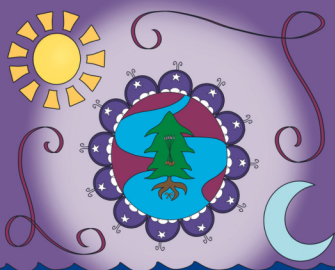


Final Agreement on the Long-Term Reform of the First Nations Child and Family Services Program

Executive Summary

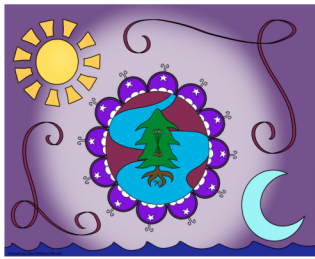
July 2024





ARTIST ACKNOWLEDGEMENT

Lillian Williams-Maracle is a member of the Onondaga Nation, Wolf clan. Lillian is a multi-media artist from Six Nations of the Grand River. Her work includes bead work, drawing, graphic arts, painting, sculpting, writing, and sewing.



She is a member of the Group of Six, a local grassroots group of six youth artists who have recently completed their third Coloring/Activity Book.

Lillian was raised on Six Nations and grew up attending longhouse ceremonies. Lillian incorporates traditional values, teachings, and community histories into her work that ensure an authentic and accurate lens.

“It is my hope that all young people will continue to celebrate and remember our ceremonies, teachings and languages through art.”

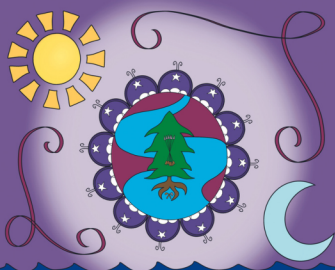
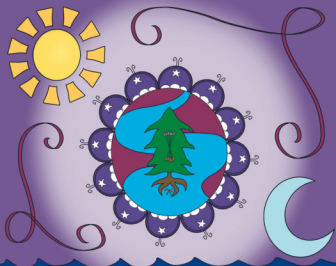


TABLE OF CONTENTS

Part I – Summary of the CHRT Litigation and Related Negotiations	3
• The CHRT Litigation	
• The Agreement-in-Principle and Final Agreement Negotiations	
• Chiefs of Ontario’s Role in the CHRT Litigation and Related Negotiations	
Part II – Overview of the FA	6
i. Limitations of the Final Agreement	6
ii. Funding Commitment	7
iii. Key Elements of the FA	8
• FNCFS Agency Funding per the FA	
• First Nations’ Funding as per the FA	
• Remoteness Adjustment Funding	
• Non-Monetary Aspects of the FA	
Part III – What Would the FA Mean for First Nations in Ontario?	15
Part IV – Enforcement of the FA and Releases	16
Part V – What Happens if the FA is Not Finally Approved?	17
Next Steps	19
Contact	20



PART I

SUMMARY OF THE CHRT LITIGATION AND RELATED NEGOTIATIONS

The CHRT Litigation

In 2007, the First Nations Child and Family Caring Society (the “Caring Society”) and the Assembly of First Nations (the “AFN”) alleged, through a human rights complaint before the Canadian Human Rights Tribunal (the “Tribunal”), racial discrimination by Indian and Northern Affairs Canada in the provision of child and family services to First Nations on reserve and in Yukon.

Chiefs of Ontario (“COO”) intervened in the litigation to provide perspective on the way discrimination operated in Ontario under the *1965 Indian Welfare Agreement* (the “1965 Agreement”).

In 2016, the Tribunal decided that Canada was racially discriminating against First Nations children on reserve (called the ‘merits decision’).

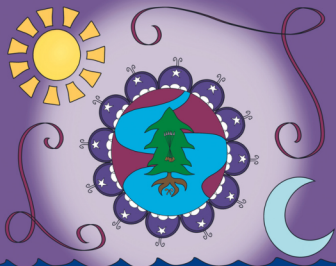
The Tribunal found that federal funding policies resulted in denials of services and created various adverse impacts for many First Nations children and families living on reserves, and that the funding policies resulted in discrimination against First Nations people.

The Tribunal ordered the federal government to cease its discriminatory practices.

Specifically, the Tribunal ordered that the following be reformed to eliminate the discrimination it found:

1. The federal on-reserve child welfare program, called the First Nations Child and Family Services (FNCFS) Program
2. Jordan’s Principle
3. The 1965 Indian Welfare Agreement

As well, the Tribunal directed Canada to take some interim measures to help alleviate the discrimination in the immediate term (while long term reform was being worked on). There were many motions about the immediate relief, which resulted in the orders from the Tribunal for Canada to pay for the actual costs of certain services and Jordan’s Principle orders.



