

Caring Society Update: First Nations Child and Family Services and Jordan's Principle

Presented by
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First Nations Child & Family
Caring Society of Canada

Société de soutien à l'enfance
et à la famille des Premières Nations
du Canada

What you Need to Know

- Canadian Human Rights Tribunal **has jurisdiction** over child and family and Jordan's Principle.
- AFN and Chiefs of Ontario, Nishnawbe Aski Nation (interested parties) **negotiating FSA on child and family with Canada. Caring Society, Canadian Human Rights Commission, Amnesty not at that table.**
- Caring Society brought **non-compliance motion on Jordan's Principle**. CHRC supports, AFN supports some relief opposes others, positions of COO and NAN are TBD. **Hearing June 3-4, 2024- AFN seeking to delay hearings until sometime after July 19, 2024***
- Class action distribution protocol on children in care going to federal court on **June 19, 2024.**





What is the CHRT case about?

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

First Nations Child and Family Services

Jordan's Principle

Three Paths to ending Canada's Discrimination and Preventing Recurrence



Negotiation

Final Settlement Agreement (FSA)
Requires agreement from Canada
Approval by First Nations in
Assembly
Approval by Tribunal



Combination

Consent order on matters
Canada agrees to in negotiation
Contested hearing on other
matters



Litigation

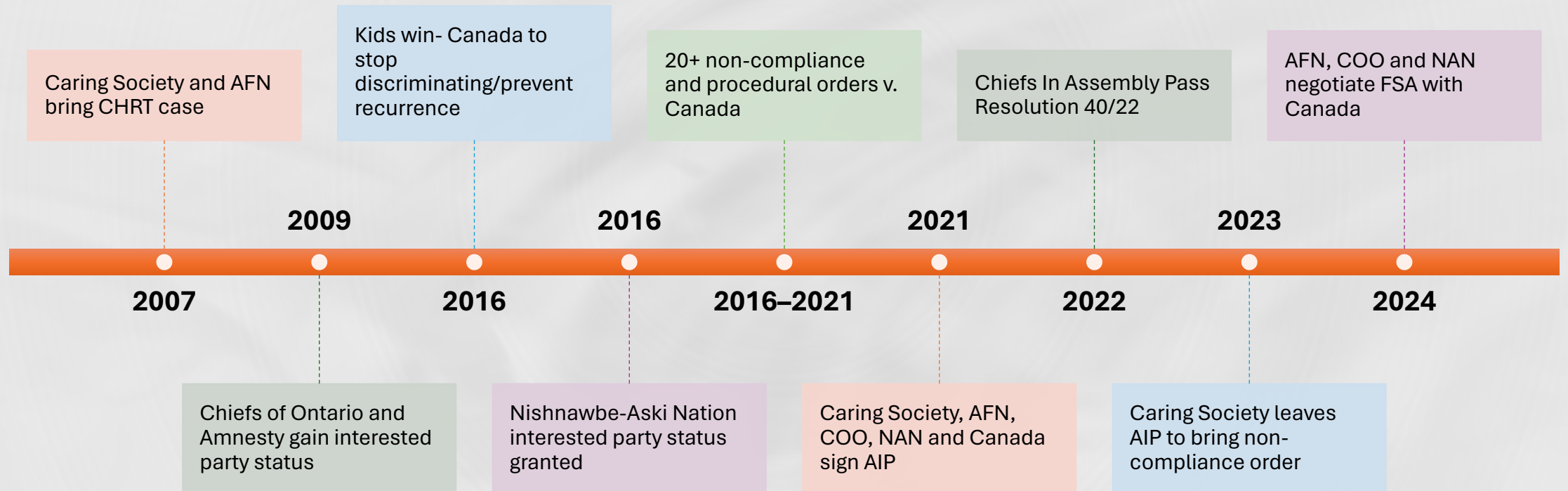
Consistent with First Nations in
Assembly
Does not require Canada's
agreement
Tribunal process is public



CHRT Case Parties: First Nations Child and Family Caring Society et al v. Attorney General

- Complainants: AFN and Caring Society
- Canadian Human Rights Commission
- Interested Parties
 - Chiefs of Ontario (1965 Indian Welfare Agreement)
 - Amnesty International (Human Rights)
 - Nishnawbe-Aski Nation (Remoteness in Ontario Northern Communities)

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



Outside the AIP: Caring Society role in CFS

- ✓ Caring Society maintains full party status at the CHRT
- ✓ End Canada's discrimination & prevent recurrence
- ✓ Committed to First Nations driven evidence (via IFSD)
- ✓ Prepared to work with AIP parties (Canada, AFN, COO, NAN) and non-AIP parties who are a part of the CHRT (Canadian Human Rights Commission, Amnesty International)
- ✓ Publicly post Caring Society negotiation approach/positions
- ✓ Respect privacy of other parties
- ✓ Welcoming advice from Regional experts, NAC and EAC
- ✓ Respond to information requests



