



Information Sheet

First Nations Child Welfare

Summary of Orders from the Canadian Human Rights Tribunal

Case Reference: 2018 CHRT 4 (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 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 grounds 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 Caring Society has created a summary of the latest non-compliance orders (2018 CHRT 4), which you can read below. To read the full text of the order, visit www.fnwitness.ca

Fund at actual cost for prevention/least disruptive measures, legal fees, intake and investigation, and building repairs

Paragraphs 233, 408-411

Canada is ordered to develop an alternative system for funding prevention/least disruptive measures, intake and investigation, legal fees, and building repair services for First Nations children and families on-reserve and in the Yukon. The system is to be based on actual needs and operate on the same basis as Canada’s current funding practices for funding child welfare maintenance costs, that is, by fully

reimbursing actual costs for these services as determined by First Nations child and family service agencies to be in the best interests of the child. Canada is to develop and implement the methodology including an accountability framework in consultation with the Assembly of First Nations, the Caring Society, the Canadian Human Rights Commission, the Chiefs of Ontario, and the Nishnawbe Aski Nation by April 23, 2018 and report back to the Panel by May 3, 2018.



Retroactive payment for prevention/least disruptive measures, legal fees, intake and investigation, and building repairs

Paragraphs 234, 411

Canada is ordered to provide funding on actual costs for prevention/least disruptive measures, legal fees, intake and investigation, and building repairs in child welfare to be reimbursed retroactive to January 26, 2016 by April 2, 2018.

Parameters for actual cost orders

Paragraphs 235-236, 412-414

(1) Nation (Indigenous) to Nation (Canada) agreement respecting self-governance to provide its own child welfare services.

(2) Canada reaches an agreement that is Nation specific even if the Nation is not yet providing its own child welfare services and the agreement is more advantageous for the Indigenous Nation than the orders in this ruling.

(3) Reform is completed in accordance to the best practices recommended by experts including the National Advisory Committee and the parties and interested parties, and the eligibility of reimbursements from prevention/least disruptive measures, legal fees, intake and investigation, and building repair services are no longer based on discriminatory funding formulas or programs.

(4) Evidence is brought by any party or interested party to the effect that readjustments of this order need to be made to overcome specific unforeseen challenges and is accepted by the Panel.

Per-child amount

Paragraphs 240, 416-417

Canada is ordered to develop an alternative system for funding child service purchase amounts for First Nations children and families on-reserve and in the Yukon based on actual

needs which operates on the same basis as INAC's current funding practices for funding child welfare maintenance costs. That is, by fully reimbursing actual costs for these services, as determined by the First Nations child and family service agencies to be in the best interests of the child and develop and implement the methodology including an accountability framework in consultation with the Assembly of First Nations, the Caring Society, the Canadian Human Rights Commission, the Chiefs of Ontario, and the Nishnawbe Aski Nation by April 2, 2018 and report back to the Panel by May 3, 2018.

Retroactive payment for per-child amount

Paragraph 241

Canada is ordered to provide funding on actual costs for the child service purchase amount in child welfare to be reimbursed retroactive to January 26, 2016 by April 2, 2018.

Small agencies

Paragraphs 249-251, 418-421

Canada is ordered to analyze the needs assessments completed by First Nations agencies in consultation with the Parties, interested parties (see protocol below), and other experts to do a cost-analysis of the real needs of small First Nations agencies related to child welfare taking into account travel distances, case load ratios, remoteness, the gaps and/or lack of surrounding services, and all particular circumstances they face. This analysis must be complete and reported back to the Tribunal by May 3, 2018. Canada is further ordered to develop an alternative method for funding small agencies based on actual needs and operates on the same basis as INAC's current funding practices for funding child welfare maintenance costs.



Data collection

Paragraphs 265, 421

Canada is ordered to provide a reliable data collection, analysis, and reporting methodology as well as ethical research guidelines respecting Indigenous peoples that include protection of Indigenous intellectual property, that will be applied to said research, for the approval of the Panel upon further submissions by the parties, to guide the data collection process launched following its October 28, 2016 letter to First Nations child and family service agencies, and to guide the data collection process resulting from all the orders for actual costs in this ruling.

