

**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**

---

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. A copy of the Consultation Protocol is attached hereto as **Exhibit “A”**.

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 “B”**.

4. On September 12, 2024, Ms. Clarke wrote to counsel for Canada requesting a consultation meeting pursuant to the Consultation Protocol regarding the Draft FSA. A copy of this correspondence is attached hereto as **Exhibit “C”**.

5. On September 19, 2024, Ms. Clarke wrote to counsel for the Parties and the Interested Parties seeking to schedule a meeting of the CCCW. A copy of this correspondence is attached hereto as **Exhibit “D”**.

6. 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 and the proposed amendments are attached hereto as **Exhibit “E”**.

7. On October 2, 2024, Ms. Clarke received a letter from Maggie Wenthe, counsel for Chiefs of Ontario. A copy of this letter is attached hereto as **Exhibit “F”**.

8. 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 email exchange between Mr. Taylor and Mr. Rugar is attached hereto **Exhibit "G"**.

9. I am advised by Ms. Clarke and do verily 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 are attached hereto as **Exhibit "H"**.

10. 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 "I"**.

11. 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 "J"**. The Caring Society received no response from Canada to this correspondence.

12. 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 "K"**.

13. 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 "L"**.

14. 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 "M"**.

15. On January 10, 2025, Mr. Vickery responded to Ms. Clarke’s letter. A copy of Mr. Vickery’s responding letter is attached hereto as **Exhibit “N”**.

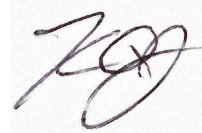
16. On January 14, 2025, Mr. Vickery sent further correspondence to Ms. Clarke. A copy of Mr. Vickery’s January 14, 2025, letter is attached hereto as **Exhibit “O”**.

**AFFIRMED** before me at the City of Toronto, )  
in the Province of Ontario, January 14, 2025 )



---

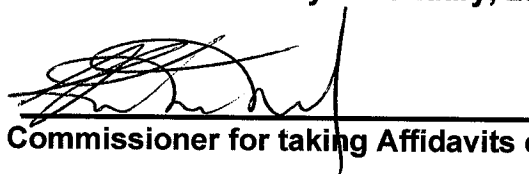
Commissioner for taking Affidavits  
Robin McLeod  
LSO #91164M



---

**KATHERINE  
QUINTANA-JAMES**

**This is Exhibit "A" to the affidavit of  
Katherine Quintana-James affirmed  
before me this 14th day of January, 2025**



A handwritten signature in black ink, appearing to read "Robin McLeod", is written over a solid horizontal line.

**A Commissioner for taking Affidavits etc.**

Robin McLeod  
LSO#91164M

**CANADIAN HUMAN RIGHTS TRIBUNAL**

BETWEEN:

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA**

- and -

**ASSEMBLY OF FIRST NATIONS**

Complainants

- and -

**CANADIAN HUMAN RIGHTS COMMISSION**

Commission

- and -

**ATTORNEY GENERAL OF CANADA**

**(Representing the Minister of Indigenous and Northern Affairs Canada)**

Respondent

- and -

**CHIEFS OF ONTARIO**

- and -

**NISHNAWBE ASKI NATION**

Interested Parties

**CONSULTATION PROTOCOL**

**(ENTERED INTO PURSUANT TO AN ORDER OF THE TRIBUNAL)**

**WHEREAS**, the First Nations Child and Family Caring Society of Canada (“Caring Society”), a non-profit organization committed to research, policy development, public education, and public engagement to support the well-being of First Nations children, youth and families, and the agencies that work with them, is a co-complainant in this matter;

**WHEREAS**, the Assembly of First Nation (“AFN”), a national advocacy organization that works on behalf of over 600 First Nations on issues such as Treaty and Aboriginal rights, education, housing, health, child welfare and social development, is a co-complainant in this matter;

**WHEREAS**, the Canadian Human Rights Commission (“Commission”), in appearing before the Tribunal at a hearing, represents the public interest pursuant to section 51 of the *Canadian Human Rights Act* (“CHRA”);

**WHEREAS**, the Attorney General of Canada, representing the departments responsible for meeting the Government of Canada's provision of services to Indigenous peoples, is the Respondent in this matter ("Canada");

**WHEREAS**, the Chiefs of Ontario ("COO"), is an advocacy forum and secretariat for collective decision-making, action, and advocacy for the 133 First Nations communities located in the Province of Ontario, which was granted interested party status to speak to the particularities of on-reserve child welfare services in Ontario;

**WHEREAS**, the Nishnawbe Aski Nation ("NAN"), is a political territorial organization that represents the socioeconomic and political interests of 49 First Nation communities located in Northern Ontario, which was granted interested party status in these proceedings, at the remedies stage to provide the perspective of delivering child and family services to remote and northern communities in Ontario;

**WHEREAS**, the Caring Society and the AFN (the "Complainants") commenced a federal human rights complaint under section 5 of the *CHRA* in 2007, joined by COO and Amnesty International in 2009 and by NAN in 2016 (the "Interested Parties"), as well as the Commission, alleging past and ongoing discrimination by Canada against First Nations children and their families by providing, amongst other things, inadequate funding to First Nations Child and Family Services Agencies ("FNCFS Agencies") for the delivery of child protection services on-reserve and in the Yukon, as well as by failing to implement Jordan's Principle;

**WHEREAS**, the Canadian Human Rights Tribunal ("Tribunal") issued its Decision, 2016 CHRT 2, on January 26, 2016, ("*Decision*") substantiating the Complaint, that made extensive findings of discrimination against Canada with respect to its administration of and delivery of services under the First Nations Child and Family Services Program ("FNCFS Program") and 1965 federal-provincial *Memorandum of Agreement Respecting Welfare Programs for Indians* ("*1965 Agreement*"), and amongst other things, ordered Canada to cease its discriminatory practices and reform the FNCFS Program and *1965 Agreement* to reflect its findings in the *Decision*; it also ordered Canada to cease applying its narrow definition of Jordan's Principle and take measures to immediately implement the full meaning and scope of Jordan's Principle;

**WHEREAS**, the Tribunal retained jurisdiction to ensure the implementation of its Decision, and subsequently directed that implementation be done in three steps, namely: (1) immediate relief; (2) mid to long term relief; and (3) compensation, and has reserved its ruling regarding the Complainants' motion for an award against Canada in relation to the costs of its obstruction of the Tribunal's process in relation to document disclosure and production;

**WHEREAS**, the Tribunal has thus far been focussed on immediate relief and has issued five compliance Rulings, including, 2016 CHRT 10, dated April 26, 2016 (immediate relief orders); 2016 CHRT 16, dated September 14, 2016 (further immediate relief orders); 2017 CHRT 7, March

29, 2017 (immediate relief orders specific to NAN motions); 2017 CHRT 14, dated May 26, 2017 (immediate relief and remedial orders regarding Jordan's Principle) (collectively "compliance Rulings"); and 2018 CHRT 4, dated February 1, 2018 (the "February 1<sup>st</sup> Ruling");

**WHEREAS** the February 1<sup>st</sup> Ruling included the following Order in paragraph 431:

[431] Canada is ordered, under section 53(2)(a) of the *CHRA*, 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. Therefore, INAC is ordered to enter into a protocol on consultations with the AFN, the Caring Society, the COO, the NAN and the Commission 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 *Decision* by **February 15, 2018**. The parties will report to the Tribunal on the progress of implementation of this order and any issues that arise by **February 8, 2018**.

**WHEREAS** the orders made in the February 1<sup>st</sup> Ruling are attached as Schedule 1 to this Consultation Protocol;

**WHEREAS** Canada has endorsed the *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP") and has repeatedly confirmed that Canada is a full supporter of UNDRIP, without qualification;

**WHEREAS** the *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP"), applies to this Protocol, including but not limited to the following Articles: Articles 3 and 4, which declare that Indigenous peoples have the right of self-determination and self-government; Articles 2, 9, 15, 21 and 22, which provide that Indigenous peoples are to be treated equally and free from discrimination; Article 7(2), which provides that "Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group"; Article 8 (1), which says that "Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture"; Article 19, which provides that "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 Article 24(1), which provides that "Indigenous . . . individuals also have the right to access, without any discrimination, to all social and health services.";

**WHEREAS** Canada has committed to implementing the Calls to Action of the Truth and Reconciliation Commission (TRC), including Nos. 1 – 5 on child welfare, particularly No. 1 ii, which calls on the federal government to reduce the number of Aboriginal children in care by "Providing adequate resources to enable Aboriginal communities and child welfare organizations to keep



Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments ..." and No. 3 , which calls "upon all levels of government to fully implement Jordan's Principle";

**WHEREAS**, Canada has committed to Reconciliation with Indigenous Peoples and to renew the Nation-to-Nation relationship with First Nations, and to develop policies in partnership with First Nations based on the recognition of rights, respect, cooperation and partnerships;

**AND WHEREAS**, in accordance with the Order in paragraph 431 of the February 1<sup>st</sup> Ruling, Canada, the Complainants, the Interested Parties, and the Commission ("the Parties") have worked in partnership to develop this Consultation Protocol;

**THEREFORE**, the Parties agree as follows:

**Purpose and Objectives**

1. The purpose of this Consultation Protocol is to fulfill the Tribunal's Order in paragraph 431 of the February 1<sup>st</sup> Ruling, to develop a protocol to govern consultations that Canada has been ordered to engage in direct consultation "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 . . . 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 *Decision*".
2. The objectives of the parties in pursuing the consultations contemplated by this Protocol are as follows:
  - a. To promote mutual understanding, meaningful communication, transparency and cooperation amongst the parties, and to facilitate Canada's consultation with First Nations, FNCFS Agencies and other rights holders and stakeholders in a manner that is consistent with the honour of the Crown, while at the same time ensuring that the immediate and mid and long term relief measures are developed and implemented in an effective and cooperative manner.
  - b. To ensure that the knowledge, skills, interests and expertise of the respective complainants, interested parties, and the Commission, and their employees, officers and consultants are combined and focused on the project of eliminating Canada's systemic discrimination in the delivery of child and family service on reserves and in the Yukon, which includes as a first step analyzing the needs assessments completed by FNCFS Agencies, and doing a cost-analysis of the real needs of FNCFS Agencies.
  - c. 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.

- d. To address what the Tribunal in paragraph 47 of the February 1st Ruling refers to as the "mass removal of children". As the Tribunal states: "There is urgency to act and prioritize the elimination of the removal of children from their families and communities".
- e. To ensure Canada eliminates those aspects of its funding formulas/models that fully fund apprehensions but underfund prevention, thereby creating a perverse incentive, which results in unnecessary apprehension of First Nations children from their families and communities.
- f. To ensure Canada develops an alternative system for funding child and family services, including prevention, intake and investigation, building repairs, legal fees, the child service purchase amount and small agency costs for First Nations children and families on-reserve and in the Yukon, based on actual needs which operates on the same basis as Canada's current funding practices for funding child welfare maintenance costs, that is, by fully reimbursing actual costs for these services, as determined by FNCFS Agencies to be in the best interests of the child and to develop and implement the methodology including an accountability framework in consultation with the Complainants, Commission and Interested Parties.
- g. To promote substantive equality for First Nations children, families and communities on reserves and in the Yukon in the delivery of child and family services, particularly in light of their higher level of needs because of historical disadvantages suffered by First Nations families, children and communities as a result of the legacy of colonialism and Indian Residential Schools.
- h. To eradicate Canada's systemic discrimination in the provision of child and family services for First Nations children, families and communities on reserves and in the Yukon, and to prevent it from reoccurring by addressing and changing systemic behaviors and patterns that led to the systemic discrimination, which was substantiated by the Tribunal.
- i. To ensure that Canada's administration of the FNCFS Program and 1965 Agreement is delivered in a culturally appropriate manner, and in line with the diversity and unique cultural, linguistic, historical and geographical needs and circumstances of First Nations across the country, particularly in northern and remote communities.

