Docket: T1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and
ASSEMBLY OF FIRST NATIONS

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous and Northern Affairs Canada)

Respondent

- and -

CHIEFS OF ONTARIO,
AMNESTY INTERNATIONAL CANADA and
NISHNAWBE ASKI NATION

Interested Parties

SUBMISSIONS REGARDING CANADA'S FAILURE TO COMPLY WITH ORDERS REGARDING JORDAN'S PRINCIPLE

DECEMBER 16, 2016

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Canada's limited definition of Jordan's Principle is discriminatory

1. On January 26, 2016, the Tribunal ordered Canada to "cease applying its narrow definition of Jordan's Principle and to take measures immediately to implement the full meaning and scope of Jordan's Principle."[1] In its January 26, 2016 decision, the Tribunal described Jordan's Principle in the following terms:

> Jordan's Principle is a child first principle and provides that where a government service is available to all other children and a jurisdictional dispute arises between Canada and a province/territory, or between departments in the same government regarding services to a First Nations child, the government department of first contact pays for the service and can seek reimbursement from the other government/department after the child has received the service. It is meant to prevent First Nations children being denied essential public services or experiencing delays in receiving them [emphasis in original].[2]

2. Due to Canada's lack of action to comply with its January 26, 2016 order, the Tribunal pronounced increasingly specific definitions of Jordan's Principle in subsequent orders. In the Tribunal's April 26, 2016 remedial order, the panel noted Canada's lack of action with regard to Jordan's Principle and clarified that its January 26, 2016 order required Canada "to 'immediately implement', not immediately start discussions to review the definition in the long-term."[3]

3. In its April 26, 2016 remedial order, the Tribunal ordered Canada to apply the following definition of Jordan's Principle: "all jurisdictional disputes (this includes between federal government departments) and involving all First Nations children (not only those children with multiple disabilities)."[4]

4. On May 10, 2016, Canada stated in its compliance report that it had eliminated "the requirement that First Nations children on reserve must have multiple disabilities that require multiple service providers"[5] and had "expanded Jordan's Principle to apply to all jurisdictional disputes and now includes those between federal government departments".[6] However, Canada's May 10, 2016 submission failed to confirm Canada was applying Jordan's Principle to all First Nations children and to all public services available to other children.

5. The Caring Society's June 8, 2016 submission regarding Canada's May 10, 2016 and May 24, 2016 compliance reports noted that Canada's May 10, 2016 compliance report was vague,[7] and

[1] *FNCFCSC et al v AGC*, 2016 CHRT 2 at para 481.
[2] *FNCFCSC et al v AGC*, 2016 CHRT 2 at para 351.
[3] *FNCFCSC et al v AGC*, 2016 CHRT 10 at para 32.
[4] *FNCFCSC et al v AGC*, 2016 CHRT 10 at para 33.
[5] Canada's May 10, 2016 Compliance Report at para C1.
[6] Canada's May 10, 2016 Compliance Report at para C2.
[7] Caring Society's June 8, 2016 submission regarding Canada's May 10, 2016 and May 24, 2016 compliance reports at para 69.

specifically noted that the May 10, 2016 compliance report did not specifically confirm that Jordan's Principle would apply to all children.[8]

6. On July 5, 2016, the Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs, and the Honourable Jane Philpott, Minister of Health, jointly announced Canada's "new approach" to Jordan's Principle without consultation with First Nations or the Parties.[9] As the fact sheet attached to Minister Bennett and Minister Philpott's joint statement specified, "[t]he Government of Canada's new approach to Jordan's Principle is a child-first approach that addresses in a timely manner the needs of First Nations children living on reserve with a disability or a short-term condition."[10] Neither the Caring Society nor the Assembly of First Nations were consulted in advance of this announcement.

