Tribunal File No.: T1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and ASSEMBLY OF FIRST NATIONS

Complainants

-and-

CANADIAN HUMAN RIGHTS COMMISSION

Commission

-and-

ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous Services Canada)

Respondent

-and-

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA, NISHNAWBE ASKI NATION, TAYKWA TAGAMOU NATION and CHIPPEWAS OF GEORGINA ISLAND

Interested Parties

RESPONDING FACTUM OF THE INTERESTED PARTIES, TAYKWA TAGAMOU NATION AND CHIPPEWAS OF GEORGINA ISLAND

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PART I – OVERVIEW

1. The children and youth of Georgina Island and Taykwa Tagamou Nation deserve to live free from discrimination in the delivery of child and family services. They should not receive inadequate services, as compared to non-Indigenous children and youth. They should not face a greater risk of removal from their homes and families because they are Indigenous children. The children of Georgina Island deserve access to adequate services that accounts for their remoteness, without having to move from their community, or put their lives at risk, in order to access them.

2. The question before this Tribunal is whether the *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario* (the "**OFA**") will truly end discrimination when it comes to the delivery of child and family services to First Nations in Ontario. Given that this Tribunal is being asked to relinquish its oversight over the underlying complaint and agree to the OFA superseding all of its previous remedial orders in relation to the First Nations Child and Family Services Program in Ontario and the *1965 Agreement*, the Moving Parties bear a heavy onus to demonstrate that the OFA will, in fact, end the discrimination recognized by this Tribunal in Ontario once and for all.

3. The Moving Parties have not, and cannot, meet the burden. The OFA does not end the discrimination at the heart of this proceeding. In particular, the OFA fails to do so for Georgina Island's and Taykwa Tagamou Nation's children and youth. This Tribunal should not approve the agreement without conditions and relinquish its jurisdiction in Ontario. If it were to do so, then the likely result would be a return to this Tribunal with a new complaint in the future — marking the start of another years-long saga where First Nations and their child welfare agencies will once again have to prove how Canada is discriminating in its delivery of child and family services. Such a result is not in the best interests of First Nations children.

4. The Moving Parties, the Attorney General of Canada, the Chiefs of Ontario ("**COO**"), and the Nishnawbe Aski Nation ("**NAN**"), seek approval of the OFA and Trilateral Agreement in Respect of Reforming the *1965 Agreement* (the "**Trilateral Agreement**"). They argue that the OFA and the Trilateral Agreement will bring an end to all discrimination in the delivery of First Nations child and family services in Ontario that this Tribunal found in its 2016 decision,[1] and therefore this Tribunal can comfortably end its jurisdiction over the Complaint in Ontario.

5. The Interested Parties Taykwa Tagamou Nation ("**TTN**") and Chippewas of Georgina Island First Nation ("**GIFN**") oppose the approval of the OFA. On this Motion, they advance the arguments permitted by this Tribunal in granting them Interested Party Status:

(a) the OFA does not represent lasting reform;

(b) commitments under the OFA are time-limited;

(c) the OFA was not developed through meaningful engagement;

(d) the OFA may not be in line with evidence on how to address discrimination in child and family services;

(e) the approach to remoteness in the OFA does not recognize the access challenges of GIFN; and

(f) the Trilateral Agreement fails to implement the Tribunal's direction to reform the *1965 Agreement*.[2]

6. As a result, this Tribunal should not approve the OFA and Trilateral Agreement, nor should it terminate its jurisdiction over ensuring the elimination of discrimination in First Nations child and family services in Ontario.

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[1] *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 ("*Merits Decision*").
[2] *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2025 CHRT 85, at para. 74(v).

7. In the alternative, TTN and GIFN request an order exempting their First Nations from the operation of the OFA. The OFA is not a settlement that they negotiated; in fact, they were excluded from the negotiations. They do not consent to the OFA, nor do they wish to see the OFA applied to their communities. This Tribunal should not disregard their self-determination and impose a settlement agreement on them against their will and over their objections.

8. TTN and GIFN also agree with and adopt the submissions of the Caring Society.

PART II - THE FACTS

A. THE INTERESTED PARTY FIRST NATIONS

(i) Taykwa Tagamou Nation

9. TTN is an Ojibway and Cree First Nation with traditional territory in northern Ontario along the Abitibi River. The name "Tahquatagama" (from which TTN derives its name) means "water on high ground" and reflects the spirit and landscape of its territory within the Moose River Basin. It was formerly known as "New Post First Nation".[3] TTN is a member of NAN and COO.

10. Following the past orders of this Tribunal in these proceedings, TTN formally established its First Nation Representative Service ("**FNRS**") program in 2018 and has been accessing funding for child and family services at their actual costs since 2018.[4]

11. In 2022, TTN enacted the T*aykwa Tagamou Nation Child Wellbeing Law*, asserting its inherent jurisdiction over child and family services. On September 30, 2024, TTN provided formal notice of its intention to exercise legislative authority and initiated a request to enter a coordination agreement with Canada and Ontario.[5] No such coordination agreement has yet been finalized.

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[3] Affidavit of Victor Linklater, sworn on October 2, 2025, at para. 4, Ex. 12, Tab 1, p. 2 ("**Linklater Affidavit**").
[4] Linklater Affidavit, at para. 6, Ex. 12, Tab 1, p. 2.
[5] Linklater Affidavit, at para. 8, Ex. 12, Tab 1, p. 2.

12. TTN is a founding member of Kunuwanimano Child and Family Services ("**Kunuwanimano**"), an agency providing services for eleven First Nations in Northern Ontario.[6]

(ii) Chippewas of Georgina Island First Nation

13. GIFN is an Anishinaabe nation, whose territory predominantly encompasses Georgina Island, in the southeastern portion of Lake Simcoe.[7]

14. Georgina Island does not have a hospital, a pharmacy, a grocery store, a gas station, a restaurant, mail service, or a school that goes past grade five.[8]

15. Georgina Island is only accessible by boat in the summer months and through a variety of dangerous and unreliable modes of transportation in the winter. GIFN runs a ferry from the south shore of Lake Simcoe to Georgina Island that is open to GIFN members and their guests, leaseholders, and contractors. However, Lake Simcoe often freezes from December or January until late March or April, which can make it very difficult to run the ferry during these months. At those times, GIFN members travel to and from the community in a variety of vehicles over the ice, which always carries the life-threatening risk that the vehicle may fall through. The effects of climate change make it very difficult to predict when the ferry will be able to operate.[9] Georgina Island does not have an airport or helipad, so air travel is not an option.[10] Tragically, members of GIFN have died simply attempting to travel to or from Georgina Island, especially in the "shoulder season" right before and after the winter, when the ice is least stable and the ferry is not operating.[11]

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[6] Linklater Affidavit, at para. 9, Ex. 12, Tab 1, p. 2.
[7] Affidavit of Chief Donna Big Canoe, affirmed October 2, 2025, at paras. 3-4, Ex. 12, Tab 2, p. 30 ("**Chief Big Canoe Affidavit**").
[8] Affidavit of Shannon Crate, affirmed October 2, 2025, at para. 7, Ex. 12, Tab 3, p. 51 ("**Crate Affidavit**"); Evidence of S. Crate, December 15, 2025, at p. 11, Transcript Brief, Tab 8, p. 575.
[9] Chief Big Canoe Affidavit, at para. 4, Ex. 12, Tab 2, p. 30.
[10] Crate Affidavit, at para. 6, Ex. 12, Tab 3, p. 51.
[11] Crate Affidavit, at para. 8, Ex. 12, Tab 3, p. 51.

16. GIFN has proposed a project to build a permanent bridge to allow safe and reliable year-round access to Georgina Island: the Georgina Island Fixed Link Project. However, this project is very expensive and there is "no commitment from any government to help" with those costs or actually commence the project.[12] As a result, while this is something that GIFN members have long dreamed of, there is currently no timeline for the commencement of the project.[13]

17. GIFN maintains its own child welfare program that delivers FNRS, Post Majority Support Services, and prevention services to its members.[14] GIFN is also one of the First Nations that first called for, and ultimately implemented, a plan resulting in the creation of Dnaagdawenmag Binnoojiiyag Child & Family Services ("**DBCFS**"), which now serves as GIFN's child welfare agency, as well as the child welfare agency for seven other First Nations in the region.[15]

B. BACKGROUND FACTS

18. TTN and GIFN agree with and adopt the articulation of the procedural history leading up to this Motion set out in the submissions of the Caring Society.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

A. THE ULTIMATE QUESTION

19. TTN and GIFN agree with the Moving Parties that the ultimate issue on this motion is whether the OFA and the Trilateral Agreement end the discrimination found by the Tribunal and therefore whether the Tribunal should end its jurisdiction over the Complaint in Ontario.

20. TTN and GIFN also agree on the general factors that are relevant to this determination. As previously articulated by this Tribunal, long term reform must:

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[12] Evidence of S. Crate, December 15, 2025, at pp. 14-15, Transcript Brief, Tab 8, pp. 578-79.
[13] Evidence of S. Crate, December 15, 2025, at p. 15, Transcript Brief, Tab 8, p. 579.
[14] Chief Big Canoe Affidavit, at para. 7, Ex. 12, Tab 2, p. 30.
[15] Chief Big Canoe Affidavit, at para. 8, Ex. 12, Tab 2, p. 31.

