

Framework for the Payment of Compensation under 2019 CHRT 39¹

1.0 Purpose of the Framework

1.1 This document has been prepared in accordance with the direction of the Canadian Human Rights Tribunal (“Tribunal”) in its decision dated September 6, 2019, 2019 CHRT 39 (“the Compensation Entitlement Order”), particularly 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. However, to the extent that 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

¹ [Footnote to be removed if Canada receives instructions on the outstanding items before February 21, 2020, or substituted with a footnote listing the items of disagreement:] This framework was developed in the absence of Canada having communicated its position on certain substantive matters related to compensation under the *Canadian Human Rights Act* in this case, and while proceedings before the Federal Court of Canada in the judicial review of this Tribunal’s September 6, 2019 Order are pending. The Caring Society reserves the right to make further submissions with respect to this Framework to the Tribunal or to the Federal Court pending Canada’s communication of its substantive positions on the outstanding issues or further developments related to the application for judicial review.

Order. Although the parties disagree on some components of the Compensation Process, which are reflected in their respective submissions, this framework represents areas where agreement has been achieved to fulfill the Tribunal's directions that beneficiaries be located in a culturally safe manner, that their rights and privacy be respected, and that the process of distribution be independent. The parties further agree that the Compensation Process should minimize the burden of proof on beneficiaries and include an opt out clause.

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.

2.0 Acceptance of Compensation

2.1 Potential beneficiaries under the Compensation Entitlement Order are not required to accept compensation. This framework will not apply to those who choose not to accept it. Those individuals remain free to pursue other legal remedies.² Beneficiaries seeking compensation shall be presumed to opt in to the compensation process.

3.0 Definitions of Beneficiaries

3.1 A "beneficiary" of compensation is a person, living or who is deceased, described at paras. 245- 257 of the Compensation Entitlement Order. Further descriptions are provided in Schedule "A". Schedule "A" is intended to summarize the Compensation Entitlement Order's descriptions so as to facilitate the work of those who would process the requests for compensation under this framework.

² See 2019 CHRT 39, at para. 201

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

- a. **“Necessary/Unnecessary Removal”** includes:
 - a. children removed from their families under legal mechanisms such as kinship and various custody agreements pursuant to child and family services legislation in the province/territory, entered into between child and family services officials and the parent(s) or caregiving grandparent(s);
 - b. children removed following an assessment of future risk of maltreatment;
 - c. [children removed prior to January 1, 2006, but remaining in care after that date].
 - d. [children and parents (or caregiving grandparents) caregivers who were deceased prior to the implementation of this Order, but who would be eligible if they were still alive];
 - e. [redacted]
- b. **“Essential Service”** *
- c. **“Unreasonable delay”** *

4.0 Locating Beneficiaries

4.1 A Notice to Potential Beneficiaries is set out at Schedule “B” to this framework. The Notice is intended to inform 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, that they may come within the classes of individual entitled

to receive compensation under the Compensation Entitlement Order. The Notice 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 is necessary, as Canada's records concerning the names and addresses of the children, parents and grandparents affected by discrimination within the First Nations Child and Family Services Program ("FNCFS Program"), the 1965 Agreement, and in Canada's implementation of Jordan's Principle, cannot identify all victims. A proactive, highly publicized approach that is based on beneficiaries' circumstances and that is sensitive to their experience of discrimination will be required to inform beneficiaries of their eligibility for compensation and to support them in filing 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 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.

4.2 Indigenous Services Canada ("ISC") or the central administrator will post the notice on a dedicated Internet webpage and distribute it through print and broadcast media and social media mechanisms. Where appropriate, notice communications will be adapted to the particular cultural, historical and geographical (including rural and remote communities) circumstances of the communities in question.

4.3 In addition to providing this general notification, ISC would call upon professionals and service providers it has relationships with to help identify beneficiaries. In some cases, additional resources will be provided to these professionals and service providers to support this work.

4.4 Given the significant demands on this network, additional resources will be required in order to ensure there is no impact to the professional(s) or groups' important work in the categories noted below:

- a. First Nations Child and Family Service 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 would be provided on condition from ISC that said resources be dedicated to the Compensation Process.

4.5. 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;
- c. provincial/territorial ministries and agencies.

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

4.6 A taxonomy on identification of potential beneficiaries, authored by Professor Barbara Fallon, of the University of Toronto, and Professor Nico Trocmé, from McGill University, is attached as Schedule "C".

- a. The taxonomy was designed for child and family services providers; 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 paying of compensation.

4.7 As requested by the Caring Society and the AFN, Canada will write to all Deputy Ministers responsible for child welfare, health and education to encourage them to meet with the parties and initiate collaboration on:

- a. ways in which provincial/territorial data systems can assist in identifying and locating beneficiaries;
- b. how to provide supports in the Compensation Process, including exemption of any compensation payments from taxation and social assistance payment or benefit “claw backs” (see 6.5 below); and
- c. how to leverage 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.

4.8 Collaboration with provinces and territories, as well as from self-governing First Nations, may be required to validate some requests for compensation.

4.9 Where validation is deemed necessary by the central administrator agreed to by the parties, it should be done with due attention to the privacy rights of beneficiaries and as simply and expeditiously as possible. In such cases,

reasonable travel costs for individuals where additional validation requests require their personal attendance at an appointment, as well as any costs associated with authentication by notaries public or similar officials, will be funded over and above any compensation to beneficiaries.

5.0 Process for Obtaining Compensation

5.1 In order to ensure that all those entitled to benefit from the Compensation Entitlement Order are able to engage in the process in a way that minimizes the risk of traumatizing or unduly inconveniencing beneficiaries, Canada would pay for the following supports:

- a. A toll-free phone line (and/or other toll-free means of communication): to provide information on mental health and other services that beneficiaries may require. The toll free phone line and/or other toll-free means of communication will be sensitive to child and youth development and account for the cultural and contextual diversity of beneficiaries. The line should also be accessible in some First Nations languages, being sensitive to the linguistic diversity of beneficiaries.
- b. **Navigators:** to promote communications pursuant to the Notice Plan and support beneficiaries in the Compensation Process, and to provide referrals to mental health supports, or cultural or other supports as required. There will be variation across the country based on decisions by First Nations on how navigation services can be best provided at an aggregate level.

5.1.b.1 Where navigation functions make use of existing mechanisms, Canada will ensure that the First Nation/organization providing navigation fully consents to

providing supports to beneficiaries of compensation, and that sufficient resources are provided to the existing navigators so as not to impede the quality or range of services 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:** whenever 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, such as, but not limited 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.

5.1.c.1 In particular, the parties have recognized the need for greater access to children's mental health supports within, but not limited to, Non-Insured Health Benefits Program service providers and existing mental health teams. Canada is committed to increasing the capacity of mental wellness teams to accommodate the Compensation Process. In order to accomplish this, Canada is willing to accept service providers who are not currently registered under the Non-Insured Health Benefits Program but are capable of providing mental health services in a manner that responds to the specific developmental needs of children and young people.

5.1.c.2 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, etc) and at no charge to beneficiaries.

5.2 The parties recognize that despite the trauma mitigation measures identified above, the process is likely to have a significant emotional impact on many beneficiaries and agree to establish mechanisms and processes to address unanticipated needs of beneficiaries that may arise throughout the Compensation Process.

5.3 Provision of support to beneficiaries will require adequate resources on the part of First Nations. Canada will assist First Nations where requested by providing reasonable financial or other supports to facilitate the compensation process.

6.0 Processing of Compensation Claims

6.1 A two-phase process will be applied to compensation claims. All claims would be sent to a central administrator identified in the Notice to Potential Beneficiaries and on the ISC webpage. The processes described below will be conducted by the central administrator.

6.2 All claims will be initially reviewed by a first-level reviewer process according to service standards agreed to by the parties and approved by the Tribunal. The central administrator conducting the first-level review will be agreed to by the parties and paid for by Canada.

- a. First-level reviewers will have authority:
 - i) to ensure the information is complete, and to assist the beneficiary if it is not; and,
 - ii) to screen in potential beneficiaries 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. The parties agree that quality assurance of the first level review process will be supported by random audits of cases and calibration of the review process.
- e. An expedited process will be put in place to prioritize urgent requests related to a beneficiary being terminally ill, in palliative care or requiring urgent approval to attend a post-secondary program.

6.3 Any completed claim that is not approved by a first-level reviewer will be referred, within service standards agreed to by the parties, 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 - who may consult with other individuals or groups in making their selection - and hosted by the central administrator.

