

## Canadian Human Rights Tribunal Letter-Decision regarding the Revised Final Settlement Agreement on Compensation Information Sheet



On July 26, 2023, in response to a joint motion by the parties, the Canadian Human Rights Tribunal (Tribunal or CHRT) issued a [letter-decision](#), finding that the Revised Final Settlement Agreement (Revised FSA) signed by the Assembly of First Nations (AFN), Canada, the Caring Society, and other class action parties fully satisfies the Tribunal's compensation orders.

This letter-decision follows the Tribunal's order ([2022 CHRT 41](#)), finding that the class action FSA signed by Canada, the AFN and the class action parties in June 2022 did not fully satisfy its orders on compensation.

To address the Tribunal's order, the AFN and Canada returned to the negotiating table with the new addition of the Caring Society to revise the FSA. The Revised FSA addresses key issues raised by the Tribunal in its 2022 CHRT 41 order, including ensuring that children and families entitled to compensation through the Tribunal orders but were left out of the class action FSA would receive compensation through the Revised FSA.

### What's Next?

A letter-decision is similar to an oral ruling from the bench, and the Tribunal will release its full reasons in the coming months.

The Revised FSA will now be submitted to the Federal Court for final approval before steps are taken to implement the Revised FSA and distribute funds.

While an Agreement-in-Principle has been reached, much work remains on the issue of long-term reform of the First Nations Child & Family Services program and the full implementation of Jordan's Principle in order to ensure the discrimination ends and does not reoccur.

*First Nations children ought to be honored for who they are, beautiful, valuable, strong and precious First Nations persons. Governments, leaders and adults in any Nation have the sacred responsibility to honor, protect and value children and youth, not harm them. Complete justice will be achieved when systemic racial*

*discrimination no longer exists. The compensation in this case is only one component. The Tribunal assisted meaningfully by the parties, has always focused on the need for a complete reform, the elimination of the systemic racial discrimination found and the need to prevent similar practices from arising. This continues to be the Tribunal's focus to see transformation and justice established for generations to come.*

*- Chair Marchildon and Member Lustig for the  
Tribunal Panel*

### Order Summary

In their letter-decision, the Tribunal:

- A. Found that the Revised FSA dated April 19, 2023, fully satisfies the Tribunal's compensation orders (2019 CHRT 39, 2020 CHRT 7, 2020 CHRT 15, 2021 CHRT 6, 2021 CHRT 7, and 2022 CHRT 41).
- B. Found that the Revised FSA fully addresses the issues in the class action FSA identified by the Tribunal in 2022 CHRT 41 by providing full compensation to all those entitled to the Tribunal's compensation orders.
- C. Makes an order clarifying 2021 CHRT 7 regarding the compensation framework providing that caregiving parents/grandparents will be limited to \$80,000 in total compensation, regardless of the number of times the same child was removed.
- D. Makes an order modifying 2020 CHRT 7, providing that compensation of \$40,000 plus applicable interest shall be paid directly to the child(ren) of the deceased caregiving parent/grandparent where that person's estate would otherwise be entitled to compensation under 2020 CHRT 7. If there are no surviving children, the compensation will go to the estate of the deceased caregiving parent/grandparent.
- E. Makes an order clarifying 2019 CHRT 39 to confirm that

caregiving parents/grandparents of those victims of Canada's discrimination towards Jordan's Principle must themselves have experienced the highest level of impact to receive compensation (\$40,000 plus applicable interest) for their child's essential service denials, unreasonable delays, and gaps.

- F. Makes an order that the claims process set out in the Revised FSA and additional measures to be developed by class counsel in consultation with experts (including the Caring Society) and approved by the Federal Court satisfies the requirements of the compensation framework (ordered in 2019 CHRT 39 and 2021 CHRT 7). This order supersedes the order in 2021 CHRT 7.
- G. Makes an order that, on the condition that the Federal Court approves the Revised FSA, the Tribunal's jurisdiction over its compensation orders will end on the day the appeal periods expire for the Federal Court's approval of the Revised FSA or on the day that any appeal(s) from the Federal Court's decision on the approval motion for the Revised FSA are finally dismissed.
- H. Makes an order that the parties will report to the Tribunal within 15 days of each of the following:
- the result of the Federal Court's decision on approval of the Revised FSA;
  - the expiry of the appeal period, or of an appeal having been commenced relating to the Federal Court's decision on the Revised FSA.

