

# TERMS OF REFERENCE FOR THE NATIONAL CHILDREN'S CHIEFS COMMISSION

## 1. PURPOSE

These terms of reference set out the mandate, membership and roles and responsibilities of the National Children's Chiefs Commission (NCCC). The NCCC provides oversight and strategic direction on the negotiations and/or litigation related to the Long-Term Reform (LTR) of First Nations Child and Family Services (FNCFS) and Jordan's Principle, including the ongoing proceedings before the Canadian Human Rights Tribunal (CHRT) in *First Nations Child and Family Caring Society et al v. Attorney General of Canada* (T1340/7008). NCCC operates in an inclusive, transparent and accountable manner that prioritizes the sacredness and rights of First Nations children, youth and families.

## 2. AUTHORITY

Assembly of First Nations (AFN) Resolution 60/2024, *Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle* mandated the establishment of the NCCC. The NCCC is mandated by First Nations-in-Assembly to oversee and provide strategic direction on LTR including addressing Canada's discriminatory conduct found in *First Nations Child and Family Caring Society et al v. Attorney General of Canada*. Accountable to First Nations rights holders, the NCCC will oversee and provide strategic direction in a manner that prioritizes the sacredness of First Nations children, youth and families, is transparent, open, and accountable to First Nations, preserves First Nations decision-making, and includes the guidance of youth, youth in care and formerly in care, and FNCFS and Jordan's Principle experts.

## 3. ACCOUNTABILITY

The NCCC is accountable to First Nations-in-Assembly and, through processes established by the NCCC, to First Nations who are not members of AFN. The NCCC is responsible for updating their respective AFN Executive member and First Nations Leadership in their region on the NCCC's priorities and progress. The NCCC will report on progress, at minimum, bi-annually to First Nations-in-Assembly at AFN assemblies and by information bulletin on important urgent matters.

#### 4. OBJECTIVES:

The NCCC is tasked with providing oversight and strategic direction on the negotiations and/or litigation related to LTR of FNCFS and Jordan's Principle. The NCCC will act openly and transparently to achieve the following objectives and criteria to ensure a fair, equitable, and transformative agreement:

- a. LTR must fully eliminate Canada's systemic discrimination in FNCFS and Jordan's Principle implementation and ensure it does not recur. This includes addressing structural inequities and adhering to all applicable CHRT orders. The CHRT orders establish the foundation for comprehensive FNCFS and Jordan's Principle LTR. LTR must build up from the baseline funding that the CHRT orders provide.
- b. LTR must overhaul funding principles, definitions, structures, methodologies, policies, conduct and instruments to reflect the actual needs of First Nations children, youth and families, as defined by First Nations. At a minimum, funding must:
  - i. be evidence-informed and based on needs as defined by First Nations themselves. First Nations are best positioned to determine the needs of their children, families, and communities;
  - ii. not solely rely on per capita formulas, especially those tied to the Indian Registration System;
  - iii. ensure positive and effective measures and resources are in place for First Nations and their service providers to develop the necessary capacity to deliver child and family services and/or Jordan's Principle; and
  - iv. ensure positive and effective measures and resources are in place for First Nations and their service providers to effectively address the structural drivers of disadvantage for First Nations children, youth and families whilst providing the necessary services, products and supports to meet existing needs arising from the structural drivers.
- c. LTR must provide funding and services that advance substantive equality, ensuring First Nations children and families have substantively equitable access to culturally, linguistically, socially, and developmentally appropriate services, products and supports. LTR must also ensure full implementation of

Jordan's Principle to eliminate delays, denials, and barriers to services.

Canada must discharge its duty to not discriminate regardless of jurisdictional or service deliver model.

