



## Change Making Consent Order for Communities not Served by a First Nations Child and Family Services Agency 2021 CHRT 12



*This ruling is a consent order addressing a motion by the First Nations Child and Family Caring Society of Canada (the Caring Society) for a determination that First Nations children and families living on-reserve and in the Yukon who are served by a provincial or territorial agency or service provider are within the scope of the Tribunal's current remedial orders. (para 1)*

*As the Tribunal noted in the Merit Decision, child and family services are provided to First Nations children in accordance with the legislation of the province or territory in which the First Nation is located (para. 5). This creates the possibility for inconsistencies in the legislative framework applicable to different First Nations children. The Innu Nation identifies one such inconsistency [due to the lack of funding available for prevention services in Newfoundland and Labrador provincial child and family services legislative framework]. (para 9)*

This order marks another notable and significant decision in the pursuit of eliminating Canada's discriminatory practices and reform in the delivery of child and family services to First Nations children and families occurred on March 17, 2021, when the Canadian Human Rights Tribunal (CHRT) agreed to a change making consent order that the CHRT's current remedial orders include First Nations Communities not served by a First Nations Child and Family Services Agency.

### Background on the CHRT

In the 2016 historic victory and change making victory decision for First Nations children and families (*Merit* decision; 2016 CHRT 2), the CHRT found and recognized Canada's discriminatory practices in delivering services to First Nations children and families whether they receive services from a First Nations Child and Family Services Agency or through provincial/territorial agencies and/or service providers that are reimbursed by Canada through provincial/territorial agreements.

The CHRT further found that Canada's First Nations Child and

Family Services Program (FNCFS Program) created incentives to remove children from their homes and communities. The provision and underfunding of these services affect the ability to effectively provide services to First Nations children and families and was found to create **inequities for First Nations children and families**. The provision of services to First Nations children and families, particularly the funding and structure, was found to not be in line with provincial standards in promoting prevention and least disruptive measures. Therefore, First Nations children and families are not given an equal opportunity to remain together or reunite in a timely manner. In the *Merit* decision, the CHRT ordered Canada to generally cease its discriminatory practices and narrow definition of Jordan's Principle and reform the FNCFS Program.

Immediately following the *Merit Decision* and persistently throughout the years, the Caring Society has monitored Canada's compliance and has repeatedly raised concerns in relation to Canada's failure or delays in disclosing relevant information, taking action and revising agreements, funding and structures to ensure they properly implement the orders made by the CHRT and address, remedy and eliminate the discrimination in the provision of child and family services to First Nations children and families.

In subsequent decisions, the CHRT noted Canada's delays and/or failure to disclose relevant information and that Canada needed to improve its communication and information sharing. The CHRT further ordered Canada to take immediate measures to address and remedy findings and adverse impacts found in the *Merit* decision including addressing the underfunding of child and families' services, particularly prevention services, to First Nations children and families.

### Background on 2021 CHRT 12

The *Merit* decision required Canada to amend all of its

agreements including those with provinces and territories to align with the decision. Canada failed to do so despite the Caring Society raising this issue as early as 2016. On August 7, 2020, the Caring Society filed a non-compliance motion in their continued efforts to eradicate the discrimination experienced by First Nations children and families. The motion was made due to the fact that Canada was not taking appropriate measures to address the discriminatory nature of provincial and territorial funding agreements. Therefore, Canada continues their discrimination by failing to take sufficient steps to provide the relief to First Nations children and their families receiving services from federally funded provincial/territorial agencies and/or services providers on reserve and in the Yukon.

The hearing for this motion was scheduled for March 10, 2021. All parties, except Canada, provided written submissions. On the deadline to file their written submission, Canada advised the CHRT of the draft consent order to settle the motion and asked to cancel the hearing date. The CHRT then issued this consent order.

## Order

After careful consideration of the draft order and the additional information, the CHRT agreed to the draft consent order in their ruling on March 17, 2021. In recognizing that First Nations children, families and communities not served by First Nations Child and Family Service Agencies are within the scope of CHRT's current remedial orders, this order requires that:

- Canada, in consultation with Caring Society and Assembly of First Nations, develop a plan to implement an interim revised funding model within 30 days for these First Nations communities, children and families;
- Canada, in consultation with above-mentioned parties, support a needs assessment exercise of each First Nation not served by a FNCFS agency to identify their needs related to prevention, and operations as well as gaps to ensure the interim funding is consistent with the principles mentioned below and to support long-term reform;
- The interim funding model must be flexible in order to ensure that principles of substantive equality and

best interests of the child are respected. This includes taking into account the historical, cultural, geographical needs and circumstances of the community, inflation, population growth, challenges in remote First Nations and the need to support governance and capacity building;

- Within 90 days, Canada provide retroactive funding to January 26, 2016 to eligible First Nations with an updated or new agreement in place. Further, Canada must take positive steps to enter into agreements with First Nations where there is not one presently in place;
- Following the implementation of interim revised funding and further consultation including affected First Nations, the interim funding model should be revised to meet the long-term needs related to reform;
- This interim funding will stay in effect until:
  - i. First Nations self-government agreement encompassing child and family services is realized;
  - ii. Canada reaches a Nation specific agreement that is more advantageous for the Indigenous Nation than the CHRT orders;
  - iii. Long-term reform of child and family services is actualized in accordance with best practices; or
  - iv. Readjustments are needed to overcome specific unforeseen challenges and is accepted by the CHRT.

Canada is obligated to relieve the discrimination experienced by First Nations children and families via the First Nations Child and Family Services Program regardless of the service provider. This order provides immediate relief from the discrimination experienced by affected children and families whilst a longer-term solution is developed to fully address the discriminatory effects of Canada's FNCFS Program.

For more information on this case, visit [fnwitness.ca](https://fnwitness.ca) or email [info@fncaringsociety.com](mailto:info@fncaringsociety.com).