushed; however, national FNCFS long term reform must proceed simultaneously through a process of consultation. The proper use of this window, in keeping with the resolutions and guidance of the First Nations-in-Assembly, is for Canada to return to the table in good faith and develop long-term reform solutions that are evidence-informed and meet the real needs of First Nations children.

When the Tribunal ultimately rejected the compensation final settlement agreement in 2022 CHRT 41 (although finding that it substantially satisfied the Compensation Entitlement Order), there was widespread upset and concern that a resolution could not be achieved. That was not the case. Canada found a way to come back to the table, work with the parties, including the Caring Society, and align the compensation settlement

agreement with the Compensation Entitlement Order. Although long-term reform in both FNCFS and Jordan's Principle is more complex, the Parties have clear guidance from the Panel and the First Nations-in-Assembly to ensure we can achieve what the Tribunal has tasked us to accomplish. There is a way forward.

Much of the work needed to meet these milestones has been completed. With Canada at the table, the Caring Society is confident that long-term reform can be achieved. Even if there are some disagreements on certain aspects of reform, the dialogic approach has assisted the Parties in the past, as evidenced by the approach taken to the Compensation Framework Order and the Revised Final Settlement Agreement on compensation.

The Caring Society and the AFN Executive, supported by the NCCC, have a pathway for achieving long-term reform. Consultation regarding FNCFS and Jordan's Principle is essential to ensure First Nations children, youth and families benefit from a fulsome consultation process, bringing together the NCCC and First Nations, national and regional experts, the co-complaints and Canada in manner that upholds the principles of fairness and good faith negotiations and substantive equality.

The Caring Society submits that now is the time to move swiftly and effectively to implement the dialogic approach now that the research, the experts and the First Nations-in-Assembly have set the table for evidence-informed solutions for FNCFS and Jordan's Principle. First Nations and the NCCC is ready, the EAC is ready, the research is ready and so is the Caring Society. It is Canada that is the source of delay and requires encouragement from this Tribunal to make itself ready.

As the late Chair of the Truth and Reconciliation Commission, the Hon. Murray Sinclair, reminds us:

> The road we travel is equal in importance to the destination we seek. There are no shortcuts. When it comes to truth and reconciliation we are forced to go the distance.

Yours truly and respectfully submitted,



Sarah Clarke

cc: Dayna Anderson, Paul Vickery, Kevin Staska, Sarah-Dawn Norris, Sarah Bird, Jon Khan, Meg Jones, Aman Owais (Counsel for Canada)

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Justin Safayeni, Stephen Aylward, Taskeen Nawab
(Counsel for Amnesty International)

Julian Falconer, Meaghan Daniel (Counsel for Nishnawbe Aski Nation)

David Taylor, Logan Stack, Kiana Saint-Macary, Robin McLeod
(Counsel for the Caring Society)

March 19, 2025

Sent by e-mail

Right Honourable Mark Carney
Prime Minister of Canada
80 Wellington St.
Ottawa, ON K1A 0A2
E-mail: pm@pm.gc.ca

Dear Prime Minister,

I am writing on behalf of the National Children's Chiefs Commission (the Commission) to congratulate you on your victory in the Liberal Party leadership race and your appointment as Prime Minister. I want to take this opportunity to invite to you take immediate action to remedy Canada's discrimination against First Nations children before calling the next federal election.

The First Nations-in-Assembly created the Commission to lead long-term reform of First Nations child and family services (FNCFS) and Jordan's Principle. First Nations across Canada remain deeply committed to ending Canada's discrimination and are dedicated to achieving solutions that are in the best interests of First Nations children and families for generations to come.

The Canadian Human Rights Tribunal ordered Canada to immediately end its discrimination against First Nations children and families in 2016. Since then, First Nations and Canada have been working toward reform rooted in substantive equality and needs-based funding to support cultural continuity. Chiefs of Ontario, Nishnawbe Aski Nation and Canada recently announced a regional agreement to reform FNCFS. Canada now has the opportunity to work with the Commission to reach a national agreement that eliminates Canada's discrimination for all First Nations children. There are steps Canada can take to address immediate issues and create a pathway toward timely resolution of the remaining challenges:

1. Work collaboratively with the Commission and the First Nations Child & Family Caring Society (Caring Society) over the coming days to co-develop a letter of commitment that sets a framework for negotiating a national agreement—independent of the Ontario agreement—on long-term reform of FNCFS that fully eliminates the discrimination identified by the CHRT. Our previous correspondence on this matter is attached for your reference.
2. Work with the Commission and the Caring Society to co-develop urgent measures to meaningfully address the crisis in Canada's implementation of Jordan's Principle that is causing serious harms to First Nations children.

These are swift actions you can take to support First Nations children and families before the next federal election. I urge you to act now to prevent further harm to First Nations children and families and demonstrate your commitment to reconciliation.

Sincerely,



Chief Pauline Frost

Chair, National Children's Chiefs Commission

Encl. Previous correspondence re. NCCC letter of commitment

c. National Children's Chiefs Commission

Assembly of First Nations Executive Committee

First Nations Child & Family Caring Society

Interim briefing: Considerations for the sustainability of Jordan's Principle

DRAFT - For discussion only

Institute of Fiscal Studies and Democracy

March 7, 2025

This analysis was produced by IFSD. IFSD's work is undertaken through a contract with the First Nations Child and Family Caring Society (Caring Society). The views and analysis do not necessarily reflect the views of the Caring Society.

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Table of Contents

Executive Summary i

Introduction 1

Context 4

The long-term sustainability of Jordan's Principle 14

- Structure 15
- Accountability 24
- Delivery 34
- Funding 36

Conclusion 43

Appendix A 45

Appendix B 46

Appendix C 47

Appendix D 48

Appendix E 49

Appendix F 50

Executive Summary

Jordan's Principle (named for Jordan River Anderson) is meant to ensure First Nations children can access products, supports, and services for health, education, and social needs.

Jordan's Principle's current structure, funding, and accountability are concerning from a public finance perspective. Its administration and delivery are risks for its sustainability and the First Nations children it is intended to serve.

Data gathered by Indigenous Services Canada (ISC) is insufficient to demonstrate results for children or to identify gaps in related program areas. There is no way of knowing through ISC's information if Jordan's Principle is being administered and funded effectively to meet the needs of children. With undefined and insufficiently documented achievements, Jordan's Principle is vulnerable (as is any program) to adverse funding decisions.

Sustainability for Jordan's Principle means ensuring it can demonstrate results and value for First Nations children. This requires administrative clarity, appropriate funding, documented performance, and consistent delivery.

Recommendations for a path forward

1) Define and adopt an alternative structure to Jordan's Principle.
   A legal rule, Jordan's Principle is reliant on administrative decisions for its operations. It merits the same structural parameters that exist for other demand-driven programs in Canada, such as Employment Insurance and Old Age Security. There are options to structure Jordan's Principle to ensure its sustainable operation and funding linked to the needs of First Nations children. See pages 14-15 and 19-24.

2) Transition to the reformed structure.
   Once a reformed structure for Jordan's Principle is defined, adopt a two-track approach to its implementation. Track 1: adopt a new data gathering framework. Track 2: leverage the data in years 2 and 3 to inform parameters and funding for Jordan's Principle. See pages 24-28.

3) Build consensus among practitioners and the parties to clarify Jordan's Principle's policy statement and its implementation.
   There are statements, guidelines, and rules associated to Jordan's Principle through ISC's website. Lacking, however, is a clear policy statement that guides and connects the structure, delivery, accountability, and funding of Jordan's Principle. The content of a policy statement will inform the rules to govern a restructured approach to Jordan's Principle, guiding scope and parameters of activity. See pages 15-18.

4) Define and implement a performance framework.
With all the information gathered on Jordan's Principle, we still do not know why children are seeking support and what happens to them following an intervention. With these gaps, there is no way of assessing progress toward formal or substantive equality through Jordan's Principle. To be sustainable, Jordan's Principle's performance must be measurable and its results evidenced. A national strategic performance framework for Jordan's Principle is an essential component of a sustainable approach to Jordan's Principle. See pages 24-34.

5) Define and implement a national data gathering framework, aligned to the spirit and intent of Jordan's Principle.
Data on Jordan's Principle should be gathered locally, consistently, and with decency. A consistent approach to gathering child-centred data means more relevant data that can be used to measure and monitor children's needs and identify gaps in existing programs and services. See pages 28-31.

6) Stabilize funding for a 2-to-3-year transition period.
A baseline and escalators are essential for estimating the costs of Jordan's Principle. Available information is insufficient to estimate a bottom-up cost based on defined factors. IFSD proposes estimating the cost of Jordan's Principle on an interim basis until such time that data capture is improved to inform access parameters and costs. See pages 36-42.

7) Maintain the Regional Working Group.
Support the Regional Working Group (as practitioners) to continue to convene to provide input and oversight on the reform and implementation of Jordan's Principle. The contributions of the Regional Working Group are reflected throughout this report.

Introduction

The Institute of Fiscal Studies and Democracy (IFSD) is providing an interim briefing ahead of the publication of its final report (anticipated for April 2025) on Jordan's Principle.

IFSD gratefully recognizes the ongoing contributions of the Regional Working Group (technical experts and practitioners in the administration and delivery of Jordan's Principle who were asked to convene to walk alongside IFSD as it undertakes its work), as well as other contributors.

The content of this interim briefing does not necessarily reflect the views of the Caring Society (the contract holder for this project), those of the Regional Working Group, or other contributors.

> Jordan's Principle is named in honour of Jordan River Anderson who died in a Winnipeg hospital, never having been in his family home because of a jurisdictional battle between the federal and provincial governments on who would pay for his homecare.
>
> As a 'child first' principle rooted in substantive equality, Jordan's Principle requires the government of first contact to consider and evaluate the needs of each individual child, including any needs stemming from their unique cultural background, historical disadvantage, and the lack of on-reserve or nearby services.

This research was ordered by the Canadian Human Rights Tribunal (CHRT) in 2022.[1]

[1] In 2022 CHRT 8, Canada was ordered to (par. 172):

> […] fund the following research through the Institute for Fiscal Studies and Democracy ("IFSD"):
>
> […]
>
> d. upon completion of the Jordan's Principle Data Assessment, the IFSD needs assessment regarding a long-term funding approach for Jordan's Principle, including but not limited to identifying and addressing formal* equality gaps, in keeping with the Tribunal's rulings, including but not limited to 2016 CHRT 2, 2017 CHRT 35, 2020 CHRT 20 and 2020 CHRT 36 (the "Jordan's Principle Long Term Funding Approach Research").
>
> *** This order does not modify any substantive equality orders made by this Tribunal in this case.**
>
> […]

In response to the order, IFSD was mandated to propose options for the long-term sustainability of Jordan's Principle through the:

1) Development of a policy framework (e.g., approach to measuring/monitoring outcomes for children, evaluating Jordan's Principle, etc.);
2) Review of existing programs and services;
3) Definition of options and considerations for reforming the operationalization of Jordan's Principle;
4) Financial analysis and costing of the baseline and any proposed reforms.

To fulfil this mandate, IFSD has undertaken its work from a public finance perspective. This means considering the structure, funding, accountability, and delivery for a reformed and sustainable approach to Jordan's Principle. Sustainability for Jordan's Principle means ensuring it can demonstrate results and value for First Nations children. This requires administrative clarity, appropriate funding, documented performance, and consistent delivery.

During September 2024 hearings of the CHRT, panel member Edward Lustig emphasized the boundaries of the CHRT's role in pronouncing on administrative and operational matters in Jordan's Principle:

> You know where that right point is to make the system work better and to avoid the calamity of someone who's dying not getting the service. We're not going to be able to tell you where that point is. We're only going to be able to tell you: Go off and try to find it yourselves.[2]

The statement reflects the limitations of the current operation of Jordan's Principle. Its administration has been problematic due to backlogs of requests, inconsistent application of rules across regions, etc. While Jordan's Principle is supporting the needs of First Nations children, the legal rule's national administration is untethered to the goal of substantive equality or the needs of children.

Jordan's Principle's current structure, funding, and accountability are concerning from a public finance perspective. Its administration and delivery are risks for its sustainability and the First Nations children it is intended to serve.

Data gathered by ISC is insufficient to demonstrate results for children or to identify gaps in related program areas. There is no way of knowing through ISC's information if Jordan's Principle is being administered and funded effectively to meet the needs of children. With undefined and insufficiently documented achievements, Jordan's Principle is vulnerable (as is any program) to adverse funding decisions.

[2] "Tribunal urges First Nations, feds to 'leave their conflicts aside' on Jordan's Principle issues," *CBC*, last updated September 2024, https://www.cbc.ca/news/indigenous/jordans-principle-hearing-tribunal-1.7321710.

As a legal rule, Jordan's Principle's operation is contingent on decisions by government. An administrative change can increase, decrease, or restrict access to Jordan's Principle. To manage the impact of these potential changes, the structure, funding, accountability, and delivery of Jordan's Principle should be linked with rules, incentives, and practices all aligned to its spirit and intent.

This interim briefing proceeds with a framework for the reform of Jordan's Principle with options for changes to structure, accountability, delivery, and funding.

IFSD makes the following observations:

1) **Structure:** A revised structure (law, rules, operating parameters) is required for Jordan's Principle. The structure should clarify its policy authority and connect to an accountability framework.
2) **Accountability:** A national strategic performance framework is required to ensure Jordan's Principle is meeting the needs of First Nations children. This should be undertaken by monitoring outcomes for children, as well as outcomes and funding for related program activity areas, e.g., as defined in the Spirit Bear Plan or similar approach.
3) **Delivery:** A relevant and consistent data gathering framework at intake is required to link requests to Jordan's Principle with the unique contexts of children, the root causes of their needs, and the limitations of existing services or programs. Such information is imperative for a sustainable and informed approach to Jordan's Principle: to understand how it interacts with other program areas and to quantify gaps.
4) **Funding:** A baseline should be defined for funding allocations with appropriate escalators; until such time that relevant data is gathered to redefine a baseline linked to the needs of First Nations children.

Context

Jordan's Principle is meant to "[resolve] jurisdictional disputes that impeded First Nations children from accessing government services," to "[respond] to the unmet needs of First Nation children," and to "[support] families in accessing products, services and supports for First Nations children and youth to help with a wide range of health, social and educational needs."[3]

In responding to these needs, Jordan's Principle is to ensure substantive equality[4] for First Nations children. In May 2017, the CHRT ruled that, under Jordan's Principle, the Government of Canada should provide services that "ensure substantive equality in the provision of services to the child, …ensure culturally appropriate services to the child and/or…safeguard the best interests of the child."[5] According to ISC, "Jordan's Principle is intended to make sure that First Nations children have substantively equal access to government services, taking into account their distinct circumstances, experiences, and needs as First Nations children."[6]

ISC's data gathering on Jordan's Principle does not align to the capture of jurisdictional disputes or substantive equality.

The national database for Jordan's Principle, "GCcase," is maintained by ISC. The existing system was introduced in 2019, with data from previous fiscal years included based on availability. As part of its work, IFSD requested GCcase data to analyze trends in requests to Jordan's Principle. Based on its past report[7], IFSD understood the limitations of the dataset in assessing substantive equality, as well as the resolution of jurisdictional or other service gaps for First Nations children. GCcase, however, is the

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[3] GC InfoBase, "Infographic for Jordan's Principle and the Inuit Child First Initiative," *Government of Canada*, accessed February 19, 2025, https://www.tbs-sct.canada.ca/ems-sgd/edb-bdd/index-eng.html#infographic/program/INDSC-BYP06/intro/.

[4] Multiple definitions of substantive equality exist. In essence, substantive equality requires consideration of differentiated circumstances to achieve equality. On its Jordan's Principle website, ISC defines substantive equality: "Substantive equality is a legal principle that refers to the achievement of true equality in outcomes. It is achieved through equal access, equal opportunity and, most importantly, the provision of services and benefits in a manner and according to standards that meet any unique needs and circumstances, such as cultural, social, economic and historical disadvantage. […]" Indigenous Services Canada, "Jordan's Principle: Substantive equality principles," last updated November 21, 2019, https://www.sac-isc.gc.ca/eng/1583698429175/1583698455266#chp2. For a discussion of substantive equality in reference to Jordan's Principle, see also, Institute of Fiscal Studies and Democracy (IFSD), "Data assessment and framing of an analysis of substantive equality through the application of Jordan's Principle," September 2022, https://ifsd.ca/wp-content/uploads/2024/06/ifsd-report-2022-09-data-assessment-and-framing-analysis-of-substantive-equality-through-the-application-of-jordans-principle.pdf.

[5] Canadian Human Rights Tribunal, *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, par. 134 (iv), https://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/232587/index.do

[6] Indigenous Services Canada, "Jordan's Principle," *Government of Canada*, last updated March 3, 2025, https://www.sac-isc.gc.ca/eng/1568396042341/1568396159824.

[7] Institute of Fiscal Studies and Democracy (IFSD), "Data assessment and framing of an analysis of substantive equality through the application of Jordan's Principle," September 2022, https://ifsd.ca/wp-content/uploads/2024/06/ifsd-report-2022-09-data-assessment-and-framing-analysis-of-substantive-equality-through-the-application-of-jordans-principle.pdf.

only available source of request data on Jordan's Principle and is used to assess trends (with noted limitations).

> On April 20, 2023, IFSD submitted a letter requesting Jordan's Principle data from GCcase. On January 9, 2024 (9 months after the initial request was submitted), IFSD received the data from ISC. This caused delays to overall project timelines. Throughout the analysis process, IFSD submitted questions to ISC and benefitted from the perspective of the GCcase technical team. While technical questions were answered by the team, other questions directed to the non-technical team, e.g., related to expenditures, operational practices, etc., received insufficient responses or remain outstanding.[8]

The subset of GCcase data obtained by IFSD does not contain all available information but several variables, some of which are aggregated to protect privacy. For instance, in the data provided to IFSD, there is no information on the context of the child making a request to Jordan's Principle, such as geographic location. Other variables such as the age of the child and the cost (requested and approved or denied) are presented as ranges, i.e., no specific values are provided. This means analysis of GCcase data is limited to describing requests and associated characteristics.

GCcase data records requests that individuals and groups made for funding from Jordan's Principle. Each request refers to one, single item that an individual or a group is requesting. One child can be associated to multiple requests and one request can be associated to multiple children.

There are four different lenses IFSD uses when analyzing GCcase data:

1) Number of children
2) Number of requests
3) Products, Services, and Supports (PSS)
4) Row count

[8] As a recent example, in January 2025, IFSD requested Jordan's Principle expenditures by region from ISC. ISC responded, indicating they did not have the resources to provide such granular information to IFSD. However, in a January 10, 2025, letter to the CHRT, ISC provided regional breakdowns of expenditures (for contribution approaches) for Jordan's Principle. IFSD again followed-up with ISC given the similarities of its request and the published data, and no response was provided.

Table 1

Measure	Description	Considerations
Number of requests	• The items people request from Jordan's Principle. • This approach counts each item once even if it is associated with multiple children.	• No count of individual children. • Limited alignment to administrative practice, i.e., clusters instances of requests.
Number of children	• The children associated to requests, when defined. • This approach counts each child once even if they are associated with multiple requests.	• Not defined for all group requests.
Products, Services, and Supports (PSS)	• Estimated number of instances of children requesting support through Jordan's Principle.	• Risks overestimating the impact/reach of Jordan's Principle (by using an estimated number of children who benefit from a group request without actual numbers).
Row count	• Defined number of instances of children requesting support through Jordan's Principle.	• Risks underestimating the impact/reach of Jordan's Principle (by assuming only one child benefits from group requests that do not define the number of associated children).

GCcase data includes only requests with a decision. This means unopened requests or those in a backlog are not included in the dataset. The data to which IFSD has access is for the period 2017-18 to 2022-23 with different variables and varying completeness across fiscal years. Variables are increasingly consistent, complete, and broader in scope from fiscal year 2020-21 onwards. However, given the dataset to which IFSD has access terminates in fiscal year 2022-23, the impact of guidelines and decisions after that date, as well as the inclusion of unopened/backlogged requests may impact the trends observed.

ISC has made several changes to the operation of Jordan's Principle. For instance, on February 10, 2025, ISC announced a series of new measures regarding the implementation of Jordan's Principle.

Going forward, all requests must show "how the requested product, service or support meets the distinct needs of the First Nation child" and that the child either "experienced gaps or delays in accessing government services" or "was denied an existing government service because of their identity as a First Nations child."[9]

[9] Indigenous Services Canada, "Jordan's Principle Operational Bulletin," *Government of Canada*, last updated February 10, 2025, https://www.canada.ca/en/indigenous-services-canada/news/2025/02/statement-by-minister-hajdu-on-the-changes-to-operating-procedures-related-to-processing-requests-under-jordans-principle.html.

In addition, these new measures:

- Restrict certain types of requests unless necessary for substantive equality.
    - This includes certain "school-related requests." ISC specified they will now re-direct requests from off-reserve school boards and private schools to other federal or provincial programs.
- Require requesters to provide a professional letter of support to demonstrate need.
- Introduce additional requirements for group requests (e.g., all group requests must list each child associated with the request with supporting documentation from a professional).[10]

The limitations of GCcase mean that the data cannot assess substantive equality or whether needs from jurisdictional or other service gaps are met.

The gaps in information from GCcase include:

- No information on *why* a child is seeking support from Jordan's Principle. The root cause of the request, e.g., insufficient funds, refusal from existing federal program, lack of service availability, etc., is not defined. This information is necessary for assessing substantive equality and service gaps.
- No information on the child's context. Such information would include considerations on geography, e.g., road access, states of emergency, service availability, etc.
- No data on outcomes for children who received support through Jordan's Principle, i.e., how the child is doing post intervention.

Summative observations of GCcase data (for available data up to fiscal year 2022-23):

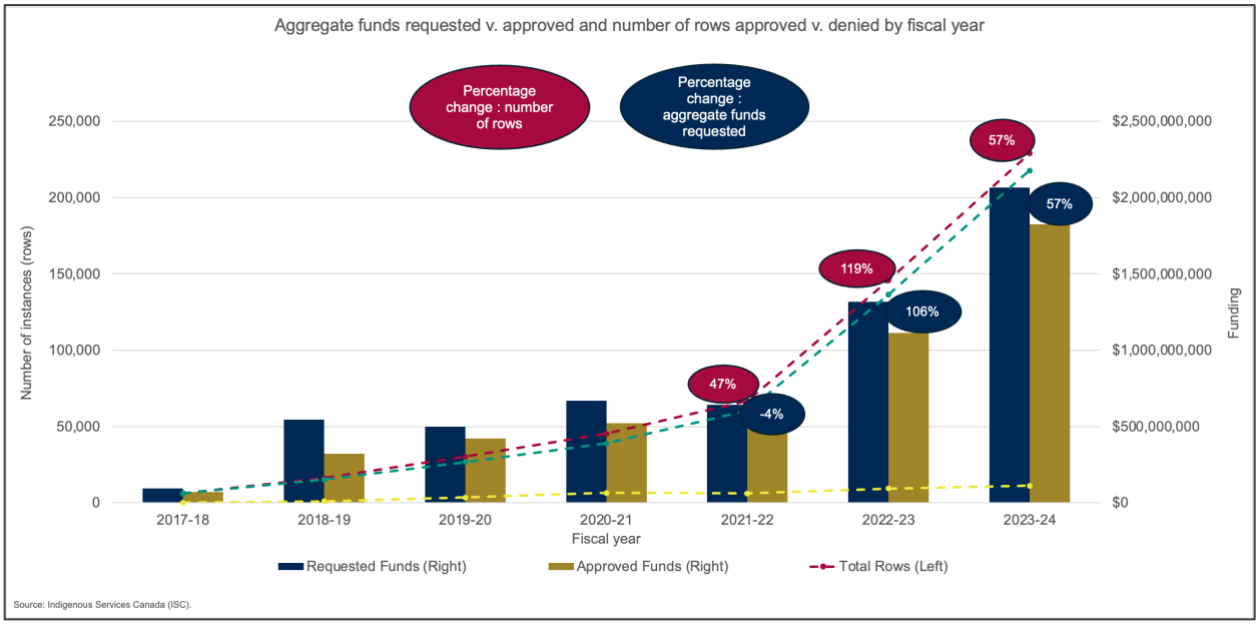
1) Instances of requests (i.e., row count) to Jordan's Principle have increased across fiscal years, most significantly from 2021-22 to 2022-23 (a 119% percentage increase). Expenditures have also increased across fiscal years.
2) Most requests across fiscal years are approved.
3) Most requests are for individuals.
4) Most requests are for amounts less than $5,000. However, most group requests are for amounts greater than $5,000.
5) Little is known about the number of children associated to group requests.
6) From 2018-19 to 2021-22, most individual requests were for children residing on-reserve. The trend changed in 2022-23, with most requests for children residing off-reserve.
7) In fiscal year 2022-23, on-reserve, requests were associated mainly to medical travel, education, and economic supports. Off-reserve, requests were associated to economic supports and education.
8) Since 2020-21, Manitoba and Ontario have the largest shares of requests.

[10] Indigenous Services Canada, "Jordan's Principle Operational Bulletin."

For additional GCcase and analysis of aggregate expenditures on Jordan's Principle, see IFSD's project updates.

Expenditures (requested and approved) and instances of requests (approved and denied) have increased across fiscal years, and most significantly from fiscal year 2021-22. In fiscal year 2023-24, Jordan's Principle expenditures reached approximately $1.8B (Figure 1).

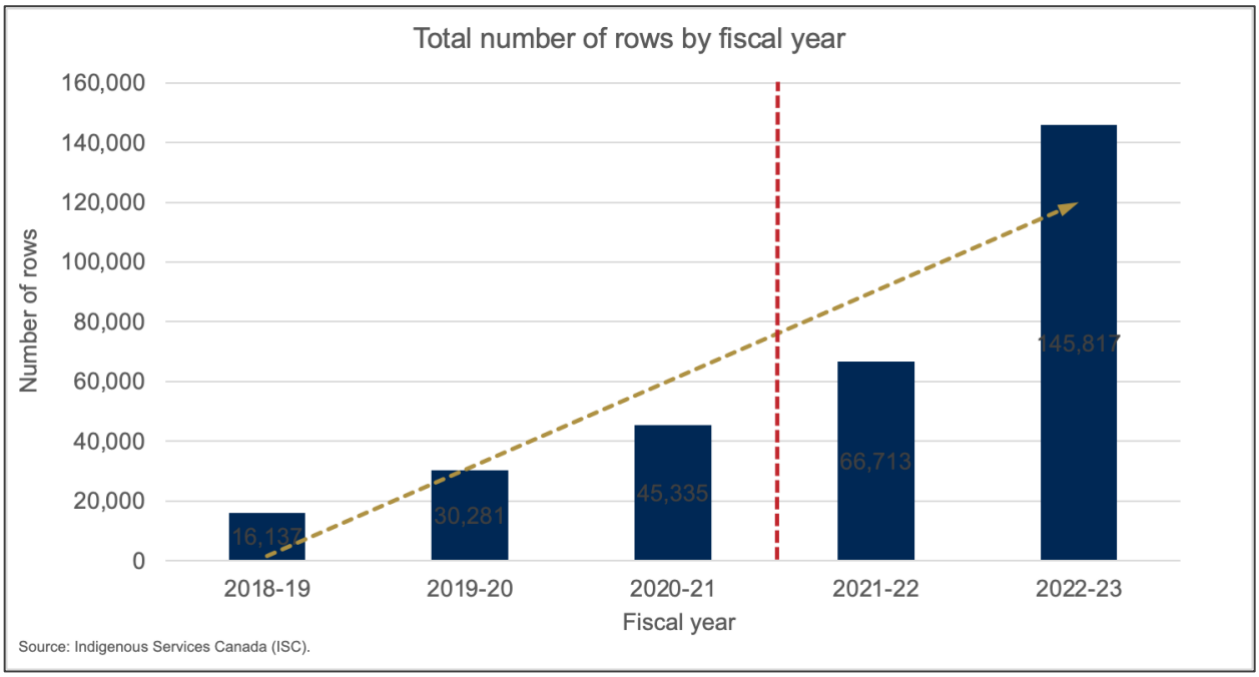
Figure 1



There was a significant growth in requests between FY 2021-22 and 2022-23 (119% percentage increase) (Figure 2). Back to Basics[11] was introduced in 2022. IFSD cannot verify if/how the implementation of Back to Basics in 2022 impacted the increase in number of requests. The data is untethered to ISC's administration, i.e., rules, evaluation, and public understanding of Jordan's Principle.

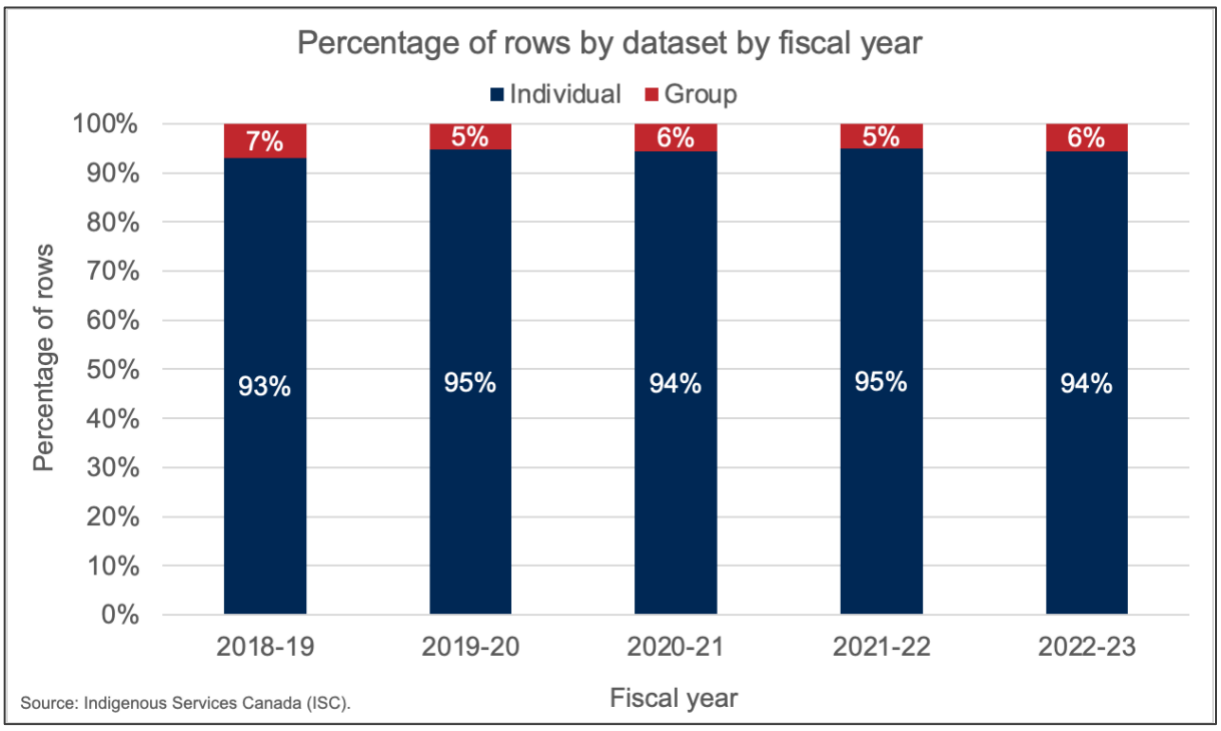
[11] Back to Basics is an approach evaluating requests to Jordan's Principle implemented by ISC in 2022. According to ISC, Back to Basics "placed the focus on ensuring First Nations and Inuit families have simple and timely access to the services and supports aimed at improving the well-being and healthy development of their children" (Indigenous Services Canada, "Departmental Results Report 2022-23," *Government of Canada*, 2023, https://publications.gc.ca/collections/collection_2023/sac-isc/R1-110-2023-eng.pdf, p. 19), and ensures Jordan's Principle is implemented in a manner that is non-discriminatory, centers the needs and best interests of the child, is simple to access, timely, and minimizes the administrative burden on families." (Indigenous Services Canada, "2023-24 United Nations 2030 Agenda and the Sustainable Development Goals," *Government of Canada*, last updated March 9, 2023, https://www.isc.gc.ca/eng/1666291904593/1666291923094).

Figure 2



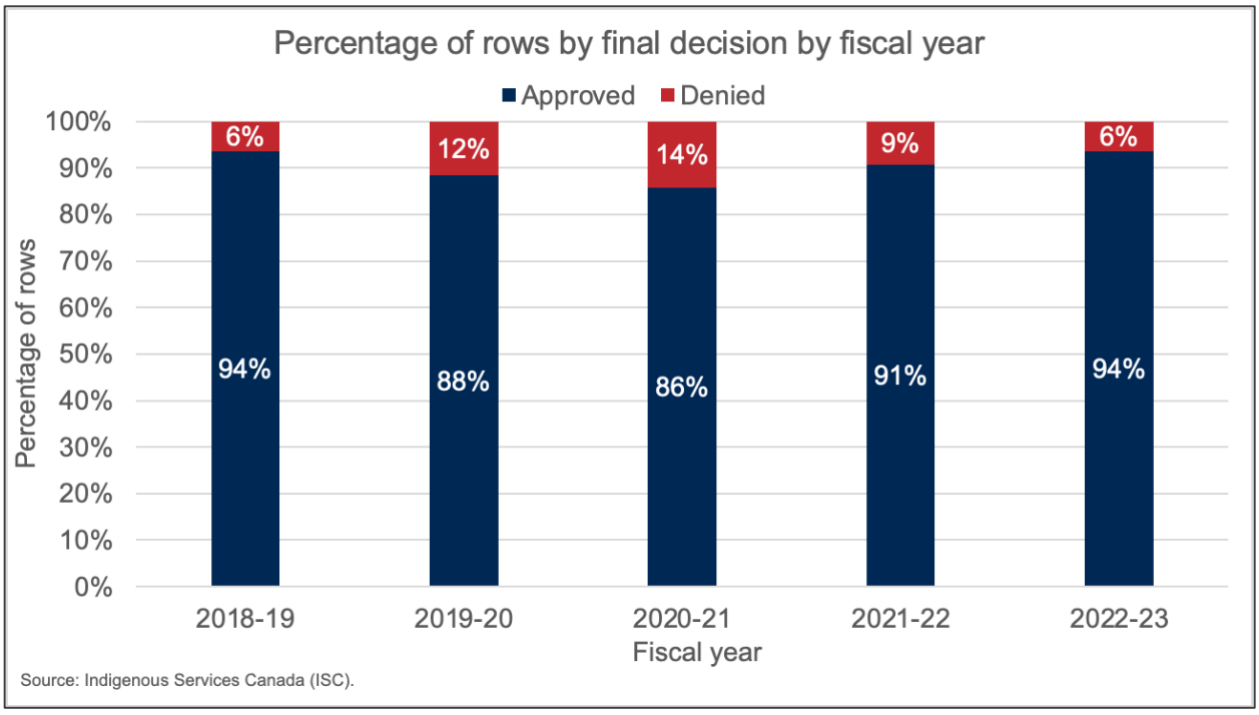
The majority (over 90%) of instances of requests are for individuals across fiscal years (Figure 3).

Figure 3



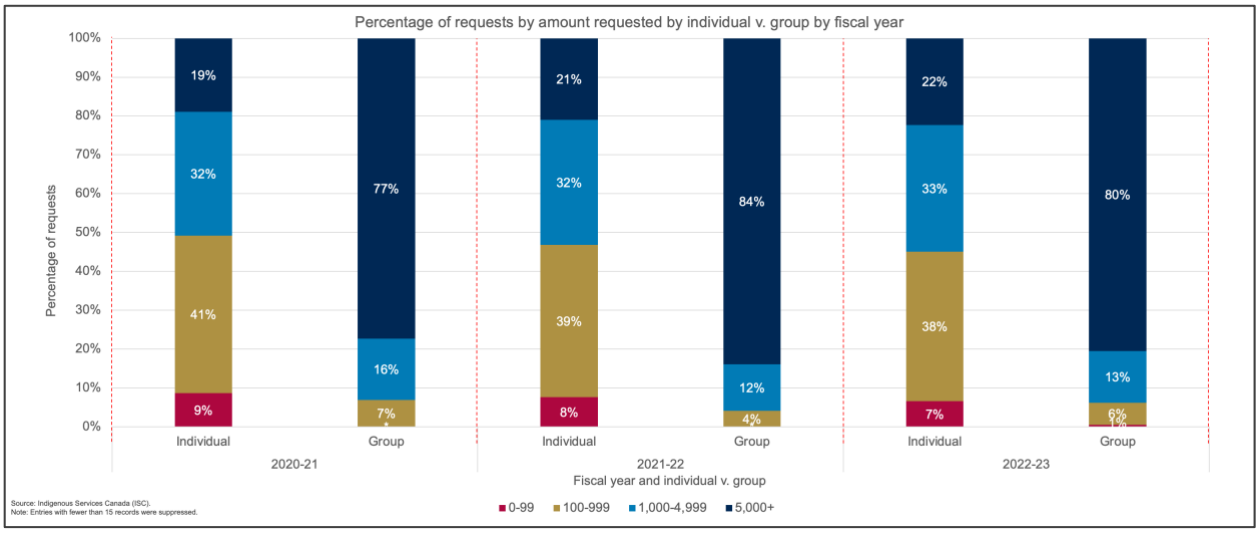
Across fiscal years, most instances of requests are approved (Figure 4).

Figure 4



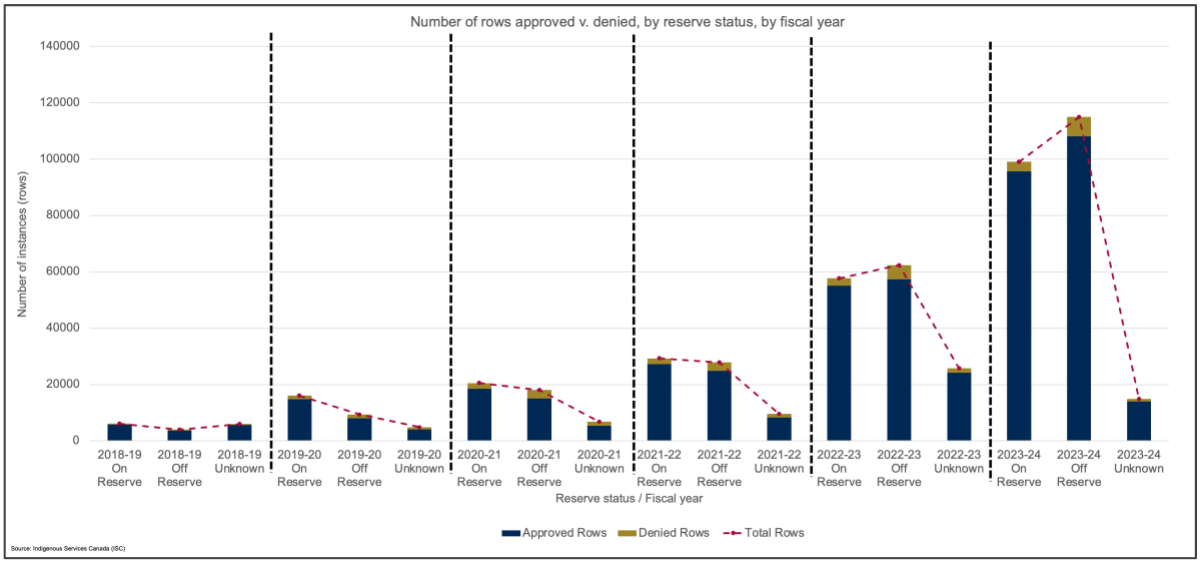
The largest shares of all requests are for amounts below $5,000. However, group requests across fiscal years are mostly for amounts above $5,000 (Figure 5).

Figure 5



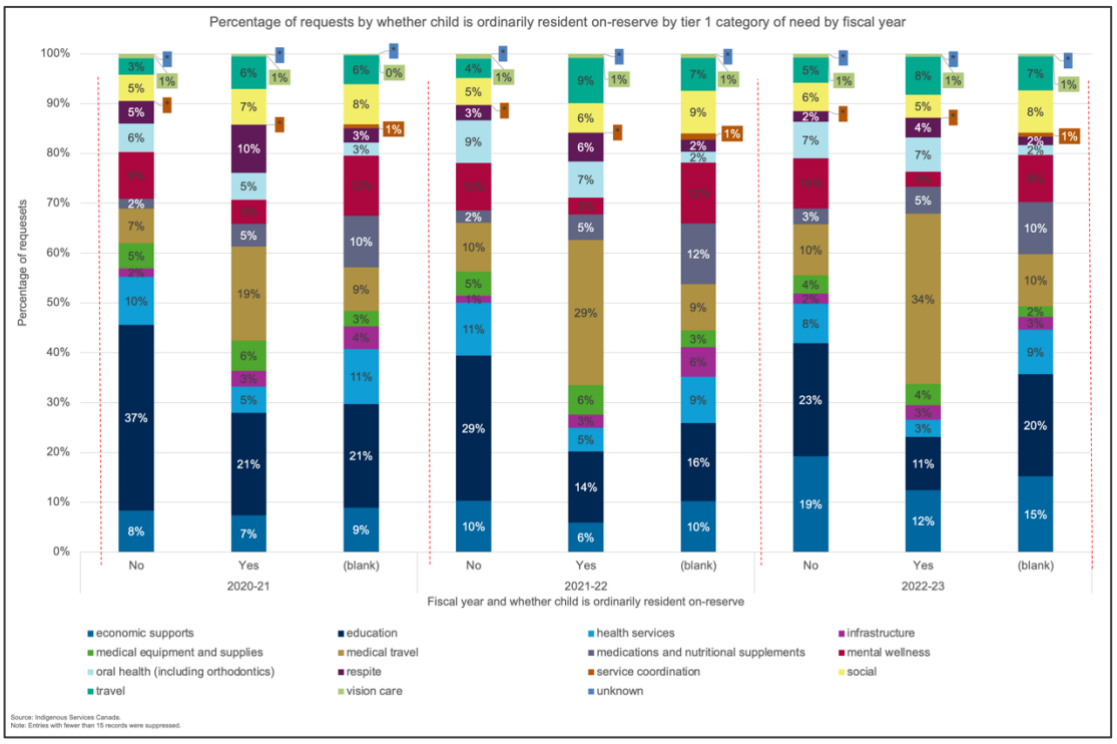
From 2018-19 and 2021-22, the total instances of requests were greater on-reserve than off-reserve. The trend shifted in 2022-23, in which total instances of off-reserve requests were greater (Figure 6).

Figure 6



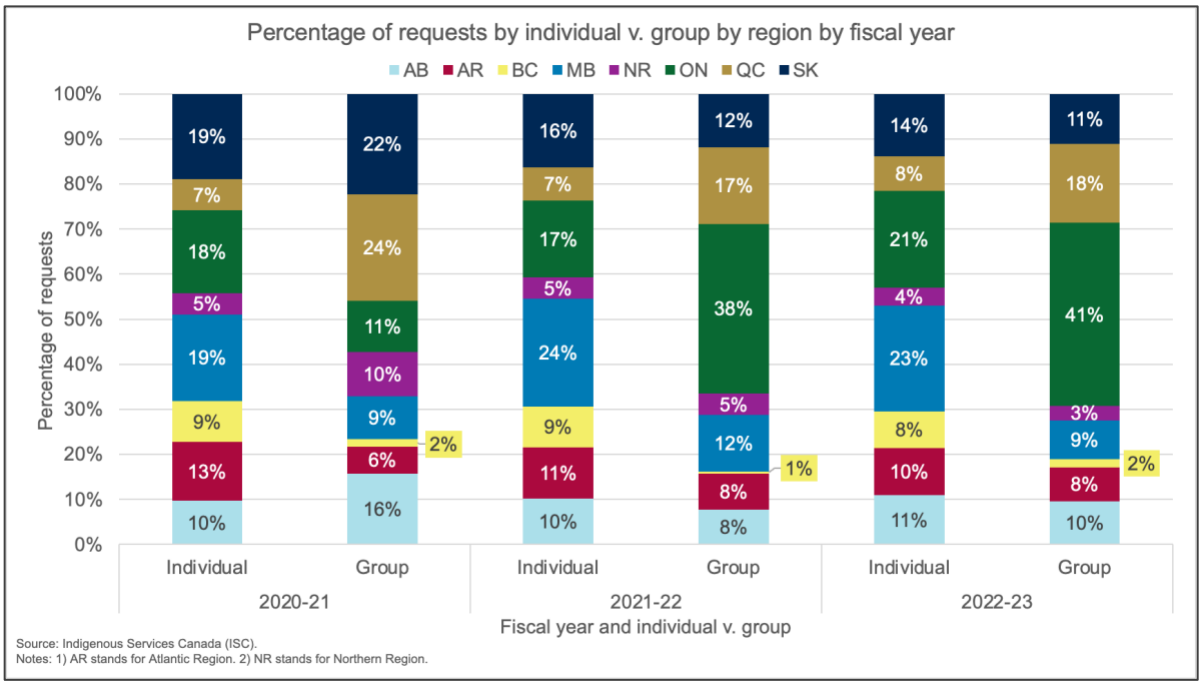
In fiscal year 2022-23, most requests on-reserve were related to medical travel. Off-reserve, requests were associated to education and economic supports (Figure 7).

Figure 7



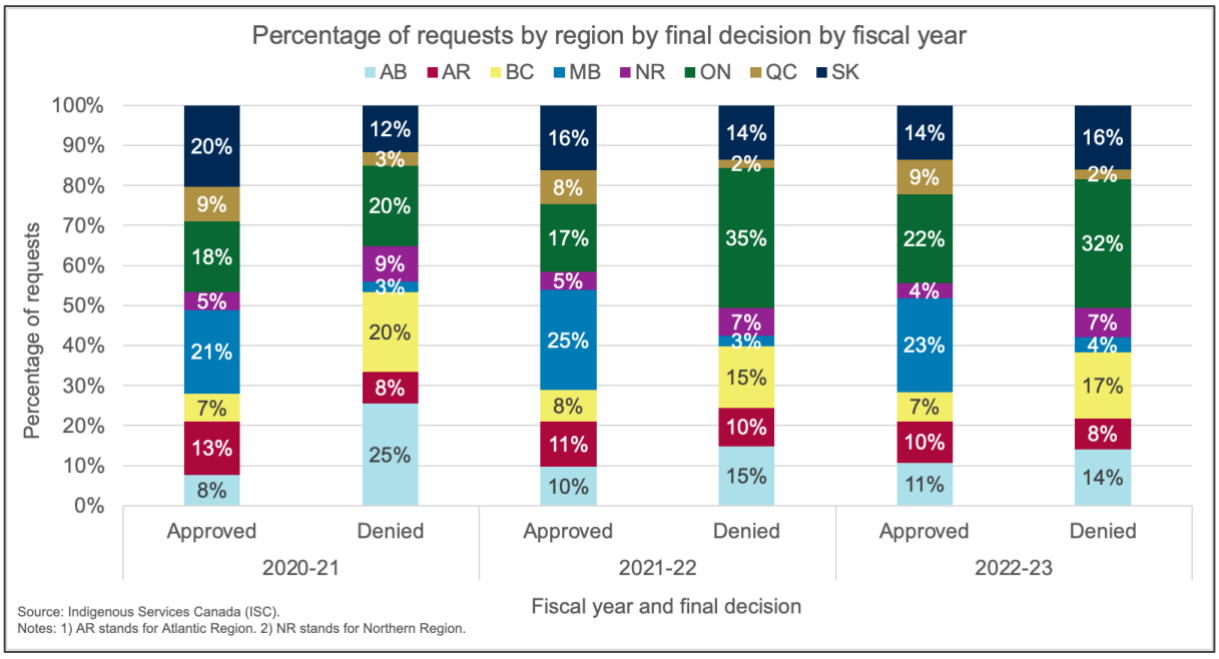
The largest shares of requests in fiscal years 2021-22 and 2022-23 are from Ontario and Manitoba (Figure 8). In fiscal year 2022-23, Ontario had the largest share of group requests and Manitoba the largest share of individual requests.

Figure 8



The largest shares of approved requests are from Manitoba and Ontario in fiscal year 2022-23. Ontario had the largest share of denied requests in fiscal year 2022-23.

Figure 9



The increased volume of requests and increased expenditures through Jordan's Principle are indicative of demand. The issue is that demand is not captured in relation to the goals of Jordan's Principle. The volume of data cannot compensate for a lack of understanding of needs addressed through Jordan's Principle or results for the well-being of children. Jordan's Principle needs to be realigned to ensure its structure, accountability, delivery, and funding are linked.

The long-term sustainability of Jordan's Principle

An established legal principle, Jordan's Principle is **a call to action** to do better for First Nations children.

Jordan's Principle is intended to support access to services in health, social well-being, and education for First Nations children, in their contexts. This is a legal principle that rests atop existing programs to improve them. To transform existing programs and services, the gaps that Jordan's Principle exposes in them must be closed.

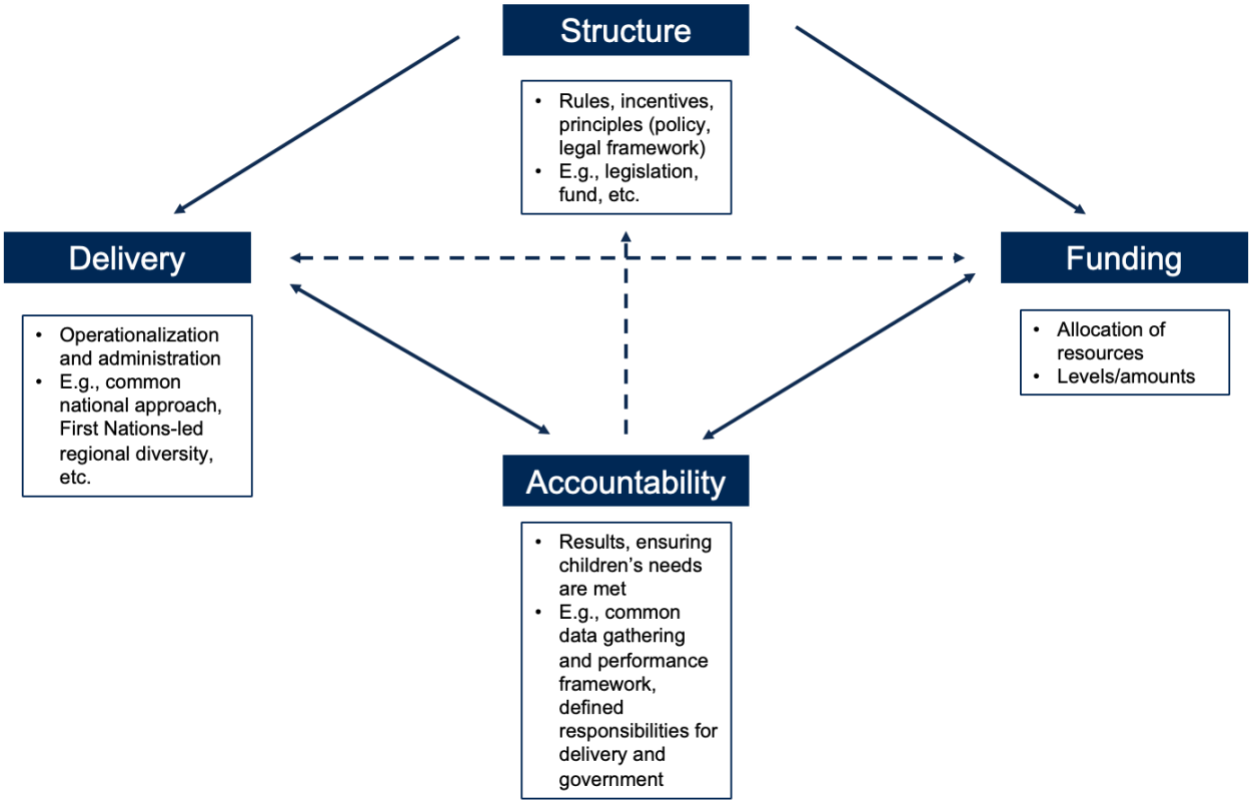
The approach to Jordan's Principle must link ***structure, accountability, delivery and funding*** (Figure 10).

The structure will influence approaches to delivery and funding requirements. Accountability will be impacted by approaches to delivery, funding amounts, and funding recipients. Over time, structure should be adjusted based on results generated for children (accountability).

While a focus on outcomes is paramount, it will also be necessary to establish ***parameters***, i.e., standards for implementation, associated to Jordan's Principle to define eligibility and areas of intervention. Such parameters may include: *individual and group access to Jordan's Principle, wherever a First Nation child lives in Canada, for health, social well-being, and education-related supports, products, and services. In addition, operational parameters should be considered:*

1) Segment individual and group requests. They are addressing two different types of needs and should be evaluated and approved (or denied) separately. This means different funding streams and evaluation criteria.
2) Urgent requests could be differentiated between life threatening and life altering requests to improve evaluation speed. A service coordinator or designated person at intake could be accountable for defining the nature of urgency in concert with relevant letter of support (see Appendix A).

Figure 10



Jordan's Principle can be reconceptualized to build a solution for First Nations children by identifying and addressing root causes of need rather than indefinitely addressing gaps. Over time, Jordan's Principle should help to close gaps permanently by identifying areas of constant need (ideally, so that fewer and fewer interventions are required because circumstances around the child improve).

Structure

Defining a structure for Jordan's Principle means clarifying the rules and policy that govern its implementation, funding, and performance. A legal rule, Jordan's Principle lacks an established structure to guide its implementation. Its operation is reliant on administrative decisions, leaving Jordan's Principle vulnerable to those decisions.

In standard federal activity areas, there are three guiding components:

- Policy statement (*what is being addressed)*: purpose/intent of the activity.
- Structure (*how it will be addressed)*: legal, regulatory, and funding frameworks.
- Performance (*with what result)*: assessment of the activity.

These components are connected. A policy statement, the problem to solve or issue to be addressed guides the structure (which informs delivery and finding) and performance

to monitor for change and define when the goal has been achieved. The guiding components are useful markers for the enactment of a federal program or rule like Jordan's Principle.

Table 2

What is the problem Jordan's Principle is trying to solve?	Inequity in the provision of social, education, and health services to First Nations children flowing from jurisdictional issues specific to First Nations children and discrimination in the construction, implementation and function of health, education, and social services provided to First Nations children.
What is the purpose of Jordan's Principle?	To ensure access to health, education, and social services for First Nations children, guided by substantive equality, or, to ensure substantive equality for First Nations children by providing access to health, education, and social services, including services beyond the "normative standard of care."
How was the purpose of Jordan's Principle intended to be achieved?	Initially, Jordan's Principle was intended to apply a "child-first" principle in the presence of a jurisdictional dispute that would otherwise delay or deny service delivery to a First Nations child—thereby circumventing the dispute in favour of service delivery. However, guided by reference to substantive equality, the ambit of Jordan's Principle has expanded to attempt to negate all barriers to equity with respect to health and social services for First Nations children, and/or to ensure equity in the provision of those services.
What results has Jordan's Principle generated?	Indeterminate for ISC. First Nations children and families are benefitting from Jordan's Principle. However, there is presently not enough publicly available information to determine results of Jordan's Principle in any meaningful way. The information ISC provides on the results of Jordan's Principle relate to outputs and are not true results. Without consideration of a child's context or starting point and the impacts on the child post-intervention, it is presently impossible to qualify what results Jordan's Principle is generating with respect to substantive equality.
Are there gaps in existing policy and legal frameworks to achieve the intended purpose?	Yes. As a legal principle, Jordan's Principle is implemented through administrative decisions. It is not a law nor is it a program. It is a legal principle that a government decided to implement. The administrative approach to Jordan's Principle could be changed by another government by increasing, decreasing, or constraining access to Jordan's Principle.