7. On July 6, 2016, Canada confirmed that its approach was limited to First Nations children living on-reserve with a disability or short-term condition requiring health or social services.[11]

8. In its September 15, 2016 decision, the Tribunal criticized Canada for its narrow analysis of Jordan's Principle, noting that "[t]his type of narrow analysis is to be discouraged moving forward as it can lead to discrimination".[12]

9. The definition Canada used in its new approach to Jordan's Principle was also criticized by the Tribunal in its September 15, 2016 decision as appearing too restrictive, such that Canada was required to explain no later than October 31, 2016 "why it formulated its definition of Jordan's Principle as such so that [the Tribunal] can assess its full impact."[13]

10. In its October 31, 2016 compliance report, Canada seemingly justified its focus on children with a disability or short-term condition requiring health or social services due to these children being "the most vulnerable" First Nations children.[14] Canada did not specifically confirm in its October 31, 2016 compliance report that Jordan's Principle was being applied to all First Nations children, residing on- and off-reserve.[15]

11. In the compliance process, the onus remains on Canada to clearly demonstrate to the Tribunal that it has complied with the Tribunal's orders. Canada's October 31, 2016 compliance report fails to demonstrate that the Tribunal's January 26, 2016, April 26, 2016, and September 15, 2016 orders have been complied with, such that further orders are required.

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[8] Caring Society's June 8, 2016 submission regarding Canada's May 10, 2016 and May 24, 2016 compliance reports at para 70(c).
[9] Canada's October 31, 2016 compliance report at Annex I: Joint Statement from the Minister of Health and the Minister of Indigenous and Northern Affairs on Responding to Jordan's Principle, dated July 5, 2016.
[10] Canada's October 31, 2016 compliance report at Annex I: Fact Sheet: Jordan's Principle – Addressing the Needs of First Nations Children.
[11] Canada's July 6, 2016 further reply submissions regarding immediate relief at para 36.
[12] *FNCFCSC et al v AGC*, 2016 CHRT 16 at para 118.
[13] *FNCFCSC et al v AGC*, 2016 CHRT 16 at para 119.
[14] Canada's October 31, 2016 compliance report at p 6.
[15] Canada's October 31, 2016 compliance report at pp 5-7.

12. In addition, Canada's October 31, 2016 compliance report demonstrates that Canada has taken further actions since July 6, 2016 that must be corrected in order to ensure that all First Nations children have access to the services they require, without delay. Notably, Canada is negotiating service agreements with third parties to provide a new "Enhanced Service Coordination" function, based on a definition that does not comply with the Tribunal's April 26, 2016 order, and is imposing service delays through the "Service Access Resolution" function, also contrary to the Tribunal's April 26, 2016 order.

Canada's definition of Jordan's Principle does not comply with the Tribunal's orders

13. The Tribunal's April 26, 2016 order articulated a very clear definition of Jordan's Principle to be applied by Canada. The definition required Jordan's Principle to apply to all First Nations children and all jurisdictional disputes. The Tribunal later clarified in its September 15, 2016 order that all children meant children residing on- and off-reserve.

14. Canada's restricted definition of Jordan's Principle targets a subset of children: those with disabilities or critical short-term conditions receiving health or social services. The Caring Society uses this formulation for convenience, as the various materials provided by Canada contain multiple definitions of Canada's new approach to Jordan's Principle:

a. First Nations children living on reserve with a disability or a short-term condition;[16]

b. First Nations children living on-reserve with a disability or a short-term condition requiring health or social services [emphasis added];[17]

c. First Nations children with a disability or a critical short-term health or social service need living on reserve, or who ordinarily reside on reserve [emphasis added][18];

d. First Nation child with a disability or a discrete condition that requires services or supports that cannot be addressed within existing authorities [emphasis added];[19]

e. First Nation children living on reserve with an ongoing disability affecting their activities of daily living, as well as those who have a short term issue for which there is a critical need for health or social supports [emphasis added];[20]