(a) Have lasting effects, be adequately resourced, and remain sustainable for present and future generations;

(b) Be flexible and improve upon the Tribunal's previous orders;

(c) Incorporate regional and local First Nations perspectives;

(d) Be evidence-based, relying on the best currently available research and studies, without delay for additional studies;

(e) Align with the spirit of the Tribunal's findings and rulings in a non-rigid manner;

(f) Be First Nations-centered and respectful of their distinct needs and perspectives;

(g) 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;

(h) 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

(i) Strive for excellence rather than perfection, without narrowing the Tribunal's findings and orders.[16]

21. While true self-determination and the informed agreement of the Parties are relevant considerations, at the end of the day, this Tribunal must be satisfied that the OFA and Trilateral Agreement are sufficient to bring an end to the discrimination it identified.

22. Further, while the Moving Parties have sought to highlight the virtues of compromise in reaching the OFA, this Tribunal has already explained that "the role of compromise in litigation does not extend to derogating from binding Tribunal orders".[17] Thus, the Moving Parties cannot compromise or contract out of the requirement to end discrimination.

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[16] *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2025 CHRT 80, at para. 113.
[17] *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2022 CHRT 41, at para. 482.

B. THE OFA DOES NOT REPRESENT LASTING REFORM

(i) The OFA effectively delegates determining the end of discrimination to Canada

23. The Moving Parties seek to have this Tribunal end its jurisdiction in Ontario and cancel its existing orders in favour of the OFA, while admitting that they cannot provide any certainty that the OFA will actually end discrimination. In this way, they seek to shift the role of this Tribunal in ending discrimination to Canada itself. Such a move is inappropriate, inconsistent with this Tribunal's mandate, and not in the best interests of First Nations children.

24. The Moving Parties admit that they do not know if the OFA will actually be effective. COO and NAN state that "[w]hether the OFA achieves its goals will only be clear once it is implemented".[18] Despite this uncertainty, they ask this Tribunal to find that the OFA *does* end discrimination and cease its supervisory jurisdiction over the complaint in Ontario.

25. Such a move is both premature and contrary to the best interests of First Nations children and families in Ontario. Ending this Tribunal's supervisory jurisdiction prematurely means that if the OFA ultimately falls short of its lofty goals, then the Parties cannot seek immediate recourse before this Tribunal, as they have previously done throughout the remedial phase of these proceedings. Instead, affected First Nations in Ontario must file a fresh complaint and start the process over again from square one to prove ongoing discrimination. This result risks tremendous delays that are not in the best interests of children. The original Complaint took almost 10 years to reach the *Merits Decision* and nearly 20 years to reach this point. First Nations children should not be forced to wait for decades to end discrimination against them if the OFA proves ineffective. This is the precise risk that the retention of jurisdiction by courts and tribunals is meant to avoid.[19]

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[18] COO/NAN Submissions, at para. 7.
[19] *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62, at para. 61.

26. The Moving Parties attempt to address this fundamental problem by pointing to the internal monitoring and review mechanisms within the OFA itself. But these are insufficient.

27. At best, the OFA's failures will be identified through the Initial Program Assessment, which must be completed by March 31, 2028.[20] ORIC will then have to review the report and provide recommendations to Canada by June 30, 2028.[21] Canada then has 120 days to respond.[22]

28. Crucially, Canada can then choose, in its sole discretion, whether to adopt ORIC's recommendations or not.[23] In essence, this delegates the question of whether the OFA is effective at eliminating discrimination from this Tribunal to Canada — the same party that discriminated against First Nations children in the first place, that initially attempted to have the complaint struck on a preliminary motion to dismiss,[24] and that has demonstrated an unfortunate and lengthy track-record of non-compliance in this very proceeding.[25]

29. Should Canada choose not to adopt any ORIC recommendations, the OFA's dispute resolution mechanisms offer limited recourse. They only allow the parties to the OFA — Canada, COO, and NAN — to challenge Canada's failure to implement recommendations.[26] That means that First Nations themselves, FNCFS Agencies, the Assembly of First Nations, and the Caring Society cannot pursue a dispute arguing Canada failed to adopt the recommendations to actually

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[20] OFA, s. 137, Ex. 23. The Initial Program Assessment is expressly required to evaluate whether the OFA "achieves progress toward the elimination of discrimination and prevention of its recurrence" (OFA, s. 139(a)(i)).
[21] OFA, s. 159(a), Ex. 23.
[22] OFA, s. 163, Ex. 23.
[23] OFA, s. 163(c), Ex. 23.
[24] *Canada (Attorney General) v. Canadian Human Rights Commission*, 2013 FCA 75.
[25] See, for example: *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2017 CHRT 14; *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2018 CHRT 4; *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2020 CHRT 24,
[26] OFA, s. 196(b), Ex. 23. The Arbitral Tribunal appears to only be able to consider Canada's failure to adopt ORIC's recommendations that require an amendment to the OFA if those recommendations are contained in the Initial Program Assessment (OFA, ss. 121, 197(c), 205).

eliminate discrimination. Moreover, arbitration over Canada's refusal to implement an ORIC recommendation will be decided under a deferential reasonableness standard.[27] Finally, the arbitrators under the OFA expressly cannot award damages for discrimination or order Canada to "fund new components of the Reformed FNCFS Funding Approach or increase funding for existing components of the Reformed FNCFS Funding Approach, unless otherwise set out in [the OFA]".[28] Nor can the arbitral tribunal consider claims that Canada failed to implement any of ORIC's recommendations that would "require an amendment" to the OFA.[29]

30. Further, if issues are still not resolved — or are only identified — by the Second Program Assessment in 2033, and Canada refuses to act on recommendations flowing from it, the dispute resolution provisions of the OFA are completely unavailable.[30]

31. These limitations leave the OFA's dispute resolution mechanisms unable to meaningfully ensure discrimination will end if the OFA's initial structure fails to eliminate it — as the Moving Parties themselves acknowledge may well occur — and Canada chooses not to willingly implement ORIC's recommendations to do so. In such a scenario, the only viable option may be to return to this Tribunal for remedial assistance. Again, should the Tribunal grant the Moving Parties' relief as requested, any complaints about ongoing discrimination due to the OFA's inadequacies would have to be addressed afresh through another years-long administrative proceeding, since the Tribunal's ongoing jurisdiction in Ontario would cease.

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[27] OFA, s. 205, Ex. 23.
[28] OFA, s. 211, Ex. 23.
[29] OFA, s. 197(c), Ex. 23. The Moving Parties, relying on ss. 121 and 205 of the OFA seem to suggest that the arbitral tribunal can consider claims that Canada unreasonably failed to implement recommendations flowing from the Initial Program Assessment that would require amendments to the OFA or structural changes. This is doubtful, given that s. 205(b) only requires the tribunal to "consider" whether the recommendations contained in the Initial Program Assessment Opinion require an amendment to the OFA (which it may then use as a basis to conclude that Canada was reasonable in refusing to adopt the recommendation). At most, a plain reading of the OFA is unclear on this point, creating uncertainty for the First Nations parties on whether adequate remedies are available.
[30] OFA, s. 197(a), Ex. 23.

32. To be clear, TTN and GIFN do not ask this Tribunal to monitor the delivery of child and family welfare services to First Nations children indefinitely. But given this Tribunal's findings of discrimination, this Tribunal's critical work in ordering remedies to eliminate that discrimination, the admitted uncertainty posed by the OFA, and the stakes for First Nations children in this province now and in the future, the Tribunal cannot end its jurisdiction at this time.

(ii) The OFA provides no effective remedy if Canada fails to appropriate funding

33. The OFA expressly makes all funding subject to Parliamentary appropriations, which severely limits the ability of the parties to seek meaningful and effective recourse.

34. Under s. 297 of the OFA, all funding commitments from Canada "remain subject to annual appropriation by the Parliament of Canada". This means that Parliament could choose not to appropriate the funds in any of the eight years of the OFA, completely defeating its purpose to eliminate discrimination in the delivery of First Nations child and family services. Canada defends this provision by pointing to the *Constitution Act, 1867* and the constitutional imperative for Parliament to appropriate funds for use by the executive.[31]

35. TTN and GIFN accept that Parliament will necessarily have to appropriate the funds provided for in the OFA. But making the funding expressly contingent upon Parliamentary appropriations *in the OFA itself* is highly problematic for First Nations and FNCFS Agencies.

36. There is no evidence that this is a standard term in all government of Canada contracts. Indeed, such a standardized term would be absurd in any commercial contract, as it would provide Canada with an easy means of avoiding its contractual obligations without true consequence.

37. Because the appropriations clause is an express term of the OFA, the First Nations parties

[31] Canada Submissions, at paras. 23-25.

cannot argue Canada breached the OFA by failing to appropriate the promised funds. The parties could not seek monetary damages or specific performance against Canada for breach of contract. In this way, the terms of the OFA effectively allows Canada (including any new government in the House of Commons) to simply choose not to fulfill its end of the bargain at any time.

38. Further, Canada's failure to appropriate the promised funds is expressly *excluded* from the OFA's dispute resolution provisions, so it cannot be addressed via arbitration under the OFA.[32]

39. The Moving Parties point to s. 298 of the OFA, which states that if Canada fails to appropriate funds, a party "may seek an order from a court of competent jurisdiction that the Parties are substantially deprived of the benefit of [the OFA]" without needing to prove monetary loss.

