

Key Themes for Engagement

Background:

In 2016, the Canadian Human Rights Tribunal (“the Tribunal”) ordered Canada to end its discrimination against First Nations children through the First Nation Child and Family Services Program (FNCFS) and Jordan’s Principle and prevent the discrimination from happening again. The Tribunal retained jurisdiction to hold Canada accountable to comply with its order. Canada has a spotty compliance record and the Tribunal has issued over 20 non-compliance orders. In the meantime, First Nations leadership and experts have completed extensive work to inform remedies to stop Canada’s discrimination and prevent it from happening again. First Nations are nearing the final stages of this case on FNCFS while work continues on Jordan’s Principle.

New Developments: 2025 CHRT 80

In August of 2025, in 2025 CHRT 80, the Tribunal ordered the Caring Society and Assembly of First Nations (AFN), in partnership with the National Children’s Chiefs Commission (NCCC), to consult First Nations and First Nations experts on a national plan (excluding Ontario) and remedies to permanently end Canada’s discrimination. The plan for long-term reform and remedies must be filed with the Tribunal on December 20, 2025. Canada will also submit its own plan, after which the Tribunal will review both and determine next steps. Canada has since filed for judicial review of 2025 CHRT 80, which the Caring Society will vigorously oppose.

In 2025 CHRT 80, the Tribunal also issued the following minimum standards for long-term reform:

- Have lasting, adequately resourced, and sustainable effects;
- Be flexible and improve upon previous orders;
- Incorporate regional and local First Nations perspectives;
- Be evidence-based, relying on current research without delay for additional research;
- Align with the spirit of Tribunal findings in a non-rigid manner;
- Be First Nations-centered and culturally appropriate;
- Comply with domestic and international human rights, including the UN Declaration on the Rights of Indigenous Peoples and the Convention on the Rights of the Child;
- Strive for excellence without narrowing Tribunal findings and orders or compromising on children’s rights.

Using this engagement document and where to send your feedback

This engagement document is designed to address critical issues in ending Canada's discrimination in FNCFS. It is organized around nine key theme areas, and includes comprehensive questions to gather regional feedback. The document also includes a "name that theme" section, inviting any additional themes that to end Canada's discriminatory conduct. This engagement process is proceeding independently, without Canada's cooperation or funding and focuses solely on how to fully satisfy the Tribunal's order to permanently stop Canada's discrimination in First Nations child and family services.

The deadline for regional feedback is November 14, 2025, to ensure there is enough time to analyze the material and incorporate it into a national plan and remedies. The results of the regional engagement will be presented in early December for further feedback before the plan and remedies are finalized and submitted to the Tribunal on December 20, 2025.

Please send responses to the questions and any additional comments to: Tracy Lavin at NCCC@ourchildrenourway.ca

Timelines:

October 1, 2025: Release engagement materials in French and English

October 1, 2025, to November 14, 2025: Regional feedback sessions with leadership, experts and rights holders

November 14 to 28, 2025: Collect and consolidate regional feedback, draft National plan and remedies

November 28, 2025 to December 5, 2025: Review and validation of National plan and remedies with Leadership, Experts and Rights Holders

December 5 to 20, 2025: Finalize the National Plan and Remedies

December 20, 2025: Submit the National Plan to the Canadian Human Rights Tribunal

Purpose of this document

This document is a tool for First Nations Leadership, Experts/technicians (e.g., Agencies and service providers), and Rights Holders to provide their perspectives on a plan and remedies that will permanently end Canada's discrimination against First Nations children in child and family services.

Organized by themes, the feedback questions focus on: legal obligations, governance, funding, accountability, and regional considerations to ensure equitable and sustainable service delivery. The themes have been identified by Rights Holders as top priorities within the limits of the Tribunal's jurisdiction. This is not a closed list and the purpose of the engagement sessions is to ensure we have captured all the important priorities to achieve justice for First Nations children.

