Court File Nos. T-402-19 / T-141-20 / T-1120-21

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON by his Litigation Guardian, Carolyn Buffalo, CAROLYN BUFFALO, and DICK EUGENE JACKSON also known as RICHARD JACKSON

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

SECOND SUPPLEMENTARY MOTION RECORD OF THE PLAINTIFFS (Motion for Settlement Approval)

October 16, 2023

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Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

FRESH AS AMENDED NOTICE OF MOTION
(Motion for Settlement Approval, returnable October 23, 2023)

October 16, 2023

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TAKE NOTICE that the plaintiffs will make a motion to the Honourable Madam Justice Aylen on October 23, 2023, at 2:00 p.m. or as soon thereafter as the motion can be heard in person, at the courthouse, 301 Wellington St, Ottawa, ON K1A 0J1.

THE MOTION IS FOR:

1. a declaration that the final settlement agreement executed by the plaintiffs and the defendant on April 19, 2023, as amended by way of Addendum dated October 10, 2023 (the "**FSA**") is fair, reasonable, and in the best interests of the class;

2. an order approving the FSA pursuant to Rule 334.29(1) of the *Federal Courts Rules*;

3. a declaration that the FSA is binding on the representative plaintiffs, on all class members, and on the defendant;

4. an order dismissing these proceedings against the defendant, without costs and with prejudice;

5. an order approving a $15,000 honorarium payment to each of the following representative plaintiffs:

    (a) Xavier Moushoom;

    (b) Jeremy Meawasige (by his litigation guardian, Jonavon Joseph Meawasige);

    (c) Jonavon Joseph Meawasige;

    (d) Zacheus Joseph Trout;

    (e) Ashley Dawn Louise Bach;

(f) Melissa Walterson;

(g) Noah Buffalo-Jackson (by his Litigation Guardian, Carolyn Buffalo);

(h) Carolyn Buffalo; and

(i) Dick Eugene Jackson also known as Richard Jackson;

6. in the alternative, if the FSA is not approved, an order that the parties are all restored, without prejudice, to their respective positions as such existed prior to the proposed settlement as of April 18, 2023; and

7. such further and other relief as counsel may request and this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. This litigation involves the class proceeding bearing Court file Numbers T-402-19 and T-141-20 (the "**Consolidated Action**"), and the class proceeding bearing Court File Number T-1120-21 (the "**Trout Action**");

2. The litigation concerns discrimination by the defendant, His Majesty the King in right of Canada, against the Class in the provision of child and family services between 1991 and 2022, and in denying, delaying and leaving service gaps in the provision of essential services between 1991 and 2017;

3. On November 26, 2021, the Federal Court certified the following classes within the Consolidated Action:

(a) ***Removed Child Class*** means all First Nations individuals who:

(i) were under the applicable provincial/territorial age of majority at any time during the Class Period; and

(ii) were taken into out-of-home care during the Class Period while they, or at least one of their parents, were ordinarily resident on a Reserve.

(b) ***Jordan's Class*** means all First Nations individuals who were under the applicable provincial/territorial age of majority and who during the Class Period were denied a service or product, or whose receipt of a service or product was delayed or disrupted, on grounds, including but not limited to, lack of funding or lack of jurisdiction, or as a result of a jurisdictional dispute with another government or governmental department;

(c) ***Family Class*** means all persons who are brother, sister, mother, father, grandmother or grandfather of a member of the Removed Child Class and/or Jordan's Class;

4. On February 11, 2022, the Federal Court certified the following classes within the Trout Action:

(a) ***Child Class*** means all First Nations individuals who were under the applicable provincial/territorial age of majority and who, during the Class Period, did not receive (whether by reason of a denial or a gap) an essential public service or product relating to a confirmed need, or whose receipt of said service or product was delayed, on grounds, including but not limited to, lack of funding or lack of

jurisdiction, or as a result of a service gap or jurisdictional dispute with another government or governmental department;

(b) ***Family Class*** means all persons who are brother, sister, mother, father, grandmother or grandfather of a member of the Child Class;

5. Starting in 2019, the parties engaged in lengthy mediation and intensive negotiations with the assistance of eminent First Nations jurists, the Honourable Leonard Mandamin and the Honourable Murray Sinclair, which eventually resulted in the signing of an agreement in principle to settle dated December 31, 2021, and a first settlement agreement on June 30, 2022 (the "**First FSA**");

6. The First FSA included a global resolution of this litigation, as well as overlapping proceedings before the Canadian Human Rights Tribunal ("**CHRT**");

7. Under the First FSA, Canada agreed to pay $20 billion to settle all claims;

8. The First FSA was conditional on obtaining an order from the CHRT confirming that the First FSA satisfied the CHRT's compensation decision (2019 CHRT 39), thereby ensuring an end to all litigation and achieving a global resolution;

9. The Assembly of First Nations ("**AFN**") and Canada brought a joint motion to the CHRT;

10. The CHRT found that the First FSA substantially satisfied its compensation decision, but did not fully mirror the compensation decision in four areas, so the CHRT could not grant an order that it fully satisfied with its rulings;

11. Thus, the First FSA became null and void, and the parties went back to the drawing board, weighing litigation and other settlement options;

12. The parties engaged in further intensive negotiations in 2023 to address the matters raised by the CHRT, resulting in the FSA that is now before the Court

13. The CHRT has approved the FSA – it fully satisfies the CHRT's compensation decision;

14. The FSA contains, amongst other things, the following key terms:

    (a) Canada will pay $23.34 billion in compensation;

    (b) Like the First FSA, the FSA is First Nations-led;

    (c) The FSA only adds to the First FSA;

    (d) The claims process is being designed with flexible standards, and is intended to be expeditious, cost-effective, user-friendly, culturally sensitive, trauma-informed, and non-traumatizing for claimants;

    (e) The FSA allocates specific budgets to the various certified classes based on the best available estimates;

    (f) In the event of a surplus, the FSA allows for the possibility of transferring funds to some other classes, with priorities generally favouring the children;

    (g) Some class members are entitled to interest payments on their base compensation, while the FSA creates the possibility of using enhancement payments to ensure

parity of treatment amongst similarly harmed class members where some are entitled to interest and others not;

(h) The FSA allows the estates of the deceased members of the Removed Child Class, Jordan's Principle Child Class, Trout Child Class, Kith Child Class and certain caregiving parents and caregiving grandparents to file a claim for compensation on behalf of the deceased class member;

(i) A *cy-près* fund established under the FSA will have a $50 million endowment to primarily benefit class members who do not receive direct payments under the FSA;

(j) An additional *cy-près* fund of $90 million will be established to benefit high-needs Jordan's Principle class members to ensure their personal dignity and well-being;

(k) The FSA ensures that culturally appropriate and trauma-informed supports are available to claimants, including, amongst others, emotional and mental wellbeing support, administrative and claims process support, legal support, and financial protections support;

15. The FSA has been the subject of extensive consultation with and approval by First Nations regions, communities, and leadership across the country;

16. The settlement amount presents a reasonable settlement in light of the existing data and the class size estimates feasible before a claims process begins;

17. The representative plaintiffs support the FSA;

18. Experienced class counsel recommend the FSA;

19. The FSA provides expeditious recovery for class members;

20. The FSA is fair, reasonable, and in the best interests of the class;

21. Notices of certification and settlement approval hearing has been given in accordance with the notice plan approved by the Court;

22. This motion is made on consent and by agreement of the plaintiffs and the defendant;

23. The FSA is conditional upon this Court approving the agreement in its current form and without modification;

24. Rule 334.29(1) of the *Federal Courts Rules*, SOR/98-106;

25. *Federal Courts Act*, RSC, 1985, c F-7; and

26. Such further and other grounds as counsel may advise.

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

1. The Affidavit of Xavier Moushoom, sworn August 23, 2022;

2. The Affidavit of Jonavon Joseph Meawasige, sworn September 25, 2023;

3. The Affidavit of Zacheus Joseph Trout, sworn September 2, 2022;

4. The Affidavit of Melissa Walterson, affirmed September 6, 2022;

5. The Affidavit of Ashley Dawn Louise Bach, affirmed September 6, 2022;

6. The Affidavit of Karen Osachoff, affirmed September 5, 2022;

7. The Affidavit of Carolyn Buffalo, affirmed September 6, 2022;

8. The Affidavit of Dick Eugene Jackson also known as Richard Jackson, affirmed September 7, 2022;

9. The Affidavit of Janice Ciavaglia, affirmed September 6, 2022;

10. The Affidavit of William Colish, affirmed September 2, 2022;

11. The Affidavit of Dr. Lucyna Lach, sworn September 6, 2022;

12. The Affidavit of Dr. Lucyna Lach, sworn September 19, 2023;

13. The Affidavit of Joelle Gott, sworn October 12, 2023;

14. The Affidavit of Dean Janvier, sworn October 12, 2023;

15. Affidavit of Amber Potts, affirmed October 16, 2023;

16. The Affidavit of Robert Kugler, sworn October 16, 2023;

17. The Affidavit of Kim Blanchette, sworn October 16, 2023;

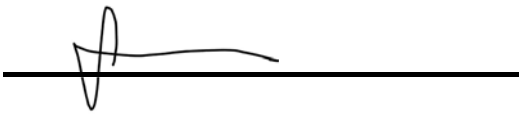
18. Such further and other evidence as counsel may advise and this Court may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

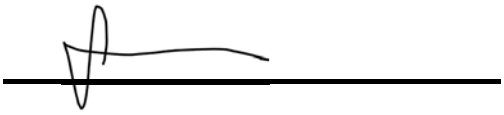
SOTOS LLP

Per: KUGLER KANDESTIN

Per: MILLER TITERLE + CO.



Per: NAHWEGAHBOW, CORBIERE



Per: FASKEN MARTINEAU DUMOULIN

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Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

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Plaintiffs

and

HER MAJESTY THE QUEEN
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

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Defendant

AFFIDAVIT OF JONAVON JOSEPH MEAWASIGE

(Sworn September 25, 2023)

I, Jonavon Joseph Meawasige, of the Pictou Landing First Nation in Nova Scotia, AFFIRM:

1. I am a representative plaintiff, and the brother and litigation guardian of another representative plaintiff, Jeremy Meawasige, in this class action. As such, I have personal knowledge of the matters that I depose to in this affidavit. Where the source of information is other than my personal knowledge, I say so and I believe that information to be true.

2. In this affidavit, I explain why I support the proposed settlement reached with Canada, both on my behalf and on behalf of my brother.

My Brother, Jeremy Meawasige

3. Jeremy is my younger brother. He lives on the Pictou Landing First Nation Reserve. I have been involved in his care since he was born.

4. Jeremy's circumstances are described in the Federal Court's decision in *Pictou Landing Band Council v. Canada (Attorney General)*, 2013 FC 342: "a teenager with multiple disabilities and high care needs. He has been diagnosed with hydrocephalus, cerebral palsy, spinal curvature and autism. Jeremy can only speak a few words and cannot walk unassisted. He is incontinent and needs total personal care including showering, diapering, dressing, spoon feeding, and all personal hygiene needs. He can become self-abusive at times, and needs to be restrained for his own safety."

5. As a result, Jeremy needed essential services. Canada refused to pay for those services to him. My mother had to go to Federal Court to ask for a judicial review of Canada's refusal. On April 4, 2013, the Court found that Canada's refusal to pay for the essential services that Jeremy needed violated Jordan's Principle, and ordered Canada to pay for the essential services that Jeremy needs.

Our Late Mother, Maurina Beadle

6. Throughout her life, our late mother, Maurina Beadle, cared for Jeremy. She refused to give him up to the child welfare system or allow him to be institutionalized away from home to receive the services he needed. Despite her own fragile health, our mother cared and fought for Jeremy and Jordan's Principle until the end of her life.

7. She was Jeremy's litigation guardian in this class action. She swore an Affidavit on May 8, 2019. Attached as **Exhibit "A"** is a copy of her affidavit. She was appointed litigation guardian for Jeremy by order of the Court dated May 28, 2019. Attached as **Exhibit "B"** is a copy of that order without Schedule "A".

8. Sadly, our mother had a stroke and passed away on November 13, 2019. She was laid to rest in Pictou Landing on November 18, 2019.

My Role in the Class Action

9. I have been involved in this lawsuit from the beginning, and have taken significant time to meet and speak to class counsel, and to understand the factual and legal matters involved in this litigation.

10. After our mother passed away, I decided to step in to ensure that Jeremy was able to continue acting as a representative plaintiff for the Jordan's Principle Class. I want Jeremy, and First Nations youth like him, to have the supports that they need to have a meaningful and dignified life.

11. As Jeremy's brother, I also volunteered to be a representative plaintiff for the class of family members of the First Nations individuals whose Jordan's Principle rights have been violated.

12. The Court appointed me as Jeremy's representative and litigation guardian on July 7, 2021. Attached as **Exhibit "C"** is the order of Madam Justice St-Louis without schedules.

13. On November 26, 2021, Madam Justice Aylen certified the class action and appointed both Jeremy and me as representative plaintiffs. Attached as **Exhibit "D"** is the order of Madam Justice Aylen without schedules.

My Work on the Class Action

14. Through my mother, I was informed of and indirectly involved in her 2013 application to the Federal Court about Jordan's Principle. That application reaffirmed First Nations' equality rights to essential services, and advanced Jordan's Principle.

15. Toward the beginning of this class action, I met in person with David Sterns and Mohsen Seddigh of Sotos LLP, who explained the class action to me. I travelled to Toronto with my mother for that first meeting.

16. Ever since then, I have routinely spoken on the phone, by text messaging and email with Mr. Seddigh about the progress of the case and I have given him my feedback and instructions about important decisions on the case.

17. I attended the mediation with the Honourable Mr. Mandamin a few times and spoke about my family's experience with Jordan's Principle and Canada's discrimination. It was extremely hard for me to speak about these things in front of many people, but I wanted my family's story to be heard. Remembering and speaking about my family's challenges is difficult for me, but I have shared it in this case, hoping that it will help prevent other kids and families from going through the same thing.

18. I have also reviewed the documents that class counsel sent me and provided feedback during this class action. These included documents such as the Consolidated Statement of Claim, my affidavits, the Court's orders, and settlement materials. I swore an affidavit in support of the motion for certification and to add me as Jeremy's litigation guardian.

19. When I requested that the Court appoint me and Jeremy as representative plaintiffs, I understood and explained my responsibilities. I have taken these responsibilities seriously and tried to the best of my ability to fairly and adequately represent the class, both for myself and on behalf of Jeremy.

20. Last year, I travelled to Toronto to meet with class counsel, my co-representative plaintiff, Zacheus Joseph Trout (and his wife, Veronica Trout), and with the team's expert working on Jordan's Principle, Dr. Lucyna Lach, who was joining us from Montreal. We had a long discussion. Dr. Lach asked for my feedback and my

personal experience with Jordan's Principle, and I shared my personal experience and my thoughts about the claims process with her.

21. I was happy to hear Dr. Lach describe to us the method that the experts were developing for the Jordan's Principle claims process to determine who was impacted more significantly by the discrimination.

22. I believe that compensation should be proportional to the suffering that each person experienced. I do not think it would be fair for everyone to receive the same compensation regardless of their circumstances. I think that would ignore the suffering of First Nations people like my mother and Jeremy. So I support the experts' work that Dr. Lach described to us.

Previous Settlement Agreement and this Settlement Agreement

23. As I said above, I was involved for over a year in mediation and negotiations with Canada that led to the previous final settlement agreement in 2022. I personally attended some sessions. Every time when we were getting close to a resolution, Mr. Seddigh would send me the settlement documents and after I had a chance to review, we would discuss the details and I would give him my instructions.

24. I was thrilled with the agreement in principle that was signed in 2021. I spoke to the media about it (https://www.aptnnews.ca/featured/plaintiffs-skeptical-but-hopeful-about-proposed-child-welfare-settlement/) to spread the word so claimants could know that compensation was finally coming.

25. Speaking with Mr. Seddigh, I kept informed of the intensive negotiations after the agreement in principle was signed. I reviewed the draft of the settlement agreement

and discussed it with Mr. Seddigh who explained it to me. I agreed with the agreement and instructed him to sign it. All parties finally signed the settlement agreement on June 30, 2022.

26. I wholeheartedly supported the settlement agreement, which I understood to be the largest settlement in Canada's history. I supported the principles that the agreement embodies. Some of these principles are:

(a) The claims process aims to minimise the risk of causing trauma to class members;

(b) There will be no interview or in-person examination of claimants;

(c) The claims process avoids subjective assessments of harm and individual trials; and

(d) The claims process uses objective criteria to assess class members' needs and circumstances.

27. The settlement agreement divided Jordan's Principle claimants into two groups: those who suffered more significant impact as a result of the discrimination, and those who suffered less impact than the first group. This way the settlement agreement was able to ensure that those who suffered more will receive at least $40,000 in compensation. Everyone else receives compensation of up to $40,000 but not more than that. I agree with this division because it gives more compensation to those who have experienced more impact, and responsibly divides the $3 billion budget for the Jordan's Principle Class.

28. I instructed my counsel to sign the settlement agreement and I supported it even though as a brother in the Jordan's Principle Family Class, I personally would not

receive direct compensation under the settlement agreement. This case has always been about the children first. I was proud of the life changing compensation that this settlement would provide to tens of thousands of First Nations children who suffered discrimination.

29. I was shocked when the settlement was rejected by the Canadian Human Rights Tribunal, to say the least.

30. I especially had a hard time with it because in the media my mother's name was being used against the settlement without anyone consulting with me or asking me what my mother or brother or I thought.

31. No one asked if I supported the settlement, or if my mother would have supported the settlement. I would not have supported the settlement if I did not believe that my mother also supported it.

32. This was a difficult time for me and my family.

33. When last year's settlement was rejected by the Canadian Human Rights Tribunal, we went back to the drawing board. I continued to stay in touch with my counsel and we were facing the prospects of going back to litigation. I was prepared for it, as much as I found that painful.

34. Fortunately, earlier this year all parties were able to go back to the negotiating table and finally bridge the gap and reach a new settlement agreement. During this time, like last time, Mr. Seddigh consulted with me and kept me appraised of the progress, until there was agreement and I instructed him to sign.

35. I am happy that the previous settlement agreement was not lost, and that the new settlement of $23.34 billion adds funds to it to address the Canadian Human Rights

Tribunal's concerns. I was ecstatic to hear this summer that the Canadian Human Rights Tribunal approved this settlement and we can now go to the Federal Court in Ottawa for approval.

Honorarium

36. I wish to ask for an honorarium for myself. As litigation guardian for Jeremy, I also wish to ask the Court to grant an honorarium to Jeremy to recognize his remarkable contribution to this case and to Jordan's Principle. If the Court grants our requests for an honorarium, my intention is to keep Jeremy's money in his bank account so it can be spent on things that he may need or make him happy.

Class Counsel

37. As I described earlier, I have been actively engaged with class counsel through Sotos LLP throughout this process. I am very happy with their work on this class action.

38. I signed an agreement with Sotos LLP about fees and disbursements. This retainer agreement says that class counsel will only be paid if they are successful at obtaining a judgment or settlement with Canada. The retainer agreement says that class counsel's fees will be taken from the settlement amount based on some percentages to be reviewed and approved by the Court.

39. Instead of pursuing the arrangement in the retainer agreement, class counsel have agreed to separately negotiate their fees directly with Canada and be paid over and above the settlement amount. This means that class counsel's fees will not be

deducted from the $23.34 billion settlement amount. I fully support this plan because it does not decrease the money that is available to pay compensation to class members.

40. Mr. Seddigh advises me and I believe that class counsel have just started negotiating their fees with Canada but they have not been able to reach an agreement as of this time.

SWORN BEFORE ME BY Jonavon Joseph Meawasige of the Pictou Landing First Nation in Nova Scotia, currently resident in Trenton, Nova Scotia, on September **25,** 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits
(or as may be)

Georgia Elizabeth Scott-McLaren, a Commissioner, etc.
Province of Ontario, for
Sotos LLP, Barristers and Solicitors
Expires February 20, 2024

JONAVON JOSEPH MEAWASIGE

This is Exhibit "A" referred to in the Affidavit of Jonavon Joseph Meawasige of the Pictou Landing First Nation in Nova Scotia, currently resident in Edmonton, sworn before me at the City of Toronto, in the Province of Ontario on September 25, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

Georgia Elizabeth Scott-McLaren, a Commissioner, etc.
Province of Ontario, for
Sotos LLP, Barristers and Solicitors
Expires February 20, 2024

Court File No. T-402-19

FEDERAL COURT

PROPOSED CLASS PROCEEDING

B E T W E E N:

XAVIER MOUSHOOM

Plaintiff

and

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF MAURINA BEADLE
(Sworn May 8th, 2019)

I, Maurina Beadle, of the Pictou Landing First Nation in Nova Scotia, SWEAR THAT:

1. I am the mother of Jeremy Meawasige and his proposed litigation guardian in this lawsuit. As such, I have personal knowledge of the matters that I depose to in this affidavit. Where the source of information is other than my personal knowledge, I say so and I believe that information to be true.

2. In this affidavit, I explain why I should be appointed as my son's litigation guardian.

3. I live with Jeremy on the Pictou Landing Indian Reserve in Nova Scotia. I am one of the elders of my community.

4. Jeremy was born on December 9, 1994. He is under a legal disability and incapable of managing his own affairs. He has been diagnosed with hydrocephalus, cerebral palsy, spinal curvature and autism. He can only speak a few words and cannot walk unassisted. He is incontinent and needs total personal care including showering, diapering, dressing, spoon feeding, and all personal hygiene needs. He can become self-abusive at times, and needs to be restrained for his own safety.

5. As a result, Jeremy is not able to appreciate the legal process or provide his counsel with instructions.

6. I have been Jeremy's primary caregiver throughout his life. I am closer to him than anyone else. I cared for him in our home without any support or assistance until 2010 when I suffered a stroke. The stroke left me physically unable to continue to care for Jeremy without assistance. I therefore needed help to be able to look after him.

7. The Government of Canada refused to provide care to Jeremy. We had to go to the Federal Court to argue that, under Jordan's Principle, Canada should pay for the services that Jeremy needed. I was an applicant in that proceeding together with the Pictou Landing Band Council. On April 4, 2013, the Court found that Canada's refusal to pay for the services violated Jordan's Principle.

8. I was awarded the Queen's Diamond Jubilee for my care for Jeremy and his progress, and for my efforts to uphold Jordan's Principle.

9. I have appointed the law firms of Sotos LLP, Kugler Kandestin LLP and Miller Titerle + Co. as counsel for Jeremy in this proposed class action. I have met with David

Sterns and Mohsen Seddigh, lawyers from Sotos LLP, who explained the class action to me.

10. I have no interest in the proceeding adverse to that of Jeremy.

11. I have been advised by Mr. Seddigh and believe that, other than under exceptional circumstances, generally no costs may be awarded against a party to a class proceeding in the Federal Court.

SWORN BEFORE ME at the City of Toronto, in the Ontario on May 8th, 2019

Maurina Beadle

Commissioner for Taking Affidavits
(or as the case may be)

Mohsen Seddigh

MAURINA BEADLE

This is Exhibit "B" referred to in the Affidavit of Jonavon Joseph Meawasige of the Pictou Landing First Nation in Nova Scotia, currently resident in Edmonton, sworn before me at the City of Toronto, in the Province of Ontario on September 25, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

Georgia Elizabeth Scott-McLaren, a Commissioner, etc.
Province of Ontario, for
Sotos LLP, Barristers and Solicitors
Expires February 20, 2024

Federal Court Cour fédérale

Date: 20190528

Docket: T-402-19

Montréal, Quebec, May 28, 2019

PRESENT: Madam Justice St-Louis

BETWEEN:

XAVIER MOUSHOOM and JEREMY MEAWASIGE (by his litigation guardian, Maurina Beadle)

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER

UPON Motion by the Plaintiff for pleadings amendment and appointment of litigation Guardian, based on Rules 3-4, 75-76, 78-79, 115, 200-202, 334.11, 334.39 of the *Federal Courts Rules*, SOR/98-106;

HAVING READ the Motion record of the Plaintiff, and noted that the Defendant does not oppose the Motion;

CONSIDERING the grounds for the Motion;

THIS COURT ORDERS that:

1. The Plaintiff is granted leave to serve and file the Amended Statement of Claim substantially in the form attached hereto as Schedule "A", within five (5) days of the date of the present Order;
2. Jeremy Meawasige is added as a Plaintiff to this action;
3. Maurina Beadle is appointed as representative and litigation guardian for Jeremy Meawasige;
4. The style of cause is amended accordingly.

"Martine St-Louis"
Judge

This is Exhibit "C" referred to in the Affidavit of Jonavon Joseph Meawasige of the Pictou Landing First Nation in Nova Scotia, currently resident in Edmonton, sworn before me at the City of Toronto, in the Province of Ontario on September 25, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

Georgia Elizabeth Scott-McLaren, a Commissioner, etc.
Province of Ontario, for
Sotos LLP, Barristers and Solicitors
Expires February 20, 2024

Federal Court Cour fédérale

Date: 20210707

Docket: T-402-19
T-141-20

Ottawa, Ontario, July 7, 2021

PRESENT: Madam Justice St-Louis

BETWEEN:

XAVIER MOUSHOOM AND JEREMY MEAWASIGE (BY HIS LITIGATION GUARDIAN, MAURINA BEADLE)

Plaintiffs

AND

THE ATTORNEY GENERAL OF CANADA

Defendant

BETWEEN:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, AND MELISSA WALTERSON

Plaintiffs

AND

HER MAJESTY THE QUEEN
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER
(Consolidated, Leave to Commence Actions, and other Relief)

UPON MOTION, by the plaintiffs for an Order:

(a) granting leave *nunc pro tunc* to the plaintiffs in Court File No. T-141-20 under this Court's Order dated May 28, 2019 in Court File No. T-402-19 ("**Preclusion Order**") to commence the proposed class proceeding in Court File No. T-141-20;

(b) consolidating the actions in Court File No. T-402-19 and Court File No. T-141-20 ("**Consolidated Proceeding**");

(c) adding Jonavon Joseph Meawasige, Noah Buffalo-Jackson, Carolyn Buffalo, and Dick Eugene Jackson also known as Richard Jackson as plaintiffs to the Consolidated Proceeding;

(d) appointing Jonavon Joseph Meawasige as representative and litigation guardian for the plaintiff Jeremy Meawasige;

(e) appointing Carolyn Buffalo as representative and litigation guardian for the plaintiff Noah Buffalo-Jackson;

(f) granting leave to serve and file the Consolidated Statement of Claim in the Consolidated Proceeding substantially in the form enclosed as **Schedule "A"** hereto;

(g) amending the style of cause in the Consolidated Proceeding accordingly, as drafted in Schedule "A" hereto;

(h) stating that the removal of the Jordan's Class members and corresponding Family Class members with claims dated between April 1, 1991 and December 11, 2007 in Court File No. T-402-19 and/or Court File No. T-141-20 from the Consolidated Proceeding is without prejudice to those class members' rights to commence a new action and to advance any arguments available to them notwithstanding this Order and notwithstanding the Consolidated Proceeding;

(i) granting the Assembly of First Nations ("**AFN**") and Zacheus Joseph Trout leave under the Preclusion Order to commence a proposed class action on behalf of the class members whose claims are separated from the Consolidated Proceedings as particularized in the draft claim substantially in the form enclosed as **Schedule "B"** hereto ("**Separated Proceeding**");

(j) stating that this Order is without prejudice to the defendant's right to contest certification and/or defend against the claims in the Separated Proceeding as it would have been immediately prior to the issuance of this Order, subject to paragraph (h), above;

(k) extending the Preclusion Order to:

i. the Consolidated Proceeding in Schedule "A" from the date it is issued under this Order, with Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Co., Nahwegahbow Corbiere, and Fasken Martineau Dumoulin as class counsel; and

ii. the Separated Proceeding from the date it is issued under this Order, with Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Co., Nahwegahbow Corbiere, and Fasken Martineau Dumoulin as class counsel;

(l) and other relief;

AND UPON being advised that the defendant consents in whole to the motion as filed;

AND UPON hearing amicus curiae and counsel's submissions;

AND UPON being satisfied of the appropriateness of the relief sought:

1. **THIS COURT ORDERS** that leave is granted *nunc pro tunc* to the plaintiffs in Court File No. T-141-20 to commence the proposed class proceeding in Court File No. T-141-20.

2. **THIS COURT ORDERS** that the actions in Court File No. T-402-19 and Court File No. T-141-20 are consolidated.

3. **THIS COURT ORDERS** that Jonavon Joseph Meawasige, Noah Buffalo-Jackson, Carolyn Buffalo, and Dick Eugene Jackson also known as Richard Jackson are added as plaintiffs to the Consolidated Proceeding.

4. **THIS COURT ORDERS** that Jonavon Joseph Meawasige is appointed as representative and litigation guardian for the plaintiff Jeremy Meawasige.

5. **THIS COURT ORDERS** that Carolyn Buffalo is appointed as representative and litigation guardian for the plaintiff Noah Buffalo-Jackson.

6. **THIS COURT ORDERS** that leave is granted to serve and file the Consolidated Statement of Claim substantially in the form enclosed as Schedule "A" hereto.

7. **THIS COURT ORDERS** that the style of cause of the Consolidated Proceeding is amended accordingly, as drafted in Schedule "A".

8. **THIS COURT ORDERS** that the separation of the claims in the Separated Proceeding from the Consolidated Proceeding is without prejudice to the rights of the class members in the Separated Proceeding to commence a new action and to advance any arguments available to them immediately prior to the issuance of this Order, notwithstanding this Order and notwithstanding the Consolidated Proceeding.

9. **THIS COURT ORDERS** that leave is granted to the plaintiffs AFN and Zacheus Joseph Trout to commence a proposed class action on behalf of the Separated Classes substantially in the form enclosed as Schedule "B" hereto.

10. **THIS COURT ORDERS** that this Order is without prejudice to the defendant's rights to contest certification and defend against the Separated Proceeding, subject to paragraph 8 of this Order.

11. **THIS COURT ORDERS** that this Court's Order dated May 28, 2019 in Court File No. T-402-19, which precludes the commencement of another proposed class proceeding in this Court in respect of the allegations in this proceeding without leave of the Court, be and is extended and shall apply to:

(a) the Consolidated Proceeding in Schedule “A” as of the date issued under this Order, with Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Co., Nahwegahbow Corbiere, and Fasken Martineau Dumoulin as class counsel; and

(b) the Separated Proceeding as of the date issued under this Order, with Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Co., Nahwegahbow Corbiere, and Fasken Martineau Dumoulin as class counsel.

"Martine St-Louis"
Judge

This is Exhibit "D" referred to in the Affidavit of Jonavon Joseph Meawasige of the Pictou Landing First Nation in Nova Scotia, currently resident in Edmonton, sworn before me at the City of Toronto, in the Province of Ontario on September 25, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

Georgia Elizabeth Scott-McLaren, a Commissioner, etc.
Province of Ontario, for
Sotos LLP, Barristers and Solicitors
Expires February 20, 2024

Federal Court Cour fédérale

Date: 20211126

Docket: T-402-19
T-141-20

Citation: 2021 FC 1225

Ottawa, Ontario, November 26, 2021

PRESENT: The Honourable Madam Justice Aylen

CLASS PROCEEDING

BETWEEN:

XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, JONAVON JOSEPH MEAWASIGE) AND JONAVON JOSEPH MEAWASIGE

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

BETWEEN:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON (by his litigation guardian, CAROLYN BUFFALO), CAROLYN BUFFALO AND DICK EUGENE JACKSON also known as RICHARD JACKSON

Plaintiffs

and

HER MAJESTY THE QUEEN

AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER AND REASONS

UPON MOTION by the Plaintiffs, on consent and determined in writing pursuant to Rule 369 of the *Federal Courts Rules*, for an order:

(a) Granting the Plaintiffs an extension of time to make this certification motion past the deadline in Rule 334.15(2)(b);

(b) Certifying this proceeding as a class proceeding and defining the class;

(C) Stating the nature of the claims made on behalf of the class and the relief sought by the class;

(d) Stipulating the common issues for trial;

(e) Appointing the Plaintiffs specified below as representative plaintiffs;

(f) Approving the litigation plan; and

(g) Other relief;

CONSIDERING the motion materials filed by the Plaintiffs;

CONSIDERING that the Defendant has advised that the Defendant consents in whole to the motion as filed;

CONSIDERING that the Court is satisfied, in the circumstances of this proceeding, that an extension of time should be granted to bring this certification motion past the deadline prescribed in Rule 334.15(2)(b);

CONSIDERING that while the Defendant's consent reduces the necessity for a rigorous approach to the issue of whether this proceeding should be certified as a class action, it does not relieve the Court of the duty to ensure that the requirements of Rule 334.16 for certification are met [see *Varley v Canada (Attorney General)*, 2021 FC 589];

CONSIDERING that Rule 334.16(1) of the *Federal Courts Rules* provides:

Subject to subsection (3), a judge shall, by order, certify a proceeding as a class proceeding if	Sous réserve du paragraphe (3), le juge autorise une instance comme recours collectif si les conditions suivantes sont réunies :
(a) the pleadings disclose a reasonable cause of action;	a) les actes de procédure révèlent une cause d'action valable;
(b) there is an identifiable class of two or more persons;	b) il existe un groupe identifiable formé d'au moins deux personnes;
(c) the claims of the class members raise common questions of law or fact, whether or not those common questions predominate over questions affecting only individual members;	c) les réclamations des membres du groupe soulèvent des points de droit ou de fait communs, que ceux-ci prédominent ou non sur ceux qui ne concernent qu'un membre;
(d) a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact; and	d) le recours collectif est le meilleur moyen de régler, de façon juste et efficace, les points de droit ou de fait communs;
(e) there is a representative plaintiff or applicant who	e) il existe un représentant demandeur qui :
(i) would fairly and adequately represent the interests of the class,	(i) représenterait de façon équitable et adéquate les intérêts du groupe,

(ii) has prepared a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members as to how the proceeding is progressing,

(iii) does not have, on the common questions of law or fact, an interest that is in conflict with the interests of other class members, and

(iv) provides a summary of any agreements respecting fees and disbursements between the representative plaintiff or applicant and the solicitor of record.

(ii) a élaboré un plan qui propose une méthode efficace pour poursuivre l'instance au nom du groupe et tenir les membres du groupe informés de son déroulement,

(iii) n'a pas de conflit d'intérêts avec d'autres membres du groupe en ce qui concerne les points de droit ou de fait communs,

(iv) communique un sommaire des conventions relatives aux honoraires et débours qui sont intervenues entre lui et l'avocat inscrit au dossier.

CONSIDERING that, pursuant to Rule 334.16(2), all relevant matters shall be considered in a determination of whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact, including whether: (a) the questions of law or fact common to the class members predominate over any questions affecting only individual members; (b) a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate proceedings; (c) the class proceeding would involve claims that are or have been the subject of any other proceeding; (d) other means of resolving the claims are less practical or less efficient; and (e) the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means;

CONSIDERING that:

(a) The conduct of the Crown at issue in this proposed class action proceeding, as set out in the Consolidated Statement of Claim, concerns two alleged forms of

discrimination against First Nations children: (i) the Crown's funding of child and family services for First Nations children and the incentive it has created to remove children from their homes; and (ii) the Crown's failure to comply with Jordan's Principles, a legal requirement that aims to prevent First Nations children from suffering gaps, delays, disruptions or denials in receiving necessary services and products contrary to their *Charter*-protected equality rights.

(b) As summarized by the Plaintiffs in their written representations, at its core, the Consolidated Statement of Claim alleges that:

(i) The Crown has knowingly underfunded child and family services for First Nations children living on Reserve and in the Yukon, and thereby prevented child welfare service agencies from providing adequate Prevention Services to First Nations children and families.

(ii) The Crown has underfunded Prevention Services to First Nations children and families living on Reserve and in the Yukon, while fully funding the costs of care for First Nations children who are removed from their homes and placed into out-of-home care, thereby creating a perverse incentive for First Nations child welfare service agencies to remove First Nations children living on Reserve and in the Yukon from their homes and place them in out-of-home care.

(iii) The removal of children from their homes caused severe and enduring trauma to those children and their families.

(iv) Not only does Jordan's Principle embody the Class Members' equality rights, the Crown has also admitted that Jordan's Principle is a "legal requirement" and thus an actionable wrong. However, the Crown has disregarded its obligations under Jordan's Principle and thereby denied crucial services and products to tens of thousands of First Nations children, causing compensable harm.

(v) The Crown's conduct is discriminatory, directed at Class Members because they were First Nations, and breached section 15(1) of the *Charter*, the Crown's fiduciary duties to First Nations and the standard of care at common and civil law.

(c) With respect to the first element of the certification analysis (namely, whether the pleading discloses a reasonable cause of action), the threshold is a low one. The question for the Court is whether it is plain and obvious that the causes of action are doomed to fail [see *Brake v Canada (Attorney General)*, 2019 FCA 274 at para 54]. Even without the Crown's consent, I am satisfied that the Plaintiffs have pleaded the necessary elements for each cause of action sufficient for purposes of this motion, such that the Consolidated Statement of Claim discloses a reasonable cause of action.

(d) With respect to the second element of the certification analysis (namely, whether there is an identifiable class of two or more persons), the test to be applied is whether the Plaintiffs have defined the class by reference to objective criteria such that a person can be identified to be a class member without reference to the merits

of the action [see *Hollick v Toronto (City of)*, 2001 SCC 68 at para 17]. I am satisfied that the proposed class definitions for the Removed Child Class, Jordan's Class and Family Class (as set out below) contain objective criteria and that inclusion in each class can be determined without reference to the merits of the action.

(e) With respect to the third element of the certification analysis (namely, whether the claims of the class members raise common questions of law or fact), as noted by the Federal Court of Appeal in *Wenham v Canada (Attorney General)*, 2018 FCA 199 at para 72, the task under this part of the certification determination is not to determine the common issues, but rather to assess whether the resolution of the issues is necessary to the resolution of each class member's claim. Specifically, the test is as follows:

> The commonality question should be approached purposively. The underlying question is whether allowing the suit to proceed as a representative one will avoid duplication of fact-finding or legal analysis. Thus an issue will be "common" only where its resolution is necessary to the resolution of each class member's claim. It is not essential that the class members be identically situated vis-à-vis the opposing party. Nor is it necessary that common issues predominate over non-common issues or that the resolution of the common issues would be determinative of each class member's claim. However, the class members' claims must share a substantial common ingredient to justify a class action. Determining whether the common issues justify a class action may require the court to examine the significant of the common issues in relation to individual issues. In doing so, the court should remember that it may not always be possible for a representative party to plead the claims of each class member with the same particularity as would be required in an individual suit. (*Western Canadian Shopping Centres*, above at para 39; see also *Vivendi Canada Inc. v. Dell'Aniello*, 2014 SCC 1, [2014] 1 S.C.R. 3 at paras 41 and 44-46.)

Having reviewed the common issues (as set out below), I am satisfied that the issues share a material and substantial common ingredient to the resolution of each class

member's claim. Moreover, I agree with the Plaintiff that the commonality of these issues is analogous to the commonality of similar issues in institutional abuse claims which have been certified as class actions (such as the Indian Residential Schools and the Sixties Scoop class action litigation). Accordingly, I find that the common issue element is satisfied.

(f) With respect to the fourth element of the certification analysis (namely, whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of fact and law), the preferability requirement has two concepts at its core: (i) whether the class proceeding would be a fair, efficient and manageable method of advancing the claim; and (ii) whether the class proceeding would be preferable to other reasonably available means of resolving the claims of class members. A determination of the preferability requirement requires an examination of the common issues in their context, taking into account the importance of the common issues in relation to the claim as a whole, and may be satisfied even where there are substantial individual issues [see *Brake*, *supra* at para 85; *Wenham*, *supra* at para 77 and *Hollick*, *supra* at paras 27-31]. The Court's consideration of this requirement must be conducted through the lens of the three principle goals of class actions, namely judicial economy, behaviour modification and access to justice [see *Brake*, *supra* at para 86, citing *AIC Limited v Fischer*, 2013 SCC 69 at para 22].

(g) Having considered the above-referenced principles and the factors set out in Rule 334.16(2), I am satisfied a class proceeding is the preferable procedure for the just

and efficient resolution of the common questions of fact and law. Given the systemic nature of the claims, the potential for significant barriers to access to justice for individual claimants and the Plaintiffs' stated concerns regarding the other means available for resolving the claims of class members, I am satisfied that the proposed class action would be a fair, efficient and manageable method of advancing the claims of the class members.

(h) With respect to the fifth element of the certification analysis (namely, whether there are appropriate proposed representatives), I am satisfied, having reviewed the affidavit evidence filed on the motion together with the detailed litigation plan, that the proposed representative plaintiffs (as set out below) meet the requirements of Rule 334.16(1)(e);

CONSIDERING that the Court is satisfied that all of the requirements for certification are met and that the requested relief should be granted;

THIS COURT ORDERS that:

1. The Plaintiffs are granted an extension of time, *nunc pro tunc*, to bring this certification motion past the deadline in Rule 334.15(2)(b) of the *Federal Courts Rules*.

2. For the purpose of this Order and in addition to definitions elsewhere in this Order, the following definitions apply and other terms in this Order have the same meaning as in the Consolidated Statement of Claim as filed on July 21, 2021:

(a) **"Class"** means the Removed Child Class, Jordan's Class and Family Class, collectively.

(b) **"Class Counsel"** means Fasken Martineau Dumoulin LLP, Kugler Kandestin LLP, Miller Titerle + Co., Nahwegahbow Corbiere and Sotos LLP.

(c) **"Class Members"** mean all persons who are members of the Class.

(d) **"Class Period"** means:

(i) For the Removed Child Class members and their corresponding Family Class members, the period of time beginning on April 1, 1991 and ending on the date of this Order; and

(ii) For the Jordan's Class members and their corresponding Family Class members, the period of time beginning on December 12, 2007 and ending on the date of this Order.

(e) **"Family Class"** means all persons who are brother, sister, mother, father, grandmother or grandfather of a member of the Removed Child Class and/or Jordan's Class.

(f) **"First Nation"** and **"First Nations"** means Indigenous peoples in Canada, including the Yukon and the Northwest Territories, who are neither Inuit nor Métis, and includes:

(i) Individuals who have Indian status pursuant to the *Indian Act*, R.S.C., 1985, c.I-5 [*Indian Act*];

(ii) Individuals who are entitled to be registered under section 6 of the *Indian Act* at the time of certification;

(iii) Individuals who met band membership requirements under sections 10-12 of the *Indian Act* and, in the case of the Removed Child Class members, have done so by the time of certification, such as where their respective First Nation community assumed control of its own membership by establishing membership rules and the individuals were found to meet the requirements under those membership rules and were included on the Band List; and

(iv) In the case of Jordan's Class members, individuals, other than those listed in sub-paragraphs (i)-(iii) above, recognized as citizens or members of their respective First Nations whether under agreement, treaties or First Nations' customs, traditions and laws.

(g) **"Jordan's Class"** means all First Nations individuals who were under the applicable provincial/territorial age of majority and who during the Class Period were denied a service or product, or whose receipt of a service or product was delayed or disrupted, on grounds, including but not limited to, lack of funding or lack of jurisdiction, or as a result of a jurisdictional dispute with another government or governmental department.

(h) **"Removed Child Class"** means all First Nations individuals who:

(i) Were under the applicable provincial/territorial age of majority at any time during the Class Period; and

(ii) Were taken into out-of-home care during the Class Period while they, or at least one of their parents, were ordinarily resident on a Reserve.

(i) **"Reserve"** means a tract of land, as defined under the *Indian Act*, the legal title to which is vested in the Crown and has been set apart for the use and benefit of an Indian band.

3. This proceeding is hereby certified as a class proceeding against the Defendant pursuant to Rule 334.16(1) of the *Federal Courts Rules*.

4. The Class shall consist of the Removed Child Class, Jordan's Class and Family Class, all as defined herein.

5. The nature of the claims asserted on behalf of the Class against the Defendant is constitutional, negligence and breach of fiduciary duty owed by the Crown to the Class.

6. The relief claimed by the Class includes damages, *Charter* damages, disgorgement, punitive damages and exemplary damages.

7. The following persons are appointed as representative plaintiffs:

(a) For the Removed Child Class: Xavier Moushoom, Ashley Dawn Louise Bach and Karen Osachoff;

(b) For the Jordan's Class: Jeremy Meawasige (by his litigation guardian, Jonavon Joseph Measwasige) and Noah Buffalo-Jackson (by his litigation guardian, Carolyn Buffalo); and

(c) For the Family Class: Xavier Moushoom, Jonavon Joseph Meawasige, Melissa Walterson, Carolyn Buffalo and Dick Eugene Jackson (also known as Richard Jackson),

all of whom are deemed to constitute adequate representative plaintiffs of the Class.

8. Class Counsel are hereby appointed as counsel for the Class.

9. The proceeding is certified on the basis of the following common issues:

(a) Did the Crown's conduct as alleged in the Consolidated Statement of Claim [Impugned Conduct] infringe the equality right of the Plaintiffs and Class Members under section 15(1) of the *Canadian Charter of Rights and Freedoms*? More specifically:

(i) Did the Impugned Conduct create a distinction based on the Class Members' race, or national or ethnic origin?

(ii) Was the distinction discriminatory?

(iii) Did the Impugned Conduct reinforce and exacerbate the Class Members' historical disadvantages?

(iv) If so, was the violation of section 15(1) of the *Charter* justified under section 1 of the *Charter*?

(v) Are *Charter* damages an appropriate remedy?

(b) Did the Crown owe the Plaintiffs and Class Members a common law duty of care?

(i) If so, did the Crown breach that duty of care?

(c) Did the Crown breach its obligations under the *Civil Code of Québec*? More specifically:

(i) Did the Crown commit fault or engage its civil liability?

(ii) Did the Impugned Conduct result in losses to the Plaintiffs and Class Members and if so, do such losses constitute injury to each of the Class Members?

(iii) Are Class Members entitled to claim damages for the moral and material damages arising from the foregoing?

(d) Did the Crown owe the Plaintiffs and Class Members a fiduciary duty?

(i) If so, did the Crown breach that duty?

(e) Can the amount of damages payable by the Crown be determined partially under Rule 334.28(1) of the *Federal Courts Rules* on an aggregate basis?

(i) If so, in what amount?

(f) Did the Crown obtain quantifiable monetary benefits from the Impugned Conduct during the Class Period?

(i) If so, should the Crown be required to disgorge those benefits?

(ii) If so, in what amount?

(g) Should punitive and/or aggravated damages be awarded against the Crown?

(i) If so, in what amount?

10. The Plaintiffs' Fresh as Amended Litigation Plan, as filed November 2, 2021 and attached hereto as Schedule "A", is hereby approved, subject to any modifications necessary as a result of this Order and subject to any further orders of this Court.

11. The form of notice of certification, the manner of giving notice and all other related matters shall be determined by separate order(s) of the Court.

12. The opt-out period shall be six months from the date on which notice of certification is published in the manner to be specified by further order of this Court.

13. The timetable for this proceeding through to trial shall also be determined by separate order(s) of the Court.

14. Pursuant to Rule 334.39(1) of the *Federal Courts Rules*, there shall be no costs payable by any party for this motion.

"Mandy Aylen"
Judge

Court File Nos. T-402-19 / T-141-20 / T-1120-21

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON by his Litigation Guardian, Carolyn Buffalo, CAROLYN BUFFALO, and DICK EUGENE JACKSON also known as RICHARD JACKSON

Plaintiffs

and

HER MAJESTY THE QUEEN
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF LUCYNA M. LACH

(Sworn September 19, 2023)

I, Lucyna M. Lach, of the City of Montreal, in the Province of Quebec, AFFIRM:

1. I am an Associate Professor, at School of Social Work, Faculty of Arts, and Associate Member of the Departments of Paediatrics, Neurology and Neurosurgery, Faculty of Medicine at McGill University, and, as such, have knowledge of the matters contained in this Affidavit.

2. I have been retained to provide expert evidence in these class actions. I previously provided a methodology report regarding First Nations essential services claims in this matter on September 6, 2022.

3. I have been asked to provide a further methodology on the caregiving parents and caregiving grandparents of First Nations child claimants under the Final Settlement Agreement signed April 19, 2023.

4. My further said report is attached to this Affidavit as **Exhibit "A"**. My curriculum vitae is attached to my report. My signed Form 52.2 is enclosed to my previous affidavit.

SWORN BEFORE ME BY Lucyna M. Lach of the City of Montreal, in the Province of Quebec, before me at the City of Toronto, in the Province of Ontario, on September 19, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits
(or as may be)

LUCYNA M. LACH

Georgia Elizabeth Scott-McLaren, a Commissioner, etc.,
Province of Ontario, for
Sotos LLP, Barristers and Solicitors.
Expires February 20, 2024.