Caring Society positions on CFS posted on fnwitness.ca

- Transparency
- Accountability
- Respect for FPIC
- Focus on ending Canada's discrimination and preventing it from happening again
- Feedback encouraged
- Document will evolve as feedback received

Reformed Approach to Child and Family Services

March 2024



Keys elements of funding approaches



**Define your purpose and principles to shape your structure and funding.
Link with enforceability to monitor and ensure discrimination does not reoccur.**

Caring Society Principles

- Best Interests of the Child (per C92)
- Cultural Continuity
- Honour of the Crown
- Needs Based Services
- Reconciliation
- Substantive Equality



Caring Society Key Definitions

- First Nations child recognized by their Nation
- Inflation- 2 percent base adjusted upwards to CPI
- Population- all recognized by Nations for CFS
- Structural Drivers- factors that fuel over-representation



Agency Funding Model (DRAFT – February 2024)

What is **NOT** included in FNCFS agency estimates:

- ✗ Post-majority supports and services
- ✗ First Nations Representative Services
- ✗ Capital (new acquisitions/builds and maintenance of owned assets). IFSD's recommendation is a national, application-based pool

The block approach:

- Allocating *sufficient* resources to a service provider for the discharge of their mandate.
- The provider makes the decisions on *how* to allocate resources to meet the needs of children and families.
- Providers work within a sufficient budget to discharge their mandates and have recourse to emergency resources for extenuating circumstances.

In its calculations for national estimates of FNCFS agencies:

1. FSD uses FNCFS agency-reported federal portions of expenditures from FY 2021-2022.
2. The agency-reported federal expenditures for FY 2021-2022 were adjusted for inflation and population to bring them to 2023-2024 dollars.
3. For any non-reporting FNCFS agencies, their estimated federal expenditures were extrapolated based on province and road access.
4. The total value of agency-reported federal expenditures is defined by IFSD as the baseline budget in its calculations.
5. To this baseline budget, all top-ups, i.e., prevention, poverty, etc. are added.
6. All components are adjusted for remoteness.
7. Projections for future fiscal years are grown by inflation and population.

Emergency Fund <ul style="list-style-type: none"> • 2% of baseline budget • Support responses to unanticipated circumstances related to CFS that affect demand for core services (protection and prevention). • Funding access, options include national pool, regional pool, or provider-managed funds. 	Maintenance <ul style="list-style-type: none"> • 3% Support to mitigate the changing costs of child maintenance within the regular course of business. 	Information Technology (IT) <ul style="list-style-type: none"> • 5%-6% of baseline budget for hardware and software, based on not-for-profit industry standards 	Results <ul style="list-style-type: none"> • 1%-5% of baseline budget to support data collection and analysis.
	Prevention <ul style="list-style-type: none"> • (\$2,500/person on-reserve) • Reduces children's contact with protect services; secondary and tertiary services 	Remoteness <ul style="list-style-type: none"> • 15% scaled average of Cost Adjusted Factor (CAF) • IFSD recommends applying it to all FNCFS agencies 	Poverty <ul style="list-style-type: none"> • Difference between MBM and total after-tax median household income on reserve • NOT poverty alleviation and NOT an income supplement • Resources to mitigate the impacts of deprivation as a driver of contact with protection

BASELINE FUNDING: FNCFS agency's total federal expenditures for the delivery of CFS reported through the 2021-22 questionnaire. All expenditures are included (as they were reported as a total by FNCFS agencies), e.g., maintenance, least disruptive measures, prevention, protection, etc.

Funding Approach First Nations without Agencies



Option One

Status Quo (\$2500 per resident for prevention and \$283 for First Nations reps) Adjust with pop and inflation

Status Quo Plus – deliver \$2500 per capita in a block



Option Two: Regional Support model



Option Three: First Nations Needs

First Nations without Agencies (IFSD Report: fnwitness.ca)

To estimate funding amounts, IFSD developed a series of scenarios. There are three scenarios (scenarios 3a, 3b, 3c), in addition to the base scenario (scenario 1), that are reviewed in the integral report (all other scenarios are included in the appendix). These scenarios use different per capita allocations to define a baseline and include top-ups for service-related activities, e.g., information technology. Over the five-year period, estimates range from \$1.3B in scenario 1 to \$2.6B in scenario 3c (Figure A).

