

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N :

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

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

-and-

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

Respondent

- and -

**CHIEFS OF ONTARIO and
AMNESTY INTERNATIONAL CANADA and NISHNAWBE ASKI NATION**

Interested Parties

JOINT NOTICE OF MOTION

The Interested Party Chiefs of Ontario and the Interested Party Nishnawbe Aski Nation make a joint motion to the Canadian Human Rights Tribunal at 240 Sparks Street, 6th Floor West, Ottawa, Ontario, to be heard at a time to be determined by the Canadian Human Rights Tribunal.

The motion is made under Rule 3 of the *Canadian Human Rights Tribunal Rules of Procedure (Proceedings Prior to July 11, 2021)* and is for orders under paragraph 53(2) of the *Canadian Human Rights Act*, Rules 1(6), 3(1), and 3(2)(d), and pursuant to the Canadian Human Rights Tribunal's continuing jurisdiction in this matter.

The motion is proposed to be heard in person.

THE MOTION IS FOR:

1. An order that the Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario (the “Ontario Final Agreement”), executed by Chiefs of Ontario (“COO”), Nishnawbe Aski Nation (“NAN”), and His Majesty the King in Right of Canada on February 26, 2025, be and is hereby approved by the Canadian Human Rights Tribunal (the “Tribunal”), without condition.
2. An order that the Ontario Final Agreement and the Trilateral Agreement Respecting Reform of the 1965 Agreement (the “Trilateral Agreement”) satisfy, supersede, and replace all orders of the Tribunal related to the discrimination found by the Tribunal concerning all elements of the Complaint in Ontario relating to the First Nations Child and Family Services (“FNCFS”) Program in Ontario and the Memorandum of Agreement Respecting Welfare Programs for Indians (the “1965 Agreement”).
3. An order ending the Tribunal’s jurisdiction over the elements of the Complaint and all associated remedial proceedings with respect to Ontario, save for jurisdiction over those aspects of the within Complaint and associated proceedings related to the interpretation and implementation of Jordan’s Principle.
4. An order that the orders of the Tribunal made with respect to the interpretation, application, and implementation of Jordan’s Principle continue to apply with respect to First Nations children in Ontario.
5. Such further and other relief as counsel may advise and the Tribunal may direct.

THE GROUNDS FOR THE MOTION ARE:

Background

6. In the *Merit Decision* (indexed as 2016 CHRT 2) at paragraph 473, the Tribunal found that the Respondent, the Attorney General of Canada (“Canada”), was discriminating against First Nations children through the unequal funding of the FNCFS Program on reserve. At paragraph 481, the Tribunal ordered Canada to cease its discriminatory practices and

reform the FNCFS Program and the 1965 Agreement to reflect the Tribunal's findings in the decision.

7. It has been over nine years since the *Merit Decision*. There have been numerous interim relief orders to remedy elements of the discrimination, but the comprehensive reform contemplated by the Tribunal's orders has not yet occurred. First Nations in Ontario have long been demanding comprehensive reform in line with their aspirations and their inherent rights to make decisions about children and families. The reform First Nations in Ontario have been demanding includes First Nations as providers of community-based prevention services, funding control, automatic receipt of First Nations Representative Services funding, and funding that reflects the real increased costs of remoteness.
8. The Tribunal, in a letter dated February 10, 2025, expressed concern that long-term reform had not yet been completed. COO and NAN share those concerns, and the Chiefs-in-Assembly of both COO and NAN have approved agreements for long-term reform and are ready to move from the *status quo* to a Reformed FNCFS Program.
9. On December 31, 2021, COO, the Assembly of First Nations ("AFN"), the First Nations Child and Family Caring Society ("Caring Society"), NAN, and Canada executed an Agreement-in-Principle on the Long-Term Reform of the FNCFS Program and Jordan's Principle. Shortly after the Agreement-in-Principle was signed, COO, the AFN, the Caring Society, NAN, and Canada began negotiating a national Final Agreement.
10. The Caring Society withdrew from the negotiations. AFN, COO, NAN, and Canada continued in the negotiations.
11. On July 11, 2024, AFN, COO, NAN, and Canada signed a draft national Final Agreement on Long-Term Reform of the FNCFS Program (the "draft national Final Agreement").
12. The draft national Final Agreement was ratified by the NAN Chiefs-in-Assembly on October 9, 2024, and the Ontario Chiefs-in-Assembly on October 10, 2024.
13. The draft national Final Agreement was not ratified by the First Nations-in-Assembly at the AFN Special Chiefs Assembly on October 17, 2024.

