



Department of Justice
Canada

Ministère de la Justice
Canada

National Litigation Sector
Department of Justice Canada
50 O'Connor Street, Room 500
Ottawa, Ontario
K1A 0H8

Telephone: 613-670-6289
Fax: 613-954-1920
Email: Robert.Frater@justice.gc.ca

October 2, 2020

Our File Number: 10967076

BY EMAIL

Judy Dubois
Registry Officer
Canadian Human Rights Tribunal
160 Elgin Street, 11th Floor
Ottawa, ON K1A 1J4

Dear Ms. Dubois:

Re: FNCFCSC et al v AGC (CHRT File T1340/4008)

Dear Ms. Dubois,

Further to Mr. Taylor's September 1, 2020 letter, please find attached the latest version of the Compensation Framework. The changes in this version include:

- (1) Changes to implement the Panel's directions in its May 28, 2020 ruling (2020 CHRT 15);
- (2) Changes to reflect the Panel's ruling with respect to the definition of a First Nations child for purposes of Jordan's Principle eligibility in its July 17, 2020 ruling (2020 CHRT 20); and
- (3) Copy edits.

Final request for direction from the Tribunal with respect to placing compensation funds in trust for certain beneficiaries

Canada, the AFN and the Caring Society will also provide today submissions on one final point where we were unable to reach agreement. Specifically, this point addresses sections 10.3 and 10.4 of the Compensation Framework, with respect to the use of a trust to hold compensation funds for minors and adults who lack legal capacity. The Commission, COO and NAN have agreed to file their submissions on this issue, if any, today as well. Concretely, the alternatives being put to the Panel are to either retain the current language on trusts, or delete it.

Canada

Integration of additional children identified in 2020 CHRT 20 into the Compensation Framework

In its September 6, 2019 Compensation Entitlement Order (2019 CHRT 39), the Tribunal held at paragraph 267 that:

Given that the parties and interested parties in this case are all First Nations except the Commission and the AGC and, that they all have different views on the appropriate definition of a First Nation child in this case, it is paramount that this form part of the discussions on the process for compensation. The Panel reiterates that it recognizes the First Nations human rights and Indigenous rights of self-determination and self-governance

The parties were unable to reach an agreement on this question, which was ultimately determined by the Tribunal in its July 17, 2020 order with respect to eligibility for Jordan's Principle (2020 CHRT 20). Canada, the AFN and the Caring Society have added sections 4.2.5, 4.2.5.1, 4.2.5.2, and 4.2.5.3 to address the addition of the children captured by the Tribunal's July 17, 2020 order.

Canada, the AFN and the Caring Society wish to specifically explain the rationale for sections 4.2.5.1, 4.2.5.2, and 4.2.5.3.

Section 4.2.5.1 has been added to the Compensation Framework to ensure that any child without *Indian Act* status living in a First Nations community, who does not have a parent who is eligible for *Indian Act* status, and is not recognized by their Nation for the purposes of Jordan's Principle, but has a meaningful connection to the First Nations community is eligible. This would exclude children who were only present in the community as a result of their parents' employment (e.g., children of RCMP personnel).

Section 4.2.5.2 has been added to define the timeframe of compensation. Canada, the AFN and the Caring Society agreed to follow the same end-date for compensation as set out in 2019 CHRT 39, (i.e. November 2, 2017). January 26, 2016 was selected as the start-date as this was the date that the Tribunal ordered Canada to "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" (2016 CHRT 2 at para 481), and also held that "Jordan's Principle is meant to apply to all First Nations children" (2016 CHRT 2 at para 382). Recalling the principles cited by the Supreme Court of Canada in *Canada (Attorney General) v Hislop*, 2007 SCC 10 at paras 81-108, Canada, the AFN and the Caring Society submit that the children addressed in the Panel's July 17, 2020 that the date of the January 26, 2016 Orders represents the "clear break with the past" for compensation entitlement.

Section 4.2.5.3 has been added to reflect the Panel's determination in its July 17, 2020 Order at para 115 that:

it would be unfair to make a finding of non-compliance of the Tribunal's orders against Canada given that while the Tribunal did not use the *Indian Act* registration provisions as an eligibility criteria and did not limit Jordan's

Principle to children on reserve, it did not provide a definition of who is a First Nations child eligible under its Jordan's Principle orders.

While we do not expect any further submissions given the work and meetings the parties have undertaken, should any party seek to file further submissions in relation to the Framework, those submissions ought to be filed no later than October 9, 2020 as previously agreed. Any reply would be made by no later than October 15, 2020.

Please advise if the Panel has any questions, or requires further submissions.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Robert Frater, Q.C.', written over a light blue circular stamp.

Robert Frater, Q.C.
Counsel for the Attorney General of Canada

cc.

David Taylor, Sarah Clarke, Anne Levesque and Barbara McIsaac, Q.C. Counsel for the Caring Society

Stuart Wuttke, Thomas Milne and David Nahwegahbow Counsel for the Assembly of First Nations

Maggie Wenté and Sinéad Dearman, Counsel for the Chiefs of Ontario

Brian Smith and Jessica Walsh, Counsel for the Canadian Human Rights Commission,

Ben Kates and Justin Safayeni, Counsel for Amnesty International

Molly Churchill and Julian Falconer, Counsel for the Nishnawbe Aski Nation