

Self determination: Idealism and realism

Treaty 6 Territory: Loving Justice

September 10, 2025 | Presented by **Cindy Blackstock,**
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Société de soutien à l'enfance
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du Canada



Blatant and invisible colonialism

- Blatant Colonialism mutilates you without pretense; it forbids you to talk, it forbids you to act, it forbids you to exist. Invisible colonialism, however, convinces you that serfdom is your destiny and impotence is your nature; it convinces you that it is not possible to speak, not possible to act, not possible to exist.”

Eduardo Galeano, *The Book of the Embraces*, 1989

Manifestations of colonialism

- Dichotomizes people as savage/civilized
- Dehumanizes individuals and Nations
- Normalize and legitimizes discrimination
- Imposing language
- Engrains discriminatory thinking and relationships
- Disables resistance and rebuilding
- Attacks and discredits resisters

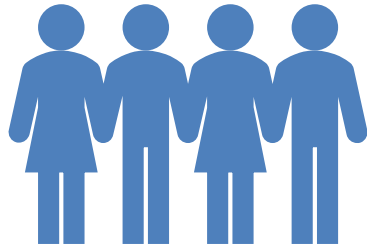


UNICEF: State of the World's Children

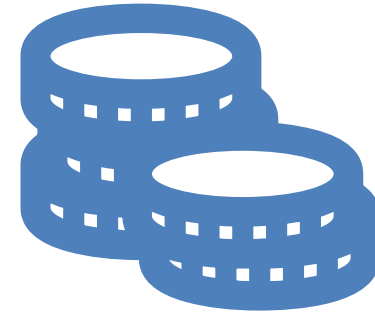
Three Mega Trends

- **Demographic Transitions**
- **Climate and Environmental Crisis**
- **Frontier Technologies**

More mega trends affecting Indigenous children



Political and social changes



Global wealth
(Inequity)

What is the
problem we
are trying to
solve with
jurisdiction?



Is child welfare the problem or a symptom?

Most Child Welfare reform measures focused here resulting in minimal change



First Nations Children **17.2 times** more likely to be placed in child welfare care
72% of all First Nations Children in Care are off reserve
Child Welfare reform often codifies government lack of attention to structural risks as child welfare failures



Child welfare system implements child welfare legislation
very limited control over structural risks



Statutory Definitions of Child Neglect: parent unable or unwilling to provide necessities of life –
Codifies structural risks as parental failure



Locus of Control	Services: Fed/Prov. Funding and community delivery → Family chooses to accept help if it is available
Structural Drivers	Mental Health, Addictions, Domestic Violence, Poverty, Poor Housing
Root Causes	Colonialism and lack of substantive equality for First Nations in public services on and off reserve



What is the CHRT case about?

Stop Canada's systemic discrimination against First Nations children, youth and families now and forever in:

First Nations Child and Family Services

Jordan's Principle



What is the focus of CHRT Long Term Reform?

Child Welfare Reform?



Stopping Canada's discrimination now and forever?