The Agreement-in-Principle and Final Agreement Negotiations

On December 31, 2021, the Agreement-in-Principle (the “AIP”) on long-term reform of the FNCFS Program, was signed by the AFN, Canada, the Caring Society, COO, and Nishnawbe Aski Nation (“NAN”) (collectively, “the Parties”).

The AIP dedicated \$19.807 billion over five years for the FNCFS Program, major capital relating to the FNCFS Program, and Jordan’s Principle. The AIP served as the basis for the negotiation of a final settlement agreement.

After the AIP was signed, COO, NAN, the AFN, Canada, and the Caring Society had been negotiating a Final Agreement on long-term reform of the FNCFS Program and Jordan’s Principle.

Negotiations stalled in January/February 2023 when the Caring Society and the AFN advised the Parties that a deal could not be concluded by March 31, 2023 and that they wanted to make some changes to the timeline and approach to reforming Jordan’s Principle.

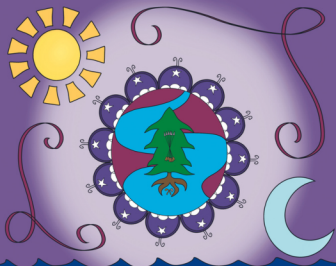
In mid-March 2023, the Caring Society and the AFN shared a joint proposal with the Parties called “The Path Forward” on how to conclude a final agreement. This proposal provided an alternative path for negotiations, including a new timeframe for completion, and called for the negotiations for the long-term reform of the FNCFS Program and Jordan’s Principle to be separated.

On October 24, 2023, Canada announced to the Parties that it had received a mandate to continue long-term reform negotiations based on The Path Forward. The new mandate provided for:

- New timelines. Reform of the FNCFS program and reform of Jordan’s Principle would be dealt with separately. Canada’s mandate was to conclude the agreement respecting the FNCFS Program by March 31, 2024, and the agreement respecting Jordan’s Principle by December 31, 2024 (Note: This deadline will shift as these negotiations have not begun);
- New funding for fiscal year 2023-24. Specifically, \$810 million in new funding for housing, IT, results, poverty, remoteness, and emergencies; and
- An expanded term of the agreement respecting the FNCFS Program (from 5 years (as agreed to in the AIP) to 10 years).

After receiving Canada’s new mandate, the Parties resumed negotiation of a draft final agreement on the long-term reform of the FNCFS Program (the “FA”).

In November 2023, the Caring Society withdrew from negotiations as they no longer agreed to the AIP negotiating terms. The remaining parties continued forward negotiating on the terms they had agreed to in the AIP.



CHIEFS OF ONTARIO'S ROLE IN THE CHRT LITIGATION AND RELATED NEGOTIATIONS

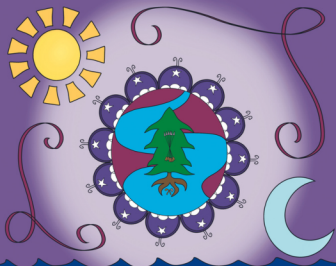
As noted in the merits decision, COO was granted 'Interested Party' status for the Tribunal proceedings. COO was granted this status to speak on the particulars of on-reserve child welfare services in Ontario. Ontario First Nations also have a unique role due to the 1965 Agreement, Band Representative ("Band Rep") services, and the focus of Ontario First Nations on community-based prevention.

In 2018, as a result of advocacy, COO won an order for Band Rep services and mental health funding for Ontario First Nations. COO also advocated for First Nations to receive "community-based prevention" in Ontario, which in other provinces went to the Agencies only.

COO's attendees at negotiations were COO staff from Social Services, Grand Chief Joel Abram, and ORC Abram Benedict (formerly Grand Chief). OKT provides legal advice. COO also has an Advisory Committee composed of representatives from all the regions that provides advice to the COO team to take to the negotiation tables. In addition, since 2016, members of COO's negotiations team have attended many conferences, forums, and meetings in Ontario and heard directly from leadership and technicians about their views on child welfare reform.

COO is not a party to the Final Settlement Agreement on Compensation and was not involved in the class actions that were filed.





