



First Nations Child & Family  
Caring Society of Canada

June 10, 2021

## Canada's Judicial Reviews v. First Nations Children Federal Court Hearings: June 14-18, 2021



### Background

In 2007, the First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations filed a human rights complaint pursuant to the *Canadian Human Rights Act* alleging that the Government of Canada's flawed and inequitable provision of First Nations child and family services and its failure to properly implement Jordan's Principle was discriminatory on the prohibited grounds of race and national ethnic origin.

Over the next 9 years, Canada brought numerous unsuccessful motions to get the case dismissed on jurisdictional grounds. In 2013, the Canadian Human Rights Tribunal began 72 days of hearings ending in October of 2014.

On January 26, 2016, the Canadian Human Rights Tribunal issued its order on the merits of the case substantiating the discrimination and ordering Canada to immediately cease its discriminatory conduct. Canada did not contest this order but failed to comply (obey) the order.

Since that time the Tribunal has issued 19 non-compliance and procedural orders.

Canada has filed for judicial review (appeal) of two of the Canadian Human Rights Tribunal orders – one providing human rights compensation to eligible victims (many of whom are still children) and the other ensuring First Nations children recognized by their Nations are eligible for Jordan's Principle. In both cases they want the orders quashed.

All of the Tribunal orders as well as the parties' legal submissions (factums) relevant to Canada's two appeals being heard by the Federal Court are posted on the timeline of [www.fncaringociety.com/i-am-witness](http://www.fncaringociety.com/i-am-witness)

### Watching the Webcast of the Federal Court Hearings

Members of the public can register to view the webcast of the hearings free of charge at: <https://www.fct-cf.gc.ca/en/court-files-and-decisions/hearings-calendar>

### Time of the Hearings

The hearings will begin at 9:30 EDT daily and will continue for approximately 4–5 hours each day with a lunch break.

### Hearing Dates:

The Federal Court will hear Canada's two judicial reviews sequentially with the Tribunal's compensation decision taking up June 14–17 (morning) and then the Jordan's Principle judicial review will be heard on June 17–18, 2021.

## Caring Society Legal Counsel and Barrister:

The Caring Society is represented by: Sarah Clarke, David Taylor, Anne Levesque, David Wilson and Spirit Bear (Twitter @SpiritBear).

## Canada's Judicial Reviews and Order of Argument

**T-1621-19: Judicial review of the Canadian Human Rights Tribunal order on compensation of victims of Canada's discriminatory provision of First Nations child and family services and Jordan's Principle. Canada seeks to quash the compensation order.**

Canada's Judicial Review to overturn the Canadian Human Rights Tribunal order 2019 CHRT 19. This order found the federal government's "willful and recklessly" discrimination towards First Nations children and some caregivers to be a "worst case scenario" contributing to unnecessary family separations, harms and in some cases, the deaths of children. Canada has not contested orders that substantiated these harms including orders that found Canada's failure to comply with the Tribunal's January 2016 decision (2016 CHRT 2) requiring it to cease its discriminatory conduct. The Tribunal awarded the maximum amount of compensation allowable under the Canadian Human Rights Act of \$40,000 per eligible victim. It is important to note that **the class action is a separate proceeding and is not part of this litigation**. The Tribunal has determined that the discrimination is ongoing meaning the longer Canada delays compliance the more victims there will be who are eligible for compensation. Canada seeks to quash the compensation order. Canada is opposed by the First Nations Child and Family Caring Society of Canada, the Assembly of First Nations, Chiefs of Ontario, Canadian Human Rights Commission, Nishnawbe Aski Nation and Amnesty International.

June 14, 2021

Attorney General of Canada  
Caring Society

June 15, 2021

Caring Society Continued  
Assembly of First Nations

June 16, 2021

Assembly of First Nations  
Chiefs of Ontario  
Nishnawbe Aski Nation  
Amnesty International Canada  
Canadian Human Rights Commission  
Attorney General of Canada reply

June 17, 2021 (morning)

Attorney General of Canada reply continued

### **Canada's Judicial Review to overturn the Canadian Human Rights Tribunal order 2020 CHRT 36 ensuring First Nations children resident off reserve who are recognized by their Nations are eligible for Jordan's Principle regardless of Indian Act status. Federal Court file: T-1559-20**

In uncontested legal orders, Canada was ordered to ensure "all First Nations children" were eligible for services, products and supports under Jordan's Principle. Canada interpreted that to exclude First Nations children who do not have *Indian Act* status who live off reserve. The Caring Society brought a non-compliance motion to the Tribunal and after a hearing, the Tribunal found that Canada must ensure that First Nations children who are recognized by their Nations are eligible for Jordan's Principle regardless of their *Indian Act* status. Canada seeks to quash this order.

Canada is opposed by the First Nations Child and Family Caring Society of Canada, the Assembly of First Nations, Chiefs of Ontario, Canadian Human Rights Commission, Nishnawbe Aski Nation and Amnesty International.

For further information on Jordan's Principle go to: [www.fncaringsociety.com/jordans-principle](http://www.fncaringsociety.com/jordans-principle)

June 17, 2021

Attorney General of Canada  
Caring Society

June 18, 2021

Assembly of First Nations  
Chiefs of Ontario  
Nishnawbe Aski Nation  
Congress of Aboriginal Peoples  
Amnesty International  
Canadian Human Rights Commission  
Attorney General of Canada Reply