

Supreme Court of Canada Decision on C92 and interface with Canadian Human Rights Tribunal case on First Nations children

Presented by
Mary Teegee, Naomi Metallic and Cindy
Blackstock
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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

Act Respecting First Nations, Metis and Inuit Children Youth and Families

- Compliance with National Standards
 - Substantive Equality
 - Cultural Continuity
 - Best interests of the Child
- Creates a pathway for jurisdiction
- Canadian Human Rights Act
- Charter of Rights and Freedoms





Child and Family Services: key facts

- First Nations children over-represented at 17.2 times the rate of other children (First Nations CIS- 2019)
- 72% of First Nations children in care are **off reserve** (predominantly served by provinces)
- Main reason why First Nations children go into care is neglect
 - ✓ Addictions
 - ✓ Domestic violence
 - ✓ Mental health
 - ✓ Poverty
 - ✓ Poor housing

What are the key problems we need to solve in child and family?

The drivers of child maltreatment

Stop Canada's discrimination and ensure substantive equality

Stop provincial discrimination and ensure substantive equality

Accountability to children and youth



Structural Problems Affecting Child Welfare

Most Child Welfare reform measures focused here →

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 problems can jurisdiction solve?

Definition of neglect: unable or unwilling to provide necessities of life

Neglect is a serious issue particularly for young children

Need to hold caregivers accountable for things they can change

Need to hold governments/others accountable for child risk beyond the ability of caregivers to change



