

# CANADIAN HUMAN RIGHTS TRIBUNAL ON FIRST NATIONS CHILD WELFARE



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# INDICATORS OF WHEN STATES CONSCIOUSLY VIOLATE HUMAN RIGHTS

1.State knows about discrimination

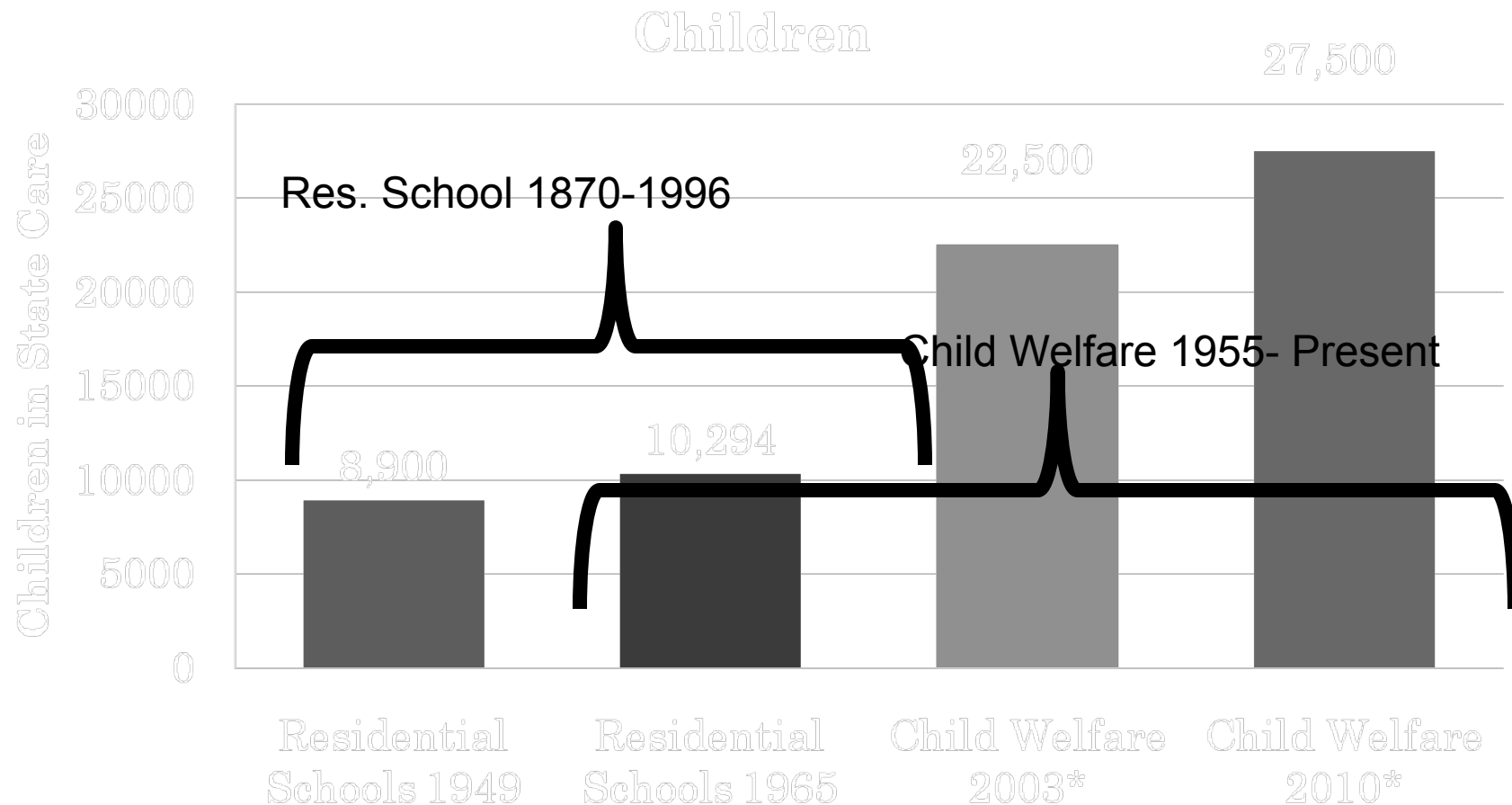
2. Has solutions to deal with it

3.Has resources to deal with it

4.Chooses not to deal with discrimination

5.Fights to preserve the discriminatory behaviour

# FIRST NATIONS IN STATE CARE IN CANADA



\*estimates. FN children 6-8 more times likely to be in foster care (Auditor General of Canada, 2008)



