

Legal Actions related to the Canadian Human Rights Tribunal Case on First Nations Children

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Information Topic	Compensation	Jordan's Principle Non-Compliance Motion	Child and Family Services Long-Term Reform	Jordan's Principle Long-Term Reform
Purpose	Compensate victims of Canada's discrimination in child and family services and Jordan's Principle on reserve and in the Yukon between 1991–2022.	Ensure Canada's compliance with existing Canadian Human Rights Tribunal (CHRT) Orders on Jordan's Principle to address immediate needs for children and families.	End Canada's discrimination in child and family services and prevent it from happening again.	End discrimination in Jordan's Principle and prevent it from happening again.
Tribunal/Court	Federal Court (Canadian Human Rights Tribunal no longer has jurisdiction.)	Canadian Human Rights Tribunal	Canadian Human Rights Tribunal	Canadian Human Rights Tribunal
Legal Style of Cause	<i>Xavier Moushoom et al. v. Attorney General of Canada T-402-19</i>	<i>First Nations Child and Family Caring Society et al. v. Attorney General of Canada T1340/7008</i>	<i>First Nations Child and Family Caring Society et al. v. Attorney General of Canada T1340/7008</i>	<i>First Nations Child and Family Caring Society et al. v. Attorney General of Canada T1340/7008</i>
Parties	<p>Settlement Implementation Committee (SIC) Assembly of First Nations (AFN): Stuart Wuttke (Chair), Chief Derek Nepinak, and Duke Peltier Moushoom: David Sterns and Robert Kugler</p> <p>First Nations Child & Family Caring Society (Caring Society): Not part of the class action but can make submissions to Federal Court re: preserving the rights of persons entitled to compensation per the CHRT orders (2006–2022).</p>	<p>Complainants: Caring Society and AFN Commission: Canadian Human Rights Commission Interested Parties: Chiefs of Ontario (COO), Nishnawbe Aski Nation (NAN), and Amnesty International</p> <p>Interested Party Motion approved by CHRT: First Nations Leadership Council (FNLC)</p>	<p>Complainants: Caring Society and AFN Commission: Canadian Human Rights Commission Interested Parties: Chiefs of Ontario, Nishnawbe Aski Nation, and Amnesty International</p>	<p>Complainants: Caring Society and AFN Commission: Canadian Human Rights Commission Interested Parties: Chiefs of Ontario, Nishnawbe Aski Nation, and Amnesty International</p>
Guiding AFN Resolution	Resolution 28/2022	Resolution 40/2022	Resolution 40/2022	Resolution 40/2022
Background	In 2019, AFN files a class action that includes the CHRT compensation (2006–2022) valued at \$12B. In 2022, AFN, Moushoom, and Canada sign a \$20B Final Settlement Agreement (FSA). Approval was not sought by First Nations Chiefs in Assembly. Caring Society and Canadian Human Rights Commission opposed AFN/Canada motion to approve the FSA. CHRT did not approve the FSA as it did not fully satisfy the CHRT's orders on compensation, including disentiing some children in care and some of the estates of caregiving parents/grandparents, and left others in uncertainty. FSA was revised with the Caring Society, increased to \$23.4B and was approved by First Nations in Assembly and the CHRT, which then ceased its discrimination.	<ol style="list-style-type: none"> In 2021, Canada agreed to include a workplan in the Agreement in Principle (AIP) to address longstanding and growing non-compliance on Jordan's Principle. Canada breached the AIP workplan. Caring Society made multiple efforts to get Canada to complete the workplan, including triggering the AIP dispute mechanism, which was ineffective. Serious harms to children and families, including those in palliative care and urgent situations. In November 2023, Caring Society advises all parties of its intention to file a non-compliance motion at the CHRT which was filed on December 12, 2023. Caring Society files affidavits including many letters of support from First Nations Leadership. 	<ol style="list-style-type: none"> Caring Society and AFN file complaint pursuant to the <i>Canadian Human Rights Act</i> against Canada for longstanding discrimination in First Nations child and family services and Jordan's Principle. AFN Resolution 53/2006 giving authority specifically says First Nations agencies are not able to provide the supports needed for families due to underfunding. Canada fought the human rights complaint using procedural grounds but eventually lost in 2016 when the CHRT substantiated the case and ordered Canada to immediately cease its discriminatory conduct. Truth and Reconciliation Commission included child and family services and Jordan's Principle among top Calls to Action. Canada must ensure that funding approaches are sufficient to allow First Nations authorized service providers to deliver child and family services at a level that promotes the best interests of their children in keeping with the principles of sovereignty and inherent jurisdiction. 	<ol style="list-style-type: none"> Canada did not begin implementing Jordan's Principle in earnest until 2017. Canada did not fund Jordan's Principle capital costs until 2021 CHRT 41. There have been multiple non-compliance orders on Jordan's Principle.

