



September 20, 2022

**Statement on Compensation
Canadian Human Rights Tribunal Hearings
September 15-16, 2022**

In 2013, when I had the honour of addressing the Canadian Human Rights Tribunal (Tribunal) on the opening day of the hearings regarding Canada's discriminatory public services for First Nations children I said, "this case and this moment is for the children" and I urged the Panel to make the best decision for the children themselves – not for the Caring Society, and not for the Government. They did just that with their historic 2016 ruling that has benefited thousands of First Nations children and in the compensation decision that recognized the egregious harm that each of the children and parents/grandparents who suffered the worst impacts experienced. Now at this moment, we ask the same of the Tribunal: make the best decision for the children, parents, and grandparents, including those who the class action Final Settlement Agreement (FSA) signed by Canada and lawyers representing the Assembly of First Nations (AFN) and other class action parties leaves behind.

Truth and reconciliation require us all to be courageous and to sometimes differ from our friends. We honour the work the AFN did in partnership with us for so many years on this case. However, on this point, we differ. During the hearings, the AFN, Canada, and others spoke about the benefits of the FSA. We acknowledge that some victims who are currently entitled to \$40K in compensation pursuant to the Tribunal's orders may get more under the FSA and we support that. However, we are here to talk about the children and adult victims who will be left behind, those who will see their Tribunal compensation erased or reduced by this FSA, and the many others who will be unsure of what they are entitled to if anything. Over half of the victims of Canada's discrimination are still children and they have not consented to anyone or any party, including Canada or the AFN, having their Tribunal compensation reduced or eliminated.

For generations of First Nations children and families, Canada's colonial poison was designed to leave First Nations peoples behind. First, with residential schools that ran for over 100 years leaving generation after generation of First Nations, Métis, and Inuit children to recover from their childhoods owing to the profound abuses and assimilative efforts forced on them. Then, by Canada's role in separating thousands of First Nations children from their families during the 60's Scoop. In this case, Canada deepened the harms to First Nations peoples by discriminating in ways that removed thousands of children from their families unnecessarily, hurting children and

contributing to the deaths of others. They were found responsible for wilful and reckless discrimination in a “worst case scenario.” As the Panel has acknowledged, even strong language does not capture the harm these victims experienced but their harm was recognized in the compensation decision. Each child and adult victim received the maximum amount of compensation that the Tribunal could award, and it was open to them to seek more compensation through litigation. In another indignity to its victims, Canada fought the Tribunal’s compensation order in Federal Court, even going as far as to erroneously suggest there was no evidence of harm. The Federal Court disagreed with Canada and the victims won. Now, Canada wants some of the victims to lose again, to be left behind, to see their hard-fought human rights compensation awards erased or reduced. During the compensation hearings on September 15, 2022, we heard supporters of the FSA acknowledge “deviations” in the Tribunal’s orders and say they were justified because there “is no perfect agreement” and that “they can live with” the compromises. This is little comfort to those making the unwilling sacrifice – the children, youth, and families entitled to the \$40K. They are at risk of suffering yet another indignity: having the justice that they gained taken away from them again. If we collectively allow that to happen, First Nations children and their parents and grandparents will be the very first group of victims to see their Canadian Human Rights Act compensation bargained away in the over 45 years since the Act was brought into force. Further, the wide-sweeping liability waiver that Canada got in the FSA takes away victims’ rights to litigate against Canada for more compensation. That is not reconciliation.

The Caring Society stands with those left behind, no matter how unpopular that makes us, because it is our privilege and our duty to do so. Indeed, looking out for those who have been left behind is exactly what human rights law is designed to do. We demand that the Government of Canada stop fighting First Nations children, pay what the Tribunal and Federal Court have ordered it to do without delay, and then work with class action counsel to pay victims even more.

Cindy Blackstock, PhD
Executive Director,
Caring Society
Professor, McGill University