Docket: T1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ATTORNEY GENERAL OF CANADA

(representing the Minister of Indigenous Services Canada)

Respondent

- and -

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

Interested Parties

AFFIDAVIT OF KRISTIN MURRAY

I, Kristin Murray, of the City of Timmins, in the Province of Ontario, DO SOLEMLY AFFIRM:

1. I am a member of the Chapleau Cree First Nation and the Executive Director of Kunuwanimano Child and Family Services ("**Kunuwanimano**"). Kunuwanimano is a child welfare agency that provides services for First Nations and Indigenous people across Northern Ontario, including members of Taykwa Tagamou Nation ("**TTN**"). In fact, TTN is one of the founding members of Kunuwanimano.

2. Pursuant to an order of this Tribunal, dated September 2, 2025, TTN was granted limited status as an interested party to participate in the joint motion of the Chiefs of Ontario ("**COO**"), the Nishnawbe Aski Nation ("**NAN**") and the Government of Canada for approval of the Final

Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario (the "**OFA**") and Trilateral Agreement in Respect of Reforming the *1965 Agreement* (the "**Trilateral Agreement**") (the "**OFA Joint Motion**").

3. As the Executive Director of the child welfare agency that serves TTN, I have knowledge of the matters contained in this affidavit. Where I do not have direct knowledge, I have identified the person from whom I obtained the information and believe it to be true.

4. Based on my experience delivering child welfare services to First Nations, including TTN, I have serious concerns regarding the OFA and the Trilateral Agreement.

My Background

5. As noted above, I am the Executive Director of Kunuwanimano. I have been in this role since July of 2023.

6. In the past, I have served in various other roles with the organization, having started at the agency in 2003. I first worked as a frontline worker providing intake and prevention services. I was then promoted to Foster Care Worker. I also held the role of Alternative Care Supervisor (2014-2017).

7. In addition, I am also currently a City Councillor for Ward 5 in the City of Timmins, Ontario. I was first elected to this position in October 2018 and was sworn in to the position in December of that year. In that role, I also served as Deputy Mayor and was appointed as the Mayor of Timmins in August 2022 to take over from the previous mayor who had resigned his seat upon his election as a Member of Provincial Parliament after the Provincial election. I served as Mayor until after the 2022 election in November 2022. I ran again for City Council Ward 5 in the 2022 election and was successfully re-elected.

8. One of the reasons that compelled me to decide to run for Council in the 2018 election was when the Human Rights Commissioner came to Timmins and spoke about pervasive racism against Indigenous people in the city. These comments really spoke to me and my experiences as an Indigenous person living in Timmins. I believed that it was incredibly important to ensure that we had representation at the decision-making table. Running for a seat on City Council was one of the many ways I have given back to my community.

9. I have a dual diploma in Social Service Work and Drug and Alcohol Counselling from Northern College, which I obtained in 2003. In 2022, I also graduated from Laurentian University with a Bachelor of Arts in Equity, Diversity, and Human Rights.

10. In the past, I have also been a Board Governor on the North Eastern Ontario Family & Children's Board. I was then recruited to work for North Eastern Ontario Family and Children's Services as the Equity Diversity and Inclusion Lead while also overseeing their Intensive Service Coordination team as the Services Supervisor (2021-2022) and then I applied for the role of service manager and was in that role (2022-2023) prior to returning to Kunuwanimano.

11. I have dedicated my life and over 20-year career to public service and child welfare in Northern Ontario, including to First Nations in Northern Ontario.

Background of Kunuwanimano

12. As I noted above, Kunuwanimano is a child welfare agency that services First Nations in Northern Ontario. We service eleven First Nations in the area: TTN, Apitipi Anicinapek Nation (Wahgoshig First Nation), Beaverhouse First Nation, Brunswick House First Nation, Chapleau Cree First Nation, Chapleau Ojibwe First Nation, Constance Lake First Nation, Hornepayne First Nation, Matachewan First Nation, Mattagami First Nation, and Missanabie Cree First Nation (though two of these communities are not recognized as First Nations by Indigenous Services Canada ("**ISC**")).

13. Our service area covers approximately 139,000 square kilometers from North of the 47.5 parallel at the Southern boundary of the Arctic Watershed, North to the jurisdiction of Payukotayno Child and Family Services, west to the jurisdiction of Tikinagan Child and Family serves, and East to the Province of Quebec. The Kunuwanimano head office is located on Apitipi Anicinapek Nation with the main office located in the city of Timmins. Below is a map of our service area:

14. While the eleven First Nations mentioned above fall within our service area, our services are not restricted to only members of those First Nations. We have a mandate to provide services to Indigenous children, youth, and families residing in our jurisdiction, regardless of which First Nation they are registered with. This includes many Indigenous people living within urban centres in our service area, such as the City of Timmins.