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<p>Status Update</p>	<p>Claims Process for the Removed Child Class and the Removed Child Family Class approved by Federal Court (compensation to begin approx. December 2024).</p> <p>Still to come: the Kith Child Class and Kith Family Class; the Essential Service Class; and the Jordan's Principle Class and Jordan's Principle Family Class.</p>	<ol style="list-style-type: none"> February 2024 – CHRT sets a motion schedule for filing Canada's cross-motion leading to a hearing of both the Caring Society's non-compliance motion and the cross-motion on June 3 and 4, 2024. March 2024 – Two children die waiting for Canada to approve an urgent Jordan's Principle request. April 2024 – AFN requests delay and new hearing dates set for August 2024. AFN opposes the relief the Caring Society is seeking. It wants short-term orders pending AFN, COO, and NAN only negotiating a Jordan's Principle FSA with Canada. COO makes a brief written submission taking no position on the non-compliance motion. NAN makes no written submissions. FNLC applies for Interested Party status. Caring Society supports; AFN, COO, NAN, and Canada take no position, but outline their views on FNLC regarding participating in forthcoming Jordan's Principle FSA negotiations. July 2024 – CHRT grants the FNLC interested party status. 	<ol style="list-style-type: none"> Canada, AFN, COO, and NAN have negotiated a draft FSA which has not been shared with Chiefs. Minimal input into the draft FSA by regional subject matter experts. AFN has not called a National Advisory Committee (NAC) meeting since February 8, 2024, meaning that it has not finished its review of the Institute for Fiscal Studies and Democracy (IFSD) funding approaches for agencies or First Nations not affiliated with agencies. An Expert Advisory Committee (EAC) was created by CHRT order to advise on reforming Indigenous Services Canada (ISC) in 2022 CHRT 8. In April of 2024, AFN wrote on behalf of Canada, AFN, COO, and NAN to impose new terms of reference for the EAC. Canada then wrote to say they would only fund activities within the impugned terms of reference. The EAC felt this narrowed their mandate. Read the EAC report here. Canada breached the AIP workplan on Jordan's Principle. The Caring Society stepped out of the AIP to bring a non-compliance motion at CHRT, but the Caring Society clearly indicated to AFN, COO, NAN, and Canada that it wanted to participate in draft FSA. This did not happen. Caring Society positions on child and family services are posted at fnwitness.ca. 	<ol style="list-style-type: none"> IFSD is currently undertaking a study with First Nations Jordan's Principle experts to develop a long-term funding approach for Jordan's Principle. This work will not be complete until at least the end of 2024. In its May 17, 2024 factum, the AFN indicates it only wants to negotiate a draft FSA with Canada, COO, and NAN (excluding the Caring Society and other CHRT parties). The Caring Society wants a transparent and open process to negotiate an FSA on Jordan's Principle that is accountable to First Nations and informed by First Nations subject matter experts and the IFSD research. Caring Society is very concerned about Canada's compliance with any agreements, given breaches of the AIP and CHRT orders on Jordan's Principle.