14. In November 2024, at the COO Annual General Assembly, the Ontario Chiefs-in-Assembly passed a resolution mandating COO to pursue an Ontario-specific agreement. Ontario Regional Chief Abram Benedict and NAN Grand Chief Alvin Fiddler formally invited Canada to enter into negotiations to achieve a Reformed FNCFS Program in Ontario, in a letter dated October 25, 2024. Ontario Regional Chief Abram Benedict and NAN Grand Chief Alvin Fiddler also met with Minister Patty Hajdu on November 8, 2024, where they conveyed COO's and NAN's desire to enter into negotiations to reform the FNCFS program in Ontario.
15. On December 30, 2024, Canada announced it had received a mandate to negotiate with COO and NAN towards long-term reform of the FNCFS Program in Ontario, based on the draft national Final Agreement.
16. On February 7, 2025, after five weeks of negotiation, COO, NAN, and Canada reached a provisional Ontario Final Agreement and a provisional Trilateral Agreement.
17. On February 25, 2025, the provisional Ontario Final Agreement and the provisional Trilateral Agreement were ratified by the NAN Chiefs-in-Assembly.
18. On February 26, 2025, the provisional Ontario Final Agreement and the provisional Trilateral Agreement were ratified by the Ontario Chiefs-in-Assembly.
19. The Ontario Final Agreement was negotiated with Canada by COO and NAN, in the spirit of reconciliation and through the exercise of the inherent right to self-determination, recognized and affirmed in the *United Nations Declaration on the Rights of Indigenous Peoples* (“*UNDRIP*”).
20. The First Nations in Ontario organize and govern themselves through COO and NAN, in line with their right to participate in decision-making matters that affect their rights, through representatives chosen by themselves in accordance with their own procedures, as recognized and affirmed in Article 18 of *UNDRIP*. The negotiation and ratification of the Ontario Final Agreement and the Trilateral Agreement is the collective expression of the self-governance and self-determination rights of the First Nations in Ontario through COO and NAN.

21. COO and NAN worked extensively with First Nations and political-territorial organizations in Ontario and their appointed representatives and technicians to inform First Nations about proposed reforms to the FNCFS program, to seek direction on proposed reforms, and to shape the Ontario Final Agreement and the Trilateral Agreement. COO and NAN provided information about the proposed reforms through numerous materials on a website maintained by COO and NAN, and through information sessions. First Nations leadership and technicians were provided many opportunities to provide their views on the reform of the FNCFS Program.

Ontario Final Agreement

22. The Ontario Final Agreement represents substantial reform to the FNCFS program in Ontario.
23. The Ontario Final Agreement's purpose and principles reflect the Tribunal's orders including the best interests of children, substantive equality, culturally appropriate services, and the prioritization of keeping children in the home. It enables the exercise of First Nations' self-determination by allowing First Nations to make choices about who provides certain services, and by allowing First Nations to be the service provider in many aspects when they so choose.
24. The Ontario Final Agreement is evidence-based. It relies on, among other things, the reports completed by the Institute of Fiscal Studies and Democracy (the "IFSD") and the Ontario Special Study (the "OSS"). The IFSD reports analyzed the costs of the FNCFS Program based on the needs of First Nations agencies. In its reports, the IFSD made numerous recommendations in relation to funding and structural changes to the FNCFS Program and proposed a new funding mechanism model for FNCFS and an updated framework on child, family, and community well-being. The OSS examined the funding relationship and comparability of child welfare services for on-reserve children in Ontario and provided options on a new First Nations family well-being policy, program delivery, and funding approach that is family-centered, community-directed, and supports better outcomes by focusing on prevention.