15. The services that we offer include customary care/foster care and family support and prevention services:

a. Customary care/foster care: we recruit and retain Indigenous foster caregivers, provide training and support to those caregivers, provide assistance with voluntary/customary care placements, provide support to children in care, provide preventative services at

"grass roots level" including awareness on child welfare matters including roles and responsibilities of the customary care/foster care worker, provide workshops on traditional modes of care as defined by our First Nation communities to prevent the removal of children, provide repatriation services where needed by offering assistance and guidance, consultation, and referral services, and encourage customary care arrangements where applicable as a least intrusive measure.

b. Family support, cultural supports, and prevention services: we provide preventative programming to Indigenous children, youth, and families, promote awareness and encourage involvement at community level "grass roots" intervention regarding child and family services and other issues relating to family support, network with other service providers including the volunteer sector to enhance current working systems, exchange information and work collaboratively on community projects, and develop and deliver programs at the community level in accordance to culture, tradition, and heritage.

Exclusion from Engagement on the OFA

16. I experienced first-hand being excluded from discussions that NAN conducted surrounding the draft national final settlement agreement (the "**Draft FSA**"), before NAN pivoted to negotiating the OFA as an Ontario-specific version of the agreement.

17. Given my experience in the field of First Nation child and family services, the Chief and Council of Chapleau Cree First Nation sought to designate me as the Chief's proxy to attend the NAN Special Chiefs Assembly regarding the Draft FSA in the fall of 2024 on his behalf. On September 27, 2024, Chief Keith Corston of Chapleau Cree First Nation sent a letter to NAN advising them that he had designated me as his proxy.

18. However, I received a call from Chief Corston a few days later, informing me that he was withdrawing the proxy. He told me that NAN leadership was unhappy with the prospect of me attending as a proxy, as they did not want representatives (and particularly CEOs/Executive Directors) from FNCFS agencies in attendance. He told me that NAN representatives reached out to him to convince him to send someone else as his proxy**.** The message that Chief Corston conveyed to me was that because NAN did not want me there, I could not go. Ultimately, this outreach was successful as the Chief withdrew his proxy for me to attend the meeting.

19. As a result, I did not attend in person any of the NAN-hosted information sessions or meetings regarding the or the Draft FSA and was not able to express my concerns directly to them or their membership.

20. This experience reinforced the sentiment that I felt from NAN throughout the outreach regarding the Draft FSA and the OFA that they did not want participation or feedback from leaders of FNCFS agencies.

21. I have heard comments from those within NAN directly, including the Deputy Grand Chief of NAN, that the FNCFS agencies only want money for themselves, and that is why they are opposed to the OFA (and were opposed to the Draft FSA). This has been used as an excuse to try to exclude representatives from those agencies from the process.

22. This sentiment was evident to me from the early stages of NAN's outreach regarding the Draft FSA. For example, in a briefing note that NAN sent out to its Chiefs on July 24, 2024 (attached to Mr. Linklater's affidavit as Exhibit "D"), NAN specifically identifies anticipated opposition from agencies as a problem to deal with. Specifically, it proposed targeted outreach to Chiefs who sit on the boards of agencies to get them on board. The briefing note stated: "Because this FSA contemplates a shift of power and funds from agencies to First Nations, it is anticipated that the employees and directors of agencies will not be in favor of ratification of the FSA. It is important to outline to the Chiefs the agency specific concerns, and how they can/may be addressed."

23. In my experience, the claim that FNCFS agencies oppose the Draft FSA simply because the agreement shifts power and funds from the agencies to the First Nations, and because the agencies want to keep the power/money for themselves is a deeply inaccurate and offensive characterization of the position of FNCFS agencies like Kunuwanimano. My opposition to the OFA is rooted in what I believe will be best for Indigenous children, especially those in Ontario as it relates to the OFA; it is not simply because I want Kunuwanimano to maintain control and access to funding (instead of the First Nations that we service).

24. On August 21 and September 20, 2025, NAN Deputy Grand Chief Bobby Narcisse reached out to FNCFS agencies, including Kunuwanimano to request that we prepare a 30-minute presentation at two different sessions for its members on our plans to transition to the OFA framework. I found this request to be ironic given how NAN has tried to exclude us from the conversations around the approval of the OFA. However, NAN's current attitude appears to be that the OFA will soon be approved and therefore we should come present on how we will now adapt to this new framework. Indeed, in its recent outreach materials on the implementation of the OFA, NAN has described it as "on the verge of implementation".

