

Framework for the Payment of Compensation under 2019 CHRT 39

1. Purpose of the Framework

- 1.1. This document has been prepared in accordance with the Canadian Human Rights Tribunal (“**Tribunal**”) decision dated September 6, 2019, 2019 CHRT 39 (“the **Compensation Entitlement Order**”), with particular attention to the directions at paragraphs 258-270. The Tribunal directed the Attorney General of Canada (“**Canada**”) to enter into discussions with the complainants Assembly of First Nations (“**AFN**”) and the First Nations Child and Family Caring Society of Canada (“**Caring Society**”), to propose ways of distributing the compensation to the beneficiaries described in the Compensation Entitlement Order (“the **Compensation Process**”). Several experts were retained to inform the Compensation Process, and input was invited from the Canadian Human Rights Commission (“**CHRC**”) and the interested parties Chiefs of Ontario (“**COO**”) and Nishnawbe Aski Nation (“**NAN**”).
- 1.2. The Framework is intended to be consistent with the Tribunal’s Compensation Entitlement Order. Where there are discrepancies between this Framework and the Compensation Entitlement Order, or such further orders from the Tribunal as may be applicable, those orders will prevail and remain binding.
- 1.3. The Framework is intended to facilitate and expedite the payment of compensation to the beneficiaries described in the Compensation Entitlement Order, as amended by subsequent Tribunal decisions.
- 1.4. Throughout this document, the word “**Parties**” is used to refer collectively to the complainants, the AFN and the Caring Society, and the respondent Canada.

2. Guiding Principles

The following principles shall guide the application of this Framework:

- 2.1. The compensation distribution process will be managed by a **Central Administrator** that is agreed to by the Parties and is outside of the public service.
 - 2.2. The compensation distribution process will take all reasonable measures to safeguard the best interests of child beneficiaries.
 - 2.3. Beneficiaries will be located and treated in a culturally safe manner and the administrative burden on beneficiaries will be minimized.
 - 2.4. The compensation distribution process shall be applied and administered pursuant to the principles of procedural fairness and natural justice with due attention to the privacy rights of beneficiaries.
 - 2.5. The Parties shall develop an implementation and distribution guide (the “**Guide**”) that shall govern the Central Administrator’s process of distribution. The Guide shall include, but is not limited to, the following requirements to be followed by the Central Administrator:
 - a) required training for the Central Administrator;
 - b) claim forms, document retention and any other documents to be completed by potential beneficiaries;
 - c) standards related to processing of claims and any necessary evidence or documents required to support a claim; and
 - d) any other requirements agreed to by the Parties.
- 2.5.1. In developing standards related to processing of claims by living or deceased persons, the Guide shall recognize that claimants’ circumstances may require flexibility in the type of documentation necessary to support the claim due to challenges such as, but not limited to, the child’s age or developmental status at the time of the events, the

disappearance of records over time, retirement or death of professionals involved in a child's case, systemic barriers to accessing professionals, etc.

2.6. Processes adopted to facilitate payments to beneficiaries will be as simple as possible and will include information that is easy to understand, having regard to the beneficiary's age and any disability or special/distinct needs of that individual.

2.7. Beneficiaries can opt out of the Compensation Process as outlined in section 3.0.

3. Acceptance of Compensation

3.1. Beneficiaries under the Compensation Entitlement Order shall be presumed to opt into the Compensation Process.

3.2. Potential beneficiaries under the Compensation Entitlement Order can opt out of the Compensation Process and are not required to accept compensation. This Framework will not apply to those potential beneficiaries who choose not to accept it by opting out. Those individuals remain free to pursue other legal remedies.¹

3.3. The Parties and the Central Administrator shall develop an opt-out process that is easy to understand and ensures potential beneficiaries are duly notified of the Compensation Process and their right to opt out.

4. Definitions of Beneficiaries

4.1. A “**beneficiary**” of compensation is a person, living or deceased, described at paras. 245-257 of the Compensation Entitlement Order,² as expanded by the Tribunal's decision in 2020 CHRT 7.³ Further descriptions are provided in Schedule “A”. Schedule “A” is intended to summarize the Compensation

¹ See 2019 CHRT 39, at para. 201.