- a. The second-level committee will conduct the review within service standards agreed to by the parties and approved by the Tribunal.
- b. The second-level committee will be able to engage independent experts with expertise relevant to the particular circumstances of

specific cases when needed, and with the permission of the beneficiary or the beneficiary's guardian.

- c. The second level committee shall be composed of persons who do not hold a political office and are independent of the federal public service.

6.4 Where the committee denies a claim, it shall provide reasons in simple and specific language for its decision, and information on supports available for understanding or contesting the decision. The individual may either ask the 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.

6.5 The parties will continue to work collaboratively to develop criteria to identify and expedite the processing of potentially complex claims. Such situations may include, but not be limited to, 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.

6.6 With respect to situations where one parent or grandparent is ineligible due to physical, sexual or psychological abuse, the parties agree that the other parent or grandparent caring for the child will remain entitled to compensation where there was no evidence that they perpetrated the abuse or permitted it to occur or continue.

7.0 Supports for Beneficiaries

7.1 Where the beneficiary does not have the legal capacity to manage their own financial affairs, such as where the beneficiary is a child, the child's guardian will make choices as to how to deal with the compensation. Where the person having guardianship is not a parent or caregiving grandparent, the compensation would be paid into a trust fund, chosen by the person having legal authority over the beneficiary's financial affairs. The trust fund selected must satisfy the following requirements:

- a. Compliance with relevant legislation and regulations;
- b. Demonstration of an excellent track record of financial accountability, transparency and governance;
- c. Agreement to indemnify beneficiaries from any liability related to governance of the trust; and
- d. Proof that trust monies for each beneficiary are insured.

7.2 Upon attaining the age of [REDACTED], a beneficiary who is a child at the time compensation is received will be entitled to withdraw their compensation from the trust fund.

7.3 Upon being identified as an eligible recipient for compensation, ISC will ensure 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. In addition to information in writing, workshops, presentations or other meetings may be used to provide information. The information will be provided 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.

7.4 Financial literacy supports will include information resources as well as one-on-one financial advice where it is requested by the beneficiary. The beneficiary is under no obligation to use the financial literacy resources.

7.5 Every compensation payment shall also be accompanied by notification of the toll-free communication options, financial 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 would also be provided on the ISC website in English, French, ASL/LSQ and First Nations languages identified in the Notice Plan.

7.6 ISC has sought a technical interpretation from the Canada Revenue Agency (“CRA”) concerning whether any compensation received would be treated as “income” for income tax assessment purposes and will advise the Tribunal as soon as the CRA provides an opinion/ruling on the matter.

7.7 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, or employment insurance benefits payable to a beneficiary.

7.8 Canada will take positive measures to obtain the agreement of the necessary 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.

8.0 Non-assignment of Benefits

8.1. No one eligible to receive compensation shall assign their right to receive compensation to any other individual, group, or legal entity. Applicants shall be advised at the time of application that they are unable to assign their compensation to another.

9.0 Amendment of the Framework

9.1. The Framework can be amended at any time with the approval of the Tribunal, following an agreement of the parties and Canada having consulted with the CHRC, COO, and NAN. 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.

SCHEDULE A
NOT PROVIDED

Schedule B

**Compensation Process for Federally funded child
welfare and Jordan's Principle**

Notice Program Draft Plan

DRAFT

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Introduction

This Notice Program is designed to notify First Nations children and their families, who were harmed by Canada's discriminatory provision of First Nations child welfare or failure to properly implement Jordan's Principle, of compensation awarded by the *Canadian Human Rights Tribunal* decision in *First Nations Child and Family Caring Society of Canada v Canada*, 2019 CHRT 39. This plan will highlight the nature of the compensation, the notice plan methodology and phases, and the options for First Nations children, youth and their families to participate in this compensation process.

KEY MESSAGES

The key messages of the Notice Program are to ensure that First Nations children, youth and their families, who are eligible for compensation, are fully informed. Eligible recipients may access compensation by submitting a request or may opt-out of the compensation scheme by submitting a X form by (Date).

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. Canada's provision of inequitable child welfare 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.

Canada requires child welfare services on reserve to be delivered in accordance with provincial child welfare laws as a condition of federal funding. Off reserve, provincial funding and child welfare laws apply. First Nations child and family service agencies began operating in the 1970's with over 100 being established by 2005. These agencies were serving a higher needs population owing to the legacies of residential schools and colonialism and received less funding than mainstream agencies received for other children off reserve. The most serious area of shortfall was in services intended to prevent child maltreatment or to mitigate risks to prevent the removals of children from their families whenever possible.

As the Tribunal has noted, this chronic under-funding has persisted for many years despite available solutions. The Auditor General of Canada found Canada's provision of First Nations Child and Family Services Program to be inequitable in 2008 and again in 2011. A 2005 report commissioned by the Assembly of First Nations and Canada and authored by the First Nations Child and Family Caring Society of Canada (Caring Society) found that funding for child and family and health services for First Nations children in Canada fell 30% below what was needed without accounting for the higher risks for First Nations children arising from residential schools and other colonial harms. Further, a 2000 study commissioned by Canada and authored by the Assembly of First Nations revealed that 22 percent less funding is available on a per child basis for First Nations children living on reserves than is provided to children living off reserves in the average province.

In addition to shortfalls in child and family service funding on reserve, First Nations children and families were being deprived access to other public services they needed due to Canada's failure to properly implement Jordan's Principle. Jordan's Principle is named in memory of Jordan River Anderson of Norway House Cree Nation in Manitoba. Born in 1999, Jordan remained in hospital for medical reasons for two years until his condition reached a point where he could be discharged to a medically trained foster home near the hospital with a longer-term plan of reuniting Jordan with his family in Norway House. If Jordan were a non-First Nations child, he would have been discharged. However, Manitoba refused to pay for the service because Jordan was a registered Indian and his family lived on reserve. Canada's Departments of Health and Indian Affairs also argued over which department was supposed to pay and in the end they left Jordan in the hospital while they argued. Jordan remained in hospital for another two years unnecessarily before he slipped into a coma and tragically died at age 5. In 2005, the Caring Society study found 393 other children were being denied services due to these types of payment disputes. Jordan's Principle was developed with the support of Jordan's family and adopted by Parliament in 2007. It allows for First Nations children to receive the public services they need when they need them. Unfortunately, Canada failed to implement Jordan's Principle and, until the Canadian Human Rights Tribunal ruled in 2016, took the position that there were no Jordan's Principle cases.

These inequalities perpetuate many of the generational problems fostered by the *Indian Act* and the residential school system, and the insufficient resources and supports in place has been found to result directly in elevated rates of abuse and even death in care.

In February 2007, the First Nations Child and Family Caring Society of Canada and the Assembly of First Nations filed a complaint under the *Canadian Human Rights Act* alleging that the Government of Canada's inequitable provision of child welfare services to 163,000 First Nations children, along with its flawed implementation of Jordan's Principle, was discriminatory on the prohibited grounds of race and national ethnic origin. The Government of Canada had made eight unsuccessful attempts to get the case dismissed on technical grounds.

On 26 January 2016, the Canadian Human Rights Tribunal substantiated the complaint and ordered the Canadian Government to cease its discriminatory conduct. The Tribunal found that the First Nations Child and Family Services (FNCFS) Program denied services to many First Nations children and families living on-reserve and resulted in adverse impacts for them because it was based on flawed assumptions about First Nations communities that did not reflect the actual needs of those communities. The Tribunal also found that the FNCFS Program's three main funding mechanisms for First Nations child and family services incentivized removing First Nations' children from their families.

The Tribunal further found that Canada's narrow interpretation and implementation of Jordan's Principle resulted in service gaps, delays or denials, and overall adverse impacts on First Nations children and families on-reserve. Jordan's Principle is a child-first principle that provides that First Nations children ought to receive public services they need when they need them in keeping with substantive equality and best interests of the child. Canada was ordered to cease applying the discriminatory definition and approach to Jordan's Principle.

Since the original ruling, the Tribunal has issued nine non-compliance orders in an attempt to force Canada to comply with its original ruling. On September 6, 2019, the Tribunal ordered Canada to provide compensation per 2019 CHRT 39, which will be outlined below.

The *Canadian Human Rights Act* (CHRA) allows for up to \$20,000 per victim of discrimination (s. 53.2(e)) and up to \$20,000 per victim if the discrimination was willful and reckless (s. 53(3)). Further, the total compensation cannot exceed \$40,000 per claimant. Below, each \$40,000

reference includes both pain and suffering (\$20,000) and special compensation for discrimination that was willful and reckless (\$20,000).