- d. LTR must affirm First Nations' inherent jurisdiction and self-determination over FNCFS. This includes recognition of their authority to legislate in these areas, independent of delegated powers under section 91(24) of the Constitution Act, 1867. LTR must also be fully aligned with the principles of UNDRIP. At a minimum, this means that First Nations Chiefs must be restored as the key decision-makers on the implementation of LTR and all LTR governance structures must be transparent and accountable to First Nations Chiefs.
- e. LTR should be with the Crown in right of Canada as a whole, ensuring accountability across all federal jurisdictions. It cannot be limited to individual departments, such as Indigenous Services Canada or Crown-Indigenous Relations.
- f. LTR must prioritize the rights of First Nations children, including future generations. Reforms must address immediate needs and ensure sustainable, culturally and linguistically relevant supports and services that promote intergenerational equity. Governance structures set out in LTR must uphold the sacredness of children, youth, and families, is transparent, open, and accountable to First Nations, preserves First Nations decisions-making, and includes the guidance of youth, youth in care and formerly in care, and regional and national experts on FNCFS and Jordan's Principle.
- g. LTR must support the revitalization and continuity of Indigenous languages and cultures as critical elements of First Nations children's well-being and identity.
- h. LTR must not be Indian Act-centric and must reflect self-determination and First Nations governance structures.
- i. LTR must reflect and respect First Nations' authority over child and family services including jurisdictional and delegation models. Where First Nations choose to operate under their own jurisdiction, Canada must respect that jurisdiction is rooted in inherent and treaty-protected rights, not federal delegation under Canadian law.
- j. LTR must establish mechanisms to ensure effective implementation, funding, oversight, outcome measurement, and accountability tailored to the unique

needs of each region. These mechanisms must complement CHRT orders and uphold a long-term commitment to eliminating discrimination.

Recognizing regional diversity, LTR will necessitate the development of region-specific sub-agreements to address localized priorities and contexts effectively.

- k. LTR must include a robust dispute resolution mechanism with powers and remedies that are at least as effective as the CHRT. The CHRT's jurisdiction must also be preserved to ensure accountability, compliance, and enforcement.
- l. The NCCC will ensure that all the following principles and requirements are incorporated into the negotiation process and/or any LTR agreements:
  - i. Establish and oversee the regionally represented negotiation team that will be responsible for carrying out LTR negotiations and/or directing litigation;
  - ii. Develop and oversee an open and transparent amendment process for First Nations to suggest changes, allow for consideration of those changes, and make changes to LTR agreements before being put to a vote. Such process is to be established by the NCCC and approved by First Nations-in-Assembly, and First Nations that are not affiliated with the AFN, to ensure the participations of First Nations that are not members of the AFN;
  - iii. Provide detailed reports to First Nations on all suggest amendments, the decision made on each amendment, and the outcomes of negotiations, before any decision making;
  - iv. Take positive and effective measures throughout LTR negotiations, to ensure review, and approval processes include the expertise of First Nations, Jordan's Principle and FNCFS experts and services providers, Elders and youth, regional experts and the National Advisory Committee (NAC);
  - v. Ensure First Nations have at least 90 days to review a complete LTR agreement with appendices, available in both official languages, before any vote on a LTR Agreement;
  - vi. Oversee and ensure there is regular feedback and communication shared with First Nations on the progress of LTR;

- vii. Ensure that Canada discloses all federal-provincial-territorial service level agreements during the negotiations process;
- viii. Ensure the negotiations process incorporates ongoing and meaningful oversight by, and consultation with, the NAC;
- ix. Ensure that Canada provides sufficient liability coverage and statutory immunity for First Nations and FNCFS Agencies and ensures that Canada is the insurer of last resort for First Nations and FNCFS Agencies that have acted in good-faith in performing duties;
- x. Ensure all resources and materials are available in both French and English;
- xi. Ensure findings from comprehensive regional and sub-regional engagements across Canada are incorporated into LTR.
- xii. Ensure there is no obligation on any party to procure approval of, or speak favourable about, any draft LTR agreement.

For Greater clarity, the NCCC is not permitted to negotiate outside the parameters of this Terms of Reference. The work of the NCCC will respect First Nations-determination, decision making over the wellbeing of their Nation's children and families. Their work will not affect, cancel or supersede any Treaty between Canada and First Nations or any existing agreement between Canada and any other First Nation.

## **5. REFERENCES**

The following documents, decisions, and declarations will be taken into consideration in the NCCC's work:

- The direction of First Nations-in-Assembly, including through AFN Resolutions 40/2022, *To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle*, 60/2024, *Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle* and 61/2024, *Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services*.
- The Canadian Human Rights Tribunal decisions in *First Nations Child and Family Caring Society et al. v Attorney General of Canada* T1340/7008;
- *An Act Respecting First Nations, Inuit and Métis Children, Youth and Families*.

- The United Nations Convention on the Rights of the Child (UNCRC), the United Nations Committee on the Rights of the Child General Comment 11, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
- The Truth and Reconciliation Commission of Canada's (TRC) Calls to Action, the National Inquiry on Murdered and Missing Indigenous Women and Girls (MMIWG) Calls to Justice.
- Respect for evidence, particularly First Nations-based and First Nation regionally developed evidence, to achieve the goals of non-discrimination towards First Nations children, youth, and families and preventing its recurrence.