**Principles and Parameters**

3. The consultation contemplated by this Consultation Protocol shall be based on the following principles and parameters, which are acknowledged and accepted by all parties:
- a. As the Panel reiterated at paragraph 180 of the February 1<sup>st</sup> Ruling, "... the best interest of the child is the primary concern in decisions that affect children. . . ."
  - b. However, the Panel also noted "that removing children from their families as a first resort rather than a last resort was not in line with the best interests of the child. **This is an important finding that was meant to inform reform and immediate relief (see the *Decision at paras 341-349*).**"
  - c. The consultation must respect First Nations' right of to self-determination, reconciliation, and the renewal of the nation-to-nation relationship with the Crown. In this regard, stopping the removal of children from their Nations and the unnecessary removal from their families is essential for First Nation self-determination and for rebuilding self-sustaining communities.
  - d. This Consultation Protocol will be rooted in the honour of the Crown and upholding and promoting the rights of Indigenous children, applying all relevant provisions and principles from the *CHRA*, the *Convention on the Rights of the Child (including UNCRC General Comment 11)*, the *United Nations Declaration for the Rights of Indigenous Peoples*; and other applicable rights frameworks.
  - e. Canada is obligated and has sufficient authority under Canadian law to effect the changes to its child and family services policies and programs, which were ordered by the Tribunal in its Decision and Rulings, and need not wait for the provinces to act.
  - f. The consultation provided for in this Protocol is intended to complement and support, but shall not be a substitute for, the direct relationship between Canada and First Nations at the regional and community levels.
  - g. Canada acknowledges that it also has a relationship with FNCFS Agencies, and that effective implementation will require Canada to continue to work directly with them, to negotiate funding agreements and terms that reflect actual needs of First Nations children, youth and families.
  - h. As the Tribunal noted at paragraph 67 of the February 1<sup>st</sup> Ruling, "Nations are distinct and have distinct needs. A one-size fits all approach is not helpful and was found to be discriminatory in the *Decision*. This is why the Panel has previously ordered [Canada] to respond to specific needs while reforming and consulting with partners, Indigenous communities, Indigenous governments, FNCFS Agencies, provinces and

parties in this case.”

- i. At the same time, the Tribunal said at paragraph 55 of the February 1<sup>st</sup> Ruling: “... while Canada advances that it needs to consult with all First Nations’ communities, which in our view remains paramount for long term reform, the Panel does not think consultation prevents Canada from implementing immediate relief.”
- j. The Tribunal has indicated at paragraph 236 of the February 1<sup>st</sup> Ruling that the Orders in that Ruling and the consultations provided for herein, are subject to the following additional parameters, that is, the orders apply “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.”

#### **Subject Areas of Consultation and Collaboration**

4. The Tribunal has directed that the implementation of its Decision be done in three steps, namely: (1) immediate relief, (2) mid to long term relief and (3) compensation. Canada commits to consult in good faith with the Complainants, the Commission and Interested Parties on all the three steps, to the extent of their respective interests and mandates.
5. The scope and processes for the consultation will vary for the three steps. As a general rule, and as indicated by the Panel, at paragraph 177 of the February 1<sup>st</sup> Ruling: “It is inevitable, consultations need to be meaningful and broad, including rights holders, different Indigenous governance, Indigenous youth, the parties and experts. However, the parties and the Tribunal had valuable information to assist the immediate relief aspect which was meant to provide remedy quickly. This is why the Panel distinguished between immediate and long term relief.”

### Consultations on Immediate Relief

6. As directed by the Tribunal, given the urgency of the immediate relief measures, the Parties shall focus consultations, as a priority, on implementing immediate relief measures identified in the Decision and in the Rulings, particularly those in the February 1<sup>st</sup> Ruling, attached as Schedule 1.
7. Canada agrees to engage in meaningful and good faith consultations with the other Parties respecting all the immediate relief orders issued by the Tribunal in the Decision and all of the Rulings, including the Orders in Schedule 1, and to report to the Tribunal according to the deadlines provided in the said Orders. Should the parties propose and the Tribunal agree to modifications to its Orders, this Consultation Protocol shall be updated accordingly. The orders and deadlines in Schedule 1 are summarized as follows:
  - **Needs Assessment and Cost Analysis** - Undertake a cost-analysis of the real needs of FNCFS Agencies, including prevention/least disruptive measures, intake and investigation, building repairs and legal fees related to child welfare, based on the needs assessments provided by FNCFS Agencies and other existing studies, to be completed and report to the Tribunal by **May 3<sup>rd</sup>, 2018**.
  - **New Funding System Based on Actual Needs** - To develop and implement an alternative system ( including methodology and an accountability framework) for funding prevention/least disruptive measures, intake and investigation, legal fees, and building repairs services for First Nations children and families on-reserve and in the Yukon, to be based on actual needs and operate on the same basis as Canada's current funding practices for funding child welfare maintenance costs, that is, by fully reimbursing actual costs for these services, as determined by the FNCFS Agencies to be in the best interests of the child; to be completed by **April 2, 2018** and report back to the Panel by **May 3, 2018**.
  - **Reimbursement Based on Actual Costs Retroactive to January 26, 2016** - Canada to provide funding on actual costs for least disruptive measures/prevention, building repairs, intake and investigations and legal fees in child welfare to be reimbursed retroactive to January 26, 2016 by **April 2, 2018**.
  - **Child Service Purchase Amount** - To develop and implement an alternative system (including methodology and an accountability framework) for funding child service purchase amount services for First Nations children and families on-reserve and in the Yukon, based on actual needs, which operates on the same basis as Canada's current funding practices for funding child welfare maintenance costs, that is, by fully reimbursing actual costs for these services, as determined by the FNCFS Agencies to be in the best interests of the child, by **April 2, 2018** and report back to the Panel by **May 3, 2018**.

- **Child Service Purchase Amount Reimbursement Based on Actual Costs Retroactive to January 26, 2016** -- Canada to provide funding on actual costs for child service purchase amount in child welfare, to be reimbursed retroactive to January 26, 2016 by **April 2, 2018**.
- **Small First Nation Agencies Needs Assessment and Cost Analysis** - Undertake a cost-analysis of the real needs of small FNCFS Agencies, based on the needs assessments provided by FNCFS Agencies and other existing studies, to be completed and report to the Tribunal by **May 3<sup>rd</sup>, 2018**.
- **New Funding System Based on Actual Needs for Small First Nation Agencies** - To develop and implement an alternative system (including methodology and an accountability framework) for funding small FNCFS Agencies, to be based on actual needs and operate on the same basis as Canada's current funding practices for funding child welfare maintenance costs, that is, by fully reimbursing actual costs for these services, as determined by the FNCFS Agencies to be in the best interests of the child; to be completed by **April 2, 2018** and report back to the Panel by **May 3, 2018**.
- **Small First Nations Agencies Reimbursement Based on Actual Costs Retroactive to January 26, 2016** -- Canada to provide funding on actual costs for small FNCFS Agencies, to be reimbursed retroactive to January 26, 2016 by **April 2, 2018**.
- **Reliable Data Collection, Analysis and Reporting Methodology** -- Canada, to provide by **March 5, 2018** a reliable data collection, analysis and reporting methodology, as well as ethical research guidelines respecting Indigenous peoples that include protection of Indigenous intellectual property for approval by the Panel upon further submissions by the parties, to guide all data collection process resulting from all the orders for actual costs in this ruling.
- **Stop Reallocation of Funds** -- Canada to stop unnecessarily reallocating funds from other social programs, especially housing, if it has the adverse effect to lead to apprehensions of children or other negative impacts outlined in the *Decision* by **February 15, 2018**.
- **Immediate Relief Investments to have no Adverse Impacts** -- Canada to ensure, that any immediate relief investment does not adversely impact indigenous children, their families and communities by **February 15, 2018**.
- **Evaluate Social Programs** -- Canada to evaluate all its Social Programs for Indigenous peoples by **April 2, 2018**, in order to determine and ensure any reallocation is necessary and does not adversely impact First Nation children and families.

- **Analyze Mental Health Programs to Identify Gaps** -- Canada to analyze all its programs that fund mental health for First Nations on reserve and in the Yukon and clearly establish which ones fund what in order to identify gaps in services to First Nations children by **April 2, 2018**.
  - **Fund Actual Costs for Mental Health Services in Ontario** – Gaps in mental health services available to First Nations children in Ontario were recognized as a discriminatory effect of the *1965 Agreement*. Canada was ordered to fund actual costs of mental health for services to First Nations children and youth from Ontario retroactively to January 26, 2016 by February 15, 2018, or within 15 business days after the receipt of documentation of expenses.
  - **Fund Actual Costs for Band Representatives in Ontario** – Canada was ordered to fund Band Representative Services for Ontario First Nations, Tribal Councils, or FNCFS Agencies at the actual cost of providing those services retroactively to January 26, 2016 by February 15, 2018 or within 15 business days after receipt of the documentation of expenses and until such time as studies have been completed or until a further order of the Panel.
  - **Assess FNCFS Agencies Deficits** -- Canada to identify which FNCFS Agencies including the NAN agencies have child welfare or health services related deficits, and assess those deficits, and report to the Tribunal by **May 3, 2018**.
  - **Communication of Immediate Relief Orders to FNCFS Agencies** -- Canada to communicate clearly to FNCFS Agencies any immediate relief ordered by the Panel in order to ensure that these measures are implemented fully, properly, and in a manner to reduce the adverse impacts on First Nations children by **March 15, 2018**.
8. 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:
- a. The Caring Society will promote the interests of First Nations families and children as well as FNCFS Agencies;
  - b. AFN will represent First Nations, their citizens and institution's interests nationally,
  - c. COO will advocate for the interests of First Nations in Ontario;
  - d. NAN will represent the interests of First Nations, FNCFS Agencies and families and children within the NAN territory; and
  - e. The Commission will represent the public interest.
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.