40. Section 298 is no cure for the OFA's flawed approach to appropriations. The parameters of when such a "substantial deprivation" court order could be obtained are unclear. For example, if Canada chooses to end its appropriations in year 7 of the OFA's term, would that still meet the threshold contemplated by the OFA? Or would Canada argue that despite failing to pay millions in funding, the substantial benefit of the OFA had been provided on account of previous funding?

41. More fundamentally, even if such a court order could be obtained, it would have little practical impact. It would be an order in the nature of a declaration, without any requirement that Canada provide the promised funds. The OFA states that once a party obtains such a court order, it can "pursue its remedies under the Complaint, or initiate a new complaint at the Tribunal".[33] Of course, since a condition of the OFA is for this Tribunal to end its jurisdiction in Ontario under the Complaint, the only true remedy would be to initiate an entirely new complaint at the Tribunal.

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[32] OFA, s. 197(b), Ex. 23.
[33] OFA, s. 298, Ex. 23.

42. The OFA thus sets out a convoluted, ineffective, and expensive path for seeking redress if Canada chooses not to honour its funding commitments by refusing to appropriate the necessary funds. The parties would first need to obtain a court declaration of substantial deprivation and then seek to enforce that declaration through re-starting a new complaint before the Tribunal.

43. Such remedial recourse is far worse than the current *status quo*. It also puts the First Nations in a worse position than other private parties contracting with Canada who can rely on the courts to seek recourse for a breach of contract if Canada does not fulfill its end of the bargain.

44. In this way, the OFA subjects Ontario First Nations children and families to the whims of Parliament without adequate recourse. As the history of this case has shown, Canada does not have an admirable track record of performing its obligations with respect to First Nations children even when it comes to requirements in binding Tribunal orders, let alone settlement agreements. The OFA being entirely subject to the appropriations process results in an agreement that is not sustainable, does not improve upon the Tribunal's previous orders, is not aligned with the spirit of the Tribunal's rulings, and does not reflect the best interests of First Nations children.[34]

C. COMMITMENTS UNDER THE OFA ARE TIME-LIMITED

45. The OFA is only operative for nine fiscal years, from 2025 to March 31, 2034.[35] As the OFA will not come into force during fiscal year 2025-2026, and the funding earmarked for that fiscal year cannot be recovered, the OFA will, at most, be effective for eight years.[36]

46. The OFA itself is vague and non-committal on what will come after this term, stating that ISC will "engage" with the Parties on the recommendations following the Second Program

[34] 2025 CHRT 80, at para. 113.
[35] OFA, s. 5, Ex. 23.
[36] See: COO/NAN Submissions, at para. 49.

Assessment on a potential successor program, "which may take effect following the expiry of the Term of this Final Agreement".[37] The OFA also states that Canada "shall consider the viability of embedding the Reformed FNCFS Funding Approach, and any recommended changes thereto, in legislation" but makes no commitments in this regard.[38]

47. Due to the time-limited nature of the OFA, and the vagueness of these provisions regarding what comes next, Ontario First Nations face "a great deal of uncertainty" on what comes next.[39]

48. The limited time span of the OFA is inconsistent with the perspectives and obligations of the very First Nations communities it purports to serve. Chief Big Canoe explained that it conflicts with the "Seventh Generation Principle", a very important concept in Anishinaabe culture and teachings.[40] Anishinaabe people must consider the impact of their actions and decisions on their descendants seven generations into the future and ensure that they act in a way "to bring about a better world for [their] descendants far into the future".[41] This principle informs how First Nations like GIFN understand their commitment to take care of their children and future generations — one that extends well beyond the next few years or even decades.

49. As Chief Big Canoe explains, the OFA's restricted time horizon fails to respect the Seventh Generation Principle:

> Focusing only on the next nine years is incredibly short-sighted in the scope of caring for the next seven generations of Anishinaabe children who will come into this world and require us to care for them. In my view, the OFA neglects our profound and important commitments to our future generations.[42]

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[37] OFA, s. 75, Ex. 23 (emphasis added).
[38] OFA, s. 76, Ex. 23.
[39] Chief Big Canoe Affidavit, at para. 47, Ex. 12, Tab 2, p. 37.
[40] Chief Big Canoe Affidavit, at para. 48, Ex. 12, Tab 2, p. 37.
[41] Chief Big Canoe Affidavit, at para. 48, Ex. 12, Tab 2, p. 37.
[42] Chief Big Canoe Affidavit, at para. 49, Ex. 12, Tab 2, p. 37.

50. The Moving Parties' response to this concern is that "no agreement can be permanent".[43] But this is no answer at all. The Moving Parties fail to explain why the OFA must be limited to only eight years, without more concrete commitments for what comes afterwards. Indeed, s. 76 of the OFA belies the Moving Parties' contention, by expressly adverting to the possibility of embedding changes in legislation. The Moving Parties have not explained why such legislative changes are not possible now, which would provide greater certainty and last indefinitely (until amended). Given the often slow and cumbersome legislative process, a final settlement agreement could even provide guaranteed funding *until* its changes are implemented in legislation. This approach would provide immediate relief, alongside much greater certainty for the future.

51. The Moving Parties also note that Canada's obligation to end discrimination generally will persist beyond the end of the OFA.[44] While true, this provides little comfort to affected First Nations, who cannot know what happens after 2034, and would be forced to launch a new complaint before the Tribunal if Canada reverts to discriminatory practices once the OFA expires.

52. Given the time limited nature of the OFA — and the uncertainty of what comes next — it cannot be said that the agreement will meet this Tribunal's objective of remaining "sustainable for future generations". Nor is it centered on First-Nations needs and perspectives, including the Seventh Generation Principle.[45] The parties can have no real sense of what the situation will look like for the next generation, let alone seven generations into the future.

D. THE OFA DOES NOT REFLECT MEANINGFUL ENGAGEMENT

53. Contrary to the claims of the Moving Parties, the OFA is not the result of meaningful consultation and engagement with First Nations in Ontario. Quite the opposite.

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[43] COO/NAN Submissions, at para. 259.
[44] COO/NAN Submissions, at para. 260.
[45] 2025 CHRT 80, at para. 113.

54. The OFA was approved by the COO and NAN Chiefs-in-Assembly in February 2025. But those votes, and the Moving Parties' claims about them, must be considered in context.

55. First, the votes in favour of the OFA were not overwhelming majorities. At the NAN assembly in February 2025, 31 of the 34 First Nations present voted in favour of the OFA, representing 63% of all 49 NAN First Nations.[46] At the COO assembly, 76 of the 83 First Nations present voted in favour, representing 57% of the 133 First Nations in COO.[47]

56. Second, the processes within COO and NAN that led up to these votes were marked by an exclusion of voices, a pressure campaign in favour of approving the OFA, and an unwillingness to allow First Nations to provide meaningful input and feedback on the terms of the agreement.

57. Chief Big Canoe, Mr. Linklater, and Ms. Crate participated in COO and NAN's engagement processes leading up to the ratification of the draft national agreement and then the OFA. They provided direct evidence that the process was not a meaningful engagement. They explain how COO and NAN leadership simply presented them with the draft agreement as a done deal that could not be altered.[48] First Nations Chiefs and their proxies did not have the opportunity to propose or vote on amendments or suggest changes.[49] COO leadership expressly told member Chiefs that COO would not change the agreement and would only negotiate with Canada.[50]

58. The timelines within COO and NAN for the OFA ratification were very condensed for such a large and impactful agreement: there was *less than a month* between the Chiefs being presented

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[46] Evidence of K. Murray, at p. 64, Transcript Brief, Tab 10, p. 742; NAN Resolution, Exhibit "E" to the Reply Affidavit of Chief Batisse, sworn October 17, 2025, Ex. 7 ("**Chief Batisse Affidavit**").
[47] Evidence of K. Murray, at p. 64, Transcript Brief, Tab 10, p. 742; Affidavit of Grand Chief Abram, sworn March 6, 2025, at para. 106, Ex. 1.
[48] Linklater Affidavit, at paras. 15-16, Ex. 21, Tab 1, p. 3; Chief Big Canoe Affidavit, at paras. 12-13, 22, Ex. 21, Tab 2, pp. 31, 33; Crate Affidavit, at para. 5, Ex. 21, Tab 3, p. 51.
[49] Linklater Affidavit, at paras. 16, 24, Ex. 21, Tab 1, pp. 3-4; Chief Big Canoe Affidavit, at paras. 13, 15, Ex. 21, Tab 2, pp. 31-32.
[50] Chief Big Canoe Affidavit, at para. 19, Ex. 21, Tab 2, pp. 32-32

with the finalized text of the draft agreement and voting to ratify it in late February.[51]