² “beneficiary” includes “potential beneficiaries” for the purpose of applying for compensation.

³ 2020 CHRT 7 at paras 125-129.

Entitlement Order’s descriptions of beneficiaries in order to inform persons or organizations charged with processing compensation requests under this Framework.

4.2. For greater certainty, the following definitions apply for the purpose of identifying beneficiaries:

4.2.1. **“Necessary/Unnecessary Removal”** includes:

- a) children removed from their families and placed in alternative care pursuant to provincial/territorial child and family services legislation, including, but not limited to, kinship and various custody agreements entered into between authorized child and family services officials and the parent(s) or caregiving grandparent(s);
- b) children removed due to substantiated maltreatment and substantiated risks for maltreatment; and
- c) children removed prior to January 1, 2006, but who were in care as of that date.

4.2.2. **“Essential service”** means a support, product and/or service recommended by a professional that was reasonably necessary to ensure:

- a) substantive equality in the provision of services, products and/or supports to the child (accounting for historical disadvantage, geographic circumstances, and the need for culturally appropriate services, products and/or supports); and
- b) the best interests and safety of the child;

4.2.2.1. For the purposes of s. 4.2.2, “reasonably necessary” means that the failure to provide the support, product or service could have:

- a) caused the child to experience mental or physical pain or suffering; or
- b) widened the gap in health outcomes between the First Nations child and children in the rest of Canadian society.

4.2.2.2. For the purposes of s. 4.2.2. “recommended by a professional” must be interpreted in a manner such that a claimant’s inability to provide proof of assessment, referral or recommendation contemporaneous with the necessity of support, product and/or service will not automatically disentitle the individual from eligibility for compensation. For example, particularly in remote communities there may not have been timely access to specialists, but there may have been access to community health nurses, social support workers, mental health workers. However, these individuals may not have designations in a specific profession related to the service being recommended. In these situations, flexibility is necessary to ensure that First Nations children who were unable to access an assessment, referral or recommendation in a timely manner due to systemic barriers (e.g. lack of approval to travel, long wait time prior to physician, therapist or specialist visits in community) are not unfairly excluded from compensation eligibility. Further guidance on this matter will be included in the Guide referenced at s. 2.5.

4.2.3. **“Service gap” means** a situation where there was a service, and/or product and/or support based on the child’s confirmed need that:

- a) was necessary to ensure substantive equality in the provision of services, products and/or supports to the child;
- b.1) was recommended by a professional with expertise directly related to the child’s need(s). Documentation provided by a medical professional or other registered professional is conclusive, unless Canada can demonstrate to the satisfaction of the Central Administrator that, based

on clinical evidence available at the time, the potential risk to the child of the service, product and/or support outweighed the potential benefit;
or

b.2) an Elder or Knowledge Keeper, who is recognized by the child's specific First Nations community, recommends a linguistic or cultural product, support and/or service; and

c) the child's needs were not met.

4.2.3.1. For purposes of s. 4.2.2. "confirmed needed" and "recommended by a professional" must be interpreted as per 4.2.2.2.

4.2.3.2. For greater certainty, the discriminatory definitions and approach employed by the federal government demanded satisfaction of all of the following criteria during the following time periods:

a) Between December 12, 2007 and July 4, 2016

- A child registered as an Indian per the *Indian Act* or eligible to be registered and resident on reserve;
- Child with multiple disabilities requiring multiple service providers;
- Limited to health and social services;
- A jurisdictional dispute existed involving different levels of government (disputes between federal government departments and agencies were excluded);
- The case must be confirmed to be a Jordan's Principle case by both the federal and provincial Deputy Ministers); and
- The service had to be consistent with normative standards

b) Between July 5, 2016 and November 2, 2017

- A child registered as an Indian per the *Indian Act* or eligible to be registered and resident on reserve (July 5, 2016 to September 14, 2016);
- The child had a disability or critical short- term illness (July 5, 2016 to May 26, 2017);
- The service was limited to health and social services (July 5, 2016 to May 26, 2017).

