First Nations Child & Family Caring Society

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WHAT FIRST NATIONS LEADERSHIP AND EXPERTS NEED TO KNOW ABOUT

Canada's Long-Term Reform Plan for First Nations Child and Family Services

This document is written for First Nations Leadership and experts. It sets out the main myths being advanced about Canada's proposed plan to permanently end its discriminatory conduct in First Nations Child and Family Services (often called long term reform) and explains what those claims mean in practical terms for First Nations. Two plans are before the Canadian Human Rights Tribunal: **Canada's National Plan** and **Loving Justice**. Loving Justice is a First Nations-led plan filed pursuant to **2025 CHRT 80**. It was informed by 105 engagement sessions across Canada and is organized around principles, governance, enforcement, funding, accountability, regional variation, Indigenous Services Canada (ISC) reform, and research and outcome data. The central question for First Nations Leadership and experts is not simply whether Canada has filed a plan. The real question is whether Canada's National Plan will actually end discrimination in a way that is enforceable, needs-based, First Nations-led, and durable over time.

Process and Tribunal Status

1 MYTH: Canada's National Plan is the only plan for long-term reform.

What you need to know: It is not. In 2025 CHRT 80, the Tribunal directed Canada, the Assembly of First Nations and the Caring Society to file long-term reform plans, either together or separately. Canada did not work with the First Nations parties and the National Children's Chiefs Commission on one common plan. As a result, two plans are now before the Tribunal. Loving Justice is a separate First Nations-led plan built from more than 100 submissions from First Nations leadership, experts and youth. It is structured around purpose, principles, governance, enforcement, funding, accountability, regional variation, ISC reform, and research and outcome data. Canada filed its own separate plan, called Canada's National Plan.

Key point: First Nations Leadership and experts should treat Loving Justice as a complete First Nations alternative before the Tribunal. Canada's National Plan is not the only path on the table, and Canada should not be allowed to present it that way.

2 MYTH: Canada's National Plan is already approved by the Tribunal.

What you need to know: It is not approved. Canada's National Plan is only a proposal filed at the Tribunal's direction. The case is still ongoing, and neither Canada's National Plan nor Loving Justice has been approved. This matters because Canada's regional agreements depend on Tribunal approval. That means Canada's National Plan does not yet have legal force as a final remedy. Loving Justice is also still before the Tribunal. It remains a live First Nations alternative and, on its own terms, calls for continued enforceability and continuing Tribunal oversight until discrimination has truly ended and cannot recur.

Key point: First Nations Leadership and experts should understand Canada's National Plan as a pending proposal only. It is not an approved deal, final remedy, or completed reform package.

3 MYTH: If Canada discriminates again, First Nations can easily go back to the Tribunal.

What you need to know: It may become much harder. Canada is asking to change the current enforcement system and reduce future access to the Tribunal and other independent bodies that can effectively remedy discrimination against children.

Contrast with Loving Justice: Loving Justice does not ask the Tribunal to step away early. It expressly preserves continued enforceability, keeps Canada's human rights obligations in place, and calls for continued Tribunal jurisdiction until Canada proves the discrimination has stopped and will not recur.[1]

Under Canada's National Plan, Canada asks the Tribunal to declare that Canada's Plan replaces all existing orders and to end the Tribunal's jurisdiction over First Nations child and family services outside Ontario.[2] That is a major shift. The Tribunal has already said that its 2016 decision and related orders are a permanent injunction against Canada's discrimination.[3] If those orders are replaced too early, First Nations lose an important layer of independent protection. Starting a new case would also take time, money and years of further litigation; this case has already taken 19 years.

Key point: First Nations Leadership and experts should be cautious about any plan that ends Tribunal oversight before an equally strong and independent enforcement system is fully in place.

1 Loving Justice, pp. 48–56
2 Canada's National Plan, p. 4
3 2025 CHRT 80 paras. 113(1), (4)

Funding and Core Model

1 MYTH: Canada's National Plan is needs-based.

What you need to know: It is mostly formula-driven, capped, and still depends on Canada's discretion. Canada's National Plan uses fixed ISC-designed formulas across the country, which means funding is largely set in advance rather than driven by actual needs as they arise.[4] After 2028-2029, funding is maintained at prior levels. If more funding is needed, service providers must apply through a Service Provider Funding Adjustment Request, and Canada decides whether to approve it.[5] In practical terms, this means funding is not automatically tied to real need. It still depends on Canada's approval process, even where children's needs are urgent or growing.