59. While COO and NAN held information sessions regarding the OFA, these sessions were generally scheduled for two hours and contained more than 100 participants; they were therefore not conducive to a detailed discussion of the merits of the OFA or developing improvements.[52] Instead, Mr. Linklater and Chief Big Canoe describe how COO and NAN leadership and counsel used these information sessions to try and sell the OFA as is and push First Nations to support it. This included insisting that the OFA was the best deal they could get and Canada would never agree to anything better.[53] It also included "fear-mongering" regarding what would happen if the First Nations rejected the OFA, including the Conservative Party coming into power and implementing a worse deal; the government "imposing" a bad deal on the First Nations without their consent; and even the government amending the *Canadian Human Rights Act*, cutting funding to this Tribunal, or replacing its members in order to somehow defeat the Complaint.[54]

60. TTN and GIFN raised their concerns about the insufficiency of the process at the time, but did not see any changes or a deeper commitment to engage with the First Nations.[55]

61. Mr. Linklater and Chief Big Canoe also provide examples of COO staff trying to exclude, silence, and denigrate voices they expected to be opposed to the OFA and delegitimize criticisms.[56]

62. Finally, COO's and NAN's negotiation teams contained no female chiefs at the negotiating table during discussions with Canada — a serious oversight given the important role of women in

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[51] Chief Big Canoe Affidavit, at para. 25, Ex. 21, Tab 2, p. 33 (Chiefs were told that the drafting was complete on February 7, 2025, and the ratification votes were on February 25-26, 2025).
[52] Linklater Affidavit, at para. 25, Ex. 21, Tab 1, p. 4.
[53] Linklater Affidavit, at para. 49, Ex. 21, Tab 1, p. 8.
[54] Linklater Affidavit, at paras. 50, 52-53, Ex. 21, Tab 1, pp. 8-9; Chief Big Canoe Affidavit, at paras. 27-28, 40-43 Ex. 21, Tab 2, pp. 33-34, 35-36.
[55] Linklater Affidavit, at para. 20, Ex. 21, Tab 1, p. 4; Chief Big Canoe Affidavit, at para. 24, Ex. 21, Tab 2, pp. 33.
[56] Linklater Affidavit, at paras. 30-32, 44, Ex. 21, Tab 1, p. 5, 7; Chief Big Canoe Affidavit, at para. 18, Ex. 21, Tab 2, p. 32.

many Indigenous communities in Ontario as the "givers of life and keepers of children".[57]

63. The Moving Parties did not cross-examine Chief Big Canoe or Mr. Linklater at all. And while NAN did briefly cross-examine Ms. Crate, it did not challenge her on issues relating to the lack of meaningful participation, engagement, and consultation.

64. The Moving Parties' reliance on information sessions that occurred after February 2025[58] does not assist them. Such sessions are not relevant to the question of whether the OFA was the result of meaningful engagement with the First Nations. These sessions occurred *after* COO and NAN ratified the OFA and were directed at getting the parties ready for its implementation. They were not an opportunity for First Nations to express concerns about, or seek changes to, the OFA.

65. The evidence also shows COO and NAN excluding representatives from FNCFS Agencies from meaningfully participating in the engagement process. This included Ms. Murray, the executive director of Kunuwanimano, as well as the executive directors of Tikinagan Child and Family Services and Payukotayno James and Hudson Bay Family Services.[59]

66. From the outset, NAN sought to delegitimize concerns from FNCFS Agencies by characterizing their concerns as simply "want[ing] money for themselves" or protecting their own power.[60] NAN identified anticipated opposition from agencies as a problem and proposed targeted outreach to Chiefs sitting on the boards of the agencies to undermine them.[61]

67. An example that illustrates NAN's posture towards agencies was its efforts to cancel Ms. Murray's proxy to represent her First Nation (Chapleau Cree First Nation) at the NAN assembly,

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[57] Big Canoe Affidavit, at para. 29, Ex. 12, Tab 2, p. 34.
[58] COO/NAN Submissions, at para. 36.
[59] Linklater Affidavit, at para. 27, Ex. 21, Tab 1, pp. 4-5.
[60] Affidavit of Kristin Murray, affirmed October 2, 2025, at paras. 21-22, Ex. 12, Tab 4, pp. 61-62 ("**Murray Affidavit**").
[61] Murray Affidavit, at para. 22, Ex. 12, Tab 4, p. 62; Exhibit "D" to Linklater Affidavit, Ex. 12, Tab 1D, p. 22.

despite the fact that Chief Corston selected her to represent the community and that NAN seemingly had no issue with other proxies at the meeting who were not elected council members.[62]

68. NAN argues that the perspectives of FNCFS Agencies were reflected in the work of the NAN Chiefs' Committee on Children, Youth, and Families, where the executive directors of the three agencies serving NAN communities hold non-voting seats. But whenever this committee discussed the draft national agreement or OFA during the negotiations with Canada, they did so in-camera, excluding the agency directors.[63] Further, the committee appears to have met just once during the process leading to the ratification of the draft national agreement (on July 25, 2024) and not at all during February 2025 while the OFA was being considered.[64]

69. Like Ms. Murray, while the executive director of DBCFS was able to sit at an advisory table for COO, she had no opportunity to provide meaningful feedback of the OFA's impacts on service delivery, particularly since the majority of the other people at the advisory table had little experience or knowledge of protection service delivery and funding.[65]

70. While Chief Batisse claimed NAN made "additional outreach to agencies", he only cited one example: a Deputy Grand Chief attending Kunuwanimano's annual general meeting in late 2023, over a year before the OFA was presented.[66]

71. Thus, FNCFS Agencies — despite having significant on-the-ground experience and knowledge about the delivery, operation and realities of providing child and family services —

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[62] Murray Affidavit, at paras. 17-18, Ex. 12, Tab 4, p. 61; Evidence of K. Murray, December 15, 2025, at pp. 44-45, Transcript Brief, Tab 9, pp. 634-35.
[63] Chief Batisse Affidavit, at paras. 26, 29, Ex. 7, pp. 6-7; Evidence of K. Murray, December 15, 2025, at p. 78, Transcript Brief, Tab 9, p. 668; Evidence of K. Murray, December 15, 2025, at pp. 59, 61, Transcript Brief, Tab 10, pp. 737, 739.
[64] Chief Batisse Affidavit, at para. 18, Ex. 7, p. 5; Murray Affidavit, at para. 26, Ex. 12, Tab 4, p. 62; Evidence of K. Murray, December 15, 2025, at pp. 25-26, Transcript Brief, Tab 9, pp. 605-16.
[65] Crate Affidavit, Ex. "A", Ex. 12, Tab 3A, p. 57.
[66] Chief Batisse Affidavit, at para. 27, Ex. 7, p. 7.

were excluded from the negotiations, crafting, and ratification of the OFA, and were limited to expressing their views in the subset of the large information sessions that were open to all participants. When asked about opportunities to give feedback on the OFA, Ms. Murray explained:

> I didn't feel like there were. I know that there was meetings that were scheduled, but if you're asking me if I felt that there were opportunities to provide some feedback or insight, I didn't. I can say that I didn't feel that that was the case.[67]

72. Chief Batisse admitted that NAN sought to keep the role of FNCFS Agencies "limited" because of a "perceived conflict of interest" given that NAN anticipated that the agencies would "want to protect their funding".[68] This framing ignores the critical work that the agencies perform to serve First Nations children and the important perspective that they have gained through their experience. It wrongly sees child and family services funding as a competition with First Nations and agencies on separate teams, rather than each trying to protect the best interests of their children.

73. This exclusion represented the loss of important voices and expertise at the table to ensure that the OFA was responsive to the needs of First Nations children and families. As Ms. Murray explained, "had FNCFS agencies been at the table, including in the negotiations of the OFA, we could have provided important information about what we do and what we need to deliver non-discriminatory services to Indigenous children and youth".[69] This important perspective was lost by excluding them from the negotiation process and severely limiting their participation in the ratification process, due to a misconceived view that they were in a conflict of interest.

74. Beyond TTN and GIFN, it is important to note that other First Nations have expressed their objection to the OFA on this motion, including from the Chief of Wasauksing First Nation and the

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[67] Evidence of K. Murray, December 15, 2025, at p. 74, Transcript Brief, Tab 9, p. 664.
[68] Chief Batisse Affidavit, at paras. 21, 24, Ex. 7, pp. 5-6.
[69] Murray Affidavit, at para. 25, Ex. 12, Tab 4, p. 62.

Council of Chippewas of Rama First Nation.[70] In fact, beyond the leadership of COO and NAN themselves, the Moving Parties have not adduced any evidence on this motion directly from any First Nations, FNCFS Agencies, or independent experts in support of the OFA.[71]

75. The record demonstrates that the road to the OFA was marked by a lack of meaningful engagement with impacted First Nations in Ontario, and the exclusion of experienced voices on the front lines of delivering child and family services. Given these shortcomings, the OFA fails to satisfy this Tribunal's objective of incorporating local First Nations' perspectives.[72] This provides yet another reason why the Moving Parties' motion ought to be dismissed.

E. THE OFA IS NOT IN LINE WITH EVIDENCE ON HOW TO ADDRESS DISCRIMINATION IN CHILD AND FAMILY SERVICES

(i) The OFA maintains some of the same discriminatory incentives

76. Through its approach to prevention funding, the OFA will perpetuate some of the same discriminatory incentives to take children into care that this Tribunal has previously identified.