For a First Nations child removed from their family and were subject to Canada's First Nations child and family services program (generally registered Indian children whose parent(s) were resident on reserve or temporarily resident off reserve at the time of the removal) and in the Yukon Territory:

- \$40,000 to each First Nations child unnecessarily removed after January 1, 2006.
- \$40,000 to each First Nations parent or grandparent of a child unnecessarily removed after January 1, 2006.
- \$40,000 to each First Nation child necessarily removed but placed outside of their families and/or communities after January 1, 2006.

The Tribunal has not issued an end date for this order as they have not found Canada in compliance with its orders re: the First Nations Child and Family Services Program.

For a First Nations child living on or off reserve:

- \$40,000 to each First Nations child that was unnecessarily removed to obtain essential services, or wasn't removed from their family but experienced gaps or delays of services that would have been available under Jordan's Principle between December 12, 2007, and November 2, 2017.
- \$40,000 to each First Nations parent or grandparent who had their child removed and placed in care to access services, or wasn't removed from their family but experienced gaps or delays of services that would have been available under Jordan's Principle between December 12, 2007, and November 2, 2017.

Individuals who are eligible for compensation can opt-out of this compensation scheme for any reason. Further, a trust will be established to enable payments to be made to children and youth up to an age ordered by the Tribunal.

METHODOLOGY FOR THE DEVELOPMENT OF THE NOTICE PROGRAM

In 2019 CHRT 39, the Tribunal ordered Canada to work with the Caring Society and Assembly of First Nations to develop a compensation process to distribute the funds. For several months the Assembly of First Nations and Caring Society worked apart from Canada as Canada did not appoint representatives for the compensation discussion until January 2020. This process

involved seeking input and advice from a variety of sources including First Nations youth in care or formerly in care. The Assembly of First Nations, in collaboration with the Caring Society, developed a draft plan for the Notice Program, as they have participated in the design of a number of notice programs. Further, a number of All-Party meetings addressed the messaging and approach of the Notice Program. Participants provided a wide range of helpful albeit sometimes competing ideas and suggestions, which were considered by the parties and influenced the development of the Notice Program and related Notice products.

NOTICE PROGRAM SUMMARY

Objective:

The overall objective of the Notice Program is to advise all First Nations children, youth and their families who were harmed through the child welfare system about their option to request compensation under the Compensation Process for Federally Funded Child Welfare and Jordan's Principle across Canada. The intent of the Notice Program is to advise eligible recipients of their ability to request compensation and of their legal right to opt out of the compensation.

Notice Program Phases:

The Notice Program is divided into two main phases: (a) the Preparation Phase; and (b) the Distribution Phase.

a) Preparation Phase - finalizing notices and training

Upon the receipt of the final Tribunal Order, the Parties will finalize and produce all notice products. These products will be consistent of a Tribunal-approved claim form, will accommodate persons with disabilities, children and youth, and attend to persons with various literacy levels in French and English. Information distribution mechanisms will include social media, multi-media campaign, a pamphlet, a poster, a postcard, and videos about the compensation process in both French and English and as many First Nations languages as possible.

Canada is expected to retain a third-party administrator to process compensation requests. Those individuals who will process applications will also receive culturally appropriate training to ensure claimants are not revictimized by the compensation process. The training will entail a detailed review of the Notice Program information, including the Tribunal-approved Claim Form. Scripted training products will be provided to the trainees. This will help ensure consistent information

messaging. This will also help ensure that staff of the third-party administrator have an accurate and clear understanding of the information, including the details of the Claim Form and where claimants can go to seek further information about the compensation process and other related supports. Workers will be clearly advised that it is not their role of to provide legal advice.

During the preparation phase, mental health support workers, funded by Canada including a 24 hours information and support line for compensation, will also provide advice to the notice program process and supports to compensation requesters.

Training for these mental health support workers will be conducted by _____ occur at _____ in the _____. There will be _____ meetings. Representatives from _____ will also be invited to attend to provide the relevant training on the Notice Program. It is expected that each training session will take approximately one-half day (4 to 5 hours).

The training will focus on educating mental health support workers on the notice materials and process to enable them to provide emotional and traditional support and provide neutral information to claimants and their families. Efforts will be made to ensure that support workers are trained in child and youth mental health and, where such professionals are not available in particular communities, that the mental health workers are aware of professionals trained in child and youth mental health. The support workers will either staff the national call in line or be located in or visit First Nations communities and/or organizations, to provide support services and answer questions from claimants, most times in the First Nations language of the community.

The Assembly of First Nations and Caring Society will also collaborate with AFOA Canada and the Royal Bank of Canada to prepare financial literacy materials to support recipients prior to, and upon receipt, of compensation funds.

The Assembly of First Nations and First Nations Child and Family Caring Society will arrange for an Information Line Liaison(s) (described further below). This will also help provide a framework to ensure consistent and clear messaging to claimants. It should be noted that like mental health support workers, the role of the Resource Line Liaison(s) is not to provide any legal advice.

b) Distribution Phase – disseminating information

After the notice preparation phase, the distribution phase will begin where information will be disseminated to claimants. The distribution phase is further broken down into four sub-phases, as detailed below. Phases 1 to 3 will be conducted within the first two years of the distribution phase. Phase 4 will extend until _____.

Phase 1 – Multi-media Campaign: Notice information will be distributed through various print, television, radio and social media. Accommodations will be made for persons with disabilities, persons who speak First Nations languages and persons with various literacy levels in French and English. A dedicated website (www.FNChildWelfareCompensation.ca) will be launched, and a toll-free information line will be in service through Phase 1-4. There will also be the AFN resource line in service to provide support for claimants.

Phase 2 – Distribution of Posters and Information Packages: Information packages, posters, social media posts, and postcards will be sent to First Nation communities, First Nations child and family service agencies and other children's service providers, Indigenous Organizations, Friendship Centres, Correctional Centres, Tribal Councils, and other partners/stakeholders. Further mail-outs may occur throughout the distribution phase. To protect claimants' confidentiality, these will be provided in bulk in a general-distribution approach.

Phase 3 – Community notices: Canada will work with the Assembly of First Nations and First Nations Child and Family Caring Society and will partner with First Nations communities across Canada to provide notice on local radio stations, local newsletters and links on their websites. These notices will be in the language of the respective community.

Phase 4 – Ongoing Information for the Duration of the Claim Period: The dedicated website and information line will be maintained throughout the Claim Period starting _____, 2020 in order to provide information to claimants.

Geographical Scope:

Claimants and their families reside in urban, rural, northern and remote/isolated communities across Canada. Some claimants may be in health care facilities, are homeless, or incarcerated. The Notice Program is designed to reach all claimants in Canada, regardless of geographic location.

Some Claimants may reside outside of Canada, who may not be exposed to or be able to access the Notice Program information via Canadian media or Canadian Indigenous organizations. Accordingly, _____ (Communication Firm) will make reasonable efforts to provide a mail-out of the Notice Program information to those claimants who reside outside of Canada and request the information.

Language:

Notice Program material will be created in a variety of languages appropriate to the media source and location. All elements of the mailing packages (described below), including the claim form, will be produced in English and French and American Sign Language (ASL)/Langue des signes du Québec (LSQ). The dedicated website will appear in English (www.FNChildWelfareCompensation.ca) and French (www.PNProtectionLenfance.ca). As well, the mental health support workers will be able to provide information in various First Nations languages and in a manner suitable for persons with limited literacy.

Delivery:

The Notice Program will be focus on ensuring claimants understand why compensation is available and how the application process works. Importantly, the messaging will be culturally sensitive and try to limit any trauma and address concerns that claimants may have. Care will be taken throughout the Notice Program to respect the privacy and confidentiality of claimants.

There will also be on-going support and information available for claimants throughout the first three phases of the distribution phase from mental health support workers and Information Line Liaison(s).

All products will be designed for claimants to be easy to read and understand. The products will contain consistent messaging, presented in clear and concise plain language, with an identifiable look, headline, and graphic. The various types of products – and the Notice Program in its entirety – are intended to ensure that claimants understand why compensation is available and how the process works, if they chose to file a claim.

If during the course of the Notice Program it is determined that other products may need to be developed to meet evolving needs or address specific issues, that will be done in a manner consistent with the Tribunal-approved Claim Form.

Responding to Inquiries:

During the claim period, Canada will fund the AFN and First Nations Child and Family Caring Society with resources to provide information regarding the Notice Program. First, Information Line Liaisons will be earmarked for the AFN and First Nations Child and Family Caring Society in order to respond to questions about the Notice Program. Second, mental health support workers will be available to provide information, assistance and support. Third, financial literacy experts will be available to assist persons who request that support.