25. The Ontario Final Agreement commits \$8.5 billion over nine fiscal years (April 1, 2025 to March 31, 2034) to implement reforms to the FNCFS Program in Ontario. The funding is flexible, meaning First Nations and FNCFS Service Providers are entitled to move funds between “line items” and are entitled to carry over unspent funds. It provides stable and predictable funding through its term.
26. The Ontario Final Agreement provides that, in addition to FNCFS Agencies, First Nations are funding recipients and vital providers of child and family services. This builds on welcome reforms that commenced in the interim relief period since the *Merit Decision*.
27. The vast majority of the \$8.5 billion is committed to the costs directly associated with the FNCFS Program. The Ontario Final Agreement provides for funding to First Nations and FNCFS Agencies in the following program and services categories:
 - (a) To First Nations and FNCFS Agencies:
 - (i) Prevention services funding
 - (ii) Emergency funding
 - (iii) FNCFS capital funding
 - (iv) Remoteness funding (where applicable)
 - (b) To First Nations:
 - (i) First Nations Representative Services funding
 - (ii) Post-Majority Support Services funding
 - (iii) Household supports funding
 - (iv) Results funding
 - (v) Information Technology funding
 - (vi) Housing funding
 - (c) To FNCFS Agencies:
 - (i) “Baseline” funding for protection services (operations and maintenance)
 - (ii) Funding directed by a First Nation for any services, at the First Nation’s option
28. Only \$75 million of the funds—amounting to less than 1% of the \$8.5 billion commitment—is committed to governance and administrative costs, such as the Ontario

Reform Implementation Committee (“ORIC”), NAN-Canada Remoteness Quotient Table and Ontario Remoteness Secretariat, Ontario FNCFS Data Secretariat, funding for COO and NAN to support the implementation of the Ontario Final Agreement, and dispute resolution.

29. The Ontario Final Agreement contains elements that are intended to give First Nations a significant role in overseeing the implementation of the Ontario Final Agreement alongside Canada, and to provide for dispute resolution.
30. The ORIC will be created, with eight members appointed as follows: one member appointed by each of COO, NAN and Indigenous Services Canada (“ISC”); and five at-large members appointed by the Ontario Chiefs-in-Assembly, one of whom is intended to be to be a youth with lived experience of out-of-home care. The ORIC will oversee and monitor the implementation of the Reformed FNCFS Program and will make recommendations, at any time, to Canada on needed improvements. The ORIC will also have subcommittees that report to it that are specifically constituted to provide technical advice and to identify any trends of concern that may arise and make recommendations to address them.
31. The ORIC will establish a Systemic Review Committee as a sub-committee. The function of the Systemic Review Committee is to review and identify trends in:
 - (a) Service Provider Funding Adjustment Requests and the determination of said requests, and
 - (b) Claimant Disputes delivered to Canada by Claimants in Ontario, Dispute Awards by the Arbitral Tribunal or Appeal Tribunal for Claimant Disputes, and appeal decisions related to Claimant Disputes of the Ontario Superior Court or other appellate courts.
32. The ORIC will also establish a Technical Advisory Committee as a sub-committee. The function of the Technical Advisory Committee is to provide technical advice on the implementation of the Reformed FNCFS Program to the ORIC and to disseminate best practice guidelines and tools to First Nations and FNCFS Service Providers.

33. In addition to the \$8.5 billion, ISC has committed to fund the following at their full cost:
 - (a) Administrative support of the ORIC;
 - (b) Cultural humility training for ISC employees; and
 - (c) Two comprehensive program assessments (to evaluate the effectiveness of the reforms and make recommendations for improvements).

34. An Ontario FNCFS Data Secretariat will be created, which will synthesize Ontario FNCFS data and other relevant data to develop, support, or inform recommendations to the ORIC in relation to the implementation and efficacy of the Reformed FNCFS Program. ISC will provide \$13.5 million over the term of the Ontario Final Agreement to support the Ontario FNCFS Data Secretariat.