77. One of the most damaging and discriminatory aspects that this Tribunal recognized in its *Merits Decision* was the ways in which ISC's funding structures provided an "incentive to take children into care".[73] In particular, because of insufficient funding for prevention services and least disruptive measures, FNCFS Agencies had the incentive to jump more quickly to protection services and the removal of children because those services were reimbursable.[74] One fundamental flaw with the prior FNCFS program was that "prevention and least disruptive measures funding is

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[70] Chief Big Canoe Affidavit, Ex. "E" and "F", Ex. 12, Tab 2E and 2F, pp. 48-49.
[71] At most, COO and NAN's joint submissions including quotations from representatives at the assemblies that are not contained anywhere in the record, not under oath, not subject to cross-examination, and not in context. COO and NAN have simply cited to online videos, rather than seeking to adduce these views through evidence.
[72] See: 2025 CHRT 80, at para. 113.
[73] *Merits Decision*, at para. 349.
[74] *Merits Decision*, at para. 384.

provided on a fixed cost basis and without consideration of the specific needs of communities or the individual families and children residing therein".[75]

78. The OFA perpetuates this same incredibly damaging dynamic, primarily from the way that it allocates prevention funding. Under the OFA, First Nations are given full discretion on the allocation of the prevention funding, including potentially choosing to retain the full amount themselves, rather than allocating any to their affiliated FNCFS Agency.[76] Ms. Murray explained the issues with enabling First Nations to chose to retain 100% of prevention funding themselves:

> First, due to factors including the generational impacts of colonization and discriminatory policies, First Nations (through no fault of their own) may not be set up to provide the necessary prevention services on their own, either in terms of resources or experience, and there is no clear transition plan or strategy in place for the shift of responsibilities from FNCFS Agencies to First Nations. Second, there is no guarantee or assurance that First Nations will re-allocate prevention funding to FNCFS Agencies like Kunuwanimano, making it extremely difficult, if not impossible, for FNCFS Agencies to plan and ensure adequate staff and resources for prevention related services and programming. That work simply cannot be done in the face of uncertain and piecemeal funding; our work requires the ability to properly plan and finance staffing and programming related to prevention. In the end, then, my concern is not simply that FNCFS Agencies are losing prevention funding — it is that the OFA seriously risks undermining the availability of these critical prevention services to First Nations children and families in need.[77]

79. After decades of discriminatory underfunding, some First Nations may understandably retain all of the prevention funding to try and address unmet needs of their communities. But they may not have the resources or experience to quickly deliver these services on their own, while the OFA enables excluding FNCFS Agencies that have been delivering these prevention services in the past. Thus, while First Nations use prevention funding to build the capacity to deliver these services, FNCFS Agencies will be left without access to prevention funding and unable to deliver

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[75] *Merits Decision*, at para. 347.
[76] OFA, s. 44(d), Ex. 23.
[77] Murray Affidavit, at para. 40, Ex. 12, Tab 4, pp. 64-65.

these services to children and families in need. In its Phase 3 Report, IFSD recognized a similar concern, noting that FNCFS Agencies have had the longest runway to develop approaches to service delivery and are thus "best placed to manage a change in the FNCFS Program", whereas, for First Nations, "that change will take more time and will be more complex to manage".[78]

80. As she reiterated on cross-examination, Ms. Murray's concern is not that First Nations themselves are unable to deliver prevention services.[79] Rather than First Nations taking the prevention money to do things on their own, she wants to work with the First Nations to deliver prevention services, such as when the First Nations identify needed programming and services and experienced agency staff remain involved in carrying out the work.[80]

81. Instead, the OFA pits First Nations and FNCFS Agencies against each other in a zero-sum game over much needed funding. For every dollar of prevention funding that the First Nation allocates to its affiliated agency, that is a dollar that it is giving up from its own prevention services.

82. FNCFS Agencies also generally serve many First Nations.[81] The resulting economies of scale allow agencies to efficiently deliver services, including prevention services, to affiliated First Nations by minimizing overhead and duplication. The OFA risks undermining these efficiencies. For example, if only one or two of several First Nations allocate their prevention funds to an affiliated FNCFS Agency, the agency will be unable to exploit these economies of scale and effectively deliver prevention services, through no fault of the First Nations or the agency.

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[78] IFSD, Phase 3 Report, at p. 55, Exhibit "A" to the Affidavit of J. Kaur, affirmed October 2, 2025, Ex. 13.
[79] Evidence of K. Murray, December 15, 2025, at pp. 36, 42, Transcript Brief, Tab 9, pp. 714, 720.
[80] Evidence of K. Murray, December 15, 2025, at pp. 38-39, Transcript Brief, Tab 9, pp. 716-17. The requirement for agencies to produce community wellbeing plans in coordination with their affiliated First Nations is not a sufficient answer to this concern, given that agencies are not given dedicated funding to do so, and ultimately the First Nations still have final authority under the OFA to allocate 100% of prevention funding.
[81] For example, DBCFS serves 8 First Nations and Kunuwanimano serves 11 affiliated First Nations: Chief Big Canoe Affidavit, at para. 8, Ex. 12, Tab 2, p. 31; Murray Affidavit, at para. 12, Ex. 12, Tab 4, p. 60.

83. Since the OFA leaves FNCFS Agencies with guaranteed maintenance funding but potentially without any prevention funding, the only option that FNCFS Agencies may be left with to try and serve children in their communities in need is to take those children into care.[82] The Association of Native Child and Family Services Agencies of Ontario (the "**ANCFSAO**") and Ms. Murray have both echoed these concerns, noting that the concern is particularly acute for situations involving children with complex and high needs:

> [The OFA's funding formula] does not account for prevention funds … necessary to address decades-long chronic needs, mental health crises, substance misuse, traumas and the resulting complex needs of children and parents. These increasingly complex and high needs over the course of the recent few years and the lack of locally available supports have resulted in removal of children to be placed in clinical group homes sometimes hundreds of kilometers outside of their communities and far from their cultures. While population and inflation factors are critical to a responsive review and adjustment of a funding formulation, they do not account of a fraction of the needs currently experienced by communities and agencies.[83]

84. In this way, the OFA perpetuates the troubling incentive structure of the pre-2016 funding regime that this Tribunal rightfully admonished: without access to adequate prevention funding, FNCFS Agencies face an incentive to remove more children from their homes when removal is not necessary because that is where they can access funding. Such an outcome fails to meet many of this Tribunal's identified parameters for approving a final settlement order, including that it does not improve upon this Tribunal's previous orders, is not evidence-based, and does not align with the spirit of this Tribunal's previous findings and rulings.

(ii) The OFA's baseline funding does not reflect needs and will not end discrimination

85. The OFA's approach to "baseline funding" for FNCFS Agencies and FNRS is not needs-based and therefore will not adequately end the discrimination.

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[82] Murray Affidavit, at para. 38, Ex. 12, Tab 4, p. 64.
[83] Murray Affidavit, at para. 53, Ex. 12, Tab 4, p. 67.

86. Under the OFA, FNCFS Agencies will receive baseline funding from ISC equal to their approved actual costs for intake and investigations (including least disruptive measures), legal fees, and building repairs in fiscal year 2022-23, indexed for inflation and population growth.[84] Similarly, FNRS funding for First Nations will be set at its highest one-year amount received between 2019-20 to 2023-24, adjusted for inflation and population growth.[85]

87. However, as those who deliver child and family services for FNCFS Agencies and First Nations have explained, these past budgets are not actually a representative baseline of the needs of the communities, or the children, youth, and families within them.[86]

88. On February 1, 2018, this Tribunal ordered Canada to address the needs of First Nations families and children by reimbursing/funding various services at their actual cost.[87] The OFA then uses the amounts received under this "actuals" approach to set baseline funding.

89. Ms. Crate explained the flaws with tying baseline funding to the highest amounts that they received under the "actuals" approach of this Tribunal's existing orders. Many First Nations face serious "capacity crises" and are "chronically under-resourced".[88] As a result, and because of the time and resources necessary to submit "actuals" claims to ISC, First Nations like GIFN have not made claims for everything that could or should qualify; nor have they fully cataloged all of the resources they need to run a successful and holistic FNRS program.[89]

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[84] OFA, s. 18(b)(i), Ex. 23.
[85] OFA, s. 26, 44(g), Ex. 23.
[86] Murray Affidavit, at para. 53, Ex. 12, Tab 4, p. 67; Exhibit "B" to the Murray Affidavit, Ex. 12, Tab 4B, p. 71.
[87] *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2018 CHRT 4 (the "***Actuals Order***"). Subsequently, the Tribunal released additional orders requiring ISC to reimburse the actual costs of other services: 2021 CHRT 41 (ordering funding at the actual cost of capital projects that support the delivery of child welfare) and 2022 CHRT 8 (ordering funding at the actual cost of providing supports and services for youth from 18 to 26 years old who were formerly in care).
[88] Crate Affidavit, at para. 32, Ex. 12, Tab 3, p. 55.
[89] Crate Affidavit, at para. 32, Ex. 12, Tab 3, p. 55.