Three Paths to ending Canada's Discrimination and Preventing Recurrence



Negotiation

Consent order to CHRT

Requires agreement from Canada
on content and implementation

Approval by First Nations
Leadership

Approval by Tribunal



Combination

Consent order on matters Canada
agrees to in negotiation

Direction from Tribunal on matters
in dispute

Orders do not expire unless
replaced by another order



Litigation

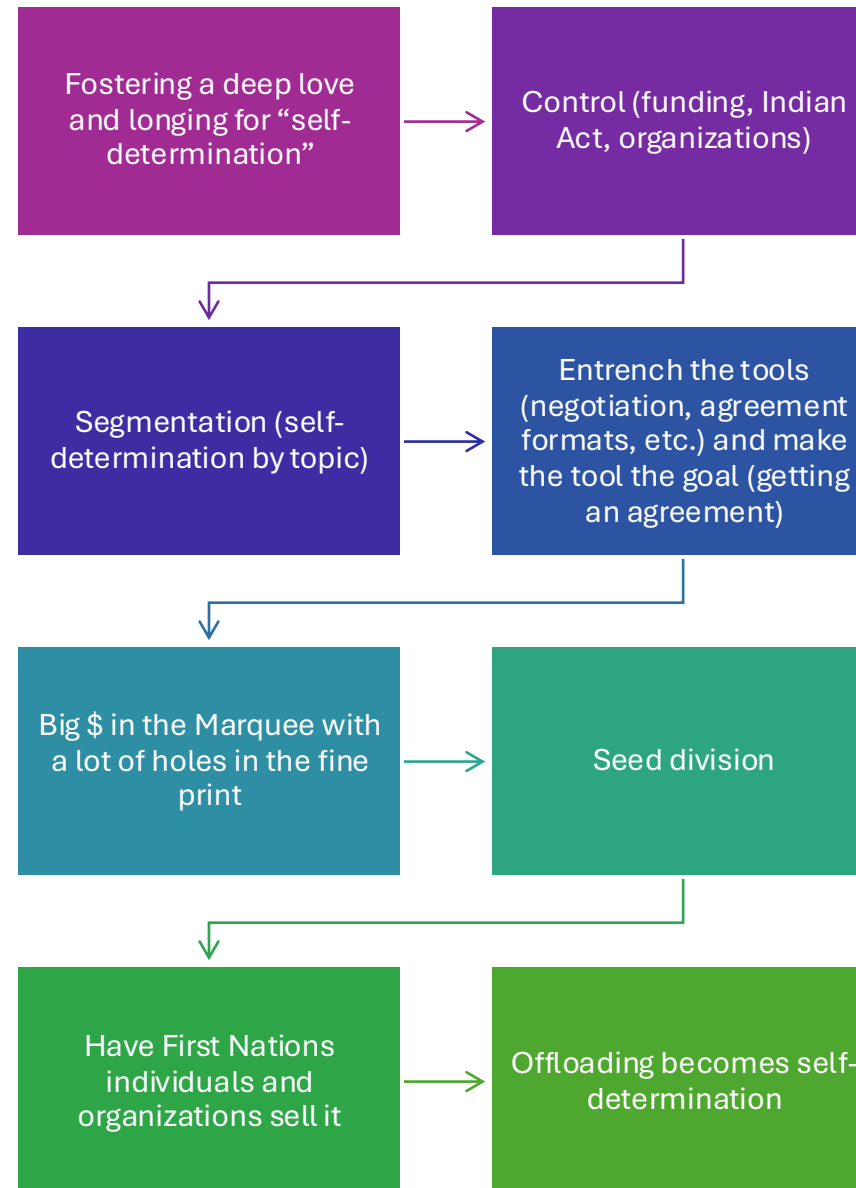
First Nations developed plan

Does not require Canada's
agreement

CHRT Party positions should be
consistent with First Nations'
direction and CHRT orders

Tribunal process is public

Colonial control of self-determination



Negotiations: Better than Litigation or Canada's Colonial Playground?