Can encode culturally based standards particular to a Nation

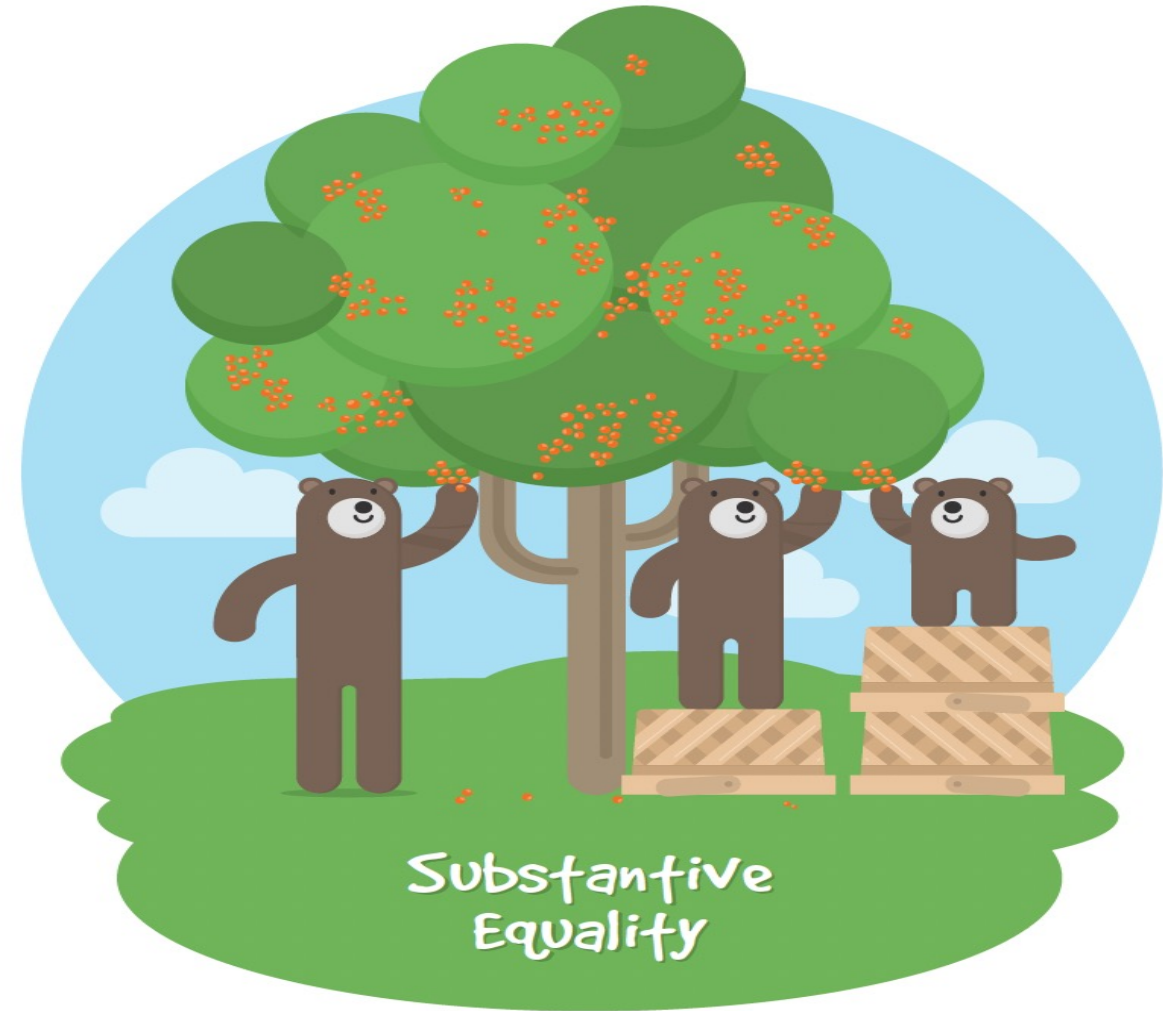
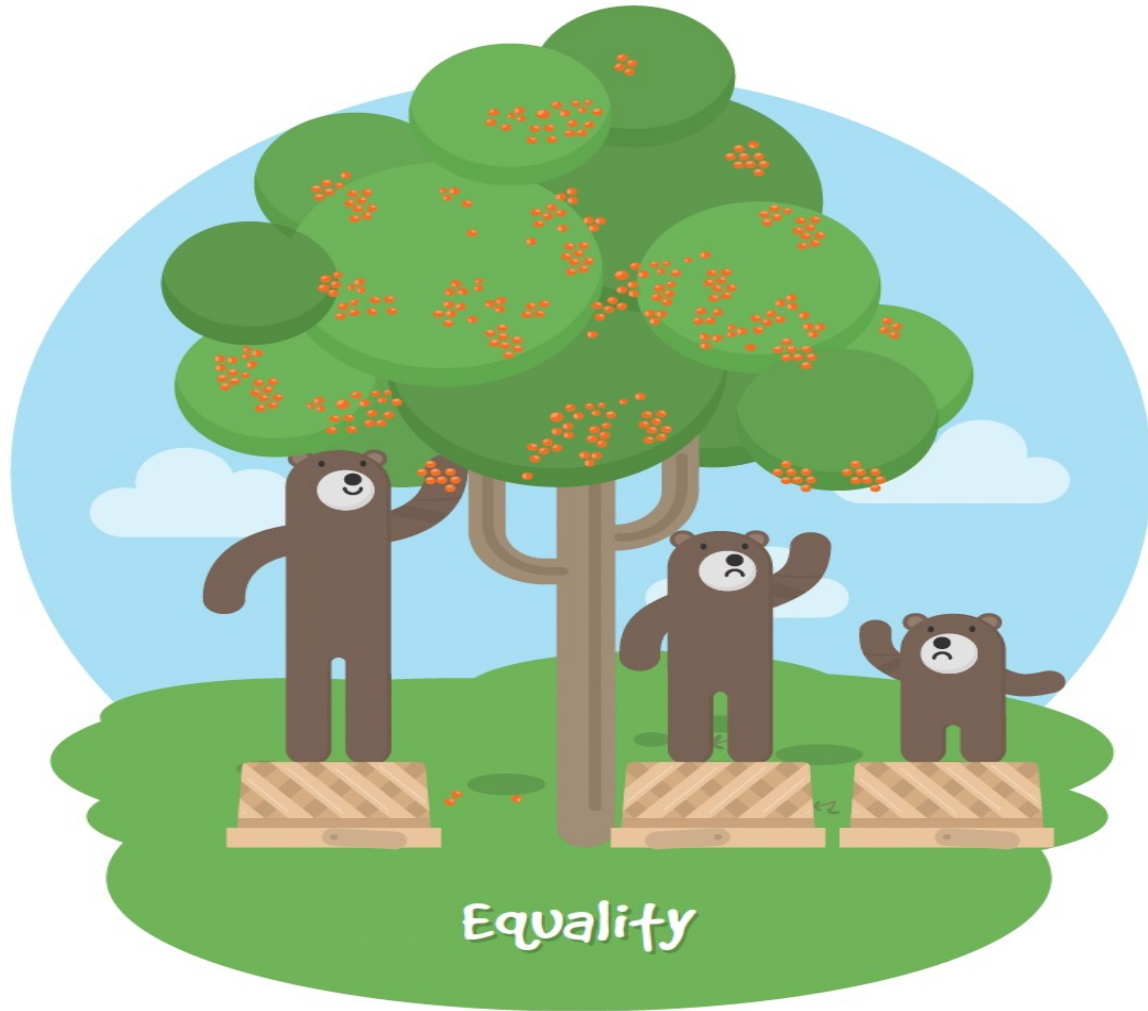




