Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Ottawa, Canada, K1A 1J4

March 30, 2026

By e-mail

Dear Parties,

Re: First Nations Child and Family Caring Society et al. v. Attorney General of Canada
Tribunal File: T1340/7008

Letter-decision on the Joint Motion on the Ontario Final Agreement with reasons to follow

Purpose for a Letter-decision on the joint motion for the approval of the OFA

The Tribunal is issuing this letter-decision, with reasons to follow, similar to a ruling on the bench, in an expeditious manner to ensure that the Ontario First Nations do not lose a full year of funding under the OFA. This letter-decision is only a summary and should not be considered a complete final decision without its full interpretation of the OFA and the Tribunal's orders and reasons. However, for clarity no additional orders will be included in the ruling with reasons to follow. The Tribunal is providing guidance in this letter-decision to inform parties on some aspects but cannot include everything in a letter-decision in such a short time after the end of the hearing on February 27, 2026.

The Tribunal finds that the prejudice to First Nations children, families, and First Nations of having to wait for the ruling with reasons, and losing a year of funding under the OFA, far outweighs any potential argument of procedural unfairness in receiving a letter-decision now and having to wait a few months for the full reasons. The Tribunal has proceeded in this manner on different occasions when it was deemed urgent and deemed necessary by this Tribunal.

Given the considerable time constraints to meet the March 31, 2026, deadline, the Tribunal reserves the right to make editorial changes to this letter-decision after its release.

Tribunal Panel's remarks

"*Of all of society's institutions, education has brought us to the current state of poor relations between Indigenous and non-Indigenous peoples; but if it is education that created this mess, it will be education that will get us out of it. We know that making things better will not happen overnight. It will take generations. That's how the damage was created and that's how the damage will be fixed. But if we agree on the objective of reconciliation, and agree to work together, the work we do today will immeasurably strengthen the social fabric of Canada tomorrow.*"

— Murray Sinclair, Who We Are: Four Questions For a Life and a Nation

After 27 years in prison, Nelson Mandela emerged not with a desire for revenge, but with a commitment to reconciliation. When he became President of South Africa in 1994, he faced a nation deeply divided by apartheid, where many expected him to remove those who had upheld the oppressive system. Instead, Mandela chose a different path. He retained experienced civil servants, including many from the former regime, and invited former adversaries to help build the new South Africa.

He understood that lasting peace required inclusion rather than exclusion. By prioritizing unity over retribution, Mandela helped prevent further division and violence and laid the foundation for a democratic society grounded in cooperation, dignity, and shared nation-building.

The Tribunal believes that the First Nations in Ontario and Canada have chosen a similar path. It may not be the only path, but it certainly is a noble one.

"*In the end, reconciliation is a spiritual process that requires more than just a legal framework. It has to happen in the hearts and minds of people.*"

Nelson Mandela (2012). "Notes to the Future: Words of Wisdom", p.65, Simon and Schuster.

The Nishnawbe Aski Nation called on the Tribunal to give peace a chance and we agree.

This is also about empowerment of First Nations and a recognition that they should be in the seat of authority in decisions concerning their own children.

First Nations have always cared for their children and have always been best placed to do so. This fundamental right was taken from them by settlers who, in their hubris, believed they knew better. That mindset has not been fully eradicated and continues to persist in many legislations, policies and systems today. The Tribunal does not seek to reinforce or legitimize this way of thinking.

The concept of the "best interests of the child" has too often been used to justify oppression, removal, and control, while imposing non-Indigenous perspectives on Indigenous Peoples. For this reason, the Tribunal has consistently emphasized that the best interests of the child must be understood and applied through an Indigenous lens to avoid repeating history.

Stopping the mass removal of First Nations children from their homes, communities and Nations has been found to be a priority by this Tribunal: *More importantly, this case is vital because it deals with mass removal of children. There is urgency to act and prioritize the elimination of the removal of children from their families and communities* (2018 CHRT 4 at paragraph 47).

This Tribunal found that the unnecessary removal of children from their homes, families and communities qualified as the worst harm, (See 2019 CHRT 39, at para.13).

First Nations children belong in their families, extended families, communities and Nations.

Self-determination and human rights

In its merits decision, the Tribunal found that the legacy of residential schools was perpetuated through child welfare institutions, and it referenced the Prime Minister's apology regarding residential schools at paragraph 147: *Two primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes,*

families, traditions and cultures, and to assimilate them into the dominant culture. These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some sought, as it was infamously said, "to kill the Indian in the child". Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country.

In choosing to work with the COO and the NAN, and in recognizing their rightful authority to make decisions for their own children, Canada is taking an important step toward reversing a history marked by racist, paternalistic, colonial, and assimilationist policies embedded in systemic and racially discriminatory structures, including child and family services.