Jordan's Principle's policy has largely been defined by orders from the CHRT. The orders were interpreted by ISC and its predecessor departments to operationalize Jordan's Principle. There are statements, guidelines, and rules associated to Jordan's Principle through ISC's website. Lacking, however, is a clear policy statement that guides and connects the structure, delivery, accountability, and funding of Jordan's Principle (Table 2).

A clear policy statement defines the purpose of the action. Consider the policy statement on equalization from the Constitution Act 1982:

> Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have

> sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.[12]

From this statement, a statute was enacted, a program established, and funding flowed through transfers with a mandatory five-year review of terms.

From ISC's website[13] there are various administrative rules for access and procedural guidelines on requests. These elements do not constitute a policy statement. The closest statement to policy is the discussion of ISC's obligations through Jordan's Principle on substantive equality:

> Pursuant to the CHRT May 26, 2017 decision as amended, the Government of Canada is to ensure substantive equality in the provision of services to the child, to ensure culturally appropriate services and to safeguard the best interests of the child.
>
> This requires Canada to provide all First Nations children, on and off reserve, and Indigenous children ordinarily living on reserve, with publicly funded benefits, supports, programs, goods and services in a manner and according to a standard that meets their particular needs and circumstances, on a substantively equal basis with non-First Nations children.[14]

It may be assumed that this is the policy statement associated to Jordan's Principle, although it is unclear from ISC's website. The content of this policy, if it were enacted, would require linkages to a performance framework to assess achievement of substantive equality. No such framework exists. Further, there is no definition of what constitutes access to services that are substantively equal with non-First Nations children.

A policy statement must be defined for Jordan's Principle to guide structure and performance. To offer a starting point for deliberations on a performance framework with the Regional Working Group, IFSD prepared a policy statement for consideration:

> *Jordan's Principle (named in honour of Jordan River Anderson) is a source of emergency resources to address the needs of First Nations children (no matter where they live in Canada) that are unmet by existing programs. The program areas include the necessities of life, e.g., housing, water, food, etc., health, e.g., physical, mental health, and allied services, and education, e.g., tools, specialized supports, etc.*

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[12] Canada, *The Constitution Act 1982,* subsection 36(2).
[13] Indigenous Services Canada, "Jordan's Principle," last updated December 16, 2024, https://www.sac-isc.gc.ca/eng/1568396042341/1568396159824
[14] Indigenous Services Canada, "Jordan's Principle: Substantive equality principles," last updated November 21, 2019, https://www.sac-isc.gc.ca/eng/1583698429175/1583698455266

Requests to Jordan's Principle will be assessed to ensure formal equality or substantive equality, by fostering equality in starting points between First Nation and non-First Nation children. The best-interests of the child and a culturally informed approach will be considered.

The Regional Working Group disagreed with IFSD's statement and the premise of a discussion of a policy statement. A policy statement was for leadership to decide. Instead, the Regional Working Group offered guiding statements and considerations on the spirit and intent of Jordan's Principle:

1) Addressing the **root causes of need and gaps in existing programs and services**, especially in housing, health, and social services.
2) **Recognizing and understanding requests in their contexts** to achieve substantive equality because different places have different needs.
3) Accessing services, supports, and products **wherever and whenever needed**.
4) **Differentiating** between the ***needs* of children and the *wants* of parents**.
5) **Empowering families** to end cycles of dependency.
6) **Training and development for First Nations by First Nations** to empower First Nations in their communities to support the delivery of Jordan's Principle, leveraging local knowledge.

When considering the common elements of the Regional Working Group's recommendations and statements, the following summary statement is proposed:

Jordan's Principle is a sacred gift from Jordan River Anderson to ensure First Nations children have the supports, services, and products whenever they need them wherever they need them.

Jordan's Principle ensures that the root causes of need and gaps in existing programs and services are addressed (until they can be permanently repaired).

Children and youth live in different places. The pursuit of substantive equality requires that their unique contexts be recognized in the delivery of and access to services, supports, and products through Jordan's Principle.

To sustainably deliver Jordan's Principle in the cultural and linguistic contexts of First Nations, local talent will be essential. Training by First Nations for First Nations to develop local talent will be imperative to the success and sustainability of Jordan's Principle.

The content will inform the rules to govern a restructured approach to Jordan's Principle, guiding scope and parameters of activity.

Major federal programs that are demand-driven (as is Jordan's Principle), have clear policy, legal, and funding frameworks (Table 3). These elements are often defined in statute, with statutory funding.[15] The structure of these major programs provide clarity on access and eligibility, as well as parameters to establish funding requirements and forecasts of expenditures on Employment Insurance (EI)[16] and Old Age Security (OAS)[17].

Table 3

Policies	Problem to solve/policy statement	Funding approach	Examples of driving factors that influence funding
Jordan's Principle	"[…] a child-first principle aimed at resolving jurisdictional disputes that impeded First Nations children from accessing government services. […] a legal obligation […], that responds to the unmet needs of First Nation children, regardless of where they live in Canada. The demand-driven initiative supports families in accessing products, services and supports for First Nation children and youth to help with a wide range of health, social and educational needs."[18]	The Government of Canada evaluates requests and covers the cost of approved products, services, and supports. There is no defined baseline or factors to estimate demand.	Unclear (e.g., how are unmet needs quantified?)
Old Age Security (OAS)	"[T]o ensure a minimum income for seniors and contribute to their income	Each OAS program (4 in total) has an annual net income threshold to receive benefit payments and maximum monthly benefit payments.	Population over age 65, resident in Canada Life expectancy Income level

[15] Government of Canada, "2024-25 Estimates," last modified June 12, 2024, https://www.canada.ca/en/treasury-board-secretariat/services/planned-government-spending/government-expenditure-plan-main-estimates/2024-25-estimates.html.
[16] Office of the Superintendent of Financial Institutions and Office of the Chief Actuary, "2025 Actuarial report on the Employment Insurance Premium Rate," *Government of Canada*, September 13, 2024, https://www.osfi-bsif.gc.ca/en/oca/actuarial-reports/2025-actuarial-report-employment-insurance-premium-rate.
[17] Office of the Chief Actuary, "Actuarial Report (18th) on the Old Age Security Program as at 31 December 2021," *Government of Canada*, November 3, 2023, https://www.osfi-bsif.gc.ca/en/oca/actuarial-reports/actuarial-report-18th-old-age-security-program-31-december-2021.
[18] GC InfoBase, "Infographic for Jordan's Principle and the Inuit Child First Initiative," *Government of Canada*, accessed February 19, 2025, https://www.tbs-sct.canada.ca/ems-sgd/edb-bdd/index-eng.html#infographic/program/INDSC-BYP06/intro/.

	replacement in retirement."[19]	Benefit payments are accessed based on criteria, e.g., age, income, etc.[20]	Inflation
Employment Insurance (EI)	To "provide eligible workers with temporary support to partially replace lost employment income."[21]	EI benefits are 55% of average insurable weekly earnings[22] to a maximum of $65,700 annually ($695 weekly). There are various rules that govern duration of the EI benefit. This is impacted by components such as earnings, seasonality of work, regional unemployment rate, etc.[23]	Population over age 15 Labour market data by region, e.g., participation, unemployment, self-employment, duration, etc. Earnings and benefits

From a public finance perspective, Jordan's Principle merits the same structural parameters that exist for EI and OAS to ensure its longevity. With Jordan's Principle, increased expenditure and broadened access were presumed to address needs for First Nations children. The failing of the approach is that it leaves Jordan's Principle vulnerable to administrative decisions. Rules/structure and funding linked to relevant data (as in the cases of EI, OAS and other important programs), protects the long-term sustainability of Jordan's Principle to ensure it can meet the needs of First Nations children.

There are options[24] for the structure of Jordan's Principle (Table 4) that can support differentiated delivery mechanisms. The options can be combined to produce various structures. For instance, the ombud and boards of the administrative decision-making

[19] GC InfoBase, "Infographic for Old Age Security," *Government of Canada*, accessed February 14, 2025, https://www.tbs-sct.canada.ca/ems-sgd/edb-bdd/index-eng.html#infographic/program/HRSD-BGN01/intro.
[20] Employment and Social Development Canada, "Old Age Security payment amounts," *Government of Canada*, October 1, 2024, https://www.canada.ca/en/services/benefits/publicpensions/cpp/old-age-security/payments.html.
[21] GC InfoBase, "Infographic for Employment Insurance," *Government of Canada*, accessed February 14, 2025, https://www.tbs-sct.canada.ca/ems-sgd/edb-bdd/index-eng.html#infographic/program/HRSD-BGO01/intro.
[22] Canada Revenue Agency determines what constitutes insurable earnings. These include "most of the different types of compensation from employment, such as wages, tips, bonuses and commissions."
[23] Government of Canada, "EI regular benefits: How much you could receive," last modified December 31, 2024, https://www.canada.ca/en/services/benefits/ei/ei-regular-benefit/benefit-amount.html.
[24] The options presented below should be read through the lens of First Nations governance. Pursuant to Assembly of First Nations (AFN) Resolution 60/2024, First Nations-in-Assembly will review and provide direction on negotiations and decisions for the reform of Jordan's Principle to the AFN Executive Committee and the Children's Chiefs Commission. Such direction should include representation and appointment processes for First Nations-led boards included in several options. IFSD assumes that First Nations-in-Assembly (or First Nations' chosen approach for guidance) will provide direction on the course forward for Jordan's Principle. The spirit, intent, and principles of a reformed approach should be captured in a formal agreement or in legislation (co-developed with First Nations) to underscore their significance.

model can be included in the special operating agency. Each option has political considerations and vulnerabilities. Regardless of the approach chosen, the principles of accountability, funding sustainability, and transparency will be paramount to ensuring the well-being of children. The status quo is thus the least desirable option relative to these principles.

Table 4

Structure (options)	Impacts			
	Delivery	**Funding**	**Accountability**	**Political considerations and vulnerabilities**
Legislation: • Law to define how Jordan's Principle should be administered, including parameters for access and service delivery	• Various modalities, e.g., First Nation-led, direct to ISC, etc.	• Funding may be included as a formula in the legislation (statutory funding), or may remain an annually voted appropriation (non-statutory funding)	• Reporting by administrator with requirement for national reporting (national reporting body to be defined)	• Subject to change but would require amendment and parliamentary processes • Insufficient time with current government to propose and pass legislation • May limit adaptability to future needs
Managed Fund: • Entity established to manage and make available a pool of resources to support the delivery of Jordan's Principle	• Various modalities, e.g., First Nation-led, regional organization, but no ISC	Options include: • Endowment • Funding tied to revenue source • Annual appropriation	• First Nations-board for oversight of fund • Fund resides within ISC • Reporting by administrators with requirements for national reporting, board of fund or director to report annually	• Fund administered separate from government eliminates its accountability for continuous action and improvement • Parameter scope is critical. Too loose, funding may be unsustainable. Too strict, insufficient impact.
Administrative decision-making: • Federal body with three components: 1) evaluation board to assess individual requests; 2) fund managed by a board to assess group requests; 3) ombud to report annually on outcomes and to define federal program gaps (relative to the Spirit Bear or similar plan) • Established via legislation	• National approach to application assessment to promote consistency	• Funding may be statutory or non-statutory (annual appropriation), commensurate to mandate	• Ombud would report annually on results based on a First Nations-defined performance framework combining case-level and national data • Additional reporting (naming and shaming) on federal program gaps being addressed by Jordan's Principle	• Legislation required • Remove ISC from administration of Jordan's Principle • National delivery only, i.e., no regional or First Nations-delivery
Hybrid approach - regional delivery with arms-length administrative decision-making: • Similar structure to above, except regions/First Nations would administer requests	• Local/regional delivery • Centralized boards operate to adjudicate disputes and promote consistency in decision-making	• Funding may be statutory or non-statutory (annual appropriation), commensurate to mandate	• Ombud role similar to above, with additional responsibilities to promote consistent local/regional data gathering	• Legislation required • Remove ISC from administration of Jordan's Principle • Roles and responsibilities of administrative decision making

• Administrative interpretations (e.g., guidelines, etc.) and data gathering are developed centrally and implemented locally				and local regional authorities would need to be negotiated and defined (they may differ by region and First Nations mandated organization) • Allows for regional variance, but could result in less consistency than centralization
Special operating agency (SOA): • Unit within a department with independence and a separate accountability arrangement • Framework agreement (between deputy minister, minister, and Treasury Board) • Administrative interpretations (e.g., guidelines, etc.) and data gathering are developed centrally (with First Nations) and implemented locally	• Local/regional delivery • Centralized boards operate to adjudicate disputes and promote consistency in decision-making • Differentiation between group and individual requests with guidelines and boards to adjudicate disputes	• Funding included in departmental reference levels, i.e., annual appropriation • Special purpose allotment (SPA) can be applied to ensure funding cannot be reallocated within the department • Separate reporting requirements to uphold accountability (relative to standard departmental performance reporting)	• Ombud would report annually on results based on a First Nations-defined performance framework combining case-level and national data • Additional reporting (naming and shaming) on federal program gaps being addressed by Jordan's Principle • Ombud would interface with department for accountability on closing gaps in existing program areas, and ensuring administration of Jordan's Principle is consistent in the department	• Administrative mechanism that will allow for greater design flexibility • No separate legislation for the SOA, it exists within the department and is subject to changes based on the framework agreement between the deputy minister, minister, and Treasury Board, co-developed with First Nations
Status quo	• Current patchwork (direct to ISC, First Nation-led, regional bodies)	• Non-statutory, annual appropriation	• Does not exist	• In its current form, Jordan's Principle has systemic weaknesses that imperil its sustainability

Summative observations:
Irrespective of the chosen reformed structure for Jordan's Principle:

1) Clarify the Jordan's Principle baseline and cap funding (with escalators) for a 2 to 3 year period until data gathered from Jordan's Principle provides clarity on needs and funding requirements.
2) Define the reformed structure for Jordan's Principle with consensus of practitioners and the parties. Implement the change with a two-track approach:
    a. Track 1: Gather relevant data (as defined in #1) to clarify the needs of First Nations children and funding through Jordan's Principle.
    b. Track 2: Leverage the gathered data to redefine eligibility parameters for Jordan's Principle. The gathered data can help to redefine a baseline, suitable escalators, and a performance framework linked to the spirit and intent of Jordan's Principle.

Accountability

Jordan's Principle is helping children by ensuring they have access to supports and services when they need them. There has been a consistent growth in the number of requests to Jordan's Principle across fiscal years. While Jordan's Principle is concealing gaps in other program and service areas, clarity around its operation and impacts is needed for its sustainability.

ISC's current performance measurement of Jordan's Principle
ISC is measuring the performance of Jordan's Principle with a single indicator: the number of products, services, and supports multiplied by the number of associated children (Figure 11). This means that neither the number of items nor the number of individual children making requests is defined in reporting. This indicator is useless in assessing equality or substantive equality for First Nations children. The utility of the indicator is only in counting the instances of issued products or services.

This is a problem. ISC's approach does not align to the Government of Canada's *Policy on Results*[25], or the *Policy on Transfer Payments*[26]. The essence of these

[25] Treasury Board of Canada Secretariat, "Policy on Results," Government of Canada, last modified July 1, 2016, https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=31300 . See sections:

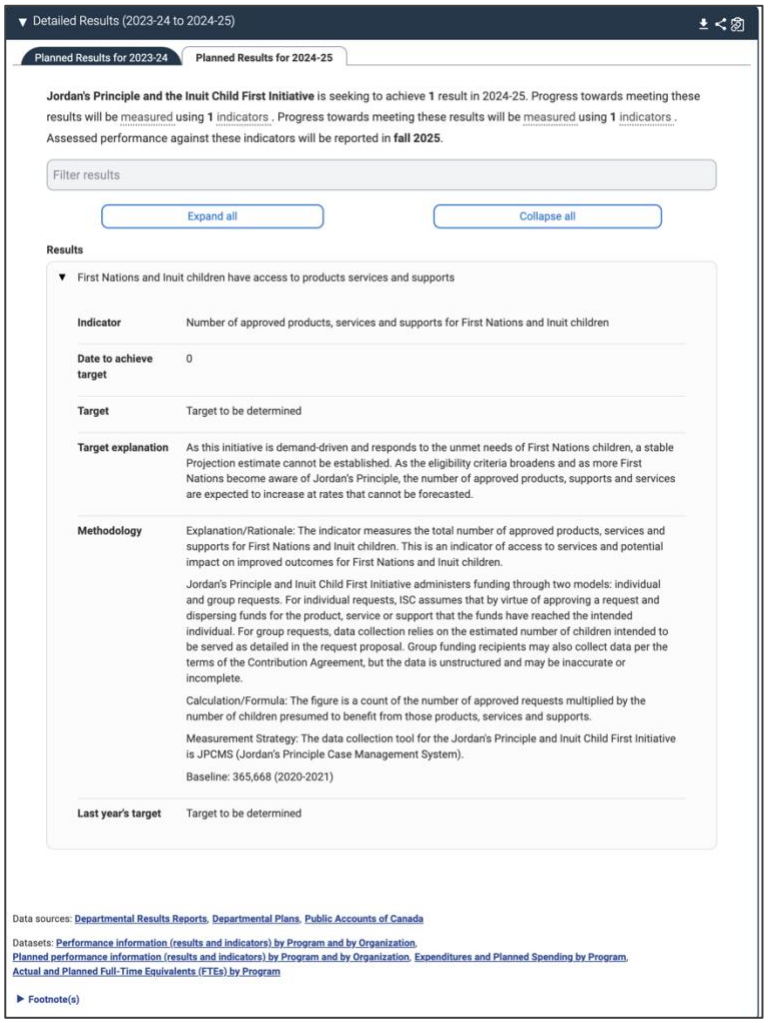
> 3.1.1. Improve the achievement of results across government; and
> 3.1.2 Enhance the understanding of the results government seeks to achieve, does achieve, and the resources used to achieve them.

[26] Treasury Board of Canada Secretariat, "Policy on Transfer Payments," Government of Canada, last modified April 4, 2022, https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=13525.
See the following sections in *Policy on Transfer Payments*:

> 4.2.2 Transfer payment programs are designed, delivered and managed in a way that achieves outcomes, contributes to departmental results, takes account of risk and clearly demonstrates value for money;

interconnected policies is to ensure that public expenditures are delivering intended results, with appropriate oversight and controls. This means that inputs (i.e. resources), outputs (i.e. program activities), and outcomes (i.e. results) should all be measured to understand program performance. ISC is only capturing program inputs (i.e. dollars spent) and some vague form of outputs (i.e. activities).

Figure 11



[…]

4.2.4 Transfer payment programs are accessible, understandable and useable by applicants and recipients, including the following:

4.2.4.1 The administrative requirements on applicants and recipients, which are required to ensure effective control, transparency and accountability, are proportionate to the level of risks specific to the program, the value of funding and the risk profile of applicants and recipients;

4.2.4.2 Applicants and recipients are engaged in support of innovation, continuous improvement, and the establishment of fair, transparent and positive relations with them; […].

The administrative challenges with Jordan's Principle, from extensive backlogs in opening requests and inconsistent interpretation of rules, to a lack of measurement and monitoring for results, fails to meet the objectives of both policies. The administration of Jordan's Principle has been a consistent issue before the CHRT. There have been multiple non-compliance motions brought forward to highlight its ineffectual administration and challenges for those seeking access through Jordan's Principle. The administration stemming from the reactive implementation of Jordan's Principle has resulted in a lack of structure and limited data to assess results for children. These issues were clearly defined in an internal departmental audit in 2019,[27] yet, remain unresolved.

For Jordan's Principle to be sustainable, its performance must be measurable, and its results evidenced (Table 5).

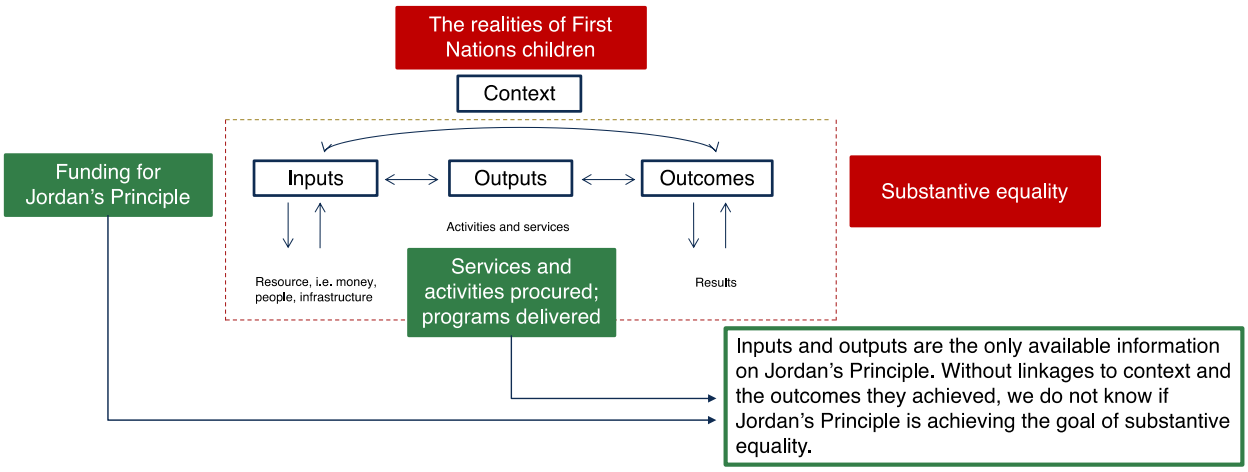
Table 5

What we know	Jordan's Principle is addressing needs.
What we don't know	The root causes of requests to Jordan's Principle…why are children in need? We know inequalities exist, but what are they? How are they affecting children?
Why this matters	Jordan's Principle is concealing gaps in existing program areas. Understanding the root causes of need is critical to developing informed policy and funding decisions to support well-being over the long-term.

As a legal principle, Jordan's Principle's operation is contingent on administrative decisions by government. An administrative change can increase, decrease, or restrict access to Jordan's Principle. Any program or initiative that cannot demonstrate its performance is susceptible to adverse funding or administrative decisions. There is no way of knowing if the funding from Jordan's Principle is addressing gaps in substantive equality. This would require linking ***why*** the claim was being made, i.e., the shortfall being addressed, and ***what*** happened to the child's/group's wellness after the claim (Figure 12).

[27] Indigenous Services Canada, "Audit of the Implementation of Jordan's Principle," Government of Canada, last modified October 28, 2020, https://www.sac-isc.gc.ca/eng/1594378735468/1594378764255.

Figure 12



There are core pieces of information that are missing from data capture on Jordan's Principle. Namely, why children are seeking support from Jordan's Principle and what happens to them following the intervention. A **consistent approach** to gathering **child-centred data** means more **relevant data** that can be used to **measure and monitor children's needs and identify gaps in existing programs and services**.

As expressed by the Regional Working Group, the goal of data gathering should be *consistency with decency*. A consistent approach ensures regular and common information is gathered to benefit all children by improving Jordan's Principle and identifying gaps in existing programs. Decency means engaging respectfully with children and families, avoiding duplication of requests, and following OCAP® Principles.

Presently, data gathering is inconsistent across regions. While some First Nations or regions are gathering good information capacity for analyzing it is limited. A common data gathering framework, defined by Jordan's Principle technical experts, would help to standardize access to and administration of Jordan's Principle.

The limitations of consistently captured relevant data were a concern of the Regional Working Group. The consideration was also reflected in case studies, in which those delivering Jordan's Principle designed their own tools for data capture and for assessing the reasonableness of expenditures where none existed. The extract below from the Regional Working Group's meeting captures concerns about the collection and analysis of data for Jordan's Principle:

> A critical concern was identified in the discussions: the current national data for Jordan's Principle, predominantly administrative in nature, fails to capture the complex and unique needs of First Nations children. This data does not reflect the realities on the ground, nor the specific needs of the children, families, and communities seeking support from Jordan's Principle.
>
> To address the gap between a community's reality and requests to Jordan's Principle, it was proposed that local data about First Nations should be gathered by First Nations to establish a baseline of well-being (in compliance with OCAP® principles). This community-level information on well-being could be

used to help contextualize requests to Jordan's Principle. This dual approach of community data with administrative data could offer a more comprehensive view of the needs and challenges faced by First Nations children.

Regionally, administrative practices to data gathering share many commonalities with some variations (see Appendix A).

There is a recognized opportunity to develop a comprehensive set of indicators to test data gathering methods specific to Jordan's Principle. The working group underscored the importance of self-reliance in these processes to ensure that control over information remains with the First Nations and their designated organizations.

To address these challenges, the working group identified several areas in need of development:

1) Support for capacity building for data collection: training for people, the right tools, and processes are needed to equip First Nations and their organizations for data gathering and analysis.
2) Gap analysis of existing federal programs: Jordan's Principle helps a lot of children but it also covers gaps in existing federal program areas. Those gaps need to be identified and quantified.
3) Data management infrastructure: it would be powerful to have a consistent approach for First Nations-led data gathering and analysis for Jordan's Principle. Such infrastructure would support the aggregation of data in a manner that facilitates comparative analysis and transparent reporting.
4) Data disaggregation: the working group called on ISC to disaggregate and report on data by territory (Northwest Territories, Yukon, Nunavut), rather than rolling it up into an aggregate category.

Read the full second meeting summary here.

Regional and national aggregation of data and analysis are possible, when information gathering is standardized and relevant to the delivery of Jordan's Principle.

IFSD understands ISC's current data gathering and processing of requests as follows:

1) Intake: information entered
2) Review: recommended action
3) Decision: confirmed/denied
4) Notification: communication of decision
5) Payment: issued to recipient

From the backlogs identified in ISC's December 2024 letter to the CHRT, it appears that ISC would benefit from a common online intake form to alleviate pressures at the intake and review steps. The same form would benefit First Nations and other organizations delivering Jordan's Principle to capture consistent data for analysis. The data gathered could improve connections between outputs and desired outcomes. At the time of writing, and as documented in internal audits, ISC cannot demonstrate results in Jordan's Principle.

ISC's internal challenge with Jordan's Principle appears to be operational and administrative. It is not *more* people that are needed, but clearer guidelines and tools

for managing Jordan's Principle. The implementation of Jordan's Principle has been layered, inconsistent, and disjointed as ISC reacted to implement CHRT rulings.[28]

Given the internal challenges, there needs to be space within ISC for employees associated to Jordan's Principle to try and fail at improving operations. There are opportunities for pilot projects with leading First Nations organizations delivering Jordan's Principle with capacity to collaborate with ISC.

There are various considerations for improving the administration of Jordan's Principle:

1) Reform ISC's intake process.
2) Invest in technology, i.e., don't try to fix what exists, build an alternative child-centred approach to intake and request management.
3) Focus on the child when gathering data. This means those locally delivering Jordan's Principle should gather data and share relevant subsets with ISC.

Centering the child in data gathering and analysis will be imperative for understanding if the operation of Jordan's Principle is upholding its spirit and intent of substantive equality.

The approach will take at least three years to be functional. Year 1 will be the introduction and implementation of a common data gathering framework. Years 2 and 3 will be for data gathering and analysis. At the close of Year 3, the information can be analyzed not to define results, but to define an initial set of parameters to inform Jordan's Principle. With the information on the gaps it is addressing or the surrounding programs and service failures it is concealing, an approach to addressing those gaps can be defined.

There are core pieces of information that are missing from assessments of Jordan's Principle. Namely, why children are seeking support from Jordan's Principle and what happens to them following the intervention. In addition to the information gap, there are different approaches to delivering Jordan's Principle across the country. The inconsistent delivery means that there are inconsistent approaches to applying Jordan's Principle, and to gathering the associated information.

There is no clear starting point or capture of change in state for the child. This makes it nearly impossible to comment on progress toward substantive equality or more basic connections between expenditures through Jordan's Principle and outcomes for children.

Table 6 provides an overview of basic information about a child making a request, much of which could be coded at intake.

[28] Indigenous Services Canada, "Audit of the Implementation of Jordan's Principle," Government of Canada, last modified October 28, 2020, https://www.sac-isc.gc.ca/eng/1594378735468/1594378764255.

Table 6

Nature of request	• Individual • Group • Point-in-time • Ongoing/long-term • Recurrent (varying intervals) • Urgency: immediate urgent need or other
Context	• Location: on-/off-reserve • Province/territory and name of FN or city/town • Geographic zone (1-4) • Age of child • Poverty/deprivation, i.e., expressed need for basic necessities, income supports, etc. • Risk factors for child, e.g., health, mental health, environment, etc. • Requestor's relation to child • Letter of support from professional/other
Gap analysis	• WHY is the child seeking support through Jordan's Principle, e.g., deprivation/poverty, geographic location, lack of services, unfunded by other program, etc. • Were other supports, services, or programs sought prior to the request? Why is support being sought through Jordan's Principle?
Input	• Date of request • Location of intake • Item/service/support requested (use ISC's list?) • Cost • Supporting letter/referral
Output	• Other services/referrals made through request, e.g., provincial/territorial service, federal program, First Nation or organization program, such as budget building or healthy grocery shopping • Evaluation of request • Amount issued v. requested; item/service issued v. requested • Risk factors to note for parent or child • Expected short-term impact on child (may be best as a statement, i.e., with Product X, the child will…)
Outcome	• Starting point of child (at time of request) versus follow-up at close of file or point-in-time (A possible approach is to follow a sample of children accessing Jordan's Principle to assess outcomes over time) • Did the child or their family make another requested? • Did the child improve or no longer require additional support following the intervention? • Were gaps in other service areas identified?

Information from the consistent capture of relevant data on Jordan's Principle can be used to inform planning and expenditures. If the data or a similar subset from Table 6 were gathered, it could be used to define needs, track gaps in other program areas, and inform parameters for accessing Jordan's Principle. Such consistency could improve planning and create stability for those accessing and delivering Jordan's Principles. Guidelines and changes to date have been ad-hoc and reactive. Using relevant

information from Jordan's Principle to reset its course would be a step towards stability and sustainability.

Building from a common data gathering framework, a performance framework could be informed. The Regional Working Group defined a two-pronged approach to data capture to support a performance framework:

1) Case-level information focused on the child;
2) Community-level data to capture context.

A performance framework is a tool to measure to monitor change relative to a goal or desired outcome. With all the information gathered on Jordan's Principle, we still do not know *why* children are seeking support and *what* happens to them following an intervention. With these gaps, there is no way of assessing progress toward formal or substantive equality through Jordan's Principle.

A national strategic performance framework for Jordan's Principle is an essential component of a sustainable approach to Jordan's Principle. The Regional Working Group defined the importance of the framework as a tool to ensure equity for First Nations children and to define gaps to improve programs and services. From a public finance perspective, the evidence generated from the framework can help to sustain Jordan's Principle by demonstrating its results for children, especially, when faced with decisions on its expenditures.

Building a national strategic performance framework for Jordan's Principle would:

1) Measure and monitor the needs of children;
2) Identify gaps in existing programs and services;
3) Hold Canada accountable;
4) Ensure the structure, delivery, and funding approaches to Jordan's Principle are working;
5) Measure progress toward the defined spirit and intent of Jordan's Principle.

Wholistic well-being was a guiding principle for the Regional Working Group for the national strategic performance framework. In their discussions, the Regional Working Group defined a series of national indicators. Some indicators were aggregations of case-level data and others were broad community-level indicators that could be captured from public and other data sources.

The indicators defined by the Regional Working Group are captured in Table 7. They are clustered thematically. IFSD was tasked by the Regional Working Group with identifying broad community-level indicators to contextualize the case-based data (also included in Table 7). To operationalize the performance framework, definitions for indicators, measures, and data capture are to be defined (see Table 7). Sources of information include case level data (aggregated), Census data, Regional Health Survey (RHS) data, and ISC data.

The development and operationalization of a strategic performance framework will take time. It is, however, imperative that it be done to ensure accountability in Jordan's Principle. This means ensuring structure, delivery, and funding are meeting the needs of children.

Table 7

Category	Indicators	For future use				
		Definition	Measure	Location of data capture	Availability of data	Case or community level
Education and pedagogy	Literacy rates in English and/or French					
	Literacy rates in Indigenous languages					
	Numeracy rates					
	Elementary school completion rate					
	Duration to completion of high school					
	Age at high school graduation					
	Change in expected educational outcomes					
	Post-graduation outcomes for youth with complex or special needs					
	Support or service to develop inherent talent or ability					
Family well-being	Sense of community belonging					
	Stability of family arrangement					
	Contact with child and family services					
	Children in care accessing Jordan's Principle					
Health and wellness	Recreational opportunities around the child					
	Instances of exceptional health-related supports and services					
	Health outcomes at least equal to or better than the general population					
	Health services consistent with Canada Health Act standards (as a minimum)					
	Instances of requests for mental health and/or spiritual supports defined as: crisis, maintenance, or normal/self-care					

Nature of requests and defined needs	WHY – Reason for accessing Jordan's Principle (root cause(s))					
	Instances of intergenerational Jordan's Principle requests, e.g., adolescent parent accessing Jordan's Principle					
	Nature of request: point in time; on-going/long-term; repeated					
	Instances of children ageing out but requiring ongoing support					
	Instance of navigation to access Jordan's Principle					
	Instances of referrals to existing supports and services					
	Identifying the source of the referral, e.g., Elder, physician, etc.					
	Were the child's needs met through Jordan's Principle					
Community well-being	Instances of community trauma					
	Cultural knowledge					
	Access to land					
	Access to Elders					
	Community emergencies impacting well-being					
Access and funding	Number of non-Indigenous and non-First Nation organizations/recipients receiving funding through Jordan's Principle					
	Documented fee increases or supplemental fees incurred when paid through Jordan's Principle					
	*See also questions to regions					
	Details on requests and transfer amounts through Jordan's Principle					
Broad national indicators (proposed by IFSD)	Housing suitability					
	Housing in need of repair					
	Food security					
	Rates of substance misuse (alcohol, drugs)					
	Access to potable water					
	Deprivation (income measure, relative to the relevant Market Basket Measure)					

	Employment rate					
	Unemployment rate					
	Highest level of educational completion					
	Instance of critical health issues (Note: Dependent on Regional Health Survey data)					
	Access to health and dental services (Note: Dependent on Regional Health Survey data)					
	Rates of access to Income Assistance					
	Population by geographic zone					

Delivery

The administration of Jordan's Principle by ISC is addressed in the structure, funding, and accountability sections of this brief. In this section, analysis will focus on the delivery of Jordan's Principle by practitioners across regions.

Jordan's Principle is being delivered differently across regions. There are four main approaches to the delivery of Jordan's Principle:

1) **Service coordination:** Service coordinators in First Nations support applications and submit them to ISC.
2) **First Nation-administered:** First Nations accept and approve applications to Jordan's Principle (with certain limitations). Any applications that are beyond scope or to be denied are referred to ISC.
3) **First Nation organization-administered:** First Nations organizations support applications and/or accept and approve applications to Jordan's Principle.
4) **Direct to ISC:** Requests for support are submitted directly to ISC.

Within the diversity of regional approaches, what is permitted as a practice in one region, e.g., the use of pre-paid credit cards, gift cards, vouchers, was not necessarily permitted in all regions. An extract of the first Regional Working Group meeting summary captures the different approaches and rules for delivery:

Different approaches, different people, and different rules yield different results. The regional working group shared the diversity of their approaches to delivering Jordan's Principle (see Appendix B for an overview of regional approaches to requests). There were creative approaches and solutions that were shared, but it was clear that what was permitted in one region, e.g., pre-paid credit cards, gift cards, vouchers, was not necessarily permitted in others. The variance in accepted approaches needs to be addressed.

There was special emphasis placed on the importance of relationships with regional ISC officials, namely focal points. As in any interaction, positive relationships can promote collaboration and mutually beneficial solutions. Certain regions highlighted the strengths and benefits of their positive working relationships with regional ISC officials. One region even noted that their ISC counterparts spend time learning about their First Nations and have quarterly meetings scheduled with First Nations and their regional support organization. These regular interactions are opportunities for information sharing, learning, and problem solving, which promote better outcomes for the region.

Participants underscored the impact one public servant can have in managing their request. If a Jordan's Principle request cannot be approved regionally, it is escalated to headquarters, entering 'the ISC blackbox,' leaving the requestor with limited information and recourse until a decision is rendered. With significant staffing changes in some regions, participants expressed challenges with consistent decision-making at the regional level. What an official four weeks ago may have approved, another may be denying. The advocacy for consistency is left to those working in and supporting First Nations. The Caring Society is regularly called upon for support and intervention across regions when challenges arise with delayed responses and denied claims.

There was a call for greater transparency and information sharing on how decisions are made regionally, what parameters are in place to guide decisions, and whether there are inter-regional assessments of consistency in the application of Jordan's Principle. Participants suggested that ISC's officials and those working in First Nations and supporting organizations should all access the same training to ensure consistent information is shared. In their discussion on the future of Jordan's Principle, the regional working group noted the need for national standards and goals with local care and control of delivery to mitigate the variances.

Read the full first meeting summary here.

IFSD has worked with First Nations and First Nations organizations to develop nine case studies on the delivery of Jordan's Principle (five of which have received approval for use in public reporting). The cases survey different models and approaches to delivering Jordan's Principle. Mandates and activities differ, highlighting the varying levels of risk, expertise, and internal controls required to manage activities associated to Jordan's Principle.

The cases represent the ways in which Jordan's Principle has been applied and leveraged to meet different needs. Consider the Yukon First Nations Education Directorate (YFNED), which built a comprehensive approach to education related supports for youth. From the redesign of curriculum, to school-based advocates, and dedicated professional services like psychologists, YFNED is "building better communities." They have defined their own approach and actualize it by taking advantage of the lack of structure and policy framework around Jordan's Principle. It's a double-edged sword. While the flexibility suits them, it also means that criteria and funding access can change, and reporting requirements are inconsistent limiting information on how children are doing (Appendix B).

Frontline workers attending Nishnawbe Aski Nation's (NAN) "As We Gather," conference highlighted operational challenges in Jordan's Principle and proposed operational improvements. They emphasized the scope of their responsibilities in Jordan's Principle that extend beyond their official functions (Appendix C).

A service coordinator shared their experience in developing their own criteria for managing requests through Jordan's Principle. They were concerned that Jordan's Principle is creating a reliance on temporary solutions without building capacity and resilience in families. Service Coordinator X considers a return to the spirit and intent of Jordan's Principle to be the meaningful support of children and families by focusing on needs, building resilience in families, and providing tools for sustainable well-being (Appendix D).

A self-governing First Nation implementing a pilot program shared their efforts to stand-up a delivery approach to Jordan's Principle. Their efforts to serve their citizens were challenged by the inconsistent management of Jordan's Principle by ISC (Appendix E).

The Council of Yukon First Nations (CYFN) built their own approach for the operationalization of Jordan's Principle. With an intake process, expenditure tracking, and case management system, CYFN is documenting how Jordan's Principle is being used to address the root causes of need. Extending their existing health and social mandate, CYFN leveraged their internal practices to introduce needed parameters on the delivery of Jordan's Principle to support needs (Appendix F).

In surveying the different modes of delivery across regions, the importance of variation to meet different contexts is clear. However, what is also evident, is the gap in consistent parameters and criteria to support practitioners in the delivery of Jordan's Principle. In many cases, practitioners themselves defined tools for data gathering and assessment where none existed. Their approaches are also reactions to the varied allowable expenditures and practices in the regions. While diversity in delivery to meet differentiated needs is useful, it should not mean that First Nations children have different likelihoods of access based on residence.

Funding

There are two crucial elements for estimating the costs of Jordan's Principle:

1) Baseline, i.e., a starting point. How the baseline is defined and what is included should be clarified (Table 8);
2) Escalators, i.e., the factors that influence/change the base expenditure over time (Table 9).

Jordan's Principle has seen significant increases in expenditures in the last three fiscal years. The significant change could be due to a change in demand, in the rules for access, or some combination thereof.

Other demand-driven programs in Canada have defined factors that influence their expenditures and are established in law. While Jordan's Principle is demand-driven, it is treated differently. A legal rule, it does not have the structure or defined funding arrangement of Employment Insurance (EI) or Old Age Security (OAS). This is a vulnerability – discussed in the Structure section of this brief – that should be addressed.

At the time of writing, we do not have sufficient and consistently captured data on Jordan's Principle to estimate a bottom-up cost based on defined factors, e.g., program or service gaps, needs of children, etc. Nor is there consistency in delivery mechanisms and cost drivers that would allow for estimates to be inferred. Therefore, IFSD proposes estimating the cost of Jordan's Principle on an interim basis until such time that data capture is improved to inform access parameters and costs. The inconsistent data that is untethered to the spirit and intent of Jordan's Principle mean that expenditure data cannot be linked to needs or other sources of demand. What we know is that expenditures are increasing, but we do not know why, nor is there appropriate data to decipher cause.

To estimate the cost of Jordan's Principle, IFSD is proposing options for a baseline and escalators. This is an interim approach until better information (tied to the spirit and intent of Jordan's Principle) is available.

Table 8

Baseline	Description	Value ($)
Fiscal year 2023-24 expenditures (Baseline 1)	Full and final Jordan's Principle expenditures for fiscal year 2023-24. This captures status quo rules on access and significant growth in requests and expenditures.	$1.8B
Poverty gap 2023-24 (Baseline 2)	Deprivation/poverty is a root cause of need and gaps in substantive equality in points of departure for First Nations children. An income-based poverty gap could be a proxy for a Jordan's Principle baseline. IFSD has used the Census (2016[29]) estimate of the median household income for First	$1.3B

[29] Following a consultation with Statistics Canada, IFSD is using Census 2016 total median household income data with adjustments for inflation in its cost estimation, as it considers the number a more accurate (albeit imperfect) reflection of the current state of First Nations.

Total median household incomes as captured in Census 2016 and Census 2021 increased significantly for First Nations. Statistics Canada has also observed general growth in income across Canada (see Statistics Canada, "Pandemic Benefits Cushion Losses for Low-Income Earners and Narrow Income Inequality – After-Tax Income Grows Across Canada Except in Alberta and Newfoundland and Labrador,"

	Nations (on-reserve) adjusted to 2023 prices and Statistics Canada's estimate of a Market Basket Measure (MBM) (Canada's official measure of poverty) for remote areas to estimate the poverty gap for First Nations.	

Table 9

Escalator	Description	Rate of growth (rounded)
Average growth rate of Jordan's Principle expenditures (Escalator 1)	Jordan's Principle expenditures have grown significantly over the last five years. If there are no changes to the structure or parameters of Jordan's Principle, growth may continue. The average growth rate as an escalator would represent a continuation of growth based on the mean.	36% (see Figure 13 for total expenditures by fiscal year)
Average growth rate of Spirit Bear-related programs (Escalator 2)	Various federal programs align to the Spirit Bear Plan of closing gaps in essential services for First Nations children. Assuming Jordan's Principle addresses gaps in these program areas, the average rate of growth in the last five years of this basket of programs could be used as an escalator to estimate growth in Jordan's Principle expenditures. Note: The recent significant increases to the First Nations Child and Family Services Program are an exception. The program is excluded from the calculation of average growth as an outlier, as are expenditures on Jordan's Principle.	11% (see Table 10 for programs aggregated thematically associated to the Spirit Bear Plan)
Moving average growth of GDP (Escalator 3)	Some major federal transfers such as the Canada Health Transfer and Equalization grow with an escalator equal to the moving	Various (see

Government of Canada, last updated July 13, 2022, https://www150.statcan.gc.ca/n1/daily-quotidien/220713/dq220713d-eng.htm).

Nationally, pandemic relief programs and other direct transfers to persons, e.g., increases to the child benefit, contributed to the income growth. While every First Nation is different, and the sources of their income changes unique, the pandemic relief programs and direct transfers were nationally available and were likely an important factor in the income growth observed for First Nations. Moreover, Statistics Canada indicated a change in Canada Revenue Agency (CRA) reporting with Form T90 for First Nations (starting in 2019) which could contribute to differences when making historical comparisons—although the size and direction of the impact is unknown.

	average growth of the nominal Gross Domestic Product (GDP) in the current and past two years. Using the economic projection from the 2024 Fall Economic and Fiscal Update, escalators based on nominal GDP growth can be estimated for the next five years.	Table 11 for the escalator by fiscal year)

Figure 13

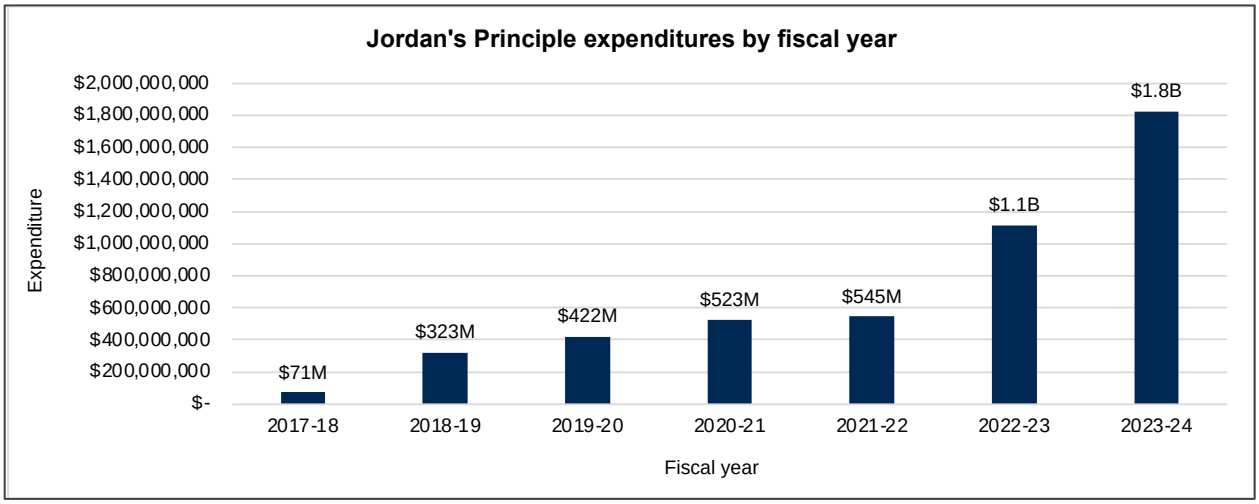


Table 10

Estimated Spirit Bear program-related expenditures (millions) by fiscal year						
	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Health and Mental Health (excl. infrastructure) (ISC)	$3,437	$3,602	$4,284	$4,842	$4,840	$5,324
Education (excl. infrastructure) (ISC)	$2,370	$2,390	$2,440	$2,650	$3,020	$3,100
Infrastructure (incl. housing, water, health, education) (ISC)	$2,179	$2,127	$2,358	$3,001	$5,564	$3,890
Income Assistance (ISC)	$1,030	$983	$1,220	$1,300	$1,320	$1,570
Governance (ISC and CIRNAC)	$581	$1,273	$1,527	$1,734	$1,613	$756
Emergency Management Assistance (ISC)	$165	$241	$790	$668	$491	$595
Indigenous Early Learning and Child Care Transformation Initiative (ESDC)	$12	$121	$197	$176	$232	$285
Other (ISC, CIRNAC, ESDC, and Department of Justice)	$735	$658	$1,192	$1,223	$898	$1,127
Total	$ 10,900	$ 11,958	$ 14,589	$ 16,253	$ 19,018	$ 18,468

Table 11

	2024-25	2025-26	2026-27	2027-28	2028-29
Escalator value (%)	6.25	3.6	4.1	4.0	4.1

The estimates with Baseline 1 and Baseline 2 vary depending on the escalator applied (Table 12). Escalator 3 presents the most modest estimates, whereas Escalator 1 and Escalator 2 generate the highest estimates across fiscal years (Figure 14 and Figure 15).

Table 12

Estimated Jordan's Principle Funding ($ billions)							
	Fiscal year	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
Baseline 1	Escalator 1	1.8	2.45	3.32	4.52	6.14	8.34
	Escalator 2	1.8	2.00	2.23	2.48	2.75	3.06
	Escalator 3	1.8	1.91	1.98	2.06	2.15	2.23
Baseline 2	Escalator 1	1.3	1.77	2.40	3.26	4.43	6.03
	Escalator 2	1.3	1.45	1.61	1.79	1.99	2.21
	Escalator 3	1.3	1.38	1.43	1.49	1.55	1.61

Figure 14

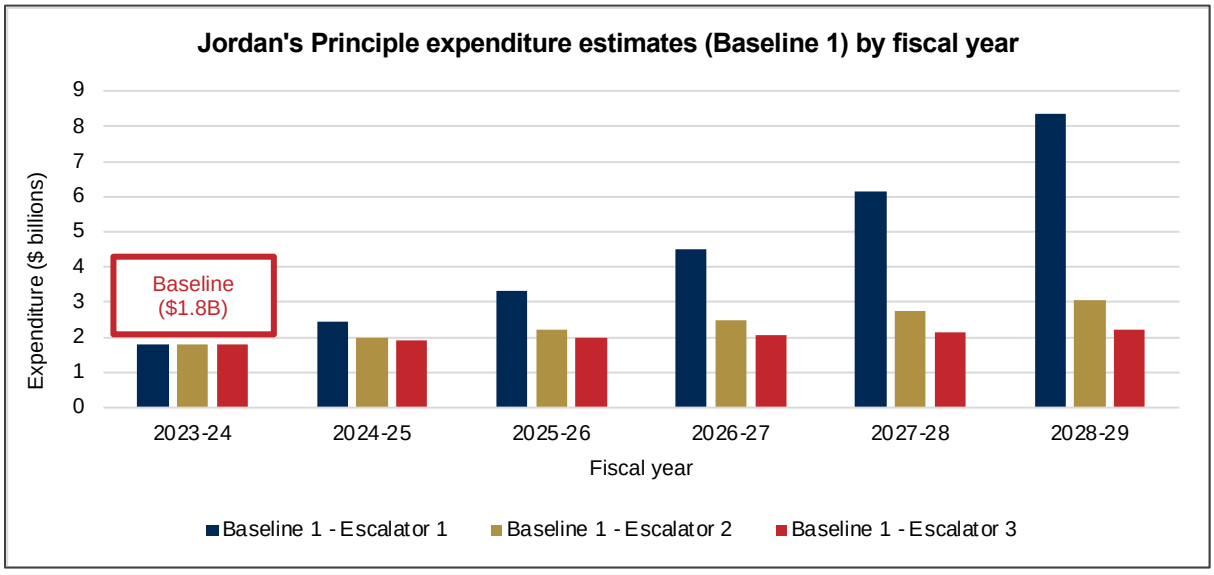
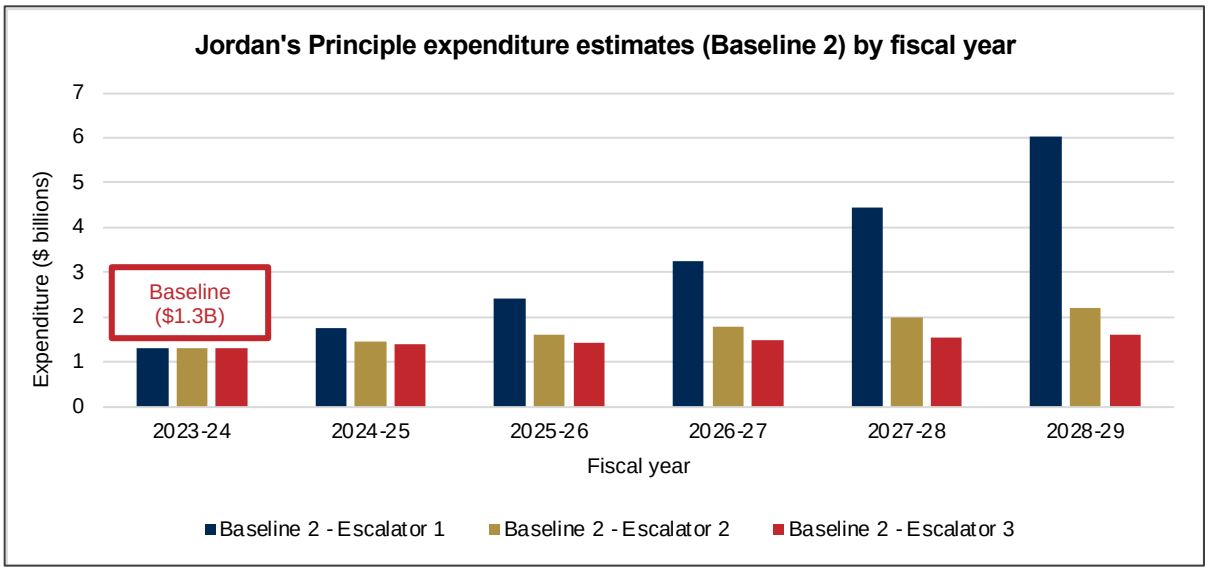


Figure 15



Clear cost-driving factors are lacking in Jordan's Principle. There is no information that links the increase in expenditures to quantifiable factors of demand. What we know is that expenditures increased, as did the number of requests. For the sustainability of Jordan's Principle, a baseline should be defined and capped by reasonable escalators tied to the needs of children being served by Jordan's Principle.

Conclusion

Jordan's Principle is helping children by ensuring they have access to supports and services when they need them. There has been a consistent growth in the number of requests to Jordan's Principle across fiscal years. While Jordan's Principle is concealing gaps in other program and service areas, clarity around its operation and impacts is needed for its sustainability.

Jordan's Principle's current structure, funding, and accountability are concerning from a public finance perspective. Its administration and delivery are risks for its sustainability and the First Nations children it is intended to serve.

Data gathered by ISC is insufficient to demonstrate results for children or to identify gaps in related program areas. There is no way of knowing through ISC's information if Jordan's Principle is being administered and funded effectively to meet the needs of children. With undefined and insufficiently documented achievements, Jordan's Principle is vulnerable (as is any program) to adverse funding decisions.

Sustainability for Jordan's Principle means ensuring it can demonstrate results and value for First Nations children. This requires administrative clarity, appropriate funding, documented performance, and consistent delivery.

Recommendations for a path forward

1) Define and adopt an alternative structure to Jordan's Principle.
   A legal rule, Jordan's Principle is reliant on administrative decisions for its operations. It merits the same structural parameters that exist for other demand-driven programs in Canada, such as Employment Insurance and Old Age Security. There are options to structure Jordan's Principle to ensure its sustainable operation and funding linked to the needs of First Nations children. See pages 14-15 and 19-24.

2) Transition to the reformed structure.
   Once a reformed structure for Jordan's Principle is defined, adopt a two-track approach to its implementation. Track 1: adopt a new data gathering framework. Track 2: leverage the data in years 2 and 3 to inform parameters and funding for Jordan's Principle. See pages 24-28.

3) Build consensus among practitioners and the parties to clarify Jordan's Principle's policy statement and its implementation.
   There are statements, guidelines, and rules associated to Jordan's Principle through ISC's website. Lacking, however, is a clear policy statement that guides and connects the structure, delivery, accountability, and funding of Jordan's Principle. The content of a policy statement will inform the rules to govern a restructured approach to Jordan's Principle, guiding scope and parameters of activity. See pages 15-18.

4) Define and implement a performance framework.
With all the information gathered on Jordan's Principle, we still do not know why children are seeking support and what happens to them following an intervention. With these gaps, there is no way of assessing progress toward formal or substantive equality through Jordan's Principle. To be sustainable, Jordan's Principle's performance must be measurable and its results evidenced. A national strategic performance framework for Jordan's Principle is an essential component of a sustainable approach to Jordan's Principle. See pages 24-34.

5) Define and implement a national data gathering framework, aligned to the spirit and intent of Jordan's Principle.
Data on Jordan's Principle should be gathered locally, consistently, and with decency. A consistent approach to gathering child-centred data means more relevant data that can be used to measure and monitor children's needs and identify gaps in existing programs and services. See pages 28-31.