NOTICE SCHEDULE**Preparation Phase Schedule:**

Below is a schedule that outlines a timeframe for activities that are necessary and will be completed prior to the launch of the distribution phase. Due to the sensitivity and potential impacts of the notice, the launch of the distribution phase will be in _____.

ACTIVITY	TIMEFRAME
Draft, design and finalize products	March 31, 2020
Translate products	April 15, 2020
Produce videos (including ASL and LSQ)	April 20, 2020
Produce social media posts	April 20, 2020
Print products and create packages	April 20, 2020
Training Sessions for Mental Health Support Workers	May 15, 2020
Launch Distribution Phase	June 1, 2020

Distribution Phase Schedule:

Below is a timeline for distribution phase. Details for each phase follow.

PHASE	TIMEFRAME
Phase 1 – Multi-media campaign	June 1, 2020
Phase 2 – Mailouts of Packages	June 1, 2020
Phase 3 – Local Community Notices	July – September, 2020
Phase 4 – On-going Notice	January 1, 2021 – date determined by the Tribunal

Phase 1 – Multi-Media Campaign (DATES):

The appearances of the individual notices and media placements may vary within the notice period. Phase 1 will commence on June 1, 2020 for at least a 12 month period. Below is a detailed breakdown of appearance.

a) Indigenous Television Notice

During the 12 month period, approximately 750 Television Notices will be broadcast throughout Canada on Indigenous television networks. In addition to running on Aboriginal Peoples Television Network (“APTN”), Notices will also appear on Canadian Broadcasting Corporation (“CBC”) North.

APTN is a national television network featuring Aboriginal content and available in over 11 million households across Canada. According to APTN, 58% of Indigenous People watch APTN National News on a weekly basis, 59% watch APTN movies once a week, and 47% watch traditional and cultural programming on a weekly basis. CBC North broadcasts across the Northwest Territories with daily newscasts and programming in Cree.

Notices will appear in a wide variety of program types and in nearly every daypart available, including primetime, early news, late news, daytime, morning early fringe and late night. The schedule includes many of the most popular and highest ranked programs on APTN and CBC North.

A total of four Television Notices will be created and appear in three different languages: English, French, and Cree. These will be 30-second informational announcements in English and 60-seconds in French (longer length due to translation) on APTN and CBC North. Indigenous language spots will also appear in 30- or 60-second formats, depending on the language being spoken.

In addition to the paid television broadcasts, we will send the Indigenous version(s) of the English television spot to CBC television for national broadcast as public service announcement(s) (“PSA”). The English television spots for regional broadcast in the Northwest Territories will be sent to CBC.

b) Radio Notice

The Radio Notice will be produced and broadcast in 17 languages/dialects, including: English, French, Quebec Cree, Déné, Ojibway, North Slavey, South Slavey, Denesuline, Tlicho, Gwich'n, South Tutchone, Tlingit, Innu, Atikamekw, Oji-Cree, and Cree. The Radio Notice will air on each network/station, in accordance with the language(s) of their programming and/or the predominant language(s) used by their listeners. Networks with multiple language programming will receive a higher number of spots, to ensure effective exposure of each version of the Notice. The radio spots will air over a four-week period.

Spots will be broadcast on radio stations within the following Indigenous communications organizations and radio networks:

Organization/Network	Languages
Aboriginal Multi Media Society of Alberta	English, Cree
James Bay Cree Communications Society Network	English, Québec Cree
Missinipi Broadcasting Corp. Network Radio (MBC)	English, Cree, Dene
Native Communications Inc. (NCI-FM)	English, Ojibway, Cree
Native Communications Society of the Western NW	English, Tlicho, North Slavey,
Northern Native Broadcasting Terrace (CFNR-FM -	English
Northern Native Broadcasting Yukon (CHON-FM)	English, Gwitch'n, Southern
Societe de Communications Atikamekw-Montagnais	Innu, Atikamekw, French
Wawatay Radio Network (WRN)	English, Oji-Cree, Cree

c) Radio PSAs

The Radio Notice will be packaged and distributed to mainstream radio stations as a PSA. The PSA package will include an audio recording of the Radio Notice (both English and French) as well as a message to the Public Service Director explaining the importance of the Notice and requesting the station air the message. While not measured, PSAs provide an easy and simple way to more widely distribute the Notice.

d) Print Publication Notices

Notices will also be placed in mainstream newspapers and local newsletters, in order to increase the reach of the Notice Program particularly among those who reside in urban settings. Notices will appear one time in seven different mainstream newspapers across Canada, for a total of five insertions. An approximate five inch by ten-inch page unit Summary Notice will be placed in the newspapers.

The prominent Notice positioning negotiated and achieved will help garner more attention from readers. Notices will appear primarily in the Main News section.

Following are the mainstream newspapers where each Notice will appear:

Newspaper	City/Area	Province
<i>Chronicle Herald</i>	Halifax	Nova Scotia
<i>Edmonton Sun</i>	Edmonton	Alberta
<i>Saskatoon Star Phoenix</i>	Saskatoon	Saskatchewan
<i>The Globe and Mail</i>	Toronto	Ontario
<i>The National Post</i>	Toronto	Ontario
<i>Winnipeg Sun</i>	Winnipeg	Manitoba
<i>Vancouver Sun</i>	Vancouver	British Columbia

Notices will also appear, as a full-page unit, in 32 highly targeted Indigenous publications. Indigenous Publications provide local and regional news to a large portion of Indigenous communities. In bilingual publications, multiple Notices will appear, once in English or French and again in the primary Indigenous language(s) of the publication. A total of 40 insertions will appear.

The Notice will be produced and appear in four different languages: English, French, Siglit and Oji-Cree.

Following are the Indigenous publications where each Notice will appear:

Publication	Coverage	Ad Language
<i>Alberta Native News</i>	Alberta	English
<i>Anishinabek News</i>	Ontario	English
<i>Eagle Feather News</i>	Saskatchewan	English
<i>Eastern Door</i>	Québec	English
<i>Elsipogtogeoei</i>	New Brunswick	English
<i>First Nations Drum</i>	National	English
<i>First Nations Voice</i>	National	English
<i>Grassroots News</i>	Manitoba	English
<i>Ha-Shilth-Sa</i>	British Columbia	English
<i>Inuvik Drum</i>	Northwest Territories	English
<i>L'Action</i>	Ontario	French
<i>L'Aquilon</i>	Northwest Territories	French
<i>Le Journal Innuvelle</i>	Québec	French
<i>Le Metropolitain</i>	Ontario	French
<i>Le Regional</i>	Ontario	French

<i>Le Rempart</i>	Ontario	French
<i>Lhorizon</i>	Ontario	English
<i>Mi'kmaq-Maliseet Nations News</i>	Nova Scotia	English
<i>Native Journal</i>	National	English
<i>Nunatsiaq News</i>	Northwest Territories	English
<i>NWT News/North</i>	Northwest Territories	English
<i>Prince Albert Grand Council Tribune</i>	Saskatchewan	English
<i>Secwepemc News</i>	British Columbia	English
<i>The Chief</i>	British Columbia	English
<i>The Hay River Hub</i>	Northwest Territories	English
<i>The Nation</i>	Québec/Ontario	English
<i>Turtle Island News</i>	Ontario	English
<i>Tusaayaksat</i>	Northwest Territories	English
<i>Tusaayaksat</i>	Northwest Territories	Siglit
<i>Wawatay News</i>	Ontario	English
<i>Wawatay News</i>	Ontario	Oji-Cree
<i>Yellowknifer</i>	Northwest Territories	English

e) Online Notice

The online portion of the Notice Program includes banner advertisements, which will run for a 30-day (could be longer) period. Notices will be formatted to accommodate mobile devices.

The banner advertisements will run on a rotating basis on the following websites:

- FirstNationsVoice.com
- FirstNationsDrum.com
- WawatayNews.ca
- WindSpeaker.com
- AlbertaNativeNews.com
- AnishinabekNews.ca
- NORJ.ca
- Grassrootsnewsmb.ca

The banner will appear in English on the selected websites with the exception of www.WawatayNews.ca, which it will appear in both English and Oji-Cree.

Banner ads will also appear on Facebook.com targeting individuals in Canada whose interests include “Indigenous Rights”, “Indigenous Music”, “Local Natives”, “Traditional Knowledge”, and “Aboriginal Titles”.