35. The Ontario Final Agreement provides for a dispute resolution process. The dispute resolution process will handle two types of disputes: disputes among COO, NAN, and/or Canada; and an optional process to resolve disputes between First Nations and FNCFS Agencies to address questions of their entitlement to or the accuracy of their funding provided for in the Ontario Final Agreement and ISC's decision to deny (in whole or in part) a First Nation's or FNCFS Agency's Service Provider Funding Adjustment request or capital funding request or proposal. The Dispute Resolution Process will provide for duty counsel to assist First Nations and FNCFS Agencies in filing disputes, free of charge. First Nations' and FNCFS Agencies' use of the dispute resolution process is optional, but if a First Nation or FNCFS Agency chooses to use the dispute resolution process, the First Nation or FNCFS Agency foregoes their right to bring their dispute before another decision-making body, such as the courts or the Tribunal.

36. The Ontario Final Agreement also addresses the unique challenges experienced by remote communities across Ontario by indexing for the increased costs of the delivery of the FNCFS program through the implementation of a Remoteness Quotient Adjustment Funding ("RQAF") in respect of eighty-five (85) First Nations across Ontario. The delivery of services in respect of First Nation Representative Services, IT, results, emergency, household supports, and Post-Majority Support Services will all be the subject of RQAF,

and, where eligible, funding shall be upwardly adjusted. For greater clarity, the RQAF calculation methodology is detailed in Appendix 10 of the Ontario Final Agreement.

37. The work of the NAN-Canada Remoteness Quotient Table will continue with a new mandate to establish an Ontario Remoteness Secretariat, which will be a centre of expertise to study the impacts of remoteness in Ontario. As such, the Ontario Remoteness Secretariat will coordinate data, analysis, research, and share best practices among First Nations and agencies. Both the NAN-Canada Remoteness Quotient Table and the Ontario Remoteness Secretariat shall work on developing evidence-based best practices, data collection, analysis, and disseminating research on remoteness costs.
38. Two program assessments will be conducted during the course of the Ontario Final Agreement, with the goal of evaluating whether the reforms to the FNCFS Program contained in the Ontario Final Agreement:
 - (a) achieve progress toward the elimination of discrimination and prevention of its recurrence in Ontario;
 - (b) provide funding in a sufficient amount and in a manner that is consistent with the purposes and principles of the Ontario Final Agreement;
 - (c) are effective and advance the outcomes of the Reformed FNCFS Program through an analysis of data collected on the indicators set out in the Ontario Final Agreement; and
 - (d) improve the well-being and advance the best interests of First Nations children, youth, and families in Ontario.
39. The initial program assessment will be completed by March 31, 2028 and the second by June 30, 2033. At the conclusion of the initial program assessment, recommendations for program and/or funding changes for the Reformed FNCFS Program in Ontario for the Second Funding Period (April 1, 2029 to March 31, 2034) will be made by the ORIC to Canada. The funding commitment for the Second Funding Period may be upwardly adjusted to account for the implementation of recommendations that flow from the initial program assessment. Following the second program assessment, ORIC will make recommendations to ISC to inform the design and/or development of the Reformed FNCFS

Program, or successor program, which may take effect following the expiry of the Ontario Final Agreement.

40. To foster greater accountability between First Nations and the FNCFS Agencies that serve them, every FNCFS Agency will be required to co-develop a child and community well-being plan with the First Nations they serve. It will be a multi-year plan, updated annually, and ISC will enforce Agency compliance with the plan.

