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June 5, 2026

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Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, ON K1A 1J4
Attn: Registrar

Dear Registrar and Tribunal:

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

The Assembly of First Nations ("**AFN**"), pursuant to the Tribunal's written direction of May 22, 2026, makes the following submission with respect to long-term reform remedies to end the discrimination found by this Tribunal over a decade ago in the First Nations Child and Family Services ("**FNCFS**") Program and prevent its recurrence.

At the outset, the AFN wishes to reiterate its support for the Loving Justice Plan – including its acknowledgement and contemplation of regional solutions and the further modifications made to it on May 11, 2026. The Loving Justice Plan was the product of significant work led by the First Nations Child and Family Caring Society of Canada ("**Caring Society**") and the National Children's Chiefs Commission ("**NCCC**"), which is a body mandated by the First Nations-in-Assembly. For greater clarity, the AFN wishes to restate its support for First Nations and their regional bodies to pursue pathways to reform that they see as the best fit for their children and families including their right to pursue reform through regional agreements.

The AFN additionally supports a swift conclusion to proceedings regarding long-term reform of the FNCFS Program outside of Ontario, with a reformed model for supports and accompanying funding, preferably to be distributed to recipients before the start of the 2027-2028 school year, which is when referrals for services typically increase. First Nations children have been waiting for change for far too long; some of those who were children at the start of these proceedings now have children of their own.

The AFN has identified three areas for supplemental comment, which are as follows:

1. Canada's funding proposal and commitment to ongoing funding for the FNCFS Program.

2. The development of a timely interim alternative dispute resolution process for future FNCFS disputes.

3. The need to apply the IFSD's Measuring to Thrive framework with the objective of collecting First Nations-developed performance indicators to evaluate how program interventions are supporting child wellbeing

Canada's Funding Proposal

Canada's Plan proposes a seven-year minimum funding commitment of $27 billion from April 1, 2027 to March 31, 2034. Canada further commits to ongoing minimum funding of $4.4 billion annually for the FNCFS Program beginning on April 1, 2034. AFN welcomes Canada's funding proposal, particularly as it addresses concerns about a fixed term for funding that some First Nations shared with the AFN during the engagement period for the 2024 Draft Agreement.

Indeed, representatives from Canada heard the same concerns during that same engagement period. It is encouraging that identifying an arrangement for ongoing funding was prioritized to alleviate those concerns. The AFN supports Canada's commitment to additional provisions that will ensure ongoing adjustment and ongoing payments past the initial seven-year funding commitment. This includes Canada's commitment to adjusting the funding elements of its Plan annually, to account for inflation in line with the Consumer Price Index and population change for First Nations.[1] To be sure that any funding commitment prevents recurrence of the discrimination, other adjustment mechanisms will need to be responsive to situations in which the needs and circumstances of communities exceed those contemplated by Canada's funding commitment.

While the AFN is pleased to see the matter of ongoing funding addressed, it wishes to ensure that the funding proposed in Canada's Plan will be allocated exclusively to the provision of services in the FNCFS Program and towards the individuals ultimately affected by the Program – namely, First Nations children. This funding must not be diluted by the costs of program administration (including public servant salaries), other ancillary costs associated with funding such as the dispute resolution approach described below, and other reform elements that may be necessary in order to fulfill the orders of the Tribunal and achieve substantive equality.

The AFN is encouraged, even optimistic, by this portion of Canada's Plan. However, it must reserve its final position on this issue until it has heard further from Canada and received more evidence regarding costing issues.

National Dispute Resolution Process

The AFN agrees with the need for a dispute settlement process, which is contemplated by Canada's Plan and the Loving Justice Plan. The AFN agrees and points out that both Plans have stated that the Parties should engage in further negotiations to establish an independent, and culturally appropriate alternative dispute resolution mechanism to adjudicate future disputes. However, the AFN seeks the creation of an interim dispute settlement process, to ensure avenues of recourse should a dispute emerge before such time that it is (or may be) replaced by another permanent process, through, for instance, the adoption and implementation of co-developed legislation. The

[1] Canada's Plan at page 14.

following section outlines AFN's proposal in this regard. Furthermore, attached to this submission as Appendix "A" is the AFN's proposed interim dispute settlement process that is modeled after well known and accepted arbitral processes.

In developing the attached dispute settlement mechanism, the AFN is seeking to create a process, solely on an interim basis and with no prejudice to a permanent model, that is impartial, fair, culturally appropriate, and specialized in issues relating to FNCFS and the FNCFS Program. The AFN was also guided by the principles that any dispute resolution body must be expeditious, well-funded, and regionally sensitive; these principles are cornerstones of access to justice and access to justice must always be and remain a foundation of any fair dispute settlement process. In order for this dispute resolution process to be credible and meaningful, it must be structured so that it does not contain hidden barriers that impede access to justice.

Accordingly, the alternative dispute resolution mechanism proposed must come into effect immediately, upon an interim Order of the Tribunal or agreement of the Parties, until such a time that it is replaced by a new, permanent model. Furthermore, Canada must cover the reasonable legal fees and disbursements, not just of the arbitral body, but also of the participants, and such fees must be drawn from funds outside of those earmarked for reformed FNCFS services.

Summarized, the AFN's proposed Interim and Dispute Resolution Process:

1. Expands the powers of Arbitral and Appeal Tribunals, including the ability to order funding, damages, interim measures, interest, legal costs, and any remedies under section 53 of the *Canadian Human Rights Act*;

2. Provides for an interim process that comes into force immediately upon an interim Order of the Tribunal and remains available until a permanent process is established, ensuring that disputes can be adjudicated without delay while a permanent national process is put in place;

3. Strengthens accessibility and cultural appropriateness through Duty Counsel, Cultural Officers, and flexible evidentiary rules for oral history and Indigenous knowledge; and

4. Establishes a more robust and independent national adjudicative structure through a larger roster of arbitrators, specified qualifications and training, and three-member tribunals at first instance and on appeal.