PART II

OVERVIEW OF THE FA

i. Limitations of the Final Agreement

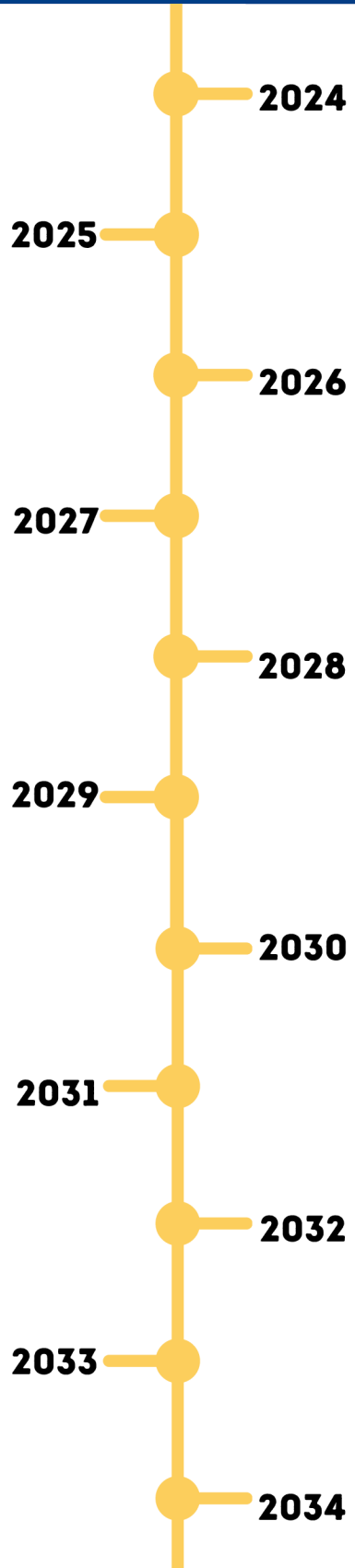
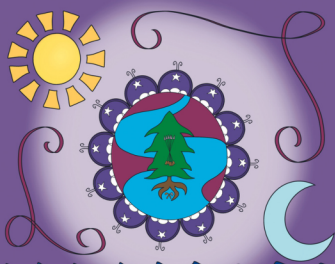
The FA seeks to address and settle the CHRT litigation and to cover or modify the orders already made by the Tribunal.

That means that, for the most part, the settlement does not deal with matters that were not the subject of the litigation and/or existing orders, including:

- Funding for off-reserve services (under the Constitution, that's the responsibility of the provinces)
- Ontario's funding formula for child welfare agencies
- Funding to improve all of the drivers of why kids are in care – e.g., poverty, inadequate housing, intergenerational trauma, mental health and addiction, unequal infrastructure
- Discrimination in the *Indian Act* about who is eligible to be registered and who isn't
- Inequalities in funding between large and small First Nations

There was no possibility of getting Canada to discuss any of these matters because they are outside of the scope of the litigation. However, these other issues may be the subject of future litigation or negotiation.





ii. Funding Commitment

On July 10, 2024, the AFN, COO, NAN, and Canada reached a **\$47.8 billion** Final Agreement on the Long-Term Reform of the FNCFS Program.

The FA term is for a total of **10 years** with the start date being April 1, 2024 and the end date being March 31, 2034.

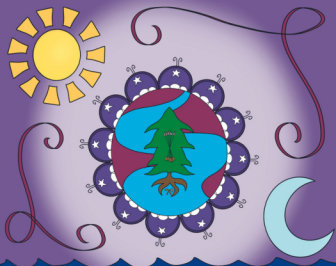
Canada will provide funding in the amount of **\$24.47 billion** for the initial five-year funding period. This amount shall not be decreased in the second five-year funding period, and Canada may increase it.

Two program assessments will be conducted, with the first being conducted around 2028-29 and the second at the end of the ten year term. The second five-year period’s funding commitment may be upwardly adjusted to account for any recommendations that flow from the first program assessment.

Canada will also fund:

- Approved Service Provider Funding Adjustment Requests
- Adjustments for inflation and population
- Certain activities (capital, PMSS, and FNRS in Ontario) at actual costs until March 31, 2025
- Adjustments to Baselines Funding for 2025-2026 to account for operations and maintenance costs incurred in 2024-2025 as well as consequential adjustments to IT, results and emergency
- Reasonable start-up costs for new FNCFS Agencies
- First Nations that become eligible under the Reformed FNCFS Program

The funds will not be reallocated by Canada for any purpose beyond those provided for under the terms of the FA.



iii. Key Elements of the FA

Under the FA, First Nations and FNCFS Agencies are both funded to deliver child and family services to First Nations children, youth, and families, but they are funded differently. The FA outlines the Reformed FNCFS Funding Approach, which is made up of several funding components, and details eligibility for the different funding components (see pages 9-11).

