

Issues & Solutions

Issues Raised by the Tribunal in 2022 CHRT 41 Regarding the Class Action Final Settlement Agreement on Compensation and Solutions in the Revised Final Settlement Agreement

The Revised Final Settlement Agreement (FSA) on compensation addresses key issues raised by the Canadian Human Rights Tribunal (Tribunal) in its 2022 CHRT 41 order, which found that the previous class* action FSA did not fully satisfy its compensation orders.

To address these concerns, the Caring Society and the Assembly of First Nations (AFN) worked with other Parties to revise the FSA to satisfy the Tribunal's compensation orders.

* A **class** is a group of two or more people with the same legal problem who can come together and sue a person, company, or institution as a collective.

Concern raised by the Tribunal in 2022 CHRT 41

Solution in the Final Settlement Agreement

Ensuring comparable compensation entitlements for children in placements not funded by Indigenous Services Canada (ISC), as well as their caregiving parents or grandparents.

\$520 million in additional funding has now been allocated to provide \$40,000 in compensation to individuals placed in non-ISC funded placements.

\$702 million in additional funding has now been allocated to provide \$40,000 in compensation to caregiving parents/grandparents of children placed in non-ISC funded placements.

Ensuring compensation entitlements for parents who had multiple children removed from their care.

\$477 million in additional funding has now been allocated to ensure that parents entitled to compensation under the CHRT's orders receive compensation for each child removed from their care and placed off reserve with non-family members.

Ensuring comparable compensation entitlements for parental estates.

\$56 million in additional funding has now been allocated to provide \$40,000 in compensation for eligible parental estates.

Ensuring comparable compensation entitlements for children who experienced a delay, denial or service gap under Jordan's Principle, as well as their caregiving parents or grandparents.

The Essential Services Class and the Jordan's Principle Class have been clarified in the FSA, including a principle that states the Parties' intention to provide the full compensation for Jordan's Principle victims/survivors that was contemplated in the Tribunal's orders.

The Jordan's Principle Class now includes individuals who experienced discrimination in Canada's narrow application of Jordan's Principle leading to the highest level of impact (including pain and suffering of the worst kind), who are entitled to a minimum of \$40,000 in compensation.

The Essential Services Class now includes individuals who experienced discrimination in Canada's narrow application of Jordan's Principle but that did not result in the highest level of impact, who are entitled to up to \$40,000 in compensation.

Ensuring comparable interest on compensation owed to all eligible individuals.

\$898.84 million in additional funding has now been allocated to pay the interest that Canada owes to individuals who are entitled to compensation under the CHRT's orders.

The FSA includes a **\$1 billion** interest reserve fund to be used to pay interest on compensation for certain individuals (including Removed Child Class members placed off-reserve, Jordan's Principle Class members and Kith Child Class members).

The interest gained on the total fund will be used to pay interest owed to other classes, including caregiving parents/grandparents and other child class claimants.

Background

January 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 (FNCFS) program and flawed, narrow implementation of Jordan's Principle (2016 CHRT 2).

September 2019: The Tribunal ordered Canada to pay the maximum compensation (\$40,000) allowable under the *Canadian Human Rights Act* to First Nations children and families who were impacted by Canada's discriminatory practices (2019 CHRT 39).

December 2022: The Tribunal issued its full reasons for its order finding that the class action FSA signed by the AFN, Canada, and other class action parties does not fully satisfy the Tribunal's orders.