90. Ms. Murray outlines a similar concern based on her experience as the director of an FNCFS Agency. In the years following the Actuals Order, not all First Nations were fully aware of the implications or extent of the funding that could be requested, and may not have made funding requests reflecting their communities' needs.[90] She is specifically aware of smaller communities with less capacity that have had difficulty obtaining reimbursement under the Actuals Order.[91]

91. This Tribunal has already found that the request-based approach under the Actuals Order posed an obstacle for some FNCFS Agencies, who may lack the capacity to make the requests.[92]

92. The Moving Parties themselves recognize the same reality. COO and NAN criticize the actuals approach and admit that it tended "to advantage higher-capacity First Nations and FNCFS Agencies — those able to spend upfront and navigate the complex reimbursement process or submit advance claims — while leaving others behind".[93] Nevertheless, the OFA continues to use the amounts obtained by FNCFS Agencies and First Nations under the actuals approach as the starting point for the agencies' baseline funding and FNRS funding.

93. In this way, the OFA is predicated upon and perpetuates these very flaws in the actuals approach that the Moving Parties recognize and highlight. The Moving Parties cannot have it both ways: the actuals process cannot both be a flawed approach inaccessible to smaller First Nations and FNCFS Agencies, and also an accurate reflection of the needs of these same service providers that should form the foundation for baseline funding under the OFA.

94. Further, tying baseline funding to funding in previous years stunts the growth of FNCFS Agencies in building up their capacity to address existing gaps in service delivery.[94] At best, the

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[90] Murray Affidavit, at para. 33, Ex. 12, Tab 4, p. 63.
[91] Murray Affidavit, at para. 34, Ex. 12, Tab 4, p. 63.
[92] 2022 CHRT 8, at paras. 121, 125.
[93] COO/NAN Submissions, at para. 143. See also: Canada's Submissions, at para. 76.
[94] Murray Affidavit, at para. 41, Ex. 12, Tab 4, p. 65.

funds needed to fill these large gaps would only be partially reflected in 2022-23 funding to the extent that the agency started to increase its services under the Actuals Order approach. In this way, the OFA makes the expansion of services for First Nations children and families more difficult beyond what the agency was already doing in 2022-23.

95. Developing a successful child and family welfare program takes time — especially after decades of discrimination. Many First Nations and agencies are just in the process of finally building up this capacity pursuant to this Tribunal's previous orders. However, the OFA seeks to freeze this process in its tracks and tie First Nations and agencies to baseline funding from a snapshot in time. Due to the systemic constraints that First Nations and agencies have faced for years, this baseline funding does not accurately reflect each community's needs.[95]

96. The stark disconnect between the OFA's baseline funding formula and the actual needs of First Nations communities is recognized by the ANCFSAO (as echoed and adopted by Ms. Murray's evidence). The organization has written that the OFA's insistence on baseline funding, rather than "implementing a need-based approach" risks adopting "the same significant funding deficit" faced by child and family service providers in the past.[96]

97. Failing to adopt a needs-based approach has devastating and long-lasting consequences. As this Tribunal explained in the *Merits Decision*:

> If funding does not correspond to the actual child welfare needs of a specific First Nation community, then how is it expected to provide services that are culturally appropriate? With unrealistic funding, how are some First Nations communities expected to address the effects of Residential Schools? It will be difficult if not impossible to do, resulting in more kids ending up in care and

[95] For the small First Nations that will receive the minimum $75,000 for FNRS as their baseline, there is no evidence that this amount is actually tied to the needs of those First Nations.
[96] Murray Affidavit, at para. 53, Ex. 12, Tab 4, p. 67.

> perpetuating the cycle of control that outside forces have exerted over Aboriginal culture and identity.[97]

98. Particularly for agencies that have not fully accessed funding under the Actuals Order, the funding they will receive under the OFA is very similar to the funding provided before 2016, which this Tribunal found to be discriminatory.[98] This creates a real risk that these FNCFS Agencies will still lack sufficient funding under the OFA regime to provide adequate, culturally appropriate, and substantively equitable child and family services.

99. Even for agencies that did access funding under the Actuals Order, like Kunuwanimano, the OFA's approach of tying baseline funding to previously received amounts, rather than actual need, poses significant problems. For example, although Kunuwanimano accessed funding under the Actuals Order in fiscal year 2022-2023, many of the social issues that they deal with as an agency have become more complex and significant since that time, impacting all aspects of the organization.[99] Nevertheless, despite increasing costs, Kunuwanimano will be locked into its 2022-2023 funding as its baseline (subject only to increases for inflation and population growth). As Ms. Murray explains, this will make it very difficult "to build and develop services and programs to meet the needs of the complex and co-occurring child protection circumstances facing the First Nations children on reserve that we serve".[100] Despite extensively cross-examining Ms. Murray, the Moving Parties never challenged her evidence on this point.

100. Because the funding under the OFA is formulaic, and not needs-based, it will not be able to adequately meet unexpected or growing needs.[101]

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[97] *Merits Decision*, at para. 425
[98] Murray Affidavit, at para. 35, Ex. 12, Tab 4, p. 64.
[99] Murray Affidavit, at para. 36, Ex. 12, Tab 4, p. 64.
[100] Murray Affidavit, at para. 36, Ex. 12, Tab 4, p. 64.
[101] See: Exhibit "A" to the Crate Affidavit, Ex. 12, Tab 3A, p. 56.

101. The OFA's formulaic approach to baseline funding will also hinder the ability of First Nations and FNCFS Agencies to respond to issues that they anticipate requiring increased funding in the near future. For example, Ms. Murray explains how, based on previous experience with large settlement agreements, she anticipates an increase in the number of referrals to FNCFS Agencies following the settlement of the On-Reserve Child Welfare Federal class action.[102] Yet the OFA ties these agencies to baseline funding based on what they received in 2022-23.

102. Further, under the structure of the OFA, the First Nation or FNCFS Agency may be unable to obtain additional funding for these needs under a Service Provider Funding Adjustment Request. Any resulting prevention services would arguably not have arisen from an "unforeseen event" and thus be ineligible for reimbursement under the OFA.[103] For other services, it is unclear whether any shortfall will be characterized as resulting from "reasons beyond [the agency's or First Nation's] reasonable control" and therefore be eligible for a funding adjustment request, since the First Nation and FNCFS Agencies can anticipate the potential increased need now.[104]

103. Similarly, it is unclear how the "reasons beyond its reasonable control" limitation will apply to cases of youth with complex special needs whose services can be incredibly expensive.[105]

104. Service Provider Funding Adjustment Requests under the OFA are not available on the basis that children, youth, or families are not receiving substantively equal services. Thus, such requests are not an adequate solution to the risk that funding is not needs-based and may not be sufficient to serve First Nations children and families.

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[102] Murray Affidavit, at para. 37, Ex. 12, Tab 4, p. 64.
[103] OFA, s. 167, Ex. 23.
[104] OFA, s. 166, Ex. 23.
[105] See: Murray Affidavit, at para. 45, Ex. 12, Tab 4, p. 66.

105. The Moving Parties rely on the OFA's provision of emergency funding, which is allocated evenly between First Nations and agencies and can be used to "respond to unexpected events that could disrupt the delivery of child and family services (such as the introduction into care of a few children with very high needs)".[106] But this emergency funding is limited to just 2% of baseline funding.[107] There is no evidence that this amount will be sufficient to fill the gap to deliver care to "children with very high needs", as the Moving Parties claim — or other community needs — particularly given the serious issues with the OFA's baseline funding approach and the potential elimination of prevention funding for FNCFS Agencies.

106. The OFA will further limit the ability of FNCFS Agencies to deliver much needed (and statutorily mandated) services by saddling them with extensive and resource-intensive activities like developing community wellbeing plans and collecting data, while not providing any dedicated funding for these activities.[108] Thus, agencies will likely be forced to divert their limited funds to these non-prevention and non-protection activities.

107. This all suggests that many First Nations and FNCFS Agencies will be unable to meet their communities' needs, based on a formulaic approach rooted in a single year of actuals spending during a time when many First Nations were unable to take full advantage of actuals claims. This is yet another reason why the OFA will fail to meaningfully address and end discrimination.

(iii) The OFA's limited capital envelope breeds unfair competition

108. Finally, the OFA's approach to capital funding does not reflect the best interests of First Nations children. The OFA provides a capped amount for capital expenditures ($264.1 million for

[106] COO/NAN Submissions, at paras. 71, 183; Canada Submissions, at para. 37a.
[107] OFA, s. 21, Ex. 23.
[108] OFA, ss. 108-109, 113-115, Ex. 23; Murray Affidavit, at para. 43, Ex. 12, Tab 4, p. 65.

2025-2029 and $190.9 million for 2029-2034).[109] Because this amount is capped — and given the high needs of First Nations and FNCFS Agencies after inadequate and discriminatory funding for many years — ISC will likely have to prioritize certain expenses over others. This will lead to First Nations and FNCFS Agencies competing to access the limited capital funding.[110] This will only result in distrust and discord amongst First Nations and agencies, which is not in the best interests of the children that they serve.

109. Moreover, the capital allocation does not acknowledge increased costs for materials and construction in remote First Nations in Ontario. In fact, there is no evidence that the OFA's capital envelope reflects the actual costs to construct buildings on First Nations.

F. OFA'S APPROACH TO REMOTENESS DOES NOT RECOGNIZE GIFN'S ACCESS CHALLENGES

110. The OFA's approach to increasing funding for "remote" First Nations unjustifiably excludes communities like GIFN with significant access challenges that result in higher costs to deliver child and family services. This fails to end discrimination vis-à-vis GIFN's children.