Furthermore, unlike Phase 1 of Canada's Plan, the AFN's proposed approach will not leave the timing and nature of appointments to a newly created dispute resolution body to the unilateral discretion of the Governor-in-Council.

This new Process also specifically addresses the concerns raised by First Nations during the October 2024 Special Chiefs Assembly on Long-Term Reform of the FNCFS Program. At that Assembly, the First Nations-in-Assembly passed a resolution to reject the 2024 Draft Agreement – one of the reasons being that First Nations-in-Assembly desired that (i) the scope of a newly created dispute resolution body be expanded; (ii) the role of the dispute resolution body be strengthened; and (iii) the remedies available to the Tribunal also be made available to the new

dispute resolution body.

While previous efforts at creating an alternative dispute resolution body may serve as a guide at this stage of the proceeding, it would be misguided to simply replicate the terms of the 2024 Draft Agreement, as Canada suggests should be done, in the face of clearly expressed concerns on the part of the First Nations-in-Assembly.

Given the mutual willingness amongst the Parties to co-develop a long-term solution to this issue, the AFN is open to legislation that is co-developed with First Nations to formalize, entrench, or otherwise give statutory effect to a dispute resolution process. However, this will take time and cannot be guaranteed. Legislation is the prerogative of Parliament, not government. An interim process must be put into place until such time as another takes its place.

Accountability through the Delivery of First Nations-developed Key Performance Indicators and Performance Measurement

The AFN notes that both the Loving Justice Plan and Canada's Plan include the implementation of program performance indicators and agrees that performance measurement must form part of the reform framework. Properly implemented, performance indicators provide evidence to assess whether reforms are working in practice and, most importantly, whether substantive equality is being achieved and maintained for First Nations children and families.

At a high-level, this must include inclusion of a common set of key child wellness indicators that will be collected and monitored by service providers and delivered to First Nations. These indicators include information about how First Nations children are doing while in care and will support evidence-based program decision-making.

A common set of national performance indicators becomes even more important when program implementation varies across regions. Without a shared set of indicators, it will be impossible to assess implementation on a national basis or to determine whether regional variation is producing substantially equitable outcomes.

Canada's Plan states that ISC developed and implemented a new national performance measurement framework and logic model for the FNCFS Program in 2025-2026 and further contemplates that region-specific results frameworks will be co-developed through regional negotiations to supplement that national framework. While Canada had previously committed to the inclusion of a set of child, family, and community well-being indicators to be collected nationally for the purposes of program monitoring and public reporting, it is not clear whether Canada's Plan maintains that same commitment in addition to the regional indicators. The Loving Justice Plan recommends the implementation of Measuring to Thrive, a performance indicator framework developed and piloted by First Nations and agency research partners with the objective of assessing the wellbeing of First Nations children during their spell in care and outcomes once they've left care, specifically to monitor the success of reunification and incidence of recurrence.

The AFN held the contract with the Institute of Fiscal Studies and Democracy ("**IFSD**") for the research that resulted in Measuring to Thrive and therefore closely observed the development and

refinement of this uniquely child-centred wellness index. The First Nations and agencies that engaged in participatory research with the IFSD on FNCFS reform worked collaboratively to develop the full Measuring to Thrive indicator set, and then identified and piloted sub-sets of indicators appropriate for reporting and monitoring purposes. In particular, the AFN strongly supports the inclusion of the Measuring to Thrive framework as a sound evidentiary foundation for a performance measurement framework that reflects First Nations perspectives on child wellbeing by asking the question: how are First Nations children doing while they are in care?

The First Nation and agency research partners recommended that a common set of indicators should describe service outcomes and highlight the structural and environmental conditions that drive child welfare overrepresentation for First Nations children. This includes a two-pronged approach to data collection that requires Canada to collect and report on the relationships between overrepresentation and safe and suitable housing, access to safe water, permanent family reunification, household income levels, and whether the child in care has access to mental health and specialized community services.

These indicators matter because they move beyond narrow administrative reporting that focuses on spending towards a means of assessing whether the reformed program is meaningfully mitigating the conditions that contribute to overrepresentation in care.

More broadly, performance measurement must inform First Nations and the agency service provider about the experience and wellbeing of children in care from a holistic First Nations perspective. Those child wellbeing indicators are related to language, connection to land, community-based activities, spirituality, placement within community, stability in care, and access to culturally appropriate specialized services. These measures must form part of the national standards for implementation, regardless of any particular regional pathway adopted.

The AFN looks forward to making further submissions with respect to the matters above by way of supporting evidence and argument, and reserves its rights thereto, in accordance with the timetable to be set by this Tribunal.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

Peter Mantas

Cc:

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Harold Cochrane, K.C. and Alyssa Cloutier – Counsel for the Southern Chiefs' Organization Inc.

