List of Issues

Canada's 7th Periodic Review by the Committee on Economic, Social and Cultural Rights



First Nations Child & Family Caring Society of Canada

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Submitted on February 7, 2020 by:

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Introduction

These submissions are made on behalf of the First Nations Child and Family Caring Society of Canada ("Caring Society"), a non-profit organization committed to research, policy development and advocacy on behalf of First Nations agencies that serve the well-being of children, youth and families. At the Caring Society, we support providing opportunities for young people to take part in activities that foster reconciliation and culturally based equity for First Nations children and youth. We believe that each of us can take peaceful and respectful actions to help make a better Canada for First Nations children and their families.

The following submissions are divided into two parts. Part One provides an overview of the discrimination currently experienced by First Nations children in Canada in the context of child welfare services as well as of a legal case initiated by the Caring Society and the Assembly of First Nations against the Government of Canada on behalf of 165,000 First Nations children. Part Two presents the Caring Society's proposed list of issues for Canada's upcoming review before the CESCR.

Part 1 - Context



(a) Ongoing discrimination relating to Canada's discriminatory practices against First Nations children

On January 26, 2016, the Canadian Human Rights Tribunal ("CHRT") issued a ruling in which it found the Government of Canada's provision for First Nations Child and Family Services Program to be discriminatory on the basis of race and national ethnic origin, contrary to section 5 of the *Canadian Human Rights Act* and international human rights law.[1] While the Government of Canada did not seek a judicial review of this decision, it has nonetheless failed to comply with the CHRT's orders to cease its discriminatory behavior, provide immediate relief, and further outline a process for determining more specific remedies.[2] As such, the CHRT has been forced to issue subsequent non-compliance orders. For instance, on May 26, 2017, the CHRT ruled that "Canada has repeated its pattern of conduct and narrow focus with respect to Jordan's Principle".[3]

The parties are still waiting for the CHRT to rule on Canada's funding of major capital costs, reallocation within the budget of Indigenous Services Canada (meaning the practice of taking money away from other Indigenous services and programs to fill in for funding shortfalls in child welfare service thereby simply displacing the discriminatory conduct) and a timeline for work presently underway by the Consultation Committee on Child Welfare.

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[1] *First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)* (26 January 2016), online: CHRT <canlii.ca/t/gn2vg>.

[2] *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)* (6 September 2019), online: CHRT <canlii.ca/t/j3n9j> [CHRT 2019].

[3] *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)* (26 May 2017), online: CHRT <canlii.ca/t/h4nqt>.



In September 2019, the CHRT ordered the Government of Canada to provide $ 20,000 to every First Nations child who was inappropriately removed from their family, as well as their parents or grand-parents, to compensate them for the discrimination they experienced.[4] In addition, Canada was ordered to pay $20,000 to every First Nations child who was inappropriately removed from their family, as well as their parents or grand-parents, because its discrimination was found to be "willful and reckless". The Government of Canada sought to challenge this decision before the Federal Court of Canada. Though it is legally required to engage in discussions with the parties regarding the compensation process, the CHRT has expressed concerns about Canada's lack of collaboration and compliance with its orders.[5] While contesting the compensation order made by the CHRT, Canada has also advised that it would be opposing the certification of a class action in which those harmed by Canada's discriminatory conduct seek compensation.[6] Canada's conduct in these two legal actions is at odds with statements of numerous statements made by public officials suggesting that it is committed to compensating First Nations children and their families.[7]

While the CHRT has ruled on the discriminatory funding of child welfare services, many other federally funded public services provided to First Nations, such as health care, housing, infrastructure, water are underfunded and insufficient.[8] In light of this, the Spirit Bear calls on:

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[4] CHRT 2019, *supra* note 2.

[5]"Human rights tribunal says it felt 'cornered' by Canada to extend First Nations child compensation deadline" (27 November 2019), online: APTN <https://aptnnews.ca/2019/11/27/human-rights-tribunal-says-it-felt-cornered-by-canada-to-extend-first-nations-child-compensation-deadline/>.

[6] Jorge Barrera, "Ottawa backed away from commitment to approve child welfare lawsuit, lawyer says" (25 January 2020), online: CBC <cbc.ca/news/indigenous/ottawa-lawsuit-children-1.5440349>.

[7] See "Minister of Indigenous Services Mandate Letter" (13 December 2019), online: Justin Trudeau, Prime Minister of Canada <pm.gc.ca/en/mandate-letters/minister-indigenous-services-mandate-letter> and Indigenous Services Canada, "Joint Statement by the Minister of Indigenous Services and the Minister of Justice and Attorney General of Canada on compensation for First Nations children" (25 November 2019), online: Government of Canada <canada.ca/en/indigenous-services-canada/news/2019/11/joint-statement-by-the-minister-of-indigenous-services-and-the-minister-of-justice-and-attorney-general-of-canada-on-compensation-for-first-nations.html>.

[8] "Spirit Bear Plan", online: First Nations Child & Family Caring Society <fncaringsociety.com/spirit-bear-plan>.



