

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

(Glossary on page 5)



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.	Addressing Canada’s non-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	Settlement Implementation Committee (SIC) Assembly of First Nations (AFN): Stuart Wuttke (Chair), Chief Derek Nepinak, and Duke Peltier Moushoom: David Sterns and Robert Kugler 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).	Complainants: Caring Society and AFN Commission: Canadian Human Rights Commission Interested Parties: Chiefs of Ontario (COO), Nishnawbe Aski Nation (NAN), and Amnesty International Interested Party Motion approved by CHRT: First Nations Leadership Council (FNLC)	Complainants: Caring Society and AFN Commission: Canadian Human Rights Commission Interested Parties: COO, NAN, Amnesty international	Complainants: Caring Society and AFN Commission: Canadian Human Rights Commission Interested Parties: Chiefs of Ontario, Nishnawbe Aski Nation, and Amnesty International
Guiding AFN Resolution	Resolution 28/2022	AFN Resolution 40/2022 , To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan’s Principle AFN Resolution 60/2024 , Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan’s Principle	AFN Resolution 40/2022 , To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan’s Principle AFN Resolution 60/2024 , Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan’s Principle AFN Resolution 61/2024 , Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services	AFN Resolution 40/2022 , To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan’s Principle AFN Resolution 60/2024 , Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan’s Principle

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Background	<p>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 disentiitling 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.</p>	<ol style="list-style-type: none">1. 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.2. 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.3. Serious harms to children and families, including those in palliative care and urgent situations.4. 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, 2023.5. Caring Society files affidavits including many letters of support from First Nations Leadership.	<ol style="list-style-type: none">1. Caring Society and AFN file complaint pursuant to the <i>Canadian Human Rights Act against Canada for longstanding discrimination in First Nations child and family services and Jordan's Principle</i>. AFN Resolution 53/2006 giving authority specifically says First Nations agencies are not able to provide the supports needed for families due to underfunding.2. 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.3. Truth and Reconciliation Commission included child and family services and Jordan's Principle among top Calls to Action.4. Canada must ensure that funding approaches are sufficient to allow First Nations and 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.5. 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.¹	<ol style="list-style-type: none">1. Canada did not begin implementing Jordan's Principle in earnest until 2017.2. Canada did not fund Jordan's Principle capital costs until 2021 CHRT 41.3. There have been multiple non-compliance orders on Jordan's Principle.

1 <https://fncaringsociety.com/publications/eac-reform-indigenous-services-canada-summary-report-activities-observations-and>