4.2.4. **“Unreasonable delay”** will be presumed where a request was not determined within 12 hours for an urgent case, or 48 hours for other cases. In exceptional cases and subject to a high threshold, Canada may rebut the presumption of unreasonable delay in any given case with reference to the following list of contextual factors, none of which is exclusively determinative:

- a) the nature of the product, support and/or service sought;
- b) the reason for the delay;
- c) the potential for the delay to adversely impact the child’s needs, as informed by the principle of substantive equality;
- d) whether the child’s need was addressed by a different service, product and/or support of equal or greater quality, duration and quantity, otherwise provided in a reasonable time;
- e) the normative standards for providing the support, product and/or services in force in the province or territory in which the child resided, or received the service, at the time of the child’s need.

4.2.4.1. As part of the Guide, the Parties will agree on a process for Canada to provide the Central Administrator with child specific information applying the factors noted above in the child’s case in order to rebut the presumption.

4.2.5. “**First Nations child**” means a child who:

- a) was registered or eligible to be registered under the *Indian Act*;
- b) had one parent/guardian who is registered or eligible to be registered under the *Indian Act*;
- c) was recognized by their Nation for the purposes of Jordan’s Principle; or
- d) was ordinarily resident on reserve, or in a community with a self-government agreement.

4.2.5.1 Children referred to in section 4.2.5(d) (ordinarily resident on reserve or in a community with a self-government agreement (“First Nations community”)) who do not meet any of the eligibility criteria in section 4.2.5(a) to (c) will only qualify for compensation if they had a **meaningful connection** to the First Nations community. The factors to be considered and carefully balanced include (without any single factor being determinative):

- a) Whether the child was born in a First Nations community or whose parents were residing in a First Nations community at the time of birth;
- b) How long the child has lived in a First Nations community;
- c) Whether the child’s residence in a First Nations community was continuous;
- d) Whether the child was eligible to receive services and supports from the First Nation community while residing there (e.g. school, health services, social housing, bearing in mind that there may have been inadequate or non-existent services in the First Nations community at the time); and
- e) The extent of the connection of the child’s parents and/or other caregivers to the First Nation community, excluding those non-status individuals working on a reserve (i.e., RCMP, teachers, medical professionals, and social workers)

4.2.5.2 The timeframe for children referred to in section 4.2.5(b) to (d) above are eligible for compensation in relation to denials, gaps and unreasonable delays with respect to essential services is January 26, 2016 to November 2, 2017.

4.2.5.3 Children referred to in section 4.2.5(b) to (d) as well as their parents (or caregiving grandparents) are eligible for compensation in the amount of \$20,000 for pain and suffering pursuant to s. 53(2)(e) of the *Canadian Human Rights Act* for pain and suffering in relation to denials, gaps and unreasonable delays with respect to essential services, but are not eligible for compensation under s. 53(3) of the *Canadian Human Rights Act* for wilful and reckless discrimination.

4.3. For greater certainty, where a child was receiving palliative care with a terminal illness, and a professional with relevant expertise recommended a service, support and/or product to safeguard the child's best interests that was not provided through Jordan's Principle or another program, the service, product and/or support will be considered essential and the delay will be considered unreasonable.

4.4. Multiple removals – The maximum amount of compensation payable to each child for removal, regardless of the number of removals, is \$40,000. Where a child was removed more than once, the parents (or one set of caregiving grandparents) shall be paid compensation for a removal at the first instance. A different grandparent or set of grandparent(s) (or the child's parents where they were not the primary caregivers at the time of the first or prior removal) may be entitled to compensation for a subsequent removal where they assumed the primary caregiving role where the parents (or the other grandparents) were not caring for the child. For clarity, each parent or grandparent who was a primary caregiver for the child may only be compensated once with respect to the removal of the same child, even if that child was removed from their care multiple times.