111. To be clear, GIFN is not arguing that any of the 85 First Nations who will receive remoteness funding under the OFA should not receive an adjustment. GIFN's argument is that the OFA improperly excludes GIFN from the remoteness adjustment.

112. Under the OFA, "remote" First Nations receive an upward adjustment to their funding for prevention, PMSS, FNRS, results, IT, household supports, and emergency funding to "account for the increased costs of delivering services in remote communities".[111]

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[109] OFA, ss. 27, 71, Ex. 23.
[110] Murray Affidavit, at para. 48, Ex. 12, Tab 4, p. 66.
[111] OFA, ss. 19-23, 26, 32, Ex. 23.

113. The OFA uses a binary cutoff to determine which First Nations are eligible to receive any remoteness adjustment. The cutoff relies on the "Index of Remoteness", a tool developed by Statistics Canada that classifies census subdivisions in Canada on a scale with 0 being not remote at all and 1 being the most remote.[112] The Index is based on the subdivision's distance to population centers within 2.5 hours of travel time and the size of those population centers.[113] In order to determine travel times, the Index of Remoteness relies on data from Google Maps.[114] However, NAN's remoteness expert was unable to explain how the Index employed the Google Maps data or whether Statistics Canada or ISC took any steps to verify the accuracy of that data.[115]

114. The OFA sets the threshold for remoteness at 0.4. That means that all First Nations with an Index of Remoteness score of 0.4 or higher will receive some adjustment to their funding for remoteness; First Nations with a score below 0.4 will receive no remoteness adjustment at all.[116] COO and NAN themselves acknowledge that a continuous remoteness scale — rather than this binary cut-off — would provide "useful nuance".[117]

115. GIFN's score on the Index of Remoteness is around 0.1, which indicates that it is not remote.[118] As a result, it will receive no remoteness adjustment at all under the OFA.

116. GIFN's relatively low remoteness score is likely due to its geographic proximity to large population centres within the Greater Toronto Area, including the City of Toronto itself, which

[112] Cook Affidavit, at para. 21, Ex. 6; Crate Affidavit, para. 18, Ex. 12, Tab 3, p. 53.
[113] Cook Affidavit, at para. 21, Ex. 6.
[114] Evidence of Dr. Cook, December 11, 2025, at p. 60, Transcript Brief, Tab 4, p. 219.
[115] Evidence of Dr. Cook, December 11, 2025, at p. 60, Transcript Brief, Tab 4, p. 219.
[116] Supplemental Affidavit of Dr. Martin Cook, affirmed May 15, 2025, at para. 22, Ex. 6; Evidence of Dr. Cook, December 11, 2025, at p. 39, Transcript Brief, Tab 4, p. 198.
[117] COO/NAN Submissions, at para. 230.
[118] Crate Affidavit, para. 19, Ex. 12, Tab 3, p. 53.

according to Google Maps is less than a 2.5-hour drive from Georgina Island.[119]

117. But this classification ignores the actual realities of Georgina Island, including the serious difficulties of accessing the island. Crucially, the Index of Remoteness — based on the Google Maps data — counts having access to a ferry as equivalent to being connected to the road network.[120] Dr. Cook, NAN's expert on the methodology for calculating the OFA's remoteness adjustments, described this as "one of the limitations" of the Index of Remoteness.[121] As a result, the Index does not take into account factors relevant to accessing a ferry-connected community, like ferry schedules and wait times, seasonality of the ferry, or delays in the ferry ride.[122]

118. This means that the bare 0.1 remoteness score for GIFN does not accurately capture the difficulties that GIFN members face accessing their community or receiving services. As summarized above, these challenges include the fact that the ferry to Georgina Island cannot operate year-round, particularly in the winter and shoulder seasons when the ice makes the crossing difficult or impossible. GIFN members have died trying to get to and from their own community.[123] GIFN geographic proximity to York Region means little when GIFN members cannot actually access services there because of the lack of a consistent and safe means of travel.[124]

119. Indeed, when Canada's own representative attempted to travel to Georgina Island to meet with community members to discuss remoteness concerns, the ferry was not operating, and he was

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[119] Crate Affidavit, para. 19, Ex. 12, Tab 3, p. 53; Evidence of Dr. Cook, December 11, 2025, at pp. 68-70, Transcript Brief, Tab 4, p. 227-29; Google Map Printout, Ex. 20.
[120] Evidence of Dr. Cook, December 11, 2025, at pp. 58, 79, Transcript Brief, Tab 4, pp. 217, 238.
[121] Evidence of Dr. Cook, December 11, 2025, at p. 58, Transcript Brief, Tab 4, p. 217. See also: COO/NAN Submissions, at para. 235 ("Statistics Canada's Index of Remoteness considers ferry-connected communities to be road-connected, which is indeed a limitation of the index and thus of the Remoteness Quotient Adjustment Factor employed in the OFA").
[122] Evidence of Dr. Cook, December 11, 2025, at p. 72, Transcript Brief, Tab 4, p. 231.
[123] Crate Affidavit, para. 8, Ex. 12, Tab 3, p. 51.
[124] Evidence of S. Crate, December 15, 2025, at p. 11, Transcript Brief, Tab 8, p. 575.

forced to travel to the island in a small utility vehicle with a risk of falling through the ice.[125]

120. As Ms. Crate explained, GIFN's remoteness impacts its ability to deliver child and family services, and increases the costs of those services[126], including in the following ways:

(a) Workers from DBCFS are often unable to travel to Georgina Island or delayed in getting there. This impacts their ability to deliver services, conduct timely investigations, or protect children in need. In fact, Ms. Crate has had to remove children herself when urgent situations have arisen and DBCFS staff were unable to make it to the island.[127]

(b) GIFN families have faced difficulty accessing services on the mainland, including mental health services, parenting supports, addiction supports, and counselling.[128]

(c) GIFN faces added costs transporting materials and supplies to the island to support children and families.[129]

(d) If GIFN is even able to find someone willing to deliver services to members on Georgina Island – such as a therapist meeting with a child or workers delivering materials for a playground – GIFN will need to cover a full day's salary to account for the travel time.[130] This makes delivering those services far more expensive compared to other First Nations accessible by year-round roads.

121. GIFN's access challenges have serious real-world consequences for its children. Ms. Crate recounted the tragic story of a post-majority youth who desperately wanted to return home to GIFN, but because the community did not have the ability to build housing or a group home, or even pay for hotels for him to stay in, it spent a lot of money for him to live outside the community to access the resources he needed. He died by suicide last year unable to return home to GIFN.[131] This is the true cost of GIFN's unaddressed remoteness for its children, youth, and families.

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[125] Evidence of D. Farthing-Nicol, December 12, 2025, Part 2 (transcript unavailable).
[126] Crate Affidavit, para. 9, Ex. 12, Tab 3, p. 51.
[127] Crate Affidavit, para. 10, Ex. 12, Tab 3, pp. 51-52.
[128] Crate Affidavit, para. 11, Ex. 12, Tab 3, p. 52.
[129] Crate Affidavit, para. 12, Ex. 12, Tab 3, p. 52.
[130] Evidence of S. Crate, December 15, 2025, at p. 12, Transcript Brief, Tab 8, p. 576.
[131] Evidence of S. Crate, December 15, 2025, at pp. 14-15, Transcript Brief, Tab 9, pp. 604-05.

122. This Tribunal has already noted that the remoteness adjustment should enable remote First Nations and agencies to "meet the actual needs of the communities they serve".[132] The reality is that the remoteness adjustment under the OFA does not reflect the actual needs of GIFN.

123. This Tribunal further explained that the remoteness adjustment should account for such things as travel to provide or access services, the higher cost of living and service delivery, and the ability to recruit and retain staff.[133] As Ms. Crate explained, these are *the precise issues* that GIFN faces. Yet, the OFA excludes GIFN completely from remoteness considerations.

124. The Moving Parties already seem to acknowledge that the remoteness adjustment results in an injustice with respect to GIFN. During cross-examination of Ms. Crate, counsel for NAN admitted that the case of GIFN "represents something that, on reflection, we wish we would have included at the time".[134]

125. Nevertheless, in their submissions, the Moving Parties now attempt to downplay the issue. They point to the allegedly "substantial" funding that GIFN will receive under other components of the OFA, in an apparent attempt to argue that GIFN should not be complaining.[135] In doing so, they misrepresent Ms. Crate's evidence. While she admitted that she was shocked when she saw COO's projection of the amount GIFN would receive under the OFA and that it would be difficult to reject the funds — particularly given that GIFN's child and family services have been in desperate need of more funding for so long — she went on to explain that "it doesn't really matter

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[132] *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs)*, 2016 CHRT 16, at para. 81.
[133] 2016 CHRT 16, at para. 81.
[134] Evidence of S. Crate, December 15, 2025, at p. 2, Transcript Brief, Tab 9, p. 592.
[135] COO/NAN Submissions, at para. 238.

how much money I'd get if I don't have the capacity to spend that money or use it in a meaningful way" and that it would not meet the needs of her community given its access challenges.[136]

126. The Moving Parties' argument is also fundamentally flawed. 85 other remote Ontario First Nations may also be receiving "substantial" funding under other aspects of the OFA. Yet the OFA still provides them with a remoteness adjustment in recognition of the increased costs of delivering services in their remote communities. In other words, the OFA acknowledges that the funding under other streams is insufficient, on its own, to fully account for a First Nation's increased costs from remoteness. There is no principled reason why GIFN should not receive this same treatment when they face similar increased costs due to remoteness.

