



Draft Child and Family Services Final Settlement Agreement Review Guide

July 2024



First Nations Child & Family Caring Society

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Most Important Elements to Look for

1. Purpose, definitions, funding structure, outcomes and enforcement (alternative dispute resolution aka ADR), transition (decision makers on when and if to transition and time frame to do so), and governance (who controls implementation?)
2. Term of agreement and what happens after for children

For the high level positions of the Caring Society on long-term reform of First Nations CFS to stop Canada's discrimination towards First Nations children, youth, and families and ensure it does not happen again, click [here](#).¹

Key Word Searches

Alternative dispute resolution. What is its mandate, authority, and limitations? Who controls it? Who can access it? What resources and protections against retaliation are provided to those seeking relief? Are there mechanisms to ensure urgent relief (e.g., injunctions)? Can First Nations and First Nations CFSAs access other forms of juridical relief without prejudice? Is it effective at holding Canada accountable? How does it avoid being “pan-Indigenous?” How does it interface with the Courts and First Nations regional accountability mechanisms?

Capital. How is it defined? Is it capped? How are remote and rural communities accommodated?

Child in care. How is it defined? Is it broad enough to include children in customary care, kinship care, care by agreement, and removal?

Condition(al). Is this agreement conditional on any terms? If so what are they?

Duty to consult. How is this defined and does the agreement ensure sufficient provisions to ensure Canada discharges its obligations to First Nations?

Expert Advisory Committee. This is a pre-existing committee created by the Tribunal to provide recommendations to reform ISC. How is this committee membership determined? Look for who this committee reports to. Does it include Chiefs in Assembly or are there mediating bodies?

¹ <https://fncaringsociety.com/publications/updated-reformed-approach-first-nations-child-and-family-services-may-2024>

Extraordinary circumstances. How is it defined? Does it include various extraordinary circumstances that directly affect First Nations, like individual class action payouts? How is it triggered, against what standard, and using what method?

First Nations child and family service agency. How is this defined and is the definition sufficiently broad to ensure it captures the wide array of service options a First Nation may choose? What are the reporting requirements and consequences?

First Nations child. There are two CHRT definitions. For Jordan's Principle, the definition is "recognized by their First Nation" on and off reserve. For child and family services, Canada has been holding onto *Indian Act* status on reserve.

First Nations decision making. What provisions are there if some First Nations choose to proceed while others would like to negotiate other terms or remain with the current funding arrangement?

FNCFS Program. How are they defining the program? This definition is critical to the interpretation of the agreement and the Tribunal's orders. If worded narrowly or to not include successor programs, it could liberate Canada from accountability under the agreement and orders.

Funding structure. Critical for efficacy and sufficiency of funding and enforcement of the agreement. Is it an integrated funding structure per the IFSD research? If not, then what research has been done to identify or mitigate any adverse effects of pulling it apart?

Governance. What mechanisms/groups control the implementation of the agreement?

Immunity. Does the agreement waive Canada's liability and, if so, under what terms?

Implementation. How is the agreement implemented? How is it accountable to the Chiefs and First Nations service providers?

Lead applicant(s). Who are the lead applicants before the Tribunal?

Liability. What protections are in place if First Nations/service providers cannot get insurance or adequate insurance to deliver child and family services.

National Advisory Committee. Created by Chiefs-in-Assembly in 1997 to provide expert technical advice on child and family service, and later Jordan's Principle reform. How is this committee membership determined? Look for who this committee reports to. Does it include Chiefs in Assembly or are there mediating bodies?

Operations budget. How is it defined and what is included? How is it calculated and adjusted?

Outcomes. How are outcomes defined? How are they measured? Where is the data held, and for what purpose?

Parliamentary appropriations. This means that each year of funding is subject to the approval of Parliament.

Parties. Who are the Parties to the Agreement and how are they accountable to non-parties directly affected by the Agreement?

Population served. If the agreement includes funding elements based on population, it will be important to understand what the definition of population is and what protections there are for children in First Nations with small populations.

Post-majority services. How is it defined? How were funding levels determined? Does it include capital?

Prevention. How is it defined? What is included in it? What level of prevention are various service providers required to deliver, and against what standards and expected outcomes? How are prevention services coordinated across multiple service providers and with protection? How are the most vulnerable/at-risk families serviced? Is there capacity-building money if the service provider is starting from scratch or currently has inadequate capacity?

Principles. What principles govern the interpretation of the agreement and how are they defined?

Promote and defend. Are the Parties to the Agreement required to promote the agreement to First Nations and others?

Province/Territory. How are they defined? How are they accountable to affected First Nations and partially delegated First Nations CFS agencies for the delivery of services? What services will they provide and how are they coordinated with unaffiliated First Nations or the partially delegated First Nations child and family service agency? Is there funding included in the overall amount and, if so, what is it?

Purpose. What is the agreement trying to achieve? This paragraph is important to enforcing the agreement if necessary.