Significant power and resource imbalance

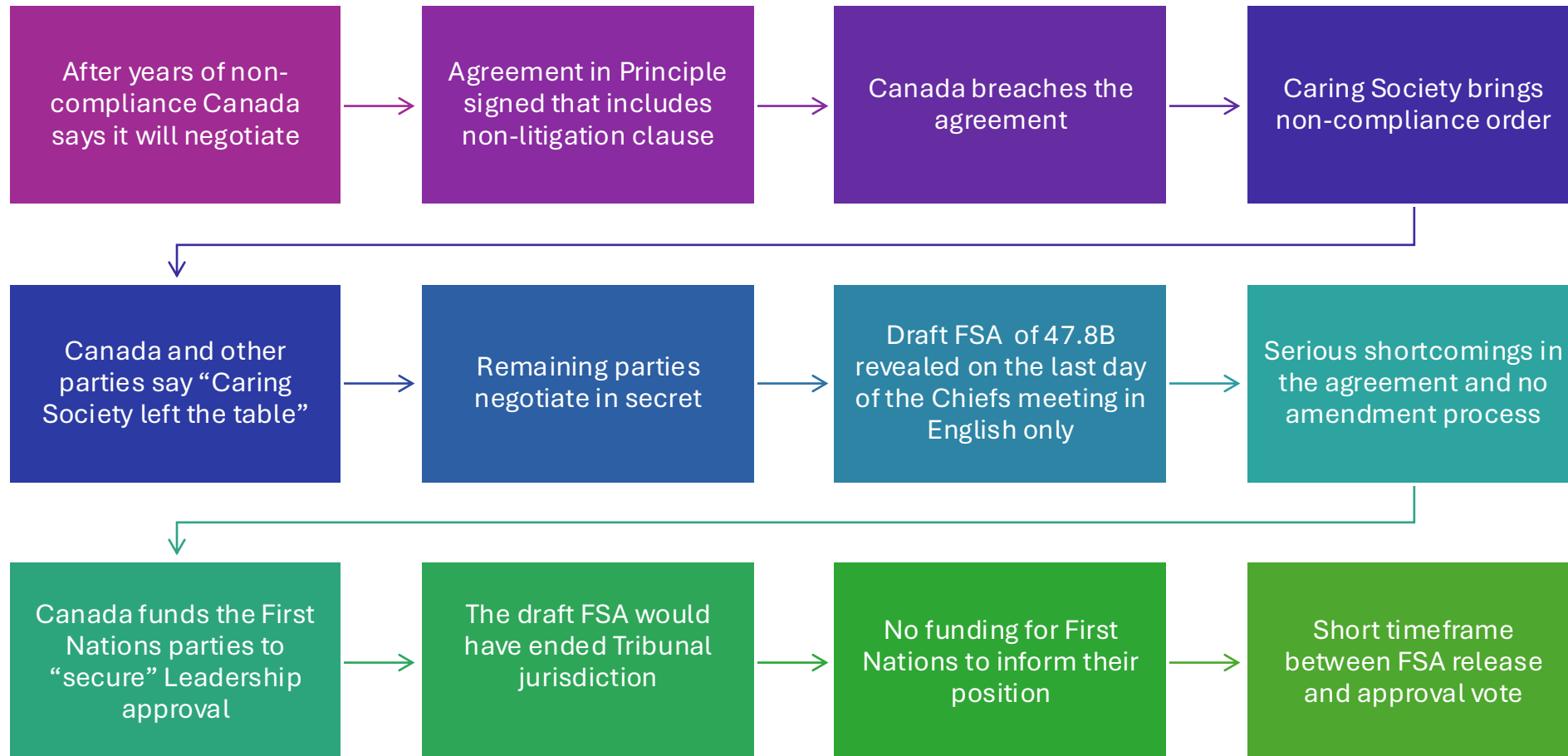
negotiations to delay, defer or disrupt

Canada insists on litigation-privileged negotiations so it can know everything while keeping First Nations in the dark

Canada controlling court ordered legal costs



The Set up: Draft Final Settlement Agreement



Disrupting colonial approval



Convened Informal National Technical Working Group to analyze agreement and brief Leadership



Most First Nations Leadership organized regionally to have information sessions inviting different points of view



First Nations leaders with experts organized across regions and drafted resolutions to propose a new process



Leadership changed the agenda at the approval meeting to ensure different points of view were heard



First Nations leaders adopted a regionally representative negotiation reset (National Children's Chiefs' Commission)

The National Children's Chiefs Commission

Formed by resolution by Rights Holders

Mandated to re-negotiate with Canada

Each First Nations region, except Ontario, appointed a Commissioner and technical support

Supported by secretariate, legal and negotiating team

Required by Rights Holders to collaborate with the Caring Society and Assembly of First Nations Executive

No funding from Canada

Canada's Conduct Post Leadership direction in October of 2024

Says it is "disappointed" by First Nations decision making

Announces it will only negotiate with Ontario that drafted the failed FSA and agrees with the content.

