



Information Sheet

Canadian Human Rights Tribunal

Refinement of Remedies

March 10, 2016

Introduction

The federal government funds First Nations child and family services on reserve through the Department of Indigenous and Northern Affairs [INAC] (previously the Department of Aboriginal Affairs and Northern Development). INAC requires that First Nations child and family service agencies on reserve use provincial/territorial child welfare laws as a condition of funding. Within its First Nations Child and Family Services Program, INAC uses four child welfare funding approaches: 1) funding arrangements with provinces and territories; 2) Directive 20-1; 3) the Enhanced Prevention Focused Approach [EPFA]; and 4) the 1965 Indian Welfare Agreement in Ontario.

In 2007, the First Nations Child and Family Caring Society of Canada and the Assembly of First Nations filed a complaint pursuant to the Canadian Human Rights Act alleging that INAC's provision of First Nations child and family services was discriminatory (CHRT 7008/1340). This information sheet summarizes the process set out by the Canadian Human Rights Tribunal to refine immediate relief, medium term reform and long term reform as per its January 26, 2016 ruling (2016 CHRT 2) and subsequent direction dated February 10, 2016. This is not an exhaustive description and readers are encouraged to read the Tribunal orders and submissions by the parties on remedies at www.fnwitness.ca for further detail.

Tribunal Findings and Orders (2016 CHRT 2): January 26, 2016

- a) The Tribunal found that the complaint was substantiated (para 456).
- b) The Tribunal ordered INAC “to cease its discriminatory practices and reform the FNCFS Program and 1965 Agreement to reflect the findings in this decision. [INAC] is also ordered to cease applying its narrow definition of Jordan’s Principle and to take measures to immediately implement the full meaning and scope of Jordan’s Principle” (para 480).
- c) The Tribunal further noted that “within three weeks of the date of this decision [January 26, 2016] the Panel will contact the parties to determine a process for having its outstanding questions on remedy answered on an expeditious basis” (para 484).
- d) The Tribunal will make further orders on remedy and compensation and will issue a ruling regarding the Caring Society’s claim for costs for obstruction of process related to INAC’s failure to disclose documents, which the Tribunal deferred (2013 CHRT 16).

Tribunal's Further Direction on Remedies: February 10, 2016

1. The Tribunal set out four areas for further clarification from the parties:
 - a) FNCFS Program budget adjustment;
 - b) Transition from Directive 20-1 to the EPFA;
 - c) Jordan's Principle;
 - d) 1965 Agreement.
2. The Tribunal directed the parties to submit their responses to these questions and other immediate relief items the parties wish to submit according to the following schedule:
 - a) Caring Society, AFN, the Canadian Human Rights Commission and Chiefs of Ontario and Amnesty International by February 18, 2016.
 - b) AANDC by March 2, 2016.
 - c) Caring Society, AFN, the Canadian Human Rights Commission (CHRC), Chiefs of Ontario and Amnesty International reply by

March 2, 2016.

- d) The Caring Society and Chiefs of Ontario filed their submissions on February 28, 2016.
- e) The Tribunal granted the CHRC and AFN a two week extension and they filed their submissions on March 3, 2016.
- f) AANDC filed their submissions on March 10, 2016.
- g) The Caring Society, AFN, CHRC, COO and Amnesty International reply on March 15, 2016.

Next Steps

The Tribunal will make an order on immediate relief and then turn to medium and long term reform as well as compensation and costs for obstruction of process.

*Read the Orders and Immediate Relief Submissions at: <https://fncaringsociety.com/first-steps-remedy-funding-inequities>

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

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