

BRIEFING NOTE

TO: UBCIC Chiefs Council
FROM: UBCIC Executive
DATE: May 27, 2021
RE: First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada, 2021 CHRT 12

PURPOSE

To provide a summary to Chiefs and leaders of the most recent non-compliance order issued against Canada by the Canadian Human Rights Tribunal (“CHRT”) in the case: *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada, 2021 CHRT 12*, and to provide further information regarding the retroactive funding from Canada to First Nations not served by a Delegated Aboriginal Agency under the Community Wellbeing Jurisdiction Initiative (“CWJI”).

BACKGROUND

In January 2016, the CHRT found that Canada had engaged in discriminatory funding practices against First Nations children and families living on reserve through their First Nations Child and Family Services (“FNCFS”) program, by incentivizing the removal of First Nations children from their families and by not funding services in a way that was reflective of the actual needs of First Nations families or communities, including prevention services. As a result of this decision, Canada was ordered to immediately cease its discriminatory practices under the FNCFS program and to undertake a reform of their FNCFS program (2016 CHRT 2).

Since the original decision, the Caring Society has brought several non-compliance motions before the CHRT arguing that Canada has failed to cease their discriminatory funding practices for First Nations child and family services. In August of 2020, the Caring Society filed a non-compliance motion before the CHRT arguing that Canada had failed to amend Provincial and Territorial funding agreements to align with the 2016 CHRT decision. Specifically, this motion argued that Canada had not taken adequate steps to address the ongoing funding inequities for First Nations children and families on-reserve who were not served by a Delegated Aboriginal Agency (“DAA”).

CURRENT STATUS

On March 17, 2021, the CHRT agreed to a draft consent order put forward by the parties. This order required Canada to work with the Caring Society and the AFN to develop an interim funding formula for First Nations not served by a DAA within 30 days, to be paid retroactively to January of 2016. An interim formula was agreed to and ISC began reaching out to First Nations in BC receiving CWJI funding on May 6th, 2021, via phone and letter (attached). This letter outlines the basis of the CHRT decision, and the current order requiring ISC to fund these First Nations according at a rate that is equitable to the funding provided to DAA’s. In addition to the retroactive funding, ISC is required to work with those First Nations unaffiliated with a DAA to develop a funding agreement that meets their needs pending long-term reform. The interim funding model and any subsequent agreements are to:

be sufficiently flexible to ensure that the principles of substantive equality (bearing in mind communities' historical, cultural and geographical needs and circumstances) and best interests of the child are respected, and that it accounts for inflation, population growth, the challenges faced by remote First Nations and the need to support governance and capacity development for the delivery of child and family services in these communities (2021 CHRT 21, para 42).

On June 7th, 2021, Indigenous Services Canada has tentatively scheduled an information session for the 82 First Nation in BC who are unaffiliated with a DAA, and who are impacted by this decision. This information session will outline the background on the decision, the current process for accessing this funding, and the obligations of Canada moving forward. Further information on this session will be forthcoming.

The First Nations Leadership Council will continue to monitor Canada's implementation of this decision and any subsequent orders from the CHRT as work is done to reform funding for First Nations child and family services.

ANALYSIS

In BC, there are 82 First Nations who are unaffiliated with a Delegated Aboriginal Agency. These 82 communities continue to have child and family services provided by the Ministry of Children and Family Development and are eligible to receive funding for prevention and support services through the Community Wellbeing and Jurisdiction Initiative (CWJI), which was established in 2018. The stated intention of this funding stream is to *"support First Nations communities to lead the development and delivery of prevention services and to assert greater control over the well-being of their children and families"*. First Nations who are unaffiliated with a DAA can apply for CWJI funding to expand prevention and wellbeing initiatives within their communities, and to develop and implement jurisdictional models.

Under the most recent CHRT order Canada has been ordered to provide funding to each of the 82 communities in BC who are unaffiliated with a DAA retroactively to January of 2016, and to increase CWJI funding to this level going forward. The current retroactive increases are based on an interim funding model that was agreed to by the parties to the order (Canada, the First Nations Child and Family Caring Society, and the Assembly of First Nations). As part of the order, Canada must work with First Nations to revise the funding program in a way that meets the goals of long-term reform.

The FNCFS program, and the CWJI funding stream, were put in place prior to the passage of *An Act Respecting First Nations, Inuit and Metis Children, Youth and Families*, and are currently under review by Canada and related parties as part of the broader systemic reform related First Nations child and family services. Should a community reach a Nation-to-Nation agreement with Canada related to the delivery and funding of child and family services that is more advantageous for their specific needs, this funding stream may be displaced as per the specific agreement of that Nation. Until that time, Canada is obligated to fund the CWJI under the interim funding agreement.

NEXT STEPS:

1. Indigenous Services Canada has tentatively scheduled an information session for June 7th from 1-2:15PM regarding the CHRT order and the associated retroactive funding. All First Nations not affiliated with a DAA and who have additional questions about this should have a representative attend this session.

APPENDICES

1. Indigenous Services Canada template letter to First Nations regarding CWJI retroactive funding.
2. First Nations Child and Family Caring Society Information Sheet re: 2021 CHRT 12