

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and
ASSEMBLY OF FIRST NATIONS**

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

**ATTORNEY GENERAL OF CANADA
(Representing the Minister of Indigenous Services
Canada)**

Respondent

- and -

**CHIEFS OF ONTARIO,
AMNESTY INTERNATIONAL CANADA and
NISHNAWBE ASKI NATION**

Interested Parties

**NOTICE OF MOTION FOR APPROVAL OF THE
COMPENSATION FINAL SETTLEMENT AGREEMENT**

TAKE NOTICE THAT THE COMPLAINANTS AND RESPONDENT will make a motion in writing to the Canadian Human Rights Tribunal (the “CHRT”) located at 240 Sparks Street, 6th Floor West, Ottawa, Ontario, as soon thereafter as it may be heard.

AND TAKE NOTICE THAT THIS MOTION IS MADE under Rule 3 of the Tribunal’s *Rules of Procedure (Proceedings Prior to July 11, 2021)* and is for orders under paragraph 53(2)(b) of the *Canadian Human Rights Act* (the “CHRA”) and under Rule 1(6) and 3(2)(d) and pursuant to the Tribunal’s continuing jurisdiction in this matter. The proposed motion will be heard in person, subject to the Panel’s direction for a hearing or further submissions.

AND TAKE NOTICE THAT THIS MOTION IS FOR confirmation that the Compensation Final Settlement Agreement (the “**Settlement**”) satisfies the compensation orders and framework for compensation made by this Tribunal.

AND TAKE NOTICE THAT THE GROUNDS FOR THE MOTION ARE:

Tribunal Proceedings and Orders

1. In February 2007, the Assembly of First Nations (the “**AFN**”) and the First Nations Child and Family Caring Society (the “**Parties**”) filed complaints under the CHRA. The complaint stated that the Government of Canada was discriminating against First Nations children and families by underfunding the First Nations Child and Family Services (“**FNCFS**”) Program on-reserve and in the Yukon, and by failing to fully implement Jordan’s Principle.
2. On January 26, 2016, (2016 CHRT 2) the Tribunal ordered Canada to (i) cease its discriminatory practices and reform the FNCFS Program and *1965 Agreement* to reflect the findings in this decision; (ii) cease applying its narrow definition of Jordan’s Principle and to take measures to implement the full meaning and scope of Jordan’s Principle; and (iii) take measures to prevent the recurrence of the discrimination found by the Tribunal (the “**Merits Decision**”).
3. On September 6, 2019 (2019 CHRT 39) the Tribunal ordered Canada to compensate certain victims of discrimination under the FNCFS Program who were removed from their homes, families and communities and their parents or caregiving grandparents, and ordered Canada to compensate certain victims of Canada’s discriminatory application of Jordan’s Principle. Included in the decision were First Nations children on-reserve and in the Yukon who were unnecessarily removed from their homes and communities from 2006 onwards, and First Nations children who were denied the essential services and other supports needed, or received after a delay, because the Government of Canada failed to meet the legal requirements of Jordan’s Principle.
4. The Tribunal did not order Canada to immediately pay compensation to the particular victims set out in the Compensation Entitlement Decision. Instead, it ordered Canada to consult with the First Nations Child and Family Caring Society (the “**Caring Society**”) and

the AFN to develop a compensation distribution framework to arrive at a final order for compensation.

5. On October 4, 2019, Canada applied for judicial review of the Compensation Entitlement Decision and sought a stay of the Tribunal's proceedings. After the Federal Court dismissed the stay motion on November 27, 2019, Canada agreed to work with the Caring Society and the AFN on the framework.
6. On February 21, 2020, the Caring Society, the AFN, and Canada submitted a draft compensation framework to the Tribunal (the "**Compensation Framework**"). From February 2020 to December 2020, the Caring Society, the AFN and Canada worked to finalize the Compensation Framework, as the Tribunal made further orders on issues related to eligibility for the estates of deceased victims (2020 CHRT 7); definitions of "service gap", "essential service" and "unreasonable delay" for the purpose of Jordan's Principle compensation (2020 CHRT 15); and an order that compensation owing to minor beneficiaries and those without legal capacity be held in trust (2021 CHRT 6). On February 12, 2021, the Tribunal directed that compensation be paid out pursuant to the Compensation Framework. Shortly thereafter, Canada amended its Notice of Application and indicated its intent to seek judicial review of the Compensation Payment Decision.
7. On March 17, 2021 (2021 CHRT 12), the Tribunal approved an order on consent of the Parties regarding non-agency First Nations, requiring Canada to develop and implement an interim funding model for First Nations that receive services under the FNCFS Program but not through a FNCFS Agency. Funding is to ensure substantive equality, the best interest of the child, and accounts for inflation, population growth, and supports governance and capacity development.
8. On June 14-18, 2021, the Federal Court heard Canada's application for judicial review of the Compensation Entitlement Decision, the Compensation Payment Decision, and the Tribunal's orders regarding eligibility under Jordan's Principle (2020 CHRT 20 and 2020 CHRT 36). On September 29, 2021, the Federal Court (2021 FC 969) dismissed Canada's applications in their entirety.