Figure A

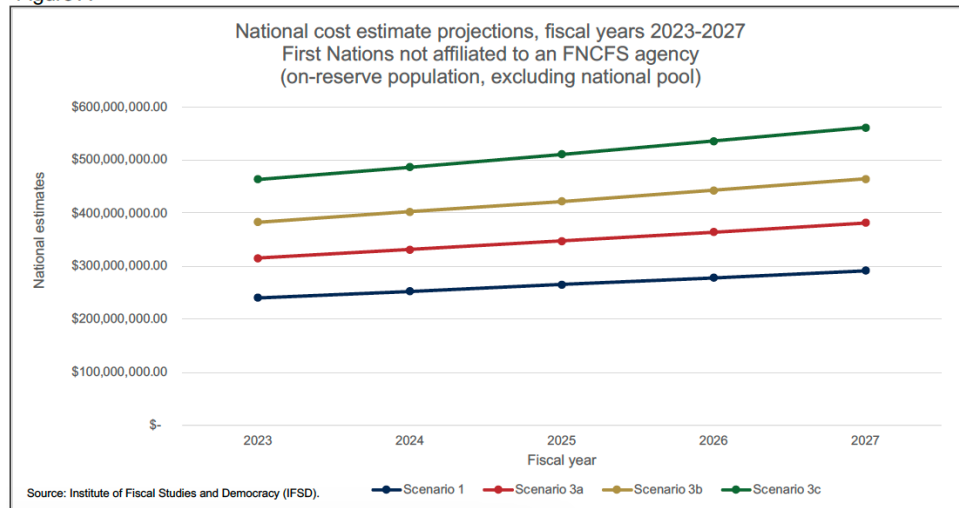


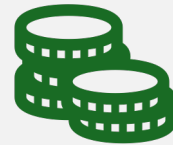
Table A

Option	Description	Change from current state
1) Status quo	Fixed contribution approach.	None. Likely revision to terms and conditions.
1a) Status quo plus	Apply block contribution approach.	First Nations have greater flexibility in how funds are used for CFS in communities. Must work with a fixed amount of funding.
2) Regional support model	Trusted regional organizations would serve as the funding allocator and capacity support provider for First Nations not affiliated to an FNCFS agency.	Variation in regional allocation models. Localized capacity support for CFS.
3) First Nations needs assessments	Funding held in trust by regional organizations until First Nation is prepared to accept the funding for use (within approx. 1-5 years), following consultation with community on their own timeline.	Resources accessed based on readiness of First Nation.

What does the IFSD proposed funding approach look like for your agency or First Nations without an agency?



To find out what your agency budget would be under the new model contact helaina.gaspard@ifsd.ca



Invite Helaina Gaspard to do a presentation on the funding research



Optimize enforceability with clear and strong definitions, purpose, principles, structure and enforcement. Possible option: statutory funding?

National/Regional Pools

1. Planning fund: This is a substantive equality measure to account for the agencies subject to 20-1 til 2018 or new agencies that have become operational since 2016 who had less ramp up time to deliver services.
2. Extenuating circumstances: This is for all agencies and accounts for extenuating costs arising from the usual business of child welfare (high needs children in care, etc.)
3. Emergency circumstances: These are the usual bucket of emergencies that can put pressures on agencies- civil unrest, natural emergencies, states of emergency etc.



National and Regional Hubs (Secretariates)

National: Non-political technical support for national data collection, research, best practices, training

Regional: Non-political technical support for training, regional data collection, research, workforce development/training

Capital


Capital for the provision of First Nations Child and Family Services and Jordan's Principle at actual cost (including remediating the structural risks driving children into care).

Expedited process for urgent requests

Jurisdiction

Canada ought to ensure non-discrimination for children, youth and families in all jurisdiction models that First Nations may choose including, but not limited to:

- Treaty
- Self Government Agreement
- C92
- Delegated child and family services agencies
- Other



Justice for children off reserve

- **72 Percent of all First Nations children in care are off reserve**
- Supreme Court Decision on C92 references **Jordan's Principle** as mechanism to ensure First Nations children do not fall through the cracks
- **Press Provinces/Territories to adopt** a CHRT compliant definition and approach to Jordan's Principle
- **Press Provinces/Territories to adopt** substantively equal and culturally appropriate measures for child and family off reserve



Urgent Non-Compliance re: Jordan's Principle

- **Canada's Non-compliance includes**
 - Unopened – delayed processing requests
 - Backlog of approved payments
 - Lack of timely and compassionate response to urgent cases
 - Serious issues with the 24-hour ISC Jordan's Principle and regional phone lines
 - Denying requests on non-permissible grounds (i.e.: income support)
- **Caring Society Remedies:** Presumptive approvals for requests under \$500 with professional letters; filling holes in other underfunded areas (education/health/income assistance); automating requests/payments; quality control, provide liability protection for First Nations and Coordinators