*Category 3-those  
from families where  
a serious problem  
leading to neglect of  
children exists.*

Residential schools  
admission categories,  
RCAP, 1996

# WHAT CANADA KNEW

*There can be no dispute: the churches and government did not, in any thoughtful fashion, care for the children they presumed to parent. While this is traceable to systemic problems, particularly the lack of financial resources, the persistence of those problems and the unrelieved neglect of children can only be explained in the context of another deficit—the lack of moral resources.*

RCAP, Chapter 10, 1996

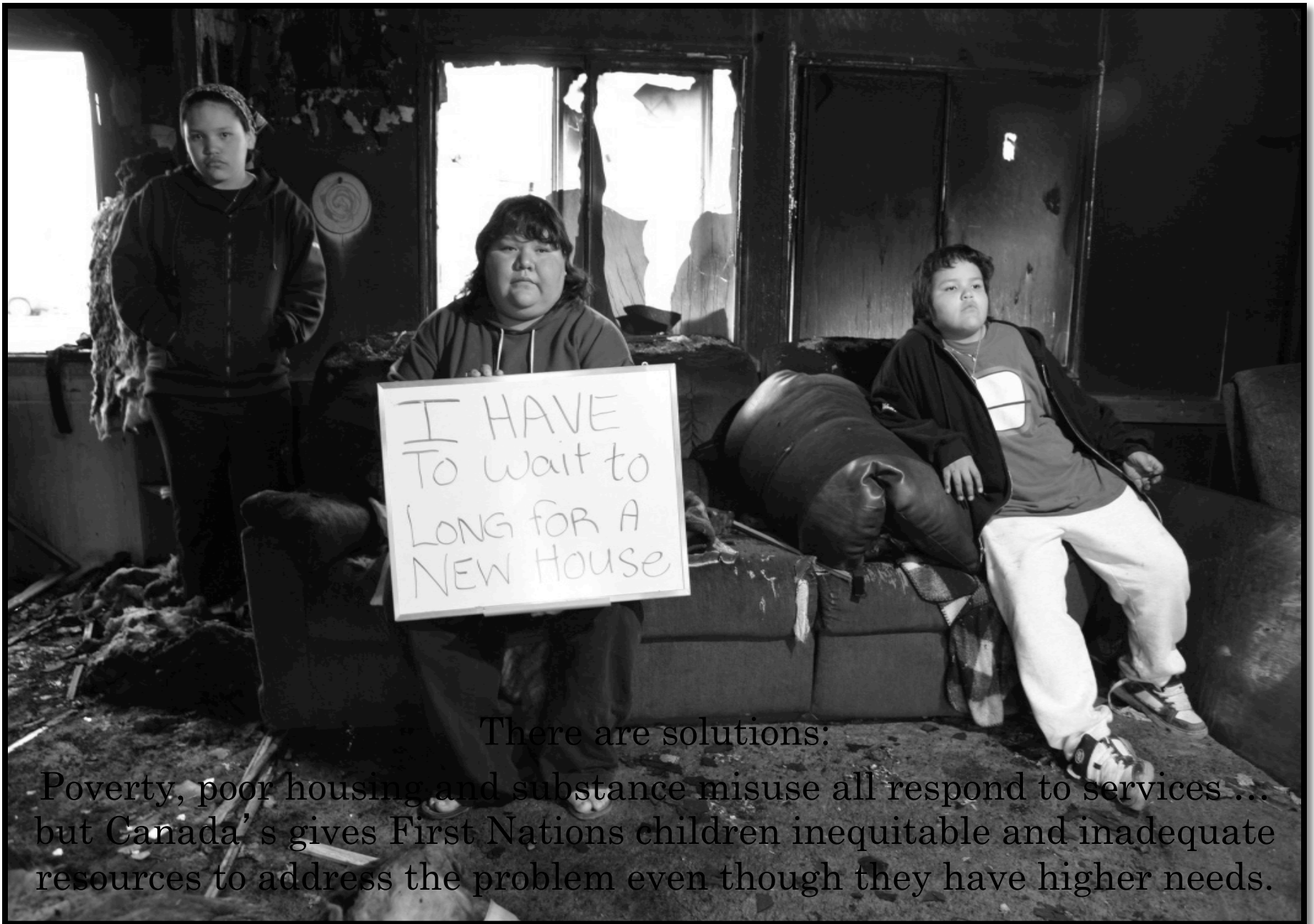


*We now recognize that, in separating children from their families, we undermined the ability of many to adequately parent their own children and sowed the seeds for generations to follow, and we apologize for having done this.*

Prime Minister Stephen Harper, 2008



*There are three times  
the number of First  
Nations children in  
foster care today than  
during the height of  
residential schools.*



There are solutions:

Poverty, poor housing and substance misuse all respond to services ... but Canada's gives First Nations children inequitable and inadequate resources to address the problem even though they have higher needs.



*Inequities in services available to children on reserve touch many aspects of their lives creating a perfect storm of disadvantage*

# PROVINCIAL GOVERNMENTS FUNDS CHILD WELFARE SERVICES IN TWO WAYS

- Direct services – such as child protection workers and offices
- Government provides contracts/ grants to voluntary sector organizations to deliver services to children and families.
- INAC does not calculate in the voluntary sector funding

# JORDAN'S PRINCIPLE



Where a jurisdictional dispute develops regarding services for a status Indian child and those services are otherwise available to Canadian children- the government of first contact pays for the service and figures out the jurisdictional dispute later.

**Jordan's Principle applies to all government services – not just health care**

# JORDAN' S PRINCIPLE STATUS

- Four provinces have adopted J.P. although Manitoba and Saskatchewan only in limited form.
- Canadian House of Commons passes Private Members Motion 296 in support of JP on December 12, 2007
- Federal government bureaucrats now trying to narrow Jordan' s Principle to apply to children with complex medical needs only.
- Cited as a best practice by the United Nations Permanent Forum on Indigenous Issues expert committee on child and youth and invoked for children in Australia.

