

Looking for Cash Back in the Courts



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Cash Back: A Yellowhead Institute Red Paper

Think the courts are a sure way to get that cash back?

Think again. Here we track 24 cases from over 25 years where Indigenous communities have asked the courts to help address arbitrary cuts, underfunding and other discrimination in their fiscal relationship with governments. Sometimes it works.

Mostly it doesn't.

CASE	YEAR	FUNDING DECISION	TYPE OF CLAIM	RESULT	REASON
<i>Mousseau v. Canada</i>	1993	Denial of housing services on reserve for Bill C-31 reinstates	Charter – Equality	LOST	Claim brought in the wrong forum. Needed to be brought in Federal Court. (No reported decision from Federal Court.)
<i>Winnipeg Child and Family Services (Southeast Area) v. Canada</i>	1997	Cuts discretionary funding in relation to child welfare services	Aboriginal rights Fiduciary Duty Charter – Equality Injunctive Relief	LOST	First Nation denied injunctive relief to prevent cuts temporarily. Judge did not think they would likely win on fiduciary duty or other claims.
<i>Nolan v. Canada</i>	1998	Cuts to employment programming for off-reserve Aboriginal groups	Charter – Equality	LOST	Claim brought in the wrong forum. Needed to be brought in federal court. (No reported decision from Federal Court.)
<i>Ochapowace Indian Band No 71 v. Canada</i>	1998	Auditing of bands in Comprehensive Funding Agreements	Contract Treaty Rights	LOST	First Nation denied injunctive relief.
<i>Lovelace v. Ontario</i>	2000	Exclusion from gaming agreement for First Nations	Charter – Equality	LOST	No discrimination since Metis and off-reserve had different needs and circumstances, and no land base.
<i>Pikangikum First Nation v. Canada</i>	2002	Placement of band in co-management	Administrative Law	WON	Decision to put in co-management did not follow INAC procedure and did not meet procedural fairness.
<i>Misquadis v. Canada (Attorney General)</i>	2002	Cutting of funds for off-reserve employment program	Charter – Equality	WON	Off-reserve groups were discriminated against as compared to on-reserve groups.

<i>Day Star First Nation v. Canada</i>	2003	Cuts to post-secondary funding for First Nations	Aboriginal and Treaty rights Charter – Equality Fiduciary Duty Duty to Consult	LOST	Claim brought in the wrong forum. Needed to be brought in federal court. (No reported decision from Federal Court.)
<i>Lac Seul First Nation v. Canada</i>	2004	Elimination of prevention services as part of child welfare funding	Injunctive Relief	LOST	Court probably could not review the decision because it was a policy decision and otherwise failed injunction test.
<i>Micmac First Nation v. Canada</i>	2007	Ending education funding to landless band	Charter – Equality	LOST	No discrimination. As a landless band, the First Nation had different needs than First Nations with reserve lands.
<i>Gallant v. Canada</i>	2007	Cutting of funds for off-reserve employment program	Charter – Equality	LOST	Any discrimination was not as a result of the AHRDS program, but as a result of the respondent’s exclusion from the <i>Indian Act</i>
<i>Ermineskin Tribe v. Canada</i>	2008	Funding for income assistance withheld under funding agreement	Administrative Law	LOST	Decision was reasonable since band had not been following INAC manual
<i>Wawatie v. Canada</i>	2009	Placement in third party management	Administrative Law	LOST	Decision not unreasonable and no breach of duty to consult
<i>Tobique Indian Band v. Canada</i>	2010	Placement in third party management	Administrative Law	LOST	Decision not unreasonable and no breach of duty to consult
<i>Kehewin Cree Nation v. Canada</i>	2011	Placement in third party management	Administrative Law	LOST	Decision not unreasonable and no breach of duty to consult
<i>Attawapiskat v. Canada</i>	2012	Placed in TPM after declaring a housing crisis	Administrative Law	WON	Unreasonable decision as band was not mismanaging money
<i>Pictou Landing First Nation v. Canada</i>	2013	Denial of respite care for mother of severely disabled son	Administrative Law Charter – Equality	WON	Decision was unreasonable as didn’t confirm with Jordan’s Principle
<i>Simon v. Canada</i>	2013	Cuts to social assistance on reserve	Administrative Law	WON	Government didn’t consult about the cuts, which were unreasonable because they would harm several people and government didn’t study impacts (LOST on appeal)
<i>Thunderchild First Nation v. Canada</i>	2015	Refusal to sign funding agreement because unilateral changes and chronic underfunding of services	Administrative Law	LOST	INAC followed its intervention policy and there was a limited duty to consult on this, which was met.

<i>Shiner v. Canada</i>	2017	Denial of braces for a First Nations girl assessed as having correct “a severe and functionally handicapping malocclusion.”	Administrative Law Charter - Equality	LOST	Health Canada followed their policy in the denial. No basis to consider Jordan’s Principle, context of child welfare, or substantive equality.
<i>Manitoba Metis Federation v. The Government of Manitoba</i>	2018	Cutting certain health services funding	Administrative Law	LOST	Decision not reviewable as funding a pure policy decision.
<i>Pekuakamiulnuatsh Takuhikan c. Procureure générale du Canada</i>	2019	Underfunding of policing services under the First Nations Policing Services	Fiduciary Duty Honour of the Crown	LOST	Funding agreement does not create trust relationship—it’s just a contract; test for fiduciary duty not met. Community policing is not a cognizable collective Aboriginal interest; honour of the Crown not engaged here based on past precedents.