Carly Fox and Jason Erbeznik – Counsel for the Assembly of Manitoba Chiefs

Alexandra Heine and Dan Goudge – Counsel for Our Children, Our Way Society

Pierre-Simon Cleary and Sophie Gagné – Counsel for the First Nations of Quebec and Labrador Health and Social Services Commission and the Assembly of First Nations Quebec-Labrador

Liam Smith, Tuma Young, K.C., Scott Smith, Alexander DeParde – Counsel for the National Children's Chiefs Commission

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APPENDIX "A": INTERIM DISPUTE RESOLUTION PROCESS AND DISPUTE RESOLUTION PROCESS

PREAMBLE

The intent of the Interim Dispute Resolution Process and Dispute Resolution Process is to allow First Nations and FNCFS service providers (collectively, the "Claimants" and singularly a "Claimant") and the Assembly of First Nations and First Nations Child and Family Caring Society of Canada (collectively, the "Parties" and singularly a "Party") to have their disagreements with Canada heard and resolved in a way that is accessible, fair and culturally-appropriate, by a body specialized in issues of First Nations child and family services ("FNCFS") and independent of government.

It is further intended that Disputes be resolved in a manner that is timely and practical, reduces unnecessary procedural barriers, and supports meaningful participation by those affected, while maintaining confidence in the fairness and integrity of the process. Above all else, the Dispute Resolution Process must be interpreted so as to ensure that Disputes are adjudicated expediently and in a culturally appropriate manner that is accessible to First Nations and FNCFS service providers.

To the greatest extent possible, this Dispute Resolution Process shall recognize and give effect to the following principles: that disputes be resolved in a manner that is accessible, fair, timely, and practical; that the process reduce unnecessary procedural barriers and support meaningful participation by those affected; that disputes be addressed in a manner that is respectful of First Nations communities, cultures, and legal traditions; that the process be sensitive and accommodating to persons who may have suffered trauma; and that the process be applied in a manner that recognizes and respects the diversity among First Nations.

PART I – INTERIM DISPUTE RESOLUTION PROCESS

1. This Interim Dispute Resolution Process is available to Parties and Claimants. For the purpose of this Interim Dispute Resolution Process, disputes shall be adjudicated in accordance with the Commercial Arbitration Code (the "Code"), which is based on the Model Law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Law on June 21, 1985, and codified under the *Commercial Arbitration Act,* RSC 1985, c. 17 (2nd Supp.) (the "Act").

2. The Interim Dispute Resolution Process will be in force as of the date the Canadian Human Rights Tribunal ("Tribunal") orders the Interim Dispute Resolution Process to enter into force (the "Entry into Force Date"). Where a Dispute is commenced under this Part, the Parties and/or Claimants and

Canada agree that this Part is an arbitration agreement for the purposes of the Act and the ADRIC Arbitration Rules.

3. In the period between the date of the Entry into Force Date and the date of the appointment of a Roster of Arbitrators (the "Effective Date") the Interim Dispute Resolution Process may be used to resolve all disputes, controversies, disagreements, or claims of a Party or Claimant that arise out of, relate to, or are in connection with the obligations, rights or responsibilities of Canada.

4. Between the date of the Entry into Force Date and the Effective Date, all disputes set out in paragraph 3 shall be remitted to final and binding arbitration under the ADRIC Arbitration Rules, subject to the modifications set out in this Part. There shall be no Appeal Tribunal in the Interim Dispute Resolution Process.

5. A Notice to Arbitrate under this Part must be delivered within one (1) year of a Party or Claimant becoming aware of facts that give rise to the Dispute, otherwise the party shall be deemed to have waived their right to have the Dispute heard.

6. An Answer to Notice under this Part must be delivered within thirty (30) days of the delivery of the Notice to Arbitrate.

7. The *IBA Rules on the Taking of Evidence in International Arbitration* (the "IBA Rules") in force at the time of the date of the Entry into Force Date apply to the Interim Dispute Resolution Process and shall replace the ADRIC Arbitration Rules to the extent of any conflict, except that Article 3 of such IBA Rules shall not apply.

8. The ADR Institute of Canada, Inc. ("ADRIC") will administer an arbitration under this Part.

9. Canada shall bear the reasonable fees and expenses of an Arbitral Tribunal, the legal fees and disbursements of a Party or Claimant and the ADRIC administration service fees, if applicable.

10. Disputes governed under this Part shall be adjudicated in a manner consistent with the procedure in Part II – Dispute Resolution Process, section B.

PART II – DISPUTE RESOLUTION PROCESS

A. Overview

11. Disputes under this Part shall be adjudicated in accordance with the Code, which is based on the Model Law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Law on

June 21, 1985, and codified under the Act.

12. All Disputes shall be resolved by final and binding arbitration.

13. Where a Dispute is commenced under this Part, the Party or Claimant and Canada agree that this Part is an arbitration agreement for the purposes of the Code and the Act and the ADRIC Arbitration Rules. In the event of an inconsistency, the Code shall take precedence over the ADRIC Arbitration Rules.

14. The Dispute Resolution Process applies as of the Effective Date. Existing adjudication processes under the FNCFS Program available to First Nations and FNCFS Service Providers shall continue until the Effective Date.

15. The Dispute Resolution Process is intended to resolve two types of disputes, as set out in this Part: Parties' Disputes and Claimant Disputes.

16. The Dispute Resolution Process for Party and Claimant Disputes is not intended to abrogate or derogate from a Party's or Claimant's rights provided for under the *Canadian Human Rights Act,* R.S.C., 1985, c. H-6. The Dispute Resolution Process is not intended to abrogate or derogate from the rights of Claimants under s. 35 of the *Constitution Act, 1982, enacted as Schedule B to the Canada Act 1982, 1982, c. 11 (U.K.)* or the inherent rights of Claimants as codified under the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14.

17. A Party or Claimant is not obligated to resolve matters by way of the Dispute Resolution Process and may seek remedies to which it may be entitled for such matters in any way it chooses, including by pursuing a claim in a court of competent jurisdiction or under the *Canadian Human Rights Act,* R.S.C., 1985, c. H-6.

