



Alternative Dispute Resolution (ADR) Process under the Draft Agreement

The ADR process is an opt-in, available to those First Nations and First Nations Child and Family Service (FNCFS) Agencies who wish to utilize it – it is not mandatory. The Canadian Rights Tribunal and the Courts remain available to both First Nations and FNCFS Agencies if needed.

The ADR process provides First Nations and FNCFS Agencies with an expeditious means to hold Canada accountable in cases where funding is withheld, miscalculated and other issues related to the implementation and interpretation of the agreement.



The Draft Agreement includes the establishment, by way of legislation, of a First Nations-led Dispute Resolution Tribunal, which operates independently from the Canadian government, though funded by Canada. The head of the Tribunal, being the President, will be selected in consultation with the parties to the Draft Agreement. The President will select a roster of Adjudicators, who will have the authority to issue binding orders on Canada.

First Nations and FNCFS Agencies will for the first time be able to have disputes heard by independent First Nations adjudicators with relevant expertise (as opposed to the existing internal government processes).

What are the benefits of the ADR?



Culturally Respectful: The process is led by First Nations and respects their cultural protocols and is informed by a cultural officer tasked with ensuring that the process remains culturally appropriate.



Accessible: There is no requirement for legal counsel, reducing financial barriers for First Nations. Free duty counsel is available to First Nations and FNCFS Agencies, and in complex matters, an Adjudicator can order Canada to pay for a lawyer for an unrepresented Claimant in a complex matter.



Independent Tribunal: The Tribunal operates independently of the Government and has the authority to make binding decisions. The President is chosen in consultation with the parties and will ensure that the Adjudicators reflect First Nations backgrounds and expertise in the area of child and family services.



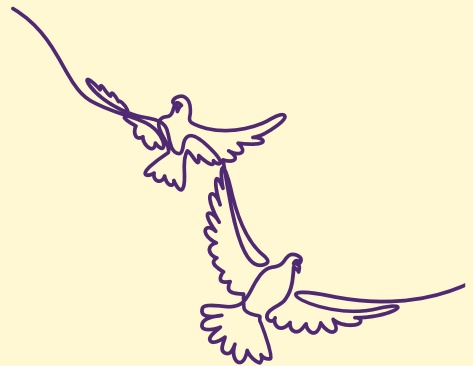
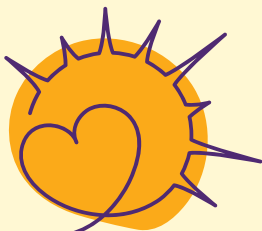
Legal Rights Preserved: The ADR process does not restrict the ability to pursue remedies in court or at the CHRT.



Efficient: The ADR process is designed to provide the effective and timely determination of disputes, being heard by First Nations experts, and being far quicker than the Courts or the CHRT.

What is the ADR Process?

- The ADR process is divided into two streams – Party Disputes, which addresses implementation and interpretation issues between the parties to the Draft Agreement, and Claimant Disputes, which will be applicable to First Nations and FNCFS Agencies in relation to issues as to funding or adjustments thereto.
- The ADR process replaces the jurisdiction of the Canadian Human Rights Tribunal (CHRT) in relation to the FNCFS Program as between the parties to the Draft Agreement. In the context of First Nations and FNCFS Agencies, if they decide to opt-in to the process, it provides a cost efficient and culturally appropriate means of resolving disputes relating to funding under the Reformed FNCFS Program.
- Mediation is also an option for those First Nations or FNCFS Agencies who wish to partake in such a process.
- First Nations and FNCFS Agency disputes will be supported by navigators, which will help claimants file disputes; cultural officers who will help ensure a process that is culturally appropriate; optional mediation; as well as access to free duty counsel for legal assistance.
- The ADR process will be far more expeditious than traditional adjudication by way of the CHRT or the Courts, which can take many months or in some circumstances, years.



What accessibility and legal supports are included?

The ADR process is designed to be more accessible to First Nations than the Canadian Human Rights Tribunal (CHRT). It allows any First Nation or FNCFS Agency to access the dispute resolution process without needing to hire legal counsel or pay legal fees, thereby lowering barriers to seeking accountability from Canada. It provides free navigation services for the filing of claims, cultural officers to guarantee a culturally appropriate process, as well as access to free duty counsel.

How does the ADR protect legal rights?

The ADR system does not limit the rights of First Nations and FNCFS Agencies to pursue other legal avenues and retain the option to take Canada to court or launch a complaint with the CHRT if their case meets the necessary criteria under the CHRT's mandate. For clarity, the ADR process is entirely optional for First Nations and FNCFS Agencies – it is not mandatory.

How was the ADR process developed?

The development of the ADR process was led by the First Nations parties to the Draft Agreement, with a focus on incorporating cultural protocols and conflict resolution methods. This ensures that the dispute resolution mechanism is not only effective, but also resonates with the traditional practices and values of First Nations.