[16] Canada's October 31, 2016 compliance report at Annex I: Fact Sheet: Jordan's Principle – Addressing the Needs of First Nations Children.
[17] Canada's July 6, 2016 further reply submissions regarding immediate relief at para 36.
[18] Canada's October 31, 2016 compliance report at p 6.
[19] Canada's October 31, 2016 compliance report at Annex I: Atlantic First Nations Health Partnership, Public Health and Primary Care Committee Update (July 5-6, 2016).
[20] Canada's October 31, 2016 compliance report at Annex I: Letter dated August 4, 2016 from Debra Keays-White (Regional Executive Officer, FNIHB Atlantic Region) to Atlantic First Nations Chiefs; Letter dated July 7, 2016 from Jocelyn Andrews (Regional Executive Officer, FNIHB Alberta Region) to Chiefs of Alberta; Letter dated August 8, 2016 from Shawn Grono (Director of Nursing, FNIHB Alberta Region) to All FNIHB and Band Employed Nurse; Health Canada Information Sheet for Nursing Staff re Jordan's Principle (undated); .

f. First Nations children living on reserve and in the Yukon who have a disability or an interim critical condition affecting their activities of daily living have access to health and social services comparable to children living off reserve [emphasis added];[21] and

g. First Nations children with a disability or interim critical condition living on reserve have access to needed health and social services within the normative standard of care in their province/territory of residence.[22]

15. The varying definitions listed above do not capture all First Nations children. Instead, they capture, among others, varying subsets of First Nations children with disabilities or short-term conditions. Various definitions are narrowed by adding concepts of "critical need", of the disability/condition "affecting activities of daily living", or regarding the "normative standard of care" of the jurisdiction in question.

16. On its face, the material Canada has provided the Tribunal fails to clearly demonstrate that Jordan's Principle is being applied to all First Nations children, as ordered on April 26, 2016.

17. Canada's unilateral imposition of limits on Jordan's Principle also runs contrary to the Tribunal's January 26, 2016 decision. There, the Tribunal identified that, at its very core, "Jordan's Principle is designed to address issues of jurisdiction which can result in delay, disruption and/or denial of a good or service for First Nations children on reserve."[23]

18. In its January 26, 2016 decision, the Tribunal was not inclined to place artificial limits on Jordan's Principle, instead focusing on "the extent to which jurisdictional gaps may occur in the provision of many federal services that support the health, safety and well-being of First Nations children and families."[24]

19. The Tribunal reached this particular conclusion with reference to evidence of a wide range of jurisdictional conflicts. This evidence included denials of dental services and mental health

[21] Canada's October 31, 2016 compliance report at Annex I: Presentation dated August 29, 2016 delivered by FNIHB Atlantic Region to the Health Committee of the Mi'kmaq-Nova Scotia-Canada Tripartite Forum at slide 5; Presentation dated September 2016 delivered by FNIHB Atlantic Region to the Public Health and Primary Care Committee, Non-Insured Health Benefits Committee, and the Atlantic First Nations Health Partnership at slide 5; Presentation dated September 2016 delivered by Health Canada to the First Nations of Quebec and Labrador Health Directors' Network at Slide 4.

[22] Canada's October 31, 2016 compliance report at Annex I : Presentation dated September 15, 2016 delivered by FNIHB Atlantic Region to the Non-insured Health Benefits Committee at slide 4; Presentation dated September 21-22, 2016 delivered by FNIHB Atlantic Region to the Public Health and Primary Care Committee, the Non-insured Health Benefits Committee, and the Atlantic First Nations Health Partnership at slide 4; Presentation dated September 28, 2016 delivered by the Co-Chairs of the Atlantic First Nations Health Partnership to the All Chiefs and Councils Assembly of the Atlantic Policy Congress of First Nations Chiefs Secretariat at Slide 4; Presentation dated October 6, 2016 delivered by FNIHB Atlantic Region to the Innu Round Table at slide 4; Presentation dated October 12, 2016 delivered by FNIHB Atlantic Region to the Mi'kmaq-Prince Edward Island-Canada Health Policy and Planning Forum and the Child and Family Services Policy and Planning Forum at slide 4; Presentation dated September 7, 2016 delivered by Health Canada to unspecified audience at slide 3; Presentation dated September 15, 2016 delivered by Health Canada to unspecified audience at slide 3..

[23] *FNCFCSC et al v AGC*, 2016 CHRT 2 at para 379.