This is Exhibit "A" referred to in the Affidavit of Lucyna M. Lach of the City of Montreal, in the Province of Quebec, sworn before me at the City of Toronto, in the Province of Ontario on September 21, 2023 in accordance with the O. Reg. 431/20, Administering Oath or Declaration Remotely

Commissioner for Taking Affidavits (or as may be)

Georgia Elizabeth Scott-McLaren, a Commissioner, etc.,
Province of Ontario, for
Sotos LLP, Barristers and Solicitors.
Expires February 20, 2024.

Report Submitted to Moushoom Class Council Regarding
Method for Assessment of Compensation for Caregiving Parents or Caregiving Grandparents
Moushoom et al v Canada, Court File Nos. T-402-19/T-1141-20 and Trout et al v Canada, Court File No. T-1120-21

By:
Lucyna M. Lach, MSW, PhD
Associate Professor, School of Social Work, Faculty of Arts
Associate Member, Departments of Paediatrics, Neurology and Neurosurgery, Faculty of Medicine
McGill University
June 12, 2023

I. Executive Summary

I was retained by Sotos LLP to assist with the caregiver components of the Jordan's Principle and Trout claims in Moushoom et al v Canada, Court File Nos. T-402-19/T-141-20 and Trout et al v Canada, Court File No. T-1120-21. I previously provided a report dated September 6, 2022 in which I addressed eligibility and evaluation for compensation of First Nations individuals who were children between 1991 and 2017 and who would qualify under the same Jordan's Principle and Trout components.

In this report, I was asked by Sotos LLP to address the following questions:

i. Is there a way to assess the impact that delays, disruptions, or gaps in essential services and supports experienced by First Nations children had on caregiving parents and grandparents between 1991 and 2017?

ii. Is the impact that caregiving parents and grandparents experienced the same as, or different from, what their children experienced?

There is no existing valid or reliable method or measure to assess the impact that delays, disruptions, or gaps in essential services and supports experienced by First Nations children had on caregiving parents and grandparents between 1991 and 2017. Measures of individual caregiver outcomes, as well as caregiver burden, concepts that are closely aligned with those identified in the Final Settlement Agreement (i.e., pain, suffering, or harm), could be adapted, and a new measure could be developed that is both valid and reliable. This will require an investment of time and resources for development and pilot testing, but can be done.

To answer the second question, impact that caregiving parents and grandparents experienced is related to, but not directly associated with (in a causal-linear kind of way), the impact that their children experienced. The lived experience of caregiving parents and grandparents varies based on their individual, family, and community context. Some may have been living in the context of severe deprivation, while others had access to resources that helped them to manage their child's needs. Therefore, one cannot directly align the impact of unmet needs on the child with harm that caregivers endured. Impact on caregivers requires a more nuanced and separate evaluation that takes into consideration their individual, family, and community level strengths and abilities. Not doing so would contribute to pathologizing, diminishing, and dismissing the strengths and abilities of First Nations caregiving contexts at the individual, family, and community levels.

How caregivers experienced their child and their unmet needs was not all the same. Some caregivers suffered tremendously, others suffered a lot, but not as much, and still others suffered, but the harm that they experienced, as difficult as it was, was not as grave as others. This exercise casts some as having suffered more than others, many of whom were living in the context of intergenerational trauma, precarious housing, food insecurity, and poverty. Although difficult to disentangle, the FSA does not compensate caregivers for these structural deficits. It

focuses solely on the impacts of First Nations children not having received essential services and supports through processes associated with denial, delay, or unavailability of such services and supports.

II. My Bio and Background

My program of research has two main streams, the first focusses on documenting social determinants of living a life of quality among children, youth and young adults with neurodisabilities and their caregiving families, and the second focuses on the co-construction of systems of care that promote navigation of and access to supports and services needed by these individuals and families. Projects addressing social determinants have documented caregiver health, parenting, income trajectories, educational outcomes, and utilization of health services by children and their primary caregivers. Funded by Kids Brain Health Network (KBHN) and using administrative and clinical databases, this work has revealed the heightened challenges faced by this population in the Canadian context. I have collaborated with Dr. David Nicholas (University of Calgary) to increase capacity across and within government and non-government organizations to create transparent and more efficient pathways of care. Organizations that families must navigate access to have come together in Vancouver, Edmonton, Watson Lake (Yukon), and Montreal, to collaborate and innovate through program development and training. In addition, I am part of CHILDBRIGHT, and am co-leading (along with Dr. Patrick McGrath) a randomized control trial entitled Parents Empowering Neurodiverse Kids. This project is evaluating a web-based parenting program that combines group coaching and educational modules, with parent-to-parent support for parents whose children have brain-based development disorders such as Autism Spectrum Disorder or Intellectual Disability AND a mental health problem. I have also collaborated with a research team documenting the state of Jordan's Principle in the province of Manitoba. I am also a peer-reviewer for numerous journals and funding bodies.

To date, I have 75 peer reviewed publications, 13 chapters, have received just over $5M in research funds as principal or co-principal investigator, and another $5.2M as co-investigator. I have purposefully approached my role as a tenured academic to create a legacy by mentoring numerous graduate students. I am recognized as a social scientist in the neuroscience space, and have focussed my efforts, almost exclusively on supervising/mentoring student outputs such as such as theses, presentations, peer-reviewed articles and chapters. I regard this is one of the highlights of my career.

As Associate Dean in the Faculty of Arts (2012-2021), I oversaw the Student Affairs portfolio where I led a number of initiatives to improve support that students receive from their point of entry until graduation. In this role, I provided academic leadership and contributed to various faculty-specific and university-wide committees addressing student success and well-being. In the community, I am a board member on the CIUSSS Centre-Ouest Board of Directors, the Board of Governors at Centre Miriam, and the Board of Directors of Dans La Rue. Through my research and community engagement, I am committed to improving the lives of neurodivergent children, youth, and young adults and their families.

III. Background Information

The Final Settlement Agreement (FSA) dated April 19, 2023 specifies, in Article 6.09, the following regarding eligibility for compensation:

> Only the Caregiving Parents or the Caregiving Grandparents of ***Approved Jordan's Principle Class Members*** may be entitled to compensation if it is determined by the Administrator, or on appeal by the Third-Party Assessor, that such Caregiving Parents or Caregiving Grandparents themselves experienced the highest level of impact (including pain, suffering or harm of the worst kind).
>
> Only the Caregiving Parents or Caregiving Grandparents of the ***Approved Trout Child Class Members*** who have established a Claim under Article 6.08(13) may be entitled to compensation if it is determined by the Administrator, or on appeal by the Third-Party Assessor, that such Caregiving Parents or Caregiving Grandparents themselves experienced the highest level of impact (including pain, suffering or harm of the worst kind).
>
> The ***impact experienced by such Caregiving Parents or Caregiving Grandparents*** will be assessed through objective criteria and expert advice pursuant to a method to be developed and specified in parallel with Schedule F, Framework of Essential Services regarding Children. Such ***impact (including pain, suffering or harm)*** may be assessed through culturally sensitive Claims Forms designed in consultation with experts. Subject to the Court's approval, the selection of which Claimants qualify under this category will be based on objective factors (which may include the severity of pain, suffering or harm) and the number of Claimants.

Who is a caregiving parent?

As per the FSA:

> "Caregiving Parent" and "Caregiving Parents" means the caregiving mother or caregiving father of the affected Child, living with, and assuming and exercising parental responsibilities over a Removed Child Class Member at the time of the removal of the Child, or over a Kith Child Class Member at the time of the involvement of the Child Welfare Authority and the Child's Kith Placement, or over a Jordan's Principle Class Member or Trout Child Class Member at the time of the Delay, Denial or Service Gap with respect to the Child's Confirmed Need for an Essential Service. Caregiving Parent includes the biological parents, adoptive parents

> or Stepparents for each applicable Class, except as where expressly provided for otherwise in this Agreement. A foster parent is excluded as a Caregiving Parent under this Agreement. An adoption in this context means a verifiable provincial, territorial or custom adoption.

Who is a caregiving grandparent?

As per the FSA:

> "Caregiving Grandparent" and "Caregiving Grandparents" means a biological or adoptive caregiving grandmother or caregiving grandfather of the affected Child who lived with and assumed and exercised parental responsibilities over a Removed Child Class Member at the time of the removal of the Child, or over a Kith Child Class Member at the time of the involvement of the Child Welfare Authority and the Child's Kith Placement, or over a Jordan's Principle Class Member or Trout Child Class Member at the time of the Delay, Denial or Service Gap with respect to the Child's Confirmed Need for an Essential Service. An adoption in this context means a verifiable provincial, territorial or custom adoption. Relationships of a foster parent or Stepparent to a Child are excluded from giving rise to a Caregiving Grandparent relationship under this Agreement.

Only 2 caregivers will qualify per child.

IV. Is there a way to assess the impact that delays, disruptions, or gaps in essential services and supports experienced by First Nations children had on caregiving parents and caregiving grandparents between 1991 and 2017?

There is no current and existing way to retrospectively measure the impact that delays, disruptions, or gaps in essential services and supports experienced by First Nations children had on caregiving parents and/or caregiver grandparents. The FSA specifies that impact should take into consideration caregiver pain, suffering or harm, concepts that are all consistent with evaluation of caregiver outcomes in the literature. In the childhood disability/chronic illness literature, caregiver outcomes refer to physical health, mental health, social support, financial status, and caregiver burden. There are existing valid and reliable measures of each of these concepts, but none have been developed for use in the First Nations context. What this means is that the selected measure(s) would need to be adapted and piloted so that the items are culturally relevant and that the measure is both valid and reliable. Validity refers to the extent to which accurate conclusions can be drawn about the presence and degree of what is being measured (i.e., impact on caregivers); reliability refers to the extent to which the results of the measure are reproducible under different conditions (i.e., measure administered to the same person a week apart, or measure administered to the same person by different people).

Before proceeding with a review of the literature on caregiver burden, it is important to establish the conditions, the impact of which, are being evaluated (impact **of** what?). I will then proceed to an analysis of what is meant by impact (impact **on** what?).

Impact *of* what?

The compensation to which caregivers are entitled is referred to in the FSA as compensation for the ***impact that parents and grandparents experienced***. Establishing the severity of impact is tied to the denial, delay, or gap in services and supports and so, it has to do with having had a child who had unmet needs. It does not have to do with the number of essential services/supports not provided, or with the severity of the child's impairments per se, but rather with the severity of the impact that the unmet needs of the child had on the caregiver at the time. The following elaborates on this distinction.

A reasonable assumption is that children with increasing/higher levels of impairments had higher levels of need, and that those needs may have not been met. However, neither of those concepts are the main ones being considered. It is the severity of the impact of *not being provided with what was needed* that is being evaluated for compensation. To address the issue of number of essential services/supports not provided, let us use an example. There may have been one service/support that was not provided and that would have had an enormous impact on the caregiver's well-being; alternatively, there may have been several services/supports that the child was not provided with and the degree to which those services would have had an impact on the caregiver's well-being may not come close to the one service that would have made a huge difference. Therefore, it is NOT the number of services that a child did not receive that is central to this undertaking, but rather the severity of their impact on a caregiver's well-being.

The evaluation of the severity of the impact on the caregiver is also NOT about the severity of the child's impairments. A child with multiple impairments may require a caregiver to provide daily care that involves the preparation of specialized formulas or foods, management of body hygiene, constant airway surveillance and the administration of medications (da Silveira et al., 2022). Lack of access to a service/support such as respite care may have had a negative impact on a caregiver's physical or mental health, on the caregiver's ability to work, and/or on the caregiver's ability to engage with their community, each of which are outcome indicators of impact. Similarly, a child with a single impairment (e.g., hearing impairment) who was denied access to a hearing aid and/or speech and language therapy, meant that a parent remained at home with that child, and was similarly impacted.

A method of assessing impact on caregivers must consider how a child's lack of access to services/supports such as mental health services was associated with caregiver outcomes such as not being able to work or being incessantly worried about whether their child will live or die. The assessment of severity of impact would therefore need to take into consideration aspects of the caregiver's experience of hardship (e.g., had to quit work or was not able to work, or experienced physical or mental health problems) that was connected to their child's denial,

delay in, or lack of access to adequate mental health services. It does not have to do with the nature, frequency or severity of the child's mental health condition per se.

Impact *on* what?

The FSA specifies that impact should take into consideration impact on caregiver pain, suffering or harm. The literature provides some guidance regarding how to conceptualize and measure impact of having a child with impairments or health challenges. However, the literature does not differentiate impact of having a child with impairments/health challenges from the impact of having a child with impairments/health challenges and unmet needs. We therefore have to turn to the former to provide some direction regarding the answer to the question, 'impact on what?'.

Individual caregiver outcomes reflected in the caregiver literature cover employment/income, hours of direct care, physical and emotional health, social isolation, and strained family relations. It is important to note that caregiver outcomes such as experienced racism, stigma, or discrimination, or housing and food precarity, are not typically considered.

Employment- or income-related consider the extent to which caregivers experience absenteeism or loss of productivity that result in unpaid leaves of absence (Arora et al., 2020), forfeiting of advancement opportunities, inability to work, job loss, and financial instability. (Dantas et al., 2019). Caregiving parents are at risk to all of these possibilities due to the direct care responsibilities that are considered extraordinary. They spend numerous hours per week providing care related to child's needs (Arora et al., 2020; Matsuzawa et al., 2020), provide extra feedings, attend to personal hygiene, dressing, and toileting (McCann et al., 2012), and are very involved in attending to their child's health care needs such as attending appointments, hospitalizations, medication administration, provision of specialized education, therapy/intervention procedures and health care management (McCann et al., 2012). These obligations have consequences as parents have fewer hours of sleep per day (Lee, 2013; Matsuzawa et al., 2020), experience injury related to provision of care (Black et al., 2022), higher levels of stress (Dantas et al., 2019), and exhaustion (Nicholas et al., 2016). Studies have documented that their physical health is worse than those whose children do not have special health care needs (Lach et al., 2009). Living with constant sense of uncertainty (Nicholas et al., 2016) and hopelessness, they are more likely to have symptoms of mental distress (Gull & Kaur, 2023; Scherer et al., 2019). These obligations also mean that they are less available to engage in other social activities (Dantas et al., 2019), and feel isolated (Nicholas et al., 2016). Finally, family routines, relationships, and activities are altered (Dantas et al., 2019; Lach et al., 2009; McCann et al., 2012), as the family system (Jellett et al., 2015) struggles to adapt to the child's unmet needs.

In addition to these individual outcomes, there are studies that examine caregiver burden, a concept that comes close to what is referred to in the FSA as pain, suffering, and harm. Caregiver burden refers to the multifaceted strain perceived by the caregiver from caring for family members and/or loved one over time (Liu et al., 2020). Measures of caregiver burden

vary from ones that are unidimensional (i.e., greater and lesser caregiver burden), to ones that are multidimensional and that tap into different aspects of caregiver burden. The caregiver burden literature is relatively well established for caregivers of aging adults with dementia, first appearing around the early to mid 1980's (Montgomery et al., 1985; Zarit et al., 1980). Measures used in those studies are now appearing in the disability literature (Boluarte-Carbajal et al., 2022; Boyer et al., 2006; Domínguez-Vergara et al., 2023) and in the caregivers of children with chronic health conditions (Javalkar et al., 2017) and/or disabilities (Calderón et al., 2011) literature. However, none have been developed for use with First Nations. Nonetheless, this represents a good starting point for considering what is possible. The following describe a few of these measures.

One of the versions of the Zarit Caregiver Burden Interview (Zarit et al., 1980) is comprised of 22 items that are answered on a five-point Likert-type scale (Never = 0; Rarely = 1; Sometimes = 2; Quite often = 3; and Almost always = 4). The ZBI items assess the perceived impact of caregiving on the caregiver's physical health, emotional health, social activities, and financial situation. Overall ZBI scores range from 0 to 88 points, where a high score implies a greater perceived caregiver burden. (Domínguez-Vergara et al., 2023).

Family Burden Assessment Scale developed by (Yildirim & Sari, 2008) evaluates the following: economic burden (6 items), social burden (6 items), physical burden (5 items), emotional burden (11 items), perception of inadequacy (8 items), and time requirement (7 items). It uses a 5-point Likert type scale and items are scored as "Never (1), Rarely (2), Sometimes (3), Often (4), and Always (5)". The lowest score that can be obtained from the scale is 43, the highest score is 215. Those who get 97 points or more are considered burdened. This scale was developed to be used in the Turkish population.

A third measure to consider is the Burden Scale for Family Caregivers (BSFC; Graessel et al., 2003). There is a 28-item version and a 10 item version, both of which have been validated for family caregivers of individuals with and without dementia. The measure generates a score between 0 and 84 which can be classified as mild, moderate or severe caregiver burden (see https://www.psychiatrie.uk-erlangen.de/med-psychologie-soziologie/forschung/psychometrische-versorgungsforschung/burden-scale-for-family-caregivers-bsfc). The measure is currently being used in a study of caregivers of adolescents with various health care needs who are transitioning into adulthood (personal communication, Professor Laura Brunton, Western University). Similarly, the 10-item version (Graessel et al., 2014) generates a score between 0 and 30, but does not lend itself to the same classification as mild/moderate/severe.

The key message here is that it is possible to adapt an existing measure and establishing validity and reliability for use in the First Nations context.

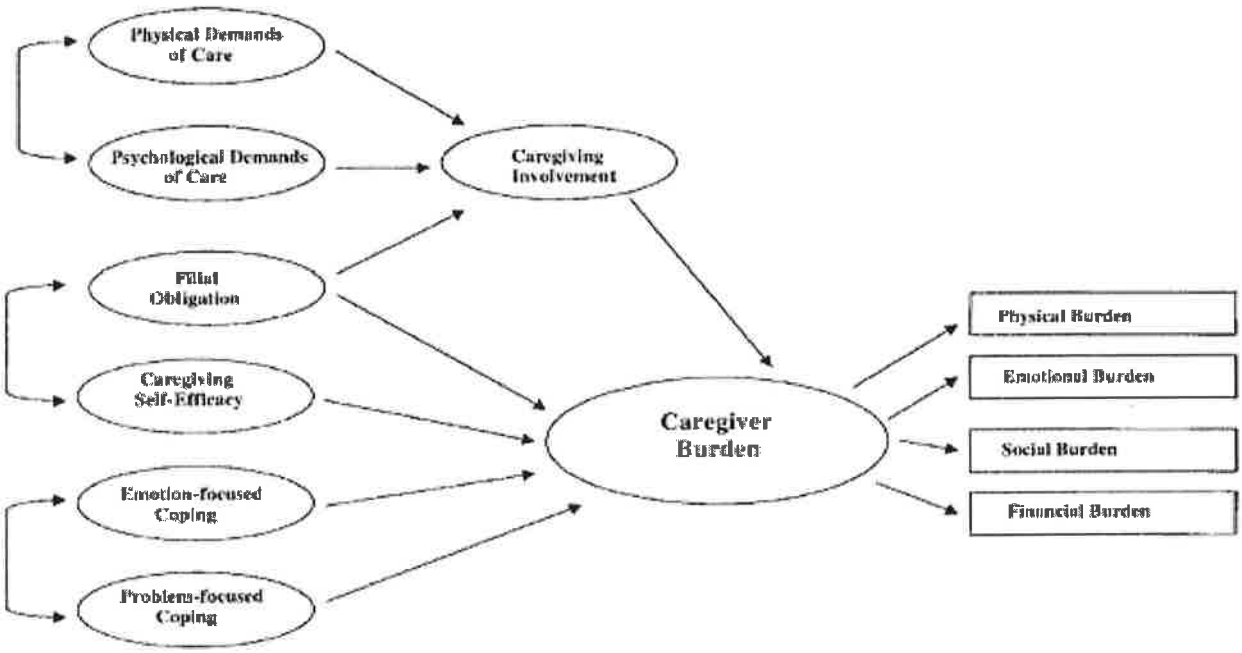
V. Is the impact that caregiving parents and grandparents experienced the same as, or different from, what their children experienced?

The relationship between harm that a child suffered and harm that caregivers suffered is not a causal linear one. At first glance, one may come to the conclusion that a child's level of pain and suffering related to unmet needs invokes an equal level of caregiver pain and suffering. Of course, no caregiver is emotionally immune from the impact of their child's pain and suffering. However, not all caregivers will experience the impact of their child's unmet needs in the same manner. We must also take into account the context and therefore variability within which the caregiver's experience of their child and their unmet needs occurred. For example, some caregivers may have had access to a supportive family or community, or were able to draw on internal coping resources that mitigated the experience of what their child was going through. Other caregivers may have had a child with similar unmet needs, but were extremely isolated had little support, and had more limited coping resources. This is not meant to blame caregivers as many were doing the best they could in a context of intergenerational trauma and suffering, poor housing conditions, and extreme poverty. What this does highlight is that a proportion of caregivers were raising their children in the context of tremendous hardship and suffering, while others did not experience that same level of hardship or suffering due to the context within which they were living.

The variability in caregiver outcomes is consistent with both theoretical and empirical literature. Theoretical literature is very critical of the 'tragedy narrative' of those who have impairments (Oliver, 2013) as it obscures alternative narratives that reveal both structural issues that contribute to the complexity and resilience in the lives of these children, families, and communities (Hemingway, 2011). To be clear, these theoretical perspectives do not address narratives about the experience of having a child with unmet needs. However, as stated earlier, unmet needs are related to impairments or health challenges. This alternative narrative is also consistent with a First Nations perspective that emphasizes how children are regarded as an honour and as a gift (Greenwood, 2006) and how the culturally diverse communities to which they belong can support their holistic development (Ineese-Nash, 2020). Taking this perspective further, the impact of having a child with impairments or health challenges and unmet needs is therefore not an exclusively tragic story, but rather one that is far more nuanced and complex. It is also a story about love, commitment, doing the best one can in the face of structural adversity, and about drawing on resources to do what is needed. The resources that First Nation children needed were not adequately provided; the CHRT proceedings and this class action are ways in which theirs and their caregiver's suffering and harm is acknowledged.

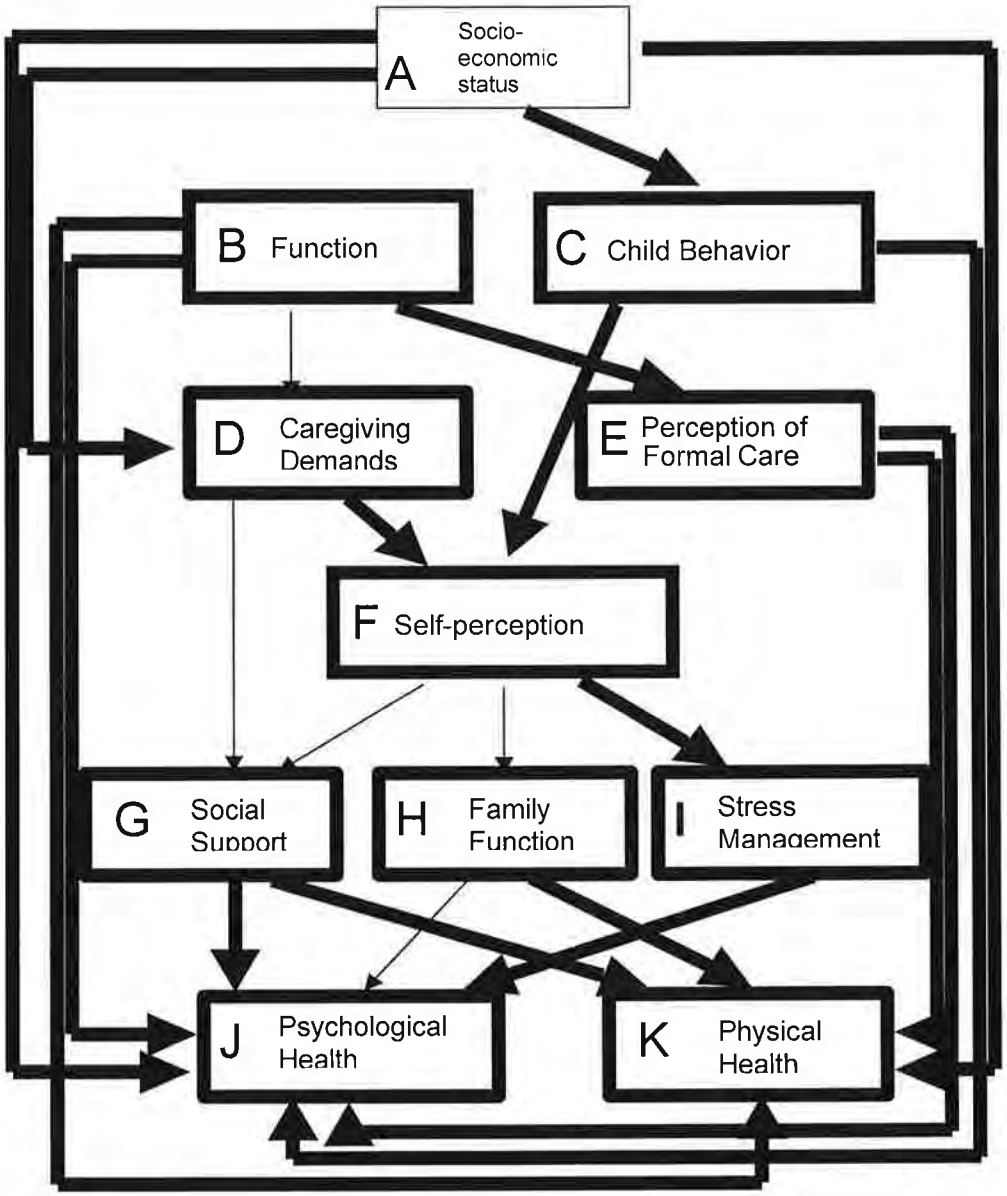
Theoretical models explaining variability in caregiver outcomes identify how child, parent, family, school and community and societal factors that all play some kind of role (Graessel et al., 2003)

Figure 1.



Structural model of the caregiver burden model - See (Chou, 2000)
Chou's (2000) model focuses on the demands of care as well as different aspects of the individual caregiver that explain variability in caregiver burden.

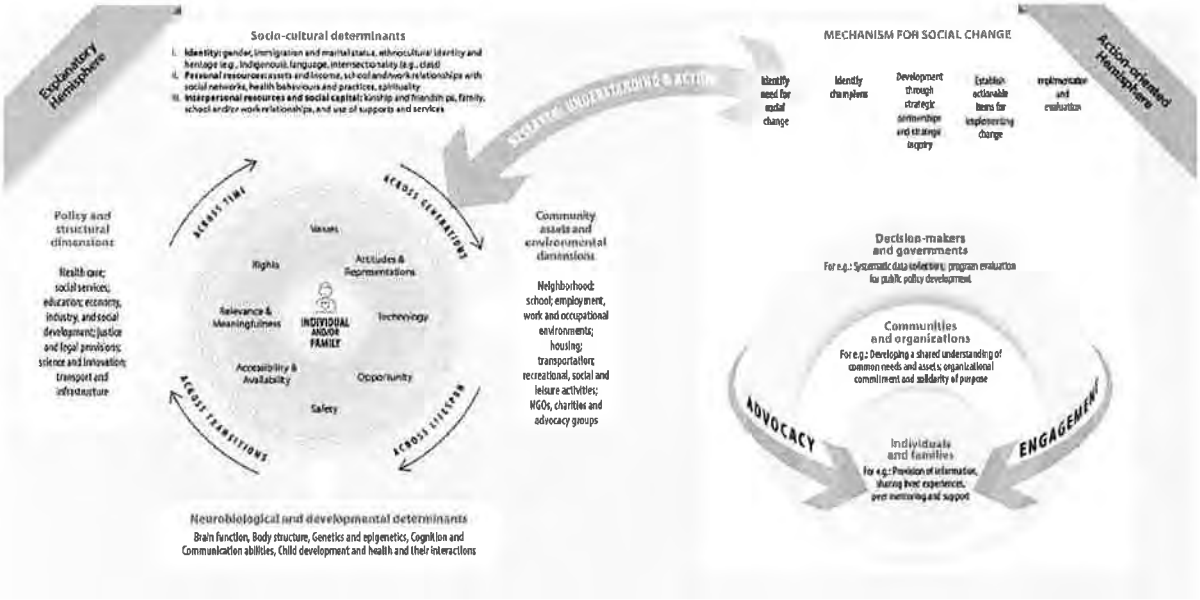
Figure 2.



Conceptual Model of Caregiving Process and Caregiver Burden Among Pediatric Population – see (Raina et al., 2004)

Raina et al., 2004 depict caregiver outcomes of psychological and physical health as being a function of socioeconomic conditions, child, caregiver, family, and social support factors.

Figure 3:

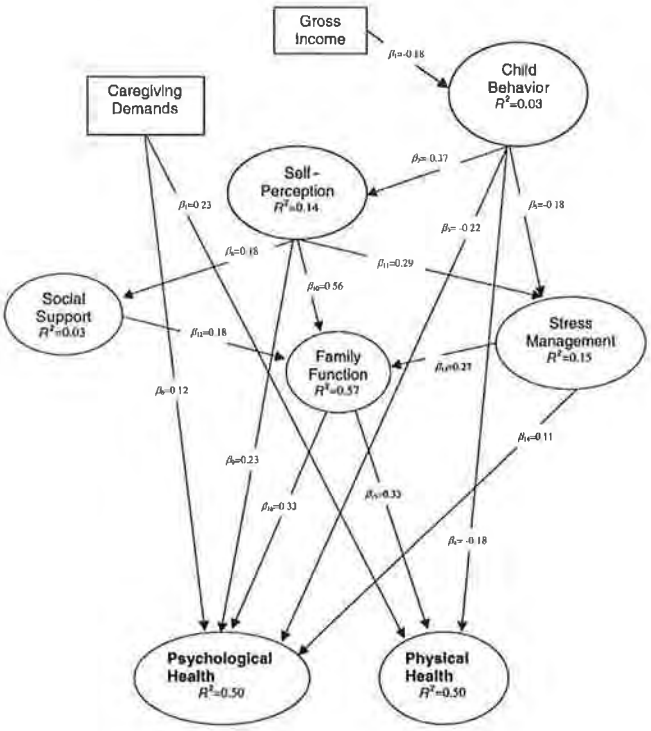


Canadian Framework for Social Determinants of Health Among Children with Neurodisabilities and their Families - see (Filipe et al., 2021)

In this framework, caregiver is situated at the centre of green circle (on the left side). In addition to socio-cultural determinants, community assets and environmental dimensions, as well as policy and structural dimensions play a role in processes that impact caregiver outcomes such as caregiver burden.

At an empirical level, the impact of having a child with impairments or health challenges that require services and supports and that are met to different degrees, on caregiver outcomes, requires testing relationships in these models. This means that risk and protective factors, other than the unmet need, that reflect the context within which the child and caregiver were living, are considered. For example, the model depicted in Figure 2 was tested by Raina et al., 2005. Using structural equation modeling, they found the following:

Figure 4.



In Figure 4, we see that there are multiple pathways for explaining indicators of caregiver burden that involve income, child factors, caregiving demands, and other aspects of the caregiver, family, and support system. Studies have repeatedly shown that caregiver well-being is a function of the complexity of the child's level of function and demands of care (Chou, 2000; McCann et al., 2012; Miller et al., 2016), behaviour problems (Lach et al., 2009; Morris, 2014) as well as caregiver factors such as coping style (Chou, 2000; Raina et al., 2005) support from family and friends and community (Zaidman-Zait et al., 2017). What this means is that two caregivers whose children had similar impairments/health challenges and unmet needs will experience the impact of those unmet needs differently.

Piloting the Forms, Questionnaires and Application Process

All forms, questionnaires, and processes for application will be piloted in 2 stages. In the first stage, up to 15 claimants, 15 caregiving claimants, 10 professionals and 10 navigators will be interviewed in order to arrive at a version of the questionnaires and forms that will be submitted to a larger pilot phase. The larger pilot phase will not start until this is completed. The number of claimant participants needed for the pilot will be determined in consultation with statisticians and a steering committee comprised of First Nations and non-First Nations partners.

The following depicts a proposed timeline:

Year	2023							2024		
Month	6	7	8	9	10	11	12	1	2	3
Stage 1: Governance and Administration										
Identify working group members										
Establish governance structure and procedures										
Hire Project Coordinator										
Finalize draft plan										
Steering group meetings										
Stage 2 - Finalizing Forms, Questionnaires and Processes - Claimant and Caregiver Claimant Forms										
Identify community for pilot										
Interview 15 claimants										
Interview 15 caregiver claimants										
Interview 10 professionals										
Interview 10 navigators										
Analysis of data										
Adaptation of instructions, forms, and questionnaires										
Stage 3 - Piloting the Forms, Questionnaires and Processes										
Identify communities for pilot										
Obtain consents										
Recruitment of participants										
Administration of questionnaires										
Data entry										
Data analysis										
Final report										

Best practices pertaining to First Nations information governance are driven by OCAP principles. Ownership, control, access, and possession of any information collected at any stage of the pilot will need to be articulated. I consulted with Albert Armieri and Aaron Franks from the First

Nations Information Governance Centre (FNIGC) on March 20, 2023. They have expertise in questionnaire design, and broker relationships with regional partners. I highly recommend that they be engaged in this process.

Conclusion

Guidance for the evaluation of the impact of unmet First Nations children's needs on caregiving parents and grandparents is provided, almost exclusively, through literature that lies outside of the First Nations context. What this theoretical and empirical literature indicates is that hardship and suffering can be assessed, but that it will be require an adaptation of existing measures, piloting of that measure, and establishing culturally appropriate methods for its administration.

The FSA explicitly identifies that compensation to caregiving parents and grandparents is related to impact and that the impact includes pain, suffering, and harm. This pain, suffering, and harm must be linked to the denials, delays, or gaps in services and supports. The method of evaluation will seek a way to distinguish greater from lesser negative impact. *This should not minimize the possibility that First Nations sons and daughters who had unmet needs that were not addressed due to delays, disruptions, or gaps in services, also brought light, growth, and positive meaning to the lives of their caregiving parents and grandparents. That is consistent with how children in the First Nations context are, in fact, viewed.*

References

Arora, S., Goodall, S., Viney, R., & Einfeld, S. (2020). Societal cost of childhood intellectual disability in Australia. *JOURNAL OF INTELLECTUAL DISABILITY RESEARCH*, *64*(7), 524–537. https://doi.org/10.1111/jir.12732

Black, L., Shaunfield, S., Labellarte, P., Gaebler-Spira, D., & Foster, C. (2022). Physical and Environmental Barriers to Mobility and Participation in Children With Medical Complexity: A Qualitative Study. *CLINICAL PEDIATRICS*, *61*(10), 717–726. https://doi.org/10.1177/00099228221099097

Boluarte-Carbajal, A., Paredes-Angeles, R., & Tafur-Mendoza, A. A. (2022). Psychometric Properties of the Zarit Burden Interview in Informal Caregivers of Persons With Intellectual Disabilities. *Frontiers in Psychology*, *13*, 792805. https://doi.org/10.3389/fpsyg.2022.792805

Boyer, F., Drame, M., Morrone, I., & Novella, J.-L. (2006). Factors relating to carer burden for families of persons with muscular dystrophy. *Journal of Rehabilitation Medicine*, *38*(5), 309–315.

Calderón, C., Gómez-López, L., Martínez-Costa, C., Borraz, S., Moreno-Villares, J. M., & Pedrón-Giner, C. (2011). Feeling of Burden, Psychological Distress, and Anxiety among Primary Caregivers of Children with Home Enteral Nutrition. *Journal of Pediatric Psychology*, *36*(2), 188–195. https://doi.org/10.1093/jpepsy/jsq069

Chou, K.-R. (2000). Caregiver burden: A concept analysis. *Journal of Pediatric Nursing*, *15*(6), 398–407. https://doi.org/10.1053/jpdn.2000.16709

Cook, J., Tovin, M., & Kenyon, L. (2022). Understanding the Lived Experience of Caring for a Child With Severe Cerebral Palsy: A Critical Step Toward Psychologically Informed Family-Centered Care. *PHYSICAL THERAPY*, *102*(4). https://doi.org/10.1093/ptj/pzab294

da Silveira, A., Hungaratti, G., Soccol, K., & Schenkel, Y. (2022). Challenges in everyday home care to children with special health needs in the voice of caregivers family. *CULTURA DE LOS CUIDADOS*, *26*(64), 136–147. https://doi.org/10.14198/cuid.2022.64.12

Dantas, K., Neves, R., Ribeiro, K., de Brito, G., & Batista, M. (2019). Repercussions on the family from the birth and care of children with multiple disabilities: A qualitative meta-synthesis. *CADERNOS DE SAUDE PUBLICA*, *35*(6). https://doi.org/10.1590/0102-311X00157918

Domínguez-Vergara, J., Santa-Cruz-Espinoza, H., & Chávez-Ventura, G. (2023). Zarit Caregiver Burden Interview: Psychometric Properties in Family Caregivers of People with Intellectual Disabilities. *European Journal of Investigation in Health, Psychology and Education*, *13*(2), 391–402. https://doi.org/10.3390/ejihpe13020029

Filipe, A. M., Bogossian, A., Zulla, R., Nicholas, D., & Lach, L. M. (2021). Developing a Canadian framework for social determinants of health and well-being among children with neurodisabilities and their families: An ecosocial perspective. *Disability and Rehabilitation*, *43*(26), 3856–3867. https://doi.org/10.1080/09638288.2020.1754926

Graessel, E., Berth, H., Lichte, T., & Grau, H. (2014). Subjective caregiver burden: Validity of the 10-item short version of the Burden Scale for Family Caregivers BSFC-s. *BMC Geriatrics*, *14*(1), 1–9.

Graessel, E., Chiu, T., & Oliver, R. (2003). *Development and Validation of the Burden Scale for Family Caregivers* [Manual]. https://www.psychiatrie.uk-erlangen.de/med-psychologie-soziologie/forschung/psychometrische-versorgungsforschung/burden-scale-for-family-caregivers-bsfc

Greenwood, M. (2006). Children Are a Gift to Us: Aboriginal-Specific Early Childhood Programs and Services in Canada. *Canadian Journal of Native Education*, *29*(1), Article 1. https://doi.org/10.14288/cjne.v29i1.196381

Gull, M., & Kaur, N. (2023). Mental Health Problems Among Caregivers of Differently-Abled Children: A Bibliometric Study. *Journal of Psychosocial Rehabilitation and Mental Health*. https://doi.org/10.1007/s40737-023-00339-2

Hemingway, L. (2011). Understanding disability: From 'personal tragedy' to social disadvantage. In L. Hemingway (Ed.), *Disabled people and housing: Choices, opportunities and barriers* (p. 0). Policy Press. https://doi.org/10.1332/policypress/9781847428066.003.0003

Ineese-Nash, N. (2020). Disability as a colonial construct: The missing discourse of culture in conceptualizations of disabled indigenous children. *Canadian Journal of Disability Studies*, *9*(3), 28–51.

Javalkar, K., Rak, E., Phillips, A., Haberman, C., Ferris, M., & Van Tilburg, M. (2017). Predictors of Caregiver Burden among Mothers of Children with Chronic Conditions. *Children*, *4*(5), 39. https://doi.org/10.3390/children4050039

Jellett, R., Wood, C. E., Giallo, R., & Seymour, M. (2015). Family functioning and behaviour problems in children with Autism Spectrum Disorders: The mediating role of parent mental health. *Clinical Psychologist*, *19*(1), 39–48. https://doi.org/10.1111/cp.12047

Lach, L. M., Kohen, D. E., Garner, R. E., Brehaut, J. C., Miller, A. R., Klassen, A. F., & Rosenbaum, P. L. (2009). The health and psychosocial functioning of caregivers of children with neurodevelopmental disorders. *Disability and Rehabilitation*, *31*(9), 741–752. https://doi.org/10.1080/08916930802354948

Lee, J. (2013). Maternal stress, well-being, and impaired sleep in mothers of children with developmental disabilities: A literature review. *Research in Developmental Disabilities*, *34*(11), 4255–4273.

Liu, Z., Heffernan, C., & Tan, J. (2020). Caregiver burden: A concept analysis. *International Journal of Nursing Sciences*, *7*(4), 438–445. https://doi.org/10.1016/j.ijnss.2020.07.012

Matsuzawa, A., Shiroki, Y., Arai, J., & Hirasawa, A. (2020). Care coordination for children with medical complexity in Japan: Caregivers' perspectives. *CHILD CARE HEALTH AND DEVELOPMENT*, *46*(4), 436–444. https://doi.org/10.1111/cch.12767

McCann, D., Bull, R., & Winzenberg, T. (2012). The daily patterns of time use for parents of children with complex needs: A systematic review. *JOURNAL OF CHILD HEALTH CARE*, *16*(1), 26–52. https://doi.org/10.1177/1367493511420186

Miller, A., Shen, J., & Masse, L. C. (2016). Child functional characteristics explain child and family outcomes better than diagnosis: Population-based study of children with autism or other neurodevelopmental disorders/disabilities. *Health Reports*, *27*(6), 9.

Montgomery, R. J., Stull, D. E., & Borgatta, E. F. (1985). Measurement and the analysis of burden. *Research on Aging*, *7*(1), 137–152.

Morris, L. (2014). The Impact of Work on the Mental Health of Parents of Children with Disabilities. *FAMILY RELATIONS*, *63*(1), 101–121. https://doi.org/10.1111/fare.12050

Nicholas, D., Zwaigenbaum, L., Ing, S., MacCulloch, R., Roberts, W., McKeever, P., & McMorris, C. (2016). "Live It to Understand It": The Experiences of Mothers of Children With Autism Spectrum Disorder. *QUALITATIVE HEALTH RESEARCH*, *26*(7), 921–934. https://doi.org/10.1177/1049732315616622

Oliver, M. (2013). The social model of disability: Thirty years on. *Disability & Society*, *28*(7), 1024–1026.

Raina, P., O'Donnell, M., Rosenbaum, P., Brehaut, J., Walter, S. D., Russell, D., Swinton, M., Zhu, B., & Wood, E. (2005). The Health and Well-Being of Caregivers of Children With Cerebral Palsy. *Pediatrics*, *115*(6), e626–e636. https://doi.org/10.1542/peds.2004-1689

Raina, P., O'Donnell, M., Schwellnus, H., Rosenbaum, P., King, G., Brehaut, J., Russell, D., Swinton, M., King, S., & Wong, M. (2004). Caregiving process and caregiver burden: Conceptual models to guide research and practice. *BMC Pediatrics*, *4*, 1–13.

Scherer, N., Verhey, I., & Kuper, H. (2019). Depression and anxiety in parents of children with intellectual and developmental disabilities: A systematic review and meta-analysis. *PloS One*, *14*(7), e0219888.

Yildirim, H., & Sari, Z. B. (2008). Development of a Family Burden Assessment Scale for FAmilies of Memtally Retarded Chidlren. *Journal of Ataturk Univesity School of Nuring*, *11*(3), 86–100.

Zaidman-Zait, A., Mirenda, P., Duku, E., Vaillancourt, T., Smith, I. M., Szatmari, P., Bryson, S., Fombonne, E., Volden, J., & Waddell, C. (2017). Impact of personal and social resources on parenting stress in mothers of children with autism spectrum disorder. *Autism*, *21*(2), 155–166.

Zarit, S. H., Reever, K. E., & Bach-Peterson, J. (1980). Relatives of the impaired elderly: Correlates of feelings of burden. *The Gerontologist*, *20*(6), 649–655.

LUCYNA M. LACH
Curriculum Vitae

CONTACT INFORMATION

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550 Sherbrooke St. Ouest,
Suite #100, Tour Est
Montreal, Quebec, H43A 1B9
(514) 398 7050
lucy.lach@mcgill.ca

ACADEMIC APPOINTMENTS

June 2009 - Present	McGill University, Faculty of Arts, School of Social Work, Associate Professor, Tenured
May 2004 – Present	McGill University, Faculty of Medicine, Department of Paediatrics (Child Development Program) and Department of Neurology and Neurosurgery (Division of Neurology), Associate Member
November 2003 – May 2009	McGill University, Faculty of Arts, School of Social Work, Assistant Professor, Tenure Track
September 2001 – October 2003	McGill University, Faculty of Arts, School of Social Work, Assistant Professor, Special Status
January 1999 – Dec. 2000	University of Toronto, Faculty of Social Work, Sessional Lecturer

EDUCATION

Doctor of Philosophy, 2004
University of Toronto, Faculty of Social Work
Thesis: Social Experiences of Children and Adolescents Diagnosed With Intractable Epilepsy; Supervisor: Elsa Marziali

Master of Social Work, 1986
University of Toronto, Faculty of Social Work

Bachelor of Arts (Honours in Sociology), 1984
University of Toronto, University College

ADMINISTRATIVE APPOINTMENTS

2022-present	MSW Program Director, School of Social Work, McGill University
2012-2021	Associate Dean (Student Affairs), Faculty of Arts, McGill University
2020-2021	CO-CHAIR, Committee on Student Services (Subcommittee of Senate), McGill University
2018-2019	CHAIR, Committee for Implementation of the Policy Against Sexual Violence, McGill University
2012-2021	CHAIR, Committee on Student Affairs, Faculty of Arts, McGill University CHAIR, Scholarship Committee CO-CHAIR, Curriculum Committee, Faculty of Arts MEMBER, Senate MEMBER, Faculty Council, Faculty of Arts MEMBER, Subcommittee on Student Affairs Policy MEMBER, Subcommittee on Student Services MEMBER, Enrolment and Student Affairs Advisory Committee MEMBER, Exchange and Study Away Steering Committee
2011-2012	GRADUATE PROGRAM DIRECTOR, MSW Program, School of Social Work, Faculty of Arts, McGill University
2010-2016	MEMBER, Staff Selection, Promotion, and Tenure Review Committee, School of Social Work, Faculty of Arts, McGill University
2011-2012	MEMBER, Scholarship Committee, Faculty of Arts
2010-2011	MEMBER, Governance Task Force, Canadian Association for Social Work Education
2006-2010	UNDERGRADUATE PROGRAM DIRECTOR, BSW Program, School of Social Work, Faculty of Arts, McGill University
2006-2007	SUPERVISOR, MSW Student, Child Development Program, Montreal Children's Hospital
2004-2005	DIRECTOR, Centre for Applied Family Studies, Faculty of Arts, McGill University

2004-2006 MEMBER, BSW Committee, School of Social Work, Faculty of Arts, McGill University

2004-2008 MEMBER, Board of Accreditation, Canadian Association of Schools of Social Work

2003-2007 MEMBER, Curriculum Committee, Faculty of Arts, McGill University

2002-2003 ASSOCIATE DIRECTOR, MSW Program, School of Social Work, Faculty of Arts, McGill University

2001-2003 MEMBER, Staff Search Promotion and Tenure Committee (SSPT), School of Social Work, Faculty of Arts, McGill University

2001-2003 MEMBER, MSW Committee, School of Social Work, Faculty of Arts, McGill University

1999-2001 PROJECT DIRECTOR, Hospital For Sick Children, Research Institute. Population Health and Brain and Behaviour Divisions.

1997-1999 CONSULTANT, EARLY INTERVENTION SERVICES OF YORK REGION

1996-1997 MEMBER, STRATEGIC TRANSFORMATION AND REDESIGN TEAM, HSC

1991-1997 SUPERVISOR, MASTER OF SOCIAL WORK GRADUATE STUDENTS, HSC

- Faculty of Social Work, University of Toronto
- Faculty of Social Work, Sir Wilfred Laurier University
- Faculty of Social Work, Washington University

RESEARCH

2020-2022 **LES EXPÉRIENCES D'EXCLUSION ET D'INCLUSION SOCIALES CHEZ LES PERSONNES VIEILLISSANT EN SITUATION DE NEURODIVERSITÉ ET LEURS PROCHES.** Shari Brotman (PI), Tamara Sussman (McGill), Émilie Raymond (Laval), Marie-Hélène Deshaies (Laval), **Lucyna Lach (McGill),** Daniel Dickson (Concordia), Laura Pacheco (CIUSSS de l'Ouest-del'île-de-Montréal); Zelda Freitas (CREGES-CIUSSS du Centre-Ouest-de-l'île-de-Montréal), Julien Simard (McGill) (collaborators);

- $149,705 awarded by Société et culture (FRQSC) Action concertée – Programme de recherche sur les personnes aînées vivant des dynamiques de marginalisation et d'exclusion sociale
- My role is to provide substantive support regarding the neurodisability literature and lived experience of families raising children/young/young adults with neurodisabilities; I will also provide input into the implementation of the project methods.