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Status Update	<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 set 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.May 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 takes no position and NAN makes no written submissions.July 2024 – CHRT grants the FNLC interested party status and FNLC generally supports the relief the Caring Society is seeking.September 2024 – Non-compliance hearing is held over three days before the CHRT Panel.November 2024 – The Tribunal issues summary ruling ordering Canada to immediately resolve the backlog, triage for urgency and report to the Tribunal with a detailed plan to do so. Canada has also been ordered to confirm that there are sufficient numbers of staff to determine urgent requests, that First Nations and First Nations organizations who have taken on Jordan's Principle work have the sufficient resources to do so and on its progress in coordinating federal programs, including a plan for implementation, The Tribunal also ordered the Parties to return with consent orders, or with alternative positions on a criteria for identifying urgent requests, solutions for addressing hardship on requesters due to reimbursement delays and an interim independent national complaints mechanism.	<ol style="list-style-type: none">On July 11, 2024, Canada, AFN, COO, and NAN signed a draft FSA on the Long-term Reform of the First Nations Child and Family Services Program. Canada breached the AIP workplan on Jordan's Principle, and therefore the Caring Society stepped out of the AIP to bring non-compliance motion at CHRT, but Caring Society clearly indicated to AFN, COO, NAN and Canada that it wanted to participate in FSA. This did not happen.On October 17, 2024, the First Nations-in-Assembly directed a reset of the negotiation process to achieve a new FSA and did not approve the draft FSA (AFN Resolutions 60/2024 and 61/2024). The draft FSA was a 10-year agreement with no protection for First Nations children from Canada's discrimination after year 10, funding was not secure, and there was minimal input into the FSA by regional subject matter experts, including the NAC as AFN has not called a NAC meeting since February 8, 2024.Caring Society positions on child and family services are posted at fnwitness.ca.AFN Resolutions 60/2024 and 61/2024 call for First Nations Chiefs to be restored as the key decision-makers on long-term reform and directed the AFN Executive Committee to establish a National Children's Chiefs Commission with representation from all regions to oversee and provide strategic direction on Long-Term Reform, ensure governance structures and amendments processes uphold the sacredness of children, youth, and families, is transparent, open, and accountable to First Nations, preserves First Nations decision-making, and includes the guidance of youth, youth in care and formerly in care, and First Nations child and family service experts.	<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 CHRT's November 21 summary ruling encourages collective solutions with all Parties returning to the table and being formed by regional leadership and technicians.First Nations-in-Assembly per AFN Resolution 60/2024 directs a new process for reaching a draft FSA on FNCFS and Jordan's Principle.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.The 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">1. 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.2. 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">1. What is Canada's plan to immediately address the backlog and triage for urgency? Canada must report to the CHRT by December 10.2. How is Canada ensuring First Nations who have taken on various aspects of Jordan's Principle are properly resourced and funded to meet the needs of the children they serve? Canada must report to the CHRT by January 9, 2025.3. In the summary ruling, the Tribunal encourages all the Parties return to the table to discuss improving Jordan's Principle operations and delivery. The Tribunal also encourages collective solutions and believes it would be beneficial for the Parties to be advised by their respective experts, including First Nations who are not part of the proceedings, regional First Nations leadership and technicians, etc. How will the other Parties include expert views and how will those views inform Jordan's Principle implementation?	<ol style="list-style-type: none">1. When will AFN convene the National Children's Chiefs Commission per AFN Resolution 60/2024 who will work openly, transparently and provide oversight of the FSA negotiations?2. When will AFN reconvene the NAC to fulfil their mandate to provide advice and technical guidance on FNCFS and Jordan's Principle?3. When will Canada obtain a new mandate and fully cooperate and participate in implementing First Nations rights holder's direction?4. How should negotiations with Canada be structured so that the rights of First Nations are respected?5. 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">1. Consistent with direction from First Nations-in-Assembly per AFN Resolution 60/2024 and the CHRT encouraging collective solutions in its November 21 summary ruling with all Parties returning to the table informed by regional leadership and technicians:<ol style="list-style-type: none">a. When will Canada obtain a new mandate and fully cooperate and participate in implementing First Nations rights holder's direction?b. When will AFN convene the National Children's Chiefs Commission per AFN Resolution 60/2024 who will work openly, transparently and provide oversight of the FSA negotiations?c. How should negotiations with Canada be structured so that the rights of First Nations are respected?d. How should negotiations be structured to ensure they are informed by First Nations subject matter experts and the IFSD research?
Longer Term Issues	<ol style="list-style-type: none">1. What is the process for compensating children in care not on Canada's database that SIC is currently relying on?2. 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.3. 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">1. 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">1. How will First Nations be supported to develop their capacity, if needed, to deliver FNCFS services if they choose?2. How will First Nations and FNCFS Agencies be supported to transition to a reformed FNCFS program?3. What safeguards need to be in place to ensure Canada's discrimination against First Nations children and families ends forever and does not recur?	<ol style="list-style-type: none">1. What governance process should be in place to ensure that any FSA remains accountable to First Nations governments?2. What governance process should be in place to ensure subject matter experts can inform the ongoing process?3. Should the CHRT retain jurisdiction to ensure Canada follows through with the FSA implementation?4. 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?5. How are First Nations who are not members of AFN or have different views represented?
Key Decision Makers	<ol style="list-style-type: none">1. Settlement Implementation Committee AFN Members: Stuart Wuttke (Chair), Chief Derek Nepinak, Duke Peltier Moushoom Members: Rob Kugler and David Sterns2. Federal Court	<ol style="list-style-type: none">1. First Nations Chiefs in Assembly2. First Nations not affiliated with AFN or otherwise represented3. Canadian Human Rights Tribunal	<ol style="list-style-type: none">1. First Nations-in-Assembly, with the guidance and support of the National Children's Chiefs Commission2. First Nations not affiliated with the AFN or otherwise represented3. Canadian Human Rights Tribunal	<ol style="list-style-type: none">1. First Nations Chiefs in Assembly2. First Nations not affiliated with AFN or otherwise represented3. Canadian Human Rights Tribunal

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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">The Caring Society's Information Sheet on the CHRT's Summary Ruling on the Jordan's Principle Non-Compliance MotionThe Caring Society's Non-Compliance Motion v. Canada on Jordan's Principle Information sheetIFSD Jordan's Principle Data Assessment (2022)Canada's March 2024 estimates of the Jordan's Principle request backlogs by regionSpirit Bear PlanLegal documents for all parties on the non-compliance motion, all available at fnwitness.ca	<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 AgencyExpert Advisory Committee ReportCaring Society's Proposed Amendments to the draft FSA	<ol style="list-style-type: none">Doing Better for Indigenous Children and Families: Jordan's Principle Accountability Mechanisms Report (2022) by Naomi Metallic et al.IFSD Jordan's Principle Data Assessment (2022)IFSD Jordan's Principle research summary (2024)IFSD Jordan's Principle research update (2024)

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