

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Ottawa, Canada K1A 1J4

July 26, 2023

By e-mail

(See Distribution List)

Dear Parties,

**Re: First Nations Child and Family Caring Society et al. v. Attorney General of Canada
Tribunal File: T1340/7008**

The Panel (Chair Marchildon and Member Lustig) wishes to provide the parties with the following decision with reasons to follow.

Ruling from the Bench akin to an oral ruling with reasons to follow on the Revised Agreement for compensation

Introduction

It took great leadership for the Assembly of First Nations (AFN) and Canada to collaborate and arrive at the previous historic Final Settlement Agreement (FSA). It took even greater leadership from the AFN and Canada's Ministers and their teams to receive the Tribunal's criticism of some aspects of the FSA (for example, leaving out some of the victims/survivors already recognized by this Tribunal), consult the Chiefs-in-Assembly, bring the Caring Society back to the negotiation table and arrive at this transformative and unprecedented Revised Settlement Agreement. According to the parties, this is the largest compensation settlement in Canadian history and it now includes a commitment from the Minister of Indigenous Services to request an apology from the Prime Minister. The Tribunal believes this was an example of grace under pressure and commends the parties to the Revised Agreement and everyone involved for this outstanding achievement that will provide some measure of justice to First Nations children and families who have unjustly suffered because of their race instead of being treated honorably and justly. First Nations children ought to be honored for who they are, beautiful, valuable, strong and precious First Nations persons. Governments, leaders and adults in any Nation have the sacred responsibility to honor, protect and value children and youth, not harm them. Complete justice will be achieved when systemic racial discrimination no longer exists. The compensation in this case is only one component. The Tribunal assisted meaningfully by the parties, has always focused on the need for

a complete reform, the elimination of the systemic racial discrimination found and the need to prevent similar practices from arising. This continues to be the Tribunal's focus to see transformation and justice established for generations to come.

The Panel is grateful for the Commissions' human rights centered contributions and for the Caring Society's courageous leadership ensuring that no child is left behind and that no one loses entitlement to compensation ordered by the Tribunal. The Panel also commends the First Nations Chiefs-in-Assembly at the AFN for their leadership in adopting a resolution in the spirit of reconciliation and prompting further negotiations on compensation to ensure that no child is left behind.

The Panel recognizes the valuable contributions of the Chiefs of Ontario and the Nishnawbe Aski Nation.

The Panel also recognizes Amnesty International's past contributions on this important issue of compensation.

Finally, the Panel recognizes the AFN's and the Caring Society's instrumental role in an effort to obtain meaningful compensation for First Nations children and families.

The Panel wishes to recognize and honor the true overcomers and heroes in this case, the First Nations children and families.

The Panel Chair speaks peace to every First Nations child, youth and young adult's heart in Turtle Island (Canada) and, to all First Nations individuals and their Communities and Nations.

The joint motion is allowed.

Before turning to the orders that the Tribunal is granting, the Panel wishes to address two points about its interpretation of the Revised Agreement.

First, the Tribunal notes that Canadians cannot prospectively renounce their rights under the *CHRA*. Accordingly, the release in s. 10.01 of the Revised Agreement cannot release Canada from human rights violations for subsequent actions. The Tribunal wishes to explicitly note its observation that any human rights complaints for events post-dating the end of the Revised Agreement (2017 for Jordan's Principle; 2022 for removed children) are not precluded by the releases. The Tribunal understands the releases to intend to prevent Class Members who have not opted-out – as well as their estates, heirs, Estate Executors, estate Claimants, and Personal Representatives – from the Revised Agreement from claiming further compensation from Canada for harms described in the Revised Agreement even after 2017 and 2022.

For non-class members, the Tribunal does not view the release as limiting liability for any discrimination that may occur subsequent to 2017 or 2022 should Canada fail to eliminate the systemic racial discrimination identified in this case and prevent the emergence of similar practices. Finally, the Revised Agreement cannot bar claims of discrimination in other federal programs or services.

The Tribunal does not anticipate that its interpretation of the release differs from that of the parties. Further, the Tribunal clarifies that it has only considered the release from the perspective of the *CHRA*, not a civil or class action claim. The Tribunal intends its comments on the release to

confirm what already appears obvious from the language of the release itself. This does not reflect hesitation on the Tribunal's part in approving the Revised Agreement but the Tribunal's experience that it is often valuable to make wording abundantly clear. These comments should not cause the parties any hesitation in seeking the Federal Court's approval of the Revised Agreement.