Contrast with Loving Justice: Loving Justice defines the reformed funding approach as evidence-informed, First Nations-led, and based on the actual and changing needs of First Nations children, youth and families. It also uses funding at actuals or actuals as a backstop in key areas so funding can rise with need rather than depend on Canada's discretion alone.[6]

Key point: First Nations Leadership and experts should understand that Canada's National Plan does not guarantee that funding will rise when needs rise.

2 MYTH: Regions can negotiate funding amounts under Canada's Plan.

What you need to know: They cannot negotiate the core funding amounts. The key funding amounts and core funding structure are set nationally in advance.[7] Regional discussions can deal with implementation details, such as how money flows or how processes operate in a region, but they do not allow regions to change the core funding levels themselves. This means regions may be asked to negotiate around the edges of a framework that Canada has already built. They can influence implementation, but not the main financial decisions.

Contrast with Loving Justice: Loving Justice does not treat regional arrangements as discussions inside fixed national amounts. Its regional variations are meant to meet or exceed the reformed funding approach, and its funding model is designed to respond to actual regional needs rather than keep regions inside nationally pre-set limits.[8]

Key point: First Nations Leadership and experts should not assume regional talks will allow them to negotiate how much funding their region receives.

3 MYTH: Canada's National Plan provides needs-based capital funding.

What you need to know: Canada's National Plan provides capital funding through a proposal-based model with capped national allocations, rather than funding based on actual need.

Communities must apply for funding, and proposals are assessed and prioritized through federal processes.[9] Since the total funding is capped within the overall National Framework, not all identified needs can be met. This raises concerns about whether the Plan is adequately resourced and capable

4 Canada's National Plan, pp. 7–8
5 Canada's National Plan, p. 13
6 Loving Justice Plan, pp. 57–83
7 Canada's National Plan, p. 7
8 Loving Justice Plan, pp. 57–79, 89–91
9 Canada's National Plan, p. 13

of meeting real infrastructure needs. In contrast, Loving Justice provides for capital at actual costs until there is enough data to create a reliable funding approach sufficient to meet needs and ensure non-discrimination.

Contrast with Loving Justice: Loving Justice provides that capital funding should continue at actual cost for a minimum period, with interim funding where needed, until an evidence-based capital approach is developed, reviewed by First Nations experts, approved by the National Oversight Council and approved by the Tribunal.[10]

Key point: Communities must compete for limited capital funding, instead of receiving funding that reflects their actual infrastructure needs.

4 MYTH: Canada's National Plan supports all First Nations children aging out of care.

What you need to know: Funding for post-majority supports under Canada's National Plan is based on partial uptake assumptions rather than full need.

Canada's Plan assumes that only 75% of eligible youth will receive services.[11] As a result, funding is based on projected participation rather than actual need. This approach may not fully reflect the Tribunal's requirement that long-term reform be adequately resourced and responsive to real demand. In contrast, Loving Justice provides post-majority funding at actual cost until there is sufficient reliable data to inform an alternative needs-based funding approach.

Contrast with Loving Justice: Loving Justice calls for post-majority supports to continue at actual cost up to age 25 until an effective, evidence-informed alternative is developed. It does not build funding around a partial uptake assumption.[12]

Key point: Canada's Plan does not guarantee access to post-majority supports for all eligible youth, meaning funding under Canada's Plan may fall short of actual need.

5 MYTH: Canada's National Plan includes off-reserve children and families.

What you need to know: Funding under Canada's National Plan is limited to on-reserve population and does not include off-reserve children and families.

Prevention funding is calculated using registered First Nations population living on-reserve or in Yukon, based on the Indian Registration System.[13] As a result, children and families living off-reserve are not reflected in funding formulas, even where needs exist. Canada has repeatedly refused to provide additional funding to serve the approximately 72 percent of First Nations children off-reserve.

