

Making Visible the Discriminatory Foundations of Canada's Child Welfare System and the Impact for First Nations Children and Families Today

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Presented by **Brittany Mathews** | October 24, 2022



First Nations Child & Family
Caring Society of Canada

Société de soutien à l'enfance
et à la famille des Premières Nations
du Canada



Canada's "old mindset", including its ways of thinking and doing, continues to inform the relationship between First Nations, Métis and Inuit peoples and non-Indigenous peoples.

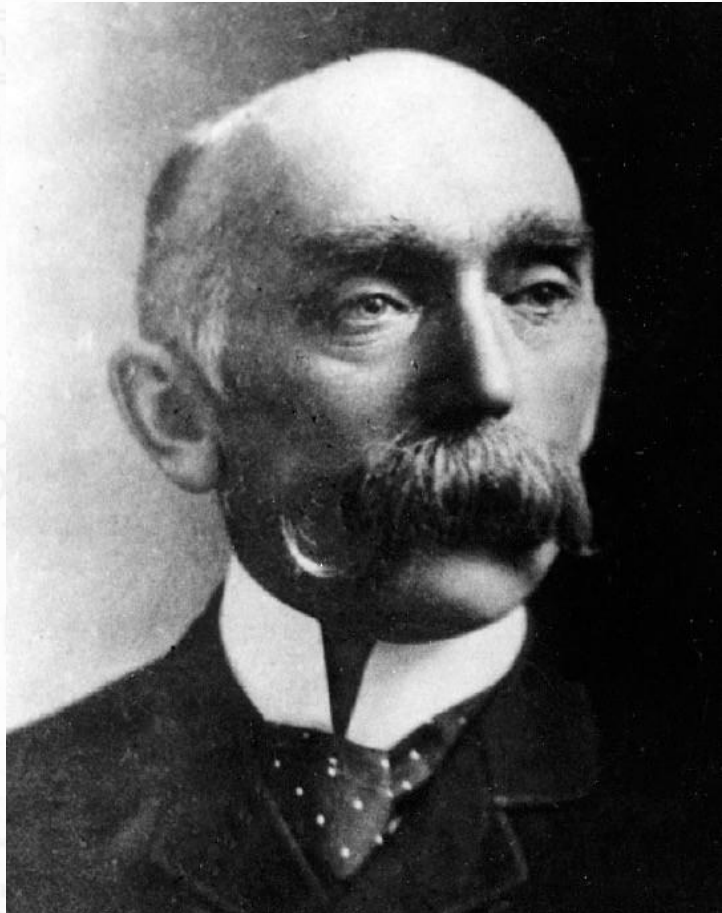
This "old mindset" hinders Indigenous peoples from fully achieving their self-determination and hinders achieving true reconciliation between Indigenous and non-Indigenous peoples.

Canada's Old Mindset

- Rooted in colonialism
- The Canadian Human Rights Tribunal refers to Canada's problematic "old mindset," describing it as "the same type of statements and reasoning that it has seen from the organization in the past"
- Information, policies, reasoning and justifications that gave rise to harmful policies and practices intended to assimilate First Nations, Métis and Inuit children into Canadian society