The (Communications firm) will also use a number of social media channels including Twitter, Facebook and Instagram to share information about the Notice Program. These will direct claimants, family members and others to the dedicated web site, or other on-line locations where they can find relevant information.

f) Videos

One “stand-alone” video will be made to provide a range of information on the compensation process. The use of this video will provide flexibility to viewers enabling them to obtain information on the nature of the claim process. The video will be included in the information packages (described below) on USB keys, will be made available in DVD format, and will also be accessible on You Tube with a link on the dedicated website.

Video 1 – “Overview of the Compensation Process for Federally Funded First Nations Child Welfare and Jordan’s Principle”: to provide claimants with information on the claim process and general information about filing a claim.

g) “Earned Media” Activities

Earned media activities are means of obtaining coverage in credible new sources that do not involve the purchase of paid advertising. These would include the use of news releases, media advisories, personal contact with reporters, and other activities designed to encourage stories to be written about the Notice Program. As part of this process, an Information news release conforming to the Court-approved Claim Form will be issued to provide a fair and neutral statement of the Notice Program and encourage media interest.

Phase 2 – Mail-outs of Information Packages (June 1, 2020):

Phase 2 of the distribution phase will coincide with Phase 1. After the initial mail-outs are complete, on-going mail-outs will continue throughout the distribution phase. Success in building awareness among all audience segments will be determined by our ability to put information directly in front of them through media that are highly visual, have “stopping power”, and afford the opportunity to deliver a number of key messages in clear and simple language. Success will also be determined by our ability to leverage one of our key communications opportunities – the direct link to our audience that is provided by the network of First Nation Band Offices, Friendship, Youth and Women’s centres across Canada. A key focus of our effort in marketing to public segments should be in the development and production of Compensation displays that can be

distributed to and placed in the centres, in essence serving as billboards that deliver messaging, require little effort to maintain, and frankly, will be very difficult for visitors to the Centres to ignore.



Information packages will be mailed to over 1,200 organizations including First Nations; Indigenous Organizations that work with claimants; Friendship Centres; Youth in Care Canada, Federal and Provincial Correctional Centres; Tribal Councils; and other partners and stakeholders. These packages will also include a USB stick with videos and with printable notice products such as posters, pamphlets, post cards, and forms. The material will be available in English, French, and other Indigenous languages.

Organizations can also provide links on their websites to the dedicated website for those claimants wanting more information

Phase 3 – Community Radio stations, local newsletters and websites July – September, 2020:

The Parties will reach out and partner with Indigenous communities across Canada to provide notice on local radio stations, local newsletters and links on their websites. These notices will be in the language of the community media type.

A significant point is that a significant proportion of the target audience cannot access written materials. This, obviously, poses a significant challenge to getting the compensation process message out to the target audience. The solution to this challenge is to provide prepared audio materials to broadcast media, both radio and television. These materials could spur interest in the Compensation process with outlets unfamiliar with the process, subsequently resulting in additional coverage that may not have resulted from the news release and follow-up approach.

These audio news releases will consist of a prepared radio spot lasting about 30 or 40 seconds that could be broadcast in its entirety, along with recorded actualities that could be used by the broadcast outlet in its preparation of its own report.

A Q&A will be included in the media information kit. The information will be directed at potential claimants and will provide basic information on how to access the request for compensation, as well as additional information on their benefits.

Relevant information could be formatted into fact sheets covering topics such as CHRT rulings and, more in-depth information about when and how to access compensation. A traceability matrix would be considered a information sheet. Because there are so many distinct First Nations peoples, inclusion of a document such as this would provide a quick reference for the casual reader who may not take the time to read the all relevant information in its entirety.

Phase 4 – Ongoing Information for the Duration of the Claim period (January 1, 2021 – December 30, 2023):

The dedicated website and information line will be maintained throughout the Claim Period from January 1, 2021 to December 30, 2023, to continue to provide information to claimants.

Applying for reconsideration

Applicants can request reconsideration of their original decision. A notice of the decision will be sent to the applicant. Any payment should arrive within a few days of the decision letter. If your claim is denied, you will receive a notice and may request a reconsideration of your claim before the Reconsideration Officer. The Reconsideration Officer's decision is final.

What if I am a minor?

If you are under the age of 18, compensation paid will be secured in a trust fund _____ until reaching the age of majority. Further, a Claimant Form will need to be submitted by the legal guardian of the minor.

Further Support

There are designated mental health support workers to provide support during the claim period. They can provide mental health support and will assist in reading of materials or completion of forms where appropriate.

You can contact health support workers at the following:

(Mental Health Support Workers Information)

Further, an Information Line Liaison can be reached at the following:

For more information

For more information about your choices, or for help with forms, contact:

- Assembly of First Nations:
call toll free:
email: _____@afn.ca
online: www.afn.ca



First Nations Child Welfare Compensation Process

If you are a First Nation child or had a First Nations child who was apprehended through the First Nations child welfare system on or after January 1, 2006 or were denied or delayed the receipt of services under Jordan's Principle between December 12, 2007 and November 2, 2007 you may be entitled to compensation.

This brochure contains information regarding a notice program for compensation available to First Nations children and their caretakers (parents or grandparents) harmed by the child welfare system.

WHAT IS THE FIRST NATIONS CHILD WELFARE COMPENSATION PROCESS?

- In February 2007, the First Nations Child and Family Care Society of Canada and the Assembly of First Nations filed a complaint under the *Canadian Human Rights Act* alleging that the Government of Canada's inequitable provision of child welfare services to First Nations children on reserve and in the Yukon, along with its flawed implementation of Jordan's Principle, was discriminatory on the prohibited grounds of race and national ethnic origin.
- On 26 January 2016, the Canadian Human Rights Tribunal substantiated the complaint and ordered the Canadian Government to cease its discriminatory conduct.
- Compensation is now available for First Nations children and their caretakers (parents or grandparents) who were harmed through the child welfare system. Payments are a lump-sum which will be considered through an application process.

What is Jordan's Principle?

Jordan's Principle allows for First Nations children to receive the public or health services they need when they need them. By establishing a procedure to guarantee immediate care for Indigenous children, Jordan's Principle provides access to public services ordinarily available to other Canadian children so Indigenous children do not experience service denials, delays, or disruptions related to their First Nations status.

Responsibility for services to First Nations children is often shared by federal, provincial/territorial, and First Nations governments; in contrast, funding and delivery of these same services to most other children in Canada falls solely under provincial/territorial jurisdiction. Canadian federal and provincial governments often dispute financial responsibility for services for Indigenous children, resulting in children being left waiting for services they desperately need. Indigenous children are denied services that are available to other children.

A Member's Motion (M-296) endorsing the adoption of Jordan's Principle was unanimously passed in the Canadian House of Commons in 2007. The federal government subsequently led a governmental response to Jordan's Principle, facilitating the development of federal and

provincial/territorial policies and procedures for identifying Jordan's Principle cases and resolving jurisdictional disputes over payment or provision of services to individual First Nations children. This process resulted in a limited application of Jordan's Principle by Indigenous and Northern Affairs Canada to children living on reserve with a disability or short-term condition.

Who can apply for compensation?

Compensation is available for each First Nations child and their parents (or grandparents if the primary guardian) who have been harmed by the child welfare system.

If you are a First Nation child who was apprehended through the First Nations child welfare system on after January 1, 2006 or were denied or delayed the receipt of a health or service under Jordan's Principle between December 12, 2007 and November 2, 2007, you, along with your parents or grandparents (if the primary caregiver) may be entitled to compensation.

The amount of compensation per claimant (\$40,000) consists of both pain and suffering (\$20,000) and special compensation for discrimination that was willful and reckless (\$20,000). Each category of compensation is as follows:

For a First Nations child apprehended who resided on reserve and in the Yukon Territory:

- \$40,000 to each First Nations child unnecessarily removed on or after January 1, 2006.
- \$40,000 to each First Nations parent (or grandparent if primary caregiver) of a child unnecessarily removed on or after January 1, 2006.
- \$40,000 to each First Nations child necessarily removed but placed outside of their families and/or communities on or after January 1, 2006.

For a First Nations child living on or off reserve:

- \$40,000 to each First Nations child that was unnecessarily removed to obtain essential services, or wasn't removed from their family but experienced gaps or delays of services that would have been available under Jordan's Principle between December 12, 2007, and November 2, 2017.

- \$40,000 to each First Nations parent or grandparent who had their child removed and placed in care to access services, or wasn't removed from their family but experienced gaps or delays of services that would have been available under Jordan's Principle between December 12, 2007, and November 2, 2017.
- Compensation cannot exceed \$40,000.

Individuals can opt-out of this compensation scheme. Further, a trust will be established to enable payments to be made to minors upon reaching the age of majority.