25. I believe that had FNCFS agencies been at the table, including in the negotiations of the OFA, we could have provided important information about what we do and what we need to deliver non-discriminatory services to Indigenous children and youth. However, because we were completely excluded from the process, this perspective was lost.

26. In addition, NAN maintains a Chiefs' Committee on Children, Youth, and Families (the "**NAN CCCYF**"). The meetings of the NAN CCCYF did not proceed while the information sessions on the Draft FSA and the OFA were ongoing. As a result, yet another forum was removed for Chiefs and First Nations to provide feedback on the draft agreements and suggest other methods for improving the welfare of our children and families.

27. Throughout the process to approve the OFA, I believe that one of the biggest issues has been the lack of clarity that we have been able to obtain. For example, my understanding is that the OFA will place certain requirements upon FNCFS agencies, such as producing various work and "well-being" plans, as well as data reporting requirements. However, no one has communicated directly with us on precisely what our obligations will be, nor were we ever consulted in respect of those obligations.

The OFA Does Not Represent Lasting Reform and the Commitments are Time-Limited

28. It is concerning to me that the government's commitments in the OFA are time limited. Specifically, the funding commitments in the OFA are limited to nine fiscal years if approved this fiscal year, running from April 1, 2025 – March 31, 2034.

29. However, the term of the OFA will only start to run once this Tribunal approves the OFA. If the agreement is not approved in fiscal year 2025-2026, the funding in the agreement will not be made available until approval and there will be no retroactive payments (see para. 6 and Appendix 12 of the OFA). But the OFA will still come to an end on March 31, 2034, regardless of the year in which it is approved. That means that if the agreement is only approved in fiscal year 2026-2027, it will in effect only run for eight years (not the promised nine). I am concerned that about what will happen in 2034 as well as the lack of time to transition from our existing approach to the approaches set out in the OFA.

OFA Will not Address Discrimination Against First Nations Children Accessing Child and Family Services

30. The OFA provides that First Nation Representative Funding (for a First Nation's on-reserve child and family population) is set at the highest amount received between 2019-2020 and 2023-2024, with ongoing funding based on the preceding year, adjusted for inflation and on-reserve population. The OFA also provides baseline funding for FNCFS Agencies set at 2022-2023 actual levels (plus operations and maintenance funding as set out under the 1965 Agreement), again subject to certain subsequent adjustments in future years (paras 18(a), (b), 33 and 44(a)).

31. On February 1, 2018, this Tribunal released its ruling in *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2018 CHRT 4 (the "**Actuals Order**"). This ruling ordered Canada to address the actual needs of First Nations family and children by reimbursing/funding various services at their actual cost.

32. Subsequently, the Tribunal released additional orders requiring Canada to provide funding for the actual costs of services, including: 2012 CHRT 41 (ordering funding at the actual cost of capital projects that support the delivery of child welfare) and 2022 CHRT 8 (ordering funding at the actual cost of providing supports and services for youth from 18 to 26 years old who were formerly in care).

33. The reality is that in the years following the Actuals Order and the subsequent orders, not all First Nations were fully aware of the implications or extent of the funding that could be requested pursuant to the orders, and may not have made funding requests that reflect the true needs of their community. These First Nations are effectively being punished by having a "baseline" set at a level that may reflect a failure to request sufficient funding, rather than what is actually required in their communities to end discrimination against their children.

34. In particular, I know that smaller communities with less capacity have faced difficulty accessing reimbursement pursuant to the Actuals Order.

35. There is also a real risk that, under the OFA, FNCFS Agencies will not have sufficient funding to provide adequate, culturally appropriate, and substantively equitable child and family services. The funding allocated to FNCFS Agencies under the OFA is very similar to the funding provided before this case began, particularly for those agencies that have not accessed the Actuals Order or have only accessed the Actuals Order on a limited basis and/or in emergency situations.

36. In Kunuwanimano's case, the agency accessed actuals funding in 2022-2023, in the amount of $7.45 million. Since that time, many of the social issues that we deal with as an agency have become more complex and significant, impacting all aspects of the organization. Kunuwanimano will now be locked into our 2022-2023 baseline without our ability to rely on prevention funding (as discussed further below), making it very different to build and develop services and programs to meet the needs of the complex and co-occurring child protection circumstances facing the First Nations children on reserve that we serve.