Reallocations

Paragraphs 277-279, 422-424

Canada is ordered to stop unnecessarily reallocating funds from other social programs, especially housing, if it has the adverse effect to lead to apprehensions of children or other negative impacts outlined in the Decision by February 15, 2018. Canada is further ordered to ensure that any immediate relief investment does not adversely impact Indigenous children, their families, and communities by February 15, 2018 and to evaluate all of its social programs in order to determine and ensure any reallocation is necessary and does not adversely impact First Nations children and their families.

Mental Health

Paragraphs 305, 425

Canada is ordered to analyze all of its programs that fund mental health for First Nations on reserves and in the Yukon and clearly establish which ones fund what in order to identify gaps or double payments in services to First Nations children by April 2, 2018.

Retroactive mental health funding

Paragraphs 306, 426

Canada is ordered to fund actual costs of mental health services to First Nations children and

youth in Ontario with CFI or otherwise retroactive to January 26, 2016 by February 15, 2018.

Band representatives

Paragraphs 336-337, 427-428

Canada is ordered to fund Band Representative Services for Ontario First Nations at actual cost of providing those services retroactive to January 26, 2016 by February 15, 2018 and until such time as studies have been completed or until further order of the Panel. INAC will not deduct this funding from existing funding or prevention funding, until studies have been completed or until further order of the Panel.

Agency deficits

Paragraphs 372, 429

Canada is ordered to identify which First Nations agencies including the Nishnawbe Aski Nation agencies above mentioned have child welfare or health related deficits and assess those deficits and report to the Tribunal by May 3, 2018.

Dissemination of information

Paragraphs 372, 429

Canada is ordered to communicate clearly to First Nations child and family service agencies any immediate relief ordered by the Panel in order to ensure that these measures are implemented fully, properly, and in a manner to reduce the adverse impacts on First Nations children by March 15, 2018. The details of such obligations will be left as a matter for the parties to discuss as part of the consultation ordered below and the communications strategies used shall be described in detail as part of the corresponding reporting obligations.

Consultation

Paragraphs 400, 431

Canada is ordered to consult not only with the Commission but also directly with the Assembly of First Nations, the Caring Society, the Chiefs of Ontario and the Nishnawbe Aski Nation on the



orders made in this ruling, the Decision, and its other rulings. INAC is ordered to enter into a protocol with the Assembly of First Nations, the Caring Society, the Chiefs of Ontario, the Nishnawbe Aski Nation and the Commission on consultations to ensure that consultations are carried out in a manner consistent with the honour of the Crown and to eliminate the discrimination substantiated in the Decision by February 15, 2018. The Parties will report on the progress of the implementation of this order and any issues that arise to the Tribunal by February 8, 2018.

Future Reporting

Paragraphs 403-406, 432-435

Canada is ordered to serve and file a report and affidavit materials detailing its compliance with each of the orders in this ruling by May 24, 2018. The Complainants and the Interested Parties shall provide a written response to Canada's report by June 7, 2018 and shall indicate:

(1) whether they wish to cross-examine Canada's affiant(s); and

(2) whether further orders are requested from the Panel. Canada may provide a reply, if any, by June 21, 2018. Any schedule for cross-examining Canada's affiant(s) and/or any further reporting

shall be considered by the Panel following the parties' submissions.

Interpretation

Paragraph 407

Orders are to be read in concurrence with the findings above, along with the findings and orders in the Decision and previous rulings (2016 CHRT 2, 2016 CHRT 10, 2016 CHRT 16, 2016 CHRT 7, 2017 CHRT 14). Separating the orders from the reasoning leading to them will not assist in implementing the orders in an effective and meaningful way that ensures the essential needs of First Nations children are met and discrimination is eliminated.

Retention of Jurisdiction

Paragraph 444

The Panel retains jurisdiction over the above orders to ensure they are effectively and meaningfully implemented, and to further refine or clarify its orders if necessary. The Panel will continue to retain jurisdiction over these orders until December 10, 2018 when it will revisit the need to retain jurisdiction beyond that date.

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