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 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.
11. The Complainants and Interested Parties will, where appropriate, jointly develop strategies to assist Canada in its implementation of the Tribunal's Decision and Rulings and Canada acknowledges the Complainants' and Interested Parties' expertise in this regard.
12. Canada accepts that it has responsibility for the full implementation of the Tribunal's *Decision*, the further existing compliance orders, and the February 1<sup>st</sup> Ruling.
13. The parties shall establish a **Consultation Committee**:
  - a. The role of the Committee shall be to oversee the development and implementation of immediate relief measures, including those under Jordan's Principle, and its role shall be extended to mid and long term relief measures unless otherwise agreed by the parties,
  - b. The Committee shall be composed of one (two) senior official(s) named by each of the parties, and each party shall be entitled to technical support including legal counsel,
  - c. Committee representatives will report and seek authority, as appropriate, from their respective political leaders,
  - d. The Committee shall be co-chaired by the Complainants,
  - e. The Committee shall develop its own procedures, and
  - f. Where the parties are unable to reach agreement on any matter, the Committee may consider engaging a mediator to assist in resolving the matter, or any party may refer the matter to the Tribunal.
14. As required, but at least once per year, the Minister of Indigenous Services, the National Chief of the AFN, the Executive Director of the Caring Society, the Chief Commissioner of the Commission, the Regional Chief of the COO, and the Grand Chief of NAN will meet to discuss high level issues related to this Consultation Protocol. The annual meeting will be held on a date set after consultation among the parties. Additional meetings will be



scheduled if all parties agree such a meeting is required. Meetings will be scheduled with not less than fourteen days' notice and subject to the availability of all parties.

15. Canada agrees to fund the work envisioned by this Consultation Protocol, as outlined in an agreed upon workplan, and with the exception of the participation of the Commission. Without limiting the generality of the foregoing, this will include the costs of the Committee, Committee meetings, preparing for meetings, memos, opinions, advices and all communications. It will also include the consultation-related fees and disbursements of experts and legal counsel (excluding litigation), and meetings and consultations of each of the Parties, with the exception of the costs of the Commission. The Committee shall establish a work-plan and budget at the outset.
16. Canada agrees to provide all information necessary for the Committee to do its work in a timely fashion, except where such information is explicitly and clearly protected by operation of law. In such cases, Canada will provide the requestor a detailed explanation in writing of its reasons for withholding the information within 5 business days of the request of withholding of the information. Where there are legal concerns about the provision of information, the parties will work to find solutions so that sufficient information may be shared.

#### **Building Awareness and Training**

17. Canada acknowledges that building awareness and training will be needed to address the systemic discrimination identified in the Decision and Rulings of the Tribunal, and that this extends to the consultations envisioned by this Protocol. Accordingly, upon signing this Protocol, the parties will work together to develop a plan to build awareness and training for all of Canada's employees and contractors who are or who will foreseeably be involved in the implementation of the protocol. Canada will provide a copy of the Protocol, as well as the Caring Society's information sheet, dated February 1, 2018, to all employees and contractors, and confirm with them that they have read and understood it.

#### **Consultations on Mid to Long Term Relief**

18. The Parties acknowledge that they have an obligation to engage in consultations on mid and long term relief, and to enter into a Protocol to guide these consultations. However, the Tribunal has not yet ruled on mid to long term relief issues, so a final Protocol on mid to long term relief may be premature. Nevertheless, the parties agree that this Protocol may be amended to apply to mid and long term relief, as well as compensation issues. The purpose and objectives in this Protocol, as well as the principles and parameters shall apply equally to mid and long term relief.
19. However, the scope of the consultations and the processes envisioned for the mid to long term relief shall be significantly different. Given the nature of the measures, the

consultations will be much broader. With regard to mid to long term relief, the Panel at paragraph 177 of its February 1<sup>st</sup> Ruling said: "It is inevitable, consultations need to be meaningful and broad, including rights holders, different Indigenous governance, Indigenous youth, the parties and experts."

20. Moreover, there is an expectation that the Parties will discuss the role of existing committees, including the National Advisory Committee and Regional Tripartite/Technical Tables in the carriage of mid to long term reforms. At paragraphs 176 and 177 of the February 1<sup>st</sup> Ruling, in response to a comment by Minister Bennett about reconstituting the NAC and the Regional Committees, the Tribunal agreed with the minister for the "long term aspect" of the reform process. In the meantime, the Parties will develop approaches, for the Tribunal's consideration, to address and resolve long-term relief requested but not yet ordered by the Tribunal such as, but not limited to, compensation.
21. The Parties, working with their respective constituencies as appropriate, will jointly develop strategies to address and implement mid-term and long-term reforms to the FNCFS Program and *1965 Agreement*, consistent with human rights, access to health, community capacity building, social development, First Nations' jurisdiction, treaty relationships, and the protection and retention of culture, language, customs and traditions in the First Nations context. This work will complement and not replace efforts towards mid-term and long-term reforms led by the NAC, Regional Committees, and First Nations.

### **Capacity and Funding**

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.
23. Canada will also make sufficient and adequate funding available to retain qualified experts or consultants to undertake any research, studies or assessment required to support the full implementation of the orders. Canada will consult the parties and pay for persons who may be deemed experts once it is agreed upon by all parties. Canada will fund parties to retain proposed experts where there is agreement between all parties that one or more of the other parties are better placed to enter into a specific needed contract. Prior to retaining a proposed expert, Canada shall disclose to the parties, the proposed expert's CV, proposal and Canada's proposed statement of work. No one will be considered an expert unless all parties agree.
24. Canada will provide the Complainants and Interested Parties 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.

**Term, Termination and Amendment**

25. Consistent with the Order of the Tribunal, this Consultation Protocol shall remain in force until the immediate and mid to long term remedies are completely implemented, unless it is replaced by mutual agreement or the Parties or terminated earlier by determination of the Tribunal. It may be amended in writing at any time by mutual consent of the parties, and the amended version will be reported to the Tribunal.
26. The Protocol may be amended by agreement of the Parties provided such amendment is produced in writing.

**Non-derogation and Signing**

27. The Parties agree that nothing in this Agreement will be construed as abrogating, limiting or derogating in any way from First Nation's constitutionally protected Aboriginal and treaty rights. For greater certainty, this Agreement is not intended and shall not be construed to create, define, recognize, affirm, suspend, limit, deny, derogate or abrogate any Aboriginal or treaty rights of First Nation which may exist or be acquired in the future within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
28. The Protocol may be signed in counter-parts. If signed in counter-parts, the Protocol becomes effective on the date of the last signature.

**THIS CONSULTATION PROTOCOL HAS BEEN EXECUTED BY REPRESENTATIVES OF CANADA, AFN, CARING SOCIETY, COO, NAN AND THE CHRC ON THE 2<sup>ND</sup> DAY OF MARCH, 2018.**

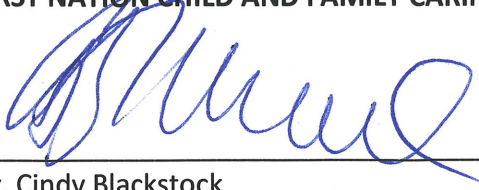
**CANADA**

  
\_\_\_\_\_  
The Honourable Jane Philpott

**ASSEMBLY OF FIRST NATIONS**

  
\_\_\_\_\_  
National Chief Perry Bellegarde

**FIRST NATION CHILD AND FAMILY CARING SOCIETY OF CANADA**



Dr. Cindy Blackstock

**CHIEFS OF ONTARIO**



Regional Chief Isadore Day

**NISHNAWBE ASKI NATION**



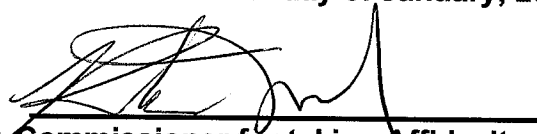
Grand Chief Alvin Fiddler

**CANADIAN HUMAN RIGHTS COMMISSION**



Per: Marie-Claude Landry  
Chief Commissioner

**This is Exhibit "B" to the affidavit of  
Katherine Quintana-James affirmed  
before me this 14th day of January, 2025**

A handwritten signature in black ink, appearing to read 'Robin McLeod', is written over a solid horizontal line.

**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](mailto:Reception@fncaringsociety.com)

613-230-5885



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





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](mailto: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,

A handwritten signature in blue ink, appearing to read 'P. Hajdu', with a stylized flourish at the end.

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 is Exhibit "C" to the affidavit of  
Katherine Quintana-James affirmed  
before me this 14th day of January, 2025**

A handwritten signature in black ink, appearing to read 'Robin McLeod', is written over a solid horizontal line.

**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.

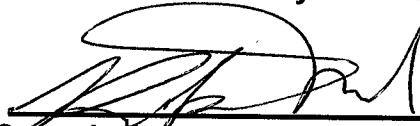
Thanks,  
Sarah

**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](mailto:sarah@childandfamilylaw.ca)

**This is Exhibit "D" to the affidavit of  
Katherine Quintana-James affirmed  
before me this 14th day of January, 2025**

A handwritten signature in black ink, appearing to read 'Robin McLeod', written over a horizontal line.

**A Commissioner for taking Affidavits etc.**

Robin McLeod  
LSO#91164M

**From:** [Sarah Clarke](#)  
**To:** [Vickery, Paul](#); [Rupar, Christopher](#); [Norris, Sarah-Dawn](#); [Stuart Wuttke](#); ["Adam Williamson"](#); ["lkassis@afn.ca"](#); [Maggie Wente](#); [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:** Invitation for a CCCW Meeting - Draft FSA  
**Date:** September 19, 2024 5:09:43 PM  
**Attachments:** [Consultation Meeting Agenda for October 2024.pdf](#)

---

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.

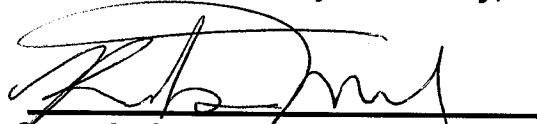
Many thanks,  
Sarah  
**Sarah Clarke**

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](mailto:sarah@childandfamilylaw.ca)

**This is Exhibit "E" to the affidavit of  
Katherine Quintana-James affirmed  
before me this 14th day of January, 2025**

A handwritten signature in black ink, appearing to read 'Robin McLeod', written over a horizontal line.