37. I am also mindful that we will likely see an increase in the number of referrals we receive and investigations conduct, given that the Claims Process for the Removed Child Class and Removed Child Family Class is now open under the $23 billion On-Reserve Child Welfare Federal Court class action. I am aware that recent data set out in the First Nations/Ontario Incidence Study of Reported Child Abuse and Neglect 2023 Major Findings Report (FNOIS-2023) shows a significant increase in the number of investigations in 2008 for First Nations children, which is year following the implementation of the Indian Residential School Settlement Agreement. While the FNOIS-2023 does not make this direct correlation, I am concerned about the pressure on Kunuwanimano in light of the class action settlement.

38. Another key problem is that under the OFA, FNCFS Agencies will not be able to access any funds for prevention services if that funding is allocated to First Nations (which they can elect to receive to our exclusion) — services that are absolutely critical to serving the best needs of First Nation children and families, and which FNCFS Agencies are statutorily required to provide. Without prevention funding, FNCFS Agencies are only left with the option of taking children into care to access resources under a different category of funding (i.e. maintenance).

39. For Kunuwanimano, the OFA will result in an estimated loss of over $4.2 million in preventing funding under the OFA as compared to 2024-2025 funding levels. This is reflected in an estimate provided by COO to Kunuwanimano on February 24, 2025. Due to space constraints, I have only included a copy of the relevant page of the estimate, showing the decrease in funding, attached as **Exhibit "A"**.

40. Under the OFA regime, I understand that prevention funds will go to First Nations directly. I have two major concerns with this arrangement. First, due to factors including the generational impacts of colonization and discriminatory policies, First Nations (through no fault of their own) may not be set up to provide the necessary prevention services on their own, either in terms of resources or experience, and there is no clear transition plan or strategy in place for the shift of responsibilities from FNCFS Agencies to First Nations. Second, there is no guarantee or assurance that First Nations will re-allocate prevention funding to FNCFS Agencies like Kunuwanimano, making it extremely difficult, if not impossible, for FNCFS Agencies to plan and ensure adequate staff and resources for prevention related services and programming. That work simply cannot be done in the face of uncertain and piecemeal funding; our work requires the ability to properly plan

and finance staffing and programming related to prevention. In the end, then, my concern is not simply that FNCFS Agencies are losing prevention funding — it is that the OFA seriously risks undermining the availability of these critical prevention services to First nations children and families in need.

41. Yet another issue with the OFA's "baseline"-focused funding approach is that it would make it virtually impossible for FNCFS Agencies to address existing gaps in service delivery models for on-reserve children. For example, as Executive Director of Kunuwanimano, I had planned to try and address the following gaps, none of which I expect will be possible under the OFA's funding model:

a. Opening offices in our member First Nations to provide prevention supports at a local level;

b. Expanding our current youth support program. We currently house and provide support to youth ages 18-26. This program has been very successful and due to demand were in the process of expanding the service however changes to the OFA will deter that from happening (provincial supports for youth end at age 23).

c. Offering mental health supports, due to the increased demand for more localized mental health supports for children and youth.

d. Establishing a safe home on reserve for instances where children are in need of protection but the First Nation wants them to remain on their First Nation.

e. Offering speech and language services. I have noticed a significant increase in the need for speech and language services among the children and youth we work with. Given the fees and further the excessive travel fees (as Speech and Language professionals charge for their hourly rate during travel time to and from our catchment areas) we wanted to explore having a Speech and Language professional employed/under contract with the agency to reduce the cost and ensure children have access to service in a timely manner.

42. I note that the gaps discussed above — including those caused by the loss of prevention funding increased referrals — are exacerbated by the fact that Jordan's Principle claims are becoming increasingly difficult to resolve. We currently have $2.1 million in Jordan's Principle claims across 124 requests that are pending.

43. Moreover, under the OFA, FNCFS Agencies are required to develop community well-being plans with their affiliated First Nations and engage in extensive data collection. These are expensive and resource intensive activities, but the OFA does not provide any dedicated funding for these activities.

44. Both First Nations and FNCFS Agencies can ask ISC to provide more funding in certain circumstances, called a "FNCFS Service Provider Funding Adjustment Request". FNCFS Agencies can make a FNCFS Service Provider Funding Adjustment Request if it is unable within its current funding, for reasons beyond its reasonable control, to deliver services as required by law or that are least disruptive measures (see para. 166 of the OFA). A First Nation can make a

FNCFS Service Provider Funding Adjustment Request if it is unable within its current funding to provide prevention services which are adequate to respond to a prevention need created by unforeseen circumstances beyond its reasonable control (see para. 167). These criteria are limited and likely will not allow a First Nation or a FNCFS Agency to make a FNCFS Service Provider Funding Adjustment Request on the basis that children, youth, and families are not receiving substantively equal child and family services. Instead, the criteria are constrained to legislative parameters and unforeseen circumstances.