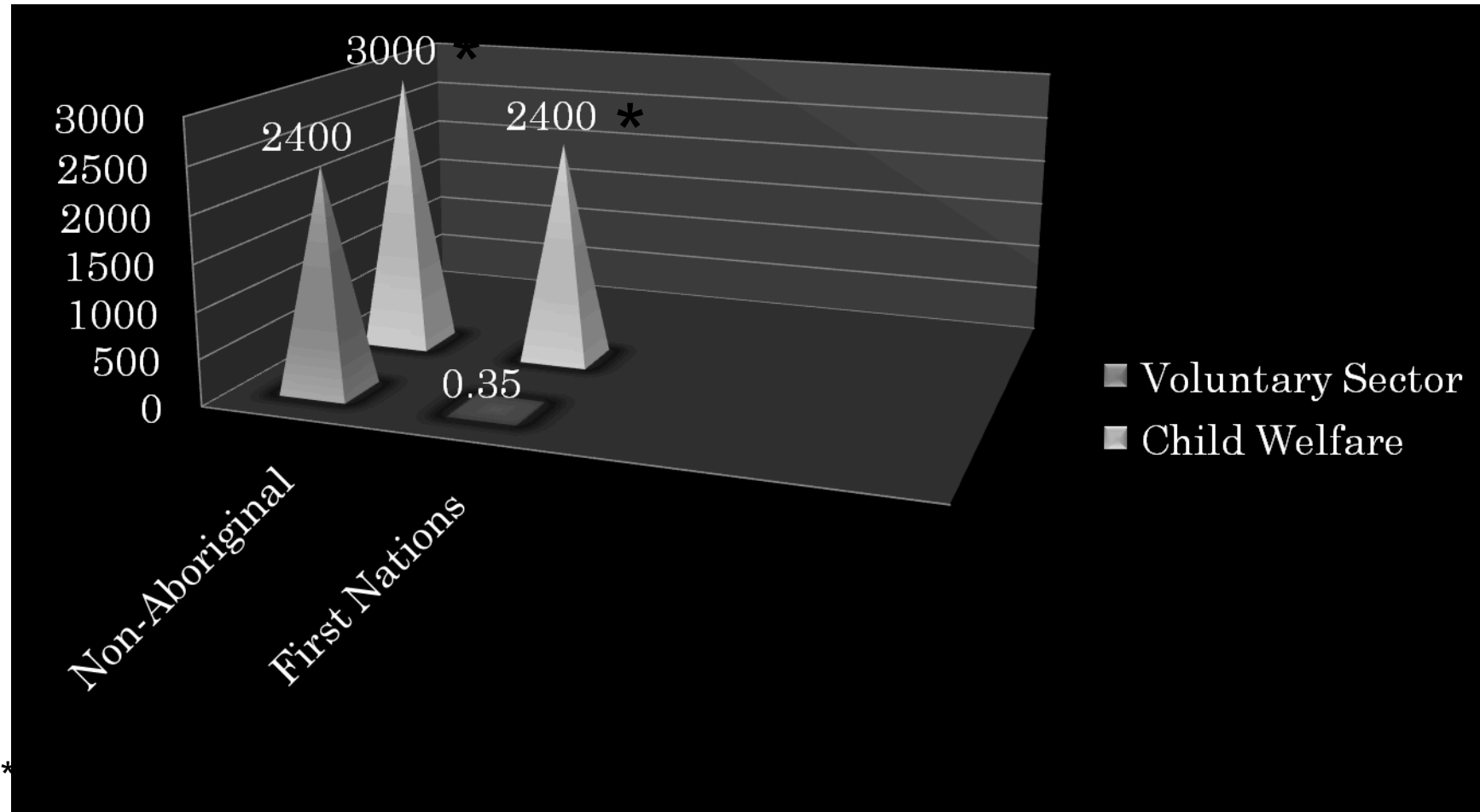
# REPORTS DOCUMENTING INEQUITY AND TESTIMONY OF TOP INAC OFFICIAL IN 2010

- INAC and AFN National Policy Review (2000) FN children get 22 % less
- Not aware why it was commissioned and familiar with “parts of it”

*“Not surprisingly the child welfare system is not well regarded by First Nations. It was, in many respects, viewed in the same way as residential school experience where First Nations children were lost to their families and communities” NPR recommendations need to be implemented*

Baby Andy Report, 2003

# COMPARISON OF PUBLIC FUNDING FOR NON-ABORIGINAL AND FIRST NATIONS



\* showing 22% less for FN on reserves as per NPR 2000

Nations

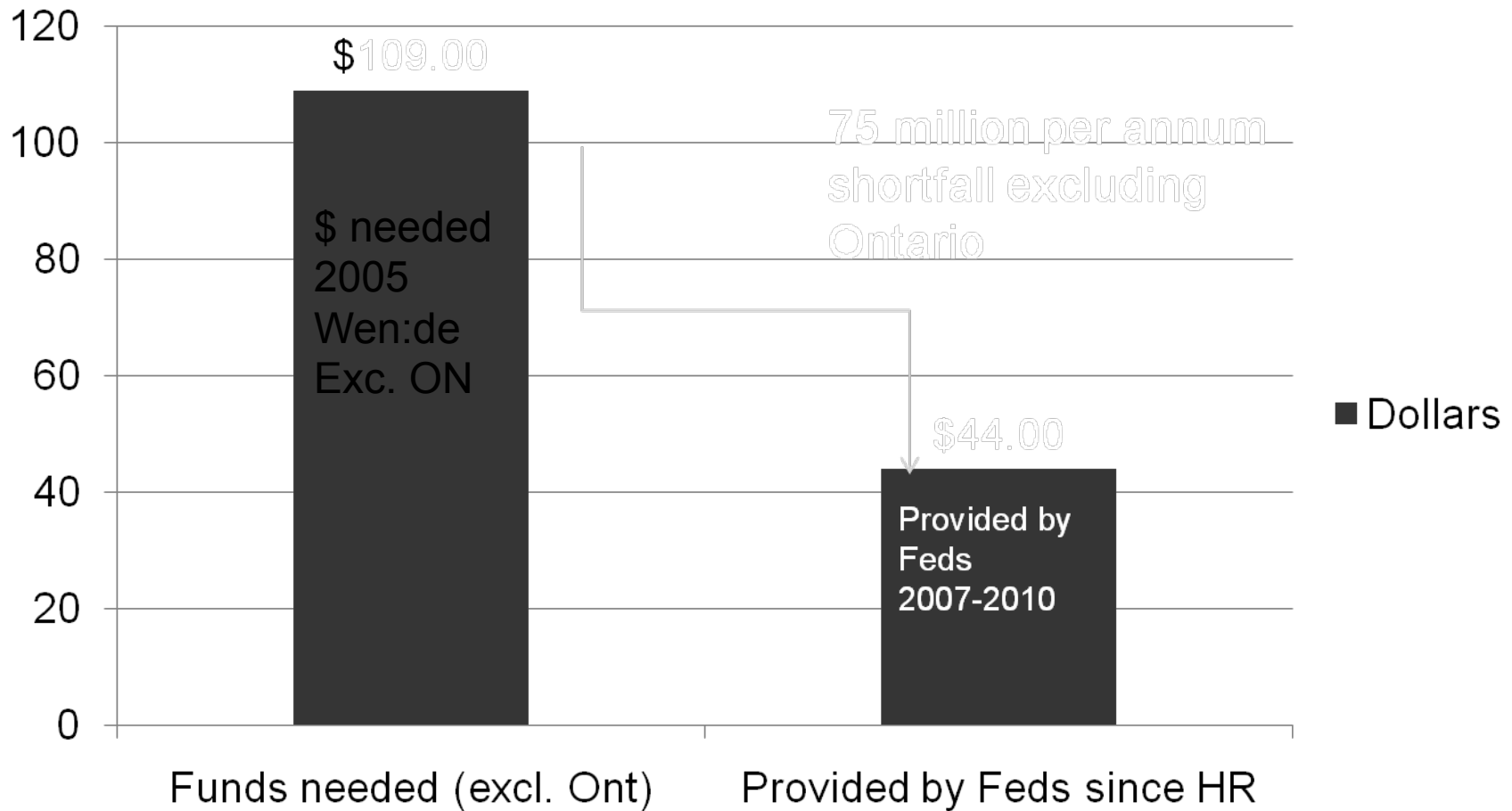
# WEN:DE REPORTS AND TESTIMONY OF TOP INAC OFFICIAL IN 2010

- INAC and AFN  
Wen:de Reports  
(2005) 109 million  
needed excl. Ontario  
and Territories
- All she knew is “they  
flowed from the  
National Policy  
Review

*A fundamental change in the funding approach of First Nations Child and Family Service agencies is required in order to reverse the growth rate of children coming into care and in order for agencies to meet their mandated responsibilities.*

*INAC fact sheet on FN CFSA, 2007*

# ENHANCED INAC FUNDING STILL INEQUITABLE





Canada knows their funding is inadequate:

“Circumstances are dire. Inadequate resources may force individual [First Nations] agencies to close down”

INAC access to information document



We worked with Canada for over 10 years with little progress. First Nations children still got less government services than other children in Canada because of who they were.

# INAC'S POSITION IN TRIBUNAL AND FEDERAL COURT

## Funding is not a service

- The CHRA covers discrimination on services, goods, or accommodation
- INAC says funding is not a service therefore CHRA should not apply
- We must demonstrate high degree of control INAC has over FNCFSA

## Equity and Comparator

- INAC says funding arrangements are equitable but offer no evidence to back their claim
- INAC says there is no comparator to FN on reserves therefore no discrimination
- Need to prove Alta funding not equitable (as AOG has already found) and comparator is non-Aboriginal children in Alta

# FIRST NATIONS POSITIONS IN TRIBUNAL AND FEDERAL COURT

## Funding is a Service

- INAC exercises significant control/ monitoring over CFS funding in ways that affect practice
- INAC has funding services officers
- INAC directly involved in child welfare policy (ie new outcomes project)

## Inequity and Comparator

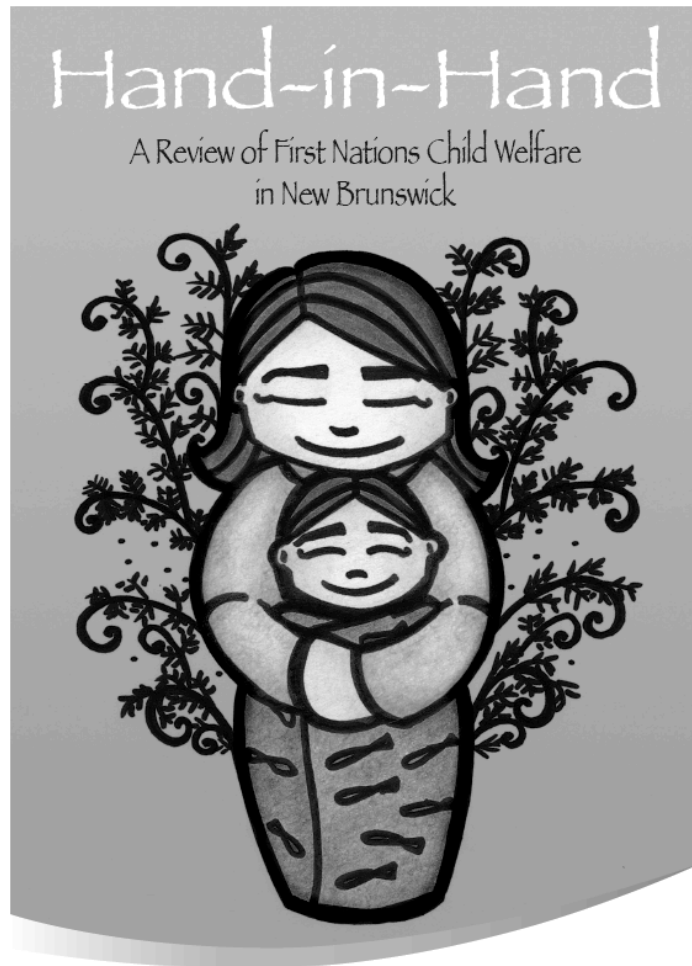
- Expert reports, AOG and Standing Committee all found Enhanced Funding and directive not equitable
- Funding not tied to community needs
- Child welfare is statutory therefore comparator is other children
- INAC even funds FN children differentially

# THE CANADIAN HUMAN RIGHTS TRIBUNAL ON FIRST NATIONS CHILD WELFARE

- Canadian Human Rights Tribunal started September 14, 2009
- Canada trying to derail the tribunal on legal technicalities
- Canada refuses mediation 4 times
- Canada takes inadequate measures to address the problem
- Canada fails to report the tribunal to the Human Rights Council or the UN CRC in periodic reviews



# 2010 AND THE INEQUALITIES CONTINUE



- *The province was not and is not prepared to renew a Tripartite Agreement on the basis of Directive 20-1 funding formula which it views as inconsistent with good social work practice.*



