Docket: T1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY and ASSEMBLY OF FIRST NATIONS

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ATTORNEY GENERAL OF CANADA (representing the Minister of Indigenous Services Canada)

Respondent

- and -

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL and NISHNAWBE ASKI NATION

Interested Parties

NOTICE OF MOTION OF THE FIRST NATIONS CHILD AND FAMILY CARING SOCIETY – COMPENSATION RELATED TO JORDAN'S PRINCIPLE

TAKE NOTICE that the complainant, First Nations Child and Family Caring Society of Canada ("**Caring Society**") will make a motion to the Canadian Human Rights Tribunal at 240 Sparks Street, 6th floor, Ottawa, Ontario, on Tuesday, April 23, 2019 at 9:30 a.m. or as soon thereafter as the motion may be heard.

AND FURTHER TAKE NOTICE that the motion will be for an order that First Nations children who have experienced discrimination pursuant to Canada's failure to equitably implement Jordan's Principle are entitled to compensation pursuant to the *Canadian Human Rights Act*,

AND FURTHER TAKE NOTICE that the grounds of the motion are:

1. Jordan's Principle is a child-first principle that applies equally to all First Nations children, whether resident on or off reserve. It addresses the needs of First Nations children by ensuring there are no gaps in government services to them. When a government service, including a service assessment or product, is available to all other children, the government department of first contact will pay for the service to a First Nations child. When a government service, including a service assessment or product, is not necessarily available to all other children or is beyond the normative standard of care, the government department of first contact will still evaluate the needs of the child to determine if the requested service should be provided to ensure the best interests of the child and substantive equality taking into account their cultural, historical and geographical needs and circumstances. Services must be provided without engaging in administrative case conferencing, policy review, service navigation or any other similar administrative procedure before the recommended service is approved and funding is provided.

2. On December 12, 2007, the House of Commons passed motion 296, adopting Jordan's Principle to resolve jurisdictional disputes involving First Nations children.

3. Since at least 2007, the Respondent has knowingly and recklessly been applying a discriminatory interpretation of Jordan's Principle to the detriment of First Nations children.

4. On April 4, 2013, the Federal Court released its decision in *Pictou Landing Band Council v. Canada (Attorney General)*, 2013 FC 342, finding Canada's interpretation of Jordan's Principle to be narrow. Notwithstanding the Federal Court's decision, the Respondent continued to apply the same narrow and discriminatory interpretation of Jordan's Principle.

5. On January 26, 2016, in its decision of 2016 CHRT 2, the Canadian Human Rights Tribunal (the "**Tribunal**") found that the Respondent was discriminating against First Nations children entitled to access services and products through Jordan's Principle by applying a narrow interpretation of Jordan's Principle that resulted in there being no cases meeting the criteria of Jordan's Principle. The Tribunal found as follows:

    - Jordan's Principle is meant to apply to all First Nations children – not just children with multiple disabilities;

    - The Respondent's approach defeats the purpose of Jordan's Principle; and

    - The narrow definition and inadequate implementation of Jordan's Principle adversely impacts First Nations children, resulting in service gaps, delays and denials for First Nations children.

6. The Tribunal ordered the Respondent to immediately cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of Jordan's Principle.

7. On September 14, 2016, in its decision of 2016 CHRT 16, the Tribunal noted that the Respondent's formulation of Jordan's Principle continued to be narrow, applying only to those First Nations children with 'disabilities and those who present with a discrete, short-term issue for which there is a critical need for health and social supports.' The Tribunal cautioned the Respondent that its formulation of Jordan's Principle once again appeared to be more restrictive than formulated by the House of Commons.