[24] *FNCFCSC et al v AGC*, 2016 CHRT 2 at para 381.

services due to jurisdictional conflicts between INAC and Health Canada, without any indication by the Tribunal that the need for dental services or mental health services arose from a disability or interim critical need.[25]

20. Indeed, with particular regard to mental health services, the problem noted by the Tribunal was that Health Canada's existing funding for mental health services was for short-term mental health crises only, such that children in care (who often have ongoing mental health needs) were not receiving services.[26]

21. The Caring Society acknowledges that the stated goal of Canada's "Child-First Initiative" appears to shift the focus off of the resolution of disputes in order to take a more proactive approach, which focuses on identifying needs for services before a dispute arises. This is logical – Jordan's Principle addresses a systemic problem, and as such requires systemic solutions.

22. However, being more proactive on this element does not entitle Canada to continue to discriminate by refusing access to this proactive approach to all First Nations children who fall outside of Canada's limited definition of Jordan's Principle. Children who do not have a disability or interim critical condition still may have needs for public services that support their health, safety and well-being; as such, they should not be excluded from Canada's "Child-First Initiative".

23. Accordingly, Canada's failure to apply Jordan's Principle to all First Nations children cannot be explained by the particular vulnerability of First Nations children with disabilities or short-term conditions.

24. Indeed, the Tribunal will recall that in its defence of the Complaint with regard to Jordan's Principle, Canada relied on this same approach to legitimize its discriminatory definition and approach to Jordan's Principle. As part of its case, Canada tendered a 2011 Health Canada presentation that purported to justify the limitation of Jordan's Principle to children with multiple disabilities experiencing conflicts between the federal and provincial governments in the following terms:

> This slide presents an overview of the federal response to Jordan's Principle. We acknowledge that there are differing views regarding Jordan's Principle. The federal response endeavors to ensure that the needs of the most vulnerable children at risk of having services disrupted as a result of jurisdictional disputes are met.
>
> […]
>
> The Government of Canada's focus is on children with multiple disabilities requiring services from multiple service providers whose quality of life will be negatively impacted by jurisdictional disputes. These are children who are the most vulnerable – children like Jordan.[27]

[25] *FNCFCSC et al v AGC*, 2016 CHRT 2 at paras 371-372.
[26] *FNCFCSC et al v AGC*, 2016 CHRT 2 at para 372.
[27] Attorney General of Canada's Book of Documents, Tab 39, Health Canada PowerPoint Presentation printed with notes, titled "Update on Jordan's Principle: The Federal Government Response" and dated June 2011 at p 6.

25. This position was reiterated by Ms. Baggley in her evidence.[28]

26. It is undisputed that Canada's new approach to Jordan's Principle has an ameliorative purpose, for some children and in some circumstances. However, the scope of Canada's approach, and the process it imposes, does not address all First Nations children with service needs. First Nations children, like other children in Canada, are entitled to non-discriminatory access to public services all of the time and in all conditions except where allowed by statute.

27. Taken as a whole, First Nations children are a vulnerable group. As the Tribunal found in its January 26, 2016 decision, the social, political and legal context of Indigenous peoples in Canada "includes a legacy of stereotyping and prejudice through colonialism, displacement and residential schools".[29]

28. Accordingly, Canada must not be permitted to justify its limitation of Jordan's Principle to a subset of First Nations children based on their greater vulnerability. The *CHRA* requires Canada to address the needs of all members of the disadvantaged group (First Nations children), not only those who are most disadvantaged. Indeed, the narrow definition of Jordan's Principle has already been held to be discriminatory by the Tribunal. Canada must now fully comply with the Tribunal's orders. Canada is not entitled, at this stage of the proceedings, to raise defences or justifications for what amounts to partial compliance.