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Key Short-Term Issues	<ol style="list-style-type: none"> The class action is governed by a SIC composed of three AFN representatives and two representatives from the Moushoom class counsel group. It is unclear what role Chiefs in Assembly have vis-à-vis the SIC. The support plan for child in care recipients is still being developed and compensation will roll out later this year. When will it be done, what will it include, and are there sufficient resources to support vulnerable people living on and off reserve? 	<ol style="list-style-type: none"> Does First Nations Leadership support the Caring Society's non-compliance motion on Jordan's Principle? Does First Nations Leadership support Canada's cross motion to extend the time frames for request determinations? Does First Nations Leadership support AFN's opposition to the Caring Society relief? 	<ol style="list-style-type: none"> When will First Nations Chiefs in Assembly receive a copy of the draft FSA and will suggestions from leadership be considered? Given the provision of AFN Resolution 40/2022 mandating that the NAC inform the draft FSA (which is now complete), why were the NAC meetings discontinued despite repeated calls for another meeting by NAC members? Why were regional and other technical experts not provided the meaningful opportunity to inform the draft FSA despite provisions in AFN Resolution 40/2022? What measures should be taken to respect the independence of the EAC, particularly given that Canada is taking measures to force EAC compliance with Terms of Reference not agreed to by all Parties? Given Canada's active non-compliance on Jordan's Principle, how confident can Leadership be that Canada will fulfill the terms of the draft FSA for child and family services or Jordan's Principle? Why was the Caring Society not able to work in parallel on the draft FSA after it left the AIP, given the provision of AFN Resolution 40/2022 that supports all current CHRT parties to seek relief from the CHRT? What is the governance for the draft FSA and how will it respect rights of individual First Nations? Can the draft FSA be amended and if so, to what extent? 	<ol style="list-style-type: none"> Do Chiefs in Assembly support AFN's proposal that only AFN, Canada, COO, and NAN negotiate an FSA for Jordan's Principle? Do Chiefs in Assembly support the Caring Society proposal for an open, transparent FSA negotiating process that is presumptively open, accountable to First Nations, and meaningfully includes First Nations subject matter experts?
Longer Term Issues	<ol style="list-style-type: none"> What is the process for compensating children in care not on Canada's database that SIC is currently relying on? Compensation Claims Process (also known as Distribution Protocols) for the Kith Child Class and Kith Family Class; the Essential Service Class; and the Jordan's Principle Class and Jordan's Principle Family Class. Overall governance question for class action: How are class actions aligned with UNDRIP? Currently class action lawyers acting for representative plaintiffs bring a class action that then results in payments to individuals. As a result, First Nations are often left reacting to the class action trying to meet support and information needs with minimal influence and resources. 	<ol style="list-style-type: none"> As Jordan's Principle is filling gaps in other underfunded federal programs (especially education and health), will Chiefs in Assembly push for the implementation of the <i>Spirit Bear Plan</i> per resolution AFN Resolution no. 92/2017? 	<ol style="list-style-type: none"> How should negotiations with Canada be structured on any issue so that the rights of First Nations are respected? How will Canada be forced into compliance if it breaches the FSA and the CHRT no longer has jurisdiction? 	<ol style="list-style-type: none"> What governance process should be in place to ensure that any FSA remains accountable to First Nations governments? What governance process should be in place to ensure subject matter experts can inform the ongoing process? Should the CHRT retain jurisdiction to ensure Canada follows through with the FSA implementation? Should there be an effective complaints mechanism per the expert report prepared by Naomi Metallic and colleagues for families and Jordan's Principle service coordinators to access that includes funds to alleviate urgent situations akin to what the Caring Society does now? How are First Nations who are not members of AFN or have different views represented?

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Key Decision Makers	<ol style="list-style-type: none"> Settlement Implementation Committee <i>AFN Members:</i> Stuart Wuttke (Chair), Chief Derek Nepinak, Duke Peltier <i>Moushoom Members:</i> Rob Kugler and David Sterns Federal Court 	<ol style="list-style-type: none"> First Nations Chiefs in Assembly First Nations not affiliated with AFN or otherwise represented Canadian Human Rights Tribunal 	<ol style="list-style-type: none"> First Nations Chiefs in Assembly First Nations not affiliated with AFN or otherwise represented Canadian Human Rights Tribunal 	<ol style="list-style-type: none"> First Nations Chiefs in Assembly First Nations not affiliated with AFN or otherwise represented Canadian Human Rights Tribunal
Key Resources	<ol style="list-style-type: none"> University of Windsor Class Action Clinic: an independent watchdog on class actions that can represent potential beneficiaries in a class action, free of charge. Canadian Human Rights Tribunal Compensation orders (2019 CHRT 39, 2020 CHRT 7, 2020 CHRT 15, 2021 CHRT 6, 2021 CHRT 7, 2022 CHRT 41 and 2023 CHRT 44) 	<ol style="list-style-type: none"> IFSD Jordan's Principle Data Assessment (2022) Canada's March 2024 estimates of the Jordan's Principle request backlogs by region Spirit Bear Plan Legal documents for all parties on the non-compliance motion, all available at fnwitness.ca. The Caring Society's Non-Compliance Motion v. Canada on Jordan's Principle Information information sheet 	<ol style="list-style-type: none"> IFSD Phase 3 report interim update (Spring 2024) IFSD Report on First Nations not affiliated with a First Nations Agency Expert Advisory Committee Report 	<ol style="list-style-type: none"> Doing Better for Indigenous Children and Families: Jordan's Principle Accountability Mechanisms Report (2022) by Naiomi Metallic et al. IFSD Jordan's Principle Data Assessment (2022) IFSD Jordan's Principle research summary

Glossary of Terms

AFN	Assembly of First Nations
AIP	Agreement in Principle
Caring Society	First Nations Child & Family Caring Society
CHRT	Canadian Human Rights Tribunal
COO	Chiefs of Ontario
EAC	Expert Advisory Committee
FNLC	First Nations Leadership Council (composed of Union of British Columbia Indian Chiefs, the First Nations Summit and the BC Assembly of First Nations)
FSA	Final Settlement Agreement
IFSD	Institute for Fiscal Studies and Democracy
ISC	Indigenous Services Canada
NAC	National Advisory Committee
NAN	Nishnawbe Aski Nation
SIC	Settlement Implementation Committee
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples