

BRIEFING NOTE

TO: First Nations Leadership
FROM: First Nations Leadership Council
DATE: June 18, 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 interim funding approach for First Nations not served by a Delegated Aboriginal Agency.

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 (2021 CHRT 12). Based on this order, Canada worked with the Caring Society and the AFN to develop an interim funding formula for First Nations not served by a DAA, to be paid retroactively to January of 2016.

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 to 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.

On June 7th, 2021, Indigenous Services Canada held an information session for the 82 First Nation in BC who are unaffiliated with a DAA, and who are impacted by this decision. A presentation PPT (attached),

was codeveloped by ISC, the Caring Society and the AFN and outlined how the funding formula was developed, what the funding can be used for, and how communities are able to access it. The session was recorded and is posted for those who were unable to attend: xxxx

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.

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).

Funding Formula

Eligible First Nations can access the retroactive funding for the five year period between 2016 and including the current 2021-22 fiscal year. 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 current formula will apply until a new funding methodology for the First Nations Child and Family Services (FNCFS) program is developed, or a First Nation enters into a different agreement with Canada. The interim funding approach was developed using the following formula:

- The per capita amount of \$947 multiplied by the on-reserve population of a particular community in the Indian Registration System;
- The amount of \$947 was derived based upon the annual yearly claims submitted by DAA's, then adding investments made to agencies in the 2016 and 2018 federal budgets, with additional escalators for capacity building and administration, a remoteness factor of 10% and interest on the retroactive portion.

Eligible Activities

Eligible First Nations can access this funding for activities related to development and delivery of early intervention, prevention and cultural programs children in care, which may include capital projects to support the delivery of these programs and services. Eligible communities who do not have an existing CWJI agreement, or who may have less experience or capacity in developing and delivering prevention programs and services, can also use this funding to conduct a needs-assessment assessment of the children, youth and families in your communities and to develop internal capacity to deliver services. This may include working with other First Nations who have more experience or capacity to understand and develop these services.

How to Access the Funding

There is no proposal required to access this funding. Communities who have an existing CWJI agreement in place may choose to expand upon and revise their existing plan. ISC has begun reaching out to all 82 eligible First Nations, including those without an existing agreement, to coordinate the distribution of funding. As this is a legal order, Canada is obligated to provide the retroactive funding to eligible communities and to ensure they have the ability to access it. The funding access form provided by ISC is attached as an appendix.

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.

APPENDICES

1. Indigenous Services Canada template letter to First Nations regarding CWJI retroactive funding.
2. ISC CWJI Funding Access Form.
3. Implementation of 2021 CHRT 12 Presentation PPT.
4. First Nations Child and Family Caring Society Information Sheet re: 2021 CHRT 12