Reform Implementation Committee. In the spring of 2024, AFN legal wrote to the Expert Advisory Committee (an independent committee created by the Tribunal to reform Canada) on behalf of Canada, NAN, and COO to impose terms of reference on this EAC and make it reportable to the Reform Implementation Committee. What is the committee? What are its powers? What committees/mechanisms report to it and under what terms? Look for who this committee reports to. Does it include Chiefs in Assembly or are their mediating bodies?

Small population First Nations. How are small population First Nations defined? What measures are in place to ensure they have an adequate base to discharge their duties?

Structural drivers. Multi-generational trauma, addictions, poverty, poor housing, and domestic violence drive the over-representation of First Nations children. How are these funded and is funding sufficient?

Term. How long is the agreement for and what happens to ensure First Nations children are not discriminated against after it expires?

Transition. Research shows that well-developed and resourced FNCFS agencies will take two to five years to transition to any new approach. Agencies developing capacity will take five to ten years, and First Nations and other service providers with limited capacity could take longer. How long is this transition, how is the transition triggered and by whom and what resources are there to support transition and safety valves if the transition adversely affects children and families?

Tribunal jurisdiction. If the agreement ends the Tribunal's jurisdiction, then it cannot make any more orders (a lot of the progress made to date on issues such as Jordan's Principle, prevention, and capital is because Canada was ordered to act.).

Unaffiliated First Nation. How is this defined? What levels of prevention are they expected to provide? Is there sufficient capacity-building money to ensure they have the infrastructure and workforce to succeed? What are the reporting requirements and consequences?

Financial Questions

1. What is the total allocation? \$
2. What is the duration of the agreement? years and when does it start ?
3. What services and recipients are included in the agreement? Select all that apply:
 - FNCFS agencies
 - First Nations served by FNCFS agencies
 - First Nations not affiliated to an FNCFS agency
 - Transfers to provinces/territories for unaffiliated First Nations and partially delegated agencies
 - Funding for jurisdiction (C92, inherent right, Treaty, etc.?)
 - Capital funding related to FNCFS
 - Other (please define)

4. What is the funding breakdown by major component for every year of the agreement?

Year	Component	Funding Breakdown
1	FNCFS agencies	Amount: \$
	First Nations served by FNCFS agencies	Amount: \$
	First Nations not affiliated to an FNCFS agency	Amount: \$
	Transfers to provinces/territories	Amount: \$
	Funding for jurisdiction	Amount: \$
	Capital funding related to FNCFS	Amount: \$
	Other (please define)	Amount: \$
2	How are these amounts adjusted?	
3	Are the amounts broken down by recipient? If not, when will that information be provided?	

5. Are carry-forwards allowed for unspent funds for every year of the agreement? Yes No
6. How is remoteness applied (i.e., is there a threshold for remoteness, does it apply to rural service providers)?

7. Is funding for the agreement segregated in a special purpose allotment (SPA) within ISC or another Department?

8. Are there reporting requirements aligned to the well-being of children, families, and communities?
Yes No

- a. What are the indicators?
- b. How are they measured?
- c. Who gathers and analyzes data?
- d. Who reports on results?
- e. How will information be used?

9. Will regional and national First Nations–led Secretariats be established to support implementation and ensure resources are sufficient and applied to achieving desired results? Yes No

10. Is there a requirement for a review of the reformed program? If so, how is it triggered, how are they done, who funds it, and what measures are in place to ensure funding adjustments are made? Yes No

11. **Who** is responsible for delivering **what** services with **what** accountability, with **what** funding, and **when**? For multiple service providers, **how will they be coordinated**?

- who** is responsible:
- what** services:
- what** accountability:
- what** funding:
- when**:
- how** they will be coordinated:

12. Against what principles is funding allocated to First Nations and service providers (e.g., capital by application/business case, prevention per capita on reserve, etc.?)

13. What are the terms of the contribution approach (or other agreement) for funding recipients of the FNCFS Program?

Recipient	Agreement terms
FNCFS agency	e.g., block contribution approach with carry-forward provision
Province/territory	e.g., FNCFS agreement publicly accessible
First Nations delivering prevention	e.g. What level of prevention and how is this coordinated with the protection provider?
First Nations under own jurisdiction	e.g. What safeguards are in place to ensure the agreement provides a floor (but not a ceiling) for First Nations, and that First Nations under any form of jurisdiction (including delegated authority) are not discriminated against.
Signing parties and agents?	What funding, if any, flows to the Parties or their agents, for what purpose and in what amount?
Other?	

Glossary

ADR Alternative Dispute Resolution

AFN Assembly of First Nations

CFS Child and Family Services

CFSA Child and Family Service Agency

COO Chiefs of Ontario

EAC Expert Advisory Committee

FNCFS First Nations Child and Family Services

FSA Final Settlement Agreement

IFSD Institute of Fiscal Studies and Democracy




ISC Indigenous Services Canada






NAN Nishnawbe Aski Nation



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