**A Commissioner for taking Affidavits etc.**

Robin McLeod  
LSO#91164M

**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**  
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](mailto:sarah@childandfamilylaw.ca)

---

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

**Sent:** September 19, 2024 5:10 PM

**To:** Vickery, Paul <[Paul.Vickery@justice.gc.ca](mailto:Paul.Vickery@justice.gc.ca)>; Rugar, Christopher <[Christopher.Rugar@justice.gc.ca](mailto:Christopher.Rugar@justice.gc.ca)>; Norris, Sarah-Dawn <[Sarah-Dawn.Norris@Justice.gc.ca](mailto:Sarah-Dawn.Norris@Justice.gc.ca)>; Stuart Wuttke <[swuttke@afn.ca](mailto:swuttke@afn.ca)>; 'Adam Williamson' <[AWilliamson@afn.ca](mailto:AWilliamson@afn.ca)>; 'lkassis@afn.ca' <[LKassis@afn.ca](mailto:LKassis@afn.ca)>; Maggie Wente <[MWente@oktlaw.com](mailto:MWente@oktlaw.com)>; Jessie Stirling <[jstirling@oktlaw.com](mailto:jstirling@oktlaw.com)>; Ashley Ash <[aash@oktlaw.com](mailto:aash@oktlaw.com)>; [meaghand@falconers.ca](mailto:meaghand@falconers.ca); [Sameha.Omer@chrc-ccdp.gc.ca](mailto:Sameha.Omer@chrc-ccdp.gc.ca); Justin Safayeni <[JustinS@stockwoods.ca](mailto:JustinS@stockwoods.ca)>; Julian Falconer <[julianf@falconers.ca](mailto:julianf@falconers.ca)>

**Cc:** David Taylor <[DTaylor@conwaylitigation.ca](mailto:DTaylor@conwaylitigation.ca)>; Robin McLeod <[robin@childandfamilylaw.ca](mailto:robin@childandfamilylaw.ca)>; Kiana Saint-Macary <[ksaintmacary@conwaylitigation.ca](mailto:ksaintmacary@conwaylitigation.ca)>; Katherine Quintana-James <[Katherine@childandfamilylaw.ca](mailto: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**

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](mailto:sarah@childandfamilylaw.ca)

# First Nations Child and Family Caring Society Proposed Amendments to the Draft Final Settlement Agreement

DRAFT FOR DISCUSSION

Updated September 24, 2024

## Explanatory Note

The Caring Society has drafted the following proposed amendments which will be sent to the Draft First Nations Child and Family Services Final Settlement Agreement Parties for their consideration. These amendments represent some of the key changes the Caring Society is seeking but is not an exhaustive list. The proposed amendments are intended to contribute to the discussions that are ongoing at the community level and are, of course, subject to change as better information becomes available, including by way of responses to the suggestions below. These amendments are offered on general themes and concepts. If the concepts captured in these proposed amendments are acceptable, additional changes to the overall agreement and definitions will be necessary. For more information on the Caring Society's positions on reforming First Nations Child and Family Services please see [here](#)

## Purpose

The purpose of a reformed approach to First Nations Child and Family Services is to ensure that First Nations children, youth, and families have access to effective and culturally based interventions to prevent and respond to child maltreatment and ensure they can thrive in a manner consistent with applicable child protection legislation and legal orders, including but not limited to *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24; the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6; the orders of the Canadian Human Rights Tribunal in *First Nations Child and Family Caring Society et al. v Attorney General of Canada*, T1340/7008; the *United Nations Declaration on the Rights of Indigenous Peoples*; and the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14.

## Additional Principles in Section 2

1. Honour of the Crown
2. Canada has the sole onus to cease the discrimination and prevent recurrence
3. Intergenerational equity,
4. Transparency, accountability, inclusivity

## Governance and Dispute Resolution

Current Wording of the Draft FSA	Proposed Amendment to the Draft FSA
<p><b>PART XIV – GOVERNANCE OF THE REFORMED FNCFS PROGRAM</b></p> <p><b>Paras 145-152</b></p> <p>This part sets out that the Reform Implementation Committee (the “<b>RIC</b>”) shall oversee and monitor the implementation of the Reformed FNCFS Program. The RIC shall receive input, recommendations, or observations from the Parties, and the various committees under the Draft FSA:</p> <ul style="list-style-type: none"> <li>• Expert Advisory Committee</li> <li>• NAN-Canada Remoteness Quotient Table</li> <li>• NARC-Canada Remoteness Quotient Table</li> <li>• National Secretariat</li> <li>• Systemic Review Committee (SRC)</li> <li>• Technical Advisory Committee (TAC)</li> </ul> <p>The RIC will also support the oversight of the Program Assessment Organization and prepare the Program Assessment Opinions and executive summaries for the Parties and the public. Meeting and work product of the RIC will be confidential and not available to the public.</p> <p>Canada shall provide \$22.2 million to AFN, COO, and NAN over the term of the FSA to support their participation in the RIC.</p>	<p><b>Replace the RIC with the Chiefs Committee</b></p> <p>Affirm that all First Nations Chiefs are the decision makers on the Reformed Funding Approach on National matters and that First Nations Chiefs are the decision makers on matters affecting their Nations or Region or Sub-Region.</p> <p>Establish a National Children’s Chiefs Committee (the “<b>NCCC</b>”) composed of regional First Nations representatives who are knowledgeable in child and family services and are chosen by the Chiefs in the Regions that operates in a transparent, inclusive and accountable manner and reports to Chiefs in Assembly and First Nations who are not members of AFN. The NCCC will bring material decisions regarding the Reformed Funding Approach to Chiefs in Assembly and First Nations who are not members of AFN for decision making. Regional Chief’s processes are to be respected</p> <p>Reconvene the National Advisory Committee (the “<b>NAC</b>”) with regional representation and the Parties to provide technical advice to the Chiefs’ Committee and to Chiefs in Assembly and First Nations who are not member of AFN and regional Chiefs’ bodies as requested. The NAC will operate in an inclusive, transparent and accountable manner.</p> <p>All references to the RIC in the Draft FSA shall be replaced with the NCCC.</p> <p>Dissolve the Systemic Review Committee and the Technical Advisory Committee and reallocate those funds to benefit children.</p> <p>The NCCC, NAC and EAC will be presumptively public.</p>

Current Wording of the Draft FSA	Proposed Amendment to the Draft FSA
<p><b>National Secretariat &amp; Regional Secretariat – Para. 108-117</b></p> <p>This part sets out the function, governance and data inputs and management. The Draft FSA states that the National Secretariat shall be independent from the Government of Canada. It shall be First Nations-led, apolitical, not-for-profit. The National Secretariat shall be established with two sectors: (i) a Best Practices and Programming sector and (ii) a Data and Evidence sector.</p> <p>The membership of the National Secretariat shall be the AFN, COO and NAN. The AFN shall incorporate the National Secretariat. The draft Articles and Bylaws for the National Secretariat are found at Appendix 9.</p>	<p><b>Replace National Secretariat Model with NAC oversight</b></p> <p>The terms of reference of the National Secretariat will be withdrawn and the NAC will develop models for the National Secretariat and regional secretariats for recommendation to the NCCC and decision making by First Nations, including in relation to membership.</p> <p>The National Secretariat shall be fulfilled by one or more apolitical and independent First Nations-led non-profit organization(s) appointed by all First Nations Chiefs in consultation with the Children’s Chief’s Committee and the National Advisory Committee. Canada will provide sustained and adequate funding to ensure the National Secretariate (whether constituted of one or more organizations) can collect, analyze and disseminate First Nations child and family services data and be a national convening center for First Nations child and family services wholistic policy and practice honouring Indigenous languages and publishing in English and French.</p> <p>Canada will also provide sufficient and sustained funding to ensure regional secretariates can provide services to collect, analyze and disseminate regional, and when appropriate sub-regional or First Nations child and family services data and act as a regional wholistic convening center for First Nations child and family services holistic policy and practice honouring Indigenous languages and publishing in one or both English and French as appropriate.</p>
<p>Agency Accountability to First Nations in Relation to the Reformed FNCFCFS Program</p> <p>Planning and Data Collection</p> <p>134. Accountability of FNCFCFS Agencies to the First Nations they serve is one of the principles of this Final Settlement Agreement. To uphold this principle</p>	<p>Replace with</p> <p>Planning</p> <p>134. ISC shall fund FNCFCFS Agencies to develop a holistic child, family and community well-being plan in collaboration with the First Nation(s) affiliated with that FNCFCFS Agency.</p>

Current Wording of the Draft FSA	Proposed Amendment to the Draft FSA
<p>and through its funding agreements with FNCFS Agencies under the Reformed FNCFS Program, ISC shall require FNCFS Agencies to co-develop a single child and community well-being plan with its affiliated First Nation(s) The plan must be submitted by June 30, 2025, and extend until March 31, 2009, subject to annual updates as necessary.</p> <p>Para 135. At least 90 days prior to the expiry of its child and family community well-being plan, an FNCFS Agency shall submit a subsequent child and community wellbeing plan, co-developed with the First Nation(s) affiliated with that FNCFS Agency. Where the aforementioned deadlines are not met. ISC shall take any actions available to ensure Agency compliance.</p> <p>Para 136</p> <p>A child and community well-being plan developed by the FNCFS Agency in consultation with their affiliated First Nations must incorporate: (lists nine required topics).</p> <p>Para 137. Through its funding agreements with FNCFS Agencies under the Reformed FNCFS Program. ISC shall require an FNCFS Agency to:</p> <ul style="list-style-type: none"> <li>(a) Fund the co-development of its child and community wellbeing plans, including providing opportunities for meaningful participation of its affiliated First Nation(s) in the co-development process; and</li> <li>(b) Report to ISC and its affiliated First Nation(s) on the implementation of its child and community wellbeing plan(s) on an annual basis.</li> </ul> <p>Para 138 A First Nation may inform ISC of any concerns it has with its FNCFCS Agency’s compliance with the child and community well-being plan. ISC shall make the FNCFS Agency aware of the scope of the concerns and consider appropriate responses, which may include individual FNCFS Agency audits.</p>	<p>Where ISC splits funding for statutory First Nations child and family services it will provide sufficient resources to ensure coordination of services to meet the needs of First Nations children, youth and families in keeping with the principles in section 2. ISC shall also provide all service providers with sufficient funding for case management systems and to collect and analyze outcome data pursuant to the Measuring to Thrive Indicators.</p> <p>Strike paras. 134—135 and 137-138 1SC does not have the expertise or a transparent and accountable process to evaluate workplans submitted by First Nations or First Nations CFS Agencies or receive and execute complaints. These paragraphs also interfere with First Nations governance.</p> <p>Consider revising the list of requirements Paragraph 136 require review by regional experts and clarity of ISC’s expertise in analyzing this information and how it will use it.</p>

Current Wording of the Draft FSA	Proposed Amendment to the Draft FSA
<p><b>Scope and Jurisdiction of the EAC – Para. 202</b></p> <p>202 The Reform Implementation Committee shall oversee the Expert Advisory Committee, including providing direction and guidance as required. The terms of reference of the Expert Advisory Committee are attached at Appendix 7, which may be updated by the Reform Implementation Committee.</p> <p>[Paras. 204-218 set out the reporting structure of the EAC and their mandate]</p>	<p><b>Replace para. 202 with the following:</b></p> <p>202 The Expert Advisory Committee shall be an independent open, and transparent committee established to respond to the reasons and guidance of the Tribunal in 2022 CHRT 8 and previous rulings including 2016 CHRT 2. The Expert Advisory Committee shall develop its own Terms of Reference, which shall be public, and Canada shall provide adequate funding to the EAC to fully discharge its responsibilities.</p> <p><b>Paragraphs 204-218 will require adjustment to reflect the EAC’s own approach to its work and regular reporting to the CHRT and First Nations in Assembly.</b></p>
<p><b>Selection and Oversight of the Program Assessment Organization – Paras. 167, 172 and 173</b></p> <p>167 the AFN shall initiate a separate request for proposal to select and retain the Program Assessment Organization(s) to conduct each of the Program Assessment(s), on the advice of the Reform Implementation Committee.</p> <p>172 The AFN shall oversee the Program Assessment Organization and, on the advice of the Reform Implementation Committee, may provide guidance on:</p> <ul style="list-style-type: none"> <li>(a) the design and methods of the Program Assessment;</li> <li>(b) relevant information, research, reports, and experts; and</li> <li>(c) the participation of First Nations service providers, knowledge holders, and experts in the Program Assessment process.</li> </ul> <p>173 The Program Assessment Organization shall solicit and consider input from the following groups:</p> <ul style="list-style-type: none"> <li>(a) FNCFS Service Providers;</li> <li>(b) Provincial and Yukon governments providing child and family services for Non-Agency First Nations;</li> <li>(c) The National Secretariat; and</li> </ul>	<p><b>Replace paras. 167, 172 and 173 with the following:</b></p> <p>167 The NAC shall oversee and recommend an organization to the NCCC as the Program Assessment Organization(s) to conduct each of the Program Assessment(s). The NCCC shall consider and review the NAC’s recommendation and seek input from the Chiefs in Assembly and First Nations not affiliated with the AFN regarding the selection of the Program Assessment (Organization(s)).</p> <p>172 The NAC shall oversee the Program Assessment Organization and, on the advice of the NCCC, may provide guidance on:</p> <ul style="list-style-type: none"> <li>(a) the design and methods of the Program Assessment;</li> <li>(b) relevant information, research, reports, and experts; and</li> <li>(c) the participation of First Nations service providers, knowledge holders, and experts in the Program Assessment process.</li> </ul> <p>173 The review conducted by the Program Assessment Organization shall be transparent, inclusive, and accountable including publicly posting the study methods, sample sizes and criteria, findings and recommendations. The Program Assessment Organization shall solicit and consider input from the following groups:</p>

