



Information Sheet

Canadian Human Rights Tribunal

The “old mindset” that led to discrimination

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 (“FNCFS”) 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 ground 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 Tribunal referenced the perpetuation of the “old mindset” within the government of Canada that led to discrimination at least 17 times in the remedial non-compliance orders.

2016 CHRT 14 (September 14, 2016)

Paragraph 29

The Panel is concerned to read in INAC’s submissions much of **the same type of statements and reasoning** that it has seen from the organization in the past.

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 this complaint. This may imply that INAC is still informed by information and policies that fall within this **old mindset** and that led to discrimination.

2017 CHRT 14 (May 26, 2017)

Paragraph 47

...the Decision found **Canada’s similarly narrow definition** and approach to Jordan’s Principle to have contributed to service gaps, delays and denials for First Nations children on reserve.

Paragraph 49

The justification advanced by [Canada] for the focused approach to Jordan’s Principle is **the same one advanced by Canada in the past** and underscored by the Panel in the Decision...

Paragraph 73

...Canada seems to want to **continue proffering similar policies and practices** to those that



were found to be discriminatory.

Paragraph 77

Canada's current approach to Jordan's Principle is **similar to the strategy it employed from 2009-2012** and as described in paragraph 356 of the Decision

Paragraph 78

In this sense, the evidence shows that Canada's funding of \$382 million over three years for Jordan's Principle is not an investment that covers the broad definition ordered by the Panel in the Decision and subsequent rulings. **Similar to Canada's past practice**, it is a yearly pool of funding that expires if not accessed.

Paragraph 93

The Panel finds Canada's new Jordan's Principle process to be very **similar to the old one**...

Paragraph 94

The timelines imposed on First Nations children and families in attempting to access Jordan's Principle funding give the government time to navigate between its own services and programs **similar to what the Panel found to be problematic** in the Decision.

Paragraph 97

The new Jordan's Principle process outlined above is **very similar to the one used in the past**, which the Panel found to be contributing to delays, gaps and denials of essential health and social services to First Nations children and families.

2018 CHRT 4 (February 1, 2018)

Paragraph 55

In so far as Canada's position is that it cannot unilaterally make decisions, the Panel finds

Canada has done so: namely to **maintain the status quo** in some areas even when the needs of specific communities or groups have been clearly identified and expressed...

Paragraph 154

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Paragraph 165

As stated above, the CHRA's objectives under sections 2 and 53 are not only to eradicate discrimination but also to prevent the practice from re-occurring. If the Panel finds that some of the **same behaviours** and patterns that led to systemic discrimination are still occurring, it has to intervene. **This is the case here.**

Paragraph 300

The Panel discussed this at length in the Decision, highlighting many politicians and Program Managers **saying the same thing over and over**: we need the provinces at the table, we need to gather information, we need to work with our partners, we have to seek approvals, other programs may cover this, etc. This has been going for years, yet the Panel found discrimination.

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