45. I am also worried that if the OFA is approved, Kunuwanimano will face deficits in future years because of the placement costs associated with youth that have complex special needs and cannot access services in the community. We have had to provide services for youth with these very high needs in the past and they can be incredibly expensive. However, under the OFA, there is not an option to address this scenario once Kunuwanimano no longer has access to reimbursement for services at their actual cost.

46. Since my time as Executive Director, I have been able to balance our budget and not run deficits. I am worried how this will change under the OFA framework, where our funding levels will decrease, but there will continue to be a need to provide services to First Nations children, youth and families.

47. Finally, the OFA has set amounts designated for capital expenditures ($264.1 million for the first phase from 2025-2029 and $190.9 million for the second phase from 2029-2034). First Nations and FNCFS agencies must submit capital requests to ISC, which will be assessed through a framework and approval process where ISC will apply a standardized set of criteria. However, the precise criteria that ISC will apply are not currently available to us.

48. I am concerned that, because funding for capital expenditures is capped, ISC will have to prioritize certain expenses over others. This will likely lead to First Nations and/or FNCFS agencies competing with each other to access scarce capital funding. Not only may this result in important capital projects not being funded, but it will also breed distrust and discord amongst the First Nations and FNCFS agencies. Such a situation is antithetical to the best interests of our children.

Broader Concerns with the OFA

49. I am aware of other First Nations and FNCFS agencies that have raised concerns about the OFA, beyond just TTN.

50. For example, of the eleven First Nations serviced by Kunuwanimano, I am aware that four of them voted against the OFA at the NAN and COO assemblies in February 2025. These First Nations are: TTN, Mattagami, Chapleau Cree, and Brunswick House.

51. Further, on April 14, 2025, the Association of Native Child and Family Services Agencies of Ontario (**"ANCFSAO"**) sent out a briefing note to its member agencies, of which Kunuwanimano is one, regarding the OFA. A copy of this briefing note, dated April 14, 2025, is attached as **Exhibit "B"**.

52. The ANCFSAO is an association of twelve FNCFS agencies that operate across Ontario.

It provides training and research for FNCFS agencies and advocates for improvements to child and family services for First Nations members in Ontario.

53. The ANCFSAO briefing note sought to inform its member agencies of changes they can expect if the OFA is approved. Among the concerns that it raised are the following:

a. "The [OFA] continues to base funding calculations on actuals from 2022-23 fiscals instead of implementing a needs-based approach, as advocated for by First Nations partners from across Canada during the national negotiations and therefore poses possibility to adopt the same significant funding deficit faced by child and family services providers today, which will only continue to increase."

b. "The funding formula for the delivery of child and family services which will determine annual allocations for agencies and First Nations over the agreement's term is based on 2022/23 child and family agency actuals and does not account for prevention funds (as noted in the FSA) necessary to address decades-long chronic needs, mental health crises, substance misuse, traumas and the resulting complex needs of children and parents. These increasingly complex and high needs over the course of the recent few years and the lack of locally available supports have resulted in removal of children to be placed in clinical group homes sometimes hundreds of kilometers outside of their communities and far from their cultures. While population and inflation factors are critical to a responsive review and adjustment of a funding formulation, they do not account of a fraction of the needs currently experienced by communities and agencies."

c. "2022-23 budgets … are not a representative baseline for your communities and families actual needs."

d. "Annual funding is subject to parliamentary appropriation year-to-year … which does not guarantee allocation, funding, nor that Canada will [remain] consistent in its commitment to pay over the nine-year term. "

54. I agree with and adopt these concerns.

AFFIRMED by Kristin Murray, of the City of Timmins, before me at the City of Toronto, in the Province of Ontario, on October 2, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits

JUSTIN SAFAYENI
LSO#58427U

KRISTIN MURRAY

This is Exhibit 'A' to the Affidavit of Kristin Murray affirmed October 2, 2025.