127. The Moving Parties also claim that GIFN did not adduce evidence of "the amount of increased costs for child and family services attributable to the First Nation's geography".[137] But this is no answer to the OFA's flawed approach to remoteness. It is true that GIFN did not precisely quantify the exact amount of their increased costs on this motion, but no party challenged Ms. Crate's evidence that GIFN does, in fact, face substantial increased costs. That is the key point.

128. The Moving Parties suggest remoteness issues can be addressed by the OFA's commitment to adapt the remoteness quotient and work with Statistics Canada on refinements to the Index of Remoteness, including through the NAN-Canada Remoteness Quotient Table. Canada points to ISC's proposed research project to estimate added costs for ferry-connected communities.[138]

129. These arguments are no answer to GIFN's concerns about how the OFA treats remoteness. As the Moving Parties themselves acknowledge, these processes "will take time" and "there is no

[136] Evidence of S. Crate, December 15, 2025, at pp. 21-22, Transcript Brief, Tab 8, pp. 585-86; Missing Portion of Evidence of S. Crate, December 15, 2025, Ex. 22.
[137] COO/NAN Submissions, at para. 238.
[138] Canada Submissions, at para. 65.

guarantee that any refinements will result in Georgina Island's Statistics Canada's Index of Remoteness score reaching or exceeding 0.40".[139] Thus, in a best case scenario, GIFN will lose out on remoteness funding for years while these issues are researched and studied; in a worst case scenario, GIFN will never receive a remoteness adjustment.[140] GIFN's children cannot wait that long and should not be required to shoulder that uncertainty.

130. Moreover, given that GIFN is not a member of NAN and not classified as "remote" under the OFA, it is excluded from the NAN-Canada Remoteness Quotient Table and engagement on these issues.[141] As a result, the OFA affords GIFN no means of participating in the very discussions surrounding improvements to the OFA to address its unfair exclusion from remoteness funding.

131. Ultimately, for GIFN's children and families, the approach to remoteness under the OFA is "significantly worse than the *status quo*" because the Actuals Order at least allows them to receive some funding to account for its access challenges (and is in the process of trying to incorporate more of them).[142] However, the OFA halts this progress and provides no funding to GIFN to account for its remoteness. In this way, the OFA fails to meet this Tribunal's stated objective of "improv[ing] upon the Tribunal's previous orders".[143]

G. THE TRILATERAL AGREEMENT FAILS TO IMPLEMENT THE TRIBUNAL'S DIRECTION

132. Through the OFA and the Trilateral Agreement, the Moving Parties fail to address the key shortcomings of, and discrimination flowing from, the *1965 Agreement*. In the *Merits Decision*,

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[139] COO/NAN Submissions, at para. 237.
[140] See: Crate Affidavit, para. 30, Ex. 12, Tab 3, pp. 54-55.
[141] See: OFA, s. 93, Ex. 23. This section provides to ISC to engage "with representatives of remote First Nations in Ontario" (emphasis added). By the OFA's own terms, GIFN is not a "remote First Nation in Ontario" and is therefore excluded from this provision.
[142] Crate Affidavit, paras. 14, 20-21, Ex. 12, Tab 3, pp. 52-53.
[143] 2025 CHRT 80, at para. 113.

this Tribunal found discrimination flowed from the *1965 Agreement* largely because sections of the agreement dealing with child and family services had not been updated since 1981 and the Schedules had not been updated since 1998.[144] As such, the *1965 Agreement* failed to address the actual needs of First Nations children and youth living on reserves in Ontario. Crucially, the *1965 Agreement* did not fund mental health services.[145]

133. The OFA and the Trilateral Agreement do nothing to address this concern.

134. First, the Trilateral Agreement does not amend or update the *1965 Agreement* in any way. It is a framework for the parties to commence negotiations with Ontario in the future, with the hopes of eventually amending or replacing the *1965 Agreement*. In this way, it is obviously insufficient, on its own, to fill the gaps that this Tribunal identified with the *1965 Agreement*.

135. Second, the OFA does not remedy the discriminatory flaws in the *1965 Agreement*. Canada argues that it has indirectly complied with the orders to reform the *1965 Agreement* through the provisions of the OFA.[146] This is incorrect.

136. The OFA contains no specific funding for FNCFS Agencies in Ontario to provide mental health services for First Nations children and youth on reserves. Canada's submissions do not mention mental health services at all. Instead, Canada simply points to increased funding that the OFA provides to FNCFS Agencies generally for protection services.[147] However, as discussed above, this funding is likely insufficient and not based on the actual needs of the First Nations communities. There is no evidence — and certainly no guarantees — that FNCFS Agencies will adequately be able to provide mental health services through this funding.

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[144] *Merits Decision*, at para. 223.
[145] *Merits Decision*, at para. 392.
[146] Canada Submissions, at para. 100.
[147] Canada Submissions, at paras. 103-06.

137. Accordingly, the Moving Parties have not addressed this Tribunal's orders and findings with respect to discrimination flowing from the *1965 Agreement* since the OFA and the Trilateral Agreement do not provide for equitable mental health services for First Nations children and youth compared to non-Indigenous children.

H. IN THE ALTERNATIVE, TTN AND GIFN SHOULD BE EXEMPTED

138. In the alternative, if this Tribunal agrees to approve the OFA, it should exempt TTN and GIFN. TTN and GIFN should have access to the existing orders of this Tribunal that have sought to eliminate discrimination in the short and medium term until such time as they can reach their own agreements with Canada that adequately reflect the self-determination of their First Nations.

139. If this Tribunal sees fit to approve the OFA, TTN and GIFN are simply asking not to be subject to an agreement that they did not negotiate or agree to. Throughout their submissions in support of the OFA, the Moving Parties seek to emphasize the importance of First Nations' self-determination. In accordance with this same principle, TTN and GIFN seek to exercise their own rights of self-determination not to be subject to the OFA.

140. Generally, the law does not bind parties to settlement agreements if they do not consent. Even in representative actions like class proceedings, a settlement cannot bind class members unless they choose not to opt out of the proceeding.[148] TTN and GIFN should not receive less rights to opt out of the OFA simply because they are First Nations who have faced discrimination.

141. The Moving Parties will likely claim an exemption is not necessary since the OFA allows First Nations to opt out through the exercise of jurisdiction over child and family services under

[148] See: *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 27.1(4). In some cases, court approval of a settlement is made conditional on class members being given a further right to opt out: Cocks and Lepage, *Defending Class Actions in Canada*, 6th Ed., at § 7.06[2].

An Act respecting First Nations, Inuit and Métis children, youth and families[149] and a coordination agreement with Canada.[150]

142. This opt-out provision is insufficient. There is no guarantee that Canada will enter coordination agreements with GIFN or TTN. Even if such agreements are reached eventually, the road to getting there can take a long period of time. Indeed, TTN enacted its *Child Wellbeing Law* in 2022 and provided notice of its intention to exercise legislative authority and requested a coordination agreement table in September 2024, but this has still not yet come to fruition.[151] As TTN's experience shows, this process can take years — if it is ever completed at all. As a result, TTN and GIFN may be subject to the terms of the OFA for its entire term before they are able to enter into a coordination agreement with Canada to opt out. This situation is unacceptable to them.

143. TTN and GIFN therefore ask to be exempted from the OFA, even if the Tribunal approves the agreement for those who wish to be subject to it.

PART IV - ORDER REQUESTED

144. TTN and GIFN respectfully request that this Tribunal deny the Moving Parties' motion, decline to approve the OFA, and maintain its jurisdiction to ensure the long-term elimination of discrimination in Ontario.

145. In the alternative, TTN and GIFN request an order exempting them from the operation of the OFA and directing that the existing Tribunal orders in this case continue to apply to them until such time as they reach their own resolution with Canada.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of February, 2026.

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[149] S.C. 2019, c. 24.
[150] OFA, s. 106, Ex. 23.
[151] Linklater Affidavit, at para. 8, Ex. 12, Tab 1, p. 2.

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SCHEDULE "A" – LIST OF AUTHORITIES

1. *Canada (Attorney General) v. Canadian Human Rights Commission*, 2013 FCA 75
2. Cocks and Lepage, *Defending Class Actions in Canada*, 6th Ed., at § 7.06[2]
3. *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62
4. *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2
5. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2025 CHRT 85
6. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2025 CHRT 80
7. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2022 CHRT 41
8. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2017 CHRT 14
9. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2018 CHRT 4
10. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2020 CHRT 24
11. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2018 CHRT 4
12. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2021 CHRT 41
13. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2022 CHRT 8

14. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs)*, 2016 CHRT 16

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date February 2, 2026

Spencer Bass

SCHEDULE "B" – TEXT OF STATUES, REGULATIONS & BY-LAWS

***Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 27.1(4)**
Effect of settlement

(4) If a proceeding is certified as a class proceeding, a settlement under this section that is approved by the court binds every member of the class or subclass, as the case may be, who has not opted out of the class proceeding, unless the court orders otherwise. 2020, c. 11, Sched. 4, s. 25.