- **Purpose, Principles, and Definitions:** The engagement emphasizes guiding principles such as substantive equality, intergenerational equity, and cultural continuity, applying legal and interpretive tools including the Act.Respecting.First.Nations?Métis?Inuit.Children?Youth.and.Families, AFN resolutions, and UNDRIP.
- **Governance and Enforcement:** First Nations leadership and experts are integral to national monitoring and implementation, with enforceable orders constraining Canada's policy discretion to prevent ongoing discrimination, akin to a permanent injunction.
- **Funding and Accountability:** Flexible, needs-responsive funding arrangements are critical, with clear responsibilities for First Nations and service providers. Accountability measures include access to justice for non-compliance, prohibition of retaliation, and clear guidelines to prevent conflicts between First Nations and agencies.
- **Regional Variations and System Reform:** Addressing regional circumstances involves data collection, workforce development, and capacity building, while reforming Indigenous Services Canada to implement safeguards against discrimination and support the Expert Advisory Committee's mandate.

Theme	Aim
1. Purpose, Principles and definitions	The purpose of long-term reform, principles, and definitions are foundational to ending discrimination for First Nations children and will all serve as interpretive tools that will assist courts and decision-makers if disputes arise during implementation. ¹ Given Canada's spotty compliance record, it is imperative that long-term reform articulates the correct purposes, principles and definitions so that future decision-makers have the tools required to hold Canada accountable to First Nations children.
Key Questions: <ol style="list-style-type: none"> 1. In addition to the principles listed in the previous Final Agreement, the following principles are proposed: intergenerational equity, cultural continuity, culturally-based safety and wellbeing of children. Do you support these principles? Are there additional principles you would want to include? 2. What are the key terms you want to see defined? How would you define those terms? 	
2. Governance	Governance is about how to oversee and monitor the implementation of long-term reforms. Governance that is led and determined by First Nations enables decision-making by First

¹ Key resources to help identify the relevant purposes, principles and definitions include: The Federal Act on Child Welfare (FNIMCYF), AFN Resolutions, CHRT Orders, UNDRIP, UNCRC, and IFSD Phase 3 report..

	Nations leadership and their experts. ² Governance of long-term reform requires mechanisms that hold Canada accountable.
<p>Key Questions</p> <ol style="list-style-type: none"> 1. What role, if any, should the following bodies play in the ongoing governance of long-term reform and final orders from the Tribunal: <ol style="list-style-type: none"> a. First Nations rights holders? b. The Assembly of First Nations? c. The National Children's Chiefs Commission? d. The Caring Society? e. Regional First Nations leaders? f. First Nations Chiefs and leaders? g. Elders? h. Youth with lived experience in care? i. Canada? j. Technical tables (e.g., NAC, JPOC, JPAT, EAC)? k. Regional technical tables? 2. Are there other bodies or organizations who should contribute to governance of long-term reform and final orders from the Tribunal? 3. What supports do First Nations in the region need to ensure their participation in regional and national implementation of CHRT orders on long-term reform. 	
3. Enforcement and Durability	To stop Canada's discrimination towards First Nations children permanently, long-term reform final orders must be enforceable and long-lasting. The Tribunal has stated that its order for Canada to cease its discriminatory conduct is akin to a permanent injunction (no time limit and will last indefinitely for future generations of First Nations children). Canada's discretion to make policy and practice changes (e.g. through its Terms and Conditions) must also be constrained by its legal obligation not to discriminate.
<p>Key Questions</p> <ol style="list-style-type: none"> 1. What enforcement mechanisms need to be in place to ensure Canada complies with the Tribunal's final orders? 	

² Key resources to help ensure appropriate governance structures include: AFN Resolutions and the National Children's Chiefs Commission's Terms of Reference.

<p>Some options for consideration:</p> <ol style="list-style-type: none"> The Tribunal maintains a level of ongoing jurisdiction to supervise the implementation of the Plan (i.e. it only ends its jurisdiction when an alternative dispute process is in place or Canada's compliance can be guaranteed)? If this is not possible, what alternative mechanisms, would you propose to constrain ISC's discretion so that discrimination would not recur? Requiring ISC to conduct a child rights and non-discrimination impact assessment (conducted by regional experts reporting to rights holders and the public)³ whenever Canada contemplates changes to legislation, policy, and procedures that impact child welfare or the Plan. A litigation fund to address systemic non-compliance <p>2. What approaches has your Community/Region used to foster a good working relationship with Canada that supports substantive equality for First Nations children and families?</p>	
<p>4. Funding Commitments and Arrangements</p>	<p>The manner by which funding is calculated and allocated (including through funding agreements) is a significant feature of Canada's discriminatory FNCFS Program. To address this, and to ensure substantive equality for future generations of children, it is critical that funding, at a minimum:</p> <ul style="list-style-type: none"> • Be flexible and responsive to children's needs; • Be linked to clear responsibilities for agencies or those providing services; • Enable capacity building for those wishing to deliver services (without forcing First Nations or agencies to tap into existing funds that are meant to be allocated elsewhere); • Be sufficient and responsive during emergency situations and unforeseen circumstances; • Ensure coordination amongst service providers within Nations and among Nations to avoid children falling through gaps. • Have a sufficient track record to assess actual needs (e.g., capital, insurance, post-majority supports, and children with high needs), and where this does not exist, ensure that funding remains at actuals until sufficient data / a baseline is established. This requires funding at actuals until service providers have capacity to meet the needs in

