



First Nations Child and Family Caring Society and Assembly of First Nations v Canada, 2019 CHRT 39

Compensation Order / Questions and Answer

On September 6, 2019, the Canadian Human Rights Tribunal (the Tribunal) ordered the Federal Government (Canada) to pay compensation to First Nations children who were unnecessarily removed and placed into the child welfare system or denied necessary services under Jordan's Principle, and to their families. The Tribunal found the unnecessary removal of children and denying First Nations children of essential services pursuant to Jordan's Principle warranted the maximum compensation amount of \$40,000 per individual available under the Canadian Human Rights Act. This decision is an unprecedented step towards justice for First Nations children; however this is not a guarantee that survivors will be paid compensation.

On October 4, 2019, Canada applied for an appeal (judicial review) to dismiss the order for compensation and a stay to stop the process for compensation and identifying survivors eligible for compensation. Nevertheless, the Assembly of First Nations (AFN) and First Nations Child and Family Caring Society (the Caring Society) are opposing this appeal and moving forward to establish the compensation process.

1. Who will pay survivors compensation?

Ultimately, it will be Canada who will pay survivors of Canada's discriminatory treatment of First Nations children, parents and grandparents (when they were the primary caregivers of the removed children).

2. Who is eligible for compensation?

The Tribunal ordered that the following groups are eligible for \$40,000 in compensation:

- First Nations children removed from their First Nation after January 1, 2006.
- First Nations children unnecessarily removed and placed into the child welfare system to receive services covered under Jordan's Principle from December 12, 2007, to November 2, 2017.
- First Nations children who only received services after a considerable delay, or only upon reconsideration from Jordan's Principle from December 12, 2007, to November 2, 2017.
- First Nations parents or grandparents (when they were the primary caregiver) of children unnecessarily removed and placed into the child welfare system after January 1, 2006 (the parent/grandparent are not eligible if the child was removed due to abuse).
- First Nations parents or grandparents (when they were the primary caregiver) of children removed and placed into the child welfare system to receive services covered under Jordan's Principle from December 12, 2007, to November 2, 2017.
- First Nations parents or grandparents of children who only received services after a considerable delay, or only upon reconsideration from Jordan's Principle from December 12, 2007, to November 2, 2017.

3. Why are First Nations children, parents and grandparents only compensated for \$40,000?

The compensation ordered by the Tribunal is the absolute maximum allotted by the *Canadian Human Rights Act*. Settlement for pain and suffering is capped at \$20,000 (Section 53(2) (e)) and if the actions are "wilful and reckless" then an additional \$20,000 is awarded (Section 53(3)) therefore amounting to \$40,000.

4. Is it possible to receive more compensation for my experiences?

It will not be possible to receive more compensation under the Tribunal's ruling. Individuals can file a separate claim against Canada or join the proposed XAVIER MOUSHOOM et al. v. The ATTORNEY GENERAL OF CANADA class action claim. For more information see question 10.

5. What does "wilful and reckless" mean?

A conclusion of "wilful and reckless" is reserved for the most serious situations. It means that the accused party knew its acts were discriminatory and they made no effort to address it despite the consequences. In this situation, the Tribunal found Canada knew that its actions towards First Nations children and families was unfair and would result in severe consequences but made no real effort to correct it by adequately funding the First Nations Child and Family Services program and Jordan's Principle.



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6. How can I apply for compensation?

The application process for identifying children, parents and grandparents eligible for compensation is not yet determined. The Tribunal ordered Canada, the Caring Society and the AFN to have a discussion on the process and report back on December 10, 2019. Canada has since applied for a stay of the Tribunal's Order to step out of discussions on identifying a compensation process that will, in the least, delay the process for compensation.

7. When will I receive compensation?

If you are eligible, you will not be able to receive compensation until Spring 2020 at the earliest. If Canada disagrees with the decision they can appeal, which will delay payment of compensation further.

8. What happens now that Canada has appealed?

Canada appealed the decision on compensation and applied for a stay of the Tribunal's Order to stop the process for identifying survivors and distributing compensation. This means Canada disagrees with the order for compensation and does not want to come to the table to identify a process with AFN and the Caring Society until a determination has been made whether to overturn the Tribunal order for compensation. The AFN and the Caring Society will still proceed with the process with the hope that Canada will come back to the table, or the application will be denied, to ensure survivors will receive timely compensation.

9. Can I appeal a decision if I am found not to be eligible for compensation?

It is likely but still unknown. An individual appeals process will be a topic of discussion between Canada, the Caring Society and the AFN regarding the distribution process of the compensation but will be ultimately decided upon by the Tribunal.

10. What if I was removed into the child welfare system or denied services under Jordan's Principle before January 1, 2006

You will not be eligible for compensation through this decision; however, you may qualify for compensation under the proposed *XAVIER MOUSHOOM et al. v. The ATTORNEY GENERAL OF CANADA* class action lawsuit. This class action seeks to represent all First Nations children taken in the child welfare system or denied services under Jordan's Principle between April 1, 1991 to February 20, 2019. If successful, this class action would address the gap for First Nations children removed between the Sixties Scoop action cut-off (December 31, 1991) and February 20, 2019; therefore, individuals left out of both the Sixties Scoop legal action and the Tribunal order, would be entitled to compensation.

For more information, please see the "Sotos Class Actions" Website under the "First Nation Youth" tab.