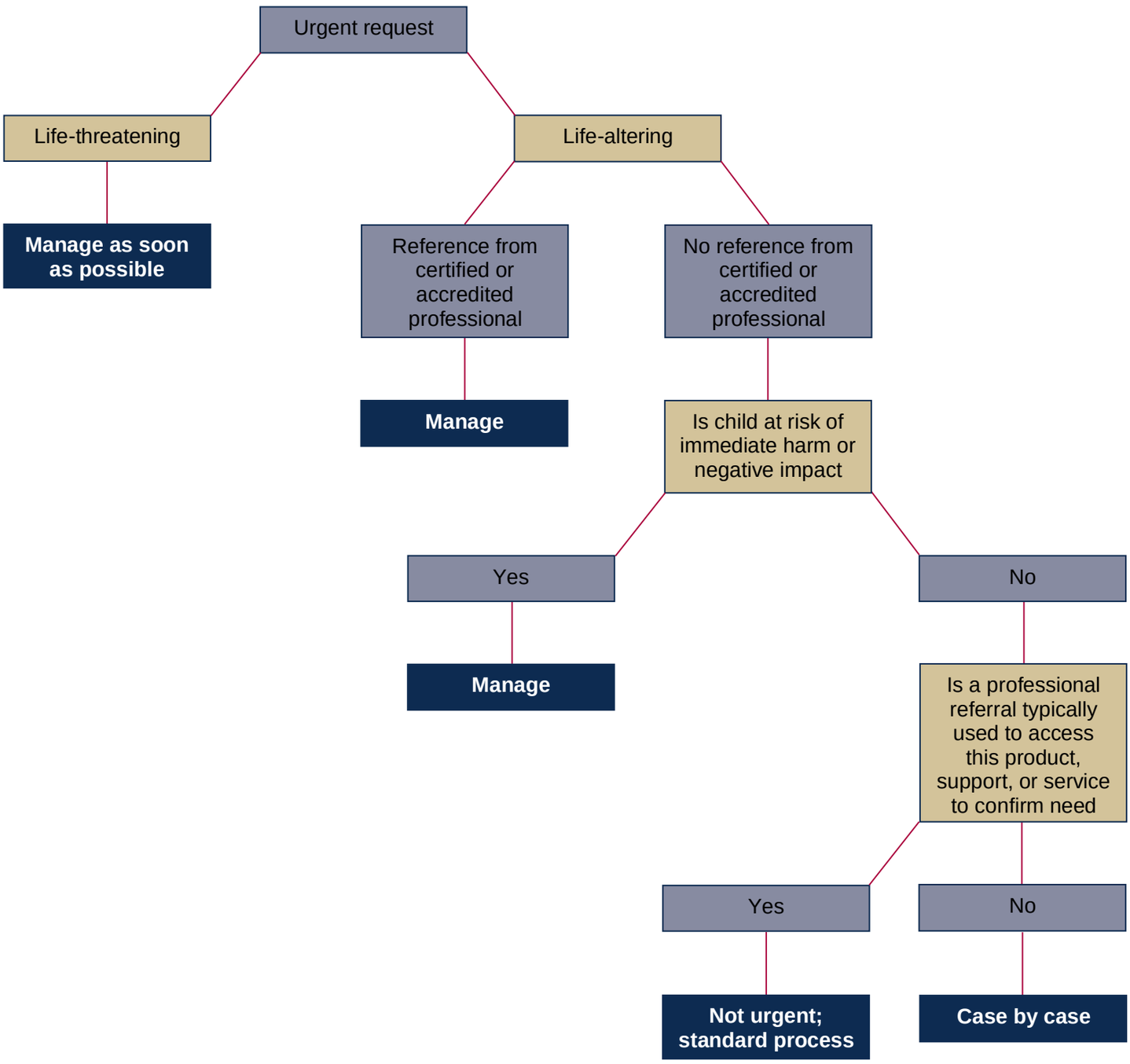
6) Stabilize funding for a 2-to-3-year transition period.
A baseline and escalators are essential for estimating the costs of Jordan's Principle. Available information is insufficient to estimate a bottom-up cost based on defined factors. IFSD proposes estimating the cost of Jordan's Principle on an interim basis until such time that data capture is improved to inform access parameters and costs. See pages 36-42.

7) Maintain the Regional Working Group.
Support the Regional Working Group (as practitioners) to continue to convene to provide input and oversight on the reform and implementation of Jordan's Principle. The contributions of the Regional Working Group are reflected throughout this report.

Appendix A

Jordan's Principle: Urgency decision tree

The approach below is an exercise to triaging requests through Jordan's Principle by prioritizing life-threatening cases, while still treating some non-life-threatening cases as urgent.[1]



[1] Some medical professionals consider non-life-threatening conditions as urgent.
J. Turnbull, G. McKenna, J. Prichard, et al., "Results from the literature review: how do policy-makers, professionals and service users define and make sense of urgent care?" in *Sense-making strategies and help-seeking behaviours associated with urgent care services: a mixed-methods study*, Southampton (UK): NIHR Journals Library; 2019 Jul. (Health Services and Delivery Research, No. 7.26.), chapter 3, https://www.ncbi.nlm.nih.gov/books/NBK544484/; Alberta Health Services, "Find Healthcare," n.d., https://www.albertahealthservices.ca/findhealth/service.aspx?id=1003853#:~:text=Medical%20care%20for%20complex%20or,Airdrie%20Community%20Health%20Centre and Centre intégré universitaire de santé et de services sociaux de l'Estrie - Centre hospitalier universitaire de Sherbrooke, « Emergency Room Triage, » n.d., https://www.santeestrie.qc.ca/en/care-services/general-services/emergency/triage

Appendix B

Building better communities with Jordan's Principle
Yukon First Nations Education Directorate (YFNED)

This summary text has been reviewed and approved by the interlocutor. IFSD wishes to recognize their contribution in sharing their professional experience with Jordan's Principle.

Utilizing Jordan's Principle, the Yukon First Nations Education Directorate (YFNED) has built a comprehensive approach to education related supports for youth. From the redesign of curriculum, to school-based advocates, and dedicated professional services like psychologists, YFNED is "building better communities." They have defined their own approach and actualize it by taking advantage of the lack of structure and policy framework around Jordan's Principle. It's a double-edged sword. While the flexibility suits them, it also means that criteria and funding access can change, and reporting requirements are inconsistent limiting information on how children are doing.

Context

Through group requests to Jordan's Principle with three-year transfer payment agreements and other sources, e.g., Yukon Government, Chiefs Committee, YFNED has built a comprehensive approach to education-related supports for youth.

"If Jordan's Principle wasn't doing what it's already doing, it would be catastrophic."

Working directly with individuals, families, and schools, YFNED's approach is focused on rebuilding people to make them contributing and capable members of their communities. Preventive services, intercepting trauma, and supporting young people are central to their approach. With their own psychologist and occupational therapist on staff, First Nations children connected to advocates can receive testing and supports in 30 days or less. YFNED is offering wrap-around services to help ensure children and youth get the supports they need when they need them.

YFNED's approach

YFNED has 16 advocates across primary and secondary schools in Whitehorse who serve as "the eyes and ears" of their programming. With a web-based intake form, YFNED relies on its advocates and direct requests from families to define and capture self-declared needs. Advocates work with children/youth and families to build service plans, in concert with school personnel to identify and support needs. Trained in suicide prevention, working with vulnerable youth, first aid, etc. the work of the advocates is premised on relationships with children/youth and their families.

In its work, YFNED takes a First Nation approach, as in it takes care of all First Nations children. The approach benefits from scale, since multiple First Nations children and youth from various communities can be in a single school.

YFNED's work has impacts both in the classroom and beyond. YFNED has adjusted curricula in schools to have English, social studies, careers, and art taught through an Indigenous worldview. Elders and Knowledge Keepers are included in the curriculum through activities such as drumming, hunting, dry meat making, etc. Training for youth extends beyond the classroom through the advocates who support them in obtaining driving permits, chain saw operation licenses, etc. These are skills that help to make them self-sufficient, employable, and active contributors to their communities.

Supporting children and youth at school

Program delivery is dependent on funding renewal. At the time of writing, most of YFNED's funding (approximately $10M) comes from Jordan's Principle. Costs for program delivery are expected to rise by roughly 20%, with an administration fee (12%) included to manage growing numbers of applications and the requisite program designs.

The lack of policy framework associated to Jordan's Principle means that YFNED can utilize it to define its own vision and execute it. However, there are no consistent criteria for accessing Jordan's Principle, and there has never been an application form or template to make a request for funding. This means that submission requirements can be altered or deemed insufficient without much notice. The lack of policy framework means that there are no parameters on reporting. The result is differing approaches between service coordinators, e.g., organization like YFNED v. First Nation, due to capacity. This inconsistency limits availability of information on what children/youth are accessing and how they are being impacted.

The current approach to Jordan's Principle is a double-edged sword. The flexibility is welcome for executing on YFNED's vision and definition of success. However, guidance on the parameters of Jordan's Principle and what can be expected in the future would be helpful to support the sustainability of the education-focused supports they have developed.

Appendix C

Summary of Feedback from Frontline Jordan's Principle Workers
(NAN "As We Gather" Conference, September 2024)

This summary text has been reviewed and approved by the interlocutor. IFSD wishes to recognize their contribution in sharing their professional experience with Jordan's Principle.

During the "As We Gather" conference hosted by Nishnawbe Aski Nation (NAN), frontline workers provided critical feedback on their experiences with Jordan's Principle, highlighting operational challenges and suggesting reforms that could enhance delivery.

Participants shared that their day-to-day responsibilities often extended beyond their official titles, as they acted as frontline coordinators, advocates, and support systems for families navigating Jordan's Principle.

Operational Challenges

Participants raised several significant operational challenges, many of which aligned with feedback gathered from the national working group:

Unclear Processes & Onerous Reporting Requirements: Frontline workers pointed out that ISC processes were opaque, particularly when accessing service coordination funding. Reporting requirements were described as inconsistent, burdensome, and often irrelevant to the real needs of the community (e.g., requiring forms to be typed rather than handwritten, but requiring a non-electronic signature)

Inconsistent Funding Affecting Staffing: A recurring issue was the inconsistent year-to-year funding, which disrupted the ability to maintain functional, community-based teams. The lack of stable funding meant that fully operational teams would be disbanded due to non-renewal of funding, affecting continuity of service delivery.

Eligibility Confusion & Arbitrary Decisions: Workers reported confusion and inconsistencies in eligibility criteria, as communicated by ISC. Identical applications would receive different outcomes, leading to frustration. ISC decisions were described as arbitrary, dismissive, and ill-informed. One participant said "it feels like ISC isn't reading our applications." Participants also mentioned instances of "subtle racism," with bureaucrats dismissing requests based on vague justifications (e.g., "the child has had enough services").

Bureaucratic Delays & Backlogs: Frontline workers expressed frustration over long wait times and backlogs, raising questions about why ISC wasn't hiring more adjudicators, especially given the growing demand. This highlighted the need for capacity building in data management and processing.

On-Reserve vs. Off-Reserve Funding Inequities: Many participants felt that funding systems were discriminatory based on location, with on-reserve and off-reserve children facing different levels of access and support. This highlights the issue of location-based inequity, and the need for disaggregated data by territory to better understand regional disparities.

Suggestions for Improvement

Frontline workers proposed several ideas and considerations for reform.

Simplifying Processes & Forms: A strong desire for simplifying the application process was expressed, with suggestions to eliminate complex forms that often used inaccessible language. Workers suggested a single-window approach with to streamline requests. This could also include standardized software, and more consistent administrative systems and data infrastructure.

Ending Reimbursement: Participants were particularly vocal about the challenges of reimbursement, saying that it unfairly burdened families who often had to float costs before receiving approval. They suggested moving towards a system where deposits or upfront payments are made. This highlights a gap in service consistency, where some requests are approved right away, and others take months or years.

Community-Based Staffing & Decision-Making: Many expressed that the decision-making process should be localized, with staffing for Jordan's Principle coming from the communities themselves. This would ensure that those making decisions are familiar with local realities, and support First Nations-led data collection and community control over information.

Consistency in Adjudication & Service Delivery: Participants advocated for greater consistency in adjudication and improved communication, suggesting that ISC assign specific staff to communities to develop expertise in local contexts. This could also be addressed by adopting uniform guidelines and clear accountability structures.

Data Collection & Reporting

Participants raised concerns around lack of consistent data collection practices and the burdensome nature of reporting. They highlighted that data gathered from frontline workers and Jordan's Principle coordinators could better reflect real needs and improve service planning. However, current systems were not user-friendly, with excessive bureaucracy hindering the process.

There were suggestions for simplified community-based data gathering, where frontline workers could provide concise reports based on their local knowledge without the need for onerous forms.

Appendix D

Sustainability and the Spirit of Jordan's Principle

This summary text has been reviewed and approved by the interlocutor. IFSD wishes to recognize their contribution in sharing their professional experience with Jordan's Principle.

Service Coordinator X serves 7 First Nations officially, but nearly 30 in practice, plus two First Nations child and family services agencies. In their work with Jordan's Principle, Service Coordinator X is concerned that Jordan's Principle is creating a reliance on temporary solutions without building capacity and resilience in families. Service Coordinator X considers a return to the spirit and intent of Jordan's Principle to be the meaningful support of children and families by focusing on needs, building resilience in families, and providing tools for sustainable well-being.

Operationalizing Jordan's Principle

Working in a team of three (including themselves), Service Coordinator X has built an approach to managing applications and floating, i.e., funding, some requests through Jordan's Principle. Every application is reviewed by Service Coordinator X to connect families with relevant supports and services. Through this approach, Service Coordinator X seeks to "extend beyond the 'cash' for basic needs, to build capacity with the family."

For instance, there are several requests for groceries. Instead of only approving the request, Service Coordinator X asks what will happen next. Receiving grocery money may help in the short-term, but how will the applicant get groceries in three or six months? If the applicant's circumstances are otherwise unchanged, will they be applying again? Will they rely on Jordan's Principle indefinitely? While recognizing the often serious nature of requests for basic necessities, Service Coordinator X works with applicants to lessen reliance on Jordan's Principle funding. Instead of routinely approving grocery requests, Service Coordinator X seeks out options that build community capacity. This could include:

- Pairing applications with already available programs and services;
- Making a group request to fund a local food bank and build long-term food security in a community; or,
- Working with applicants to get coaching on budgeting and managing personal finances to ensure they can live within their means.

The active support and work alongside families and the use of group requests for commonly occurring requests are meant to build resilience and capacity so that Jordan's Principle offers a step forward rather than being a form of dependence.

There are few parameters for the delivery of Jordan's Principle. Service Coordinators are left to apply their judgement in supporting applications. This has resulted in Service Coordinator X developing their own scales and frameworks for applicants. The need for

parameters in Jordan's Principle has made effective communication with applicants a critical part of Service Coordinator X's work. Some applicants may come in with a preconceived idea about funding (i.e., my neighbour got a laptop through Jordan's Principle, so I should too). Service Coordinator X handles this by framing applications through a lens of *wants* versus *needs*. For example, an applicant may want a king-size bed for their child, but only need a twin bed, given the child's height and age. Service Coordinator X is careful so as not to be seen as gatekeeping, but rather works in partnership with applicants to understand their unique needs. This approach builds trust through respect of the applicants and their abilities, and is also supported by the tribal council employing Service Coordinator X.

With one service coordinator, one family support worker (a position funded through Jordan's Principle), and one administrator (to manage payments and track applications), the team often burns out. They are regularly serving well above the 7 First Nations in their mandate, serving nearly 30 First Nations at certain times.

Flourishing Jordan's Principle

Service Coordinators can be helpful as trained professionals (e.g., social workers, nurses) in building capacity and connecting families to available services. A return to these original functions, rather than the churn of reviewing applications would support the sprit and intent of Jordan's Principle by supporting families in creating meaningful and sustainable change.

The limited guidance on the implementation of Jordan's Principle has led to significant variability between regions. Guidance and guidelines would be helpful for assessing reasonableness in different places, e.g., urban versus remote, and for the types of requests, e.g., helping to decipher *needs* versus *wants*. Approving everything that applicants want, can and does lead to abuses. For example, applicants may receive money for groceries, and spend it on a vacation. Or they may be approved for household furnishings, and immediately sell them. While they may be the exception, it is crucial to limit these abuses for the long-term success of Jordan's Principle.

Unifying the Jordan's Principle application process across all regions could lessen the impetus for complaints or misinterpretations about what Jordan's Principle is for and how it should operate. Process parity could also lead to greater clarity for applicants and practitioners. In turn, clarity and parity allow for easier evaluation, ensuring that Jordan's Principle is operating as intended.

Appendix E

First Nation X

This summary text has been reviewed and approved by the interlocutor. IFSD wishes to recognize their contribution in sharing their professional experience with Jordan's Principle.

First Nation X is a self-governing First Nation operating a Jordan's Principle pilot program. The program has one Jordan's Principle Navigator, and is looking to hire a second. The program is currently in development and is scheduled to be fully operational by the end of 2024.

Key takeaways

1. **Customized Case Management:** First Nation X develops customized wrap-around plans, building capacity within families and caregivers to address long-term needs and improve outcomes. The program addresses diverse needs, including emergency accommodation, addiction treatment, bedroom furniture, educational support, and respite care.
2. **Gap Filling:** Jordan's Principle is filling service gaps to help meet the basic needs of vulnerable individuals.
3. **Success: Leveraging Existing Systems:** First Nation X has modeled its Jordan's Principle program on existing systems within its First Nation. This allows it to leverage work that has already been completed, i.e., for budgeting, HR, etc.
4. **Success: Group Proposals:** The program has secured significant funding through group proposals, allowing First Nation X to staff its pilot program adequately.
5. **Challenge: ISC processes:** Delayed and inconsistent decisions from ISC cause problems. First Nation X may have to pay for services while awaiting a decision.

Operationalizing Jordan's Principle: A Pilot Program

First Nation X is running a Jordan's Principle pilot program to address what citizens and staff described as barriers to accessing equitable services. This pilot is overseen by First Nation X's Justice department and aims to streamline services, reduce wait times, and enhance case management for families accessing Jordan's Principle.

The program is still in its development phase, focusing on establishing protocols, training navigators, and standardizing practices. Once fully implemented, it aims to offer comprehensive support across all of First Nation X's service delivery departments.

As of the time of writing, First Nation X has been approved to be a Jordan's Principle Service Coordinator, with funding for 2 navigators, 1 intake/administration worker and half of the wages for a manager. First Nation X is working to secure the remaining wage funding for the manager through Post Majority Support Services (PMSS).

First Nation X also completed a service agreement with ISC to fund necessities of life like grocery support, emergency rent and housing, clothing, winter clothing, utilities/heating and prenatal supports.

The needs being addressed through Jordan's Principle are diverse (e.g., emergency accommodation, addiction treatment, educational support, bedroom furniture, sports fees, etc.). First Nation X's approach to Jordan's Principle reflects a commitment to providing holistic support, by first addressing immediate needs, and then building capacity within their community to foster long-term well-being.

First Nation X decided to establish their own Jordan's Principle Navigator due to several issues with the existing service delivery model:

1. **Fragmentation of Service Delivery**: Citizens were experiencing fragmented supports and services, making it challenging to navigate multiple systems for support and relief. This fragmentation was not in the best interest of the families and added to the burden of developing sound, customized wrap-around supports and services.
2. **Barriers to Access**: Citizens reported feeling barriers were being put in place to access equitable service delivery. Specifically, there were instances where citizens experienced a "no" before their application was even submitted. Largely, this was caused by requests being outside the scope of Jordan's Principle i.e., not for the well-being and benefit of the child.
3. **Longer Wait Times:** At the time of implementation, First Nation X had only identified one service coordination organization that their citizens could access (Regional Organization Y). Regional Organization Y served a larger community than just First Nation X, resulting in longer wait times for citizens to access Jordan's Principle funding.
4. **Lack of Appeal Process**: Citizens had no clear avenue to appeal applications and did not understand how to re-apply or modify their applications. This led to frustration, as citizens felt their needs were not being adequately met**.**

First Nation X is seeking funding for a variety of supports and services through Jordan's Principle to enhance their programming and services. Some of these include:

1. **Staffing and Program Costs:** First Nation X is seeking funding for various positions, such as Jordan's Principle Navigators, and for programming costs related to their Justice teams, Youth Outreach, and Youth Recreation teams. They are also developing a Necessities of Life program and other group proposals for specific needs like winter clothing.
2. **Capital:** First Nation X is submitting applications to recover costs on several capital purchases that enhance their on-the-land programming, e.g., trucks, trailers, river boats, and snowmobiles. They are also working on constructing additional office space and developing outdoor gathering and recreation hubs.

3. **Support for Individual Requests:** This includes emergency and medical travel, bedroom furniture for children, food and fuel subsidies, emergency accommodation, addictions treatment, respite support, private caregiver expenses, sports fees and equipment, educational supports, and emergency utility payments.

To manage cash flow for urgent requests, First Nation X uses its prevention dollars. This involves assuming the financial risk of covering these costs upfront, with the expectation that they will be reimbursed by Jordan's Principle later. They have developed tracking and reimbursement mechanisms to manage this process.

ISC approval decisions are ofren significantly delayed and can be inconsistent. Some applications may be approved quicly, while others take months. When asked about challenges, a Jordan's Principle Navigator from First Nation X offered the following:[1]

> *What I find the most challenging is how long it takes to get a decision back from [ISC]. Since I have started (February 2024); I have not received a decision back from [ISC] from the 23 applications I have submitted. I have only received approvals from the previous Navigator's submissions; some of those applications were submitted as far back as August 2023. When I do a follow-up email to [ISC] regarding the applications I have sent they respond within 1-2 business days providing an ISC# but the application will be pending approval.*
>
> *In addition, I think [ISC] assumes that [First Nation X] will just cash flow the supports for our clients. When I have submitted my own application personally; I received an approval 2 days after I submitted my application.*
>
> *I just got off the phone with CLIENT 1 (she wanted a follow-up done on her application) however, she told me her sister submitted an application on her own and she received an approval quite quickly as well.*

First Nation X highlighted challenges with delayed decision-making in Jordan's Principle applications, alongside instances of quicker approvals for individual submissions. The variability in processing time causes uncertainty for both applicants and staff. It reflects ongoing inefficiencies and disorganization with ISC's processes.

Additionally, ISC assumes First Nation X will be financially responsible for client supports while awaiting a decision. A unified approach (parity of process across all regions) to Jordan's Principle applications could help alleviate concerns over financial responsibility, and give greater clarity to applicants about what will and will not be covered.

First Nation X is developing their approach to operations and planning. This includes:

[1] Quotes have been edited for clarity, but have not been substantively altered.

1. **Integration with Other Services:** First Nation X is aligning the development of their Jordan's Principle program with their Post-Majority Services Program, which replicates the same financial tracking, bill backs, and cash flowing processes.
2. **Leveraging Cost Information**: First Nation X uses detailed cost information from their current operations to inform and support their funding proposals. This helps them to project and anticipate costs for future service delivery and program development.
3. **Data Management**: First Nation X has purchased a database/case management system to use as a tool for managing cases and tracking requests.

Responding to citizens' concerns about fragmented service delivery, First Nation X is integrating their approach to Jordan's Principle. While their development of an approach is ongoing, they are integrating services and activities, and using their own cost analysis to inform proposals. They utilize Jordan's Principle funding to support positions responsible for coordinating both Jordan's Principle and general program and service delivery. As their work continues, First Nation X is encountering challenges and disruptions due to the inconsistent management of Jordan's Principle by ISC.

Appendix F

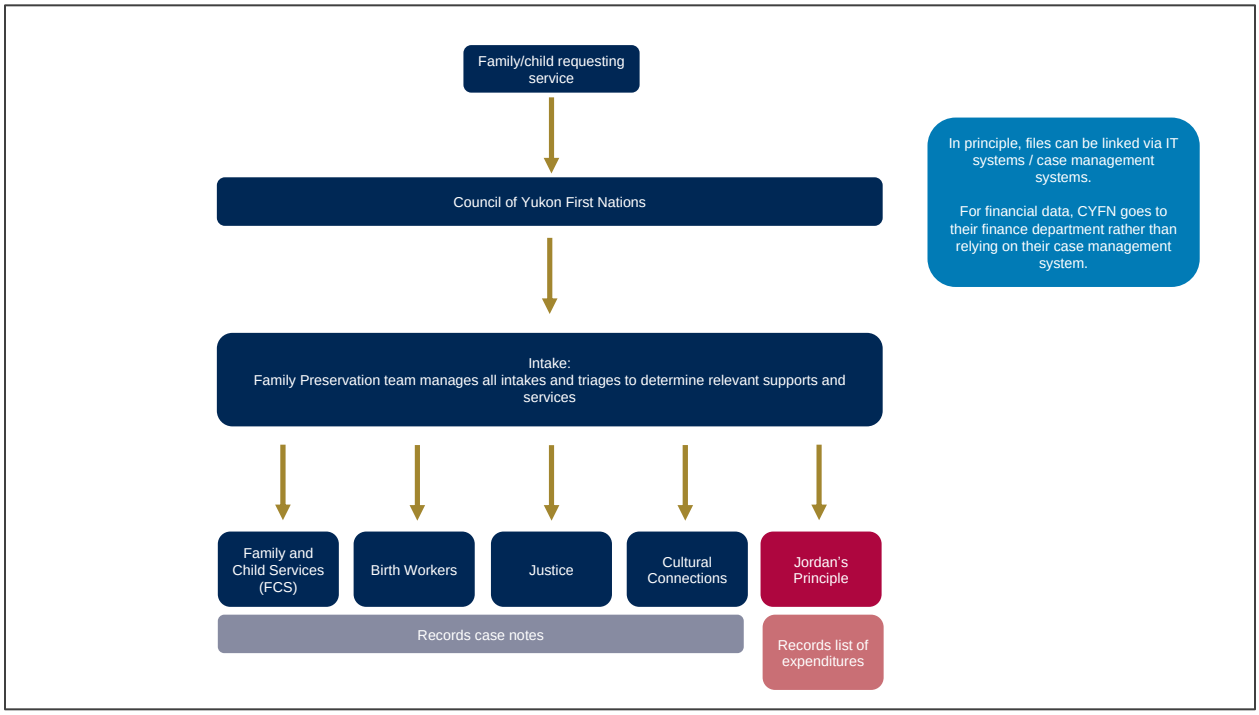
Jordan's Principle Service Coordination
Council of Yukon First Nations (CYFN)

This summary text has been reviewed and approved by the interlocutor. IFSD wishes to recognize their contribution in sharing their professional experience with Jordan's Principle.

The Council of Yukon First Nations (CYFN) built their own approach for the operationalization of Jordan's Principle. With an intake process, expenditure tracking, and case management system, CYFN is documenting how Jordan's Principle is being used to address the root causes of need.

CYFN is an urban-based service provider in child and family services, and the first Jordan's Principle service coordinator in the territory. An increase in requests led the CYFN Family Preservation Services team to build their own programs utilizing Jordan's Principle. The programs allows CYFN to triage requests, track outputs and provide culturally appropriate wrap around services.

Any family seeking support from Family Preservation Services goes through a general intake process. During intake, the family is asked to provide basic information about their needs, context related to their child and family, income sources, as well as their family goals.



Once the intake process is complete, a referral to one or more of the units and respective teams: Client Services; Prenatal and Infant Supports; Programming; Jordan's Principle.

Due to the significant volume of incoming requests, CYFN developed internal eligibility criteria and established parameters by which a family may access Family Preservation Services resources and supports. More specifically, five assessment criteria were defined:

1) Children with complex needs
2) Children living in poverty
3) Children/families who have emergencies
4) Family connections/reunification
5) Cultural connections

If a family does not meet the established criteria, CYFN directs them to complete and submit their application to ISC directly.

In fiscal year 2023-2024, CYFN was provided a contribution agreement for a “float” to cashflow approved Jordan’s Principle supports and services. This allowed CYFN to received funds up from and to request ISC directly for additional resources. This was reduced barriers for supports and services for children.

With its intake and tracking process, including expenditures associated to Jordan’s Principle, CYFN is building its own data set to capture requests. From its internal analysis, approximately 70% of all intakes are for Necessities of Life (NOL) requests associated to poverty specifically food, clothing and housing. CYFN leverages this information to build supporting wrap around programs and services.

To equip families with skills and tools, CYFN established a requirement to attend workshops to remain eligible for the NOL supports. For instance, families are asked to complete courses, whether delivered through CYFN or their First Nations, on topics such as budgeting, parenting, cultural programming, etc. If a family chooses not to attend, they are directed to apply directly to Jordan’s Principle, rather than receiving the supports through Family Preservation Services.

CYFN established the structured approach to protect and promote the integrity of Jordan’s Principle. There are different service coordination approaches that may apply rules differently across the country, which do not always reflect the spirit and intent of Jordan’s Principle. As with any service provision, not all families are pleased with CYFN’s approach. However, CYFN advocates that its current approach supports families who are most in need, while offering them ongoing opportunities to build and strengthen family skills. The goal is to provide families the skills to strength protective factors and prevent involvement with the child welfare system. To attain this set goal, root causes of need must be addressed.

The outwardly seamless approach (i.e., where a family can ask for support without specifying the type of support they are seeking) requires internal coordination and a well-functioning administration. CYFN’s approach helps clients navigate services with independence. Administering Jordan’s Principle entails a significant administrative

burden. In fact, documenting requests, expenditures, issuing cheques and purchase orders etc. are time intensive, and this strains capacity within Family Preservation Services. There is also a need to monitor potential misuse of funds, as may be the case if, for example, families sell the purchased products. While this remains an exception, this type of misuse can be damaging to Jordan's Principle overall, especially as CYFN expects that an evaluation will be carried out in the future and long term reforms.

A forward strategy for Jordan's Principle

To make Jordan's Principle more effective for children and families, CYFN focuses on defining and quantifying needs. Knowing the community is crucial to determining appropriate eligibility and effectively assessing requests. A block of funds allocated based on the identified needs within the served community could be allocated to a service coordinator like CYFN. CYFN would then be accountable for the use of the funds, while documenting requests and outcomes.

Pilots on operationalizing Jordan's Principle in different settings could be instructive, namely in urban versus on-reserve settings, with regional versus First Nation-led administration. These exercises could help define costs, areas of need, approaches, and successful strategies to support families seeking supports through Jordan's Principle.

Government of Canada / Gouvernement du Canada

Submit a request under Jordan's Principle

Important

If a child needs **immediate** care, please call 911 or your local emergency services number, or visit the nearest health facility.

Urgent requests

If you have an urgent request that meets the following interim criteria, please contact the Jordan's Principle Call Centre at 1-855-JP-CHILD (1-855-572-4453). This could include:

- life threatening cases
- cases involving end-of-life or palliative care
- risk of suicide
- risk to physical safety
- no access to food or basic necessities
- risk of entering the child welfare system
- caregivers and children fleeing from domestic violence

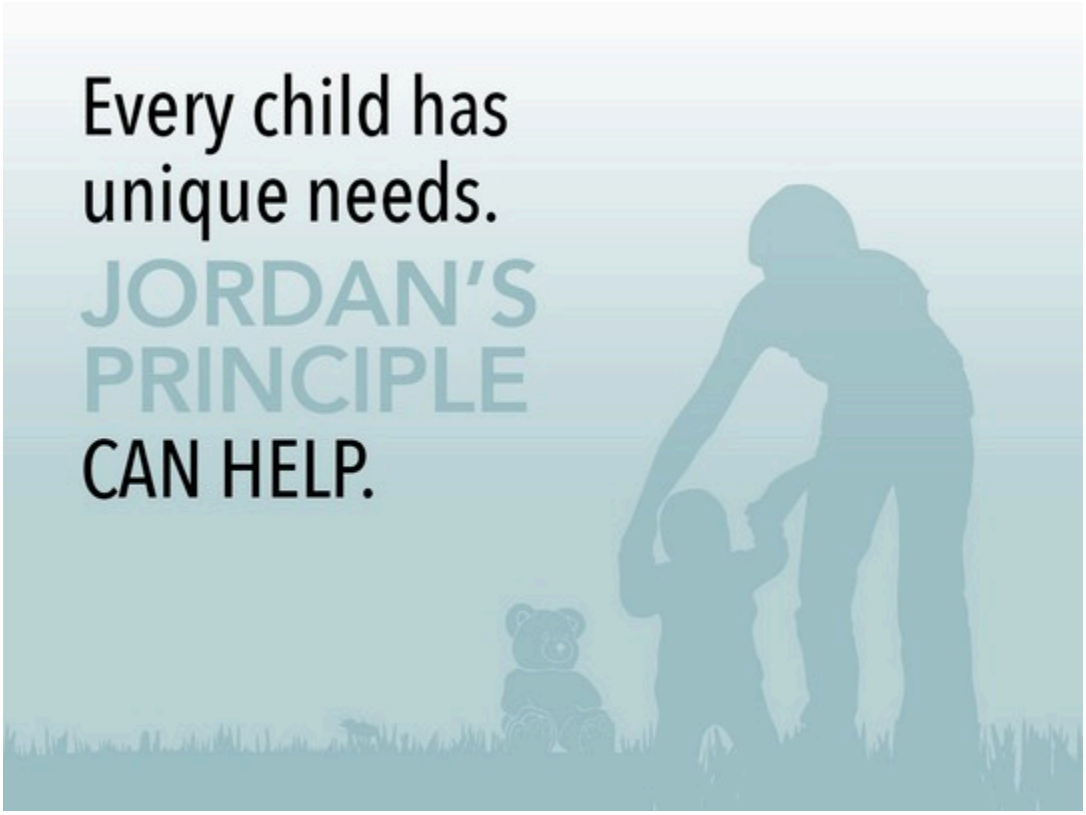
This interim criteria of urgent was clarified by the Canadian Human Rights Tribunal in its November 21, 2024 summary ruling.

Requests are reviewed on a case-by-case basis and there may be some time-sensitive requests that are urgent, but are not covered by the above.

Urgent requests for products, services or supports under Jordan's Principle must be directly linked to the child's urgent circumstances.

On this page

- What is covered
- Who is covered
- Who to contact
- Who can send requests
- How to send a request
- Processing requests
- Reimbursements
- How to appeal decisions
- For more information



Available 24 hours, 7 days a week

- Jordan's Principle Call Centre: 1-855-JP-CHILD (1-855-572-4453)
- teletypewriter: 1-866-553-0554

What is covered

Jordan's Principle responds to unmet needs of First Nations children no matter where they live in Canada.

Different levels of government fund different services for First Nations children. As a result, it can be hard to figure out how to access necessary products, services and supports.

Under Jordan's Principle, we can:

- inform families about the help available for their child and how to access it
- coordinate access to products, services and supports
- provide funding when it's needed to make sure products, services and supports are accessed without delay

What is funded

Each child's situation is unique. Please confirm coverage in advance with your regional focal point for Jordan's Principle.

Funding can help with a wide range of health, social and educational needs, including the unique needs that First Nations Two-Spirit and LGBTQQIA children and youth and those with disabilities may have. Some examples of what has been funded under Jordan's Principle include:

Health

- mobility aids
- wheelchair ramps
- addiction services
- services from Elders
- mental health services
- specialized hearing aids
- traditional healing services
- services for children in care
- assessments and screenings
- transportation to appointments
- medical supplies and equipment
- long-term care for children with specialized needs
- therapeutic services for individuals or groups (speech therapy, physiotherapy, occupational therapy)

Social

- social worker
- land-based activities
- personal support worker
- specialized summer camps
- respite care (individual or group)
- specialized programs based on cultural beliefs and practices

Education

- school supplies
- tutoring services

- teaching assistants
- specialized school transportation
- psycho-educational assessments
- assistive technologies and electronics

Who is covered

On November 25, 2020, the Canadian Human Rights Tribunal (CHRT) released a ruling about Jordan's Principle eligibility. A child under the age of majority in their province or territory of residence can access Jordan's Principle, if they permanently reside in Canada and if the child meets one of the following criteria:

- is registered or eligible to be registered under the *Indian Act*
- has one parent or guardian who is registered or eligible to be registered under the *Indian Act*
- is recognized by their nation for the purposes of Jordan's Principle
- is ordinarily resident on reserve

The eligibility above replaces the CHRT interim motion ruling of February 2019.

To find out more about how to confirm with a First Nations official that a child is recognized by their nation (for the purposes of Jordan's Principle), contact your regional focal point for Jordan's Principle or the Jordan's Principle Call Centre.

If you are a First Nations leader or official, looking for more information about what this means to your nation, please contact your regional office or regional focal point for Jordan's Principle.

Ordinarily resident on reserve means that an Indigenous child:

- lives on reserve
- normally lives on reserve even if the child or one of the members of their household (such as a sibling, parent, extended family living with child) may have been required to spend some time away temporarily from the community to access services such as health care or education where there are no other comparable services available in the community
- was ordinarily resident on reserve immediately prior to accessing Jordan's Principle
- is a dependent of a family that maintains a primary residence on reserve
- returns to live on reserve with parents, guardians or caregivers during the year, even if they live elsewhere while attending school or to receive medical care or other services
- meets student eligibility requirements in Yukon Territory

A child taken into care of a Child and family services agency or into a kinship or informal agreement is considered ordinarily resident on reserve where:

- the child's parent or guardian lived on reserve at the time the child was taken into care
  or
- a child goes into the care of a guardian who lives on reserve

Requests for Inuit children can be made through the Inuit Child First Initiative.

Please contact us if you're not sure how to help an Indigenous child who needs access to products, supports and services.

Who to contact

Update

Requests for access to products, services and supports for Inuit children through the Inuit Child First Initiative can also be sent to the regional focal points listed on this page.

Update: On September 6, 2019, the Canadian Human Rights Tribunal (CHRT) released a decision related to compensation for certain individuals under Jordan's Principle. This is a complex decision which the Government of Canada is reviewing. Although you may have questions about this, **the 24/7 Jordan's Principle toll-free line and regional contacts, are intended to help with requests for products, services and supports, and not for requests related to the CHRT order of compensation of individuals**.

For more information:

- The Government of Canada's assessment of the Canadian Human Rights Tribunal's ruling on compensation

Contact us to:

- get more information about Jordan's Principle
- request funding for a product, service or support
- get copies of forms
- seek reimbursements
- start an appeal

You can reach us through:

- Jordan's Principle focal points across Canada
- local service coordinators for First Nations communities

Regional focal points across Canada

If you can't reach a regional focal point or you are seeking assistance after the listed business hours, please contact the Jordan's Principle Call Centre.

Expand all | Collapse all

▼ National Office

Monday to Friday 8:00am to 4:00pm Eastern time

Indigenous Services Canada
JPCaseMgt-GestCasPJ@sac-isc.gc.ca

▼ Atlantic Region (New Brunswick, Newfoundland , Nova Scotia, Prince Edward Island)

Monday to Friday 8:30am to 4:30pm Atlantic time

For requests:
1-833-652-0210
principedejordanatl-jordansprincipleatl@sac-isc.gc.ca

For payment inquiries:
jordansprincipleatl_finance-principedejordan@sac-isc.gc.ca

▼ Quebec

Monday to Friday 8:00am to 4:00pm Eastern time

For requests:

1-833-725-7236

principedejordan-qc-jordanprinciple@sac-isc.gc.ca

For payment inquiries:

principedejordanfacturation-qc-jordanprincipleinvoicing@sac-isc.gc.ca

▼ **Ontario**

Monday to Friday 8:00am to 4:00pm Eastern time

For requests:
1-833-442-2429
jordansprincipleon-principedejordan@sac-isc.gc.ca

For payment inquiries:
1-833-442-2429
principedejordanfinance-on-financejordansprinciple@sac-isc.gc.ca

▼ **Manitoba**

Monday to Friday 8:00am to 4:00pm Central time

For requests:

1-833-725-8807

jordansprinciplemb-principedejordan@sac-isc.gc.ca

For payment inquiries:

fnihbfnihmbrjp-spnirmbdgspni@sac-isc.gc.ca

▼ **Saskatchewan**

Monday to Friday 8:00am – 4:00pm Central time

For requests:

1-833-752-4453

principedejordansk_admission-jordansprinciplesk_intake@sac-isc.gc.ca

For payment inquiries:

1-833-752-4453

jordansprinciplesask_finance-principedejordan@sac-isc.gc.ca

▼ **Alberta**

Monday to Friday 8:00am to 4:00pm Mountain time

For requests and payments:

1-833-632-4453

jordansprincipleab-principedejordan@sac-isc.gc.ca

▼ **British Columbia**

Monday to Friday 8:00am to 4:00pm Pacific time

For requests:

778-951-0716

principedejordancb-bcjordansprinciple@sac-isc.gc.ca

For payment inquiries:
778-951-0716
paiementsprincipedejordancb-bcjordansprinciplepayments@sac-isc.gc.ca

▼ **Northern Region - Yukon, Northwest Territories and Nunavut**

Monday to Friday 8:00am to 4:00pm Eastern time

For requests:
1-866-848-5846
principedejordanrn-nrjordansprinciple@sac-isc.gc.ca

For payment inquiries:
1-866-848-5846
principedejordanfinancern-nrfinancejordansprinciple@sac-isc.gc.ca

Who can send requests

A request for a child or children in the same family or with the same guardian can be submitted by:

- a parent or guardian of a First Nations or Indigenous child who ordinarily resides on reserve
- a First Nations, or Indigenous child who ordinarily resides on reserve, at the age of consent in their province or territory of residence. A child at the age of consent can make decisions on their own about the care they need. Age of consent varies by province or territory.
- an authorized representative of the child, parent or guardian

- written or verbal consent must be provided by the parent or guardian

An authorized representative is an individual or business that the requester has given authorized, written permission to act on their behalf with respect to a Jordan's Principle request.

A request for a group of children from multiple families or guardians can be submitted by:

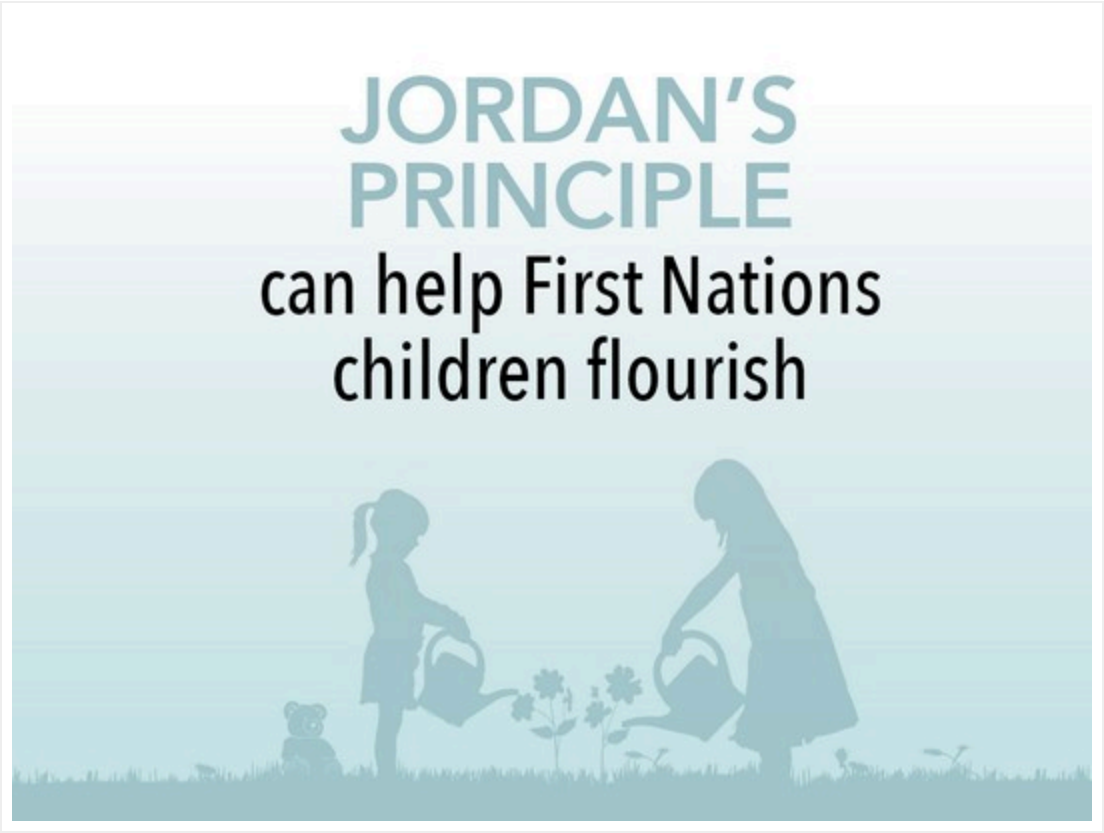
- a parent or guardian of First Nations or Indigenous children who ordinarily reside on reserve
- a community or Tribal Council
- a community organization or institution
- a service coordinator, navigator or case manager

They can request products, services and supports, such as:

- respite care
- wheelchair ramps
- support programs
- educational assistants
- transportation to school
- local therapeutic specialists

How to send a request

Contact us through our call centre, open 24 hours a day, 7 days a week, or your regional focal point to start your request to access services through Jordan's Principle.



The call centre or your regional focal point can provide copies of the forms to start a request or assist you with filling them in.

You can also obtain copies of the forms by clicking and downloading:

- Individual or family request form

How to open the PDF forms

These forms won't open on a mobile device, you will need a computer.

Don't double-click the PDFs. Right click instead.

To access these PDF forms:

1. Install Adobe Reader 10+ or an alternate reader if you don't already have one
2. Download and save the PDF file to your computer

3. Right click on the PDF file you have saved on your computer, select "Open with", choose your PDF reader

We want to make the application process as easy to understand as possible.

Having certain information ready when you contact us can help if you are seeking access to products, services or supports. We start by working with you to gather the basic information to make the request.

To help us confirm the child's eligibility, we may need one of these:

- name, date of birth or registration number of a First Nations child or parent who is registered under the *Indian Act*
- name and date of birth of a First Nations child or parent who is not registered but is entitled to Indian status under the *Indian Act*
- documents confirming a child ordinarily lives on a reserve
- confirmation that your child is recognized by their First Nation for the purposes of Jordan's Principle – visit Confirmation of recognition for more information
    - as a parent or guardian, you could provide a copy of the Confirmation of recognition form completed by a First Nation's designated or deemed official
    - you can also choose to provide consent to Indigenous Services Canada to seek confirmation of recognition from your First Nation on your behalf by completing the Consent to communicate form
    - if you are a service coordinator, a First Nations leader or official looking for more information about what this means to your First Nation, visit Confirmation of recognition

Contact us to obtain copies of these forms.

You will also need to send in a document that shows how the requested product, service or support meets the child's identified health, social or educational need. This document could be from an Elder, knowledge keeper or professional in that field of expertise.

Each request is determined based on the best interests of the child, substantive equality and culturally relevant service provision. If you are unsure of what you should submit, visit document needed for a request or contact your regional focal point.

If you are seeking reimbursement, follow the steps listed in Step 7. Reimbursements.

Processing requests

The Jordan's Principle regional focal point in your area will review the completed request. A decision will be sent to you in writing after the request is processed.

How long it takes to process a request

Requests for a child or children in the same family or with the same guardian:

- **urgent requests** (the child's current health or safety is a concern) are processed within 12 hours of receiving all necessary information
- all other requests are processed within 48 hours of receiving all necessary information
    - if we do not have enough information to confirm the type of product, service or support the child needs, more time may be necessary to get this information; however, if the child requires

an assessment of their need(s), this can be paid for immediately under Jordan's Principle

Requests for a group of children from multiple families or guardians:

- **urgent requests** are processed within 48 hours of receiving all necessary information
- all other requests are processed within 1 week of receiving all necessary information

Approved requests are managed in 1 of 2 ways:

1. where possible, we arrange for the products, services or supports to be provided directly to the child, or children. In these situations, there is no cost to the family, guardian, child or authorized representative and reimbursement is arranged directly with the service provider or vendor
2. if the family, guardian, child or authorized representative has already paid for the approved product, service or support, then reimbursement of these expenses will be provided

Denied request

If your request is denied, you may appeal the decision up to 1 year from the date the request was denied.

Reimbursements

Each child's situation is unique. For this reason it is important to confirm coverage in advance with your Jordan's Principle regional focal point.

Reimbursement may be provided if the approved product, service or support has already been paid.

Requesting a reimbursement

A reimbursement form is needed:

- to request reimbursement for costs already paid
- for service providers and vendors to request direct payment for services rendered

Follow these 3 steps to request a reimbursement:

1. contact us so we can help you start the process and confirm that the product, service or support will be funded
2. complete a reimbursement form. We can send you the form and help you fill it in
3. send the completed reimbursement form to the Jordan's Principle regional focal point in your area and include all relevant supporting documents

Receiving the payments

Requests for a child or children in the same family or with the same guardian:

- the parent or guardian normally gets the payment if the child is under the age of majority in their province or territory of residence
- children over age 16 may get the payment if they submitted the request
- a vendor or service provider may be paid directly

Request for a group of children from multiple families or guardians:

- payment will be made to the community or group that made the request
- vendors or service providers may be paid directly

How to appeal decisions

Appeals to decisions under Jordan's Principle can be sent to regional focal points across Canada. They will help you start the appeal and work with you throughout the process.

If a request is denied, the requester may appeal the decision within **1 year** of the date of denial. To do so, they must send in a written request to their regional Jordan's Principle focal point.

At a minimum, the request for appeal must contain:

- the child's name and date of birth
- the product or service requested
- the date of denial and a copy of the Jordan's Principle denial letter (if available)

Although it is not required to begin an appeal, you may also include additional information, such as:

- assessments
- information showing that the request will help ensure:
  - substantive equality
  - access to a culturally appropriate service
  - meet the best interests of the child

New or additional information is not needed in order to start an appeal. The appeal process can take up to 30 business days.

Sending a request for appeal

An individual can appeal a decision on behalf of an eligible child as described in Step 2. Who is covered, including

- a parent or guardian of that child
- a First Nations child, or an Indigenous child ordinarily resident on reserve at the Age of Consent in their province or territory of residence
- an authorized representative of the child, parent or guardian

Requests for appeals for a group of children from multiple families or guardians can be submitted by:

- the community or group that submitted the request

Please contact us if you have:

- any questions
- new information about any request under Jordan's Principle that was submitted or denied between 2007 and 2017

For more information

- Jordan's Principle regional focal points across Canada
- local service coordinators in First Nations communities or organizations across Canada (contact your local Jordan's Principle regional focal point to get this information)
- Jordan's Principle Call Centre: 1-855-JP-CHILD (1-855-572-4453), open 24 hours a day, 7 days a week
- teletypewriter: 1-866-553-0554

Did you find what you were looking for?

Yes No

What was wrong?

- ○ I can't **find** the information
- ○ The information is hard to **understand**
- ○ There was an error or something **didn't work**
- ○ Other reason

Please provide more details

You will not receive a reply. Don't include personal information (telephone, email, SIN, financial, medical, or work details).

Maximum 300 characters

Submit

Date modified: 2025-01-16

Government of Canada / Gouvernement du Canada

Submit a request under Jordan's Principle

Important

If a child needs **immediate** care, please call 911 or your local emergency services number, or visit the nearest health facility.

Urgent requests

If you have an urgent request that meets the following interim criteria, please contact the Jordan's Principle Call Centre at 1-855-JP-CHILD (1-855-572-4453). This could include:

- life threatening cases
- cases involving end-of-life or palliative care
- risk of suicide
- risk to physical safety
- no access to food or basic necessities
- risk of entering the child welfare system
- caregivers and children fleeing from domestic violence

This interim criteria of urgent was clarified by the Canadian Human Rights Tribunal ruling 2025 CHRT 6.

Urgent requests for products, services or supports under Jordan's Principle must be directly linked to the child's urgent circumstances.

> Requests are reviewed on a case-by-case basis. There may be some time-sensitive requests that are urgent, but are not covered by the above.

On this page

- Updates on Jordan's Principle
- Information to include with your request
- What is covered
- Who is covered
- Who to contact
- Who can send requests
- How to send a request
- Processing requests
- Reimbursements
- How to appeal decisions
- For more information



Updates on Jordan's Principle

Statement by Minister Hajdu on the changes to operating procedures related to processing requests under Jordan's Principle (February 10, 2025)

Jordan's Principle Operational Bulletin

Information to include with your request

A request must include:

1. Confirmation of eligibility
2. Completed application form
    a. Please clearly explain how the requested product, service, or support will meet the child's specific health, social, or educational needs.

b. Provide a detailed cost breakdown of requested products, services and/or supports.

3. Documentation
    a. All requests must be accompanied by a letter of support that shows how the requested product, service or support links directly to the child's unmet health, social or educational needs.
    b. Support letters must come from a health professional, educational professional, Elder, or Knowledge Keeper who knows the child and can identify their needs.
    c. Professionals providing a letter of support must do so within their scope of practice.
    d. If you are requesting additional funding to extend services for the child, updated letters of support are required to support the child's changing needs or to demonstrate a need for continued supports or services.
    e. Include any relevant assessments or diagnoses.
    f. Explains how the child experienced gaps or delays in accessing government services, or has denied an existing government service because of their identity as a First Nations child
4. Parent or guardian consent if you are submitting an application on behalf of the parent of guardian of the First Nations child.
    a. Additional documentation may be required

Please see Documents needed for a request (info additional information).

If you have any questions on how to submit an application for Jordan's Principle or need support in completing an application, please contact us.

Available 24 hours, 7 days a week

- Jordan's Principle Call Centre: 1-855-JP-CHILD (1-855-572-4453)
- teletypewriter: 1-866-553-0554

What is covered

Jordan's Principle supports substantively equal access to a wide range of health, social and educational products, supports and services that respond to the unique situation and distinct needs of each First Nations child.

Under Jordan's Principle, we can:

- inform families about the help available for their child and how to access it
- coordinate access to products, services and supports
- provide funding when it's needed to make sure products, services and supports are accessed without delay

What is funded

Funding can help with a wide range of health, social and educational needs, including the unique needs that First Nations Two-Spirit and LGBTQQIA children and youth and those with disabilities may have. Some examples of what can be funded under Jordan's Principle include:

Health

- Child-specific addiction services
- Professional mental health services
- Specialized hearing aids
- Assessments and screenings for a medical or educational need

- Transportation to child-specific medical appointments
- Medical supplies and equipment
- Therapeutic services for individuals or groups (speech therapy, physiotherapy, occupational therapy)
- Medical respite care (individual or group)
- Mobility aids
- Wheelchair ramps

Social

- Child-specific land-based activities on reserve
- Child-specific specialized programs based on cultural beliefs and practices on reserve

Education

- School supplies
- Tutoring services
- Teaching assistants on reserve
- Assessments and screenings for educational needs
- Assistive technologies and electronics related to child-specific educational needs
- Specialized school transportation

Each child's situation is unique. If you have questions about what may be covered, contact your regional focal point for Jordan's Principle.

Capital assets

On January 18, 2022, the Canadian Human Rights Tribunal (CHRT) amended its November 2021 orders on funding capital assets to support the delivery of the First Nation child and family services (FNCFS) program and Jordan's Principle (2021 CHRT 41).