2020-2022 **NOTHING WITHOUT US: TOWARDS INCLUSIVE, EQUITABLE COVID-19 POLICY RESPONSES FOR YOUTH WITH DISABILITIES AND THEIR FAMILIES.** Jennifer Zwicker (PI), David Nicholas (Co-PI), Denise Keiko Shikako-Thomas (Co-PI), Chantal Camden, Mayada Elsabbagh, Anne Hudo, Matthew Hunt, Sebastian Jodoin, **Lucyna Lach,** Raphael Lencucha (Co-applicants), Neil Belander, Krista Carr, Robert Lattanzio, Nicky Lewis, Michael Prince (collaborators).

- $199,965 awarded by Canadian Institutes of Health Research (CIHR) COVID-19 Mental Health and Substance Use Service Needs and Delivery Program
- Using a mixed methods design, this research maps COVID-19 policies implemented in each province and their alignment with disability-inclusive design that promotes resilience and mental health, describes acute mental health needs of youth with disabilities and their caregivers and co-designs recommendations using evidence to better match COVID-19 policy responses
- My role is to support implementation of the qualitative component of the project.

2018-2020 **WHO BENEFITS FROM GOVERNMENT DISABLITY FINANCIAL SUPPORT? AN ASSESSMENT OF HOW DISABILITY BENEFITS SUPPORT CAREGIVERS OF CHILDREN WITH SEVERE DISABILITIES IN CANADA AT DIFFERENT INCOMES.** Jennifer Zwicker (PI), Daniel Dutton, **Lucyna Lach,** David Nicholas (Co-applicants), Rubab Arim, Dafna Kohen, Kathleen O'Grady (collaborators).

- $74,675 awarded by Social Sciences and Humanities Research Council (SSHRC) Insight Development Program
- This research uses a mixed methods approach to determine the take-up of federal disability benefits and supports among families of children/youth with DD in each province and across income levels.
- My role is involves oversight of qualitative component of the project.

2017-2022 **INTEGRATED NAVIGATIONAL SUPPORT FOR FAMILIES OF CHILDREN WITH NEURODEVELOPMENTAL DISABILITIES: A PILOT IN ALBERTA, BRITISH COLUMBIA, AND THE YUKON.** David Nicholas and **Lucyna Lach (Co-PIs),** Jenn Zwicker and Community Partners

- $199,992 awarded by Kids Brain Health Network
- This is a community-based participatory project that involves the development of partnerships between managers/directors in the health, social services, and education sectors, non-government organizations, advocates, and family members. A collective community impact approach is being used to develop a shared understanding of the challenges that families of children with neurodisabilities face accessing services, mapping assets, and developing joint initiatives to improve families' experience of navigating services.
- $750,000 (2018-2022) awarded by Azrieli Foundation
- $660,000 (2018-2022) awarded by Anonymous Donor

2016-2022 **PARENTING PROGRAM FOR CHALLENGING BEHAVIOUR IN CHILDREN WITH NEURODISABILITIES: STRONGEST FAMILIES NEURODEVELOPMENTAL.** Patrick McGrath and **Lucyna Lach (Co-PIs),** Megan Aston, Christine Ellsworth, Anna Huguet, Patricia Lingley-Pottie, Jennifer McLean, Patricia Monaghan, Mike Sangster, Krista Sweet, Lori Wozney and Donna Thomson

- $1,395,046 awarded by CIHR Strategic Patient Oriented Research (SPOR) entitled **CHILD-BRIGHT: Child Health Initiatives Limiting Disability – Brain Research Improving Growth and Health Trajectories.** Annette Majnemer, Steve Miller, Dan Goldowitz (Co-PI's) et al. I am co-principal investigator on one of 13 projects; value of the SPOR $25 Million.
- 3-arm RCT testing an online and telephone-based parent coaching intervention
- Providing co-leadership for all aspects of the project

2016-2018 **MECHANISMS OF INTERGENERATIONAL FAMILY VIOLENCE PERPETRATION TRANSMISSION: THE PHENOMENOLOGY OF ADOLESCENT AFFECT REGULATION.** Katherine Maurer (PI), Robert Buckley, **Lucyna Lach,** Delphine Collin-Vezina, Heather MacIntosh (Co-Applicants).

- $68,389 awarded by Social Sciences and Humanities Research Council (SSHRC) Insight Development Grant Program
- Phenomenological study examining adolescent experience of managing difficult emotions
- Contributing to recruitment, analysis and interpretation of data

2016-2019 **THE FAMILY NAVIGATOR: A GLOBAL PARTNERSHIP TO EXPAND ACCESS TO CARE FOR AUTISM AND RELATED CONDITIONS.** Mayada Elsabbagh , Brigitte Auger, Mimi Israel (Co-PIs), Marie-Josee Fleury, Ridha Joober, Keiko Shikako-Thomas, Peter Szatmari, Wendy Ungar (co-applicants), Jonathon Green, Sebastien Jacquemont, **Lucyna Lach,** Annette Majnemer, Laurent Mottron, Illina Singh (collaborators). CIUSS Montreal-West, ACCESS Canada, Montreal Children's Hospital, MUHC Technology Assessment Unit, World Health Organization, Autism Speaks (decision makers).

- $377,778 awarded by CIHR Patient and Health Systems Improvement (PHSI) Grant
- Collaborator
- RCT to evaluate the efficacy of a family navigator intervention for families of children with autism and other neurodisabilities

2015-2018 **HEALTH ECONOMICS AND SOCIAL DETERMINANTS OF HEALTH (HE-SDOH): A FRAMEWORK FOR UNDERSTANDING SOCIOECONOMIC AND QUALITY OF LIFE OUTCOMES AMONG CHILDREN WITH NEURODISABILITIES AND THEIR CAREGIVERS. Lucyna Lach,** David Nicholas, Herb Emery, Jennifer Zwicker (CoPI's),

David Rothwell, Dafna Kohen, Rubab Arim, Gabriel Ronen, Nora Fayed, & Rachel Birnbaum.

- $700,000 awarded by NeuroDevNet (NDN), National Centre of Excellence (funded by Industry Canada)
- Co-principal investigator role
- Multiple projects using existing population-based, administrative, and clinical datasets to document various social determinants of health (income trajectory, ethnocultural status, social support, access to care) of children with neurodisabilities and their caregivers; findings support capacity building for health economic evaluations of NDN projects
- Focus groups and individual interviews with parents of children with neurodisabilities at different stages of transition (dx, entry into school, high school, and leaving high school) regarding their experience of and need for support

2014-2017 **SOINS EN COLLABORATION EN SANTE MENTAL JEUNESSE: CHARACTERISTIQUES DES INTERVENTIONS THERAPEUTIQUE ET QUALITE DES SERVICES.** Lucie Nadeau, Andre Delorme (Co-PIs), Sara Fraser, Vania Jiminez-Siguoin, **Lucyna Lach,** Nicholas Moreau, Lourdes Rodriguez Del Barrio, & Cecile Rousseau

- $477,734 operating grant awarded by CIHR (Partnerships in Health System Improvement)
- role purpose of the project is to document outcomes and process indicators associated with 3 different models of delivery of mental health services
- co-investigator; providing input into design of study and interpretation of findings

2014-2016 **CP2: ENGAGING COMMUNITY PARTNERS FOR CHILDREN'S PARTICIPATION.** Keiko Shikako-Thomas, Michael Shevell, Maryam Oskoui, Chantal Camdem, **Lucyna Lach,** Isabelle Émond, Nathalie Trudelle, Walter Wittich

- Doug Maynard, Marie-Claire Major, Margaret Guest (Collaborators)
- Nadine Bergeron (Knowledge User)
- $12,500 planning grant awarded by CIHR Institute Community Support; OPHQ $17,500 and REPAR $17,500
- co-investigator role; contribute to planning and execution of a KT event with community partners invested in facilitating participation of children with CP

2012-2015 **POVERTY AND ETHNOCULTURAL DIVERSITY AS THE CONTEXT FOR PARENTING AND SERVICE ACCESS FOR CHILDREN WITH NEURODEVELOPMENTAL DISORDERS IN MONTREAL, QUEBEC. Lucyna M. Lach,** David Rothwell, Cecile Rousseau, Sebastien Breau, Monica Ruiz-Casares, Dana Anaby, Daniel Amar, Peter Rosenbaum, Dafna Kohen, David Nicholas.

- $20,000 awarded by McGill University; McGill University Collaborative Grant Competition; Additional $15,000 from SSHRC to CIHR internal grant; McGill University
- primary investigator

- conduct a review of literature, focus groups, and planning grant meeting to prepare submission to CIHR or provincial funding body

2010-2014 **THE HEALTH OF CANADIAN CAREGIVERS: USING ADMINSTRATIVE HEALTH SERVICES DATA TO UNDERSTAND DETERMINANTS OF HEALTH.** Jamie Brehaut, Dafna Kohen, Peter Rosenbaum, Anton Miller, **Lucyna M. Lach, M**arni Brownell, Kimberley McGrail, Rochelle Garner, Rubab Arim & Anne Guevremont (Collaborator)

- $349,699 awarded by the Canadian Institutes of Health Research; Operating Grant
- co-investigator
- provide input into design, implementation, analysis, and interpretation of findings

2010-2014 **DETERMINANTS OF ACTIVE INVOLVEMENT IN LEISURE FOR YOUTH: DAILY LIVING WITH DISABILITY.** Annette Majnemer, **Lucyna M. Lach,** D. Maltais, Barbara Mazer, Line Nadeau, P. Riley, C. Rohlicek, Norbert Schmitz.

- $388,272 awarded by the Canadian Institutes of Health Research; Operating Grant
- co-investigator
- provide input into design, implementation and analysis of findings

2010 **A DIALOGUE ON THE HEALTH OF CAREGIVERS OF CHILDREN WITH DISABILITIES.** Jamie C. Brehaut, Dafna E. Kohen, and Rubab G. Arim, **Lucyna M. Lach,** Peter Rosenbaum, Anton Miller, & Rochelle Garner.

- $40,000 awarded by the Canadian Institutes of Health Research; Meetings, Planning, and Dissemination Grant.
- co-investigator
- presented results related to health of caregivers of children with chronic health conditions and neurodevelopmental disorders to policy makers, institutional and clinical leaders, advocates and parents

2009-2015 **CIHR TEAM IN PARENTING MATTERS! THE BIOPSYCHOSOCIAL CONTEXT OF PARENTING CHILDREN WITH NEURODEVELOPMENTAL DISORDERS IN CANADA.** Peter Rosenbaum (Nominated Principal Investigator), **Lucyna M. Lach (Co-Principal Investigator);** Dafna Kohen (Co-Principal Investigator); Michael Saini, Rochelle Garner, Rachel Birnbaum, David Nicholas, Jamie Brehaut, Delphine Collin-Vezina, Ted McNeill, Alison Niccols, & Michael McKenzie and collaborators

- $780,114 awarded by the Canadian Institutes of Health Research; Emerging Team Grant: Children with Disabilities (Bright Futures For Kids With Disabilities) Competition
- co-principal investigator – rated as 1st of 8 studies reviewed in this competition
- responsible for conceptualizing the grant, managing the research teams, implementation of 4 projects, training and supervision of RAs, interpretation of findings, and dissemination

2009-2011 **A SYNTHESIS REVIEW OF INTERVENTIONAL OUTCOMES IN PAEDIATRIC AUTISM.** David Nicholas, Lonnie Zwaigenbaum, Sheila Roberts, Joyce Magill-Stevens, **Lucyna M. Lach,** Margaret Clarke, and Decision Makers Margaret Whelan, Laura Cavanagh, Margaret Spoelstra,

- $99,960 awarded by the Canadian Institutes of Health Research Synthesis Grant: Knowledge Translation
- co-investigator – rated as 1st of 68 studies submitted to the competition
- responsible for developing methods, recruitment, training and supervision of RAs, interpretation of findings.

2009-2014 **OUTCOME TRAJECTORIES IN CHILDREN WITH EPILEPSY: WHAT FACTORS ARE IMPORTANT? QUEBEC SUBSAMPLE OF THE CANADIAN STUDY OF PAEDIATRIC EPILEPSY HEALTH OUTCOMES. Lucyna M. Lach (Principal Investigator),** Michael Shevell, Lionel Carmant, Gabriel Ronen, David Streiner, Peter Rosenbaum, Charles Cunningham, & Michael Boyle.

- $255,820 awarded by the Ministère de la Santé et des Service Sociaux
- principal investigator – funding received to collect data in Quebec (Montreal Children's Hospital and Ste. Justine) and to contribute to the pan-Canadian study on HRQL in epilepsy (see below)
- responsible for all aspects of implementing this research
- additional funding received from CRIR ($15,000), McGill University Faculty of Arts ($7,500), Faculty of Medicine ($5,000), MUHC Research Institute ($2,500), VP Research ($7,500), and CIHR McMaster Team ($50,000)

2008 **PARENTING IN A BIOPSYCHOSOCIAL CONTEXT: CHALLENGES, SUCCESSES, AND THE IMPACT OF PARENTING ON THE WELL-BEING OF CHILDREN WITH NEURODEVELOPMENTAL DISORDERS IN CANADA.** Peter Rosenbaum (Nominated Principal Investigator), **Lucyna M. Lach (Co-Principal Investigator);** Jamie Brehaut, Delphine Collin-Vezina, Rochelle Garner, Dafna Kohen, Ted McNeill, David Nicholas, & Michael Saini.

- $9,927 awarded by the Canadian Institutes of Health Research Emerging Team Grant Competition: Children with Disabilities (Bright Futures for Kids with Disabilities); Letter of Intent
- co-principal investigator – one of 9 studies (out of an original 16) funded to develop a full proposal for funding to be submitted in September 2008.
- responsible for team meeting in Ottawa on the 12 and 13th of June, coordinating development of the grant proposal and final submission of the grant proposal.

2008-2009 **PARENTING CHILDREN AND ADOLESCENTS WITH CHRONIC HEALTH CONDITIONS AND DISABILITIES: A SYNTHESIS OF THE RESEARCH. Lucyna M. Lach (Principal Investigator),** David, Nicholas, Ted McNeill (Michael Saini and Peter Rosenbaum as collaborators)

- $36,983 awarded by the Social Sciences and Humanities Research Council – Research Development Initiative (SSHRC-RDI)
- primary applicant – study funded to conduct a systematic review of parenting literature and to develop a theoretical model for use in future studies
- responsible for project management, develop of algorithm, supervision of students and research assistants, writing up final report.

2008-2013 **OUTCOME TRAJECTORIES IN CHILDREN WITH EPILEPSY: WHAT FACTORS ARE IMPORTANT?** Gabriel M. Ronen, David L. Streiner, Peter L. Rosenbaum, **Lucyna M. Lach,** Michael H. Boyle, & Charles E. Cunningham.

- $767,485 awarded by the Canadian Institutes for Health Research (CIHR)
- co-applicant – study funded to test a theoretical model of determinants of health related quality of life in children and adolescents with epilepsy
- responsible for development of theoretical model tested, analysis and interpretation of pilot data, choosing measures, project management.

2007-2011 **DETERMINANTS OF PARTICIPATION AND QUALITY OF LIFE AMONG ADOLESCENTS WITH CEREBRAL PALSY.** Annette Majnemer, Denise Keiko Thomas, Michael Shevell, **Lucyna M. Lach,** Mary Law, Norbert Schmitz, (and Allan Colver, Kathleen Montpetit, France Martineau, Michele Gardiner, Louise Koclas as collaborators).

- $300,834 awarded by the Canadian Institutes for Health Research (CIHR)
- co-applicant – study funded to test a theoretical model of determinants of participation and quality of life
- responsible for choosing measures, interpretation of data, publications.

2007-2008 **DETERMINANTS OF PARTICIPATION IN LEISURE ACTIVITIES AMONG ADOLESCENTS WITH CEREBRAL PALSY.** Annette Majnemer, Denise Keiko Thomas, Michael Shevell, **Lucyna M. Lach,** Mary Law, Norbert Schmitz, Allan Colver, Kathleen Montpetit, France Martineau, Michele Gardiner, Louise Koclas.

- $40,000 awarded by the Réseau provinciale de récherche en adaptation-réadaptation (REPAR)
- co-applicant – study funded to test a theoretical model of determinants of participation

2007-2009 **REHABILITATION SERVICES FOR PRESCHOOL CHILDREN WITH PRIMARY LANGUAGE IMPAIRMENT: INDIVIDUAL VS DYAD INTERVENTION.** Barbara Samuel (Mazer), Annette Majnemer, **Lucyna M. Lach,** Elin Thordardottir, & Michael Shevell.

- $258,632 awarded by the Fonds de Récherche en Santé du Québec (FRSQ- Subventions de Recherches Cliniques ou en Santé des Populations)
- co-applicant – study funded to examine effectiveness of dyadic versus traditional approaches to providing rehabilitation services for preschool children with language impairment.

2006-2008 **PANDEMIC PLANNING FOR PAEDIATRIC CARE.** David Nicholas, Beverley Antle, Donna Koller, Cynthia Bruce-Barrett, Anne Matlow, Randi Shaul Zlotnik, & **Lucyna M. Lach.**

- $159,632 awarded by the Canadian Institutes for Health Research
- co-applicant – study funded to review existing institutional, provincial and federal policies and build a consensus for best practices to guide paediatric-based pandemic planning.
- responsible for liaison with Quebec-based paediatric hospitals and rehabilitation centres.

2006-2007 **CHILDHOOD-DISABILITY – LINK: A WEBSITE LINKING INFORMATION AND NEW KNOWLEDGE TO SERVICE PROVIDERS AND FAMILIES.** Annette Majnemer, Jeffrey D Atkinson, Kim Cornish, D Feldman; Eric Jean Fombonne, S Ghosh; Eva Kehayia, Nicole Korner-Bitensky, **Lucyna M. Lach**, Mindy Levin, Catherine Limperopoulos, F Malouin, Barbara Mazer, Line Nadeau; Michael Shevell; Laurie Snider.

- $20,048 awarded by the Réseau Provincial de Récherche en Adaptation-Réadaptation, Fonds de Récherche en Santé du Québec.
- co-applicant – study funded to develop plans for a website that will provide a forum for exchange of evidence regarding childhood disability
- regular written contribution to web-site regarding research progress, publications

2006-2007 **DETERMINANTS OF QUALITY OF LIFE IN ADOLESCENTS WITH CEREBRAL PALSY: A QUALITATIVE STUDY**, Annette Majnemer, **Lucyna M. Lach**, Michael Shevell, Denise Keiko Thomas.

- $7,500 awarded by the Montreal Children's Hospital Research Institute
- co-applicant – study funded to build a theoretical model of factors that influence quality of life in adolescents with cerebral palsy
- project management, training of interviewers and supervision of data analysis

2005-2007 **THE HEALTH OF CANADIAN CAREGIVERS: CAN A NATIONAL LONGITUDINAL DATASET BE USED TO MODEL THE HEALTH OF CAREGIVERS OF CHILDREN WITH DISABILITIES?** Jamie Brehaut, Dafna Kohen, Anne F. Klassen, **Lucyna M. Lach**, Anton Miller, Peter Rosenbaum.

- $274, 464 grant awarded by the Canadian Institutes for Health Research. Operating Grant – Population Health.
- co-applicant – study funded to examine the health of caregivers of Canadian children with chronic health conditions and disabilities using the National Longitudinal Study of Children and Youth (NLSCY) in Canada
- team leader for analysis and interpretation of data pertaining to caregivers of children and youth with neurodevelopmental disabilities; contribute to interpretation of SEM pertaining to health of caregivers of children with chronic health conditions and disabilities

2005-2006 **LATENCY AGE CHILDREN WITH EPILEPSY AND THEIR PEERS : PERCEPTIONS OF PEER RELATIONSHIPS AND SOCIAL SUPPORT. Lucyna M. Lach**, Beverley Antle, Janice Hansen, Catherine Frazee and Karen Yoshida.

- $16,000 grant awarded by the Réseau Santé Mentale et Neuroscience, Fonds de Récherche en Santé du Québec
- principal applicant - funding received to complete analysis on peer study previously funded by the Bloorview Children's Hospital Foundation
- primary responsible for completion of data analysis and dissemination

2004-2006 **AN EVALUATION OF THE RELEVANCE, FEASIBILITY AND VALIDITY OF WEB-BASED DATA COLLECTION FOR CHILDREN.** David Nicholas, Nancy Young, Catherine Boydell, Ross Hetherington, James Varni, Laurie Snider, **Lucyna M. Lach**, & Gillian King.

- $125,384 grant awarded by the Canadian Institutes for Health Research. Operating Grant – Advancing Theories, Frameworks, Methods and Measurement in Health Services and Policy.
- co-applicant – study funded to examine relevance, feasibility and validity of gathered using web-based versus paper and pencil or face to face data gathering techniques;
- sharing responsibility for the data gathered from the Montreal site with Laurie Snider

2004-2006 **INTERSECTING BARRIERS TO HEALTH FOR IMMIGRANT WOMEN WITH PRECARIOUS STATUS**. Jacqueline Oxman-Martinez, Nazilla Khanlou, Swarna Weerasinghe, Vijay Agnew, **Lucyna M. Lach**, Louise Poulan de Courval, Jill Hanley, Merle Jacobs.

- $100,000 grant awarded by the Canadian Institutes for Health Research. Operating Grant – Reducing Health Disparities and Promoting Equity for Vulnerable Populations.
- co-investigator – initially invited as a collaborator but status has been officially revised with CIHR to that of a co-applicant;
- development, implementation and analysis of interviews conducted with health care providers about services offered to women with precarious immigration status

2003-2006 **PRÊT! PAS PRÊT! JE VIEILLIS! COMMENT L'ENTOURAGÉ DE L'ADOLESCENT AYANT UNE INCAPACITÉ MOTRICE LE SOUTIENT DANS SO PARTICIPATION SOCIALE.** Sylvie Tétrault, Monique Carriére

- $134, 856 grant awarded by the Fonds Québécois de la Recherche sur la Société et la Culture.
- collaborator – study funded to examine factors that facilitate and impede transition from adolescence into young adulthood in those with physical disabilities
- responsible for Montreal site (English component); supervision of RAs who will be interviewing adolescents, young adults, parents, and health care professionals; supervision of data analysis.

2003-2004 **FEASIBILITY STUDY FOR MULTI-SITE RANDOMIZED TRIAL OF INTERVENTION FOR DEPRESSED OLDER PATIENTS IN PRIMARY CARE SETTINGS.** Jane McCusker, Martin Cole, Mark Yaffe, Dendukuri Nandini, Maida Sewitch, Martin Dawes, Philippe Cappeliez

- $180,812 research grant awarded by the Canadian Institutes For Health Research
- collaborator; pilot project funded to examine the feasibility of a randomized trial of problem solving therapy for older patients diagnosed with depression.
- I was invited to participate in this project after it was funded. My contribution has included the following: process analysis of the delivery of the intervention; administering focus groups with allied health professionals, primary care physicians, and psychiatrists; analysis of focus group data.

2003-2005 **QUALITY OF LIFE IN CHILDREN WITH EPILEPSY: WHAT CONSTELLATION OF FACTORS IS IMPORTANT?** Gabriel M. Ronen, David L. Streiner, Charles Cunningham, Michael H. Boyle, Peter L. Rosenbaum, **Lucyna M. Lach**, and Joan K. Austin.

- $80,000 research grant awarded by the Child Neurology Society/Foundation.
- co-applicant; pilot project funded to examine the feasibility of launching a longitudinal study of moderators and mediators of quality of life of children between the ages of 8 and 13 diagnosed with epilepsy.
- development of the theoretical model; selection of measures to be used in the study.

2000–2003 **CHILD AND FAMILY ADAPTATION TO CHILDHOOD CHRONIC HEALTH CONDITIONS: A COMPREHENSIVE CONCEPTUAL FRAMEWORK OF PSYCHOSOCIAL RISK AND RESILIENCE.** Judith Globerman, Jan Wallander, Gillian King, Pat McKeever, Jeff Jutai, Beverley Antle, **Lucyna M. Lach**, Ted McNeill, and David Nicholas

- $293,000 research grant awarded by the Social Sciences and Humanities Research Council, Strategic Themes Competition: Society, Culture and the Health of Canadians
- co-applicant; development of a theoretical model for the study and understanding of psychosocial risk and resilience factors in the adjustment of children with chronic health conditions and their families
- development of the structure for the data collection (both quantitative and qualitative); conceptual analysis of over 500 measures; synthesis of information generated in the meta-analysis and meta-synthesis.

2000–2003 **SOCIAL EXPERIENCES IN SCHOOL: PERCEPTIONS OF STUDENTS WITH PHYSICAL DISABILITIES AND CHRONIC HEALTH CONDITIONS.** Beverley Antle, **Lucyna M. Lach**, Janice Hansen, Catherine Frazee, Karen Yoshida

- $80,215 research grant awarded by the Bloorview Children's Hospital Foundation
- co-principal investigator; study examines perceptions of peer relationships among children with cerebral palsy and epilepsy, and nominated peers
- development of methodology; management of data collection; data analysis.

2001-2003 LONGITUDINAL OUTCOME OF PAEDIATRIC EPILEPSY SURGERY. Mary Lou Smith, **Lucyna M. Lach**, Irene I. Elliott, Sharon Whiting, Lynn McCleary

- $117,594 research grant awarded by the Ontario Mental Health Foundation
- study examines long term quality of life and neurocognitive outcomes in young adults (18-31) who received epilepsy surgery during childhood or adolescence
- co-investigator; involves 2 sites: Hospital For Sick Children in Toronto and Children's Hospital of Eastern Ontario in Ottawa
- responsible for qualitative interviews conducted with young adults who have intractable epilepsy but did not undergo epilepsy surgery; data analysis pertaining to social outcomes.

1999–2001 LONGITUDINAL STUDY OF OUTCOME FOR CHILDREN UNDERGOING EPILEPSY SURGERY. Mary Lou Smith, **Lucyna M. Lach**, Irene Elliott

- $100,664 research grant awarded by the Ontario Mental Health Foundation
- co-investigator; continuation of a multi-method study examining the biopsychosocial outcome of epilepsy surgery in children, adolescents and their families
- shared responsibility for psychosocial (behavioural, emotional and family) component of the study; interviews with caregivers of children with epilepsy; analysis of psychosocial and qualitative data (parent-based).

1997-1999 OUTCOME OF EPILEPSY SURGERY: A MULTI-METHOD MULTIDIMENSIONAL APPROACH. Mary Lou Smith, **Lucyna M. Lach**, Irene Elliott

- $98,000 research grant awarded by the Ontario Mental Health Foundation
- co-investigator; a longitudinal, multi-method study examining the biopsychosocial outcome of epilepsy surgery in children, adolescents, their families
- shared responsibility for psychosocial (behavioural, emotional and family) component of the study; interviews with caregivers of children with epilepsy; analysis of psychosocial and qualitative data (parent-based).

PUBLICATIONS

Finlay, B., Wittevrongel, K., Materula, D., Hébert, M.L., O'Grady, K., **Lach, L.M.,** Nicholas, D., and Zwicker, J.D. (2023). Pan-Canadian caregiver experiences in accessing government disability programs: A mixed methods study *Research in Developmental Disabilities.* https://doi.org/10.1016/j.ridd.2022.104420.

McCrossin, J., **Lach, L.** (2022). Parent-to-parent peer support for families of children with neurodisabilities: Applications of family resilience theory. *Child: Care, Health & Development.* https://doi.org/10.1111/cch.13069.

Currie, G., Finlay, B., Seth, A., Roth, C., Elsabbagh, M., Hudon, A., Hunt, M., Jodoin, S., **Lach, L.**, Lencucha, R., Nicholas, D. B., Shakako, K., & Zwicker, J. (2022). Mental health challenges during COVID-19: Perspectives from parents with children with neurodevelopmental disabilities.

International Journal of Qualitative Studies on Health and Well-Being, 17(1). https://doi.org/10.1080/17482631.2022.2136090

Seth, A., Finlay, B., Currie, G., Roth, C., **Lach, L.,** Hudon, A., Lencucha, R., Hunt, M., Nicholas, D., Shikako-Thomas, K., & Zwicker, J. (accepted). Impacts of the COVID-19 pandemic: Pan-Canadian perspectives from parents and caregivers of youth with neurodevelopmental disabilities. *Journal of Pediatric Healthcare.*

Nicholas, D. B., Mitchell, W., Ciesielski, J., Khan, A., & **Lach, L.** (2022). Examining the Impacts of the COVID-19 pandemic on service providers working with children and youth with neurodevelopmental disabilities and their families: Results of a focus group study. *Journal of Intellectual Disabilities*, https://doi.org/10.1177/17446295221104623

McCrossin, J., Filipe, A.M., Nicohlas, D., & **Lach, L.** (2022). The allegory of "navigation as a concept of care: The case of child neurodevelopmental disabilities. *Journal on Developmental Disabilities for the Special Edition focused on Changing Social Welfare Provisions and Shifting Family Dynamics, 27*(2). https://doi.org/10.5281/zenodo.7017122

McCrossin, J., Clancy, A., Grantzidis, F., & **Lach, L.** (2022). "They may cry, they may get angry, they may not say the right thing": A case study examining the role of peer support when navigating services for children with neurodisabilities. *Journal on Developmental Disabilities for the Special Edition focused on Changing Social Welfare Provisions and Shifting Family Dynamics, 27*(2). https://doi.org/10.5281/zenodo.7017122

Hebert, M., Nicholas, D., **Lach, L.M.,** Mitchell, W., Zwicker, J., Bradley, W., Litman, S., Gardiner, E., & Miller, A.R. (in press). Lifespan navigation-building framework for children/youth with neurodisabilities and their families. *Families in Society.* DOI:10.1177/10443894221081609.

Salvino, C., Spencer, C., Filipe, A. M., & **Lach, L. M**. (2022). Mapping of financial support programs for children with neurodisabilities across Canada: Barriers and discrepancies within a patchwork system. *Journal of Disability Policy Studies*, *33*(3), 168–177. https://doi.org/10.1177/10442073211066776

McCrossin, J. McGrath, P., & **Lach, L**. (2022). Content analysis of parent training programs for children with neurodisabilities and mental health or behavioral problems: A scoping review. *Disability & Rehabilitation.* DOI:10.1080/09638288.2021.2017493.

Brotman, S., Sussman, T., Pacheco, L., Dickson, D., **Lach, L.,** Raymond, E., Deshaies, M.H., Freitas, Z., & Milot, E. (2021): The crisis facing older people living with neurodiversity and their aging family carers: A social work perspective. *Journal of Gerontological Social Work,* DOI:10.1080/01634372.2021.1920537

Filipe, A.M., Bogossian, A., Zulla, R., Nicholas, D., & **Lach, L.M.** (2021). Developing a Canadian framework for social determinants of health and wellbeing among children with

neurodisabilities and their families: an ecosocial perspective. Disability & Rehabilitation, 43(26), 3856-3867. DOI:10.1080/09638288.2020.1754926

Gardiner, E., Miller, A., & **Lach, L.** (2021). Behavioral strength and difficulty profiles among children with neurodisability. *Journal of Developmental and Physical Disabilities, 33*(2), 1-17. DOI:10.1007/s10882-020-09742-0.

Vanderlee, E., Aston, M., Turner, K., McGrath, P., & **Lach, L.** (2021). Patient-oriented research: A qualitative study of research involvement of parents of children with neurodevelopmental disabilities. *Journal of Intellectual Disabilities*, *25*(4), 567-582. DOI:10.1177/1744629520942015.

Rothwell, D., **Lach, L.M.,** Kohen, D., Findlay, L., & Arim, R. (2020). Income trajectories of families raising a child with a neurodisability. *Disability & Rehabilitation.* DOI: 10.1080/09638288.2020.1811782.

Gardiner, E., Miller, A. R., & **Lach, L. M.** (2020). Service adequacy and the relation between child behavior problems and negative family impact reported by primary caregivers of children with neurodevelopmental conditions. *Research in Developmental Disabilities*, *104*, 103712. DOI:10.1016/j.ridd.2020.103712.

Gardiner, E., Miller, A., & **Lach, L.** (2020). Topography of behavior problems among children with neurodevelopmental conditions: Profile differences and overlaps. *Child: Care, Health and Development, 46*(1), 149-153. DOI:10.1111/cch.12720.

Rothwell, D.W., Gariépy, G., Elgar, F.J., & **Lach, L.M**. (2019). Trajectories of poverty and economic hardship among American families supporting a child with a neurodisability. *Journal of Intellectual Disability Research*, *63*(10), 1273-1284. DOI:10.1111/jir.12666

Arim, R. G., Miller, A. R., Kohen, D. E., Guèvremont, A., **Lach, L.M.**, & Brehaut, J. C. (2019). Changes in the health of mothers of children with neurodevelopmental disabilities: An administrative data study. *Research in Developmental Disabilities, 86,* 76-86. DOI:org/10.1016/j.ridd.2018.12.007.

Brehaut, J. C., Guèvremont, A., Arim, R. G., Garner, R. E., Miller, A. R., McGrail, K. M., ... & Kohen, D. E. (2019). Using Canadian administrative health data to measure the health of caregivers of children with and without health problems: A demonstration of feasibility. *International Journal of Population Data Science*, *4*(1). DOI:org/10.23889/ijpds.v4i1.584.

Majnemer, A., O'Donnell, M., Ogourtsova, T., Kasaai, B., Ballantyne, M., Cohen, E., ... & Filliter, J. H. (2019). BRIGHT Coaching: A randomised controlled trial on the effectiveness of a developmental coach system to empower families of children with emerging developmental delay. *Frontiers in Pediatrics*, *7*, 332.

Sentenac, M., **Lach, L.M.,** & Elgar, F. (2019). Educational disparities in young people with neurodisabilities. *Developmental Medicine and Child Neurology, 61(2),* 226-231. DOI:10.1111/dmcn.14014.

Gardiner, E., **Lach, L.M.,** & Miller, A. (2018). Family impact of childhood neurodevelopmental disability: Considering adaptive and maladaptive behaviour. *Journal of Intellectual Disability Research, 62*(10), 888-899. DOI:10.1111/jir.12547.

Bogossian, A, King, G, **Lach, L**, Currie, M, Nicholas, D, McNeill, T, & Saini, M. (2019). (Unpacking) father involvement in the context of childhood disability research: A scoping review. *Disability and Rehabilitation*, 41(1), 110-124. DOI:10.1080/09638288.2017.1370497.

Ritzema, A.M., **Lach, L.M.,** Nicholas, D., & Sladeczek, I.E. (2018). A model of well-being for children with neurodevelopmental disorders: Parental perceptions of functioning, services, and support. *Child: Care Health and Development, 44,* 240-248. DOI:10.1111/cch.12541.

Arim, R. G., Miller, A. R., Guèvremont, A., **Lach, L.** M., Brehaut, J. C., & Kohen, D. E. (2017). Children with neurodevelopmental disorders and disabilities: a population-based study of healthcare service utilization using administrative data. *Developmental Medicine & Child Neurology*, *59*(12), 1284-1290. DOI: 10.111/dmcn.13557.

Ferro, M.A., Avery, L., Fayed, L., Streiner, D.L., Cunningham, C.E., Boyle, M.H., **Lach L.M.,** Glidden, G., Rosenbaum, P., Ronen, G.M. and on behalf of the QUALITÉ group. (2017). Child and parent-reported quality of life trajectories in children with epilepsy: a prospective cohort study. *Epilepsia, 58*(7), 1277-186. DOI: 10.1111/epi.13774

Ketelaar, M., Bogossian, A., Saini, M., Visser-Meily, A., & **Lach, L.** (2017). Assessment of the 'family' in the context of practice and research: A state-of-the-art review of pediatric neurodisabilities. *Developmental Medicine and Child Neurology,* 59(3), 259-269. DOI: 10.1111/dmcn.13287

Ruiz-Casares, M., Drummond, J.D., Beeman, I., & **Lach, L.M.** (2016). Parenting for the promotion of mental health: A scoping review of programmes targeting ethnoculturally diverse families. *Health and Social Care in the Community, 25*(2), 743-757. DOI: 10.1111/hsc.12364

Arim, R.G., Kohen, D.E., Brehaut, J.C., Guèvremont, A., Garner, R.E., Miller, A.R., McGrail, K., Brownell, M., Lach, L.M., & Rosenbaum, P. (2015). Developing a non-categorical measure of child health using administrative data. *Health Reports, 26*(2), 9-16.

Ritzema, A., **Lach, L.M.,** Nicholas, D. & Rosenbaum, P. (2016). About My Child: Measuring 'Complexity' in Neurodisability. Evidence of Reliability and Validity. *Child: Care Health and Development 42*(3), 402-409.. DOI: 10.111/cch12326

Arim, R. G., Guèvremont, A., Kohen, D. E., Brehaut, J. C., Garner, R. E., Miller, A. R., McGrail, K. Brownell, M., **Lach L. M.,** & Rosenbaum, P.L. (2017). Exploring the Johns Hopkins Aggregated Diagnosis Groups in administrative data as a measure of child health. *International Journal of Child Health and Human Development, (10)*1, 19-29.

Fayed, N., Davis, A. M., Streiner, D. L., Rosenbaum, P. L., Cunningham, C. E., **Lach, L. M.,** Boyle, M. & Ronen, G. (2015). Children's perspective of quality of life in epilepsy. *Neurology*, *84*(18), 1830-1837. DOI:10.1212/WNL.0000000000001536

Majnemer, A., Shikako-Thomas, K., Schmitz, N., Shevell, M., & **Lach, L.** (2015). Stability of leisure participation from school-age to adolescence in individuals with cerebral palsy. *Research in Developmental Disabilities, 47(December),* 73-79. DOI:10.1016/j.ridd.2015.08.009.

Shikako-Thomas, K., Shevell, M., **Lach, L.,** Law, M., Schmitz, N., Poulin, C., Majnemer, A. & the QUALA group (2015). Are you doing what you want to do? Leisure preferences of adolescents with cerebral palsy. *Developmental Neurorehabilitation*, *18(4)*, 234-240, DOI:10.3109/17518423.2013.794166.

Arim, R. G., Garner, R. E., Kohen, D. E., **Lach, L. M.,** Brehaut J. C., MacKenzie, M. J., & Rosenbaum, P. L. (2015). Psychosocial functioning in children with neurodevelopmental disorders and/or externalizing behaviour problems. *Disability & Rehabilitation, 37(4),* 345-354. DOI:10.3109/09638288.2014.919361.

Rothwell, D., **Lach, L.M.,** Blumenthal, A., & Akesson, B. (2015). Patterns and trends of Canadian social work dissertations. *Teaching in Social Work, 35(1-2),* 46-64, DOI: 10.1080/08841233.2014.977988.

Ronen, G.M., Streiner, D.L., Boyle, M.H., Cunningham, C.E., **Lach, L.M.,** Verhey, L.H., Fayed, N., Chen, K., & Rosenbaum, P.L. (2014). Outcome trajectories in children with epilepsy: Hypotheses and methodology of a Canadian longitudinal observational study. *Pediatric Neurology, 50*(1), 38-48, DOI:10.1016/j.pediatrneurol.2013.08.024.

Smith, M.L., Olds, J., Snyder, T., Elliott, I., **Lach, L.M**., & Whiting, S. (2014). A follow up study of cognitive function in young adults who had resective epilepsy surgery in childhood. *Epilepsy & Behavior, 32,* 79-83, DOI:10.1016/j.yebeh.2014.01.006.

Brossard-Racine, M., Waknin, J., Shikako-Thomas, K., Shevell, M., Poulin, C., **Lach, L.M.,** Law, M., Schmitz, N., the QUALA group & Majnemer, A. (2013). Behavioural difficulties in adolescents with cerebral palsy. *Journal of Child Neurology, (28)*1, 27-33, DOI:10.1177/0883073812461942.

Majnemer, A., Shikako-Thomas, K., **Lach, L.M.,** Shevell, M., Law, M., Schmitz, N., & The QUALA Group. (2013). Mastery motivation in adolescents with cerebral palsy. *Research in Developmental Disabilities, 34,* 3384-3392, DOI:10.1016/j.ridd.2013.07.002.

Majnemer, A., Shikako-Thomas, K., **Lach, L.,** Shevell, M. Law, M., Schmitz, N. Poulin, C., & QUALA Group. (2013). Rehabilitation service utilization in children and youth with cerebral palsy. *Child: Care Health and Development, 40*(2), 275-282, DOI:10.111/cch.12026.

Majnemer, A., Shikako-Thomas, K., Shevell, M., Poulin, C., **Lach, L.,** Law, M., Schmitz, N., & Group TQ. (2013). The relationship between manual ability and ambulation in adolescents with cerebral palsy. *Physical & Occupational Therapy in Pediatrics, 33(2),* 243-249, DOI:10.3109/01942638.2012.754394.

Majnemer, A., Shikako-Thomas, K., Shevell, M., Poulin, C., **Lach, L.,** Schmitz, N., Law, M., & QUALA Group. Pursuit of complementary and alternative medicine treatments in adolescents with Cerebral Palsy. *Journal of Child Neurology, 28*(11), 1443-1447.

Manor, L., Streiner, D.L., Yam, W.I., Rosenbaum, P.L., Verhey, L.H., **Lach, L.,** & Ronen, G.M. (2013). Age-related variables in childhood epilepsy: How do they relate to each other and to quality of life? *Epilepsy & Behavior, 26(1),* 71-74, DOI:10.1016/j.yebeh.2012.10.024.

Shikako-Thomas, K., Bogossian, A., **Lach, L.M.,** Shevell, M., & Majnemer, A. (2013). Parents' perspectives on the quality of life of adolescents with cerebral palsy: Trajectory, choices and hope. *Disability and Rehabilitation, 35(25),* 2113-2122, DOI:10.3109/09638288.2013.770083.

Shikako-Thomas, K., Shevell, M., Schmitz, N., **Lach, L.,** Law, M., Poulin, C., & Majnemer, A. (2013). Determinants of participation in leisure activities among adolescents with cerebral palsy. Research in Developmental Disabilities, 34(9), 2621-2634, DOI:10.1016/j.ridd.2013.05.013.

Shikako-Thomas, K., Shevell, M., **Lach, L.M.,** Law, M., Schmitz, N., Poulin, C., Majnemer, A., & Quala Group (2013). Picture me playing – A portrait of participation and enjoyment of leisure activities in adolescents with cerebral palsy. *Research in Developmental Disabilities, 34(3),* 1001-1010, DOI:10.1016/j.ridd.2012.11.026.

Arim, R.G., Garner, R.E., Brehaut, J.C., **Lach, L.M.,** MacKenzie, M.J., Rosenbaum, P., & Kohen, D.E. (2012) Contextual influences of parenting behaviours for children with neurodevelopmental disorders: Results from a Canadian National Survey. *Disability & Rehabilitation, 34*(26), 2222-2233, DOI: 10.3109/09638288.2012.680650.

Elliott, I., Kadis, D.S., **Lach, L.M.,** Olds, J., McCleary, L., Whiting, S., Snyder, T., & Smith, M.L. (2012). Quality of life in young adults who underwent resective surgery for epilepsy in childhood. *Epilepsia, 53(9),* 1577-1586, DOI:10.1111/j.1528-1167.2012.03594.x.

Jud, A., Landolt, M.A., Tatalias, A., **Lach, L.M**., & Lips, U. (2012). Health-related quality of life in the aftermath of child maltreatment: Follow-up study of a hospital sample. *Quality of Life Research, 22,* 1361-1369, DOI:10.1007/s11136-012-0262-z.

Kuo, Y.C. & **Lach, L.M**. (2012). Life decisions of Taiwanese women who care for a sibling with Cerebral Palsy. *Health Care for Women International, 33(7),* 646- 655, DOI: 10.1080/07399332.2012.673655.

Brehaut, J.C., Garner, R.E., Miller, A.R., **Lach, L.M.,** Klassen, A.F., Rosenbaum, P.L., & Kohen, D. (2011). Changes over time in the health of caregivers of children with health problems: Growth curve findings from a 10-year Canadian population-based study. *American Journal of Public Health, 101(12),* 2308-2316, DOI:10.2105/AJPH.2011.300298.

Cimino, T., **Lach, L.M.,** Saini, M., & Mechan, K. (2011). Abstract quality in a systematic review: Results from a study of parenting children with chronic health conditions and disabilities. *Journal of Evidence Based Social Work, 8(4),* 369-378, DOI:10.1080/15433714.2010.531228.

Garner, R. E., Arim, R. G., Kohen, D. E., **Lach, L.M.,** MacKenzie, M. J., Brehaut J. C., & Rosenbaum, P. L. (2011). Parenting children with neurodevelopmental disorders and/or behaviour problems. *Child: Care, Health & Development, 39(3),* 412-421, DOI: 10.1111/j.1365-2214.2011.01347.x.

Hum, K., Smith, M.L., **Lach, L.M.,** & Elliott, I.M. (2010). Self perceptions of social function two years after pediatric epilepsy surgery. *Epilepsy & Behavior, 17(3),* 354-359, DOI:10.1016/j.yebeh.2009.11.022.

Lach, L.M., Elliot, I. Giecko, T., Olds, J., Snyder, T., McCleary, L., Whiting, S., Lowe, A., Nimigon, J. & Smith, M.L. (2010). Patient-reported outcome of pediatric epilepsy surgery: Social inclusion or exclusion as young adults? *Epilepsia, 51(10),* 2089-2097, DOI:10.1111/j.1528-1167.2010.02584.x.

Nicholas, D.B., Patershuk, C., Donna Koller, D., Bruce-Barrett, C., **Lach, L.M.,** Zlotnik-Shaul, R., & Matlow, A., (2010). Pandemic planning in pediatric care: A website policy review and national survey data. *Health Policy, 96(2),* 134-142, DOI:10.1016/j.healthpol.2010.01.007.

Nicholas, D., **Lach, L.M.,** King, G., Scott, M., Boydell, K., & Sawatzky, B., Reisman, J., Schippel, E., & Young, N. (2010). Contrasting internet and face-to-face focus groups for children with chronic health conditions: Outcomes and participant experiences. *International Journal of Qualitative Methods, 9(1),* 105-121.

Ronen, G., Streiner, D.L., Verhey, L.J., **Lach, L.M.**, Boyle, M.H., Cunningham, C.E., & Rosenbaum, P.L. (2010). Disease characteristics and psychosocial factors: Explaining the expression of quality of life in childhood epilepsy. *Epilepsy & Behavior, 18(1/2),* 88-93, DOI: 10.1016/j.yebeh.2010.02.023.

Brehaut, J.C., Kohen, D.E., Garner, R.E., Miller, A.R., **Lach, L.M.,** Klassen, A.F., & Rosenbaum, P.L. (2009). Health among caregivers of children with health problems: Findings from a Canadian

population-based study. *American Journal of Public Health, 99(7),* 1254-1262, DOI:10.2105/AJPH.2007.129817

Lach, L.M., Kohen, D.E., Garner, R.E., Brehaut, J.C., Miller, A.R., Klassen, A.F., & Rosenbaum, P.L. (2009). The health and psychosocial functioning of caregivers of children with neurodevelopmental disorders. *Disability & Rehabilitation, 31(8),* 607-618 (10.1080/09638280802242163) or *31(9),* 741-752 (DOI: 10.1080/08916930802354948).

Shikako-Thomas, K., **Lach, L.,** Majnemer, A., Nimigon, J., Cameron, K., & Shevell, M. (2009). Quality of life from the perspective of adolescents with cerebral palsy: "I just think I'm a normal kid, I just happen to have a disability". *Quality of Life Research, 18,* 825-832 DOI:10.1007/s11136-009-9501-3.

Verhey, L.H., Kulik, D.M., Ronen, G.M., Rosenbaum, P.L., **Lach, L.M.**, & Streiner, D.L. (2009). Quality of life in childhood epilepsy: What is the level of agreement between youth and their parents? *Epilepsy & Behaviour,14(2),* 407- 410, DOI:10.1016/j.yebeh.2008.12.008.

Elliott, I., **Lach, L.M.,** & Smith, M.L. (2008) Psychosocial outcomes in children two years after epilepsy surgery: Has anything changed? *Epilepsia, 49(4),* 634-641, DOI: 10.1111/j.1528-1167.2007.01498.x

Thomas, D.K., Majnemer, A., Law, M., & **Lach, L.M.** (2008). Determinants of participation in leisure activities among children and adolescents with Cerebral Palsy: A systematic review. *Physical & Occupational Therapy in Pediatrics, 29(2),* 155-169, DOI:10.1080/01942630802031834.

Kohen, D.E., Brehaut, J.C., Garner, R.E., Miller, A.R., **Lach, L.M.**, Klassen, A.F., & Rosenbaum, P.A. (2007). Conceptualizing childhood health problems using survey data: A comparison of key indicators. *BMC Pediatrics, 7(40),* DOI:10.1186/1471-2431-7-40.