29. It also bears noting that Jordan's Principle is designed to ensure that First Nations children can access all government services available to other Canadian children without discrimination. By definition, a child to whom Jordan's Principle applies will be disadvantaged, given that they will have experienced a service or bureaucratic procedural obstacle due to their First Nations status. Canada will perpetuate this disadvantage by excluding such children from the scope of its new approach to Jordan's Principle. This is discriminatory, contrary to section 5 of the *CHRA*. Canada cannot replace one discriminatory approach to Jordan's Principle (as found by the Tribunal in its January 26, 2016 decision) with another.

Canada has not provided sufficient assurances that Jordan's Principle is being applied to children living off-reserve

30. On September 15, 2016, the Tribunal ordered Canada "to immediately apply Jordan's Principle to all First Nations children, not only to those residing on reserve."[30]

31. In Canada's October 31, 2016 compliance report, Canada's only assurance was to state that "Canada has applied Jordan's Principle as ordered".[31] Without more, it is unclear that Jordan's Principle is being applied to First Nations children residing off-reserve.

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[28] Cross-examination of Corine Baggley by Mr. Poulin, May 1, 2014 (Vol 58) at p 18 line 19 to p 19 line 20.
[29] *FNCFCSC et al v AGC*, 2016 CHRT 2 at para 402.
[30] *FNCFCSC et al v AGC*, 2016 CHRT 16 at para 118.
[31] Canada's October 31, 2016 compliance report at p 5.

32. What is more, the material in the Health Canada presentations filed as Annex I to Canada's October 31, 2016 compliance report suggests that the on-reserve residence criterion is still being applied. In a presentation titled "Regional Updates: First Nations of Quebec and Labrador Health Directors' Network, September 2016", slide 4 states that "[t]he Child First Initiative is intended to ensure that First Nations children living on reserve and in the Yukon who have a disability or an interim critical condition affecting their activities of daily living have access to health and social services comparable to children living off reserve [emphasis added]."[32]

33. While the presentation is not dated, Canada's October 31, 2016 compliance report notes that during the week of September 21, 2016, there was a meeting between Health Canada and First Nations Health Directors on Jordan's Principle.[33] It is reasonable for the Tribunal to draw an inference that the presentation noted above was given during the week of September 21, 2016. As such, there is evidence that the "on-reserve" criterion has continued to be applied following the Tribunal's September 15, 2016 order.

34. Given the publicity surrounding the multiple definitions of Jordan's Principle contained in Annex I to Canada's October 31, 2016 compliance report, Canada should be required to confirm in writing with those already contacted that Jordan's Principle applies to all First Nations children, and not only those residing on reserve.

Health Canada's presentations regarding Canada's new approach to Jordan's Principle have perpetuated the discriminatorily narrow definition and provide evidence that Canada is negotiating service agreements on the basis of the faulty definition of Jordan's Principle

35. On July 6, 2016, Paula Isaak, Assistant Deputy Minister of Indigenous and Northern Affairs Canada's ("INAC") Education and Social Policy and Programs Branch and Sony Perron, Assistant Deputy Minister of Health Canada's First Nations and Inuit Health Branch ("FNIB") sent a letter to an undisclosed distribution list announcing Canada's new approach to Jordan's Principle and indicating that "[o]ver the coming months, Health Canada and Indigenous and Northern Affairs Canada will actively engage with provinces and Yukon Territory and First Nations to establish supports that would address gaps in health and social services for First Nations children on reserve with an ongoing disability or who have a discrete, short-term condition."[34]

36. Annex I to Canada's October 31, 2016 compliance report provides evidence of many of the activities undertaken during this engagement. These include consultation with stakeholders regarding the selection criteria to be used to identify the organizations that will fulfill the service coordination function. This is concerning, as the scope of Jordan's Principle may well affect the type of organization needing to be selected to deliver the service coordination function.

[32] Canada's October 31, 2016 compliance report at Annex I: Health Canada Presentation: Regional Updates: First Nations of Quebec and Labrador Health Directors' Network, September 2016 a slide 4.
[33] Canada's October 31, 2016 compliance report at p 17.
[34] Canada's October 31, 2016 compliance report at Annex I: Letter from P. Isaak and S. Perron to undisclosed recipients, dated July 6, 2016.