18. Disputes shall be resolved pursuant to the procedures set forth in this Dispute Resolution Process, which shall be the exclusive procedure for resolving a Dispute for any Party or Claimant who has consented to the use of the Dispute Resolution Process.

Parties' Disputes

19. A Parties' Dispute is a dispute of a Party regarding Canada's implementation of an order of the Tribunal with respect to national long-term reform and remedies of FNCFS.

Claimant Disputes

20. A Claimant Dispute is a dispute brought by a First Nation or FNCFS service provider regarding the allocation and administration of their reformed FNCFS Program funding.

Jurisdiction of Arbitral Tribunal and Appeal Tribunal – Parties' Disputes

21. In considering a Parties' Dispute, an Arbitral Tribunal shall assess Canada's decision that gave rise to the Parties' Dispute, considering Canada's compliance in implementing an order of the Tribunal with respect to national long-term reform and remedies of FNCFS. In so doing, the Tribunal shall assess the materials that were before Canada's decision maker and the written reasons for decision, if any. Alternatively, where a Parties' Dispute arises but Canada has not made a decision to be reviewed, an Arbitral Tribunal shall consider the circumstances giving rise to the Parties' Dispute. In any Parties' Dispute, an Arbitral Tribunal has the jurisdiction to:

    (a) process, adjudicate, and resolve Disputes, including by making procedural and substantive decisions;

    (b) lengthen or shorten any time limit established by this Dispute Resolution Process;

    (c) decide any procedural or evidentiary question arising during the hearing;

    (d) on request of a party in a Dispute, order any party to take any reasonable interim measure as the Arbitral Tribunal may consider necessary in respect of the subject matter of a Dispute;

    (e) order such remedies as are permitted under the Dispute Resolution Process;

    (f) order funding to a particular First Nation or FNCFS Service Provider;

    (g) order such remedies as are permitted under s. 53 of the *Canadian Human Rights Act*, RSC, 1985, c. H-6;

    (h) order general damages, damages for discrimination, or punitive damages;

    (i) order that interest be paid on amounts ordered to be paid, on the same basis as in s. 31 of the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50; and

    (j) order Canada, on such terms as are just, and at any time, including but not limited to at the initiation of proceedings, to pay a Party's legal costs and fees of counsel of the Party's choosing.

22. An Appeal Tribunal, when reviewing the decision of an Arbitral Tribunal in a Parties' Dispute, shall conduct a *de novo* assessment of Canada's decision that gave rise to the Parties' Dispute, based on the record before the Arbitral Tribunal. An Appeal Tribunal has the same jurisdiction as an Arbitral Tribunal in relation to a Parties' Dispute, as set out in paragraph 21 of this Dispute

Resolution Process, and in addition may uphold Canada's decision or substitute its own decision.

Jurisdiction of an Arbitral Tribunal and Appeal Tribunal – Claimant Disputes

23. In considering a Claimant Dispute, an Arbitral Tribunal shall conduct a review of Canada's decision giving rise to the Claimant Dispute, considering Canada's compliance in implementing an order of the Tribunal with respect to national long-term reform and remedies of FNCFS.

24. An Arbitral Tribunal shall consider, as applicable:

(a) the materials that were before Canada's decision maker and the written reasons for decision, if any;

(b) the views of the Claimant and any associated First Nations;

(c) the legal traditions and protocols of the relevant First Nation;

(d) the circumstances of the individual First Nation;

(e) the principle of substantive equality as applied in 2016 CHRT 2, *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);*

(f) the urgency of the funding that is the subject of the Claimant Dispute; and

(g) any evidence not before the decision maker that is tendered by the parties to the Claimant Dispute (including Canada and the Parties, if the Parties choose to intervene) and that the Arbitral Tribunal finds relevant and appropriate in the circumstances.

25. In considering a Claimant Dispute, an Arbitral Tribunal has the jurisdiction to:

(a) process, adjudicate, and resolve Disputes, including by making procedural and substantive decisions;

(b) lengthen or shorten any time limit established by this Dispute Resolution Process; and

(c) decide any procedural or evidentiary question arising during the hearing;

(d) on request of a Claimant or Canada, order any reasonable interim measure as the Arbitral Tribunal may consider necessary in respect of the subject matter of the Claimant Dispute;

(e) order such remedies as are permitted under this Dispute Resolution Process;

(f) order funding to a particular First Nation or FNCFS Service Provider;

(g) order such remedies as are permitted under s. 53 of the *Canadian Human Rights Act*, RSC, 1985, c. H-6;

(h) order general damages, damages for discrimination, or punitive damages;

(i) order that interest be paid on amounts ordered to be paid, on the same basis as in s. 31 of the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50; and

(j) order Canada, on such terms as are just, and at any time, including but not limited to at the initiation of proceedings, to pay a Claimant's legal costs and fees of counsel of the Claimant's choosing.

26. In a Claimant Dispute, an Appeal Tribunal shall conduct a *de novo* assessment of Canada's decision that gave rise to the Claimant Dispute, based on the record before the Arbitral Tribunal and, where the context requires, the factors set out in paragraph 24 of this Dispute Resolution Process. An Appeal Tribunal has the same jurisdiction as an Arbitral Tribunal in relation to a Claimant Dispute as set out in paragraph 25 and in addition may uphold Canada's decision or substitute its own decision.

B. Principles and Rules Applicable to Determination of Disputes

27. An Arbitral Tribunal shall decide all Disputes in accordance with this Dispute Resolution Process and in particular its purposes and principles.