Indicators of Canada's Old Mindset

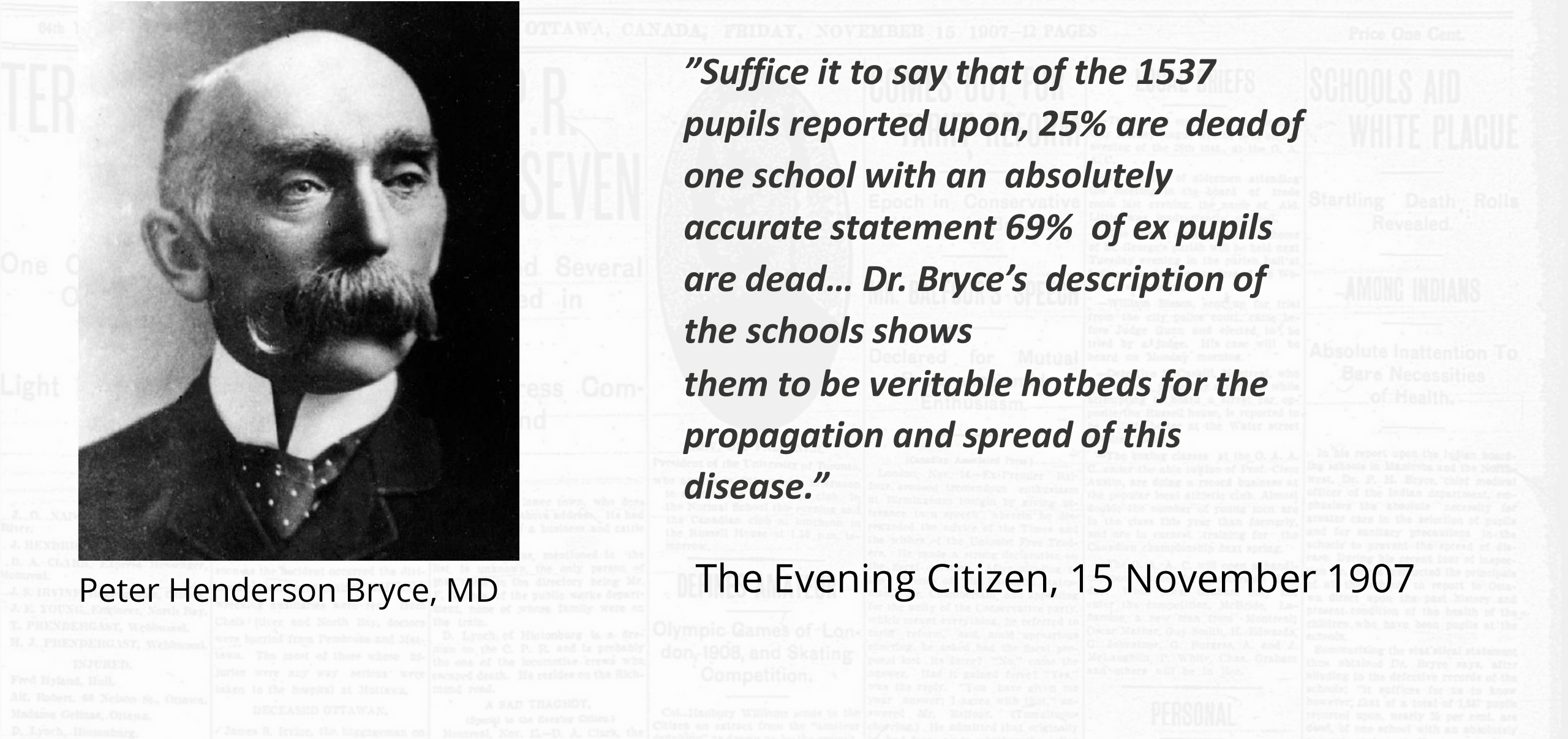


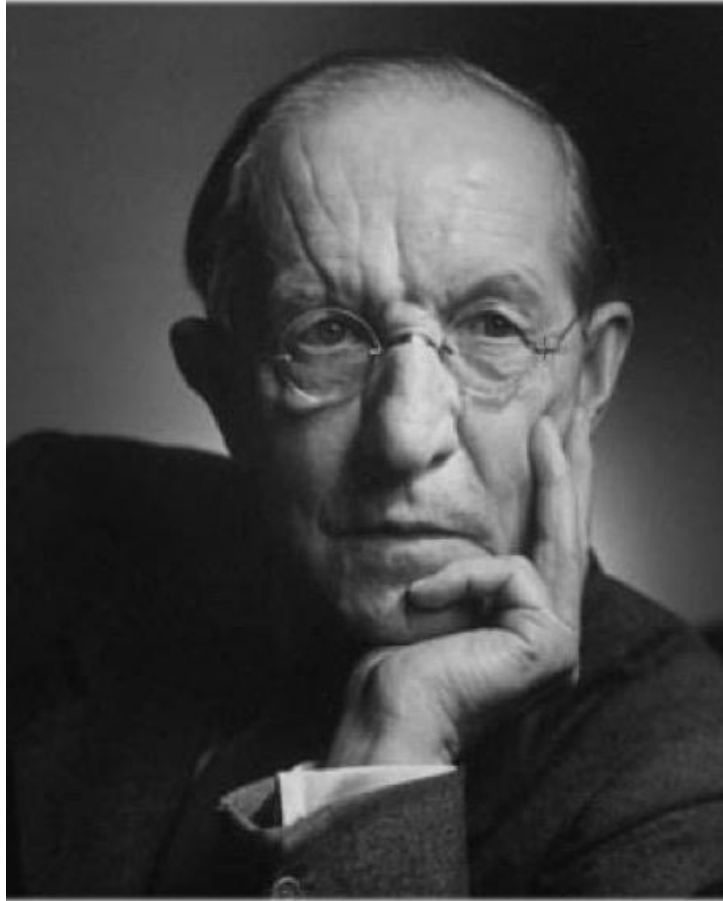


"Suffice it to say that of the 1537 pupils reported upon, 25% are dead of one school with an absolutely accurate statement 69% of ex pupils are dead... Dr. Bryce's description of the schools shows them to be veritable hotbeds for the propagation and spread of this disease."