How do I apply for compensation?

You may make a claim for money compensation by completing the Claimant Form and sending it to the _____.

The deadline to apply for compensation is (Date). Copies of the Claimant Form are available at (www. _____).


You do not need to pay a lawyer to complete the form. The administrator will help you fill out the form.

(Add documentation needed for application)

How will payments be calculated?

The Claims Administrator will review your Claim Form and determine if you qualify for a payment. If you do, the Claims Administrator will determine the amount of your lump-sum payment. Once an application is processed, applicants will receive a detailed letter explaining their assessment.

Payment, if applicable, will arrive within a few days of the letter. If an applicant is not satisfied with the outcome of their application, they have an opportunity to have their application reconsidered.



FIRST NATIONS CHILD WELFARE COMPENSATION PROCESS

**TO LEARN MORE
ABOUT THE
COMPENSATION
PROCESS, CONTACT:**

First Nations Child
Welfare Compensation
Process
Liaison Phone: _____
(toll free) Email:
Online: www.afn.ca

ASSEMBLY OF FIRST
NATIONS Phone: 1-833-
212-2688 (toll free)
Email: _____@afn.ca
Online: www.afn.ca

If you are a First Nation child who was apprehended through the First Nations child welfare system on or after January 1, 2006 or were denied or delayed the receipt of services under Jordan's Principle between December 12, 2007 and November 2, 2017 you, along with your caretakers (parents or grandparents) may be entitled to compensation.

- Claim Forms for claim forms are available for claimants to apply.
- The deadline to submit a claim form _____.

First Nations Child Welfare Compensation Template - News Article – Ads

First Nations Child Welfare Compensation Program

If you are a First Nation child who was apprehended through the First Nations child welfare system on or after January 1, 2006 or were denied or delayed the receipt of services under Jordan's Principle between December 12, 2007 and November 2, 2017 you, along with your caretakers (parents or grandparents) may be entitled to compensation.

A notice program is currently ongoing for compensation available to First Nations children and their caretakers (parents or grandparents) harmed by the child welfare system.

Why is this compensation available?

On September 6, 2019, the Canadian Human Rights Tribunal found that Canada wilfully and recklessly discriminated against First Nations children in the child welfare system. In this ruling, Canada was ordered to pay the maximum amount allowable under the *Canadian Human Rights Act* to compensate First Nations children, youth and families who have been harmed by the child welfare system or were denied or delayed the receipt of services due to Canada's discriminatory implementation of Jordan's Principle.

Compensation amounts to \$40,000 for each claimant, which includes pain and suffering and wilful and reckless discrimination.

For a First Nations child removed from their family and were subject to Canada's First Nations child and family services program (generally registered Indian children whose parent(s) were resident on reserve or temporarily resident off reserve at the time of the removal) and in the Yukon Territory:

- \$40,000 to each First Nations child unnecessarily removed after January 1, 2006.
- \$40,000 to each First Nations parent or grandparent of a child unnecessarily removed after January 1, 2006.
- \$40,000 to each First Nation child necessarily removed but placed outside of their families and/or communities after January 1, 2006.

The Tribunal has not issued an end date for this order as they have not found Canada in compliance with its orders re: the First Nations Child and Family Services Program.

For a First Nations child living on or off reserve:

- \$40,000 to each First Nations child that was unnecessarily removed to obtain essential services, or wasn't removed from their family but experienced gaps or delays of services that would have been available under Jordan's Principle between December 12, 2007, and November 2, 2017.

- \$40,000 to each First Nations parent or grandparent who had their child removed and placed in care to access services, or wasn't removed from their family but experienced gaps or delays of services that would have been available under Jordan's Principle between December 12, 2007, and November 2, 2017.

Claimants include the First Nation child apprehended and each caretaker (parents or grandparents).

The First Nations Child Welfare Compensation Program has been mandated to provide notice and a claims process for claimants to apply for compensation.

Where can I find more information and submit a claim?

For more information please visit www. _____ or contact the toll-free information at: _____

The deadline to submit a claim is _____.

Radio (PSA) Notice Template - First Nations Child Welfare Compensation Process

Concept: To provide claimants with notice of the compensation process and contact information.

Runtime: ~30 secs

Audio

Music: peaceful music playing lightly in the background.

Narrator Script:

- If you are a First Nation child who was apprehended through the First Nations child welfare system on or after January 1, 2006 or were denied or delayed the receipt of services under Jordan's Principle between December 12, 2007 and November 2, 2017 you, along with your parents or grandparents may be entitled to compensation.
- You can file a claim for compensation through the First Nations Child Welfare Compensation Process, which has been developed to provide a mandated claims process for claimants to submit their claims applications.
- For more information please visit www._____ or contact the toll-free information at: _____

TV (PSA) Notice Template - First Nations Child Welfare Compensation Process

Concept: To provide claimants with notice of the compensation process and contact information.

Runtime: ~30 secs

Audio

Music: peaceful music playing lightly in the background.

Narrator Script:

- If you are a First Nation child who was apprehended through the child welfare system after January 1, 2006 or were denied or delayed the receipt of services under Jordan's Principle between December 12, 2007 and November 2, 2017 you, along with your parents or grandparents may be entitled to compensation.
- You can file a claim for compensation through the First Nations Child Welfare Compensation Process, which has been developed to provide a mandated claims process for claimants to submit their claims applications.
- For more information please visit www._____ or contact the toll-free information at: _____

Visual:

- Appropriate and sensitive video footage (of some sort) with narrator's script on-screen. (Ex. Sixties Scoop – different people walking together by a river or lake. My Records, My Choice – Had a hand holding an eagle feather throughout the ad.)

Overview of the First Nations Child Welfare Compensation Process Concept: To provide claimants with information on the claim process and general information about filing a claim. Runtime: ~2 min		
Audio	Visual	
<ul style="list-style-type: none"> ▪ Music – peaceful music playing lightly in the background. ▪ Narrator will read the on-screen text. 	<p>Background - two options:</p> <ul style="list-style-type: none"> ▪ solid colour – with text below on screen. ▪ Appropriate and sensitive video footage of some sort with text below. <p>On-screen text:</p> <p><u>First Nations Child Welfare Compensation Program</u></p> <ul style="list-style-type: none"> ▪ If you are a First Nation child who was apprehended through the child welfare system after January 1, 2006 or were denied or delayed the receipt of services under Jordan's Principle between December 12, 2007 and November 2, 2017 you, along with your parents or grandparents may be entitled to compensation. ▪ A notice program is currently ongoing for compensation available to First Nations children and their caretakers (parents or grandparents) harmed by the child welfare system. 	<p>1</p> <p>Time – ~30 secs</p>
<p>Narrator will read the on-screen text.</p>	<p>On-screen text will fade and new text will emerge that states:</p> <p><u>Why is this compensation available?</u> On September 6, 2019, the Canadian Human Rights Tribunal found that Canada willfully and recklessly discriminated against First Nations children in the child welfare system. In this ruling, Canada was ordered to pay the maximum amount allowable under the <i>Canadian Human Rights Act</i> to compensate First Nations</p>	<p>2</p> <p>Time – ~1 min</p>

	<p>children, youth and families who have been harmed by the child welfare system or were denied or delayed receipt of services due to Canada's discriminatory implementation of Jordan's Principle.</p> <p>Compensation amounts to \$40,000 for each claimant, which includes pain and suffering and wilful and reckless discrimination. Claimants include the First Nation child apprehended and each caretaker (parents or grandparents).</p>	
<p>Narrator will read on-screen text.</p>	<p>The second set of on-screen text will fade and a third set of text will emerge that states:</p> <p>The First Nations Child Welfare Compensation Program has been mandated to provide notice and a claims process for claimants to apply for compensation.</p> <p><i>Where can I find more information and submit a claim?</i></p> <p>For more information please visit www._____ or contact the toll-free information at: _____.</p> <p>The deadline to submit a claim is _____.</p>	<p>3</p> <p>Time – ~30 secs</p>

Schedule C

THIS IS EXHIBIT "2" TO THE
AFFIDAVIT OF CINDY BLACKSTOCK
SWORN BEFORE ME ON

December 8, 2019

in Ottawa, Ontario


A Commissioner for Taking Oaths

Canadian Human Rights Tribunal (CHRT) Ruling 2019 CHRT 39

— Taxonomy of Compensation Categories for First Nations Children, Youth and Families —

Briefing Note
November 2019



Policy Bench

Fraser Mustard Institute for Human Development

Policy Bench Co-Leads:

Barbara Fallon, Ph.D.
Professor
Factor-Inwentash Faculty of
Social Work
University of Toronto