28. An Arbitral Tribunal shall, in considering procedure for resolving a Dispute, proceed in a just, expeditious, and cost-effective manner, having regard to cultural appropriateness and as is appropriate in all the circumstances of the case.

29. All Disputes shall be resolved under the ADRIC Arbitration Rules in force at the time of the Effective Date.

30. The Arbitral Tribunal is the master of its own proceedings, and will be guided by:

(a) The Code,

(b) the ADRIC Arbitration Rules,

(c) the *IBA Rules on the Taking of Evidence in International Arbitration*, except Article 3,

(d) the advice of a Cultural Officer as appointed and whose duties are set out under this Dispute Resolution Process; and

(e) the Federal Court's Practice Guidelines For Aboriginal Law

Proceedings September 2021, section D on Elder Evidence.

31. An Arbitral Tribunal may:

(a) in the same manner and to the same extent as a superior court of record, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce any documents and things that the Arbitral Tribunal considers necessary for the full hearing and consideration of the Dispute;

(b) administer oaths or affirmations and require a witness to testify under oath or affirmation;

(c) receive and accept any evidence and other information, whether on oath or by affidavit or otherwise, that the Arbitral Tribunal sees fit, whether or not that evidence or information is or would be admissible in a court of law.

32. An Arbitral Tribunal and Appeal Tribunal may not admit or accept as evidence anything that would be inadmissible in a court by reason of any privilege or confidence recognized by the common law or legislation, including those privileges and confidences set out in sections 37 through 39 of the *Canada Evidence Act*, R.S.C. 1985, c. C-5.

33. An Arbitral Tribunal and Appeal Tribunal shall apply evidentiary rules in a flexible and culturally appropriate manner, consistent with the nature of Indigenous legal traditions and knowledge systems. Without limiting the foregoing, the Arbitral Panel shall:

(a) admit and consider oral histories, traditions, teachings, and other forms of Indigenous knowledge as evidence, notwithstanding that such evidence may not conform to common law or statutory evidentiary requirements, including the rules relating to hearsay;

(b) ensure that such evidence is given due and meaningful consideration, on an equal footing with documentary and other forms of historical evidence; and

(c) adapt procedures for the receipt of evidence, including through oral testimony, Elders' evidence, ceremonies, or other culturally appropriate methods, where appropriate.

Posting of Information About the Dispute Resolution Process

34. Canada and the Parties will each make information about the Dispute Resolution Process publicly accessible, including at least the following information:

(a) the address for service to serve a Notice to Arbitrate on Canada;

(b) the address for service for the Parties;

(c) the contact information for Duty Counsel;

(d) the address to provide a copy of a Notice to Arbitrate;

(e) the deadline by which a Party or Claimant must initiate a Dispute under this Part;

(f) a link to the Code;

(g) a link to the ADRIC Arbitration Rules;

(h) a link to the *IBA Rules on Taking Evidence*;

(i) a link to the Federal Court Elder Evidence and Oral History Protocol; and

(j) any forms required to be submitted in a Claimant Dispute.

35. The Parties shall make the information set out in paragraph 34 publicly accessible by at least publishing it on their websites and any website devoted to the implementation of this Dispute Resolution Process.

36. Canada shall make the information set out in paragraph 34 available on ISC's website relating to the Dispute Resolution Process, in any correspondence with First Nations and FNCFS Service Providers concerning their funding allocations and capital project decisions, and on written request from a First Nation or an FNCFS Service Provider.

Nature of Dispute Awards

37. A Dispute Award in a Parties' Dispute shall be binding on all Parties, regardless of whether the Party chose to participate in the arbitration of the Dispute.

38. A Dispute Award in a Claimant Dispute shall be binding on the Claimant and ISC.

Appeal to a Court of Competent Jurisdiction

39. An Appeal Tribunal's Dispute Award shall be final and binding, unless it is set aside or varied by a court of competent jurisdiction as defined under the Act.

Confidentiality

40. Notwithstanding the Code or the ADRIC Arbitration Rules, on application of a Party or a Claimant in a Dispute, an Arbitral Tribunal or Appeal Tribunal may order that all or some of an Arbitral Tribunal's procedures, hearings, and

documents or interim orders and decisions shall remain strictly confidential between the Party or Claimant and Canada, as the case may be.

(a) In order to succeed on an application set out in paragraph 40, the party applying for the confidentiality order must establish that (i) court openness poses a serious risk to an important public interest; (ii) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (iii) as a matter of proportionality, the benefits of the confidentiality order outweigh its negative effects.

(b) For greater clarity, the requirements in subparagraph (a), above, shall be applied in a manner that places due consideration to the personal concerns regarding privacy of a complainant, particularly if a child is involved, cultural context of a Claimant and any other relevant culturally appropriate considerations.

41. Unless otherwise ordered, all decisions of an Arbitral Tribunal or an Appeal Tribunal shall be made public in a manner that will be determined by the Parties within ninety (90) days of the Effective Date.

Language

42. The language of the Dispute Resolution Process for Parties' Disputes, including for hearings, documentation, and Dispute Awards, shall be English and/or French as selected by the Party who commenced the dispute.

43. The language of the Dispute Resolution Process for Claimant Disputes, including hearings, documentation, and Dispute Awards, shall be English and/or French, as selected by the Claimant who commenced the dispute. Portions of the proceeding may be held in an Indigenous language, where requested by the Claimant and so ordered by an Arbitral Tribunal or Appeal Tribunal.

44. Wherever necessary, Canada shall pay for the costs of written and oral translation services, including simultaneous interpretation, to facilitate access to justice for the Parties and Claimants.

(a) For greater clarity, if portions of the proceedings are held in an Indigenous language pursuant to paragraph 43, Canada shall pay for the cost of simultaneous interpretation and translation services.