Continuing to improve services by reflecting on what is working and what is not is both prudent and consistent with the Tribunal's approach of retaining jurisdiction and clarifying its orders. Experience is a powerful teacher, and First Nations in Ontario should have the right to choose the appropriate pathways for their children, as well as the ability to adapt and improve over time, provided that Canada remains accountable through the Tribunal's final orders.

The OFA represents the first completed regional agreement on long-term reform. First Nations in Ontario are ready, and they have chosen to exercise their right to self-determination by requesting this agreement. They are the ones who represent their children. While the Tribunal focuses on Canada's human rights obligations to First Nations children and families, the fundamental human right of those children to grow up within their families, communities, and Nations is best achieved when their own communities make decisions on behalf of their children.

The Tribunal has repeatedly recognized Indigenous peoples' right of self determination as a fundamental right under international law and more importantly as an inherent right and a human right.

One of the key findings and worst harm that Canada was ordered to rectify and compensate is the mass removal of First Nations children from their homes, families, communities and Nations. 2019 CHRT 39 at paragraphs 188 and 201: *The Panel need not hear from every First Nations child to assess that being forcibly removed from their homes, families and communities can cause great harm and pain. The expert evidence has already established that.* (...) [201] *However, it is true that the Complainants do not have a legal representation mandate given by each First Nations child and parent living on reserve to seek remedy on their behalf at the Tribunal. What they do have is a resolution from the Chiefs in Assembly of the AFN mandating the AFN to seek remedies for Members of First Nations who are represented by their elected First Nations Chiefs. Some First Nations Peoples may disagree to have the AFN or others to advocate on their behalf and request individual remedies in front of the Tribunal, this is their right and the Panel believes they should be able to opt-out. The opting-out possibility will form part of the compensation process* (...). [202] *This being said, for those who would accept, the Panel finds that <u>the AFN mandated by resolution by Chiefs of First Nations should be able to speak on behalf of their children and voice their needs</u> and seek redress for compensation which should go directly to victims/survivors following a culturally safe and independent process, protecting sensitive information and privacy with the option to opt-out. The Panel believes <u>also that the COO and the NAN should be able to speak on behalf of their children and voice their needs and seek redress for compensation</u>. Also, the Caring Society directed by Dr. Cindy Blackstock has worked tirelessly for numerous years to*

represent the best interest of children with an Indigenous lens and has invaluable expertise to assist the Panel and the parties in this process. (emphasis added).

The findings above included in a ruling upheld by the Federal Court remain in effect in these proceedings.

The COO and the NAN again are speaking on behalf of their children in requesting the Tribunal to approve the OFA.

The COO in their oral submissions emphasized: ‘’ *their children's rights and self-determination cannot be separated: they are one*.

For generations, decisions about our children were made by outsiders that did not live in our communities and did not add to our peoples. These decisions were justified as being best interest of our Kids. But when they decided to do what they did, they harmed us’’.

Children are safer in their communities with those who love and care for them. When the Tribunal considers the First Nations children's individual rights it also considers their families, communities and Nations because they know best how to care for them. One of the most colonial, patriarchal and harmful mindset espoused by Canada was that the government knows best and should make the decisions for First Nations children. Canada is making a giant step to reverse that terrible legacy with the OFA and it does so in partnership with the First Nations in Ontario.

The preamble to the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),* GA Res 61/295 (13 September 2007), recognizes the shared responsibility of families and communities for children:

"*Recognizing in particular the right of Indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child*."

Furthermore, the *UNDRIP* affirms that Indigenous rights are exercised both collectively and individually, reflecting their interdependence rather than treating them as distinct or competing categories. At its core, *UNDRIP* moves beyond legal frameworks that isolate individual rights, recognizing instead that individual and collective rights coexist and reinforce one another.

As early as 2018 CHRT 4, the Tribunal supported Parliament's intent for a Nation-to-Nation relationship and its goal of reconciliation and this is also reflected in the Tribunal's findings and orders. One example of the Tribunal's findings is found at paragraph 66: *This being said, the Panel fully supports Parliament's intent to establish a Nation-to-Nation relationship and that reconciliation is Parliament's goal (see Daniels v. Canada (Indian Affairs and Northern Development,* 2016 SCC 12 (CanLII), [2016] 1 SCR 99), *and commends it for adopting this approach. The Panel ordered that the specific needs of communities be addressed and this involves consulting the communities. However, the Panel did not intend this order to delay addressing urgent needs. It foresaw that while agencies would have more resources to stop the mass removal of children, best practices and needs would be identified to improve the services while the program is reformed, and ultimately child welfare would reflect <u>what communities need and want, and the best interest of children principle would be upheld</u>. It is not one or the other; it is one plus the other.* (emphasis added).

