



## Information Sheet

# Victory for First Nations Children

## Canadian Human Rights Tribunal Finds Discrimination Against First Nations Children Living On-Reserve

January 26, 2016

### Findings of Discrimination

On January 26, 2016, the Canadian Human Rights Tribunal (Tribunal) issued its decision regarding a complaint filed in February 2007 by the First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations (AFN), alleging that the Department of Indian and Northern Affairs' (INAC) provision of First Nations Child and Family Services (FNCFS) and implementation of Jordan's Principle is flawed, inequitable and thus discriminatory under the *Canadian Human Rights Act*.

The Tribunal found that the FNCFS Program denied services to many First Nations children and families living on-reserve and resulted in adverse impacts for them because it was based on flawed assumptions about First Nations communities that did not reflect the actual needs of those communities. The Tribunal also found that the FNCFS Program's two main funding mechanisms incentivized removing First Nations' children from their families.

The Tribunal also found that INAC's narrow interpretation and implementation of Jordan's Principle results in service gaps, delays or denials, and overall adverse impacts on First Nations children and families on-reserve. Jordan's principle is a child-first principle that provides that, in the matter of public services available to all other children, where jurisdictional disputes arise between Canada and a province/territory, or

between government departments in the same government, the government or department of first contact pays for the service, and can seek reimbursement from another government or department after the fact.

### INAC's Failure to Reform to FNCFS Program

The Tribunal found that INAC was aware of the adverse impacts caused by its FNCFS Program for many years, and that, despite that knowledge and numerous reports and recommendations to address those adverse impacts, failed to significantly modify the FNCFS Program. The Tribunal found that the reforms INAC introduced failed to address the service gaps, denials, and adverse impacts caused by the FNCFS Program. The Tribunal qualified Canada's statements and commitments regarding reform of the FNCFS Program, expressed on the international scene and at the national level, as "empty rhetoric".

The Tribunal found that, by focusing on funding levels, INAC's attempts to reform the FNCFS Program to this point have failed to address the root causes of the adverse impacts experienced by First Nations children and families living on-reserve. The Tribunal held that a true reform of the FNCFS Program requires an approach that focuses on providing substantive equality by focusing on the distinct needs and circumstances of First Nations children and families living on-

reserve, including their cultural, historical, and geographical needs and circumstances.

## Remedies Ordered

The Tribunal made four immediate orders regarding the discrimination perpetrated by the FNCFS Program. First, INAC was ordered to:

1. Cease its discriminatory practices regarding the FNCFS Program;
2. Reform the FNCFS Program;
3. Cease applying the narrow definition of Jordan's Principle; and
4. Take measures to immediately implement the full meaning and scope of Jordan's Principle.

The Tribunal also retained jurisdiction over the complaint to seek further information regarding the immediate and long-term remedies sought by the Caring Society and the AFN, and to seek further information regarding the compensation sought for First Nations children impacted by child welfare practices on-reserve between 2006 and January 26, 2016.

## Immediate Action for Reform

Canada does not need to wait for further orders from the Tribunal before putting immediate reforms to the FNCFS Program into place.

The Caring Society has provided 11 preliminary steps for immediate reform of the Directive 20-1 funding formula (applied in New Brunswick, British Columbia, Newfoundland and Labrador, and the Yukon) at:

[https://fncaringsociety.com/sites/default/files/Remedies%2020-1%20Final 0.pdf](https://fncaringsociety.com/sites/default/files/Remedies%2020-1%20Final%200.pdf).

The Caring Society has provided 13 preliminary steps for immediate reform of the Enhanced Prevention Focused Approach funding formula (applied in Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, and Prince Edward Island) at:

[https://fncaringsociety.com/sites/default/files/Remedies%20EPFA%20-%20%20Final 0.pdf](https://fncaringsociety.com/sites/default/files/Remedies%20EPFA%20-%20%20Final%200.pdf).

The Caring Society has provided 9 preliminary steps for immediate reform of the 1965 Indian Welfare Agreement funding formula (applied in Ontario) at:

[https://fncaringsociety.com/sites/default/files/1965%20Agreement%20final 0.pdf](https://fncaringsociety.com/sites/default/files/1965%20Agreement%20final%200.pdf).

**For more information on the case go to  
[www.fnwitness.ca](http://www.fnwitness.ca) or contact [info@fncaringsociety.com](mailto:info@fncaringsociety.com)**

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