Roster of Arbitrators

45. Canada and the Parties shall, as soon as reasonably possible and no later than ninety (90) days after the Entry into Force Date, agree upon and maintain a Roster of Arbitrators who shall serve on Arbitral Tribunals and Appeal Tribunals.

46. If any of Canada, the AFN, or Caring Society refuses to participate in the

selection of Arbitrators for the Roster of Arbitrators within the time established in paragraph 45 of this Dispute Resolution Process, then the Roster may be established by the remaining entities who do participate.

(a) If Canada and the Parties cannot agree on the appointment of a full Roster of Arbitrators pursuant to paragraph 45 within ninety (90) days after the Entry into Force Date, Canada and the Parties shall each appoint six (6) Arbitrators to the Roster of Arbitrators within ten (10) days.

(b) If, following this subsequent ten (10) day period, Canada or the Parties have not appointed their six (6) Arbitrators to the Roster of Arbitrators, the remainder of the Roster may be established by the entities that have fully participated in the appointment of Arbitrators.

47. The Roster of Arbitrators shall be composed of a number of Arbitrators, but no fewer than twelve (12), necessary to ensure the timely arbitration of Disputes. Arbitrators may remain on the Roster until they remove themselves from the Roster, the expiry of their term, or until otherwise removed by agreement of the parties or a superior court of record.

48. Canada and the Parties shall endeavour to select Arbitrators to be named to the Roster of Arbitrators who:

(a) have expertise in the matters addressed by any order of the Tribunal with respect to national long-term reform remedies of FNCFS; or

(b) have experience with First Nations government, social programs, child welfare, and child well-being; or

(c) are practicing lawyers in good standing with a provincial or territorial governing body; or

(d) are practicing as arbitrators or adjudicators of administrative tribunals or other like bodies; or

(e) are retired judges or justices of the peace.

49. Within the Roster of Arbitrators, at least six (6) Arbitrators shall have a law degree.

50. Canada and the Parties shall aspire to gender parity and diversity in representation in the composition of the Roster of Arbitrators.

51. Canada and the Parties shall select Arbitrators for the Roster of Arbitrators with a preference in favour of Arbitrators who are recognized as members of a First Nation.

52. If a selected Arbitrator resigns from the Roster of Arbitrators or becomes unable to serve on the Roster of Arbitrators, a replacement Arbitrator shall

be appointed as soon as reasonably possible, and no later than fifteen (15) days, following the procedure that was used in the appointment of the Arbitrator being replaced.

(a) For greater clarity, should the selected Arbitrator who resigned from the Roster of Arbitrators have been appointed under paragraphs 46(a) or (b), the party that nominated the selected Arbitrator shall appoint the resigning Arbitrator's replacement.

53. Canada shall enter into confidential contractual arrangements with the appointed Arbitrators which will establish the terms of their payment once appointed. The Parties shall be given an opportunity to review and approve the contractual arrangements prior to the contract being signed with the appointed Arbitrators.

54. Arbitrators shall be paid by Canada but Arbitrators shall remain independent from ISC and Canada.

55. Arbitrators shall be reasonably compensated at rates agreed to by Canada and the Parties.

Mandatory Training of Arbitrators

56. Any person selected for the Roster of Arbitrators must, at least ten (10) days prior to entering into the contractual arrangement in paragraph 53, demonstrate that they have completed at least one five (5) day / forty (40) hour professional development course in adjudication or arbitration or have experience appearing as an adjudicator or arbitrator, or as legal counsel before arbitral bodies, for at least the same amount of time, and have completed specialized cultural training to ensure that Claimant Disputes are dealt with in a respectful and culturally appropriate manner specific to First Nations.

57. The cost of the training and professional development, if incurred after the appointment to the Roster, shall be reimbursed by Canada, once successfully completed.

Dispute Resolution Process Administration

58. Parties or Claimants who have initiated a Dispute and Canada shall use ADRIC's administration services unless they agree to an alternative way of administering the Dispute Resolution Process.

C. Dispute Resolution Procedures – All Disputes

59. A party commences a Dispute by delivering a Notice to Arbitrate as prescribed in the ADRIC Arbitration Rules.

60. A Party must deliver a Notice to Arbitrate within one (1) year of becoming aware of the circumstances giving rise to the Parties' Dispute. Otherwise, the Party shall be deemed to have waived their right to have the Parties' Dispute heard.

61. A Claimant may commence a Claimant Dispute by delivering a Notice to Arbitrate within one (1) year of the Claimant becoming aware of the circumstances giving rise to the Claimant Dispute. Otherwise, the Claimant shall be deemed to have waived its right to have its dispute heard under the Dispute Resolution Process for Claimant Disputes.

62. Where a Notice to Arbitrate is delivered by a Party or by a Claimant, Canada must deliver its Answer to Notice within thirty (30) days of delivery of the Notice to Arbitrate.

63. If a Claimant delivers a Notice to Arbitrate containing a technical defect, Canada shall, within thirty (30) days, direct the Claimant to appropriate information about the delivery of Notices to Arbitrate and Claimant Arbitration Agreements, and may direct the Claimant to Duty Counsel. A technical defect shall not be considered a default.

Appointment of an Arbitral Tribunal or Appeal Tribunal

64. All Disputes shall be heard by an Arbitral Tribunal of three Arbitrators at first instance.

65. Each party to a Dispute shall appoint one arbitrator each from the Roster of Arbitrators established under paragraphs 45 to 55 of this Dispute Resolution Process, and the two arbitrators so appointed shall appoint the third arbitrator, who shall also be a member of the Roster of Arbitrators.