5. Locating Beneficiaries

5.1. A Notice Plan to Potential Beneficiaries (the “**Notice Plan**”) is set out at Schedule “B” to this Framework. The Notice Plan describes the intended process for informing children, youth and their families, legal guardians and persons exercising legal authority over the affairs of any persons who have been deemed incapable of making decisions regarding their finances or property under applicable provincial and territorial laws, as well those exercising legal authority over the Estates of deceased persons, that they may come within the classes of individuals entitled to receive compensation under the Compensation Entitlement Order. The Notice Plan has been designed by the Parties to satisfy the Tribunal’s requirement that beneficiaries be identified in a culturally relevant and safe manner. This Notice Plan is necessary, as Canada’s records concerning the names and addresses of the children, parents and grandparents affected by discrimination by the First Nations Child and Family Services Program (“**FNCFS Program**”), the 1965 Agreement, and by Canada’s implementation of Jordan’s Principle, cannot identify all victims. A proactive, highly publicized approach that is based on beneficiaries’ circumstances and is sensitive to their experience of discrimination will be required to inform beneficiaries of their eligibility for compensation and to support them in submitting a claim. Measures taken to identify beneficiaries should reflect any challenges particular to the area where the beneficiary resides. Special measures may be necessary to inform beneficiaries with special/distinct needs (i.e. persons with disabilities, those located in rural or remote communities, incarcerated persons, homeless persons, or persons in domestic violence shelters). Canada will work with First Nations to address the needs of beneficiaries in their communities.

5.2. As described in the Notice Plan, Indigenous Services Canada (“**ISC**”) and the Central Administrator will post notice products about the Compensation Entitlement Order and Compensation Process on a dedicated website (the

“**Compensation Website**”) and distribute them through print and broadcast media and social media mechanisms. Where appropriate, communications will be adapted to the particular cultural, historical and geographical (including rural and remote communities) circumstances of the communities in question.

5.3. In addition to providing this general notification, ISC will call upon professionals and service providers with whom it has relationships to help identify beneficiaries.

5.4. Given the significant demands on the network of professionals and service providers referred to in section 5.3, additional resources will be required in order to ensure there is no impact to the important work of the professional(s) or groups in the categories noted below:

- a) First Nations Child and Family Service Agencies (“**FNCFS Agencies**”); and,
- b) Health, early childhood, education and social service providers in First Nations communities.

In order to ensure that the Compensation Process proceeds without delay, these resources will be provided by ISC on the condition that these resources be dedicated to the Compensation Process.

5.5. Other service providers will be approached for their collaboration in identifying beneficiaries, including:

- a) ISC-employed nurses in community health centres and nursing stations;
- b) over 30,000 registered service providers under the Non-Insured Health Benefits Program (the “**NIHB Program**”); and
- c) provincial/territorial government ministries and agencies.

ISC also has a partnership agreement with Correctional Services Canada that will be leveraged to identify potential beneficiaries within the federal correctional system.

5.6 The report entitled “Canadian Human Rights Tribunal (CHRT) Ruling 2019 CHRT 39: Taxonomy of compensation categories for First Nations children, youth and families” dated November 2019 and authored by Marina Sistovaris, PhD, Professor Barbara Fallon, PhD, Marie Saint Girons, MSW and Meghan Sangster, Med, MSW of the Policy Bench: Fraser Mustard Institute for Human Development will assist in the identification of potential beneficiaries (the “**Taxonomy**”). The Taxonomy is attached as Schedule “C”.

- a) The Taxonomy was designed for child and family services providers to assist in the process of identifying and locating potential beneficiaries; however, a feasibility investigation is underway to determine if, and how, it can assist other service providers to identify beneficiaries.
- b) Canada will fund any adaptations required to apply this Taxonomy to meet the needs of specific service provider communities, as determined by the independent experts who drafted the taxonomy in Schedule “C”.
- c) Identifying children who were necessarily and unnecessarily removed will likely require assistance from child and family service agencies across the country. The Taxonomy is intended to guide their review of individual records in their possession so as to expedite the process of identifying and locating potential beneficiaries and ultimately validation of claims for compensation.

5.7 As requested by the Caring Society and the AFN, Canada will write to all provincial and territorial Deputy Ministers responsible for child and family services, health, and education to encourage them to meet with the Parties and collaborate in the following areas:

- a) Identifying ways in which provincial/territorial data systems can assist in identifying and locating beneficiaries;
- b) Providing supports in the Compensation Process, including exemption of any compensation payments from taxation and social assistance payments or benefit “claw backs” (see 6.5 below); and
- c) Leveraging processes, if any, that provinces/territories have established for the receipt of compensation for children in care.