Child & Youth  
Advocate



Ombudsman

*Child and youth advocate of NB, 2010*

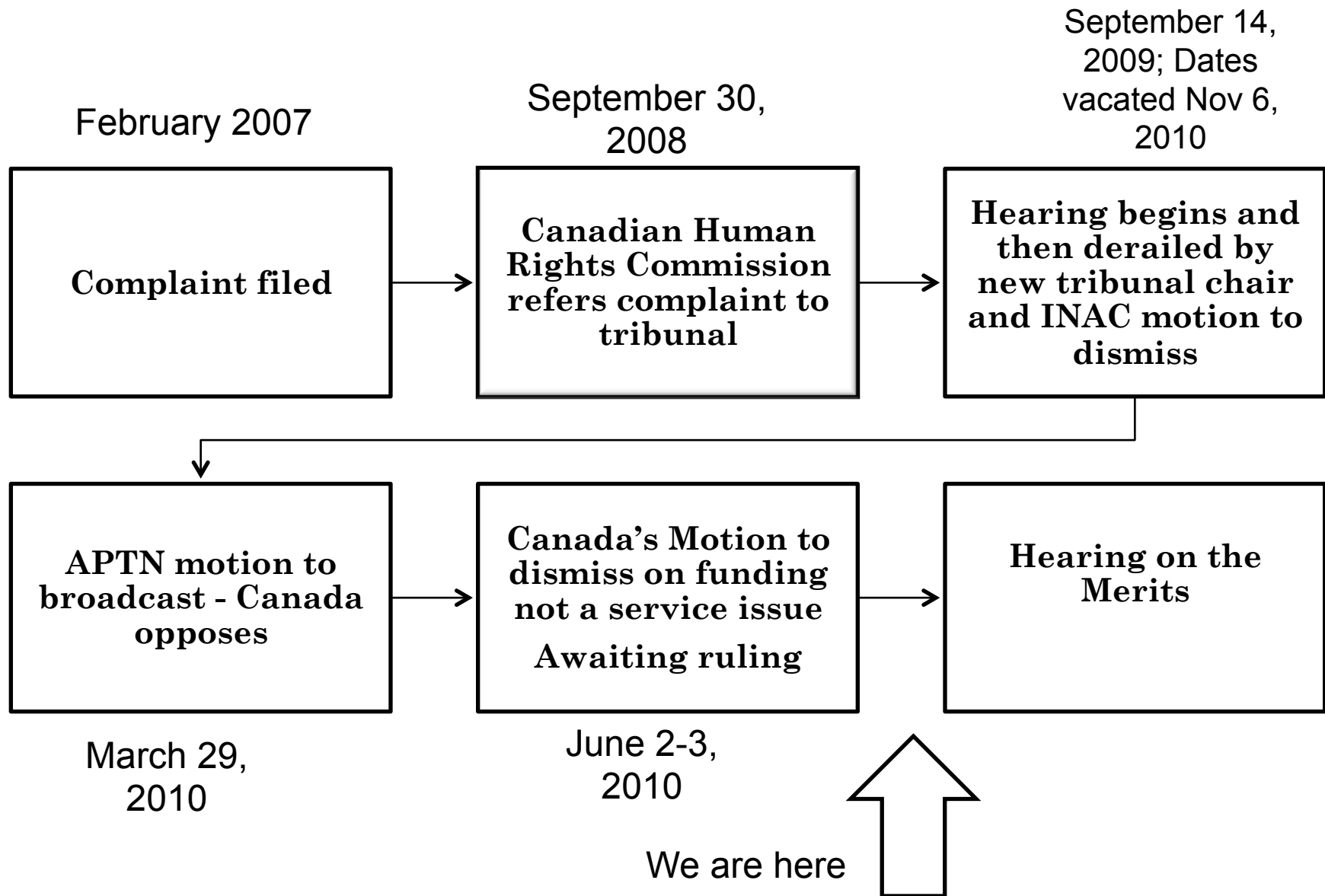
# AUDITOR GENERAL OF CANADA AND TESTIMONY OF TOP INAC OFFICIAL IN 2010

- Auditor General of Canada (May 2008) All INAC FNCFS funding inequitable (including enhanced)
- Not sure if AOG had concerns. “can’t remember off the top what those recommendations were”

*Continuing to use a flawed funding formula means that FN child and family service agencies are often underfunded, and First Nations children and their families do not receive the services they need.*