The Evening Citizen, 15 November 1907

Peter Henderson Bryce, MD





Duncan Campbell Scott,
Superintendent of Indian
Affairs

“Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic, and there is no Indian question, and no Indian department.”

Testimony of Duncan Campbell Scott, Deputy Superintendent of Indian Affairs to the Special Parliamentary Committee of the House of Commons that was examining Scott’s proposals to amend sections of the *Indian Act*, 1920



Cost to implement Dr. PH Bryce's reforms: \$10,000 to \$15,000

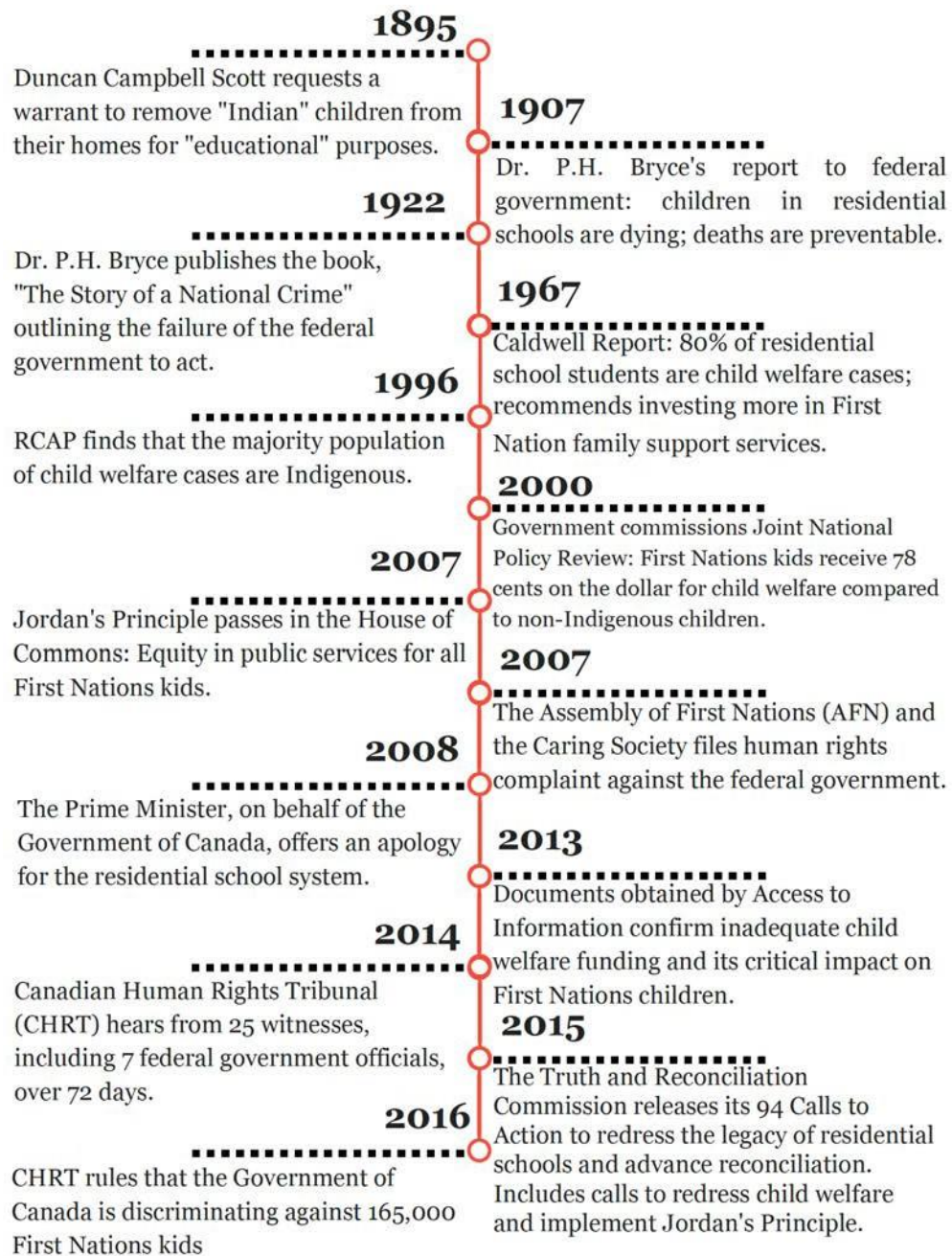
Duncan Campbell Scott's reaction to Dr. PH Bryce's report: Reforms too expensive and not implemented. In 1920, Scott made attendance at residential schools for all children aged 7-15 mandatory.



