First Nations Child &
Family Caring Society

August 7, 2025

Key Considerations regarding potential Regional Agreements on Child and Family Services and/or Jordan's Principle

Brief history of *First Nations Child and Family Caring Society et al. v. Attorney General of Canada* [T1340/7008]

In 2007, the Assembly of First Nations ("**AFN**") and First Nations Child and Family Caring Society (the "**Caring Society**") filed a complaint under the *Canadian Human Rights Act* ("**CHRA**") alleging that Canada was discriminating against First Nations children and families on the prohibited grounds of race and national or ethnic origin.

Over 500 documents were filed as evidence and 25 witnesses testified over the 72-day hearing before the Canadian Human Rights Tribunal (the "**Tribunal**"). The Tribunal is mandated to hear complaints under the CHRA to protect the human rights of all Canadians and has the ability to make legally binding orders.

In its landmark 2016 ruling, the Tribunal found Canada's provision of First Nations child and family services and its narrow implementation of Jordan's Principle to be discriminatory and ordered Canada to cease its discriminatory conduct and prevent it from recurring. Over 30 non-compliance and procedural orders followed, and the Tribunal retains jurisdiction over the case to ensure its orders are properly implemented by Canada.

What is happening nationally on the Tribunal case on First Nations Child and Family Services?

In October 2025, First Nations-in-Assembly voted against approving a Draft Final Settlement Agreement on long-term reform of the First Nations Child and Family Services Program ("**National Draft FSA**") signed by Canada, the AFN, and the interested parties Chiefs of Ontario ("**COO**") and Nishnawbe Aski Nation ("**NAN**"). First Nations leadership directed a reset of negotiations with Canada, led by the National Children's Chiefs Commission (the "**NCCC**") in collaboration with the Caring Society and the AFN Executive. First Nations leadership further directed the NCCC to focus on a national agreement with regional variations to account for distinct regional circumstances and the rich diversity of languages and cultures. The NCCC has made substantial progress towards discharging its mandate, despite having no funding and Canada's refusal to negotiate. The NCCC is doing important work to prepare for negotiations or to litigate, should Canada continue to refuse to negotiate or refuse to negotiate in good faith.

In January 2025, the Caring Society filed a motion with the Tribunal to require Canada to consult with the parties on child and family services reform outside of Ontario, and Jordan's Principle nationally, as it had previously done in 2018. The Tribunal has not yet decided this motion.

Canada's Draft Agreement on First Nations Child and Family Services with the Chiefs of Ontario and Nishnawbe Aski Nation

Canada, COO and NAN subsequently completed an agreement on child and family services in Ontario ("**OFA**"), which was approved by the majority of COO and NAN First Nations and subsequently submitted to the Tribunal. The OFA is largely based on the rejected National Draft FSA, with terms stipulating that the Tribunal orders on child and family services will no longer apply to Ontario.

The OFA is conditional on the Tribunal's approval to be implemented. To secure Tribunal approval, Canada, COO and NAN must put forward evidence to demonstrate that Canada's discrimination in the provision of First Nations child and family services has stopped and will not happen again.

The Indian Welfare Agreement, also known as the "1965 Agreement" is a unique funding approach for First Nations child and family services in Ontario. In contrast, the rest of First Nations child and family services in Canada are funded either through separate provincial/federal agreements. Outside of Ontario, Canada used its discriminatory Directive 20-1 or the Enhanced Prevention Focused Approach (EPFA) to fund First Nations child and family services.

Can other First Nations, Sub-Regions and Regions pursue their own agreements on First Nations Child and Family Services and/or Jordan's Principle?

a. **Engagement with Tribunal orders:**

- First Nations are free to negotiate and put into effect any agreement with Canada, provided that the agreement is more advantageous for the First Nation and improves upon the Tribunal orders. However, if all or parts of regional agreements affect the Tribunal's orders it is very likely that the Tribunal will have to approve it. If said agreements seek to extinguish some or all of the Tribunal orders as per the rejected National Draft Final Settlement Agreement, it will be necessary to seek approval from the Tribunal to do so. There are clear legal standards that must be met in order for the Tribunal to agree that any agreement or other instrument gives effect to the spirit of its orders. The Tribunal order, 2025 CHRT 80, provides helpful guidance in this regard.

b. **Tribunal legal standing and Interested Party status**:

- In 2025 CHRT 80, the Tribunal makes clear that there are limits to the number of First Nations, Experts, agencies, etc. that the Tribunal can hear from. It is relying on the Parties and the NCCC to do the consultation and bring solutions forward that accommodate regional and First Nations interests within the scope of the Tribunal's jurisdiction and direction.

- The moving party must have the legal standing to bring a motion before the Tribunal. As a matter of general procedure, First Nations who do not currently have such standing before the Tribunal can apply for, and be granted, Interested Party status. Interested Party status does not typically include the authority to bring motions and there will be additional scrutiny for interested parties that seek to resolve part or all of a complaint. Therefore, any interested party must be granted authority to bring such a motion by the Tribunal before filing it. Alternatively, one of the full parties, Canada, the Caring Society or AFN, can bring such a motion.

c. Evidence of Non-Discrimination:

- Any agreement seeking to resolve the Complaint in whole or in part must be supported by evidence that Canada's discriminatory conduct has ceased and that the agreement will prevent its recurrence. If the agreement impacts long-term reform and the implementation of the Tribunal orders, the Tribunal set out a non-exhaustive list of parameters in 2025 CHRT 80 that will guide the Tribunal's decision-making [para. 113]:
  - > *Having lasting effects, be adequately resourced, and remain sustainable for future generations;*
  - > *Be flexible and improve upon the Tribunal's previous orders;*
  - > *Incorporate regional and local First Nations perspectives;*
  - > *Be evidence-based, relying on the best currently available research without delay for future studies;*
  - > *Align with the spirit of the Tribunal's findings and rulings in a non-rigid manner;*
  - > *Be First Nations-centered and respectful of their distinct needs and perspectives*
  - > *Be culturally appropriate, respect substantive equality, reflect the best interests of the child through an Indigenous lens and respect the specific needs of First Nations children and families;*
  - > *Comply with domestic and international human rights, especially the Convention on the Rights of the Child; the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Indigenous Peoples Act; and*
  - > *Strive for excellence rather than perfection, without narrowing the Tribunal's findings or orders.*

d. Permanent order forbidding Canada's discrimination toward First Nations children:

- The Tribunal has repeatedly ruled that its landmark 2016 order is a permanent order against Canada to immediately cease the discrimination against First Nations children and ensure that it does not recur. In 2025 CHRT 80, the Tribunal notes that its orders for Canada to cease its discriminatory conduct are intended to protect multiple generations of First Nations children and are the same as an injunction.

- Canada cannot contract out of its human rights obligations, although they are free to reach agreements with First Nations that exceed the minimum standards set out in the orders (2018 CHRT 4, para. 413).

e. Efficiency and expeditious proceedings:

- The Tribunal has stated that adjudicating motions on numerous First Nations/Canada agreements affecting the Tribunal orders is not consistent with its duty to conduct the case efficiently and expeditiously. The Tribunal has wide discretion on how to manage proceedings before it and is bound by the CHRA to conduct the proceedings in an efficient and expeditious manner.

f. Canada currently refusing negotiations outside of Ontario:

- Canada has advised that it does not currently have a mandate to pursue regional agreements outside of Ontario.