Glossary of Funding Components

Baseline Funding for Agencies for operations and maintenance

Emergency Funding to help address service delivery-related emergencies

First Nation Representative Services Funding to support First Nations when their children and families are involved/at risk of involvement with CFS

FNCFS Capital Funding for capital assets needed to support the delivery of CFS

Household Support Funding (previously termed Poverty Funding) to help meet the basic needs of families, keeping them together and out of care wherever possible

Housing Funding to support housing in First Nations to prevent children from coming into care and to support reunification where possible

Post-Majority Support Services Funding to support youth aging out of care and young adults formerly in care, up to the age of 26

Prevention Funding to support culturally relevant, community-based programs and services that address the structural drivers that place children, youth, and families at risk of CFS involvement

Remoteness Adjustment Funding to account for the increased cost of delivery of CFS in remote communities

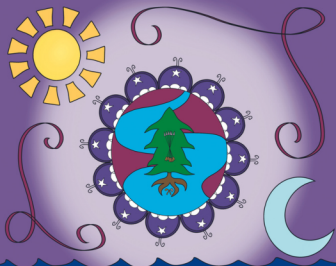
Results and IT Top Up Funding to help with data collection and reporting and to assist with an IT update

First Nations funding is greatly increased under the FA and includes significant amounts for First Nation Representative Services, community-based prevention, and remoteness.

As well, funding under the FA is flexible – it can be moved between budget lines and can be carried over year to year. This means that First Nations (as well as Agencies) will be able to re-allocate funds across different components.

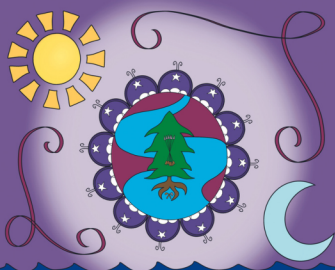
Adjustments for inflation will be made for all funding components using the Consumer Price Index (CPI).

There are also several important non-monetary aspects of the FA including enhanced Agency accountability to First Nations, a high level of FN control over the implementation of the FA, a culturally appropriate and accessible ADR process, and more (see pages 13-14).



FNCFS Agency Funding per the FA

Baseline Funding	<ul style="list-style-type: none"> • The FNCFS FA does not change the way Ontario FNCFS Agencies are funded by Ontario under the Ontario Funding Formula for on- and off-reserve protection, maintenance, and operations. The FA only speaks to the funding that ISC provides to Agencies. • Ontario FNCFS Agencies continue to have access to actuals from ISC for intake and investigation, legal fees, and building repairs up until March 31, 2025. • Starting April 1, 2025, baseline funding will be provided to FNCFS agencies based on the 2022-2023 operations and maintenance expenditures, adjusted for inflation and population growth. Going forward, baseline funding will be adjusted to reflect inflation and population growth. • An Ontario FNCFS Agency’s “total” Baseline Funding includes funding from both Ontario and funding from ISC.
Prevention Funding	<ul style="list-style-type: none"> • In Ontario in 2022-23, 2023-24, and 2024-25 (except for GCT#3), prevention funding was allocated between Agencies and First Nations according to the following approach, which was adopted by leadership at COO SCA in Apr. 2022: <ul style="list-style-type: none"> • As a first step, Agencies are maintained at their 2020-21 prevention funding level (accessed at actuals) • Then, the remainder of prevention funding is distributed to First Nations • First Nations receive a minimum \$75,000 • Non-Agency (unaffiliated) First Nations receive the full \$2,500 per capita amount • As of April 1, 2025, a new approach will be used nationally that distributes prevention funding between the Agency and the First Nation based on the proportion of the First Nation’s population served by the Agency. This approach results in a more even distribution.
Emergency Funding	<ul style="list-style-type: none"> • This funding will be split 50/50 between Agencies and First Nations. • This funding is designed to support responses to unanticipated circumstances related to the delivery of CFS. • The fund will be replenished annually and carry forward of unspent funds will be allowed. • The emergency fund is not intended to replace existing programs, such as ISC’s Emergency Management Assistance Program (EMAP).
FNCFS Capital Funding	<ul style="list-style-type: none"> • ISC will continue to fund capital at actuals until March 31, 2025. ISC will fund existing projects to completion on actuals. ISC will also fund new projects to completion at actuals so long as the application is received by ISC by March 31, 2025. • Starting April 1, 2025, access to actuals will be replaced by a fixed national pool of \$2.9 billion for the 10 year term. • The current CHRT 41 application system will be replaced by a new system developed by the Parties with input by First Nations technicians.
Post-Majority Support Services Funding	<ul style="list-style-type: none"> • Agencies will continue to be able to access PMSS at actuals until March 31, 2025.