Lach, L.M., Ronen, G.M., Rosenbaum, P.L., Cunningham, C., Boyle, M.H., Bowman, S., & Streiner, D.L. (2006). Health-related quality of life in youth with epilepsy : Theoretical model for clinicians and researchers. Part I: The role of epilepsy and co-morbidity. *Quality of Life Research, 15(7),* 1161-1171, DOI:10.1007/s11136-006-0051-7.

Nicholas, D., Globerman, J., Antle, B., McNeil, T., & **Lach, L.** (2006). Processes of meta-study: A study of psychosocial adaptation to childhood chronic health conditions. *International Journal of Qualitative Methods, 5(1).* Articled retrieved on August 15, 2006 from http://www.ualberta.ca/~iiqm/backissues/5_1/HTML/nicholas.htm.

Smith, M.L., Elliott, I.M., & **Lach, L.M.** (2006). Memory outcome after pediatric epilepsy surgery: Objective and subjective perspectives. *Child Neuropsychology, 12(3),* 151-164, DOI: 10.1080/09297040591001076.

Elliott, I.M., **Lach L.M.,** Smith M.L. (2005). 'I just want to be normal': A qualitative study exploring how children and adolescents view the impact of intractable epilepsy on their quality of life. *Epilepsy & Behavior, 7(4),* 664-678, DOI:10.1016/j.yebeh.2005.07.004

Oxman-Martinez, J., Hanley, J., **Lach, L.M.**, Khanlou, N., Weerasinghe, S., & Agnew, V. (2005). Intersection of Canadian policy parameters affecting women with precarious immigration status: A baseline for understanding barriers to health. *Journal of Immigrant Health, 7(4),* 247-258.

Kadis, D.S., Stollstorff, M., Elliott, I., **Lach, L**. & Smith, M.L. (2004). Cognitive and psychological predictors of everyday memory in children with intractable epilepsy. *Epilepsy & Behavior, 5(1),* 37-43, DOI:10.1016/j.yebeh.2003.10.008.

Smith, M.L., Elliott, I.M., & **Lach, L.M**. (2004). Cognitive, psychosocial and family outcomes one year after epilepsy surgery. *Epilepsia, 45(6),* 650-660, DOI: 10.1111/j.0013-9580.2004.21903.x.

Smith, M.L., Elliott, I.M., & **Lach, L.M**. (2002). Cognitive skills in children with intractable epilepsy: Comparison of surgical and non-surgical candidates. *Epilepsia, 43(6),* 631-637, DOI: 10.1046/j.1528-1157.2002.46801.x

Elliott, I., **Lach, L.**, & Smith, M.L. (2000). Adolescent and maternal perspectives of quality of life and neurosurgical status following epilepsy surgery. *Epilepsy & Behavior, 1(6),* 406-417, DOI:10.1006/ebeh.2000.0129.

McNeill, T., Nicholas, D., Szechy, K., & **Lach, L.** (1998). Perceived outcome of social work intervention: Beyond consumer satisfaction. *Social Work in Health Care*, 26(3), 1-18, DOI: 10.1300/J010v26n03_01.

Dissertation

Lach, L.M. (2004). Social experiences of children and adolescents diagnosed with intractable epilepsy: Maternal representations. *Dissertation Abstracts International, 65 (05),* (UMI No. AAT NQ91844).

Book Chapters

Lach, L.M., Bailey, S., Bogossian, A., & Rothwell, D. Artifacts or catalysts? Moving doctoral dissertations from the shelf to the community. (2016) In I. Taylor, M. Bogo,M. Lefebre, & B. Teater, (Eds.), International Handbook of Social Work Education. Routledge Press.

Lach, L.M. & Birnbaum, R. (2016). Obligation to Report Child Abuse/Neglect is More Complex Than It Seems. In P. Rosenbaum, G. Ronen, E. Racine, J. Johannesen & B. Dan (Eds.), *Ethics in Child Health: Principles and Cases in Neurodisability.* MacKeith Press.

Birnbaum, R., **Lach, L.M.,** Saposnek, D, & Macculloch, R. (2016). Co-parenting children with neurodevelopmental disorders. In L. Drozd and M. Saini (Eds.), *Parenting Plan Evaluations: Applied Research for the Family Court* (2nd edition). New York: Oxford University Press.

Bogossian, A., **Lach, L.,** Nicholas, D., & McNeill, T. *(accepted).* Fathers of children with intellectual and developmental disabilities: Where are they and why does it matter? In A. Fudge-Schorman and K. Stoddard (Eds.), *Social Work, Intellectual and Developmental Disabilities in Canada.* Waterloo Canada: Wilfred Laurier Press.

Glidden, G., MacCulloch, R., **Lach, L.,** & Birnbaum, R. *(accepted).* Services and supports for parents of children and youth with neurodisabilities: Social Workers navigating policy, programs and service delivery tensions. In A. Fudge-Schorman and K. Stoddard (Eds.), *Social Work, Intellectual and Developmental Disabilities in Canada.* Waterloo Canada: Wilfred Laurier Press.

Lach, L.M., Rosenbaum, P.R., Bailey, S., Bogossian, A., & MacCulloch, R. (2015). Parenting a child with cerebral palsy: Family and social issues. In: B. Dan, M. Mayston, N. Paneth, & P. Rosenbloom (Eds.), *Cerebral Palsy: Science and Clinical Practice.* London, UK: MacKeith Press.

Lach, L.M. (2013). The family does matter! In: G. Ronen & P. Rosenbaum (Eds.), *Life Quality Outcomes in Young People with Neurological and Developmental Conditions, pp.* 136-153. London: MacKeith Press.

Bailey, S., **Lach, L.M.,** & Byford-Richardson, K. (2012). Interpersonal interactions and relationships. In A. Majnemer (Ed.), *Measures for Children with Developmental Disabilities: An ICF-CY Approach* (pp. 381-403). London, UK: Mac Keith Press.

Birnbaum, R., **Lach, L.M.,** Saposnek, D, & Macculloch, R. (2012). Co-parenting children with neurodevelopmental disorders. In K. Kuehnle & L. Drozd (Eds.), *Parenting Plan Evaluations: Applied Research for the Family Court* (pp. 270-329). New York: Oxford University Press.

Bogossian, A., & **Lach, L.M.** (2012). Environmental factors: Support and relationships. In A. Majnemer (Ed.), *Measures for Children with Developmental Disabilities: An ICF-CY Approach* (pp. 455-470). London, UK: Mac Keith Press.

Lach, L.M. (2009). Social challenges among children and adolescents with intractable epilepsy. In: J.W. Wheless, L.J. Willmore, & R.A. Brumback (Eds.), *Advanced Therapy in Epilepsy,* pp. 453-459. Hamilton, Ont: BC Decker, Inc.

Lach, L.M. & Peltz, L. (1999). Adolescents' and parents' perception of non-epileptic seizures: A retrospective and qualitative glance. In A.J. Rowan & J. Gates (Eds.), *Non-Epileptic Seizures, 2nd edition* (pp. 227-236). Boston: Butterworth-Heineman.

Lach, L. & Melchiorre, S. (1993). Withholding the truth from a fatally ill child. In F. Bayliss & C. McBurney (Eds.), *In The Case Of Children: Paediatric Ethics In a Canadian Context* (pp. 136-139). Toronto: Department of Bioethics, Hospital for Sick Children.

Reports, Newsletters, Webinars.

Sinha, V., Sangster, M., Gerlach, A.J., Bennett, M., Lavoie, J.G. & Lach, L., Balfour, M., & Folster, S. (2022). The implementation of Jordan's Principle in Manitoba: Final report. Winnipeg, MB: Assembly of Manitoba Chiefs. (http://csprg.squarespace.com/jpmanitoba)

Nicholas, D., Lach, L.M., & Mitchell, W. (2022). A Guide to Building Community Capacity for Neurodivergent Individuals. See (www.bccndi.org)

Lach, L.M., Plater, J., Sugar-Miller, H., Fruchter, O., & Binning, C. (2022). Report on c=ontinuing education and employment in the CIUSSS Centre-Ouest. Report prepared for the Board of Directors, CIUSSS Centre-Ouest.

Lach, L.M., Sugar-Miller, H., Chenevert, D., & McCarry, S. (2022). Report on access to services and supports that promote physical, social and mental well-being in the CIUSSS Centre-Ouest. Report repared for the Board of Directors, CIUSSS, Centre-Ouest.

Sinha, V., Sangster, M., Arbati, K., Gerlach, A.J., Bennett, M., Hart, J., Folster, S., Lavoie, J.G. & Lach, L. (2021). The implementation of Jordan's Principle in Manitoba: Interim report. Winnipeg, MB: Assembly of Manitoba Chiefs. (http://csprg.squarespace.com/jpmanitoba)

Improving Health System Navigation for Patients and Families: A Collective Community Impact Approach. Webinar given on January 31, 2019 for Children's Healthcare Canada Knowledge Exchange Network.
https://ken.childrenshealthcarecanada.ca/xwiki/bin/view/CAPHC+Presents%21/Improving+Health+System+Navigation+for+Patients+and+Families%3A++A+Collective+Community+Impact+Approach

Parents Empowering Neurodiverse Kids: The Strongest Families Neurodevelopmental Program to Help Parents Manage Challenging Behaviours. Webinar given on January 10, 2019 for Children's Heatlhcare Canada Knowledge Exchange Network.
https://ken.childrenshealthcarecanada.ca/xwiki/bin/view/CAPHC+Presents%21/Parents+Empowering+Neurodiverse+Kids%3A+The+Strongest+Families+Neurodevelopmental+Program+to+Help+Parents+Manage+Challenging+Behaviours.

Vives, L., Sinha, V., Burnet, E., & **Lach, L.** in collaboration with Pinaymootang First Nation and Nanaandawewigamig First Nations Health and Social Secretariat of Manitoba (2017). "Honouring Jordan'sPrinciple: obstacles to access to equal health and social services for First Nations children with complexneeds living in Fairford, Manitoba." Fairford, MB: Pinaymootang First Nation, Canada.

The Jordan's Principle Working Group (2015). *Without denial, delay, or disruption: Ensuring First Nations children's access to equitable services through Jordan's Principle.* Ottawa, ON: Assembly of First Nations.

Rothwell, D.W., **Lach, L.M.,** Blumenthal, A., & Akesson. (2014). Patterns and trends of social work dissertations in Canada. Retrieved from Social Science Research Network http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2390227.

Rosenbaum, P., **Lach, L.M.,**Kohen, D., & Arim, R. Parenting children with neurodevelopmental disorders: What do we know & what are the opportunities? Canadian Association of Paediatric Health Centres
Webinar, http://ken.caphc.org/xwiki/bin/view/ChildDevelopmentRehab/Parenting+Matters%21+Part+1+-+Parenting+Children+with+Neurodevelopmental+Disabilities%3A+What+Do+We+Know%2C%C2%A0and+What+are+the+Opportunities%3F, on February 28, 2012.

Lach, L.M. (2008). Caring for caregivers. On the Uptake. Retrieved from http://www.childhooddisability.ca/cdc_en/newsletter/On%20The%20Uptake%20-%20Spring%202008.pdf on June 5, 2008.

Lach, L.M., & Anucha, U. (2008). Canadian Association of Schools of Social Work, King's College University Site Report, May, 2008.

Lach, L.M., & Vedan, R. (2007). Canadian Association of Schools of Social Work, University of Calgary Site Report, May, 2007.

Callahan, M., **Lach, L.M.,** & Vedan, R. (2007). Canadian Association of Schools of Social Work, McMaster University Site Report, January, 2007.

Paquet-Deehy, A., & **Lach, L.M**. (2006). Canadian Association of Schools of Social Work, Laurentian University Site Report, May 2006.

Lach, L.M., & Barlow, C. (2006). Canadian Association of Schools of Social Work, Wilfrid Laurier University Site Report, January, 2006.

Van Caloen, B., McDonald, L., & **Lach, L.M.** (2005). Canadian Association of Schools of Social Work, University of Regina Site Report, November, 2005.

Elliott, I., **Lach, L.M.,** & Smith, M.L. (October, 2005). Epilepsy: Impact on the life of a child. Retrieved on August 19, 2008 from http://www.epilepsy.com/articles/ar_1130770266.

Cantini, F., Ells, C., Hirtle, M., Letendre, M. (2004). Tutorial in Research Ethics. Retrieved from Ministry of Health and Social Services website http://ethique.msss.gouv.qc.ca/didacticiel/ on May 11, 2005.

Lach, L.M. (2004). Transcript of interview with Jenna Martin, Senior editor of Epilepsy.com on Success of epilepsy surgery has long term social effects. Retrieved on August 18, 2008 from http://professionals.epilepsy.com/page/ar_1101995906.html.

Lach, L.M. (Spring, 2004). Social experiences of children and teens with intractable epilepsy. *Lumina, Epilepsy Canada.*

Elliott, I., **Lach, L.M.,** & Smith, M.L. (Fall, 2004). Epilepsy impact on the life of a child. *Lumina, Epilepsy Canada*

Published Abstracts (Peer-Reviewed)

Hebert, M., Nicholas, D., Mitchell, W., **Lach, L.M.** (2021). Key messages from parents for parent sof children with neurodisability to be better navigations and Illuminations for professional navigators [Abstract]. *International Journal of Qualitative Methods, 20,* 80. DOI: 10.1177/16094069211053959.

Zulla, R., Nicholas, D., & **Lach, L.M.** (2020). How do we navigate service delivery systems? A scoping review of the literature on the evidence of navigation relative to neurodevelopmental disabilities and health issues [Abstract]. *International Journal of Qualitative Methods, 19,* 56-57.

Bogossian, A, **Lach, L**, Nicholas, D, & McNeill, T. (2018). Connecting: the parenting experiences of fathers of children with neurodisabilities. [Abstract]. *International Journal of Qualitative Methods 17*(1). DOI:10.1177/1609406917748701.

Bogossian, A, **Lach, L**, Nicholas, D, & McNeill, T. (2017). Connecting: the parenting experiences of fathers of children with neurodisabilities. [Abstract]. *Developmental Medicine & Child Neurology, 59*, 119.

Lach, L.M., Rothwell, D., Blumenthal, A., & Akkeson, B. (2014). A scoping review of doctoral scholarship in Canada: Implications for the discipline. [Abstract] *The Society for Social Work and Research,* retrieved from https://sswr.confex.com/sswr/2014/webprogram/Paper21785.html on April 20, 2014.

Bogossian, A., Rothwell, D., Lach, L., Nicholas, D., Bailey, S., Kohen, D., & Rosebaum, P. (2014). Financial stress among parents of children with neurodisabilities in Canada: the role of 'complexity' [Abstract]. Developmental Medicine and Child Neurology, 56*(Supplement 5),* 7.

Lach, L., Bogossian, A., Bailey, S., Kohen, D., & Rosebaum, P. (2014). Building a model to address the role of parenting in the lives of children with neurdevelopmental disorders (NDD): does

overprotectiveness matter? [Abstract]. Developmental Medicine and Child Neurology, 56*(Supplement 5)*, 48.

Lach, L.M., Garner, R., Arim, R., Kohen, D., & Rosenbaum, P. (2012). Rates of separation/divorce of children with neurodevelopmental disorders: Results from a Canadian longitudinal population-based study. [Abstract]. *Developmental Medicine and Child Neurology, 54(Supplmenet 6),* 49.

Shikako-Thomas, K., Majnemer, A., **Lach, L.M.,** Shevell, M., Law, M., Schmitz, H., & Poulin, C. (2012). Personal and environmental factors associated with participation in leisure activities in adolescents with Cerebral Palsy. [Abstract]. *Developmental Medicine and Child Neurology, 54(Suppl 6),* 13.

Arim, R. G., Kohen D. E., Garner, R. E., **Lach, L.M.** (2012, February). *Whether and when children with complex health problems experience parental separation? An application of survival analysis to developmental research*. Poster session presented at the Society for Research in Child Development Themed Meeting: Developmental Methodology, Tampa, FL.

Arim, R.G., Kohen, D.E., Garner, R.E., **Lach, L.M.,** MacKenzie, M.J., Brehaut, J.C., & Rosenbaum, P.R. Longitudinal associations between parenting behaviours and child psychosocial outcomes for children with complex health conditions. Society for Research in Child Development conference. Montreal, Quebec. April 2, 2011. [need to locate accurate citation]

Lach, L.M., Saini, M., Bailey, S., Bogossian, A., Cimino, T., Gionfriddo, K., & Nimigon-Young, J. (2010). Systematic review methods for observational studies: Challenges and solutions. *Cochrane Colloquium Abstracts Journal,* 18th Cochrane Colloquium and the 10th Campbell Colloquium, October 18-22, 2010, Keystone Colorado. Retrieved from http://www.imbi.uni-freiburg.de/OJS/cca/index.php?journal=cca&page=article&op=view&path[]=9635 on April 17, 2012.

Ronen, G.M., Streiner, D.L., Verhey, L.H., **Lach, L.M.,** Boyle, M.H., Cunningham, C.E., & Rosenbaum, P.L. (2009). Quality of life in childhood epilepsy: What factors explain youth and their parents' rating? [Abstract], *Epilepsia, 50(Suppl 11),* 401.

Verhey, L.H., Kulik, D.M., Rosenbaum, P., **Lach, L.,** Streiner, D.L., & Ronen, G.M. (2008). Health-related quality of life in childhood epilepsy: How children and youth rate their HRQL compared to their parents. [Abstract], *Epilepsia, 49(Suppl 3),* 154.

Manor, L., Ronen, G., **Lach, LM.,** Rosenbaum, P., Streiner, D., Boyle, M., & Cunningham, C. (2007). Age of epilepsy-onset, epilepsy-duration or proportion-of-life with epilepsy: How do they correlate with health-related quality of life? [Abstract], *Epilepsia, 48(Suppl 6),* 55.

Ronen, G.M., **Lach, L.M,** Rosenbaum, P., Streiner, D., Boyle, M., & Cunningham, C. (2007). Exploring predictors of self-reported health-related quality of life among children with epilepsy that are amenable to change. [Abstract], *Epilepsia, 48(Suppl 6),* 113-114.

Smith, M.L., Elliott, I.E., & **Lach, L.M.** (2006). Cognitive correlates of academic skills in children with epilepsy. [Abstract], *Epilepsia, 47(Suppl 4),* 113-114.

Elliott, I.E., Smith, M.L., Raufi, K., **Lach, L.M.,** Lowe, A., McCleary, L., Olds, J., Snyder, T., & Whiting, S. (2005). Pediatric epilepsy surgery: Impact on quality of life in young adulthood. [Abstract], *Epilepsia, 46(Suppl. 8),* 248.

Elliott, I.M. Smith, M.L., & **Lach, L.M.** (2004). Subjective and objective vews of memory outcome after pediatric epilepsy surgery. [Abstract], *Epilepsia, 45(Suppl. 7),* 351.

Lach, L.M., Elliott, M.L., Smith, M.L., Whiting, S., Olds, S., & McCleary, L., et al. (2004). Long term social outcomes of epilepsy surgery: The role of seizure control and measures. [Abstract], *Epilepsia, 45(Suppl. 7),* 184.

Elliott, I.M., Lach, L.M., & Smith, M.L. (2003). Psychosocial outcomes in children and adolescents 2 to 4 years after epilepsy surgery: Has anything changed? [Abstract], *Epilepsia, 44(Suppl. 9),* 118.

Kelly, K., Smith, M.L., Elliott, I.E., Olds, J., McCleary, L., Whiting, S., **Lach, L,** Lowe, A., & Snyder, T. (2003). Long-term effects of pediatric epilepsy surgery: The influence of seizure status on psychiatric outcome in young adults. [Abstract], *Epilepsia, 44(Suppl. 9),* 318.

Kadis, D.S., Smith, M.L., Stollstorff, M., **Lach, L.M**. & Elliott, I.E. (2003). Cognitive and psychological predications of everyday memory in children with epilepsy. [Abstract], *Epilepsia, 44(Suppl. 9),* 237-238.

Lach, L.M. Elliott, I.E., & Smith, M.L. (2003). Family adjustment after epilepsy surgery: Longer-term findings from a prospective longitudinal study of children. [Abstract], *Epilepsia, 44(Suppl. 9),* 154-155.

Smith, M.L., Elliott, I.E., & **Lach, L.M**. (2003). Neuropsychological outcomes two to four years after epilepsy surgery in children and adolescents. [Abstract], *Epilepsia, 44(Suppl. 9),* 162.

Elliott, I.M., **Lach, L.M**., & Smith, M.L. (2002). Child and adolescent perspectives on their quality of life following epilepsy surgery. [Abstract], *Epilepsia, 43(Suppl. 7),* 94.

Kelly, K., Smith, M.L., Elliott, I.E**., Lach, L.M.,** Whiting, S., & Lowe, A. (2002). Long term outcome of mood and psychopathology following epilepsy surgery. [Abstract], *Epilepsia, 43(Suppl. 7),* 326.

Lach, L.M., Elliott, I.M., & Smith, M.L. (2002). Predictors of social adjustment after paediatric epilepsy surgery. [Abstract], *Epilepsia, 43(Suppl. 7),* 327-328.

Smith, M.L., Kadis, D., Stollstorff, M., **Lach L.,** & Elliott, I.M. (2002). Predictors of everyday memory in children with epilepsy. [Abstract], *Journal of the International Neuropsychological Society, 8(2),* 271.

Smith, M.L., Naguiat, A., **Lach, L.M.,** & Elliott, I.M. (2002). Sex Differences in Memory in Children with Intractable Epilepsy. [Abstract], *Epilepsia, 43(Suppl. 7),* 72.

Lach, L.M., Elliot, I., & Smith, M.L. (2001). Does life for children and families change after epilepsy surgery? [Abstract], *Epilepsia, 42(Suppl. 7),* 302.

Smith, M.L., Stollstorff, M., Hoosen-Shakeel, S., Elliott, I.M., & **Lach, L.M.** (2001). The relationship of attention to memory in children with intractable epilepsy. [Abstract], *Epilepsia, 42(Suppl. 7),* 103.

Hoosen-Shakeel, S., Smith, M.L., Elliott, I. & **Lach, L.M.** (2000). Usefulness of the Children's Memory Scale for predicting memory abilities in children with epilepsy. [Abstract], *Epilepsia, 41(Suppl. 7),* 155.

Lach, L.M., Elliott, I., & Smith, M.L. (2000). Baseline findings from a prospective study of children undergoing epilepsy surgery - The gap between quantitative and qualitative findings: Do measures measure up? [Abstract], *Epilepsia, 4(Suppl. 7),* 248.

Smith, M.L., **Lach, L.M**., & Elliott, I. (2000). Reasoning, remembering, and academics in children with epilepsy: Does surgery make a difference? [Abstract], *Epilepsia, 41(Suppl. 7),* 81-82.

Elliott, I., **Lach, L.M.**, & Smith, M.L. (1999). Impact of intractable epilepsy on quality of life in children: Child, adolescent and parent pre-surgical perspectives. [Abstract], *Epilepsia, 40(Suppl. 7),* 112.

Smith, M.L., Elliott, I., & **Lach, L.M.** (1999). The neuropsychology of intractable epilepsy in children: Similarities and differences between surgical and non -surgical cases. [Abstract], *Epilepsia, 40(Suppl 7),* 47.

Elliott, I., **Lach, L.,** & Smith, M.A. (1997). Adolescents' perceptions of their lives after epilepsy surgery. [Abstract], *Epilepsia, 38(Suppl. 8),* 234.

Krogh, K., **Lach, L**. & Humphries, T. (1997). Change in parent perceptions: Impact of a clinical classroom program for children with epilepsy. [Abstract], *Epilepsia, 38(Suppl. 8),* 240.

Lach, L., Elliott, I., & Smith, M.L. (1997). Life after paediatric epilepsy surgery: The parent view. [Abstract], *Epilepsia, 38(Suppl. 8),* 233.

TEACHING

University Courses Given

Introduction to Practicum, SWRK222, McGill University, Faculty of Arts, School of Social Work, Undergraduate social work course, Winter 2020.

Integrative Seminar, SWRK422, McGill University, Faculty of Arts, School of Social Work, Undergraduate social work course, Winter 2021, Winter 2022, Winter 2023

*Thought and Theory Development in Social Work, SWRK702, McGill University, Faculty of Arts, School of Social Work, PhD level required course, Fall 2020, Fall 2021, Fall 2022

*Critical Thought and Ethics, SWRK 525, McGill University, Faculty of Arts, School of Social Work, Undergraduate Required course, Fall 2009 to 2019.

*Knowledge and Values, SWRK 612, McGill University, Faculty of Arts, School of Social Work, Graduate level required course, Fall 2009

Practice with Individuals and Families, SWRK 320 D1/D2 (changed to SWRK 320 and SWRK 326), McGill University, Faculty of Arts, School of Social Work, Undergraduate Social Work Course, Winter 2007 & Winter 2008

*Disabilities and Rehabilitation, SWRK 669, McGill University, Faculty of Arts, School of Social Work, Graduate Social Work Course, Winter, 2005-2009

Family Assessment, SWRK 472, McGill University, Faculty of Arts, School of Social Work, Undergraduate Social Work Course, Fall, 2001-present

Health and Social Work, SWRK-609, McGill University, Faculty of Arts, School of Social Work, Graduate Social Work Course, Fall, 2001-2003

School Social Services, SWRK-465, McGill University, Faculty of Arts, School of Social Work, Undergraduate Social Work Course, Winter, 2002-2004

Social Work in the Health Field, McGill University, Faculty of Arts, School of Social Work, Undergraduate Social Work Course, Winter, 2002-present

Elements and Lab, 4103H, University of Toronto, Faculty of Social Work, Graduate Social Work Course, Fall, 2000.

Social Work Practice With Individuals and Families, SWK 4601S, University of Toronto, Faculty of Social Work, Graduate Social Work Course, Winter, 1999

*Graduate Level Courses

Graduate Supervision – Post Doctorate

Angela Filipe (2017-2020). Current position: Assistant Professor, Health and Social Theory, Department of Sociology, Durham University, Durham, UK.
Emily Gardiner (2015-2021) – co-supervision with Dr. Anton Miller (UBC/BC Children's Hospital)

Graduate Supervision – PhD Thesis Supervision

Student Name	Years Registered	Title of Dissertation	Current Employment
Samuel Ragot	2022-present	TBD	N/A
Kifah Baniowda	2021-present	Barriers and facilitators to inclusive education for children with neurodisabilties in Palestine.	N/A
Jeff McCrossin	2019-present	Parent Training for Children with Neurodisabilities: The Role of Family	N/A
Gina Glidden	2013-2019	The Journey of Ladders and Snakes: Help-Seeking Among Mothers and Fathers of Children with Neurodisabilities (ND)	West Island Therapy and Wellness Centre, Counsellor, Private Practice
Sara Quirke	2012-2017	Exploring parenting factors as possible predictors and moderators of mothers' cognitive appraisals of the family impact of raising their child with a neurodisability.	Lester B. Pearson School Board, Psychologist
Radha MacCulloch	2011-did not complete	Exploring how Transition Programs Understand and Support the Meaningful Transition to Adulthood for Youth with a NDD: Insights from Service Providers, Youth, and their Parents	Specialisterne, Vice President, Head of Canada
Aline Bogossian	2011-2017	Exploring 'Father Involvement' among Caregiving Fathers of Children and Youth with Neurodisabilities	Universite de Montreal, Associate Professor
Anne Ritzema	2010-2015	Predictors of Child Well-Being; Parenting Children	Lighthouse Child and Adolescent

		with NDD	Psychology, Psychologist and Director
Sacha Bailey	2009-2017	The experience of hope among parents of children with Neurodisabilities	BC Centre for Ability; Pediatric Social Worker and Clinical Researcher
Judith Sabetti	2008-2013	Employment and Recovery in Mental Illness	unknown
Anne Marie Piche	2005-2011	Parental Practices in the Context of Caregiving Disruption: The Case of Post-Institutional Adoption	UQAM, Associate Professor
Janet Kuo	2001-2008	Caregiving Identities of Women with a Brother or Sister with Cerebral Palsy in Taiwan	Associate Professor, National Taipei University of Education

Graduate Supervision – PhD Thesis Committee Member

John Aspler
(2015-2020) Fetal Alcohol Spectrum Disorder and Cerebral Palsy in the Canadaiin Media: A qualitative analysis of Media Discourse and Stakeholder Perspectives. (Integrated Program in Neuroscience)

Ro'fah Mudzakir
(2003-2011) Education for Children with Disabilities in Indonesia: Moving Toward Inclusion (School of Social Work)

Denise Keiko Thomas
(2007-2012) Determinants of Participation in Leisure Activities in Adolescents with Cerebral Palsy (School of Physical and Occupational Therapy, Faculty of Medicine)

Nancy Miodrag
(2009) Predictors of stress and Symptoms of Psychopathology in Parents of Children with Developmental Disabilities within Early Intervention (Department of Educational and Counselling Psychology)

Jennifer Saracino
(2007-2011) Early Intervention in Canada: Perceptions of Parents and Service Providers (Department of Educational and Counselling Psychology)

Graduate Supervision – MSW Thesis Supervision

Phoebe Johnston

(2016-2018) An Issue of Transparency: Comparing Respite Funding Programs for Families Raising a Child with a Neurodisability Across Canada. Current position: Clinical Social Worker, Nova Scotia Health Authority, Halifax, Nova Scotia.

Nadine Powell
(2006-2013) Transitioning from paediatric to adult centred care: A review of the research on transition interventions for adolescents and young adults with chronic conditions. Current position: unknown

Gina Glidden
(2010-2013) Intensity of Participation Among Children With Epilepsy: An Exploratory Factor Analysis of Child Components. Current position: West Island Therapy and Wellness Centre, Counsellor, Private Practice

Aline Bogossian
(2011) The Role of Family Environment in Parenting Children with NDD: Results of a Systematic Review. Current position: Associate Professor, Universite de Montreal.

Shirley Hopwood-Wallace
(2010) Documented Symptoms in Children Exposed to Domestic Violence. Current position: retired

Linda Shames
(2007) Rate of symptoms of dual diagnosis in the Child Welfare system in Canada: Profile of adolescents and their caregivers in the CIS-2003. Current position: Social Worker, CIUSSS Centre-Ouest, Montreal, Quebec.

Glenda O'Reilly
(2002) Families in Today's Health Care System: The Experience of Families During a Paediatric Admission. Current position: unknown.

Tracey Kent
(2002) Evaluation of the National Alliance for the Mentally Ill--Professional Education Program: Changes in Perception and Practice. Current position: Clincial social worker at Royal Ottawa Mental Health Centre, Brockville, Ontario.

Graduate Supervision – Masters Thesis Committee Member

Nathalie Chokron
(2008-2011) Factors associated with participation in leisure activities among school-aged children with developmental delay (School of Physical and Occupational; Faculty of Medicine).

Graduate Supervision – PhD Thesis Examiner

Boychuck, Zachary (2019). *Creating the Content for Knowledge Translation Tools to Prompt Early Referral for Diagnostic Assessment and Rehabilitation Services for Children with Suspected Cerebral Palsy.* School of Physical and Occupational Therapy, Faculty of Medicine, McGill University.

Fontil, Laura (2019). *Transition to School for Children with Autism Spectrum Disorders: Review of the Literature, Policy Implications, and Intervention Efficacy.* Department of Educational Counselling and Psychology, Faculty of Education, McGill University.

Ryan, Stephanie (2018). *Sport Involvement for Youth with Autism Spectrum Disorders and Intellectual Disablities.* Department of Psychology, York University.

Roy St. Jean, Sean Armand (2018). *Today in Light of Yesterday: A Phenomenological Study of Child Protection Workers' Vocational Experiences as Informed by Memories of Childhood.* School of Social Work, UBC (Okanagon).

Foley, Veronique (2017). *Comment les services de santé et de réadaptation permettent-ils de répondre aux besoins des familles d'enfant présentant une déficience physique motrice? Repenser nos services sous l'angle de l'intersectionnalité.* Universite Sherbrooke, Faculté de Médecine et des Sciences de la Santé.

Dahan Oleil, Noemi (2014). *Participation in Leisure Activities Among Adolescents Born Extremely Pre-Term.* McGill University, School of Occupational and Physical Therapy.

Mantulak, Andrew (2012). *The Lived Experience of Mothers of Children Who Have Undergone Kidney Transplantation.* Faculty of Social Work, Wilfrid Laurier University.

Vinay, Marie-Claude (2010). *Le point de vue des enfants diabétiques sur le bien-être.* Department of Psychology, UQAM.

Peterson, Leah (2009). *A Qualitative Examination of the Experiences of Taiwanese Transnational Youth in Vancouver.* Department of Educational and Counselling Psychology, Faculty of Education, McGill University.

August, Pam (2009). *The Role of Expression Recognition in Social Information Processing and Poor Social Adjustment.* Department of Educational and Counselling Psychology, Faculty of Education, McGill University.

Saros, Nicole (2008). *Consultation for Children with Developmental Delays.* Department of Educational and Counselling Psychology, Faculty of Education, McGill University.

Saleh, Maysoun (2007). *Actual versus Best Practices for Young Children with Cerebral Palsy: A Survey of Paediatric Occupational Therapists and Physical Therapists in Quebec, Canada.* School of Occupational and Physical Therapy, Faculty of Medicine, McGill University.

Assunta de Iaco, Gilda (2006). *Juvenile Street Gang Members and Ethnic Identity in Montreal, Canada.* Department of Sociology, Faculty of Arts, McGill University.

O'Shea, Joseph (2006). *Re-Defining Risk Behaviours Among Gay Men: What Has Changed?* Department of Sociology, Faculty of Arts, McGill University.

Sarkissian, Sonia (2006). *Illness Intrusiveness, Quality of Life and Self-Concept in Epilepsy.* Institute of Medical Sciences, Faculty of Medicine, University of Toronto.

Glen, Tamara (2005). *Exploring Perceptions of Attention Deficit Hyperactivity Disorder.* Department of Educational and Counselling Psychology, Faculty of Education, McGill University.

Globe, Patricia (2005). *The Use of Child-Based Consultation: Changing Problematic Behaviours in Children Altering Interactions with Teachers in the Classroom.* Department of Educational and Counselling Psychology, Faculty of Education, McGill University.

Nedlham, Carolyn (2005). *A Narrative Analysis Exploring the Effects of Long-Term Caregiving on the Female Caregiver's Sense of Self.* Department of Counselling Psychology, Faculty of Education, McGill University.

Levy, Jonathan. (2004). *Deviance and Social Control Among Haredi Adolescent Males.* School of Social Work, McGill University.

Malowaniec, Leah. (2003). *Determining Community Attitudes and Concerns with Respect to the Establishment of Safer Injection Facilities in Vancouver's Downtown Eastside.* School of Social Work, McGill University.

Graduate Supervision – MSW Thesis Examiner

Bastien, Laurianne (2021). *Evaluating an Online Mental Health Outreach Program for University Students During the COVID-19 Pandemic.* Department of Educatonal and Counselling Pyschology, Faculty of Education, McGill University.

Quirke, Sara (2011). *Parents' Positive and Negative Cognitive Appraisals in Raising a Child with An Autism Spectrum Disorder.* Department of Educational and Counselling Psychology, Faculty of Education, McGill University.

Knight, Patsi Leila (2007). *Vision Impairment in Older Adults: Adaptation Strategies and the Charles Bonnet Syndrome.* School of Social Work, Faculty of Arts, McGill University.

Cox, Judith (2006). *Children with Developmental Disabilities: Finding Permanent Homes.* School of Social Work, Faculty of Arts, McGill University.

Graziani, Sylvie (2005). *Early Adolescent Experiences of Friendships, Peer Relations and Stress: Drawing on Girls' Impressions.* School of Social Work, Faculty of Arts, McGill University.

Spinner, David (2005). *The Edmonton Arts and Youth Feasibility Study: A Qualitative Look At Running an Arts Education Program for Youth in Conflict with the Law.* School of Social Work, Faculty of Arts, McGill University.

Kromer, Anna (2004). *The Impact of Ethnic Identity on Nursing Home Placement Among Polish Older Adults*

Melrose, Heather (2003). How Do Resource Foster Parents Conceptualize Concurrent Planning.

Tanner, Gordon (2003). *Street Outreach Programs For Homeless and Underhoused People: A Grounded Theory Study.*

Presentations

Peer Reviewed Conferences

Kohen, D. E., Arim, R. G., Miller, A. R., Guèvremont, A., **Lach, L. M.**, & Brehaut, J. C. (2018, October). *Children with neurodevelopmental disabilities: Identification and patterns of health services using Canadian administrative data*. Poster presentation at the DEVSEC: Conference on the Use of Secondary and Open Source Data in Developmental Science. Phoenix, Arizona.

Lach, L.M., Kohen, D., Arim, R., Miller, A., Tough, S., McDonald, S., Fayed, N,, Cohen, E., Guttman, A., Kitchen, L., Nicholas, D., Rosenbaum, P., & Bogossian, A. (2017). Indicators for children with neurodisabilities in Canada. Panel presentation given at the 6th Conference of the International Society for Child Indicators (ISCI) entitled 'Children in a World of Opportunities: Innovations in Research, Policy and Practice' in Montreal, Quebec on June 29, 2017

Sentenac M., **Lach L.,** Gariepy G. Elgar F. Social inequalities in educational trajectories of children with neurodisabilities in Canada.Annual Conference of ALTER- European Society of Disability Research. Lausanne, 6-7 July 2017.

Sentenac M., **Lach L.,** Gariepy G. Elgar F. Educational trajectories of children with neurodisabilities in Canada. 6th Conference of the International Society of Child Indicators (ISCI). Montreal, 28-30 June 2017.

Bogossian, A., **Lach, L,** Nicholas, D., & McNeill, T. (2017). Connecting: The parenting experiences of fathers of children with neurodisabilities. Scientific poster presentation at the 71st annual

meeting of the American Academy of Cerebral Palsy and Developmental Medicine, September 13-16, 2017, Montreal, QC.

Nicholas, D., **Lach, L.,** Bogossian, A., & Rosenbaum, P. (2017). The biopsychosocial context of parenting children with neurodevelopmental disorders in Canada. Oral presentation at the 6th Conference of the International Society for Child Indicators, June 28-30, 2017, Montreal, QC.

Gariepy, G., Rothwell, D., & **Lach, L.** (2017). Does having a child with a neurodevelopmental disorder impact the trajectory of economic hardship of families? Oral presentation at the Society for Social Work Research Conference, January 13, 2017, New Orleans, Louisiana.

Ketelaar, M., Bogossian, A., Saini, M., Visser-Meily, A., & **Lach, L.** (2016). Why and how to assess family in the context of practice and research. Oral presentation at the joint meeting of the 5th International Conference of Cerebral Palsy, 28th Annual Meeting of the European Academy of Childhood Disability and the 1st Biennial Meeting of the International Alliance of Academies of Childhood Disability, June 1 – 4, 2016 Stockholm, Sweden.

Lach, L, Bogossian, A, Quirke, S, Nicholas, D. Improving the lives of children with neurodisabilities: Does parenting matter? Oral presentation at ISPCAN International Congress on Child Abuse and Neglect, August 28 – 30, 2016 Calgary, Canada

Lach, L, Bailey, S, Bogossian, A, Panel entitled Artifacts of Catalysts? Moving doctoral dissertations from the shelf to the practice community. (2015) Presentation 1: Disseminating Doctoral Dissertations: State of Affairs in Canada. Presented during the 2015 National CASWE-ACFTS Conference, June 1 – 4, 2015, University of Ottawa, ON, Canada.

Lach, L.M., Ritzema, A., Bailey, S., Bogossian, A., MacCulloch, R., Glidden, G. Kohen, D., & Rosenbaum, R. (2014). The CIHR Team in Parenting Matters! Canadian Family Advisory Network (CFAN) Annual Symposium. Canadian Association of Pediatric Health Centres Annual Conference, October 19, 2014. Calgary, Alberta.

Lach, L.M., Bogossian, A., Bailey, S., Nicholas, D., Kohen, D., & Rosenbaum, P. (2014). Oral Building a model to address the role of parenting in the lives of children with neurodevelopmental disorders (NDD): Does overprotectiveness matter? Paper presented at the 68th Annual Meeting of the American Academy of Cerebral Palsy and Developmental Medicine, September 10-14, 2014, San Diego, California.

Bogossian, A., Rothwell, D., **Lach, L.,** Bailey, S., Nicholas, D., Kohen, D., & Rosenbaum, P. (2014). Financial stress among parents of children with neurodevelopmental disabilities in Canada: The role of 'complexity'. Poster presentation at the 68th Annual Meeting of the American Academy for Cerebral Palsy and Developmental Medicine, September 10 – 14, 2014, San Diego, California.

Lach, L.M., Rothwell, D., & Blumenthal, A. (2014). Scoping review of doctoral scholarship in Canada: Implications for the discipline. Poster presentation at the Society for Social Work

Research Conference, January 15-19, 2014, San Antonio, Texas. January 17, 2014. Poster presentation at the Congress for Humanities and Social Sciences, May 25-29, 2014. St. Catharines, Ontario. May 29, 2014.

Kohen, D.E, Arim, R.G., Guevrement, A., Brehaut, J.C., Miller, A.R., McGrail, K., Brownell, M., **Lach, L.M.,** & Rosenbaum, P. (2013). Implementing the children with special health care needs (CHSCN) screener using Canadian administrative health data. Poster presentation at the Canadian Association of Paediatric Health Centres conference, October 20 – 23, 2013. Toronto, Ontario. October 21, 2013.

Arim, R., Guevrement, A., Kohen, D.E., Brehaut, J.C., Miller, A.R., McGrail, K., Brownell, M., **Lach, L.M.,** & Rosenbaum, P. (2013). The implementation of case-mix system approach to categorizing child health using Canadian administrative health data. Poster presentation at the Canadian Association of Paediatric Health Centres conference, October 20 – 23, 2013. Toronto, Ontario. October 21, 2013.

Bogossian, A., **Lach, L.M.,** & Saini, M. Measures of fathering children with neurodevelopmental disorders: What is known and what is missing? Poster presentation during the Pediatric Scientist Development Program (PSDP) Annual Meeting, February 28 – March 1, 2013 at the Hyatt Regency Atlanta, Atlanta, GA

Lach, L.M., Garner, R., Arim, R., Kohen, D., & Rosenbaum, P. Rates of separation/divorce of children with neurodevelopmental disorders: Results from a Canadian longitudinal population-based study (2012). Paper presented at the American Academy of Cerebral Palsy and Developmental Medicine 66th Annual Meeting. Toronto, Ontario. September 14, 2012.

Shikako-Thomas, K., Majnemer, A., **Lach, L.M.,** Shevell, M., Law, M., Schmitz, N., & Poulin, C. (2012). Personal and environmental factors associated with participation in leisure activities in adolescents with Cerebral Palsy. Poster presented at the American Academy of Cerebral Palsy and Developmental Medicine 66th Annual Meeting. Toronto, Ontario. September 15, 2012.

Bogossian, A., Bailey, S., MacCulloch, R., Cimino, T., Saini, M., **Lach, L.M.,** & Rosenbaum, P. (2012). Distilling the data: Development of a method for data extraction within a systematic review of observational studies. Poster presented at the American Academy of Cerebral Palsy and Developmental Medicine 66th Annual Meeting. Toronto, Ontario. September 15, 2012.

MacCulloch, R., Glidden, G., Birnbaum, R., **Lach, L.M.,** & Rosenbaum, P. (2012). Exploring the tension between written and enacted policy: Provincial legislation, policies and programs that affect Canadian parents of children with a neurodevelopmental disorder. Poster presented at the NeuroDevNet 2012 Brain Development Conference, September 22, 2012, Toronto, Ontario.

MacCulloch, R., Glidden, G., Birnbaum, R., **Lach, L.M.,** & Rosenbaum, P. (2012). Exploring the tension between written and enacted policy: Provincial legislation, policies and programs that

affect Canadian parents of children with a neurodevelopmental disorder. Poster presented at the 18th Qualitative Health Research Conference, October 23, 2012, Montreal, QC.

Bogossian, A., **Lach, L.,** Nicholas, D., McNeill, T., Saini, M. (2012). Integrating qualitative research on the experience of fathers of children with neurodevelopmental disorders. Poster presented at the 18th Qualitative Health Research Conference, October 25, 2012, Montreal, QC.

Arim, R.G., Kohen, D.E., Garner, R., & **Lach, L.M.** (2012). Whether and when children with complex health problems experience parental separation: An application of survival analysis to developmental research. Poster presented at the Society for Research in Child Development Themed Meeting– Positive Development of Minority Children: Developmental Methodology Meeting. Tampa, Florida. February 10, 2012.

Nicholas, D.B., Zwaigenbaum, M., Clarke, M., Roberts, W., Magill-Evans, J., Saini, M., **Lach, L.,** MacCulloch, R., Ing, S., Barrett, D., & Spoelstra, M. (2011). Stage I of a synthesis review of interventional outcomes for Autism: Systematic descriptive mapping. Poster presented at the International Meeting for Autism Research (IMFAR). San Diego, California. May 12, 2011.

Arim, R.G., Kohen, D.E., Garner, R.E., **Lach, L.M.,** MacKenzie, M.J., Brehaut, J.C., & Rosenbaum, P.R. (2011). Longitudinal associations between parenting behaviours and child psychosocial outcomes for children with complex health conditions. Poster presented at the Society for Research in Child Development conference. Montreal, Quebec. April 2, 2011.

Lach, L.M., Saini, M., Bailey, S., Bogossian, A., Cimino, T., Gionfriddo, K., & Nimigon-Young, J. (2010). Systematic review methods for observational studies: Challenges and solutions. Poster session presented at the Joint Colloquium of the Cochrane & Campbell Collaborations Meeting. Keystone Colorado. October 18-22, 2010.

Arim, R. G., Garner, R. E., Kohen D. E., **Lach, L.M.,** Brehaut, J.C., MacKenzie, M., & Rosenbaum, P. L. (2010). Differences in parenting behaviors for children with and without neurodevelopmental disabilities and behavior problems. Poster presented at the Canadian Congenital Anomalies Surveillance Network (CCASN) 8th Annual Scientific Meeting: Environmental & Nutritional Vulnerability for Congenital Anomalies. Ottawa, Ontario. November, 2010.

Lach, L.M., Kohen, D., Rosenbaum P., Arim, R., et al. (2010). Parents of children with chronic health conditions and disabilities: A multi-method approach to studying health and parenting. Presented at Oxford-Brookes University, Oxford, UK (May 18, 2010); Trinity College University of Dublin (May 21, 2010); and at the European Academy of Childhood Disability conference in Brussels, Belgium (May 26-29, 2010). Also presented at the Congress of Humanities and Social Sciences conference. Montreal, Quebec. June 1, 2010.

Shikako-Thomas, K., **Lach, L.,** Majnemer, A., Nimigon, J., Cameron, K., & Shevell, M. Engagement in preferred occupations promotes well-being in adolescents with CP. (2010). Presentation at

the Canadian Association of Occupational Therapists National Conference. Halifax, Nova Scotia. May 26-29, 2010.

Nicholas, D., Koller, D., Bruce-Barrett, C., Matlow, A., Zlotnik-Shaul, R., & **Lach, L.** Pandemic planning for paediatric care. Platform presentation at the Canadian Association of Paediatric Health Centres conference. Edmonton, Alberta. October, 2008.

Shikako-Thomas, K., Majnemer, A., **Lach, L.,** Cameron, K., Nimigon, J., & Shevell, M. (2008). Quality of life in adolescents with Cerebral Palsy – A qualitative study. Poster presentation at the American Academy of Cerebral Palsy and Developmental Medicine. Atlanta, Georgia. September 19, 2008.

Lach, L.M., Elliott, I.M., Smith, M.L., Whiting, S., Olds, J., McCleary, L., Lowe, A., & Snyder, T. (2004). Long term social outcomes of paediatric epilepsy surgery: The Role of seizure control and measures. Platform presentation given at the American Epilepsy Society conference. New Orleans, Louisiana. December 6, 2004.

A 30 Year Review of Paediatric Literature Addressing Psychosocial Adaptation to Chronic Illness: Results of a Meta-Analysis and Meta-Synthesis. Platform presentation given with Dr. David Nicholas and Dr. Beverley Antle at the 4th International Conference on Social Work in Health and Mental Health. Quebec City, Quebec. May 26, 2004.

Social Inclusion? Experiences of Students with Chronic Health Conditions or Disabilities and their Peers. Platform presentation given with Dr. Beverley Antle at the 4th International Conference on Social Work in Health and Mental Health. Quebec City, Quebec. May 26, 2004.

What Really Makes a Difference? 30 Years of Research on How Children and Families Adapt to Chronic Health Conditions and Disabilities. Poster presentation with Dr. Beverley Antle, Dr. J. Globerman, Ms. Laura Beaune and Dr. T. McNeill at the 4th International Conference on Social Work in Health and Mental Health. Quebec City, Quebec. May 26, 2004.