For more information on how to request funding for capital assets:

- Funding for capital assets: Jordan's Principle and First Nations child and family services

What is not eligible to be funded

ISC will not approve funding for the following items unless such funding is required by substantive equality under Jordan's Principle:

- purchase, construction or structural renovations of homes
- requests to support sporting events or elite or competitive sport-related training, unless it is linked to the specific health, social, or educational needs of the First Nations child
- international travel, unless it is related to an exceptional medical need of the First Nations child
- non-medical supports such as travel costs, non-medical respite care, child care, clothing, furniture and vehicles, unless accompanied by a letter of support from a medical professional. The professional must be able to provide a child-specific recommendation based on their professional designation and their knowledge of the First Nation child's specific needs

- school-related requests, unless linked to the specific health, social or educational need of the First Nations child. Supports to school boards off-reserve and private schools will be redirected to provincial school boards, or other existing provincial and federally-funded programs
- automatic administrative fees within group requests, including salaries, service fees and overhead costs

Who is covered

On November 25, 2020, the CHRT released a ruling about Jordan's Principle eligibility. A First Nations child under the age of majority in their province or territory of residence can access Jordan's Principle, if they permanently reside in Canada and if the child meets one of the following criteria:

- is registered or eligible to be registered under the *Indian Act*
- has one parent or guardian who is registered or eligible to be registered under the *Indian Act*
- is recognized by their nation for the purposes of Jordan's Principle
- is ordinarily a resident on reserve

The eligibility above replaces the CHRT interim motion ruling of February 2019.

To find out more about how to confirm with a First Nations official that a child is recognized by their nation (for the purposes of Jordan's Principle), contact your regional focal point for Jordan's Principle or the Jordan's Principle Call Centre.

If you are a First Nations leader or official, looking for more information about what this means to your nation, please contact your regional office or regional focal point for Jordan's Principle.

Ordinarily resident on reserve means that an **Indigenous child**:

- lives on reserve
- normally lives on reserve even if the child or one of the members of their household (such as a sibling, parent, extended family living with child) may have been required to spend some time away temporarily from the community to access services such as health care or education where there are no other comparable services available in the community
- was ordinarily resident on reserve immediately prior to accessing Jordan's Principle
- is a dependent of a family that maintains a primary residence on reserve
- returns to live on reserve with parents, guardians or caregivers during the year, even if they live elsewhere while attending school or to receive medical care or other services
- meets student eligibility requirements in Yukon Territory

A child taken into care of a Child and family services agency or into a kinship or informal agreement is considered ordinarily resident on reserve where:

- the child's parent or guardian lived on reserve at the time the child was taken into care
  or
- a child goes into the care of a guardian who lives on reserve

Requests for Inuit children can be made through the Inuit Child First Initiative.

Please contact us if you're not sure how to help an Indigenous child who needs access to products, supports and services.

Who to contact

Contact us to:

- get more information about Jordan's Principle
- request funding for a product, service or support
- get copies of forms
- seek reimbursements
- start an appeal

You can reach us through:

- Jordan's Principle focal points across Canada
- local service coordinators for First Nations communities

Regional focal points across Canada

If you can't reach a regional focal point or you are seeking assistance after the listed business hours, please contact the Jordan's Principle Call Centre.

Expand all | Collapse all

▼ **National Office**

Monday to Friday 8:00am to 4:00pm Eastern time

Indigenous Services Canada

JPCaseMgt-GestCasPJ@sac-isc.gc.ca

▼ **Atlantic Region (New Brunswick, Newfoundland , Nova Scotia, Prince Edward Island)**

Monday to Friday 8:30am to 4:30pm Atlantic time

For requests:

1-833-652-0210

principedejordanatl-jordansprincipleatl@sac-isc.gc.ca

For payment inquiries:

jordansprincipleatl_finance-principedejordan@sac-isc.gc.ca

▼ **Quebec**

Monday to Friday 8:00am to 4:00pm Eastern time

For requests:

1-833-725-7236

principedejordan-qc-jordanprinciple@sac-isc.gc.ca

For payment inquiries:

principedejordanfacturation-qc-jordanprincipleinvoicing@sac-isc.gc.ca

▼ **Ontario**

Monday to Friday 8:00am to 4:00pm Eastern time

For requests:

1-833-442-2429

jordansprincipleon-principedejordan@sac-isc.gc.ca

For payment inquiries:

1-833-442-2429

principedejordanfinance-on-financejordansprinciple@sac-isc.gc.ca

▼ Manitoba

Monday to Friday 8:00am to 4:00pm Central time

For requests:

1-833-725-8807

jordansprinciplemb-principedejordan@sac-isc.gc.ca

For payment inquiries:

fnihbfnihmbrjp-spnirmbdgspni@sac-isc.gc.ca

▼ Saskatchewan

Monday to Friday 8:00am – 4:00pm Central time

For requests:

1-833-752-4453

principedejordansk_admission-jordansprinciplesk_intake@sac-isc.gc.ca

For payment inquiries:

1-833-752-4453

jordansprinciplesask_finance-principedejordan@sac-isc.gc.ca

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Monday to Friday 8:00am to 4:00pm Mountain time

For requests and payments:

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jordansprincipleab-principedejordan@sac-isc.gc.ca

▼ British Columbia

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principedejordancb-bcjordansprinciple@sac-isc.gc.ca

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▼ Northern Region - Yukon, Northwest Territories and Nunavut

Monday to Friday 8:00am to 4:00pm Eastern time

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For payment inquiries:
1-866-848-5846
principedejordanfinancern-nrfinancejordansprinciple@sac-isc.gc.ca

There are local service coordinators that have been hired in communities across Canada. They can help families who:

- have questions about Jordan's Principle
- would like to submit a request for products, services or supports under Jordan's Principle

We fund these coordinators, who are staffed by:

- local tribal councils
- First Nations communities
- regional health authorities
- First Nations non-governmental organizations, etc.

To reach a local service coordinator, please contact your community or tribal council for available support.

Who can send requests

A request for a child or children in the same family or with the same guardian can be submitted by:

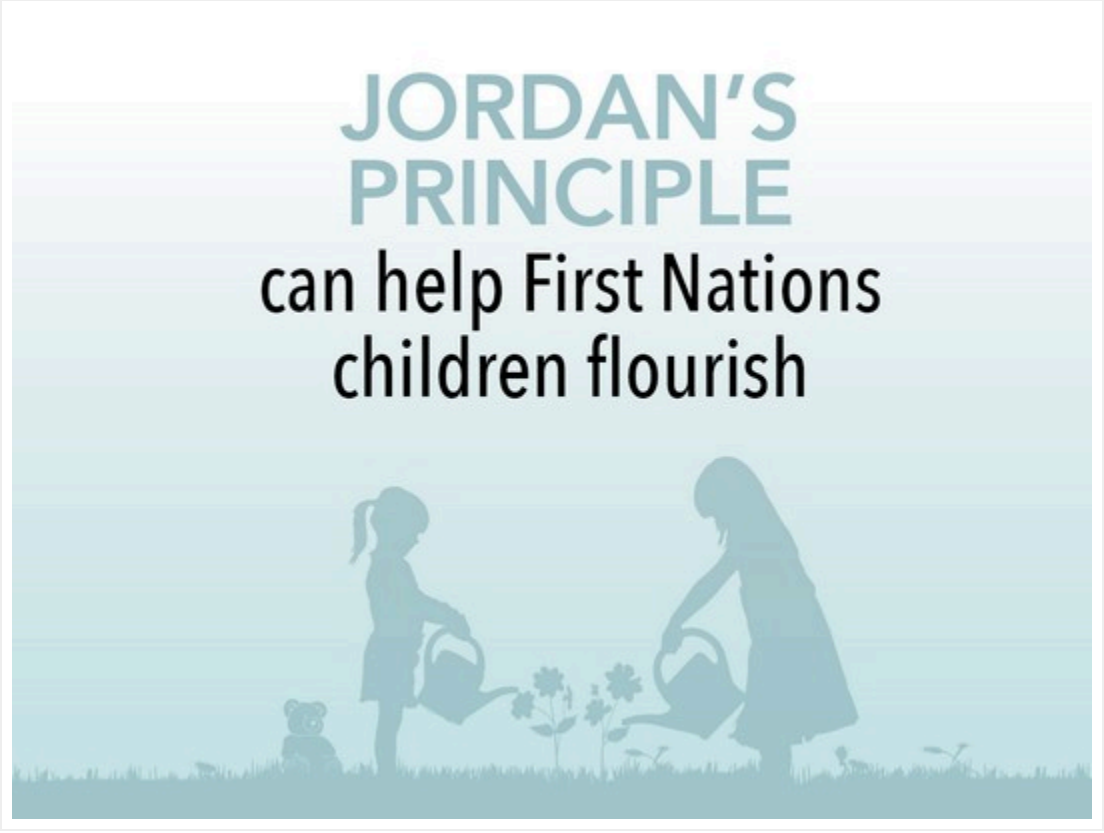
- a parent or guardian of a First Nations or Indigenous child who ordinarily resides on reserve
- a First Nations, or Indigenous child who ordinarily resides on reserve, at the age of consent in their province or territory of residence. A child at the age of consent can make decisions on their own about the care they need. Age of consent varies by province or territory.
- an authorized representative of the child, parent or guardian
    - written or verbal consent must be provided by the parent or guardian

An authorized representative is an individual or business that the requester has given authorized, written permission to act on their behalf with respect to a Jordan's Principle request.

A request for a group of children from multiple families or guardians can be submitted by:

- a parent or guardian of First Nations or Indigenous children who ordinarily reside on reserve
- a community or Tribal Council
- a community organization or institution
- a service coordinator, navigator or case manager

How to send a request



Contact us through our call centre, open 24 hours a day, 7 days a week, or your regional focal point to start your request to access services through Jordan's Principle.

The call centre or your regional focal point can provide copies of the forms to start a request or assist you with filling them in.

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1. Install Adobe Reader 10+ or an alternate reader if you don't already have one
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Having certain information ready when you contact us can help if you are seeking access to products, services or supports. We start by working with you to gather the basic information to make the request.

To help us confirm the child's eligibility, we may need one of these:

- name, date of birth or registration number of a First Nations child or parent who is registered under the *Indian Act*
- name and date of birth of a First Nations child or parent who is not registered but is entitled to Indian status under the *Indian Act*
- documents confirming a child ordinarily lives on a reserve
- confirmation that your child is recognized by their First Nation for the purposes of Jordan's Principle – visit Confirmation of recognition for more information
    - as a parent or guardian, you could provide a copy of the Confirmation of recognition form completed by a First Nation's designated or deemed official
    - you can also choose to provide consent to Indigenous Services Canada to seek confirmation of recognition from your First Nation on your behalf by completing the Consent to communicate form
    - if you are a service coordinator, a First Nations leader or official looking for more information about what this means to your First Nation, visit Confirmation of recognition

Contact us to obtain copies of these forms.

You will need to send in a letter of support that shows how the requested product, service or support links directly to the child's unmet health, social or educational needs. Letters of support must be provided by a health professional, educational professional or Elder or Knowledge Keeper, depending on their expertise as it relates to their ability to determine the unmet needs of the child, and the supports required.

Additional documentation may be required to show how the requested product, service or support meets the child's identified health, social or educational need. If you are unsure of what you should submit, visit

document needed for a request or contact your regional focal point.

If you are seeking reimbursement, follow the steps listed in Step 7. Reimbursements.

Processing requests

The Jordan's Principle regional focal point in your area will review the completed request. A decision will be sent to you in writing after the request is processed.

How long it takes to process a request

Jordan's Principle has experienced a significant growth in requests and due to the significant increase in demand, we are experiencing delays in processing Jordan's Principle requests. Every request is unique and may vary in complexity and this impacts both in the amount of time and effort required to review the request.

Requests for a child or children in the same family or with the same guardian:

- **urgent requests** (the child's current health or safety is a concern) are processed within 12 hours
- all other requests are processed within 48 hours of receiving all necessary information
    - if we do not have enough information to confirm the type of product, service or support the child needs, more time may be necessary to get this information; however, if the child requires an assessment of their need(s), this can be paid for immediately under Jordan's Principle

Requests for a group of children from multiple families or guardians:

- **urgent requests** are processed within 48 hours of receiving all necessary information
- all other requests are processed within 1 week of receiving all necessary information

Approved requests are managed in 1 of 2 ways:

1. where possible, we arrange for the products, services or supports to be provided directly to the child, or children. In these situations, there is no cost to the family, guardian, child or authorized representative and reimbursement is arranged directly with the service provider or vendor
2. if the family, guardian, child or authorized representative has already paid for the approved product, service or support, then reimbursement of these expenses will be provided

Denied request

If your request is denied, you may appeal the decision up to 1 year from the date the request was denied.

Reimbursements

Reimbursement will be provided if the approved product, service or support has already been paid.

Please note that previously-approved requests might not be approved again. We recommend that you do not pay for services until ISC has approved your request.

A reimbursement form is needed:

- to request reimbursement for costs paid for approved requests
- for service providers and vendors to request direct payment for services rendered

Follow these 3 steps to request a reimbursement:

1. contact us so we can help you start the process and confirm that the product, service or support will be funded
2. complete a reimbursement form. We can send you the form and help you fill it in
3. send the completed reimbursement form to the Jordan's Principle regional focal point in your area and include all relevant supporting documents

Receiving the payments

Requests for a child or children in the same family or with the same guardian:

- the parent or guardian normally gets the payment if the child is under the age of majority in their province or territory of residence
- children over age 16 may get the payment if they submitted the request
- a vendor or service provider may be paid directly

Request for a group of children from multiple families or guardians:

- payment will be made to the community or group that made the request
- vendors or service providers may be paid directly

How to appeal decisions

If your request is denied, you can appeal the decision within **1 year** of the date of denial. To do so, you must send in a written request to your regional focal point. They will help you start the appeal and work with you throughout the process.

At a minimum, the request for appeal must contain:

- the child's name and date of birth
- the product or service requested
- the date of denial and a copy of the Jordan's Principle denial letter (if available)

Although it is not required to begin an appeal, you may also include additional information, such as:

- assessments or updated letters of support from a health professional, educational professional or Elder or Knowledge Keeper
- information showing that the request will help:
  - substantive equality
  - access to a culturally appropriate service
  - meet the best interests of the child

New or additional information is not needed to start an appeal. Jordan's Principle aims to review the request within 30 business days.

An individual can appeal a decision on behalf of an eligible child as described in Step 2. Who is covered, including

- a parent or guardian of that child
- a First Nations child, or an Indigenous child ordinarily resident on reserve at the Age of Consent in their province or territory of residence
- an authorized representative of the child, parent or guardian

Requests for appeals for a group of children from multiple families or guardians can be submitted by:

- the community or group that submitted the request

Requests for appeals are reviewed by the Jordan's Principle External Expert Review Committee (EERC) non-government experts, which provides a recommendation to the department regarding whether the denial decision should be upheld or overturned.

An appeal decision is then rendered based on the information presented in the file, including the EERC's recommendation. The regional focal points will help start the appeal and work with you throughout the process.

Please contact us if you have:

- any questions
- new information about any request under Jordan's Principle that was submitted or denied between 2007 and 2017

Requesting a judicial review

You can challenge the appeal decision by bringing an application for judicial review before the Federal Court within 30 days of receipt of the decision.

For more information on how to apply for a judicial review, see How to file an Application for Judicial Review.

For more information

- Jordan's Principle regional focal points across Canada

- local service coordinators in First Nations communities or organizations across Canada (contact your local Jordan's Principle regional focal point to get this information)
- Jordan's Principle Call Centre: 1-855-JP-CHILD (1-855-572-4453), open 24 hours a day, 7 days a week
- teletypewriter: 1-866-553-0554

Did you find what you were looking for?

Yes No

What was wrong?

- ○ I can't **find** the information
- ○ The information is hard to **understand**
- ○ There was an error or something **didn't work**
- ○ Other reason

Please provide more details

You will not receive a reply. Don't include personal information (telephone, email, SIN, financial, medical, or work details).

Maximum 300 characters

Submit

Date modified: 2025-02-10

This is **Exhibit U** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, Ontario
Date: 2025.10.22 10:22:47-04'00'
Foxit PDF Editor Version: 13.1.6

A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

March 31, 2025

Sent By E-mail
Judy Dubois
Registry Operations
Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, ON K1A 1J4
E-mail: Registry.Office@chrt-tcdp.gc.ca

Dear Panel:

RE: First Nations Child and Family Caring Society et al v. Attorney General of Canada
Tribunal File: T1340/7008

We write to you today on behalf of the Assembly of First Nations ("AFN") Executive Committee to formally retract the letter submitted to the Tribunal on March 24, 2025 by Mr. Adam Williamson, Senior In-House Counsel for the AFN.

The letter in question was sent without the requisite authorization from the AFN Executive Committee. As such, it does not reflect the official position of the AFN in this matter. In light of this, we respectfully request that the Tribunal remove the March 24 letter from the official record of this proceeding.

The AFN would also kindly request an extension of time to file our submissions and evidence on this matter as well as the Caring Society's consultation motion, from today (March 31, 2025) until Friday, April 4, 2025.

In the interim, we wanted to advise the Tribunal that the AFN is in agreement with the First Nations Child and Family Caring Society's ("Caring Society") March 24, 2025 submission that the main obstacle to long-term reform is Canada's refusal to (i) continue consultations, and (ii) meaningfully engage in the dialogic approach in relation to continuing to develop a national agreement on long-term reform of First Nations child and family services, with regional variations which substantively address the distinct circumstances, cultures, and inherent rights of First Nations children and families ("LTR Agreement").

The AFN has reviewed the National Children's Chiefs Commission's ("NCCC") correspondence requesting that Canada immediately re-engage with the NCCC, AFN Executive, and the Caring Society to complete negotiations of a LTR Agreement. The AFN agrees with the NCCC's statement in its February 21, 2025 letter that: "*[t]he enclosed table confirms the NCCC's view that a national LTR Agreement is within reach, and merely requires Canada to return to the negotiation table to work with the NCCC, the AFN Executive, and the Caring Society in good faith to deliver the justice that all First Nation children and families deserve*." In particular, the AFN would like to draw the Tribunal's attention to that table, which outlines the NCCC's views on: "(i) the ten high-level, outstanding issues with the LRT Agreement which must be addressed before the LTR Agreement is finalized; (ii) Canada's position on each outstanding issue, as set out in the draft LTR Agreement; (iii) the NCCC's proposal on how to resolve each outstanding issue; and (iv) the NCCC's views on whether each outstanding issue can be readily resolved."

We have enclosed the NCCC's correspondence with Canada for ease of reference.

The AFN shares the Caring Society and the Panel's concerns in connection with the delay in achieving long-term reform. However, there is now a clear pathway forward to concluding a national LRT Agreement.

Read together, the NCCC's correspondence with Canada on this issue and the Caring Society's position on this motion that "The Research is Ready" and "The Caring Society is Ready", suggests to the AFN that what is required here is for the Tribunal to order Canada to return to the table to work collaboratively and in good faith with the NCCC, AFN Executive, and the Caring Society to close the remaining gaps on a national LTR Agreement and to report back periodically to the Tribunal on their progress and to seek the Tribunal's guidance where necessary.

The AFN remains committed to working collaboratively and transparently in all matters before the Tribunal. We regret any confusion or inconvenience this may have caused and appreciate the Tribunal's attention to this request.

Please do not hesitate to contact us should you require any further clarification.

Respectfully,



Regional Chief, Assembly of First Nations – NB
First Nations Child and Family Services Portfolio Holder
(506)737-7018

1671 rue Principale Street, Madawaska Maliseet First Nation, NB E67C 1W6

This is **Exhibit V** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, Ontario
Date: 2025.10.22 10:22:56-04'00'
Foxit PDF Editor Version: 13.1.6

A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

Assembly of First Nations

50 O'Connor Street, Suite 200
Ottawa, Ontario K1P 6L2
Telephone: (613) 241-6789 Fax: (613) 241-5808
www.afn.ca

Assemblée des Premières Nations

50, rue O'Connor, Suite 200
Ottawa, Ontario K1P 6L2
Téléphone: (613) 241-6789 Télécopieur: (613) 241-5808
www.afn.ca

April 4, 2025

By Email

Judy Dubois
Registry Operations
Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, ON K1A 1J4

Dear Ms. Dubois:

I write to you on behalf of the Assembly of First Nations (AFN) in response to the Panel's request for clarity regarding the AFN's structure and recent representations. I respectfully request that the AFN be provided until Monday, April 14, 2025 to deliver its response to your request.

The AFN is continuing discussions on this matter with our Executive Committee and internal leadership as well as securing new legal counsel representation. We appreciate your continued patience as we navigate the current situation. We will seek to provide a further update by April 14, 2025.

In addition, with respect to our March 24 letter, I wish to clarify that Mr. Williamson did not act without instructions or authorization in filing this letter.

Sincerely,

Andrew Bisson
Chief Executive Officer

This is **Exhibit W** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, Ontario
Date: 2025.10.22 10:23:05-04'00'
Foxit PDF Editor Version: 13.1.6

A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

From: CHRT Registry Office <Registry.Office@chrt-tcdp.gc.ca>
Sent: April 25, 2025 12:12 PM
To: 'David Taylor'; 'sarah@childandfamilylaw.ca'; Kiana Saint-Macary; Peter Mantas; gcyr@fasken.com; 'tsun@fasken.com'; 'Anshumala.Juyal@chrc-ccdp.gc.ca'; khizer.pervez@chrc-ccdp.gc.ca; Vickery, Paul; Norris, Sarah-Dawn (she her elle la); Jones, Meg (she her elle la); Anderson, Dayna (she her elle la); Staska, Kevin; Bird, Sarah (she her elle); Khan, Jon; Dueck-Read, Alicia (she her elle la); Owais, Aman; 'MWente@oktlaw.com'; Jessie Stirling; Ashley Ash; Katelyn Johnstone; jrogers@oktlaw.com; 'julianf@falconers.ca'; Asha James; Shelby Percival; meaghand@falconers.ca; David Schwartz; Jordan Tully; 'justins@stockwoods.ca'; 'Stephen Aylward'; 'Jasmine Kaur'; Lloyd, Michelle (CHRC/CCDP); Darvill, Jillian (she her elle la); Perrault-Werner, Alisia (she her elle la); Anderson, Jackie (she her elle la); Wong, Theresa (she her elle la)
Subject: Request for clarification - FNCFCSC and AFN v. AGC (CHRT File T1340/7008)

EXTERNAL EMAIL – USE CAUTION / COURRIEL EXTERNE – FAITES PREUVE DE PRUDENCE

Dear Parties,

The Tribunal is in receipt of the AFN's letter and attachments dated April 24, 2025. The Tribunal confirms that the AFN's position to be considered as part of the Caring Society's consultation motion is found in the one paragraph reproduced below and the Tribunal requests the AFN to clarify if their March 31, 2025 letter and attachments should be considered by the Tribunal as part of its submissions on the Caring Society's consultation motion or was it only for the long-term question from the Tribunal? The Tribunal confirms that it will remove the AFN's March 24, 2025 submissions on long-term reform from the Tribunal's official record.

> *Caring Society motion*
>
> *The AFN agrees with the relief sought by the Caring Society in its January 14, 2025 motion currently pending before the Tribunal. In particular, it supports the Caring Society's prayer for relief that the Tribunal issue an Order directing consultation between Canada, the AFN and the Caring Society on the national long-term reform of the First Nations Child and Family Services Program, First Nations federal child and family services and Jordan's Principle in line with the Tribunal's Order of February 1, 2018 (2018 CHRT 4) and its related consultation orders.*

The Tribunal thanks the AFN for the clarifications.

Thank you.

Judy Dubois
(*she / her / elle*)

Registry Officer – Canadian Human Rights Tribunal
Administrative Tribunals Support Service of Canada / Government of Canada
240 Sparks Street, 6th floor West, Ottawa ON K1A 1J4
registry.office@chrt-tcdp.gc.ca / Tel: 613-878-8802 / Facsimile: 613-995-3484

Agente du greffe – Tribunal canadien des droits de la personne
Service canadien d'appui aux tribunaux administratifs / Gouvernement du Canada
240, rue Sparks, 6e étage ouest, Ottawa ON K1A 1J4
registry.office@chrt-tcdp.gc.ca / Tél.: 613-878-8802 / Télécopieur: 613-995-3484

This is **Exhibit X** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, Ontario
Date: 2025.10.22 10:23:19-04'00'
Foxit PDF Editor Version: 13.1.6

A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

From: Meaghan Daniel <meaghand@falconers.ca>
Sent: March 24, 2025 6:09 PM
To: Katelyn Johnstone; CHRT Registry Office; 'Judy.Dubois@tribunal.gc.ca'
Cc: : David Taylor; Kiana Saint-Macary; Julian Falconer; Jasmine Kaur; jfriend@conwaylitigation.ca; Sarah Clarke; 'awilliamson@afn.ca'; 'Anshumala.Juyal@chrc-ccdp.gc.ca'; khizer.pervez@chrc-ccdp.gc.ca; Lloyd, Michelle (CHRC/CCDP; Maggie Wente; Jessie Stirling-Voss; Ashley Ash; Jenna Rogers; Asha James; Shelby Percival; 'justins@stockwoods.ca'; StephenA@stockwoods.ca; Taskeenn@stockwoods.ca; Anderson, Dayna (she her elle la); Staska, Kevin; Dueck-Read, Alicia (she her elle la); Khan, Jon; Bird, Sarah (she her elle la); Owais, Aman; Perrault-Werner, Alisia (she her elle la); Anderson, Jackie (she her elle la); Vickery, Paul; Jones, Meg (she her elle la); Norris, Sarah-Dawn (she her elle la); Darvill, Jillian (she her elle la)
Subject: Re: FNCFCSC and AFN v. AGC (CHRT File T1340/7008) - Long Term Reform

Categories: [SharePoint] This message was saved in 'LCMS Site > FNCFS CARING SOCIETY V AGC , T1340/7008 - POST FNCFS FINAL AGREEMENT (2024)(LEX-500219273) > Correspondence'

EXTERNAL EMAIL – USE CAUTION / COURRIEL EXTERNE – FAITES PREUVE DE PRUDENCE
Good Evening,

NAN has no submissions in reply to the letter of March 17, 2024 from Canada on Long Term Reform.

Meaghan Daniel

From: Katelyn Johnstone <kjohnstone@oktlaw.com>
Sent: March 24, 2025 11:29 AM
To: CHRT Registry Office <Registry.Office@chrt-tcdp.gc.ca>; 'Judy.Dubois@tribunal.gc.ca' <Judy.Dubois@tribunal.gc.ca>
Cc: : David Taylor <DTaylor@conwaylitigation.ca>; Kiana Saint-Macary <ksaintmacary@conwaylitigation.ca>; Julian Falconer <julianf@falconers.ca>; Jasmine Kaur <JKaur@conwaylitigation.ca>; jfriend@conwaylitigation.ca <jfriend@conwaylitigation.ca>; Sarah Clarke <sarah@childandfamilylaw.ca>; 'awilliamson@afn.ca' <AWilliamson@afn.ca>; 'Anshumala.Juyal@chrc-ccdp.gc.ca' <Anshumala.Juyal@chrc-ccdp.gc.ca>; khizer.pervez@chrc-ccdp.gc.ca <khizer.pervez@chrc-ccdp.gc.ca>; Lloyd, Michelle (CHRC/CCDP <michelle.lloyd@chrc-ccdp.gc.ca>; Maggie Wente <MWente@oktlaw.com>; Jessie Stirling-Voss <jstirling@oktlaw.com>; Ashley Ash <aash@oktlaw.com>; Jenna Rogers <jrogers@oktlaw.com>; Asha James <ashaj@falconers.ca>; Shelby Percival <ShelbyP@falconers.ca>; Meaghan Daniel <meaghand@falconers.ca>; 'justins@stockwoods.ca' <JustinS@stockwoods.ca>; StephenA@stockwoods.ca <StephenA@stockwoods.ca>; Taskeenn@stockwoods.ca <Taskeenn@stockwoods.ca>; Anderson, Dayna (she her elle la) <Dayna.Anderson@justice.gc.ca>; Staska, Kevin <Kevin.Staska@justice.gc.ca>; Dueck-Read, Alicia (she her elle la) <Alicia.Dueck-Read@justice.gc.ca>; Khan, Jon <Jon.Khan@justice.gc.ca>; Bird, Sarah (she her elle la) <Sarah.Bird@justice.gc.ca>; Owais, Aman <Aman.Owais@justice.gc.ca>; Perrault-Werner, Alisia (she her elle la) <Alisia.Perrault-Werner@justice.gc.ca>; Anderson, Jackie (she her elle la) <Jackie.Anderson@justice.gc.ca>; Vickery, Paul <Paul.Vickery@justice.gc.ca>; Jones, Meg (she her elle la) <Meg.Jones@justice.gc.ca>; Norris, Sarah-Dawn (she her elle la) <Sarah-Dawn.Norris@Justice.gc.ca>; Darvill, Jillian (she her elle la) <Jillian.Darvill@justice.gc.ca>
Subject: RE: FNCFCSC and AFN v. AGC (CHRT File T1340/7008) - Long Term Reform

Good morning,

COO has no reply submissions in response to Canada's comments on Long Term Reform of the FNCFS Program sent March 17, 2025, in response to the Panel's February 20, 2025 and February 27, 2025 directions for submissions on the requests about order and timing of submissions on the matters posed by the Panel in its letter of February 10, 2025. In light of the recent correspondence regarding the intention of several groups to bring motions to be added as interested parties to the proceeding, COO asks to reserve a right to reply to the positions of the other parties making submissions on the matter today to the extent that they are contrary to COO's desire to move ahead with long term reform in Ontario.

Sincerely,
Katelyn

Katelyn Johnstone (She/Her)
Associate
T 647.872.1624 E kjohnstone@oktlaw.com

From: Darvill, Jillian (she her elle la) <Jillian.Darvill@justice.gc.ca>
Sent: March 17, 2025 3:45 PM
To: CHRT Registry Office <Registry.Office@chrt-tcdp.gc.ca>; 'Judy.Dubois@tribunal.gc.ca' <Judy.Dubois@tribunal.gc.ca>
Cc: : David Taylor <DTaylor@conwaylitigation.ca>; Kiana Saint-Macary <ksaintmacary@conwaylitigation.ca>; 'julianf@falconers.ca' <julianf@falconers.ca>; Jasmine Kaur <JKaur@conwaylitigation.ca>; jfriend@conwaylitigation.ca; Sarah Clarke <sarah@childandfamilylaw.ca>; 'awilliamson@afn.ca' <AWilliamson@afn.ca>; 'Anshumala.Juyal@chrc-ccdp.gc.ca' <Anshumala.Juyal@chrc-ccdp.gc.ca>; khizer.pervez@chrc-ccdp.gc.ca; Lloyd, Michelle (CHRC/CCDP <michelle.lloyd@chrc-ccdp.gc.ca>; Maggie Wente <MWente@oktlaw.com>; Jessie Stirling-Voss <jstirling@oktlaw.com>; Ashley Ash <aash@oktlaw.com>; Katelyn Johnstone <kjohnstone@oktlaw.com>; Jenna Rogers <jrogers@oktlaw.com>; Asha James <ashaj@falconers.ca>; Shelby Percival <ShelbyP@falconers.ca>; meaghand@falconers.ca; 'justins@stockwoods.ca' <JustinS@stockwoods.ca>; StephenA@stockwoods.ca; Taskeenn@stockwoods.ca; Anderson, Dayna (she her elle la) <Dayna.Anderson@justice.gc.ca>; Staska, Kevin <Kevin.Staska@justice.gc.ca>; Dueck-Read, Alicia (she her elle la) <Alicia.Dueck-Read@justice.gc.ca>; Khan, Jon <Jon.Khan@justice.gc.ca>; Bird, Sarah (she her elle la) <Sarah.Bird@justice.gc.ca>; Owais, Aman <Aman.Owais@justice.gc.ca>; Perrault-Werner, Alisia (she her elle la) <Alisia.Perrault-Werner@justice.gc.ca>; Anderson, Jackie (she her elle la) <Jackie.Anderson@justice.gc.ca>; Vickery, Paul <Paul.Vickery@justice.gc.ca>; Jones, Meg (she her elle la) <Meg.Jones@justice.gc.ca>; Norris, Sarah-Dawn (she her elle la) <Sarah-Dawn.Norris@Justice.gc.ca>
Subject: FNCFCSC and AFN v. AGC (CHRT File T1340/7008) - Long Term Reform

Sent on behalf of Dayna Anderson

Please find attached Canada's comments on Long Term Reform of the FNCFS Program, as requested by the Tribunal in their correspondence dated February 10, 2025 and subsequent direction dated February 27, 2025.

Sincerely,

Dayna Anderson
(she/her/elle)

General Counsel
Prairie Regional Office (Winnipeg)
601 – 400 St. Mary Avenue, Winnipeg, Manitoba R3C 4K5
National Litigation Sector
Department of Justice Canada / Government of Canada

dayna.anderson@justice.gc.ca / Tel: 204-294-5563 / Fax: 204-983-3636

Avocate générale
Bureau régional des Prairies (Winnipeg)
400, avenue St. Mary, pièce 601, Winnipeg (Manitoba) R3C 4K5
Secteur national du contentieux
Ministère de la Justice Canada / Gouvernement du Canada
dayna.anderson@justice.gc.ca / Tél. 204-294-5563 / Téléc. 204-983-3636

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Ce message contient des renseignements qui pourraient être confidentiels, soustraits à la communication, ou protégés par le privilège relatif au litige ou par le secret professionnel liant l'avocat ou le notaire à son client. S'il ne vous est pas destiné, vous êtes priés de ne pas le lire, l'utiliser, le conserver ou le diffuser. Veuillez sans tarder le supprimer et en détruire toute copie, et communiquer avec l'expéditeur au 204-984-6961 ou à dayna.anderson@justice.gc.ca. Merci de votre collaboration

This is **Exhibit Y** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, Ontario
Date: 2025.10.22 10:23:29-04'00'
Foxit PDF Editor Version: 13.1.6

A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

From: Katelyn Johnstone <kjohnstone@oktlaw.com>
Sent: March 24, 2025 10:29 AM
To: CHRT Registry Office; 'Judy.Dubois@tribunal.gc.ca'
Cc: : David Taylor; Kiana Saint-Macary; 'julianf@falconers.ca'; Jasmine Kaur; jfriend@conwaylitigation.ca; Sarah Clarke; 'awilliamson@afn.ca'; 'Anshumala.Juyal@chrc-ccdp.gc.ca'; khizer.pervez@chrc-ccdp.gc.ca; Lloyd, Michelle (CHRC/CCDP; Maggie Wente; Jessie Stirling-Voss; Ashley Ash; Jenna Rogers; Asha James; Shelby Percival; meaghand@falconers.ca; 'justins@stockwoods.ca'; StephenA@stockwoods.ca; Taskeenn@stockwoods.ca; Anderson, Dayna (she her elle la); Staska, Kevin; Dueck-Read, Alicia (she her elle la); Khan, Jon; Bird, Sarah (she her elle la); Owais, Aman; Perrault-Werner, Alisia (she her elle la); Anderson, Jackie (she her elle la); Vickery, Paul; Jones, Meg (she her elle la); Norris, Sarah-Dawn (she her elle la); Darvill, Jillian (she her elle la)
Subject: RE: FNCFCSC and AFN v. AGC (CHRT File T1340/7008) - Long Term Reform

Categories: [SharePoint] This message was saved in 'LCMS Site > FNCFS CARING SOCIETY V AGC, T1340/7008 - POST FNCFS FINAL AGREEMENT (2024)(LEX-500219273) > Correspondence'

EXTERNAL EMAIL – USE CAUTION / COURRIEL EXTERNE – FAITES PREUVE DE PRUDENCE
Good morning,

COO has no reply submissions in response to Canada's comments on Long Term Reform of the FNCFS Program sent March 17, 2025, in response to the Panel's February 20, 2025 and February 27, 2025 directions for submissions on the requests about order and timing of submissions on the matters posed by the Panel in its letter of February 10, 2025. In light of the recent correspondence regarding the intention of several groups to bring motions to be added as interested parties to the proceeding, COO asks to reserve a right to reply to the positions of the other parties making submissions on the matter today to the extent that they are contrary to COO's desire to move ahead with long term reform in Ontario.

Sincerely,
Katelyn

Katelyn Johnstone (She/Her)
Associate
T 647.872.1624 E kjohnstone@oktlaw.com

From: Darvill, Jillian (she her elle la) <Jillian.Darvill@justice.gc.ca>
Sent: March 17, 2025 3:45 PM
To: CHRT Registry Office <Registry.Office@chrt-tcdp.gc.ca>; 'Judy.Dubois@tribunal.gc.ca' <Judy.Dubois@tribunal.gc.ca>
Cc: : David Taylor <DTaylor@conwaylitigation.ca>; Kiana Saint-Macary <ksaintmacary@conwaylitigation.ca>; 'julianf@falconers.ca' <julianf@falconers.ca>; Jasmine Kaur <JKaur@conwaylitigation.ca>; jfriend@conwaylitigation.ca; Sarah Clarke <sarah@childandfamilylaw.ca>; 'awilliamson@afn.ca' <AWilliamson@afn.ca>; 'Anshumala.Juyal@chrc-

ccdp.gc.ca' <Anshumala.Juyal@chrc-ccdp.gc.ca>; khizer.pervez@chrc-ccdp.gc.ca; Lloyd, Michelle (CHRC/CCDP <michelle.lloyd@chrc-ccdp.gc.ca>; Maggie Wente <MWente@oktlaw.com>; Jessie Stirling-Voss <jstirling@oktlaw.com>; Ashley Ash <aash@oktlaw.com>; Katelyn Johnstone <kjohnstone@oktlaw.com>; Jenna Rogers <jrogers@oktlaw.com>; Asha James <ashaj@falconers.ca>; Shelby Percival <ShelbyP@falconers.ca>; meaghand@falconers.ca; 'justins@stockwoods.ca' <JustinS@stockwoods.ca>; StephenA@stockwoods.ca; Taskeenn@stockwoods.ca; Anderson, Dayna (she her elle la) <Dayna.Anderson@justice.gc.ca>; Staska, Kevin <Kevin.Staska@justice.gc.ca>; Dueck-Read, Alicia (she her elle la) <Alicia.Dueck-Read@justice.gc.ca>; Khan, Jon <Jon.Khan@justice.gc.ca>; Bird, Sarah (she her elle la) <Sarah.Bird@justice.gc.ca>; Owais, Aman <Aman.Owais@justice.gc.ca>; Perrault-Werner, Alisia (she her elle la) <Alisia.Perrault-Werner@justice.gc.ca>; Anderson, Jackie (she her elle la) <Jackie.Anderson@justice.gc.ca>; Vickery, Paul <Paul.Vickery@justice.gc.ca>; Jones, Meg (she her elle la) <Meg.Jones@justice.gc.ca>; Norris, Sarah-Dawn (she her elle la) <Sarah-Dawn.Norris@Justice.gc.ca>
Subject: FNCFCSC and AFN v. AGC (CHRT File T1340/7008) - Long Term Reform

Sent on behalf of Dayna Anderson

Please find attached Canada's comments on Long Term Reform of the FNCFS Program, as requested by the Tribunal in their correspondence dated February 10, 2025 and subsequent direction dated February 27, 2025.

Sincerely,

Dayna Anderson
(she/her/elle)

General Counsel
Prairie Regional Office (Winnipeg)
601 – 400 St. Mary Avenue, Winnipeg, Manitoba R3C 4K5
National Litigation Sector
Department of Justice Canada / Government of Canada
dayna.anderson@justice.gc.ca / Tel: 204-294-5563 / Fax: 204-983-3636

Avocate générale
Bureau régional des Prairies (Winnipeg)
400, avenue St. Mary, pièce 601, Winnipeg (Manitoba) R3C 4K5
Secteur national du contentieux
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This is **Exhibit Z** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, Ontario
Date: 2025.10.22 10:23:40-04'00'
Foxit PDF Editor Version: 13.1.6

A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

Canadian human rights commission | Commission canadienne des droits de la personne

Direct Line / ligne directe: 613-290-9675
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khizer.pervez@chrc-ccdp.gc.ca

VIA EMAIL

March 31, 2025

Judy Dubois
Registry Operations
Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, ON K1A 1J4

Re: *FNCFCSC and AFN v AGC* (T1340/7008)
Commission response to Panel comments regarding approach to long-term reform

Dear Panel,

The Canadian Human Rights Commission (Commission) writes in response to this Panel's letter dated February 10, 2025, requesting the parties share their respective views on the Panel's comments regarding the approach to the long-term remedial phase of these proceedings.

The Commission wishes to stress its respect for the sovereignty of First Nations communities and the rightsholders in this proceeding. Nothing in the Commission's submissions is intended as a critique or comment on the substantive remedies sought or offered by the parties, or what would be a good resolution for the rightsholders.

The Commission acknowledges the dedication and work that the parties have done using a dialogic approach, to further the goal of achieving long-term reform of the First Nations Child and Family Services Program (FNCFS Program). The Commission also recognizes the importance of long-term reform for Indigenous children and families, as well as the timeliness of this remedy to end discrimination.

The Commission's view is that it is respectfully the decision of the Tribunal to determine how to advance the long-term remedial stage. The Commission has not been involved in negotiations on long-term reform. Instead, the development of remedies on long-term reform was led by the First Nations bodies with ties to the First Nations children, families, and communities harmed by Canada's discriminatory practices.

The Commission acknowledges the Tribunal's jurisdiction over this matter. As noted by the Tribunal, the parties entered the long-term remedial phase in 2018 and committed to

reforming the FNCFS Program by March 2023. In the spirit of consultation and reconciliation, the Tribunal adopted the dialogic approach to provide the parties with an opportunity to engage in good faith negotiations to advance this matter while seeking direction from the Tribunal as needed.

While being supportive of the dialogic approach, the Commission is concerned with the amount of time it has taken to achieve long-term reform of the FNCFS Program. As explained by the Federal Court, while negotiations are a way to realize the goal of reconciliation, good will in the negotiation process must be encouraged and fostered "before the passage of time makes an impact on those negotiations."[1] The Commission agrees with the Tribunal's rationale that "[i]t is far better for children to complete the long-term remedial phase shortly rather than wait for long periods of time."

As the Tribunal recently expressed, it has always hoped for a settlement on long-term reform by way of consent order requests by the parties. If this is not possible, however, the Tribunal stated that it "can make systemic long-term orders informed by the parties to eliminate the systemic discrimination found".[2]

We provide the above submissions for this Panel's consideration in determining the path forward on long-term reform.

Sincerely,

Juyal, Anshumala

Digitally signed by Juyal, Anshumala
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Reason: I am the author of this document
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Date: 2025.03.31 09:47:28-04'00'
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Anshumala Juyal and Khizer Pervez
Counsel for the Commission

cc Dayna Anderson, Paul Vickery, Kevin Staska, Sarah-Dawn Norris, Sarah Bird, Jon Khan, Meg Jones, Aman Owais (Counsel for Canada)

Adam Williamson (Counsel for the AFN)

Maggie Wente, Jessie Stirling-Voss, Ashley Ash, Katelyn Johnstone (Counsel for COO)

Justin Safayeni, Stephen Aylward, Taskeen Nawab (Counsel for Amnesty International)

Julian Falconer, Meaghan Daniel (Counsel for Nishnawbe Aski Nation)

David Taylor, Sarah Clarke, Logan Stack, Kiana Saint-Macary, Robin McLeod (Counsel for the Caring Society)

---

[1] *Canada (Attorney General) v First Nations Child and Family Caring Society of Canada*, 2021 FC 969 at para 300.

[2] *First Nations Child and Family Caring Society of Canada v Canada (Attorney General)*, 2025 CHRT 6 at para 237 (not yet reported).

This is **Exhibit AA** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

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Reason: I attest to the accuracy and integrity of this document
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A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
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LSO No. 14203P

Canadian Human Rights Tribunal
Tribunal canadien des droits de la personne
Ottawa, Canada, K1A 1J4

July 29, 2025

By e-mail

(See Distribution List)

Dear Parties,

Re: First Nations Child and Family Caring Society et al. v. Attorney General of Canada
Tribunal File: T1340/7008

Please see below the summary of the Case Management Conference Call (CMCC) that was held on July 25, 2025. The summary includes any Directions/Orders from the Tribunal. Any updates since the CMCC are noted in *italics*.

Sophie Marchildon, Panel Chair, Edward Lustig, Panel Member

David Taylor, Sarah Clarke, Kiana Saint-Macary, Counsel with Dr. Cindy Blackstock, Brittany, Matthews, and Stephanie Wellman for the Caring Society

Peter N. Mantas, Gabrielle Cyr and Tina Sun, Counsel for the Assembly of First Nations, with Liam Smith

Anshumala Juyal and Khizer Pervez, Counsel for the Canadian Human Rights Commission

Dayna Anderson, Paul Vickery, Kevin Staska and Alicia Dueck-Read, Counsel for Canada

Maggie Wente, Jessie Stirling-Voss, Ashley Ash, Katelyn Johnstone Counsel for the Chiefs of Ontario (COO)

Julian Falconer and Meaghan Daniel, Counsel with David Schwartz, Paralegal for the Nishnawbe Aski Nation (NAN)

Judy Dubois, Registry Officer

Introduction by the Panel Chair

Member Marchildon began the CMCC with an introduction on behalf of the Panel, stating that this matter must proceed expeditiously in keeping with the *CHRA*. The Panel urged the parties to try to resolve the separate issue of long-term reform now in the best interests of First Nations children.

The full text of this introduction is attached to this summary.

Ontario Final Agreement (OFA) schedule and the recent procedural developments

Member Marchildon advised the parties that to expedite matters it is preferable to hold a single hearing for the evidence and arguments, likely in the fall of 2025 rather than two: one for the cross-examinations of affiants and one for arguments. Parties generally agreed for one single hearing. Member Marchildon noted that no decision has yet been made regarding the potential interested parties or the extent of their participation should the motions be granted. Ms. Anderson stated that it is difficult to anticipate the length of the hearing if the number of parties and affiants are not known. Further, it is difficult to prepare if they don't know in advance the case that they have to meet. Member Marchildon mentioned that more days can be planned for a longer hearing and then readjusted once all parties and affiants are known. This would at least ensure that hearing dates are safeguarded. The motions for interested parties would be decided in advance of the hearing.

Ms. Wente suggested to prioritize the two motions seeking interested party status involving moving parties from Ontario.

Ms. Wente advised that the Chiefs of Ontario would be looking at hearing dates in November 2025. Ms. Clarke indicated that she has other hearings in November 2025 and that she would request hearing dates to be scheduled in December 2025 rather than in November 2025.

Ms. Wente stated that all positions on the OFA must be known, adding that the Caring Society needs to provide their position. The other parties agreed.

Sarah Clarke recognized not providing a position is not in keeping with the normal course, however, the Caring Society wants to share research and the impact on children in Ontario, as it works with other organizations. Ms. Wente replied that proceeding in that manner would be complicating and cause delays.

On the issue of Canada joining the OFA motion, Member Marchildon stated there has been no decision made yet.

Ms. Clarke stated the motion should be revised to show that Canada is advancing the motion. Ms. Clarke summarized the Caring Society's position filed at an earlier date. Mr. Taylor added that this is important for access to justice purposes. Ms. Wente responded that this is not an arduous process, with Ms. Anderson stating that it is unnecessary to take an overly technical approach to altering the motion.

At this time, the Tribunal makes no direction regarding the content of the joint OFA motion. The Caring Society will have an opportunity to respond to the substance of the joint OFA motion in accordance with the upcoming Tribunal schedule.

Direction:

The Tribunal directs Canada to file an amended joint OFA motion naming Canada as the moving party.

The Caring Society will file its response to the joint OFA motion as per the Tribunal's forthcoming schedule. Should the Tribunal grant interested party status to a moving party, and if the newly added interested party's position affects the other parties, including the Caring Society, the Tribunal will ensure that all parties have an opportunity to provide submissions.

Current state of mediation

Member Marchildon asked about the status of the ongoing Tribunal-led mediation, adding she was not asking for substantive details about the mediation itself.

Mr. Taylor addressed the Caring Society's email sent to the Tribunal on July 24, 2025, with draft requested orders attached. He stated that this is the submission that would be made in the event that mediation is ultimately not successful. Ms. Anderson mentioned that they felt blindsided given that they were unaware that the Caring Society would file such requested orders at a time when parties remain involved in Tribunal-assisted mediation.

All the parties confirmed that they remain committed to mediation. However, at the time of the CMCC there has been no consensus reached. The parties also noted that the Tribunal Chairperson, via the mediator, has informed the parties that Tribunal resources for mediation would not be available as of September 9, 2025. Canada added that the Tribunal Chair wrote that this deadline is flexible if the parties are making significant progress in mediation.

Direction: *For the time being, the Tribunal will disregard the requested orders under Jordan's Principle filed by the Caring Society and will revisit this matter following the conclusion of the Tribunal mediation sessions, at which point the parties' views will be sought.*

Other items discussed

There was no time left in the CMCC to discuss the third agenda item (How to best move forward to resolve outstanding matters in the best interest of First Nations children and families while keeping with section 48.9(1) of the *CHRA*.) This will be revisited at the next CMCC. The date is to be determined.

Ms. Clarke advised that the Caring Society has retained an expert and that the expert's report will only be ready in September 2025. Ms. Wente asked the Panel to direct the Caring Society to name the expert and the nature of the evidence. Ms. Anderson also supported a request for an order, so the parties know the case that they have to meet.

Ms. Anderson added that while the Tribunal has taken a progressive approach, it is clear that there is no perfect answer and suggested that the parties and the Tribunal's focus should be on moving forward with long-term reform in Ontario.

Member Marchildon agreed that the long-term reform in Ontario must move forward. However, consistent with the approach taken by the Panel in this case over the last 13 years, the long-term reform for the rest of the country will also remain her focus. Member Marchildon requested confirmation that the Panel's question would be presented to their client (ISC-Canada) and seek instructions. The question is: **Would Canada agree on a voluntary basis to return to the table of negotiations on long-term reform outside of Ontario, at least once, to meet with the National Children's Chiefs Commission?** Ms. Anderson confirmed that she would bring the question to her client (Indigenous Services Canada (ISC)).

Member Marchildon reiterated that, setting aside the issue of complete reform for now, the ideal outcome would be for the parties to come to an agreement on long-term. However, if no agreement

can be reached, the Panel cannot wait for years if parties do not agree or do not engage in negotiations. The Tribunal has obligations under the *CHRA* and must move the matter forward. The Panel may receive the parties' proposed options and issue further relief orders concerning the long-term, if necessary.

Member Lustig agreed and added that the solutions will always be subject to improvement, and that compromise is needed.

The Panel did not direct during the CMCC that the Caring Society provide details about their expert. Ms. Clarke asked for an opportunity to file submissions on this issue.

Direction: *The Tribunal allows the Caring Society to file brief submissions prior to disclosing information on their expert and the nature of their expert's evidence, by* ***August 5, 2025****. The parties who wish to respond to those submissions may do so by* ***August 12, 2025****, and the Caring Society may file a reply, if any, by* ***August 15, 2025****.*

Note: *The Tribunal reminds all parties that it is standard practice for the Tribunal to direct the filing of will-say statements for witnesses, including expert witnesses. This practice does not infringe upon any privilege and enables all parties to understand the case they must meet. It is also beneficial to the Tribunal in adjudicating the matters before it. This being said, the Tribunal will revisit this once the parties' submissions directed above have been filed.*

The Tribunal will contact the parties to schedule another CMCC in the near future.

Should you have any questions, please do not hesitate to contact the Registry Office by e-mail at registry.office@chrt-tcdp.gc.ca or by fax at 613-995-3484.

Yours truly,

Judy Dubois
Digitally signed by Judy Dubois
Location: Ottawa, Ontario Canada
Date: 2025.07.29 09:23:20-04'00'

Judy Dubois
Registry Officer

DISTRIBUTION LIST

David Taylor, Sarah Clarke and Kiana Saint-Macary
Counsel for the First Nations Child and Family Caring Society of Canada

Peter N. Mantas, Gabrielle Cyr and Tina Sun
Counsel for the Assembly of First Nations

Anshumala Juyal and Khizer Pervez
Counsel for the Canadian Human Rights Commission

Paul Vickery, Sarah-Dawn Norris, Meg Jones, Dayna Anderson, Kevin Staska
Sarah Bird, Jon Kahn,, Alicia Dueck-Read, Aman Owais
Counsel for the Attorney General of Canada

Maggie Wente, Jessie Stirling-Voss, Ashley Ash, Katelyn Johnstone and Sinéad Dearman
Counsel for Chiefs of Ontario

Julian Falconer, Asha James, Shelby Percival and Meaghan Daniel
Counsel for Nishnawbe Aski Nation

Justin Safayeni and Stephen Aylward
Counsel for Amnesty International

Canadian Human Rights Tribunal
Tribunal canadien des droits de la personne
Ottawa, Canada, K1A 1J4

July 25, 2025

By e-mail

(See Distribution List)

Dear Parties,

Re: First Nations Child and Family Caring Society et al. v. Attorney General of Canada
Tribunal File: T1340/7008

Please find below the introductory comments of the Panel chair during the July 25, 2025, CMCC, on behalf of both Panel members

Thank you everyone for joining this case management conference.

Before we hear from everyone, I need to inform you of a few developments at different levels including at the Tribunal and I will give you all an opportunity to respond to my comments. This is in the spirit of active adjudication to move forward in resolving outstanding matters and with keeping in mind the First Nations children who are at the center of this case.

Recently, the government has announced forthcoming incremental budget cuts that will apply across governments and the Tribunal is no exception. Therefore, in an effort to reduce costs and in keeping with the *CHRA*'s requirements to deal with cases expeditiously, a number of measures are being studied at the moment by the Tribunal.

In a recent case, *Dominique v. Public Safety Canada,* 2025 CHRT 63 (CanLII), dealing with a complaint of underfunding of police services where the member relied on 2016 CHRT 2 to support its reasoning, the member made comments about the need to expedite the proceedings : [42] ‘’*The Tribunal’s mandate to provide timely access to justice ends up being severely compromised if cases are not moved forward in the most expeditious manner possible. Although I understand the complexity of this case and its significance to the parties, in my view such factors do not override the need for the Tribunal to address the cases before it in the most expeditious way possible while still complying with procedural fairness’’*.

https://www.canlii.org/en/ca/chrt/doc/2025/2025chrt63/2025chrt63.html

While the need to proceed expeditiously has always been a requirement under the *Act*, the budget cuts announcements and some of the Tribunal's recent rulings and the Tribunal's approach come on the heels of this requirement. It remains unclear how long the Panel members who are on a part time status will be able to remain on this case. While it is our greatest desire to bring this case to completion in a meaningful way, we cannot allow years to go by without resolution.

The Panel has opted for a dialogic approach in this case that may not be accepted by all Tribunal members. However, as you know, the Federal Court agreed with this approach.

This being said, the Federal Court also encouraged the parties to avoid long delays in resolving the matters.

In 2022 CHRT 8, the Tribunal agreed to make a number of orders on consent of the parties and the parties indicated that a settlement agreement on long-term reform would be completed by end of 2023 and not yet completed. The Tribunal retained jurisdiction to determine long-term relief and reform rather than multiple interim issues.

We are not saying that some interim issues did not have merit. The interim ruling on Jordan's Principle was important. However, after more than five months, the Panel hasn't heard of any agreement or requests on any substantive aspect of the interim orders for consultation aside from the Caring Society's update that the Panel has only received this morning and has yet to consider.

The Panel foresaw a National settlement agreement structured in a way that is flexible enough to respect each unique First Nation. The Panel signaled that it would consider the parties' views, the NAC, the experts, the chiefs' views expressed through their resolutions (that apply to this complaint and fall within our jurisdiction).

The Tribunal has consistently repeated its desire to honor self-governance and other important inherent rights of First Nations and we recognize the sovereignty of each First Nation. We have made statements about the true value of each First Nations' unique expertise; however, we have clearly stated in previous rulings that we are not a commission of inquiry and that we cannot possibly hear from all First Nations in the context of these proceedings without paralyzing the proceedings. While the Panel has made comments about respecting FPIC and *UNDRIP-UNDRIPA*, the Tribunal's structure and mandate is not conducive for individual interventions at the Tribunal and the consideration of every individual First Nation. The way to reconcile the two is found partly in the Panel's creative orders in 2018 CHRT 4.