First Nations' Funding per the FA

Prevention Funding

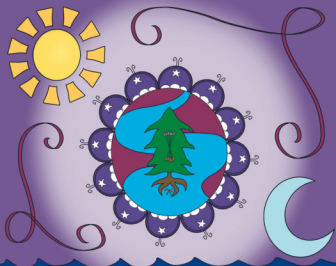
- In Ontario in 2022-23, 2023-24, and 2024-25 (except for GCT#3), prevention funding was allocated between Agencies and First Nations according to the following approach, which was adopted by leadership at COO SCA in Apr. 2022:
 - As a first step, Agencies are maintained at their 2020-21 prevention funding level (accessed at actuals)
 - Then, the remainder of prevention funding is distributed to First Nations
 - First Nations receive a minimum \$75,000
 - Non-Agency (unaffiliated) First Nations receive the full \$2,500 per capita amount
- As of April 1, 2025, a new approach will be used nationally that distributes prevention funding between the Agency and the First Nation based on the proportion of the First Nation's population served by the Agency. This approach results in a more even distribution.
- As of April 1, 2026, in Ontario, the allocation approach noted above will continue to apply until a First Nation tells ISC it wishes to allocate the funding differently.
 - **As of April 1, 2026, a First Nation in Ontario may elect to receive up to 100% of the prevention funding, with any remainder going to its affiliated Agency(ies). Agencies' prevention funding may be reduced or eliminated depending on the choice a First Nation makes.**

First Nation Representative Services Funding

- In 2023-24, First Nations in Ontario are receiving the highest of the (i) FNRS funding they received in 2019-20, 2020-21, or 2021-22; (ii) \$392 per capita; or \$75,000
- First Nations can access additional funding at actuals only if they have expended 75% of their funding.
- As of 2025-26, access to actuals will end. First Nations in Ontario will receive funding equal to the highest annual amount of FNRS funding from the previous four fiscal years, from 2019/20-2022-23.
 - In subsequent years, First Nations will receive the same funding that they did in the preceding year with adjustments for inflation and population.
- The approach to FNRS funding will be considered as part of the first Program Assessment.
- Funding for FNRS off reserve will continue at actuals through Jordan's Principle.

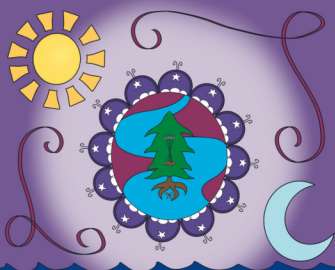
Emergency Funding

- Funding will be split 50/50 between Agencies and First Nations.
- This funding is designed to support responses to unanticipated circumstances related to the delivery of CFS.
- The fund will be replenished annually and carry forward of unspent funds will be allowed.
- The emergency fund is not intended to replace existing programs, such as ISC's Emergency Management Assistance Program (EMAP).



First Nations' Funding per the FA

<p>Household Supports Funding (previously termed Poverty Funding)</p>	<ul style="list-style-type: none"> • Funding to support First Nations in meeting the basic needs of families, particularly those needs that, if left unmet, could lead to children being placed in care • 100% allocated to First Nations. • In 2024-25, the fund totals 25.5M.
<p>Results Top Up</p>	<ul style="list-style-type: none"> • Funding to help with data collection and reporting • 100% allocated to First Nations
<p>IT Top Up</p>	<ul style="list-style-type: none"> • Funding to assist with an IT update • 100% allocated to First Nations
<p>FNCFS Capital Funding</p>	<ul style="list-style-type: none"> • In 2024-25, ISC will continue to fund capital at actuals until March 31, 2025. ISC will fund existing projects to completion on actuals. ISC will also fund new projects to completion at actuals so long as the application is received by ISC by March 31, 2025. • Starting April 1, 2025, access to actuals will be replaced a fixed national pool of \$2.9 billion for the 10 year term. • The current CHRT 41 application system will be replaced by a new system developed by the Parties with input by First Nations technicians.
<p>Post-Majority Support Services Funding</p>	<ul style="list-style-type: none"> • As of April 1, 2025, access to actuals will end and will be replaced by an approach where First Nations receive a direct allocation annually (no applications needed). • First Nations would be the default service provider and Agencies would not receive this funding unless the First Nation chooses to allocate its funding. • Funding for PMSS over the Initial five-year term of the FA is estimated at \$795.8M. • It's estimated that First Nations in Ontario will receive approximately \$315M in PMSS funding over the 10-year period.
<p>Housing Funding</p>	<ul style="list-style-type: none"> • Canada committed \$2 billion in the AIP for a national housing fund to address child and family services-related housing issues in First Nations. As of 2024-25, \$1.79 billion remains. • Ontario's share of the fund is about \$336.4 million. • The housing funding will only go to First Nations. • First Nations will receive a \$250,000 base amount with additional funding that will take into account population, overcrowding, and remoteness. • Goes to all First Nations, even those exercising jurisdiction

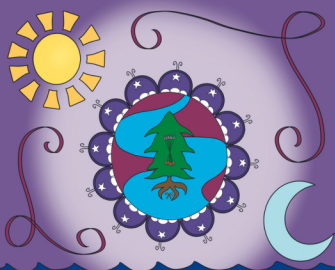


REMOTENESS ADJUSTMENT FUNDING

With respect to remoteness adjustment funding:

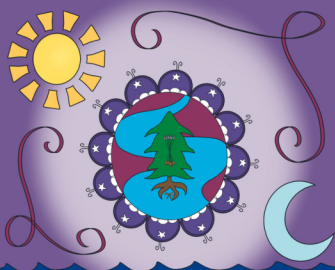
- NAN championed this work and helped develop the new approach to remoteness which uses the Remoteness Quotient Adjustment Factor (RQAF) methodology.
- First Nations and Agencies with a Remoteness Index score at or above 0.4 will receive remoteness adjustment funding. Well over half of First Nations will receive remoteness funding, and the Agencies will receive corresponding remoteness funding.
- Remoteness is added to the funding a First Nation or Agency will receive.
- Remoteness no longer will mean only if you are connected by a road but looks at connection to a municipality or urban centre.
- Prevention, FNRS, results, IT, emergency, household supports, and PMSS funding will be adjusted to account for the increased costs of delivering CFS in remote First Nations.



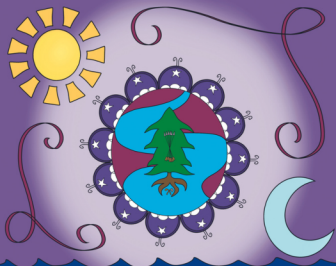


Non-Monetary Aspects of the FA

Reform Implementation Committee (the “RIC”)	<ul style="list-style-type: none"> This committee will oversee and monitor the implementation of the Reformed FNCFS Program and will make recommendations, at any time, to Canada on needed improvements. The Committee is majority First Nations led and composed of 12 members with COO, the AFN, NAN, and Canada each appointing 3 members. There will be subcommittees to address systemic trends and to provide technical advice.
Alternative Dispute Resolution	<ul style="list-style-type: none"> This will be a new ADR system that will handle 2 kinds of disputes: <ul style="list-style-type: none"> Parties Disputes between COO, the AFN, NAN, and/or Canada. Claimant Disputes for First Nations and Agencies to address funding inaccuracies or denial of funding adjustments requests.
Agency Accountability	<ul style="list-style-type: none"> Every FNCFS Agency will be required to co-develop a Child and Community Wellbeing Plan with the First Nations they serve. It will be a 5-year plan, updated annually, and ISC will enforce Agency compliance with the plan. The plan will cover things like how the Agency is spending its funding (including surpluses) and how the Agency will work to achieve the First Nations’ priorities.
Service Provider Funding Adjustment Requests	<ul style="list-style-type: none"> First Nations and Agencies can both access this stream for additional funding. Requests by First Nations will be prioritized before Agencies if both the First Nation and Agency apply for additional funding relating to the same event. Agencies can request funding through this process if they can no longer within their funding, and for reasons beyond reasonable control, deliver FNCFS services required by law. Agencies must have the written support of First Nations leadership to do so. First Nations can request funding through this process if they are unable, within their funding, to respond to prevention needs created by unforeseen events beyond their reasonable control. First Nations and Agencies can go to ADR regarding denials.
Program Assessments	<ul style="list-style-type: none"> There will be two Program Assessments which will be done by an independent organization. The first will occur at Year 5 and the organization will produce recommendations for any needed improvements to the program, including funding levels, to the Reform Implementation Committee in the form of a Report. The RIC will put the recommendations before Canada in the form of an Opinion. Canada will then review and consider the Opinion and the Report. It’s response will be public. Disputes about Canada’s decision about implementing the recommendations in the Opinion will be subject to ADR but limited to certain factors. The limitations of the Dispute Resolution Tribunal’s review in this regard are noted on page 17. The second Program Assessment will occur near year 10 and will be the same as the first but will be focused on what Reformed FNCFS Program will look like post- expiry of the FSA, after Year 11.



<p>Secretariats</p>	<ul style="list-style-type: none"> • A National Secretariat will be established by COO, NAN, and the AFN. It will be an independent not-for-profit and will provide guidance on best practices and operations and programming support and data collection. • Regional Secretariats will provide support on data collection and analysis, best practices that are informed by community input, provide regional data to the National Secretariat, and engaging with community and local organizations. • With the support of National Assembly of Remote Communities (or NARC), a Remoteness Secretariat will be established to act as a centre of expertise on remoteness.
<p>Reform of ISC</p>	<ul style="list-style-type: none"> • The Expert Advisory Committee (EAC) on the Reform of ISC was established in 2022 to address systemic discrimination and get rid of the ‘old mindset’ in ISC. • Under the FA, the EAC will be overseen by the RIC and co-chaired by Canada and the AFN. • The EAC will retain a third party organization to evaluate ISC. • A workplan will be developed to reform ISC. • The EAC will eventually be replaced by an independent monitor who will oversee Canada’s implementation of the reforms.
<p>Reform of the 1965 Agreement</p>	<ul style="list-style-type: none"> • A separate agreement negotiated simultaneously with the FA will set out how COO, NAN, and Canada will work together to reform the 1965 Agreement as well as the principles for reform.
<p>C-92 Safety Net</p>	<ul style="list-style-type: none"> • A First Nation that exercises jurisdiction over child and family services under <i>An Act respecting First Nations, Inuit and Métis children, youth and families</i> (C-92) (or a self-government agreement, treaty arrangement, etc.) will be entitled to no less than the funding it would have received under the FNCFS FA in its Coordination Agreement.
<p>Community Wellness Reporting</p>	<ul style="list-style-type: none"> • ISC will require FNCFS Agencies to collect data and report on data indicators drawn from the Measuring to Thrive framework. This data collection will support a holistic vision of recipients of the Reformed FNCFS Program and will also support enhanced decision making.



