



October 20, 2020

By e-mail

(See Distribution List)

Dear Counsel,

**Re: First Nations Child and Family Caring Society et al. v. Attorney General of Canada
Tribunal File: T1340/7008**

The Panel is in receipt of the AGC's letter dated October 19, 2020 asking the Tribunal's indulgence for a little additional time to finalize a document on Jordan's Principle eligibility criteria following 2020 CHRT 20. The AGC also added that if the parties are unable to reach consensus in the next few days, they will advise the Panel.

Upon consideration, the Panel grants the short extension request.

Compensation process questions from the Panel (to be answered at your earliest convenience but no later than November 9, 2020).

1. Trust fund:

Proposed compensation process by the AFN and the Caring Society:

An appointed, independent trustee will manage compensation for minors and those who lack legal capacity, until such time as they reach the age of majority or gain capacity to manage their own affairs.

Questions:

If a child reaches the age of majority and yet never gains capacity to manage their own affairs, is it your proposal that their entire life or until no money is left, the funds will be managed by the appointed trustee? If that is the case what will be deemed eligible expenses that can be withdrawn from the funds for the beneficiary? For example, some children entitled to compensation under Jordan's Principle were not removed from their homes and some were removed in order to receive health services. We have concrete examples in the evidence in this case such as Jeremy Beadle and his mother who sadly has now passed away. If Jeremy Beadle's mother were still alive, she would never be able to manage the funds for her child under the proposed process. Is that correct?

If this is correct, will there be a process in which a parent, grand-parent, uncle, aunt, or other legal guardian has input on the use of the trust funds and may request funds for the benefit of the adult child?

While not perfect, the Panel has made significant efforts to avoid a paternalistic approach in sending harmful and false messages that First Nations persons are less capable of managing funds than non-First Nations persons. Given the compensation process is developed by the parties but will be ordered by this Tribunal, the flaws identified will be imputed to the Tribunal. While the Panel as leaders and decision-makers accepts this fact, it does not want to convey the negative, colonial message that First Nations are less capable of managing funds than other non-First Nations people. The Panel kept reconciliation as a backdrop for the entire case and has concerns with the proposed approach.

As you all know better than this Panel, Canada's colonial history, which forms part of the evidence in this case, considered First Nations less capable of caring for their children and built residential schools on this false premise along with the need to assimilate and destroy First Nations cultures, languages, traditions etc.

The Panel understands this and is trying to do all it can to right the wrongs of the past.

Yet, it does agree that vulnerable children need to be protected from any financial abuse.

The Panel understands that a small number of guardians in some children's families may, unfortunately, abuse the funds, thus the need for the trust fund. However, the Panel does not believe that all guardians would do so.

The Panel generally agrees that governments should not manage the beneficiaries' funds in a case of racial systemic discrimination in government services.

Please provide as much detail on this as possible to assist the Panel in its determination. The Panel invites parties to seek to assist the Panel to determine the compensation process expeditiously and to avoid unnecessary procedural or substantive issues.

While the question is aimed at the AFN and the Caring Society, all parties are welcome to comment.

Compensation process clause 8.4

8.4. The entities noted in section 8.3 will also, based on the judgment of the social worker at the time of the removal as recorded in the file, list parents or caregiving grandparents who sexually, physically or psychologically abused their children on an "**Exclusion List**". Generally, both parents or grandparents will be denied compensation in these circumstances. However, where a non-offending parent or grandparent did not know the

abuse was occurring, or was incapable of stopping it, they may be entitled to compensation where, for example:

- a non-offending parent or grandparent was also a victim of abuse by the other parent;

(...)

The Panel believes the first item on the list departs from the orders and is not entirely in line with the spirit of the orders, especially the part about a parent not knowing of the sexual and/or psychological abuse. In most cases, physical abuse is a lot harder to ignore.

Moreover, incest is a pernicious and taboo crime that can plague some families. Sadly, it can be known but ignored, it can also be trivialized and normalized (see for example, *Reclaiming Power and Place: A Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, Kepek-Quebec at chapter 5 and, especially at page 99 of the report. While not in evidence as part of this motion the Panel finds this instructive in seeking the parties' views). How would you distinguish those who did not know despite reasonable diligence from those who were wilfully blind." that really did not know from the ones who did not want to know and ignored signs? The Panel frowns on compensating those parents who ignored the signs because this is especially harmful to a child and sends the wrong message from this Panel. The Panel tried to avoid this fact driven inquiry in ordering that when a child was victim of abuse, the parent or grandparents/guardians would not be eligible for compensation. The search for who knew and who did not may require inquests and/or adjudication which is what the Tribunal tried to avoid.

Please provide as much detail on this as possible to assist the Panel in its determination. The Panel invites parties to seek to assist the Panel to determine the compensation process expeditiously and to avoid unnecessary procedural or substantive issues.

While the question is aimed at the AFN and the Caring Society, all parties are welcome to comment.

Compensation process clause 9.6

9.6. Potential beneficiaries denied compensation can request the second-level review committee to reconsider the decision if new information that is relevant to the decision is provided, or appeal to an appeals body composed of individuals agreed to by the Parties and hosted by the Central Administrator. The appeals body will be non-political and independent of the federal public service. The Parties agree that decisions of the appeals body may be subject to further review by the Tribunal. The reconsideration and appeals process will be fully articulated in the Guide.

The Panel specifically requests the Commission's expertise on the CHRA to provide detailed comments on the Tribunal's ability to act as an appeals body outside amendments to the CHRA. Other parties may also comment but the Commission's view is specifically requested.

Notice plan Annex A background:

BACKGROUND

More First Nations children have been removed from their families and are in foster care today than were in residential schools at the height of the operation of that system. First Nations children are 12 times more likely to be placed in care due to neglect driven by poverty, poor housing, parental substance misuse, and domestic violence. The Government of Canada's ("Canada") provision of inequitable child and family services and other public services via Jordan's Principle made it more difficult for families to address risk factors and thus more First Nations children were placed in care and stayed there.

The Panel wonders if a wording change could be made in the background section of the Notice plan to replace the terms: "stayed there" to add something along the lines of: stayed separated from their families, communities and Nations?

This puts emphasis on the real harm that eroded First Nations and the significant harm to the child and the child's family and community.

The Panel specifically requests the views of the Caring Society, AFN and Canada and is open to hearing the views of all the parties.

If you have any questions or concerns further to the above, please do not hesitate to contact the Registry by email at registry.office@chrt-tcdp.gc.ca.

Yours truly,

Judy Dubois
Registry Officer

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