## **6. GUIDING PRINCIPLES:**

The NCCC shall be committed to conducting themselves with respect, dignity, transparency and accountably, and exemplify the seven guiding principles of love, respect, courage, honesty, wisdom, humility and truth. Further, the NCCC will be guided by the following principles:

1. **Truth and Transparency:** The NCCC commits to open, honest communication and full disclosure to honour and respect the rights of First Nations and their children.
2. **Free Prior and Informed Consent:** The United Nations Declaration on the Rights of Indigenous Peoples will be upheld to protect the rights of First Nations.
3. **Respect for the Sacredness and Rights of Children and Youth:** The rights, dignity, and cultural identities of children and youth are fundamental. The NCCC shall protect these through meaningful engagement and relationship building.
4. **Reconciliation and Healing:** The NCCC seeks to address and heal the ongoing impacts of colonial policies on First Nations children, youth, and families.
5. **Self-Determination:** The NCCC upholds the inherent right of First Nations to guide and govern the well-being of their children and youth according to their laws, customs, and cultural practices.

## **7. NCCC COMPOSITION**

The NCCC shall be persons of good character, committed to human rights and dignity and will conduct themselves personally and professionally in a manner that

does not bring the reputation of the NCC or its mandate into disrepute. Persons who have been convicted of violent crimes or crimes against children are not eligible. The NCCC will consist of members appointed through regional decision-making processes, representing a diverse group of First Nations. The NCCC will consist of:

- a. One (1) regional representative, one (1) alternate, and their technician(s) from each of the 11 AFN regions;
- b. One (1) regional representative and one (1) alternate for every region not represented by AFN;
- c. An Elder/Knowledge Keeper representative; and
- d. A youth representative

## **8. INCLUSION AND REPRESENTATION**

The NCCC shall take positive and effective measures to seek out the input and expertise of:

- a. First Nations and their rightsholders;
- b. First Nations child and family service providers;
- c. Elders and Youth;
- d. The National Advisory Committee (NAC) and Expert Advisory Committee (EAC)
- e. Regional and independent experts, including the Jordan's Principle Operations Committee Caucus;
- f. Non-AFN member First Nations and their unique perspectives will be formally included, ensuring their voices are reflected.

## **9. REPORTING AND ACCOUNTABILITY**

The NCCC shall report to their respective AFN Executive member and First Nations-in-Assembly and through processes established by the NCCC to First Nations not represented by AFN, detailing progress, challenges, and updates summarizing achievements and ongoing initiatives, and recommendations for further actions on FNCFs reform and Jordan's Principle implementation.

## **10. MEETINGS**

The NCCC will meet monthly, or as needed when determined by the NCCC, with additional meetings as required to address urgent matters. All members must actively participate and contribute to decision-making and demonstrate a

commitment to regularly attend meetings or send an alternative.

Notice of meeting dates and location will be provided in a reasonable amount of time. Travel and accommodation for NCCC members to attend in-person meetings will be reimbursed by an entity determined by the NCCC.

NCCC meetings, where possible, will be open to all interested First Nations Chiefs and appointed technical/legal/political representative as observers to the meetings.

## **11. DECISION MAKING**

The NCCC will operate by consensus wherever possible in providing strategic direction and oversight of the LTR Agreements negotiations, respecting traditional First Nations decision-making processes.

## **12. Deliverables**

The NCCC will deliver the following to First Nations-in-Assembly and First Nations who are not members of AFN:

- i. Before First Nations-in-Assembly proceed with any decision making on LTR agreements, any recommendations, amendments, and outcomes of negotiations shall be submitted to the First Nations-in-Assembly and First Nations not affiliated with AFN for review;
  - ii. Available options and supporting financial resources and materials for LTR;
  - iii. A draft agreement on FNCFS LTR that meets the criteria identified in this Terms of Reference;
  - iv. Identified issues critical to ending Canada's discrimination and preventing its recurrence that ought to be addressed through further litigation before the CHRT;
  - v. Detailed documentation of the negotiation process, decisions, and outcomes;
  - vi. An open and transparent amendment process for First Nations-in-Assembly to suggest changes, allow for consideration of those changes, and make changes to long-term reform agreements before being put to a vote, such process is to be approved by First Nations;
- Ensure that all drafts have a French language translation.



### **13. RESOURCES**

The NCCC will work with Indigenous Services Canada to secure funding for their work including independent legal and technical assistance, ensuring all First Nations have adequate resources to understand and contribute to the FNCFS agreements.

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