Non-compliance motion: a last resort

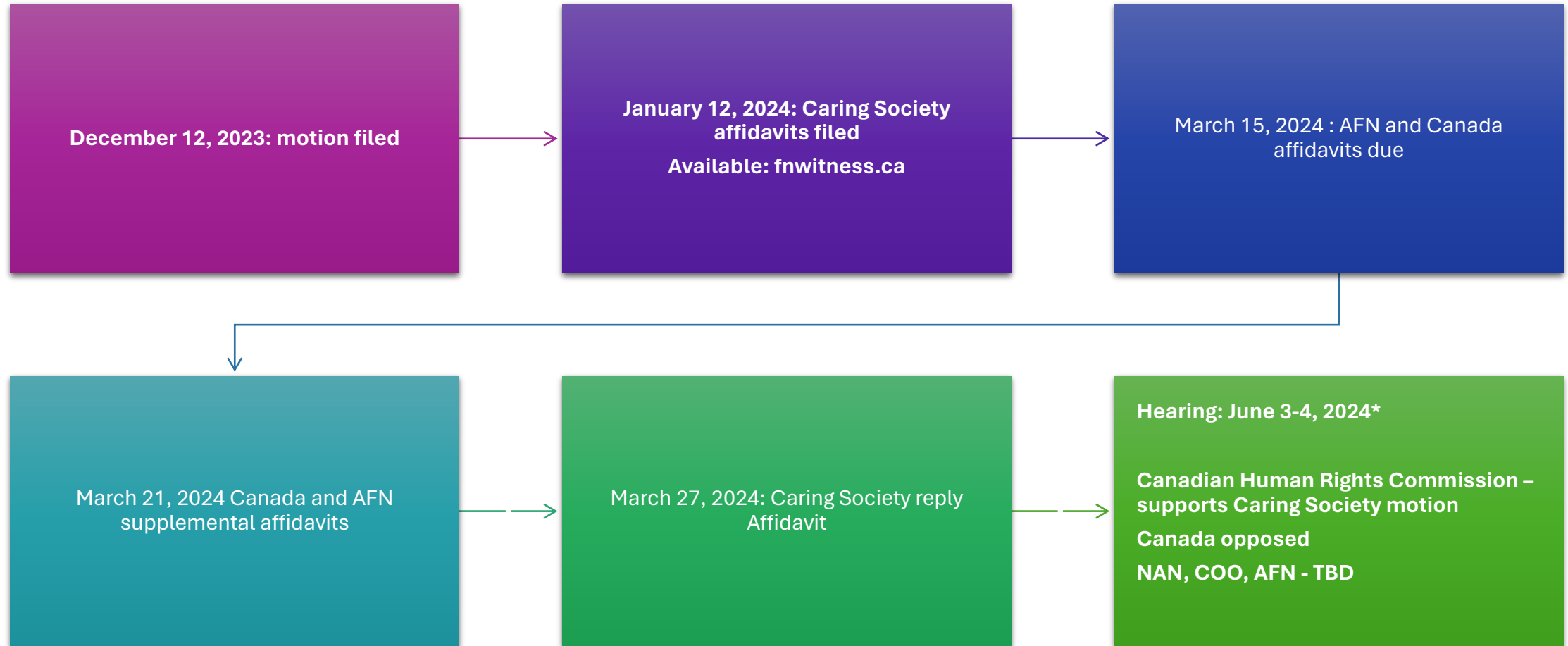
- Caring Society flagging non-compliance **since 2018**
- Caring Society **proactively suggesting solutions**
- Canada **did not resolve concerns**
- **Growing severity of harms for First Nations children**
- **Other serious negative impacts for First Nations (bridge financing Jordan's Principle requests, coordinators taking the brunt of Canada's non-compliance, etc.)**



ISC Jordan's Principle request backlog estimates by region (March 27, 2024)

Regional	Lowest Estimate	High Estimate
Alberta	4,385	8,279
Atlantic	1,873	4,805
BC	4,511	5,340
Manitoba	8,443	16,353
Northern	5,271	11,820
Ontario	9,565	13,692
Quebec	156	638
Saskatchewan	9,575	24,133
TOTAL	49,445	81,723

Key legal dates: Jordan's Principle Non-Compliance Motion (fnwitness.ca)



How You Can Help

- **Support the non-compliance motion on Jordan's Principle and ensure it is heard without delay**
- **Ensure your technical experts (NAC and Regions) have adequate time and information to review any proposed agreements to **inform** First Nations Leadership decision making**
- **Review and provide feedback on the **Caring Society positions****



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