



October 15, 2021

Via email: Marc.Miller@parl.gc.ca; David.Lametti@parl.gc.ca; mcu@justice.gc.ca

The Honourable Marc Miller, P.C., M.P.
Minister of Indigenous Services
10 Wellington Street
Gatineau, QC K1A 0H4

The Honourable David Lametti, P.C., M.P.
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, ON K1A 0H8

Dear Minister Miller and Minister Lametti,

Re: Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada

We write on behalf of the Canadian Bar Association Child and Youth Law, Aboriginal Law, and Constitutional and Human Rights Sections (CBA Sections) about the recent dismissal of judicial review applications brought by the federal government to challenge two rulings of the Canadian Human Rights Tribunal (CHRT) on discrimination against First Nations children and families.

The CBA is a national association representing 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice. The CBA Child and Youth Law Section coordinates activities, provides advice and responds to law, policy and legal research developments on matters affecting children in Canada. The CBA Aboriginal Law Section represents lawyers specializing in legal issues pertaining to Indigenous people from across Canada. The CBA Constitutional and Human Rights Section examines issues such as constitutionality of government legislation and proposed legislation, human rights codes and international human rights law.

On September 29, 2021, Justice Paul Favel released a detailed decision in response to the federal government's applications for judicial review of two rulings by the CHRT.¹ This decision follows a series of rulings on the initial 2007 complaint by the First Nations Child and Family Caring Society and Assembly of First Nations, alleging discrimination against First Nations children and families in Canada's provision of First Nations Child and Family Services (FNCFS) and application of Jordan's Principle.²

In January 2016, the CHRT found that Canada was in fact discriminating against First Nations children and families in its provision and funding of the FNCFS Program and narrow application of Jordan's Principle, and ordered Canada to reform its FNCFS Program and fully implement Jordan's Principle.

¹ *Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada*, 2021 FC 969 (CanLII), [online](#).

² FNCFS program [online](#), Jordan's Principle application [online](#).

At the conclusion of his decision, Justice Favel notes:

[300] Negotiations are also seen as a way to realize the goal of reconciliation. It is, in my view, the preferred outcome for both Indigenous people and Canada. Negotiations, as part of the reconciliation process, should be encouraged whether or not the case involves constitutional issues or Aboriginal rights. When there is good will in the negotiation process, that good will must be encouraged and fostered before the passage of time makes an impact on those negotiations. As Pitikwahanapiwin (Chief Poundmaker), a nation-builder in his own right, so aptly said:

We all know the story about the man who sat by the trail too long, and then it grew over, and he could never find his way again. We can never forget what has happened, but we cannot go back. Nor can we just sit beside the trail.

[301] In my view, the procedural history of this case has demonstrated that there is, and has been, good will resulting in significant movements toward remedying this unprecedented discrimination. However, the good work of the parties is unfinished. The parties must decide whether they will continue to sit beside the trail or move forward in this spirit of reconciliation.

We echo Justice Favel's comments, and urge the federal government to cease any further litigation in this matter and to move forward in the true spirit of reconciliation.

It is time to take meaningful steps to address the Truth and Reconciliation Calls to Action.³ The action in this case is to find resolution through good faith negotiation rather than further litigation. This is important on behalf of all the children who did not make it home from residential schools and for the Indigenous people who struggle today to address the lingering effects of those injustices.

The CBA Sections urge you to avoid perpetuating further harm by continuing to challenge CHRT rulings in this matter. The ongoing litigation against the First Nations Child and Family Caring Society and Assembly of First Nations stands in the way of reconciliation and does not serve the administration of justice.

Yours truly,

(Original letter signed by Sarah Mackenzie for Mary Birdsell, Allan W. Damer and Claire P. Truesdale)

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³ TRC Calls to Action, [online](#).