## Retention of Jurisdiction

The Tribunal notes that this ruling does not affect its retention of jurisdiction on other issues and orders in the case (other than those specified at A. and G. of this order). The Tribunal retains jurisdiction on all its rulings and orders to ensure they are properly implemented and that the discrimination ends.

The Tribunal will revisit its retention of jurisdiction once:

- the parties have filed a final agreement on long-term reform that the Tribunal finds is satisfactory in eliminating the discrimination and preventing it from reoccurring; or
- after any outstanding issues on final orders are resolved; or
- as the Tribunal sees fit given the evolution of this case.

## Interpretation of Liability

Before making its orders, the Tribunal noted that Canadians cannot renounce their rights under the *Canadian Human Rights Act*. As such, the release of liability found in the Revised FSA cannot release Canada from human rights violations for future actions. The Tribunal explicitly notes that the releases do not preclude any human rights complaints for events after the end of the Revised FSA (2017 for Jordan's Principle and 2022 for removed children).

For non-class members of the Revised FSA, the Tribunal does not view the release as limiting liability for any discrimination that may occur after 2017 or 2022 should Canada fail to eliminate the racial discrimination found in this case and prevent the discrimination from happening again. The Tribunal also notes that the Revised FSA cannot bar claims of discrimination in other federal programs or services.

## Background

- In 2016, the Tribunal ruled that the Canadian government is racially discriminating against 165,000 First Nations children in its provision of the First Nations Child & Family Services program and flawed, narrow implementation of Jordan's Principle ([2016 CHRT 2](#)).
- Human rights compensation pursuant to the *Canadian Human Rights Act* is awarded to victims of discrimination for pain and suffering up to a maximum value of \$20,000 per victim. In cases where the discrimination was "wilful and reckless," the Tribunal can award additional compensation up to a maximum value of \$20,000 per victim.
- In 2019, the Tribunal ordered Canada to pay each eligible victim of Canada's discrimination \$40,000 in human rights compensation dating back to 2006 ([2019 CHRT 39](#)). The Federal Court dismissed Canada's application for judicial review of this order in September 2021 (2021 FC 969). Canada filed another appeal at the Federal Court of Appeal, which is in abeyance (on pause).
- Canada sought to negotiate an agreement covering both class action proceedings and the Tribunal orders on compensation simultaneously. Canada, the AFN and the class action parties signed the class action FSA in June 2022.
- The class action FSA capped the compensation amount to \$20 billion for all members of the class. The class action goes

back further than the Tribunal orders and gave some victims entitled to human rights compensation more than they were entitled to under the Tribunal orders, but some victims of Canada's discrimination (children and youth in placements that were not funded by Indigenous Services Canada and parental estates) would have received no compensation, reduced compensation or their compensation entitlement would have been uncertain.

- In July 2022, the AFN and Canada brought a motion to the Tribunal asking the Tribunal to declare the class action FSA satisfies the Tribunal's orders on compensation (2019 CHRT 39 and related compensation orders) or, in the alternative, for the Tribunal to amend its compensation orders to conform to the FSA. The matter was heard in September 2022. The Chiefs of Ontario and Nishnawbe Aski Nation supported the AFN/Canada motion, and the Caring Society and Canadian Human Rights Commission opposed it.
- In December 2022, the Tribunal issued its full reasons for its order, finding that the class action FSA does not fully satisfy the Tribunal's compensation orders ([2022 CHRT 41](#)).
- In April 2023, the AFN and the Caring Society announced the Revised FSA on compensation valued at over \$23 billion for the approximately 300,000 First Nations children, youth and families who experienced discrimination due to Canada's flawed approach to First Nations Child & Family Services and Jordan's Principle.

For more information, please visit [fnwitness.ca](https://fnwitness.ca).