JUSTIN SAFAYENI
LSO NO.58427U

2024-25 TOTAL (CURRENT APPROACH)	2026-27 ESTIMATE COMPARED WITH 2024-25 ALLOCATION	IRO / PTO
$8,503,165.32	*Decrease by:* *($4,232,808.32)*	N/A

In 2024-25 re

INCREASE	First Nation	Service Provider
#	0	0
$	$0.00	$0.00
Total	$0.00	

DECREASE	First Nation	Service Provider
#	0	1
$	$0.00	($4,232,808.32)
Total	($4,232,808.32)	

Association of Native Child and Family Services Agencies of Ontario

This is Exhibit 'B' to the Affidavit of Kristin Murray affirmed October 2, 2025.

JUSTIN SAFAYENI
LSO NO.58427U

BRIEFING NOTE

April 14, 2025

Ontario Regional Final Settlement Agreement on the Long-Term Reform of the First Nations Child and Family Services Program in Ontario

Purpose

To provide a summary of the Ontario Regional Final Settlement Agreement and offer actionable steps First Nations may consider to pre-emptively secure outmost funds and enhance implementation.

Issues/Summary

On February 26, 2025, a Regional Ontario Final Settlement Agreement was signed by Chiefs of Ontario, Nishnawbe Aski Nation and Canada, intended to reform the Child and Family Services Program in Ontario.

Background

On October 10, 2024, a resolution was passed at the Chiefs of Ontario Special Chiefs Assembly (SCA) where the Chiefs in Assembly supported and ratified the Draft National Final Settlement Agreement (Draft FSA) on the long-term reform of the First Nations Child and Family Services (FNCFS) Program across Canada. This Agreement however was subsequently rejected and voted down by the First Nations in Assembly during the AFN Special Chiefs Assembly in October. Following a resolution passed during the Chiefs of Ontario's Fall Special Chiefs Assembly in November 2024, COO and NAN, mandated by the Chiefs-in-Assembly proceeded by pursuing a standalone provincial agreement with Canada. The Ontario Final Agreement was voted on and ratified on February 26, 2025 by the parties (COO, NAN and Canada).

- The Ontario Final Settlement Agreement (also referred to as the *Ontario Agreement, Regional Agreement*, *OFSA*) was drafted by COO, NAN and Canada (informed by consultations led by COO and NAN).
- OFSA was adopted by majority of First Nations leadership but not all First Nations in Ontario
- Ontario Agreement in most part replicates provisions in the Draft Final Settlement Agreement presented in October 2024 and subsequently rejected by the AFN Chiefs in Assembly, but includes a number of regional variations, including a revised funding amount of Ontario portion of the originally proposed settlement of $47.8 billion.
    - Ontario portion as agreed upon by the Parties noted above is $8.5 billion for the duration of the term.

The proposed implementation date for the reformed approach to First Nations Child and Services Program delivery in Ontario is April 2026 if proceeds. In order to be fully implemented however the regional agreement still requires Canada Human Rights Tribunal's decision as the Tribunal's original Orders under which the Agreement is contemplated directed Canada to develop and enter into a national agreement and framework which would end discrimination for all First Nations children and families across Canada.

- A Motion has been filed by the NAN and COO on March 7th, 2025 to have the Ontario Final Agreement with the Human Rights Tribunal seeking approval

- Interested Parties may intervene (if accepted) should they seek to address concerns identified within this final Ontario Agreement
    - Tribunal has advised deadline for expression of interest to become an Intervening Party is April 15, 2025
    - Parties interested in applying should be submitting a letter of intent immediately prior to April 15 deadline and working with their legal counsel to develop their positions and applications

Canada's failure to meet First Nations' direction, its obligations to our children, families and communities and address and rectify its long-standing discriminatory practices has remained a key concern across every jurisdiction on Turtle Island. Despite an order in 2016 by the Canadian Human Rights Tribunal directing Canada to immediately cease its systemic discrimination of First Nations Child and Family Services and Jordan's Principle, Canada continues its discriminatory conduct which has resulted in the tragic loss of First Nations children's lives, an increase of our families and children coming into the child welfare system and ongoing and worsening crises, including substance use and mental health which do not receive adequate funding and supports.

The recent negotiations on a Final Settlement Agreement seek to address and prevent further discrimination and inequitable treatment of First Nations children and families. While the current regional Agreement will immediately secure some of the much-needed funding for reform of programs for First Nations children and families, it presents further opportunities which if unaddressed, may result in short-term gain for a potential long-term significant and ongoing shortfall. Considerations and mitigating actions are outlined below. Specific sections of the OFSA are referenced in colour boxes for convenience. The full Ontario Final Agreement can be found on www. FNCFSReform.ca under Resources Tab in English and French.