Minister suggests Chiefs outside of Ontario are not "ready"

First Nations in Ontario pass resolutions approving the draft FSA

Motion filed with the Tribunal, supported by Canada, to replace the orders with their agreement

Canada announces the Ontario agreement will "inform" national reform

Tribunal rules that OFA will not apply to other Nations
Hearing/decision date TBA

Canada files with the Tribunal saying it met twice with the NCCC and wants to know if that is enough

2025 CHRT 80: Safeguarding Future Generations

- CHRT order providing guidance on long term CFS reform
- Decision on Caring Society motion on national long- term reform outside Ontario is still under reserve
- **Ontario Agreement and National reform continue concurrently and separately**
- **Order for Caring Society, AFN in consultation with National Children's Chiefs Commission to consult and return with a plan to stop Canada's discrimination and prevent recurrence on December 20, 2025**
- **Canada can work on a separate plan and file on December 20, 2025: Encouraged to meet with NCCC**
- **Order does not include Jordan's Principle**

ction



Alignment: Resolutions and 2025 CHRT 80

- Tribunal's order to cease discrimination is treated the same as an injunction (para 60)
- Orders meant to safeguard multiple generations (para 61)
- Improve on the CHRT orders and respect the spirit of the orders (para 113 (5))
- Based on best available evidence (para 113 (4))
- Respect the human rights in the Convention on the Rights of the Child and UNDRIP (para 113 (8))
- Incorporate regional and First Nations perspectives (para 113)
- Plan will proceed with or without Canada (para 125, 126)



Regional perspectives (outside of Ontario)

AFN Resolution supports regional variations to a national agreement

2025 CHRT 80 strongly aligned with Leadership Direction on long term reform

First Nations can negotiate with Canada on CFS and Jordan's Principle so long as the Tribunal orders are not engaged.

Any agreement that touches on CHRT orders will very likely require CHRT approval per 2025 CHRT 80

Recent CHRT decisions strongly encourage a national arrangement with or without Canada

Most promising path: national agreement with regional variations to address distinct circumstances linked to remedying discrimination

Next Steps



Order is to file a plan and remedies for national reform outside of Ontario on December 20, 2025 (Canada encouraged to negotiate but if it does not it will have to put its own plan forward consistent with the CHRT orders) Tribunal will then order a path forward

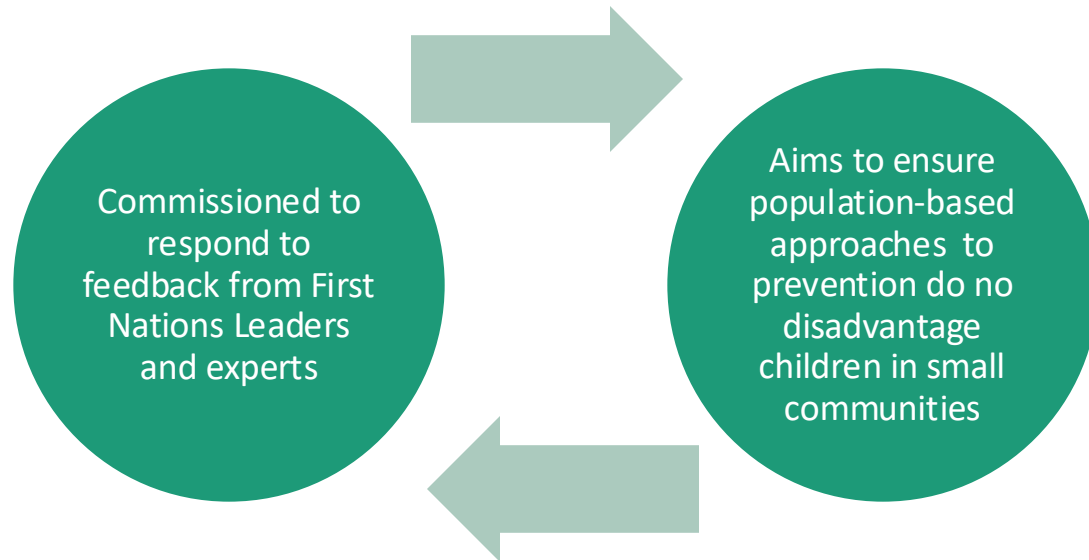


AFN, Caring Society and NCCC Consultation with First Nations and experts in the affected regions. Materials to assist regions is coming soon.



