Aim: 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. Given Canada's poor 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.

Purpose: "Ensure First Nations children, youth and families can live the lives they wish to have free from Canada's discrimination in First Nations child and family services and Jordan's Principle substantiated in 2016 CHRT 2 and related rulings.

Canada has a duty to ensure its conduct provides for effective, needs based, culturally appropriate outcomes in the best interests of First Nations children enshrining human rights as minimum standards, respecting relevant legislation and regulations and promoting the distinct rights of First Nations. "

Principles:

1. All First Nations children, youth and families have the right, individually and collectively, to be free of all forms of discrimination and have access to Effective Remedies.

2. 2016 CHRT 2 is a permanent injunction against Canada to cease its discriminatory conduct in First Nations child and family services and Jordan's Principle.

"3. Canada's conduct shall be consistent with:

(a) the cultural safety and well-being of First Nations children, youth, young adults, and families, including the importance to the child of preserving the child's cultural identity and connections to the language and territory of the First Nations group, community, or people to which the child belongs;

(b) substantive equality and intergenerational equity;

(c) addressing the needs of First Nations children, youth, young adults, and families, including the child's needs, given the child's age and stage of development, such as the child's need for stability;

(d) Best interests of the child

(e) the child's participation, views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;

(f) cultural continuity is essential to the wellbeing of a First Nations child, a First Nations family, and an Indigenous group, community or people

(g) Canada holds the duty to ensure its conduct, including all arrangements with First Nations and others affecting First Nations children, youth and families is free from all forms of discrimination and to provide Effective Remedies should discrimination occur.

(h) Canada holds the duties of Honour of the Crown, Duty of Diligent Implementation and Duty to Consult and shall design and implement the Reformed FNCFS in a manner consistent with these duties.

(i) Canada's conduct shall be responsive to the actual and changing needs of First Nations children, youth, and families, accounting for historical disadvantage and the structural drivers that cause and perpetuate child maltreatment and the distinct circumstances of First Nations communities. Such an approach must account for the existing capacity to collect needs-based data on individual children using contemporaneous data collection and analysis tools.

(j) Reconciliation based whereby the structure and implementation of the Reformed FNCFS and Jordan's Principle shall be consistent with the Truth and Reconciliation Commission Final Report and Calls to Action.

(k) Substantive equality and achieving equality in outcomes rather than providing formally equal treatment.

(l) respect for the inherent right of self-government, which is recognized and affirmed by section 35 of the Constitution Act, 1982, and which includes jurisdiction, in relation to child and family services;

(m) respect for the right to self-determination of Indigenous peoples, which is a right recognized and affirmed in the United Nations Declaration on the Rights of Indigenous Peoples (the "Declaration");

(n) that the United Nations Declaration on the Rights of Indigenous Peoples Act affirms the Declaration as a universal international human rights instrument with application in Canadian law and provides a framework for the Government of Canada's implementation of the Declaration;

(o) the rights in the Declaration, including the rights of children and youth, and the United Nations Convention on the Rights of the Child, including the right to be free from discrimination;

(p) Canada recognizes and affirms that First Nations are in the best position to determine the legal mechanisms, instruments and processes to affirm jurisdiction, in whole or in part, over matters relating to their children.

(q) [NTD: The starting premise for long-term reform must be openness and transparency. All information relating to implementation of an Agreement should be, to the maximum extent possible, transparent. Transparency ensures accountability. Transparency and accountability, together, help end discrimination and prevent its reoccurrence.]

(r) Access to Information relevant to the violation of rights and remedies Canada shall publicly publish on a prominent and accessible platform the causes and conditions resulting in Canada's discrimination substantiated in 2016 CHRT 2 and related orders and effective remedies Canada has implemented to address the causes and conditions. "

Definitions:

“Act Respecting First Nations, Métis and Inuit children, youth and families (the Act)” means the national legislation setting standards for child and family services and enabling jurisdiction by Indigenous governance bodies.

“Access to Justice” means positive, public and effective measures to disclose all effective judicial remedies to redress any recurrence of discrimination and access to sufficient quality resources, including funding for legal fees, to give effect to such remedies.

