



Information Sheet

First Steps in Fixing the Inequities in First Nations Child and Family Services: Immediate Action Reforms

Directive 20-1

(Applied in BC, Newfoundland and Labrador, New Brunswick and the Yukon)

January 10, 2016

Introduction

The Federal Government of Canada 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 Canada). 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 (Caring Society) 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 is discriminatory (CHRT 7008/1340).

The case was filed as a last resort after the federal government failed to implement the recommendations of two reviews: 1) the Joint National Policy Review of First Nations Child and Family Services (2000) and 2) the Wen:de reports (2005). Since the case was filed, the Auditor General conducted two reviews and made

recommendations for reform. Few were ever implemented.

In its closing submissions before the Canadian Human Rights Tribunal, the Caring Society put forward a three-phase remedy. The first phase provided immediate relief based on the prior recommendations. The second phase involved establishing a national committee composed of the Assembly of First Nations, the Caring Society, First Nations child and family service agencies and the Government of Canada to support regional negotiations to achieve substantive equity. The third phase involved establishing an independent oversight body to ensure the federal government does not slip back into discriminatory processes.

This information sheet summarizes the immediate actions INAC must take to provide immediate relief for First Nations children and families in regions where Directive 20-1 applies. This is not an exhaustive list and readers are encouraged to review all of the final written submissions filed by the parties in CHRT 7008/1340 available at www.fnwitness.ca for greater detail.

Immediate, Preliminary Reforms for Directive 20-1

- 1) The Government of Canada to make an immediate and public statement that current inequalities in First Nations services on reserve are discriminatory and

will be addressed as a matter of immediate priority. Such a statement must be accompanied with a pledge to work with First Nations, First Nations child and family service agencies and experts to develop a specific action plan with detailed timelines and budgets to immediately address inequalities in First Nations services on reserve and prevent the recurrence of discrimination.

- 2) Replacement of the federal government's current response to Jordan's Principle with the response recommended in the joint report by the Assembly of First Nations, Canadian Paediatric Society, UNICEF et al. available at:
http://www.afn.ca/uploads/files/jordans_principle-report.pdf
- 3) Provision of new financial resources for First Nations agencies across Canada as set out in the INAC 2012 presentation (CHRT Tab 248) in the amount of 109 million nationally per annum plus the 3 percent inflation adjustment applied retroactively to 2012. While this amount falls short of what will be required to achieve equality in First Nations services on reserve, but provides at least some initial relief for the children and their families.
- 4) Approve child in care related legal expenses as an eligible expense under the maintenance budget and increase the maintenance budget to cover such costs.
- 5) Reinstatement of the annual cost of living adjustment as per the Consumer Price Index.
- 6) Cessation of the INAC practice of taking funds from other First Nations programs such as housing, water and building schools to cover shortfalls in the education, child and family services and social

assistance budgets.

- 7) Immediate reforms to the operations stream in Directive 20-1:
 - a. The 6% of children in care and 20% of families receiving services are baseline assumptions in the funding approach and agencies serving above these baselines receive upward funding adjustments;
 - b. Increase the per-child amount for prevention services to \$200 per child;
 - c. Replace the current operations registered child populations thresholds of 251, 501, 801 and 1000 in the operations formula with the recommended funding increments per every 25 children on reserve as recommended in Wen:de;
 - d. There are several First Nations in New Brunswick that receive zero dollars for the "fixed amount" portion of the operations formula for agency management and administration under the current application of the operations formula. At a minimum, INAC must fund these agencies at the amount provided to agencies at the 250 population threshold pending further review;
 - e. In partnership with affected First Nations, INAC must review decisions to deny the creation of First Nations child and family service agencies in British Columbia and the Yukon. Review all other decisions to refuse the establishment of First Nations child and family service agencies.

- 8) Make a commitment to work with the First Nations Child and Family Caring Society, Assembly of First Nations and Canadian Human Rights Commission to recall the National Advisory Committee and Regional Tables in order to conduct a study and implement the findings to determine remaining inequities in the program and develop evidence informed responses to remedy the inequities and prevent their resurgence. This process must be informed by the success of the Wen:de study approach.
 - 9) Fund the development of culturally based practice standards and programs.
 - 10) Fund agency building renovations by qualified contractors where facility conditions pose a health and safety hazard. Additional costs related to capital will need to be addressed at the regional tables in phase 2 of the remedy.
 - 11) Mandatory training of all Members of Parliament regarding the Truth and Reconciliation Commission (“TRC”) Report and Findings. Training for INAC staff and executive staff on the TRC report and findings as well as the First Nations Child and Family Service Program including the original structure of the program, overview of First Nations child welfare and reviews of the program.
- provision of more prevention funding, resolution of jurisdictional disputes to ensure First Nations children could access services on the same terms as other children and the recognition of First Nations jurisdiction. None of the recommendations related to increasing funding for children and families were ever implemented.
- b) Wen:de Reports (2005). The Wen:de reviews were jointly conducted by INAC and AFN with the participation of First Nations child welfare agencies and over 20 leading experts in fields such as child welfare, economics, community development, law, and information technology. It resulted in a series of three reports identifying the funding shortfalls in detail and proposing a new funding formula and policy reforms. Most of the substantial recommendations were not implemented or implemented improperly.
 - c) Auditor General of Canada (2008*, 2011). Found Directive 20-1 to be flawed and inequitable. The United Nations Committee on the Rights of the Child (2012) expressed concern that the recommendations of the Auditor General of Canada had not been fully implemented.
 - d) Standing Committee on Public Accounts (2009,* 2012).

Reviews of Directive 20-1

- a) Joint National Policy Review (2000)*. This review was jointly conducted by INAC and AFN with the participation of First Nations child welfare agencies. There were 17 recommendations for reform, including the

* Full reports available at:

<http://www.fncaresociety.com/i-am-witness-first-nations-child-and-family-services-funding>

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