Canada will also write to provincial and territorial Assistant Deputy Ministers responsible for correctional facilities and community facilities to solicit their cooperation.

5.8 Collaboration with provinces and territories, as well as with self-governing First Nations governments, may be required to locate potential beneficiaries.

6. Support to Beneficiaries Throughout the Compensation Process

6.1 In order to minimize the risk of traumatizing or unduly inconveniencing potential beneficiaries of the Compensation Entitlement Order, Canada will fund the following supports:

- a) **A toll-free phone line** (and/or other toll-free means of communication)
Line Operators will provide information on the Compensation Process in addition to suggesting mental health, cultural and other services that beneficiaries may require arising from the Compensation Process. Operators of the toll-free phone line and/or other toll-free means of communication will be sensitive to child and youth development, as well as the cultural and contextual diversity of beneficiaries. The line should also be accessible in some First Nations languages to reflect the linguistic diversity of beneficiaries.

b) Navigators

Navigators will promote communications under the Notice Plan, support beneficiaries in the Compensation Process, and provide referrals to mental health, cultural, or other services beneficiaries may require arising from the Compensation Process. Navigators' duties will vary across the country based on decisions by First Nations on how navigation services can be best provided.

Where the duties of a Navigator are taken up by a First Nation or First Nations organization, Canada will ensure that the First Nation or First Nation organization providing navigation consents to providing supports to beneficiaries of compensation, and that sufficient resources are provided to those Navigators so as not to impede the quality or range of services already provided by these existing mechanisms. Canada will also ensure that the new resources are dedicated to the Compensation Process.

c) Mental health and cultural supports

Where possible, these supports will be provided through First Nations organizations that have established expertise and trust in communities through their support of other survivors of trauma. This may include those who provided support through processes relating to the Truth and Reconciliation Commission, the Indian Residential Schools Settlement Agreement, the Sixties Scoop class action and the National Inquiry into Missing and Murdered Indigenous Women and Girls.

In particular, the Parties have recognized the need for greater access to child and youth mental health supports within, but not limited to, NIHB Program service providers and existing mental health teams. Canada will ensure that mental wellness teams have the capacity to accommodate the Compensation Process. In order to accomplish this goal, Canada may

accept service providers who are not currently registered under the NIHB Program but are capable of providing mental health services in a manner that responds to the specific developmental needs of children and young people.

Mental health supports will be provided throughout the Compensation Process in a way that is responsive to beneficiaries' needs (e.g.: private counselling, at events, in a family setting, or in group sessions, tele-health), at no charge to beneficiaries.

6.3 First Nations will require adequate resources to provide support to beneficiaries. Canada will assist First Nations where requested by providing reasonable financial or other supports. In providing these supports and determining what constitutes “reasonable financial or other supports” and what constitutes “sufficient resources” in section 6.2(b), consideration will be given to all relevant factors, including the particular needs and realities of rural and remote First Nations with limited resources or infrastructure for providing support to beneficiaries, and who face increased costs in provision of services due to remoteness.

7. Timeline for the Claims Process

7.1. Once the Tribunal's order implementing this Framework is final⁴ the Parties will meet within 15 business days to set an “**Implementation Date**” for the Compensation Process. The Parties agree to work towards the earliest Implementation Date possible.

7.2. Claims for compensation may be received up to, and including, the “**Initial Claims Deadline**”, which will be twenty-four (24) months from the date that the Notice to beneficiaries is posted on the Compensation Website, social media platforms and in at least four national media sources agreed to by the Parties.

⁴ “Final” means no longer subject to judicial review or appeal.