Samuel Hume Blake, KC

“In doing nothing to obviate the preventable causes of death, brings the Department within unpleasant nearness to the charge of manslaughter.”

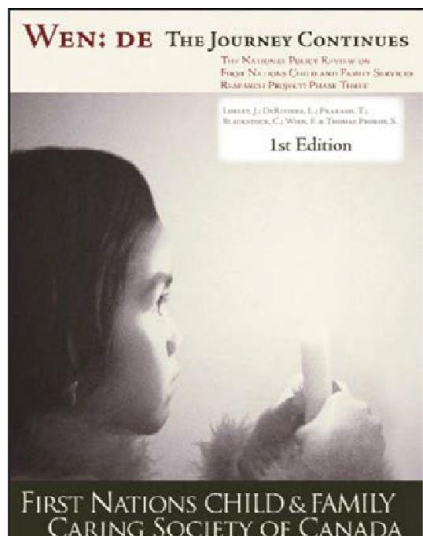
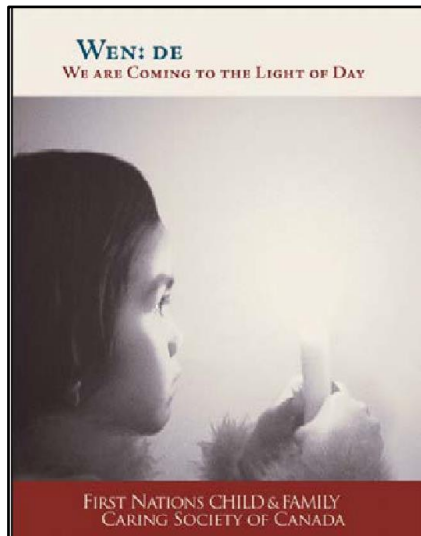
S.H. Blake letter to the Hon. Frank Oliver, Minister of the Interior, Sunday Morning, 27 January 1907



Key barrier to reconciliation:

- Not doing better when we know better.

Read more at fncaringsociety.com/reconciling-history



Money over wellbeing: governments are concerned with who is assuming costs, not the safety and wellbeing of children.

Inequitable resources: the over representation of First Nations children in the child welfare system is a result of the structural risk factors (poverty, poor housing and substance misuse) not being adequately addressed through the funding of least disruptive measures/prevention in First Nations communities.

Sources:

Wen: De: We are Coming to the Light of Day, 2005.

Wen: De: The Journey Continues, 2005.

The cost of doing nothing: “A failure of governments to invest in a substantial way in prevention and least disruptive measures is a false economy – The choice is to either invest now and save later or save now and pay up to 6-7 times more later.”



Truth and
Reconciliation
Commission of Canada

Calls to Action

In order to redress the legacy of residential schools and advance the process of Canadian reconciliation, the Truth and Reconciliation Commission makes the following calls to action.

Legacy

CHILD WELFARE

1. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to reducing the number of Aboriginal children in care by:
 - i. Monitoring and assessing neglect investigations.

publish annual reports on the number of Aboriginal children (First Nations, Inuit, and Métis) who are in care, compared with non-Aboriginal children, as well as the reasons for apprehension, the total spending on preventive and care services by child-welfare agencies, and the effectiveness of various interventions.

3. We call upon all levels of government to fully implement Jordan's Principle.
4. We call upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that:

Source: Truth and Reconciliation Commission of Canada Calls to Action. (2015).
www.nctr.ca/records/reports/



National Inquiry into Missing and Murdered Indigenous Women and Girls Calls for Justice

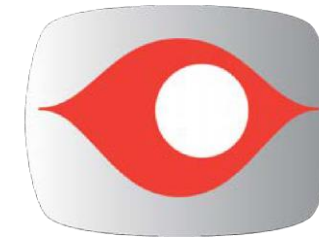
- 1.1 We call upon federal, provincial, territorial, municipal, and Indigenous governments (hereinafter “all governments”), in partnership with Indigenous Peoples, to develop and implement a National Action Plan to address violence against Indigenous women, girls, and 2SLGBTQQIA people, as recommended in our *Interim Report* and in support of existing recommendations by other bodies of inquiry and other reports.⁶ As part of the National Action Plan, we call upon all governments to ensure that equitable access to basic rights such as employment, housing, education, safety, and health care is recognized as a fundamental means of protecting Indigenous and human rights, resourced and supported as rights-based programs founded on substantive equality. All programs must be no-barrier, and must apply regardless of Status or location.
- 12.10 We call upon the federal, provincial, and territorial governments to immediately adopt the Canadian Human Rights Tribunal 2017 CHRT 14 standards regarding the implementation of Jordan’s Principle in relation to all First Nations (Status and non-Status), Métis, and Inuit children. We call on governments to modify funding formulas for the provision of services on a needs basis, and to prioritize family support, reunification, and prevention of harms. Funding levels must represent the principle of substantive equity.