"Alternative Care" means a person(s) or entity who has primary responsibility for providing the day-to-day care of an Indigenous child, other than the child’s parent, including in accordance with the customs or traditions of the Indigenous group, community or people to which the child belongs. (fournisseur de soins)

"Best interests of the child" means

“Block funding” means funds provided for child and family service purposes under a contribution agreement or statute to be used by service providers with flexibility to meet needs in communities. Carry forwards are allowed and unexpended funds can be retained. Associated terms and conditions should align to the spirit and intent of the Reformed Funding Approach and uphold the Orders.

"Capacity ” means the adequate supports, financial and human resources and time required to ensure a First Nation(s), First Nations child and family service agency or other First Nations authorized FNCFS provider to design and operate FNCFS s and related services, interventions and s consistent with the Act and provincial or First Nations child and family services legislation and corollary legislation.

“Child maltreatment” means all types of physical and/or emotional maltreatment, sexual abuse, neglect, negligence, and commercial and other exploitation, which results in actual or potential harm to the child’s safety and wellbeing, best interests, development, and/or dignity in the context of a relationship of responsibility, trust or power.

“Child Participation” means (a) a child must be able to exercise the child’s rights under this Act, including the right to have their views and preferences considered in decisions that affect the child, and the child must be able to do so without discrimination, including discrimination based on sex or gender identity or expression; (b) the rights and distinct needs of a child with a disability are to be considered in order to promote the child’s participation, to the same extent as other children, in the activities of the child’s family or the Indigenous group, community or people to which the child’s belongs.

“Child removal” means the placement of a child in alternative care pursuant to applicable child and family services legislation including but not limited to children placed in care by court order or through agreements with the child’s guardian(s) and the child and family service authority designated under provincial/territorial or First Nations law.

"Cultural Continuity" means……

“Culturally Appropriate” means reflective and responsive to the distinct First Nation(s) culture, including language, of the child and their family.

"Effective Remedies ” means process and outcomes to stop Canada’s discrimination , prevent its recurrence and restore the dignity of those affected including, but not limited to, a) equal and effective access to justice b) adequate, effective and prompt reparation for harm related to the discrimination and c) access to relevant information concerning violations and reparation mechanisms.

"Emergencies" means a serious event that raises the level of risk for First Nations children, youth and families requiring immediate and effective responses.

“Expert Advisory Committee (EAC)” means an independent and public committee of multi-disciplinary experts formed by 2022 CHRT 4 and funded by Canada to assess and publicly comment on the causes and conditions of Canada’s discriminatory conduct and associated remedies.

“Family” includes a person whom a child considers to be a close relative or whom the First Nations group, community, or people to which the child belongs considers, in accordance with the customs, traditions or customary adoption practices of that Indigenous group, community or people, to be a close relative of the child.

“First Nations” means a government authorized by First Nations citizens.

“First Nations Child and Family Services (FNCFS)" means services to protect First Nations children from child maltreatment and to support families to safely care for their children, including primary, secondary and tertiary prevention services, child protection, guardianship, post-majority care, reunification and adoption and dispute resolution. It also includes services and products required to enable child and family services such as, but not limited to: 1) development of Indigenous child and family services laws, 2) governance, 3) legal, 4) research (including data collection and analysis), 5) human resources, capital resources (i.e.: buildings, vehicles, information technology) and 6) communication technology, office equipment/supplies), 7) standards, 8) design and evaluation to deliver such services (services à l’enfance et à la famille).

“First Nation not affiliated with a FNCFSA” means a First Nation that receives statutory child and family services from a province/territory and/or non-Indigenous child and family service provider and is not affiliated with a FNCFSA.

"“First Nations child” means a First Nations person or persons who, under applicable provincial or territorial law, is under the age of which an individual ceases to be a child, and includes the following:

i. The child is registered or eligible to be registered under the Indian Act, as amended from time to time;

ii. The child has one parent/guardian who is registered or eligible to be registered under the Indian Act;

iii. The child is recognized by their First Nation; or

iv. The child is ordinarily resident on reserve."