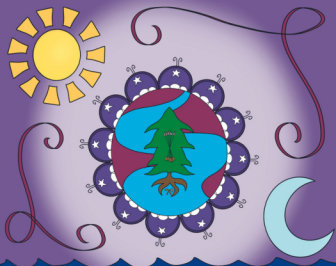
PART III

WHAT WOULD THE FA MEAN FOR FIRST NATIONS IN ONTARIO?

Implications for First Nations in Ontario

<p>Benefits</p>	<ul style="list-style-type: none"> • Increased funding that is flexible (reallocation, carry-forward), stable for the foreseeable future, accounts for increased costs associated with remoteness, keeps pace with true inflation (CPI) • Recognition of First Nations as vital, front-line service providers that are leading the way in the development and delivery of prevention services (primary and secondary), FNRS, and PMSS • Automatic receipt of PMSS funding – no more applications • Promise of a new-and-improved FNCFS capital funding system • Automatic receipt of housing funding to address CFS needs • Enhanced accountability of Agencies to the First Nations they serve • Safety net for First Nations that exercise jurisdiction under C-92 • Access to ADR process for First Nations and Agencies that is more streamlined and culturally appropriate than existing ISC appeal processes • Route to request additional funding from ISC in case of unforeseen events in some circumstances • Operational and data support from Secretariats • Review of effectiveness of funding/program at year 5 and before year 10
------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>Costs</p>	<ul style="list-style-type: none"> • Increased responsibility for First Nations in development and delivery of services, which could: <ul style="list-style-type: none"> • expose/exacerbate capacity challenges, including staffing pressures • increase risk of liability for First Nations for negligence or injury that happens in the delivery of services or in the program buildings; and for claims that the service delivery scheme is inadequate or discriminatory. • result in an increased requirement for data collection and reporting to ISC • require that First Nations engage in more significant planning than before with ISC and its affiliated Agency(ies) • Adopting the FNCFS FA means leaving behind the current funding situation (i.e., the actuals orders). As of April 1, 2025: <ul style="list-style-type: none"> • Agencies will no longer have access to actuals for: intake and investigation, legal fees, and buildings repairs; FNCFS capital; or PMSS • First Nations will no longer have access to actuals for: FNCFS capital; PMSS; or FNRS (available now if they expend 75%+ of their annual allocation)
---------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



PART IV

ENFORCEMENT OF THE FA AND RELEASES

Enforcement is mostly achieved through the ADR process outlined in the FA:

- **The Parties** can:
 - take Canada to ADR for interpretation or application of the FA
 - take Canada to ADR if Canada ignores certain decisions of the Reform Implementation Committee as contained in the Initial Program Assessment Opinion.

In the latter case, the Dispute Resolution Tribunal would assess whether Canada's decision was reasonable.

In their analysis, the Tribunal would consider if the recommendations made by the Reformed Implementation Committee were:

- Consistent with the overall principles of the Final Agreement;
- Informed by the findings and recommendations in the Initial Program Assessment Report; and
- Reasonable and prudent.



- **FNCFS Service Providers** can take Canada to ADR if Canada doesn't advance their funding, miscalculates their funding, or on appeal from a request to adjust their prevention / protection funding in case of unexpected circumstances

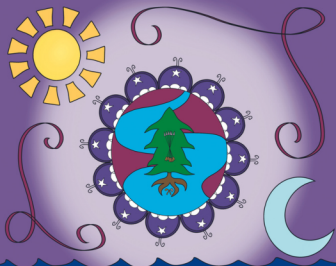
If Canada fails to advance the money, **the Parties** can go to court to seek a declaration that the agreement is breached and can try to go back to the Tribunal or to court.

Note: it is a risk that it is very hard to enforce agreements against Canada if they don't live up to the FA. Canada enjoys many shields from liability at Canadian law.