Source: National Inquiry into Missing and Murdered Indigenous Women and Girls Final Report. (June 2019). www.mmiwg-ffada.ca/final-report/



i am a witness

Canadian Human Rights Tribunal hearing



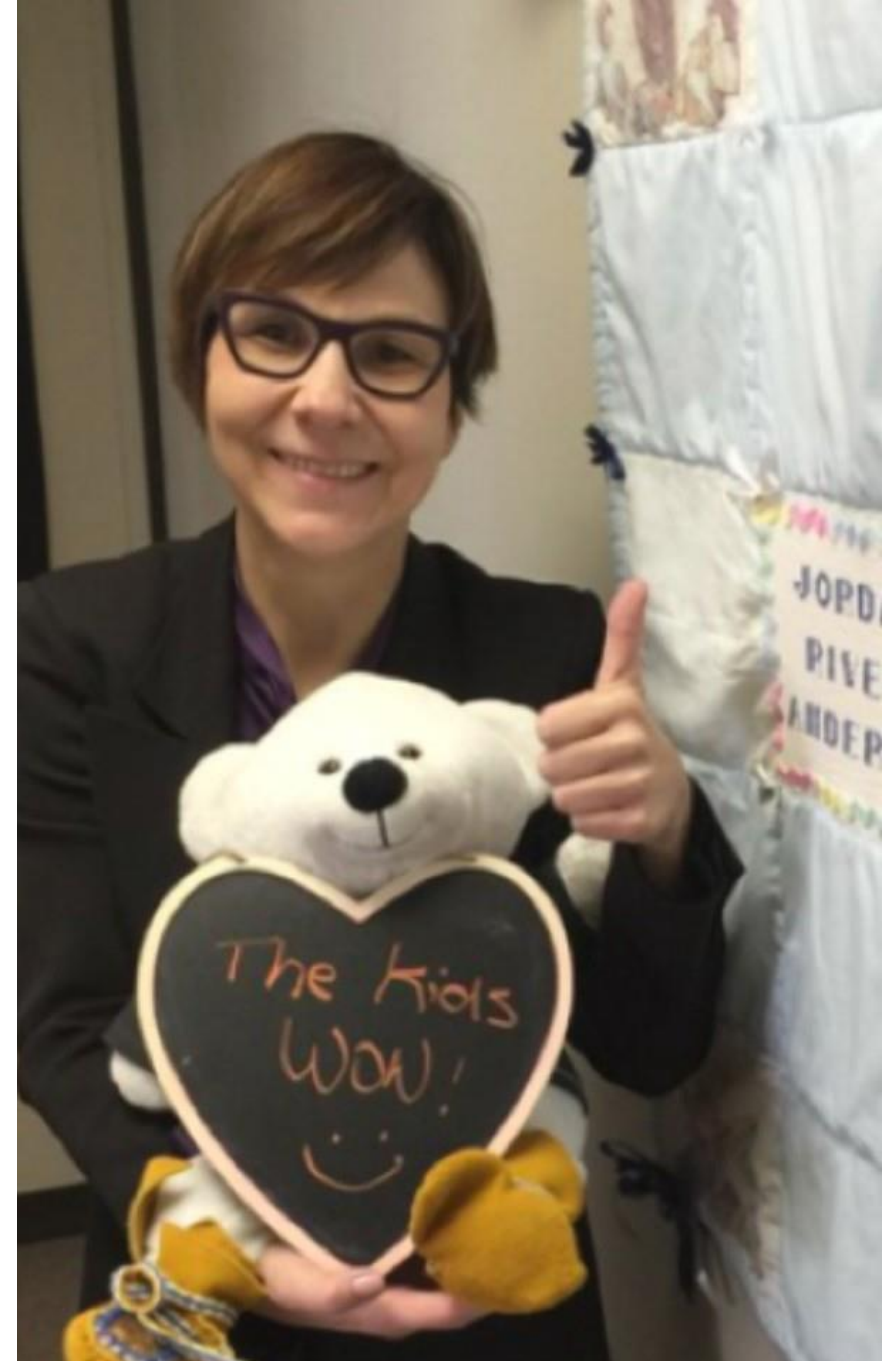
Reconciliation is... making sure First Nations kids are safe and have a chance to grow up in their communities.