What problems can community solve?

- “Someone needs to say something” Courageous conversations
- “Someone needs to do something” Courageous actions
- Use evidence to inform programs
- Targeting funds to drivers of neglect
- Addressing sexual, physical and emotional maltreatment
- Directing funds to those most able to help children immediately
- Developing long term plans and measuring progress

First Nations kids deserve Substantive Equality





What problems can Substantive equity solve?

- Key to addressing drivers
- Research shows equity linked to:
 - Economic wellbeing
 - Reductions in social problems
 - Improvements in health/education/wellness



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

Working Together

Over 4 Million Jordan's Principle services, products and supports

Over \$20 Billion in new supports in child, youth and family services

\$23.4 Billion in compensation for victims of Canada's Discrimination



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

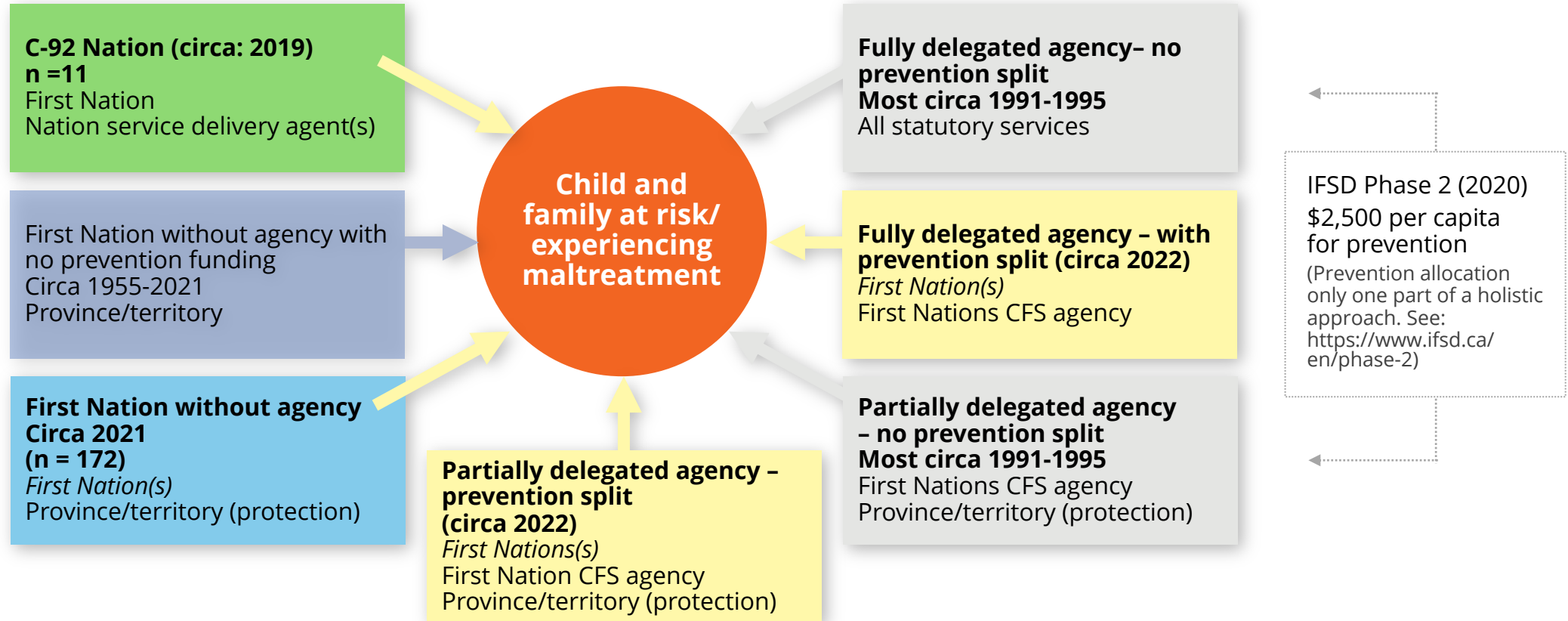
Consent order on matters
Canada agrees to in negotiation
Contested hearing on other
matters