³ For more information about the Child Rights and Non-discrimination Impact Assessment, please visit: <https://www.justice.gc.ca/eng/csj-sjc/cria-erde/tool-outil.html>.

	their communities. ⁴
<p>Key Questions</p> <ol style="list-style-type: none"> 1. Is your Community / service provider currently experiencing any funding (or other related) shortfalls in the delivery of child and family services? How are these shortfalls impacting service delivery / programming? How can these shortfalls be addressed? 2. Are there challenges with in how FNCFS funding flows (i.e., timing, issues with Canada's approval process, use of surplus funds, issues with auditing, unilateral changes in policy development and implementation, CHRT41)? How could this be improved? 3. How can long-term reform ensure funding flows in a manner that is immediately responsive to children's needs? 4. What are the current gaps in capital, post majority support, children with high needs, insurance, etc. funding? 5. Are there any other funding categories that must stay at actuals until sufficient data is collected / a baseline is established? 6. What is working well in your community with respect to service coordination between service providers and Nations (e.g., coordination of prevention services)? What are the challenges? Are you seeing ongoing jurisdictional disputes that result in service gaps for First Nations children and families? What mechanisms are needed to resolve these? 	
5. Accountability	<p>Canada has been discriminating against First Nations children for multiple generations. Long-term reform must hold Canada accountable for ending its discrimination. Long-term reform must ensure measures that hold Canada accountable to First Nations children – its voluntary compliance cannot be guaranteed. The following measures will be critical:</p> <ul style="list-style-type: none"> • Protect against retaliation and ensure effective measures to address any allegations of retaliation by Canada; • Ensure long-term reform and final Tribunal Orders provides clear guidelines on acceptable implementation so that future decision makers can easily locate and evaluate misconduct by Canada. • Address Canada's old mindset and discriminatory practices and policies
<p>Key Questions</p> <ol style="list-style-type: none"> 1. Who needs to be held accountable for funding of First Nations child and family services? What mechanisms do 	

⁴ There are numerous reports available provide helpful evidence in crafting a Plan that is flexible and needs based. To assist, we have organized these reports based on service delivery model: Agencies - IFSD Phase 3 Report; First Nations not affiliated with an Agency: IFSD Unaffiliated First Nation Report; First Nations delivering services: Engage First; First Nations pursuing or operating under own jurisdiction: All reports above.

<p>you see as necessary to ensure there is accountability to First Nations children? Options for accountability may include:</p> <ol style="list-style-type: none"> Transparency when there are changes to long-term reform Regional dispute resolution mechanisms Child welfare/wellbeing commissioner/ombudsperson outside of ISC or government controlled Ending Canada's unilateral decision-making Others? <ol style="list-style-type: none"> What reporting requirements would you suggest to balance ISC's requirement to prudently manage public funds with minimizing reporting burdens on First Nations and their service providers? How can long-term reform foster and enhance the vital working relationship with First Nations and their service providers in the best interests of First Nations children? 	
6. Regional Variations	<p>A key priority for is to ensure long-term reform addresses the distinct circumstances of First Nations children and families. Long-term reform should respect unique and innovative service delivery models that are working. Key elements may include:</p> <ul style="list-style-type: none"> Enabling regional data collection; Creating best practices hubs, workforce development and training; Allocating capacity building funds to First Nations and new agencies; Mechanisms to support the participation of First Nations and First Nations experts in negotiating and implementing federal/provincial/territorial funding arrangements where they exist. Planning processes to support the delivery of prevention services and plans
<p>Key Questions</p> <ol style="list-style-type: none"> What are the unique needs in your region and what supports do you need to address them? What funding approach did ISC apply in your region as of January 1, 2016? – Is the approach effective, does it respect your needs, are there aspects that should be maintained? Do you have an existing non-political child and family service technical hub in your region that is supported by First Nations leadership? What regional support (i.e., training, workforce development, data, regional policy), if any, do you need to meet the cultural needs of children coming into the contact with child welfare? What supports, if any, do you need to negotiate and implement federal/provincial/territorial funding arrangements in child and family services? 	