Steven Miller, M.D.
Head of Neurology
Division of Neurology
The Hospital for Sick Children

Policy Bench Advisory Committee:

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Staff Pediatrician
Pediatric Medicine
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List of Acronyms

AFN	Assembly of First Nations
CANLII	Canadian Legal Information Institute
CFS	Child and Family Services
CHRA	Canadian Human Rights Act
CHRT	Canadian Human Rights Tribunal
FC	Federal Court
FN	First Nations
FNFCS	First Nations Family Caring Society
OHRC	Ontario Human Rights Commission
PEI	Prince Edward Island

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Canadian Human Rights Tribunal (CHRT)

Ruling 2019 CHRT 39

—Taxonomy of Compensation Categories for First Nations Children, Youth and Families —

1.0 Purpose

The purpose of this briefing note is to: (1) develop a taxonomy of compensation categories; and (2) frame questions that will help guide individuals appointed by the Canadian Human Rights Tribunal (CHRT) to carry out the process of identifying individuals eligible to receive compensation according to the conditions set out by 2019 CHRT 39. The development of compensation categories and framing of questions involved:

- a) a content review of the 2019 CHRT 39 ruling;
- b) mapping out the compensation categories, identifying common themes and defining key terms and concepts;
- c) reviewing provincial and territorial child welfare legislation, identifying and defining key terms and concepts;
- d) analyzing and synthesizing information concerning the 2019 CHRT 39 ruling and child welfare legislation in Canada; and
- e) framing questions corresponding to the compensation categories.

2.0 Background

On September 6, 2019, the CHRT issued the eighth non-compliance order—2019 CHRT 39—concerning compensation for First Nations children, youth and families negatively impacted by Canada’s child welfare system. The CHRT found that Canada’s “willful and reckless conduct” and discriminatory child welfare practices have contributed to the ongoing pain and suffering of First Nations children, families and communities. According to the Tribunal’s ruling, the Government of Canada is required to pay First Nations children, youth and families the maximum amount of compensation permitted under the *1985 Canadian Human Rights Act (CHRA)* who were: unnecessarily placed in care since January 1, 2006; necessarily placed in care but outside of their extended families since January 1, 2006 or denied or delayed receiving services between December 12, 2007 and November 2, 2017 as a result of the Government of Canada’s discriminatory application of Jordan’s Principle.

Data from the *2011 Canadian National Household Survey* reveal that Aboriginal children continue to be overrepresented in foster care relative to Canada’s non-Aboriginal child population. Statistics show that Aboriginal children between the ages of 0 and 15 represent only seven

percent of Canada's total child population, but account for 49 percent of the total foster child population (Wray and Sinha, 2015, p. 1). First Nations children accounted for the greatest share of children—approximately 40 percent—between the ages of 0 and 15 in foster care, followed by children identifying as Métis (approximately six percent) and Inuit (approximately two percent) (Wray and Sinha, 2015, p. 3).¹ The disparity between Aboriginal and non-Aboriginal children in care is even more pronounced when examining rates of Aboriginal children in foster care with those of non-Aboriginal foster children. The *2011 Canadian National Household Survey* found that at the national level, the rates of Aboriginal children in foster care according to the various aboriginal identity categories were between six and 15 times higher than the rate of non-Aboriginal foster children (3 per 1,000 children) (Wray and Sinha, 2015, p. 1). The rate of First Nations children in foster care was the highest, with an overall population rate of 45 per 1,000 children followed by children identifying as Inuit (28 per 1,000 children) and Métis (17 per 1,000 children) (Wray and Sinha, 2015, pp. 1, 4).

In 2008, neglect was identified as the primary category of substantiated child maltreatment investigations involving First Nations children, with approximately 46 percent (or 28 per 1,000 First Nation children) of all cases involving some form of neglect (Vandna, Trocmé, Fallon et al., 2011, p. xix).² This included: failure to supervise (physical harm); physical neglect; educational neglect; abandonment; medical neglect; failure to supervise (sexual abuse); permitting criminal behaviour; and failure to provide physiological treatment (Vandna, Trocmé, Fallon et al., 2011, p. 95). The data suggests the overrepresentation of First Nations children in care is driven by child maltreatment cases involving neglect which is closely associated with “household/family structural factors and caregiver risk concerns like those identified in a large proportion of First Nations investigations; factors such as poverty, caregiver substance abuse, social isolation and domestic violence can impede caregiver’s abilities to meet children’s basic physical and psychosocial needs” (Vandna, Trocmé, Fallon et al., 2011, p. xix).³

¹ The percentage of Indigenous children in care can reach 100 percent in some provinces and territories (Ontario Human Rights Commission, 2018).

² Exposure to intimate partner violence accounted for 33 percent (or 20 per 1,000 First Nations children) of substantiated maltreatment investigations involving First Nations children followed by physical abuse and emotional maltreatment each accounting for nine percent (or 6 per 1,000 First Nations children) and finally, sexual abuse for two percent (or 1 per 1,000 First Nations children)” (Vandna, Trocmé, Fallon et al., 2011, p. xix).

³ On April 12, 2018, the Ontario Human Rights Commission (OHRC) released, *Interrupted Childhoods: Over-Representation of Indigenous and Black Children in Ontario Child Welfare*. The report outlines the findings of the OHRC’s inquiry into the over-representation of Indigenous and Black children in Ontario’s child welfare system. The OHRC’s (2018, p. 2) inquiry found that the overrepresentation of Indigenous children in Canada’s foster care system can be attributed to a number of “complex and multi-faceted” issues stemming largely from the intergenerational effects of colonialism and associated child welfare practices.

The Assembly of First Nations (AFN) (2019, n.p.) estimates up to 54,000 children may be eligible for compensation. According to estimates by a Government of Canada official, compensation under the terms of the 2019 CHRT 39 ruling could reach \$6 billion if compensation is distributed to eligible victims by 2020 and an estimated \$8 billion if delays in the compensation process extend implementation into 2025/2026 (Perron Affidavit, 2019, para. 39).

3.0 Status

The CHRT has ordered the Government of Canada and the complainants in the proceedings—First Nations Family Caring Society (FNFCS) and the AFN—to devise a plan of action identifying who qualifies for compensation and the best method for the distribution of compensation covered by the CHRT's decision. The CHRT has given the parties until December 10, 2019 to submit their proposals for review.⁴ On October 4, 2019—three days before the October 7, 2019 deadline to appeal—the Government of Canada filed an application to the Federal Court for a judicial review and a stay of the CHRT's compensation ruling. In its application, the Government of Canada claims awarding compensation to those eligible under the terms of the Tribunal's decision is "inconsistent with the nature of the complaint, the evidence, past jurisprudence and the [CHRA]."⁵ On October 11, 2019, the Federal Court appointed Justice Paul Favel as Case Management Judge to manage the parties involved in the case.⁶ Hearings on Canada's stay application will be held in Federal Court on November 25 and 26, 2019.

⁴ *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada*, 2019 CHRT 39 at para. 269.

⁵ See *Attorney General of Canada v First Nations Child and Family Caring Society of Canada, Assembly of First Nations, Canadian Human Rights Commission, Chiefs of Ontario, Amnesty International, Nishnawbe Aski Nation*, 2019 CHRT 39, Notice of Application for Judicial Review to FC.

⁶ See *Attorney General of Canada and First Nations Child and Family Caring Society of Canada, Assembly of First Nations, Canadian Human Rights Commission, Chiefs of Ontario, Amnesty International and Nishnawbe Aski Nation*. Order.

4.0 Compensation Categories

Three central compensation categories are extrapolated from the 2019 CHRT 39 ruling:

Category 1: Compensation for First Nations Children and their Parents or Grandparents in Cases of Unnecessary Removal of a Child in the Child Welfare System;

Category 2: Compensation for First Nations Children in Cases of Necessary Removal of a Child in the Child Welfare System

Category 3: First Nations Children and their Parents or Grandparents in Cases of Unnecessary Removal of a Child to Obtain Essential Services and/or Experienced Gaps, Delays and Denials of Services that Would Have Been Available under Jordan's Principle.

These have been further divided into subcategories, for which the eligibility requirements are explained below.