- CANADA to immediately comply with all rulings by the Canadian Human Rights Tribunal ordering it to immediately cease its discriminatory funding of First Nations child and family services. The order further requires Canada to fully and properly implement Jordan's Principle (www.jordansprinciple.ca).
- PARLIAMENT to ask the Parliamentary Budget Officer to publicly cost out the shortfalls in all federally funded public services provided to First Nations children, youth and families (education, health, water, child welfare, etc.) and propose solutions to fix it.
- GOVERNMENT to consult with First Nations to co-create a holistic Spirit Bear Plan to end all of the inequalities (with dates and confirmed investments) in a short period of time sensitive to children's best interests, development and distinct community needs.
- GOVERNMENT DEPARTMENTS providing services to First Nations children and families to undergo a thorough and independent 360° evaluation to identify any ongoing discriminatory ideologies, policies or practices and address them. These evaluations must be publicly available.
- ALL PUBLIC SERVANTS including those at a senior level, to receive mandatory training to identify and address government ideology, policies and practices that fetter the implementation of the Truth and Reconciliation Commission's Calls to Action.

(b) Shannen's Dream

Shannen Koostachin of Attawapiskat First Nation lead a movement for "safe and comfy" schools and quality, culturally-based education for First Nations children called the Attawapiskat School Campaign.

Shannen knew just how hard it was to learn in an on reserve school that was under resourced. The only elementary school for the 400 children in Attawapiskat was closed as thousands of gallons of diesel fuel contaminated the ground under the school. The federal government put portable trailers on the playground of the contaminated school as a "temporary school" until a new one could be built. Nine years later there was still no sign of a new school.



Shannen never went to class in a proper school and the portables became more run down over time. The heat would often go off, the children would have to walk outside in the cold to go from one portable to another and the doors were warped. The children of Attawapiskat launched the Attawapiskat School Campaign to reach out to non-Aboriginal children all across Canada to write to the federal government and demand a new school for Attawapiskat.

Thousands of children answered the call and three Ministers of Indian Affairs promised a new school and then broke their promise. The children kept writing. When the Minister of Indian Affairs, Chuck Strahl, wrote in 2008 to say the federal government could not fund a new school, the grade 8 class canceled their graduation trip to Niagara Falls and used the money to send three youth, including Shannen, down to meet with Minister Strahl to demand a new school.

Minister Strahl said the government could not afford a new school. Shannen did not believe him and that she told the Minister she would never give up because the younger children in her community deserve a proper school. She kept her promise. Shannen spoke to thousands of people asking for their help to ensure every child got a good education and a "comfy" school. She was an inspiring speaker because she talked from the heart. She made a compelling speech at an education rights conference hosted by the children of Attawapiskat and attended by 500 other children at the University of Toronto in 2009.

Shannen's leadership was remarkable and she was nominated, as an ambassador for all the children of Attawapiskat, for the International Children's Peace Prize given out by the Nobel Laureates. In May of 2010, Shannen Koostachin tragically passed away in an automobile accident. With the support of her loving family, friends and community, Shannen's Dream is a campaign named in her memory to make sure all First Nations children across Canada have "safe and comfy schools" and receive a good quality education that makes them proud of who they are. In 2015, the Truth and Reconciliation



Commission also called upon Canada to provide culturally-based education for First Nations children. [9]

Ten years after Shannon's death, the Government of Canada has still not taken measures to ensure equitable and culturally appropriate educational services, programs and infrastructure to First Nations children. First Nations children across the country continue to experience discrimination in educations.[10]

[9] "Calls to Action" (2015), online: Truth and Reconciliation Commission of Canada <nctr.ca/assets/reports/Calls_to_Action_English2.pdf>

[10] "Why fixing First Nations education remains so far out of reach" (22 August 22 2014), online: MacLeans <.macleans.ca/news/canada/why-fixing-first-nations-education-remains-so-far-out-of-reach>. See also "Commission Laurent: des jeunes Autochtones tenus à l'écart de l'école par la bureaucratie", (6 February 2020), online : Le Devoir < https://www.ledevoir.com/societe/education/572305/du-yoga-plutot-que-l-ecole-pour-des-centaines-de-jeunes-autochotones?fbclid=IwAR1mTChizb-2UyEjYEGBVS6QkyRyiYeA92W8GhDcklmwFcXgOvbklGlCisU>



Part 2 – Proposed list of issues

The Caring Society proposes the following list of issues for Canada's upcoming 2020 Review.

1) *The Government of Canada should be asked for a detailed account on the steps it will take in order to appropriately compensate each child and family who has been a victim of racial and national ethnic origin discrimination through the First Nations Child and Family Services Program. This should include a precise timetable, as well as the amount of resources which will be allocated to support victims entitled to compensation.*

2) *The Government of Canada should be asked for a detailed account on the steps it will take to implement Spirit Bear Plan to ensure equity and culturally appropriateness of all services and programs provided to First Nations children.*

3) *The Government of Canada should be asked to outline, in detail, what steps it intends to take to proactively address the outstanding issues before the CHRT including major capital, reallocation, and timelines for the CCCW.*

4) *The Government of Canada should be asked for a detailed account on the steps it will take to honor Shannon's memory by equitably and culturally appropriately funding education for First Nations children.*