Children and Adolescents With Intractable Epilepsy: How Do These Youth View Their Quality of Life (QOL)? Elliott, I.M., Lach, L.M., & Smith, M.L. Platform presentation given at the 9th International Paediatric Nursing Research Symposium. Montreal, Quebec. April 12, 2002.

Does Life For Children and Families Change After Epilepsy Surgery? Lach, L.M., Smith, M.L., & Elliott, I.M. Platform presentation given at the American Epilepsy Society Conference. Philadelphia, PA. December 5, 2001.

I Just Want To Be Normal: Quality of Life (QOL) In Children With Intractable Epilepsy. Elliott, I.M., Lach, L.M., & Smith, M.L. Presentation given at the Canadian Association of Neuroscience Nurses National Conference, June 13, 2001.

On Becoming A Successful Qualitative Researcher: Integrity, Perseverance...and Then There is Reality. Alaggia, R., Lach, L.M., & Tsang, T. Presentation given at the Qualitative Analysis Conference, McMaster University. May 17, 2001.

Baseline Findings From a Prospective Study of Children Undergoing Epilepsy Surgery - The Gap Between Quantitative and Qualitative Findings: Do Measures Measure Up? Lach, L.M., Elliott, I.M., & Smith, M.L. Platform presentation given at the American Epilepsy Society Conference, Los Angeles, CA, December 4-8, 2000.

Reasoning, Remembering, and Academics in Children With Epilepsy: Does Surgery Make a Difference? Smith, M.L., Lach, L.M., & Elliott, I. Platform presentation given at the American Epilepsy Society Conference, Los Angeles, CA, December 4-8, 2000.

Paddling Upstream: Issues, Opportunities, and Pitfalls in Patient and Family-Focused Care Redesign. Association For The Care of Children's Health Conference. Washington, D.C. May 27, 1997.

Empowerment of Families in a Paediatric Health Care Setting. Lach, L.M., Elliott, I.M. Association For The Care Of Children's Health (ACCH) Conference. Toronto, Ontario. May 1994.

Invited Speaker

Neurodevelopmental Disabilities Resources and Navigation Initiative: Building National Capacity. Invited presentation given to Fetal Alcohol Spectrum Disorders group at Policywise in Calgary, AB. February 21, 2019.

Thinking Critically and Pragmatically About Practice with Parents of Children with Neurodisabilities: Research as a Bridge? Presentation given at Sunny Hill Children's Health Centre, Vancouver, BC. July 12, 2018.

Parent Well-Being, Positive Parenting, and Mindfulness. Presentation given at the Implementing Early Detection and Intervention in CP Conference (in collaboration with Courtney Rice). Columbus Ohio. April 6-7 2018.

KBHN-CB November 6, 2017.

CPNet

Community Engagement: Setting an Agenda for ASD Research. 2nd Biennial Winter Institute, Banff Alberta, March 6-9, 2013.

Mothering and Children with Epilepsy: Tensions and Rewards. Presentation at the Hospital For Sick Children, June 22, 2011.

Health, psychosocial function, and parenting of caregivers of children with neurodevelopmental disorders: Results from the NLSCY . Presentation at Department of Pediatrics Grand Rounds, Montreal Children's Hospital, February 23, 2011.

Caring to Caregiving: Parents of Children with Neurodevelopmental Disorders. Homecoming lecture, School of Social Work, McGill University. October 13, 2011.

Families of children with chronic health conditions and disabilities: Operationalizing family-centred care. School of Occupational and Physical Therapy, McGill University. April 7, 2010.

Parenting children with neurodevelopmental disorders: Overview of a program of research and preliminary findings. Centre for Research on Children and Families, McGill University. March 10, 2010. Centre de recherche interdisciplinaire en réadaptation du Montréal. November 16, 2010.

Turning clinical issues into qualitative research questions. Department of Paediatrics Clinical Research Retreat, Faculty of Medicine, McGill University. Brome, QC, September 26 & 27, 2009.

Theoretical frameworks to guide assessment of quality of life and health-related quality of life. Quality of Life in Childhood Onset Chronic Conditions and Disorders. Niagara-on-the-Lake, Ontario, May 3-5, 2009.ity of Life in Childhood Onset Chronic Conditions and Disorders
Health and Psychosocial Functioning of Caregivers of Children with Neurodevelopmental Disorders: Results from the NLSCY. Paper presented at the following:
Clinical Research Rounds, Montreal Children's Hospital, Montreal, QC. March 2, 2007.
Research Seminar, Centre for Research on Children and Families, McGill University, Montreal, QC. April 18, 2007.
Quality of Life Conference, Novartis Foundation. London, UK. May 9, 2007.

Mentoring Students in Research Methodologies that go "Against the Grain" of Conventional Health Research. Panel presentation at the McGill Qualitative Health Research Group (MQHRG) Spring Conference entitled Ensuring Quality in Qualitative Health Research, Montreal, Quebec. April 5, 2007.

Moving the Profession Forward: False Dichotomies and the Future of Social Work in Canada. Keynote Address, Social Work Week, Ottawa, Ontario. March 8, 2007.

Children with Chronic Health Conditions and Their Families: What are the Pressing Research Questions? Child Development Research Group Inaugural Conference, MUHC and Montreal Children's Hospital, April 20, 2005.

A 30-Year Review of Paediatric Literature Addressing Psychosocial Adjustment to Chronic Health Conditions : Preliminary Findings from a Meta-Analysis and Meta-Synthesis. First Annual McGill Psychosocial Oncology Research Day, March 11, 2005.

The Status of Psychosocial Research in Canada: The Case of Epilepsy. Presentation given at the Canadian Epilepsy Research Initiative Meeting, Montreal, May 20, 2004.

Families of Children and Adolescents with Epilepsy: What Matters? Presentation given at the Family: Building, Bridging, and Becoming conference sponsored by St. Amant Centre, Winnipeg, Manitoba. October 8, 2004.

Multi-Systemic Therapy. Presentation given at the Argyle Family Institute, March 31, 2004.

Does Life Improve After Epilepsy Surgery? Presentation given to the School of Occupational and Physical Therapy, McGill University Research Seminar Series, November 18, 2002; Presentation given at the Montreal Children's Hospital, Rehabilitation Department Lecture Series, November 19, 2002.

Social Sciences and Epilepsy. Presentation given at the Canadian League Against Epilepsy – Canadian Epilepsy Research Initiative Meeting. Vancouver, B.C. June 17, 2002.

Behaviour, Affect and Cognition in Children Diagnosed With Epilepsy: The Complex Interaction of Biologic and Social factors. Presentation given to the Department of Child Psychiatry, Institute for Child and Family, Jewish General Hospital. Montreal, Quebec. January 31, 2002.

Psychosocial and Quality of Life Issues in Epilepsy. Presentation given at the Canadian Epilepsy Consortium Meeting, Montreal, Quebec. September 29, 2001

Neuropsychological and psychosocial adjustment of children and adolescents with intractable epilepsy: A multimethod approach. Lach, L.M., Elliott, I.M., & Smith, M.L. Presented at:
Neurology Grand Rounds, Hospital For Sick Children, November 15, 2000
Bloorview Epilepsy Research Program Grand Rounds, Toronto, July 27, 2000
Research Institute Grand Rounds, Children's Hospital of Eastern Ontario, Ottawa, June 30, 2000.

Quality of Life of Children With Intractable Epilepsy. Presented to Bloorview Parent Support Group, Bloorview Children's Hospital, May 15, 2000.

Psychosocial Outcome of Epilepsy Surgery: Preliminary Findings. Snead, O.C., Lach, L.M., & Elliott, I. Research rounds at the Bloorview MacMillan Centre, April 4, 2000.

Quality of life after paediatric epilepsy surgery: A multidimensional, multi-method study - baseline and preliminary year 1 findings. Grand Rounds, Bloorview MacMillan Centre Research Group. January 18, 2000.

Other Presentations

Lach, LM., McGrath, P. Thomson, D., & Turner, K. Strongest Families™ Neurodevelopmental: Parent Involvement in Modifying an Online Parenting Program for Children with Neurodisabilities and Challenging Behaviour. Poster presented at Canadian Association for Pediatric Health Centres Conference, October 21-23, 2018.

Lach, L.M. Quality of Life as an Outcome in Children and Youth with Epilepsy. Presentation given to NeuroDevNet trainees on February 16, 2016.

Rosenbaum, P., **Lach, L.M.,** Kohen, D., & Arim, R. Parenting children with neurodevelopmental disorders: What do we know & what are the opportunities? Canadian Association of Paediatric Health Centres webinar, http://ken.caphc.org/xwiki/bin/view/ChildDevelopmentRehab/Parenting+Matters%21+Part+1+-+Parenting+Children+with+Neurodevelopmental+Disabilities%3A+What+Do+We+Know%2C%C2%A0and+What+are+the+Opportunities%3F, on February 28, 2012.

Doing Mixed Methods Research: Epistemology, Methodology, and Method. Presentation given to doctoral students at the School of Social Work, McGill University. April 28, 2011.

Mentoring Students in Research Methodologies that go "Against the Grain" of Conventional Health Research. Panel presentation at the McGill Qualitative Health Research Group (MQHRG) Spring Conference entitled Ensuring Quality in Qualitative Health Research, Montreal, Quebec. April 5, 2007.

The Case of Case Management: Case Management in the Context of Chronic Care. Presentation given to Spina Bifida Continuum on May 8, 2006.

Transition from Adolescence to Young Adulthood: Youth With Disabilities. Presentation given to Physical and Occupational Therapy graduate class on March 28, 2006.

The Case of Case Management: Case Management in the Context of Chronic Care. Presentation given to Stroke Network on December 14, 2005.

Social Outcomes and Experiences from Childhood to Young Adulthood: The Case of Intractable Epilepsy. Presentation given at the Constance-Lethbridge Rehabilitation Centre, Member of the Centre for Research in Interdisciplinary Rehabilitation (CRIR). June 7, 2005.

Children With Chronic Health Conditions and Disabilities: An Overview of Current Research Trends. Presentation given at the Child Development Research Group Meeting, April 20, 2005.

Families of Youth with Epilepsy: Practice to Research and Research to Practice. Presentation given in Psychiatry Grand Rounds, Montreal Children's Hospital, April 7, 2005.

Epilepsy in Childhood: Impact on Cognition, Affect/Behaviour and Social Development. Elliott, I., Lach, L., & Smith, M.L. Presentation given at Paediatric Update 2001, Department of Pediatrics, Faculty of Medicine, University of Toronto. May 2-5, 2001.

Does Life Change For Children and Families After Epilepsy Surgery? Lach, L.M. Elliott, I.M. Neurology Subspecialty Rounds, University of Toronto. April 10, 2001.

A Family Centred Approach To The Assessment and Treatment of Children With Intractable Epilepsy. Deutsch, J., Weiss, S., Lach, L.M., & Elliott, I.M. Presented at the 4th Annual Child and Adolescent Psychiatry Update, HSC. November 4, 2000.

Nature and Nurture Issues Surrounding Epilepsy in Children and Youth. Lach, L.M. & Elliott, I.M. Presented to parents and professionals at Epilepsy Mississauga on April 13, 2000 and to professionals at Thistletown Regional Centre in Toronto on May 25, 2000.

Baseline Findings From a Prospective Study of Children Undergoing Epilepsy Surgery: Quantitative and Qualitative Results. Presented at social work rounds, Department of Social Work, Hospital For Sick Children, April 10, 2000.

Psychosocial Adjustment of Children with Epilepsy, Lach, L.M., & Elliott, I. Presentation given at Epilepsy Mississuaga, March, 28, 2000.

CLINICAL APPOINTMENTS

May 1988 -
Aug. 2001 DIVISION OF NEUROLOGY, Hospital For Sick Children

- assessment and treatment of children with neurological disorders and their families
- crisis, adjustment and supportive counselling regarding developmental, behavioural and illness-related issues experienced by children diagnosed epilepsy, children undergoing epilepsy surgery, and their families
- individual, couple, family and group psycho-educational modalities of treatment
- consultation to schools regarding classroom management issues
- member of an interdisciplinary team
- supervise and teach M.S.W. students
- conduct clinical research related to psychosocial outcomes and quality of life in this population

Febr. 1990 -
Dec. 1997 PRIVATE PRACTICE

- part-time private practice
- counselling individuals, couples and families regarding relationship difficulties, loss and bereavement, parenting, school and career problems, adoption issues, anxiety and depression

Febr. 1994 -
May 1996 KINARK CHILD AND FAMILY SERVICES (Newmarket)

- part-time contract position
- provided brief therapy intervention to clients on waiting list for family therapy

May 1986 -
May 1988 CYSTIC FIBROSIS SERVICE, Hospital For Sick Children

- assessment and treatment of children and families
- counselling individuals, couples and families regarding issues related to living with a chronic terminal illness
- clinical issues included loss and bereavement, behaviour problems, school problems, eating disorders and parent/child interaction
- adolescent support group
- member of a multidisciplinary team

January 1985 -
May 1986 MEDICAL OUTPATIENT SERVICE, Hospital For Sick Children (MSW Placement)

- assessment and treatment of individuals, families and group at medical or psychosocial risk

January 1985 -
May 1986 NEPHROLOGY SERVICE, Hospital For Sick Children (MSW Placement)

- assessment and treatment of children who were undergoing life sustaining dialysis treatment or kidney transplants
- established a peer support network for parents of children with nephrotic syndrome
- group for adolescents

SUMMARY of AWARDS RECEIVED

Li Ka Shing Fellowship, Faculty of Arts, McGill University. May 2019.

Montreal Children's Hospital Research Institute. Rising Researcher Award. February, 2004.

American Epilepsy Society Young Investigator's Award, American Epilepsy Society Conference, Philadelphia, PA. December, 2001.

Hospital For Sick Children, Research Institute, Research Training Competition Graduate Award (RESTRACOMP)
1999-2000 - $35,000; 2000-2001 - $35,000

University of Toronto Fellowship Award
1996-1997 - $10,000; 1995-1996 - $10,000

REVIEWS

Canadian Institutes for Health Research, invited member of Social and Developmental Aspects of Children's & Youth's Health Committee, *Grant Reviewer, May and November 2005, May 2006, November 2010, May 2013, September 2013, May 2014, May 2015, May 2016 (Virtual Chair), May 2017, December 2019, June 2021, November 2021 – Scientific Officer, Child Health Committee*
Social Sciences and Humanities Research Council, *Invited Grant Reviewer*
Brain Canada, *Grant Reviewer*
Canada Research Chair
Canadian Kidney Foundation, *Grant Reviewer*
Hospital For Sick Children Foundation, *Grant Reviewer*
Montreal Children's Hospital Research Institute, *Grant Reviewer*
Montreal University Health Centre (MUHC) Research Institute, *Grant Reviewer*
MITACS, *Grant Reviewer*
Canadian Social Work Journal, *Reviewer for journal*
Child Care Health and Development, *Reviewer for journal*
Child and Youth Services Review, *Reviewer for journal*
Developmental Medicine and Child Neurology, *Reviewer for journal*
Development and Psychopathology, *Reviewer for journal*
Disability & Rehabilitation, *Reviewer for journal*
Epilepsia, *Reviewer for journal*
Epilepsy and Behaviour, *Reviewer for journal*
Human Development, Disability and Social Change, *Editorial Board,* 2008-present
Journal of Abnormal Child Psychology, *Reviewer for journal*
Journal of American Medical Association (JAMA), *Reviewer for journal*
Paediatric Research, *Reviewer for journal*
Psychiatric Research, *Reviewer for journal*
Physical & Occupational Therapy in Pediatrics, *Editorial Board,* 2007-2017
Research for Social Work Practice, *Editorial Board,* 2015-2019
Royal Canadian Society, *Reviewer for journal*

PROFESSIONAL AFFILIATION

Réseau Provincial de Recherche en Adaptation-Réadaptation (REPAR). Full Research Member. 2006-2012.

Canadian Epilepsy Research Initiative – International League Against Epilepsy (CERI-ILAE). 2002-2012

Centre de Recherche Interdisciplinaire en Réadaptation du Montréal Metropolitain (CRIR). Full Research Member of Research Domain 3 (Social Participation and Health Care Delivery). 2004-present.

Centre for Research on Children and Families (CRCF). Full member. 2006-present.

Ontario Association for Professional Social Workers, 1988-2001

Ontario College of Social Workers, 1988-2001

OTHER SERVICE

Integrated University Health and Social Service Centre (CIUSSS- Centre-Ouest Montreal. Board Member; Chair of Vigilance and Quality Committee. November 2015-present.

Centre Miriam, Montreal, QC. Board of Governors, Member. 2014-present.

Dans La Rue, Montreal, QC. Board of Directors, Member. 2016-present.

Yaldei Child Development Centre, Montreal, QC. Member of the Medical Advisory Board. 2004, 2015

Canadian Association of Schools of Social Work. Board of Accreditation member. 2004-2008.

Canadian Association for Social Work Education (CASWE). Governance Task Force. 2010 – 2011.

Court File Nos. T-402-19 / T-141-20 / T-1120-21

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON,
NOAH BUFFALO-JACKSON by his Litigation Guardian, Carolyn Buffalo, CAROLYN BUFFALO, and DICK EUGENE JACKSON also known as RICHARD JACKSON

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF JOELLE GOTT
(Sworn October 12, 2023)

I, Joelle Gott, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Partner at Deloitte LLP, and operate within the Financial Advisory services group. I am an engagement lead for Deloitte LLP ("**Deloitte"** or "**Administrator**") in its role as Administrator of the First Nations Child and Family Services Jordan's Principle and Trout Class Settlement Agreement as revised on April 19, 2023 (the **"SA"** or **"Settlement"**). Deloitte was appointed as the Administrator of the proposed Settlement by Order of the Federal Court, dated August 11, 2022 (the "**Order**"). As one of the engagement leads, I manage the administration of notice, opt-outs and the claims implementation process in the proposed settlement in these class proceedings. As such, I have personal knowledge of the matters contained in this affidavit, except where stated to be based on information and belief, in which case I believe them to be true.

2. This affidavit is sworn in respect of the Plaintiffs' motion for approval of the SA. In this affidavit, I describe the activities that Deloitte as Administrator has taken since its appointment by the Federal Court on August 11, 2022.

ACTIVITIES OF THE ADMINISTRATOR

3. Since its appointment on August 11, 2022, the Administrator has consulted with the Defendant, Canada, the Plaintiffs and Class Counsel (the "**Parties**") in advance of the Court's consideration of approval of the Settlement ("**Settlement Approval Hearing**"), approval of the claims process, and appointment of the Settlement Implementation Committee ("**SIC**").

4. The Administrator has been supporting and working with the Parties to prepare for the implementation and launch of the administration activities of the Administrator as outlined in the Settlement under Article 3 (Administration), including, Section 3.02 "Duties of the Administrator", and Article 5 (Claims Process).

5. The following is a summary of the activities that have been undertaken since August 11, 2022 by the Administrator in consultation with the Parties and engagement with the First Nations Child & Family Caring Society of Canada (the "**Caring Society**"), where applicable.

6. The Administrator reviewed the Order and SA with respect to services, delivery and duties of the Administrator. The review resulted in the identification of and planning for the delivery of the two key aspects that fall under the responsibilities and duties of the Administrator for each of the classes under the Settlement and Order:

(a) Communications; administration of notice and opt-out;

(b) Claims Implementation; preparation for:

(i) Administration of the Claims Process; and

(ii) Navigational Supports.

7. The Administrator regularly consulted and met with the Parties and engaged with the Caring Society for its input and comments, which included:

(a) Bi-weekly meetings held with the Parties throughout the period September 29, 2022, to July 6, 2023, and ad hoc meetings thereafter, for planning, status updates on notice and opt-outs, and preparation and presentation of research and materials

for discussion, review and decision-making by the Parties, including relating to communications and the claims process.

(b) Full-day working sessions held in-person with the Parties and Caring Society from June 12 to 13, 2023, July 17 to 18, 2023, August 8 and 18, 2023, and on September 19, 2023, with a future date scheduled for October 20, 2023. These sessions are held for planning, status updates and preparation and presentation of research and materials for discussion, review and decision-making by the parties, including relating to communications and the claims process.

(c) Ad hoc sub-committee meetings including representatives from the Parties and the Administrator to advance the design and decisioning on key activities, including:

(i) Distribution Protocol sub-committee meetings held virtually throughout the period of April to May, 2023; and

(ii) Communications design sub-committee meetings held virtually during the period of November 2022 and June 2023 with the representatives of Believeco:Partners Inc. doing business as Argyle ("**Argyle**").

(d) Preparation of meeting information, agendas and other support materials needed in advance of each meeting, in addition to preparing minutes to be distributed to participants following all meetings.

(e) Project Plan for Administration: Development of a detailed project plan and timelines/milestones approved by the Parties, which outlined the activities

required to be completed by the Administrator and the Parties for the period up to and including March 2024, including outlines of the critical path to implementation and launch of the Claims Process and the period to submit claims for the Removed Child and Removed Child Family classes.

(f) Preparation and submission of an Illustrative Budget to Canada in respect of the Claims Process for year one activities up to March 31, 2023, and year two activities up to March 31, 2024; and an Administrator's Budget for Navigational Supports for year two up to March 31, 2024, in accordance with the Order.

(g) Consultation with the Assembly of First Nations ("**AFN**") – Meetings and discussions with AFN and members of Deloitte's Indigenous Advisory Board lead, which included planning with AFN for timing of their regional consultation regarding the draft claims process.

(h) Consultation with Canada – Meetings and discussions with Canada and the Parties regarding information and records Canada may have in its possession and available to be shared with the Administrator with respect to identifying the various classes, certain Class members and confirmation of eligibility criteria under the SA.

(i) Internal meetings with Deloitte's Indigenous Advisory Board, which included discussions and consultation on various aspects of the Settlement, Administrator's duties, Claims Process, Claim Forms, and other related matters.

(j) Implementation of the Administrator Email – In August 2022, the Administrator set up a dedicated email for the Settlement (fnchildclaims@deloitte.ca) and thereafter monitored and responded to class member and other enquiries received.

(k) Implementation of Call Centre services – Arranged for a call centre operated by Argyle commencing in August 2022. Presentation by the Administrator and approval of the Parties of contact centre services and related logistics, including the selection of the Administrator as the service provider. The Administrator will contract and engage with Indigenous-owned/Indigenous-led organizations to provide opportunities for Indigenous peoples to participate in the settlement by supporting the call centre as agents. The Administrator commenced the design and implementation of the contact centre for class members.

8. Upon Federal Court approval of both the SA and applicable Claims Process including distribution protocol, the Administrator will commence the prescribed activities under the SA (Section 3.02), of installing and implementing systems in accordance with the SA and applicable Claims Process, including consultation with the SIC upon Implementation of the SA. The Claims Process and claims period is expected to launch approximately six months after the date each Claims Process is approved by the Court.

COMMUNICATION

9. In accordance with the August 11, 2022 appointment of the Administrator to manage the administration of the notice and opt-out plan, and at the request of the Parties, the Administrator oversaw the development of the communications plan, including related strategies and materials, over the past year. These activities were initially undertaken leading up to the

expected settlement approval hearing in the fall of 2022 in connection with the earlier version of the SA, dated June 30, 2022, which was deferred. These activities were performed again by the Administrator with respect to the revised Settlement of April 19, 2023, in advance of the Settlement Approval Hearing scheduled for October 2023.

10. On August 8, 2022, the Administrator engaged Argyle to assist the Administrator with its duties with respect to communications, noticing, and managing opt-outs for the Settlement. The Administrator was responsible for overseeing the activities undertaken by Argyle, as well as facilitating reviews and approvals of communications materials (e.g., Notice Plans) with the Parties. In addition, preliminary research was undertaken by Argyle on behalf of the Administrator with respect to communication and outreach for the Incarcerated Class Members Process.

11. Please see the Affidavits of Kim Blanchette, Argyle, to be affirmed, for details of the communication activities undertaken by Argyle at the request of the Administrator and the Parties, including tracking and reporting on the opt-outs received to date in advance of the Settlement Approval Hearing.

CLAIMS IMPLEMENTATION

12. The Administrator has been working with the Parties in developing draft distribution protocols and claims processes, including preparing claims design options and providing recommendations. Pursuant to the SA, *the design and implementation of the distribution protocol within the Claims Process will be within the sole discretion of the Plaintiffs,* subject to the approval of the Court (SA Section 5.01(1)).

General Activities – applicable to all classes

13. Review of key relevant agreements for the purposes of planning of claims implementation:

(a) Review of previous proposed settlement agreement dated June 30, 2022 in preparation for the anticipated fall 2022 settlement approval hearing that was subsequently deferred.

(b) Review, comparison and mapping of the terms of the final SA as revised on April 19, 2023 to the terms of the previous June 30, 2022 settlement agreement, for the purposes of updating the eligibility mapping, Claims Process and distribution protocol draft documents.

(c) Review of the Canadian Human Rights Tribunal ("**CHRT**") letter dated July 26, 2023 that announced that the CHRT had approved the Settlement and found that the revised Settlement (as revised on April 19, 2023) fully satisfied the Tribunal's Compensation Orders.

14. The following activities have been undertaken over the past year by the Administrator, since its appointment on August 11, 2022, in consultation with the various Parties and with the participation of the Caring Society, as applicable, related to all classes:

(a) Planned Activities of the Administrator under the SA:

The Administrator developed a timeline and overview of planned activities required to prepare for the Administrator's duties outlined in SA Article 3.02 of

the SA, including activities to be completed at a future date in consultation with class counsel and the SIC:

(i) Developing a Claims Process, including distribution protocol, to prepare for developing, installing, and implementing systems, forms, information, guidelines and procedures for processing claims and processing appeals of the decisions of the Administrator to the Third-Party Assessor in accordance with the SA and the Claims Process;

(ii) Planning for receiving funds from the Trust and the Trustee to make payments to Class Members in accordance with the SA and the Claims Process;

(iii) Planning for ensuring adequate staffing for the performance of the Administrator's duties under the SA, including the provision of adequate training and instructing of personnel;

(iv) Planning for First Nations participation and the reflection of First Nations perspectives and appropriate cultural knowledge in settlement administration, and ensuring the use of proper experts and a trauma-informed and child- and youth-focused approach to the Class;

(v) Planning for provision of navigational supports to Class Members in the Claims Process as outlined out in SA Schedule I, Framework for Supports for Claimants in Compensation Process;

(vi) Planning for timeline required to build and maintain a database to host all relevant Claimant information as well as an online portal for electronic claims; and

(vii) Planning for ensuring communications with Claimants can occur in both English and French, as the Claimant elects.

(b) Eligibility Criteria – Review of the Settlement terms with the Parties to identify the distinctions in eligibility criteria among the classes identified under the SA in order to plan for the Claims Process and communication with the classes.

(c) Preparation of a comparison and contrast mapping of the eligibility criteria for each class under the SA, including key criteria and elements of each, such as:

(i) Indian Status;

(ii) Ordinarily Resident On-Reserve status;

(iii) Type of Funding by Canada (e.g. Removed Child Class);

(iv) Relationship of eligible family members to child;

(v) Priority of claims;

(vi) Compensation amounts (Base, Enhanced, and Interest);

(vii) Class Period;

(viii) Supporting Documentation required;

(ix) Funding budget; and

(x) Claims Period considerations and extension requests.

(d) Research – The Administrator conducted research on various topics at the request of the Plaintiffs, including certain eligibility requirements, and presented to the Parties along with proposed processes for discussion and decisioning. These included:

(i) Caregiver Class eligibility:

Supporting Documentation – Types of information and documentary evidence that may be available to the Administrator and to Claimants to establish a caregiver's relationship to a child (parent or grandparent), including for biological and adoptive caregivers;

Ineligible Caregivers – Caregivers not eligible under the SA in the event of Abuse of the removed or placed child, including: documentation that may be available from Child Welfare Authorities and the like, related to cause for removal; and approaches to determining how the Abuse exception could appropriately be applied; and

(ii) First Nation status eligibility requirement of child class members, as defined under the terms of Settlement, and sources of verification.

(e) Financial Options for the Class – consultation with the Parties, including meeting with representatives from the Rotman School of Management (University of

Toronto), identified and selected by the Parties, to discuss their preliminary research and recommendations with respect to communication of investment vehicles to eligible claimants (SA Section 6.14(a)).

(f) Funding to pay compensation – consultation with Parties, including meeting with representatives of Eckler Limited, identified and selected by the Parties, to discuss expected timing and amounts that the Administrator may require from the Trustee/Trust Fund in order to pay compensation to eligible class members for each class.

(g) Supporting Documentation – Review of Supporting Documentation requirements under the SA and proposed claims processes for claims, including the type of Supporting Documentation that may be required and available and alternatives for accessing by Claimants, as well as the potential roles of Navigators, Administrator, and others (e.g. Child Welfare Authorities).

(h) Consultation with Canada – Supporting Documentation:

Meeting and discussions with Canada and the Parties regarding information and records Canada may have available or may be able to assemble for the Administrator with respect to the identifying the various classes and certain Class members and confirmation of eligibility criteria, including but not limited to:

(i) First Nations children in respect of which Canada funded their removal during the class period;

(ii) First Nation Status of child classes;

(iii) Family Relationships (Parent and Grandparents); and

(iv) Ordinarily Resident On-Reserve Status.

(i) Canada Records – First Nations Status and Family Relationships:

Consultation with Canada on records and data that may be available from Canada with respect to confirmation of First Nations Status of child Claimants (e.g., Indian Registry, Nominal Roll and the like) and biological family relationships (Family classes of child classes):

(i) Review and communication to the Parties of possible approaches to identify family class members (family classes) of eligible child classes;

(ii) Consultation and meetings with Canada regarding the records that Canada may have available that would confirm family relationships for the purposes of identifying family classes (biological parents and grandparents) of child classes (e.g., Indian Registry);

(iii) Meetings with Canada regarding available information/data held by Canada within the Indian Registry, including presentation by Canada of the datapoints generally contained within the Indian Registry hosted by Canada; and

(iv) Possible access/permissions, and possible format available and timeline for access to data from the Indian Registry by the Administrator.

(j) Indigenous Estates Research – Consultation with Indigenous Services Canada ("**ISC**"):

Consultation with ISC related to Indigenous estates and development of enhanced processes, procedures, and communication protocols between ISC and the Administrator for the purposes of expediting the processing of Indigenous estates and assisting representatives who file claims on behalf of deceased First Nations persons, where ISC may appoint a representative/Administrator of an Indigenous estate through a Letter of Administration:

(i) Discussion of privacy releases and motion materials that may be required by ISC to allow for a process for ISC to share Letter of Administration communications/decisions directly with the Administrator.

(ii) Discussion of system, processes and additional resources ISC may put in place provide support in processing Indigenous estates documents and issuing Letters of Administration in a timely manner.

(k) Personal Representatives – Design of Claims Process for Vulnerable Claimants:

Design of proposed claim processes for Personal Representatives who represent eligible class members who are incapable of filing a claim on their own behalf (under Power of Attorney and Public Guardian), including review of the letter issued by the Public Guardian and Trustee of Manitoba to Class Counsel, dated August 3, 2023, that outlines the processes proposed by the National Association

of Public Trustees and Guardians ("**NAPTG"**) on how to identify vulnerable class members to assist with processing of their claims.

15. Discussion with the Parties regarding the best practices and lessons learned from other Indigenous class actions, including and not limited to, processes for:

(a) Claim Form submission types;

(b) Claim Form content /requirements;

(c) Deadlines/Missing Information;

(d) Other Counsel considerations;

(e) Garnishment Notices; and

(f) Deceased Class Members, including Indigenous estates.

Removed Child Class and Removed Child Family Class – Claims Process Design

16. The Administrator drafted proposed Claims Processes, including distribution protocols, for the Removed Child and Removed Child Family Class, in consultation with the Parties, for the purposes of advancing discussion and decisioning regarding the appropriate approach, including:

(a) Process to identify eligible class members and basis of denial of class members determined not to meet the eligibility criteria;

(b) Process and language to assist claimants to self-identify the class to which they may belong;

(c) Process to determine whether eligible class members may be located based on data from Canada;

(d) Verification of eligibility criteria, including First Nations individuals, parents/grandparents, ordinarily resident on-reserve, circumstances and funding of removal/placement; and

(e) Drafting a Removed Child Class and Family Claims Process, Class claim flowchart, and mapping the claim journey from claim submission/intake to payment.

17. Enhancement Factors – Discussion with the Parties regarding the Enhancement compensation factors permitted under the SA. Review and discussion of the factors identified under the Settlement (under Section 6.03(3)) and next steps for defining parameters for assessment by the Administrator.

18. Canada Records – Supporting Documentation – Removed Class:

The Administrator undertook the following activities to explore with Canada the Supporting Documentation that may be available directly from Canada to the Administrator to identify the Removed Child Class members:

(a) Consultation with Canada and the Parties and determination that Canada is able to assemble a database of available records for children removed during the class period that will assist with identifying children removed from Reserve and placed into care (Removed Child Class only) and certain Enhancement Factors entitlement under the Settlement ("**ISC Database**");

(b) Confirmation with Canada regarding the data fields that are available in the ISC Database to allow for identification of Removed Child Class members by the Administrator from the data within the ISC Database;

(c) Obtaining estimate from Canada of size and scope of total population of records that may be provided by Canada to the Administrator;

(d) Analysis of datapoints available from the ISC Database to permit the identification of claimants eligible for Base Compensation and possibly Enhancement Factor Compensation;

(e) Contracting and provision of resources seconded to Canada to assist Canada with collecting data from Canada records for the ISC Database;

(f) Meetings with Canada regarding available information/data, access/permissions, format available and timeline for production to the Administrator of the ISC Database;

(g) Review of motion materials to permit Canada to securely share ISC Database data with the Administrator; and

(h) Analysis of records in ISC Database available to date:

(i) Receipt from Canada of preliminary partial list of ISC Database data.

(ii) Secure receipt of data from Canada in two tranches (in June 2023 and July 2023) and ingestion into the Administrator's secure environment for analysis.

(iii) The analysis conducted on the ISC Database data received consisted of two primary components: i) categorizing each line of data based on the completeness of information; and ii) applying matching criteria to various datapoints for each record in the database to identify unique individuals within the data provided by Canada.

(iv) A presentation of findings of the initial analysis was provided to the Parties (August 28, 2023) and updated results were shared with the Parties as part of subsequent discussion materials (September 19, 2023).

19. Claim Forms – Removed Child and Family Class claims forms:

The Administrator designed, drafted and reviewed draft Claims Forms in consultation with the Parties for the purposes of advancing discussion and decisioning regarding the appropriate approach, which included:

(a) Branding/design/format;

(b) Content and minimum information to be collected in the Claim form necessary for the Administrator to adjudicate the claim;

(c) Attestation language for the claimant including privacy/releases to allow for informed access and sharing of claimant information required for the adjudication of the claim in accordance with the SA and proposed Claims Process; and

(d) Review of Claims Forms with Deloitte Indigenous Advisory Board members.

20. Online Claim forms:

The Administrator commenced the technology build and design of online claims platform for Removed Child Classes including customization.

21. Claims Adjudication Technology Platform:

The Administrator planned for the systems to host the Claim Forms, data, and Supporting Documents including preliminary design of a Claims adjudication process in the platform based on the draft Claims Processes.

Kith Child Class and Kith Child Family Class

22. The Administrator commenced research to develop the Kith Child and Family Class claims process and distribution protocol, including undertaking the following activities:

(a) Review of eligibility criteria for the Kith Class under the final SA (April 19, 2023) with the Parties and with respect to the requirements of Article 7.01 8(b) of the SA: "(*b) The Parties and the Administrator will develop the Claims Process dedicated to the Kith Child Class with the participation of the Caring Society, and they will collectively take into account the views of and guidance from youth in care and youth formerly in care, as well as Child Welfare Authorities, to the extent that such views are applicable and in the best interests of the Class."*

(b) Engagement with the Caring Society with respect to the definition, elements, and funding of the Kith Child Class, including types of Supporting Documentation that may possibly be available from Child Welfare Authorities.

(c) Consultation with the Parties and Provincial Attorneys General from various provinces regarding the potential participation of Child Welfare Authorities in supporting the Claims Process.

(d) Identification and interviewing of Indigenous Child Welfare experts for consideration for the role of advisor to the Administrator with respect to the Indigenous child welfare system and Child Welfare Authorities in each jurisdiction.

(e) Preliminary research with respect to the privacy releases necessary for Child Welfare Authorities to potentially release child welfare records to the Administrator, should Child Welfare Authorities agree to provide these records, and the records are available and retrievable.

(f) Preparing initial drafts of the Kith Claim Form for discussion and review by the Parties.

(g) Preparing initial drafts of the Child Welfare Authority Declaration Form under SA section 7.02 4(b) for Supporting Documentation for Kith claims.

Jordan's Principle and Trout Classes

23. The Administrator commenced research to develop the Jordan's Principle and Trout classes claims process, including distribution protocol. The Administrator engaged in consultation with the Parties, including with respect to the following:

(a) Steering Committee to be set up by AFN for governance and administration of Jordan's Principle and Trout Class Pilot Project;

(b) Steering Committee/working group to plan and execute the Pilot Project, including project manager, AFN representative, Plaintiff Counsel, subject matter experts, Caring Society and Deloitte Indigenous lead;

(c) Pilot Project planning of timing prior to finalization of Claims Process and distribution protocol for Jordan's Principle and Trout Classes;

(d) Pilot Project to involve outreach and consultation with selected potential Jordan's Principle claimants for the purposes of information gathering, finalizing of Claims Process and distribution protocol as well as Claim Form for the class;

(e) Review and communication to the Parties regarding the Jordan's Principle class; and

(f) Review of whether there is data available from Canada, including proposed access to the Administrator for the purposes of identifying class members and vetting claims.

NAVIGATIONAL SUPPORTS

24. Under the terms of the SA, the Administrator's duties (Section 3.02(j)) include providing navigational supports to Class Members in the Claims Process as outlined in *Schedule I, Framework for Supports for Claimants in Compensation Process.*

25. The Administrator prepared a detailed project plan and illustrative budget related to planning and implementation of navigational supports that was presented to the Parties for consideration for approval.

26. The affidavit of Dean Janvier, Partner at Deloitte LLP, affirmed October 12, 2023, provides additional details of the Administrator's activities surrounding Navigational Supports.

SWORN by Joelle Gott of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario on October 12, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Maeve Byrne

Commissioner for Taking Affidavits
(or as may be)

Maeve Byrne

Joelle Gott

Joelle Gott

Court File Nos. T-402-19 / T-141-20 / T-1120-21

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON,
NOAH BUFFALO-JACKSON by his Litigation Guardian, Carolyn Buffalo, CAROLYN BUFFALO, and DICK EUGENE JACKSON also known as RICHARD JACKSON

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF DEAN JANVIER
(Sworn October 12, 2023)

I, Dean Janvier, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY:

1. I am a Partner at Deloitte LLP and operate with the Audit & Assurance services practice. I am an engagement lead for Deloitte LLP in its role as Administrator of the First Nations Child and Family Services and Jordan's Principle Settlement Agreement dated April 19, 2023 (the **"SA"**). Deloitte was appointed as the Administrator of the proposed Settlement by order of the Federal Court, dated August 11, 2022 (the "**Order**"). As one of the engagement leads, I manage the administration of notice, opt-outs and the claims implementation process in the proposed settlement in these class proceedings. Specifically, I manage the administration of the navigational supports for claimants under the claims implementation process. As such, I have personal knowledge of the matters contained in this affidavit, except where stated to be based on information and belief, in which case I believe them to be true.

2. This affidavit is sworn in respect of the Plaintiffs' motion for approval of the SA.

3. In that context, I was asked by the Plaintiffs to describe for the Court the activities of the Administrator, Deloitte LLP, with respect to navigational supports planning, since the appointment of Deloitte as Administrator by the Federal Court on August 11, 2022.

4. These activities have been undertaken by the Administrator in consultation with the Parties. The Administrator has also engaged with the First Nations Child and Family Caring Society (the "**Caring Society**") for its views and comments.

5. The Administrator has been working with the Parties to prepare for the implementation and launch of the administration activities of the Administrator as outlined in the SA under Article 3 (Administration), including Section 3.02 "Duties of the Administrator" and Article 5 (Claims Process).

6. Under the terms of the SA, the Administrator's duties (Section 3.02(j)) include providing navigational supports to Class Members in the Claims Process as outlined in Schedule I, Framework for Supports for Claimants in Compensation Process ("**Navigational Supports**").

7. The Administrator researched and prepared a detailed proposed project plan and illustrative budget related to Navigational Supports for services up to March 31, 2024 and presented and provided it to the Parties for consideration for approval. The Administrator has received comments on the project plan and is working on implementing those comments and preparing an updated draft for review.

8. In developing the project plan and budget, the Administrator has met with the Parties and the Caring Society on numerous occasions to discuss the requirements of the SA as it relates to the Navigational Supports.

9. Pursuant to the requirements of the SA, the draft plans for the Navigational Supports address the following types of assistance to be provided to claimants:

(i) assistance with the filling out and submission of Claims Forms;

(ii) assistance with obtaining Supporting Documentation;

(iii) assistance with appeals to the Third-Party Assessor pursuant to this Agreement;

(iv) reviewing Claims Forms, Supporting Documentation, and First Nations Council Confirmations; and

(v) determining a Claimant's eligibility for compensation in the Class.

10. The SA requires the development of supports for claimants that are culturally safe and trauma-informed, including the ability to refer Claimants to wellness supports that are available in the community; have chat/text access options; minimize the need for Claimants to repeat their stories; and are offered in partnership with other organizations (e.g., Correctional Service of Canada, educational institutions, etc.)

11. Accordingly, the goals of the navigational supports model that Deloitte has been working on include the following:

(a) Supporting the development of strategies and plans to ensure accessibility and support through appropriate community-first events;

(b) Planning and delivering support in collaboration with communities;

(c) Prioritizing community relationships;

(d) Balancing volume of participation with quality of Claimant experience;

(e) Delivering support with dignity, humanity and humility;

(f) Creating opportunities for feedback, assessment and improvement;

(g) Recording, sharing and acting on lessons learned; and

(h) Working closely with Elders, mental health professionals and other supports.

12. Pursuant to those requirements, the draft project plan addresses various activities to be undertaken, including:

(a) Training of navigators;

(b) Ensuring navigators are available at the commencement of the claims period for the support of the claimants;

(c) Ensuring publicly available information supports are in place at the commencement of the claims period;

(d) Development of both virtual and in-person options for access to navigators; and

(e) The development of a call centre.

13. Meetings the Administrator held with various parties in furtherance of the project plan and budget have included Believeco:Partners Inc. doing business as Argyle ("Argyle"), the Caring Society, the Government of Canada, and the Assembly of First Nations and its National Advisory Council.

14. We anticipate that once the illustrative budget for Navigational Supports is approved by Canada, Deloitte we will have further meetings with the Parties and stakeholders and continue to refine and enhance the workplan and budget based on the input received.

SWORN by Dean Janvier of the City of Calgary, in the Province of Alberta, before me at the City of Toronto, in the Province of Ontario on October 12, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Maeve Byrne

Commissioner for Taking Affidavits
(or as may be)

Maeve Byrne

Dean Janvier

Court File Nos. T-402-19 / T-141-20 / T-1120-21

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON by his Litigation Guardian, Carolyn Buffalo, CAROLYN BUFFALO, and DICK EUGENE JACKSON also known as RICHARD JACKSON

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF AMBER POTTS
(Affirmed on October 16, 2023)

I, Amber Potts, of the City of Ottawa in the Province of Ontario, AFFIRM THAT:

1. I am the Interim Chief Executive Officer of the Assembly of First Nations (hereinafter the "**AFN**") and, in that capacity, have personal knowledge of the matters to which I hereinafter affirm and wherever so stated I verily believe them to be true. Prior to my appointment as Interim Chief Executive Officer, I served as Vice President, Strategic Policy Integration at the AFN. I have been briefed extensively on the AFN's proceedings before the Canadian Human Rights Tribunal ("**Tribunal**") under the style of cause *First Nations Child and Family Caring Society v. Attorney General of Canada*, CHRT File No. T1340-7008 (the "**CHRT Proceedings**") and have been actively involved in these proceeding since the proposal of this class action. As such, I have personal knowledge of the facts hereinafter deposed to except where stated to be on information and belief, in which case I verily believe them to be true.

2. I have reviewed the affidavit of Janice Ciavaglia, formerly the Chief Executive Officer of the AFN, affirmed September 6, 2022, in support of the settlement approval motion previously scheduled in this matter (the "**Ciavaglia Affidavit**"). I adopt the contents of her affidavit.

3. In this affidavit, I address the events subsequent to the Ciavaglia Affidavit leading up to the revised final settlement agreement dated April 19, 2023 ("**FSA**") that is before this Court for approval.

4. I have also reviewed the affidavit of Robert Kugler, affirmed October 16, 2023, who is one of the class counsel working on behalf of Xavier Moushoom, Jeremy Meawasige and Jonavon Joseph Miawasige and Zacheus Trout. I provide my statements herein to reflect the perspective of the AFN, in addition to the comments of Mr. Kugler, and seek to avoid duplication of Mr. Kugler's statements.

1) The Assembly of First Nations

5. The AFN is a national organization which advocates on behalf of First Nation citizens in Canada, which includes more than 1,008,955 people living in 634 First Nation communities and in cities and towns across the country.

6. In accordance with the AFN Charter and resolutions passed by the First Nations-in-Assembly, the AFN advocates for First Nations in a range of fora and processes, including the United Nations. The AFN advocates on areas including Aboriginal and treaty rights, self-determination, upholding the honour of the Crown, land claims, economic development, education, languages and literacy, health, housing, social development, justice, taxation, and the environment. The Chiefs meet semi-annually to set national policies and directions through resolutions.

7. The AFN Social Development Sector has been heavily involved in conducting and coordinating research and advocating for changes in the federal government's First Nations Child and Family Services Program ("**FNCFS Program**") and Jordan's Principle. The AFN filed this class action proceeding to advocate for its constituents and in order to avoid the mistakes of past class action settlements.

8. I wish to acknowledge the decades of work by First Nations leadership, Elders, advocates and youth that have laid the foundation for this historic settlement, and who have touched the lives of tens of thousands of First Nations families through their dedication to, and advocacy on behalf of, First Nations children and families.

2) The 2022 CHRT Motion

9. On June 30, 2022, the parties reached a historic settlement of $20 billion (the "**2022 FSA**"). The 2022 FSA was intended to conclude these class proceedings and the elements of individual compensation previously ordered by the Tribunal in the CHRT Proceedings. The 2022 FSA contained a precondition that the Tribunal grant an order finding that the 2022 FSA satisfied its compensation-related decisions in the CHRT Proceedings.

10. At the time that the AFN approved the 2022 FSA (via approval of the AFN Executive Committee), the AFN believed that the 2022 FSA was the best possible outcome for the class, and for our First Nations constituents. First Nations leadership urged a trauma-informed, simple and accessible claims process and the 2022 FSA set out the terms upon which the implementation of the settlement would occur, in order to achieve this goal. AFN leadership was clear that the

settlement should incorporate a First Nations-led class action implementation process, in order to avoid replicating harms and re-traumatizing claimants.

11. In September 2022, the AFN brought a joint motion with Canada before the Tribunal, as an Applicant and Respondent in said proceedings respectively, seeking the Tribunal's approval that the 2022 FSA satisfied the Tribunal's compensation-related orders.

12. Two of the parties to the CHRT Proceedings, the First Nations Child and Family Caring Society of Canada ("**Caring Society**") and the Canadian Human Rights Commission ("**Commission**") opposed the relief sought by the AFN and Canada. The other parties to the CHRT Proceedings either supported or took no position on the motion.

13. Following an oral hearing, the Tribunal reserved its decision. As a result, the settlement approval hearing previously scheduled before this Court in September 2022 was adjourned.

14. On October 24, 2022, the Tribunal delivered a letter decision with full reasons to follow, dismissing the motion, in part, sought by the AFN and Canada.

15. The AFN desired the greatest compensation for the greatest number of First Nations individuals and that the compensation be distributed in a culturally-sensitive manner. The AFN viewed the 2022 FSA as accomplishing both of these goals and was thereforegreatly disappointed by the Tribunal's decision to decline the motion sought. First Nations children and families had waited years to receive compensation, and now it was uncertain whether and when these individuals would receive compensation. The 2022 FSA held the promise of securing compensation for hundreds of thousands of First Nations individuals and avoiding protracted litigation in relation to the Tribunal's compensation orders, but now had reached a dead-end.

16. In response to the Tribunal's letter decision, on December 7, 2022, the AFN First Nations-in-Assembly unanimously adopted Resolution No. 28/2022. A true copy of Resolution No. 28/2022 is attached hereto and marked as **Exhibit "A".**

17. AFN Resolution No. 28/2022, reflecting the consensus of the First Nations-in-Assembly, set out the principles upon which a revised final settlement agreement should be negotiated, including to:

> 1. Support compensation for victims covered by the proposed Final Settlement Agreement (FSA) on compensation and those already legally entitled to $40,000 plus interest under the Canadian Human Rights Tribunal (CHRT) compensation orders to ensure that all victims receive compensation for Canada's willful and reckless discrimination.
>
> …
>
> 5. Support the principles on which the FSA is built, including taking a trauma-informed approach, employing objective and non-invasive criteria, and ensuring a First Nations-driven and culturally informed approach to compensation individuals.
>
> 6. Continue to support the Representative Plaintiffs and all victims of Canada's discrimination by ensuring that compensation is paid as quickly as possible to all those who can be immediately identified and to continue to work efficiently to compensate those who may need more time.

18. Resolution No. 28/2022 confirmed the desire of the First Nations-in-Assembly to pursue settlement of the Consolidated Class Action, and to build upon the work of the 2022 FSA to address the concerns raised by the Tribunal. It also confirmed the First Nations-in-Assembly's support of the principles and criteria of the claims process contemplated in the 2022 FSA that set the foundation for an appropriate, culturally informed, and trauma-informed claims process.

19. Resolution No. 28/2022 also reflected the First Nations-in-Assembly's collective urgency to proceed to distribution of compensation, obtaining necessary approvals and commencing the next phase of implementation. This is reflected in section 6 of the Resolution, which authorized a phased distribution of compensation, if necessary to commence distributing compensation for one group while the claims process was finalized for others.

20. The Tribunal released its full reasons on December 20, 2022, dismissing the motion sought, indexed as 2022 CHRT 41 (the "**2022 CHRT Ruling**"). The Tribunal commended the parties for their work, but held that there were certain aspects of the 2022 FSA that did not mirror the compensation payable in the various CHRT compensation orders.

21. Mr. Kugler has accurately described the derogations the Tribunal identified in the 2022 CHRT Ruling.

3) The FSA achieves greater compensation for a greater number of First Nations individuals

22. In early 2023, the AFN, Moushoom class counsel and Canada convened negotiations in an effort to improve upon the achievement of the 2022 FSA and address the Tribunal's concerns. As directed by Resolution No. 28/2022, the negotiations were intended to build upon the 2022 FSA, not to alter the existing entitlements. Key principles, including the fact that all settlement funds would be distributed to claimants, the payment of class counsel fees separate from the settlement funds, and the First Nations-led implementation process were all retained as baseline principles for the negotiation process.

23. The parties held various rounds of negotiations between January and April 2023 and were eventually able to resolve the outstanding issues that the Tribunal had identified in the 2022 FSA.

24. Having reviewed Mr. Kugler's Affidavit, he has outlined the improvements upon the 2022 FSA that are contained within the FSA.

25. However, from the AFN's perspective, I highlight three important ways that the FSA improves upon the 2022 FSA:

(a) There is increased compensation available to the class as a whole. The sum of $23,343,940,000 is an improvement of approximately $3.35 billion over the 2022 FSA. This increased amount of compensation will directly benefit the First Nations individuals who are victims/survivors of Canada's discrimination.

(b) A wider group of First Nations individuals who experienced discrimination will benefit from the FSA. The AFN views the inclusion of these individuals, who suffered the same discrimination as other First Nations individuals who were included in the 2022 FSA, as a positive element of the FSA.

(i) For the Removed Child Class, the CHRT's Compensation Order would restrict compensation to those children who were removed from their homes, families and communities. The FSA includes all children removed from their homes regardless of who they were placed with, including family,

and/or where they were placed into care (including in their own communities).

(ii) In particular, not all children who experienced discrimination were placed in child welfare placements that were funded by Indigenous Services Canada ("**ISC**"). Some children residing on reserve were voluntarily placed into care off-reserve with the involvement of child welfare authorities and their placements were not funded by ISC. These children, and their caregiving parents and grandparents, deserve to be compensated for the discrimination they experienced from Canada.

(iii) In addition, the estates of deceased caregiving parents and grandparents who were removed (between 2006 to 2022) are now eligible to receive compensation for the discrimination they experienced. This will increase the benefits available to the estate's beneficiaries. In most cases, this will be the children of the estate, and the FSA accounts for a simplified process for paying compensation to the surviving children in order to avoid the costs and burdens associated with the administration of estates.

(c) An additional cy-près fund will support claimants beyond the receipt of compensation. Jordan's Principle Class Members with high needs are some of the most vulnerable First Nations individuals, and the additional support into their young adult life, through a $90 million fund that is specifically aimed at meeting their needs, is supported by the AFN.

26. I highlight these specific advances in the FSA as examples of the improvements made in line with Resolution No. 28/2022. The AFN is confident in its view that the FSA is the best possible deal for our people, and would note that it is fully supported by the First Nations-in-Assembly.

27. On April 4, 2023, as the parties were finalizing a revised settlement, the draft terms of the FSA were presented to the First Nations-in-Assembly. AFN legal counsel, Class Action representative plaintiffs and the Caring Society presented and explained the terms of the Revised Agreement, including the changes made to the 2022 FSA. It was important to the AFN that First

Nations leadership were provided information on the changes made in response to the Motion Decision and to Resolution 28/2022.

28. The First Nations-in-Assembly, by consensus, passed Resolution No. 04/2023, fully supporting what would be executed as the FSA later that month. Attached hereto and as **Exhibit "B"** is a true copy of Resolution No. 04/2023.

29. Resolution No. 04/2023 offered the AFN's full support of the terms of the FSA; supported the AFN in seeking an order from the CHRT confirming that the FSA fully satisfied its compensation orders; and, following the receipt of the CHRT's endorsement of the FSA, directed the AFN to seek approval of the FSA by the Federal Court on an expedited basis. The passage of Resolution No. 04/2023 constituted an unprecedented level of involvement by First Nations leadership in any class action settlement in Canada's history. The AFN is proud with what has been achieved in this historic settlement.

30. I am advised by Dianne Corbiere, AFN Class Counsel, and do verily believe that the representative plaintiffs were regularly briefed on the progress of the FSA, were presented with its terms for endorsement, and instructed class counsel to proceed with its execution.

31. Following the execution of the FSA on April 19, 2023, the parties, this time with the support of the Caring Society, collaborated to present a joint motion for approval of the FSA to the Tribunal, in line with the direction of the First Nations-in-Assembly. The Tribunal found that the FSA fully satisfies its compensation-related orders and granted the order by letter decision dated July 26, 2023. This was followed by full reasons for its decision on September 26, 2023, indexed as 2023 CHRT 44.

4) A 1st First Nations-Led Claims Process

32. One of the primary motivating factors for the AFN to be involved in these proceedings was to ensure that the claims process would not re-traumatize individuals who have, by virtue of their First Nations status alone, experienced discrimination from Canada. AFN leadership has instructed its legal counsel to design a claims process that will minimize the potential for re-traumatization of individuals, many of whom will be young adults when they are first able to submit a claim for compensation. This is reflected in the terms of the FSA.

33. The AFN advocated for the insights of First Nations leadership and youth to be reflected in the FSA. The AFN worked with legal counsel to ensure that the FSA was structured in a manner that was culturally relevant, trauma-informed and responsive to the concerns of First Nations about the compensation process.

34. The claims process contemplated by the FSA is to be First Nations-led and is focused upon minimizing re-traumatization of claimants. To the extent possible, the FSA contemplates using objective factors to determine eligibility. There is also a general prohibition on any individual who experienced discrimination as a child from being asked to give testimony. Given the First Nations-led nature of the claims process, the AFN views it as important to ensure the process will meet the requirements set out in the FSA.

35. The First Nations-in-Assembly recognized that the development of an objective, non-traumatizing claims process would likely take time and significant effort to design. Further, the First Nations-in-Assembly recognized that the design for some classes may require significantly more effort than others. This is reflected in Resolution No. 28/2022, which permits class counsel to seek approval of a claims process with respect to a specific class, in advance of others. Resolution No. 28/2022 also emphasizes that any completed claims process should be implemented, even if there are remaining claims processes that are being developed. This is also reflected in Resolution No. 04/2023.

36. The approach to the claims process is focused upon each of the specific classes the FSA is intended to benefit. It is important to the AFN that the claims process be complete and accomplish the goals of the FSA. With a class consisting primarily of marginalized and vulnerable First Nations youth, many of whom are coping with inter-generational and personal trauma, the AFN wants to avoid any risk of re-traumatization and minimize the administrative burden upon class members. These principles are set out in the FSA, and it is the AFN's expectation that the claims process will reflect this.

37. As part of minimizing this risk of re-traumatization, the AFN expects both: (a) as much clarity as possible for individuals, such that they will be able to understand whether they will be receiving compensation before applying, and (b) supports for the claimants to be in place prior to the claims process being implemented. While the AFN desires for victims/survivors to receive

compensation as soon as possible, the AFN does not support an approach that would rush the payment of compensation and fail to achieve the principles set out in the FSA.

38. I am advised by Dianne Corbiere, AFN class counsel, and verily believe to be true, that class counsel has been working with the court-appointed Administrator, Deloitte LLP, to design a claims process for each class that meets the requirements of the FSA. As CEO of AFN, I have personally supervised the AFN involvement in this process. I am also advised that the parties and Deloitte have made significant progress on the preparation of the claims process. This work is outlined in Mr. Kugler's affidavit. The AFN is supportive of the ongoing work to develop a claims process that will meet the requirements of the FSA and will realize the success of the 1st First Nations-led class actions claims process.

39. The AFN has committed to its leadership that First Nations communities will have the opportunity to provide input into the claims process. This will ensure that the views of First Nations communities are taken into account and will also better equip communities to adequately support their members in submitting a claim. As such, once the claims process is near-finalized, AFN legal counsel and leadership will consult with the AFN regions prior to presenting the claims process to the Court for review and approval.

40. This consultation with the regions should be granted appropriate time and flexibility to ensure that it is meaningful. Therefore, the AFN does not view hard deadlines for the claims process, whether imposed by the parties or the Court, to be advisable. The AFN is committed, and has significant motivation, to distribute compensation to our people as soon as possible.

41. Finally, the Settlement Implementation Committee, who will be responsible for the general oversight of the claims process and seeking any necessary amendments thereto upon their implementation, is comprised of five members, including two First Nations non-counsel members appointed by the AFN, and one lawyer appointed by the AFN. This guarantees that within the context of implementation, the settlement will remain informed by and subject to First Nations perspectives.

42. I make this affidavit in support of the relief sought by the plaintiffs for the approval of the FSA, and for no other or improper purpose.

43. This Affidavit was completed remotely in accordance with the Commissioners for Taking Affidavits Act – Ontario Regulation 431/20 Administering Oath or Declaration Remotely, with the commissioner located in Ottawa and the deponent located in Ottawa.

AFFIRMED remotely by Amber Potts in the city of Ottawa, before me in the City of Orillia in the County of Simcoe in the Province of Ontario, this 16th day of October, 2023 in accordance with O. Reg. 431/20

A Commissioner of Oaths/Notary Public
LAURA CHRISTINE SHARP
LSO # 80265D

Amber Potts

The Following is Exhibit "A" referred to in the
Affidavit of Amber Potts
Affirmed before me this 16th day of October, 2023

Laura Christine Sharp
LSO #80265D
A Commissioner, Public Notary, etc.

Assembly of First Nations

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Assemblée des Premières Nations

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SPECIAL CHIEFS ASSEMBLY
December 6,7,8, 2022, Ottawa, ON

Resolution no. 28/2022

TITLE:	**Final Settlement Agreement on Compensation for First Nations Children and Families**
SUBJECT:	Child and Family Services
MOVED BY:	Council Chairperson Khelsilem, Squamish Nation, BC.
SECONDED BY:	Chief Patsy Corbiere, Aundeck Omni Kaning First Nation
DECISION	Carried by consensus

WHEREAS:

A. The Assembly of First Nations (AFN) Chiefs-in-Assembly honour all the children, youth, and families, those with us and those lost, who experienced egregious harms by Canada and its colonial structures, the impacts of which continue to be felt today. We dedicate ourselves to ensuring justice for all affected children and families.

B. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states that:

- **i.** Article 2: Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.
- **ii.** Article 7(2): Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.
- **iii.** Article 22 (2): States shall take measures, in conjunction with Indigenous peoples, to ensure that Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Certified copy of a resolution adopted on the 7th day of December, 2022 in Ottawa, Ontario

ROSEANNE ARCHIBALD, NATIONAL CHIEF

28 – 2022

Head Office / Siège Social
46 Irene Roundpoint Lane, Akwesasne, ON K6H 0G5 Tel. / Tél.: 613-241-6789 Fax / Téléc.: 613-932-0415

iv. Article 40: Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

C. The First Nations Child and Family Caring Society (Caring Society), as represented by Cindy Blackstock, and AFN, as represented by the former National Chief Phil Fontaine, filed a human rights claim in 2007 alleging that Canada's inequitable provision of First Nations child and family services and its choice not to implement Jordan's Principle was discriminatory.

D. The Canadian Human Rights Tribunal (CHRT) substantiated the claim in 2016 CHRT 2 and ordered Canada to immediately cease its discriminatory conduct towards First Nations children and families.

E. Consistent with the direction of the First Nations-in-Assembly *AFN Resolution 85/2018, Financial Compensation for Victims of Discrimination in the Child Welfare System* pursuant to the Canadian Human Rights Act, the CHRT ordered Canada to pay $40,000.00 per eligible victim for Canada's "willful and reckless" discrimination of the worst kind.

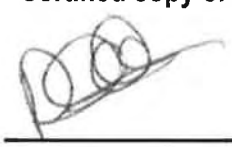
F. On September 28, 2021, the Federal Court dismissed the Government of Canada's application for judicial review of the Canadian Human Rights Tribunal's compensation orders.

G. The Government of Canada then appealed the 2021 Federal Court Decision and announced it wished to address the human rights damages within two larger class actions: *Moushoom et al. v. Attorney General of Canada* and the Assembly of First Nations class action.

H. In 2022, the AFN and Canada engaged in negotiations and concluded a settlement of $20 billion for compensation to be paid to victims of Canada's discrimination. The agreement provided additional compensation above that which the CHRT awarded and deviated from the CHRT orders in some regards.

I. Canada and AFN filed a joint motion to have their Final Agreement approved by the Tribunal, and on October 24, 2022, the CHRT issued a letter decision confirming that the Final Settlement Agreement on compensation signed by Canada, the AFN, and other class action parties does not fully satisfy its orders.

Certified copy of a resolution adopted on the 7th day of December, 2022 in Ottawa, Ontario

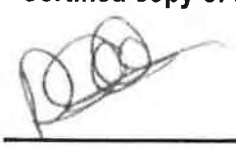


SPECIAL CHIEFS ASSEMBLY
December 6,7,8, 2022, Ottawa, ON **Resolution no. 28/2022**

THEREFORE, BE IT RESOLVED that the First Nations-in-Assembly:

1. Support compensation for victims covered by the proposed Final Settlement Agreement (FSA) on compensation and those already legally entitled to $40,000 plus interest under the Canadian Human Rights Tribunal (CHRT) compensation orders to ensure that all victims receive compensation for Canada's willful and reckless discrimination.
2. Direct Canada to fund post-majority supports tailored to the specific needs of each child and young adult victims up to age 26 who are eligible for compensation until such time that community-based supports funded by Canada can adequately support all victims for the duration of the compensation period.
3. Direct the Assembly of First Nations (AFN) to immediately seek a minimum of 12 months following the announcement of a revised Final Settlement Agreement for claimants to determine whether they will participate in the class action. Persons entitled to compensation shall determine whether they will participate in the class action based on complete information, including the terms of any settlement.
4. Call upon Canada to immediately place the minimum of $20 billion earmarked for compensation in an interest-bearing account held by an independent and reputable major financial institution and immediately pay the compensation to all victims of Canada's discrimination, including those eligible under the class action and under the CHRT orders.
5. Support the principles on which the FSA is built, including taking a trauma-informed approach, employing objective and non-invasive criteria, and ensuring a First Nations-driven and culturally-informed approach to compensating individuals.
6. Continue to support the Representative Plaintiffs and all victims of Canada's discrimination by ensuring that compensation is paid as quickly as possible to all those who can be immediately identified and to continue to work efficiently to compensate those who may need more time.
7. Ensure that the AFN returns to the First Nations-in-Assembly to provide regular progress reports and seek direction on any outstanding implementation issues.

Certified copy of a resolution adopted on the 7th day of December, 2022 in Ottawa, Ontario



ROSEANNE ARCHIBALD, NATIONAL CHIEF

The Following is Exhibit "B" referred to in the
Affidavit of Amber Potts
Affirmed before me this 16th day of October, 2023

Laura Christine Sharp
LSO #80265D
A Commissioner, Public Notary, etc.

Assembly of First Nations

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SPECIAL CHIEFS' ASSEMBLY
APRIL 3, 4, 5 & 6, 2023; OTTAWA, ON

Resolution no.04/2023

TITLE:	**Revised Final Settlement Agreement on Compensation for First Nations Children and Families**
SUBJECT:	Child and Family Services
MOVED BY:	Ogimaa Kwe Linda Debassige, M'Chigeeng First Nation, ON
SECONDED BY:	Chief Derek Nepinak, Pine Creek First Nation, MB
DECISION	Carried by Consensus

WHEREAS:

A. The First Nations-in-Assembly honour all the children, youth, and families, those with us and those lost, who experienced egregious harms by Canada and its colonial structures, the impacts of which continue to be felt today. We dedicate ourselves to ensuring justice for all affected children, youth, and families.

B. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:

i. Article 2: Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

ii. Article 7 (2): Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

iii. Article 22 (2): States shall take measures, in conjunction with Indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Certified copy of a resolution adopted on the 4th day of April 2023 in Ottawa, Ontario

ROSEANNE ARCHIBALD, NATIONAL CHIEF

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iv. Article 40: Indigenous peoples have the right to access to prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

C. The First Nations-in-Assembly commend the Representative Plaintiffs for their strength and resilience in pursuing the Class Action against Canada's discrimination under the First Nations Child and Family Services (FNCFS) Program and the improper implementation of Jordan's Principle seeking fair and equitable compensation for individuals impacted by this profound discrimination.

D. In 2022, Canada and the Assembly of First Nations (AFN) sought the Canadian Human Rights Tribunal's (CHRT) approval of the $20 billion Final Settlement Agreement (FSA) on Compensation. On October 24, 2022, the CHRT issued a letter decision confirming that the FSA on Compensation substantially, but not fully, satisfied its orders on compensation. The CHRT provided its full reasons on December 20, 2022 (2022 CHRT 41).

E. The First Nations-in-Assembly mandated the AFN by way of Resolution 28/2022, *Final Settlement Agreement on Compensation for First Nations Children and Families*, to, among other items:

i. support compensation for those entitled under the FSA and those entitled to $40,000 plus interest under the CHRT compensation orders;

ii. direct the AFN to return to the First Nations-in-Assembly to provide regular progress reports and seek direction on implementation issues, and,

iii. expressed support for the Representative Plaintiffs and all victims and survivors of Canada's discrimination and sought to ensure that compensation would be paid as quickly as possible.

F. The Representative Plaintiffs, youth in care and formerly in care, and those with lived experience in other class actions have expressed that supports for class members are imperative to their wellbeing, including mental wellness supports, financial literacy, and supports for youth past the age of majority, including for high needs Jordan's Principle recipients.

G. Canada, the AFN, Moushoom counsel, and the First Nations Child and Family Caring Society of Canada ('Caring Society') thereafter came together to amend the FSA on Compensation to address the concerns identified by the CHRT in 2022 CHRT 41. In these negotiations, the AFN advanced the mandates directed by the First Nations-Assembly in Resolution 28/2022.

Certified copy of a resolution adopted on the 4th day of April 2023 in Ottawa, Ontario

ROSEANNE ARCHIBALD, NATIONAL CHIEF

H. The Parties have negotiated a revised Final Settlement Agreement (Revised FSA) on Compensation, providing over $23 billion in compensation for the survivors and victims of Canada's discrimination, while addressing the issues highlighted by the CHRT in 2022 CHRT 41 and pursuing fair compensation for the Classes dating back to 1991.

I. The Representative Plaintiffs, the AFN, and the Caring Society are recommending that the First Nations-in-Assembly endorse the Revised FSA on Compensation.

J. Pending approval of the Revised FSA, the AFN will present the revised agreement to the CHRT for approval. Once approved by the CHRT, the revised agreement will then be presented to the Federal Court of Canada for approval to ensure the timely distribution of compensation to the survivors and victims of Canada's discrimination.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

1. Fully support the Revised Final Settlement Agreement (Revised FSA) on Compensation in principle and authorize the Assembly of First Nations (AFN) negotiators to make the necessary minor edits to complete the Revised FSA.
2. Support the AFN in seeking an order from the Canadian Human Rights Tribunal (CHRT) confirming that the Revised FSA on compensation fully satisfies its compensation orders.
3. Direct the AFN, upon the endorsement of the Revised FSA on Compensation by the CHRT, to seek approval of Revised FSA on Compensation by the Federal Court of Canada on an expedited basis.
4. Call on the Prime Minister of Canada to make a formal and meaningful apology to the Representative Plaintiffs and the survivors of Canada's discrimination and those who have passed away.
5. Continue to support the Representative Plaintiffs and all survivors and victims of Canada's discrimination by ensuring that compensation is paid, and adequate supports are provided as quickly as possible to all those who can be immediately identified and to continue to work efficiently to ensure that compensation reaches all those who are eligible.
6. Direct the AFN to return to the First Nations-in-Assembly to provide regular progress reports on supports, implementation and the claims process and seek direction where required.

Certified copy of a resolution adopted on the 4th day of April 2023 in Ottawa, Ontario

ROSEANNE ARCHIBALD, NATIONAL CHIEF

Court File Nos. T-402-19 / T-141-20 / T-1120-21

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON by his Litigation Guardian, Carolyn Buffalo, CAROLYN BUFFALO, and DICK EUGENE JACKSON also known as RICHARD JACKSON

Plaintiffs

and

HER MAJESTY THE QUEEN
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF ROBERT KUGLER
(Sworn October 16, 2023)

I, Robert Kugler, of the City of Montreal in the Province of Quebec, AFFIRM THAT:

1. I am a partner at the law firm of Kugler Kandestin LLP in Montreal, Quebec, and class counsel in this matter. As such I have personal knowledge of the matters hereinafter deposed to, either personally or from having been advised by others, and where so stated I believe same to be true.

2. On September 2, 2022, William Colish, affirmed an affidavit ("**Colish Affidavit**") in support of a motion to approve a settlement dated June 30, 2022 ("**First FSA**"). I adopt the contents of the Colish Affidavit.

3. The hearing of the motion to approve the First FSA was adjourned after the Canadian Human Rights Tribunal ("**CHRT**" or "**Tribunal**") rejected a joint motion ("**Joint Motion**") brought by the Assembly of First Nations ("**AFN**") and Canada to declare that the First FSA fully satisfied compensation orders rendered by the CHRT (namely, 2019 CHRT 39, 2020 CHRT 15, 2020 CHRT 7, 2020 CHRT 15, 2020 CHRT 20, 2020 CHRT 36 and 2021 CHRT 7, collectively referred to hereinafter as, the "**Compensation Decision**").

4. Following the CHRT's rejection of the Joint Motion, the parties engaged in intensive discussions involving the First Nations Child and Family Caring Society of Canada ("**Caring Society**") to explore the possibility of a settlement that addressed the concerns raised by the CHRT.

5. On April 19, 2023, the parties executed a revised final settlement agreement.

6. On October 10, 2023, the parties executed an addendum to form part of the revised final settlement agreement. The final settlement agreement is attached hereto as **Exhibit "A"**, and the Addendum is attached as **Exhibit "B"**. Collectively, these two documents are referred to as the "**FSA**".

7. Concurrent with the execution of the FSA, the negotiating parties to the Tribunal proceedings (the AFN, Canada and the Caring Society) signed minutes of settlement to govern their relationship and obligations with respect to the FSA and a renewed motion to the Tribunal. Attached as **Exhibit "C"** is a copy of the minutes of settlement.

A. The First FSA and the Joint Motion to CHRT

8. The First FSA is fully described in the Colish Affidavit.

9. Given that the First FSA was intended to be a settlement of all litigation, it included a precondition that the Tribunal also grant an order finding that it satisfied its Compensation Decision.

10. In September 2022, the AFN and Canada filed the Joint Motion.

11. Amongst the various parties to the Tribunal proceeding, two opposed the Joint Motion (the Caring Society and the Canadian Human Rights Commission). All other parties either supported the Joint Motion or took no position.

12. The Tribunal heard the motion and reserved its decision.

13. Therefore, the settlement approval hearing scheduled before this Court for September 2022 was adjourned.

14. On October 24, 2022, the Tribunal delivered a letter decision with full reasons to follow, dismissing the Joint Motion.

15. On December 20, 2022, the Tribunal released its ruling, indexed as 2022 CHRT 41, on the Joint Motion ("**2022 Joint Motion Decision**"). The Tribunal held that although the First FSA substantially satisfied the Tribunal's compensation orders, it departed from certain entitlements for certain individuals who were awarded compensation under the Tribunal's Compensation Decision. The 2022 Joint Motion Decision is attached hereto as **Exhibit "D"**.

16. In summary, the Tribunal identified four reasons why the First FSA derogated from its Compensation Decision. The Tribunal ruled that it would not grant the order requested unless the settlement, to the extent that it overlapped with the Tribunal's decisions, mirrored its decisions as a baseline.

17. The Tribunal's reasons for not approving the First FSA included:

    (a) The First FSA did not include children that the Tribunal clarified were in fact captured by its decisions: these were First Nation children ordinarily resident on a reserve or in the Yukon who were sent by their caregivers to live for a period of time with non-kin off-reserve, in which a child welfare agency was involved (as will be explained below, the parties have named this group "**Kith**");

    (b) The First FSA did not provide compensation for estates of deceased parents and grandparents of affected children;

(c) The First FSA limited compensation to certain parents and grandparents who had *more than one child* removed; instead of multiplying their compensation by the number of children who were removed, the First FSA capped their compensation at $60,000. The Tribunal determined that if, for example, a father had 4 children removed from his care, he should be entitled to $160,000, while each of these children who was placed in the child welfare system would receive $40,000 under the Compensation Decision; and

(d) The Tribunal needed more certainty and clarity on the parties' approach to Jordan's Principle and a longer opt-out period.

B. The Efforts After the CHRT Rejection of First FSA

18. The 2022 Joint Motion Decision meant the end of the First FSA.

19. It also indicated that any future motion brought to the Tribunal for the approval of a revised settlement that was not on consent of all parties to the Tribunal proceeding would risk a similar public failure. We, as class counsel saw first-hand that this might entail extreme distress, harm, and re-traumatization to the representative plaintiffs and class members.

20. In other words, risking a repetition of the 2022 Joint Motion Decision was not an option.

21. This meant that the possibility of a revised settlement depended on the full agreement of the parties to the class actions, as well as stakeholders in the

CHRT matter who, as non-parties to the class actions, did not owe duties to class members falling outside the Tribunal's jurisdiction, as the representative plaintiffs and class counsel did.

22. As a result, in the months that immediately followed, the AFN, class counsel and the representative plaintiffs faced significant uncertainty.

23. On the one hand, we had two certified class proceedings that we intended to move forward to a litigated resolution on the merits if settlement was not viable. We could not wait to advance litigation for an indefinite period of time, as class members deserved timely access to justice. However, we also had a responsibility to explore the possibility of salvaging the First FSA. Despite its differences with the CHRT's Compensation Decision, we considered that the First FSA constituted an excellent result for hundreds of thousands of vulnerable individuals long-deserving of compensation.

24. In or about February of this year, the parties and the Caring Society met in Ottawa to consider whether a new settlement could be reached, which would improve upon the First FSA and address the concerns raised by the CHRT.

25. The Tribunal's full reasons assisted the parties in focusing the discussions.

26. The parties engaged in intensive negotiations – including in-person and remote, plenary and multilateral meetings between January and April 2023.

27. Eventually, the effort of all parties and the Caring Society paid off. Once the FSA was presented to the representative plaintiffs and to the First Nations-in-

Assembly, class counsel and Canada signed the FSA on April 19, 2023. Concurrently, the parties to the Tribunal proceedings signed the minutes of settlement.

28. Up until April 19, 2023, and the signing of the FSA and minutes of settlement, there was no certainty that an agreement would be achieved given the complexity of the issues.

C. The FSA Compared to the First FSA

29. The Colish Affidavit already sets out class counsel's belief that the First FSA was an excellent result to settle a class action. The settlement was historic and would enable hundreds of thousands of deserving individuals to receive significant and, in many cases, life-changing compensation, further to a claims process intended to be as simple and trauma-informed as possible.

30. As the FSA now before the Federal Court for approval is an improvement over the First FSA, class counsel is of the view that the FSA is an excellent result for the class members, and certainly a result that is "fair and reasonable". It significantly increases the compensation available to the class as a whole, and provides for individual compensation for thousands of additional individuals.

31. The FSA *adds* benefits to those provided in the First FSA and in no way removes any benefits that were previously available to the class. The additional benefits respond to the concerns raised by the Tribunal in its 2022 Joint Motion Decision.

32. The FSA retains the structure and many of the features of the First FSA that were appreciated by the Tribunal. For example, we refused to accept that any settlement funds destined for cohorts of class members under the First FSA be transferred to other cohorts of class members in order to satisfy the requirements of the Tribunal. To satisfy our requirements and address the concerns of the Tribunal, it was necessary for Canada to increase the settlement funds.

33. The Tribunal's Compensation Decision pertaining to the Removed Child Class and the Removed Child Family Class covered the period **January 1, 2006** (one year prior to the filing of the Complaint to the Tribunal) **to March 31, 2022** (when the parties agreed that Canada's discriminatory practices had ceased), a period fully subsumed within the class period, which begins in 1991. The Tribunal's Compensation Decision pertaining to Jordan's Principle covered the period of **December 12, 2007** (the date that Jordan's Principle was recognized by Parliament) **to November 2, 2017**, whereas the FSA enables individuals deprived of timely essential services since 1991 to receive compensation. These different periods are important for certain distinctions among entitlements in the FSA, as I describe below.

34. A blackline comparison would be of little assistance in understanding substantive changes given the evolution of the two agreements. Instead, I describe the substantive revisions in the following paragraphs.

35. Where substantive changes were not made to the First FSA, I refer to the description provided in the Colish Affidavit.

(i) Settlement Funds

36. The total settlement amount under the FSA is $23,343,940,000 ($23.34 billion), compared to the $20 billion in settlement funds in the First FSA.

37. The FSA does not reallocate the First FSA's $20 billion in settlement funds to satisfy the derogations identified by the Tribunal. Instead, Canada added settlement funds to address the Tribunal's concerns.

(ii) Kith Classes

38. As I described above, the cohort of children and their caregivers who now comprise the "kith" classes in the FSA were not included in the First FSA. These children were sent to live off-reserve with family friends in placements involving a child welfare agency that were not funded by Indigenous Service Canada ("**ISC**"). These placements are at times referred to as "voluntary placements".

39. The certified "Removed Child Class" required that the class member be removed by child welfare authorities, or "taken into out-of-home care during the Class Period while they, or at least one of their parents, were ordinarily resident on a Reserve".

40. In the 2022 Joint Motion Decision, the Tribunal clarified that Kith children were to be compensated, because their separation from home, family and

community and their placement with trusted adults was the result of Canada's discriminatory child welfare system, notwithstanding that their placement was not funded by ISC.

41. The Tribunal's decision about Kith children meant that caregivers of Kith children were also entitled to be compensated.

42. Although the Tribunal's decisions covered the period from 2006 to 2022, the plaintiffs and class counsel insisted that if Kith children were to be compensated during the period from 2006 to 2022, then they *all* had to be compensated going back to 1991.

43. Accordingly, and in order to achieve a global resolution of all litigation, the FSA includes two additional classes: the Kith Child Class and the Kith Family Class, primarily addressed in Article 1 and the new Article 7.

44. Kith Child Class: The Kith Child Class includes a First Nations Child placed with a Kith Caregiver in a Kith Placement between 1991 and 2022.

45. Each Kith Child Class Member is entitled to $40,000 in base compensation.

46. The Kith Child Class has a newly added fixed budget of $600 million, based on an estimate of the number of Kith Children from 1991 to 2022 of 15,000.

47. Kith Family Class: The Kith Family Class replicates the base orders of the Tribunal for the caregiving parents and caregiving grandparents of the Kith Child Class for those placed during the Tribunal timeline, meaning 2006 to

2022. This was a principled exception to the "parity principle" class counsel sought to implement, whereby individuals are entitled to similar compensation regardless of *when* they experienced discrimination. This exception was made to prioritize the existing funds for the child survivors.

48. The entitlements for the Kith Family Class generally replicate the entitlements of the Removed Child Family Class in relation to the same time period. The Kith Family Class may thus receive multiples of base compensation where multiple of their children are determined to be eligible as Kith Child Class Members.

49. The newly added budget for the Kith Family Class is the fixed amount of $702 million, based on an estimate of 17,550 Kith Family Class members entitled to compensation (between January 1, 2006 to March 31, 2022).

50. Given the unique circumstances of this cohort, where objectively identifying a Kith Child Class Member involves practical challenges, all parties agreed that a unique claims process would have to be tailored to the particular circumstances of the Kith Child Class and the Kith Family Class. This is found in article 7.01(8) of the FSA. Enhancement payments are not available to these classes.

(iii) Additions to Caregiving Parents and Grandparents

51. The First FSA followed a general principle whereby when necessary, class members who suffered harm as children are prioritized over those who suffered harm as adults (caregiving parents and grandparents).

52. As a result, the First FSA sought to strike a balance by recognizing the additional impact of having multiple children removed with *additional* (rather than multiples of) compensation, yet limiting the maximum entitlement of a single caregiving parent or grandparent to $60,000. This enabled the parties to provide more compensation out of the fixed settlement funds to children who suffered the greatest harm.

53. In the 2022 Joint Motion Decision, the Tribunal held that since it had already rendered its Compensation Decision, which had been upheld on judicial review, it could not endorse a settlement that did not include multiples of base compensation payments for caregiving parents or grandparents that corresponded to the number of children removed from their care and into the child welfare system.

54. Therefore, the parties worked toward a solution that would not require a reduction to any existing entitlements under the First FSA, while addressing the Tribunal's concern. The parties eventually agreed to an additional $997 million specifically budgeted for caregiving parents and grandparents who endured the removal of multiple children. Specifically, the parties estimated that $477 million was required to compensate caregivers of multiple children removed from their homes, families and communities from 2006 to 2022. Consistent with class counsel's parity principle, an additional $520 million was required to compensate caregivers who had multiple children removed between 1991 and 2006.

55. This $997 million budget is in addition to the $5.75 billion that had been agreed to in the First FSA for the Removed Child Family Class, for a total of approximately $6.75 billion available to this class.

56. The terms of entitlement and assessment for the Removed Child Family Class in Article 6 of the FSA have not otherwise materially changed from the First FSA. The FSA maintains a method of assessing multiple claims with respect to a single Removed Child Class Member and entitles multiple caregiving parents and/or grandparents to receive compensation corresponding to a single Removed Child.

57. For the period 1991 to 2006, the maximum compensation available, regardless of the number of removals, is $80,000. While this is limited compared to those Removed Child Family Class Members in the 2006 to 2022 period, this is an increase in maximum compensation to these class members compared to the First FSA. Class counsel viewed the maximum of $80,000 for those class members who do not overlap with the Tribunal's orders as necessary to prioritize the compensation available to the child survivors.

(iv) Additions to Estates (Certain Caregiving Parents and Grandparents)

58. In line with the child survivor priority principle, the First FSA did not contemplate payment of settlement funds to the estates of deceased caregiving parents and caregiving grandparents. This was intended to allocate more of the fixed settlement funds to child survivors.

59. As in the First FSA, the estates of deceased child class members remain eligible for compensation under the FSA.

60. The 2022 Joint Motion Decision held that the estates of deceased caregiving parents and caregiving grandparents covered by the Tribunal's Compensation Decision must also receive compensation.

61. The parties were able to reach agreement on paying estates of all class members who overlap with the Tribunal's Compensation Decision. Thus, the FSA permits claims to be made on behalf of the estates of the Removed Child Family Class (between 2006 and 2022), Kith Family Class, and the Jordan's Principle Family Class. An additional budget of $56 million accounts for the estates of deceased Family Class Members. The added budget of the Kith Family Class is inclusive of estates.

62. However, in light of the burdensome and costly complications that may ensue when compensation is paid to an estate, the parties agreed that this budget should be paid in priority to child survivors of deceased caregivers where possible, rather than directly to estates of the deceased. This is also intended to minimize delay in receipt of the compensation funds by the child survivors of the deceased caregivers. This was supported by the Caring Society and endorsed by the Tribunal.

(v) Interest Payments

63. While the 2022 Joint Motion Decision had not addressed the question of interest on compensation payments, the parties and the Caring Society determined that

it was appropriate to account for same given that the Tribunal had previously made an order regarding the payment of interest on the compensation ordered by the Tribunal.

64. As a result, the FSA contemplates the payment of interest on base compensation for certain class members who overlap with the Tribunal's decisions.

65. The FSA addresses the interest payment in Article 6.15 through the creation of an Interest Reserve Fund, dedicated to paying interest on compensation amounts for those class members whose claims overlap with the Tribunal's orders.

66. The FSA allocates $1 billion for the payment of interest to the child class members whose claims fall within the period of 2006-2022.

67. The caregiving parents and grandparents who are entitled to compensation under the Tribunal's Compensation Decision are also entitled to interest under the FSA. The interest payable to these individuals will be paid out of the income on the settlement funds. This is the only instance in the FSA where new funds are not allocated to meet a requirement set by the 2022 Joint Motion Decision. It is not, however, a payment out of the principal settlement funds; and is only from income thereon. This was a compromise agreed to by the parties and the Caring Society.

68. Class counsel obtained estimates from the actuary, Eckler, of potential income on the principal settlement funds. Eckler estimates that the settlement funds will

generate several billion dollars of interest income during the course of the claims process, all of which will be allocated to benefit the class. Attached as **Exhibit "E"** is Eckler's said estimate, which I received from Eckler.

69. Eckler also prepared a memo estimating cash flows. A copy is attached as **Exhibit "F"**.

70. The FSA includes a mechanism in the Enhancement Payments aimed to maintain parity and equity between similarly harmed child class members whose claims overlap with the Tribunal's orders and those whose claims do not. The mechanism is as follows in Article 1.01:

> "**Enhancement Payment**" means an amount, based on Enhancement Factors, that may be payable to an Approved Removed Child Class Member, an Approved Jordan's Principle Class Member, or an Approved Trout Child Class Member, in addition to a Base Payment. In determining eligibility for and the quantum of an Enhancement Payment, the Settlement Implementation Committee may provide guidelines that take into account the amount of interest payment that an Approved Removed Child Class Member or an Approved Jordan's Principle Class Member has received on their Base Compensation, with a view to considering equity or parity amongst Class Members who may receive an interest payment and those Class Members who may not receive an interest payment under this Agreement. [Emphasis added]

(vi) Jordan's Principle, Trout and Essential Services

71. The 2022 Joint Motion Decision did not reject the approach to the Jordan's Principle Class and Trout Child Class in the First FSA.

72. However, the Tribunal expressed concern about some uncertainty in the approach to the Jordan's Principle Class, such that the Tribunal could not

conclusively decide if the proposed approach satisfied or derogated from the Tribunal's decisions.

73. The general approach to these classes has not changed between the First FSA and the FSA that is now before the Court. The description of the approach in the Colish Affidavit remains applicable, including:

(a) The Framework of Essential Services (Schedule F to the FSA) is the same as the document appended to the First FSA;

(b) The compensation budgets for these classes remain the same;

(c) Dr. Lucyna Lach's expert opinion regarding the proposed piloting is the same; and

(d) The parties continue to agree that Jordan's Principle piloting is necessary to ensure that objective criteria for the assessment of class members' experiences can be accurately identified, in order to compensate the individuals who have experienced the highest level of impacts (including pain, suffering and harm of the worst kind) due to Canada's discrimination.

74. The parties did, however, clarify the language regarding the Jordan's Principle Class entitlements.

75. Among the changes in the FSA in that respect are:

(a) The certified Jordan's Class is divided into two sub-categories of "Essential Service Class" and "Jordan's Principle Class". The Jordan's Principle Class is intended to fully overlap with the subgroup of class members who are covered by the Tribunal's decisions. This revision clarifies the parties' intention for the Tribunal but does not affect the two-tiered approach in the First FSA, which tailors the amount of compensation proportionate to the level of impact experienced.

(b) The concept of "Delay" is now defined as 12 hours for an urgent case, or 48 hours for other cases, from the time of a request to Canada for a service until the receipt of a determination on that request. This subcategory is expected to include a small number of class members given that requests were not frequent during the class period in light of their futility and the absence of service delivery infrastructure to receive requests.

(c) The eligibility of caregiving parents and caregiving grandparents of the Jordan's Principle Class and Trout Child Class is tied to the level of direct impact experienced by such caregivers. This approach is rooted in expert advice that the impacts experienced by the family members of children who experienced a delay, denial or gap in essential services may be different than the impacts experienced by the children themselves. While both the child and the caregiving parent or grandparent necessarily experienced impacts as a result of Canada's discrimination, the extent of the impacts is, in many cases, different.

The AFN submitted the expert report of Dr. Lucyna Lach to the Tribunal in this regard, which is also before the Court on this settlement approval hearing.

(vii) Additional New Cy-Près Fund

76. The Cy-Pres fund in the First FSA was intended to support all class members who are not entitled to direct compensation to connect with family, First Nations communities, or engage in cultural/land-based activities, as described in Article 8.02 of the FSA.

77. Under Article 8 of the FSA, the Cy-Près Fund now has two components:

(a) A budget of $50 million (the same as the First FSA) now referred to as the "General Cy-Près Fund", which maintains the same purposes as the Cy-Pres fund in the First FSA; and

(b) A "Jordan's Principle Post-Majority Care Fund" with an additional $90 million budget aimed at supporting approved Jordan's Principle Class Members with high needs aging out of Jordan's Principle service delivery eligibility.

78. Both the General Cy-Près Fund and the Jordan's Principle Post-Majority Care Fund are fully First Nations-led.

i. Longer Opt-Out

79. The Tribunal raised a concern about the length of the opt-out period, which had been fixed at six months at the time of the 2022 Joint Motion Decision.

80. This was already a long opt-out period, as well as the maximum period allowed in the province of Quebec (Article 576 of the *Code of civil procedure*).

81. As the parties engaged in intensive negotiations of the FSA, we sought, on consent, the extension of the previous opt-out deadline of six months by a further 180 days, until August 23, 2023.

82. On February 23, 2023, the Court granted the extension sought, increasing the opt-out period in this class action to one year.

83. The previously approved notices were thus distributed without interruption in accordance with the Court's approved notice plan during the opt-out period.

84. A further motion to approve revised notices of opt-out and settlement approval hearing and to extend the opt-out deadline to October 6, 2023 was granted by the Court on August 16, 2023. Attached as **Exhibit "G"** is the Court's order.

85. I am not aware of any class action that has had a longer opt-out period than in this case.

86. As is detailed in the Affidavit of Kim Blanchette sworn October 16, 2023, to the best of my knowledge no class member has opted out of this class proceeding.

87. As I further explain below, the Tribunal has now found this opt-out period satisfactory.

(viii) Supports for Financial Literacy

88. We understand that many of the class members are young adults who have experienced challenging upbringings and often limited formal education. We expect that many of them will have extremely limited financial literacy, and some may not even currently have a bank account. Accordingly, a great deal of attention is being paid to ensuring that each class member has the opportunity to be protected from financial exploitation. One of the ways that this is being done is through financial literacy. Class counsel have engaged experts at the University of Toronto to advise us on how to promote the best decision-making for those who are not accustomed to receiving large sums of money. The experts will conduct testing and piloting to ensure that financial information is communicated appropriately so that the class members are aware of what options are available.

89. In addition, as some class members may receive up to $230,000 with Enhancement Payments, we have had several discussions with McKellar Structured Settlements, the leading structured settlement advisor in Canada, to allow for payments to be offered to class members under a structured settlement. This would allow class members who may not feel comfortable managing the funds on their own or who may feel vulnerable to financial exploitation, to choose to receive periodic payments over time with interest, backed by a 100% guarantee by a registered Canadian life insurance company. Structured settlements are common in personal injury cases involving persons with disabilities. However, it is my understanding from

McKellar that this would be the first case to use a structured settlement in a class action.

90. While each class member who is not under a legal disability will have the option as to how and when to receive their settlement funds, by offering limited financial education, the availability of structured settlements, and possibly other financial options that we are exploring, we believe that we will enhance the possibility for positive outcomes resulting from the payment of settlement funds. More information on this will be provided once details have been determined and after consultation with First Nations.

(ix) Other Supports and Features

91. The FSA provides for the same extensive supports as the First FSA. Indeed, the Framework for Supports for Claimants in Compensation Process (Schedule I) remains unchanged.

92. The FSA also continues the same governing principles as the First FSA, including:

(a) The Claims Process is intended to be expeditious, cost-effective, user-friendly, culturally sensitive, trauma-informed, and non-traumatizing, with any necessary accommodations for persons with disabilities or vulnerabilities.

(b) Financial literacy protections and investment supports will be made available to the class.

(c) The FSA ensures a culturally informed and trauma-informed approach driven by lessons learned from prior settlements concerning Indigenous peoples.

93. As I describe further below, the parties and Deloitte LLP, the court-appointed Administrator, have been working to develop these features since the execution of the FSA.

D. The Tribunal Declared that the FSA Satisfied the Compensation Decision

94. After executing the FSA and the minutes of settlement, the parties collaborated with the Caring Society on a new joint motion seeking the Tribunal's endorsement that the FSA fully satisfies the Tribunal's orders.

95. The Tribunal granted that order by a letter decision dated July 26, 2023. Attached as **Exhibit "H"** is a copy of that decision.

96. The Tribunal released its full reasons for its decision on the new joint motion on September 26, 2023. Attached as **Exhibit "I"** is a copy of those reasons.

E. The Claims Process

97. Class counsel and the AFN have been working closely with Deloitte in developing the claims process. I have reviewed the Affidavit of Joelle Gott, sworn October 16, 2023, which summarizes those efforts. I add some further information on the work carried out to date on the claims process below.

98. Pursuant to the FSA, the plaintiffs, together with Deloitte and relevant stakeholders, have been working on developing the claims process that will govern the distribution of compensation to eligible class members.

99. The concept of a claims process is widely defined in the FSA as the process, or processes, "to be further designed and detailed in accordance with the FSA" for the distribution of compensation to eligible class members. The definition also explicitly recognizes that other processes may need to be developed within the claims process, including for the submission of claims, determination of eligibility, assessment, verification, determination of possible enhancements, and payment of compensation, among others (FSA Article 1.01, definition of "Claims Process").

100. The approach to the claims process in this case is specific to each of the particular classes that the FSA is intended to benefit.

101. The class primarily consists of marginalized and vulnerable First Nations youth who are coping with inter-generational and personal trauma, having survived a discriminatory child welfare system and a system that failed to provide essential services.

102. The FSA explicitly reflects the parties' intention and commitment to do the following as it relates to the claims process:

(a) ensure that the process is administered in an expeditious, cost-effective, user-friendly, culturally sensitive, and trauma-informed manner;

(b) safeguard the best interests of class members who are minors and persons under a disability;

(c) minimize the administrative burden on class members;

(d) avoid to the extent possible the necessity for class members to retain counsel to process their claims; and

(e) ensure culturally informed and trauma-informed mental health and cultural support services, as well as navigational assistance are available to class members (FSA, Recitals AA(ii) and (iii)).

103. The objective of the claims process in this case is to deliver as close to 100% of the $23.34 billion dollars that are available under the FSA to as close to 100% of the eligible class members as possible. In order to achieve this, both the approach to developing the claims process and the claims process itself must be nimble, iterative, and responsive to the feedback and results from expert advice, testing and community consultation.

(i) Each Claims Process Requires Unique Considerations

104. Given the differences among the classes, including the differing criteria for eligibility and evidence to establish eligibility, the plaintiffs are empowered to develop separate and/or iterative claims processes where this promotes the objectives of the FSA. Accordingly, the parties and the administrator have been working to develop an approach that will deal quickly with the most readily identifiable and verifiable claims in order to make payments as quickly as

possible to the corresponding claimants. This is also facilitated by the distinct budgets among the classes.