4.1 Compensation Category 1 – Compensation for First Nations Children and their Parents or Grandparents in Cases of Unnecessary Removal of a Child in the Child Welfare System

Table 1: Compensation Category 1

Compensation Category 1 — First Nations children and their parents or grandparents in cases of unnecessary removal of a child in the child welfare system

Time Period: *January 1, 2006 (date following last WEN DE report)⁷ until earliest of - either (1) Panel decides that unnecessary removal of First Nations children has ceased; (2) Parties agreed on a settlement agreement for long-term relief; or (3) Panel ceases to retain jurisdiction and amends the order.*

Eligibility Requirements:

1A) First Nations children living on reserve and in the Yukon Territory who

- Were **unnecessarily apprehended** *due to* substantiated neglect *driven by*
 - poverty,
 - no housing *OR* deemed inappropriate housing,
 - *AND/OR* substance abuse
- **AND placed in care** outside of their homes, families, *or* communities
- **AND** especially in regards to substance abuse, **did not benefit from prevention services** in the form of least disruptive measures or other prevention services permitting them to keep their child safely in their homes, families and communities⁸
- **EVEN IF** they were **reunited with the immediate and extended family** at a later date
- **EXCEPT IF** qualify for compensation under CHRT 39, para. 250 (see Categories 3A,3B)

Source: First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada, 2019 CHRT 39 at paras. 245-246.

Compensation: \$20,000 (para. 246) + \$20,000 (paras. 253-254) = \$40,000

(Continued on Next Page)

⁷ See First Nations Caring Society (2005).

⁸ 2016 CHRT 2 ruling found that First Nations children living on-reserve were discriminated against by the Canadian government in part because they did not receive adequate prevention services. This finding was not the subject of a judicial review by the Canadian Government and has therefore been assumed to be true throughout the Briefing Note.

4.1 Compensation Category 1 – First Nations Children and their Parents or Grandparents in Cases of Unnecessary Removal of a Child in the Child Welfare System

Table 1: Compensation Category 1

Compensation Category 1: First Nations children and their parents or grandparents in cases of unnecessary removal of a child in the child welfare system

Time Period: *January 1, 2006 (date following last WEN DE report)*⁹ until earliest of - either (1) Panel decides that unnecessary removal of FN children has ceased; (2) Parties agreed on a settlement agreement for long-term relief; or (3) Panel ceases to retain jurisdiction and amends the order.

Eligibility Requirements:

1B) First Nations parents or grandparents living on reserve and in the Yukon Territory who

- Had their child **unnecessarily apprehended** *due to* substantiated neglect *driven by*:
 - poverty,
 - no housing *OR* deemed inappropriate housing,
 - *AND/OR* substance abuse
- **AND placed in care** outside of their homes, families, or communities
- **AND** especially in regards to substance abuse, **did not benefit from prevention services** in the form of least disruptive measures or other prevention services permitting them to keep their child safely in their homes, families and communities¹⁰
- **EXCEPT IF**
 - the parents or grandparents **sexually, physically, OR psychologically abused** their children
 - *OR* qualify for compensation under CHRT 39, para. 251 (see Categories 3C, 3D)

Source: First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada, 2019 CHRT 39 at paras. 247 and 255.

Compensation: \$20,000 each child (para. 248) + \$20,000 (paras. 253-254) = \$40,000

⁹See First Nations Caring Society (2005).

¹⁰2016 CHRT 2 ruling found that First Nations children living on-reserve were discriminated against by the Canadian government in part because they did not receive adequate prevention services. This finding was not the subject of a judicial review by the Canadian Government and has therefore been assumed to be true throughout the Briefing Note.

4.2 Compensation Category 2 – Compensation for First Nations Children in Cases of Necessary Removal of a Child in the Child Welfare System

Table 2: Compensation Category 2

Compensation Category 2: First Nations children in cases of necessary removal of a child in the child welfare system.

Time Period: *January 1, 2006 until earliest of - either (1) Panel decides that unnecessary removal of First Nations children has ceased; (2) Parties agreed on a settlement agreement for long-term relief; or (3) Panel ceases to retain jurisdiction and amends the order.*

Eligibility Requirements:

- 2) First Nations **children** living on reserve and in the Yukon territory who
- Were **necessarily apprehended** from their homes
 - *BUT* placed in care **outside of their extended families and communities, and therefore** did not benefit from prevention services
 - *EXCEPT IF* qualify for compensation under CHRT 39, para. 250 (see Categories 3A, 3B)

Source: First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada, 2019 CHRT 39 at para. 249.

Compensation: \$20,000 (para. 249) + \$20,000 (paras. 253-254) = \$40,000

4.3 Compensation Category 3 – Compensation for First Nations Children and their Parents or Grandparents in Cases of Unnecessary Removal of a Child to Obtain Essential Services and/or Experienced Gaps, Delays and Denials of Supports, Services, and/or Products that Would Have Been Available under *Jordan's Principle*

Table 3: Compensation Category 3

Compensation Category 3: Compensation for First Nations children and their parents or grandparents in cases of unnecessary removal of a child to obtain essential supports, services, and/or products and/or experienced gaps, delays and denials of supports, services, and/or products that would have been available under *Jordan's Principle*. *Jordan's Principle* applies to children, parents, or grandparents living on or off reserve. Substantive equality is a legal requirement in *Jordan's Principle* and applies to Compensation Category 3.

Time Period: *Between December 12, 2007 (date of adoption in the House of Commons of the *Jordan's Principle* motion)¹¹ and November 2, 2017 (date of Tribunal's CHRT 35 ruling on *Jordan's Principle*).¹²*

Eligibility Requirements:

3A) First Nations children, living on or off reserve, who

- Were **deprived of essential services as a result of:**
 - a gap, delay *AND/OR* denial of services
- **AND placed in care** outside of their homes, families, or communities **in order to receive those services**

Source: First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada, 2019 CHRT 39 at para. 250.

Compensation: \$20,000 (para. 250) + \$20,000 (paras. 253-254) = \$40,000

3B) First Nations children, living on or off reserve, who

- **WITHOUT** being placed in out-of-home care
- **DID NOT** benefit from services covered by *Jordan's Principle* as defined in 2017 CHRT 14 and 35,
 - *OR* who received such services after an unreasonable delay
 - *OR* upon reconsideration ordered by the Tribunal

Source: First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada, 2019 CHRT 39 at para. 250.

Compensation: \$20,000 (para. 250) + \$20,000 (paras. 253-254) = \$40,000

(Continued on Next Page)

¹¹ See Canada. Parliament, House of Commons, Journals, 39th Parliament, 2nd sess., 2007 December 12, Number 036.

¹² See *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (Representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 35.

4.3 Compensation Category 3 – First Nations Children and their Parents or Grandparents in Cases of Unnecessary Removal of a Child to Obtain Essential Services and/or Experienced Gaps, Delays and Denials of Supports, Services, and/or Products That Would Have Been Available Under *Jordan's Principle*

Table 3: Compensation Category 3

Compensation Category 3: Compensation for First Nations children and their parents or grandparents in cases of unnecessary removal of a child to obtain essential supports, services, and/or products and/or experienced gaps, delays and denials of services that would have been available under *Jordan's Principle*.

Jordan's Principle applies to children, parents, or grandparents living on or off reserve. Substantive equality is a legal requirement in *Jordan's Principle* and applies to Compensation Category 3.

Time Period: Between December 12, 2007 (date of adoption in the House of Commons of the *Jordan's Principle* ruling)¹³ and November 2, 2017 (date of Tribunal's CHRT 35 ruling on *Jordan's Principle*).¹⁴

Eligibility Requirements:

3C) First Nations parents or grandparents, living on or off reserve, who

- Were **deprived of essential services** for their child as a result of:
 - a gap, delay *AND/OR* denial of services
- *AND* had their **child placed in care** outside of their homes, families, or communities **in order to receive these services and therefore**, did not benefit from services covered under *Jordan's Principle* as per 2017 CHRT 14 and 35
- *EXCEPT IF* the parents or grandparents **sexually, physically, OR psychologically abused** their children

Source: *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada*, 2019 CHRT 39 at paras. 251 & 255.

Compensation: \$20,000 (para. 251) + \$20,000 (paras. 253-254) = \$40,000

3D) First Nations parents or grandparents, living on or off reserve,

- Whose child was **not removed from the home**
- *BUT* was **denied services**
 - *OR* received services after an unreasonable delay
 - *OR* upon reconsideration ordered by the Tribunal
- *EXCEPT IF* the parents or grandparents **sexually, physically, OR psychologically abused** their children

Source: *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada*, 2019 CHRT 39 at paras. 251 & 255.

Compensation: \$20,000 (para. 251) + \$20,000 (paras. 253-254) = \$40,000

¹³ See Canada. Parliament, House of Commons, Journals, 39th Parliament, 2nd sess., 2007 December 12, Number 036.

¹⁴ See *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (Representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 35.