7.3. Claims for compensation may be received after the Initial Claims Deadline if received by the “**First Extended Claims Deadline**”, which will be twelve (12) months from the date of the Initial Claims Deadline. The First Extended Claims Deadline shall be available in communities or for individuals in the circumstances detailed below:

In a community, where any of the following events occur:

- a) There was a delay implementing the Notice Plan to all, or a portion of the beneficiaries;
- b) There is a consensus among service providers and professionals that more time is required to identify potential beneficiaries in the community;
- c) Child and family service providers do not respond, or are delayed in responding to request(s) to apply the Taxonomy as adapted from Schedule “C” to assist in identifying beneficiaries;
- d) There was a delay in implementing navigation services in the community;
- e) There were disruptions in the Compensation Process related to unforeseen circumstances such as epidemics, pandemics, natural disasters, community-based emergencies or service disruptions at a national, regional or community level; and/or
- f) Such other reasons in respect of which the Parties may agree.

For any individual, where any of the following events occur:

- a) A beneficiary is unable to complete the process due to medical or mental health reasons documented by a relevant professional;
- b) A beneficiary was a minor at the time of the expiration of the Initial Claims Deadline and no claim was made on their behalf;

- c) Canada failed to respond in a timely way to a beneficiary's reasonable request for information the beneficiary required in order to submit their claim and/or
- d) Such other reasons in respect of which the Parties may agree.

7.4. Claims for compensation may be received following the First Extended Claims Deadline if received by the “**Second Extended Claims Deadline**”, which will be six (6) months from the date of the First Extended Claims Deadline. Claims shall be considered pursuant to the Second Extended Claims Deadline in any community or for any individual in which any of the events noted in clause 7.3 have not yet resolved before the First Extended Claims Deadline.

7.5. Canada acknowledges that once the Central Administrator has completed its work, there may still be some beneficiaries who were unable to make a claim due to their age, or where their guardian failed to make a claim on their behalf. In order to guide Canada in dealing with such claims, the Parties and the Central Administrator shall develop a guide (the “**Post Claim Period Guide**”) to ensure that the administration of these claims by Canada reflects the experience and best practices of the Central Administrator. The Post Claim Period Guide must be completed before the Central Administrator winds up its operations.

8. Validation of Compensation Claims

8.1. ISC shall preserve and manage all of its records, documents, electronic data and any other relevant information in relation to potential beneficiaries for a period not less than twenty (20) years. ISC shall make all necessary information available to potential beneficiaries and the Central Administrator without delay and with due regard for the privacy of record holders.⁵ Where there are concerns that the

⁵ The information necessary to validate claims may be information covered by the *Privacy Act*. The authority of Canada to share such information with the Central Administrator is s. 8(2)(m)(ii), because the information would “clearly benefit the individual to whom the information relates.” Because the AFN is also a party to this agreement, s. 8(2)(k) would also permit the sharing of information.

provision of the requested information contravenes legislation or court order, ISC shall notify the beneficiary of the reason for the delay and undertake to provide all records in whole or part that may be disclosed.

8.2. All records developed or produced by the beneficiaries are the property of each individual beneficiary and shall be destroyed five years after the payment of their compensation or the final decision on compensation. Further details concerning the final disposition of records shall be dealt with in the Guide.

8.3. As ISC and FNCFS Agencies, First Nations, provincial/territorial government ministries and agencies and the professionals and service providers with whom ISC has relationships work to identify beneficiaries as outlined in sections 5.3-5.8, they will record the names of beneficiaries who, based on a file review, meet the requirements of the Taxonomy as adapted pursuant to section 5.6, on a “**Compensation List**” to be provided to the Central Administrator. The Compensation List shall consist of persons for whom there is agreement between ISC and another knowledgeable professional or group identified above that the person should be a beneficiary.

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;
- a non-offending parent or grandparent was absent from the home for extended periods for unavoidable reasons (e.g. military service);

- a non-offending parent or grandparent suffers from a disability that either prevented them from intervening or of being aware of the abuse.

8.5. Where an individual is excluded from compensation due to sexual, physical or psychological abuse of their child(ren) or grandchild(ren), and upon their request, the Central Administrator may refer the individual to existing services that might ameliorate trauma or behaviours related to child maltreatment.

8.6. When claims are submitted, they shall be deemed valid by the Central Administrator if a beneficiary's name appears on the Compensation List.

8.7. If a beneficiary's name does not appear on the Compensation List, the Central Administrator shall consider the claim pursuant to the Guide noted in section 2.5.