<p>6. What capacity needs does your region have for (non-identifying) data collection and analysis in child and family services?</p> <p>7. If your region has Nations or Agencies serving small populations (under 1000 children), what specific supports do you need to discharge child and family service responsibilities?</p>	
7. Reform Indigenous Services Canada	<p>Indigenous Services Canada has a long track of knowingly implementing policies that will, or are likely to, harm children. Long-term reform must put mechanisms in place to correct Canada's historical mindset. Canada, itself, has failed to implement safeguards to detect and respond to discrimination, for example, Canada's longstanding efforts to frustrate the Expert Advisory Committee in carrying out its mandate to advise on departmental reform.⁵</p>
<p>Key Questions</p> <ol style="list-style-type: none"> 1. What challenges has your community faced when working with ISC on FNCFS? What patterns of ISC behaviour contribute to its discriminatory conduct in child and family services? 2. How can ISC's discriminatory conduct be addressed? 3. Do you think an independent body is needed to monitor ISC over the long run and provide public recommendations on internal ISC reform? 4. What would you accept as an indication that ISC has corrected its old mindset and has fully reformed? 5. Do you see a role for a child wellbeing commissioner/ombudsperson? 	
Theme	Aim
8. Research and Outcome Data	<p>Ending discrimination against First Nations children requires ongoing monitoring of the overall well-being of children and communities. To ensure substantive equality for generations to come, it is imperative to collect child outcome data at the Nation level and non-identifying information at the regional and national levels. This data will allow us to:</p> <ul style="list-style-type: none"> • Detect if Canada's discrimination is recurring; • Adjust funding approaches as better evidence becomes available; and • Evaluate if services are working and identify promising practices.
<p>Key Questions</p> <ol style="list-style-type: none"> 1. Is your Community / service providers in a position to evaluate the impact of your program? If so, what tools did you find helpful in doing so? If not, what tools / services would assist you in completing such an evaluation? 	

⁵ There are numerous Tribunal orders and AFN resolutions that discuss the need to correct Canada's old mindset. Further, the EAC's interim report provides key evidence regarding the challenges First Nations children and communities face when confronting ISC.

2. What capacity do you currently have to collect child outcome data and report non-identifying data into regional and national datasets to track child outcomes and detect the recurrence of discrimination? 3. What capacity do you have to analyse data at a Community/service provider level to inform policy and practice? 4. Is there a role for Regional and/or National secretariats to support data collection and analysis?	
Theme	Aim
9. Transitions and Readiness	Free, prior and informed consent must be in place to ensure First Nations are fully informed and consent to taking on service delivery pursuant to any funding arrangement prior to being expected to do so. However, building to a state of readiness takes time (e.g., Directive 20-1 allowed 3-5 years before expecting services to be delivered). Transitioning from one funding approach to another also takes time to avoid system disruption and causing harm for children (e.g., IFSD recommends 3-5 years for agencies and longer for First Nations). ⁶ Long-term reform therefore must ensure that there is adequate funding and support as Agencies and First Nations transition to a reformed approach.
Key Questions 1. What, if any, challenges has your Community / service providers faced during past funding transitions (e.g., prevention funding switching to a population-based model)? What, if any, measures would have assisted you with the transition? 2. What, if any, successes / challenges have you had with building capacity? 3. Should there be a transitional funding plan to support First Nations and service providers? 4. What will you need to ensure children do not fall through the gaps during a transition?	
10. Name that Theme	The preceding themes have been identified as top priorities by Rights Holders within the limits of the Tribunal's jurisdiction. However, this is not a closed list. We want to hear what other themes/priorities are important for your Community to end Canada's discrimination.

We appreciate you taking the time to review this document and we look forward to your input. Please let us know if you have any feedback regarding how future engagement sessions should be structured to ensure it meets the needs of your region.

⁶ IFSD reports.