Current Wording of the Draft FSA	Proposed Amendment to the Draft FSA
<p>(d) Other groups identified by the AFN, on the advice of the Reform Implementation Committee</p>	<p>(a) FNCFS Service Providers;            (b) Provincial and Yukon governments providing child and family services for Non-Agency First Nations;            (c) The NAC; and            (d) Other groups identified by the NCCC</p>
<p><b>Dispute Resolution Regarding Initial Program Assessment – Para. 231</b></p> <p>In a Parties’ Dispute concerning Canada’s decision about whether or how any recommendations contained in the Initial Program Assessment Opinion will be implemented, the Dispute Resolution Tribunal shall assess the reasonableness of Canada’s decision and may order any remedy that could at common law be awarded on judicial review, subject to the limitations contained in paragraph 241. In conducting its review, the Dispute Resolution Tribunal shall consider, among other factors:</p> <ul style="list-style-type: none"> <li>(a) whether the recommendations contained in the Initial Program Assessment Opinion are consistent with the principles and limitations in paragraph 186;</li> <li>(b) whether the recommendations contained in the Initial Program Assessment require an amendment to this Final Settlement Agreement;</li> <li>(c) the Program Assessment Report; and</li> </ul> <p>Canada’s reasons for its decision, if any.</p>	<p><b>Replace para. 231 with the following:</b></p> <p>In a Parties’ Dispute concerning Canada’s decision about whether or how any recommendations contained in the Initial Program Assessment Opinion, there shall be a presumption that the findings and recommendations of the Initial Program Assessment Opinion ought to be implemented. The Dispute Resolution Tribunal may order any remedy that could be made in accordance with section 53(2) of the <i>Canadian Human Rights Act</i>, RSC 1985, c. H-6. In conducting its review of a Parties’ Dispute regarding the Initial Program Assessment Opinion. the Dispute Resolution Tribunal shall consider, among other factors:</p> <ul style="list-style-type: none"> <li>(a) whether the recommendations contained in the Initial Program Assessment Opinion are consistent with the principles of An Act Respecting First Nations, Inuit and Metis children, youth and families and other applicable legislation including First Nations legislation;</li> <li>(b) whether Canada’s refusal to implement the recommendations contained in the Initial Program Assessment Opinion demonstrate beyond a reasonable doubt that its decision is evidence based and in the best interest of the child, substantive equality, is culturally appropriate, non-regressive and takes into full consideration the unique circumstances of the community. Canada’s intentions or reasons shall not be considered in the analysis and shall be provided in a timely manner; and</li> <li>(c) the Program Assessment Report</li> </ul>

Current Wording of the Draft FSA	Proposed Amendment to the Draft FSA
<p><b>Jurisdiction of the Dispute Resolution Tribunal – Paras. 240 &amp; 241</b></p> <p>240 The Dispute Resolution Tribunal has jurisdiction to:</p> <ul style="list-style-type: none"> <li>(a) process, adjudicate, and resolve Disputes, including by making procedural and substantive decisions;</li> <li>(b) on request of a party to a dispute, order any party to a Dispute to take any reasonable interim measure in relation to the health or safety of a child as the Dispute Resolution Tribunal may consider necessary in respect of the subject matter of a Dispute;</li> <li>(c) order such remedies as are permitted under this Final Settlement Agreement, having regard to the parameters of the Parties’ Dispute Process and Claimant Dispute Process and the limitations and remedies set out in paragraphs 231 and 241;</li> <li>(d) order funding to a particular FNCFS Service Provider as set out in this Final Settlement Agreement;</li> <li>(e) order that interest be paid on amounts ordered to be paid on the same basis as in the <i>Federal Courts Act</i>, RSC, 1985, c. F-7; and</li> <li>(f) order Canada to pay the legal costs of any party to a Dispute on such terms as are just and in accordance with rates for counsel funded by Canada at the rates provided for by the Department of Justice’s external agent counsel rates.</li> </ul> <p>241 The Dispute Resolution Tribunal does not have jurisdiction to:</p> <ul style="list-style-type: none"> <li>(a) amend any provision of this Final Settlement Agreement;</li> <li>(b) award general damages, punitive damages, or damages for discrimination;</li> <li>(c) determine a claim as described in paragraph 384;</li> <li>(d) expand the jurisdiction of the Dispute Resolution Tribunal;</li> <li>(e) reduce the existing funding of any FNCFS Service Provider or the funding entitlement of an FNCFS Service Provider under this Final Settlement Agreement;</li> </ul>	<p><b>Replace Paras 240 and 241 with the following:</b></p> <p>240 The Dispute Resolution Tribunal has jurisdiction to:</p> <ul style="list-style-type: none"> <li>(a) process, adjudicate, and resolve Disputes, including by making procedural and substantive decisions;</li> <li>(b) make any order or give any direction that could be made in accordance with the <i>Canadian Human Rights Act</i>, RSC, 1985, c. H-6, including in relation to claims alleging retaliation and injunctive orders to stop Canada from retaliating;</li> <li>(c) on request of a party to a dispute, order Canada to take any reasonable interim measure in relation to the health or safety of a child as the Dispute Resolution Tribunal may consider necessary in respect of the subject matter of a Dispute;</li> <li>(d) order such remedies as are permitted under Final Settlement Agreement, having regard to the parameters of the Parties’ Dispute Process and Claimant Dispute Process and the limitations and remedies set out in paragraphs 231 and 241;</li> <li>(e) order funding to a particular First Nation, FNCFS Service Provider or group of FNCFS Service Providers as set out in this Final Settlement Agreement;</li> <li>(f) order that interest be paid on amounts ordered to be paid on the same basis as in the <i>Federal Courts Act</i>, RSC, 1985, c. F-7; and</li> <li>(g) order Canada to pay the legal costs of any party to a Dispute on such terms as are just and in accordance with rates for counsel funded by Canada at the rates provided for by the Department of Justice’s external agent counsel rates.</li> <li>(h) order Canada to increase funding to the Reformed FNCFS Funding Approach when systemic issues arise</li> <li>(i) orders to stop and prevent retaliation by the Government of Canada including injunctive relief.</li> </ul>



Current Wording of the Draft FSA	Proposed Amendment to the Draft FSA
<p>(f) reduce the level of the overall funding commitment provided for in paragraphs 5 and 9 of this Final Settlement Agreement;</p> <p>(g) make orders in the Claimant Dispute Process that requires or results in systemic change;</p> <p>(h) order Canada to fund new components of the Reformed FNCFS Funding Approach or increase funding for existing components of the Reformed FNCFS Funding Approach, unless otherwise set out in this Final Settlement Agreement; or</p> <p>(i) introduce additional indexation factors (for example, new methods of calculation of population growth or inflation).</p>	<p>(j) order that this Final Settlement Agreement be amended as necessary to ensure Canada stops any discrimination found by the Dispute Resolution Tribunal and to prevent its recurrence.</p> <p>241 The Dispute Resolution Tribunal does not have jurisdiction to:</p> <p>(a) expand the jurisdiction of the Dispute Resolution Tribunal;</p> <p>(b) reduce the existing funding of any First Nation, FNCFS Service Provider or the funding entitlement of an FNCFS Service Provider under this Final Settlement Agreement;</p> <p>(c) reduce the level of the overall funding commitment provided for in paragraphs 4, 5 and 9 of this Final Settlement Agreement;</p>
<p><b>Confidentiality of Dispute Resolution Process – Para. 254</b></p> <p>On application of a party to any Dispute, the Dispute Resolution Tribunal may order that all or some of the Dispute Resolution Tribunal’s procedures, hearings, and documents or interim orders and decisions shall remain strictly confidential between the parties to the Dispute.</p>	<p><b>Replace para. 254 with the following:</b></p> <p>With the exception of requirements under the <i>Privacy Act</i> or the confidentiality provisions of provincial or federal legislation or regulation, only a First Nations litigant may request the confidentiality of procedures, hearings, documents or decisions when it is in the best interest of the child.</p>
<p><b>Appointment of the Dispute Resolution President – Para. 266</b></p> <p>The President shall be appointed by the Governor in Council, on the recommendation of the Minister of ISC following consultation with the Parties. The President may be appointed for a second term.</p>	<p><b>Replace para. 266 with the following:</b></p> <p>The President shall be appointed by the Governor in Council, on the recommendation of the Minister of ISC following a recommendation received from First Nations in Assembly in collaboration and consultation with First Nations that have no affiliation to AFN, or limited affiliation with AFN and with the advice of the NCCC, EAC, and the NAC,</p>
<p><b>ISC Power to amend appendices – Para. 399</b></p> <p>399. ISC can revise the following appendices in consultation with the Parties and may take into account the recommendations of the Reform Implementation Committee in doing so:</p> <p>(a) Appendix 10</p>	<p><b>Replace para. 399 with the following:</b></p> <p>ISC may revise the following appendices to this Final Settlement Agreement on the approval of the First Nations in Assembly in consultation with First Nations that have no affiliation with AFN or a limited affiliation with the AFN and with the advice of the NCCC, EAC and NAC:</p>

