



The Caring Society's Non-Compliance Motion v. Canada on Jordan's Principle

Background:

In 2007, the First Nations Child & Family Caring Society (Caring Society) and Assembly of First Nations (AFN) filed a human rights complaint against Canada for its inequitable provision of the First Nations Child & Family Services (FNCFS) Program and flawed approach to Jordan's Principle. In late 2009, the Chiefs of Ontario (COO) and Amnesty International were granted interested party status. In 2016, the Canadian Human Rights Tribunal (Tribunal) ordered the government to stop its discriminatory conduct and take measures to ensure it does not happen again. After this ruling, Nishnawbe-Aski Nation (NAN) was also granted interested party status. Since 2016, the Tribunal has issued over 28 non-compliance and procedural orders against Canada and retains jurisdiction over the complaint.

On December 12, 2023, the Caring Society filed another non-compliance motion with the Tribunal regarding Canada's chronic and wilful failure to adhere to the Tribunal's orders on Jordan's Principle. Filing a non-compliance motion lays the foundation for a hearing on the matter to take place, which could then result in the Tribunal issuing an official non-compliance order with specific measures to address the same.

Key Questions:

Who is responsible for administering the Tribunal orders on Jordan's Principle?

The Government of Canada has the sole legal obligation to implement Jordan's Principle in compliance with the Tribunal's orders. The Tribunal has ordered that Jordan's Principle must be implemented based on the principles of substantive equality, culturally appropriate service provision, the child's needs and best interests, and must take distinct community circumstances into account.

Some First Nations are also working to ensure their citizens have access to Jordan's Principle. This is a positive step but does not

absolve Canada from its ultimate legal responsibility to ensure Jordan's Principle is being implemented in a manner consistent with the Tribunal's orders.

What is a non-compliance order?

In 2016, the Tribunal ordered Canada to immediately stop the discrimination at the level of the FNCFS Program and Jordan's Principle and prevent it from recurring. Because Canada did not immediately fix the problem, the Tribunal has issued more than 28 subsequent orders, many of them non-compliance orders. A non-compliance order is a legal order issued by the Tribunal with specific measures to ensure that Canada follows its existing legal orders.

What are the Caring Society's concerns put forward in the December 2023 non-compliance motion?

In its December 12, 2023 non-compliance motion, the Caring Society identified the following concerns regarding Canada's:

- Wilful narrowing of the Tribunal's orders by imposing additional eligibility criteria and request processing criteria;
- Ineffective methods for receiving and processing Jordan's Principle requests by phone or other formats;
- Chronic failure to adhere to the Tribunal's timelines for determining requests including in urgent cases;
- Failure to adhere to reasonable timeframes to fund approved requests;
- Failure to adopt sufficient accountability measures to ensure that the Tribunal's orders are upheld; and
- Attempting to shield itself from non-compliance by relying on the *Financial Administration Act* and other administrative measures.

You can read the Caring Society's notice of motion [here](#).

Key dates and documents

The Tribunal has set out the following schedule for the Parties (the Caring Society, AFN, COO, NAN, and Canada) to file their submissions on the non-compliance motion. You can find it [here](#).

You can also find the Caring Society's affidavits, filed on January 12, 2024, [here](#).

Once the documents are publicly available, they will be posted to fncaringsociety.com/i-am-witness.

What happens if a non-compliance order is issued?

If the Tribunal determines that a non-compliance order is warranted, Canada will be required to provide immediate relief for the six areas of concern identified in the Caring Society's motion. Non-compliance orders are legally binding and set out specific measures Canada must make to comply with the Tribunal's orders and often include mandatory reporting to the Tribunal.

Is the Tribunal's hearing on the non-compliance motion public?

Yes, there will be a hybrid (virtual and in-person) hearing on the motion on Monday, June 3, 2024, and Tuesday, June 4, 2024.

The hearings will be in Ottawa at a venue of the Tribunal's choosing. Updated information, including the address, will be posted on our website as it becomes available.