8.7.1. With respect to Jordan's Principle claimants whose names do not appear on the Compensation List, Canada will take positive measures to ensure its information/database on the historical and socio-economic circumstances of First Nations is up to date. It will also provide the Central Administrator with access to any and all information/databases in its possession regarding the historical and socio-economic circumstances of First Nations communities, including Indigenous Services Canada's Synergy in Action Community Profiles Database, in order to assess the cultural, linguistic, historical and geographic factors that may impact eligibility for compensation. The Central Administrator will make use of this information to inform the determination of what was an "essential service", a "service gap" or "unreasonable delay".

8.8. For greater certainty, individual claims are required in all cases, even where more than one child in a community faced similar unmet needs due to the lack of access to the same or similar essential services.

9. Processing of Compensation Claims

- 9.1. All claims will be sent to a Central Administrator identified in the notice products developed under the Notice Plan and on the Compensation Website. The two-level claims process outlined below will be conducted by the Central Administrator.
- 9.2. The Central Administrator will be agreed to by the Parties and funded by Canada.
- 9.3. All claims will be initially reviewed by a trained and duly qualified first-level reviewer according to service standards agreed to by the Parties and approved by the Tribunal.
- a) First-level reviewers will have authority to
 - i) ensure the information is complete, and to assist the beneficiary if it is not;
 - ii) screen in potential beneficiaries where information is complete; and
 - iii) approve claims and refer claims for expeditious payment.
 - b) First-level reviewers will have no authority to reject claims.
 - c) First level reviewers must understand the Tribunal's compensation decisions. All relevant training will be funded by Canada to ensure that first-level reviewers can competently fulfill their responsibilities.
 - d) Quality assurance of the first-level review process will be supported by random case audits and calibration of the review process.
 - e) An expedited process will be put in place to prioritize urgent requests for beneficiaries who are terminally ill or in palliative care, or who have been accepted into a high school completion program, post-secondary program or job skills training program.

9.4. Any completed claim that is not approved by a first-level reviewer will be referred to a second-level committee composed of at least three First Nations experts, with demonstrated knowledge of, and experience in, First Nations child and family services and Jordan's Principle, selected and approved by the Parties, and hosted by the Central Administrator. The second-level committee will rely on standards (including time frames) and processes approved by the Parties, including the following:

- a) The second-level committee may engage independent experts with expertise relevant to the particular circumstances of specific cases when needed, with proper authorization from the beneficiary or the beneficiary's guardian, or in the case of a deceased beneficiary, the deceased beneficiary's authorized representative.⁶
- b) The second-level committee shall be composed of persons who do not hold any political office, and have not held any political office in the past four (4) years and are independent of the federal public service.

9.5. Where the committee denies a claim, it shall provide written and specific reasons for its decision in simple language, as well as information on appeal processes and supports to understand and/or appeal the decision.

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.

⁶ It is the Parties' intention that no parent or grandparent on the Exclusion List should receive compensation.

10. Supports for Beneficiaries Relating to the Payment of Compensation

10.1. Where the beneficiary has the legal capacity to manage their own financial affairs, the compensation shall be paid directly to the beneficiary.

10.2. Where the beneficiary is deceased and is represented by a person exercising legal authority over the beneficiary's Estate, the compensation shall be paid directly to the beneficiary's Estate.

10.3. Where the beneficiary does not have the legal capacity to manage their own financial affairs, the compensation shall be held in trust for the beneficiary.

10.4. The Parties will select up to three (3) business entities that specialize in holding, administering and distributing funds held in trust for the benefit of the beneficiaries who do not have the legal capacity to manage their own financial affairs (the "Appointed Trustees"). The administration fees charged by the Appointed Trustees shall be paid for by Canada and shall not encroach on the beneficiaries' entitlement. [Canada does not agree with the Trust approach]

10.5. The Appointed Trustees shall hold the funds in trust pursuant to a trust agreement agreed to by the Parties (the "Trust Agreement"). The Trust Agreement shall outline the following requirements:

- a) The powers, responsibilities and requirements of the trustee to hold and manage the funds for the benefit of the beneficiaries;
- b) The distribution provisions for income and capital;
- c) The criteria for encroachment on capital;
- d) The removal and replacement of trustees;
- e) The accounting and report requirements; and

f) Any other appropriate related provisions.

