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**ISSUE UPDATE**  
**May 2018**

## **CHILD WELFARE & JORDAN'S PRINCIPLE**

### **OVERVIEW**

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In 2007, the Assembly of First Nations (AFN), in partnership with the First Nations Child and Family Caring Society (Caring Society), launched a case at the Canadian Human Rights Tribunal (CHRT) alleging that Canada discriminates against First Nations children by underfunding First Nations Child and Family Services programs on reserve. On January 20, 2016, the CHRT found that the federal government did indeed discriminate against First Nations children in the provision of services on the basis of race. The CHRT ordered the federal government to immediately and completely overhaul its on-reserve child and family services program.

The AFN fought for nearly nine years to advocate for First Nations children at the CHRT, and continues to do so in filing non-compliance rulings due to inaction on behalf of the federal government.

The CHRT has issued four compliance rulings – one on April 26, 2016, a second on September 26, 2016, a third on May 26, 2017, and a fourth on February 1, 2018. The April 2016, ruling required Canada to immediately take measures to address a number of its findings and articulated a clear definition of Jordan's Principle to apply to all First Nations children and all jurisdictional disputes. The September 2016 ruling set out additional measures that Indigenous Services Canada (ISC) was to take, to comply with the CHRT's findings. The May 2017 ruling reaffirmed the CHRT's findings

and again set out the measures needed for ISC to comply with the CHRT's findings. The February 2018 ruling set out further measures for ISC to comply with the CHRT's findings, and ordered Canada to enter into a Consultation Protocol with the Parties.

The AFN continues to advocate for a complete overhaul of the First Nations Child and Family Services program, which must be informed by the work of the National Advisory Committee (NAC). The Jordan's Principle Action Table operates under the structure of the NAC, and is active in advancing the implementation of Jordan's Principle. The Jordan's Principle Action Table is oriented towards proposing policy options for the extension of federal program authorities, support for service delivery models, and funding to fully implement Jordan's Principle. Further, the membership of the Jordan's Principle Action Table is set to expand to achieve full regional representation. The AFN has requested support from the AFN Regional Chiefs to identify regional representatives to achieve this.

National Chief Perry Bellegarde raised the issue of First Nations child welfare at the Federal/Provincial/Territorial (FPT) Meeting of Ministers Responsible for Human Rights on December 11, 2017.

At the December 2017 Special Chiefs Assembly, the AFN Chiefs in Assembly passed Resolution 92/2017, *Support the Spirit Bear*

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*Plan to End Inequities in all Federally Funded Public Services for First Nations Children, Youth and Families.* This resolution supports a whole-of-government approach to reforming services for First Nations children, youth and families, including the full and proper implementation of the CHRT.

On January 25 and 26, 2018, the National Chief, the AFN Executive Committee and Regional First Nations leadership, attended the Emergency Meeting on First Nations, Inuit and Métis Child and Family Services alongside representatives from Inuit and Métis partners. The leaders were joined by the Minister of ISC, Jane Philpott, Minister of Crown—Indigenous Relations and Northern Affairs (CIRNA), Carolyn Bennett, and provincial and territorial Ministers and Deputy Ministers of health, social services, children’s services, and Indigenous relations. Experts, practitioners, leaders, youth, Elders and grandmothers shared their experiences working with and being part of the child and family services system. National Chief Perry Bellegarde and Regional First Nations leadership called for reform of the child and family services system across all provinces and territories, with a focus on prevention, adequate funding, and acknowledging the inherent right and jurisdiction of First Nation communities to provide care and protection for their children. The NAC Interim Report informed part of the discussion on recommendations to forge the path towards these necessary changes.

At the Emergency Meeting, Minister Philpott announced Canada’s commitment to six

points of action to address the overrepresentation of Indigenous children in care.

- 1) Continuing to implement the CHRT orders, including Jordan’s Principle, and reforming child and family services funding to a flexible funding model.
- 2) Working with partners to shift program focus to culturally-appropriate prevention, early intervention, and family reunification.
- 3) Working with partners to support communities to “draw down” jurisdiction over child and family services (including exploring the possibility of co-developing federal legislation).
- 4) Participating and accelerating the work of tripartite and technical tables.
- 5) Supporting Inuit and Métis leadership to advance reform on child and family services.
- 6) Creating a data strategy with provinces/territories and Indigenous partners.

Reference was also made at the Emergency Meeting to a commitment to work with Indigenous partners by the FPT Child and Youth in Care Working Group, made by Working Group co-chairs Minister Couteau (ON) and Minister Fielding (MB).

Budget 2018 was released on February 27, 2018, and announced \$1.4 billion for First Nations Child and Family Services to fully implement the CHRT orders, address funding pressures for agencies, and increase prevention resources.

### UPDATE

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The CHRT released a fourth compliance ruling on February 1, 2018, (2018 CHRT 4). This ruling summarizes Canada’s actions towards compliance with the initial and subsequent

CHRT rulings, stating that, while some effort has been made, full compliance has yet to be seen. These orders must be fulfilled in consultation with the AFN, Caring Society, and

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interested parties in a timely manner to reduce the adverse impacts on children. This ruling also called for Canada to enter into a Consultation Protocol with the Parties to the CHRT (AFN, Caring Society, Nishnawbe Aski Nation, and Chiefs of Ontario) to oversee the consultations required by this and previous CHRT rulings.

Canada, the Canadian Human Rights Commission, and the Parties to the CHRT have entered into a Consultation Protocol as per the 2018 CHRT 4 ruling. The Consultation Protocol's goal is to improve communication, transparency and understanding, and to ensure proper consultation with the Parties over matters related to the CHRT in order to eliminate the systemic discrimination substantiated by the CHRT. Consultation areas

include immediate relief, mid- to long-term relief, and compensation.

The Consultation Protocol established a Consultation Committee on Child Welfare (CCCW) consisting of all the parties to the CHRT. The CCCW had its first meeting on May 10, 2018. At this first meeting, the Terms of Reference were reviewed along with other pressing matters, including discussions on ramp up funding allocations and the First Nations Child and Family Services Program Terms and Conditions.

At the Special Chiefs Assembly on May 1, 2018, the Chiefs-in-Assembly passed AFN Resolution 11/2018 supporting *Federal Legislation on First Nations Child Welfare Jurisdiction*. The Resolution directs the AFN to establish a working group to begin this important work.

### NEXT STEPS

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- Continue to advocate for immediate, mid, and long-term relief measures.
- Move forward with the NAC work to completely overhaul the on-Reserve Child and Family Services program.
- Move forward with the Jordan's Principle Action Table work and support the expansion of the Action Table, including regional representation.
- Co-develop policy options for a Fall 2018 Memorandum to Cabinet to inform the full implementation of Jordan's Principle, as directed by regional discussions and the Jordan's Principle Action Table.
- Host a two-day Jordan's Principle Summit on September 12 and 13, 2018 in Winnipeg, MB, to share best practices and innovative approaches to implement Jordan's Principle and discuss the long-term approach to Jordan's Principle as defined by First Nations.
- Convene a NAC meeting in July 2018 to review work by the Institute of Fiscal Studies and Democracy (IFSD) on developing a new funding approach for First Nations Child and Family Services.
- Convene a second meeting of the CCCW to ensure oversight and consultation on CHRT orders.
- Establish a working group to begin co-developing Federal Legislation on First Nations Child Welfare Jurisdiction, pursuant to AFN Resolution 11/2018.
- Continue advocating for trilateral processes in every province and territory. There are over 40,000 First Nations children in provincial care and it is time for all jurisdictions to do their part in addressing this national crisis.