

Canadian Human Rights Tribunal Decision on Class Action Final Settlement Agreement on Compensation (2023 CHRT 44)



On September 26, 2023, the Canadian Human Rights Tribunal (Tribunal or CHRT) issued [2023 CHRT 44](#), its full decision on the class action settlement proposed in the Revised Final Settlement Agreement (Revised Agreement) on compensation for First Nations children and parent/grandparent caregivers impacted by Canada's discrimination in child welfare and Jordan's Principle. This decision follows the Tribunal's [July, 26, 2023 letter-decision](#) on the Revised Agreement, in which the Tribunal stated that the Revised Agreement fully satisfies the Tribunal's compensation orders.

In [2023 CHRT 44](#), the Tribunal found that the Revised Agreement addresses key issues raised by the Tribunal in [2022 CHRT 41](#), in which the Tribunal found that the previous Final Settlement Agreement in the class action (previous FSA), which was signed in June 2022 by Canada, the AFN, and the class action parties, did not fully satisfy its compensation orders. The Revised Agreement, signed by the above parties, addresses key issues raised in 2022 CHRT 41, including ensuring that First Nations children and families entitled to compensation through the Tribunal order who were left out of the previous FSA would receive compensation through the Revised Agreement. The Caring Society supported the Revised Agreement in Minutes of Settlement signed separately with Canada and the Assembly of First Nations.

The Tribunal notes that the Revised Agreement lays out "the largest settlement of its kind in Canadian history" and says that this fact "stems from the magnitude of harms that were inflicted upon First Nations children, families, communities and Nations." The Tribunal also notes that the Revised Agreement includes a commitment from the Minister of Indigenous Services to request an apology from the Prime Minister and says that the Revised Agreement "will provide some measure of justice to First Nations children and families who have unjustly suffered because of their race instead of being treated honorably and justly." In addition, the ruling notes:

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 First Nations children have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have when systemic racial discrimination no longer exists.

Order Summary

In [2023 CHRT 44](#), the Tribunal:

- A. Found that the Revised Agreement fully satisfies the [Tribunal's Compensation Orders](#) (2019 CHRT 39, 2020 CHRT 7, 2020 CHRT 15, 2021 CHRT 6, 2020 CHRT 7, and 2022 CHRT 41);
- B. Found that the Revised Agreement fully addresses the derogations identified by the Tribunal by providing full compensation to all those entitled further to the Tribunal's Compensation Orders, including: First Nations children removed from their homes, families, and communities; First Nations caregiving parents/grandparents who experienced multiple First Nations children removed from their homes, families, and communities; and, First Nations children eligible for compensation due to denials, unreasonable delays, and gaps in essential services due to Canada's discriminatory approach to Jordan's Principle;
- C. Makes an order clarifying its order [2021 CHRT 7](#), which approved the Compensation Framework negotiated by the Caring Society, the AFN, and Canada, providing that, with respect to each removed First Nations child, together caregiving parents and caregiving grandparents will be limited to \$80,000 in total compensation regardless of the number of sequential

removals of the same child;¹

- 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 parent/caregiving grandparent on a pro rata basis where the estate of that deceased parent/caregiving grandparent would otherwise be entitled to compensation under 2020 CHRT 7. Where there are no surviving children, the compensation will go to the estate of the deceased parent/caregiving grandparent;
- E. Makes an order clarifying [2019 CHRT 39](#) to confirm that caregiving parents (or caregiving grandparents) of Canada's discrimination towards Jordan's Principle victims/survivors must themselves have experienced the highest level of impact (including pain, suffering or harm of the worst kind, for example, the death or removal of a child, and a family's forced relocation off-reserve) in order to receive compensation (\$40,000 plus applicable interest) for their child's essential service denials, unreasonable delays and gaps;
- F. Makes an order finding that the claims process set out in the Revised Agreement and further measures to be developed by class counsel in consultation with experts (including the Caring Society) and approved by the Federal Court satisfies the requirements under the compensation framework as ordered in 2019 CHRT 39 and 2021 CHRT 7. This order supersedes the Tribunal's order in 2021 CHRT 7;
- G. Makes an order that, conditional upon the Federal Court's approval of the Revised Agreement, the Tribunal's jurisdiction over its Compensation Orders will end on the day that all appeal periods in relation to the Federal Court's approval of the Revised Agreement expire or, alternatively, on the day that any appeal(s) from the Federal Court's decision on the approval motion for the Revised Agreement are finally dismissed;
- H. Makes an order that the parties will report to the Tribunal within 15 days of each of the following: (1) the result of the Federal Court's decision on approval of the Revised Agreement; (2) the expiry of the appeal period relating to the Federal Court's decision on the Revised

Agreement or of an appeal having been commenced.

Retention of Jurisdiction

This ruling does not affect the Panel's retention of jurisdiction on other issues and orders in this case other than as specified in A) and G). Consistent with the approach to remedies taken in this case, the Panel continues to retain jurisdiction on all its rulings and orders to ensure that they are effectively implemented, and that systemic discrimination is eliminated.

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 and Family Services Program (FNCFS) and in its 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 the class action proceedings and the Tribunal orders on compensation simultaneously. Canada, the AFN, and the class action parties signed the previous FSA in June 2022.
- The previous FSA capped the compensation amount to \$20 billion for all members of the class. The class action goes back further than the Tribunal orders, covered

¹ When multiple children were removed, First Nations caregiving parents/grandparents would receive \$40,000 for one child

removed, \$80,000 for two children removed, and \$120,000 for three children removed, etc. (2023 CHRT 44 at paragraph 86).

more victims than the Tribunal orders, and gave greater compensation to some victims entitled to human rights compensation under the Tribunal orders; however, 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, in the case of victims of Canada's flawed implementation of Jordan's Principle, 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 previous 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 previous 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 previous FSA does not fully satisfy the Tribunal's compensation orders ([2022 CHRT 41](#)).
- In April 2023, the class action parties, supported by the Caring Society, reached the Revised Agreement 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 and submitted it to the First Nations-in-Assembly for approval. The Revised Agreement was unanimously approved.

For more information, including a timeline and link to all documents pertaining to the case, please visit fnwitness.ca.