8. On May 26, 2017, in its decision of 2017 CHRT 14 (as amended on November 2, 2017: 2017 CHRT 35), the Tribunal made further findings that the Respondent was continuing to discriminate against First Nations children through its narrow interpretation and application of Jordan's Principle. The Respondent did this knowingly, given that it did not seek judicial review of the January 2016 Decision or any subsequent order. The Tribunal noted as follows:

    - Despite the findings in the 2016 Decision, Canada has repeated its pattern of conduct and narrow focus with respect to Jordan's Principle;

    - Canada's definition of Jordan's Principle does not fully address the findings in the 2016 Decision and is not sufficiently responsive to the previous orders of the Panel;

    - The emphasis on the 'normative standard of care' or 'comparable' services does not answer the findings in the 2016 Decision with respect to substantive equality and the need for culturally appropriate services;

    - Canada' narrow interpretation of Jordan's Principle coupled with a lack of coordination amongst its programs to First Nations children and families, along with the emphasis on existing policies and avoiding the potential high costs of services, is not the approach that is required to remedy discrimination; and

    - Canada is not in full compliance with the previous Jordan's Principle orders in this matter.

9. On May 26, 2017, the Tribunal ordered Canada to cease perpetuating and relying upon definitions of Jordan's Principle that are not in compliance with the Tribunal's previous orders. The Tribunal further ordered the Respondent to interpret and apply the definition of Jordan's Principle as outlined in the Tribunal's orders, as amended on November 2, 2017, pursuant to 2017 CHRT 35.

10. Since at least December 2007, the Respondent knowingly and recklessly applied a narrow and discriminatory definition of Jordan's Principle such that First Nations children who have been denied access to services and products under Jordan's Principle are entitled to compensation pursuant to section 53(3) of the *CHRA*. The Caring Society seeks an order that the Respondent:

(a) Pay an amount of $20,000 as compensation under s. 53(3) of the *CHRA*, plus interest pursuant to s. 53(4) of the *CHRA* and Rule 19(2) of the Canadian Human Rights Tribunal Rules of Procedure, for every First Nations individual who, as a child, did not receive an eligible service or product pursuant to Canada's discriminatory approach to Jordan's Principle from December 12, 2007 to November 2, 2017 (subject to the Panel's adjudication of the compliance of Canada's definition of the meaning of "First Nations child" for the purposes of implementing Jordan's Principle);

(b) Provide to the Tribunal and the parties a detailed account of the number of First Nations individuals who, as a child, did not receive an eligible service or product pursuant to Canada's discriminatory approach to Jordan's Principle from December 12, 2007 to November 2, 2017; and

(c) Pay this compensation, plus interest, into a trust fund that:

a. Will be used to the benefit of First Nations children and families who have experienced pain and suffering as a result of the Respondent's discriminatory treatment;

b. Will provide First Nations children and families with access to services, such as culture and language programs, family reunification programs, counselling, health and wellness programs and education programs;

c. Will provide a direct distribution in the amount of $20,000 to the estate of any First Nations children who have passed away;

d. Will be administered by a board of seven Trustees appointed jointly by the Complainant, the Commission and the Respondent or, if the latter fail to agree, by the Tribunal; and

e. Will fund all costs related to the development and operation of the trust in order.

11. In the alternative, from at least April 2013 to November 2, 2017, the Respondent knowingly and recklessly applied a narrow and discriminatory definition of Jordan's Principle such that First Nations individuals who, as children, were denied access to services and products under Jordan's Principle are entitled to compensation pursuant to section 53(3) of the *CHRA.*

12. In the further alternative, from at least January 26, 2016 to November 2, 2017, the Respondent knowingly and recklessly applied a narrow and discriminatory definition of Jordan's Principle such that First Nations individuals who, as children, were denied access to services and products under Jordan's Principle are entitled to compensation pursuant to section 53(3) of the *CHRA.*

13. The Caring Society requests that the compensation be managed and administered by the same trust that the Caring Society is requesting manage and administer the compensation in relation to the FNCFS Program.

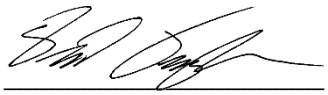
14. Such further and other grounds as counsel may advise and the Tribunal may permit.

AND FURTHER TAKE NOTICE that the following documents will be referred to in support of such motion:

1. Affidavit of Spenser Chalmers, affirmed April 3, 2019; and

2. Such further and other material as counsel may advise and the Tribunal permits.

Dated at the City of Ottawa, Ontario, this 3rd day of April, 2019.



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