

# Bearing Witness to the Case on First Nations Child Welfare and Jordan's Principle

at the Canadian Human Rights Tribunal

## About the Case

**ON JANUARY 26 2016**, the Canadian Human Rights Tribunal (Tribunal or CHRT) made a landmark decision. It found that Canada racially discriminates against First Nations children by underfunding child welfare services on reserve and failing to properly implement Jordan's Principle, a legal rule ensuring First Nations children receive the services they need when they need them. The Tribunal ordered Canada to cease this discrimination immediately. Five years later, while progress has been made, Canada has yet to fully comply with the Tribunal's orders.

### Facts to Consider

- Before the case was heard in 2013, Canada tried to stop the case from moving forward based on legal technicalities.
- Since 2011, Canada has legally challenged rulings on the case four times.
- As of 2017, Canada spent 8.3 million dollars in legal costs fighting the complaint and the CHRT's orders (APTN News).
- Since its landmark ruling in 2016, the Tribunal has issued 15 non-compliance or procedural orders.

**February 23, 2007:** The Caring Society and the Assembly of First Nations (AFN) file a complaint with the Canadian Human Rights Commission (CHRC) alleging that Canada is discriminating against First Nations children by underfunding child welfare on reserve.



**September 30, 2008:** CHRC refers the complaint to the Canadian Human Rights Tribunal (CHRT or Tribunal for short).

**October, 2008:** Government of Canada (Canada for short) tries to have the case dismissed on the technicality that it funds rather than administers services to First Nations children.

**June 30, 2011:** The Federal Court allows the Aboriginal Peoples Television Network to broadcast the CHRT hearings.

**March 14, 2011:** The Tribunal dismisses the complaint on a legal technicality.

**April 18, 2012:** The Federal Court overturns the Tribunal's dismissal and refers the case back to a differently constituted Tribunal composed of a panel chair and two panel members.

**February 25, 2013:** The Tribunal hearings begin.

**March 6, 2013:** The Federal Court of Appeal hears Canada's application to overturn the Federal Court ruling ordering the Tribunal to hear that case. It rejects Canada's application and allows the case to move forward.

**July 3, 2013:** Canada is found to have unlawfully withheld over 90,000 documents. Despite this, the Caring Society and other interested parties submit over 500 documents and 25 people testify, all of which is entered into evidence.

**April 26, 2016:** The Tribunal orders Canada to fully implement Jordan's Principle within two weeks (**2016 CHRT 10**).

**January 26, 2016:** The Tribunal finds that Canada is discriminating against First Nations children and their families by failing to provide equitable child welfare and properly implement Jordan's Principle (**2016 CHRT 2**).

**October 20-24, 2014:** Parties to the case make closing statements. The in-person and virtual hearings are attended and watched by hundreds of people across the country.

**September 14, 2016:** The Tribunal finds Canada's response to the January 26, 2016 (2016 CHRT 2) decision and remedial orders to be inadequate to end the discrimination (**2016 CHRT 16**).

**May 26, 2017:** The Tribunal finds Canada has failed to properly implement Jordan's Principle and they provide guidelines for implementation (**2017 CHRT 14** see also **2017 CHRT 35**).

**June 23, 2017:** Canada files an application for judicial review of the May 26, 2017 order on Jordan's Principle (2017 CHRT 14) to quash parts of it prohibiting Canada from consulting professionals before approving services and requiring that it respond to Jordan's Principle requests within 12 to 48 hours.

**November 2, 2017:** The Tribunal amends its May 26, 2017 orders on Jordan's Principle. Canada is now required to respond to Jordan's Principle requests in 12 hours for urgent cases, and 48 hours for non-urgent cases. Canada can only consult professionals before approving services if it is necessary to determine the child or group of children's clinical needs (**2017 CHRT 35**).

**February 21, 2019:** The Tribunal issues interim relief orders for Jordan's Principle. It rules that non-status First Nations children recognized by their Nation will be covered under Jordan's Principle in urgent and life-threatening situations until it hears all the evidence and reaches a decision on the definition of a First Nations child for the purposes of Jordan's Principle (**2019 CHRT 7**).

**January 7, 2019:** The Tribunal reaffirms that Canada obstructed the case in 2013 by failing to disclose 90,000 documents and orders Canada to compensate the Caring Society, the AFN, and the Chiefs of Ontario (**2019 CHRT 1**).

**February 1, 2018:** The Tribunal finds that Canada has failed to make the necessary changes to the child welfare system and its funding to end the discrimination. The ruling calls on Canada to cost out the extent of the underfunding and identify actual needs (**2018 CHRT 4**).

**March 4, 2019:** The Tribunal grants the Congress of Aboriginal Peoples (CAP) limited interested party status to the case (**2019 CHRT 11**).

**September 6, 2019:** The Tribunal orders Canada to pay the maximum amount allowable under the Canadian Human Rights Act (CHRA) to compensate First Nations children, youth, and families who have been harmed by the child welfare system or were denied or delayed receipt of services due to Canada's discriminatory implementation of Jordan's Principle (**2019 CHRT 39**).

**April 16, 2020:** The Tribunal rules on three outstanding questions regarding compensation. It decides compensation will be paid to the estates of deceased individuals, that compensation will be paid to children when they reach the provincial/territorial age of majority and children in care as of January 1, 2006, but removed before then are eligible for compensation (**2020 CHRT 7**).

**October 4, 2019:** Canada files for judicial review and motions for a stay of enforcement of the 2019 CHRT 39 decision ordering it to pay compensation to First Nations children, youth, and families who have been harmed by its discrimination.

**May 28, 2020:** The Tribunal defines the terms, "service gap," "unreasonable delay," and "essential service" for the purpose of determining eligibility for Jordan's Principle compensation (**2020 CHRT 15**).

**June 12, 2020:** The Tribunal responds to a motion filed by the Caring Society requesting access to information Canada redacted. The Tribunal agrees with the Caring Society and requests further information from Canada (**2020 CHRT 17**).

**July 17, 2020:** The Tribunal rules that First Nations children who will become eligible for Indian Act registration/status under S-3 implementation are eligible for services through Jordan's Principle (**2020 CHRT 20**).

**August 11, 2020:** Tribunal releases ruling regarding Band Representative Services for Ontario First Nations, Tribal Councils, and First Nations Child and Family Services Agencies (**2020 CHRT 24**).

**November 25, 2020:** The Tribunal determines who is eligible to receive services through Jordan's Principle: children registered or eligible to be registered under the Indian Act, children with a parent or guardian registered or eligible to be registered under the Indian Act, children recognized by their Nation for the purposes of Jordan's Principle, or children resident on reserve (**2020 CHRT 36**).

**December 22, 2020:** Canada files for judicial review with the Federal Court of the CHRT's rulings (2020 CHRT 20 and 2020 CHRT 36) on the groups of children eligible to receive services through Jordan's Principle. Both 2020 CHRT 20 and 2020 CHRT 36 remain in place while the judicial review is underway.



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