MYTHS AND FACTS: Long-Term Reform Draft Agreement

The Assembly of First Nations, alongside the Chiefs of Ontario, Nishnawbe Aski Nation and the Government of Canada, have negotiated $47.8 billion in a Draft Agreement to reform First Nations Child and Family Services (FNCFS). **There's a lot of discussion surrounding the Draft Agreement. Here are some of the facts you should know.**

MYTH

The Draft Agreement doesn't commit enough money to implement all the reforms that are needed to the FNCFS Program.

FACT

This Draft Agreement relied on the research conducted by the Institute of Fiscal Studies and Democracy (IFSD) at the direction of the AFN to identify the cost of the reforms required by the Canadian Human Rights Tribunal (CHRT).

- First Nations and agencies collaborated with the IFSD and identified further child and family service gaps, such as post-majority support services and funding for information technology.
- These additional reforms were costed out by the experts at the IFSD shared with the parties. This research was foundation of the intensive negotiations focused to the best interests of First Nations children.
- The $47.8 billion committed in the Draft Agreement fundamentally changes the way that FNCFS is funded by enabling First Nations to direct FNCFS funds in a way that makes sense for their communities, and to target the root causes of children going into care.
- The Draft Agreement represents a historic and transformative approach that will benefit current and future generations.

MYTH

Agencies will lose funding if the Draft Agreement is implemented.

FACT

The Draft Agreement allocates significant funding to FNCFS Agencies to continue their specialized work, including those services mandated by provincial or territorial services provided by qualified child and family specialists.

- Approximately one third of the Draft Agreement's total funding is designated for FNCFS agencies.
- First Nations can choose to allocate the funds they receive under this agreement to their Agency.

MYTH

The Draft Agreement dictates how First Nations should spend this funding and doesn't support First Nations' rights to self-determination and jurisdiction.

FACT

The Draft Agreement allocates funding directly to First Nations, with flexibility to allocate resources across various categories, while also allowing First Nations to move resources to other priorities within the FNCFS Program as needs change over time.

- For instance, one community may need more funding to support their parenting programs under prevention, but others may need more funding to ensure safe and adequate housing for children in their community.
- Under the Draft Agreement, First Nations and FNCFS Providers will receive stable and predictable funding that is flexible to address the needs of their children and families.
- Additionally, Agencies will be accountable to the First Nations they provide services through the development of a collaborative approach to a Child and Community Wellness Plan and required reporting about Agency services and outcomes to the First Nation.

MYTH

The Draft Agreement fails to protect future generations after its ten-year term.

FACT

The Draft Agreement ensures that the FNCFS program and associated funding best meets the needs of future generations through mandatory reviews at the five and ten-year marks.

- Funding will continue after the ten-year term of the agreement; however, these evaluations will make recommendations on the funding amounts and mechanism meet the changing needs of First Nations.
- The inclusion of program evaluation is rooted in best practices for child and family services and the Draft Agreement contains provisions to extend, support and update strategies based on the findings of the program evaluation, securing continuous improvements and long-term benefits.

MYTH

First Nations exercising their jurisdiction under An Act respecting First Nations, Inuit, and Métis children, youth and families (the Act) will not benefit from this Draft Agreement.

FACT

First Nations exercising their jurisdiction are not subject to the agreement and the self-jurisdiction approach affirmed by the Act is a wholly separate process.

- However, the Draft Agreement does provide First Nations in the process of exercising jurisdiction a framework to build up from if they choose.
- The Draft Agreement commits Canada to ensuring that First Nations exercising jurisdiction under the Act will not receive less funding than they would under the FNCFS Program.

MYTH

The Canadian Human Rights Tribunal (CHRT) orders and process provide more protection for First Nations than the Draft Agreement.

FACT

The Draft Agreement establishes a First Nations-led Dispute Resolution Tribunal that is accessible to First Nations and Agencies to ensure accountability from Canada for their implementation.

- Dispute Resolution Tribunal members will be chosen in partnership with the Parties and established by a process that provides the Tribunal with the ability to make binding orders on Canada. The Dispute Resolution Tribunal is paid for by Canada but will be independent from the Government, just like the Canadian Human Rights Tribunal.
- Unlike the CHRT, any First Nation or Agency may access the dispute resolution process set out in the Draft Agreement without having to hire and pay for legal counsel and associated legal fees, making this process more accessible.
- The Dispute Resolution Tribunal is not the mandatory avenue for disputes, and the CHRT remains open for cases that qualify to be heard under the CHRT's mandate, however the establishment of the Dispute Resolution Tribunal ensures a dispute resolution process that is led by First Nations, respects First Nations cultural protocols, and is focused on issues of First Nations child and family services.

MYTH

This Draft Agreement does not respect Jordan's Principle.

FACT

The $20 billion Agreement-in-Principle concluded in December 2021 included a path towards reforming Jordan's Principle.

- A decision was made by the Parties to pause negotiations towards a final agreement on Jordan's Principle to allow adequate time for important First Nations-informed research on Jordan's Principle to be completed.

MYTH

The reforms in the Draft Agreement are part of the compensation settlement.

FACT

Compensation for past harms under the FNCFS Program and narrow application of Jordan's Principle is part of a separate settlement agreement with the Government of Canada, valued at $23 billion which was approved in October 2023.

- The Draft Agreement on FNCFS allocates $47.8 billion over ten years for reforms aimed at improving services and preventing future discrimination in First Nations child and family services, which is funded separately from the compensation amount.
- The compensation addresses past harm, while the Draft Agreement focuses on long-term improvements and ending discrimination.

MYTH

First Nations were excluded from the negotiations process.

FACT

The AFN, Chiefs of Ontario and Nishnawbe Aski Nation were the three First Nations parties negotiating the Draft Agreement and are the First Nations-representative Parties associated to the Canadian Human Rights complaint.

- The CHRT ordered Canada to work with the Parties to the CHRT to negotiate reform in it's 2016 landmark ruling that found Canada discriminated against First Nations through chronic underfunding of FNCFS.
- The AFN was mandated by First Nations-in-Assembly Resolution 40/2022 to enter negotiations with Canada and the other parties to complete a draft agreement. This is the Draft Agreement released on July 11, 2024.
- Legal rules surrounding the negotiations process, sometimes referred to as "settlement privilege," means that information discussed at negotiations could not be disclosed outside of the involved parties.
- However, the AFN Executive Committee, consisting of Regional Chiefs, was regularly updated and provided additional guidance to the AFN on negotiations. Although the Draft Agreement could not be shared during the negotiations, it was made publicly available immediately once negotiations concluded.

MYTH

The Draft Agreement was not informed by First Nations experts or research.

FACT

The reforms in the Draft Agreement are based on more than two decades of research conducted and led by First Nations and the AFN.

- These include the Wen:de Reports, the National Advisory Committee on FNCFS Program Reform, AFN regional reports, expert research conducted with First Nations by the Institute of Fiscal Studies and Democracy, alongside input and advice from First Nations leadership at the AFN Executive Committee.
- The Draft Agreement also aligns with mandates provided to the AFN by the First Nations-in-Assembly, including by Resolutions 40/2022 and 86/2023, To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle, which mandated the AFN to negotiate the Draft Agreement, engage regionally, and seek approval of the Draft Agreement from the First Nations-in-Assembly.

MYTH

The Draft Agreement provides Canada with new powers over First Nations and Agencies.

FACT

The Draft Agreement does not provide Canada with any powers over the internal decision-making of First Nations or alter the eligibility for FNCFS.

- The Draft Agreement puts more decision-making authority for service approaches and funding allocation in the hands of First Nations.
- The Draft Agreement also reduces the role of Indigenous Services Canada in these decision-making processes, ensuring that the accountability of agencies is directed toward the First Nations they serve.