Contrast with Loving Justice: Loving Justice expressly criticizes narrow on-reserve population definitions and adopts a broader substantive-equality approach to the population served, including children and families who would live on-reserve but cannot because of housing and service gaps.[14]

Key point: Off-reserve needs are not accounted for in funding formulas.

10 Loving Justice Plan, pp. 77–83
11 Canada's National Plan, p. 10
12 Loving Justice Plan, pp. 77–82
13 Canada's National Plan, p. 14
14 Loving Justice Plan, pp. 68–70

Governance and Control

1 MYTH: Canada's National Plan enables First Nation sovereignty.

What you need to know: Canada's National Plan maintains final decision-making authority at the federal level and does not establish true shared or nation-to-nation governance.

While the Plan includes regional governance bodies, those bodies provide advice and recommendations rather than making binding decisions.[15] Canada retains decision making authority over key elements, including funding levels, approval of adjustments, funding terms and conditions and whether to act on program assessment recommendations.[16] In addition, program assessments are not binding on Canada, meaning federal decision-making ultimately prevails.[17]

Contrast with Loving Justice: Loving Justice builds governance around First Nations-led bodies, including a National Oversight Council, National and Regional Technical Tables, and National and Regional Secretariats. Those bodies are designed to oversee implementation, funding, accountability, and policy review, rather than simply advise Canada.[18]

Maintaining final federal authority raises questions about alignment with the Tribunal's emphasis on First Nations-centred approaches that incorporate First Nations perspectives and decision-making roles.[19]

point: Decision-making authority remains centralized under Canada, rather than shared with First Nations. The governance system proposed by Canada risks displacing a rights-based approach to First Nations child and family services with a Canada controlled program and policy approach

2 MYTH: Canada's National Plan allows nation-based agreements.

What you need to know: Canada's National Plan is primarily structured around regional agreements governed by a Canada-controlled national framework, typically at the provincial or territorial level.

While nation-based agreements may be considered, this only occurs in limited circumstances and at Canada's discretion.[20] Canada's National Plan is built around regional agreements that operate within a nationally fixed framework designed by Canada.

Contrast with Loving Justice: Loving Justice describes regional variations as variations that meet or exceed a First Nations-defined reformed funding approach and address distinct regional circumstances, while remaining grounded in the plan's shared purpose and principles.[21] The difference matters. Under Canada's National Plan, regions are mainly adjusting implementation within a Canada-controlled model. Under Loving Justice, regional variation is framed as a mechanism to reflect distinct rights, realities and needs without dropping below common minimum human rights standards.

Key point: Canada's National Plan uses regional agreements to implement a Canada-designed national framework. Loving Justice uses regional variations to improve on enforceable minimum human rights standards to adapt a First Nations-led framework to distinct regional needs while preserving minimum standards.

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15 Canada's National Plan, pp. 8, 16
16 Canada's National Plan, pp. 7–8, 13
17 Canada's National Plan, pp. 13, 16
18 Loving Justice Plan, pp. 38–50
19 2025 CHRT 80, paras. 65–67, 106 and paras. 113 (3), (6), (7).
20 Canada's National Plan, p. 5
21 Loving Justice Plan, pp. 89–93

3 MYTH: Canada's National Plan requires First Nations to sign confidentiality agreements to negotiate regional agreements.

What you need to know: Although Canada's National Plan does not explicitly address confidentiality agreements, Canada's submissions to the Tribunal indicate that they will be required.

Canada determines how negotiations are conducted, funds participation, and sets the engagement parameters within which regions.[22] This level of controls creates the potential for conditions, including confidentiality requirements, that may limit how information is shared.

Contrast with Loving Justice: Loving Justice starts from transparency and accountability as organizing principles and says negotiations and implementation information should be transparent to the maximum extent possible. It does not frame regional implementation as a Canada-controlled process.[23]

Centralized control over negotiations may not fully reflect the Tribunal's expectation of a dialogic, good-faith process grounded in meaningful engagement with First Nations.[24]

Key point: Federal control over negotiations creates the potential for conditions that may limit transparency and accountability.

4 MYTH: Canada's National Plan will allow First Nations to opt out.

What you need to know: The option to opt out is unlikely and not guaranteed, based on both Canada's National Plan and Canada's actions in litigation.