We have now received another letter of intent from the Southern Chiefs Organization inc. to bring a motion for interested party to join these proceedings generally.

Some moving parties have confirmed that they wish to join because of the OFA motion and this seems to be exacerbated in their views that Canada has not returned to the table of negotiations for the FNCFS Program outside Ontario.

The Tribunal cannot continue to deal with numerous motions when there is a need for completion.

The Tribunal proposes to move forward with the OFA approval joint motion and to expedite matters, the Tribunal is of the view that one single hearing to hear both the affiants' evidence and arguments is preferable than having one hearing for cross-examinations of the affiants and a second one for arguments. This would allow the Tribunal to set hearing dates for the OFA joint motion hearing shortly.

For clarity, the Tribunal would hold one hearing to deal only with the Ontario joint motion hopefully this fall.

On the separate issue of long-term reform for the rest of the country and regardless of how we decide the consultation motion, there is a need to make long-term reform orders or settlement agreement approvals sooner than later in the best interest of First Nations children. Therefore, the Tribunal urges the parties to try to resolve the long-term aspect of the complaint now. According to past comments from the parties, most studies and solutions are readily available.

Would Canada on a voluntary basis, re-consider meeting with the parties at least once to hear the Children's Chiefs Commission? We do not expect a response from Canada on this case management.

Finally, the findings and orders in 2016 CHRT 2 are made to last. The Tribunal considers its' general orders akin to a permanent injunction to cease and desist the racial systemic discrimination found and prevent its reoccurrence to be final orders that cannot be subsequently modified by the Panel or future members. However, numerous immediate and mid-term orders were meant to be replaced by long term orders with the assistance of the parties. However, waiting months and years because some parties are not in agreement or do not want to negotiate anymore will not assist the Panel in determining the outstanding issues. The Tribunal has authority to move things forward to find meaningful, effective, sustainable, culturally appropriate, needs- based, long-term solutions for generations to come, that incorporate the distinct needs of First Nations without hearing directly from each one of them.

Yours truly,

Judy Dubois
Digitally signed by Judy Dubois
Location: Ottawa, Ontario Canada
Date: 2025.07.25 13:50:24-04'00'

Judy Dubois
Registry Officer

This is **Exhibit BB** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
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Date: 2025.10.22 10:24:02-04'00'
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A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

Canadian Human Rights Tribunal
Tribunal canadien des droits de la personne
Ottawa, Canada, K1A 1J4

July 25, 2025

By e-mail

(See Distribution List)

Dear Parties,

Re: First Nations Child and Family Caring Society et al. v. Attorney General of Canada
Tribunal File: T1340/7008

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Before we hear from everyone, I need to inform you of a few developments at different levels including at the Tribunal and I will give you all an opportunity to respond to my comments. This is in the spirit of active adjudication to move forward in resolving outstanding matters and with keeping in mind the First Nations children who are at the center of this case.

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https://www.canlii.org/en/ca/chrt/doc/2025/2025chrt63/2025chrt63.html

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The Panel has opted for a dialogic approach in this case that may not be accepted by all Tribunal members. However, as you know, the Federal Court agreed with this approach.

This being said, the Federal Court also encouraged the parties to avoid long delays in resolving the matters.

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On the separate issue of long-term reform for the rest of the country and regardless of how we decide the consultation motion, there is a need to make long-term reform orders or settlement agreement approvals sooner than later in the best interest of First Nations children. Therefore, the Tribunal urges the parties to try to resolve the long-term aspect of the complaint now. According to past comments from the parties, most studies and solutions are readily available.

Would Canada on a voluntary basis, re-consider meeting with the parties at least once to hear the Children's Chiefs Commission? We do not expect a response from Canada on this case management.

Finally, the findings and orders in 2016 CHRT 2 are made to last. The Tribunal considers its' general orders akin to a permanent injunction to cease and desist the racial systemic discrimination found and prevent its reoccurrence to be final orders that cannot be subsequently modified by the Panel or future members. However, numerous immediate and mid-term orders were meant to be replaced by long term orders with the assistance of the parties. However, waiting months and years because some parties are not in agreement or do not want to negotiate anymore will not assist the Panel in determining the outstanding issues. The Tribunal has authority to move things forward to find meaningful, effective, sustainable, culturally appropriate, needs- based, long-term solutions for generations to come, that incorporate the distinct needs of First Nations without hearing directly from each one of them.

Yours truly,

Judy Dubois
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This is **Exhibit CC** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

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A Commissioner for taking Affidavits

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Canadian Human Rights Tribunal



Tribunal canadien des droits de la personne

Citation: 2025 CHRT 80
Date: August 20, 2025
File No.: T1340/7008

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

Interested parties

Ruling

Members: Sophie Marchildon
Edward P. Lustig

Table of Contents

I. Context 1

II. Moving forward on a National FNCFS long-term reform concurrently and separately from Ontario 4

III. Analysis 14

The general orders in 2016 CHRT 2 16

The Tribunal's Dialogic approach 19

IV. Orders 31

V. Retention of jurisdiction 32

I. Context

[1] In 2016, the Tribunal released *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] and found that this case is about children and how the past and current child welfare practices in First Nations communities on reserves, across Canada, have impacted and continue to impact First Nations children, their families and their communities. The Tribunal found that Canada racially discriminated against First Nations children on reserve and in the Yukon in a systemic way not only by underfunding the First Nations Child and Family Services Program (FNCFS) but also in the manner that it designed, managed and controlled it. One of the worst harms found by the Tribunal was that the FNCFS Program failed to provide adequate prevention services and sufficient funding. This created incentives to remove First Nations children from their homes, families and communities as a first resort rather than as a last resort. Another major harm to First Nations children was that zero cases were approved under Jordan's Principle given the narrow interpretation and restrictive eligibility criteria developed by Canada. The Tribunal found that beyond providing adequate funding, there is a need to refocus the policy of the program to respect human rights principles and sound social work practice in the best interest of children. The Tribunal established Canada's liability for systemic and racial discrimination and ordered Canada to cease the discriminatory practice, take measures to redress and prevent it from reoccurring, and reform the FNCFS Program and the 1965 Agreement in Ontario to reflect the findings in the Merit Decision. The Tribunal determined it would proceed in phases for immediate, mid-term and long-term relief and program reform and financial compensation so as to allow immediate change followed by adjustments and finally, sustainable long-term relief. This process would allow the long-term relief to be informed by data collection, new studies and best practices as identified by First Nations experts, First Nations communities and First Nations Agencies considering their communities' specific needs, the National Advisory Committee on child and family services reform and the parties, (see 2023 CHRT 44, at paras. 16-17).

[2] The Tribunal also ordered Canada to cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of

Jordan's Principle. Jordan’s Principle orders and the substantive equality goal were further detailed in subsequent rulings.

[3] The Tribunal determined all the above need to be adequately funded. This means in a meaningful and sustainable manner so as to eliminate the systemic discrimination and prevent it from reoccurring, (see 2023 CHRT 44, at para. 18).

[4] The Panel was clear in 2016 CHRT 10 that it hoped that reconciliation could be advanced through the parties resolving remedial issues through negotiations rather than adjudication (para. 42). The Panel noted in 2016 CHRT 16 that some of the parties cautioned the Tribunal about the potential adverse impacts that remedial orders could have (para. 13). Accordingly, the Tribunal strongly encouraged the parties to negotiate remedies, including on the issue of compensation.

[5] The Tribunal issued a series of rulings and orders to completely reform the Federal First Nations Child and Family Services Program, including long-term reform orders focused on prevention, in 2022 CHRT 8. In 2019, the Tribunal ruled and found Canada’s systemic and racial discrimination caused harms of the worst kind to First Nations children and families. The Tribunal ordered compensation to victims/survivors and, at the request of the complainants and interested parties, the Tribunal made binding orders against Canada to provide compensation to victims/survivors. The Tribunal then issued a series of compensation process decisions at the parties’ requests and this process came to an end in late 2020 when Canada decided to judicially review the Tribunal’s compensation decisions and halt the completion of the compensation process’s last stages which would have allowed distribution of the compensation to victims/survivors, (see 2023 CHRT 44, at para. 19). The Tribunal, after partially rejecting an initial Settlement Agreement on compensation, approved a Final Settlement Agreement on compensation in 2023.

[6] The Tribunal encouraged the parties for years to resolve issues.

[7] On February 10, 2025, the Tribunal requested submissions from the parties on how best to proceed with what is still outstanding in the long-term phase of remedies in the best interests of First Nations children and in accordance with section 48.9(1) of the *CHRA*. In making its decision, the Tribunal has received and considered all of those submissions.

[8] The Tribunal has decided to move forward without further delay into the long-term phase of remedies both for Ontario and the National FNCFS long-term reform concurrently but separately. Given the orders below, which include a broad consultation component, and to avoid a situation similar to the one found in 2022 CHRT 41 concerning the parties interpretation of the Tribunal's final orders, the Tribunal finds it necessary to provide clarity on its 2016 CHRT 2 final order against Canada to: cease the discriminatory practices found and reform the FNCFS Program and *1965 Agreement* to reflect the findings in this decision and cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of Jordan's principle. This will be explained in detail below.

[9] This ruling does not decide the Consultation Motion brought by the Caring Society, which is broader in scope and will require a lengthier consultation process, as it encompasses Jordan's Principle long-term reform. The orders in this ruling are necessary to best inform the Tribunal on the appropriate next steps and are made in keeping with the Tribunal's previous rulings and section 48.9(1) of the *CHRA*, regardless of whether the Tribunal grants the Consultation Motion. If the Tribunal grants the motion, the National FNCFS long-term reform plan will assist the parties in their discussions. If the Tribunal does not grant the motion, or if Canada—being unwilling to return to negotiations—disagrees with the Tribunal, the Tribunal will nonetheless already have something tangible on which to rely and can move forward with the assistance of the parties outside the Consultation Motion proceedings. This serves as a safeguard to protect First Nations children from undue delays in receiving justice in the event that the Consultation Motion decision results in prolonged negotiation or further potential proceedings before the Courts. The Tribunal hopes that the parties and First Nations will recognize the well-intentioned and creative nature of the orders set out in this ruling.

[10] The Tribunal finds it important to elaborate on the purpose and intent of the dialogic approach, including what it is not intended to be. This will be explained below.

II. Moving forward on a National FNCFS long-term reform concurrently and separately from Ontario

[11] On February 10, 2025, the Tribunal wrote to the parties

> The Tribunal signaled in 2018 CHRT 4 that it had entered the long-term remedial phase. The Tribunal ordered studies to inform the long-term remedies. The Panel reminds Canada that it can end the process at any time with a settlement on compensation, immediate relief and long-term relief that will address the discrimination identified and explained at length in the Decision. Otherwise, the Panel considers this ruling to close the immediate relief phase unless its orders are not implemented. The Panel can now move on to the issue of compensation and long-term relief. (see 2018 CHRT 4 at, para. 385).
>
> In 2022, the parties came back to this Tribunal asking for what they described as approximately 80% of the long-term remedial consent orders and that they would have a full reformed program by March 2023. This Tribunal issued its orders on consent of the parties in March 2022, nearly 3 years ago and has waited since and is still waiting.
>
> 2022 CHRT 8:
>
> 25. On December 31, 2021, the Parties announced that they had reached an Agreement-in-Principle on long-term reform. As part of that Agreement-in-Principle, the Parties committed to reforming the FNCFS Program by March 31, 2023, as well as improving compliance with and reforming Jordan's Principle.
>
> Also, in the Agreement-in-Principle, the parties have agreed that the Reformed CFS Funding Approach will accommodate First Nations and FNCFS service providers experiencing exceptional circumstances, to be defined in the Final Settlement Agreement, which may require a longer transition to the Reformed CFS.
>
> 26. In addition, the terms of the consent order sought in this consent motion (see paras 1-9 under "orders sought") were annexed to the Agreement-in-Principle.
>
> Following the execution of the Agreement-in-Principle, the Caring Society, the
>
> AFN, and Canada agreed to seek this order as soon as possible.
>
> VIII. Retention of Jurisdiction
>
> [175] Pending a complete and final agreement on long term relief on consent or otherwise and consistent with the approach to remedies taken in this case

> and referred to above, the Panel retains jurisdiction on the Consent Orders contained in this ruling. The Panel will revisit its retention of jurisdiction once the parties have filed a final and complete agreement on long-term relief or as the Panel sees fit considering the upcoming evolution of this case.
>
> The Tribunal has been flexible and patient, however, is seriously considering options to move forward with the long-term remedial phase in accordance with its mandate under the *CHRA*, its rulings and in the best interest of First Nations children. The dialogic approach was adopted to move things forward in this case with an emphasis on consultation and reconciliation; however, the dialogic approach is not meant to be waiting for years and years of delay without finality. The Tribunal as master of its own house, has the power to control its own process and not idly wait for parties to unilaterally decide when and how to come back to the Tribunal and how many years to wait before the Tribunal can close the long-term remedial phase chapter.
>
> It is far better for children to complete the long-term remedial phase shortly rather than wait for long periods of time. Reform may take longer but can be projected with the assistance of the studies. The Panel gave guidance on long-term remedy on multiple occasions and recently in 2025 CHRT 6. The Panel continues to rely on this rationale.
>
> The Panel is giving an opportunity for the parties to share their views on the above for the Panel's consideration before it decides next steps. This question does not include Jordan's Principle for the time being. The parties will respond by:
>
> Caring Society, AFN, COO and NAN by February 24, 2025
> Commission by March 3, 2025
> Canada by March 17, 2025

[12] The parties filed submissions in response to the Tribunal's questions and those submissions are summarized below.

[13] The First Nations Child and Family Caring Society (the "Caring Society") writes further to the Panel's direction of February 10, 2025, and in response to Canada's submission of March 17, 2025, regarding the long-term reform phase of this human rights complaint. It has been over nine years since the Merits Decision and much has been accomplished.

[14] The Tribunal's retention of jurisdiction remains essential, at this time, to ensuring that Canada's discriminatory conduct is eradicated from child and family services and Jordan's Principle and is not repeated for future generations.

[15] The Caring Society submits that the First Nations-in-Assembly, the National Children's Chiefs Commission (the "NCCC"), and the Caring Society are ready, along with the research regarding First Nations child and family services ("FNCFS") and Jordan's Principle, to build, through dialogue with Canada, an enduring end to Canada's discriminatory conduct and ultimately resolve the complaint. Yet without Canada at the table, we cannot move forward. To this end, the Caring Society's view on the issues raised by the Panel in its February 10, 2025, letter centres on requiring Canada to consult on long-term reform solutions that are grounded in the evidence, which is now ready, with the co-complaints, and with the NCCC. Canada's suggestion that the Ontario Final Settlement Agreement form the basis for national long-term reform of FNCFS is wholly inappropriate, given that many of the terms therein were considered and ultimately rejected by First Nations outside of Ontario.

[16] The Caring Society submits that First Nations and the National Children's Chiefs Commission are ready.

[17] In October 2024, First Nations-in-Assembly passed resolutions directing a reset of work towards long-term reform, including the establishment of the NCCC and the inclusion of the Caring Society in FNCFS and Jordan's Principle negotiations and long-term reform. Since October 2024, the Caring Society has been working with technical experts across Canada to support the implementation of the direction of First Nations-in-Assembly, including collaboration with the NCCC when requested.

[18] The First Nations-in-Assembly resolutions set out clear direction for FNCFS reform, guided by the NCCC, that is informed by evidence and protects First Nations children from discrimination now and forever. Through collective decision-making and affirmed resolutions, First Nation leaders have called for the development of a national umbrella agreement, with regional agreements that take full account of the distinct circumstances, cultures and the inherent rights of the children and the First Nations they belong to. First Nations-in-Assembly were clear in their expectations of a nation-to-nation relationship with the government of Canada and have repeatedly insisted on the importance of Canada fulfilling its obligations under the United Nations Declaration of Indigenous People

(UNDRIP), the honour of the Crown and asserting their right to Free, Prior and Informed Consent.

[19] The Caring Society supports the approach set forth by the First Nations-in-Assembly and is confident that if (and when) Canada returns to the table in good faith, consistent with direction of the First Nations-in-Assembly, First Nations children, youth and families will be protected from discrimination now and into the future. Canada's refusal to continue consultations and meaningfully engage in the dialogic approach to end discrimination for all First Nations children evidences the need for the Tribunal to maintain its jurisdiction in this regard.

[20] The Caring Society submits that the research is ready and the studies will be completed by March 31, 2025.

[21] The Caring Society shares the Panel's concerns regarding the delay in achieving long-term reform and recognizes that the Tribunal cannot indefinitely remain seized of this complaint. However, the Caring Society sees Canada's refusal to return to discussions with First Nations outside of Ontario and recent unilateral actions on Jordan's Principle, which appear to dramatically narrow the scope of the support Canada is willing to provide, as demonstrating that the progress since the Merits Decision is still not yet entrenched. As such, it is the Caring Society's position that a premature release of jurisdiction risks eroding the hard work undertaken over the last nine years, including from the lessons learned from First Nations outside of Ontario in their calls for a new approach to long-term reform.

[22] The Caring Society further submits that Canada's reliance on the Ontario Final Settlement Agreement (FSA) to inform national First Nations Child and Family Services (FNCFS) long-term reform contradicts the direction of First Nations rights holders and the express resolutions of the First Nations-in-Assembly. The Ontario FSA was rejected by First Nations outside of Ontario and cannot serve as the blueprint for national reform, as it fails to meet the goal of ending and preventing discrimination. Canada must be deterred from using the Ontario FSA as a national template, as it does not reflect the diverse needs of First Nations children, youth, and families across the country. While the Ontario FSA should proceed with care for those it impacts, national FNCFS long-term reform must advance

concurrently through evidence-informed consultation in accordance with First Nations-in-Assembly guidance.

[23] Much of the work needed to meet these milestones has been completed. With Canada at the table, the Caring Society is confident that long-term reform can be achieved. Even if there are some disagreements on certain aspects of reform, the dialogic approach has assisted the Parties in the past, as evidenced by the approach taken to the Compensation Framework Order and the Revised Final Settlement Agreement on compensation.

[24] The Caring Society and the AFN Executive, supported by the NCCC, have a pathway for achieving long-term reform. Consultation regarding FNCFS and Jordan's Principle is essential to ensure First Nations children, youth and families benefit from a fulsome consultation process, bringing together the NCCC and First Nations, national and regional experts, the co-complaints and Canada in manner that upholds the principles of fairness and good faith negotiations and substantive equality.

[25] The Caring Society submits that now is the time to move swiftly and effectively to implement the dialogic approach now that the research, the experts and the First Nations in-Assembly have set the table for evidence-informed solutions for FNCFS and Jordan's Principle. First Nations and the NCCC is ready, the EAC is ready, the research is ready and so is the Caring Society. It is Canada that is the source of delay and requires encouragement from this Tribunal to make itself ready.

[26] The AFN is in agreement with the Caring Society's submission that the main obstacle to long-term reform is Canada's refusal to continue consultations, and meaningfully engage in the dialogic approach in relation to continuing to develop a national agreement on long-term reform of First Nations child and family services, with regional variations which substantively address the distinct circumstances, cultures, and inherent rights of First Nations children and families.

[27] The AFN has reviewed the National Children's Chiefs Commission's ("NCCC") correspondence requesting that Canada immediately re-engage with the NCCC, AFN Executive, and the Caring Society to complete negotiations of a long-term reform

agreement. The AFN agrees with the NCCC's statement in its February 21, 2025, letter that a national long-term reform agreement is within reach and merely requires Canada to return to the negotiation table to work with the NCCC, the AFN Executive, and the Caring Society in good faith.

[28] The COO respects that the Chiefs in other regions were not agreeable to move ahead with the proposed reforms, as is their right. COO and NAN have been working closely together on long-term reform that suits the needs of First Nations in Ontario and as mandated by their respective Chiefs-in-Assembly to do so. Ontario Regional Chief Abram Benedict and Grand Chief Alvin Fiddler formally invited Canada to enter into negotiations to achieve reform to the FNCFS Program in Ontario. On December 30, 2024, Canada announced to COO and NAN it had received a mandate to negotiate with COO and NAN to implement the reforms contained in the rejected national agreement, but specifically in Ontario.

[29] A provisional Ontario Final Agreement and the Trilateral Agreement Respecting the 1965 Agreement were reached on February 10, 2025, and will be the subject of ratification votes by the NAN Chiefs and Ontario Chiefs-in-Assembly on February 25 and 26, 2025, respectively.

[30] The COO submits that if the draft agreements are ratified by the NAN and Ontario Chiefs, the COO expects to bring a joint motion in March 2025 along with the NAN and Canada seeking a Tribunal order that the draft Ontario Final Agreement and the Trilateral Agreement Respecting the 1965 Agreement meet the Tribunal's prior orders and consequently that the Tribunal's jurisdiction over the long-term reform of the FNCFS Program in Ontario (but not Jordan's Principle) is ended.

[31] The NAN submits that with respect to the Panel's concerns regarding long-term reform, specifically the delay in reaching long-term reform through efforts towards consultation, The NAN advises that the Assembly of First Nations (AFN), Chiefs of Ontario (COO), NAN, and Canada reached a draft Final Agreement on long-term reform in July 2024. In October 2024, NAN and COO each and separately held successful ratification

votes on the draft Final Agreement. However, the draft Final Agreement was ultimately rejected by the First Nations in Assembly of the AFN in October 2024.

[32] While the AFN, by majority, rejected the draft Final Agreement, Chiefs in the Ontario region were largely supportive. The Ontario region Chiefs therefore directed the leadership within NAN and COO to pursue a regionalized version of the reforms contained in the draft Final Agreement.

[33] On December 30, 2024, Canada informed the NAN and the COO that it had a mandate to negotiate a regionalized version of the draft Final Settlement Agreement for long-term reform in Ontario only.

[34] The NAN submits that between December 30, 2024, and February 10, 2025, Canada, the NAN, and the COO negotiated a provisional Ontario Final Agreement (OFA) and a Trilateral Agreement Respecting the 1965 Agreement. These two draft agreements will be voted on in a Special Chiefs Assembly by NAN Chiefs on February 25, 2025, and by Special Chiefs Assembly by Ontario Chiefs on February 26, 2025. Without in any way pre-determining the will of the Chiefs in the above-noted Special Chiefs Assemblies; if so instructed, the NAN, the COO, and Canada intend to bring a joint motion to the Tribunal. The relief sought on this motion would be to end the Tribunal's jurisdiction over the long-term reform of the First Nation Child and Family Services Program in Ontario based on a new Ontario Final Agreement settlement.

[35] The NAN submits that as the Tribunal is aware, dating back to 2016, NAN has strongly advocated for the development of a remoteness quotient that would address the unique challenges faced by remote communities in the delivery of child and family services. This work has culminated in the development of a form of indexing for remoteness termed the Remoteness Quotient Adjustment Factor (RQAF). The RQAF indexing coupled with important terms around remoteness data collection and research represent gains that NAN, in partnership with the COO and Canada, has sought to preserve in the new proposed OFA. If so mandated by the Chiefs, it is NAN's intention to file materials with the Tribunal that elaborate on these significant reforms.

[36] The specific motion materials are the subject of discussions with the COO and Canada but will reflect the context and factual foundation of the work that has been done to conclude long-term reform in Ontario.

[37] Following the COO and the NAN's submissions above, and the resolutions from a majority of the Chiefs-in-Assembly in Ontario, the NAN and the COO brought a joint motion seeking the Tribunal's approval of a final settlement agreement for long-term reform in Ontario. Both the COO and the NAN request the joint motion to proceed expeditiously.

[38] The Commission's view is that it is respectfully the decision of the Tribunal to determine how to advance the long-term remedial stage. The Commission has not been involved in negotiations on long-term reform. Instead, the development of remedies on long-term reform was led by the First Nations bodies with ties to the First Nations children, families, and communities harmed by Canada's discriminatory practices. The Commission acknowledges the Tribunal's jurisdiction over this matter. As noted by the Tribunal, the parties entered the long-term remedial phase in 2018 and committed to reforming the FNCFS Program by March 2023. In the spirit of consultation and reconciliation, the Tribunal adopted the dialogic approach to provide the parties with an opportunity to engage in good faith negotiations to advance this matter while seeking direction from the Tribunal as needed.

[39] While being supportive of the dialogic approach, the Commission is concerned with the amount of time it has taken to achieve long-term reform of the FNCFS Program. As explained by the Federal Court, while negotiations are a way to realize the goal of reconciliation, good will in the negotiation process must be encouraged and fostered "before the passage of time makes an impact on those negotiations." The Commission agrees with the Tribunal's rationale that "[i]t is far better for children to complete the long-term remedial phase shortly rather than wait for long periods of time."

[40] As the Tribunal recently expressed, it has always hoped for a settlement on long-term reform by way of consent order requests by the parties. If this is not possible, however, the Tribunal stated that it "can make systemic long-term orders informed by the parties to eliminate the systemic discrimination found".

[41] Canada submits that as the Tribunal is aware, Canada, the Chiefs of Ontario (COO) and the Nishnawkbe Aski Nation (NAN) recently entered into an agreement to reform the FNCFS Program in Ontario (Ontario Final Agreement), as well as a Trilateral Agreement respecting the 1965 Agreement. These agreements were ratified by the NAN Chiefs and the Ontario Chiefs-in-Assembly on February 25 and 26, 2025 respectively. On March 7, 2025, the COO and the NAN filed a joint motion for approval of the Ontario Final Agreement, which Canada has supported.

[42] These agreements come after years of research, study, consultation and negotiation with the Assembly of First Nations (AFN), the First Nations Child and Family Caring Society of Canada (Caring Society), COO and NAN, all in an effort to secure agreement on the long-term reform of the FNCFS Program nationally, the specifics of which are set out in the Affidavit of Duncan Farthing-Nichol, filed on March 13, 2025, in response to the Caring Society's consultation motion. These specifics include:

- completion of the December 31, 2021, Agreement in Principle;
- the funding and work of multiple committees and tables to provide advice and consider general and specific reform issues;
- regular meetings between the parties, including multiple full day negotiation meetings;
- Indigenous Services Canada's (ISC) financial support of the development of research in a number of areas. This included funding, amongst other research, of contracts between the AFN and the Institute of Fiscal Studies and Democracy (IFSD), and between the Caring Society and IFSD, to inform the development of an alternative funding system.

[43] Canada submits that it is of note that during most of the period of consultation and negotiation on long-term reform of the FNCFS Program, the Caring Society, the AFN, COO and NAN were active participants in either consultations or negotiations with Canada. The Caring Society ceased their participation in negotiations between December 2023 and February 2024. The AFN did not participate in the negotiation of the Ontario specific agreement in January 2025 but was otherwise an active participant in the negotiations.

[44] With this context in mind, Canada respectfully submits that the best way to move forward with the long-term remedial phase is for the Tribunal to first consider the joint motion

from COO and NAN respecting long-term reform of the FNCFS program in Ontario. This motion, if granted, would finally resolve and remedy all issues respecting the FNCFS Program in Ontario. For the benefit of First Nation children and families in Ontario, it is imperative that this motion proceed without delay. Further, the outcome of the joint motion is likely to inform the path forward in these proceedings, including the use of the dialogic approach and the completion of the long-term remedial phase outside of Ontario.

[45] Canada respectfully urges the Tribunal to honour the effort and urgency expressed by the COO and the NAN to address the joint motion. We urge the Tribunal to facilitate the consideration of the Ontario Final Agreement, which is conditional on Tribunal approval, by placing the Caring Society's consultation motion temporarily into abeyance. Consideration of national reform continues to be extremely important to Canada. It is Canada's perspective that the Tribunal's analysis of the Ontario Final Agreement will inform the next steps on national reform.

[46] Canada submits that the FNCFS Program today is very different than it was in 2016. Canada has done significant work and has implemented important reforms. During consultations and negotiations, Canada made considerable reforms to the Program in keeping with the parties' recommendations and the orders from this Tribunal (including on consent). Canada has and continues to implement this Tribunal's orders. Further, Canada has and continues to provide funding beyond the Tribunal's orders, including with respect to housing and First Nations Representative Services outside Ontario. Recipients who are eligible to receive funding under the FNCFS Program continue to benefit from these reforms. Approximately $3.6 billion in funding was provided in 2023-2024, which stands in stark contrast with the $676.8 million in funding spent on the FNCFS Program in 2015-2016, when this complaint was substantiated. Effectively Canada is more than honouring the Tribunal's orders. As such, Canada is asking the Tribunal to honour the urgency of the COO and the NAN's joint motion and focus first on Ontario Final Agreement. It is Canada's perspective that the work of final national reforms will benefit from and be informed by the Tribunal's review of the Ontario final reforms.

[47] Canada has since filed an amended joint OFA motion, specifying that it has joined COO and NAN as co-moving parties.

III. Analysis

[48] On January 26, 2016, this Panel rendered its decision on the merits (see, 2016 CHRT 2, https://canlii.ca/t/gn2vg, (Merit Decision). This Merit Decision was long awaited by First Nations Peoples and was positively received. This was the result of the enormous collective efforts of the parties especially, the co-complainants, the First Nations Child and Family Society (Caring Society) and the Assembly of First Nations (AFN) and the Canadian Human Rights Commission (Commission). The decision was publicly described as historic, landmark and groundbreaking. Canada accepted the decision through its Justice Minister Jody Wilson Raybould, as she then was. Minister Wilson Raybould made powerful public comments on the Tribunal's Merit Decision: "We believe that this decision is pointing us in the right direction, as a country, and we will not seek a judicial review of the decision. This is part of the new relationship and spirit of reconciliation that our government is committed to." https://www.cbc.ca/news/politics/federal-government-not-appeal-children-reserves-1.3458969

[49] In its 182 pages Merit Decision, the Tribunal made a whole array of findings including on: intergenerational trauma, international law, residential schools, the sixties scoop, substantive equality, and much more, in support of its orders.

[50] The Tribunal wrote: AANDC (now Indigenous Services Canada) is ordered to cease its discriminatory practices and reform the FNCFS Program and 1965 Agreement to reflect the findings in this decision. AANDC is also ordered to cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of Jordan's principle.

[51] At, paragraph 482, the Tribunal found:

> More than just funding, there is a need to refocus the policy of the program to respect human rights principles and sound social work practice. In the best interest of the child, all First Nations children and families living on-reserve should have an opportunity "…equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society" (*CHRA* at s. 2).

[52] In the Missing and Murdered Indigenous Women and Girls' November 1, 2017, interim report, INTERIM REPORT THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS: Our Women and Girls are sacred, made findings and recommendations based on the Tribunal's Merit Decision:

> This legal case, as well as a substantial number of the reports we reviewed, recognizes strong links between the child welfare system and violence against Indigenous women and girls in Canada, at. page. 45.
>
> (…)
>
> The National Inquiry calls for:
>
> immediate action for: Full compliance with the Canadian Human Rights Tribunal ruling (2016) that found that Canada was racially discriminating against First Nations children, at. pages 80- 81.

[53] The Tribunal takes judicial notice that Canada accepted the interim report. (See for example, at, https://search.open.canada.ca/qpnotes/record/wage%2CWAGE-2020-QP-00005?utm_source).

[54] While the stronger legally binding step from Canada was when the Justice Minister decided not to judicially review the Merit Decision, the recommendations from the MMIWG accepted by Canada reinforce Canada's public commitments.

[55] The United Nations Committee on Economic, Social and Cultural Rights (CESCR) recommended that Canada review and increase its funding to family and child welfare services for Indigenous Peoples living on reserves and fully comply with the Tribunal's January 2016 Decision. The CESCR also called on Canada to implement the Truth and Reconciliation Commission's recommendations with regards to Indian Residential Schools. (see Economic and Social Council, CESCR, concluding observations on the sixth periodic report of Canada, March 23, 2016, E/C.12/CAN/CO/6, paras.35-36; See also Affidavit of Dr. Cindy Blackstock, December 17, 2016, at para.33, Exhibit L).

The general orders in 2016 CHRT 2

[56] The word **cease** found in the order is taken directly from the quasi-constitutional *CHRA*:

> 53 (2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate:
> that the person cease the discriminatory practice and take measures, in consultation with the Commission on the general purposes of the measures, to redress the practice or to prevent the same or a similar practice from occurring in future, including
> i) the adoption of a special program, plan or arrangement referred to in subsection 16(1), or
> (ii) making an application for approval and implementing a plan under section 17;

[57] In 2018 CHRT 4, at. para. 34, the Tribunal explicitly stated that Section 53(2)(a) *CHRA* grants it jurisdiction to make a "cease and desist order", the Tribunal stated clearly:

> [34] Section 53(2)(a) of the *CHRA* gives this Tribunal the jurisdiction to make a cease and desist order. In addition, if the Tribunal considers it appropriate to prevent the same or a similar practice from occurring in the future, it may order certain measures including the adoption of a special program, plan or arrangement referred to in subsection 16(1) of the *CHRA* (see *National Capital Alliance on Race Relations (NCARR) v. Canada (Department of Health & Welfare)* T.D.3/97, pp. 30-31).
>
> [35] The scope of this jurisdiction was considered by the Supreme Court of Canada in *CN v. Canada (Canadian Human Rights Commission),* 9 [1987] 1 SCR 1114, [Action Travail des Femmes]). In adopting the dissenting opinion of MacGuigan, J. in the Federal Court of Appeal, the Court stated that:
>
> ...s. 41(2)(a), [now 53(2)(a)], was designed to allow human rights tribunals to prevent future discrimination against identifiable protected groups, but he held that "prevention" is a broad term and that it is often necessary to refer to historical patterns of discrimination, in order to design appropriate strategies for the future... (at page 1141).
>
> [36] The Supreme Court also said in reference to the Order made by the Tribunal in that ...When confronted with such a case of "systemic discrimination", [as was the case with Canadian National Railway], it may be

that the type of order issued by the Tribunal is the only means by which the purpose of the *Canadian Human Rights Act* can be met.

In any program of employment equity, there simply cannot be a radical dissociation of "remedy" and "prevention". Indeed, there is no prevention without some form of remedy... (at pages 1141 to 1142).

The Court pointed out that:

Unlike the remedies in s. 41(2)(b)-(d), [now Section 53], the remedy under s. 41(2)(a), is directed towards a group and is therefore not merely compensatory but is itself prospective. The benefit is always designed to improve the situation for the group in the future, so that a successful employment equity program will render itself otiose. (at page 1142). As in the *NCARR* case referred to above, the Panel is not dealing with employment equity issues however, there is nothing in the *CHRA* that restricts remedies under section 53 (2) (a) to employment equity issues. Similar to the analysis in NCARR, the Panel believes this is applicable to the case at hand.

[38] In fact as an example, the words in section 16 (1) of the *CHRA* are not earmarked for employment situations only:

Special programs

16 (1) It is not a discriminatory practice for a person to adopt or carry out a special program, plan or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be based on or related to the prohibited grounds of discrimination, by improving opportunities respecting goods, services, facilities, accommodation or employment in relation to that group. (emphasis added).

[39] Moreover, the Federal Court of Canada in regards to remedies stated in *Grover v. Canada (National Research Council*) (1994), 24 CHRR D/390 (FC) at para. 40 [Grover], “[s]uch a task demands innovation and flexibility on the part of the Tribunal in fashioning effective remedies and the *Act* is structured so as to encourage this flexibility.” (emphasis added).

[40] The Tribunal made extensive findings in 2016 CHRT 2 and provided very detailed reasons as to how it arrived at its findings. The Panel specifically mentioned that reform must address the findings in the Decision. This case is about underfunding, policy, authorities and, the National Program that were found to be discriminatory.(...)

[41] Canada must accept that liability was found and that remedies flow from this finding. The Decision was not a recommendation; it is legally binding.

> [42] To the same extent that funds must be provided to comply with Court decisions, funds must also flow from the Tribunal's Decision. Treasury Board decisions cannot be above the *CHRA* when it comes to expenses for liability.
>
> [43] The Panel to date has not made orders prescribing specific amounts of funding. It has chosen to make orders flowing from its findings which were accepted by Canada.

[58] The Tribunal in 2019 CHRT 7, at. paragraph 52 described this power as an injunction-like power.

[59] *In Canada (Human Rights Commission) v. Taylor,* [1990] 3 S.C.R. 892, the Supreme Court made findings on a Canadian Human Rights Tribunal decision which found the Western Guard Party had repeatedly sent telephonic hate messages directed at Jewish individuals—constituting a discriminatory practice under section 13 (1) of the *CHRA*. The Tribunal ordered the messages to cease, effectively commanding the conduct stop immediately. At paragraph [48] (per Chief Justice Dickson) stated:

> The fact that the *Act* imposes no criminal sanction is particularly important. Section 13(1) is not aimed at punishing an individual for expression. Rather, in conjunction with s. 53(2)(a), it provides a remedy for discriminatory expression in the form of a cease and desist order. This is a remedial order, not a penal one. It is forward-looking and aimed at preventing the continuation of discriminatory practices. The order does not involve a fine or imprisonment, and does not attract a criminal record, (emphasis added).

[60] This shows that a Tribunal's cease-order under s 53(2)(a) of the *CHRA* is treated the same as an injunction.

[61] The Tribunal made this order to cease the systemic discriminatory practices found as an order meant to protect First Nations and families for generations to come. It is a forward-looking order aimed at preventing the continuation of the discriminatory practice found and as mentioned multiple times in previous rulings in this case, prevent future practices to reoccur.

[62] Without this assurance of both a final and long-term order to cease the discriminatory practice and prevent its recurrence, respondents, especially the ones found liable in systemic cases, could cease their discriminatory practices until such time as the Tribunal no longer has jurisdiction and there would be no safeguard in place should the systemic

discrimination start again years later. This would leave the victims of the systemic discrimination to start their case all over again. Such an unreasonable result is the opposite of access to justice. Moreover, it is the opposite of judicial economy and is undoubtfully unjust.

[63] The Tribunal confirms the final nature of the general orders in 2016 CHRT 2, at paragraph 481, to cease the discriminatory practice that are akin to an injunction:

> AANDC is ordered to cease its discriminatory practices and reform the FNCFS Program and 1965 Agreement to reflect the findings in this decision. AANDC is also ordered to cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of Jordan's principle, (emphasis added).

[64] The Tribunal will next turn to the dialogic approach and examine its proper relationship to the final 2016 CHRT 2 orders explained above.

The Tribunal's Dialogic approach

[65] The Federal Court, in a judicial review initiated by Canada in this case, in *Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada*, 2021 FC 969, in dismissing all of Canada's arguments, made important comments on the Tribunal's approach to remedies in this case:

> [135] The fact that the Tribunal has remained seized of this matter has allowed the Tribunal to foster dialogue between the parties. The Commission states that the leading commentators in this area support the use of a dialogic approach in cases of systemic discrimination involving government respondents (Gwen Brodsky, Shelagh Day & Frances M Kelly, "The Authority of Human Rights Tribunals to Grant Systemic Remedies", (2017) 6:1 Can J of Human Rights 1). The Commission described this approach as bold considering the nature of the Complaint and the complexity of the proceedings.
>
> [136] The dialogic approach contributes to the goal of reconciliation between Indigenous people and the Crown. It gives the parties opportunities to provide input, seek further direction from the Tribunal if necessary, and access information about Canada's efforts to bring itself in compliance with the decisions. As discussed later in my analysis of the Eligibility Decision, this approach allowed the Tribunal to set parameters on what it is able to address

based on its jurisdiction under the *CHRA*, the Complaint, and its remedial jurisdiction.

[137] The Commission states that the dialogic approach was first adopted in this proceeding in 2016 and has been repeatedly affirmed since then. It submits that the application of the dialogic approach is relevant to the reasonableness considerations in that Canada has not sought judicial review of these prior rulings.

[138] I agree with the Tribunal's reliance on *Grover v Canada (National Research Council)* (1994), 1994 CanLII 18487 (FC), 24 CHRR 390 [Grover] where the task of determining "effective" remedies was characterized as demanding "innovation and flexibility on the part of the Tribunal…" (2016 CHRT 10 at para 15). Furthermore, I agree that "the [*CHRA*] is structured so as to encourage this flexibility" (2016 CHRT 10 at para 15). The Court in Grover stated that flexibility is required because the Tribunal has a difficult statutory mandate to fulfill (at para 40). The approach in *Grover*, in my view, supports the basis for the dialogic approach. This approach also allowed the parties to address key issues on how to address the discrimination, as my summary in the Procedural History section pointed out.

…

[162] I disagree with the Applicant's characterization of the decisions following the Merit Decision as an "open-ended series of proceedings." Rather, the subsequent proceedings reflect the Tribunal's management of the proceedings utilizing the dialogic approach. The Tribunal sought to enable negotiation and practical solutions to implementing its order and to give full recognition of human rights. As well, significant portions of the proceedings following the Merit Decision were a result of motions to ensure Canada's compliance with the various Tribunal orders and rulings. (emphasis added)

[281] As noted above, I have determined that the Tribunal did not change the nature of the Complaint in the remedial phase. The Tribunal, exercising extensive remedial jurisdiction under the quasi-constitutional *CHRA*, provided a detailed explanation of what had transpired previously and what would happen next in each ruling/decision (See e.g. 2016 CHRT 16 at para 161). In so doing, it was relying on a dialogic approach. Such an approach was necessary considering the scope of the discrimination and the corresponding efforts to remedy or prevent future discrimination. Most importantly, the Tribunal was relying on established legal principles articulated in *Chopra v Canada (AG),* 2007 FCA 268 at para 37 and *Hughes* 2010 at para 50 (Merit Decision at paras 468, 483). I do not agree that the Tribunal did not provide the parties with notice of matters to be determined. (emphasis added)

…

> [301] In my view, the procedural history of this case has demonstrated that there is, and has been, good will resulting in significant movements toward remedying this unprecedented discrimination. However, the good work of the parties is unfinished. The parties must decide whether they will continue to sit beside the trail or move forward in this spirit of reconciliation.
>
> [302] I find that the Applicant has not succeeded in establishing that the Compensation Decision is unreasonable. The Tribunal, utilizing the dialogic approach, reasonably exercised its discretion under the *CHRA* to handle a complex case of discrimination to ensure that all issues were sufficiently dealt with and that the issue of compensation was addressed in phases. The Tribunal ensured that the nexus of the Complaint, as discussed in the Merit Decision, was addressed throughout the remedial phases. Nothing changed. All of this was conducted in accordance with the broad authority the Tribunal has under the *CHRA*.
>
> …

[66] The Dialogic approach does not supplant a final "cease the discriminatory practice" order grounded in the evidence and the *Canadian Human Rights Act* ("*CHRA*"); rather, it operates as a mechanism for implementing such an order. The cease order in this matter, addressing systemic racial discrimination, is firmly grounded in the extensive evidentiary record underlying the Merit Decision and is issued pursuant to the Tribunal's authority under the *CHRA*. Its purpose is to provide immediate and enduring protection to the victims of such discrimination and to ensure that the same or similar practices do not recur.

[67] The Tribunal affirms that this order has never been negotiable and was not issued on an interim basis. The "cease the discriminatory practices" order in 2016 CHRT 2 is final and binding. It is not subject to variation under the Dialogic approach, nor to derogation or abrogation by any future decision in these proceedings, or to amendment through any agreement between the parties. The cease order determines what the authors of the discrimination must do—stop—while the Dialogic approach addresses how compliance is to be achieved, and the orders implemented. 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. What remains non-negotiable is the requirement to end systemic discrimination permanently.

[68] The dialogic approach is helpful in the phased remedy portion of this case; however, it cannot be elevated above final orders or be a means to stagnate long-term reform.

[69] In a recent case management conference, the Tribunal emphasized that the findings and orders in 2016 CHRT 2 are intended to be lasting. The Tribunal considers its general orders akin to an injunction to cease and desist the systemic racial discrimination identified and to prevent its recurrence, to constitute final orders that cannot subsequently be modified by this Panel or by future members.

[70] Moreover, while the Panel has no authority to bind Tribunal members in other cases, in this instance, the final orders found in 2016 CHRT 2 cannot be abrogated or amended by this Panel or by any new Panel members, if applicable.

[71] The Tribunal interpreted the principle of finality of its orders in 2022 CHRT 41 and continues to rely on the same reasoning:

> [178] Moreover, the parties could not contract out or ask the Tribunal to amend its evidence-based findings establishing systemic racial discrimination and related orders in the Merit Decision to a finding that there never was racial discrimination and, therefore, no remedy is required. In the same vein, if evidence-based findings are made that victims/survivors have suffered and should be compensated, the parties cannot contract out or ask the Tribunal to amend its previous evidence-based findings and related orders to a finding that certain victims/survivors entitled by this Tribunal have not suffered and should no longer receive compensation.
>
> [179] This is significantly different than asking the Tribunal to make a finding based on new evidence presented that demonstrates that some aspects of the discrimination found by this Tribunal has ceased in compliance with the injunction-like order made by this Panel to cease the discriminatory practice or that some amendment requests may enhance the Tribunal's previous orders to eliminate discrimination (2022 CHRT 8). The Tribunal's retention of jurisdiction is to ensure its orders are effectively implemented. This includes not narrowing its orders (see for example Jordan's Principle definition in 2017 CHRT 14) and eliminating the discrimination found in a complex nation-wide case involving First Nations from all regions. This is done through reporting, motions, clarification requests, etc. and findings are made on the evidence.

[72] However, as was also raised during the case management conference, numerous immediate and mid-term orders were intended to be superseded by sustainable long-term orders, with the assistance and input of the parties. The objective was to issue final long-

term orders that would constitute an improvement upon the immediate orders, which had been made on the basis of the best evidence then available. The parties submitted that further studies and additional data collection were necessary to inform best practices in relation to long-term remedies.

[73] This Tribunal agreed and took a phased approach to the remedies in dividing them in categories: general orders in 2016 CHRT 2, immediate relief, mid-term relief, long-term relief, reform and compensation. This allowed the Tribunal to make immediate relief orders three months after the Merit Decision and in many subsequent decisions.

[74] This was to allow for change to occur immediately while studies and data collection would be completed. This was explained in previous rulings. This is how the dialogic approach was adopted by this Tribunal.

[75] The dialogic approach was never intended to continually revisit previous orders or to confine the proceedings within an endless cycle of interim measures. Its purpose is to facilitate the transition from immediate and mid-term orders based on the best evidence then available, to long-term, sustainable, culturally appropriate, evidence-based, orders, whether by consent or determination of the Tribunal (based on the parties' evidence and submissions), designed to benefit future generations. Moreover, long-term orders must be informed by First Nations' perspectives and guided by First Nations-led solutions.

[76] Furthermore, waiting months and years because some parties are not in agreement or do not want to negotiate anymore will not assist the Panel in determining the outstanding issues. The Tribunal has authority to move things forward to find meaningful, effective, sustainable, culturally appropriate, needs- based, long-term solutions for generations to come, that incorporate the distinct needs of First Nations without hearing directly from each one of them.

[77] The Tribunal cannot possibly hear directly from all 634 First Nations, organizations, experts, agencies etc. This was clear form the beginning of the proceedings and the dialogic approach did not change this:

> This process would allow the long-term relief to be informed by data collection, new studies and best practices as identified by First Nations

> experts, First Nations communities and First Nations Agencies considering their communities' specific needs, the National Advisory Committee on child and family services reform and the parties, (see 2023 CHRT 44, at paras. 16-17).

[78] The parties and the NCCC can consult them, and the parties can bring their perspectives to the Tribunal.

[79] In 2016 CHRT 11, at para. 14, the Tribunal stated that: the Tribunal's remedial clarification and implementation process is not to be confused with a commission of inquiry or a forum for consultation with any and all interested parties.

[80] In 2022 CHRT 26, at paragraphs. 41-42 the Tribunal stated that:

> [41] Moreover, in this wide-ranging case, impacting First Nations communities in Canada, the Tribunal has to consider that every First Nation community or organization could seek to intervene in these proceedings to share their unique knowledge, experience, culture and history. Would they have expertise to offer? Absolutely. However, it is impossible for all of the First Nations to join this case without halting the work of the Tribunal. The Tribunal is informed by three large organizations representing First Nations (AFN, COO, NAN) and an organization with expertise in child welfare and other services offered to First Nations children regardless of where they reside (Caring Society) to consult with First Nations by different means and bring their perspectives to these proceedings.
> [42] Moreover, the Panel recognizes that the rights holders are First Nations people and First Nations communities and governments. While it is ideal to seek every Nations' perspective again, these proceedings are not a commission of inquiry, a truth and reconciliation commission or a forum for consultation. The Panel relies on the evidence, the parties in this case and the work that they do at the different committees such as the National Advisory Committee on Child Welfare (NAC), tables, forums and community consultations to inform its mid and long-term findings.

[81] In 2020 CHRT 31, at para. 28, the Tribunal reiterated the same principle, quoting 2016 CHRT 11.

[82] In 2022 CHRT 8, the Tribunal on consent of the parties, made long-term relief orders focused on prevention and in line with the Merit Decision's findings on the need to reform and shift the approach from protection to prevention in the FNCFS Program. The Tribunal found that the Federal FNCFS Program focused on protection and created an incentive to remove Indigenous children from their families.

[83] Indeed, as this Tribunal already stated in these proceedings, this shift is necessary to stop the mass removal of children 2018 CHRT 4, at. paragraph 47:

> [47] More importantly, this case is vital because it deals with mass removal of children. There is urgency to act and prioritize the elimination of the removal of children from their families and communities.

[84] The Tribunal finds that the parties' commitment to return to the Tribunal with a National FNCFS long-term agreement by end of 2023 is overdue. The Tribunal, at the time that it made the consent orders in 2022 CHRT 4, was urged by the parties to remove the part of its compensation order that ensured compensation was owed to the victims/survivors of the discrimination until the systemic discrimination had ended. This was a powerful deterrent, and it was upheld by the Federal Court. The Tribunal given the prevention orders and, in foreseeing a long-term reform agreement in approximately a year's time, agreed to remove the ongoing aspect of the compensation and change it for a 2022 cut-off date.

[85] We are now in August 2025, and it is time for swift action.

[86] On January 29, 2025, the Tribunal made interim Jordan's Principle consultation orders. The parties opted for Tribunal-assisted mediation with a different Tribunal member than this Panel to resolve the 9 items. Six months later, the Tribunal is still waiting, and there is no indication of any agreement to date. The Tribunal was informed by Canada that the Tribunal-assisted mediation was terminated by the member on August 13, 2025, even though two outstanding items remained to be resolved under the Tribunal's orders. This mediation concerned interim orders under Jordan's Principle, not a complete long-term reform of the FNCFS Program or Jordan's Principle.

[87] Of note, in 2024, the AFN and Canada had discouraged the Tribunal to make interim Jordan's Principle orders given that a final Jordan's Principle long-term reform settlement agreement was forthcoming in March 2025. The Tribunal rejected that argument based on its extensive experience in these proceedings and the low probability of obtaining such an agreement in that time frame. The parties could not agree on the 9 interim Jordan's Principle items in the time frame anticipated by the AFN and Canada to arrive to a complete long-term reform agreement for Jordan's Principle.

[88] This is not to cast blame on anyone however, it does show that with the best of intentions, deadlines may not be met. This is consistent with many instances in these proceedings and informs the Tribunal's approach in this ruling.

[89] Consequently, the Tribunal finds it more efficient to complete the long-term reform of the FNCFS Program in the short-term and deal with the long-term reform of Jordan's Principle afterward, rather than attempting both together and risking long delays for each.

[90] During the conference management call on July 25, 2025, Member Lustig mentioned that the FNCFS Program will always be undergoing change and that there is no perfect solution. Further, he mentioned that there needs to be some compromise from all sides to arrive to an agreement.

[91] The Tribunal further clarifies that compromise is one that is reasonable and respects the rights of First Nations children and in line with the spirit of the Tribunal's findings and orders.

[92] Furthermore, at the case management conference call on July 25, 2025, the Tribunal had intended to discuss how best to advance long-term reform based on the parties' submissions and further discussion at the CMCC. However, due to time constraints, this discussion was postponed, and the Tribunal informed the parties that another CMCC would be scheduled for this purpose.

[93] Following the CMCC, the Tribunal deliberated on the parties' responses to its Jordan's Principle consultation orders and other emerging issues. The Tribunal was also informed that the mediation process between the parties had been terminated by the Tribunal mediator. Canada expressed its willingness to continue discussions with the parties to resolve two outstanding issues and indicated that it will provide an update in September 2025.

[94] The Tribunal's consent orders were issued in November 2024, with reasons to follow, aiming for an expeditious process for interim solutions and further orders.

[95] This delay is very concerning and informs the Tribunal on the proceedings moving forward.

[96] Five months from now, it will be the tenth anniversary of the Tribunal's decision on the merits.

[97] The Tribunal believes it is now time to proceed towards completion on FNCFS long-term reform and further CMCCs can be scheduled following the Tribunal's orders below.

[98] While the Tribunal fully agrees to proceed with the OFA, it does not agree to delay the National FNCFS long-term reform until the OFA motion has been determined. This would be unhelpful for several reasons. The OFA will not apply to other regions, and the Tribunal will not rely on the OFA to determine a National FNCFS long-term reform remedy. Therefore, delaying the National FNCFS long-term reform proceedings until the OFA has been decided is neither reasonable nor in the best interests of First Nations children and families outside Ontario, and it is inconsistent with the Tribunal's previous orders and with section 48.9(1) of the *CHRA*.

[99] The Tribunal directs that both the OFA and the National FNCFS long-term reform matters proceed concurrently. Should one be decided before the other, both matters will nonetheless have advanced and will proceed to hearings within a reasonably proximate timeframe.

[100] The Tribunal has received an unprecedented number of motions seeking interested party status. A recurring submission in these motions is that, if approved, the OFA may serve as a precedent for the National long-term reform. As noted above, the Tribunal has determined that this will not be the case, except insofar as certain general statements may be made regarding the Tribunal's previous orders, findings, process and approach to remedies.

[101] Another recurring submission is that Canada has refused to return to negotiations, resulting in a halt in the National long-term reform. While the Tribunal does not determine the multiple motions for interested party status in this ruling, the order issued in this ruling may nonetheless address aspects of the recurring submissions that have generated concern among numerous First Nations governments and organizations that are not parties to these proceedings.

[102] The broad consultation for long-term reform orders explained in 2018 CHRT 4 were directed at Canada.

[103] Moreover, the Caring Society submits that now is the time to move swiftly and effectively to implement the dialogic approach now that the research, the experts and the First Nations in-Assembly have set the table for evidence-informed solutions for the FNCFS. First Nations and the NCCC is ready, the EAC is ready, the studies will be completed by March 31, 2025, the research is ready and so is the Caring Society and much of the work needed to meet these milestones has been completed.

[104] In considering Canada's submissions above and its willingness to sign a National long-term agreement that was ultimately rejected, Canada must be taken to have a clear understanding of what long-term reform entails from its perspective.

[105] The ideal solution would be for an agreement on consent of all the parties if Canada returns to the table and such an agreement is possible. However, if not, the Tribunal cannot allow the parties to dictate a very slow pace in achieving finality on long-term reform contrary to the *CHRA*'s requirements and the best interest of First Nations children and families and their respective Nations.

[106] The Tribunal in the objective of avoiding the possibility of an imposed final solution, urges Canada to return to the table of negotiations to listen to the NCCC and the co-complainants and consider the research, the experts and the evidence-informed solutions for long-term reform of the FNCFS Program.