Current Wording of the Draft FSA	Proposed Amendment to the Draft FSA
(b) Appendix 2	(a) Appendix 2 (b) Appendix 4 (c) Appendix 5 (d) Appendix 6 (e) Appendix 3 (f) Appendix 7 (g) Appendix 12 (h) Appendix 10
<p><b>Discussions on regional modifications</b></p> <p>45 The Parties acknowledge that a First Nation or a regional or sub-regional organization may seek to discuss with Canada modifications to the Reformed FNCFS Program and the allocations thereunder, but Canada shall not be obligated to provide any additional funding to that First Nation or regional or sub-regional organization beyond what is provided by the Reformed FNCFS Funding Approach.</p>	<p><b>Replace para 45 with the following:</b></p> <p>45 Consistent with the Tribunal’s orders that First Nations children must have access to and receive substantively equal, culturally appropriate services that account for the distinct circumstances of their communities, First Nation(s) in consultation with their child and family service providers may request in writing that Canada vary the approach under the Reformed FNCFS Funding Approach and the allocations for those First Nations, regional or sub-regional organizations be increased consistent with the principles set out in paragraph 2 of this Final Settlement Agreement and/or to ensure First Nations children can fully enjoy the benefits of an <i>Act Respecting First Nations, Metis, Inuit children, youth and families</i> and other applicable legislation. Any such variation and the associated agreement will be publicly posted within 30 days on ISC’s website and social media.</p>
<p><b>Amendment Process</b></p> <p>230 A Parties’ Dispute is a dispute, controversy, disagreement, or claim of a Party that arises out of, relates to, or is in connection with:</p>	<p><b>Replace paras 230 and 390 with the following:</b></p> <p>230 A Parties’ Dispute is a dispute, controversy, disagreement, or claim of a Party that arises out of, relates to, or is in connection with:</p>

Current Wording of the Draft FSA	Proposed Amendment to the Draft FSA
<p>(a) this Final Settlement Agreement, including any question regarding its existence, validity, termination, implementation, application, and interpretation and/or breach, other than a Complaint Dispute;</p> <p>(b) a decision by Canada as to whether or how any recommendations of the Reform Implementation Committee will be implemented.</p> <p>390 The terms of this Final Settlement Agreement may only be amended by the Parties upon their unanimous consent in writing.</p>	<p>(a) this Final Settlement Agreement, including any question regarding its existence, validity, termination, implementation, application, and interpretation and/or breach, other than a Complaint Dispute;</p> <p>(b) a dispute regarding a proposed amendment wherein the Parties cannot agree following the process set out in paragraph 390.</p> <p>390 The terms of this Final Settlement Agreement, except for those contained in paragraphs 1-2 (purpose and principles), may be amended to ensure non-discrimination and ensure the fulfillment of the funding purpose and principles set out in this Final Settlement Agreement, including in response to unforeseen circumstances or in response to evidence that the measures in this Final Settlement Agreement are not having their intended effect. Such amendments can be made by the Parties upon their unanimous consent in writing, or on order of the Dispute Resolution Tribunal pursuant to paragraphs 230 and 240(j), and shall be evidence informed, consistent with the principles set out in paragraph 2 in this Final Settlement Agreement. The Parties agrees to the following amending process:</p> <p>(a) any Party seeking to amend this Final Settlement Agreement shall give notice to all other Parties, setting out the specific amendment sought, the rationale of the amendment and any evidence demonstrating that the amendment will benefit First Nations children, youth and families (the “<b>Amendment Notice</b>”);</p> <p>(b) the Amendment Notice shall be provided to all First Nations and service providers, including information related to the specific nature of the proposed change, the evidence supporting the change and any positive, neutral or adverse affects on each of the principles guiding the agreement and in C92</p> <p>(c) the other Parties shall respond to the Amendment Notice within 90 days with their position on the proposed amendment, including the rationale for that response and the evidence on which that response is founded (“<b>Amendment Response</b>”);</p>

Current Wording of the Draft FSA	Proposed Amendment to the Draft FSA
	<ul style="list-style-type: none"> <li>(d) the Parties shall meet within 45 days of receipt of the last Amendment Response. The Party seeking the amendment shall organize and facilitate the meeting;</li> <li>(e) where the Parties consent to the amendment, such amendment shall be added to the Final Settlement Agreement as an addendum;</li> <li>(f) where the Parties do not agree regarding the proposed amendment, such amendment shall be referred to the Dispute Resolution Tribunal for determination pursuant to paragraphs 230 and 240(j); and</li> <li>(g) any addendum or amendment agreed to by the Parties shall be submitted to the Tribunal for its approval.</li> </ul>

### Funding Level and Structures

Current Wording of the Draft FSA	Proposed Amendment to the Draft FSA
<p><b>Principles – para. 2</b></p> <p>The principles guiding the Reformed FNCFS Program to be implemented by way of this Final Settlement Agreement shall include:</p> <ul style="list-style-type: none"> <li>(a) the cultural safety and well-being of First Nations children, youth, young adults, and families;</li> <li>(b) substantive equality;</li> <li>(c) addressing the needs of First Nations children, youth, young adults, and families;</li> <li>(d) the best interests of children;</li> <li>(e) prioritizing keeping children in the home;</li> <li>(f) holistic and culturally informed programming, having regard for the current realities of distinct First Nations, including historical and</li> </ul>	<p><b>Add intergenerational equity to the principles:</b></p> <p>The principles guiding the Reformed FNCFS Program to be implemented by way of this Final Settlement Agreement shall include:</p> <ul style="list-style-type: none"> <li>(a) the cultural safety and well-being of First Nations children, youth, young adults, and families;</li> <li>(b) substantive equality and intergenerational equity;</li> <li>(c) addressing the needs of First Nations children, youth, young adults, and families;</li> <li>(d) the best interests of children;</li> <li>(e) prioritizing keeping children in the home;</li> <li>(f) holistic and culturally informed programming, having regard for the current realities of distinct First Nations, including historical and contemporary disadvantage and contextual differences, including remoteness;</li> </ul>

Current Wording of the Draft FSA	Proposed Amendment to the Draft FSA
<p>contemporary disadvantage and contextual differences, including remoteness;</p> <p>(g) recognition of Indigenous legal traditions and principles, if applicable;</p> <p>(h) addressing the Structural Drivers that place First Nations children, youth, and families at higher risk of involvement with the child welfare system;</p> <p>(i) respect for the inherent right of self-government, which is recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i>, and which includes jurisdiction, in relation to child and family services;</p> <p>(j) respect for the right to self-determination of Indigenous peoples, which is a right recognized and affirmed in the <i>United Nations Declaration on the Rights of Indigenous Peoples</i> (the “<b>Declaration</b>”);</p> <p>(k) that the <i>United Nations Declaration on the Rights of Indigenous Peoples Act</i> affirms the <i>Declaration</i> as a universal international human rights instrument with application in Canadian law and also provides a framework for the Government of Canada’s implementation of the <i>Declaration</i>;</p> <p>(l) the rights in the <i>Declaration</i>, including the rights of children and youth, and the <i>United Nations Convention on the Rights of the Child</i>, including the right to be free from discrimination;</p> <p>(m) accountability of FNCFS Service Providers and provincial and Yukon governments to the First Nation governments they serve; and</p> <p>(n) guidance from First Nations-led and/or endorsed evidence.</p>	<p>(g) recognition of Indigenous legal traditions and principles, if applicable;</p> <p>(h) addressing the Structural Drivers that place First Nations children, youth, and families at higher risk of involvement with the child welfare system;</p> <p>(i) respect for the inherent right of self-government, which is recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i>, and which includes jurisdiction, in relation to child and family services;</p> <p>(j) respect for the right to self-determination of Indigenous peoples, which is a right recognized and affirmed in the <i>United Nations Declaration on the Rights of Indigenous Peoples</i> (the “<b>Declaration</b>”);</p> <p>(k) that the <i>United Nations Declaration on the Rights of Indigenous Peoples Act</i> affirms the <i>Declaration</i> as a universal international human rights instrument with application in Canadian law and also provides a framework for the Government of Canada’s implementation of the <i>Declaration</i>;</p> <p>(l) the rights in the <i>Declaration</i>, including the rights of children and youth, and the <i>United Nations Convention on the Rights of the Child</i>, including the right to be free from discrimination;</p> <p>(m) accountability of FNCFS Service Providers and provincial and Yukon governments to the First Nation governments they serve; and</p> <p>(n) guidance from First Nations-led and/or endorsed evidence.</p>
<p><b>Definition of Child – para. 3(l)</b></p> <p>“<b>child</b>” means a First Nations person who, under applicable provincial or territorial law, is under the age of which an individual ceases to be a child.</p>	<p><b>Replace para. 3(l) with the following:</b></p> <p>“<b>child</b>” means a First Nations person who, under applicable provincial or territorial law, is under the age of which an individual ceases to be a child, and includes the following:</p>

Current Wording of the Draft FSA	Proposed Amendment to the Draft FSA
	<ol style="list-style-type: none"> <li>1. The child is registered or eligible to be registered under the <i>Indian Act</i>, as amended from time to time;</li> <li>2. The child has one parent/guardian who is registered or eligible to be registered under the <i>Indian Act</i>;</li> <li>3. The child is recognized by their Nation; or</li> <li>4. The child is ordinarily resident on reserve.</li> </ol>
<p>Definition of FNCFS Agency – para 3.(ll)</p> <p>“<b>FNCFS Agency</b>” means an agency established by and affiliated with one or more First Nations and delegated or authorized pursuant to provincial or other authorities to provide legislated child welfare services.</p>	<p><b>Replace para. para 3(ll) with the following:</b></p> <p>“<b>FNCFS Agency</b>” means an agency established by and affiliated with one or more First Nations and delegated or authorized pursuant to provincial or other authorities to provide legislated child welfare services, <b>and also includes any service provider that was recognized as an agency by ISC under the FNCFS program in fiscal 2023-2024.</b></p>
<p><b>PREVENTION ALLOCATION - Para 42(d)(i)</b></p> <p>42(d)(i) As of April 1, 2026, outside of Ontario, ISC shall allocate all prevention funding to First Nations. FNCFS Agencies shall draw from their respective Baseline Funding to conduct least disruptive measures as required under provincial legislation. However, a First Nation may decide to have its affiliated FNCFS Agency receive a portion or all of the prevention funding attributable to the First Nation. A First Nation shall provide written notice to ISC advising of such a decision by the December 1<sup>st</sup> prior to the fiscal year to which the prevention funding is applicable. Once written notice is provided by the First Nation, the direction contained therein persists until further notice is given.</p>	<p><b>Replace Para. 42(d)(ii) with the following and add 42(d)(i)(A):</b></p> <p>42(d)(i) As of April 1, 2026, ISC shall allocate all prevention funding to FNCFS Agencies in keeping with the legislative requirements of section 14 of <i>An Act respecting First Nations, Inuit and Métis children, youth and families</i>, S.C. 2019, c. 24. However, First Nations and FNCFS Agencies may decide that certain prevention programming shall be delivered by the First Nation. A First Nation and its affiliated FNCFS Agency shall provide notice to ISC advising of such a decision in the child and community well-being plan, including a budget for capacity funding, as set out in paragraphs 134 -136 of the Final Settlement Agreement. Once such notice is provided in the child and community well-being plan, ISC shall allocate the required prevention capacity and/or service funding to the First Nation.</p> <p>42(d)(i)(A) As of April 1, 2026, where a First Nation plans to ultimately deliver prevention programming but requires time to build capacity, the First Nation shall give notice to ISC in its multi-year plan set out in paragraphs 43 and 44 of this Final Settlement Agreement, indicating its suggested budget for</p>