37. Given that funding arrangements for the "Enhanced Service Coordination" function are being, or have already been, concluded,[35] Canada should be required to proactively, and in writing, correct the record with any person, organization, or government who received, or could be in receipt of, Health Canada's flawed presentation material on Jordan's Principle. Given that the July 5, 2016 announcement regarding Canada's new approach to Jordan's Principle was posted on Government of Canada websites, these efforts should involve the general public as well.

38. In addition, Canada must revisit any funding arrangements already concluded to ensure that they reflect the full and proper scope and implementation of Jordan's Principle. The agreement of regional organizations to implement a government initiative cannot insulate that initiative from compliance with the Tribunal's orders in particular, or with the *CHRA* more generally.

The Child First Initiative's goal of "Provincial Comparability" falls short of the reform ordered by the Tribunal

39. In a number of the presentations included at Annex I to Canada's October 31, 2016 compliance report, the stated goal of Canada's "Child-First Initiative" is described as being to "ensure that children living on reserve […] have equitable access to health and social services comparable to children living off reserve."[36] There are also numerous references in these presentations to the Child First Initiative providing access to services within the normative standard of care in the province/territory of residence.

40. As the Tribunal recognized in its January 26, 2016 decision, provincial comparability is an inadequate measure when designing programs and initiatives to provide substantive equality to First Nations children. The Tribunal recognized that "the actual service needs of First Nations children and families […] are often higher than those off reserve."[37]

41. In light of this recognition, the Tribunal found that "human rights principles, both domestically and internationally, require AANDC to consider the distinct needs and circumstances of First Nations children and families living on-reserve – including their cultural, historical and geographical needs and circumstances – in order to ensure equality".[38]

42. While a number of the presentations indicate that "requests for services beyond the normative standard [will be] considered on a case-by-case basis",[39] there is no indication in the presentations as to the criteria that will guide Canada's analysis in such situations. To the extent that case-by-case determinations are not made considering the distinct needs and circumstances of

[35] FNIHB's goal after a September 16, 2016 meeting with the Rehabilitation Centre for Children in Winnipeg was to finalize a contribution between FNIHB and the Rehabilitation Centre for Children "shortly", see Minutes of Meeting with Rehabilitation Centre for Children re Jordan's Principle Child First Initiative dated September 16, 2016 at p. 3, found in Annex I to Canada's October 31, 2016 compliance report.

[36] See for instance: Canada's October 31, 2016 compliance report at Annex I: Presentation dated August 29, 2016 delivered by FNIHB Atlantic Region to the Health Committee of the Mi'kmaq-Nova Scotia-Canada Tripartite Forum at slide 6.

[37] *FNCFCSC et al v AGC*, 2016 CHRT 2 at para 388.

[38] *FNCFCSC et al v AGC*, 2016 CHRT 2 at para 465.

[39] See for instance: Canada's October 31, 2016 compliance report at Annex I: Presentation dated August 29, 2016 delivered by FNIHB Atlantic Region to the Health Committee of the Mi'kmaq-Nova Scotia-Canada Tripartite Forum at slide 4.

First Nations children, including their cultural, historical and geographical needs and circumstances, the "Child First Initiative" will fall short of the way forward set out by the Tribunal in its January 26, 2016 decision.

The process imposed in the Child First Initiative appears to perpetuate discrimination against First Nations children

43. In its April 26, 2016 remedial order, the Tribunal ordered that "[p]ursuant to the purpose and intent of Jordan's Principle, the government organization that is first contacted should pay for the service without the need for policy review or case conferencing before funding is provided."[40]

44. Despite the clarity of this order, the "Service Access Resolution" function outlined in the presentations attached to Annex I of Canada's October 31, 2016 compliance report appears to continue to impose delays on First Nations children. Indeed, the "Service Access Resolution" function appears to be a seven or eight step process that decision-makers must go through in order to accord funding for a service from the "Reserve Fund". This process is all the more concerning given that it contains no transparent and independent mechanism for a family to appeal a denial of service with respect to their child.