Litigation

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

First Nations CFS Service Delivery Evolution Since 2016 CHRT 2



- Legend

- Existed as of 2016 CHRT 2
- Created post 2016
- Existed as of 2016 CHRT 2 but no longer existing (?)

- *Italics: ISC did not fund capacity to deliver prior to operation*

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.

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)

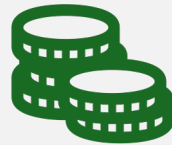
National: Non-political technical support for national data collection, research, best practices, training

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

Know what funding looks like for you



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



Ensure the purpose, principles, structure and enforcement are strong. Possible option: statutory funding?



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 Ontario 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 Process



December 12, 2023: motion filed



January 12, 2024: Caring Society affidavits filed

Available: fnwitness.ca



Hearing: June 3-4, 2024

Canadian Human Rights Commission – supports Caring Society motion

Canada opposed

NAN, COO, AFN - TBD

Outside the AIP: Caring Society role in CFS

- ✓ Maintains 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
- ✓ Publicly post Caring Society negotiation approach/positions
- ✓ Respect privacy of other parties
- ✓ Welcoming advice from Regional experts, NAC and EAC
- ✓ Respond to information requests from Leadership and their technical experts
- ✓ Achieve the best result for children, youth, families, Nations and service providers





Supreme Court Decision: C92

- Affirms the constitutionality of C92
- Centers child and family services in the honour of the crown
- Adopts UNDRIP as a presumption
- Mentions Jordan's Principle
- Provinces cannot use the notwithstanding clause
- Upholds the act of Canada's 91(24) jurisdiction in relation to Indigenous Peoples instead of section 35

Supreme Court Decisions Watch

- Cindy Dickson v. Vuntut Gwitchin First Nation
 - Relationship between self-government laws and the Charter
- Attorney General v. Pekuakamiulnualth Takuhikah First Nation
 - Honour of the Crown/Good faith negotiations in federal/provincial funding agreements with First Nations (Hearing in April 2024)



Considerations for C92 Nations

- First Nation Constitution could coordinate laws within the Nation
- Need for effective mechanisms to coordinate laws among First Nations and other child and family service providers
- Definitions of Neglect (ensuring remedies to address structural drivers)
- Statutory funding provisions
- Consider implications of 2020 CHRT 36 for on and off reserve
- Measures for extenuating circumstances (such as extraordinary class action settlements that increase need of vulnerable citizens)





Coming Soon: Spirit Bear Podcast on C92 with Guests Naomi Metallic and Hadley Friedland

Wahkotowin Lodge and Governance Centre

Free, accessible and reliable
educational materials on C92



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LAW & GOVERNANCE LODGE

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The Wahkohtowin Law and Governance Lodge is a dedicated research unit based out of the University of Alberta. The Wahkohtowin Lodge's objectives are to uphold Indigenous laws and governance by:

- Supporting Indigenous communities' goals to identify, articulate, and implement their own laws,
- Developing, gathering, amplifying, and transferring wise practices, promising methods and research tools,



Take Aways



GET INVOLVED IN
COMMUNITY-
BASED RESEARCH
FOR JORDAN'S
PRINCIPLE WITH
IFSD



TRIBUNAL RETAINS
JURISDICTION ON
ENDING THE
DISCRIMINATION
AND PREVENTING
ITS RECURRENCE



FUNDING
PURPOSE,
DEFINITIONS AND
STRUCTURE AND
ENFORCEMENT
ARE MOST
IMPORTANT



FUNDING FOR THE
DRIVERS OF CHILD
MALTREATMENT IS
ESSENTIAL TO
SUCCESS FOR
JURISDICTION

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