“First Nations Child and Family Services (FNCFS)" means federal government initiatives, s, and/or services to support First Nations children, youth, and families, including but not limited to prevention services, early intervention services, least disruptive measures, child protection, guardianship services, customary care, adoption, custom adoption, and post-majority services that ensure the full enjoyment of the national standards in an Act Respecting First Nations, Métis, and Inuit children, youth and families.

“First Nations Child and Family Service Agency (FNCFSA)" means an agency authorized by and affiliated with one or more First Nations and delegated or authorized, in whole or in part, pursuant to provincial or other authorities to provide legislated child welfare services, and also includes any service provider that was funded to delivery child and family services by Canada under the FNCFS in fiscal 2023-2024.

“First Nations exercising jurisdiction” means First Nations providing child and family services pursuant to their own laws, in whole or in part, implemented under An Act Respecting First Nations, Métis and Inuit children, youth and families and/or other mechanisms recognizing their inherent, Treaty, and/or self-government rights.

“First Nations Representative” means a person or group that is authorized by a First Nation to make representations on behalf of the First Nation in child and family service matters.

"“First Nations youth” means a person who is between the age of majority as set out in the relevant, First Nations, provincial, or territorial law and 27 years of age and includes:

i. The youth reside on or off reserve or in the Yukon and is registered or eligible to be registered under the Indian Act, R.S.C., 1985, c. I-5, as amended from time to time;

ii. the youth have one parent or guardian who is registered or eligible to be registered under the Indian Act, R.S.C., 1985, c. I-5;

iii. the youth reside on or off reserve or in the Yukon and is recognized by their First Nation; or

iv. the youth is ordinarily resident on reserve."

“Fully Reformed Funding Approach” means a future funding approach that adopts the Reformed Funding Approach as a funding base, adjusted annually for inflation and population, for FNCFSAs, First Nations not affiliated with a FNCFSA, and other service providers, which will also have the capacity to track Measuring to Thrive indicators and adjust funding upwards to address increases in need. The Fully Reformed Funding Approach will adjust to the actual needs and distinct circumstances of First Nations children over time and address any recurrence of discrimination. Implementation of this approach is not currently possible given the lack of child-specific data collection and analysis supports but will be possible if the Reformed Funding Approach is fully implemented and baseline child-specific data is collected, analyzed and published.

“Funding Commitment” means any resources, including financial resources payable or provided by Canada or its agents to fulfill the Purpose of this Agreement.

"Honour of the Crown”

“Inflation” means a minimum annual adjustment of 2% adjusted upwards to the Consumer Price Index (CPI) where it exceeds 2%

“Intergenerational Equity” means positive duty on Canada to give due regard to the best interests and rights of future generations of Firs t Nations children and the long term implications of its conduct including the rights of future generations to fully enjoy their to grow up as members of their Nation, the enjoyment of their culture and language(s), their rights to land and the minimum standards afforded to them in the United Nations Convention on the Rights of the Child, the United Nations Declaration on the Rights of Indigenous Peoples, the Canadian Human Rights Act and other legal human rights standards and instruments.

"Jordan’s Principle” means a child-first substantive equality legal principle requiring Canada to ensure First Nations children recognized by their First Nation and resident in Canada, have access to the culturally appropriate health, education and social supports, services and products they need when they need them free of discrimination including but not exclusively related to jurisdictional disputes within or between federal government departments/initiatives and/or the federal government and other governments.

“Least Disruptive Measures” means statutory tertiary prevention services required by the Act and/or provincial or First Nations child and family service legislation to address child maltreatment risk factors, including Structural drivers, for child(ren) who experience, or are likely to experience, a high risk of child maltreatment and services to children and families to support a child in alternative care’s safe reunification with their family.

“Measuring to Thrive” means a set of indicators developed by FNCFS experts with the IFSD to define and monitor child and family service outcomes for the wellbeing of First Nations children, youth, families, and communities.

“Minimum Base Funding ” means the minimum funding required to deliver First Nations child and family services and/or Jordan’s Principle.

"National Children’s Chief’s Committee (NCCC)" Created by First Nations in Assembly resolutions 60/2024, 61, 2024 and 88/2024 and 90/2024 , the NCCC is composed of representatives designated by First Nations through their regional processes to oversee negotiations on First Nations child and family services and Jordan’s Principle.