Awaiting CHRT decision on Caring Society consultation motion.

Engage First Small Populations Prevention Study



Key Findings

Vision: Nations in the study want to serve their citizens on and off reserve

Capacity: Minimum base funding to provide prevention is approximately \$1.2 Million per year

Report available:
fnwitness.ca

What we are hearing about Canada's approach to Jurisdiction in child and family



Firewall itself from any liability and additional funding requests



Wants to enter into short term funding agreements



Incentivizes jurisdiction via C92 and is aligning funding with the rejected FSA



Views First Nations laws as applicable only in home province



Applicability in other provinces and with other services (i.e.: provincial health, police) as being First Nation responsibility.



Wants Fixed Amounts and believes CHRT orders no longer apply when First Nation signs funding agreement



Prefers to "discuss" without transcription

Potential Jurisdictional Model Options



Operate laws per provincial legislation where consistent and draw down jurisdiction in areas of inconsistency.



Partial delegation (i.e.: deliver prevention)



Full jurisdiction per C-92



Self-determination using a different process (i.e.: Treaty, Section 35).



Recommended reforms to C-92

Mandatory substantively equal funding on and off reserve;

Embed Jordan's Principle

Ensure adequate funding to resolve drivers of child maltreatment

Recognize all forms of jurisdiction not just C92

Include technical and funding supports for First Nations pursuing jurisdiction to ensure success

Recognize traditional family laws that cut across program areas and provide funding for same.



Key messages re: jurisdiction

- Jurisdiction, Equity, People and Resources are key to success
- Funding purpose, structure and definitions essential to getting it right
- Focus on drivers of child maltreatment
- Community based visions must guide the process
- Proceed slowly and with due diligence





Jordan's Principle

- Named after Jordan River Anderson
- Sacred and legal principle
- Access the education, health, and social services supports First Nations children on and off reserve need when they need them

Letters from ISC Minister Hajdu



February 10, 2025: Reintroduces provincial buck passing measures and announces “region by region” approach