[107] If Canada refuses, the Tribunal, the other parties, the NCCC, the experts, the First Nations Chiefs, governments and organizations, should not be forced to wait till the OFA is completed to see what Canada decides to do for National long-term reform. Canada was ordered to complete long-term reform. Canada can agree to negotiate or not however, one thing that Canada cannot do is simply wait and let time go by. Therefore, should Canada refuse to return to the table to meet the NCCC and hear them out, the Tribunal will hear the co-complainants' evidence-based solutions representing the NCCC and multiple First Nations' viewpoints and Canada's and then choose between the long-term reform order requests.

[108] The Tribunal values all expert viewpoints of First Nations. However, the Tribunal is not and cannot invite them directly into these proceedings without creating a paralysis of these proceedings that would negatively affect the very children that are at the heart of these proceedings.

[109] The Tribunal has limited resources and is not mandated and does not have capacity to hear directly from every First Nation to make its orders. This is clearly expressed in considering the whole body of decisions rendered by this Tribunal in this case.

[110] The Tribunal finds that the Caring Society, the AFN and the NCCC, can aptly consult and gather relevant Nations specific, local and regional perspectives, other First Nations experts and First Nations organization's perspectives and incorporate them in their National long-term reform plan and requested orders for the Tribunal's consideration.

[111] Canada is encouraged to join them or to work on a separate plan informed by the recent evidence and recent studies and incorporate this in their National long-term reform plan and requested orders for the Tribunal's consideration.

[112] The Tribunal renders this creative and innovative decision, consistent with the *Grover* decision referred to above, in an effort to advance proceedings in the best interest of First Nations children and families in circumstances marked by limited collaboration among the parties, who have become increasingly adversarial, and in the face of unforeseen delays.

[113] The Tribunal, in issuing the following orders, establishes non-exhaustive parameters, some of which have been referenced in prior rulings. Long-term reform remedies shall:

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 Convention on the Rights of the Child, the United Nations Declaration on the Rights of Indigenous Peoples 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.

[114] The National FNCFS long-term reform plan and requested remedies outside Ontario shall include detailed deadlines and clear, measurable targets based on the most recent studies, evidence, and the diverse viewpoints of First Nations and other experts. The National long-term reform plan and requested remedies outside Ontario shall demonstrate how its implementation will clearly and effectively cease the systemic racial discrimination identified in the Tribunal's findings and prevent its recurrence for multiple generations. The National FNCFS long-term reform plan and requested remedies outside Ontario will focus on the long-term reform of the FNCFS currently before the Tribunal and described at length in its previous rulings. The National FNCFS long-term reform plan and requested remedies outside Ontario will improve upon the Tribunal's current orders, whether by mirroring them or by adopting different approaches, as supported by the evidence and First Nations' perspectives.

[115] The parties' commitment to this ruling and orders will inform the Tribunal on next steps and may impact the Tribunal's approach toward the other matters before it.

[116] The consultations shall be conducted efficiently and shall prioritize virtual meetings over in-person meetings in light of time and financial constraints.

[117] The Tribunal, in an effort to advance the matter, finds that, given the extended timeline for completing the remaining long-term orders originally intended to be finalized in 2023 as explained in 2022 CHRT 8 and the continued delays in these proceedings, there is a need for monthly reporting to the Tribunal. The parties engaged in the consultations shall provide the Tribunal with a monthly progress report.

IV. Orders

[118] Pursuant to section 48.9(1) and 53(2) of the *CHRA*, the dialogic approach, the Tribunal's previous orders and the Tribunal's retention of jurisdiction, the Tribunal orders:

[119] Canada shall inform the Tribunal, by August 29, 2025, whether it agrees to meet with the National Children's Chiefs Commission to discuss National FNCFS long-term reform outside Ontario, or whether it will reconsider meeting with the AFN and the Caring Society, on a voluntary basis, for the same purpose.

[120] Within four months of the date of this ruling, the Caring Society and the AFN shall consult, in accordance with the parameters set out above, with the National Children's Chiefs Commission, First Nations Chiefs, and other experts, including First Nations and First Nations organizations outside Ontario, as well as those that have filed interested party motions, to develop an evidence-based, comprehensive National FNCFS long-term reform plan and requested remedies outside Ontario. The completed plan, together with supporting affidavit evidence and materials, shall be filed with the Tribunal for its consideration.

[121] The consultations shall ensure that French speaking First Nations who desire to communicate and read materials in French will have the opportunity to do so.

[122] The determination of the OFA motion shall not be contingent upon the Tribunal's conclusion of its consideration of the National FNCFS long-term reform plan and requested remedies outside Ontario referred to in paragraph 120.

[123] The determination of the National FNCFS long-term reform plan and requested remedies outside Ontario shall not be contingent upon the Tribunal's conclusion of its consideration of the OFA motion for Ontario.

[124] The Caring Society, the AFN and Canada shall provide monthly updates to the Tribunal.

[125] Should Canada agree to participate in the consultations referred to in paragraph 120, it shall do so in accordance with the parameters set out above and the orders in this ruling. Where possible, a National FNCFS long-term reform plan and requested remedies outside

Ontario, agreed to on consent by the Caring Society, the AFN, and Canada, together with supporting affidavit evidence and materials, shall be filed with the Tribunal at the conclusion of the consultations.

[126] If a National FNCFS long-term reform plan and requested remedies outside Ontario cannot be reached on consent, or if Canada declines to participate in the consultations, Canada shall, within four months of the date of this ruling, file with the Tribunal its evidence-based National plan on long-term reform remedies outside Ontario. The completed plan shall be supported by affidavit evidence and materials for the Tribunal's consideration.

[127] As already directed, the Ontario region and the OFA will have its separate hearing and parties in favour or opposing will have an opportunity to be heard. The Tribunal is aiming to hold a hearing in 2025, in the absence of unforeseen circumstances.

[128] The orders above do not include Jordan's Principle long-term reform.

V. Retention of jurisdiction

[129] Pending a complete and final agreement on long-term relief on consent or otherwise (a National long-term reform plan as ordered in this ruling) and consistent with the dialogic approach to remedies taken in this case and referred to above, the Panel retains jurisdiction on the Orders contained in this ruling and all its previous orders except its compensation orders. The Panel will revisit its retention of jurisdiction once the parties have filed a National long-term reform plan as ordered in this ruling or a final and complete agreement on long-term reform or as the Panel sees fit considering the upcoming evolution of this case.

Case Management Conference Call (CMCC)

[130] The Tribunal will organize a CMCC shortly, to discuss the implementation of the Orders and answer any questions and/or clarifications, if necessary. The Tribunal will also discuss the long-term reform outside Ontario's hearing schedule. While the Tribunal will receive either a single National Plan filed on consent or two National FNFCS long-term reform plans with supporting evidence within approximately the same timeframe, the parties will have an opportunity to respond to the report(s). The schedule governing those

submissions, any reply evidence, and the cross-examination of affiants and other witnesses if any, will be addressed before or at the CMCC.

Signed by

Sophie Marchildon
Panel Chairperson

Edward P. Lustig
Tribunal Member

Ottawa, Ontario
August 20, 2025

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1340/7008

Style of Cause: First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)

Ruling of the Tribunal Dated: August 20, 2025

Written representations by:

David P. Taylor, Sarah Clarke, Kiana Saint-Macary and Robin McLeod, counsel for the First Nations Child and Family Caring Society of Canada, the Complainant

Anshumala Juyal and Khizer Pervez, counsel for the Canadian Human Rights Commission

Paul Vickery, Sarah-Dawn Norris, Meg Jones, Dayna Anderson, Kevin Staska, Sarah Bird, Jon Khan, Alicia Dueck-Read and Aman Owais, counsel for the Attorney General of Canada, the Respondent

Maggie Wente, Jessie Stirling, Ashley Ash and Katelyn Johnstone, counsel for the Chiefs of Ontario, Interested Party

Julian Falconer, Asha James, Shelby Percival and Meaghan Daniel, counsel for the Nishnawbe Aski Nation, Interested Party

This is **Exhibit DD** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

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A Commissioner for taking Affidavits

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Our File Number: LEX-500219273

August 29, 2025

Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, Ontario K1A 1J4

Dear Members Marchildon and Lustig:

Re: First Nations Child and Family Caring Society of Canada et al. v. the Attorney General of Canada et al.
Tribunal File: T1340/7008

Introduction

We write with regard to the Panel's August 20, 2025 ruling in 2025 CHRT 80. We appreciate the Panel's confirmation that it will continue to advance proceedings on the *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario*. We also appreciate the Panel's indication that it will schedule a Case Management Conference Call (CMCC) to answer questions on its latest ruling, provide clarification and discuss scheduling. To assist with an orderly discussion at the CMCC, we are sharing our initial questions and requests for clarification below.

We also wish to provide additional information to the Panel and clarifications of our own in response to 2025 CHRT 80, particularly in light of the Tribunal's outstanding decision on the Caring Society's January 14, 2025 motion seeking an order for further consultations on long-term reform.

Consultation Motion

The First Nations Child and Family Caring Society of Canada (Caring Society) filed a motion in January 2024 for an order compelling Canada to engage in additional consultations with the AFN and the Caring Society on both the FNCFS Program and Jordan's Principle. The Panel determined that the motion would be heard in writing only, with filings complete as of May 22, 2025. The motion has been under reserve with the Panel since that time.

Canada's position in response to the Caring Society's motion was:

- while Canada has made intensive and meaningful efforts towards achieving final resolution of the complaint with the consent of all parties, the dialogic approach with the AFN and the Caring Society is no longer working;

- Canada's good faith efforts to consult and negotiate have been hindered by the Caring Society's conduct, which includes:

    - abandoning consultations and negotiations;

    - advocating against the Final Agreement, which was based on the terms of the Agreement in Principle between the Caring Society, the AFN, COO, NAN and Canada;

    - making extensive new and further demands that are well outside the terms to which they previously agreed, and beyond what is required to meet the Tribunal's reform orders;

- the Panel should not order any additional consultations with the AFN and the Caring Society; and

- instead, the Panel should move forward by considering the pending motion for approval of the 2025 *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario*.[1]

In paragraph 9 of 2025 CHRT 80, the Panel stated that "This ruling does not decide the Consultation Motion brought by the Caring Society, which is broader in scope and will require a lengthier consultation process, as it encompasses Jordan's Principle long-term reform." **We seek clarification, however, as to whether 2025 CHRT 80 is intended to fully or partially resolve the consultation motion as regards the FNCFS Program.**

<u>Negotiations with the National Children's Chiefs Commission</u>

In paragraph 119 of the Ruling, the Panel ordered that "Canada shall inform the Tribunal, by August 29, 2025, whether it agrees to meet with the National Children's Chiefs Commission to discuss National FNCFS long-term reform outside Ontario, or whether it will reconsider meeting with the AFN and the Caring Society, on a voluntary basis, for the same purpose."

Following the Panel's July 25, 2025 CMCC, and prior to the Panel's August 20 Ruling, federal political representatives and high-level officials from Indigenous Services Canada (ISC) voluntarily met with the National Children's Chiefs Commission (NCCC) on two occasions. First, on August 11, 2025, ISC Associate Deputy Minister Michelle Kovacevic met with Chief Pauline Frost, Chair of the NCCC. Second, on August 18, 2025, the Honourable Mandy Gull-Masty, Minister of Indigenous Services, together with ISC's Deputy Minister Gina Wilson, met with Chief Frost.

[1] Factum of the Attorney General of Canada in response to the Caring Society's consultation motion, dated May 15, 2025, paras 1-4.

During these meetings, Chief Frost stated that the NCCC's position remains that a national agreement must cover First Nations children both on- and off-reserve. She also noted the NCCC's position that the $47.8 billion proposed in the *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program* (Final Agreement) is only a baseline from which to begin negotiations.

Chief Frost stated that negotiations towards long-term reforms should be tripartite between the First Nations Child and Family Caring Society of Canada (Caring Society), the NCCC and Canada. She further stated that the NCCC has entered into a bilateral agreement with the Caring Society, although Canada has no knowledge of the contents of that bilateral agreement.

Canada's position is that the NCCC's position, particularly with respect to off-reserve Program funding, are beyond the scope of the 2021 *Agreement-in-Principle on Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle* (Agreement in Principle) made with the Complainants (the Caring Society and the AFN), and indeed beyond the scope of the complaint itself.[2] **We are therefore seeking clarification from the Panel as to whether the Panel is asking that Canada engage with the NCCC beyond these two meetings and, if so, to confirm that any such additional meeting is to cover only issues within the scope of the Agreement in Principle and the complaint.**

In addition, we are seeking the Panel's clarification as to whether it is suggesting that Canada not only *consult*, but *negotiate* with the NCCC and/or the Caring Society and/or the AFN, in line with the parameters set out in paragraph 113, towards a new national long-term FNCFS Program reform agreement, and despite Canada's position articulated with respect to the January 2025 consultation motion that: (a) Canada has fully discharged its obligations pursuant to the Tribunal's orders to consult with the AFN and the Caring Society; and (b) the Panel should not order additional consultations with the AFN and the Caring Society.[3] Further, on what basis has the Panel arrived at the parameters in paragraph 113 and does the Panel intend that Canada must comply with each of them in any national plan for long-term reform of the FNCFS Program? As noted by the Panel, some of these parameters have been set out in previous rulings. However, others are new and expand upon previous rulings.

Should the Panel clarify that it expects Canada to negotiate with the NCCC, the Caring Society and/or the AFN in line with its new parameters and new consultation process, Canada will require time beyond August 29, 2025 to seek and obtain instructions.

<u>Consultation with Non-Parties</u>

In paragraph 120 of 2025 CHRT 80, the Panel orders that the AFN and the Caring Society shall consult with a series of non-parties, including the NCCC, First Nations chiefs, other experts including First Nations and First Nation organizations outside Ontario and all those who filed interested party motions. **We are seeking clarification as to the basis on which the Panel has jurisdiction to order that complainants (in this case, the AFN and the Caring Society) consult with non-parties to a complaint, with or without the respondent.**

[2] *Ibid*. See for example paragraph 84.
[3] *Ibid*. See for example paragraph 88.

Timing of Consultations

The Panel stated at paragraph 108 of 2025 CHRT 80 that it cannot invite all First Nations into the proceeding without creating a paralysis, while at the same time ordering that within 4 months, the AFN, the Caring Society and Canada develop long-term FNCFS Program reform plans that incorporate all regional and local First Nations perspectives, including through consultations with the NCCC, First Nations chiefs, other experts including First Nations and First Nation organizations outside Ontario and all those who filed interested party motions (paras 113, 120 and 126). **Does the Panel contemplate that the Complainants (the AFN and the Caring Society) and potentially the Respondent (Canada) will consult or negotiate directly with every First Nation community, regional entity, and First Nations child and family services agency in Canada (save for in Ontario and the Northwest Territories) on national FNCFS Program reforms in advance of providing their plan or plans on December 20, 2025?**

Like the Tribunal, Canada believes it is critical that reforms to the FNCFS Program be co-developed with First Nations, experts and regional groups. That is why Canada consulted so extensively over a number of years with the AFN, Chiefs of Ontario (COO) and Nishnawbe Aski Nation (NAN). The AFN has been viewed in these proceedings as the representative of First Nations across Canada, COO as the representative of Ontario First Nations, and NAN as the representative of 49 First Nations in northern Ontario.

It has become clear to Canada that a consultation or negotiation process to develop new plans for long-term reform, which reflects the expressed needs of First Nations leadership and communities, will take time. For example, Canada has heard a potential lack of consensus around whether one national long-term reform strategy is the right approach. Canada is deeply concerned that the Panel's four-month timeframe to develop new plans for long-term reform is not achievable.

Next Steps

At paragraph 120 of 2025 CHRT 80, the Panel ordered the Caring Society and the AFN to submit a comprehensive national plan as well as requested remedies for long-term reform of the FNCFS Program. The Panel ordered Canada to take part in development of that plan or to submit its own comprehensive national plan (paragraphs 125 and 126).

We are seeking clarification regarding whether the Panel intends to implement a process leading to its consideration of the merits of the potentially competing plans, including the filing of evidence and argument, or whether the Panel intends to make orders on long-term reform of the FNCFS Program based solely on the plans submitted on December 20, 2025.

Consultations ordered by the Panel in 2025 CHRT 6

In paragraph 86 of 2025 CHRT 80, the Panel wrote: "On January 29, 2025, the Tribunal made interim Jordan's Principle consultation orders. The parties opted for Tribunal-assisted mediation with a different Tribunal member than this Panel to resolve the 9 items… the Tribunal was informed by Canada that the Tribunal-assisted mediation was terminated by the member on August 13, 2025, even though two outstanding items remained to be resolved under the Tribunal's orders."

For clarity, in 2025 CHRT 6, the Panel ordered consultations on eleven items. Canada's letter to the Panel, dated August 14, 2025, advised that as of the end of the Tribunal-mediated process on August 13, 2025, "two topics that the Tribunal ordered consultation on in 2025 CHRT 6 have yet to be discussed." Our indication that two items remain to be *discussed* should not be taken to imply that the parties have *resolved* any of the other topics for consultation. Rather, the parties have to date *consulted* on nine of the eleven items. It is Canada's hope that the other parties will meet with Canada to discuss at a minimum the remaining two items, outside of Tribunal-assisted mediation. Canada is making best efforts to coordinate such discussions.

Thank you in advance for considering these questions and clarifications.

Sincerely,



Dayna Anderson
Senior General Counsel

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This is **Exhibit EE** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

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A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
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Canadian Human Rights Tribunal
Tribunal canadien des droits de la personne
Ottawa, Canada, K1A 1J4

September 12, 2025

By e-mail

(See Distribution List)

Dear Parties,

Re: First Nations Child and Family Caring Society et al. v. Attorney General of Canada
Tribunal File: T1340/7008

The Panel wishes to advise the parties of the following:

The Tribunal is in receipt of the AGC's letter dated August 29, 2025. The Tribunal appreciates that the AGC seeks clarifications and provided them in advance of the CMCC. The Tribunal will provide responses below and is also looking forward to discussing this further at the upcoming CMCC. The answers (A) below are summaries provided expeditiously in advance of an upcoming CMCC but may not include all of the Tribunal's views on each point. This is letter one of two letters and attachments. Additionally, the Tribunal reserves the right to further detail its responses below.

Q. In paragraph 9 of 2025 CHRT 80, the Panel stated that "This ruling does not decide the Consultation Motion brought by the Caring Society, which is broader in scope and will require a lengthier consultation process, as it encompasses Jordan's Principle long-term reform." We seek clarification, however, as to whether 2025 CHRT 80 is intended to fully or partially resolve the consultation motion as regards the FNCFS Program.

A. The Tribunal has not yet decided the consultation motion, either in whole or in part. It remains under deliberation. In the meantime, following the parties' submissions in response to the Tribunal's request dated February 10, 2025, regarding long-term reform, the Tribunal has chosen to take a different approach to move forward.

The ruling in 2025 CHRT 80 addresses this specific matter—not the consultation motion. If the Attorney General of Canada reviews the submissions summarized in the ruling, it will be clear that they were filed in direct response to the Tribunal's request for submissions on long-term. While some parties reiterated arguments previously raised in the consultation motion, the Tribunal considered only those submissions provided in response to its February 10, 2025, request. For instance, the Commission made more extensive submissions in response to the request on long-term reform than it did for the consultation motion.

Importantly, the Tribunal did not rely on the materials filed with the consultation motion when issuing its procedural ruling to move the proceedings forward. Instead, it based its analysis on the history of the proceedings, its prior rulings, the parties' responses at the last CMCC on July 21, 2025, the submissions made in response to its February 10, 2025, request, and the developments since its 2022 CHRT 8 ruling.

The Tribunal has also considered the broader context. Nearly ten years have passed since the Merit decision, and under section 48.9(1) of the *Canadian Human Rights Act* (CHRA), the Tribunal has a duty to move the matter toward completion. The *CHRA* does not contemplate the Tribunal waiting indefinitely for the parties to take steps in that direction. Therefore, the Tribunal is committed to advancing the proceedings as efficiently and effectively as possible, with a view to achieving resolution in the near future.

Negotiations with the National Children's Chiefs Commission

Q. In paragraph 119 of the Ruling, the Panel ordered that "Canada shall inform the Tribunal, by August 29, 2025, whether it agrees to meet with the National Children's Chiefs Commission to discuss National FNCFS long-term reform outside Ontario, or whether it will reconsider meeting with the AFN and the Caring Society, on a voluntary basis, for the same purpose."

Following the Panel's July 25, 2025, CMCC, and prior to the Panel's August 20 Ruling, federal political representatives and high-level officials from Indigenous Services Canada (ISC) voluntarily met with the National Children's Chiefs Commission (NCCC) on two occasions. First, on August 11, 2025, ISC Associate Deputy Minister Michelle Kovacevic met with Chief Pauline Frost, Chair of the NCCC. Second, on August 18, 2025, the Honourable Mandy Gull-Masty, Minister of Indigenous Services, together with ISC's Deputy Minister Gina Wilson, met with Chief Frost.

During these meetings, Chief Frost stated that the NCCC's position remains that a national agreement must cover First Nations children both on-and off-reserve. She also noted the NCCC's position that the $47.8 billion proposed in the Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program (Final Agreement) is only a baseline from which to begin negotiations.

Chief Frost stated that negotiations towards long-term reforms should be tripartite between the First Nations Child and Family Caring Society of Canada (Caring Society), the NCCC and Canada. She further stated that the NCCC has entered into a bilateral agreement with the Caring Society, although Canada has no knowledge of the contents of that bilateral agreement.

Canada's position is that the NCCC's position, particularly with respect to off-reserve Program funding, are beyond the scope of the 2021 Agreement-in-Principle on Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle (Agreement in Principle) made with the Complainants (the Caring Society and the AFN), and indeed beyond the scope of the complaint itself. We are therefore seeking clarification from the Panel as to whether the Panel is asking that Canada engage with the NCCC beyond these two meetings and, if so, to confirm that any such additional meeting is to cover only issues within the scope of the Agreement in Principle and the complaint.

A. On July 21, 2025, the Panel Chair asked the AGC to consult with their client on whether they would agree to meet with the NCCC. The AGC indicated that they would present the Tribunal's request to their client. However, by the time the Panel released its ruling a month later, no response had been provided. On August 29, 2025, the Tribunal learned for the first time that two such meetings had already taken place.

The Tribunal acknowledges and thanks Canada for having met twice with the NCCC. Had the AGC informed the Tribunal of these meetings earlier, the Tribunal would have considered this aspect of the matter differently. It is also important to note that in 2025 CHRT 80, the Tribunal merely urged Canada to meet with the NCCC; it did not order Canada to do so. The Tribunal's order was limited to requiring Canada to inform the Tribunal, by August 29, 2025, whether it would agree to meet with the NCCC or whether it will reconsider meeting with the AFN and the Caring Society, on a voluntary basis, for the same purpose. The portion of this Order concerning the NCCC requirement has now been satisfied.

The Tribunal is concerned that both (1) the co-complainants and (2) the Respondent may have significantly shifted their approach in this complaint. The Tribunal will hear from all parties before and/or at the CMCC to clarify these matters and determine the appropriate course of action.

1. Position of the Co-complainants

The AGC has informed the Tribunal that the NCCC maintains its position that a national agreement must include First Nations children both on- and off-reserve. If this relates solely to Jordan's Principle in line with the Tribunal's previous rulings, the Tribunal understands this position. However, if the request now extends to the FNCFS Program and related services as part of resolving the complaint, this would represent a major development. Such a shift could potentially prevent the Tribunal from finalizing the case unless Canada agreed to those terms, and only if an agreement were filed on consent—which does not appear to be the case. While one affidavit in the record which was not considered by the Tribunal to arrive at its 2025 CHRT 80 ruling refers to the inclusion of off-reserve First Nations children, the Tribunal is unclear that the AFN Chiefs-in-Assembly resolutions reference this in relation to Jordan's Principle or also for the FNCFS Program.

Resolution no. 90/2024 mentions:

M. All First Nations children on and off reserve and living in self-governing First Nations have a right to receive substantively equal and culturally based child and family services and/or Jordan's Principle and live free of Canada's discrimination now and forever.

The Tribunal will seek clarification from the co-complainants and Canada on this matter. Did Canada base its original position on the assertion that the co-complainants have expanded their request to include off-reserve First Nations children under this resolution? If so, was this what Chief Frost reiterated in order to resume the negotiations?

If the parties confirm this to be the case, it should be noted that the matter of off-reserve First Nations children under the FNCFS Program outside of Jordan's Principle rulings was not addressed in the 2025 CHRT 80 orders. This point is of central importance and should guide any further discussion. The focus must remain on what the Tribunal found, what it ordered to cease, and what is required to ensure that the systemic racial discrimination identified is eliminated and

does not recur. While the Tribunal notes the resolution above entirely lines up with the Tribunal's Merit Decision and rulings, insofar as the resolution suggests now adding off-reserve First Nations children to the portion of the complaint for the FNCFS Program, this is a significant shift that needs to be discussed urgently. Moreover, the Tribunal holds immense respect for the decisions made by the First Nations Chiefs. While their resolutions carry significant weight, they do not confer additional jurisdiction to the Tribunal. This was not contemplated in 2025 CHRT 80, and the Tribunal will return to the parties to seek clarification.

2. Position of the Respondent

The AGC has also raised concerns regarding the lack of consensus on a national long-term reform approach. The Tribunal is concerned with this comment. The Tribunal recalls, however, that Canada previously advanced a national long-term reform agreement which was ultimately rejected by the Chiefs, who responded by calling for a renegotiated national framework that also incorporated regional perspectives. The Tribunal will return to the parties to seek clarification.

Finally, the Tribunal requests that the AGC outline what it refers to as the scope of the Agreement-in-Principle (AIP). As the AGC is aware, the AIP has not been provided in full to the Tribunal—unless it has been submitted recently for purposes of the OFA or the consultation motion. In any event, it has not yet been considered by this Tribunal in reaching its decision in 2025 CHRT 80.

Next Steps

Q. In addition, we are seeking the Panel's clarification as to whether it is suggesting that Canada not only consult, but negotiate with the NCCC and/or the Caring Society and/or the AFN, in line with the parameters set out in paragraph 113, towards a new national long-term FNCFS Program reform agreement, and despite Canada's position articulated with respect to the January 2025 consultation motion that: (a) Canada has fully discharged its obligations pursuant to the Tribunal's orders to consult with the AFN and the Caring Society; and (b) the Panel should not order additional consultations with the AFN and the Caring Society. Further, on what basis has the Panel arrived at the parameters in paragraph 113 and does the Panel intend that Canada must comply with each of them in any national plan for long-term reform of the FNCFS Program? As noted by the Panel, some of these parameters have been set out in previous rulings. However, others are new and expand upon previous rulings.

Should the Panel clarify that it expects Canada to negotiate with the NCCC, the Caring Society and/or the AFN in line with its new parameters and new consultation process, Canada will require time beyond August 29, 2025, to seek and obtain instructions.

A. The Tribunal has left it to Canada to decide whether to pursue discussion, consultation, negotiation, or neither. At the same time, the Tribunal has left open the possibility for Canada to change its position at any time and join the NCCC, the co-complainants, or both, should it so choose. The Tribunal did not order Canada to consult or negotiate. The purpose of the order is to ensure progress in addressing the long-term aspects of the complaint, not to create paralysis or delay in resolving matters that negatively affect the Tribunal's work and, most importantly, the First Nations children.

The AGC refers to what the Tribunal wrote in 2025 CHRT 80:

[113] The Tribunal, in issuing the following orders, establishes non-exhaustive parameters, some of which have been referenced in prior rulings. Long-term reform remedies shall:

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 Convention on the Rights of the Child, the United Nations Declaration on the Rights of Indigenous Peoples 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.

The quasi-totality of the parameters is found in the Tribunal's previous merits decisions and rulings. None of the parameters expand upon those rulings. The Tribunal continues to rely on all of its earlier rulings; however, for the purposes of an expeditious response, it has focused on several key rulings and is referring to findings and orders that demonstrate the presence of the parameters. The Tribunal is preparing a document containing numerous references to its previous rulings, which will be provided to the parties no later than next week. Some terminology used in the parameters is synonymous or similar—though not always identical—to that in the Tribunal's previous rulings, but it remains consistent with the spirit of those rulings. For example, the Tribunal has repeatedly used the expression "sustainable for generations to come," which is similar to "remain sustainable for present and future generations" found in parameter 1 of paragraph 113.

Certain terms were also included to assist the parties—particularly Canada, which has stated that it is not necessary to mirror the Tribunal's orders exactly and that compromise is required. Accordingly, the Tribunal has incorporated terms such as "flexible," "non-rigid," and "strive for excellence, rather than perfection" to reflect this position, even if similar concepts can be found in earlier rulings.

Moreover, upon thorough review of the Tribunal's previous findings and rulings, Canada will find that they encompass most, if not all, of the relevant parameters. These parameters stem from the Tribunal's careful consideration of the evidence that has informed its findings over the years. Most of these parameters should come as no surprise to Canada; if they do, the Tribunal itself would be surprised. Canada should not object to the inclusion of additional clarifying wording, which was added to prevent the constant expansion of issues and the pursuit of perfection rather than excellence. Furthermore, Canada should not settle for anything less than excellence, as this is in the best interests of First Nations children.

The Tribunal expects the co-complainant and Canada to incorporate the non-exhaustive parameters in their respective National FNCFS long-term reform plan and requested remedies outside Ontario. plans or if Canada changes its position on consultation, to the National plan filed on consent. If a parameter cannot be included, the Tribunal expects the parties who will file a National FNCFS long-term reform plan and requested remedies outside Ontario to provide a reasonable explanation as to why they could not include this aspect in their National long-term plan.

Consultation with Non-Parties

Q. In paragraph 120 of 2025 CHRT 80, the Panel orders that the AFN and the Caring Society shall consult with a series of non-parties, including the NCCC, First Nations chiefs, other experts including First Nations and First Nation organizations outside Ontario and all those who filed interested party motions. We are seeking clarification as to the basis on which the Panel has jurisdiction to order that complainants (in this case, the AFN and the Caring Society) consult with non-parties to a complaint, with or without the respondent.

A. This order flows directly from the Tribunal's previous rulings, findings, and orders, as well as from the developments in these proceedings. The Tribunal has repeatedly emphasized in its rulings that its jurisdiction stems from the complaint, the *CHRA*, all its previous findings, rulings and orders and applicable case law such as *Grover, Action Travail des femmes, NCARR, Robichaud*, and other cases, as analyzed in the Tribunal's rulings, findings, and orders. The Tribunal is preparing a document containing numerous references to its previous rulings, which will be provided to the parties no later than next week. The document is a compilation of some (though not all) references in the Tribunal's Merit Decision and rulings that address the requirement to consult with First Nations, other experts, First Nations agencies, and others for long-term reform. Moreover, the Tribunal has previously stated that orders should be considered alongside the findings leading to them and not separately.

The Tribunal continues to rely on all of its previous decisions and rulings. However, for the purposes of an expeditious response, it has focused on several key rulings, referring to findings and orders that demonstrate the need to consult with non-parties, First Nations chiefs, other experts (including First Nations experts), and First Nations organizations.

On the issue of the developments in these proceedings, the National Advisory Committee on Child and Family Services Reform was mandated to consult with multiple experts to make recommendations to ensure the best possible solutions and outcomes for First Nations children. The parties hold conflicting views on whether its mandate has ended or is ongoing, as well as on the timing and extent of that mandate.

Moreover, Canada informed the Tribunal that it no longer wishes to negotiate with the co-complainants and has refused to meet with the New National Children's Chiefs Commission. The Tribunal made one final request and has planned for a process should Canada refuse again. The idea of consultation aligns with the goal of obtaining the best practices and perspectives for a long-term, final solution, as reiterated numerous times in the Tribunal's rulings.

The Tribunal cannot possibly hear from every party or devote all its resources to deciding motions for interested-party status, especially since Canada insists to only proceed with Ontario for the time being. Furthermore, while the Chiefs-in-Assembly approve the inclusion of any rights holders seeking interested-party status, this does not bind the Tribunal to grant such status. This creates a difficult context for the Tribunal, which must find creative ways to advance the matter toward resolution.

The parties have become more contentious, and more organizations are seeking to be added to the proceedings, which adds to this complexity. The order for the co-complainants to consider perspectives outside the Tribunal proceedings is in line with the Tribunal's previous rulings. This does not confer upon non-parties an official consultation status at the Tribunal, but it ensures that their expertise is at least considered by the co-complainants and potentially by Canada. This forms part of the Tribunal's approach, as stated in previous rulings, to obtain the best possible solutions in the best interests of First Nations children.

Canada submitted to the Tribunal, on the issue of compensation, that it relied mostly on the AFN to conduct regional and community consultations with First Nations and experts. This is similar to the current situation, which now includes the National Children's Chiefs Commission that the AFN has officially recognized in these proceedings in its filings.

Timing of Consultations

Q. The Panel stated at paragraph 108 of 2025 CHRT 80 that it cannot invite all First Nations into the proceeding without creating a paralysis, while at the same time ordering that within 4 months, the AFN, the Caring Society and Canada develop long-term FNCFS Program reform plans that incorporate all regional and local First Nations perspectives, including through consultations with the NCCC, First Nations chiefs, other experts including First Nations and First Nation organizations outside Ontario and all those who filed interested party motions (paras 113, 120 and 126). Does the Panel contemplate that the Complainants (the AFN and the Caring Society) and potentially the Respondent (Canada) will consult or negotiate directly with every First Nation community, regional entity, and First Nations child and family services agency in Canada (save for in Ontario and the Northwest Territories) on national FNCFS Program reforms in advance of providing their plan or plans on December 20, 2025?

Like the Tribunal, Canada believes it is critical that reforms to the FNCFS Program be codeveloped with First Nations, experts and regional groups. That is why Canada consulted so extensively over a number of years with the AFN, Chiefs of Ontario (COO) and Nishnawbe Aski Nation (NAN). The AFN has been viewed in these proceedings as the representative of First Nations across Canada, COO as the representative of Ontario First Nations, and NAN as the representative of 49 First Nations in northern Ontario.

It has become clear to Canada that a consultation or negotiation process to develop new plans for long-term reform, which reflects the expressed needs of First Nations leadership and communities,

will take time. For example, Canada has heard a potential lack of consensus around whether one national long-term reform strategy is the right approach. Canada is deeply concerned that the Panel's four-month timeframe to develop new plans for long-term reform is not achievable.

A. No, the Tribunal does not expect that the Complainants (the AFN and the Caring Society) and, potentially, the Respondent (Canada) will consult or negotiate directly with every First Nation community, regional entity, and First Nations child and family services agency in Canada (except in Ontario and the Northwest Territories) on national FNCFS Program reforms in advance of providing their plan or plans on December 20, 2025, as it would be impossible to do so within four months. The Tribunal believes that much of this work has already been done, or ought to have been done, over the years. Canada was prepared to bring a final settlement agreement on national long-term reform to the Tribunal if it had been approved by the AFN Chiefs-in-Assembly. Canada has stated that it has already consulted extensively and does not wish to be ordered to do so again. The Tribunal finds this demonstrates that Canada knows what is required to cease the systemic discrimination found and to prevent its recurrence and can include it in their National FNCFS long-term reform plan and requested remedies outside Ontario.

The necessary studies have been completed, and, as Canada itself noted in its question above, it has engaged in extensive consultations over a number of years with the AFN, the Chiefs of Ontario (COO), and the Nishnawbe Aski Nation (NAN). In these proceedings, the AFN has been regarded as the representative of First Nations across Canada, COO as the representative of Ontario First Nations, and NAN as the representative of 49 First Nations in northern Ontario. This demonstrates that numerous perspectives have already been provided, and four months is sufficient to seek as many perspectives possible to strengthen the National plan without accepting everyone in these proceedings which would halt the Tribunal's work.

The National plan could also include a mechanism for First Nations that wish to negotiate on a Nation-to-Nation basis and not be bound by the final orders of the Tribunal. The Tribunal had already envisioned such an approach in 2018 CHRT 4.

The Tribunal is not requesting long-term order requests through consultation with over 600 First Nations individually, which would cause the Tribunal to wait years for completion. The Tribunal is seeking long-term solutions that incorporate as many First Nations perspectives as possible, including the possibility for individual First Nations to decline the long-term solutions if they so choose and instead negotiate directly with Canada, taking into account the evidence accumulated so far that can inform such orders. Some aspects can be prospective and clearly demonstrate how the systemic discrimination identified will be eliminated and prevented from reoccurring.

Next Steps

Q. At paragraph 120 of 2025 CHRT 80, the Panel ordered the Caring Society and the AFN to submit a comprehensive national plan as well as requested remedies for long-term reform of the FNCFS Program. The Panel ordered Canada to take part in development of that plan or to submit its own comprehensive national plan (paragraphs 125 and 126).

We are seeking clarification regarding whether the Panel intends to implement a process leading to its consideration of the merits of the potentially competing plans, including the filing of evidence and argument, or whether the Panel intends to make orders on long-term reform of the FNCFS Program based solely on the plans submitted on December 20, 2025.

A. The Panel intends to implement a process leading to its consideration of the merits of the potentially competing plans, including the filing of evidence and argument. The Tribunal will also seek the parties' views on this.

Consultations ordered by the Panel in 2025 CHRT 6

Q. In paragraph 86 of 2025 CHRT 80, the Panel wrote: "On January 29, 2025, the Tribunal made interim Jordan's Principle consultation orders. The parties opted for Tribunal-assisted mediation with a different Tribunal member than this Panel to resolve the 9 items… the Tribunal was informed by Canada that the Tribunal-assisted mediation was terminated by the member on August 13, 2025, even though two outstanding items remained to be resolved under the Tribunal's orders."

For clarity, in 2025 CHRT 6, the Panel ordered consultations on eleven items. Canada's letter to the Panel, dated August 14, 2025, advised that as of the end of the Tribunal-mediated process on August 13, 2025, "two topics that the Tribunal ordered consultation on in 2025 CHRT 6 have yet to be discussed." Our indication that two items remain to be discussed should not be taken to imply that the parties have resolved any of the other topics for consultation. Rather, the parties have to date consulted on nine of the eleven items. It is Canada's hope that the other parties will meet with Canada to discuss at a minimum the remaining two items, outside of Tribunal-assisted mediation. Canada is making best efforts to coordinate such discussions.

A. The Tribunal appreciates the clarification. It had not understood that 9 of the 11 topics were resolved. Given that the consultation orders for the complaints mechanisms were postponed until after the other orders, and considering the confidentiality of the mediation process, the Tribunal does not know which items were discussed and which remain outstanding. The number 9 arose from the July 21, 2025, CMCC discussions. The Tribunal had understood that the discussions had ended and that the outcome was unclear. Canada's confirmation reinforces the concerns expressed by the Tribunal in 2025 CHRT 80. If six months of discussions between the parties did not result in agreement on any of the 11 items, Canada's desire to coordinate discussions on the two outstanding issues does not, in itself, address the Tribunal's concerns. The Tribunal is considering next steps on this point.

The Tribunal welcomes follow-up questions from Canada or any other party, whether in advance of the CMCC or at the CMCC.

Should you have any questions, please do not hesitate to contact the Registry Office by e-mail at registry.office@chrt-tcdp.gc.ca or by fax at 613-995-3484.

Yours truly,

Judy Dubois
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Judy Dubois
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This is **Exhibit FF** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

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A Commissioner for taking Affidavits

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Canadian Human Rights Tribunal



Tribunal canadien des droits de la personne

Citation: 2025 CHRT 80
Date: August 20, 2025
File No.: T1340/7008

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

Interested parties

Ruling

Members: Sophie Marchildon
Edward P. Lustig

Table of Contents

I. Context 1

II. Moving forward on a National FNCFS long-term reform concurrently and separately from Ontario 4

III. Analysis 14

The general orders in 2016 CHRT 2 16

The Tribunal's Dialogic approach 19

IV. Orders 31

V. Retention of jurisdiction 32

I. Context

[1] In 2016, the Tribunal released *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] and found that this case is about children and how the past and current child welfare practices in First Nations communities on reserves, across Canada, have impacted and continue to impact First Nations children, their families and their communities. The Tribunal found that Canada racially discriminated against First Nations children on reserve and in the Yukon in a systemic way not only by underfunding the First Nations Child and Family Services Program (FNCFS) but also in the manner that it designed, managed and controlled it. One of the worst harms found by the Tribunal was that the FNCFS Program failed to provide adequate prevention services and sufficient funding. This created incentives to remove First Nations children from their homes, families and communities as a first resort rather than as a last resort. Another major harm to First Nations children was that zero cases were approved under Jordan's Principle given the narrow interpretation and restrictive eligibility criteria developed by Canada. The Tribunal found that beyond providing adequate funding, there is a need to refocus the policy of the program to respect human rights principles and sound social work practice in the best interest of children. The Tribunal established Canada's liability for systemic and racial discrimination and ordered Canada to cease the discriminatory practice, take measures to redress and prevent it from reoccurring, and reform the FNCFS Program and the 1965 Agreement in Ontario to reflect the findings in the Merit Decision. The Tribunal determined it would proceed in phases for immediate, mid-term and long-term relief and program reform and financial compensation so as to allow immediate change followed by adjustments and finally, sustainable long-term relief. This process would allow the long-term relief to be informed by data collection, new studies and best practices as identified by First Nations experts, First Nations communities and First Nations Agencies considering their communities' specific needs, the National Advisory Committee on child and family services reform and the parties, (see 2023 CHRT 44, at paras. 16-17).

[2] The Tribunal also ordered Canada to cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of

Jordan's Principle. Jordan's Principle orders and the substantive equality goal were further detailed in subsequent rulings.

[3] The Tribunal determined all the above need to be adequately funded. This means in a meaningful and sustainable manner so as to eliminate the systemic discrimination and prevent it from reoccurring, (see 2023 CHRT 44, at para. 18).

[4] The Panel was clear in 2016 CHRT 10 that it hoped that reconciliation could be advanced through the parties resolving remedial issues through negotiations rather than adjudication (para. 42). The Panel noted in 2016 CHRT 16 that some of the parties cautioned the Tribunal about the potential adverse impacts that remedial orders could have (para. 13). Accordingly, the Tribunal strongly encouraged the parties to negotiate remedies, including on the issue of compensation.

[5] The Tribunal issued a series of rulings and orders to completely reform the Federal First Nations Child and Family Services Program, including long-term reform orders focused on prevention, in 2022 CHRT 8. In 2019, the Tribunal ruled and found Canada's systemic and racial discrimination caused harms of the worst kind to First Nations children and families. The Tribunal ordered compensation to victims/survivors and, at the request of the complainants and interested parties, the Tribunal made binding orders against Canada to provide compensation to victims/survivors. The Tribunal then issued a series of compensation process decisions at the parties' requests and this process came to an end in late 2020 when Canada decided to judicially review the Tribunal's compensation decisions and halt the completion of the compensation process's last stages which would have allowed distribution of the compensation to victims/survivors, (see 2023 CHRT 44, at para. 19). The Tribunal, after partially rejecting an initial Settlement Agreement on compensation, approved a Final Settlement Agreement on compensation in 2023.

[6] The Tribunal encouraged the parties for years to resolve issues.

[7] On February 10, 2025, the Tribunal requested submissions from the parties on how best to proceed with what is still outstanding in the long-term phase of remedies in the best interests of First Nations children and in accordance with section 48.9(1) of the *CHRA*. In making its decision, the Tribunal has received and considered all of those submissions.

[8] The Tribunal has decided to move forward without further delay into the long-term phase of remedies both for Ontario and the National FNCFS long-term reform concurrently but separately. Given the orders below, which include a broad consultation component, and to avoid a situation similar to the one found in 2022 CHRT 41 concerning the parties interpretation of the Tribunal's final orders, the Tribunal finds it necessary to provide clarity on its 2016 CHRT 2 final order against Canada to: cease the discriminatory practices found and reform the FNCFS Program and *1965 Agreement* to reflect the findings in this decision and cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of Jordan's principle. This will be explained in detail below.

[9] This ruling does not decide the Consultation Motion brought by the Caring Society, which is broader in scope and will require a lengthier consultation process, as it encompasses Jordan's Principle long-term reform. The orders in this ruling are necessary to best inform the Tribunal on the appropriate next steps and are made in keeping with the Tribunal's previous rulings and section 48.9(1) of the *CHRA*, regardless of whether the Tribunal grants the Consultation Motion. If the Tribunal grants the motion, the National FNCFS long-term reform plan will assist the parties in their discussions. If the Tribunal does not grant the motion, or if Canada—being unwilling to return to negotiations—disagrees with the Tribunal, the Tribunal will nonetheless already have something tangible on which to rely and can move forward with the assistance of the parties outside the Consultation Motion proceedings. This serves as a safeguard to protect First Nations children from undue delays in receiving justice in the event that the Consultation Motion decision results in prolonged negotiation or further potential proceedings before the Courts. The Tribunal hopes that the parties and First Nations will recognize the well-intentioned and creative nature of the orders set out in this ruling.

[10] The Tribunal finds it important to elaborate on the purpose and intent of the dialogic approach, including what it is not intended to be. This will be explained below.

II. Moving forward on a National FNCFS long-term reform concurrently and separately from Ontario

[11] On February 10, 2025, the Tribunal wrote to the parties

> The Tribunal signaled in 2018 CHRT 4 that it had entered the long-term remedial phase. The Tribunal ordered studies to inform the long-term remedies. The Panel reminds Canada that it can end the process at any time with a settlement on compensation, immediate relief and long-term relief that will address the discrimination identified and explained at length in the Decision. Otherwise, the Panel considers this ruling to close the immediate relief phase unless its orders are not implemented. The Panel can now move on to the issue of compensation and long-term relief. (see 2018 CHRT 4 at, para. 385).
>
> In 2022, the parties came back to this Tribunal asking for what they described as approximately 80% of the long-term remedial consent orders and that they would have a full reformed program by March 2023. This Tribunal issued its orders on consent of the parties in March 2022, nearly 3 years ago and has waited since and is still waiting.
>
> 2022 CHRT 8:
>
> 25. On December 31, 2021, the Parties announced that they had reached an Agreement-in-Principle on long-term reform. As part of that Agreement-in-Principle, the Parties committed to reforming the FNCFS Program by March 31, 2023, as well as improving compliance with and reforming Jordan's Principle.
>
> Also, in the Agreement-in-Principle, the parties have agreed that the Reformed CFS Funding Approach will accommodate First Nations and FNCFS service providers experiencing exceptional circumstances, to be defined in the Final Settlement Agreement, which may require a longer transition to the Reformed CFS.
>
> 26. In addition, the terms of the consent order sought in this consent motion (see paras 1-9 under "orders sought") were annexed to the Agreement-in-Principle.
>
> Following the execution of the Agreement-in-Principle, the Caring Society, the
>
> AFN, and Canada agreed to seek this order as soon as possible.
>
> VIII. Retention of Jurisdiction
>
> [175] Pending a complete and final agreement on long term relief on consent or otherwise and consistent with the approach to remedies taken in this case

> and referred to above, the Panel retains jurisdiction on the Consent Orders contained in this ruling. The Panel will revisit its retention of jurisdiction once the parties have filed a final and complete agreement on long-term relief or as the Panel sees fit considering the upcoming evolution of this case.
>
> The Tribunal has been flexible and patient, however, is seriously considering options to move forward with the long-term remedial phase in accordance with its mandate under the *CHRA*, its rulings and in the best interest of First Nations children. The dialogic approach was adopted to move things forward in this case with an emphasis on consultation and reconciliation; however, the dialogic approach is not meant to be waiting for years and years of delay without finality. The Tribunal as master of its own house, has the power to control its own process and not idly wait for parties to unilaterally decide when and how to come back to the Tribunal and how many years to wait before the Tribunal can close the long-term remedial phase chapter.
>
> It is far better for children to complete the long-term remedial phase shortly rather than wait for long periods of time. Reform may take longer but can be projected with the assistance of the studies. The Panel gave guidance on long-term remedy on multiple occasions and recently in 2025 CHRT 6. The Panel continues to rely on this rationale.
>
> The Panel is giving an opportunity for the parties to share their views on the above for the Panel's consideration before it decides next steps. This question does not include Jordan's Principle for the time being. The parties will respond by:
>
> Caring Society, AFN, COO and NAN by February 24, 2025
> Commission by March 3, 2025
> Canada by March 17, 2025

[12] The parties filed submissions in response to the Tribunal's questions and those submissions are summarized below.

[13] The First Nations Child and Family Caring Society (the "Caring Society") writes further to the Panel's direction of February 10, 2025, and in response to Canada's submission of March 17, 2025, regarding the long-term reform phase of this human rights complaint. It has been over nine years since the Merits Decision and much has been accomplished.

[14] The Tribunal's retention of jurisdiction remains essential, at this time, to ensuring that Canada's discriminatory conduct is eradicated from child and family services and Jordan's Principle and is not repeated for future generations.

[15] The Caring Society submits that the First Nations-in-Assembly, the National Children's Chiefs Commission (the "NCCC"), and the Caring Society are ready, along with the research regarding First Nations child and family services ("FNCFS") and Jordan's Principle, to build, through dialogue with Canada, an enduring end to Canada's discriminatory conduct and ultimately resolve the complaint. Yet without Canada at the table, we cannot move forward. To this end, the Caring Society's view on the issues raised by the Panel in its February 10, 2025, letter centres on requiring Canada to consult on long-term reform solutions that are grounded in the evidence, which is now ready, with the co-complaints, and with the NCCC. Canada's suggestion that the Ontario Final Settlement Agreement form the basis for national long-term reform of FNCFS is wholly inappropriate, given that many of the terms therein were considered and ultimately rejected by First Nations outside of Ontario.

[16] The Caring Society submits that First Nations and the National Children's Chiefs Commission are ready.

[17] In October 2024, First Nations-in-Assembly passed resolutions directing a reset of work towards long-term reform, including the establishment of the NCCC and the inclusion of the Caring Society in FNCFS and Jordan's Principle negotiations and long-term reform. Since October 2024, the Caring Society has been working with technical experts across Canada to support the implementation of the direction of First Nations-in-Assembly, including collaboration with the NCCC when requested.

[18] The First Nations-in-Assembly resolutions set out clear direction for FNCFS reform, guided by the NCCC, that is informed by evidence and protects First Nations children from discrimination now and forever. Through collective decision-making and affirmed resolutions, First Nation leaders have called for the development of a national umbrella agreement, with regional agreements that take full account of the distinct circumstances, cultures and the inherent rights of the children and the First Nations they belong to. First Nations-in-Assembly were clear in their expectations of a nation-to-nation relationship with the government of Canada and have repeatedly insisted on the importance of Canada fulfilling its obligations under the United Nations Declaration of Indigenous People

(UNDRIP), the honour of the Crown and asserting their right to Free, Prior and Informed Consent.

[19] The Caring Society supports the approach set forth by the First Nations-in-Assembly and is confident that if (and when) Canada returns to the table in good faith, consistent with direction of the First Nations-in-Assembly, First Nations children, youth and families will be protected from discrimination now and into the future. Canada's refusal to continue consultations and meaningfully engage in the dialogic approach to end discrimination for all First Nations children evidences the need for the Tribunal to maintain its jurisdiction in this regard.

[20] The Caring Society submits that the research is ready and the studies will be completed by March 31, 2025.

[21] The Caring Society shares the Panel's concerns regarding the delay in achieving long-term reform and recognizes that the Tribunal cannot indefinitely remain seized of this complaint. However, the Caring Society sees Canada's refusal to return to discussions with First Nations outside of Ontario and recent unilateral actions on Jordan's Principle, which appear to dramatically narrow the scope of the support Canada is willing to provide, as demonstrating that the progress since the Merits Decision is still not yet entrenched. As such, it is the Caring Society's position that a premature release of jurisdiction risks eroding the hard work undertaken over the last nine years, including from the lessons learned from First Nations outside of Ontario in their calls for a new approach to long-term reform.

[22] The Caring Society further submits that Canada's reliance on the Ontario Final Settlement Agreement (FSA) to inform national First Nations Child and Family Services (FNCFS) long-term reform contradicts the direction of First Nations rights holders and the express resolutions of the First Nations-in-Assembly. The Ontario FSA was rejected by First Nations outside of Ontario and cannot serve as the blueprint for national reform, as it fails to meet the goal of ending and preventing discrimination. Canada must be deterred from using the Ontario FSA as a national template, as it does not reflect the diverse needs of First Nations children, youth, and families across the country. While the Ontario FSA should proceed with care for those it impacts, national FNCFS long-term reform must advance

concurrently through evidence-informed consultation in accordance with First Nations-in-Assembly guidance.

[23] Much of the work needed to meet these milestones has been completed. With Canada at the table, the Caring Society is confident that long-term reform can be achieved. Even if there are some disagreements on certain aspects of reform, the dialogic approach has assisted the Parties in the past, as evidenced by the approach taken to the Compensation Framework Order and the Revised Final Settlement Agreement on compensation.

[24] The Caring Society and the AFN Executive, supported by the NCCC, have a pathway for achieving long-term reform. Consultation regarding FNCFS and Jordan's Principle is essential to ensure First Nations children, youth and families benefit from a fulsome consultation process, bringing together the NCCC and First Nations, national and regional experts, the co-complaints and Canada in manner that upholds the principles of fairness and good faith negotiations and substantive equality.

[25] The Caring Society submits that now is the time to move swiftly and effectively to implement the dialogic approach now that the research, the experts and the First Nations in-Assembly have set the table for evidence-informed solutions for FNCFS and Jordan's Principle. First Nations and the NCCC is ready, the EAC is ready, the research is ready and so is the Caring Society. It is Canada that is the source of delay and requires encouragement from this Tribunal to make itself ready.

[26] The AFN is in agreement with the Caring Society's submission that the main obstacle to long-term reform is Canada's refusal to continue consultations, and meaningfully engage in the dialogic approach in relation to continuing to develop a national agreement on long-term reform of First Nations child and family services, with regional variations which substantively address the distinct circumstances, cultures, and inherent rights of First Nations children and families.

[27] The AFN has reviewed the National Children's Chiefs Commission's ("NCCC") correspondence requesting that Canada immediately re-engage with the NCCC, AFN Executive, and the Caring Society to complete negotiations of a long-term reform

agreement. The AFN agrees with the NCCC's statement in its February 21, 2025, letter that a national long-term reform agreement is within reach and merely requires Canada to return to the negotiation table to work with the NCCC, the AFN Executive, and the Caring Society in good faith.

[28] The COO respects that the Chiefs in other regions were not agreeable to move ahead with the proposed reforms, as is their right. COO and NAN have been working closely together on long-term reform that suits the needs of First Nations in Ontario and as mandated by their respective Chiefs-in-Assembly to do so. Ontario Regional Chief Abram Benedict and Grand Chief Alvin Fiddler formally invited Canada to enter into negotiations to achieve reform to the FNCFS Program in Ontario. On December 30, 2024, Canada announced to COO and NAN it had received a mandate to negotiate with COO and NAN to implement the reforms contained in the rejected national agreement, but specifically in Ontario.

[29] A provisional Ontario Final Agreement and the Trilateral Agreement Respecting the 1965 Agreement were reached on February 10, 2025, and will be the subject of ratification votes by the NAN Chiefs and Ontario Chiefs-in-Assembly on February 25 and 26, 2025, respectively.

[30] The COO submits that if the draft agreements are ratified by the NAN and Ontario Chiefs, the COO expects to bring a joint motion in March 2025 along with the NAN and Canada seeking a Tribunal order that the draft Ontario Final Agreement and the Trilateral Agreement Respecting the 1965 Agreement meet the Tribunal's prior orders and consequently that the Tribunal's jurisdiction over the long-term reform of the FNCFS Program in Ontario (but not Jordan's Principle) is ended.