“National Secretariate” means non-political technical secretariat functions to collect regional and national data on First Nations children, youth, and families relevant to First Nations Child and Family Services and Jordan’s Principle, conduct and disseminate research, best practices, and professional and public education.

“NAC” means a National Technical Advisory Committee on First Nations Child and Family Services to provide technical expert advice on the design and implementation on First Nations child and family services that is mandated by and reports to First Nations outside Ontario.

“Non-reallocation” means pursuant to 2018 CHRT 4 at para. 422 Canada must not reallocate funds from other social s, especially housing, to fund its obligations pursuant to the Orders and related agreements.

“Orders” means decisions and orders made by the Tribunal or Courts respecting First Nations Child and Family Caring Society et al. v. Attorney General of Canada T1340/7008.

“Population served” includes all residents on reserve (regardless of status) and in the Yukon and persons off reserve recognized by their Nations.

"Post Majority Services” means services, supports and products provided to a young adult who was in care or under Jordan’s Principle as of day they reached the age of majority and are eligible for post majority services.

""“Reformed Funding Approach” means evidence-informed, community-driven, transparent, multi-year, performance-informed funding structure(s) that shall support and promote the substantive equality and best interest rights of First Nations children, youth, and families receiving, or eligible to receive, child and family services. Funding levels shall be calibrated to achieve substantive equality and shall be determined based on the actual needs of First Nations children, youth, and families, pursuant to the following considerations:

i. Funding shall be culturally appropriate, focused on prevention and based on the actual needs of First Nations children, youth, and families, taking full account of the unique circumstances of the respective First Nation(s), including their historical, cultural, and geographical needs and circumstances.

ii. Funding shall address, through culturally based child welfare services, the structural drivers and root causes of the over-representation of First Nations children and youth encountering the child welfare system.

iii. Funding shall not be subject to downward adjustments or other adverse conduct by Canada and will be determined pursuant to an evidence-based approach linking a multi-year performance informed funding structure (block approach) towards needs-based and bottom-up budgeting to support wellbeing, as informed by the Measuring to Thrive framework, which was developed through community-driven evidence-informed research.

iv. Funding shall ensure that outcome data on First Nations children, youth, and families can be collected and analyzed to monitor for the recurrence of discrimination, inform child and family services interventions, and calibrate resources to any increased need."

“Remoteness” means a variable factor measured on a continuum and describes the lived circumstances of First Nations communities for whom issues of access (by road network, by ice road only, by air only, or otherwise), geography, and context exacerbate challenges faced by all First Nations, including increasing the costs associated with child and family services. Remoteness is generally associated with geographic distance from, and access to, service centres (often defined based on population size and density), which affects the costs of shipping goods as well as costs related to personnel, including travel, and living costs .

“Retaliation” Any conduct by Canada or its agents, including economic retaliation and other conduct inconsistent with the United Nations Declaration on the Right and Responsibility of Individuals, groups, and Organs of Society that seek to protect Universally Protected Human Rights and Fundamental Freedoms that seeks to frustrate the efforts of peaceful human rights defenders to uphold the human rights of First Nations children, youth, young adults and families pursuant set out in this agreement or related to First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada T1340/7008.

“Special Purpose Allotment (SPA)" means a specific authority in the Treasury Board Transfer Policy designed to protect funds from departmental internal vote transfers as with authority to carry over funding across fiscal years.

“Structural drivers” mean factors that are largely out of a caregiver or caregivers’ control, including factors linked to Canada’s conduct, which reinforce, perpetuate or exacerbate disadvantage for First Nations children, youth, and their families and/or which contribute to the overrepresentation of First Nations children and youth in the child welfare system, including: poverty, poor housing, exclusion factors such as racism, systemic racism, and colonialism, and multi-generational trauma, manifested as substance misuse and intimate partner violence

"Substantive equality" means

“Tribunal” means the Canadian Human Rights Tribunal

“Young Adult” means a person aged between the age of majority in the jurisdiction of their residency up to age 26 eligible for post-majority services. (27?)