Canada also can, at any time, create legislation to override the agreement.

The Courts and Tribunal will remain a last resort if Canada flatly refuses to implement the FA.

The First Nations parties don't release Canada from liability in the FA.



PART V

WHAT HAPPENS IF THE FA IS NOT FINALLY APPROVED?

Simply put - it's hard to predict. **A variety of circumstances could arise in the near future and beyond.**

Current CHRT Orders would remain in place

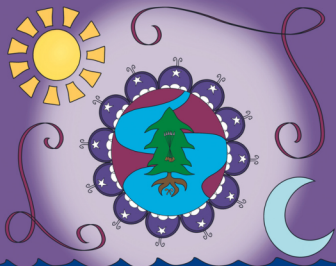
- First Nations would have the current CHRT Orders on actuals for FNRS, \$2500 per capita for prevention services, capital application process
- Canada might stop advancing some of the funds that were advanced last year – e.g., housing funding, top-ups (which haven't been released this year) , the remoteness funding as per the new remoteness approach
- The disadvantages of that approach would remain (e.g., hard to access money in the actuals process for some, but has worked really well for others).

Canada could impose a reformed program and go to the Tribunal for approval

- Canada could ask the Tribunal to vary its former orders, or impose the program it wants and seek an order from the Tribunal to vary the prior orders
- This doesn't seem likely with the current government. A changed government may take this step.

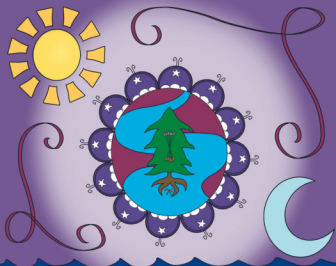
Further attempts at negotiation could be made

- First Nations could try to settle with Canada again
- It seems unlikely that Canada has an appetite to negotiate again at this time.



Ongoing litigation

- We would be in a position of trying to change any orders / seek new funding etc through litigation
 - Costly
 - Risky because the Tribunal is getting frustrated, and the Tribunal panel members can be replaced at any time
 - Causes friction among parties at times
 - Slow
 - Litigation has limitations – you can't design a social program through litigation, you never know if you will get what you ask for and the level of detail in implementation is not guaranteed
 - Limitations in this case which was primarily about agency-based funding - there is a limited evidentiary basis to fund more for First Nations than has already been achieved
 - There are limits on what the Tribunal can do and how much control it can exert over a program
 - Any of the “non-monetary” aspects of the deal can't be achieved through litigation – e.g., the Reform Implementation Committee, Secretariats, etc.



NEXT STEPS

Information Sessions

- Over the coming months, there will be COO-led information sessions that will take place across the province to help communities better understand how the Final Agreement will support First Nations in improving child and family services in their community.
- At the same time, Indigenous Services Canada will also continue working with and engaging the provinces and Yukon, First Nations (including those not represented by the Assembly of First Nations), First Nations child and family services agencies and service providers on the reformed First Nations Child and Family Services Program.



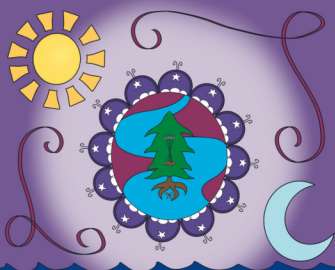
The Final Agreement will not come into force unless it is approved by First Nations leadership and the Canadian Human Rights Tribunal (or the courts, as necessary).

Votes at Special Chiefs Assemblies

- COO is holding a virtual Special Chiefs Assembly on September 10 and 11 where the Final Agreement will be put to an approval vote by the Ontario Chiefs in Assembly.
- The AFN is holding a Special Chiefs Assembly on September 16-19 in Winnipeg where the Final Agreement will be put to an approval vote by the Chiefs in Assembly.

Seeking Approval at the Canadian Human Rights Tribunal

- Should the Final Agreement be approved by First Nations leadership at the special Chiefs assemblies, Canada and the First Nations Parties would file a motion with the Canadian Human Rights Tribunal to seek the end of its oversight over the FNCFS Program.
- If the Tribunal approves the Final Agreement (or the courts, as necessary), full implementation of reforms contemplated in the Final Agreement will begin. This could start as early as April 1, 2025.



CONTACT

For further inquiries or more information regarding this Summary, please contact:

Fallon Andy (They/Them/He/Him)

Interim Associate Director of Social Services, Chiefs of Ontario

Email : Fallon.Andy@coo.org

Phone: (416) 597-1266

Mobile: (437) 428-5378

Nicole Bakes (She/Her)

Interim Associate Director of Social Services, Chiefs of Ontario

Email: nicole.bakes@coo.org

Phone: (416) 597-1266

Mobile: (519) 320-6620