Canada seeks to apply its national framework to all First Nation by April 1, 2027 regardless of whether they want it or not. In the Ontario Final Agreement letter decision, the Tribunal explicitly allowed two First Nations – Taykwa Tagamou Nation and Georgina Island First Nation – to be exempted and receive custom remedies tailored to their circumstances.[25] Canada has filed a judicial review specifically challenging those exemptions and seeking to set aside the Tribunal's decision allowing those First Nations to opt out.[26] Canada is also seeking judicial review of the Tribunal's 2025 CHRT 80 order setting minimum standards and fencing Ontario reform from national reform.

Canada's Plan establishes a single national framework and allows implementation even where no agreement is reached.[27] This suggests limited flexibility and may be difficult to reconcile with the Tribunal's emphasis on responsiveness to distinct First Nations circumstances.[28]

Contrast with Loving Justice: Loving Justice establishes national minimum standards and expressly contemplates region-specific variations that meet or exceed those standards. It also provides that, where Canada does not submit a regional plan within the required period, the region may submit its own plan detailing the required regional variations for the complainants to raise with the Tribunal as part of the Tribunal's continuing supervision.[29]

Key point: Meaningful opt-out options or independent pathways appear unlikely under Canada's Plan.

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22 Canada's National Plan, p. 6
23 Loving Justice Plan, pp. 26–27; 84–88
24 2025 CHRT 80 paras. 65–67, 106
25 CHRT 2026 letter decision, pp. 13–14 (https://fncaringsociety.com/publications/tribunal-letter-decision-ontario-final-agreement)
26 Canada's Federal Court application, Apr. 29, 2026, p. 1
27 Canada's National Plan, pp. 3–5
28 2025 CHRT 80 paras. 113–114
29 Loving Justice Plan, pp. 89–91

Outcomes and Accountability

1 MYTH: Canada's Plan will reduce the number of kids in care.

What you need to know: Canada's National Plan does not guarantee reductions in apprehensions or the number of children in care.

While prevention funding is included, it is formula-based and not tied to enforceable outcomes.[30] Program assessments may generate recommendations, but Canada is not obligated to implement them.[31]

The absence of binding outcome requirements raises questions about whether Canada's Plan fully addresses the Tribunal's direction to eliminate the structural drivers of over-apprehension and prevent recurrence of discrimination.[32]

Contrast with Loving Justice: Loving Justice is expressly outcome-focused. It ties reform to positive outcomes for children, requires attention to structural drivers such as poverty, housing and loss of language and culture, and builds in research, data and review mechanisms aimed at preventing the recurrence of discrimination.[33]

Key point: Canada's Plan does not ensure fewer children in care because Canada's Plan lacks enforceable outcome-based obligations.

2 MYTH: The dispute resolution tribunal under Canada's National Plan will be fully independent.

What you need to know: Canada's proposed dispute resolution mechanism does not have guaranteed independence or permanence, particularly in its initial phase.

Canada's Plan proposes to establish a tribunal through an order-in-council before legislation is enacted, meaning its authority is controlled by the federal executive.[34]

Without legislative entrenchment, the tribunal's structure and authority can be changed, limited or delayed by Canada. Establishing a dispute mechanism without immediate legislative independence may not fully reflect the Tribunal's expectation of durable, enforceable accountability structures.[35]

Contrast with Loving Justice: Loving Justice calls for either continued Tribunal oversight or an independent dispute resolution mechanism grounded in First Nations law, with enforceable remedies, protection against retaliation, and authority to address both systemic and individual harms.[36]

Key point: Under Canada's Plan, the dispute resolution process may not provide fully independent or durable oversight.

3 MYTH: First Nations will control data and performance measurement.

What you need to know: Data governance remains primarily under federal control, with First Nations playing a supplementary role.