Second, the Tribunal finds that the Revised Agreement does not resolve the issue of long-term remedies, reform, eliminating the systemic discrimination found and preventing similar practices from recurring. Accordingly, this ruling does not address those issues.

Orders

- A) The Tribunal finds that the revised First Nations Child and Family Services, Jordan's Principle and Trout Class Settlement Agreement dated April 19, 2023, fully satisfies the Tribunal's Compensation Orders (2019 CHRT 39, 2020 CHRT 7, 2020 CHRT 15, 2021 CHRT 6, 2021 CHRT 7 and 2022 CHRT 41) in this proceeding;
- B) The Tribunal finds that the Revised Agreement fully addresses the derogations identified by the Tribunal by providing full compensation to all those entitled further to the Tribunal's Compensation Orders, including: First Nations children removed from their homes, families and communities; First Nations caregiving parents/grandparents who experienced multiple First Nations children removed from their homes, families, and communities; and, First Nations children eligible for compensation due to denials, unreasonable delays, and gaps in essential services due to Canada's discriminatory approach to Jordan's Principle;
- C) The Tribunal makes an order clarifying its order 2021 CHRT 7 further to the Compensation Framework, providing that together caregiving parents and caregiving grandparents will be limited to \$80,000 in total compensation regardless of the number of sequential removals of the same child.
- D) The Tribunal makes an order varying 2020 CHRT 7, providing that compensation of \$40,000 plus applicable interest shall be paid directly to the child(ren) of the deceased parent/caregiving grandparent on a pro rata basis where the estate of that deceased parent/caregiving grandparent would otherwise be entitled to compensation under 2020 CHRT 7. Where there are no surviving children, the compensation will flow to the estate of the deceased parent/caregiving grandparent;
- E) The Tribunal makes an order clarifying its order 2019 CHRT 39, to confirm that caregiving parents (or caregiving grandparents) of Canada's discrimination towards Jordan's Principle victims/survivors must themselves have experienced the highest level of impact (including pain, suffering or harm of the worst kind) in order to receive compensation (\$40,000 plus applicable interest) for their child's essential service denials, unreasonable delays and gaps;
- F) The Tribunal makes an order finding that the claims process set out in the Revised Agreement and further measures to be developed by class counsel in consultation with experts (including the Caring Society) and approved by the Federal Court satisfies the requirements under the compensation framework as ordered in 2019 CHRT 39 and 2021 CHRT 7. This order supersedes the Tribunal's order in 2021 CHRT 7;

- G) The Tribunal makes an order that, conditional upon the Federal Court's approval of the Revised Agreement, the Tribunal's jurisdiction over its Compensation Orders will end on the day that all appeal periods in relation to the Federal Court's approval of the Revised Agreement expire or, alternatively, on the day that any appeal(s) from the Federal Court's decision on the approval motion for the Revised Agreement are finally dismissed;
- H) The Tribunal makes an order that the parties will report to the Tribunal, within 15 days of each of the following: (1) the result of the Federal Court's decision on approval of the Revised Agreement; (2) the expiry of the appeal period relating to the Federal Court's decision on the Revised FSA or of an appeal having been commenced;

Retention of jurisdiction.

This ruling does not affect the Panel's retention of jurisdiction on other issues and orders in this case other than as specified in A) and G).". Consistent with the approach to remedies taken in this case, the Panel continues to retain jurisdiction on all its rulings and orders to ensure that they are effectively implemented and that systemic discrimination is eliminated. The Panel will revisit its retention of jurisdiction once the parties have filed a final and complete agreement on long-term relief, whether on consent or otherwise, that is found to be satisfactory by this Panel in eliminating the systemic discrimination found and preventing its reoccurrence or, after the adjudication of outstanding issues leading to final orders or, as the Panel sees fit considering the upcoming evolution of this case.

Should you have any questions, please do not hesitate to contact the Registry Office by e-mail at registry.office@chrt-tcdp.gc.ca by telephone at 613-878-8802 or by fax at 613-995-3484.

Yours truly,

Judy Dubois
Registry Officer

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