105. One of the key foundations for such an approach as it relates to the Removed Child Class is a database that ISC has been preparing for more than two years, and that is expected to be transferred to Deloitte imminently ("**ISC Database**").

106. The ISC Database is a database of available records relating to children removed during the class period, which is expected to assist with identifying and verifying eligibility for compensation and compensation entitlements of members of the Removed Child class. It is expected that in instances where claimants can be identified on the ISC Database, their entitlement to the base compensation amount can be established on this basis alone, assuming the identity of the individual can be verified.

107. We understand from Canada that the ISC Database has some gaps, given that it consists of records dating back over 30 years from across Canada. The consequence is that, while it is expected that many thousands of claimants' eligibility for base compensation will be straightforward, it is also expected that an unknown number of other claims may require verification through different means. The plaintiffs and class counsel feel that it would be unfair for the tens of thousands of claimants who are expected to be identified through the ISC Database to have to wait to receive any compensation while the claims of individuals who are not within Canada's ISC Database are addressed. This would also be inconsistent with the direction of the AFN First Nations-in-

Assembly's direction to distribute compensation to those individuals whose claims can be readily verified.

108. Thus, for those claimants who are identified in the ISC Database, the parties intend for base compensation to begin to be distributed within months of the commencement of the claims process.

109. For those claimants whose claims cannot be verified through the ISC Database, the plaintiffs and the Administrator are working on a process intended to be as simple as possible to enable the claimant to substantiate their eligibility for compensation. This process will recognize that class members' circumstances may require flexibility in the type of documentation necessary to support their claims, and the timelines for doing so, as guided by the principles in the FSA. This involves communication with the provinces and agencies which are underway.

110. In order to fully develop this process, the ISC Database must be analyzed and reviewed to assess what information the database provides, where gaps may arise, and the nature of the gaps. Canada continues to work on finalizing the complete database for delivery to the Administrator. It is expected that the ISC Database should be ready imminently, at which point the Administrator will be able to conduct its final assessment.

111. Claims forms are being developed that are intended to allow individuals to determine whether they are a member of the class by requesting sufficient information to enable a determination of eligibility without further requests of

the claimant. The plaintiffs intend to minimize the burden placed upon claimants to prove their eligibility.

112. The goal of minimizing the information requested of claimants also is to be balanced against the risk that individuals who are not class members may erroneously believe based on the claims documents that they are within the class. The parties have been working to ensure that, in the pursuit of simplicity for class members, the claims process does not inadvertently create confusion or false expectations for class members regarding their eligibility. We intend to avoid a process that unnecessarily creates misplaced expectations of eligibility, which would risk re-traumatizing individuals who, in fact, are not class members and whose claims would be denied.

113. Achieving these objectives is a complex process that requires a careful weighing of the benefits and drawbacks of every element of each claims process. We continue to work intensively with the Administrator to achieve this goal.

114. Since signing the FSA, the parties, the Caring Society and Deloitte have had numerous meetings to work through these issues. We continue to make progress, which will be further informed by the AFN's consultation with First Nations communities and Canada's delivery of the ISC Database.

(ii) Claims Processes Were Designed to Maximize a Claimant's Ability to Claim Compensation

115. The parties are also advancing their understanding of the type of assistance that can be provided to claimants who may require supporting records from the provinces and child welfare authorities ("**Child Welfare Records**"). Given that the ISC Database will have gaps, it is expected that certain class members may need access to their Child Welfare Records in order to establish their eligibility under the FSA.

116. We have had (and plan on further) meetings in an effort to determine:

(a) what information may be available to prove eligibility;

(b) where the information may be located;

(c) how the information may be accessed by claimants;

(d) whether claimants can authorize or enable the Administrator to seek Child Welfare Records directly and in what circumstances; and

(e) the necessary approaches to privacy and consent, among other related issues.

117. In a similar vein, the parties continue to actively consult with the provincial Public Guardians and Trustees across the country. We have undertaken these consultations in order to inform our decisions in relation to the claims process design, with the goal of meeting the principles set out in the FSA: minimizing

the burden on class members wherever possible, and minimizing the potential for re-traumatization.

(iii) The Unique Substantive Characteristics of the Claims Process

118. The substantive elements of the claims process also require an innovative approach. Some substantive requirements necessitate the development of a sub-process, which requires consultation with experts and First Nations communities to ensure they reflect the objectives of the FSA.

119. For example, pursuant to the FSA, otherwise eligible family members of the Removed Child Class and the Kith Child Class are not entitled to receive compensation if they committed Abuse (as defined in the FSA) of the eligible child (FSA, Article 1.01, definition of "Abuse"; Articles 6.04(4) and 7.03(2)). The parties have been working on the development of a process for identifying circumstances where this Abuse exception would ensure that the caregiver does not receive compensation. However, we also aim to accomplish this requirement in a manner that is trauma-informed and respectful of the privacy and safety concerns of children and their families. Therefore, the parties, along with the Administrator, continue to consider the appropriate approach to this requirement.

120. The FSA also requires the creation of a distinct "Incarcerated Class Members Process", for communicating the claims process specifically to class members incarcerated in federal penitentiaries, provincial prisons, and other penal and correctional institutions (See FSA, Article 1.01, definition of "Incarcerated

Class Members Process"). The parties and the Administrator continue to work on the development this as part of the overall claims process.

(iv) Protection from Being Misguided During the Claims Process

121. The plaintiffs have also filed a motion with the court seeking the approval of two interrelated protections for class members related to the claims process:

(a) a Non-Class Counsel Legal Professionals Protocol (the "**Protocol**"), to govern non-class counsel legal professionals who wish to provide services to class members for pay to submit a claim in the settlement of these proceedings; and

(b) the continuation of the protections that the Court has put in place regarding advertising and communications to the class by non-class counsel through the requirement of prior Court approval.

122. These are critical protections for class members that further the goals of the FSA with respect to the claims process.

123. As described in further detail in the plaintiffs' motion and supporting affidavits, the Protocol addresses the payment of legal fees from class members' payouts by the Administrator. If legal professionals wish to be paid legal fees, they are required to comply with the Protocol and obtain the Court's approval of their fees. The Protocol has several goals:

(a) to ensure that legal services do not unnecessarily usurp the compensation available to class members;

(b) to ensure that class members are able to make informed decisions about whether to retain non-class counsel despite the supports available to them free of charge through the FSA;

(c) to prevent misinformation or misleading communications to the class;

(d) to guide legal professionals who are engaged to represent class members during the claims process;

(e) to minimize the risk of re-traumatization of vulnerable individuals by ensuring that legal services, if necessary, are provided in a culturally competent manner; and

(f) to heed the lessons learned from prior First Nations settlements and prevent harm to the class.

124. The plaintiffs' motion also seeks the extension of the Court's previously ordered requirement that communications to the class be supervised by the Court and be the subject of prior approval. The plaintiffs seek to ensure that those protections remain in place to avoid a repetition of harm to the class.

125. There are also numerous concepts relating to claimant eligibility and the claims process in the FSA that have been left to further development by the parties as part of the claims process design, and which the plaintiffs and the Administrator are working on, in consultation with relevant stakeholders. By way of example, the FSA refers to "Enhancement Factors" that will enable certain Removed Children to receive more than the Base Compensation.

(v) Enhancement Factors and Enhancement Payments

126. The concept of an "Enhancement Factor" is defined in the FSA as "any objective criterion agreed to by the Plaintiffs and approved by the Court" that may be used to enhance the base compensation of certain members of the class (FSA, Article 1.01, definition of "Enhancement Factor"). The Enhancement Factors are an important part of the assessment of the compensation to which certain class members are entitled. They are proxies for harm that, based on expert opinion, are designed to enable proportionate compensation to class members to which they apply (FSA, Article 6.01(5)).

127. The FSA further requires that the plaintiffs design a system of weighing the enhancement factors for the Removed Child Class, "based on the input of experts that will reflect the relative importance of each Enhancement Factor as a proxy for harm." (FSA, Article 6.03(4)).

128. Class counsel have developed a draft approach in respect of making Enhancement Payments based on the Enhancement Factors. This approach has not yet been finalized by the parties. It requires a full consideration of:

(a) the forthcoming ISC Database,

(b) Expert advice,

(c) First Nations community input,

(d) An analysis of the number of claims that are potentially eligible for Enhancement Payments, and ultimately,

(e) approval of the Settlement Implementation Committee ("**SIC**"), which will have the discretion to make modifications to class counsel's approach.

129. The enhancement payment approach proposed by class counsel is attached as **Exhibit "J"** ("**Enhancement Payment Initial Approach**").

130. As appears from the Enhancement Payment Initial Approach, class counsel estimate that Removed Children who suffered the greatest harm based on the objective Enhancement Factors may receive Base Compensation and Enhancement Payments in excess of $230,000.

131. **Northern or Remote Community** The concept of a "Northern or Remote Community" is defined in the FSA as "a community as agreed upon by the Plaintiffs and set out in the Claim Process" (FSA, Article 1.01, definition of "Northern or Remote Community"). Notably, the concept of Northern or Remote Community is relevant to the determination of the Enhancement Factors described above.

(vi) Supports

132. I have reviewed the Affidavit of Dean Janvier, sworn October 16, 2023, which describes Deloitte's work with the parties on supports available to claimants.

133. The plaintiffs have been working on the significant support system for claimants that will be in place alongside the claims process, in accordance with

FSA Schedule I, Framework for Supports for Claimants in Compensation Process.

134. These supports will include culturally sensitive and trauma-informed health information and other supports for claimants. The plaintiffs and the Administrator continue to develop the structure for the navigational supports, including a network of Navigators that will be available to assist claimants throughout the claims process.

F. First Nations Consultations Regarding the Claims Process

135. Given the First Nations-led nature of this class action, one of the key components of the efforts of class counsel and the parties is to ensure there is adequate consultation with First Nations communities. The AFN continues to lead in this regard.

136. The parties and Deloitte are working expeditiously to finalize a claims process package that the AFN can present to the AFN regions across Canada in order to receive input from First Nations communities themselves.

137. We are hopeful that First Nations community consultation will occur in the coming months. We are doing everything possible to finalize the claims process to present this Court for approval.

G. Addendum to the FSA

138. During the course of the work done since April 19, 2023 when the FSA was executed, the parties became aware of four corrections that were, in the view of the parties, advisable.

139. The parties therefore executed an addendum to the FSA on October 10, 2023 (included as part of Exhibit "A").

140. As explained in the addendum, the parties intend that it form an integral part of the FSA, and the plaintiffs seek approval of the FSA as amended by the addendum.

H. Conclusion

141. All members of class counsel have worked and continue to work tirelessly on this settlement. We are extremely proud of the FSA and have no hesitation in recommending its approval by the Court.

142. This FSA represents the largest settlement in Canadian history, and to the best of my knowledge, one of the three largest settlements anywhere worldwide.

143. The parties and class counsel met numerous times, including under the guidance of the Honourable Leonard Mandamin and then the Honourable Murray Sinclair, ultimately concluding an Agreement in Principle on December 31, 2021. This Agreement in Principle is attached as **Exhibit "K**".

144. The parties and class counsel then met extensively to draft and finalize the First FSA.

145. Thereafter, the parties and class counsel continued meeting under difficult circumstances and managed to agree upon the FSA that is now before the Court for approval.

146. The parties and class counsel have met on hundreds of occasions, have consulted with experts in numerous relevant fields, and have grappled with and debated countless complex issues in arriving at the FSA. The FSA is an achievement that we take pride in submitting to the Court.

147. Class counsel recognizes that there is no such thing as a "perfect" settlement. In particular, there is no amount of compensation that can possibly make up for the harms suffered by the class members arising from Canada's discrimination. However, we believe that we have met and exceeded the expectations of the class members with the FSA.

148. The implementation of the FSA will also be carefully overseen by numerous experts in various fields, who will report to the Court, in order to ensure that the FSA is implemented as intended.

SWORN by Robert Kugler of the City of Montréal, in the Province of Québec, before me at the City of Toronto, in the Province of Ontario, on October 16, 2023 in accordance with O Reg 431/20, Administering Oath or Declaration Remotely

Adil Abdulla

Commissioner for Taking Affidavits

ADIL ABDULLA

Robert Kugler

Robert Kugler (Oct 16, 2023 15:25 EDT)

ROBERT KUGLER

This is **Exhibit "A"** to the Affidavit of Robert Kugler, sworn remotely
before me at the City of Toronto, in the Province of Ontario,
on October 16, 2023 in accordance
Administering Oath or Declaration Remotely

Adil Abdulla

Commissioner for taking Affidavit
(or as may be)

First Nations Child and Family Services, Jordan's Principle, and Trout Class Settlement Agreement

(as revised on April 17, 2023)

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Schedule J: Summary Chart of Essential Service, Jordan's Principle, and Trout Approach

SETTLEMENT AGREEMENT

THIS AGREEMENT is dated effective as of April 17, 2023 ("**Effective Date**").

BETWEEN:

XAVIER MOUSHOOM, JEREMY MEAWASIGE by his Litigation Guardian, Jonavon Joseph Meawasige, and JONAVON JOSEPH MEAWASIGE

(together, the "**Moushoom Plaintiffs**")

AND:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON by his Litigation Guardian, Carolyn Buffalo, CAROLYN BUFFALO, and DICK EUGENE JACKSON also known as RICHARD JACKSON

(together, the "**AFN Plaintiffs**")

AND:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

(together, the "**Trout Plaintiffs**")

AND:

HIS MAJESTY THE KING IN RIGHT OF CANADA

("**Canada**")

(collectively, "**Parties**")

WHEREAS:

A. On March 4, 2019, the Moushoom Plaintiffs commenced a proposed class action in the Federal Court under Court File Number T-402-19 (the "**Moushoom Action**"), seeking compensation for discrimination dating back to April 1, 1991.

B. On January 28, 2020, the AFN Plaintiffs also filed a proposed class action in the Federal Court under Court File Number T-141-20 (the "**AFN Action**") regarding similar allegations dating back to April 1, 1991.

C. On July 7, 2021, the Honourable Justice St-Louis ordered that the Moushoom Action and the AFN Action be consolidated with certain modifications (the "**Consolidated Action**").

D. The parties to the Consolidated Action engaged in mediation in accordance with the Federal Court Practice Guidelines for Aboriginal Law Proceedings (dated April 2016) to resolve all or some of the outstanding issues in the Consolidated Action. The Honourable Leonard Mandamin acted as mediator from November 1, 2020 to November 10, 2021.

E. On July 16, 2021, the Trout Plaintiffs filed a proposed class action in the Federal Court under Court File Number T-1120-21 (the "**Trout Action**") regarding the Crown's discriminatory provision of essential services and products between April 1, 1991 and December 11, 2007.

F. On September 29, 2021, in reasons indexed at 2021 FC 969, Justice Favel of the Federal Court of Canada upheld the Canadian Human Rights Tribunal (the "**Tribunal**") decision made in Tribunal File: T1340/7008 (the "**CHRT Proceeding**") and indexed at 2019 CHRT 39, 2020 CHRT 15, and 2021 CHRT 7 (collectively , the "**Compensation Orders**") in which the Tribunal awarded compensation to Children and their caregiving parents or caregiving grandparents impacted by Canada's systemic discrimination in the underfunding of child and family services on reserve and in the Yukon, and its narrow interpretation of Jordan's Principle. Canada appealed to the Federal Court of Appeal from Justice Favel's decision.

G. On or about November 1, 2021, the Parties entered into negotiations outside of the Federal Court mediation process.

H. The Parties, by agreement, appointed the Honourable Murray Sinclair to act as chair of the negotiations.

I. The Parties worked collaboratively to determine the class sizes of the Consolidated Action and the Trout Action.

J. The Parties separately engaged experts ("**Experts**") to prepare a joint report on the estimated size of the Removed Child Class, as defined herein, on which the Parties would rely for settlement discussions (the "**Joint Report**").

K. The Experts relied on data provided by Indigenous Services Canada ("**ISC**") in preparing the Joint Report. ISC communicated to the Experts and Class Counsel that the data often came from third-party sources and was in some cases incomplete and inaccurate. The Joint Report referred to and took into account these factors.

L. The Experts estimated that there were 106,200 Removed Child Class Members from 1991 to March 2019. The Experts advised that this class size must be adjusted to 115,000 to cover the period from March 2019 to March 2022 (the "**Estimated Removed Child Class Size**"). The Estimated Removed Child Class Size was determined based on the data received from ISC and modelling and took into account gaps in the data.

M. Canada provided to the Plaintiffs estimates of the Jordan's Principle Class Size, which were between 58,385 and 69,728 for the period from December 12, 2007 to November 2, 2017 (the "**Jordan's Principle Class Size Estimates**"). The Parties understand that the Jordan's Principle Class Size Estimates were based on a single 2019-2020 quarter and that extrapolating from that quarter therefore has limitations.

N. Based on the Jordan's Principle Class Size Estimates, the Plaintiffs estimated the size of the Trout Class, as defined below, to be approximately 104,000.

O. Based on the Parliamentary Budget Officer Report, *Compensation for the Delay and Denial of Services to First Nations Children*, dated February 23, 2021, there are an estimated 1.5 primary caregivers per First Nations Child.

P. On November 26, 2021, the Federal Court granted certification of the Consolidated Action on consent of the parties.

Q. On February 11, 2022, the Federal Court granted certification of the Trout Action on consent of the parties.

R. The Moushoom Plaintiffs, the AFN Plaintiffs, and the Trout Plaintiffs (collectively, the "**Representative Plaintiffs**") and Canada concluded an agreement in principle ("**AIP**") on December 31, 2021, which set out the principal terms of their agreement to settle the Consolidated Action and the Trout Action (collectively, the "**Actions**").

S. On March 24, 2022 (in 2022 CHRT 8), the Tribunal established March 31, 2022, as the end date for compensation to individuals included in the Removed Child Class and the Removed Child Family Class.

T. The Parties engaged in several months of intensive negotiations and drafted a final settlement agreement dated June 30, 2022 ("**Previous FSA**").

U. Pursuant to the Previous FSA, the Parties sought approval from the Court of Short-Form and Long-Form Notices of Certification and Settlement Approval Hearing, as well as the Opt-out Form. The Plaintiffs' motion was heard on June 22, 2022. On June 24, 2022, the Court granted the motion and approved the documents. The Court also heard submissions on the appropriate Opt-Out Deadline and determined that the Opt-Out Deadline would be six months from the date on which the notices are published.

V. Pursuant to the Previous FSA, the Parties sought approval from the Court of their notice plan for the distribution of Notices of Certification and Settlement Approval Hearing. The Parties published the approved Short-Form and Long-Form Notices of Certification and Settlement Approval Hearing accordingly as of August 19, 2022. On February 10, 2023, the Parties sought on consent a six-month extension of the Opt-Out Deadline to August

23, 2023, bringing the total time to Opt-Out to approximately one year, which extension the Court granted by an order dated February 23, 2023 attached hereto as Schedule A.

W. The Previous FSA was, amongst other things, conditional on the Tribunal confirming the satisfaction of the Compensation Orders.

X. The Plaintiffs brought and briefed the settlement approval motion to the Court. Canada and the Assembly of First Nations ("**AFN**") also brought a joint motion on July 22, 2022 to the Tribunal for an order confirming the satisfaction of the Compensation Orders. The First Nations Child and Family Caring Society of Canada ("**Caring Society**") and the Canadian Human Rights Commission opposed the joint motion. The motion was heard on September 14-15, 2022.

Y. On October 24, 2022, the Tribunal issued a letter decision dismissing the joint motion. On December 20, 2022, the Tribunal issued its full reasons in 2022 CHRT 41 ("**Joint Motion Decision**") for denying the joint motion. The Tribunal found that the Previous FSA substantially satisfied the Compensation Orders, but stated and clarified that with respect to the individuals covered by the Compensation Orders: (a) certain removed children not in a placement that was funded by Canada should be eligible for compensation; (b) estates of deceased Caregiving Parents or Caregiving Grandparents should be eligible for compensation; (c) the Caregiving Parents or Caregiving Grandparents of certain Removed Child Class Members who had more than one child removed from them should receive multiplications of $40,000 based on the number of removed children; and (d) Jordan's Principle children eligible under the Compensation Orders should receive $40,000. This Agreement intends to address the Joint Motion Decision.

Z. The Parties and the Caring Society thereafter explored ways of addressing the Joint Motion Decision, such that the Tribunal can find the Agreement fully satisfies the Tribunal's orders. The Parties and the Caring Society have now agreed to this updated Agreement, which addresses the issues raised in the Joint Motion Decision and is intended to be a full and final settlement of the Consolidated Action, Trout Action, and the Compensation Orders.

AA. In entering into this Agreement, the Parties:

i) Intend a fair, comprehensive and lasting settlement of all claims raised or capable of being raised in the Consolidated Action, the Trout action and the CHRT Proceeding including that:

(a) Canada knowingly underfunded child and family services for First Nations Children living on Reserve and in the Yukon;

(b) Canada failed to comply with Jordan's Principle, a human rights principle designed to safeguard First Nations Children's existing substantive equality

rights guaranteed in the *Canadian Charter of Rights and Freedoms* ("***Charter***"); and

(c) Canada failed to provide First Nations Children with essential services available to non-First Nations Children or which would have been required to ensure substantive equality under the *Charter*;

ii) Intend that the Claims Process be administered in an expeditious, cost-effective, user-friendly, culturally sensitive, and trauma-informed manner;

iii) Desire to:

(a) safeguard the best interests of the Class Members who are minors and Persons under Disability;

(b) minimize the administrative burden on Class Members; and

(c) ensure culturally informed and trauma-informed mental health and cultural support services, as well as navigational assistance are available to Class Members.

BB. This settlement agreement is designed such that some Class Members, or subsets of Class Members, receive direct compensation, while some others may be eligible to indirectly benefit from the Agreement without receiving direct compensation.

NOW THEREFORE in consideration of the mutual agreements, covenants, and undertakings set out herein, the Parties agree as follows:

ARTICLE 1 – INTERPRETATION

1.01 Definitions

In this Agreement, the following definitions apply:

"**Abuse**" means sexual abuse (including sexual assault, sexual harassment, sexual exploitation, sex trafficking and child pornography) or serious physical abuse causing bodily injury, but does not include neglect or emotional maltreatment.

"**Actions**" has the meaning set out in the Recitals.

"**Actuary**" means the actuary or firm of actuaries appointed by the Court on the recommendation of the Settlement Implementation Committee who is, or in the case of a

firm of actuaries, at least one of the principals of which is, a Fellow of the Canadian Institute of Actuaries.

"**Administrator**'' means Deloitte LLP, appointed by the Court by order dated August 11, 2022 attached hereto as Schedule B, and any successor(s) for Deloitte LLP appointed from time to time pursuant to this Agreement.

"**AFN Supports**" has the meaning set out in Article 9.

"**Age of Majority**" means the age at which a Class Member is legally considered an adult under the provincial or territorial law of the province or territory where the Class Member resides, attached hereto as Schedule C.

"**Agreement**" means this settlement agreement, including the Schedules attached hereto.

"**Approved Essential Service Class Member**" means a Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to the criteria set in this Agreement.

"**Approved Jordan's Principle Class Member**" means a Jordan's Principle Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to the criteria set in this Agreement.

"**Approved Jordan's Principle Family Class Member**" means a Jordan's Principle Family Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to the criteria set in this Agreement.

"**Approved Kith Child Class Member**" means a Kith Child Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to Article 7.

"**Approved Kith Family Class Member**" means a Kith Family Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to Article 7.

"**Approved Removed Child Class Member**" means a Removed Child Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to Article 6.

"**Approved Removed Child Family Class Member**" means the Caregiving Parent or Caregiving Grandparent of a Removed Child Class member, whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to Article 6.

"**Approved Trout Child Class Member**" means a Trout Child Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to the criteria set in this Agreement.

"**Approved Trout Family Class Member**" means a Trout Family Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to the criteria set in this Agreement.

"Assessment Home" means a home designed for an initial short-term placement where the needs of a Child are being assessed in order to match them to a longer term placement.

"**Auditors**" means the auditors appointed by the Court and their successors appointed from time to time pursuant to the provisions of Article 16.

"**Band**" has the meaning set out in the *Indian Act*.

"**Band List**" has the meaning set out in sections 10-12 of the *Indian Act*.

"**Banking Facilities**" means an investment account or instrument at any single or syndicate of Schedule I Chartered Canadian Banks and their related treasury and custody entities, as approved by the Court.

"**Base Compensation**" means the amount of compensation (excluding any applicable Enhancement Payment and interest payment) approved by the Court as set out in this Agreement as part of the Claims Process, to be paid to an Approved Removed Child Class Member, an Approved Jordan's Principle Class Member, an Approved Trout Child Class Member, an Approved Kith Child Class Member, an Approved Removed Child Family Class Member, an Approved Trout Family Class Member, an Approved Jordan's Principle Family Class Member, or an Approved Kith Family Class Member. Such Base Compensation may be different for different Classes and may be made in more than one installment as the implementation of the Claims Process may require.

"**Budget**" means each of the budgets set out in Articles 6 and 7.

"**Business Day**'' means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the province or territory in which the person who needs to take action pursuant to this Agreement is ordinarily resident or a holiday under the federal laws of Canada applicable in the said province or territory.

"**Canada**" has the meaning set out in the preamble.

"**Caregiving Grandparent**" and "**Caregiving Grandparents**" means a biological or adoptive caregiving grandmother or caregiving grandfather of the affected Child who lived with and assumed and exercised parental responsibilities over a Removed Child Class

Member at the time of the removal of the Child, or over a Kith Child Class Member at the time of the involvement of the Child Welfare Authority and the Child's Kith Placement, or over a Jordan's Principle Class Member or Trout Child Class Member at the time of the Delay, Denial or Service Gap with respect to the Child's Confirmed Need for an Essential Service. An adoption in this context means a verifiable provincial, territorial or custom adoption. Relationships of a foster parent or Stepparent to a Child are excluded from giving rise to a Caregiving Grandparent relationship under this Agreement.

"**Caregiving Parent**" and "**Caregiving Parents**" means the caregiving mother or caregiving father of the affected Child, living with, and assuming and exercising parental responsibilities over a Removed Child Class Member at the time of the removal of the Child, or over a Kith Child Class Member at the time of the involvement of the Child Welfare Authority and the Child's Kith Placement, or over a Jordan's Principle Class Member or Trout Child Class Member at the time of the Delay, Denial or Service Gap with respect to the Child's Confirmed Need for an Essential Service. Caregiving Parent includes the biological parents, adoptive parents or Stepparents for each applicable Class, except as where expressly provided for otherwise in this Agreement. A foster parent is excluded as a Caregiving Parent under this Agreement. An adoption in this context means a verifiable provincial, territorial or custom adoption.

"**Certification Orders**" mean collectively the order of the Court dated November 26, 2021, certifying the Consolidated Action as a class proceeding and the order of the Court dated February 11, 2022, certifying the Trout Action as a class proceeding, copies of which are attached hereto as Schedules D and E.

"Child" or **"Children"** means an individual under the Age of Majority of the individual's place of residence as set out in Schedule C, Provincial and Territorial Ages of Majority:

(a) at the time of removal, for the purposes of the Removed Child Class;

(b) at the time of the involvement of the Child Welfare Authority and the Kith Placement, for the purposes of Kith Child Class; and

(c) at the time of the Delay, Denial or Service Gap with respect to the individual's Confirmed Need for an Essential Service, for the purposes of the Essential Service Class, the Jordan's Principle Class, and the Trout Child Class.

"**Child Welfare Authority"** for the purposes of the Kith Child Class means an administrative body that is mandated to prevent and respond to Child maltreatment pursuant to provincial/territorial child welfare legislation and *An Act Respecting First Nations, Inuit and Métis Children, Youth and Families*, S.C. 2019, c. 24.

"**Child Welfare Information**" for the purposes of the Kith Child Class includes documents, records, case notes, statistics, reports, third party records and any other form

of information produced and/or collected by a Child Welfare Authority in relation to services and supports provided to First Nations Children, youth, and families pursuant to provincial or territorial child and family services legislation.

"**Child Welfare Records Technician**" means one or more individuals with sufficient expertise in child welfare and administrative information retained by the Administrator on advice of the Settlement Implementation Committee for the purposes of the verification of a Claim under this Agreement through provincial authorities, agencies or other Child Welfare Authorities, including in matters such as the verification of the Claims made by Kith Child Class Members or Kith Family Class Members. Child Welfare Records Technicians may be existing employees of a Child Welfare Authority as well as independent technicians retained pursuant to this Agreement.

"**CHRT Interest Accrual Period**" means:

(a) with respect to Approved Removed Child Class Members who were placed off-Reserve with non-Family as of and after January 1, 2006 and their corresponding Approved Removed Child Family Class Members: as of the last day of the calendar quarter of the removal until the Implementation Date;

(b) with respect to Approved Kith Child Class Members and Approved Kith Family Class Members as of and after January 1, 2006: as of the last day of the calendar quarter of the placement with a Kith Caregiver until the Implementation Date; and

(c) with respect to Approved Jordan's Principle Class Members and Approved Jordan's Principle Family Class Members: as of the last day of the calendar quarter of the Service Gap, Delay or Denial until the Implementation Date.

"**Claim**" means a claim for compensation made by or on behalf of a Class Member.

"**Claimant**" means a person who makes a Claim by completing and submitting a Claims Form to the Administrator, or on whose behalf a Claim is made by such Class Member's Estate Executor, estate Claimant or Personal Representative.

"**Claims Deadline**" means the date that is:

(a) three (3) years after the Claims Process Approval Date applicable to each class: for Class Members who have reached the Age of Majority or died before the Claims Process Approval Date applicable to those Class Members;
(b) three (3) years after the date on which a Class Member reaches the Age of Majority: for Class Members who have not reached the Age of Majority by the time of the Claims Process Approval Date applicable to their class; or
(c) three (3) years after the date of death: for Class Members who were under the Age of Majority and alive by the time of the Claims Process Approval Date

applicable to their class and who died or die prior to reaching the Age of Majority; or

(d) an extension of the deadlines in (a)-(c) above by 12 months: for Class Members individually approved on request by the Administrator on the grounds that the Claimant faced extenuating personal circumstances and was unable to submit a Claim as a result of physical or psychological illness or challenges, including homelessness, incarceration or addiction, or due to unforeseen community circumstances such as epidemics, community internet connectivity, pandemics, natural disasters, community-based emergencies or service disruptions at a national, regional or community level.

"**Claims Form**" means a written declaration in respect of a Claim by a Class Member with Supporting Documentation or such other form as may be recommended by the Administrator and agreed to by the Settlement Implementation Committee.

"**Claims Process**" means the process, including a distribution protocol, to be further designed and detailed in accordance with this Agreement for the distribution of compensation under this Agreement to eligible Class Members. The Claims Process also includes the Incarcerated Class Members Process and such other processes as may be recommended by the Administrator and experts, agreed to by the Plaintiffs and approved by the Court, for the submission of Claims, determination of eligibility, assessment, verification, determination of possible enhancement, payment of compensation to Class Members, and the role of the Third-Party Assessor. The distribution protocol within the Claims Process may be created and submitted to the Court for approval in one package or in several parts relating to different classes as and when each of such parts becomes ready following the Implementation Date.

"**Claims Process Approval Date**" with respect to each class means the date on which the distribution protocol in the Claims Process for that class has been approved by the Court.

"**Class**" means Jordan's Principle Class, Jordan's Principle Family Class, Removed Child Class, Removed Child Family Class, Trout Child Class, Trout Family Class, Kith Child Class, Kith Family Class, and Essential Service Class, collectively. Reference to a "class" or "classes" with a lower case "c" is to any of the Jordan's Principle Class, Jordan's Principle Family Class, Removed Child Class, Removed Child Family Class, Trout Child Class, Trout Family Class, Kith Child Class, Kith Family Class, or Essential Service Class, as may apply within the context of such reference.

"**Class Counsel**" means Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Company, Nahwegahbow Corbiere, and Fasken LLP, collectively.

"**Class Member**" and "**Class Members**" means any one or more individual members of the Class.

"**Confirmed Need**" means the need of a member of the Jordan's Principle Class, Trout Child Class or Essential Service Class as confirmed by Supporting Documentation as defined for Essential Service Class, Jordan's Principle Class, and Trout Child Class.

"**Court**" means the Federal Court of Canada.

"**Cy-près Fund**" has the meaning set out in Article 8.

"**Delay**" means unreasonable delay and it is presumed that delay is unreasonable where a member of the Essential Service Class, Jordan's Principle Class, or Trout Child Class requested an Essential Service from Canada but they did not receive a determination on their request within 12 hours for an urgent case, or 48 hours for other cases, provided that contextual factors, as specified in the Claims Process, do not suggest otherwise.

"**Denial**" means where a member of the Essential Service Class, Jordan's Principle Class, or Trout Child Class requested an Essential Service from Canada and that request was either denied or the member of the Essential Service Class, Jordan's Principle Class, or Trout Child Class did not receive a response as to acceptance or denial.

"**Eligible Deceased Class Member**" means:

(a) a deceased Caregiving Parent or Caregiving Grandparent eligible to receive compensation as a Removed Child Family Class Member (of a Child placed off-Reserve with non-Family as of and after January 1, 2006), a Kith Family Class Member, or a Jordan's Principle Family Class Member;

(b) a deceased adult eligible to receive compensation as a Removed Child Class Member, a Kith Class Member, a Jordan's Principle Class Member, an Essential Services Class Member, or a Trout Class Member; and

(c) a deceased adult Claimant who submitted a Claim prior to death.

"**Eligibility Decision**" has the meaning set out in Article 5.02.

"**Enhancement Factor**" means any objective criterion agreed to by the Plaintiffs and approved by the Court that may be used by the Administrator to enhance the Base Compensation of some members of the Removed Child Class, Jordan's Principle Class or Trout Child Class.

"**Enhancement Payment**" means an amount, based on Enhancement Factors, that may be payable to an Approved Removed Child Class Member, an Approved Jordan's Principle Class Member, or an Approved Trout Child Class Member, in addition to a Base Payment. In determining eligibility for and the quantum of an Enhancement Payment, the

Settlement Implementation Committee may provide guidelines that take into account the amount of interest payment that an Approved Removed Child Class Member or an Approved Jordan's Principle Class Member has received on their Base Compensation, with a view to considering equity or parity amongst Class Members who may receive an interest payment and those Class Members who may not receive an interest payment under this Agreement.

"**Essential Service**" means a service, product or support that was required due to the Child's particular condition or circumstance, the failure to provide which would have resulted in material impact on the Child, as assessed in accordance with Schedule F, Framework of Essential Services.

"**Essential Service Class**" means a First Nations individual who did not receive from Canada (whether by reason of a Denial or a Service Gap) an Essential Service relating to a Confirmed Need, or whose receipt of said Essential Service relating to a Confirmed Need was delayed by Canada, on grounds, including but not limited to, lack of funding or lack of jurisdiction, as a result of a jurisdictional dispute with another government or federal governmental department(s) during the period between December 12, 2007 and November 2, 2017 (the "**Essential Service Class Period**"), while they were under the Age of Majority.

"**Estate Administrator**" includes an executor or administrator appointed or designated under federal, provincial or territorial legislation, as applicable under the circumstances.

"**Estate Executor**" means the executor, administrator, trustee or liquidator of an Eligible Deceased Class Member's estate.

"**Family**" includes a parent, stepparent, grandparent, adult sibling, aunt, uncle or adult first cousin of the Child.

"**First Nations**" in reference to individuals means:

(a) with respect to all Class Members: individuals who are registered pursuant to the *Indian Act*;

(b) with respect to all Class Members: individuals who were entitled to be registered under sections 6(1) or 6(2) of the *Indian Act*, as it read as of February 11, 2022 (the latter date of the Certification Orders);

(c) additionally with respect to the Removed Child Class only: individuals who met Band membership requirements under sections 10-12 of the *Indian Act* by February 11, 2022 (the latter date of the Certification Orders) such as where their respective First Nation community assumed control of its own membership by establishing membership rules and the individuals were found to meet the

requirements under those membership rules and were included on the Band List prior to February 11, 2022;

(d) additionally with respect to the Jordan's Principle Class only: individuals who met Band membership requirements under sections 10-12 of the *Indian Act* pursuant to paragraph (c), above, AND who suffered a Delay, Denial, or Service Gap between January 26, 2016 and November 2, 2017;

(e) additionally with respect to the Jordan's Principle Class only: individuals who were recognized as citizens or members of their respective First Nation prior to February 11, 2022 (the latter date of the Certification Orders) as confirmed by First Nations Council Confirmation, whether under final agreement, self-government agreement, treaties or First Nations' customs, traditions and laws, AND who suffered a Delay, Denial, or Service Gap between January 26, 2016 and November 2, 2017.

"**First Nations Council Confirmation**" means a written confirmation, the form and contents of which will be agreed upon amongst the Plaintiffs subject to the Court's approval, from a First Nation designed for the purposes of the Claims Process to the effect that an individual is recognized as a citizen or member of their respective First Nation whether under treaty, agreement or First Nations' customs, traditions or laws.

"**Framework of Essential Services**" is the approach to Essential Services and Confirmed Need, enclosed as Schedule F, Framework of Essential Services, developed with the assistance of experts, and agreed to by the Plaintiffs for the purposes of the Claims Process. The Framework of Essential Services is subject to further piloting by qualified experts and necessary re-adjustments agreed to by the Plaintiffs, or the Settlement Implementation Committee after the Approval of this Agreement.

"**Group Home**" means a staff-operated home funded by ISC where several Children are living together. Some Group Homes are parent-operated, where a couple with professional youth care training operate a Group Home together.

"**Implementation Date**" of this Agreement means the later of:

(a) the day following the last day on which a Class Member may appeal or seek leave to appeal the Settlement Approval Order; or

(b) the date on which the last of any appeals of the Settlement Approval Order are finally determined.

"**Incarcerated Class Members Process**" means the process for communicating the Claims Process specifically to Class Members incarcerated in federal penitentiaries, provincial prisons, and other penal and correctional institutions or institutions where

individuals are held involuntarily due to matters such as a lack of criminal responsibility due to a mental disorder.

"***Income Tax Act***" means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp), as amended.

"***Indian Act***" means the *Indian Act*, R.S.C. 1985, c. I-5, as it read as of February 11, 2022 (the latter date of the Certification Orders).

"**Investment Committee**" means an advisory body constituted in accordance with this Agreement and Schedule G, Investment Committee Guiding Principles.

"**ISC**" has the meaning in the Recitals and includes any predecessor or successor department.

"**Jordan's Principle**" is a child-first human rights principle grounded in substantive equality that protects and promotes the substantive equality rights of all First Nations Children whether resident on- or off-Reserve, including in the Northwest Territories and Yukon. Jordan's Principle is named in honour of Jordan River Anderson of Norway House Cree Nation and his family.

"**Jordan's Principle Class**" or "**Jordan's Principle Class Member**" means an Essential Service Class Member who experienced the highest level of impact (including pain, suffering or harm of the worst kind) associated with the Delay, Denial, or Service Gap of an Essential Service that was the subject of a Confirmed Need. The Parties intend that the way that the highest level of impact is defined, and the associated threshold set for membership in the Jordan's Principle Class, fully overlap with the First Nations children entitled to compensation under the Compensation Orders.

"**Jordan's Principle Family Class**" means all persons who are the brother, sister, mother, father, grandmother or grandfather of a member of the Jordan's Principle Class at the time of Delay, Denial or Service Gap. Amongst the Jordan's Principle Family Class, only the Caregiving Parents or Caregiving Grandparents may receive direct compensation if otherwise eligible under this Agreement.

"Jordan's Principle Post-Majority Beneficiaries" means the beneficiaries eligible for benefits from the Jordan's Principle Post-Majority Fund.

"**Jordan's Principle Post-Majority Fund**" means $90,000,000 set aside from the Settlement Funds for the benefit of high-needs Approved Jordan's Principle Class Members necessary to ensure their personal dignity and well-being.

"**Kith Caregiver**" means an adult who is not a member of the Child's Family, does not live on-Reserve, and who cared for a Kith Child Class Member without receiving any funding in relation to the Child's Kith Placement.

"**Kith Child Class**" or "**Kith Child Class Member**" means a First Nations Child placed with a Kith Caregiver in a Kith Placement during the Removed Child Class Period and who meets the conditions specified herein and in Article 7.

"**Kith Family Class**" or "**Kith Family Class Member**" includes only the Caregiving Parents or, in the absence of Caregiving Parents, the Caregiving Grandparents of an Approved Kith Child Class Member who was placed in a Kith Placement between January 1, 2006 and March 31, 2022 pursuant to the conditions specified herein and in Article 7.

"**Kith Placement**" means where a First Nations Child resides with a Kith Caregiver outside of the Child's Family and off-Reserve, and a Child Welfare Authority was involved in the Child's placement.

"**Kith Placement Agreement**" means an agreement between a Caregiving Parent or Caregiving Grandparent of a Kith Child Class Member and a Child Welfare Authority relating to a Kith Placement of that Kith Child Class Member.

"**Non-kin Foster Home**" means any family-based care funded by ISC.

"**Non-paid Kin or Community Home**" means an informal placement, other than a Kith Placement, that has been arranged within the family support network, and the Child Welfare Authority does not have temporary custody and the placement is not funded by ISC.

"**Northern or Remote Community**" means a community as agreed upon by the Plaintiffs and set out in the Claim Process.

"**Notice Plan**" means the notice plan to be approved by the Court for dissemination of notices to Class Members.

"**Ongoing Fees**" has the meaning set out in Article 17.03.

"**Opt-Out**" means: (a) the delivery by a Class Member to the Administrator of the Opt-Out Form with the intention of being removed from the Actions before the Opt-Out Deadline; or (b) after the Opt-Out Deadline, a Class Member obtaining leave of the Court to opt out of the Actions in accordance with this Agreement.

"**Opt-Out Deadline**" means August 23, 2023 or such other date as the Court may determine, after which Class Members may no longer Opt-Out of the Actions, except with leave of the Court.

"**Opt-Out Form**" means the opt-out form as approved by the Court and enclosed hereto as Schedule H, Opt-Out Form.

"**Ordinarily Resident on Reserve**" means:

(a) a First Nations individual who lives in a permanent dwelling located on a First Nations Reserve at least 50% of the time and who does not maintain a primary residence elsewhere;

(b) a First Nations individual who is living off-Reserve while registered full-time in a post-secondary education or training program who is receiving federal, Band or Aboriginal organization education/training funding support and who:

a. would otherwise reside on-Reserve;

b. maintains a residence on-Reserve;

c. is a member of a family that maintains a residence on-Reserve; or

d. returns to live on-Reserve with parents, guardians, caregivers or maintainers when not attending school or working at a temporary job.

(c) a First Nations individual who is temporarily residing off-Reserve for the purpose of obtaining care that is not available on-Reserve and who, but for the care, would otherwise reside on-Reserve;

(d) a First Nations individual who is temporarily residing off-Reserve for the primary purpose of accessing social services because there is no reasonably comparable service available on-Reserve and who, but for receiving said services, would otherwise reside on-Reserve;

(e) a First Nations individual who at the time of removal or placement with a Kith Caregiver met the definition of ordinarily resident on reserve for the purpose of receiving child welfare and family services funding pursuant to a funding agreement between Canada and the province or territory in which the individual resided (including Ordinarily Resident on Reserve individuals funded through the cost-shared model under the Canada-Ontario 1965 Indian Welfare Agreement);

(f) for the purposes of Class Members in the Yukon, “on-Reserve” in this Agreement is inclusive of areas within the “Community Boundary” as defined in the *Umbrella Final Agreement Between the Government of Canada, the Council for Yukon Indians and the Government of the Yukon* as of February 11, 2022 (the latter date of the Certification Orders), and “off-Reserve” in this Agreement is correspondingly inclusive of areas outside the “Community Boundary” as of February 11, 2022 (the latter date of the Certification Orders).

“**Out-of-home Placement**” means a distinct location where a Removed Child Class Member has been placed pursuant to a removal, such as an Assessment Home, Non-kin Foster Home, Paid Kinship Home, Group Home, a Residential Treatment Facility, or other

similar placement funded by ISC, except for the members of the Kith Child Class pursuant to Article 7.

"**Paid Kinship Home**" means a formal placement that has been arranged within the family support network and paid for by ISC, where the Child Welfare Authority has temporary or full custody.

"**Parties**" means the Plaintiffs and Canada;

"**Person Under Disability**" means:

(a) a person under the Age of Majority under the legislation of their province or territory of residence; or

(b) an individual who is unable to manage or make reasonable judgments or decisions in respect of their affairs by reason of mental incapacity including those for whom a Personal Representative has been appointed, or designated by operation of the law, pursuant to the applicable provincial, territorial or federal legislation.

"**Personal Representative**" means the person appointed, or designated by operation of the law, pursuant to the applicable provincial, territorial or federal legislation to manage or make reasonable judgments or decisions in respect of the affairs of a Person Under Disability who is an eligible Claimant and includes an administrator for property.

"**Plaintiffs**" means collectively the Moushoom Plaintiffs, the AFN Plaintiffs and the Trout Plaintiffs.

"**Professional**" means a professional with expertise relevant to a Child's Confirmed Need(s), for example: a medical professional or other registered professionals available to a Class Member in their place of residence and community (particularly in a Northern or Remote Community where there may not have been, or be, access to specialists, but there may have been access to community health nurses, social support workers, and mental health workers), or an Elder or Knowledge Keeper who is recognized by the Child's specific First Nations community.

"**Recitals**" means the recitals to this Agreement.

"**Removed Child Class**" or "**Removed Child Class Member**" means First Nations individuals who, at any time during the period between April 1, 1991 and March 31, 2022 (the "**Removed Child Class Period**"), while they were under the Age of Majority, were removed from their home by child welfare authorities or voluntarily placed into care, and whose placement was funded by ISC, such as an Assessment Home, a Non-kin Foster Home, a Paid Kinship Home, a Group Home, or a Residential Treatment Facility or another ISC-funded placement while they, or at least one of their Caregiving Parents or Caregiving Grandparents, were Ordinarily Resident on Reserve or were living in the

Yukon, but excluding children who lived in a Non-paid Kin or Community Home through an arrangement made with their caregivers and excluding individuals living in the Northwest Territories at the time of removal.

"**Removed Child Family Class**" means all persons who are the brother, sister, mother, father, grandmother or grandfather of a member of the Removed Child Class at the time of removal.

"**Reserve**" means a tract of land, as defined under the *Indian Act*, the legal title to which is vested in the Crown and has been set apart for the use and benefit of a Band.

"**Residential Treatment Facility**" means a treatment program for several Children living in the treatment facility with 24-hours-a-day trained staff, including locked or secure and unlocked residences, funded by ISC.

"**Service Gap**" means an Essential Service that is subject to a Confirmed Need, as determined in accordance with Schedule F, Framework of Essential Services, but was not available to an Essential Service, Jordan's Principle or Trout Class Member.

"**Settlement Approval Hearing**" means a hearing of the Court to determine a motion to approve this Agreement.

"**Settlement Approval Order**" means the draft order submitted to the Court regarding the approval of this Agreement, the form and content of which will be agreed upon amongst the Parties, if and as approved by the Court.

"**Settlement Funds**" means a total of $23,343,940,000 ($23.34394 billion), which Canada will pay to settle the claims of the Class in accordance with this Agreement.

"**Settlement Implementation Committee**" or "**Settlement Implementation Committee and its Members**" means a committee established pursuant to Article 12.

"**Settlement Implementation Report**" has the meaning set out in Article 12.03(1)(m).

"**Spell in Care**" applies to the Removed Child Class and means a continuous period in care, which starts when a Child is taken into out-of-home care and ends when the Child is discharged from care, by returning home, moving into another arrangement in a Non-paid Kin or Community Home, being adopted, or living independently at the Age of Majority. ISC data considers a Spell in Care by the start and end dates of each continuous period of Out-of-home Placement.

"**Stepparent**" means a person, other than an adoptive parent, who is First Nations and a spouse of the biological Caregiving Parent of a Removed Child Class Member, Jordan's Principle Class Member, or Trout Child Class Member, and lived with that Child's biological Caregiving Parent and contributed to the support of the Child, for at least three

(3) years, prior to the removal of the Child, or the occurrence of the Delay, Denial or the Service Gap.

"**Supporting Documentation**" means:

(a) for the Removed Child Class: such documentation required to be submitted by a Removed Child Class Member in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;

(b) for the Essential Service Class, Jordan's Principle Class, and Trout Child Class: such documentation required to be submitted by a member of the Essential Service Class, Jordan's Principle Class, and Trout Child Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;

(c) for the Removed Child Family Class: such documentation required to be submitted by a member of the Removed Child Family Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;

(d) for the Jordan's Principle Family Class: such documentation required to be submitted by a member of the Jordan's Principle Family Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;

(e) for the Trout Family Class: such documentation required to be submitted by a member of the Trout Family Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;

(f) for the Kith Child Class: such documentation required to be submitted by a member of the Kith Child Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;

(g) for the Kith Family Class: such documentation required to be submitted by a member of the Kith Family Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form; and

(h) for Eligible Deceased Class Members: the documentation to be required to be submitted in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form.