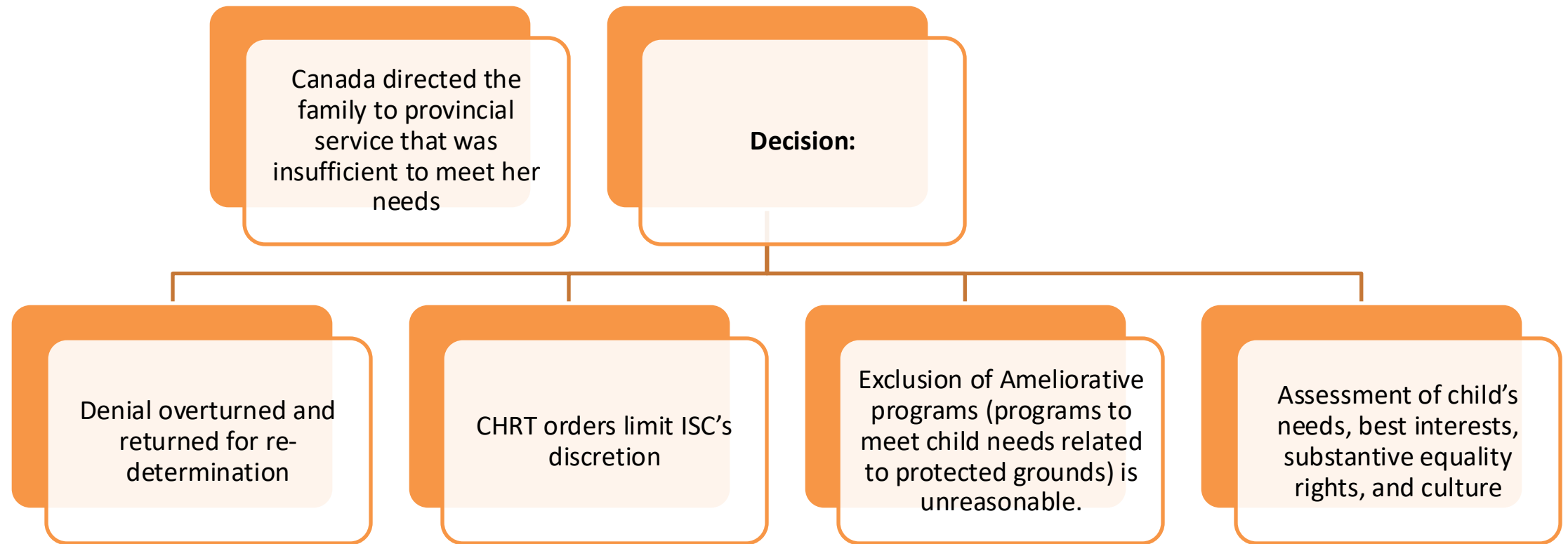


February 10, 2025: Minister writes to Provincial Governments saying Jordan’s Principle not intended to replace “core programming that falls under provincial/territorial jurisdiction”

Jordan's Principle: Stopping Canada's discrimination

- Kids should not pay for ISC's failure to process cases in a timely manner: Demand ISC automatically approve all cases in the backlog starting with the most urgent ones
- Demand ISC fully implement Jordan's Principle and withdraw discriminatory bulletins and conduct as per 2025 CHRT 6
- ISC to restore funding to First Nations and First Nations organizations for Jordan's Principle and learn from their best practices
- ISC to work with First Nations, First Nations experts and the parties to honour Jordan's Principle
- Hold ISC accountable in court

Cully v. Attorney General T-1255-25 (Refer to Information Sheet for more information)




Powless v. Canada

London

Grandmother challenges Ottawa's refusal to apply Jordan's Principle to renovate mouldy home

Jordan's Principle is designed to ensure Indigenous kids get care, services supports in a timely manner

 Isha Bhargava · CBC News · Posted: May 15, 2025 9:34 AM EDT | Last Updated: May 15



Joanne Powless, 65 of the Oneida Nation of the Thames is the primary caregiver for her two granddaughters. The family has been fighting Ottawa for three years to fix their mould-contaminated home which has caused the girls, aged eight and 10, to suffer from severe asthma and multiple hospitalizations. (Submitted by Joanne Powless)

Note: Canada appealed to Federal Court of Appeal. Hearing: Oct 6, 2025

- **Kids with respiratory illness need mold remediation**
 - **Denial: ISC said Jordan's Principle is not intended to change the scope of special or ameliorative programs and referred the family to another program.**
 - **The Federal Court found it to be unreasonable that:**
 - ISC narrowly assessed the request without considering key principles (i.e.: needs, substantive equality).
 - ISC relied heavily on the cost to deny request
 - ISC's conclusion that other programs suffice.
- The Federal Court confirmed that Canada must focus on whether the children's needs are addressed, not whether there is an ameliorative program.**

Discrimination does not pay

Canada has not learned- stopping discriminatory harms to kids is better and cheaper.

- 1) **Class Actions (23.4B) spent when hundreds of millions would have fixed the problem decades ago**
- 2) **Children's lives and childhood trauma echoes across lifetime**
- 3) **Best government investment is in children (saves \$ throughout the lifespan)**



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Next Steps

- **File a Plan for National Reform:** By Dec 20, 2025, the AFN, Caring Society and NCCC need to file a plan for national child and family services reform outside of Ontario.
- **No waiting for Canada** Canada encouraged to work with AFN, Caring Society and NCCC but if not then then Canada has to present its own plan (with evidence)
- **Consultation with First Nations and Experts:** AFN, Caring Society and NCCC to consult First Nations and experts to inform the plan
- **Advocate with Canada.** Advocate with the Prime Minister and Minister to comply with CHRT orders, negotiate in good faith.
- **Return to the Tribunal** on Jordan's Principle consultation orders per 2025 CHRT 6 (backlogs, urgent definition etc.)

How to help

1

Regional consultation:
Meet regionally with NCCC
Commissioner to
determine the best
pathway for regional
consultation.




2

Demand ISC retraction of
discriminatory policies and
Bulletins that undermine
the CHRT orders and put
children at risk. Take legal
action if needed

3

Support/contribute
funding for the NCCC and
Regional Consultations.

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