And in 2018 CHRT 4, at paragraph133: (...) *There is a real need to make further orders on this crucial issue to stop the mass removal of Indigenous children, and* to assist Nations to keep their children safe within their own communities. (emphasis added).

The OFA upholds First Nations' right to self-determination by empowering communities to shape their own child and family services, including deciding who will deliver key services, particularly in the area of prevention, based on their own priorities and choices.

The Tribunal does not find that the OFA or Canada sets First Nations in Ontario up to fail. The OFA includes important safety measures through its mid term and end term reviews, as well as through the commitment to co-develop the reformed Program following the OFA's expiry. Moreover, as explained in this letter-decision and ruling with reasons to follow, some safeguards, accountability and orders continue to apply. While the Ontario framework could always be improved, this is already accounted for within the OFA and does not justify rejecting it.

Further discussions among the parties risk delaying long-overdue, meaningful reform. The parties committed to submitting final long-term consent orders by 2023 but did not do so. Years have passed, the Ontario Special Study has been completed, the IFSD reports have been finalized, and substantial work has already been done.

"*We are now faced with the fact that tomorrow is today. We are confronted with the fierce urgency of now.*"

Martin Luther King Jr.

As this Tribunal has stated many years ago: ''*This is the season for change the time is now*''.

1965 Agreement and Trilateral Agreement

The Tribunal acknowledges the positive covenant to reform the 1965 Agreement with the full participation of Ontario First Nations, the Province of Ontario, and Canada.

In the long term, a sufficiently funded, sustainable, and culturally appropriate system was to be implemented, as recommended by studies, experts, First Nations, and the parties, etc., whether on consent or otherwise, to address the specific needs of First Nations in Ontario. The Tribunal did not impose a specific choice of long-term system, so long as its orders were met. The Tribunal left the choice of long-term systems to be implemented to the parties, expert First Nations, and other experts, in order to meet its orders to eliminate the systemic discrimination found and prevent its recurrence. The Tribunal's understanding is that the OFA does so, especially with its provision for mid-term and end-of-term reviews and a post-OFA system, with the interpretation provided by the Moving Parties.

Decision

The joint motion for approval of the OFA is granted, with the understanding and interpretation, and the guidance set out in the Tribunal's findings, orders, and reasons to follow in its decision on this joint motion.

The moving parties' joint OFA motion is granted, as interpreted by this Tribunal, which incorporates, in its interpretation, the fundamental safeguards intended to permanently end the systemic racial discrimination found, prevent it from reoccurring, and protect First

Nations children in Ontario for generations to come, as reflected in the summary and orders below and in the reasons to follow.

The Tribunal accepts the OFA's interpretation by the moving parties who were at the table and negotiated the agreement, as explained in detail in their written and oral submissions. The Caring Society made some valuable points about specific provisions of the OFA and potential multiple interpretations in their final arguments. Some interpretations were clearly their own interpretation of the OFA based on their reading of the OFA. The Tribunal finds that the moving parties' responses were satisfactory and alleviated many of the Tribunal's interrogations.

The Caring Society proposes that the parties return to negotiations to address what it characterizes as unclear wording and issues of interpretation. Such a course would result in further delay and would be detrimental to First Nations children and families. It would also require the Tribunal to disregard the will of the Chiefs in Ontario, as expressed through majority resolutions adopted at Chiefs-in-Assembly, through which they have exercised their decision-making authority in the best interests of their children in a manner that is culturally appropriate to them. This is not to suggest that, if the OFA did not satisfy the Tribunal's orders, the Tribunal should nevertheless approve it blindly.

The Caring Society's interpretation of the OFA, along with that of TTN and GFIN, which were not involved in its negotiation, raises a number of concerns. However, the parties that negotiated the OFA and were fully apprised of its intent and mechanisms have provided satisfactory explanations in response to those concerns.

The Moving Parties interpret the OFA as an approach that includes both First Nations and First Nations agencies, rather than an either-or framework.

Given that the Tribunal has historically accorded significant weight to resolutions of the complainant AFN's Chiefs-in-Assembly, without taking into account the proportion of Chiefs absent from those assemblies and who did not vote, it cannot accept the GIFN-TTN's argument. To adopt such an approach consistently would suggest that the Tribunal may draw negative inferences from AFN resolutions in circumstances where, for example, only two or three hundred Chiefs and proxies present at the Chiefs-in-Assembly voted out of a possible 634 Chiefs. This is not the approach the Tribunal has adopted to date.

However, the Tribunal's orders included the need to respect the distinct and specific needs of First Nations and their right to self-determination.