The Caring Society and the Assembly of First Nations (AFN) filed a complaint with the Canadian Human Rights Tribunal in 2007 alleging Canada's inequitable child welfare funding for First Nations and approach to Jordan's Principle was discriminatory.

Read about the case at fnwitness.ca

2016 CHRT 2

On January 26, 2016, the Canadian Human Rights Tribunal found that the Canadian government is racially discriminating against 165,000 First Nations children and their families by providing flawed and inequitable child welfare services and failing to implement Jordan's Principle to ensure equitable access to government services.




“Overall, the Panel finds AANDC’s position unreasonable, unconvincing and not supported by the preponderance of evidence”

2016 CHRT 2, para. 460

“Similar to the Residential Schools era today, the fate and future of many First Nations children is still being determined by the government.”

2016 CHRT 2 para. 426

Canadian Human Rights Tribunal  Tribunal canadien des droits de la personne

Citation: 2016 CHRT 2
Date: January 26, 2016
File No.: T1340/7008

Between:

First Nations Child and Family Caring Society of Canada
- and -
Assembly of First Nations
Complainants

- and -
Canadian Human Rights Commission
Commission

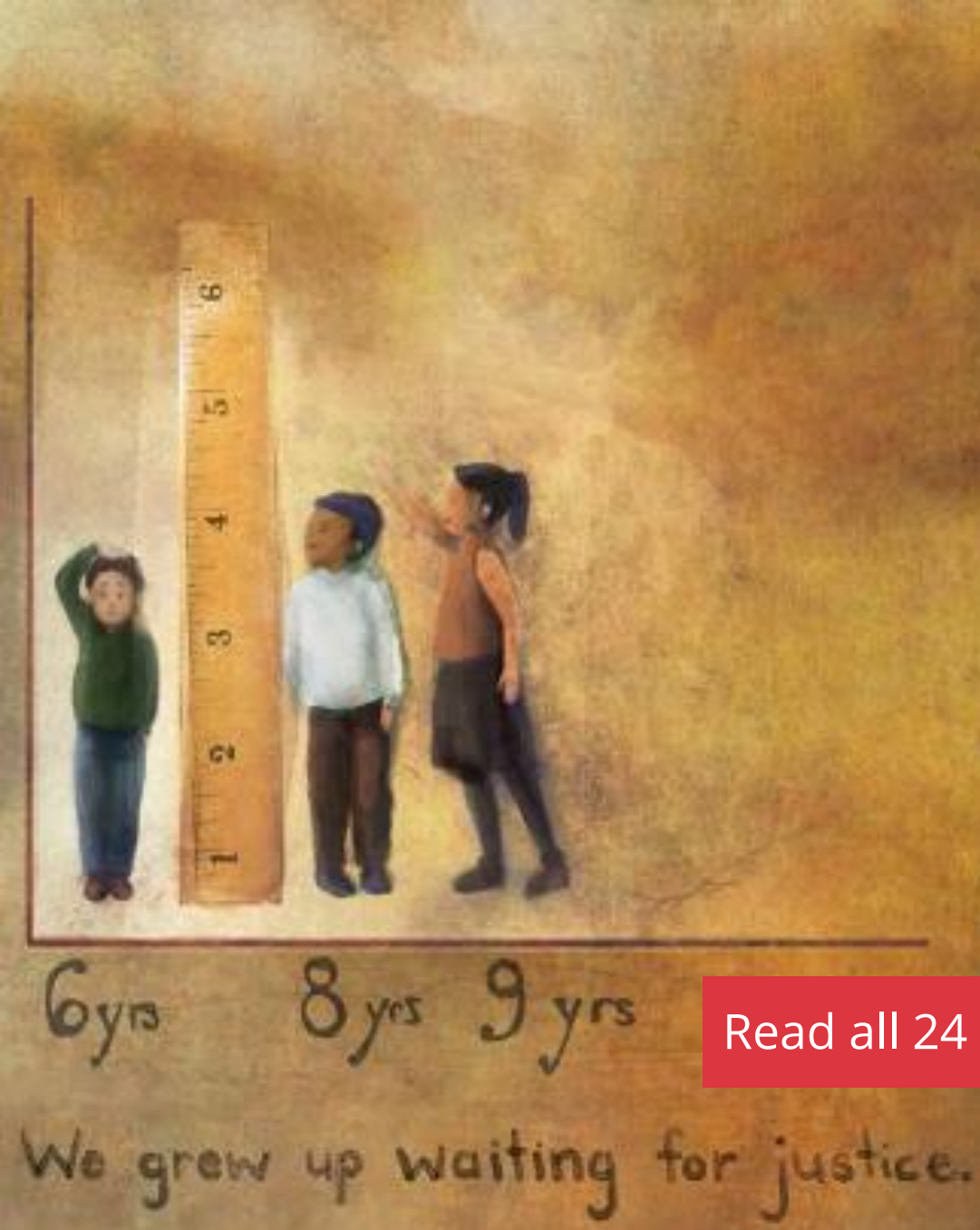
- and -
Attorney General of Canada
(Representing the Minister of Indian Affairs and Northern Development Canada)
Respondent