FUNDING, GOVERNANCE AND OVERSIGHT

The regional Ontario Final Settlement Agreement has negotiated $8.5 billion for the reformed FNCFS Program in Ontario for an amended period of 9 years, commencing on April 1, 2025 and ending March 31, 2034 (instead of the initial 10-year period of the Draft National Agreement). As the period noted includes a 12-months transition period over 2025-2026, the funding term is in fact 8 years, not 10.

Services eligibility must meet the criteria of the individual receiving services as 'ordinary resident on reserve'. This applies to post-majority services for youth and young adults.

- $3.9 billion is allocated for the period of April 1, 2025 – March 31, 2029.
    - This amount can be adjusted via dispute and adjustments requests for inflation, population and services delivery.
    - Portion of this funding will reimburse the Ontario Government for child and family services expenditures under the Trilateral 1965 Indian Welfare Agreement.
        - Work to reform the 1965 Agreement has not yet begun however a target date is established for March 31, 2027. The Parties have proposed an interim Trilateral Agreement.
- Funding for the second period will be provided annually at an amount no less than amount provided in fiscal year 2028-29, and will be based on program review following the initial 4-year period.
    - OFSA Par. 12 notes that Canada agrees and understands additional funding may be required exceeding the above commitment and will inform its decision via the program assessment, adjustment requests etc., subject to decisions by the oversight committees.

- Similarly to the original National Draft FSA, the Agreement contemplates a transition period to the Reformed FNCFS Funding Approach during the period of April 1, 2025 – March 31, 2026. It is during this time that FNCFS agencies will retain access to actuals for operations and maintenance (including for intake and investigation, legal fees, building repairs).
    - Agencies are to submit all claims related to operations and maintenance by September 20, 2026. Access to actuals will cease April 1, 2026, at which time ISC will instead provide baseline funding as set out in the Agreement.
- Funding areas include Baseline, Prevention, Capital, Top-Up and IT, Post Majority Services and First Nations Band Representatives.

» The Ontario Agreement continues to base funding calculations on actuals from 2022-23 fiscals instead of implementing a needs-based approach, as advocated for by First Nations partners from across Canada during the national negotiations and therefore poses possibility to adopt the same significant funding deficit faced by child and family services providers today, which will only continue to increase.
    - The funding formula for the delivery of child and family services which will determine annual allocations for agencies and First Nations over the agreement's term is based on 2022/23 child and family agency actuals and does not account for prevention funds (as noted in the FSA) necessary to address decades-long chronic needs, mental health crises, substance misuse, traumas and the resulting complex needs of children and parents. These increasingly complex and high needs over the course of the recent few years and the lack of locally available supports have resulted in removal of children to be placed in clinical group homes sometimes hundreds of kilometers outside of their communities and far from their cultures. While population and inflation factors are critical to a responsive review and adjustment of a funding formulation, they do not account of a fraction of the needs currently experienced by communities and agencies.

» The FSA notes 'least disruptive measures' as a service priority and directs agencies to pull it from actuals.
    - 2022/23 agency budgets did not contain this allocation within the permitted expenditures which already barely sufficed for immediate intervention when crises were eminent. In other words, prevention of a family's entry to child welfare by proactive identification of needs (e.g. family's socio-economic needs, lack of safe housing infrastructure, mental health and intergenerational traumas) and pre-emptive addressing and offering supports was not funded by the government.
    - 2022-23 budgets therefore are not a representative baseline for your communities and families actual needs.

FSA Para. 18 – Baseline Funding shall be the sum of:

> (a) Operations and maintenance expenditures reimbursed to the Government of Ontario by Canada under the 1965 Agreement for the 20 DRAFT applicable fiscal year, funding for which expenditures are provided to FNCFS Agencies by the Government of Ontario; and
> (b) An additional amount provided directly to FNCFS Agencies by ISC equal to:
> (i) In fiscal year 2026-2027, actual expenditures that were funded directly by ISC and incurred by FNCFS Agencies in Ontario for intake and investigation, legal fees, and building repairs for fiscal year 2022-2023; adjusted for inflation and population growth between March 31, 2023 and March 31, 2026;
> (ii) In fiscal years subsequent to fiscal year 2026-2027, the amount in (i) upwardly adjusted for inflation and population growth, and not reduced.

FSA – Para 44 - PREVENTION ALLOCATION

> 44(d)(i) As of Effective Date, ISC shall allocate all prevention funding based on written notice provided by First Nations. Allocation based on written notice will begin October 1, 2026. 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 1st 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.