Current Wording of the Draft FSA	Proposed Amendment to the Draft FSA
	capacity building and its estimated timeline. ISC shall provide the First Nation with its requested capacity funding at actuals.
<p>45. The Parties acknowledge that a First Nation or regional or sub-regional organization may seek to discuss with Canada modifications to the Reformed FNCFS Program and the allocations thereunder, but Canada shall not be obligated to provide any additional funding to that First Nation or regional or sub-regional organization beyond what is provided by the Reformed FNCFS Funding Approach.</p>	<p><b>Replace Para. 45 with the following:</b></p> <p>The Parties acknowledge that a First Nation or regional or sub-regional organization may seek to discuss with Canada modifications to the Reformed FNCFS Program and the allocations thereunder. <b>In assessing a modification request by a First Nation, region or sub-region, Canada shall in good faith consider the Principles set out in section 2 of this Final Settlement Agreement.</b></p>
<p><b>FIRST NATION REPRESENTATIVE SERVICE FUNDING – OUTSIDE OF ONTARIO – Paras. 25, 58(a) &amp; 62</b></p> <p>25 For First Nations except those in Ontario, total funding for First Nation Representative Services in fiscal year 2024-2025 shall be calculated by multiplying the amount of \$294.72 by the total population for all First Nations eligible to receive funding under the Reformed FNCFS Program, according to the approach for determining population as set out in paragraph 35, then adding to that product the amount necessary to provide each First Nation a minimum of \$75,000. This amount shall be adjusted for inflation in subsequent years. This funding shall be upwardly adjusted in the manner set out in paragraph 32 and Appendix 12 to account for the increased costs of delivery services in remote communities, subject to the transition provision for fiscal year 2024-2025 set out in paragraph 52(h)(i).</p> <p>April 1, 2025-March 31, 2026</p> <p>58(a) For First Nations except those in Ontario, First Nation Representative Services funding shall be funded in accordance with paragraph 25.</p> <p>From April 1, 2026, Onward</p>	<p><b>Replace Paras. 25, 58(a) &amp; 62 with the following:</b></p> <p>25 For the Initial Five Years, First Nations, except for First Nations in Ontario, shall have access to reimbursement for their actual costs for First Nation Representative Services equivalent to the actual costs available pursuant to 2018 CHRT 4, including but not limited to:</p> <ul style="list-style-type: none"> <li>(a) salaries, benefits, and costs to support the delivery of services;</li> <li>(b) human resources recruitment, training or professional development;</li> <li>(c) paraprofessional and professional fees;</li> <li>(d) general program delivery costs such as non-medical travel costs, accommodations, transportation or meals for First Nations Representatives to support the delivery of services;</li> <li>(e) program delivery costs and family support services including prevention services and services for those involved with the child and family services system.</li> <li>(f) Overhead, administrative costs (office rent, computer, information technology, utilities, insurance to help support FNRS services).</li> </ul> <p>April 1, 2029-March 31, 2030</p>



Current Wording of the Draft FSA	Proposed Amendment to the Draft FSA
<p>62 As of April 1, 2026, the transition to the Reformed FNCFS Funding Approach shall be complete.</p>	<p>58(a) Funding for First Nation Representative Services following the Initial Five-Year terms shall be determined in accordance with the Initial Program Assessment Opinion.</p>
<p><b>TRANSITION TO THE REFORMED FNCFS FUNDING APPROACH – Paras. 53, 59, 60 &amp; 62</b></p> <p>53 <u>Operations and maintenance funding:</u></p> <ul style="list-style-type: none"> <li>(a) Commencing April 1, 2025, FNCFS Agencies’ access to the reimbursement at their actual costs for intake and investigations, legal fees, building repairs, child service purchase, and small agency costs shall cease.</li> <li>(b) Outside of Ontario, ISC shall reimburse claims for FNCFS Agencies’ actual costs for intake and investigations, legal fees, building repairs, child service purchase, and small agency costs incurred in fiscal year 2024-2025, submitted on or before September 20, 2025.</li> <li>(c) In Ontario, ISC shall reimburse claims of FNCFS Agencies’ actual costs for intake and investigations, legal fees, and building repairs incurred in fiscal year 2024-2025, submitted on or before September 20, 2025.</li> </ul> <p>59 <u>FNCFS capital funding:</u></p> <ul style="list-style-type: none"> <li>(a) Commencing April 1, 2025, ISC shall no longer accept funding requests under the 2021 CHRT 41 process. ISC shall instead providing capital funding in the manner described in subparagraph 42(e)</li> <li>(b) For greater clarity, ISC shall continue to process capital funding requests that are received on or before March 31, 2025, and fund those requests that are approved, pursuant to 2021 CHRT 41. Requests received shall include requests that are paused or pending approval from ISC as of March 31, 2025.</li> </ul>	<p><b>Replace paras. 53, 59, 60 &amp; 62 with the following:</b></p> <p>53 <u>Operations and maintenance funding:</u></p> <ul style="list-style-type: none"> <li>(a) Commencing April 1, 2030, FNCFS Agencies’ access to the reimbursement at their actual costs for child in care (including but not limited to alternative care, customary care and/or kinship care), intake and investigations, legal fees, building repairs, child service purchase, and small agency costs may cease if recommended in the Initial Program Assessment and approved by First Nations in Assembly.</li> <li>(b) Outside of Ontario, ISC shall reimburse claims for FNCFS Agencies’ actual costs for intake and investigations, legal fees, building repairs, child service purchase, and small agency costs incurred in fiscal year 2027-2028, submitted on or before September 20, 2028.</li> <li>(c) In Ontario, ISC shall reimburse claims of FNCFS Agencies’ actual costs for child in alternative care maintenance intake and investigations, legal fees, and building repairs incurred in fiscal year 2027-2028, submitted on or before September 20, 2028.</li> </ul> <p>59 <u>FNCFS capital funding:</u></p> <ul style="list-style-type: none"> <li>(a) Under the term of this Final Settlement Agreement, capital funding and requests shall continue at actuals pursuant to 2021 CHRT 41 and consistent with the principles of best interests of the child, culturally appropriate, substantive equality and taking into full account the distinct circumstances of the child’s First Nations community. The parties shall update and streamline the process for capital claims to ensure efficiency, effectiveness and timelines of processing claims and monitor the implementation of said approach to ensure it</li> </ul>



Current Wording of the Draft FSA	Proposed Amendment to the Draft FSA
<p>60 <u>post-majority support services funding</u>: Commencing on April 1, 2025, FNCFS Service Providers shall no longer have access to reimbursement of their actual costs for post-majority support services, ISC shall instead provide post-majority support services funding in the manner outlined in subparagraph 42(f).</p> <p>From April 1, 2026, Onward</p> <p>62 As of April 1, 2026, the transition to the Reformed FNCFS Funding Approach shall be complete.</p>	<p>achieves the purpose and principles set out in the Agreement and the requirements of 2021 CHRT 41.</p> <p>60 <u>post-majority support services funding</u>: Under the term of this Final Settlement Agreement, for the Initial Five-Year term post-majority support services shall continue at actuals pursuant to 2022 CHRT 8.</p>
<p><b>FNCFS Capital Funding – Para. 42(e)</b></p> <p><u>FNCFS capital funding</u>: Prior to September 1, 2024, the Parties shall develop an implementation plan for this capital funding that leverages existing and new community capital planning processes. ISC, with the advice of the Reform Implementation Committee, shall also develop guidance documents to support FNCFS Service Providers in seeking capital funding.</p>	<p><b>Replace para. 42(e) with the following:</b></p> <p><u>FNCFS capital funding</u>:, Within three (3) years of the Tribunal’s approval of this Final Settlement Agreement and subject to the development of an evidence based approach approved by the NCCC, the Parties, the Caring Society and the Commission, with direct input from the NAC, shall develop an implementation plan for this capital funding, including an approach that addresses urgent requests, requirements that Canada not engage in administrative delays and required timelines for Canada to determine capital funding requests.</p>
<p><b>Post-majority support services funding – Para. 42(f)(i)</b></p> <p>42(f)(i) Save for the funding noted in subparagraph 42(f)(ii), ISC shall allocate all post-majority support funding to First Nations. Prior to September 1, 2024, the Parties shall co-develop the approach by which ISC shall allocate post-majority support services funding among First Nations. That approach shall align with the principles of needs-based funding and recognition of the distinct realities of First Nations.</p>	<p><b>Replace para. 42(f)(i) with the following:</b></p> <p>42(f)(i) Post-majority support funding following the Initial Five Year term shall be determined in accordance with the Initial Program Assessment Opinion, but shall not be less than the highest amount received in any given fiscal year. That approach shall align with the principles of needs-based funding, be culturally appropriate and recognition of the distinct realities of First Nations.</p>

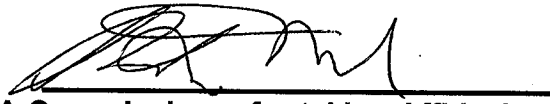
## Tribunal's Jurisdiction and Tribunal's Orders

Current Wording of the Draft FSA	Proposed Amendment to the Draft FSA
<p><b>SUSPENDING TRIBUNAL'S ORDERS – Paras. 385 &amp; 386</b></p> <p>385 Within 30 days following the signing of the Final Settlement Agreement, the Parties shall file a joint Notice of Motion with the Tribunal in which they shall seek an order from the Tribunal that the Final Settlement Agreement is approved and that the Tribunal's jurisdiction over the complaint and all associated proceedings has ended save for those relating to Jordan's Principle, and that the terms of the Final Settlement Agreement supersede and replace all order of the Tribunal related to the discrimination found by the Tribunal concerning the FNCFS Program and the 1965 Agreement.</p> <p>386 For clarity, the terms of this Final Settlement Agreement shall supersede, and render void all previous orders of the Tribunal concerning the 1965 Agreement and the FNCFS Program provided by Canada through ISC and any previous entities, unless an Order or part of an Order of the Tribunal is specifically identified as surviving and still in force following this Final Settlement Agreement.</p>	<p><b>Replace para. 385 &amp; 386 with the following:</b></p> <p>385 Subject to the approval of the Final Settlement Agreement by First Nations in Assembly and within 30 days following the signing of the Final Settlement Agreement, the Parties shall file a joint Notice of Motion with the Tribunal in which they shall seek an order from the Tribunal that the Final Settlement Agreement is approved and that the Tribunal shall retain jurisdiction over the complaint in relation to the FNCFS Program and the 1965 Agreement for a minimum of five (5) years from the date of approval of the Final Settlement Agreement. The Parties shall only return to the Tribunal for assistance following the full adjudication of a Parties' Dispute.</p> <p>386 Following the five (5) year supervision role of the Tribunal, the Parties to the complaint shall report to the Tribunal regarding the Initial Five-Year term and seek guidance and direction regarding the Tribunal's ongoing jurisdiction in relation to the FNCFS Program and the 1965 Agreement. For clarity, the Tribunal's reasons and findings made in all existing orders shall continue and this Final Settlement Agreement has no impact on any of the Tribunal's orders in relation to Jordan's Principle.</p>
<p><b>Enforcement of Funding Commitment – Para. 384</b></p> <p>384 Notwithstanding paragraph 383, if the Parliament of Canada does not appropriate sufficient funding to satisfy Canada's commitment in PART IV – FUNDING COMMITMENT of this Final Settlement Agreement, a Party may seek an order from a court of competent jurisdiction that the Parties are substantially deprived of the benefit of the FSA. The Party seeking such an order need not have suffered monetary loss nor shall it be necessary for a Party to prove that it is unable to perform its obligations under this Final Settlement Agreement as a result of Parliament's decision not to appropriate sufficient funding. If a court makes such an order, a Party may seek to re-open the complaint at the Canadian Human Rights Tribunal</p>	<p><b>Replace Para. 384 with the following:</b></p> <p>384 Notwithstanding paragraph 383, if the Parliament of Canada does not appropriate sufficient funding to satisfy Canada's commitment in PART IV – FUNDING COMMITMENT of this Final Settlement Agreement, a Party may seek an order or direction from the Tribunal. Any First Nation, First Nations service provided or FNCFS Agency may initiate a new complaint at the Tribunal. For clarity, nothing in this clause is intended to foreclose any other cause of action or remedy which may be available to the Parties.</p>