- and -
Chiefs of Ontario
- and -
Amnesty International
Interested Parties

Decision

Members: Sophie Marchildon and Edward Lustig

The Tribunal has issued 24 procedural and non-compliance orders against the federal government since the January 2016 ruling.

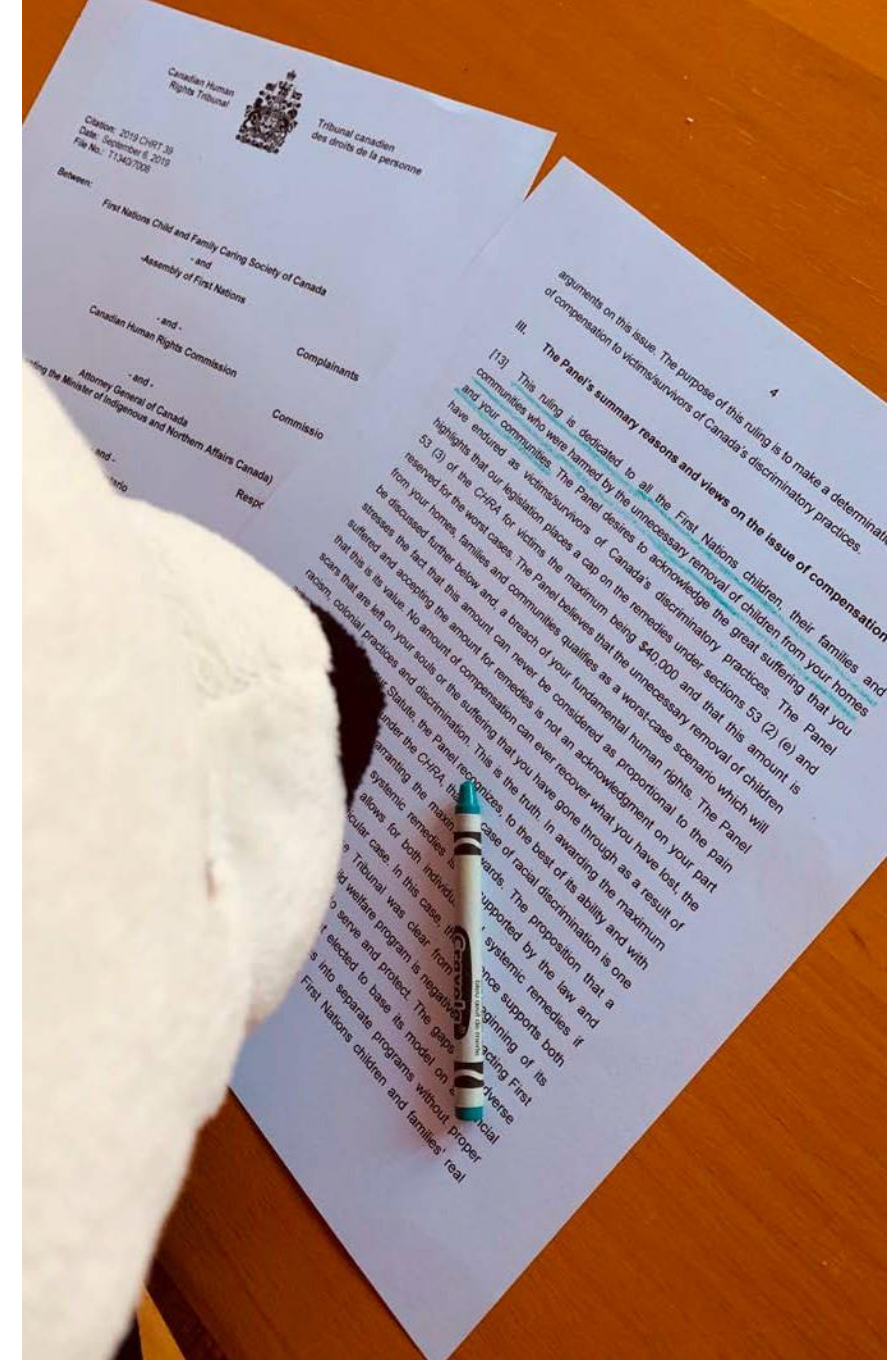


Read all 24 legal orders, information sheets and more at fnwitness.ca

2019 CHRT 39: Compensation Order

September 6, 2019

The CHRT ordered Canada to pay the maximum amount (\$40,000) allowable under the *Canadian Human Rights Act* to compensate First Nations children, youth and their families who affected by its discriminatory treatment in child welfare services and provision of Jordan's Principle.