[31] The NAN submits that with respect to the Panel's concerns regarding long-term reform, specifically the delay in reaching long-term reform through efforts towards consultation, The NAN advises that the Assembly of First Nations (AFN), Chiefs of Ontario (COO), NAN, and Canada reached a draft Final Agreement on long-term reform in July 2024. In October 2024, NAN and COO each and separately held successful ratification

votes on the draft Final Agreement. However, the draft Final Agreement was ultimately rejected by the First Nations in Assembly of the AFN in October 2024.

[32] While the AFN, by majority, rejected the draft Final Agreement, Chiefs in the Ontario region were largely supportive. The Ontario region Chiefs therefore directed the leadership within NAN and COO to pursue a regionalized version of the reforms contained in the draft Final Agreement.

[33] On December 30, 2024, Canada informed the NAN and the COO that it had a mandate to negotiate a regionalized version of the draft Final Settlement Agreement for long-term reform in Ontario only.

[34] The NAN submits that between December 30, 2024, and February 10, 2025, Canada, the NAN, and the COO negotiated a provisional Ontario Final Agreement (OFA) and a Trilateral Agreement Respecting the 1965 Agreement. These two draft agreements will be voted on in a Special Chiefs Assembly by NAN Chiefs on February 25, 2025, and by Special Chiefs Assembly by Ontario Chiefs on February 26, 2025. Without in any way pre-determining the will of the Chiefs in the above-noted Special Chiefs Assemblies; if so instructed, the NAN, the COO, and Canada intend to bring a joint motion to the Tribunal. The relief sought on this motion would be to end the Tribunal's jurisdiction over the long-term reform of the First Nation Child and Family Services Program in Ontario based on a new Ontario Final Agreement settlement.

[35] The NAN submits that as the Tribunal is aware, dating back to 2016, NAN has strongly advocated for the development of a remoteness quotient that would address the unique challenges faced by remote communities in the delivery of child and family services. This work has culminated in the development of a form of indexing for remoteness termed the Remoteness Quotient Adjustment Factor (RQAF). The RQAF indexing coupled with important terms around remoteness data collection and research represent gains that NAN, in partnership with the COO and Canada, has sought to preserve in the new proposed OFA. If so mandated by the Chiefs, it is NAN's intention to file materials with the Tribunal that elaborate on these significant reforms.

[36] The specific motion materials are the subject of discussions with the COO and Canada but will reflect the context and factual foundation of the work that has been done to conclude long-term reform in Ontario.

[37] Following the COO and the NAN's submissions above, and the resolutions from a majority of the Chiefs-in-Assembly in Ontario, the NAN and the COO brought a joint motion seeking the Tribunal's approval of a final settlement agreement for long-term reform in Ontario. Both the COO and the NAN request the joint motion to proceed expeditiously.

[38] The Commission's view is that it is respectfully the decision of the Tribunal to determine how to advance the long-term remedial stage. The Commission has not been involved in negotiations on long-term reform. Instead, the development of remedies on long-term reform was led by the First Nations bodies with ties to the First Nations children, families, and communities harmed by Canada's discriminatory practices. The Commission acknowledges the Tribunal's jurisdiction over this matter. As noted by the Tribunal, the parties entered the long-term remedial phase in 2018 and committed to reforming the FNCFS Program by March 2023. In the spirit of consultation and reconciliation, the Tribunal adopted the dialogic approach to provide the parties with an opportunity to engage in good faith negotiations to advance this matter while seeking direction from the Tribunal as needed.

[39] While being supportive of the dialogic approach, the Commission is concerned with the amount of time it has taken to achieve long-term reform of the FNCFS Program. As explained by the Federal Court, while negotiations are a way to realize the goal of reconciliation, good will in the negotiation process must be encouraged and fostered "before the passage of time makes an impact on those negotiations." The Commission agrees with the Tribunal's rationale that "[i]t is far better for children to complete the long-term remedial phase shortly rather than wait for long periods of time."

[40] As the Tribunal recently expressed, it has always hoped for a settlement on long-term reform by way of consent order requests by the parties. If this is not possible, however, the Tribunal stated that it "can make systemic long-term orders informed by the parties to eliminate the systemic discrimination found".

[41] Canada submits that as the Tribunal is aware, Canada, the Chiefs of Ontario (COO) and the Nishnawkbe Aski Nation (NAN) recently entered into an agreement to reform the FNCFS Program in Ontario (Ontario Final Agreement), as well as a Trilateral Agreement respecting the 1965 Agreement. These agreements were ratified by the NAN Chiefs and the Ontario Chiefs-in-Assembly on February 25 and 26, 2025 respectively. On March 7, 2025, the COO and the NAN filed a joint motion for approval of the Ontario Final Agreement, which Canada has supported.

[42] These agreements come after years of research, study, consultation and negotiation with the Assembly of First Nations (AFN), the First Nations Child and Family Caring Society of Canada (Caring Society), COO and NAN, all in an effort to secure agreement on the long-term reform of the FNCFS Program nationally, the specifics of which are set out in the Affidavit of Duncan Farthing-Nichol, filed on March 13, 2025, in response to the Caring Society's consultation motion. These specifics include:

- completion of the December 31, 2021, Agreement in Principle;
- the funding and work of multiple committees and tables to provide advice and consider general and specific reform issues;
- regular meetings between the parties, including multiple full day negotiation meetings;
- Indigenous Services Canada's (ISC) financial support of the development of research in a number of areas. This included funding, amongst other research, of contracts between the AFN and the Institute of Fiscal Studies and Democracy (IFSD), and between the Caring Society and IFSD, to inform the development of an alternative funding system.

[43] Canada submits that it is of note that during most of the period of consultation and negotiation on long-term reform of the FNCFS Program, the Caring Society, the AFN, COO and NAN were active participants in either consultations or negotiations with Canada. The Caring Society ceased their participation in negotiations between December 2023 and February 2024. The AFN did not participate in the negotiation of the Ontario specific agreement in January 2025 but was otherwise an active participant in the negotiations.

[44] With this context in mind, Canada respectfully submits that the best way to move forward with the long-term remedial phase is for the Tribunal to first consider the joint motion

from COO and NAN respecting long-term reform of the FNCFS program in Ontario. This motion, if granted, would finally resolve and remedy all issues respecting the FNCFS Program in Ontario. For the benefit of First Nation children and families in Ontario, it is imperative that this motion proceed without delay. Further, the outcome of the joint motion is likely to inform the path forward in these proceedings, including the use of the dialogic approach and the completion of the long-term remedial phase outside of Ontario.

[45] Canada respectfully urges the Tribunal to honour the effort and urgency expressed by the COO and the NAN to address the joint motion. We urge the Tribunal to facilitate the consideration of the Ontario Final Agreement, which is conditional on Tribunal approval, by placing the Caring Society's consultation motion temporarily into abeyance. Consideration of national reform continues to be extremely important to Canada. It is Canada's perspective that the Tribunal's analysis of the Ontario Final Agreement will inform the next steps on national reform.

[46] Canada submits that the FNCFS Program today is very different than it was in 2016. Canada has done significant work and has implemented important reforms. During consultations and negotiations, Canada made considerable reforms to the Program in keeping with the parties' recommendations and the orders from this Tribunal (including on consent). Canada has and continues to implement this Tribunal's orders. Further, Canada has and continues to provide funding beyond the Tribunal's orders, including with respect to housing and First Nations Representative Services outside Ontario. Recipients who are eligible to receive funding under the FNCFS Program continue to benefit from these reforms. Approximately $3.6 billion in funding was provided in 2023-2024, which stands in stark contrast with the $676.8 million in funding spent on the FNCFS Program in 2015-2016, when this complaint was substantiated. Effectively Canada is more than honouring the Tribunal's orders. As such, Canada is asking the Tribunal to honour the urgency of the COO and the NAN's joint motion and focus first on Ontario Final Agreement. It is Canada's perspective that the work of final national reforms will benefit from and be informed by the Tribunal's review of the Ontario final reforms.

[47] Canada has since filed an amended joint OFA motion, specifying that it has joined COO and NAN as co-moving parties.

III. Analysis

[48] On January 26, 2016, this Panel rendered its decision on the merits (see, 2016 CHRT 2, https://canlii.ca/t/gn2vg, (Merit Decision). This Merit Decision was long awaited by First Nations Peoples and was positively received. This was the result of the enormous collective efforts of the parties especially, the co-complainants, the First Nations Child and Family Society (Caring Society) and the Assembly of First Nations (AFN) and the Canadian Human Rights Commission (Commission). The decision was publicly described as historic, landmark and groundbreaking. Canada accepted the decision through its Justice Minister Jody Wilson Raybould, as she then was. Minister Wilson Raybould made powerful public comments on the Tribunal's Merit Decision: "We believe that this decision is pointing us in the right direction, as a country, and we will not seek a judicial review of the decision. This is part of the new relationship and spirit of reconciliation that our government is committed to." https://www.cbc.ca/news/politics/federal-government-not-appeal-children-reserves-1.3458969

[49] In its 182 pages Merit Decision, the Tribunal made a whole array of findings including on: intergenerational trauma, international law, residential schools, the sixties scoop, substantive equality, and much more, in support of its orders.

[50] The Tribunal wrote: AANDC (now Indigenous Services Canada) is ordered to cease its discriminatory practices and reform the FNCFS Program and 1965 Agreement to reflect the findings in this decision. AANDC is also ordered to cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of Jordan's principle.

[51] At, paragraph 482, the Tribunal found:

> More than just funding, there is a need to refocus the policy of the program to respect human rights principles and sound social work practice. In the best interest of the child, all First Nations children and families living on-reserve should have an opportunity "…equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society" (*CHRA* at s. 2).

[52] In the Missing and Murdered Indigenous Women and Girls' November 1, 2017, interim report, INTERIM REPORT THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS: Our Women and Girls are sacred, made findings and recommendations based on the Tribunal's Merit Decision:

> This legal case, as well as a substantial number of the reports we reviewed, recognizes strong links between the child welfare system and violence against Indigenous women and girls in Canada, at. page. 45.
>
> (…)
>
> The National Inquiry calls for:
>
> immediate action for: Full compliance with the Canadian Human Rights Tribunal ruling (2016) that found that Canada was racially discriminating against First Nations children, at. pages 80- 81.

[53] The Tribunal takes judicial notice that Canada accepted the interim report. (See for example, at, https://search.open.canada.ca/qpnotes/record/wage%2CWAGE-2020-QP-00005?utm_source).

[54] While the stronger legally binding step from Canada was when the Justice Minister decided not to judicially review the Merit Decision, the recommendations from the MMIWG accepted by Canada reinforce Canada's public commitments.

[55] The United Nations Committee on Economic, Social and Cultural Rights (CESCR) recommended that Canada review and increase its funding to family and child welfare services for Indigenous Peoples living on reserves and fully comply with the Tribunal's January 2016 Decision. The CESCR also called on Canada to implement the Truth and Reconciliation Commission's recommendations with regards to Indian Residential Schools. (see Economic and Social Council, CESCR, concluding observations on the sixth periodic report of Canada, March 23, 2016, E/C.12/CAN/CO/6, paras.35-36; See also Affidavit of Dr. Cindy Blackstock, December 17, 2016, at para.33, Exhibit L).

The general orders in 2016 CHRT 2

[56] The word **cease** found in the order is taken directly from the quasi-constitutional *CHRA*:

> 53 (2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate:
> that the person cease the discriminatory practice and take measures, in consultation with the Commission on the general purposes of the measures, to redress the practice or to prevent the same or a similar practice from occurring in future, including
> i) the adoption of a special program, plan or arrangement referred to in subsection 16(1), or
> (ii) making an application for approval and implementing a plan under section 17;

[57] In 2018 CHRT 4, at. para. 34, the Tribunal explicitly stated that Section 53(2)(a) *CHRA* grants it jurisdiction to make a "cease and desist order", the Tribunal stated clearly:

> [34] Section 53(2)(a) of the *CHRA* gives this Tribunal the jurisdiction to make a cease and desist order. In addition, if the Tribunal considers it appropriate to prevent the same or a similar practice from occurring in the future, it may order certain measures including the adoption of a special program, plan or arrangement referred to in subsection 16(1) of the *CHRA* (see *National Capital Alliance on Race Relations (NCARR) v. Canada (Department of Health & Welfare)* T.D.3/97, pp. 30-31).
>
> [35] The scope of this jurisdiction was considered by the Supreme Court of Canada in *CN v. Canada (Canadian Human Rights Commission),* 9 [1987] 1 SCR 1114, [Action Travail des Femmes]). In adopting the dissenting opinion of MacGuigan, J. in the Federal Court of Appeal, the Court stated that:
>
> ...s. 41(2)(a), [now 53(2)(a)], was designed to allow human rights tribunals to prevent future discrimination against identifiable protected groups, but he held that "prevention" is a broad term and that it is often necessary to refer to historical patterns of discrimination, in order to design appropriate strategies for the future... (at page 1141).
>
> [36] The Supreme Court also said in reference to the Order made by the Tribunal in that ...When confronted with such a case of "systemic discrimination", [as was the case with Canadian National Railway], it may be

that the type of order issued by the Tribunal is the only means by which the purpose of the *Canadian Human Rights Act* can be met.

In any program of employment equity, there simply cannot be a radical dissociation of "remedy" and "prevention". Indeed, there is no prevention without some form of remedy... (at pages 1141 to 1142).

The Court pointed out that:

Unlike the remedies in s. 41(2)(b)-(d), [now Section 53], the remedy under s. 41(2)(a), is directed towards a group and is therefore not merely compensatory but is itself prospective. The benefit is always designed to improve the situation for the group in the future, so that a successful employment equity program will render itself otiose. (at page 1142). As in the *NCARR* case referred to above, the Panel is not dealing with employment equity issues however, there is nothing in the *CHRA* that restricts remedies under section 53 (2) (a) to employment equity issues. Similar to the analysis in NCARR, the Panel believes this is applicable to the case at hand.

[38] In fact as an example, the words in section 16 (1) of the *CHRA* are not earmarked for employment situations only:

Special programs

16 (1) It is not a discriminatory practice for a person to adopt or carry out a special program, plan or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be based on or related to the prohibited grounds of discrimination, by improving opportunities respecting goods, services, facilities, accommodation or employment in relation to that group. (emphasis added).

[39] Moreover, the Federal Court of Canada in regards to remedies stated in *Grover v. Canada (National Research Council*) (1994), 24 CHRR D/390 (FC) at para. 40 [Grover], “[s]uch a task demands innovation and flexibility on the part of the Tribunal in fashioning effective remedies and the *Act* is structured so as to encourage this flexibility.” (emphasis added).

[40] The Tribunal made extensive findings in 2016 CHRT 2 and provided very detailed reasons as to how it arrived at its findings. The Panel specifically mentioned that reform must address the findings in the Decision. This case is about underfunding, policy, authorities and, the National Program that were found to be discriminatory.(...)

[41] Canada must accept that liability was found and that remedies flow from this finding. The Decision was not a recommendation; it is legally binding.

> [42] To the same extent that funds must be provided to comply with Court decisions, funds must also flow from the Tribunal's Decision. Treasury Board decisions cannot be above the *CHRA* when it comes to expenses for liability.
>
> [43] The Panel to date has not made orders prescribing specific amounts of funding. It has chosen to make orders flowing from its findings which were accepted by Canada.

[58] The Tribunal in 2019 CHRT 7, at. paragraph 52 described this power as an injunction-like power.

[59] *In Canada (Human Rights Commission) v. Taylor,* [1990] 3 S.C.R. 892, the Supreme Court made findings on a Canadian Human Rights Tribunal decision which found the Western Guard Party had repeatedly sent telephonic hate messages directed at Jewish individuals—constituting a discriminatory practice under section 13 (1) of the *CHRA*. The Tribunal ordered the messages to cease, effectively commanding the conduct stop immediately. At paragraph [48] (per Chief Justice Dickson) stated:

> The fact that the *Act* imposes no criminal sanction is particularly important. Section 13(1) is not aimed at punishing an individual for expression. Rather, in conjunction with s. 53(2)(a), it provides a remedy for discriminatory expression in the form of a cease and desist order. This is a remedial order, not a penal one. It is forward-looking and aimed at preventing the continuation of discriminatory practices. The order does not involve a fine or imprisonment, and does not attract a criminal record, (emphasis added).

[60] This shows that a Tribunal's cease-order under s 53(2)(a) of the *CHRA* is treated the same as an injunction.

[61] The Tribunal made this order to cease the systemic discriminatory practices found as an order meant to protect First Nations and families for generations to come. It is a forward-looking order aimed at preventing the continuation of the discriminatory practice found and as mentioned multiple times in previous rulings in this case, prevent future practices to reoccur.

[62] Without this assurance of both a final and long-term order to cease the discriminatory practice and prevent its recurrence, respondents, especially the ones found liable in systemic cases, could cease their discriminatory practices until such time as the Tribunal no longer has jurisdiction and there would be no safeguard in place should the systemic

discrimination start again years later. This would leave the victims of the systemic discrimination to start their case all over again. Such an unreasonable result is the opposite of access to justice. Moreover, it is the opposite of judicial economy and is undoubtfully unjust.

[63] The Tribunal confirms the final nature of the general orders in 2016 CHRT 2, at paragraph 481, to cease the discriminatory practice that are akin to an injunction:

> AANDC is ordered to cease its discriminatory practices and reform the FNCFS Program and 1965 Agreement to reflect the findings in this decision. AANDC is also ordered to cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of Jordan's principle, (emphasis added).

[64] The Tribunal will next turn to the dialogic approach and examine its proper relationship to the final 2016 CHRT 2 orders explained above.

The Tribunal's Dialogic approach

[65] The Federal Court, in a judicial review initiated by Canada in this case, in *Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada*, 2021 FC 969, in dismissing all of Canada's arguments, made important comments on the Tribunal's approach to remedies in this case:

> [135] The fact that the Tribunal has remained seized of this matter has allowed the Tribunal to foster dialogue between the parties. The Commission states that the leading commentators in this area support the use of a dialogic approach in cases of systemic discrimination involving government respondents (Gwen Brodsky, Shelagh Day & Frances M Kelly, "The Authority of Human Rights Tribunals to Grant Systemic Remedies", (2017) 6:1 Can J of Human Rights 1). The Commission described this approach as bold considering the nature of the Complaint and the complexity of the proceedings.
>
> [136] The dialogic approach contributes to the goal of reconciliation between Indigenous people and the Crown. It gives the parties opportunities to provide input, seek further direction from the Tribunal if necessary, and access information about Canada's efforts to bring itself in compliance with the decisions. As discussed later in my analysis of the Eligibility Decision, this approach allowed the Tribunal to set parameters on what it is able to address

based on its jurisdiction under the *CHRA*, the Complaint, and its remedial jurisdiction.

[137] The Commission states that the dialogic approach was first adopted in this proceeding in 2016 and has been repeatedly affirmed since then. It submits that the application of the dialogic approach is relevant to the reasonableness considerations in that Canada has not sought judicial review of these prior rulings.

[138] I agree with the Tribunal's reliance on *Grover v Canada (National Research Council)* (1994), 1994 CanLII 18487 (FC), 24 CHRR 390 [Grover] where the task of determining "effective" remedies was characterized as demanding "innovation and flexibility on the part of the Tribunal…" (2016 CHRT 10 at para 15). Furthermore, I agree that "the [*CHRA*] is structured so as to encourage this flexibility" (2016 CHRT 10 at para 15). The Court in Grover stated that flexibility is required because the Tribunal has a difficult statutory mandate to fulfill (at para 40). The approach in *Grover*, in my view, supports the basis for the dialogic approach. This approach also allowed the parties to address key issues on how to address the discrimination, as my summary in the Procedural History section pointed out.

…

[162] I disagree with the Applicant's characterization of the decisions following the Merit Decision as an "open-ended series of proceedings." Rather, the subsequent proceedings reflect the Tribunal's management of the proceedings utilizing the dialogic approach. The Tribunal sought to enable negotiation and practical solutions to implementing its order and to give full recognition of human rights. As well, significant portions of the proceedings following the Merit Decision were a result of motions to ensure Canada's compliance with the various Tribunal orders and rulings. (emphasis added)

[281] As noted above, I have determined that the Tribunal did not change the nature of the Complaint in the remedial phase. The Tribunal, exercising extensive remedial jurisdiction under the quasi-constitutional *CHRA*, provided a detailed explanation of what had transpired previously and what would happen next in each ruling/decision (See e.g. 2016 CHRT 16 at para 161). In so doing, it was relying on a dialogic approach. Such an approach was necessary considering the scope of the discrimination and the corresponding efforts to remedy or prevent future discrimination. Most importantly, the Tribunal was relying on established legal principles articulated in *Chopra v Canada (AG),* 2007 FCA 268 at para 37 and *Hughes* 2010 at para 50 (Merit Decision at paras 468, 483). I do not agree that the Tribunal did not provide the parties with notice of matters to be determined. (emphasis added)

…

> [301] In my view, the procedural history of this case has demonstrated that there is, and has been, good will resulting in significant movements toward remedying this unprecedented discrimination. However, the good work of the parties is unfinished. The parties must decide whether they will continue to sit beside the trail or move forward in this spirit of reconciliation.
>
> [302] I find that the Applicant has not succeeded in establishing that the Compensation Decision is unreasonable. The Tribunal, utilizing the dialogic approach, reasonably exercised its discretion under the *CHRA* to handle a complex case of discrimination to ensure that all issues were sufficiently dealt with and that the issue of compensation was addressed in phases. The Tribunal ensured that the nexus of the Complaint, as discussed in the Merit Decision, was addressed throughout the remedial phases. Nothing changed. All of this was conducted in accordance with the broad authority the Tribunal has under the *CHRA*.
>
> …

[66] The Dialogic approach does not supplant a final “cease the discriminatory practice” order grounded in the evidence and the *Canadian Human Rights Act* (“*CHRA*”); rather, it operates as a mechanism for implementing such an order. The cease order in this matter, addressing systemic racial discrimination, is firmly grounded in the extensive evidentiary record underlying the Merit Decision and is issued pursuant to the Tribunal’s authority under the *CHRA*. Its purpose is to provide immediate and enduring protection to the victims of such discrimination and to ensure that the same or similar practices do not recur.

[67] The Tribunal affirms that this order has never been negotiable and was not issued on an interim basis. The “cease the discriminatory practices” order in 2016 CHRT 2 is final and binding. It is not subject to variation under the Dialogic approach, nor to derogation or abrogation by any future decision in these proceedings, or to amendment through any agreement between the parties. The cease order determines what the authors of the discrimination must do—stop—while the Dialogic approach addresses how compliance is to be achieved, and the orders implemented. 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. What remains non-negotiable is the requirement to end systemic discrimination permanently.

[68] The dialogic approach is helpful in the phased remedy portion of this case; however, it cannot be elevated above final orders or be a means to stagnate long-term reform.

[69] In a recent case management conference, the Tribunal emphasized that the findings and orders in 2016 CHRT 2 are intended to be lasting. The Tribunal considers its general orders akin to an injunction to cease and desist the systemic racial discrimination identified and to prevent its recurrence, to constitute final orders that cannot subsequently be modified by this Panel or by future members.

[70] Moreover, while the Panel has no authority to bind Tribunal members in other cases, in this instance, the final orders found in 2016 CHRT 2 cannot be abrogated or amended by this Panel or by any new Panel members, if applicable.

[71] The Tribunal interpreted the principle of finality of its orders in 2022 CHRT 41 and continues to rely on the same reasoning:

> [178] Moreover, the parties could not contract out or ask the Tribunal to amend its evidence-based findings establishing systemic racial discrimination and related orders in the Merit Decision to a finding that there never was racial discrimination and, therefore, no remedy is required. In the same vein, if evidence-based findings are made that victims/survivors have suffered and should be compensated, the parties cannot contract out or ask the Tribunal to amend its previous evidence-based findings and related orders to a finding that certain victims/survivors entitled by this Tribunal have not suffered and should no longer receive compensation.
>
> [179] This is significantly different than asking the Tribunal to make a finding based on new evidence presented that demonstrates that some aspects of the discrimination found by this Tribunal has ceased in compliance with the injunction-like order made by this Panel to cease the discriminatory practice or that some amendment requests may enhance the Tribunal's previous orders to eliminate discrimination (2022 CHRT 8). The Tribunal's retention of jurisdiction is to ensure its orders are effectively implemented. This includes not narrowing its orders (see for example Jordan's Principle definition in 2017 CHRT 14) and eliminating the discrimination found in a complex nation-wide case involving First Nations from all regions. This is done through reporting, motions, clarification requests, etc. and findings are made on the evidence.

[72] However, as was also raised during the case management conference, numerous immediate and mid-term orders were intended to be superseded by sustainable long-term orders, with the assistance and input of the parties. The objective was to issue final long-

term orders that would constitute an improvement upon the immediate orders, which had been made on the basis of the best evidence then available. The parties submitted that further studies and additional data collection were necessary to inform best practices in relation to long-term remedies.

[73] This Tribunal agreed and took a phased approach to the remedies in dividing them in categories: general orders in 2016 CHRT 2, immediate relief, mid-term relief, long-term relief, reform and compensation. This allowed the Tribunal to make immediate relief orders three months after the Merit Decision and in many subsequent decisions.

[74] This was to allow for change to occur immediately while studies and data collection would be completed. This was explained in previous rulings. This is how the dialogic approach was adopted by this Tribunal.

[75] The dialogic approach was never intended to continually revisit previous orders or to confine the proceedings within an endless cycle of interim measures. Its purpose is to facilitate the transition from immediate and mid-term orders based on the best evidence then available, to long-term, sustainable, culturally appropriate, evidence-based, orders, whether by consent or determination of the Tribunal (based on the parties' evidence and submissions), designed to benefit future generations. Moreover, long-term orders must be informed by First Nations' perspectives and guided by First Nations-led solutions.

[76] Furthermore, waiting months and years because some parties are not in agreement or do not want to negotiate anymore will not assist the Panel in determining the outstanding issues. The Tribunal has authority to move things forward to find meaningful, effective, sustainable, culturally appropriate, needs- based, long-term solutions for generations to come, that incorporate the distinct needs of First Nations without hearing directly from each one of them.

[77] The Tribunal cannot possibly hear directly from all 634 First Nations, organizations, experts, agencies etc. This was clear form the beginning of the proceedings and the dialogic approach did not change this:

> This process would allow the long-term relief to be informed by data collection, new studies and best practices as identified by First Nations

> experts, First Nations communities and First Nations Agencies considering their communities' specific needs, the National Advisory Committee on child and family services reform and the parties, (see 2023 CHRT 44, at paras. 16-17).

[78] The parties and the NCCC can consult them, and the parties can bring their perspectives to the Tribunal.

[79] In 2016 CHRT 11, at para. 14, the Tribunal stated that: the Tribunal's remedial clarification and implementation process is not to be confused with a commission of inquiry or a forum for consultation with any and all interested parties.

[80] In 2022 CHRT 26, at paragraphs. 41-42 the Tribunal stated that:

> [41] Moreover, in this wide-ranging case, impacting First Nations communities in Canada, the Tribunal has to consider that every First Nation community or organization could seek to intervene in these proceedings to share their unique knowledge, experience, culture and history. Would they have expertise to offer? Absolutely. However, it is impossible for all of the First Nations to join this case without halting the work of the Tribunal. The Tribunal is informed by three large organizations representing First Nations (AFN, COO, NAN) and an organization with expertise in child welfare and other services offered to First Nations children regardless of where they reside (Caring Society) to consult with First Nations by different means and bring their perspectives to these proceedings.
> [42] Moreover, the Panel recognizes that the rights holders are First Nations people and First Nations communities and governments. While it is ideal to seek every Nations' perspective again, these proceedings are not a commission of inquiry, a truth and reconciliation commission or a forum for consultation. The Panel relies on the evidence, the parties in this case and the work that they do at the different committees such as the National Advisory Committee on Child Welfare (NAC), tables, forums and community consultations to inform its mid and long-term findings.

[81] In 2020 CHRT 31, at para. 28, the Tribunal reiterated the same principle, quoting 2016 CHRT 11.

[82] In 2022 CHRT 8, the Tribunal on consent of the parties, made long-term relief orders focused on prevention and in line with the Merit Decision's findings on the need to reform and shift the approach from protection to prevention in the FNCFS Program. The Tribunal found that the Federal FNCFS Program focused on protection and created an incentive to remove Indigenous children from their families.

[83] Indeed, as this Tribunal already stated in these proceedings, this shift is necessary to stop the mass removal of children 2018 CHRT 4, at. paragraph 47:

> [47] More importantly, this case is vital because it deals with mass removal of children. There is urgency to act and prioritize the elimination of the removal of children from their families and communities.

[84] The Tribunal finds that the parties' commitment to return to the Tribunal with a National FNCFS long-term agreement by end of 2023 is overdue. The Tribunal, at the time that it made the consent orders in 2022 CHRT 4, was urged by the parties to remove the part of its compensation order that ensured compensation was owed to the victims/survivors of the discrimination until the systemic discrimination had ended. This was a powerful deterrent, and it was upheld by the Federal Court. The Tribunal given the prevention orders and, in foreseeing a long-term reform agreement in approximately a year's time, agreed to remove the ongoing aspect of the compensation and change it for a 2022 cut-off date.

[85] We are now in August 2025, and it is time for swift action.

[86] On January 29, 2025, the Tribunal made interim Jordan's Principle consultation orders. The parties opted for Tribunal-assisted mediation with a different Tribunal member than this Panel to resolve the 9 items. Six months later, the Tribunal is still waiting, and there is no indication of any agreement to date. The Tribunal was informed by Canada that the Tribunal-assisted mediation was terminated by the member on August 13, 2025, even though two outstanding items remained to be resolved under the Tribunal's orders. This mediation concerned interim orders under Jordan's Principle, not a complete long-term reform of the FNCFS Program or Jordan's Principle.

[87] Of note, in 2024, the AFN and Canada had discouraged the Tribunal to make interim Jordan's Principle orders given that a final Jordan's Principle long-term reform settlement agreement was forthcoming in March 2025. The Tribunal rejected that argument based on its extensive experience in these proceedings and the low probability of obtaining such an agreement in that time frame. The parties could not agree on the 9 interim Jordan's Principle items in the time frame anticipated by the AFN and Canada to arrive to a complete long-term reform agreement for Jordan's Principle.

[88] This is not to cast blame on anyone however, it does show that with the best of intentions, deadlines may not be met. This is consistent with many instances in these proceedings and informs the Tribunal's approach in this ruling.

[89] Consequently, the Tribunal finds it more efficient to complete the long-term reform of the FNCFS Program in the short-term and deal with the long-term reform of Jordan's Principle afterward, rather than attempting both together and risking long delays for each.

[90] During the conference management call on July 25, 2025, Member Lustig mentioned that the FNCFS Program will always be undergoing change and that there is no perfect solution. Further, he mentioned that there needs to be some compromise from all sides to arrive to an agreement.

[91] The Tribunal further clarifies that compromise is one that is reasonable and respects the rights of First Nations children and in line with the spirit of the Tribunal's findings and orders.

[92] Furthermore, at the case management conference call on July 25, 2025, the Tribunal had intended to discuss how best to advance long-term reform based on the parties' submissions and further discussion at the CMCC. However, due to time constraints, this discussion was postponed, and the Tribunal informed the parties that another CMCC would be scheduled for this purpose.

[93] Following the CMCC, the Tribunal deliberated on the parties' responses to its Jordan's Principle consultation orders and other emerging issues. The Tribunal was also informed that the mediation process between the parties had been terminated by the Tribunal mediator. Canada expressed its willingness to continue discussions with the parties to resolve two outstanding issues and indicated that it will provide an update in September 2025.

[94] The Tribunal's consent orders were issued in November 2024, with reasons to follow, aiming for an expeditious process for interim solutions and further orders.

[95] This delay is very concerning and informs the Tribunal on the proceedings moving forward.

[96] Five months from now, it will be the tenth anniversary of the Tribunal's decision on the merits.

[97] The Tribunal believes it is now time to proceed towards completion on FNCFS long-term reform and further CMCCs can be scheduled following the Tribunal's orders below.

[98] While the Tribunal fully agrees to proceed with the OFA, it does not agree to delay the National FNCFS long-term reform until the OFA motion has been determined. This would be unhelpful for several reasons. The OFA will not apply to other regions, and the Tribunal will not rely on the OFA to determine a National FNCFS long-term reform remedy. Therefore, delaying the National FNCFS long-term reform proceedings until the OFA has been decided is neither reasonable nor in the best interests of First Nations children and families outside Ontario, and it is inconsistent with the Tribunal's previous orders and with section 48.9(1) of the *CHRA*.

[99] The Tribunal directs that both the OFA and the National FNCFS long-term reform matters proceed concurrently. Should one be decided before the other, both matters will nonetheless have advanced and will proceed to hearings within a reasonably proximate timeframe.

[100] The Tribunal has received an unprecedented number of motions seeking interested party status. A recurring submission in these motions is that, if approved, the OFA may serve as a precedent for the National long-term reform. As noted above, the Tribunal has determined that this will not be the case, except insofar as certain general statements may be made regarding the Tribunal's previous orders, findings, process and approach to remedies.

[101] Another recurring submission is that Canada has refused to return to negotiations, resulting in a halt in the National long-term reform. While the Tribunal does not determine the multiple motions for interested party status in this ruling, the order issued in this ruling may nonetheless address aspects of the recurring submissions that have generated concern among numerous First Nations governments and organizations that are not parties to these proceedings.

[102] The broad consultation for long-term reform orders explained in 2018 CHRT 4 were directed at Canada.

[103] Moreover, the Caring Society submits that now is the time to move swiftly and effectively to implement the dialogic approach now that the research, the experts and the First Nations in-Assembly have set the table for evidence-informed solutions for the FNCFS. First Nations and the NCCC is ready, the EAC is ready, the studies will be completed by March 31, 2025, the research is ready and so is the Caring Society and much of the work needed to meet these milestones has been completed.

[104] In considering Canada's submissions above and its willingness to sign a National long-term agreement that was ultimately rejected, Canada must be taken to have a clear understanding of what long-term reform entails from its perspective.

[105] The ideal solution would be for an agreement on consent of all the parties if Canada returns to the table and such an agreement is possible. However, if not, the Tribunal cannot allow the parties to dictate a very slow pace in achieving finality on long-term reform contrary to the *CHRA*'s requirements and the best interest of First Nations children and families and their respective Nations.

[106] The Tribunal in the objective of avoiding the possibility of an imposed final solution, urges Canada to return to the table of negotiations to listen to the NCCC and the co-complainants and consider the research, the experts and the evidence-informed solutions for long-term reform of the FNCFS Program.

[107] If Canada refuses, the Tribunal, the other parties, the NCCC, the experts, the First Nations Chiefs, governments and organizations, should not be forced to wait till the OFA is completed to see what Canada decides to do for National long-term reform. Canada was ordered to complete long-term reform. Canada can agree to negotiate or not however, one thing that Canada cannot do is simply wait and let time go by. Therefore, should Canada refuse to return to the table to meet the NCCC and hear them out, the Tribunal will hear the co-complainants' evidence-based solutions representing the NCCC and multiple First Nations' viewpoints and Canada's and then choose between the long-term reform order requests.

[108] The Tribunal values all expert viewpoints of First Nations. However, the Tribunal is not and cannot invite them directly into these proceedings without creating a paralysis of these proceedings that would negatively affect the very children that are at the heart of these proceedings.

[109] The Tribunal has limited resources and is not mandated and does not have capacity to hear directly from every First Nation to make its orders. This is clearly expressed in considering the whole body of decisions rendered by this Tribunal in this case.

[110] The Tribunal finds that the Caring Society, the AFN and the NCCC, can aptly consult and gather relevant Nations specific, local and regional perspectives, other First Nations experts and First Nations organization's perspectives and incorporate them in their National long-term reform plan and requested orders for the Tribunal's consideration.

[111] Canada is encouraged to join them or to work on a separate plan informed by the recent evidence and recent studies and incorporate this in their National long-term reform plan and requested orders for the Tribunal's consideration.

[112] The Tribunal renders this creative and innovative decision, consistent with the *Grover* decision referred to above, in an effort to advance proceedings in the best interest of First Nations children and families in circumstances marked by limited collaboration among the parties, who have become increasingly adversarial, and in the face of unforeseen delays.

[113] The Tribunal, in issuing the following orders, establishes non-exhaustive parameters, which have been referenced in prior rulings. Long-term reform remedies shall:

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 Convention on the Rights of the Child, the United Nations Declaration on the Rights of Indigenous Peoples 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.

[114] The National FNCFS long-term reform plan and requested remedies outside Ontario shall include detailed deadlines and clear, measurable targets based on the most recent studies, evidence, and the diverse viewpoints of First Nations and other experts. The National long-term reform plan and requested remedies outside Ontario shall demonstrate how its implementation will clearly and effectively cease the systemic racial discrimination identified in the Tribunal's findings and prevent its recurrence for multiple generations. The National FNCFS long-term reform plan and requested remedies outside Ontario will focus on the long-term reform of the FNCFS currently before the Tribunal and described at length in its previous rulings. The National FNCFS long-term reform plan and requested remedies outside Ontario will improve upon the Tribunal's current orders, whether by mirroring them or by adopting different approaches, as supported by the evidence and First Nations' perspectives.

[115] The parties' commitment to this ruling and orders will inform the Tribunal on next steps and may impact the Tribunal's approach toward the other matters before it.

[116] The consultations shall be conducted efficiently and shall prioritize virtual meetings over in-person meetings in light of time and financial constraints.

[117] The Tribunal, in an effort to advance the matter, finds that, given the extended timeline for completing the remaining long-term orders originally intended to be finalized in 2023 as explained in 2022 CHRT 8 and the continued delays in these proceedings, there is a need for monthly reporting to the Tribunal. The parties engaged in the consultations shall provide the Tribunal with a monthly progress report.

IV. Orders

[118] Pursuant to section 48.9(1) and 53(2) of the *CHRA*, the dialogic approach, the Tribunal's previous orders and the Tribunal's retention of jurisdiction, the Tribunal orders:

[119] Canada shall inform the Tribunal, by August 29, 2025, whether it agrees to meet with the National Children's Chiefs Commission to discuss National FNCFS long-term reform outside Ontario, or whether it will reconsider meeting with the AFN and the Caring Society, on a voluntary basis, for the same purpose.

[120] Within four months of the date of this ruling, the Caring Society and the AFN shall consult, in accordance with the parameters set out above, with the National Children's Chiefs Commission, First Nations Chiefs, and other experts, including First Nations and First Nations organizations outside Ontario, as well as those that have filed interested party motions, to develop an evidence-based, comprehensive National FNCFS long-term reform plan and requested remedies outside Ontario. The completed plan, together with supporting affidavit evidence and materials, shall be filed with the Tribunal for its consideration.

[121] The consultations shall ensure that French speaking First Nations who desire to communicate and read materials in French will have the opportunity to do so.

[122] The determination of the OFA motion shall not be contingent upon the Tribunal's conclusion of its consideration of the National FNCFS long-term reform plan and requested remedies outside Ontario referred to in paragraph 120.

[123] The determination of the National FNCFS long-term reform plan and requested remedies outside Ontario shall not be contingent upon the Tribunal's conclusion of its consideration of the OFA motion for Ontario.

[124] The Caring Society, the AFN and Canada shall provide monthly updates to the Tribunal.

[125] Should Canada agree to participate in the consultations referred to in paragraph 120, it shall do so in accordance with the parameters set out above and the orders in this ruling. Where possible, a National FNCFS long-term reform plan and requested remedies outside

Ontario, agreed to on consent by the Caring Society, the AFN, and Canada, together with supporting affidavit evidence and materials, shall be filed with the Tribunal at the conclusion of the consultations.

[126] If a National FNCFS long-term reform plan and requested remedies outside Ontario cannot be reached on consent, or if Canada declines to participate in the consultations, Canada shall, within four months of the date of this ruling, file with the Tribunal its evidence-based National plan on long-term reform remedies outside Ontario. The completed plan shall be supported by affidavit evidence and materials for the Tribunal's consideration.

[127] As already directed, the Ontario region and the OFA will have its separate hearing and parties in favour or opposing will have an opportunity to be heard. The Tribunal is aiming to hold a hearing in 2025, in the absence of unforeseen circumstances.

[128] The orders above do not include Jordan's Principle long-term reform.

V. Retention of jurisdiction

[129] Pending a complete and final agreement on long-term relief on consent or otherwise (a National long-term reform plan as ordered in this ruling) and consistent with the dialogic approach to remedies taken in this case and referred to above, the Panel retains jurisdiction on the Orders contained in this ruling and all its previous orders except its compensation orders. The Panel will revisit its retention of jurisdiction once the parties have filed a National long-term reform plan as ordered in this ruling or a final and complete agreement on long-term reform or as the Panel sees fit considering the upcoming evolution of this case.

Case Management Conference Call (CMCC)

[130] The Tribunal will organize a CMCC shortly, to discuss the implementation of the Orders and answer any questions and/or clarifications, if necessary. The Tribunal will also discuss the long-term reform outside Ontario's hearing schedule. While the Tribunal will receive either a single National Plan filed on consent or two National FNFCS long-term reform plans with supporting evidence within approximately the same timeframe, the parties will have an opportunity to respond to the report(s). The schedule governing those

submissions, any reply evidence, and the cross-examination of affiants and other witnesses if any, will be addressed before or at the CMCC.

Signed by

Sophie Marchildon
Panel Chairperson

Edward P. Lustig
Tribunal Member

Ottawa, Ontario
August 20, 2025

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1340/7008

Style of Cause: First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)

Ruling of the Tribunal Dated: August 20, 2025

Written representations by:

David P. Taylor, Sarah Clarke, Kiana Saint-Macary and Robin McLeod, counsel for the First Nations Child and Family Caring Society of Canada, the Complainant

Anshumala Juyal and Khizer Pervez, counsel for the Canadian Human Rights Commission

Paul Vickery, Sarah-Dawn Norris, Meg Jones, Dayna Anderson, Kevin Staska, Sarah Bird, Jon Khan, Alicia Dueck-Read and Aman Owais, counsel for the Attorney General of Canada, the Respondent

Maggie Wente, Jessie Stirling, Ashley Ash and Katelyn Johnstone, counsel for the Chiefs of Ontario, Interested Party

Julian Falconer, Asha James, Shelby Percival and Meaghan Daniel, counsel for the Nishnawbe Aski Nation, Interested Party

This is **Exhibit GG** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, Ontario
Date: 2025.10.22 10:24:56-04'00'
Foxit PDF Editor Version: 13.1.6

A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

From: CHRT Registry Office <Registry.Office@chrt-tcdp.gc.ca>
Sent: September 17, 2025 9:04 AM
To: 'David Taylor'; 'sarah@childandfamilylaw.ca'; Kiana Saint-Macary; Peter Mantas; gcyr@fasken.com; 'tsun@fasken.com'; 'Anshumala.Juyal@chrc-ccdp.gc.ca'; khizer.pervez@chrc-ccdp.gc.ca; Vickery, Paul; Norris, Sarah-Dawn (she her elle la); Jones, Meg (she her elle la); Anderson, Dayna (she her elle la); Staska, Kevin; Bird, Sarah (she her elle); Khan, Jon; Dueck-Read, Alicia (she her elle la); Owais, Aman; 'MWente@oktlaw.com'; Jessie Stirling; Ashley Ash; Katelyn Johnstone; Sinéad Dearman; 'julianf@falconers.ca'; Asha James; Shelby Percival; meaghand@falconers.ca; David Schwartz; Jordan Tully; 'justins@stockwoods.ca'; 'Stephen Aylward'; 'Jasmine Kaur'; Lloyd, Michelle (CHRC/CCDP); Darvill, Jillian (she her elle la); Perrault-Werner, Alisia (she her elle la); Anderson, Jackie (she her elle la); Wong, Theresa (she her elle la)
Subject: Update from the Panel - FNCFCSC and AFN v. AGC (CHRT File T1340/7008)

EXTERNAL EMAIL – USE CAUTION / COURRIEL EXTERNE – FAITES PREUVE DE PRUDENCE
Dear Parties,

The Panel wishes to advise of the following:

> The Tribunal will make its best efforts to issue a revised OFA schedule and provide directions on the question of the expert before the end of the week. An agenda for the CMCC will also be sent shortly.
>
> The Tribunal confirms that all nine parameters were already addressed in previous rulings in this case. To ensure clarity, the Tribunal has decided to remove the words “some of” in 2025 CHRT 80.
>
> The expression “some of” had been used as a precaution, recognizing that certain words and expressions function as synonyms. To avoid any misunderstanding, the Tribunal has determined that it is preferable to remove it and instead rely on the body of its previous rulings, where the parameters can be located.

Thank you.

Judy Dubois
(she/her/elle)

Senior Registry Officer / CHRT Registry Services
On behalf of the Canadian Human Rights Tribunal
Administrative Tribunals Support Service of Canada / Government of Canada
judy.dubois@tribunal.gc.ca

Agente principale du greffe / Services du greffe du TCDP
Au nom du Tribunal canadien des droits de la personne
Service canadien d’appui aux tribunaux administratifs / Gouvernement du Canada
judy.dubois@tribunal.gc.ca

This is **Exhibit HH** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, Ontario
Date: 2025.10.22 10:25:08-04'00'
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A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

Canadian Human Rights Tribunal
Tribunal canadien des droits de la personne
Ottawa, Canada, K1A 1J4

September 17, 2025

By e-mail

(See Distribution List)

Dear Parties,

Re: First Nations Child and Family Caring Society et al. v. Attorney General of Canada
Tribunal File: T1340/7008

The Panel wishes to advise the parties of the following:

This document includes some Tribunal ruling references on its jurisdiction and sections 53 and 16 of the *CHRA*, some important case law interpreting sections 53 and 16 and referred to in the Tribunal's previous rulings, and the Tribunal's approach to remedies explained in previous rulings. This document also includes references to some Tribunal rulings mentioning the need to have consultations with First Nations and First Nations experts, who are not necessarily part of these proceedings, to assist in crafting effective remedies. The Tribunal has included references from previous rulings and from a ruling on consent of the parties requesting the Tribunal to rely on evidence and perspectives from non-parties. The Tribunal also included a previous ruling referencing a Federal Court decision approving the Tribunal's approach to remedies in this case and finding that the Tribunal's jurisdiction to make the orders flowed not only from the parameters and objectives of the *CHRA*, but also from the evidentiary foundation upon which the Tribunal grounded its decisions, because the *CHRA* provides the Tribunal with broad discretion to fashion appropriate remedies to fit the circumstances.

The Tribunal reserves the right to edit and complement this document. Furthermore, the Tribunal continues to rely on all its rulings and decisions that align fully with the Tribunal's recent ruling in 2025 CHRT 80.

2022 CHRT 8

> [136] … this approach allowed the Tribunal to set parameters on what it is able to address based on its jurisdiction under the *CHRA*, the Complaint, and its remedial jurisdiction.
>
> [16] The Panel also said that aside from orders of compensation, this flexibility in fashioning effective remedies arises mainly from sections 53(2)(a) and (b) of the *CHRA*. Those sections provide the Tribunal with the authority to order measures to redress the discriminatory practice or prevent the same or similar practice from occurring in the future

[see s. 53(2)(a)]; and to order that the victim of a discriminatory practice be provided with the rights, opportunities or privileges that are being or were denied [see s. 53(2)(b)].

[468] As the Complaint has been substantiated, the Panel may make an order against AANDC pursuant to section 53(2) of the *CHRA*. The aim in making an order under section 53(2) is not to punish AANDC, but to eliminate discrimination (see Robichaud at para. 13). To accomplish this, the Tribunal's remedial discretion must be exercised on a principled basis, considering the link between the discriminatory practice and the loss claimed…

[469] …In crafting remedies under the *CHRA*, the Tribunal's powers under section 53(2) must be given such fair, large and liberal interpretation as will best ensure the objects of the *Act* are obtained.

(2018 CHRT 4 excerpt)

[32] …This is provided for in the *Act* under section 53 (2) (a): that the person cease the discriminatory practice and take measures, in consultation with the Commission on the general purposes of the measures, to redress the practice or to prevent the same or a similar practice from occurring in future…

2022 CHRT 8

[468] …The aim in making an order under section 53(2) is not to punish AANDC, but to eliminate discrimination (see Robichaud at para. 13).

[138] I agree with the Tribunal's reliance on *Grover v Canada (National Research Council)* (1994), 1994 CanLII 18487 (FC), 24 CHRR 390 [Grover] where the task of determining 'effective' remedies was characterized as demanding 'innovation and flexibility on the part of the Tribunal…' (2016 CHRT 10 at para 15). Furthermore, I agree that 'the [CHRA] is structured so as to encourage this flexibility' (2016 CHRT 10 at para 15). The Court in *Grover* stated that flexibility is required because the Tribunal has a difficult statutory mandate to fulfill (at para 40). The approach in *Grover*, in my view, supports the basis for the dialogic approach.

Legal Framework

[153] In considering the Tribunal's powers to make the requested orders, the Tribunal relies on the following:

This Tribunal's January 26, 2016 order (2016 CHRT 2 [Merit Decision]) ordered Canada to cease its discriminatory practices and reform the FNCFS Program to reflect the findings in that decision.

This Tribunal's April 26, 2016, order (2016 CHRT 10) required Canada to immediately take measures to address the findings in its January 26, 2016, decision.

This Tribunal's September 14, 2016, order (2016 CHRT 16) required Canada to update its policies, procedures and agreements to comply with the Tribunal's findings in its January 26, 2016, decision.

This Tribunal's understanding in making its September 14, 2016, order (2016 CHRT 16) that reform of Canada's policies, procedures and agreements to comply with the Tribunal's findings in its January 26, 2016, decision would be achieved over the longer term, with certain interim measures being put in place until that time.

The principles set out for immediate relief in the Tribunal's February 4, 2018, order (2018 CHRT 4).

All other rulings made by this Panel in this case.

[154] In light of the above and consistent with the Tribunal's detailed findings in the Merit Decision which included other related provincial/territorial agreements and other funding methods, all subsequent rulings and the Tribunal's approach to remedies and, pursuant to section 53(2) of the *CHRA*, the Panel finds it has statutory authority to make the consent orders requested by the AFN, the Caring Society and Canada and agreed to by the COO, the NAN, the Commission and Amnesty International as it will be further explained below.

[155] The Panel previously reviewed Canada's responsibility to remedy the discriminatory practice in this case in 2018 CHRT 4:

> [215] In its [Merit] Decision and rulings, the Panel found that Canada was responsible for funding to cover the costs of providing family and child welfare services to First Nations on reserves. It found that this responsibility included funding to cover the costs of providing services to First Nations children on reserves in need of care, in a manner that was culturally appropriate and substantively equal to the manner that the services were provided to non-First Nations children in Canada. It found that the basis upon which Canada was calculating and providing the funding was flawed in various respects, resulting in insufficient funding (i.e. underfunding) to provide the services in the manner hereinbefore described, and to meet the needs of First Nations children on reserve. It found that Canada was underfunding the services now being requested by the Moving Parties to be paid on an actual cost basis as immediate relief in this case. It found that Canada knew that it was underfunding the services and that the underfunding of prevention services, in particular, while Canada fully funded maintenance and apprehension expenses, created a perverse incentive to remove far too many First Nations children on reserve from their homes and families. It found that this underfunding of services was one of the discriminatory practices engaged in by Canada in this case, and that Canada needed to take immediate steps to eliminate this discriminatory underfunding and to fully reform the Program in the longer term.
>
> [216] Canada has accepted the Tribunal's [Merit] Decision and rulings that it is discriminating against First Nations children by underfunding the services and that both immediate steps and longer-term reform need to be undertaken to eliminate this discriminatory underfunding of services to First Nations children on reserve.

> [217] All of the parties agree that the Tribunal's remedial powers are to be interpreted broadly to give effect to the objectives of the *CHRA* in eliminating discrimination when there has been a determination by the Tribunal that discrimination has occurred and an order to cease has been made, in order to ensure that the discrimination does not continue.

[156] Furthermore, the Panel previously wrote in 2018 CHRT 4:

> [387] It took years for the First Nations children to get justice. Discrimination was proven. Justice includes meaningful remedies. Surely Canada understands this. The Panel cannot simply make final orders and close the file. The Panel determined that a phased approach to remedies was needed to ensure short term relief was granted first, then long term relief, and reform which takes much longer to implement. The Panel understood that if Canada took 5 years or more to reform the Program, there was a crucial need to address discrimination now in the most meaningful way possible with the evidence available now.

[157] The Panel also wrote in 2016 CHRT 10 that:

> [15] … [C]onstructing effective and meaningful remedies to resolve a complex dispute, as is the situation in this case, is an intricate task. Indeed, as the Federal Court of Canada stated in *Grover v. Canada (National Research Council)* (1994), 1994 CanLII 18487 (FC), 24 CHRR D/390 (FC) at para. 40 [Grover], "[s]uch a task demands innovation and flexibility on the part of the Tribunal in fashioning effective remedies and the Act is structured so as to encourage this flexibility.
>
> [16] The Panel also said that aside from orders of compensation, this flexibility in fashioning effective remedies arises mainly from sections 53(2)(a) and (b) of the *CHRA*. Those sections provide the Tribunal with the authority to order measures to redress the discriminatory practice or prevent the same or similar practice from occurring in the future [see s. 53(2)(a)]; and to order that the victim of a discriminatory practice be provided with the rights, opportunities or privileges that are being or were denied [see s. 53(2)(b)].

[158] In the initial Merit Decision, the Panel indicated its approach once a complaint is substantiated:

> [468] As the Complaint has been substantiated, the Panel may make an order against AANDC pursuant to section 53(2) of the *CHRA*. The aim in making an order under section 53(2) is not to punish AANDC, but to eliminate discrimination (see Robichaud at para. 13). To accomplish this, the Tribunal's remedial discretion must be exercised on a principled basis, considering the link between the discriminatory practice and the loss claimed (see *Chopra v. Canada (Attorney General),* 2007 FCA 268 at para. 37). In other words, the Tribunal's remedial discretion must be exercised reasonably, in consideration of the particular circumstances of the case and

> the evidence presented (*Hughes v. Elections Canada*, 2010 CHRT 4 at para. 50).
>
> [469] It is also important to reiterate that the *CHRA* gives rise to rights of vital importance. Those rights must be given full recognition and effect through the Act. In crafting remedies under the *CHRA*, the Tribunal's powers under section 53(2) must be given such fair, large and liberal interpretation as will best ensure the objects of the *Act* are obtained. Applying a purposive approach, remedies under the *CHRA* should be effective in promoting the right being protected and meaningful in vindicating the rights and freedoms of the victim of discrimination (see *CN v. Canada (Canadian Human Rights Commission),* 1987 CanLII 109 (SCC), [1987] 1 SCR 1114 at p. 1134; and, *Doucet-Boudreau* at paras. 25 and 55).

[159] The Panel further addressed its remedial authority in 2018 CHRT 4:

> [31] The Panel provided an overview of the Tribunal's broad and flexible remedial authorities in 2016 CHRT 10 (paras. 10-19) which was not judicially reviewed.
>
> [32] Moreover, in making its orders the Tribunal is operating under its Statute that permits it to address past discriminatory practices, and prevent future ones from occurring. This is provided for in the *Act* under section 53 (2) (a): that the person cease the discriminatory practice and take measures, in consultation with the Commission on the general purposes of the measures, to redress the practice or to prevent the same or a similar practice from occurring in future, including (...). (emphasis omitted).

