

CHRT Timelines – Briefing Note



1. Question

At what point should the Caring Society consent to ending the Tribunal's jurisdiction over Canada on Jordan's Principle and Child and Family Services?

2. Standard

Consistent with the *Canadian Human Rights Act*, the Tribunal must be satisfied that Canada has ceased its discrimination against First Nations children and families and that the discrimination will not recur before it ends its jurisdiction. Here are the three main areas that need to be addressed:

- a. First Nations child and family services delivered by Agencies
- b. First Nations child and family services by Nations (including those just delivering prevention in whole or in part)
- c. Jordan's Principle

3. Process

On December 31, 2021, an Agreement in Principle (AIP) was signed, placing the ending of the discrimination and the wellbeing of First Nations children and families as paramount considerations and set December 31, 2022 as the date to end the Tribunal's jurisdiction. This non-binding agreement sets a framework for the negotiation of a final agreement. After the Final Agreement is signed it, would be submitted to the Tribunal to support a consent order by the parties to end the Tribunal's jurisdiction. When the Tribunal ceases jurisdiction, it no longer has authority to issue orders including non-compliance orders on this complaint.

4. Canada's Compliance History

Over 20 non-compliance and procedural orders, as well as two Federal Court orders as recent as September of 2021 have been needed against Canada since 2016 when the Tribunal issued its original order to cease discrimination against First Nations children.

5. Key Facts

- a. About 75% of the \$19 billion over five years in the AIP has already been secured by legal orders and is flowing to the Nations and Agencies.
- b. Two thirds of the remaining money is for remoteness. We believe Canada should pay that money immediately as they were ordered to address remoteness in 2016 and still have not done it.
- c. Jordan's Principle requests amounting to \$574 million. were approved in 2020/21 and \$93.6 million were denied. Requests increased 50% between 2019/20 and 2020/21 and are projected to continue to increase to respond to unmet needs.

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6. Caring Society's Positions

- a. We believe that the timeframes for ending the Tribunal's jurisdiction and implementing a fully reformed funding approach need to be extended a further 12 months to implement the AIP measures to end Canada's discriminatory conduct and prevent its recurrence.
- b. Canada is saying they will not pay the remoteness money and other financial resources unless we sign the final agreement. ***This intimidation tactic must be rejected*** and does not bode well for their compliance after the Tribunal is gone. Canada has a legal duty to address the discrimination facing our children.
- c. The Caring Society believes that ***prior to*** signing off on a Final Agreement or ending the Tribunal's jurisdiction, we must do the following:
 - i. Ensure Nations and agencies have a meaningful opportunity to participate in the research to establish a long-term funding approach for child and family services and Jordan's Principle.
 - ii. Ensure Nations and agencies have an opportunity to fully understand and have input into any proposed long-term reform solution.
 - iii. That the solutions are described in sufficient detail in a legally binding final order by the Tribunal that Nations or Agencies could seek orders to address non-compliance by Canada.
 - iv. That there is a robust and effective alternative dispute resolution mechanism to hold Canada accountable.
 - v. Canada needs to comply with the existing orders and fix its conduct.

7. Current Status and Timeframes

- a. **Jordan's Principle:** Analysis of Canada's data on Jordan's Principle was delayed due to Canada not providing the necessary information in a timely way. That data analysis will be available in July 2022 and will set out a process for working with Nations and service providers to develop a long-term funding approach to Jordan's Principle. The target to complete this work is summer/fall of 2023.
- b. **Funding for Agencies:** A funding approach will be developed with budgets for Agencies in the spring of 2023. That will be insufficient time for many Agencies to consult with affected Nations and adjust their services in line with the new fiscal arrangements. The Caring Society believes that Agencies should be able to take the time they and their Nations feel they need to fully understand the new funding approach, shape it to their needs, and transition in a way that sets them up for success without any risk of losing money.
- c. **Funding for First Nations without Agencies:** There is no existing funding approach that accounts for distinct needs, circumstances, and capacity levels of the over 200 First Nations without agencies receiving prevention funding. Work is underway with First Nations without agencies to begin this work, but it will not be completed until early in 2023. There will then need to be time for First Nations to fully understand and assess any funding approaches.
- d. **Alternative dispute mechanism:** The Caring Society is waiting for Canada to provide its positions on an Alternative Dispute Resolution (ADR). This is essential, particularly as Canada is pushing to get rid of the Tribunal and says this ADR will address the significant unanswered questions. This is at an early stage.