The Ontario Final Agreement remedies the systemic discrimination found

41. The reforms to the FNCFS Program in Ontario contained in the Ontario Final Agreement are designed to remedy and prevent the recurrence of the systemic discrimination found by the Tribunal and achieve substantive equality. The Ontario Final Agreement recognizes that First Nations are leaders in delivering culturally appropriate child and family services to their own communities, in the best interests of their children, and as such must be funded adequately, flexibly, and in a way that is responsive to the unique needs of First Nations' children, families, and communities.
42. The proposed Reformed FNCFS Program is sustainably and adequately funded and resourced by Canada. The Ontario Final Agreement provides stable and predictable funding over nine fiscal years, without the need to apply yearly, and obligates Canada to engage with COO and NAN in the development of a Reformed FNCFS Program beyond the term of the agreement and to consider the recommendations of the ORIC following the second program assessment in doing so.
43. The proposed reformed funding model under the Ontario Final Agreement provides the flexibility necessary for the FNCFS program to respond to the specific needs of First Nations children, families, and communities, including through funding reallocation and carry-forward provisions.
44. The inclusion of First Nations-controlled prevention funding in the Ontario Final Agreement accommodates the delivery of culturally appropriate prevention services aimed at reducing the number of children entering care and ending the perpetuation of the cycle

of control that outside forces have historically exerted over First Nations children and families, and over their cultures and identities.

45. The Ontario Final Agreement provides multiple mechanisms for feedback on the FNCFS Program and methods to prevent the recurrence of discrimination—including the ORIC and its subcommittees, the performance measurement model in combination with the Ontario FNCFS Data Secretariat, and the two program assessments—to ensure the Ontario Final Agreement achieves the desired outcomes.
46. The Ontario Final Agreement recognizes and respects First Nations’ inherent right of self-government, which is recognized and affirmed by section 35 of the *Constitution Act, 1982*, including jurisdiction in relation to child and family services, as recognized and affirmed in *An Act respecting First Nations, Inuit and Métis children, youth and families*, S.C. 2019, c. 24. It respects and enhances First Nation self-determination over programs and services for those First Nations who do not exercise their inherent jurisdiction and choose to stay under the FNCFS Program.
47. The Ontario Final Agreement also contains a commitment from Canada to work with COO and NAN on an expedited basis to pursue comprehensive reform of the 1965 Agreement between Canada and the Government of Ontario (“Ontario”).

The Trilateral Agreement

48. The Trilateral Agreement details how COO, NAN, and Canada will work together to engage with Ontario in discussions on reforming the 1965 Agreement.
49. Canada has a mandate to engage in preliminary discussions with COO, NAN, and Ontario on reforming all program areas covered under the 1965 Agreement, namely social assistance, child and family services, childcare, and homemaking.
50. The Trilateral Agreement contains the following commitments:
 - (a) A commitment by COO, NAN, and Canada to create a work plan outlining how they will reach out to Ontario and identifying substantive subjects for discussion with Ontario by May 31, 2025.

- (b) A commitment by Canada to provide \$3.71 million in funding to COO and \$3.92 million in funding to NAN over the five fiscal years of 2025-2026 to 2029-2030 to carry out the activities set out in the work plan, including amounts to support engagements, research, legal fees, and the Special Chiefs Assemblies required to ratify any reformed 1965 Agreement.
- (c) A commitment that Canada will take the position that COO and NAN be given the opportunity to fully participate in discussions with Canada and Ontario in respect of reforming the 1965 Agreement.
- (d) A commitment by Canada to not amend, replace, or terminate the 1965 Agreement or enter into any reformed 1965 Agreement without consultation with COO and NAN.
- (e) A commitment by Canada to make best efforts to reach an agreement on a reformed 1965 Agreement with Ontario by March 31, 2027 and to discuss next steps with COO and NAN if a reformed agreement cannot be reached by that date.
- (f) Outside of the Ontario Final Agreement, ISC commits to continue to fund First Nations to access funding at actuals to support the need for First Nation Representative Services to First Nation children and families residing off-reserve until March 31, 2027, subject to Canada's approval processes and terms and conditions. Funding for post-March 31, 2027 is to be negotiated.

The Trilateral Agreement addresses the Tribunal's order on the 1965 Agreement

- 51. The Trilateral Agreement commits COO, NAN, and Canada to engage with Ontario in discussions to reform the 1965 Agreement to respond to the *Merit Decision*.
- 52. The Trilateral Agreement recognizes and respects First Nations' inherent right of self-government, which is recognized and affirmed by section 35 of the *Constitution Act, 1982*, including jurisdiction in relation to child and family services, as recognized and affirmed in *An Act respecting First Nations, Inuit and Métis children, youth and families*, S.C. 2019, c. 24. It respects and enhances First Nation self determination by allowing them to participate in the re-negotiation of—and potentially become parties to—a reformed 1965 Agreement through COO and NAN.

