



CHILD WELFARE & JORDAN'S PRINCIPLE

OVERVIEW

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 most recent ruling set out further measures for ISC to comply with the CHRT's findings, and ordered a Consultation Protocol between 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 federal program authorities, service delivery models, and funding to fully implement Jordan's Principle. A phased approach to engagement and consultation on implementation on known service gaps initially, and later to focus on bridging gaps have been proposed. Further, the membership of the Jordan's Principle Action Table is set to expand to achieve full regional representation. 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

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Resolution 92/2017, *Support the Spirit Bear 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.

UPDATE

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).

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. The orders made in the ruling include: funding actual costs of First Nations agencies, small agencies, Ontario agencies, and First

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Nations representatives in Ontario; reforming funding structures that incentivize the apprehension of First Nations children; ceasing the reallocation of funds from other social programs for Indigenous peoples that negatively impact children and families; analyzing mental health programs and social program deficits. These orders must be fulfilled in consultation with the AFN, Caring Society, and interested parties in a timely manner to reduce the adverse impacts on children.

Canada, the Canadian Human Rights Commission, and the Parties to the CHRT (AFN, Caring Society, Nishnawbe Aski Nation, and Chiefs of Ontario) 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.

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. A subsequent NAC meeting took place in Ottawa April 24 and 25, 2018. A Jordan's Principle Action Table meeting took place April 17 and 18, 2018 in Ottawa.

NEXT STEPS

- Continue to advocate for immediate relief measures.
- Move forward with the NAC work to completely overhaul the on-reserve Child and Family Services (CFS) programs.
- Move forward with the Jordan's Principle Action Table work and support the expansion of the Action Table, including regional representation.
- Keep advocating for trilateral processes in every province and territory. There are over 40,000 children in provincial care and it is time for all jurisdictions to do their part in addressing this national crisis.
- Move to convene the first meeting of the Consultation Committee called for within the Consultation Protocol.