“The Panel finds that Canada’s conduct was devoid of caution with little to no regard to the consequences of its behavior towards First Nations children and their families both in regard to the child welfare program and Jordan’s Principle. Canada was aware of the discrimination and of some of its serious consequences on First Nations children and their families... Canada focused on financial considerations rather than on the best interest of First Nations children and respecting their human rights.”

2019 CHRT 39 para. 231

“The Panel finds it has sufficient evidence to find that Canada’s conduct was willful and reckless resulting in what we have referred to as a worst-case scenario...”

2019 CHRT 39, para. 234

Recent example of Canada's old mindset: Canada refused to fund prevention services for Innu families

The Tribunal found that improper funding for prevention incentivized the removal of children into alternative care and ruled this to be discriminatory (2016 CHRT 2).

Despite clear orders and clear evidence of need for prevention services, Canada refused to fully fund Innu to deliver such services until 2021 relying on technical jurisdictional arguments to justify its position.

By providing unlimited maintenance funding (i.e. funding for every Innu child/youth in care) to the province and providing limited prevention funding, this created a situation where often the only recourse for families struggling with "recent and brutal" colonization, was to immediately remove the child into care: "It fuels removals from home that could be prevented."

A legal order by the Tribunal was ultimately needed to compel Canada to act in the best interests of Innu children (2021. CHRT 12).

Source: Affidavit of Germaine Benuen, submitted by Innu Nation, October 30, 2020 to Canadian Human Rights Tribunal

Bill C-92: An Act respecting First Nations, Inuit and Métis children, youth and families

Tribunal funding principles:

- Substantive equality
- Needs based
- Accounts for distinct community circumstances
- Best interests of the child

Under oath, Canada's witness on the Caring Society's non-compliance motion suggested it was an "arguable point" that First Nations drawing down their own laws retain benefit from the Tribunal orders.

Bill C-92: An Act respecting First Nations, Inuit and Métis children, youth and families

AIP on Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle signed December 31, 2021:

- Indicates that First Nations with jurisdiction via Bill C92 cannot get less funding.
- However, there are no safeguards in terms of funding structure (i.e. based on needs) or enforcement.

Bill C-92: An Act respecting First Nations, Inuit and Métis children, youth and families

Key elements of funding agreements:

- Structure
- Enforcement obligations
- Dollar amount

Aspects of Bill C-92 funding arrangements sought by Canada

- Fixed amounts (i.e. providing fixed amount adjusted by inflation and population)
- No coming back for more funds
- No liability (i.e. requiring indemnification if funds fall short)
- Limited enforceability of funding agreement (i.e. if one party is not following the spirit of the agreement, what happens?)

A 2021 Status Update on Reconciliation: 11 of the 94 Truth and Reconciliation Commission Calls to Action have been implemented.

Why the lack of action on the Calls to Action?

5 Reasons:

- | | | | | |
|--|--|---|---|--|
| 01. Paternalism
"We know best" mentality of policymakers that excludes Indigenous peoples from leading with their own solutions. | 02. Structural anti-Indigenous discrimination
Canada asserts legal myths to justify dispossession and poverty. | 03. "The Public Interest"
Using the interests of non-Indigenous Canadians to explain their actions (or lack thereof). | 04. Insufficient Resources
Canada refuses to adequately address funding inequities. | 05. Reconciliation as Exploitation or Performance
Most actions are symbolic and serve to manage Canada's reputation. |
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Source: Jewell, E & Mosby, I. (2021). *Calls to Action Accountability: A 2021 Status Update on Reconciliation*. Yellowhead Institute. yellowheadinstitute.org/trc/



Accountability in Our Lifetime:

A Call to Honour
the Rights of Indigenous
Children and Youth



Gabrielle Fayant and Carrington Christmas
Edited by Brittany Mathews

Accountability in our Lifetime

- Outlines requirements for a model of accountability for Indigenous children and youth.
- Determinants:
 - Responsibility
 - Safety
 - Respect
 - Reciprocity
 - Relational
 - Integrity

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 spiritbearandfriends

 @SpiritBear



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