Current Wording of the Draft FSA	Proposed Amendment to the Draft FSA
<p>bearing file number T1340/7008, or to initiate a new complaint at the Canadian Human Rights Tribunal. For clarity, nothing in this clause is intended to foreclose any other cause of action or remedy which may be available to the Parties.</p>	
	<p>Nothing in this agreement shall affect, cancel or supersede any Treaty between Canada and First Nations or any existing agreement between Canada and any other First Nation.</p> <p>Canada recognizes that all relations with Indigenous peoples be based on the recognition and implementation of their right of self-government.</p> <p>The release does not settle, compromise, release or limit in any way whatsoever any claims by the releasors, in any action, claim or complaint regarding a declaration of Aboriginal or Treaty rights, a breach of Treaty rights, a breach of Treaty rights, a breach of fiduciary duty or the constitutionality of any provision of the Constitution Act, 1982</p>

DRAFT

**This is Exhibit "F" to the affidavit of  
Katherine Quintana-James affirmed  
before me this 14th day of January, 2025**

A handwritten signature in black ink, appearing to read 'R. McLeod', is written over a solid horizontal line.

**A Commissioner for taking Affidavits etc.**

Robin McLeod  
LSO#91164M



**Maggie Wente**  
[mwente@oktlaw.com](mailto:mwente@oktlaw.com)  
**T: 416-981-9340**  
**75558**

October 2, 2024

**SENT VIA EMAIL**

[\(sarah@childandfamilylaw.ca\)](mailto: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 19<sup>th</sup> 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.

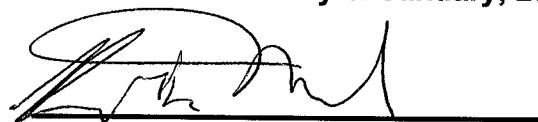
Sincerely,



Maggie Wenté

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

**This is Exhibit "G" to the affidavit of  
Katherine Quintana-James affirmed  
before me this 14th day of January, 2025**

A handwritten signature in black ink, appearing to read 'Robin McLeod', is written over a solid horizontal line.

**A Commissioner for taking Affidavits etc.**

Robin McLeod  
LSO#91164M

**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,

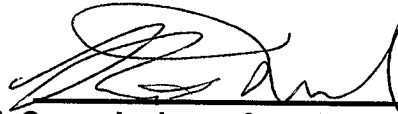
David

---

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



**This is Exhibit "H" to the affidavit of  
Katherine Quintana-James affirmed  
before me this 14th day of January, 2025**

A handwritten signature in black ink, appearing to read 'Robin McLeod', written over a solid horizontal line.

**A Commissioner for taking Affidavits etc.**

Robin McLeod  
LSO#91164M



**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.
- 

**Certified copy of a resolution adopted on the 18th day of October, 2024 in Calgary, Alberta**

*Cindy Woodhouse*

---

**CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF**

**60 – 2024**  
Page 1 of 5

- 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.

---

**Certified copy of a resolution adopted on the 18th day of October, 2024 in Calgary, Alberta**

*Chixelhouse.*

- 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;

---

**Certified copy of a resolution adopted on the 18th day of October, 2024 in Calgary, Alberta**

*Chixelhouse.*

- 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,

---

**Certified copy of a resolution adopted on the 18th day of October, 2024 in Calgary, Alberta**

*Chixelhouse.*

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.

---

Certified copy of a resolution adopted on the 18th day of October, 2024 in Calgary, Alberta

*C. Woodhouse*

---

CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF

60 – 2024  
Page 5 of 5



**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.

---

**Certified copy of a resolution adopted on the 18th day of October, 2024 in Calgary, Alberta**

*C. Woodhouse*



- 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

---

**Certified copy of a resolution adopted on the 18th day of October, 2024 in Calgary, Alberta**

*Chixelhouse.*



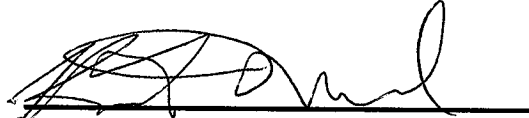
- ii. to FNCFS agencies to ensure they can deliver prevention in a substantively equitable manner in keeping with legislative requirements to meet the needs of First Nations children and their unique cultural circumstances.
  - k. Ensure there is an evidence-informed, needs-based funding structure that 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.

---

**Certified copy of a resolution adopted on the 18th day of October, 2024 in Calgary, Alberta**

*Chixelhouse.*

**This is Exhibit "I" to the affidavit of  
Katherine Quintana-James affirmed  
before me this 14th day of January, 2025**

A handwritten signature in black ink, appearing to read 'Robin McLeod', written over a horizontal line.

**A Commissioner for taking Affidavits etc.**

Robin McLeod  
LSO#91164M

---

# 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

**SPECIAL CHIEFS ASSEMBLY**  
December 3, 4, 5, 2024, Ottawa, ON

**Resolution no. 88/2024**

---

<b>TITLE:</b>	<b>Implementing the Chiefs' Direction to End Canada's Discrimination in First Nations Child and Family Services</b>
<b>SUBJECT:</b>	Children and Families
<b>MOVED BY:</b>	Chief Trevor Prince, Sandy Bay Ojibway First Nation, MB
<b>SECONDED BY:</b>	Chief Jason Daniels, Swan Lake First Nation, MB
<b>DECISION</b>	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.

---

**Certified copy of a resolution adopted on the 4th day of December, 2024 in Ottawa, ON**

*Chexhouse.*

---

**CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF**

**88 – 2024**  
Page 1 of 4

- 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

---

**Certified copy of a resolution adopted on the 4th day of December, 2024 in Ottawa, ON**

*Chaxelhouse.*

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

---

**Certified copy of a resolution adopted on the 4th day of December, 2024 in Ottawa, ON**

*Cindy Woodhouse*

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.

---

Certified copy of a resolution adopted on the 4th day of December, 2024 in Ottawa, ON

*Woodhouse*



**SPECIAL CHIEFS ASSEMBLY**  
December 3, 4, 5, 2024, Ottawa, ON

**Resolution no. 89/2024**

---

<b>TITLE:</b>	<b>Renewing Negotiations Toward Long-Term Reform of First Nations Child and Family Services and Jordan's Principle</b>
<b>SUBJECT:</b>	Children and Families
<b>MOVED BY:</b>	Khelsilem, Council Chairperson, Squamish Nation, BC
<b>SECONDED BY:</b>	Chief Erica Beaudin, Cowessess First Nation, SK
<b>DECISION</b>	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

---

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

*Chexhouse*

---

**CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF**

**89 – 2024**  
Page 1 of 5



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

---

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

*Chexhouse.*



- 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:

---

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

*Woodhouse*

- 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.

---

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

*Woodhouse*

---

CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF

89 – 2024  
Page 4 of 5

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*



**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**

**90 – 2024**  
Page 1 of 3

- 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 up triaging 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*

**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**

*Cindy Woodhouse*

**This is Exhibit "J" to the affidavit of  
Katherine Quintana-James affirmed  
before me this 14th day of January, 2025**

A handwritten signature in black ink, appearing to read 'Robin McLeod', written over a horizontal line.

**A Commissioner for taking Affidavits etc.**

Robin McLeod  
LSO#91164M





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 is Exhibit "K" to the affidavit of  
Katherine Quintana-James affirmed  
before me this 14th day of January, 2025**

A handwritten signature in black ink, appearing to read 'Robin McLeod', written over a horizontal line.

**A Commissioner for taking Affidavits etc.**

Robin McLeod  
LSO#91164M



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 is Exhibit "L" to the affidavit of  
Katherine Quintana-James affirmed  
before me this 14th day of January, 2025**

A handwritten signature in black ink, appearing to read 'Robin McLeod', is written over a solid horizontal line.

**A Commissioner for taking Affidavits etc.**

Robin McLeod  
LSO#91164M



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  
Secteur national du contentieux  
50, rue O'Connor, bureau 500  
Ottawa (ON) K1A 0H8

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.

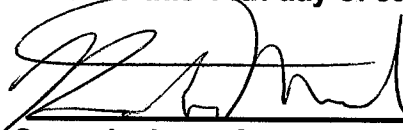
Sincerely,

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 is Exhibit "M" to the affidavit of  
Katherine Quintana-James affirmed  
before me this 14th day of January, 2025**

A handwritten signature in black ink, appearing to read 'Robin McLeod', written over a horizontal line.

**A Commissioner for taking Affidavits etc.**

Robin McLeod  
LSO#91164M



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 is Exhibit "N" to the affidavit of  
Katherine Quintana-James affirmed  
before me this 14th day of January, 2025**

  
**A Commissioner for taking Affidavits etc.**

Robin McLeod  
LSO#91164M



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  
Secteur national du contentieux  
50, rue O'Connor, bureau 500  
Ottawa (ON) K1A 0H8

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.

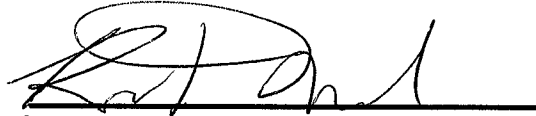
Sincerely,

For: Paul Vickery  
Legal Agent and Counsel

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

Canada 

**This is Exhibit "O" to the affidavit of  
Katherine Quintana-James affirmed  
before me this 14th day of January, 2025**

A handwritten signature in black ink, appearing to read "Robin McLeod", written over a solid horizontal line.

**A Commissioner for taking Affidavits etc.**

Robin McLeod  
LSO#91164M



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  
Secteur national du contentieux  
50, rue O'Connor, bureau 500  
Ottawa (ON) K1A 0H8

Telephone/Téléphone:  
Fax /Télécopieur:  
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.

**Canada**



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.

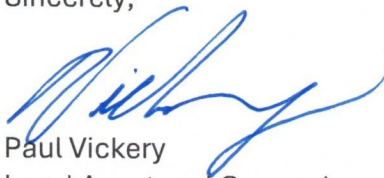
It is disappointing that the First Nations-in-Assembly rejected the Final Agreement, which would have legally bound Canada to provide \$47.8 billion in stable and predictable funding over 10 years for a fully reformed Program. The Final Agreement would have resulted in a Program that gives First Nations 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