

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

**WRITTEN SUBMISSIONS OF THE
CANADIAN HUMAN RIGHTS COMMISSION**

(on the joint motion of the Complainants and Respondent dated June 30, 2023)

1. The Assembly of First Nations (“AFN”), First Nations Child and Family Caring Society (“Caring Society”) and Attorney General of Canada (“Canada”) (together, the “Moving Parties”) have filed a joint motion (“Joint Motion”).¹ Together, they ask the Tribunal to clarify or vary certain aspects of its compensation rulings, then find the Revised Final Settlement Agreement (“Revised Agreement”) fully satisfies those rulings, as clarified or varied.

¹ Notice of Motion for Approval of the Revised Compensation Final Settlement Agreement and Consent Relief of the Assembly of First Nations, First Nations Child and Family Caring Society of Canada and Attorney General of Canada dated June 30, 2023.

2. The Commission consents to the Joint Motion. The Revised Agreement addresses the concerns the Caring Society and/or the Commission raised on the previous motion², and the issues the Tribunal flagged in its previous ruling.³ The Tribunal should grant the relief sought by the Moving Parties.

Discussion

3. The Moving Parties have filed extensive evidence⁴, and detailed written submissions⁵, in support of the Joint Motion. Together, they describe (i) the hard work that was done to arrive at the Revised Agreement, (ii) the ways the Revised Agreement resolves the issues the Tribunal identified with the previous proposed settlement, and (iii) the nature of the Tribunal's retained jurisdiction to grant the relief being sought.

4. The Moving Parties generously shared drafts of their submissions before filing. The Commission provided comments, and the Moving Parties engaged with those comments in a meaningful way.

5. In the circumstances, the Commission will not repeat or restate all the things the Moving Parties have already said in their materials. The Caring Society and the AFN in particular have given detailed accountings of how the Revised Agreement builds off its predecessor. Suffice it to say the Commission agrees with them that:

- a. The Revised Agreement significantly increases the available amount of overall compensation to be paid.⁶

² Written Submissions of First Nations Child and Family Caring Society of Canada dated September 9, 2022; Submissions of the Canadian Human Rights Commission (Re the motion by the Assembly of First Nations for approval of the Final Settlement Agreement on compensation) dated September 9, 2022.

³ [First Nations Child and Family Caring Society et al. v. Attorney General of Canada](#), 2022 CHRT 41.

⁴ See the affidavits of Lucyna M. Lach (affirmed June 20, 2023), Craig Gideon (affirmed June 30, 2023), Dr. Cindy Blackstock (affirmed June 30, 2023) and Dr. Valerie Gideon (affirmed June 30, 2023).

⁵ Factum of the complainant, Assembly of First Nations, signed July 5, 2023; Written Submissions of the First Nations Child and Family Caring Society of Canada – Joint Motion re Compensation, signed July 5, 2023; and Submissions of the Attorney General of Canada, signed July 4, 2023.

⁶ AFN Factum at paras 3, 19 and 44; Caring Society Submissions at para 7

- b. The Revised Agreement provides for payments in respect of all the categories of survivors/victims identified in the Tribunal's compensation orders, plus interest.⁷
- c. Based on available evidence, best calculations show the Revised Agreement will enable payments to be made in respect of the victims/survivors identified by the Tribunal.⁸
- d. The requested clarifications and variations respect the spirit and intent of the Tribunal's compensation rulings, and are within the scope of the Tribunal's retained jurisdiction to oversee effective and efficient implementation.⁹
- e. First Nations leadership played a critical role in achieving the Revised Agreement.¹⁰
- f. The opt-out deadline has been extended, and Canada and the AFN will jointly ask the Federal Court for a further extension, to ensure victims/survivors have had a meaningful opportunity to consider their options.¹¹
- g. If the requested relief is granted, and the Tribunal cedes its supervisory jurisdiction to the Federal Court, the Revised Agreement will enable the Caring Society to play an important role in that forum, where issues are raised that could impact the victims/survivors identified in the Tribunal's orders.¹²

⁷ AFN Factum at paras 20, 23, 34-35 (estates of parents and grandparents), 63-69 (Kith Child and Kith Family classes), 70-72 (estates of parents and grandparents), 76-77 (multiple removals), 87-101 (Jordan's Principle) and 121-122 (interest reserve fund); Caring Society Submissions at paras 7-8, 48-50 (Kith Child and Kith Family classes), 53-55 (multiple removals), 57-65 (Jordan's Principle), 70(a) (interest), 73 and 75-76 (estates of parents and grandparents), and 121 (interest).

⁸ AFN Factum at paras 21, 67, 77 and 89-93; Caring Society Submissions at paras 7, 51-52, 56, 66 and 122, and Annex A.

⁹ AFN Factum at paras 52-59 (scope of retained jurisdiction), 73-75 (distribution re deceased parents and grandparents), 80-86 (sequential removals), 102-109 (Jordan's Principle); Caring Society Submissions at paras 41-44 (scope of retained jurisdiction), 73-95 (distribution re deceased parents and grandparents), 96-110 (Jordan's Principle) and 111-115 (sequential removals).

¹⁰ AFN Factum at paras 3, 12, 16, 42, 127-132 and 141; Caring Society Submissions at paras 5, 36, 38 and 119.

¹¹ AFN Factum at paras 29 and 110-114; Caring Society Submissions at paras 67-69.

¹² AFN Factum at para 38; Caring Society Submissions at paras 65, 71 and 124.

Concluding Remarks

6. While the Commission is not a signatory to the Revised Agreement or the related Minutes of Settlement, it wholeheartedly endorses the statement that opens each document. Among other things, that statement says the following:

We honour all children, youth and families affected by Canada's discriminatory conduct in child and family services and Jordan's Principle. We acknowledge the emotional, mental, physical, spiritual, and yet to be known harms that this discrimination had on you and your loved ones. We stand with you and admire your courage and perseverance while recognizing that your struggle for justice often brings back difficult memories. We pay tribute to those who have passed on to the Spirit World before seeing their experiences recognized in this Agreement.

. . .

To all the First Nations children, youth and families reading this – remember that you belong. You are children of Chiefs, leaders, matriarchs, and knowledge keepers, and you have the right to your culture, language, and land.

7. The Commission would also like to commend the Moving Parties and their counsel, and the class action representative plaintiffs and their counsel, for all they have done to make this Joint Motion possible. This Tribunal and the courts have encouraged parties to work together to find negotiated pathways forward, in a spirit of reconciliation. The Commission believes the Revised Agreement and this Joint Motion are powerful examples of what can be accomplished in this regard.

8. Special recognition is due to the AFN and the Caring Society, who together launched the human rights complaint that has led to this historic moment. Building on all that came before, they continue to work tirelessly to seek human rights justice for First Nations children, youth and families affected by the discrimination found by this Tribunal. The Commission has been honoured to participate in the journey.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

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