



Canadian Human Rights Tribunal Rules on Eligibility for Compensation for First Nations Children & Families 2020 CHRT 7



“Canada should not benefit financially because children, youth and family members have died waiting for Canada’s racial discrimination to end.” [para. 137]

On April 16, 2020 the Canadian Human Rights Tribunal (CHRT) issued a ruling regarding three questions related to eligibility for compensation for First Nations children and families. It follows the ruling issued in September 2019 in which the CHRT ordered Canada to compensate First Nations children and families who experienced discriminatory treatment in child welfare services or who were denied or delayed receipt of services due to Canada’s discriminatory implementation of Jordan’s Principle (2019 CHRT 39, the “compensation order”).

The CHRT also ordered the Parties to discuss the process for compensation. Despite delays in discussions due to Canada filing a judicial review of the compensation order, Canada was eventually ordered to continue discussions with the Parties. A draft “Framework for the Payment of Compensation under 2019 CHRT 39” was created and the Parties requested the CHRT rule on three questions where consensus could not be reached and that required further guidance. The questions posed by the Parties and the ruling from the CHRT are as follows:

1. At what age should beneficiaries again unrestricted access to the compensation?

Decision: The provincial/territorial age of majority

2. Should compensation be available to children who entered care prior to January 1, 2006 but remained in care as of that date?

Decision: Yes

3. Should compensation be paid to the estates of deceased individuals who otherwise would have been eligible?

Decision: Yes

Background

On September 6, 2019 the Canadian Human Rights Tribunal (CHRT) found that Canada wilfully and recklessly discriminated against First

Nations children and their families (2019 CHRT 39). The CHRT ordered Canada to pay the maximum amount allowable under the *Canadian Human Rights Act* (CHRA) to compensate certain First Nations children, their parents or grandparents who have been affected by the discriminatory treatment in the child welfare system since January 1, 2006 or were denied or delayed receipt of services due to Canada’s discriminatory implementation of Jordan’s Principle from December 12, 2007 to November 2, 2017. Per the compensation order, children, parents and grandparents who are entitled to receive \$40,000 in compensation include:

- Each child, on reserve or in the Yukon, taken into care unnecessarily¹ (removals that may have been prevented if adequate services were available) since January 1, 2006.
- Each child, on reserve or in the Yukon, taken into care before January 1, 2006 and remained in care as of January 1, 2006.
- Each child, on reserve or in the Yukon, removed from their families then returned after January 1, 2006.
- Each parent or grandparent caring for a child, on reserve or in the Yukon, who was unnecessarily removed since January 1, 2006.
- Each child who was removed from their homes on reserve or in the Yukon due to abuse since January 1, 2006 and were placed outside their extended families or communities and thus did not benefit from least disruptive measures.
- Each First Nations child on or off reserve who, as a result of a gap, delay and/or denial of services, was placed in care outside of their home, family and community in order to receive those services between December 12, 2007 and November 2, 2017.

¹ Parents or grandparents responsible for physical, sexual or emotional abuse of a child are not eligible for compensation.

- Each First Nations child on or off reserve who was not removed from their family home but was either denied services covered under Jordan's Principle or who received such services after an unreasonable delay or upon reconsideration ordered by the Tribunal.
- Each parent or grandparent who, as a result of a service gap, denial or delay, were denied essential services and had a child removed from the home between December 12, 2007 and November 2, 2017.
- Each parent or grandparent whose child was not removed from their home but was denied services covered under Jordan's Principle or received such services after an unreasonable delay or upon reconsideration ordered by the Tribunal.

The CHRT gave the Parties until December 10, 2019 to develop a process for the distribution of the compensation. On October 4, 2019, Canada submitted a judicial review of the CHRT's decision to the Federal Court seeking an order to stop all financial compensation and a motion to put the CHRT order on hold (a motion to stay) until the Federal Court decided on the judicial review. Hearings were held on November 25-26, 2019 at the Federal Court. That same week, Federal Court Justice Favel denied Canada's motion to stay CHRT proceedings. Following the denial, Canada asked the CHRT for an extension to the December 10 deadline to make submissions on the compensation process. The CHRT approved this and granted a further extension at Canada's request to February 21, 2020.

Orders

The Parties made submissions to the Canadian Human Rights Tribunal (CHRT) on February 21, 2020 regarding the compensation process. A draft "Framework for the Payment of Compensation under 2019 CHRT 39" (the Draft Framework) was created and the Parties requested the CHRT rule on three questions where consensus could not be reached and that required further guidance. The CHRT ruled on the three questions as follows:

At what age should beneficiaries gain unrestricted access to the compensation?

The CHRT ruled that children who experienced discriminatory treatment as defined in the compensation order (2019 CHRT 39) would gain access to the compensation at their provincial/territorial age of majority. The CHRT believes the Draft Framework should include supports for compensation beneficiaries, including the

recommendations issued in a report by Youth in Care Canada (YICC) [paras. 30-34].

Should compensation be available to children who entered care prior to January 1, 2006 but remained in care as of that date?

The CHRT ruled that children who entered care prior to January 1, 2006 but remained in care as of that date should be eligible for compensation. The CHRT added two further orders to the compensation order (2019 CHRT 39) regarding who would be entitled to receive compensation:

- Each First Nations child, on reserve or in the Yukon, who were removed from their homes and taken into care for compensable reasons (outlined in 2019 CHRT 39) prior to or on January 1, 2006 and remained in care on January 1, 2006 [para. 75].
- Each parent or grandparent caring for a First Nations child, on reserve or in the Yukon, who was unnecessarily removed from their homes and taken into care for compensable reasons (outlined in 2019 CHRT 39) prior to or on January 1, 2006 and remained in care on January 1, 2006 [para. 76].

Should compensation be paid to the estates of deceased individuals who otherwise would have been eligible?

The CHRT ruled that compensation be paid to the estates of deceased First Nations children and parents or caregiving grandparents who have died waiting for Canada's discrimination to end. The CHRT issued a further order to the compensation order (2019 CHRT 39) regarding who would be entitled to receive compensation:

- Each First Nations child and parent or grandparent caring for a First Nations child who have died after suffering discriminatory practices described in the compensation order (2019 CHRT 39) [para. 151].

The CHRT requested further submissions on the point of whether First Nations children and their parents or grandparents on or off reserve who, as a result of Canada's racial discrimination found in this case, experienced a gap, delay and/or denial of services under Jordan's Principle, were deprived of essential services and were removed and placed in care in order to access services prior to December 12, 2007 or on December 12, 2007 should be compensated.

For more information on the case, visit fnwitness.ca or contact info@fncaringsociety.com.