



June 14, 2021

The Honourable Prime Minister Justin Trudeau  
Office of the Prime Minister  
80 Wellington Street, Ottawa, ON K1A 0A2

The Honourable Minister David Lametti  
Minister of Justice and Attorney General of Canada  
House of Commons, Ottawa, Ontario, K1A 0A6

The Honourable Minister Marc Miller  
Minister of Indigenous Services  
House of Commons, Ottawa, Ontario, K1A 0A6

VIA EMAIL ONLY

**Regarding: Federal Government Compliance with Canadian Human Rights Tribunal rulings to end discrimination against First Nations children**

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We are writing to you on behalf of the BC Civil Liberties Association (BCCLA) to urge you to drop the federal government's current litigation against First Nations children<sup>1</sup> and to comply with Canadian Human Rights Tribunal's (CHRT) legally binding decisions to provide compensation to victims and fully implement Jordan's Principle. We also urge you to immediately comply with all existing CHRT rulings that order Canada to cease discriminatory funding of First Nations child and family services.<sup>2</sup> In addition, we call on you to co-create with First Nations and implement a holistic Spirit Bear Plan to end all inequalities in public services for all First Nations children, youth and families.<sup>3</sup>

The BCCLA is the oldest and most active civil liberties organization in Canada, founded in 1962. Our mandate is to defend and extend civil liberties and human rights for all in BC and Canada through litigation in the courts, law and policy reform, and public legal education.

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<sup>1</sup> Attorney General of Canada v. First Nations Child and Family Caring Society et al., S. 18.1 Application for Judicial Review in Federal Court, Hearings scheduled for June 14-June 18, 2021.

<sup>2</sup> First Nations Child and Family Caring Society, CHRT Orders, <https://fncaringsociety.com/chrt-orders>.

<sup>3</sup> First Nations Child and Family Caring Society, Spirit Bear Plan, <https://fncaringsociety.com/spirit-bear-plan>.



In 2016, the BCCLA recognized Dr. Cindy Blackstock as our Liberty Award Winner for Excellence in Legal Advocacy for her tireless work to fight for justice for First Nations children. We continue to stand with and support the First Nations Child and Family Caring Society in holding Canada accountable for its discriminatory treatment of First Nations children. This is not their burden to carry alone.

As you know, on January 26, 2016 the Canadian Human Rights Tribunal ruled that the Canadian government is racially discriminating against 165,000 First Nations children.<sup>4</sup> In the landmark ruling, the Tribunal found that First Nations children and families living on reserve and in the Yukon are denied substantively equal child and family services, and/or are differentiated adversely against in the provision of child and family services by the federal government. The Tribunal determined that the services provided by Canada under the First Nations Child and Family Services Program are discriminatory and harmful to First Nations children and families.

Since 2016, the First Nations Child and Family Caring Society and the Assembly of First Nations have had to return to the Tribunal multiple times due to Canada's shameful non-compliance with the historic CHRT ruling. Since 2016, the Tribunal has made a total of 19 non-compliance and procedural orders against the federal government. We are disappointed and disgusted that Canada is currently pursuing a judicial review of two of the orders: one providing human rights compensation to eligible victims and the other extending eligibility for Jordan's Principle by ensuring non-status First Nations children recognized by their Nations are eligible.

The inequalities in First Nations child welfare funding are longstanding and well documented, as are the tragic consequences of this systemic colonialism. First Nations children are, in several cases, forced into the child welfare system, First Nations are being torn apart, and justice is denied to First Nations young people. In 2019, the Canadian Human Rights Tribunal characterized Canada's racial discrimination as "one of the worst possible cases warranting the maximum awards."<sup>5</sup> The Tribunal further held: "In this case we are in a context of repeated violations of human rights of vulnerable First Nations children over a very long period of time by Canada who has international, constitutional and human rights obligations towards First Nations children and families."<sup>6</sup>

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<sup>4</sup> 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), 2016 CHRT 2, online <https://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/127700/index.do?q=2016+CHRT+2>

<sup>5</sup> First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada), 2019 CHRT 39, para 13, <https://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/453537/index.do?q=2019+CHRT+39+>

<sup>6</sup> *Ibid*, para 232.



We are outraged with Canada’s sustained efforts to dodge responsibility to First Nations children. While the federal government denies it is fighting First Nations children in court, your actions clearly suggest otherwise. We echo the words of Dr. Cindy Blackstock who told media, “What we know from the government is that they try to use legal technicalities to try and get out of their obligations towards children.”<sup>7</sup> In another recent interview, Dr. Blackstock stated, “I’m so disappointed that this is continuing to happen in 2021, in the wake of the revelation of the 215 children who were found on the grounds of the Kamloops residential school and the rest of the children who are yet to be found.”<sup>8</sup>

It is unconscionable that in an era of professed reconciliation, First Nations children and youth have to fight in court to defend their right to equitable access to public services and the ability to grow up safely in their homes and communities. It is appalling that, due to the federal government’s maintenance of the status quo of colonialism, there are more First Nations children in foster care today than at the height of residential schools. The federal government must live its commitment to the Truth and Reconciliation Commission, and the well-being and future of First Nations children. This includes dropping all litigation that harms and impedes human rights for First Nations children; immediate and full compliance with all CHRT rulings to ensure equal provision of child and family services for First Nations children; and co-creation and implementation of a holistic Spirit Bear Plan to end all inequalities in public services for First Nations children, youth and families.

We look forward to your timely response on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Harsha Walia', written over a light blue horizontal line.

Harsha Walia, Executive Director

A handwritten signature in black ink, appearing to read 'V. Martisius', written over a light blue horizontal line.

Veronica Martisius, Staff Counsel

Cc: Dr. Cindy Blackstock and First Nations Child and Family Caring Society.

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<sup>7</sup> Dr. Cindy Blackstock quoted in “Blackstock gears up for latest Federal Court fight to end ‘human rights tragedy’ against First Nations kids” by Brett Forester, *APTNews*, May 19, 2021, <https://www.aptnnews.ca/national-news/blackstock-gears-up-for-latest-federal-court-fight-to-end-human-rights-tragedy-against-first-nations-kids/>

<sup>8</sup> Dr. Cindy Blackstock quoted in “Why does Justin Trudeau’s government continue to fight Indigenous compensation claims in court? ‘I can’t make sense of it,’ top advocate says,” by Raise Patel, *Toronto Star*, June 7, 2021, <https://www.thestar.com/politics/federal/2021/06/07/why-does-justin-trudeaus-government-continue-to-fight-indigenous-compensation-claims-in-court-i-cant-make-sense-of-it-top-advocate-says.html>