9. On October 29, 2021, Canada appealed the Federal Court’s order (2021 FC 969) upholding the Compensation Entitlement Decision and the Compensation Payment Decision to the Federal Court of Appeal (Federal Court of Appeal File No. A-290-21), but indicated its desire to move forward with intensive negotiations to settle the outstanding compensation for First Nations children who had been discriminated against via the FNCFS Program, in terms of the receipt of services under Jordan’s Principle, as well as the necessary reforms to the FNCFS Program. Canada’s appeal was put into abeyance with the consent of the Parties. The AFN insisted that discussions on compensation also include a separate track on long-term reform. Canada also intended and therefore agreed that it was open to negotiations on both compensation and long-term reform.

Reaching a Compensation Final Settlement Agreement

10. In the Fall of 2021, the Parties entered into negotiations and reached an Agreement-in-Principle (the “AIP”) on Compensation for the discrimination that First Nations children and families experienced under the Government of Canada’s FNCFS Program and narrow application of Jordan’s Principle. The Parties were assisted by the Honourable Murray Sinclair.
11. On December 31, 2021, the Parties reached an AIP on Compensation which was announced on January 4, 2022. The AIP on Compensation includes children who were denied the essential services and other supports they needed or received them after an unreasonable delay, because Canada failed to meet the essential needs of First Nations children and failed to meet the legal requirements of Jordan’s Principle. Some of the caregivers of these children will also be compensated.
12. As part of the AIP, the Complainants and Respondent committed to reforming the FNCFS Program by March 31, 2023, as well as improving compliance with and reforming Jordan’s Principle.
13. On June 30, 2022, the Complainants and Respondent executed a Settlement in line with Compensation Decision of 2019 CHRT 39 and subsequent Orders and the Compensation Framework. Adjustments were made to ensure the Settlement stayed within the parameters

of the compensation provided by Canada and the settlement is broader in some respects than the orders of this Tribunal. The Settlement is designed so Class Members, or subsets of Class Members, receive direct compensation, while some others indirectly benefit from the Settlement without receiving direct compensation through mechanisms the Parties have provided.

Endorsement of the Compensation Final Settlement Agreement

14. The AFN and Canada seek the following Orders:

- a) a declaration that the Compensation Final Settlement Agreement is fair, reasonable, and satisfies the Tribunal's Compensation Order 2019 CHRT 39, and all related clarifying orders.
- b) In the alternative, the AFN and Canada seek a variation of the Tribunal's Compensation Decision, Compensation Framework, and other compensation related orders, to conform to the proposed Final Settlement Agreement.
- c) in either event, that the Tribunal's endorsement of the Final Settlement Agreement or variation of its Compensation Decision to conform to the terms thereof shall remain contingent on the Federal Court of Canada's approval of the terms of the Final Settlement Agreement.

15. The Parties further rely on subsection 91(24) of the *Constitution Act, 1867*; Section 53(2) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6; Rules 1(6), 3(1), and Rule 3(2) of this Tribunal's *Rules of Procedure (Proceedings prior to July 11, 2021)*; the Tribunal's implied jurisdiction to control its own processes; and such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The affidavit of Janice Ciavaglia, dated July 22, 2022;
- (b) The affidavit of Valerie Gideon, dated July 6, 2022; and

(c) Such further and other materials as counsel may advise and this Tribunal may permit.

Dated: July 22, 2022



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