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30 Canada's National Plan, p. 10
31 Canada's National Plan, p. 16
32 2025 CHRT 80 paras. 113–114
33 Loving Justice Plan, pp. 15–26; 99–107
34 Canada's National Plan, pp. 17–18
35 2025 CHRT 80 paras. 113–114
36 Loving Justice Plan, pp. 48–59

Although Canada's Plan uses strong language about regional indicators and First Nations participation, the core performance measurement framework has already been designed and implemented by ISC, and can be supplemented, not replaced, by regional inputs.[37] This means that the core metrics, reporting structure and accountability mechanisms are still defined at the federal level. This raises questions about whether Canada's Plan reflects the Tribunal's emphasis on First Nations-centred approaches to defining outcomes and measuring success.[38]

Contrast with Loving Justice: Loving Justice places data collection and analysis with First Nations-led national and regional secretariats and ties data governance to Measuring to Thrive and OCAP principles. It treats data as part of First Nations-led accountability, not simply federal performance management.[39]

Key point: First Nations participation is included, but control over data and performance measurements remains largely with Canada.

4 MYTH: Canada's National Plan allows flexibility and respects diverse approaches.

What you need to know: Canada's National Plan establishes a standardized national model, with limited flexibility. Canada's Plan is built around a single national framework with fixed funding elements, formulas and timelines that apply across all regions.[40] While regional agreements are contemplated, they are designed to adapt implementation within the framework, not to redefine its core structure. Core elements, such as funding amounts, formula structures and program components are not open to negotiation.[41] Canada has indicated that where agreements are not reached, it intends to proceed with the national framework regardless.[42]

A standardized approach may be difficult to reconcile with the Tribunal's requirement for flexible, First Nations-informed long-term reform.[43]

Contrast with Loving Justice: Loving Justice uses one shared set of purpose and principles, but it is built to allow regional variations that meet or exceed the common minimum standard and reflect distinct rights, cultures, needs, geography and service realities. Its flexibility is therefore built into the model itself, not limited to implementation details.[44]

Key point: Regions can adjust implementation but cannot fundamentally change the model itself.

37 Canada's National Plan, p. 15
38 2025 CHRT 80 paras. 113–114
39 Loving Justice Plan, pp. 40–49, 88, 99–103
40 Canada's National Plan, pp. 7–8
41 Canada's National Plan, pp. 7–8
42 Canada's National Plan, p. 5
43 2025 CHRT 60, paras. 113(3), (6), (7)
44 Loving Justice Plan, pp. 89–93

5 MYTH: First Nations can negotiate above the reformed FNCFS funding amounts in their coordination agreements.

What you need to know: Canada's National Plan fixes core funding levels and formulas at the national level, so coordination agreements do not provide a mechanism to negotiate increases above those nationally set amounts.

Canada's National Plan states that core funding elements are set within the national framework, while regional or coordination arrangements are directed to implementation within that framework rather than renegotiation of the underlying national funding structure.[45] On that structure, additional funding above the reformed FNCFS amounts is not negotiable through coordination agreements alone.

Contrast with Loving Justice: Loving Justice does not treat regional or coordination arrangements as a place to operate inside nationally fixed amounts. Its regional variations are meant to meet or exceed the reformed funding approach, and its overall funding model is designed to adjust upward when actual needs require it.[46]

Key point: Coordination agreements may address implementation, but they do not provide a mechanism to renegotiate the nationally fixed funding structure in Canada's National Plan.

6 MYTH: Litigation delays children's access to justice.

What you need to know: Court and Tribunal processes can be slow, particularly where Canada argues technical points, seeks judicial review or appeals decisions. However, the legal record demonstrates that these processes have been a decisive and effective mechanism for securing enforceable remedies for First Nations children, youth and families.

Over multiple decades, political advocacy, economic evidence, and First Nations–led solutions identified the harms and required reforms in First Nations child and family services. Despite this, Canada did not implement measures sufficient to eliminate the discrimination identified in those processes. Substantive changes have instead occurred following binding orders of the Canadian Human Rights Tribunal and the courts. Litigation therefore serves not only as a corrective mechanism, but as the primary means through which enforceable rights and funding obligations have been realized in practice.

Key point: While litigation can take time, the historical record shows that enforceable change has followed legal orders, not policy commitments or agreements alone. Canada's negotiation approaches should therefore be assessed with caution where they rely on discretion rather than binding legal obligations.

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45 Canada's National Plan, pp. 5, 7–8

46 Loving Justice Plan, pp. 57–79, 89–91