45. As a preliminary matter, it is concerning to see that the second question in the "Reserve Fund – Eligibility Determination" framework asks whether the child is "a Registered First Nation individual". The Caring Society fears that limiting the "Child First Initiative" in this way, a number of vulnerable children who are entitled to be registered, but for various reasons (such as the difficulty of meeting documentary requirements) have not been registered, will be excluded from Jordan's Principle's reach. The second step of the "Reserve Fund – Eligibility Determination" should instead address whether a child is Registered or <u>entitled</u> to be Registered.

46. Secondly, where a First Nation's child's case does not fall within "the normative standard of care", it appears inevitable that there will be case conferencing or other procedural delays. Indeed, the presentation delivered by FNIHB to the First Nations of Quebec and Labrador Health Directors' Network in September 2016 explicitly noted that there will be varying timelines for responses: "Every case is different and every request is different. The length of time required to obtain a decision can depend on many factors, but we will work with partners to get a decision quickly".[41]

47. This case-by-case process, where FNIHB will consider whether "an exception" should be made and which includes inquiry into whether access to services or support has been sought through existing Health Canada, INAC, or provincial programs, contains echoes of the 2009 and 2013 Memorandums of Understanding that the Tribunal found discriminatory given that they had "delays inherently built into them by including a review of policy and programs, case conferencing and approvals from the Assistant Deputy Minister, before interim funding [was] even provided."[42]

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[40] *FNCFCSC et al v AGC*, 2016 CHRT 10 at para 33.
[41] Presentation dated September 2016 delivered by Health Canada to the First Nations of Quebec and Labrador Health Directors' Network at Slide 9.
[42] *FNCFCSC et al v AGC*, 2016 CHRT 2 at para 379.

48. Canada should be required to confirm to the Tribunal that the Service Access Resolution function has been modified so that "the government organization that is first contacted should pay for the service without the need for policy review or case conferencing before funding is provided."[43] Canada should be required to file revised Health Canada policy materials confirming that this is the case.

Conclusion

49. Canada's approach to Jordan's Principle means that First Nations children must have a disability or critical short-term condition in order to access public services on the same terms as other children. Such an approach is inherently discriminatory as other children do not need to have a disability or critical short-term condition in order to equitably access public services in Canada.

50. Accordingly, the Caring Society seeks the following orders:

a. A declaration that Canada has failed to comply with the Tribunal's Orders in 2016 CHRT 2, 2016 CHRT 10, and 2016 CHRT 16 by:

    i. Adopting a definition of Jordan's Principle in the context of the Child First Initiative announced on July 5, 2016 that is contrary to the definition ordered by the Tribunal; and

    ii. Imposing policy review or case conferencing in the context of the Child First Initiative announced on July 5, 2016, before funding is provided to a First Nations child with a service need.

b. An Order that Canada immediately cease relying upon and perpetuating the definition of Jordan's Principle that violates the Tribunal's Orders in 2016 CHRT 2, 2016 CHRT 10 and 2016 CHRT 16 (First Nations children with "disabilities and those who present with a discrete, short-term issues for which there is a critical need for health or social supports");

c. An Order that, within 30 days of the Order, Canada contact all stakeholders who received communications including the definition of Jordan's Principle that violates the Tribunal's Orders in 2016 CHRT 2, 2016 CHRT 10, and 2016 CHRT 16, and to immediately advise these stakeholders in writing that Jordan's Principle includes all jurisdictional disputes involving all First Nations children resident on and off reserve;

d. An Order that, within 30 days of the Order, Canada revisit any agreements concluded with third party organizations to provide services under the Child First Initiative's Service Coordination Function and make any changes necessary to reflect the proper definition and scope of Jordan's Principle, which includes all jurisdictional disputes involving all First Nations children; and

[43] *FNCFCSC et al v AGC*, 2016 CHRT 10 at para 33.

e. An Order that Canada immediately cease imposing service delays due to policy review or case conferencing or any other procedure through the Child First Initiative's Service Access Resolution Function.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: December 16, 2016

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Counsel for the Caring Society