66. The third arbitrator appointed by the first two arbitrators shall be a lawyer or a retired judge and shall act as chair of the Arbitral Tribunal.

67. Appeals shall be heard by an Appeal Tribunal of three Arbitrators. The Appeal Tribunal shall be established by the process set out in paragraphs 65 and 66 of this Dispute Resolution Process.

    (a) For greater clarity, no Arbitrator appointed to the Arbitral Tribunal at first instance shall serve as an Arbitrator on the Appeal Tribunal with respect to the same Dispute.

68. Where ADRIC has been asked to appoint the Arbitral Tribunal, such Arbitrators shall only be selected or appointed according to the ADRIC arbitrator appointment protocol.

69. If an Arbitral Tribunal, Appeal Tribunal or a member thereof becomes

incapable of serving while seized of a Dispute, the timeframes applicable to that Arbitral Tribunal's or Appeal Tribunal's proceedings in respect of any Dispute shall be suspended until a replacement Arbitral Tribunal or Appeal Tribunal is selected.

70. In the event that no Arbitrator or no sufficient number of Arbitrators from the Roster of Arbitrators is available, and if the parties to a Dispute cannot agree on the appointment of an Arbitral Tribunal or Appeal Tribunal from outside the Roster of Arbitrators on consent, then ADRIC may appoint an Arbitral Tribunal or Appeal Tribunal composed of Arbitrators who are not on the Roster of Arbitrators.

Exchange of Parties' Positions and Documents

71. An Arbitral Tribunal may allow a Party or a Claimant in a Dispute to amend or supplement their statements, including their "Initial Evidence" as defined in the ADRIC Arbitration Rules, having regard to:

    (a) any delay caused by making the amendment or supplement; and

    (b) any prejudice suffered by the other parties to the Dispute.

Mediation

72. The parties to a Dispute may agree to enter into mediation at any time using a consensually selected mediator who may or may not be on the Roster of Arbitrators.

73. The mediator's reasonable fees and expenses shall be paid by Canada.

Manner of Proceedings

74. Unless the parties to a Dispute have agreed to proceed by way of written witness statements and argument, the Arbitral Tribunal shall convene an oral hearing. The location and manner of the oral hearing, as well as any other procedural appearances, shall be determined by the Arbitral Tribunal. The use of videoconferencing should be encouraged to reduce cost and accommodate parties and their counsel, provided this is consistent with the principles in the preamble above, including fairness, respect for culture, and sensitivity to persons with trauma.

75. Parties' Disputes are presumptively non-confidential and open to public attendance, however, an Arbitral Tribunal may order that all or part of a hearing be closed to the public, on request of a Party, subject to paragraph 40 of this Dispute Resolution Process.

76. Claimants' Disputes are presumptively non-confidential and open to public

attendance, however, an Arbitral Tribunal may order that all or part of a hearing be closed to the public, on request of a Claimant, subject to paragraph 40 of this Dispute Resolution Process.

77. An Arbitral Tribunal shall strive to schedule hearings to be held on consecutive days until completion, taking into account schedules, witness availability, and need for preparation time.

Default of a Party or Claimant

78. If, without explanation, any party to a Dispute fails to meet a timeline established by the ADRIC Arbitration Rules or by the Arbitral Tribunal's procedural order for taking a step in the Dispute Resolution Process, the Arbitral Tribunal may make an order that the party to the Dispute has foregone their opportunity to do so and may make such order as it deems fit.

79. Before making an order further to a default of a party to a Dispute, the Arbitral Tribunal shall give all parties to the Dispute written notice providing an opportunity to provide an explanation and may permit a party to a Dispute to cure its default on such terms as are just.

80. If, without showing sufficient cause or confirming that it will not tender evidence, a party to a Dispute fails to appear at the hearing or to produce documentary evidence, the Arbitral Tribunal may continue the proceedings and make a Dispute Award on the evidence before it.

Dispute Awards

81. An Arbitral Tribunal Dispute Award or Appeal Tribunal Dispute Award shall be made by a majority.

82. A Dispute Award shall be made in writing and shall state the reasons upon which it is based.

83. The Arbitral Tribunal or Appeal Tribunal may, on its own initiative, correct any clerical error, typographical error, or make a similar amendment to a Dispute Award, within thirty (30) days after the date of the Dispute Award.

Parties' Participation Costs and Legal Fees

84. Where a Party retains a lawyer to assist them with a Dispute or intervention in a Dispute, a Party may seek an order from the Arbitral Tribunal at any stage of the proceedings that Canada shall pay the fees and disbursements of a lawyer retained to assist them with a Dispute. Any such motion shall be granted unless to do so would be contrary to the interests of justice.

D. Procedures Specific to the Dispute Resolution Process for Claimant Disputes

Shared Objectives

85. To the greatest extent possible, this Dispute Resolution Process shall recognize and give effect to the following principles:

(a) Claimant Disputes should be resolved in a reasonable, collaborative, and informal atmosphere;

(b) Claimant Disputes should be heard in a location and manner that is convenient for the Claimant, including online or within the community of the Claimant;

(c) Claimant Disputes should be resolved in a manner that is respectful of the Claimant's community and culture;

(d) the Dispute Resolution Process should be accessible to Claimants; and

(e) First Nations legal traditions and principles may inform the resolution of Claimant Disputes, recognizing and respecting the diversity among First Nations.