March 7, 2025



OLTHUIS, KLEER, TOWNSHEND LLP

250 University Avenue, 8th Floor

Toronto, ON M5H 3E5

Fax: (416) 981-9350

**Maggie Went, Jessie Stirling-Voss, Ashley
Ash, and Katelyn Johnstone**

Tel: 416-981-9340/416-981-9409

416-204-4764/647-872-1324

Email: mwent@oktlaw.com

jstirling@oktlaw.com

aash@oktlaw.com

kjohnstone@oktlaw.com

**Counsel for the Interested Party,
Chiefs of Ontario**



FALCONERS LLP

10 Alcorn Avenue, Suite 204

Toronto, ON M4V 3A9

Fax: (416) 929-8179

**Julian N. Falconer, Meaghan Daniel and
Shelby Percival**

Email: julianf@falconers.ca

meghand@falconers.ca

shelbyp@falconers.ca

**Counsel for the Interested Party,
Nishnawbe Aski Nation**

ORIGINAL TO:

CANADIAN HUMAN RIGHTS TRIBUNAL

c/o Judy Dubois, Registry Officer

240 Sparks Street, 6th Floor West

Ottawa, ON K1A 1J4

ATTORNEY GENERAL OF CANADA

Paul Vickery, Dayna Anderson, Sarah-Dawn Norris and Meg Jones

Department of Justice Canada

50 O'Connor Street

Ottawa, ON K1A 0H8

Counsel for the Respondent, the Attorney General of Canada

ASSEMBLY OF FIRST NATIONS

Stuart Wuttke and Adam Williamson

55 Metcalfe Street, Suite 1600

Ottawa, ON K1P 6L5

Counsel for the Co-complainant Assembly of First Nations

CANADIAN HUMAN RIGHTS COMMISSION

Anshumala Juyal and Khizer Pervez

344 Slater Street, 8th Floor

Ottawa, ON K1A 1E1

Counsel for the Canadian Human Rights Commission

AMNESTY INTERNATIONAL

STOCKWOODS LLP

Justin Safayeni, Stephen Aylward and Taskeen Nawab

TD North Tower

77 King Street West, Suite 4130

Toronto, ON M5K 1H1

Counsel for the Interested Party, Amnesty International

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA

CONWAY BAXTER WILSON LLP/s.r.l.

David P. Taylor

Suite 400 – 411 Roosevelt Avenue

Ottawa, ON K2A 3X9

CLARKE CHILD & FAMILY LAW

Sarah Clarke and Robin McLeod

Suite 950 – 36 Toronto Street

Toronto, ON M5C 2C5

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

FIRST NATIONS AND FAMILY CARING
SOCIETY OF CANADA et al.
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COMMISSION
Commission

Docket: T1340/7008

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Proceeding commenced at Toronto

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OLTHUIS, KLEER, TOWNSHEND LLP

250 University Avenue, 8th Floor
Toronto, ON M5H 3E5

**Maggie Wente, Jessie Stirling-Voss, Ashley Ash,
and Katelyn Johnstone**

Tel: 416-981-9340/416-981-9409

416-204-4764/647-872-1324

Email: mwente@oktlaw.com

jstirling@oktlaw.com

aash@oktlaw.com

kjohnstone@oktlaw.com

**Counsel for the Interested Party,
Chiefs of Ontario**

FALCONERS LLP

10 Alcorn Avenue, Suite 204
Toronto, ON M4V 3A9

**Julian N. Falconer, Meaghan Daniel, and Shelby
Percival**

Email: julianf@falconers.ca

meaghand@falconers.ca

shelbyp@falconers.ca

**Counsel for the Interested Party, Nishnawbe Aski
Nation**