



UPDATE BULLETIN

First Nations Child and Family Caring Society of Canada



Canadian Human Rights Tribunal on First Nations Child Welfare (2016 CHRT 2 and subsequent orders). (Note the Tribunal currently has jurisdiction until March 2019 – an extension is possible).

First Nations Child and Family Services:

a) Progress

- i. funding at actuals for prevention services, salaries, building repairs, legal, band representatives and mental health for First Nations CFS agencies is underway per (2018 CHRT 4).
- ii. The Institute for Fiscal Studies and Democracy (IFSD) has completed the first stage of a costing study to determine current needs and project costs forward. Results presented at the National Advisory Committee on First Nations Child Welfare on November 27, 28, 2018 and will inform the approach forward.

b) Mixed/unclear Results

- i. Canada announced \$80 million for the Community Wellbeing and Jurisdictional Initiative (CWJI) to fund non-First Nations agency-based projects. Amount fixed by INAC and originally did not include First Nations in Ontario. When this was corrected, INAC did not increase the overall funding envelope meaning reduced amounts for other regions. Concerns about the adequacy and sustainability of the fund remain.
- ii. Budget 2018 announced 1.4 Billion over 5 years (about 278 million per year) in additional funding for First Nations Child and Family Services but the funding has not been drawn down by the Department.
- iii. Canada has not restored the full value of losses incurred by small agencies (serving less than 1000 children on reserve) related to its discriminatory application of downward adjustments related to population. It has agreed to fund all salaries retroactively and going forward.

c) Ongoing Concerns

- i. Reallocation. In 2018 CHRT 4, Canada was ordered to cease unnecessary reallocations from other programs to cover shortfalls in child and family. The Tribunal determined that the reallocation process (particularly from housing) had a detrimental effect on families. Canada claims it has ceased reallocating and instead is “cash-managing.” In evidence before the Tribunal, Canada confirms that cash-management is taking money from other budgets but says unlike in “reallocation” the funds will be eventually restored to the source budget. The problem is that this repayment can take several years and there are shortfalls in funding across federal programs for First Nations.
- ii. Capital: While Canada is increasing the maximum amount per project for minor capital amount from 1.5 million to approx. 2.25 million to account for inflation, they have not sought authorities to fund major capital projects to house prevention programs, expanded child and family service or CWJI programs.
- iii. Canada has continued to require agencies to sign attestations saying they will adhere to policies and procedures that are either: 1) known to be discriminatory per the CHRT or 2) are not in writing and only orally known at the department.

Jordan’s Principle per (2016 CHRT 2; 2017 CHRT 14)

a) Progress

- i. Canada is now including all public services in its definition.
- ii. Canada has approved funding for over 160K services/products since May of 2017.
- iii. Greater public understanding of what Jordan’s Principle is and how to access it.
- iv. Establishment of community -based navigators to assist families.
- v. 24-hour Jordan’s Principle reporting line established 1-855-JP-CHILD

b) Mixed Results

- i. Although community-navigator programs have been started not all First Nations have access to one and some regions are concerned about heavy workloads, lack of training and standards to ensure equity.
- ii. There is a need for greater public awareness about Jordan’s Principle particularly at the community level and among child and youth serving professionals/organizations.
- iii. Uneven application of substantive equality and best interests of the child screens for cases.

c) Ongoing Concerns

- i. There is no funding for major capital to fund building space for group requests for children and youth.

- ii. ISC definition of “all First Nations children” excludes First Nations children off reserve without status.
- iii. Time frame compliance is reaching required targets (14% of claims not processed within 48 hours in BC).
- iv. There can be long gaps (up to 10 weeks) between ISC approval and payment creating service disruptions (i.e.: providers cease service because they have not been paid).

CHRT Compensation for Discrimination

The Canadian Human Rights Act allows for up to \$20,000 per victim of discrimination and a further up to \$20,000 per victim if the discrimination is willful and reckless. The Caring Society and AFN made submissions in 2014 that the full value for both amounts should be awarded. The Tribunal took the matter under reserve. The Caring Society asked Canada to respond to 6 scoping questions to determine if a settlement was possible:

- a. Will Canada compensate all children in care and all children who should have been eligible for relief under Jordan’s Principle?
- b. Does Canada agree that such discrimination was willful and reckless?
- c. Does Canada agree that the period for compensation runs from February 2006 (the CHRA allows for one year before the complaint is filed) to the time period where the Tribunal finds compliance?
- d. Does Canada agree that any claims received by victims shall not be used to thwart any tort claims later brought by the victims themselves?
- e. Does Canada agree to pay funds for the administration and disbursement of compensation in addition to the discrimination awards given to victims?
- f. What non-financial compensation will Canada provide to victims of the discrimination?

Canada is to provide a response by the end of November. This is matter that may be set down for further adjudication.

General Compliance and the essential need for Canada to implement the Spirit Bear Plan (<https://fncaringsociety.com/spirit-bear-plan>)

Durability of program change Post- CHRT remains a serious concern. Canada has not adopted the Spirit Bear Plan supported by the Chiefs in Assembly in 2017 to end ALL inequalities in public services affecting First Nations children and youth and Canada has no public plan of its own to end all of the inequalities.

Moreover, while there is some progress on training development for public servants, the ways of thinking that contributed to the discrimination in children’s services continues to be embedded in ISC culture. Progressive views continue to be person and leadership dependent at ISC versus engrained into the public service itself. The Auditor General raised the culture of the department as a problematic issue overall last year but the Privy Council Clerk refuted the claims offering scant evidence of efforts to shift departmental philosophy, policies, practices.

Caring Society updates

- a. Our website has been completely redesigned to make it easier than ever for community members, First Nations leadership, technicians and the public to find information and get involved in the Caring Society's campaigns for culturally based equity for First Nations children. Check out resources like our free searchable database, 7 free ways to make a difference, and Spirit Bear pages at www.fncaringsociety.com
- b. Free public service announcements on Jordan's Principle available in French, English and American Sign Language on www.jordansprinciple.ca
- c. We have produced a short video explaining the IFSD research on First Nations Child and Family Service Agency funding approaches- watch it at www.fnwitness.ca
- d. Spirit Bear's new book "Fishing for Knowledge: Catching Dreams" will be available on December 3, 2018. Spirit Bear takes a journey through traditional knowledge and residential schools before joining children today to implement "Shannen's Dream" for safe and comfy schools and equitable education for First Nations students. Copies are \$15.00 plus taxes and shipping. Will also be available via Chapters and Fitzhenry.ca
- e. 2019 Spirit Bear calendars available now to guide children and community through a year of free activities to implement the TRC Calls to Action. To order copies (\$15.00 plus taxes and shipping) please contact info@fncaringsociety.com
- f. We will have a booth at the AFN SCA in December to share free information and sell the books and calendars so see us there!

For more information contact us at info@fncaringsociety.com or call us between 9:00 a.m. to 4:00 p.m. EST.

Happy Holidays from the Caring Society!