[160] As noted in 2018 CHRT 4 at paragraph 40, "[t]he Tribunal made extensive findings in [the Merit Decision] and provided very detailed reasons as to how it arrived at its findings." As noted in the Merit Decision, [t]hose findings demonstrate that "AANDC's design, management and control of the FNCFS Program, along with its corresponding funding formulas and the other related provincial/territorial agreements have resulted in denials of services and created various adverse impacts for many First Nations children and families living on reserves" (Merit Decision at para. 458). Moreover, [t]he Tribunal also found that "[t]he failure to coordinate the FNCFS Program and other related provincial/territorial agreements with other federal departments and government programs and services for First Nations on reserve, resulting in service gaps, delays and denials for First Nations children and families" (2016 CHRT 2 at para. 458, emphasis added). Later, "[t]he Panel specifically mentioned that reform must address the findings in the [Merit] Decision. This case is about underfunding, policy, authorities and, the National Program that were found to be discriminatory" (see 2018 CHRT 4 at para. 40). The lengthy Merit Decision is authoritative in this case and the findings referred to above can be found in the Merit Decision and will not be repeated here. The Tribunal outlines the above to support that it has authority to issue this Consent Order since the subject matter of this Consent Order forms part of the evidence and findings in this case.

[161] Moreover, 2018 CHRT 4 provides that:

> [34] Section 53(2)(a) of the *CHRA* gives this Tribunal the jurisdiction to make a cease-and-desist order. In addition, if the Tribunal considers it appropriate to prevent the same or a similar practice from occurring in the future, it may order certain measures including the adoption of a special program, plan or arrangement referred to in subsection 16(1) of the *CHRA* (see National *Capital Alliance on Race Relations (NCARR) v. Canada (Department of Health & Welfare)* T.D.3/97, pp. 30-31). The scope of this jurisdiction was considered by the *Supreme Court of Canada in CN v. Canada (Canadian Human Rights Commission*), 1987 CanLII 109 (SCC), [1987] 1 SCR 1114, [Action Travail des Femmes]).

[162] Subsequently, the Panel noted in 2018 CHRT 4 that:

> [51] Indeed, the Supreme Court in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Communauté urbaine de Montréal*, 2004 SCC 30 (CanLII) has also directed human rights tribunals to ensure that their remedies are effective, creative when necessary, and respond to the fundamental nature of the rights in question.

[163] Furthermore, the Panel previously indicated in 2018 CHRT 4 that:

> [53] … it may deem it necessary to make further orders. It would be unfair for the Complainants, the Commission and the interested parties who were successful in this complaint, after many years and different levels of Courts, to have to file another complaint for the implementation of the Tribunal's orders and reform of the First Nations' Child welfare system.

[164] The Panel also said in 2018 CHRT 4 that:

> [50] In retaining jurisdiction, the Panel is monitoring if Canada is remedying discrimination in a responsive and efficient way without repeating the patterns of the past.

[165] A similar approach to remedies was taken in the *McKinnon v. Ontario (Ministry of Correctional Services),* [1998], OHRBID, No 10, 1998 CanLII 29849 (ON HRT), 32 CHHR D/1 and [2002] OHRBID, No 22 decisions from the HRTO informed by the specific facts in the case and affirmed on appeal (see *Ontario v. McKinnon,* 2004 CanLII 47147 (ONCA)). The Tribunal relied on this case in 2018 CHRT 4 (see paras. 24 and 388). The Tribunal held that "[a]kin to what was done in the *McKinnon* case, it may be necessary to remain seized to ensure the discrimination is eliminated and mindsets are also changed. That case was ultimately settled after ten years. The Panel hopes this will not be the case here" (2018 CHRT 4 at para. 388). While the Panel said this in 2018, notably, next month will mark the tenth year when the Federal Court quashed the former Chairperson's decision in this case and ordered a different Panel to adjudicate this case. This is when Sophie Marchildon, Edward P. Lustig and Réjean Bélanger were first seized of this matter.

[166] In a recent decision, *Ontario v. Association of Ontario Midwives*, 2020 ONSC 2839 the Ontario Divisional Court discussed the case at hand and commented on the monitoring and updating of funding policies, programs and formulas in systemic cases to ensure substantive equality:

> [189] The Tribunal's findings in this regard are reasonable. Indeed, they are consistent with the SCC's decision in *Moore* and the Canadian Human Rights Tribunal's decision in Caring Society, two cases concerning systemic discrimination in government funding policies. Moore and Caring Society make clear that governments have a proactive human rights duty to prevent discrimination which includes ensuring their funding policies, programs and formulas are designed from the outset based on a substantive equality analysis and are regularly monitored and updated. Such jurisprudence is directly at odds with the MOH's position that it can wait before acting until midwives – a deeply sex-segregated profession that is highly susceptible to systemic gender discrimination in compensation – have proven that the MOH's conduct constitutes sex discrimination. (footnotes omitted).

[167] Recently, in a judicial review initiated by Canada in this case, the Federal Court in Canada *(Attorney General) v. First Nations Child and Family Caring Society of Canada,* 2021 FC 969, in dismissing all of Canada's arguments, made important comments on the Tribunal's approach to remedies in this case:

> [135] The fact that the Tribunal has remained seized of this matter has allowed the Tribunal to foster dialogue between the parties. The Commission states that the leading commentators in this area support the use of a dialogic approach in cases of systemic discrimination involving government respondents (Gwen Brodsky, Shelagh Day & Frances M Kelly, "The Authority of Human Rights Tribunals to Grant Systemic Remedies", (2017) 6:1 Can J of Human Rights 1). The Commission described this approach as bold considering the nature of the Complaint and the complexity of the proceedings.
>
> [136] The dialogic approach contributes to the goal of reconciliation between Indigenous people and the Crown. It gives the parties opportunities to provide input, seek further direction from the Tribunal if necessary, and access 2022 CHRT 8 (CanLII)information about Canada's efforts to bring itself in compliance with the decisions. As discussed later in my analysis of the Eligibility Decision, this approach allowed the Tribunal to set parameters on what it is able to address based on its jurisdiction under the CHRA, the Complaint, and its remedial jurisdiction.
>
> [137] The Commission states that the dialogic approach was first adopted in this proceeding in 2016 and has been repeatedly affirmed since then. It submits that the application of the dialogic approach is relevant to the reasonableness considerations in that Canada has not sought judicial review of these prior rulings.

[138] I agree with the Tribunal's reliance on *Grover v Canada (National Research Council)* (1994), 1994 CanLII 18487 (FC), 24 CHRR 390 [Grover] where the task of determining "effective" remedies was characterized as demanding "innovation and flexibility on the part of the Tribunal…" (2016 CHRT 10 at para 15). Furthermore, I agree that "the [CHRA] is structured so as to encourage this flexibility" (2016 CHRT 10 at para 15). The Court in Grover stated that flexibility is required because the Tribunal has a difficult statutory mandate to fulfill (at para 40). The approach in Grover, in my view, supports the basis for the dialogic approach. This approach also allowed the parties to address key issues on how to address the discrimination, as my summary in the Procedural History section pointed out.

…

[162] I disagree with the Applicant's characterization of the decisions following the Merit Decision as an "open-ended series of proceedings." Rather, the subsequent proceedings reflect the Tribunal's management of the proceedings utilizing the dialogic approach. The Tribunal sought to enable negotiation and practical solutions to implementing its order and to give full recognition of human rights. As well, significant portions of the proceedings following the Merit Decision were a result of motions to ensure Canada's compliance with the various Tribunal orders and rulings.

…

[281] As noted above, I have determined that the Tribunal did not change the nature of the Complaint in the remedial phase. The Tribunal, exercising extensive remedial jurisdiction under the quasi-constitutional *CHRA*, provided a detailed explanation of what had transpired previously and what would happen next in each ruling/decision (See e.g. 2016 CHRT 16 at para 161). In so doing, it was relying on a dialogic approach. Such an approach was necessary considering the scope of the discrimination and the corresponding efforts to remedy or prevent future discrimination. Most importantly, the Tribunal was relying on established legal principles articulated in *Chopra v Canada* (AG), 2007 FCA 268 at para 37 and *Hughes* 2010 at para 50 (Merit Decision at paras 468, 483). I do not agree that the Tribunal did not provide the parties with notice of matters to be determined.

…

[301] In my view, the procedural history of this case has demonstrated that there is, and has been, good will resulting in significant movements toward remedying this unprecedented discrimination. However, the good work of the parties is unfinished. The parties must decide whether they will continue to sit beside the trail or move forward in this spirit of reconciliation.

[302] I find that the Applicant has not succeeded in establishing that the Compensation Decision is unreasonable. The Tribunal, utilizing the dialogic approach, reasonably exercised its discretion under the *CHRA* to

> handle a complex case of discrimination to ensure that all issues were sufficiently dealt with and that the issue of compensation was addressed in phases. The Tribunal ensured that the nexus of the Complaint, as discussed in the Merit Decision, was addressed throughout the remedial phases. Nothing changed. All of this was conducted in accordance with the broad authority the Tribunal has under the *CHRA*.

2022 CHRT 41

> [492] The Tribunal is not stating that it cannot amend its orders if the FSA does not mirror the Tribunal's orders. The Tribunal can amend its orders to clarify, enhance, or reflect the parties' wishes if they consent and do not remove recognized rights.
>
> [493] The Tribunal emphasizes that the *CHRA* is a restorative piece of legislation.
>
> [494] In fact, special programs are permitted in the *CHRA* when it has the policy goal to provide equity for some segments of society who are the subject of discrimination (see section 16 of the *CHRA*). This was discussed in *Action travail des femmes* and relied upon in the Tribunal's Compensation Decision in 2021 CHRT 6:
>
> [66] For the SCC, paragraph 2 of the Special Temporary Measures Order, ordering the CN to implement a special employment program, was specifically designed to address and remedy the type of systemic discrimination against women in the case under examination. Therefore, the SCC addressed the specific issue of the scope of the remedial powers established under section 41(2)(a) (now 53(2)(a)) of the CHRA, taking into account the power granted to the Tribunal to order measures regarding the "adoption of a special program, plan or arrangement referred to in subsection 15(1) (now 16(1)), to prevent the same or a similar practice occurring in the future" (Action Travail des femmes, at p. 1139).
>
> [67] Concurring with the dissenting opinion of Justice MacGuigan of the Federal Court of Appeal in the case under appeal, the SCC held that section 41(2)(a) (now 53(2)(a)) is "designed to allow human rights tribunals to prevent future discrimination against identifiable protected groups" (Action Travail des femmes, at p 1141). In cases of systemic discrimination, the prevention of reoccurrence of discriminatory practices often requires referring to historical patterns of discrimination in order to design appropriate strategies for the future (Action Travail des femmes, at p. 1141). Furthermore, the SCC held that the type of measure ordered by the Tribunal in the case under examination may be the only means to achieve the purpose of the *CHRA*, that is to combat and prevent future discrimination (*Action Travail des femmes*, at p. 1141, 1145), (emphasis added).
>
> [68] In these cases, remedy and prevention cannot be dissociated, since "there is no prevention without some form of remedy" (*Action Travail des*
>
> *femmes*, at p. 1142). Thus, the remedies available under section 53(2)(a) *CHRA* are directed toward a specific protected group and are not only compensatory in nature, but also prospective. As a result, with a view to achieve the prevention objective of the *CHRA*, a "special program, plan or arrangement" as referred to in subsection 16

(1) *CHRA* serves three main purposes: (1) countering the effect of systemic discrimination; (2) addressing the attitudinal problem of stereotyping, and; (3) Creating a critical mass, which may have an impact on the "continuing self-correction of the system" (*Action Travail des femmes*, at pp 1143-44), (emphasis added).

[69] In sum, while ruling that the Tribunal had the power to order such a special measure, the SCC summarized its findings as follows:

For the sake of convenience, I will summarize my conclusions as to the validity of the employment equity program ordered by the Tribunal. To render future discrimination pointless, to destroy discriminatory stereotyping and to create the required "critical mass" of target group participation in the work force, it is essential to combat the effects of past systemic discrimination. In so doing, possibilities are created for the continuing amelioration of employment opportunities for the previously excluded group. The dominant purpose of employment equity programs is always to improve the situation of the target group in the future. MacGuigan J. stressed in his dissent that "the prevention of systemic discrimination will reasonably be thought to require systemic remedies" (p. 120).

Systemic remedies must be built upon the experience of the past so as to prevent discrimination in the future. Specific hiring goals, as Hugessen J. recognized, are a rational attempt to impose a systemic remedy on a systemic problem. The Special Temporary Measures Order of the Tribunal thus meets the requirements of s. 41(2)(a) of the Canadian Human Rights Act.

It is a "special program, plan or arrangement" within the meaning of s. 15(1) and therefore can be ordered under s. 41(2)(a). The employment equity order is rationally designed to combat systemic discrimination in the Canadian National St. Lawrence Region by preventing "the same or a similar practice occurring in the future". (Action Travail des femmes, at pp 1145-46).

[70] The Panel has relied on several occasions on the principles established by the Supreme Court of Canada in *Action Travail des femmes*, see for example: 2016 CHRT 2 at para. 468; 2016 CHRT 10, at para. 12-18; 2018CHRT 4, at para. 21-39; 2019 CHRT 39, at para. 97.

[495] Furthermore, no concept of removing ordered entitlements suggested by the AFN and Canada is found in the *CHRA* itself, the spirit of the *CHRA* or a proper human rights analysis. A careful consideration of the Panel's work in this case makes clear the Panel views its role under the *CHRA* as proactive to eliminate and prevent discrimination, not make orders and take them away.

[496] In 2021 CHRT 6, the Tribunal wrote:

[61] To the contrary, in the interpretation of the *CHRA*, it is important to take into account the purpose of the *CHRA*, that is to extend the present laws in Canada as set forth in section 2 in order to give effect to the principle that every human being should be given equal opportunity to live his or her life without discrimination (Action Travail des femmes, at p 1133). It should be recalled that human rights legislations are intended to give effect to rights of vital importance, ultimately

enforceable by a court of law (*Action Travail des femmes*, at p 1134). As a result, while the meaning of the words of the *CHRA* is important, rights must be given full recognition and effect (Action Travail des femmes, at p 1134). This is also in line with the federal Interpretation Act, RSC 1985, c I-21, according to which statutes are deemed remedial and thus, must receive a fair, large and liberal interpretation with a view to give effect to their objects and purpose (*Action Travail des femmes*, at p 1134).

[62] This comprehensive method of interpretation of human rights legislation was first stated in *Insurance Corporation of British Columbia v. Heerspink*, 1982 CanLII 27 (SCC), [1982] 2 S.C.R. 145, where Justice Lamer acknowledged the fundamental nature of human rights legislation: they are "not to be treated as another ordinary law of general application. It should be recognized for what it is, a fundamental law" (Action Travail des femmes, at pp 1135-36, citing Heerspink, at p. 158). This principle of interpretation was later confirmed and further articulated in *Winnipeg School Division No. I v. Craton,* 1985 CanLII 48 (SCC), [1985] 2 S.C.R. 150, at p. 156, where Justice McIntyre, writing for a unanimous Court, stated that:

Human rights legislation is of a special nature and declares public policy regarding matters of general concern. It is not constitutional in nature in the sense that it may not be altered, amended, or repealed by the Legislature. It is, however, of such nature that it may not be altered, amended, or repealed, nor may exceptions be created to its provisions, save by clear legislative pronouncement. (cited in *Action Travail des femmes*, at 1136).

[65] These principles must equally be applied when interpreting the remedial powers granted to the Tribunal under the *CHRA*.

[497] An analysis of section 53 of the *CHRA* where the Tribunal has recognized victims/survivors in its orders and can change its mind later for the reasons advanced in this motion including unproven financial constraints is not appropriate and does not keep with the SCC's reasons in *Action Travail des femmes*.

[498] The Tribunal cannot make the alternative order requested to amend its previous orders to conform to the FSA or to elevate the FSA over the Tribunal's orders in case of conflict. The Tribunal reaches this conclusion after considering the **applicable case law discussed**, **the *CHRA* and human rights regime all discussed above, its previous findings and its previous orders**.

[517] This does not dispose of the Tribunal's retained jurisdiction to ensure systemic

discrimination is eliminated. Canada cannot contract out the Tribunal's quasi-constitutional responsibility to eliminate the discrimination found and prevent similar discriminatory practices from arising**. It has to occur after an evidence-based finding that satisfies the Tribunal that discrimination is eliminated and prevented from reoccurring or on consent of all, not just some, parties** in the Tribunal proceedings and based on compelling evidence that the systemic racial discrimination will be eliminated (…).

2022 CHRT 41: [181] Of note, this finding was made on the evidence presented that linked the increased sustainable prevention funding and **community-based programs** with the ceasing of removals of children from their homes, families and communities:

[149] The above findings demonstrate the need for culturally appropriate and safe prevention services that address the key drivers resulting in First Nations children entering care and the need for adequately funded and sustainable prevention services that **are tailored to the distinct needs of First Nations children, families and communities.**

[150] The elimination of the mass removal of children is achievable when a real shift is made from reactive services that bring children into care to preventive services, **especially when prevention services are developed and delivered by the First Nations children's respective First Nations communities.** The evidence provided by the parties demonstrates that this shift will be made possible with the April 1, 2022, implementation of increased prevention funds provided to First Nations and First Nations child and family service providers across Canada.

[151] Finally, the consent orders discussed above are in line with the Panel's findings and orders. The Panel believes the full and timely implementation of those orders will significantly improve the lives of First Nations children, families and communities. (2022 CHRT 8).

2022 CHRT 41

> [225] This approach is consistent with the clearly expressed intent by the Tribunal to issue short-term, mid-term and long-term relief and for long-term relief to be informed by the short term and mid-term phases.
>
> [226] The Panel previously wrote in 2018 CHRT 4:
>
> [387] It took years for the First Nations children to get justice. Discrimination was proven. Justice includes meaningful remedies. Surely Canada understands this. The Panel cannot simply make final orders and close the file. The Panel determined that a phased approach to remedies was needed to ensure short term relief was granted first, then long term relief, and reform which takes much longer to implement. The Panel understood that if Canada took 5 years or more to reform the Program, there was a crucial need to address discrimination now in the most meaningful way possible with the evidence available now.
>
> …
>
> [415] The Panel also recognizes that in light of its orders, and the fact that
>
> data collection will be further improved in the future and the NAC's work will progress more adjustments will need to be made as the quality of information increases.

> [227] **The Tribunal has clearly expressed on a number of occasions that it will retain jurisdiction until sustainable long-term relief and reform has been addressed in a way that is responsive to the Tribunal's findings and role to eliminate the discrimination found and prevent its reoccurrence or similar discriminatory practices to arise. The Tribunal has always focused on the need to uphold the principle of substantive equality considering the specific needs of First Nations children, families, communities and Nations as an integral part of eliminating the systemic discrimination found. Those specific needs are accounted for in First Nations-led and designed prevention programs for example.**
>
> [230] The Tribunal considered the request for compensation by direct and specific reference to the evidence in this case. This fundamental tenet of justice was underscored by the Federal Court in its upholding of the Tribunals' orders, concluding that the Tribunal's jurisdiction to make the orders flowed **not only from the parameters and objectives of the *CHRA*, but also from the evidentiary foundation upon which the Tribunal grounded its decisions**:
>
> Ultimately, the Compensation Decision is reasonable because the *CHRA*
>
> provides **the Tribunal with broad discretion to fashion appropriate remedies to fit the circumstances.** To receive an award, the victims did not need to testify to establish individual harm. The Tribunal already had extensive evidence of Canada's discrimination; the resulting harm experienced by First Nations children and their families (the removal of First Nations children from their homes); and Canada's knowledge of that harm. Further, the Tribunal did not turn the proceedings into a class action because the nature and rationale behind the awards are different from those ordered in a class action. From the outset, First Nations children and families were the subject matter of the complaint and Canada always knew that the Respondents were seeking compensation for the victims. If Canada wanted to challenge these aspects of the Complaint, it should have done so earlier. Canada may not collaterally attack the Merit Decision or other decisions in this proceeding.
>
> **(2021 FC 969 at para. 231, emphasis added).**

> [268] Furthermore, in determining if the victims/survivors will be compensated, the Tribunal **cannot divorce the task from the evidence and findings that warrant the remedy** (…).

Experts, First Nations perspectives, studies

[7] Dr. Cindy Blackstock

"…**Respecting the right of First Nations to be self-determining, I believe that First Nations ought to have the right to make a free, prior and informed choice**

about which funding approaches, policies and practices, including those arising from the Tribunal proceedings, ought to apply."

2022 CHRT 8

[30–33] Dr. Blackstock & IFSD

"While the Panel has considered all the materials, it finds Dr. Cindy Blackstock's affidavit reliable given her expert knowledge of the matters at hand… Dr. Blackstock provides a concise and very useful outline of this order request indicating that:

…**Canada has agreed to reform the FNCFS Program to reflect a performance-informed budgeting approach, with consideration of the well-being outcome indicators defined in the IFSD Measuring to Thrive framework… The Reformed Funding Approach must be based on evidence informed principles including the following:**

a. **Funding will be provided… based on evidence informed well-being indicators for First Nations children, youth, and families…**

b. The well-being indicators will facilitate reliable data collection at a community, regional and national level to inform best practices and improve federal child welfare policies…

c. Funding will be based on a bottom-up budgeting approach…

d. Funding will address the structural drivers of the over-representation as well as culturally based child welfare services.

[33] Dr. Blackstock further affirms that: …The Measuring to Thrive framework is a results-based tool to plan, monitor, and assess the performance of policies and programs, against the goal of thriving First Nations children, families and First Nations… Implementation of the performance-based budgeting framework… **will center funding levels and structures on the needs of children, youth and families**…"

2022 CHRT 8

[114–117] The Panel entirely agrees with this wise approach to prevention reform proposed by the parties in order to **generate real and lasting systemic change**. Moreover, the evidence filed supports this finding.

This success story is referenced in Stephanie Wellman's affidavit and also included in the IFSD report #1, Enabling Children to Thrive filed in evidence. The report states that a case for prevention is clear from both FNCFS agency cases and from existing research. **The unanimity from agencies and experts on the importance and need for a focus on prevention services and funding to match cannot be overemphasized…**

…The Tribunal notes that **Carrier Sekani Family Services has developed a prevention model informed by its own research and experience, implementing a unique integration of health and social services across the life cycle.**

2022 CHRT 8 at para.36:

In 2018 CHRT 4 at para. 236 the Tribunal ordered that its immediate to mid-term orders will remain in effect:

Until such time as one of the options below occur:

1. Nation (Indigenous)-to Nation (Canada) agreement respecting self-governance to provide its own child welfare services.

2. Canada reaches an agreement that is Nation specific even if the Nation is not yet providing its own child welfare services and the agreement is more advantageous for the Indigenous Nation than the orders in this ruling.

3. **Reform is completed in accordance with best practices recommended by the experts including the NAC** and the parties and interested parties, and Eligibility of reimbursements from prevention/least disruptive measures, building repairs, intake and investigations and legal fees services are no longer based on discriminatory funding formulas or programs.

4. Evidence is brought by any party or interested party to the effect that readjustments of this order need to be made to overcome specific unforeseen challenges and is accepted by the Panel.

2022 CHRT 8 at paragraph 88:

As set out in Dr. Blackstock's affidavit dated March 4, 2022:

48. The NAC has considered necessary reforms of ISC and reforms within the Government of Canada. In its Interim Report of the National Advisory Committee on First Nations Child and Family Services Program Reform, January 2018 [see Exhibit I attached to Dr. Blackstock's affidavit], the NAC makes several recommendations regarding internal reform, training, and education, including the following:

a. A comprehensive 360 evaluation of ISC's FNCFS Program and Jordan's Principle must be completed to ensure it is fulfilling the Treasury Board Authorities and is compliant with the law and Canada's commitment to the Truth and Reconciliation Commission (TRC) Calls to Action. **Such an evaluation should include consultation with First Nations leadership, FNCFS Agencies and experts such as provincial/territorial child advocates.** The evaluation can inform the reformulation of ISC and Indigenous Crown Relations. This evaluation should be made public, and the evaluation team/group will be selected jointly by First Nations leadership and Canada. These evaluations should be done every 4 years to ensure ongoing compliance (see p. 17).

50. From the Caring Society's perspective, reform of ISC is critical to sustainable and equitable long-term reform. In addition to the recommendations made by the NAC, the Caring Society will continue to advocate for full ISC reform including: (a) ensuring that ISC staff have proper credentials in First Nations child and family services, children's health, education and social services; (b) implementing employee performance and incentive programs linked to **ensuring non**

discrimination and alignment with human rights law, including but not limited to the United Nations Convention on the Rights to the Child (with attention to General Comment No. 11) and UNDRIP; and (c) adoption and implementation of the Spirit Bear Plan to address all inequities in federally funding public services. The Spirit Bear plan was introduced as an exhibit to the cross examination of Sony Perron (then Associate Deputy Minister at Indigenous Services Canada) on May 9, 2018, and a copy is attached to Dr. Blackstock's affidavit as Exhibit "J".

[89] **The Panel accepts the above and finds this is consistent with the evidence and history in this case**. For example, in the Merit Decision, the Panel wrote:

449] The CRC's monitoring body, the CRC Committee, stressed the importance of culturally appropriate social services for indigenous children (see General Comment No. 11, February 12, 2009 (CRC/C/GC/11) at para. 25).

[2] In 2016, the Tribunal released its *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] and found that this case is about children and how the past and current child welfare practices in First Nations communities on reserves, across Canada, have impacted and continue to impact First Nations children, their families and their communities. The Tribunal found that Canada racially discriminated against First Nations children on reserve and in the Yukon in a systemic way not only by underfunding the FNCFS Program but also in the manner that it designed, managed and controlled it. One of the worst harms found by the Tribunal was the FNCFS Program creating incentives to remove First Nations from their homes, families and communities. Another major harm to First Nations children was that zero cases were approved under Jordan's Principle given the narrow interpretation and restrictive eligibility criteria developed by Canada. The Tribunal found that more than just funding, there is a need to refocus the policy of the program to respect human rights principles and sound social work practice in the best interest of children. The Tribunal ordered Canada to cease the discriminatory practice, take measures to redress and prevent it from reoccurring, and reform the FNCFS Program and the 1965 Agreement in Ontario to reflect the findings in the Merit Decision. The Tribunal determined it would proceed in phases for immediate, mid-term and long-term relief so as to allow immediate change followed by adjustments and finally, **sustainable long-term relief informed by data collection, new studies and best practices as identified by First Nations experts, the specific needs of First Nations communities and of First Nations Agencies, the National Advisory Committee on child and family services reform and the parties**

2022 CHRT 41

[225] This approach is consistent with the clearly expressed intent by the Tribunal to issue short-term, mid-term and long-term relief and for long-term relief to be informed by the short term and mid-term phases.

[226] The Panel previously wrote in 2018 CHRT 4:

> [415] The Panel also recognizes that **in light of its orders, and the fact that data collection will be further improved in the future and the NAC's work will progress, more adjustments will need to be made as the quality of information increases.**

Should you have any questions, please do not hesitate to contact the Registry Office by e-mail at registry.office@chrt-tcdp.gc.ca or by fax at 613-995-3484.

Yours truly,

Judy Dubois
Digitally signed by Judy Dubois
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Date: 2025.09.17 08:30:26-04'00'

Judy Dubois
Registry Officer

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Counsel for Amnesty International

This is **Exhibit II** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
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Date: 2025.10.22 10:25:20-04'00'
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A Commissioner for taking Affidavits

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September 22, 2025

Judy Dubois
Registry Operations
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Dear Ms. Dubois:

RE: ***FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA ET AL V ATTORNEY GENERAL OF CANADA*** **– T#1340/7008**

Further to 2025 CHRT 80, the First Nations Child and Family Caring Society (the "**Caring Society**") provides this update in consultation with the Assembly of First Nations (the **"AFN"**).

In 2025 CHRT 80, the Panel directed the AFN and the Caring Society to consult with "the National Children's Chiefs Commission (the "**NCCC**"), First Nations Chiefs, and other experts, including First Nations and First Nations organizations outside Ontario, as well as those that have filed interested party motions, to develop an evidence-based, comprehensive National FNCFS long-term reform plan and requested remedies outside Ontario" (para. 120). Extensive work is being done to ensure that the timelines as ordered by the Tribunal are met and that consultation proceeds in a fulsome and transparent manner.

Response to Canada's August 29, 2025 Correspondence re: NCCC

On August 29, 2025, Canada wrote to the Panel regarding the 2025 CHRT 80 ruling and advised that it had met with the NCCC. The NCCC has written to the AFN and the Caring Society raising concerns regarding the characterization of those meetings and the information shared in Canada's August 29, 2025 correspondence. The NCCC's letter, dated September 22, 2025, is attached hereto as **Schedule "A"**.

Information Sharing with First Nations Leadership, First Nations Experts and Organizations re: 2025 CHRT 80

The AFN hosted its Annual General Meeting on September 3-5, 2025 in Treaty One (Winnipeg, MB) (the "**AGM**"). The Caring Society, along with members of the NCCC attended. On September 5, 2025, AFN Regional Chief Joanna Bernard, NCCC Chair, Chief Pauline Frost, NCCC Commissioner Chief David Monias (MB) and Cindy Blackstock

provided a plenary information session on the requirements of 2025 CHRT 80 including forthcoming consultations on a national plan and remedies regarding child and family services. Attendees included First Nations Leadership, First Nations child and family service experts and the public.

Also during the AGM, by resolution, the Chiefs-in-Assembly approved the Terms of Reference for the NCCC and called on the AFN to provide funding to ensure that the NCCC can engage in the work contemplated under 2025 CHRT 80. The Chiefs-in-Assembly also passed a resolution calling on Canada to immediately and effectively address its non-compliance and the Jordan's Principle backlog in particular. Once those resolutions are formally released, we will provide them to the Tribunal.

Further information sharing took place at the Loving Justice Conference in Treaty Six (Saskatoon, Saskatchewan) on September 9 & 10, 2025. On September 9, 2025, NCCC Chair Chief Pauline Frost and NCCC Co-Chair Deborah Foxcroft provided an update on the NCCC including their assistance with the national consultations to inform the plan and remedies required in 2025 CHRT 80. There were over 600 delegates at this national conference, focused on jurisdiction in First Nations child and family services including First Nations Leadership, First Nations child and family service experts and legal professionals from across Canada. On September 10, 2025**,** Cindy Blackstock, presented at the conference and included information on 2025 CHRT 80 and the next steps in the development of the national plan and remedies required in 2025 CHRT 80 and met with Elders who were formerly in care.

Development of the Consultation Workplan

In relation to the consultation workplan, the AFN and the Caring Society are working together with the NCCC to leverage their respective expertise and platforms to complete the workplan in accordance with 2025 CHRT 80. The current focus is to finalize the consultation materials, including the development of consultation themes and an information package, setting out the scope of the CHRT complaint, the existing orders as well as the goals and constraints of this process. Our interim timeline is as follows:

a. October 1, 2025: Finalizing consultation materials in French and English
b. October 1, 2025- November 15, 2025: Consultations with First Nations leadership and regional experts as well as prospective interested parties.
c. November 15, 2025: Begin roll up of results of national consultation and provide further information sessions on how the materials will inform the plan and remedies
d. December 20, 2025: AFN and Caring Society file the plan with remedies with the CHRT

We have also reached out directly to all of the proposed intervenors who sought leave to this proceeding, with the goal of meeting with them and their counsel in October 2025.

Our engagement will include consulting with the Assembly of Seven Generations, which is an Indigenous youth-led grass-roots organization focused on the needs of Indigenous youth, including those formally in care. It will be essential for our work to be informed by the experiences of youth in care and youth formally in care.

Further Disclosure Required to Complete the National Plan

In order to ensure that the AFN and the Caring Society can engage in fulsome consultation and build a national remedial plan to end Canada's discrimination and prevent its recurrence, ongoing disclosure is required. On September 22, 2025, in advance of sending this letter, the Caring Society wrote to Canada requesting the following:

- *Federal-Provincial and Federal-Yukon Agreements for the purposes of providing child and family services, including reformed federal-provincial and Federal-Yukon agreements in placed between 2016 and 2025; and*

- *Documents related to the discussions and negotiations with respect to the reform of federal-provincial and Federal-Yukon agreements, including but not limited to audits, annual reports, funding reviews, performance data collection, analysis, reporting, and funding amounts provided under Federal-Provincial and Federal-Yukon agreements including the services and activities for which funding is provided*.

The Caring Society has asked Canada to advise in advance of the case management conference scheduled for September 26, 2025, whether it has any objection to providing this disclosure.

Judicial Review of 2025 CHRT 80

On Friday September 19, 2025, the AFN and the Caring Society were served with an application for judicial review of 2025 CHRT 80. We believe the work directed pursuant to 2025 CHRT 80 should continue, irrespective of Canada's application. The AFN and the Caring Society look forward to providing the Panel with a comprehensive update in October 2025.

Clarification Regarding the Panel's Letter of September 12, 2025 Re: 2025 CHRT 6

In its letter dated September 12, 2025, the Panel noted as follows:

> The Tribunal appreciates the clarification. It had not understood that 9 of the 11 topics were resolved. Given that the consultation orders for the complaints mechanisms were postponed until after the other orders, and considering the confidentiality of the mediation process, the Tribunal does not know which items were discussed and which remain outstanding. The number 9 arose from the July 21, 2025, CMCC discussions. The Tribunal had understood that the discussions had ended and that the outcome was unclear. Canada's confirmation reinforces the concerns expressed by the Tribunal in 2025 CHRT 80. If six months of discussions between the parties did not result in agreement on any of the 11 items, Canada's desire to coordinate discussions on the two outstanding issues does not, in itself, address the Tribunal's concerns. The Tribunal is considering next steps on this point.

The AFN and the Caring Society wish to clarify that 9 of the 11 topics are not resolved. To date there is no agreement on any of the items. The AFN and the Caring Society hope to discuss next steps at the case management conference on September 26, 2025.

Yours Truly,



Sarah Clarke

cc. *Peter Mantas, Gabrielle Cyr and Tina Sun,*
Counsel for the Co-Complainant, Assembly of First Nations

Dayna Anderson, Paul Vickery, Sarah Bird, Kevin Staska and Alicia Dueck-Read,
Counsel for the Attorney General of Canada

Anshumala Juyal and Khizer Pervez,
Counsel for the Canadian Human Rights Commission

Maggie Wente, Benjamin Brookwell, Sinéad Dearman, Jessie Stirling-Voss, Katelyn Johnstone, Ashley Ash, Jenna Rogers
Counsel for the Interested Party, Chiefs of Ontario

Julian Falconer, Meaghan Daniels, and Jordan Tully
Counsel for the Interested Party, Nishnawbe Aski Nation

Justin Safayeni, Stephen Aylward and Taskeen Nawab,
Counsel for the Interested Party, Amnesty International

Schedule “A”

September 18, 2025

To: Caring Society
Assembly of First Nations

Re: ***First Nations Child and Family Caring Society of Canada et al. v. the Attorney General of Canada et al. Tribunal File: T1340/7008*, Canadian Human Rights Tribunal's September 12, 2025 letter**

Dear colleagues,

The National Children's Chiefs Commission (the "Commission") writes in relation to the Canadian Human Rights Tribunal's (the "Tribunal") September 12, 2025, letter, which provides clarification in response to questions Canada submitted to the Tribunal in its August 29, 2025, letter.

Canada's August 29, 2025, letter references two preliminary discussions between officials from Indigenous Services Canada and Commission Chair, Chief Pauline Frost. It is important to clarify two important matters in relation to those discussions.

First, the Commission was surprised that Canada referenced those introductory discussions in its formal submissions to the Tribunal. The Commission maintains that those discussions were *preliminary and introductory* in nature, intended only as an opportunity for Chief Frost and the newly appointed Minister as well as the Assistant Deputy Minister of Indigenous Services Canada (the "ADM"), respectively, to get acquainted. Contrary to Canada's submissions, the Minister and ADM did not meet with the Commission and the purpose of those brief discussions was not to address substantive issues related to the settlement of the complaint before the Tribunal. Rather, those ISC officials spoke solely with Chief Pauline Frost. To demonstrate the perfunctory nature of those discussions, Chief Frost was not accompanied in those meetings by any technicians or legal counsel. To the contrary and quite alarmingly, Canada intentionally excluded the Commission's technical advisors, and Chief Frost's own technicians, from the calls, while including their own technical advisors. In the circumstances, the discussions did not amount to any form of consultation, negotiation or substantive engagement in relation to this matter.

In fact, until the August 11, 2025, call with ADM Kovacevic, Canada had consistently refused or ignored requests to engage with the Commission and, in correspondence with the AFN, expressed "confusion" as to the role of the Commission. Therefore, from Chief Frost's perspective, the meeting was an opportunity to clarify Canada's confusion and to set the stage for future dialogue.

Second, Canada's letter inaccurately characterizes the Commission's position on what is required to settle this matter. **To be clear, the Commission is not seeking to expand the Tribunal's jurisdiction or the scope of the complaint in this matter**, which is limited to (i) the long-term reform of child and family services on-reserve and in the Yukon, and (ii) Jordan's principle. It is, however, worth noting that the First Nations-in-Assembly, who created the Commission and provided us with our mandate, are deeply concerned about the well-being of their children and families wherever they reside. Arbitrary jurisdictional boundaries established by Canada do not alter the responsibility that First Nations Chiefs and matriarchs carry for their children and families. In this regard, the First Nations-in-Assembly have directed the Commission to take this reality into account.

These jurisdictional boundaries remain one of several critical issues the Commission has attempted—without success—to raise with Canada through dialogue. At the same time, the Commission recognizes that the scope of the complaint before the Tribunal in this matter is restricted to children and families living on-reserve and in the Yukon and does not wish to delay the resolution of this matter in any way. Accordingly, the Commission has not, therefore, treated this issue as a precondition to establishing negotiations to resolve Canada's ongoing discrimination in the matter before the Tribunal.

Finally, Canada's letter suggested, without any evidence, that there may be a "the lack of consensus on a national long-term reform approach." On the contrary, the First Nations-in-Assembly have provided strong support for the national approach and have passed resolutions to that effect in October and December 2024 and most recently at the AFN's Annual General Assembly earlier this month. On September 4, 2025, the Chiefs voted *against* a resolution calling on the AFN to advocate for regional agreements, and adopted a resolution allocating $1 million to the Commission to advance the national approach as directed by the Tribunal.

The Commission believes it is important to ensure that the Tribunal, and all parties, have an accurate understanding of the Commission's role, the context of its engagement with Canada, and the direction provided by First Nations leadership. As such, we encourage the Caring Society and/or AFN to share this letter with the Tribunal.

Sincerely,



Chief Pauline Frost
On behalf of the National Children's Chiefs Commission

This is **Exhibit JJ** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
Location: Ottawa, Ontario
Date: 2025.10.22 10:25:41-04'00'
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A Commissioner for taking Affidavits

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Via Email

Our File Number: LEX-500219273

September 25, 2025

Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, Ontario K1A 1J4

Dear Members Marchildon and Lustig:

Re: First Nations Child and Family Caring Society of Canada et al. v. the Attorney General of Canada et al.
Tribunal File: T1340/7008
2025 CHRT 80 - Update

This letter constitutes the Attorney General of Canada's monthly update, as ordered in 2025 CHRT 80. This is also our response to the Panel's request for additional information as set out in the Panel's letter dated September 12, 2025. More specifically, the Panel sought clarification regarding the scope of the *Agreement-in-Principle on Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle* (the AIP) and the parties' positions respecting the scope of long-term reform of the First Nations Child and Family Services Program (FNCFS Program).

1. The Scope of the AIP

As the Panel is aware, the AIP was finalized on December 31, 2021 by Canada, the Assembly of First Nations (AFN), the First Nations Child and Family Caring Society of Canada (Caring Society), Chiefs of Ontario (COO) and Nishnawbe Aski Nation (NAN). A publicly available summary of the AIP was previously filed with the Panel.[1]

On March 13, 2025, the Attorney General of Canada (AGC) filed the Affidavit of Duncan Farthing-Nichol, affirmed March 13, 2025, in response to the Caring Society's consultation motion (the Farthing-Nichol Affidavit). The AGC further referenced the Farthing-Nichol Affidavit in its March 17, 2025 response to the Tribunal respecting long-term FNCFS Program reform.

[1] Exhibit 61 of the Affidavit of Cindy Blackstock, affirmed January 12, 2024.

The scope of the AIP was set out in the Farthing-Nichol Affidavit:

> **i. The AIP**
>
> 32. With the assistance of the late Honourable Murray Sinclair, in fall 2021, Canada, the Caring Society, the AFN, COO and NAN (collectively the **AIP Parties)** negotiated a detailed outline of a reformed FNCFS Program, high-level principles and process for long-term reform of Jordan's Principle, and commitments from Canada towards immediate reforms. These were captured in the AIP. While the AIP itself is confidential and subject to settlement privilege, publicly available information on the AIP, including a publicly available summary, was previously filed with the Tribunal in Exhibit 61 of the January 12, 2024 Affidavit of Cindy Blackstock.
>
> 33. As part of the AIP negotiations, ISC committed to immediate reforms of the FNCFS Program and measures related to Jordan's Principle. Those reforms and measures, which were incorporated into 2022 CHRT 8 on consent, include:
>
> a) FNCFS Program funding for prevention and post-majority support services, which began to flow in the 2022-23 fiscal year;
> b) funding for Jordan's Principle research, including a data assessment and a needs assessment from IFSD;
> c) funding for IFSD's FNCFS Program Phase 3 and non-agency First Nations research;
> d) creation of the EAC; and
> e) consultation with the Parties on mandatory cultural competency training and performance commitments for employees within ISC.
>
> 34. Though not part of 2022 CHRT 8, ISC also began in the 2022-2023 fiscal year to implement the AIP's commitment to fund First Nation Representatives Services across the country, rather than just in Ontario.
>
> 35. In the 2023-2024 fiscal year, outside the FNCFS Program, ISC began distributing to First Nations the $2 billion over five years committed in the AIP and announced in Budget 2022 to support the purchase, construction, and renovation of housing units in their communities. That time-limited funding assists First Nations in addressing housing as a cause of children coming into care and remaining in care.
>
> 36. Regarding Jordan's Principle, the AIP Parties agreed to discuss options for First Nations to take on a larger role in approving and delivering products, services and supports under Jordan's Principle. The AIP Parties also agreed that, following a needs assessment and feedback from First Nations and service providers, they would negotiate towards a long¬ term approach to Jordan's Principle.

> 37. The AIP established the foundation for long-term reform of both the FNCFS Program and Jordan's Principle. Based on this foundation, the AIP Parties engaged in negotiations starting in 2022 towards long-term reform of both Jordan's Principle and the FNCFS Program in accordance with the AIP approach.

The Affidavit of Amber Potts, affirmed March 3, 2025 and filed by the AFN in response to the consultation motion, further states that the AIP did *not* include:

- funding for children residing off-reserve;
- the indefinite continuation of the actuals process for a variety of the funding streams beyond the recommendations of the Institute for Fiscal Studies and Democracy; or
- the retention of oversight of the CHRT with respect to the implementation of any Final Agreement.[2]

2. The Co-Complainants' Position

In Canada's factum in response to the Caring Society's consultation motion, Canada took the position that there is no practical utility in additional consultations or negotiations with the co-complaints.[3] We confirm that this position was based on the co-complainants' and NCCC's significant expansion of relief sought beyond the scope of the complaint, as well as the disappointing results of Canada's significant, repeated efforts at resolving this matter.

We have clearly and consistently stated Canada's position that ideally the complaint should be resolved through negotiation and agreement of all parties. However, since the rejection of the Draft Final Agreement by the First Nations-in-Assembly, the co-complainants have sought increasingly expansive relief that is well outside the scope of the AIP, and more importantly beyond the scope of the complaint and this Panel's previous findings and orders.

Canada's position on this point is explained and supported by the evidence and submissions filed in response to the Caring Society's consultation motion.[4] The evidence can be summarized as follows:

- On October 18, 2024, the Chiefs-in-Assembly adopted Resolution 60/2024 and Resolution 61/2024, which:

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[2] Affidavit of Amber Potts, affirmed March 3, 2025 [**Potts Affidavit**] at para 34.
[3] Factum of the Attorney General of Canada, dated May 15, 2025 [**Canada's Factum**].
[4] Potts Affidavit, at paras 33–38; Affidavit of Duncan Farthing-Nichol, affirmed March 13, 2025 [**Farthing-Nichol Affidavit**]; Canada's Factum cited to Resolution 61/2024, art 1(i), 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)*, 2020 CHRT 36 which indicates that for the purposes of Jordan's Principle, a First Nations child includes children off-reserve, *contra 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 para 280; Resolution, 61/2024, art 1(o). The Caring Society filed a copy of these resolutions with the Tribunal on January 3, 2025. They were subsequently filed in evidence as Exhibit E to the Potts Affidavit.

- rejected the Draft Final Agreement and called on Canada to renegotiate through a public negotiation process that would include the Caring Society and the National Children's Chiefs Commission (NCCC);[5]

- directed the NCCC "to renegotiate the draft [Final Settlement Agreement] FSA" in line with a list of directions[6] which include:

    - ensuring funding is made available for children residing off-reserve;[7]
    - the indefinite continuation of the actuals process for a variety of the funding streams, beyond the recommendations of the Institute for Fiscal Studies and Democracy; and
    - the retention of the Tribunal's oversight with respect to the implementation of any new final agreement.[8]

- On December 5, 2024 the First Nations-in-Assembly adopted Resolution 90/2024, stating in part that the First Nations-in-Assembly confirm that the $47.8 billion committed through the rejected Draft Final Agreement is only the floor for negotiations on long-term reform of the FNCFS Program.[9]

- The Caring Society, the AFN and the NCCC all subsequently wrote to Canada, expressly seeking that Canada obtain a new negotiation mandate to publicly (without negotiation privilege) negotiate towards long-term reform on the terms approved by the First Nations-in-Assembly.[10]

- On February 21, 2025, the NCCC provided Canada with its list of ten "outstanding issues with the LTR [long-term FNCFS Program reform] Agreement which must be addressed before the LTR Agreement is finalized".[11] The list of outstanding issues includes proposed expansions to the Draft Final Agreement, including providing FNCFS Program

[5] Farthing-Nichol Affidavit, para 62.
[6] Potts Affidavit, para 35 and Exhibit E.
[7] One of those directions was to "[e]nsure that the definition of 'First Nations child' as defined in 2020 CHRT 36 is considered and incorporated into the FSA.": Potts Affidavit, Exhibit E; Resolution 61/2024, art 1(i), 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)*, 2020 CHRT 36 which indicates that for the purposes of Jordan's Principle, a First Nations child includes children off-reserve; see also statements of Dr. Cindy Blackstock on December 4, 2024, at the Assembly of First Nations Special Chiefs Assembly, wherein she publicly indicated that the intent behind defining 'First Nations child' according to 2020 CHRT 36 was to expand the FNCFS Program to children off-reserve: Dr. Cindy Blackstock delivered at the Assembly of First Nations Special Chiefs Assembly (December 4, 2024), online: <cpac.ca/public-record/episode/assembly-of-first-nations-special-chiefs-assembly--december-4-2024?id=35640966-d27b-414c-bfc4-4bc8384a4bd8> at 7:32:00.
[8] Farthing-Nichol Affidavit, para 62; Potts Affidavit, para 34.
[9] Farthing-Nichol Affidavit, para 63; Quintana-James Affidavit, Exhibit D.
[10] Farthing-Nichol Affidavit, para 64 and Exhibit F; Potts Affidavit, Exhibit F; Quintana-James Affidavit, Exhibits E, F and H.
[11] Farthing-Nichol Affidavit, para 64 and Exhibit F [our emphasis].

services to First Nations children and families off-reserve and lengthy retention of CHRT jurisdiction.[12]

Since the filing of the evidence noted above, the co-complainants and the NCCC have further expanded the relief sought beyond the scope of the complaint. For example, on August 21, 2025, the NCCC wrote to Canada to affirm their "unwavering commitment to ensure the fair and equitable inclusion of the Northwest Territories (NWT) in the reform of First Nations child and family services…" (enclosed). The funding of child and family services in the Northwest Territories, where the FNCFS Program does not operate, has always been outside the scope of the complaint.

3. Canada's Position

For clarity, Canada has not yet determined the path forward with respect to long-term FNCFS Program reform outside Ontario, following the rejection of the Draft Final Agreement and the expansive new proposals made by the co-complainants and NCCC.

Canada understands and shares the Tribunal's concern on whether there is a lack of consensus amongst First Nations on a national long-term reform approach. Following the rejection of the Draft Final Agreement by the First Nations in Assembly, and the subsequent negotiation of the Ontario Final Agreement, several First Nations have communicated with the Minister of Indigenous Services and various ISC officials to indicate their interest in negotiating their own regional agreements.

We hope this information is of assistance.

Sincerely,

Dayna Anderson
Senior General Counsel

CC:

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[12] Farthing-Nichol Affidavit, para 64(i) and Exhibit F.

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Sent: Wednesday, August 27, 2025 8:51 AM
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Cc: pauline.frost@vgfn.ca; kakfwistephen; Helen Henderson; debfoxcroft@gmail.com; Kelsey.jacko@clfns.com; desmondb@louisbulltribe.ca; erica.beaudin@cowessessfn.com; ivan.sawan@loonriver.ab.ca; crystal.okemow@luckymancree.com; davidmonias@gmail.com; angela.levasseur@ncncree.com; Heidi.Cook@misipawistik.com; tfnchief@atfn.ca; fortfolly@fortfolly.ca; ross.perley@neqotkuk.ca; michelleglasgow@sipeknekatik.ca; frontdesk@acadiaband.ca; kcoade@mcpei.ca; j.brake@qalipu.ca; bbenoit@mfngov.ca; corinne.dyment@lennoxisland.com
Subject: MIN-A32750 - Fair and equitable inclusion of the NWT in FNCFS and Jordan's Principle reform
Attachments: 2025 Aug 21 Inclusion of NWT.pdf

Categories:

COURRIEL EXTERNE - FAITES PREUVE DE PRUDENCE / EXTERNAL EMAIL - USE CAUTION

Dear Minister Gull-Masty,

Please find attached a letter from Chief Pauline Frost, Chair of the National Children's Chiefs Commission.

Regards,
Tracy

Tracy Lavin
Policy, Research & Engagement Manager
Our Children Our Way Secretariat
Mobile (778) 835-9047
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Confidentiality Notice:
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If this message contains personal information about a child or third party, any unauthorized disclosure may also violate privacy protections under the *Freedom of Information and Protection of Privacy Act* (Part 3) and sections 70 and 74 of the *Child, Family and Community Service Act*.

MIN-A32750

If you are not the intended recipient, please do not open, copy, or distribute this message. Delete it immediately and notify the sender of the error.

August 21, 2025

By email

The Honourable Mandy Gull-Masty
Minister of Indigenous Services Canada
10 rue Wellington
Gatineau, QC K1A 0H4

Re: Fair and equitable inclusion of the NWT in FNCFS and Jordan's Principle reform

Dear Minister Gull-Masty,

On behalf of the National Children's Chiefs Committee (NCCC), I am writing to affirm our unwavering commitment to ensuring the fair and equitable inclusion of the Northwest Territories (NWT) in the reform of First Nations child and family services and Jordan's Principle. This commitment was clearly articulated in Assembly of First Nations (AFN) Resolution No. 87/2024, which received overwhelming support—over 98%—from the AFN Chiefs in Assembly.

It is imperative that Canada support our efforts to improve the lives and outcomes of First Nation children and families living on reserve, in the Yukon and in the Northwest Territories by addressing the longstanding and systemic inequities in First Nations child and family services and the implementation of Jordan's Principle.

In our collective pursuit of justice and equitable treatment, we wish to emphasize the critical importance of directing substantively equitable resources to First Nations and their communities. We believe that provincial and territorial governments should not act as intermediaries, controlling the allocation of funds according to their own priorities. Instead, funding must flow directly to First Nations, ensuring that our communities have the necessary resources to address their unique needs and priorities effectively.

The NCCC urges you and your department to take swift action to ensure that the principles outlined in AFN Resolution No. 87/2024 inform your decisions moving forward. Together, we can work toward meaningful reconciliation and reforms that will ultimately transform the lives of First Nations children and families across Canada.

The NWT region stands firmly supported by the NCCC and the AFN Chiefs in their efforts to achieve full and equitable inclusion in all aspects of FNCFS and Jordan's Principle reform.

Thank you for your attention to this urgent matter. We look forward to your continued collaboration as we strive for a brighter future for all First Nations children.

Sincerely,



Chief Pauline Frost
Chair, National Children's Chiefs Committee

This is **Exhibit KK** to the Affidavit of **Duncan Farthing-Nichol**, affirmed remotely before me on October 22, 2025.

Adatia, Shireen

Digitally signed by Adatia, Shireen
DN: C=CA, O=GC, OU=Jus-Jus, CN="Adatia, Shireen"
Reason: I attest to the accuracy and integrity of this document
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A Commissioner for taking Affidavits

SHIREEN SULTAN ADATIA
Licensed Paralegal
LSO No. 14203P

Canadian Human Rights Tribunal
Tribunal canadien des droits de la personne
Ottawa, Canada, K1A 1J4

October 3, 2025

By e-mail

(See Distribution List)

Dear Parties,

Re: First Nations Child and Family Caring Society et al. v. Attorney General of Canada Tribunal File: T1340/7008

The Panel wishes to advise the parties of the following:

Dear Parties,

In advance of the upcoming case management conference, the Tribunal conveys the following comments and reiteration of the scope of the matter, with a view to advancing these proceedings in a timely, orderly and constructive manner.

Scope of the Matter Before the Tribunal

The Tribunal is of the view that the parties must have clarity on the scope of the case to be resolved so as to properly direct their efforts.

The complaint and record before the Tribunal that led to the Merit Decision and subsequent rulings did not include the Northwest Territories or First Nations children living off-reserve. This was not the Tribunal's choice; it was a choice made by the co-complainants, the Caring Society and the AFN, when they filed their complaint and reaffirmed it over the years. Further, the sole exception with respect to off-reserve children was their inclusion under Jordan's Principle within the parameters explained in the Tribunal's rulings and orders.

The resolutions of the Chiefs-in-Assembly filed in the record for the hearing on the merits and subsequent rulings did not extend to off-reserve children (outside of Jordan's Principle) or to the Northwest Territories.

The Tribunal further clarified the scope of the matter in 2019 CHRT 39.

The Tribunal has the utmost respect for the Chiefs and the National Children's Chiefs Commission and for the objective that off-reserve First Nations children and First Nations children in the Northwest Territories live free from discrimination (the Tribunal is not making a finding here). While the Tribunal respects any resolution of the Chiefs to now include such children, such resolutions cannot confer additional jurisdiction upon the Tribunal—particularly when raised nearly a decade after the decision on the merits.

Resolutions of the Chiefs-in-Assembly

Insofar as the Chiefs-in-Assembly resolutions may be supporting motions for interested party status before the Tribunal, this development is proving to be problematic. While the Chiefs-in-Assembly have every right to pursue any legal recourse they see fit, encouraging additional First Nations to now participate in these proceedings does not assist the Tribunal in fulfilling its mandate. On the contrary, it risks undermining the work of all parties within the dialogic process established before the Tribunal. On numerous occasions, the Tribunal has stated that it cannot hear directly from every First Nation community or region, and has instead relied upon the AFN to assist in this respect at the National level. The Tribunal has always recognized that the AFN is not itself a rights holder and that funding and services must be tailored to the unique circumstances of each First Nation.

The Tribunal reiterates that it does not have jurisdiction to impose obligations on First Nations rights holders as part of these proceedings.

The Tribunal looks forward in discussing the matter with the parties at the next CMCC.

Should you have any questions, please do not hesitate to contact the Registry Office by e-mail at registry.office@chrt-tcdp.gc.ca or by fax at 613-995-3484.

Yours truly,

Judy Dubois
Digitally signed by Judy Dubois
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Judy Dubois
Registry Officer

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Julian Falconer, Asha James, Shelby Percival and Meaghan Daniel
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