



First Nations Child & Family  
Caring Society of Canada

June 7, 2021



## Honouring Those Lost and the Survivors of Residential Schools for our Future Generations

In May 2021, Tk'emlúps te Secwépemc Chief Rosanne Casimir announced that the remains of 215 children had been found near the city of Kamloops, British Columbia. The children who were found attended the Kamloops Indian Residential School, the largest in Canada's residential school history. All of these children died far away from their families and communities, and were as young as three years old at the time of their death. There are no available records to identify most of the children whose remains were found.

Indigenous leaders and advocates expect the number of children found at the Kamloops Indian Residential School to rise when the final report is released in mid-June. Many children who attended residential schools across Canada remain unidentified and buried in unmarked graves near and at the sites of former residential schools.

### Canada's long history of discrimination

The Truth and Reconciliation Commission ("TRC") spent seven years extensively researching the Indian Residential School System ("IRSS"). From 2008 to 2015, it heard from over 7000 survivors and their family members. The TRC's final report found that these institutions were poorly built and heated, and that children resided in unsanitary and unhealthy living conditions without access to appropriate health services or trained medical staff. These unsafe and poor health conditions were largely due to the Government of Canada's systemic underfunding of the services provided to Indigenous children in the IRSS. Thousands of children died because of this.

Unfortunately, Canada's pattern of providing inequitable funding for services to First Nations children continues today. In 2016, the Canadian Human Rights Tribunal ("CHRT") found that Canada was racially discriminating against 165 000 First Nations children by providing them with inequitable services. The CHRT found that Canada's discrimination was causing the unnecessary removal of First Nations children from their families, homes and communities. According to TRC

Commissioner Dr. Marie Wilson, the harms experienced by First Nations children today when they are removed from their families, homes and communities are comparable to those experienced by children who attended the IRSS.

### What can the Government of Canada do now to address this situation?

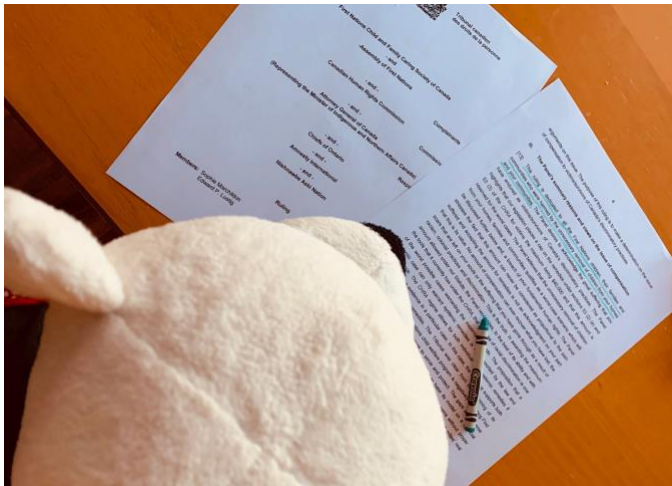
Since 2015, the Government of Canada has had a detailed list of actionable items it must do to honour the memories of the children who died in the IRSS and the survivors. The first Calls to Action that were made relate to child welfare. The first Call to Action made by the TRC urges Canada to ensure that the child welfare services it provides and funds to Indigenous children and their families are equitable and culturally appropriate. Another Call to Action urges Canada to immediately implement Jordan's Principle, a child-first principle that ensures First Nations children living in Canada can access the services and support they need, when they need them. The Government of Canada has not implemented either of these Calls to Action.

Canada must also immediately stop fighting survivors of the IRSS and First Nations children in court. Canada is currently using taxpayer money to pay for lawyers to litigate against survivors of IRSS, including those survivors of the Kamloops Indian Residential School, the friends and fellow schoolmates of the 215 children whose remains were found. Canada is simultaneously trying to overturn a decision made by two expert members of the Canadian Human Rights Tribunal, aiming to ensure equality for 165 000 First Nations children, some of whom are the children and grand-children of the survivors of the Kamloops Indian Residential School.

## How is Canada's ongoing litigation against First Nations children related to the unmarked graves in Kamloops?

Canada is currently before the Federal Court of Canada seeking to overturn two decisions made by expert members of the Canadian Human Rights Tribunal, that aim to put an end to the racial discrimination faced by First Nations youth and their families. One decision requires Canada to compensate First Nations children who were unnecessarily removed from their homes, and those who were denied important services because of Canada's racial discrimination. The other decision states that it is not up to Canada, but First Nations Peoples themselves, to decide if their children are eligible to receive services through Jordan's Principle.

The survivors of the IRSS shared their stories in hopes that their children and grand-children would not experience discrimination in a similar way they did when they were young. The best way to honour the memories of the 215 children is to ensure that Canada does not perpetuate its pattern of inequitable services and treatment of First Nations children.



## What are Canada's arguments in these cases?

Canada is making two main arguments in the decision about compensation. Firstly, Canada is arguing that First Nations children do not deserve compensation because they were victims of systemic rather than individual discrimination. By this logic, the families of the children whose remains were found should not be entitled to compensation because the

IRSS was a systemic problem. Accepting Canada's argument would also mean that the individual victims of current and ongoing government discrimination against First Nations Peoples, like Joyce Echaquan, should not obtain compensation.

Canada's second argument is about evidence. It does not deny that its willfully discriminatory conduct has harmed and caused trauma to First Nations children and their families. However, it argues that child victims ought to be required to testify in an open legal proceeding about the harm and trauma they experienced in order to qualify for compensation. This is not a requirement for victims of discrimination to obtain compensation under the *Canadian Human Rights Act* and not a single legal decision supports this claim.

The second decision Canada is fighting is about Jordan's Principle. Canada is arguing that the *Indian Act*, the very law that was used to force First Nations children to attend residential schools, which is deeply rooted in colonialism, ought to be used to determine which First Nations child is eligible for services under Jordan's Principle. It also says it cannot follow the CHRT decision on Jordan's Principle because it needs to consult First Nations Peoples about which children ought to qualify under Jordan's Principle. Not one of the 634 First Nations communities in Canada has come forward to say that it disagrees with the criteria provided by the Canadian Human Rights Tribunal nor that it prefers to be consulted first. The Assembly of First Nations, the First Nations Child and Family Caring Society, Amnesty International, the Chiefs of Ontario, the Canadian Human Rights Commission, the Nishnawbe Aski Nation all support the eligibility criteria for Jordan's Principle ordered by the CHRT.

## What can I do?

The [NDP](#) has tabled a motion in the House of Commons requiring Canada to fund and speed up the implementation of the Truth and Reconciliation Commission's Calls to Action, and to stop fighting IRSS survivors and First Nations children in court. All opposition parties will support the motion. Write or call your MP, and ask them to support this motion.

[Amnesty International](#) has created an online action calling on Canada to ensure justice and accountability for Indigenous Peoples for individuals to sign and demand concrete action.

On Friday June 11, 2021 from 12 P.M. – 1:30 P.M. EST join the Caring Society and the Ontario Children’s Advancement Coalition for their free [information session live on facebook](#).

Tell Canada why you think it must stop litigating against survivors of the IRSS and First Nations children. Share your reasons on social media using the hashtag **#NotInMyName** and ask your families and friends to do the same.