The moving parties' proposal that the Tribunal incorporate their interpretation and explanation of the OFA into its findings in the final decision with reasons is an effective means of ensuring that the OFA is interpreted in a manner that satisfies the Tribunal's orders. Accordingly, the Tribunal finds that it is the moving parties' interpretation of the OFA as articulated in their written and oral submissions that satisfies its orders, and not a less generous interpretation. The Tribunal's findings and orders should remain a foundational instrument for interpreting the OFA and for ensuring that the injunction-like permanent order to cease the systemic racial discrimination found and prevent the same or similar practice to occur in the future continues to be satisfied.

Moreover, the moving parties have demonstrated how the OFA meets the Tribunal's parameters under 2025 CHRT 80, as will be explained in the reasons to follow. The Tribunal finds that the OFA and the moving parties' interpretation of the OFA is based on the most relevant evidence available, such as the IFSD reports and the Ontario Special Study, and in

some aspects exceeds those recommendations. The mechanism to move forward now to support this generation of children, to reevaluate in mid-term, and then again prior to the expiry of the OFA to ensure that the best possible system is in place by 2034 is entirely in line with the Tribunal's views on reform to improve with best practices as the quality of the information improves (See, 2018 CHRT 4 para. 237).

The Tribunal shares the Caring Society's concerns about accountability and has addressed some of those concerns in the safeguards explained below and the ruling with reasons to follow. While the Tribunal had hoped that certain safeguards to protect children for generations to come would have been more clearly articulated in the OFA, and agrees with the Caring Society's concerns on those aspects, the moving parties have provided satisfactory explanations and commitments. They also stated that, if the Tribunal were to include those commitments and explanations regarding how the OFA should be interpreted and how it works as a whole, as well as greater precision regarding its cease-and-desist systemic discrimination order in its ruling, this would not be viewed as a condition of approving the OFA. This is very helpful, and the Tribunal is therefore incorporating safeguards in this letter decision summary, its orders, and its reasons to follow, to protect generations to come and ensure Canada's accountability.

The Tribunal finds that Canada has made a positive covenant to ensure that the systemic racial discrimination found by the Tribunal has been eliminated and does not recur, as confirmed in its response to Tribunal member Lustig, and the Tribunal therefore, as part of its orders in this ruling, holds Canada accountable to that positive covenant in approving the OFA and making its findings and orders, with reasons to follow.:

So you referred to, paragraph 74? Yes. If you could go to that, please. Yes.

And it says, Canada acknowledges its ongoing obligation.

Yes.

to ensure that the discrimination found by the tribunal has been eliminated and does not recur. Yes.

Is that a positive covenant that Canada gives? To the parties? Yes, absolutely. And (sic) does it relate to the discrimination found by the tribunal in its decision in 2016, the merit decision? Absolutely. And so does it mean that, the (sic) orders that were made under that remain in full force in effect, and Canada agrees to abide by them. On an ongoing basis.

To the extent that your question refers to the cease and desist provisions, yes, the answer is clearly yes.

Canada also commits to its ongoing obligation to ensure that the systemic racial discrimination found by the Tribunal has been eliminated and does not recur in its written and oral submissions and in the text of the OFA. For example, AGC's submissions dated January 19, 2026, at page 34 paragraph g. term of the agreement, the AGC submits: *The OFA ensures the discrimination does not recur because it is a long-term (9 year) agreement. Moreover, Canada is required to work with the parties to develop the reformed program that will be in effect following the expiry of the term. Canada has also committed to considering the availability of legislated funding following the second program assessment. All these terms seek to ensure that the reforms will be sustainable for future generations*.

At paragraph 91 of Canada's written submissions: (...) *As the Tribunal has noted, the cease and desist order will remain in effect permanently. It would therefore be inappropriate to reject the OFA due to concerns that Canada may not comply with that order in the future*.

The AGC also submits at paragraph 83 of its written submissions that (...) *eliminating discrimination is the purpose of the OFA and therefore the OFA will play an important role in ensuring the right to be free from discrimination is upheld in the context of the FNCFS Program*.

The COO and the NAN's joint submissions submit that the Tribunal has repeatedly emphasized that long-term reforms must be durable and sustainable to protect First Nations children, families, and communities for generations to come. The OFA recognizes its nine-year limit (now 8 years) and includes measures requiring Canada to act after the OFA expires to ensure its reforms endure. The OFA mandates ISC to work with the Parties after the Second Program Assessment to design a successor program. Canada must also consider enshrining the Reformed FNCFS Funding Approach in legislation.

Canada's duty to eliminate discrimination in the FNCFS Program does not end with the OFA OFA at para 74: '*''Canada acknowledges it ongoing obligation to ensure that the discrimination found by the Tribunal has been eliminated and does not recur''. This obligation is rooted in binding findings of the Tribunal that remain in force indefinitely, regardless of the end of the OFA's term*''.

The OFA and paragraph 74 will expire but not the underlying ongoing obligation or the Tribunal's final orders in this ruling and reasons to follow.

Furthermore, the moving parties do not seek to replace or extinguish the cease the systemic discrimination found injunction-like order nor does the Tribunal agree to replace, extinguish, modify, amend, abrogate it, as previously mentioned in an unchallenged ruling 2025 CHRT 6:

[602] (...) *The Tribunal will revisit this retention of jurisdiction once long-term reform has been addressed with long-term Tribunal orders or the parties' agreement that clearly demonstrates the systemic racial discrimination will be eliminated in implementing the agreed measures and the same or similar systemic racial discriminatory practices will not reoccur. This necessarily includes sufficient and sustainable resources for all First Nations in the long-term. The Tribunal's cease and desist the discriminatory practice order in the Merit decision is an injunction-like permanent order against Canada. The purpose of this order is to eliminate the mass removal of children from their respective Nations and to protect First Nations children, families, and Nations for generations to come. Finally, the Tribunal encourages the parties to negotiate as part of both long-term reform processes, creative, innovative, needs-based culturally appropriate solutions that reflect the different contexts and needs of the many diverse First Nations*. (emphasis added).

In its merit decision 2016 CHRT 2, the injunction-like order to cease the discrimination is found at paragraph 481: (...) *AANDC is ordered to cease its discriminatory practices and reform the FNCFS Program and 1965 Agreement to reflect the findings in this decision. AANDC is also ordered to cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of Jordan's principle*.

Orders only apply to Ontario

The orders in this letter-decision only apply to the Ontario region. Which is in a unique and distinct situation as found by this Tribunal in the Merit decision.

The systemic racial discrimination must end permanently

The moving parties' joint OFA motion is granted, as interpreted by this Tribunal, which incorporates, in its interpretation, the fundamental safeguards intended to permanently end the systemic racial discrimination found, prevent it from reoccurring, and protect First Nations children in Ontario for generations to come, as reflected in the summary below and in the orders and in the reasons to follow.

The Tribunal finds that the OFA satisfies paragraph 481 of 2016 CHRT 2 for Ontario only, including the injunction-like order to cease the systemic discrimination found and the obligation to prevent the same or a similar practice from occurring in future, as explained in paragraph 274 of the Merit Decision and the findings that led to the order, and reiterated multiple times in unchallenged decisions and more recently in 2025 CHRT 6, with the understanding that it is as interpreted by this Tribunal, which incorporates fundamental safeguards in its interpretation below and in its reasons to follow:

For greater certainty, the orders issued in this ruling, as further explained in the reasons to follow, are final and binding and operate to hold Canada accountable to its obligations under the *Canadian Human Rights Act*, the Tribunal's permanent cease and desist order, and the OFA. Upon the expiry of the OFA, Canada's ongoing obligations under the *Canadian Human Rights Act* and the Tribunal's cease and desist order shall remain in force.

The OFA is implemented in its entirety for its entire period and a sustainable, culturally appropriate, adequately resourced and funded, Federal FNCFS program or mechanism or system is implemented for the First Nations in Ontario who have not exercised jurisdiction under *An Act respecting First Nations, Inuit and Métis children, youth and families* once the OFA expires in 2034.

In approving the OFA, it is with the understanding that Canada will cease the systemic discriminatory found in the merit decision 2016 CHRT 2 and prevent the same or a similar discriminatory practice to reoccur and has positively covenanted to do so in paragraph 74 of the OFA. To be clear, the Tribunal finds the OFA to satisfy the Tribunal's order with the understanding that it is implemented with the interpretation of the OFA provided by the moving parties, for the entire period of the OFA not just a few years and if an adequate system, program or mechanism is implemented at the end of the OFA in 2034. With the understanding that Canada cannot contract out its human rights obligations to escape final binding Tribunal orders recognizing human rights of First Nations children and families. Moreover, the Tribunal found in 2016 CHRT 2 at, paragraph [42]: that in Kelso v. The Queen, [1981] 1 SCR 199 at page 207 (Kelso), the Supreme Court of Canada stated:

No one is challenging the general right of the Government to allocate resources and manpower as it sees fit. But this right is not unlimited. It must be exercised according to law. The government's right to allocate resources cannot override a statute such as the Canadian Human Rights Act. (emphasis added). In 2018 CHRT 4: [121] *This is a striking example of a system built on colonial views perpetuating historical harm against Indigenous peoples, and all justified under policy. While the necessity to account for public funds is certainly legitimate*

it becomes troubling when used as an argument to justify the mass removal of children rather than preventing it. *There is a need to shift this right now to cease discrimination*, (emphasis added). Further, in 2018 CHRT 4 at paragraph: 132: (...) The focus is on financial considerations and not the best interests of children nor addressing liability and preventing mass removals of children.

In 2025 CHRT 6 at paragraph 464, the Tribunal reiterated its findings on the *Financial Administrative Act*: *The Tribunal discussed the FAA extensively in previous rulings and more recently in 2021 CHRT 41 and the Tribunal continues to rely on those findings. As mentioned, in 2021 CHRT 41 at paragraphs [376] and [377]: "The Financial Administration Act should be interpreted harmoniously with quasi-constitutional legislation such as the CHRA including orders made under the CHRA ... Further, the Tribunal's orders are to be read harmoniously with the Financial Administration Act and, in the event of conflict, the orders made under the CHRA have primacy over an interpretation of the Financial Administration Act that limits the Tribunal's remedial authority."*

All findings and reasons of the Tribunal in all its decisions stand, survive and are still in force presently, during the OFA and following the OFA and form the rationale flowing from its 2016 CHRT 2 decision, supporting the spirit and principles in which systemic racial discrimination must be permanently eliminated and not reoccur (injunction-like cease and desist order). As previously mentioned in 2025 CHRT 80:

[66]

The Dialogic approach does not supplant a final "cease the discriminatory practice" order grounded in the evidence and the Canadian Human Rights Act ("CHRA"); rather, it operates as a mechanism for implementing such an order. The cease order in this matter, addressing systemic racial discrimination, is firmly grounded in the extensive evidentiary record underlying the Merit Decision and is issued pursuant to the Tribunal's authority under the CHRA. Its purpose is to provide immediate and enduring protection to the victims of such discrimination and to ensure that the same or similar practices do not recur.

[67]

The Tribunal affirms that this order has never been negotiable and was not issued on an interim basis. The "cease the discriminatory practices" order in 2016 CHRT 2 is final and binding. It is not subject to variation under the Dialogic approach, nor to derogation or abrogation by any future decision in these proceedings, or to amendment through any agreement between the parties. The cease order determines what the authors of the discrimination must do—stop—while the Dialogic approach addresses how compliance is to be achieved, and the orders implemented. There may be multiple effective methods for remedying discrimination, and flexibility is permitted in selecting among them, provided that the discrimination is fully and effectively addressed. What remains non-negotiable is the requirement to end systemic discrimination permanently.

The Tribunal agrees with Canada that the *CHRA* provides a specific mechanism for enforcing the Tribunal's orders; under section 57, they can be made orders of the Federal Court for enforcement purposes. Further, section 57 of the *CHRA* opens an effective recourse to the Federal Court to seek enforcement of the 2016 CHRT 2 cease and desist order and findings in support of this order and the orders in this OFA final ruling which will later include fulsome reasons in support of the orders.

Section 57 of the *CHRA* applies to the merit decision and also this ruling including the reasons to follow.

Substantive equality

The Caring Society has raised the Federal Court decision in *Powless v. Canada (Attorney General),* 2025 FC 1227 and the importance of the Tribunal's findings and that the Court relied on the Tribunal's findings on Jordan's Principle. The Tribunal agrees that all its findings in all its Merit Decision and rulings must stand and inform reforms.

At the heart of this entire case is the principle of substantive equality. Substantive equality ensures that the real and specific needs of First Nations children and families are accounted for and take into account their historical disadvantages, intergenerational traumas, barriers, unique circumstances, etc. In the Merit decision at paragraph 403, the Tribunal wrote: *In providing the benefit of the FNCFS Program and the other related provincial/territorial agreements, AANDC is obliged to ensure that its involvement in the provision of child and family services does not perpetuate the historical disadvantages endured by Aboriginal peoples. If AANDC's conduct widens the gap between First Nations and the rest of Canadian society rather than narrowing it, then it is discriminatory* (see A at para. 332; and, Eldridge at para. 73).

[455] *Substantive equality and Canada's international obligations require that First Nations children on-reserve be provided child and family services of comparable quality and accessibility as those provided to all Canadians off-reserve, including that they be sufficiently funded to meet the real needs of First Nations children and families and do not perpetuate historical disadvantage*.

The Tribunal is rooting its orders and reasons in this final ruling on the OFA with reasons to follow on this principle and will provide further clarity on this in its reasons to follow. The Tribunal is mentioning this since it is relevant to its orders for Georgina Island First Nation and Taykwa Tagamou Nation.

OPTING-Out and exemption

The Moving Parties 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 made conditional on class members being given a further right to opt out: An Act respecting First Nations, Inuit and Métis children, youth and families and a coordination agreement with Canada.

Georgina Island First Nations and Taykwa Tagamou Nation request that 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. The GIFN and TTN argue that while the avenue for a coordination agreement with Canada is available, it certainly is not expeditious. Waiting for years to obtain a coordination agreement cannot be a reasonable path that respects the First Nations rights under the Tribunal's orders.

The TTN and GIFN submit that they 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.

Georgina Island First Nation

The situation of Georgina Island is very troubling. The situation cannot be a better example of the need to apply substantive equality as defined by this Tribunal to the existing accessibility barriers to that the First Nation peoples living in Georgina Island First Nation face. The Tribunal will discuss the evidence in detail in its reasons to follow.

When funding mechanisms fail to fully account for the specific, real needs of First Nations children, those applying those mechanisms must do so. This principle lies at the heart of a human rights–based framework and its protections. Moreover, it reflects Canada's obligations under the *Canadian Human Rights Act* and the Tribunal's orders.

The remoteness quotient is an important, ground-breaking, innovative and valuable tool, and the Tribunal acknowledges it. However, as conceded by NAN's counsel, it does not adequately capture the unique circumstances of Georgina Island First Nation.

The answer cannot be to ignore the First Nation's accessibility barriers and require the community to wait several years for a potential agreement while those barriers remain and continue to affect FNCFS Program services. Moreover, it is unacceptable to continue placing children, community members, and others at risk, particularly during the winter months. This is not substantive equality, and it is not even formal equality.

Canada is not a third-world country, and we are in 2026. Safe, reliable, year-round ferry services, supported by icebreaking tugboat capacity, already exist elsewhere in Ontario and could be implemented and properly funded. Without ordering a specific remedy, the Tribunal finds that a First Nation-led, community-driven solution is required, one that is adequately funded to prevent avoidable dangers and deaths. Moreover, among other things, a safe, reliable, and effective year-round ferry service could help reduce accessibility barriers, mitigate risks during emergency situations, and lower the costs of FNCFS services for First Nations children and families.

The possibility of being part of a coordination agreement does not bring time to a standstill or allow Canada to make Georgina Island First Nation wait for years while children and families are in danger and their specific needs are not met. The Tribunal understands the complexity of the tripartite coordination agreement involving the Province. However, this does not prevent Canada from reaching a timely interim bilateral agreement, a Memorandum of Understanding, or another solution chosen with the consent of the Georgina Island First Nation and Canada. Adequate and timely solutions must be implemented in the interim, in partnership with Georgina Island First Nation.

Canada must apply the principle of substantive equality to Georgina Island First Nation to be responsive to their distinct and specific needs and the significantly higher costs to deliver child and family services in consultation with Georgina Island First Nation.

The OFA should not apply to Georgina Island First Nation in its current form, given its unique circumstances. Upon the OFA coming into effect, if it is not possible for Georgina Island First Nation to continue operating under the Tribunal's previous orders, given the Tribunal's finding that the OFA satisfies and supersedes its interim orders, an interim solution must be

developed in consultation with Georgina Island First Nation that is no less generous than the Tribunal's interim orders and that respects the spirit, findings, and reasons of those orders, including those set out in the letter decision and the ruling concerning the OFA.

Taykwa Tagamou Nation:

The Taykwa Tagamou Nation enacted its Child Wellbeing Law in 2022 and provided notice of its intention to exercise legislative authority and requested a coordination agreement with Canada and Ontario in September 2024, but this has still not yet come to fruition.

The Taykwa Tagamou Nation's expressed desire to be part of a coordination agreement does not bring time to a standstill allowing Canada to make them wait for years.

The OFA should not apply to Taykwa Tagamou Nation who refuses it and seeks a coordination agreement, yet must wait for a prolonged period. Adequate and timely solutions must be implemented in the interim, in partnership with the Taykwa Tagamou Nation.

Taykwa Tagamou Nation is in particular circumstances that require a specific solution.

Interpretation of Wording in the interim Orders

The Tribunal's previous orders are not contracts; they are legally binding orders grounded in the evidence forming part of the record. The term "null and void" is not appropriate. The proper finding is that those orders have been satisfied by the OFA, in accordance with the Tribunal's interpretation of that agreement. The inclusion of the term "supersedes" provides additional assurance and avoids any confusion regarding the interim orders.

I. Overarching Order: the systemic racial discrimination must end permanently

Pursuant to section 53(2) of the *CHRA* the Tribunal orders that:

The injunction-like order at paragraph 481 of 2016 CHRT 2 to cease the discriminatory practices found by this Tribunal remains in force, including during and following the OFA, and continues to remain in force permanently.

II. Further Orders

For clarity, the orders in section II below are governed by the Overarching Order I set out above.