- First Nations are required to submit notice to Indigenous Services Canada (ISC) with regards to direction related to distribution of Prevention funds between the First Nation and their affiliated child and family services agency.
    - Should the First Nation determine they wish all prevention funds to be disbursed to the First Nation, it is recommended they review required reporting under the Agreement to ISC to ensure they can meet outlined requirement necessary to maintain funding.
    - First Nations are also required to report on all planning and implementation activities annually under the FNCFS Funding Approach to ISC. Where they are affiliated with an agency, joint planning and reporting is also required.

C. First Nations planning

45. No later than June 30, 2025 six months following the Effective Date, First Nations shall be required to provide ISC with a multi-year plan regarding the implementation of services it is funded for under the Reformed FNCFS Funding Approach, with the exception of FNCFS capital. A template plan for this purpose is attached at Appendix 4.

- The Agreement outlines dispute process allowing First Nations argue their funding allocation based on need. Should the appeal be rejected First Nations next available recourse is via a court process.

Para. 47. 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.

- Annual funding is subject to parliamentary appropriation year-to-year (submitting an appeal seeking approval of the federal courts) which does not guarantee allocation, funding, nor that Canada will retain consistent in its commitment to pay over the nine-year term.
    - The Agreement notes other approvals required by Canada however does not define those.

Para. 297. Any and all funding commitments by Canada or amendments agreed to by the Parties in this Final Agreement remain subject to annual appropriation by the Parliament of Canada, or other necessary approval processes required by the Government of Canada.

- In addition to parliamentary decision making, allocations are also dependent on 'impact' – *demonstrating impact of the funding and services on children will be required*. Aligning, meeting and demonstrating that the provided resources are effective in operationalizing program activities and meet the established outcomes will help safeguarding the funding.
- The Agreement does not contemplate additional funding for First Nations specifically to develop and establish full infrastructure and capacity quired for the First Nation to assume full delivery of child and family services. Allocations utilized by First Nations for development of programs to deliver child, youth and family services are to be administered in accordance with the terms of the Agreement.

A full breakdown of the funding allocation for the initial period between April 2025 and March 2029 can be found in Part V, Para. 17 – 53 of the OFSA.

- The Agreement, if approved, will terminate the Tribunal's jurisdiction and oversight of the original complaint and associated proceedings in Ontario, filed against Canada's discriminatory practices and systemic underfunding of First Nations children and families.
- While a Dispute Resolution process is outlined within the Agreement to be responsive to Ontario specific needs, the ADR does not allow for remission of funding to rectify systemic issues or order and implement systemic solutions (ie. the process allows for dispute of specific, case by case scenarios).
- Passing of the FSA will terminate current system under the 2021 CHRT 41 order where Indigenous Services Canada (ISC) funds First Nations capital assets required for delivery of child and family services based on actuals. Instead, under the new framework a fixed pool is established in the amount of up to $264.1 million for the initial 4-year funding period [para 27]. For the second term ISC will provide up to $190.9 million for capital expenditures. Transfer of remaining funds from first to second term of the agreement shall remain up to Parliamentary Appropriation process. It remains unclear what funds would be available after the 9-year FSA term ends. Determination of eligibility for capital funds will be assessed by ISC based on proposed project link to the Reformed FNCFS Program's funded services and activities and availability of existing ISC-funded capital assets.
- A similar approach is undertaken with regards to Post Majority support services funding. The FSA if signed will terminate current reimbursement of PMC actuals. An amount of $382.2 million has been determined for the 9-year term.
- Currently there is 3 motions before the Tribunal in front of the Ontario Final Settlement: FNCS motion non Compliancy on Jordan's Principle, FNCS to have Canda negotiating a National Agreement and FN of Quebec intervener application.
- Eight have filed the letters indicating their intention to file interested party motions are: Chippewas of Georgina Island First Nation – Ontario, Taywka Tagamou First Nation – Ontario, Assembly of Manitoba Chiefs – Manitoba, Federation of Sovereign Indigenous Nations –Saskatchewan Council of Yukon First Nations – Yukon Our Children Our Way Society – British Columbia, Neqotkuk (Tobique) First Nation – New Brunswick, Mi'gmaq Child and Family Services of New Brunswick – New Brunswick

We encourage that Agencies work closely with First Nations leadership to review the terms of the Agreement and consider how the outlined provisions, should it come into effect, may impact current needs and services in the short and long term. We suggest a review of current funding, existing shortfalls and comparative to ensure new proposed funding will be responsive to the identified needs. Consideration of capacity for service delivery, infrastructure, data and governance for collection and reporting of child and family services data to validate need for funding is critical to ensure ongoing ISC funding year over year.

FOR FURTHER INQUIRIES:
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