



Letter-Decision from the Canadian Human Rights Tribunal Confirming Funding of Capital Assets

Introduction

On August 26th, 2021, the Canadian Human Rights Tribunal (CHRT) issued a letter-decision in the First Nations Child and Family Caring Society et al. v. Attorney General of Canada case. A letter-decision is the equivalent of an oral ruling being made at the bench, which is binding and for which legal reasons will follow. This order flows from a non-compliance motion filed by the Caring Society in February 2019 regarding Canada's failure to remedy discrimination in the provision of capital to enable substantively equal child welfare prevention and Jordan's Principle services. This order is important as there is a serious housing/building shortage in many First Nations communities, meaning there is often no space to provide the prevention services that would keep more children safely at home with their families.

The parties are the Attorney General of Canada, the Caring Society, the Assembly of First Nations, and the Canadian Human Rights Commission. The Nishnawbe Aski Nation, the Chiefs of Ontario, and Amnesty International have interested party status in these proceedings.

Purpose of the Order

This letter-decision focuses on funding for First Nations Child and Family Services (FNCFS), including the purchase and construction of capital assets. Capital refers to the physical property that is required to operate programs and services, such as buildings, vehicles, and other infrastructure. The CHRT confirms that funding for the purchase of buildings and additional capital assets that support the delivery of programs and prevention services must be provided under the FNCFS Program.

Capital Assets: the Tribunal orders Canada to fund all FNCFS agencies, including small agencies and First Nations, for the actual costs of purchasing capital assets. The Tribunal further orders Canada to fund the actual cost of constructing capital assets that are "ready to proceed". For capital projects that are still in the early planning stages and for FNCFS agencies and First Nations interested in capital asset purchase and/or construction, funding will be made available to

conduct capital needs and feasibility studies..

Capital Needs Under Jordan's Principle: the Tribunal orders Canada to fund all FNCFS agencies, including small agencies and First Nations, for the purchase of capital assets that "support the delivery of Jordan's Principle services to children on-reserve". The Tribunal further orders Canada to fund the actual cost of constructing capital assets that are "ready to proceed". For capital projects that are still in the early planning stages and for FNCFS agencies and First Nations interested in capital asset purchase and/or construction under Jordan's Principle, funding will be made available to conduct capital needs and feasibility studies.

Band Representatives: the Tribunal orders Canada to fund the actual costs for Band representatives and any on-reserve prevention services. Ontario First Nations will also have access to funding for feasibility studies and needs-assessments for the purchase and/or construction of capital assets that support the delivery of Band Representatives and prevention services.

For each of the above orders, Canada must advise FNCFS agencies and First Nations "within 30 days of receipt of the forthcoming reasons concerning this order" on how to access this funding. Canada must also make this information available on the Indigenous Services Canada website.

The CHRT also provides clarification around the use of the *Financial Administration Act (FAA)*, due to concerns that this law has been "interpreted in a way that hinders the Panel's quasi-judicial statutory role". This means that the Tribunal's rulings and the *FAA* should be used together, not against each other. If there is a conflict between a CHRT order and the *FAA*, the orders of the Tribunal are paramount, which means they come first. This clarification prohibits Canada from denying services or refusing to implement orders based on their interpretation of the *FAA*.

Summary

Altogether, this letter-decision orders greater funding for on and off reserve capital, which means programs and services can be delivered in safe, family-friendly environments that serve the best interests of First

Nations children and communities. This letter-decision reinforces the provision of funding for Band Representatives and preventative services on-reserve, and addresses the conflict between CHRT orders and other government legislation. As stated in the letter, the Panel will be issuing reasons in the coming weeks to accompany this decision. The Caring Society will provide further analysis as more information becomes available.

For more information on the CHRT case, please visit fnwitness.ca.

For more on Jordan's Principle, or any of the other focus areas of the Caring Society, please visit our website at fncaringsociety.com.

You can read the full text of the letter on the I am a Witness Timeline here: fncaringsociety.com/publications/chrt-letter-decision-august-26-2021.