In light of the Tribunal's findings and orders set out above, and the reasons that follow, which together constitute the basis for those orders and for the additional orders below, and pursuant to section 53(2) of the *CHRA*, the Tribunal hereby orders:

a. The OFA is approved without condition,

b. The OFA and the Trilateral Agreement satisfy the Tribunal's order in the Merit Decision that Canada cease its discrimination relating to the FNCFS Program in Ontario and the *1965 Agreement*;

c. The OFA satisfies and supersedes all interim remedial orders related to the discrimination found by the Tribunal in relation to the FNCFS Program in Ontario and the 1965 Agreement.

III. Jurisdiction

a. For clarity, the orders of the Tribunal relating to Jordan's Principle shall continue to apply to Canada in Ontario; and

b. The Tribunal ends its jurisdiction over all elements of the Complaint in Ontario only and all associated proceedings, save for jurisdiction over those elements of the Complaint and associated proceedings related to Jordan's Principle.

IV. Orders Separate from Joint Motion for Approval of the OFA

Pursuant to section 53(2) of the *CHRA* and the Tribunal's findings, reasons, including those set out in its reasons to follow:

a. The OFA shall not apply to Georgina Island First Nation and Taykwa Tagamou Nation, both of which are exempt from its operation, and

b. Upon the date the OFA comes into effect, in the absence of any agreement, coordination agreement, or interim or long-term solution, Canada shall consult with Georgina Island First Nation within 90 days of the OFA's effective date to establish and implement an interim solution for Georgina Island First Nation in relation to the FNCFS Federal Program, identify Georgina Island First Nation's specific and distinct needs under that Program, apply substantive equality as defined by this Tribunal, and ensure the elimination of accessibility barriers to the FNCFS Program;

   The interim solution shall be no less generous than the Tribunal's interim orders and shall respect the spirit, findings, and reasons of those orders, including those set out in the letter decision and the ruling concerning the OFA. For clarity, this provides guidance while preserving flexibility for Georgina Island First Nation and Canada to determine the appropriate interim solutions.

   This interim order shall remain in effect until a long-term solution, an agreement or a coordination agreement has been implemented.

c. Upon the date the OFA comes into effect, if a coordination agreement has not yet been implemented for Taykwa Tagamou Nation, Canada shall consult with Taykwa Tagamou Nation within 90 days of the OFA's effective date to establish and implement an interim solution for Taykwa Tagamou Nation in relation to the FNCFS Federal Program, identify Taykwa Tagamou Nation's specific and distinct needs under that Program, and apply substantive equality as defined by this Tribunal.

   The interim solution shall be no less generous than the Tribunal's interim orders and shall respect the spirit, findings, and reasons of those orders, including those set out in the letter decision and the ruling concerning the OFA. For clarity, this provides guidance while preserving flexibility for Taykwa Tagamou Nation and Canada to determine the appropriate interim solutions.

This interim order shall remain in effect until a long-term coordination agreement with Taykwa Tagamou Nation has been implemented.

The orders in this letter-decision and later incorporated in the ruling with reasons to follow, are not intended to be interpreted separately from the findings that support them.

Retention of jurisdiction

Tribunal retains jurisdiction on Jordan's Principle including in Ontario and all its other orders except in Ontario and for compensation.

Joint motion approval process

Asking this Human Rights Tribunal to make an all-or-nothing decision is not ideal in the context of these long-standing proceedings, the fact that it took over a year to complete the OFA joint motion hearing, the impact on First Nations children and families who wait and given the nature and mandate of a Human Rights Tribunal. The Tribunal made best efforts to approve this agreement with an interpretation that satisfies its orders without modifying the OFA.

Conclusion

The Panel Chair's remarks in 2018 CHRT 4 remain as relevant today as when they were made:

[452] *Given the recognition that a Nation is also formed by its population, the systematic removal of children from a Nation affects the Nation's very existence*.

[453] ***The building of a Nation-to-Nation relationship cannot be more significant than by stopping the unnecessary removal of Indigenous children from their respective Nations***. ***Reforming the practice of removing children to shift it to a practice of keeping children in their homes and Nations will create a channel of reconciliation. This is the true spirit of reconciliation. This is the goal. This is hope. This is love in action. This is justice***.

[454] *The Panel wishes to thank everyone involved for working tirelessly on this important case. The Panel hopes this approach will spur productive discussions amongst the parties to potentially reach additional agreements. The Panel also trusts that change has started and has accelerated in the last few months. The Panel is really hopeful for what is coming ahead for Indigenous children in Canada*.

Should you have any questions, please do not hesitate to contact the Registry Office by e-mail at registry.office@chrt-tcdp.gc.ca or by fax at 613-995-3484.

Yours truly,

Judy Dubois

Judy Dubois
Registry Officer