

A COMPARISON OF Loving Justice and Canada's Plan to Inform First Nations Leadership Decision-Making



April 10, 2026

This information note is designed to help First Nations leadership assess Loving Justice and Canada's Plan to determine which approach best:

- Ends discrimination,
- Protects children across generations,
- Addresses regional distinctions,
- Ensures real enforcement,
- Respects First Nations decision-making and rights, and
- Provides stable funding aligned with human rights.

For each element, the guide highlights **what leadership should look for, what Loving Justice and Canada's Plan provide, and the risks and implications for First Nations leaders to consider.**

1) Background

In August 2025, the Canadian Human Rights Tribunal (2025 CHRT 80) ordered the parties to develop plans to permanently end Canada's discrimination in First Nations child and family services. Canada filed its proposed plan, and the Caring Society – supported by the National Children's Chiefs Commission and Assembly of First Nations – filed a First Nations-led plan informed by more than 100 submissions from First Nations and subject-matter experts. Both plans are currently before the Tribunal for consideration. **The Tribunal has not approved either plan and a timetable for the legal proceedings is pending.**

2) Ending Canada's Discrimination

a) Leadership Question

Does this approach actually end discrimination – or does it risk allowing discrimination to continue in new forms?

b) Loving Justice – What Leadership Should Note

- Grounded directly in **Canadian Human Rights Tribunal findings**, not discretionary policy.
- Targets the **structural causes** of discrimination (funding incentives, system design).
- Uses **rights-based standards as the minimum**, not optional goals.
- Focuses on **preventing harm before children are affected**, rather than fixing damage afterward.

c) Canada’s Plan – Key Risks for Leadership

- Relies on **policy adjustments**, not structural change.
- Allows Canada to **define compliance internally**, increasing the risk of relabelled discrimination.
- Weak connection to **independent human rights enforcement**.
- Focuses on administrative reform rather than removing discriminatory incentives.

d) Risks and Implications

The Loving Justice plan reduces the risk of future discrimination and limits Canada’s ability to redefine compliance unilaterally. Canada’s Plan does not include effective external constraints on Canada’s unilateral decision, leaving the risk of further discrimination under this framework.

3) Safeguarding Children for Multiple Generations

a) Leadership Question

Will this approach protect children not just today, but for generations to come?

b) Loving Justice – What Leadership Should Note

- Designed to protect **current and future generations** of First Nations children.
- Invests in **upstream supports** that strengthen families before crises occur.
- Includes **long-term accountability mechanisms** that outlast political cycles.
- Treats children’s wellbeing as a **continuing obligation**, not a temporary program.

c) Canada’s Plan – Key Risks for Leadership

- **Time-limited and government-defined**, vulnerable to shifting priorities.
- Emphasizes **system management** rather than long-term child outcomes.
- Lacks safeguards if funding or political will changes.
- Does not guarantee protection against renewed discrimination over time.

d) Risks and Implications

The Loving Justice plan creates durable protections that cannot be easily undone by future governments. Under Canada’s plan, children’s protections may weaken as governments, budgets, or policies change.

4) Canada's Regional Agreements vs. Loving Justice's Regional Variations

a) Leadership Question

How are the distinct needs and circumstances within regions addressed in Loving Justice and Canada's Plan?

b) Loving Justice – What Leadership Should Note

- Creates space for **regional variations built on binding national minimum human rights standards** required to end discrimination.
- **Mandatory where needed** to address geography, remoteness, population size, language, culture, existing capacity, or service delivery realities.
- **First Nations and their experts take the lead** in identifying and designing regional variations to meet their needs.

c) Canada's Plan – Key Risks for Leadership

- Regional agreements are **limited to the implementation of Canada's Plan**.
- Funding formulas, program elements, eligibility, and accountability structures are **fully determined by Canada and will not be open to regional negotiations**.
- If no agreement is reached, Canada intends to unilaterally implement its National Framework effective April 1, 2027.

d) Risks and Implications

Regional variation under Loving Justice is a legal accommodation mechanism, not a discretionary negotiation. It exists to ensure reforms work for children in every region, while preserving enforceability, permanence, and independence from federal policy shifts. Under Canada's Plan, regional agreements function as policy implementation instruments without any rights-based guarantees. Regional flexibility exists only to the extent Canada permits, and protections depend on continued federal compliance and renewal of agreements.

5) Enforcement

a) Leadership Question

If things go wrong, who has the power to fix them – and how fast?

b) Loving Justice – What Leadership Should Note

- Anchored in **enforceable legal standards and human rights obligations**.
- Includes **independent oversight** with consequences if discrimination reemerges.
- Enforcement **does not depend on Canada's goodwill or discretion**.
- Prioritizes **real-world outcomes for children**, not just reporting.

c) Canada's Plan – Key Risks for Leadership

- Relies primarily on **self-monitoring by government**.
- Enforcement mechanisms are **weak or indirect**.
- No independent authority with clear power to compel change.
- Risk that problems are identified but **not fixed in time to protect children**.

d) Risks and Implications

Under the Loving Justice plan, there are clear tools to compel correction when children are at risk. Canada's Plan lacks independent enforcement: as a result, accountability may fail when it matters most.

6) First Nations Decision-Making and Rights

a) Leadership Question

Are First Nations truly leading – or mainly implementing someone else's plan?

b) Loving Justice – What Leadership Should Note

- **First Nations lead** the design, implementation, and evaluation.
- Respects **inherent and human rights**, including self-determination.
- Decision-making authority is **substantive and binding**, not advisory.
- Positions First Nations as **rights-holders**, not program recipients.

c) Canada's Plan – Key Risks for Leadership

- First Nations are left to implement a **federally designed framework**.
- Core decision-making authority remains with Canada.
- Participation is often **consultative or conditional**.
- Does not recognize First Nations as equal decision-makers.

d) Risks and Implications

The Loving Justice approach strengthens governance, authority, and long term self determination. Under Canada's plan, authority remains centralized with Canada, limiting true self-determination.

7) Funding Stability, Control, and Human Rights Alignment

a) Leadership Question

Does the funding structure permanently end discriminatory incentives and protect services regardless of political change?

b) Loving Justice – What Leadership Should Note

- Funding flows from **human rights obligations**, not discretionary programs.
- Funding safety valves are built into the system to adapt to specific needs.
- Designed to eliminate **structural underfunding incentives** identified by the Tribunal.
- Funding is **ongoing and enforceable**, aligned with longterm child wellbeing.
- Reduces Canada’s ability to delay, withhold, or redefine commitments.

c) Leadership Implication

Funding supports rights and outcomes, not federal leverage or short-term compliance.

d) Canada’s Plan – Key Risks for Leadership

- Funding is **time-limited and policy-based**, not rights-anchored.
- Canada largely retains **control over release, conditions, and continuation**.
- Exposes First Nations to funding pauses, redesigns, or claw-backs when priorities shift.
- Risk that services expand and then collapse when agreements or political will change.

e) Leadership Implication

Loving Justice establishes a funding approach that supports human rights and wellness outcomes. Under Canada’s Plan, Canada maintains control of the funding tap.

8) Summing Up

a) Loving Justice

- Ends discrimination at its roots,
- Protects children across generations,
- Provides real enforcement, and
- Places First Nations leadership at the centre of decision-making.

b) Canada’s Plan

- Manages the system Canada controls,
- Limits First Nations Leadership to implementing Canada’s Plan
- Offers limited enforcement,
- Leaves key decisions with Canada, and
- Risks allowing discrimination to continue over time