*Standing Committee on Public Accounts, 2009*

# HUMAN RIGHTS TRIBUNAL PROCESS



# IMPLICATIONS

Canada avoids accountability for discrimination using legal loopholes

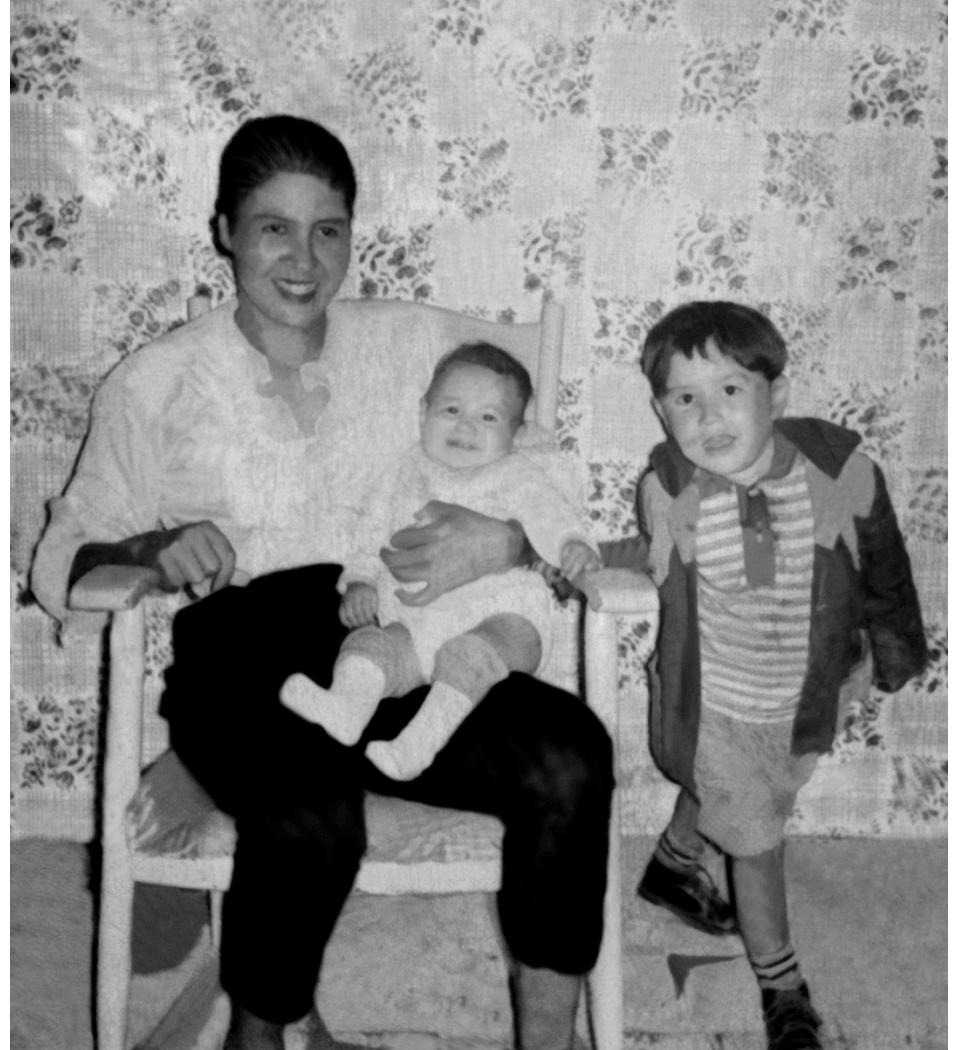
Canada trying to download responsibility for its discriminatory policies onto service providers

Children continue to go into child welfare care unnecessarily



# OTHER FN CASES BEFORE THE CANADIAN HUMAN RIGHTS COMMISSION

- Mushkegwuk Council on under funding of policing. Service and comparator issues being raised by Canada
- Proposed case on under funding education






**Help him make his  
dream come true**

**First Nations children  
on reserve receive 2 to  
3 thousand dollars  
LESS a year for  
primary and  
secondary education  
than other children –  
no wonder only four in  
ten First Nations  
children graduate from  
high school**

# HOW YOU CAN HELP



- Join over 6400 other individuals and organizations and sign up to be a witness at [fnwitness.ca](http://fnwitness.ca) 
- Ensure full implementation of Jordan's Principle in Manitoba!

TAKE ACTION [www.fnwitness.ca](http://www.fnwitness.ca)



[www.fnccaringociety.com](http://www.fnccaringociety.com)