



## CHILD WELFARE

### 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), as well as the Consultation Committee on Child Welfare (CCCW).

At the December 2017 Special Chiefs Assembly, the AFN Chiefs-in-Assembly passed 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 decision.

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, Carolyn Bennett, and provincial and territorial Ministers and Deputy Ministers of

# ISSUE UPDATE

## November 2019

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.

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 Federal, Provincial, Territorial Child and Youth in Care Working Group, made by Working Group co-chairs Minister Couteau (Ontario) and Minister Fielding (Manitoba).

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, the Caring Society, and other 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.

# ISSUE UPDATE

## November 2019

The Consultation Protocol established a Consultation Committee on Child Welfare (CCCW) consisting of all the parties to the CHRT case. 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 funding allocations and the First Nations Child and Family Services Program Terms and Conditions.

The CCCW has met monthly throughout 2018 and 2019. These meetings were structured to provide updates from Canada on implementation of all CHRT orders. Discussions included a review of the revised program terms and conditions, program funding, Jordan's Principle activities, training, mental health gaps, compensation, and several other outstanding issues for mediation or adjudication before the tribunal. The CCCW Terms of Reference were approved and finalized at the August 2, 2018, meeting.

The CHRT issued an Order on Compensation to victims of the child welfare system on September 6, 2019. The order specified that each victim receive \$40,000, the maximum allowable under the Canadian Human Rights Act. The order also specified that Canada, the AFN and the Caring Society meet to discuss a process to pay the compensation and report back to the Tribunal on December 10, 2019. Canada has now requested a Judicial Review and Stay of the order. The AFN and the Caring Society are opposing the Judicial Review and Stay with hearings set in November 2019.

NAC meetings were held in February, May, July and October 2019, in Ottawa. The Institute of Fiscal Studies and Democracy

(IFSD) has started on phase two of their research which involves developing a new performance-based funding model for First Nations Child and Family Service Agencies. The NAC continues its oversight of the IFSD research. The NAC also continued its discussion and provided feedback to Canada on new child welfare legislation, program terms and conditions and Jordan's Principle.

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

The Child Welfare Legislation Working Group was established and has now completed its work with Royal Assent on June 21, 2019, of Bill C-92, *An Act Respecting First Nations, Inuit and Metis Children, Youth and Families (the Act)*. The new legislation is set to come into force on January 1, 2020.

At the Annual General Assembly in July 2019, a further Resolution was passed on Transition and Implementation of the *Act*. The Resolution called for the establishment of a Chiefs and Technical Subcommittee to provide oversight and involvement with transition planning, including regulation and policy development. The Chiefs Committee had its first meeting in Vancouver on October 16 and 17, 2019. Terms of Reference were adopted, and an emergency letter was sent to Canada requesting a Political Accord, reiterating the requirement for a "distinctions based" approach to implementation and that an implementation secretariat be established for the *Act*. The Technical Subcommittee is meeting on November 18, 2019.

### NEXT STEPS

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- Continue to advocate for immediate, mid, and long-term relief measures.
- Continue to advocate per the direction from the Chiefs Committee on Child and Family Services for predictable, sustainable and needs based funding, a full distinctions-based approach to transition planning, the establishment of an Implementation Secretariat and that a Political Accord be completed to ensure full and proper implementation of the Act.
- Move forward with the NAC work to completely overhaul the on-reserve Child and Family Services program.
- The next meeting of the CCCW is set for November 8, 2019. Critical agenda items for this meeting will include the compensation orders and continued discussions on several other outstanding issues for possible mediation/adjudication at the tribunal.
- The next meeting of the Chiefs Committee on Child and Family Services and Self Determination is on December 2, 2019.
- Continue advocating for trilateral processes in every province and territory.