Duty Counsel

86. Canada and the Parties shall, within ninety (90) days of the Effective Date, establish a roster of no fewer than twelve (12) Duty Counsel to assist Claimants with providing information and to provide independent legal advice and assistance with Claimant Disputes. Canada shall enter into contractual arrangements with the appointed Duty Counsel which will establish the terms of their engagement, which shall be consistent with the terms contained in paragraph 88 of this Dispute Resolution Process. The Parties shall be given an opportunity to review and approve the contractual arrangements prior to the contract being signed with the appointed Duty Counsel.

(a) If Canada and the Parties cannot agree on the appointment of a full roster of Duty Counsel pursuant to paragraph 86 within ninety (90) days after the Entry into Force Date, Canada and the Parties shall each appoint six (6) Duty Counsel to the roster of Duty Counsel within ten (10) days.

(b) If, following this subsequent ten (10) day period, Canada or the Parties have not appointed their six (6) Duty Counsel to the roster of Duty Counsel, the remainder of the roster may be established by the entities that have fully participated in the appointment of Duty Counsel.

87. Duty Counsel shall be paid by Canada at reasonable rates to be negotiated with Canada and the Parties.

88. Duty Counsel are independent from ISC and Canada and shall assist Claimants with understanding and accessing the Dispute Resolution Process for Claimant Disputes and bringing their case before the Arbitral Tribunal, including helping Claimants complete forms, collect documents for their hearings, understand their right to seek an appeal or judicial review and such other tasks or support as required to assist the Claimant, not including representing the Claimant before the Arbitral Tribunal.

Claimant Participation Costs and Legal Fees

89. Where a Claimant retains a lawyer to assist them with a Claimant Dispute, a Claimant may seek an order from the Arbitral Tribunal at any stage of the proceedings that Canada shall pay the fees and disbursements of a lawyer retained to assist them with a Claimant Dispute. Any such motion shall be granted unless to do so would be contrary to the interests of justice.

Proactive Information Sharing – Duty Counsel

90. When requested to, or when notified by a Claimant that they may or intend to deliver to Canada a Claimant Dispute, Canada's officials shall provide the First Nation or FNCFS Service Provider with contact information for Duty Counsel.

Intervention by a Party

91. A Party may bring a motion to intervene in a Claimant Dispute, and the Arbitral Tribunal shall determine whether the intervention will be allowed, after hearing submissions from the Claimant, ISC, and the proposed intervenor on such terms as are just.

Participation of Cultural Officer

92. Canada and the Parties shall, within ninety (90) days of the Effective Date, establish a roster of no fewer than twelve (12) Cultural Officers whose role it is to provide information and advice to the Arbitral Tribunal about culturally appropriate resolution of Claimant Disputes. Canada shall enter into contractual arrangements with the appointed Cultural Officers which will establish the terms of their payment. The Parties shall be given an opportunity to review and approve the contractual arrangements prior to the contract being signed with the appointed Duty Counsel.

    (a) If Canada and the Parties cannot agree on the appointment of a full Roster of Cultural Officers pursuant to paragraph 92 within ninety (90) days after the Entry into Force Date, Canada and the Parties shall each appoint six (6) Cultural Officers to the roster of Cultural Officers within ten (10) days.

(b) If, following this subsequent ten (10) day period, Canada or the Parties have not appointed their six (6) Cultural Officers to the roster of Cultural Officers, the remainder of the roster may be established by the entities that have fully participated in the appointment of Duty Counsel.

93. Cultural Officers shall be paid by Canada at reasonable rates to be negotiated with Canada and the Parties.

94. Cultural Officers are independent and shall only advise the Arbitral Tribunal or Appeal Tribunal.

95. In every Claimant Dispute, the Arbitral Tribunal shall ask a Claimant if the Claimant wishes to have a Cultural Officer retained.

96. The Cultural Officer shall make their recommendations in advance of the pre-hearing and may make further recommendations at any other time.

97. The Cultural Officer may consider, among other things:

(a) any requests of the Claimant;

(b) the Indigenous legal traditions and protocols identified by the Claimant; and

(c) any culturally rooted procedures that may promote access to justice for the Claimant and ensure substantive equality and fairness.

98. The Cultural Officer may:

(a) recommend that a representative knowledge keeper or elder sit with the Arbitral Tribunal to provide guidance on legal traditions and protocols without the need to qualify them as an expert witness;

(b) recommend procedures for use by the Arbitral Tribunal to incorporate legal traditions and protocols for use during the hearing of the Claimant Dispute, including the use of ceremony or prayer prior to or immediately following a proceeding;

(c) request that the Claimant be permitted to bring a Party or other support person to attend at any aspect of the Dispute Resolution Process;

(d) request that proceedings be conducted in an Indigenous language;

(e) request that proceedings be conducted orally or in writing; and

(f) request that proceedings be open or closed to the public and that aspects of the proceeding be anonymized or confidential.

99. Any such recommendations or requests in paragraph 98 are subject to the

sole discretion of the Arbitral Tribunal, after hearing submissions on the question. Any such recommendations or requests shall be granted unless to do so would be contrary to the interests of justice.

Expert Appointed by Arbitral Tribunal

100. On its own initiative, an Arbitral Tribunal may seek representations from the Claimant and from ISC concerning a proposal by the Arbitral Tribunal to appoint one or more independent experts to report to the Arbitral Tribunal on specific issues to be determined by the Arbitral Tribunal, after which the Arbitral Tribunal may appoint one or more independent experts to report on specific issues, in the manner set out by the ADRIC Arbitration Rules.

Expenses of Arbitral Tribunal, Appeal Tribunal and Related

101. The fees for administration services provided by ADRIC, and the reasonable expenses of the Arbitral Tribunal and Appeal Tribunal, including the cost of retaining experts, shall be borne by Canada.