



Information Sheet

First Nations Child Welfare

Summary of Findings from the Canadian Human Rights Tribunal

Case Reference: 2018 CHRT 4 (February 1, 2018)

Background

On January 26, 2016, the Canadian Human Rights Tribunal (“Tribunal”) ruled in favour of First Nations children (2016 CHRT 2, “the Decision”), finding that the First Nations Child and Family Services Program delivered by the Department of Indigenous and Northern Affairs Canada (“INAC”), and its related funding models and federal-provincial agreements, is discriminatory contrary to section 5 of the *Canadian Human Rights Act*. The Tribunal further found that INAC’s failure to properly implement Jordan’s Principle, a measure to ensure First Nations children receive the public services they need when they need them, was discriminatory on the grounds of race and national ethnic origin.

The Tribunal retained jurisdiction and ordered Canada to immediately cease its discriminatory practices in regards to the First Nations Child and Family Services Program and to immediately, fully, and properly implement Jordan’s Principle. Since the Decision in January, 2016, the Tribunal has issued four remedial non-compliance against Canada: 2016 CHRT 10; 2016 CHRT 16; 2017 CHRT 14, and 2018 CHRT 4 (the current order). The Tribunal may issue further orders to ensure Canada fully and properly complies with the Decision and remedial non-compliance orders.

The Caring Society has created a list of important quotations from 2018 CHRT 4, which you can read below. To read the full text of the order, visit www.fnwitness.ca

The importance of this case

Paragraph 47

...this case is vital because it deals with mass removal of children. There is urgency to act and prioritize the elimination of the removal of children from their families and communities.

Paragraph 124

...the legacy of residential schools is not only continuing but getting worse, with increasing numbers of child apprehensions through the child welfare system.

Legal orders are *not* recommendations

Paragraph 41

Canada must accept that liability was found and that remedies flow from this finding. The Decision was not a recommendation; it is legally binding.

Paragraph 171

Canada admits it lacks data to address some of the Panel’s immediate relief orders so it unilaterally decided they were best left to mid-term or long term without seeking leave from the Tribunal. It has treated some of the orders as recommendations rather than orders.



Immediate relief for First Nations children, youth, and families

Paragraph 55

...while Canada advances that it needs to consult with all First Nations' communities, which in our view remains paramount for long term reform, the Panel does not think consultation prevents Canada from implementing immediate relief.

Paragraph 66

The Panel ordered that the specific needs of communities be addressed and this involves consulting the communities. However, the Panel did not intend this order to delay addressing urgent needs ... It is not one or the other; it is one plus the other.

Paragraph 59

Canada simply cannot hide behind the provinces' responsibilities to shield itself from its own responsibilities.

Paragraph 220

We are pleased that Canada is consulting and seeking to obtain specific information on needs however it is not a replacement for immediate relief.

Paragraphs 300, 301

The Panel takes issue with the fact that [consultation] was always advanced to justify delay, and denials of equitable services leading to discrimination ... This has been going on for years, yet the Panel found discrimination ... This is precisely one of the reasons why the Panel ordered immediate relief so that the long term reform would not prevent action now for Indigenous children.

Paragraph 387

It took years for the First Nations children to get justice. Discrimination was proven. Justice includes meaningful remedies. Surely Canada understands this. The Panel cannot simply make

final orders and close the file. The Panel determined that a phased approach to remedies was needed to ensure short term relief was granted first, then long term relief, and reform which takes much longer to implement. The Panel understood that if Canada took 5 years or more to reform the Program, there was a crucial need to address discrimination now in the most meaningful way possible with the evidence available now.

Paragraph 440

While we understand that reform needs to be done in partnership with all the Indigenous rights holders, provinces and territories, there is also no indication in the evidence before us that the absent partners disagree with ... immediate relief orders or general orders made so far. The Provinces have expressed through their legislation the need for least disruptive measure in child welfare as sound social work practice. Why would anyone oppose this? Respecting this and, adding specific needs, culturally appropriate programs and self-determination will only better the situation for Indigenous children.

Equitable funding

Paragraph 46

The best interest of children is not advanced by legalistic positions such as Canada's. It is also sending a message that the Tribunal has no power and human rights can be violated and are remedied only if Canada finds money in their budget.

Paragraph 121

While the necessity to account for public funds is certainly legitimate it becomes troubling when used as an argument to justify the mass removal of children rather than preventing it ... The Panel finds the seriousness and emergency of the issue is not grasped with some of Canada's actions and responses.



Paragraph 131

The Panel understands this to be the usual and reasonable process for any financial request. It is to be expected and followed in normal circumstances. This is not the case here. Canada was found liable under the [*Canadian Human Rights Act*] for having discriminated against First Nations children and their families.

Paragraph 146

The Panel finds it problematic that again, Canada's rationale is based on the funding cycle not the best interests of children ... Moreover, there is a major problem with Budget 2016 being rolled out over 5 years ... the Panel finds it does not fully address immediate relief.

Paragraph 194

...absent any idea of what information gaps need to be filled to implement relief, Canada did not provide any specific targets for when engagement/collaboration/information on needs exercises will be completed and First Nations children can therefore expect any further relief from Canada's discriminatory conduct. More problematic still is that fact that, as of now, there is no additional funding forecasted in Canada's five-year budget for increased service levels resulting from Canada's "multi-pronged engagement process."

Paragraph 272

Canada's practice of reallocating funds from other programs is negatively impacting housing services on reserve and as a result is adversely impacting the child welfare needs of children and families on reserve by leading to apprehensions of children. This perpetuates the discriminatory practices instead of eliminating them.

Old mindsets perpetuate discrimination

Paragraph 154

The fact that key items, such as determining funding for remote and small agencies, were deferred to later is reflective of INAC's old mindset that spurred the complaint. This may imply that INAC is still informed by information and policies that fall within this old mindset that led to discrimination.

Paragraph 295

Canada needs to do an analysis of all its programs that fund mental health for First Nations on reserve and in the Yukon and clearly establish which ones fund what ... This cycle of not entirely knowing is harming children and quite frankly, is not logical.

Tribunal decisions in regards to First Nations Child Welfare and Jordan's Principle:

2016 CHRT 2 (January 26, 2016) <http://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/127700/1/document.do>

2016 CHRT 10 (April 26, 2016) <http://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/143741/1/document.do>

2016 CHRT 16 (September 14, 2016) <http://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/181627/1/document.do>

2017 CHRT 14 (May 26, 2017) <https://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/232587/1/document.do>

2018 CHRT 4 (February 1, 2018) https://fncaringsociety.com/sites/default/files/2018%20CHRT%204_1.pdf

**For more information on the case go to
www.fnwitness.ca or contact info@fncaringsociety.com**