10.6. Upon an individual being identified as an eligible recipient for compensation, ISC will ensure that the Central Administrator provides the beneficiary with financial literacy information in a form and content agreed to by the Parties, and at no cost to the beneficiary. To the extent possible, these supports will be adapted to reflect beneficiaries' cultural, historical, geographical (including rural and remote communities) needs and circumstances. In addition to information in writing, workshops, presentations or other meetings may be used to provide financial literacy information with the goal of supporting beneficiaries to:

- a) receive the compensation;
- b) manage the compensation payment;
- c) plan and save for the future; and
- d) prevent financial exploitation, fraud and financial abuse.

10.7. Financial literacy supports will include resources and information on how to access personal financial advice when requested by the beneficiary. The beneficiary is under no obligation to use the financial literacy resources.

10.8. Every compensation payment shall be accompanied by notification of the toll-free communication options (see s. 6.1(a)), financial literacy information, and information on how to access other supports. These supports will be provided at no cost to the beneficiary and with no obligation to use any particular service provider or institution. This information will also be provided on the Compensation Website in English, French, ASL/LSQ and First Nations languages identified in the Notice Plan.

10.9. The Canada Revenue Agency (“CRA”) has advised that compensation received will not be treated as “income” for income tax assessment purposes.

10.10. ISC, in collaboration with other federal government departments, will take positive measures to obtain the agreement of the provinces, territories and self-governing First Nations that the receipt of any payments pursuant to the Tribunal's Compensation Entitlement Order will not adversely affect the quantity, nature or duration of any post-majority care services, post-secondary education assistance, social benefits, social assistance benefits, federal benefits related to the COVID-19 pandemic or employment insurance benefits payable to a beneficiary.

10.11. Canada will take positive measures to obtain the agreement of the relevant Departments of the Government of Canada that the receipt of any payments pursuant to the Tribunal's Compensation Entitlement Order will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a beneficiary. Such payments include those made under any Canadian social benefit programs such as Old Age Security, Canada Pension Plan or the Canada Child Benefit and those benefits provided by Canada related to the COVID-19 pandemic.

11. Non-assignment of Benefits

11.1. No amount payable under this Framework can be assigned and any such assignment is null and void.

12. Monitoring of the Framework

12.1. The Parties recognize that despite the trauma mitigation measures identified above, the process is likely to have a significant emotional impact on many beneficiaries. Where unanticipated needs of beneficiaries arise, mechanisms and processes will be adapted or established to address those needs.

12.2. The Parties will continue to work collaboratively to develop criteria to identify and expedite the processing of potentially complex claims (for example, a child removed multiple times, with removals involving different parents and

grandparents). The Parties have agreed to develop further guidance on this issue, which would weigh factors such as (a) who the biological parent(s) are; and (b) legal guardianship of the child and other relevant matters.

12.3. The Parties will meet with the Central Administrator every three (3) months to monitor the implementation of the Compensation Process and to consider adjustments to this Framework as are necessary to ensure that it is achieving the objectives of facilitating and expediting the payment of compensation to beneficiaries in ways that minimize the risk of traumatizing or unduly inconveniencing beneficiaries. The Parties will have particular regard for populations and/or groups of beneficiaries whose distinct needs require adjustment to the Compensation Process not contemplated in this Framework.

13. Further Development of the Framework

13.1. The Framework is intended to provide general guidance to facilitate the Compensation Process. As noted above, the Parties will continue to work on tools that may provide more precision to guide the implementation of the Framework. Processes can and should be amended where the Parties agree amendment is necessary. Such amendments do not require the approval of the Tribunal. Where the Parties disagree on the necessity for amendment, or the wording of any amendment, the Tribunal shall determine the issue on motion from the party requesting the amendment.

13.2. The parties will discuss the development of these tools with the Commission and with the Interested Parties, as appropriate, in keeping with the scope of their status as Interested Parties in this proceeding.