



## Information Sheet<sup>1</sup>

# AFN Secures Victory and Compensation for First Nations Children and Families

## Canadian Human Rights Tribunal Orders Compensation

### 2019 CHRT 39

September 6, 2019

*"Canada's conduct was wilful and reckless resulting in what we have referred to as a worst-case scenario under our Act." (para. 234)*

September 6, 2019, marked another win for First Nations children and their families as the Canadian Human Rights Tribunal (CHRT) found that Canada wilfully and recklessly discriminated against First Nations children. In this ruling, the CHRT ordered Canada to pay the maximum amount allowable under the *Canadian Human Rights Act* (CHRA) to compensate First Nations 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.

The CHRA allows for up to \$20,000 per victim of discrimination (s. 53 2(e)) and further up to \$20,000 per victim if the discrimination was wilful and reckless (s. 53 (3)).

### Background

During the closing arguments of the case in 2014, the Assembly of First Nations argued that the CHRT should award the maximum amount of \$40,000 allowable under the CHRA to all victims of Canada's discrimination.

On January 26, 2016, the CHRT substantiated the complaint and ordered Canada to immediately cease its discriminatory conduct. The Tribunal left the issue of compensation under reserve until more urgent matters affecting children were addressed. Disappointingly, the Tribunal has had to issue 10 subsequent orders to ensure Canada's compliance. Additional orders are pending on matters relating to the eligibility of First Nations children without Indian status off reserve for Jordan's Principle and the provision of capital to facilitate the provision of prevention and other critical services for children.

In 2014, Canada argued that no compensation should be paid. In 2019, they argued the Tribunal was the wrong forum for the compensation issue to be heard and also suggested that there was no evidence of harm to individual children before the Tribunal. The Tribunal rejected both arguments.

### Orders

The Tribunal dedicated its decision to First Nations children and as such, ruled in favour of the children. It issued the following orders:

<sup>1</sup> Note: This sheet is for information purposes only and not intended to provide legal advice.

## **First Nations Child and Family Services Compensation to Victims of Discrimination<sup>2</sup>**

1) \$40,000 for each child taken into care on reserve and in the Yukon for unnecessary removals (removals that may have been prevented if adequate services were available<sup>3</sup>) from January 1, 2006. [para. 245 (20K) + para. 253<sup>4</sup> (20 K) = 40K]

2) \$40,000 for each child removed from their families on reserve and in the Yukon and then returned to immediate or extended family at a later date from January 1, 2006. [para. 246 (20K) + para. 253 (20 K) = 40K]

3) \$40, 000 to each parent or each grandparent caring for each child resident on reserve and in the Yukon who were unnecessarily removed from January 1, 2006. [para. 247 (20K) + para. 253 (20K) = 40K]<sup>5</sup>

4) \$40,000 to each First Nations child who experienced abuse and were necessarily removed from their homes who resided on reserve and in the Yukon but were placed outside of their extended families and communities and thus did not benefit from prevention and least disruptive measures. [para. 249 (20K) + para. 253 (20 K) = 40K]

## **Jordan's Principle Compensation to Victims of Discrimination**

5) \$40,000 to each First Nations child, living on or off reserve, who, as a result of a gap, delay and/or denial of services, was deprived of essential

services and placed in care outside of their home, family and community in order to receive those services from December 12, 2007 to November 2, 2017. [para. 250 (20K) + para. 253 (20 K) = 40K]<sup>6</sup>

6) \$40,000 to each First Nations child, living on or off reserve, who was not removed from their family home and was either denied services covered under Jordan's Principle as defined in 2017 CHRT 14 or 35 (for example, mental health, and suicide prevention, special education, dental, etc.), or who received such services after an unreasonable delay or upon reconsideration ordered by the Tribunal. [para. 250 (20K) + para. 253 (20 K) = 40K]

7) \$40,000 to each parent or grandparent who, as a result of a service gap, denial and/or delay, were denied essential services and had a child removed from the home between December 12, 2007 and November 2, 2017. [para. 251 (20K) + para. 253 (20 K) = 40K]

8) \$40,000 to each parent or grandparent whose child was not removed from their home and was denied services covered under Jordan's Principle or received such services after an unreasonable delay or after reconsideration by order of the Tribunal. [para. 251 (20K) + para. 253 (20 K) = 40K]

The Tribunal gives the Parties until December 10, 2019 to develop a process for the distribution of the compensation (para. 269).

For more information on the case, visit [www.fnwitness.ca](http://www.fnwitness.ca) or contact [morr@afn.ca](mailto:morr@afn.ca) or [swellman@afn.ca](mailto:swellman@afn.ca).

<sup>2</sup> Orders related to child and family service take effect as of January 1, 2006 "until the earliest of the following options occur: the Panel informed by the parties and the evidence makes a determination that the unnecessary removal of First Nations children from their homes, families and communities as a result of the discrimination found in the case has ceased; the parties agreed on a settlement agreement for effective and meaningful long term relief; the Panel ceases to retain jurisdiction and beforehand amends this order (para. 248).

<sup>3</sup> The Tribunal defined unnecessary removal in para. 245 as "First Nations children living on reserve and in the Yukon Territory who, as a result of poverty, Lack of housing or deemed appropriate housing, neglect and substance abuse were unnecessarily apprehended and placed in care outside of their

homes, families and communities and especially in regards to substance abuse did not benefit from least disruptive measures or other prevention services permitting them to remain safely in their homes, families and communities.

<sup>4</sup> The Tribunal awards a further 20K in special compensation to victims of "wilful and reckless" discrimination in para. 253.

<sup>5</sup> Parents or grandparents who were found responsible for sexual abuse, physical abuse or psychological abuse are not eligible for compensation per para. 256.

<sup>6</sup> Para. 252. Awards for placement of children in out of home care related to Jordan's Principle cannot be combined with other awards for placement in out of home care.