"**Time in Care**" means the total amount of time that a Removed Child Class Member spent in care regardless of the number of Spells in Care.

"**Third-Party Assessor**" means the person or persons appointed by the Court to carry out the duties of the Third-Party Assessor as stated in this Agreement, to be particularized in the Claims Process, and their successors appointed from time to time, as approved by the Court.

"**Trout Child Class**" or "**Trout Child Class Member**" means First Nations individuals who, during the period between April 1, 1991 and December 11, 2007 (the "**Trout Child Class Period**"), while they were under the Age of Majority, did not receive from Canada (whether by reason of a Denial or a Service Gap) an Essential Service relating to a Confirmed Need, or whose receipt of said Essential Service was delayed by Canada, on grounds, including lack of funding or lack of jurisdiction, or as a result of a Service Gap or jurisdictional dispute with another government or governmental department.

"**Trout Family Class**" means all persons who are the brother, sister, mother, father, grandmother or grandfather of a member of the Trout Child Class at the time of Delay, Denial or Service Gap. Amongst the Trout Family Class, only the Caregiving Parents or Caregiving Grandparents may receive direct compensation if otherwise eligible under this Agreement.

"**Trust**" means the trust established pursuant to Article 15.

"**Trust Fund**" has the meaning set out in Article 4.

"**Trustee**" means the trustee appointed by the Court pursuant to Article 15 for the purposes of this Agreement. The Trustee may be constituted by deed of trust, a society, or non-profit corporation as directed by the Plaintiffs.

1.02 Headings

The division of this Agreement into paragraphs and the use of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

1.03 Extended Meanings

In this Agreement, words importing the singular number include the plural and vice versa, and words importing any gender or no gender include all genders. The term "including" means "including without limiting the generality of the foregoing". Any reference to a government ministry, department or position will include any predecessor or successor government ministry, department or position.

1.04 Interpretation

The Parties acknowledge that they have reviewed and participated in settling the terms of this Agreement and they agree that there will be no presumptive rule of construction to

the effect that any ambiguity in this Agreement is to be resolved in favour of any particular Party.

1.05 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as enacted on the date of such reference and not as the statute may from time to time be amended, re-enacted, or replaced, and the same applies to any regulations made thereunder.

1.06 Business Day

Where the time on or by which any action required to be taken hereunder expires or falls on a day that is not a Business Day, such action may be done on the next succeeding day that is a Business Day.

1.07 Currency

All references to currency herein are to lawful money of Canada.

1.08 Compensation Inclusive

The amounts payable to Class Members under this Agreement are inclusive of any prejudgment or post-judgment interest, except as otherwise specified in Article 6.15, Article 6.16, or under Article 7.

1.09 Schedules

The following Schedules to this Agreement are incorporated into and form part of this Agreement:

Schedule A: Order dated February 23, 2023 on Opt-Out Deadline

Schedule B: Order dated August 11, 2022 on Appointment of Administrator

Schedule C: Provincial and Territorial Ages of Majority

Schedule D: Certification Order dated November 26, 2021 in Court File Nos. T-402-19 and T-141-20 (2021 FC 1225)

Schedule E: Certification Order dated February 11, 2022 in Court File No. T-1120-21 (2022 FC 149)

Schedule F: Framework of Essential Services

Schedule G: Investment Committee Guiding Principles

Schedule H: Opt-Out Form

Schedule I: Framework for Supports for Claimants in Compensation Process

Schedule J: Summary Chart of Essential Service, Jordan's Principle, and Trout Approach

1.10 Binding Agreement

This Agreement is binding upon the Parties, and for Canada and Class Members, upon their estates, heirs, Estate Executors, estate Claimants, and Personal Representatives.

1.11 Applicable Law

This Agreement will be governed by the laws of Canada, together with the laws of the province or territory where the Class Member is ordinarily resident, as applicable, save where otherwise specified in this Agreement.

1.12 Counterparts

This Agreement may be executed electronically and in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same Agreement.

1.13 Official Languages

As soon as practicable after the execution of this Agreement Class Counsel will arrange for the preparation of an authoritative French version. The French version will be of equal weight and force at law.

1.14 Ongoing Supervisory Role of the Court

Notwithstanding any other provision of this Agreement, the Court will maintain exclusive jurisdiction to supervise the implementation of this Agreement in accordance with its terms, including the adoption of protocols and statements of procedure, and the Parties attorn to the jurisdiction of the Court for that purpose. The Court may give any directions or make any orders that are necessary for the purposes of this Article.

ARTICLE 2 - EFFECTIVE DATE OF AGREEMENT

2.01 Date when Binding and Effective

On the Implementation Date, this Agreement will become binding in accordance with Article 11 on all Class Members who have not Opted-Out by the Opt-Out Deadline.

2.02 Effective Upon Approval

None of the provisions of this Agreement will become effective unless and until the Court approves this Agreement.

2.03 Legal Fees Severable

Class Counsel's fees for prosecuting the Actions have been or will be negotiated separately from this Agreement and remain subject to approval by the Court. The Court's decision on Class Counsel's fees will have no effect on the implementation of this Agreement. If the Court refuses to approve the fees of Class Counsel, the remainder of the provisions of this Agreement will remain in full force and effect and in no way will be affected, impaired or invalidated.

ARTICLE 3 – ADMINISTRATION

3.01 Designation of Administrator

The Administrator administers the Claims Process with such powers, rights, duties and responsibilities as are set out in this Article and such other powers, rights, duties and responsibilities as are determined by the Settlement Implementation Committee and approved by the Court. Following the establishment of the Settlement Implementation Committee and on the recommendation of the Settlement Implementation Committee, the Court may replace the Administrator at any time.

3.02 Duties of the Administrator

1) The Administrator's duties and responsibilities include the following:

   (a) in consultation with the Settlement Implementation Committee, developing, installing, and implementing systems, forms, information, guidelines and procedures for processing Claims and appeals of the decisions of the Administrator to the Third-Party Assessor in accordance with this Agreement and the Claims Process;

   (b) in consultation with the Settlement Implementation Committee, developing, installing, and implementing systems and procedures for making payments of compensation in accordance with this Agreement and the Claims Process;

   (c) receiving funds from the Trust and the Trustee to make payments to Class Members in accordance with this Agreement and the Claims Process;

   (d) ensuring adequate staffing for the performance of its duties under this Agreement, and training and instructing personnel;

(e) ensuring, in consultation with the Settlement Implementation Committee, First Nations participation and the reflection of First Nations perspectives, appropriate cultural knowledge, use of proper experts, and a trauma-informed and child- and youth-focused approach to the Class;

(f) keeping or causing to be kept accurate accounts of its activities and its administration and preparing annual audited financial statements, as well as reports, and records as are required by the Settlement Implementation Committee, the Auditors and the Court;

(g) reporting to the Settlement Implementation Committee on a monthly basis respecting:

i) Claims received and Claims determined including associated timelines for determination;

ii) Claims deemed ineligible and the reason(s) for that determination; and

iii) appeals from the Administrator's decisions and the outcomes of those appeals.

(h) identifying and reporting to the Settlement Implementation Committee systemic issues, including suspected or potential irregular or fraudulent Claims, in the implementation of the Agreement and the Claims Process as such issues arise and in any event no later than on a quarterly basis, and working with the Settlement Implementation Committee and any experts as may be required to find a resolution to such systemic issues—a systemic issue being an issue that affects more than one Class Member;

(i) responding to inquiries from Claimants respecting Claims and Claims Forms;

(j) providing navigational supports to Class Members in the Claims Process as outlined out in Schedule I, Framework for Supports for Claimants in Compensation Process, including: (i) assistance with the filling out and submission of Claims Forms; (ii) assistance with obtaining Supporting Documentation; (iii) assistance with appeals to the Third-Party Assessor pursuant to this Agreement; (iv) reviewing Claims Forms, Supporting Documentation, and First Nations Council Confirmations; and (v) determining a Claimant's eligibility for compensation in the Class;

(k) maintaining a database with all information necessary to permit the Settlement Implementation Committee and the Actuary to assess the financial sufficiency of the Trust Fund;

(l) in appropriate circumstances, requiring further Supporting Documentation in

relation to a claimed Confirmed Need from a different Professional. In case of doubt, the Administrator will consult with the Settlement Implementation Committee for direction;

(m) communicating with Claimants in either English or French, as the Claimant elects, and if a Claimant expresses the desire to communicate in a language other than English or French, making best efforts to accommodate such Claimant;

(n) verifying Claims in accordance with this Agreement;

(o) reporting annually to the Court on the Administrator's above tasks;

(p) determining requests for the extension of the Claims Deadline by individual Class Members facing extenuating personal circumstances, such as where a Claimant was unable as a result of physical or psychological illness or challenges, including homelessness, incarceration or addiction, or due to unforeseen circumstances such as epidemics, community internet connectivity, pandemics, natural disasters, community-based emergencies or service disruptions at a national, regional, or community level, to submit a Claim before the Claims Deadline, subject to further direction on such circumstances from the Settlement Implementation Committee; and

(q) such other duties and responsibilities as the Court or the Settlement Implementation Committee may from time to time direct.

2) In carrying out its duties and responsibilities outlined in this Agreement, the Administrator will:

(a) act in accordance with the principles governing the administration of Claims set out in this Article, in particular that the Claims Process intends to be cost-effective, user-friendly, culturally sensitive, trauma-informed, and non-traumatizing to Class Members;

(b) ensure quality assurance processes are documented and transparent;

(c) comply with the service standards established by the Plaintiffs; and

(d) perform other duties and responsibilities as the Court or the Settlement Implementation Committee may from time to time direct.

3) Except as otherwise provided in this Agreement and the Claims Process, the Administrator will request on a monthly basis such funds from the Trustee as may be necessary to pay approved Claims. The Trustee will provide such funds to the

Administrator, and the Administrator will pay such funds to the Class Members in accordance with this Agreement and the Claims Process.

3.03 Appointment of the Third-Party Assessor

On the recommendation of the Parties until the approval of this Agreement, and of the Settlement Implementation Committee thereafter, the Court will appoint as necessary from time to time one or more Third-Party Assessors composed of experts, including First Nations experts, with demonstrated knowledge of, and experience in, First Nations child and family services and Jordan's Principle. On the recommendation of the Settlement Implementation Committee, the Court may replace a Third-Party Assessor at any time. The Third-Party Assessor will perform the duties of the Third-Party Assessor set out in this Agreement and the Claims Process.

3.04 Responsibility for Costs

1) Canada will pay:

   (a) the reasonable costs of giving notice in accordance with the Notice Plan to be developed by the Parties, including Canada and the Settlement Implementation Committee, as approved and ordered by the Court;

   (b) the reasonable costs and disbursements of the Administrator, the Third-Party Assessor, the Trustee, the Auditors, the Actuary, Child Welfare Records Technicians, and any experts, advisors or consultants retained by the Settlement Implementation Committee for the purpose of implementing this Agreement;

   (c) the costs of the administration of the Trust;

   (d) legal fees pursuant to Article 17;

   (e) the costs of the supports for Class Members throughout the Claims Process as outlined in Schedule I, Framework for Supports for Claimants in Compensation Process; and

   (f) the costs of the Dispute Resolution Process in accordance with Article 18.

2) The Settlement Implementation Committee will provide a forecast of the costs and disbursements of the administration of this Agreement to Canada on an annual basis, on or before December 1 of each year regarding the year ahead, which forecast may be revised due to unforeseen circumstances. In such case, the Settlement Implementation Committee will advise Canada in writing. Canada may dispute the reasonableness of the forecast or any revision of it.

3) None of the costs payable by Canada pursuant to this Article will be deducted from the Settlement Funds.

ARTICLE 4 - TRUST FUND

4.01 Establishment of the Trust Fund

1) As soon as practicable after the appointment and settlement of the Trust in accordance with Article 15, the Trustee will establish investment trust account(s) at Banking Facilities for the purposes of receiving and investing the Settlement Funds and paying compensation to eligible Class Members.

2) The Trustee will collaborate with Canada to establish a transfer and drawdown schedule for payments to enable the orderly payment of the Settlement Funds. Canada will have no input or role in the selection of the Banking Facilities or the Trustee's selection of deposit or financial instruments.

3) On or after thirty (30) Business Days following the Implementation Date, and in accordance with Article 1.01, the Trustee on the recommendation of the Investment Committee may direct Canada to make payments to the Trust up to the total of the Settlement Funds.

4) By no later than 120 days following the Implementation Date, Canada will make payments to the Trust of Settlement Funds in the total amount of $23,343,940,000 ($23.34394 billion).

4.02 Distribution of the Trust Fund

The Trustee will periodically, on request based on estimated approved Claims, pay the Administrator from the trust account(s) under Article 4.01 for the purpose of distributing the Trust Fund for the benefit of the Class Members in accordance with this Agreement, including by paying compensation in accordance with Articles 6 and 7 through the Claims Process.

ARTICLE 5 - CLAIMS PROCESS

5.01 Principles Governing Claims Administration

1) The design and implementation of the distribution protocol within the Claims Process will be within the sole discretion of the Plaintiffs, subject to the approval of the Court. The Plaintiffs will establish the Claims Process and may seek input from the Caring Society, as well as from experts and First Nations stakeholders as the Plaintiffs deem in the best interests of the Class Members. The Plaintiffs will finalize the distribution protocol within the Claims Process in accordance with this Agreement, and will submit same for approval of the Court.

2) Notwithstanding Article 5.01(1), Canada will have standing to make submissions on the Claims Process at the hearing on the motion to approve same before the Court.

3) The Claims Process is intended to be expeditious, cost-effective, user-friendly, culturally sensitive, trauma-informed, and non-traumatizing, with any necessary accommodations for persons with disabilities or vulnerabilities. The Administrator will identify and implement service standards for the Claims Process no later than 180 days after the Claims Process Approval Date for any given class.

4) The Administrator and the Third-Party Assessor will, in the absence of reasonable grounds to the contrary, presume that a Claimant is acting honestly and in good faith with respect to any Claim.

5) In considering a Claims Form, Supporting Documentation, or a First Nations Council Confirmation, the Administrator and the Third-Party Assessor will draw all reasonable inferences that can be drawn in favour of the Claimant.

6) The Administrator will make reasonable efforts to obtain verification of each Claim within six (6) months of the receipt of the completed Claim, with all required elements. If the Administrator identifies systemic issues with its ability to verify some or all Claims in accordance with the Claims Process within six (6) months, the Administrator will refer the matter to the Settlement Implementation Committee to determine whether a different service standard should be applied to any of the classes.

7) In designing the Claims Process, the Administrator and the Plaintiffs will develop standards relating to the processing of Claims in compliance with this Agreement, insofar as this Agreement recognizes that Class Members' circumstances may require flexibility in the type of documentation necessary to support the Claims Forms due to challenges such as the Child's age or developmental status at the time of the events, the disappearance of records over time, the retirement or death of Professionals involved in a Child's case, and systemic barriers to accessing Professionals. In recognition of same, for example, Article 6.08(5) allows for Supporting Documentation that is contemporaneous or current where appropriate.

8) The Claims Process regarding the determination of Claims from members of the Kith Child Class will establish criteria and standards specific to the processing of such Claims, which take into account the Parties' intention and acknowledgement that specific standards, Supporting Documentation, eligibility, and Claims verification apply to the Kith Child Class as compared to the Removed Child Class to ensure the integrity of the Claims Process while also respecting the general principles set out in Article 5.01(7) and Article 7.01.

9) The Claims Process regarding the determination of Claims from members of the Essential Service Class, the Jordan's Principle Class, and the Trout Child Class will include a review for the purpose of making a recommendation on eligibility and compensation to the Administrator by an individual with specific culturally appropriate health and social training on Jordan's Principle, Essential Services, Confirmed Needs, Professionals, and Supporting Documentation. The Eligibility Decision will be made by the Administrator having received a recommendation under this Article.

10) In order to distribute payment to Claimants as soon as reasonably possible following the Implementation Date, the distribution protocol in the Claims Process for each class may be designed, piloted where required, and submitted for approval to the Court before the distribution protocol for other classes is finalized and approved. For example, if the distribution protocol within the Claims Process for the Removed Child Class is finalized and approved by the Court, compensation may be distributed to the Removed Child Class in accordance with this Agreement in advance of the finalization and approval of the distribution protocol for other classes.

5.02 Eligibility Decisions and Enhanced Compensation Decisions

1) The Administrator will make the decision on eligibility and compensation with respect to all classes ("**Eligibility Decision**").

2) The Administrator will review each Claims Form, Supporting Documentation, First Nations Council Confirmation, recommendation under Article 5.01(9), and such other information as the Administrator considers relevant to determine whether each Claimant is eligible for compensation.

3) A First Nations Council Confirmation is required for Claimants under the Jordan's Principle Class who solely meet the definition of "First Nations" as defined in Article 1.01 based on having been recognized as a member or citizen by their respective First Nations under agreement, treaties or First Nations' customs, traditions and laws on or before February 11, 2022 (the latter date of the Certification Orders).

4) Within six months of the receipt of a completed Claim with all required elements, including verification of the Claim by the Administrator, the Administrator will provide written reasons (including instructions on the appeal process) to a Claimant in any case of:

    (a) an Eligibility Decision;

    (b) a decision that a member of the Removed Child Family Class or the Kith Family Class is not entitled to receive compensation due to Abuse under Article 6.04(4) or Article 7.03(2);

(c) a decision that a Claimant is not entitled to an Enhancement Payment available to that Class; or

(d) a decision to refuse to extend the Claims Deadline with respect to a Class Member.

5) Only a Claimant approved by an Eligibility Decision may be entitled to payment pursuant to Article 6 or Article 7.

6) A Claimant will have 60 days to commence an appeal to the Third-Party Assessor in accordance with the Claims Process upon receipt of:

(a) an Eligibility Decision that a Claimant is not a Class Member;

(b) a decision that a Claimant is not entitled to an Enhancement Payment as defined in the Claims Process;

(c) a refusal to extend the Claims Deadline with respect to an individual Class Member; or

(d) a dispute amongst Removed Child Family Class Members under Article 6.05 or amongst Kith Family Class Members under Article 7.03.

7) The Third-Party Assessor's decision on an appeal pursuant to Article 5.02(6) will be final and not subject to judicial review, further appeal or any other remedy by legal action.

8) The Third-Party Assessor will comply with the procedure and timeline standards established in the Claims Process for an appeal from a decision of the Administrator.

9) There will be no right of appeal by a Class Member who belongs to a category, such as brothers and sisters, that is not entitled to receive direct payment under this Agreement.

ARTICLE 6 - COMPENSATION

6.01 General Principles Governing Compensation

1) The Plaintiffs will design a Claims Process with the goal of minimising the risk of causing trauma to Class Members.

2) No member of the Removed Child Class, Jordan's Principle Class, or Trout Child Class will be required to submit to an interview, examination or other form of *viva voce* evidence taking.

3) The Plaintiffs will agree to require fair and culturally appropriate Supporting Documentation in accordance with this Agreement tailored to each different class for the purposes of the Claims Process.

4) A Class Member may claim compensation starting two (2) years before they reach the Age of Majority, provided that no compensation is paid to that Class Member until after the Age of Majority. A Class Member may only receive compensation under the terms of this Agreement after the Age of Majority, except in the case of an Exceptional Early Payment in accordance with Article 6.10. The Claims Process will include a means by which a Child may register with the Administrator at any time in order to receive updates on the implementation of this Agreement.

5) Enhancement Factors have been selected as appropriate proxies for harm, based on expert opinion, and are designed to enable proportionate compensation to the Removed Child Class, the Jordan's Principle Class, and the Trout Child Class.

6) Compensation under this Agreement will take the form of either direct payment to eligible Class Members, or eligible estates of deceased Class Members, who have claimed through the Claims Process and been approved by the Administrator or indirect benefit to the Class through the Cy-près Fund.

7) A Class Member who qualifies for compensation as a member of more than one class under this Agreement will receive the higher amount for which the Class Member qualifies amongst the applicable classes, and compensation under the classes will not be combined.

8) The Kith Child Class and the Kith Family Class will be the subject of a separately designed compensation and verification process in the Claims Process in accordance with Article 7.

6.02 Governing Principles on Removed Children

1) This Agreement seeks to adopt a trauma-informed and culturally sensitive approach to compensating the Removed Child Class and the Caregiving Parents or Caregiving Grandparents of the Removed Child Class.

2) To the extent possible and based on objective criteria, the Agreement seeks to bring proportionality to the compensation process such that members of the Removed Child Class who suffered the most harm may receive higher compensation in the Claims Process.

3) For the Removed Child Class, eligibility for compensation and Enhancement Factors will be based on objective criteria and data primarily from ISC and Supporting Documentation as the case may be.

6.03 Removed Child Class Compensation

1) Base Compensation payable to an Approved Removed Child Class Member will not be multiplied by the number of Spells in Care.

2) An Approved Removed Child Class Member will be entitled to receive Base Compensation of $40,000.

3) An Approved Removed Child Class Member may be entitled to an Enhancement Payment based on the following Enhancement Factors ("**Removed Child Enhancement Factors**"):

    (a) the age at which the Removed Child Class Member was removed for the first time;

    (b) the Time in Care;

    (c) the age of a Removed Child Class Member at the time they exited the child welfare system;

    (d) whether a Removed Child Class Member was removed to receive an Essential Service relating to a Confirmed Need;

    (e) whether the Removed Child Class Member was removed from a Northern or Remote Community; and

    (f) the number of Spells in Care for a Removed Child Class Member and/or, if possible, the number of Out-of-home Placements applicable to a Removed Child Class Member who spent more than one (1) year in care.

4) The Plaintiffs will design a system of weighting the Removed Child Enhancement Factors for the Removed Child Class based on the input of experts that will reflect the relative importance of each Enhancement Factor as a proxy for harm.

5) The Plaintiffs have determined a Budget of $7.25 billion for the Removed Child Class, subject to Articles 6.11, 6.12, and 6.13.

6.04 Caregiving Parents or Caregiving Grandparents of Removed Child Class

1) Amongst the Removed Child Family Class, only the Caregiving Parents or Caregiving Grandparents may receive direct compensation if otherwise eligible under this Agreement. Brothers and sisters are not entitled to direct compensation but may benefit indirectly from this Agreement through the Cy-près Fund.

2) A foster parent is not entitled to compensation under this Agreement and is not entitled or permitted to claim compensation on behalf of a Child under this Agreement.

3) The Base Compensation of an Approved Removed Child Family Class Member will not be multiplied based on the number of removals or Spells in Care for a Child.

4) A Caregiving Parent or Caregiving Grandparent who has committed Abuse that has resulted in the Removed Child Class Member's removal is not eligible for compensation in relation to that Child. However, a Caregiving Parent or Caregiving Grandparent is not

barred from receiving compensation as a member of the Removed Child Class, the Kith Child Class, the Essential Service Class, the Trout Child Class or the Jordan's Principle Class if the Caregiving Parent or Caregiving Grandparent is otherwise eligible for compensation as a Child member of one of those classes under this Agreement.

5) A maximum compensation amount of two Base Compensation payments per Child among Caregiving Parents or Caregiving Grandparents of a Child, regardless of number of Spells in Care or removals, may be distributed under this Agreement.

6) Where the Child was removed more than once from a Caregiving Parent or a Caregiving Grandparent, the Caregiving Parent or the Caregiving Grandparent from whom the Child was first removed will be eligible to receive compensation.

7) The first time that a Child is removed from either a Caregiving Parent or Caregiving Grandparent will determine who receives compensation: whoever the Child was removed from earlier will take eligibility priority to receive a Base Compensation. For example, if the Child was removed from two Caregiving Grandparents in 2008 and later removed from a Caregiving Parent in 2010, the two Caregiving Grandparents receive two Base Compensation payments and no other person receives compensation.

8) Where the Class Member's eligibility cannot be determined in accordance with Article 6.04(6) or Article 6.04(7), or where the Child was first removed from more than two Caregiving Parents or Caregiving Grandparents, eligibility will be determined according to the following priority list:

    (a) Category A: Caregiving Parents who are not Stepparents; then

    (b) Category B: Caregiving Grandparent(s); then

    (c) Category C: Stepparents.

9) The Parties have budgeted the Base Compensation for an Approved Removed Child Family Class Member to be $40,000.

10) The final quantum of Base Compensation to be paid to each Approved Removed Child Family Class Member will be determined by the Settlement Implementation Committee in consultation with the Actuary, having regard to the number of Approved Removed Child Family Class Members and the Budget for the Removed Child Family Class under this Article, and the requirement to pay Base Compensation of $40,000 to Caregiving Parents and Caregiving Grandparents of Children in care as of or removed between January 1, 2006 and March 31, 2022 and placed off-Reserve with non-Family, subject to Court approval.

11) Payments to Approved Removed Child Family Class Members who may be entitled to receive compensation under this Article before the expiration of the Claims Deadline may

be made in installments in order to ensure sufficient funds exist to pay like amounts to like Claimants regardless of when they submitted their Claim.

12) The Plaintiffs have determined a Budget of $5.75 billion for the Removed Child Family Class.

6.05 Sequencing and Priorities in Compensation for Removed Child Family Class Members

1) The Administrator will not pay any Claims by a Caregiving Parent (Category A), Caregiving Grandparent (Category B) or Stepparent (Category C) until the expiration of the Claims Deadline, in order to determine:

   (a) From whom the Child was removed first;

   (b) Whether one, two, or no Caregiving Parent(s) (who are not Stepparents), or Caregiving Grandparent(s), who cared for the Child at the time of the first removal (Category A) are approved with respect to the same Child;

   (c) whether more than two other Caregiving Grandparents (Category B) or Stepparents (Category C) have submitted a Claim with respect to the same Child; and

   (d) the amount of compensation, if any, payable to each such Claimant in accordance with this Article.

2) Notwithstanding Article 6.05(1), the Claims Process may include provisions for exceptional circumstances to the following effect: The Administrator may approve a Claim by a putative Category A, Category B, or Category C Claimant before the expiration of the Claims Deadline in accordance with the timelines specified in Article 5.02(4), and if they are determined to be Approved Removed Child Family Class Members, the Administrator may pay their compensation in accordance with the timelines specified in Article 6.14, subject to all other applicable limitations under this Agreement only if the Claimant has submitted Claims Forms and Supporting Documentation substantiating that all other biological parent(s), adoptive parent(s), stepparent(s), biological and adoptive grandparent(s), if applicable, of the Child have expressly renounced their entitlement to make a Claim under this Agreement or if the Child was the subject of a single removal at birth and the Child was a ward of the state as a result of that removal until the Age of Majority.

3) In the event of Claims by more than two putative Caregiving Parents (Category A), the Administrator may require further information and proof from those Claimants, but without the direct involvement of the affected Child, to substantiate who, if any, amongst such

Claimants meet the definition of a Caregiving Parent entitled to compensation under this Agreement.

4) Where only one Caregiving Parent (Category A), who cared for the child at the time of the first removal has submitted a Claim that has been approved with respect to the Child, only one Caregiving Grandparent (Category B) who was living in the same household as the Caregiving Parent may be deemed to be eligible to receive the remaining Base Compensation payment under this Agreement, regarding that Child, and no other parent, grandparent, or stepparent of that Child will receive a Base Compensation under this Agreement. If such Caregiving Grandparent (Category B) is also eligible for compensation with respect to one or more other removed Children between January 1, 2006 and March 31, 2022 who were placed off-Reserve with non-Family, they will be entitled to a maximum of $80,000 in compensation under this Agreement with respect to multiplications of the Base Compensation under Article 6.06.

5) In the event of Claims by multiple putative Caregiving Grandparents (Category B) beyond the available number of Base Compensation payment(s) with respect to the same Child, the Administrator may require further information and proof from those Claimants, but without the direct involvement of the affected Child, to substantiate who, if any, amongst such Claimants meet the definition of a Caregiving Grandparent entitled to compensation under this Agreement.

6) If only one Base Compensation remains with respect to a Child, and two Stepparents (Category C) have been approved by the Administrator, or on appeal to the Third-party Assessor, such Stepparents will share pro rata that one Base Compensation.

7) Any dispute amongst Caregiving Parents, Caregiving Grandparents or Stepparents will be subject to a summary adjudicative determination by the Third-Party Assessor in accordance with the Claims Process.

6.06 Multiplication of Base Compensation for Certain Removed Child Family Class Members

1) An Approved Removed Child Family Class Member who is a Caregiving Parent or a Caregiving Grandparent will receive multiple Base Compensation payments if and where more than one Child of the Caregiving Parent or the Caregiving Grandparent, as the case may be, has been removed from their Family, and placed off-Reserve with non-Family at any time during the Removed Child Class Period.

2) The multiplication of the Base Compensation will correspond to the number of such Children who were removed from the Caregiving Parent or the Caregiving Grandparent and placed off-Reserve with non-Family. For greater certainty, a Child who was placed on-Reserve does not entitle a Caregiving Parent or a Caregiving Grandparent to a

multiplication of the Base Compensation. For example, two Caregiving Parents who had two of their Children removed from their care and placed off-Reserve with non-Family will each be entitled to $80,000 in compensation if otherwise eligible for compensation under this Agreement.

3) No other Removed Child Family Class Member may receive a multiplication of the Base Compensation regardless of the number of Children removed from such Removed Child Family Class Member and regardless of whether a Child was placed on-Reserve or off-Reserve.

4) Notwithstanding Article 6.06(1) and Article 6.06(2), an Approved Removed Child Family Class Member will be entitled to a maximum of two (2) Base Compensation payments, up to a maximum of $80,000 of compensation regardless of the number of Children removed in the following cases:

   (a) the Approved Removed Child Family Class Member had two or more Children removed and placed off-Reserve with non-Family between April 1, 1991 and December 31, 2005 (excluding those who remained in care as of January 1, 2006);

   (b) all Approved Removed Child Family Class Members who are Stepparents who had two or more Children removed and placed off-Reserve with non-Family during the Removed Child Class Period; or

   (c) all Approved Removed Child Family Class Members who are Category B Caregiving Grandparents during the Removed Child Class Period in cases where one Category A Caregiving Parent has been approved for compensation under this Agreement with respect to the affected Child.

5) The Settlement Implementation Committee may, on advice from the Actuary, reassess eligibility for multiplications of Base Compensation under this Article for Caregiving Parents or Caregiving Grandparents who are the subject of Article 6.06(4), including the potential reduction of two Base Compensation payments or, conversely, removal of the cap of two (2) Base Compensation payments set out in Article 6.06(4).

6) The Plaintiffs have determined a Budget of $997 million for the multiplication of Base Compensation paid pursuant to this article.

6.07 Governing Principles Regarding Essential Service, Jordan's Principle, and Trout Classes

1) To the extent possible, this Agreement applies the same methodology to the Essential Service Class, Jordan's Principle Class, and Trout Child Class.

2) This Agreement intends to:

(a) be trauma-informed regarding the Jordan's Principle Class, Essential Service Class, and the Trout Child Class;

(b) avoid subjective assessments of harm, individual trials, or other cumbersome methods of making Eligibility Decisions with respect to these classes; and

(c) use objective criteria to assess Class Members' needs and circumstances as a proxy for the impact experienced by such Class Members in a discriminatory system.

3) The Base Compensation of an Approved Jordan's Principle Class Member or an Approved Trout Child Class Member will not be multiplied based on the number of Essential Services that were the subject of the Child's Confirmed Need.

6.08 Essential Service Class, Jordan's Principle Class, and Trout Child Class

1) The Plaintiffs will design the portion of the Claims Process with respect to members of the Essential Service Class, Jordan's Principle Class, and the Trout Child Class in accordance with this Article. A summary of the approach in this Article as an interpretive aid is attached as Schedule J, Summary Chart of Essential Service, Jordan's Principle, and Trout Approach. In the case of a conflict, the Articles in this Agreement will govern.

2) Eligibility for compensation for members of the Essential Service Class, Jordan's Principle Class, and the Trout Child Class will be determined based on those Class Members' Confirmed Need for an Essential Service if:

(a) a Class Member's Confirmed Need was not met because of a Denial of a requested Essential Service;

(b) a Class Member experienced a Delay in the receipt of a requested Essential Service for which they had a Confirmed Need; or

(c) a Class Member's Confirmed Need was not met because of a Service Gap even if the Essential Service was not requested.

3) The Framework of Essential Services, based on advice from experts, establishes a method to assess:

(a) whether the Child had a Confirmed Need for an Essential Service;

(b) whether an Essential Service was subject to a Delay, Denial or Service Gap; and

(c) the impact of the Delay, Denial or Service Gap, as assessed by objective criteria (including related to the pain, suffering or harm) associated with the Delay, Denial or Service Gap.

4) A Claimant will be considered to have established a Confirmed Need if the Claimant has provided Supporting Documentation and has been approved by the Administrator.

5) Supporting Documentation will include verification of a recommendation by a Professional consistent with the following principles, where applicable:

    (a) Permissible proof includes contemporaneous and/or current proof of assessment, referral or recommendation to account for the difficulties in retaining and obtaining historic records during the Trout Child Class Period and Essential Service Class Period.

    (b) Permissible proof includes proof of assessment, referral or recommendation from a Professional within that Professional's expertise as may be available to the Class Member in their place of residence, including those in a Northern and Remote Community.

    (c) In order to establish a Confirmed Need, the Professional must specify in all cases the Essential Service that the Claimant needed, and the reason for the need, and when the need can reasonably be expected to have existed.

    (d) A Claimant may establish that they requested an Essential Service from Canada during the Trout Child Class Period or Essential Service Class Period by way of a statutory declaration. Proof of a request for an Essential Service is the only instance where a statutory declaration may be adduced as Supporting Documentation for the purposes of the Trout Child Class, Essential Service Class, Jordan's Principle Class, Jordan's Principle Family Class, and the Trout Family Class.

6) If the Administrator, or the Third-Party Assessor on appeal, determines that a Class Member has provided Supporting Documentation establishing a Confirmed Need for an Essential Service, the Administrator, or the Third-Party Assessor on appeal, will determine whether the Claimant faced a Denial, Delay or a Service Gap.

7) Where a Class Member has provided Supporting Documentation establishing a Confirmed Need for an Essential Service and where the Administrator has determined that the Class Member experienced a Denial, Delay or a Service Gap, that Class Member will be:

    (a) an Approved Essential Service Class Member or an Approved Jordan's Principle Class Member, depending on the criteria specified in this Agreement, if the Claimant's Confirmed Need occurred within the Essential Service Class Period;

    (b) an Approved Trout Child Class Member if the Claimant's Confirmed Need occurred within the Trout Child Class Period.

8) The Plaintiffs have determined a total Budget of $3.0 billion dollars for the Essential Service Class (inclusive of the Jordan's Principle Class) and collectively, subject to Articles 6.11, 6.12, and 6.13 ("**Essential Service Budget**").

9) The Plaintiffs have determined a Budget of $2.0 billion dollars for the Trout Child Class, subject to Articles 6.11, 6.12, and 6.13 ("**Trout Child Budget**").

10) A Claimant may be determined to be a Jordan's Principle Class Member if they have established a Confirmed Need for an Essential Service and have been determined to have experienced the highest level of impact (including pain, suffering or harm of the worst kind) in relation to a Delay, Denial or Service Gap, and including impact in relation to conditions and circumstances such as an illness, disability or impairment, based on objective criteria and expert advice pursuant to the method specified in Schedule F, Framework of Essential Services. In this regard:

    (a) Such impact (including pain, suffering or harm) is to be assessed through culturally sensitive Claims Forms and instruments such as a questionnaire designed in consultation with experts. Subject to the Court's approval, the selection of which Claimants qualify under this category will be based on objective factors (which may include the severity of pain, suffering or harm) and the number of Claimants.

    (b) The threshold of impact for qualification as a member of the Jordan's Principle Class is subject to the results of piloting of the method developed in accordance with Schedule F, Framework of Essential Services.

11) An Approved Jordan's Principle Class Member will be entitled to receive Base Compensation of $40,000.

12) An Approved Essential Service Class Member other than a Jordan's Principle Class Member will receive up to but not more than $40,000 in compensation based on a pro rata share of the Essential Service Budget after deducting the total estimated amount of compensation to be paid to all Approved Jordan's Principle Class Members.

13) An Approved Trout Child Class Member will receive a minimum of $20,000 in compensation if they have established a Confirmed Need for an Essential Service and have been determined to have experienced the highest level of impact (including pain, suffering or harm of the worst kind) in relation to a Delay, Denial or Service Gap, including impact in relation to conditions and circumstances such as an illness, disability or impairment, based on objective criteria and expert advice pursuant to the method specified in Schedule F, Framework of Essential Services. In this regard:

    (a) Such impact (including pain, suffering or harm) is to be assessed through culturally sensitive Claims Forms and instruments such as a designed in consultation with experts. Subject to the Court's approval, the selection of which Claimants qualify

under this category will be based on objective factors (which may include the severity of pain, suffering or harm) and the number of Claimants.

(b) The threshold of impact for qualification as a member of the Trout Child Class is subject to the results of piloting of the method developed in accordance with Schedule F, Framework of Essential Services.

14) An Approved Trout Child Class Member who has not established a Claim under Article 6.08(13) will receive up to but not more than $20,000 in compensation having regard to the Trout Child Class Budget, based on a pro rata share of the Trout Child Budget after deducting the total amount of compensation to be paid to Approved Trout Child Class Members who have established a claim under Article 6.08(13).

15) In the event of a Trust Fund Surplus pursuant to Article 6.11 based on advice from the Actuary after approved Claims under Article 6.08(10) and Article 6.08(13) are paid or projected to be paid, Approved Jordan's Principle Class Members, and Approved Trout Child Class Members who have established a claim under Article 6.06(13) may be entitled to an Enhancement Payment.

6.09 Caregiving Parents or Caregiving Grandparents of Jordan's Principle Class and Trout Child Class

1) Only the Caregiving Parents or the Caregiving Grandparents of Approved Jordan's Principle Class Members may be entitled to compensation if it is determined by the Administrator, or on appeal by the Third-Party Assessor, that such Caregiving Parents or Caregiving Grandparents themselves experienced the highest level of impact (including pain, suffering or harm of the worst kind).

2) Such Approved Jordan's Principle Family Class Members will be entitled to receive Base Compensation of $40,000.

3) Only the Caregiving Parents or Caregiving Grandparents of the Approved Trout Child Class Members who have established a Claim under Article 6.08(13) may be entitled to compensation if it is determined by the Administrator, or on appeal by the Third-Party Assessor, that such Caregiving Parents or Caregiving Grandparents themselves experienced the highest level of impact (including pain, suffering or harm of the worst kind). The Base Compensation of Approved Trout Family Class Members will be determined by the Settlement Implementation Committee with the assistance of the Actuary regarding the forecasted number of Claimants, based on objective factors (which may include the severity of pain, suffering or harm) and the number of Claimants.

4) The impact experienced by such Caregiving Parents or Caregiving Grandparents will be assessed through objective criteria and expert advice pursuant to a method to be developed and specified in parallel with Schedule F, Framework of Essential Services

regarding Children. Such impact (including pain, suffering or harm) may be assessed through culturally sensitive Claims Forms designed in consultation with experts. Subject to the Court's approval, the selection of which Claimants qualify under this category will be based on objective factors (which may include the severity of pain, suffering or harm) and the number of Claimants.

5) The selection of the objective factors and the threshold for qualification under this Article is subject to the results of piloting of the method of assessment developed in accordance with this Article.

6) The Base Compensation of an Approved Jordan's Principle Family Class Member or an Approved Trout Family Child Class Member will not be multiplied based on the number of Essential Services that were the subject of the Confirmed Need of the Approved Jordan's Principle Class Member or the Approved Trout Child Class Member whose Claim grounds the Caregiving Parent or Caregiving Grandparent's eligibility to seek compensation under this Article.

7) All other Jordan's Principle Family Class Members and Trout Family Class Members will not receive direct compensation under this Agreement, but are intended to benefit indirectly from the Cy-près Fund.

8) The Budget for the Jordan's Principle Family Class and the Trout Family Class collectively is the fixed amount of $2.0 billion dollars ("**Jordan's Principle and Trout Family Budget**"). There will be no reallocation to these classes of any surpluses or revenues.

6.10 Exceptional Early Payment of Compensation Funds

1) Notwithstanding Article 6.01(4), the Administrator may exceptionally approve the payment of compensation to a Claimant who has not reached the Age of Majority in accordance with this Article.

2) An individual under the Age of Majority may be eligible to receive an amount of compensation to fund or reimburse the cost of a life-changing or end-of-life wish experience or needs (the "**Exceptional Early Payment**"), if they provide Supporting Documentation establishing that:

   (a) they meet the requirements, other than age, to be an Approved Removed Child Class Member or an Approved Jordan's Principle Class Member; and

   (b) they are suffering from a terminal or severe degenerative life-threatening condition that has placed their life in jeopardy.

3) An individual who establishes eligibility for an Exceptional Early Payment in accordance with this Article must provide reasonable proof of a chosen life-changing or end-of-life wish experience and the approximate cost of that experience.

4) The Administrator will assess a Claimant's eligibility for an Exceptional Early Payment to fund or reimburse the cost in an amount up to, but no more than $40,000.

5) The Administrator will determine the Claim for an Exceptional Early Payment in the best interests of the Child and on an expedited basis commensurate with the Child's circumstances. The Administrator will require such documentation in good faith as is required to assess:

   (a) the Claimant's eligibility;

   (b) the Claimant's terminal or severe degenerative life-threatening condition;

   (c) the validity of the Claimant's life-changing or end-of-life experience request;

   (d) the age and circumstances of the Child and whether the Child needs any protection; and

   (e) the approximate cost of the life-changing or end-of-life wish experience.

6) Where a Class Member has received an Exceptional Early Payment and later submits a Claim for compensation, the amounts paid as Exceptional Early Payment will be deducted from that Claimant's total entitlement, if any, to compensation under this Agreement.

6.11 Priorities in Distribution of Surplus

1) On the advice of the Actuary or a similar advisor, the Settlement Implementation Committee may determine at any time or from time to time that there are unallocated or surplus funds on the Settlement Funds in the Trust Fund (a "**Trust Fund Surplus**").

2) The Settlement Implementation Committee may propose that a Trust Fund Surplus be designated and that there be a distribution of any Trust Fund Surplus for the benefit of the Class Members in accordance with this Article and the Claims Process, subject to the approval of the Court.

3) The Settlement Implementation Committee, having proposed that a surplus be designated and that there be a distribution of such Trust Fund Surplus, will bring motions before the Court for approval of the designation of a surplus and the proposed distribution of any Trust Fund Surplus. The designation and any allocation of a Trust Fund Surplus will be effective on the later of:

   (a) the day following the last day on which an appeal or a motion seeking leave to appeal of either of the approval orders in respect of such designation and allocation may be brought under the *Federal Courts Rules*, SOR /98-106; and

   (b) the date on which the last of any appeals of either of the approval orders in respect of such designation and allocation is finally determined.

4) In no event will any amount from the Trust Fund, including any Trust Fund Surplus, revert to Canada, and Canada will not be an eligible recipient of any Trust Fund Surplus.

5) In allocating the Trust Fund Surplus, the Settlement Implementation Committee will have due regard to the order of priorities set out below:

    i) Approved Removed Child Class Members;

    ii) Approved Jordan's Principle Class Members;

    iii) Approved Trout Child Class Members;

    iv) Approved Essential Service Class Members;

    v) Approved Removed Child Family Class Members.

6.12 Reallocation of Budgets

1) The Settlement Implementation Committee will adopt the Budgets with respect to compensation allocated to different classes in accordance with the amounts listed in Article 6 and Article 7.

2) The Settlement Implementation Committee will arrange for an actuarial review of the Trust Fund to be conducted at least once every three (3) years and more frequently if the Settlement Implementation Committee considers it appropriate. The actuarial review will be conducted by the Actuary in accordance with accepted actuarial practice in Canada. The actuarial review will determine:

    (a) the value of the assets available to meet all outstanding and future expected Claims;

    (b) the present value of all outstanding and future expected Claims using where necessary such reasonable assumptions as determined by the Actuary to be appropriate;

    (c) an actuarial buffer to provide a reasonable margin of protection due to adverse deviations from the assumptions utilized; and

    (d) the actuarial surplus and/or the actuarial deficit of funds in a Budget.

3) If based on the Actuary's advice the total compensation to be paid to the number of approved Class Members within a class is, or is expected to be, below the Budget, the Settlement Implementation Committee may transfer some amount from that Budget to another Budget.

4) If more than one (1) Budget has a higher than estimated total compensation to be paid to the number of approved Class Members, the Settlement Implementation Committee may

make such transfer of funds in accordance with the following order of priorities, subject to Court approval:

i) Approved Removed Child Class Members;

ii) Approved Jordan's Principle Class Members;

iii) Approved Trout Child Class Members;

iv) Approved Essential Service Class Members;

v) Approved Removed Child Family Class Members.

6.13 Income on Trust Fund

Subject to Article 6.15 and Article 6.16, the Settlement Implementation Committee may allocate income earned by the Trust Fund to any class, in its discretion, in accordance with the following order of priorities, favouring those classes where higher than estimated total compensation to be paid to the approved Class Members exists:

i) Approved Removed Child Class Members;

ii) Approved Jordan's Principle Class Members;

iii) Approved Trout Child Class Members;

iv) Approved Essential Service Class Members;

v) Approved Removed Child Family Class Members.

6.14 Option to Invest Compensation Funds

The Administrator will provide payment to Class Members who have been approved for compensation within nine (9) months of the approval of the Class Member's Claim, but in all cases, only after taking the following steps:

(a) At least six (6) months prior to issuing payment, the Administrator will contact the Approved Class Member to ask whether the Class Member wishes to direct a portion or all of the amount to which the Class Member is entitled to an investment vehicle.

(b) The form of notice to the Class Member will be determined by the Settlement Implementation Committee.

(c) If the Class Member indicates their desire that a certain amount be invested, the funds will be held or directed to an account or investment instrument to which the trustee is directed to send the payment by the Claimant.

(d) Once the Class Member's investment account is established, the fees, costs and taxes payable on the investment capital or returns will be borne by the Class Member's individual investment, as applicable.

6.15 Interest Payments to Certain Child Class Members

1) To facilitate the adjustment of compensation for the time value of money, the Settlement Implementation Committee, upon the advice of the Investment Committee and the Actuary will create an interest reserve fund, intended to ensure payment of 1.75 per cent annualized simple interest upon the Base Compensation amount payable in respect of the CHRT Interest Accrual Period ("**Interest Reserve Fund**").

2) The following Class Members are entitled to receive interest pursuant to this Article:

   (a) Approved Removed Child Class Members who were placed off-Reserve with non-Family during the CHRT Interest Accrual Period;

   (b) Approved Kith Child Class Members; and

   (c) Approved Jordan's Principle Class Members.

3) The entitlement of an Approved Removed Child Class Member, an Approved Kith Child Class Member, or an Approved Jordan's Principle Class Member to receive interest from the Interest Reserve Fund will commence on the 1st day of the yearly quarter following their removal or following the date on which the Child faced a Delay, Denial or Service Gap with respect to an Essential Service that was the subject of a Confirmed Need for the Child and runs for the balance of the CHRT Interest Accrual Period.

4) The Interest Reserve Fund will have an initial Budget of $1 billion.

5) The Actuary will calculate expected returns on the Settlement Funds from time to time and will recommend to the Settlement Implementation Committee additions to or transfers from the Interest Reserve Fund.

6.16 Income generated above the Interest Reserve Fund

1) The Settlement Implementation Committee may allocate any income earned on the Settlement Funds above the amount guaranteed by the Interest Reserve Fund, upon the advice of the Investment Committee and the Actuary, in accordance with Article 6.13 and Article 6.16.

2) The allocation of income generated above the Interest Reserve Fund will be distributed in accordance with the following priorities:

   (a) The endowment of the sum of $50 million to the Cy-près Fund pursuant to Article 8.02(1); then

(b) Approved Removed Child Family Class Members of Children placed off-Reserve with non-Family, Approved Kith Family Class Members, and Approved Jordan's Principle Family Class Members during the CHRT Interest Accrual Period, up to 1.75 per cent simple annualized interest from the date of the accrual of interest during the CHRT Interest Accrual Period; then

(c) Approved Removed Child Class Members other than those listed in Article 6.15(2)(a); then

(d) Approved Jordan's Principle Class Members; then

(e) Approved Trout Child Class Members; then

(f) Approved Essential Service Class Members; then

(g) Other Approved Removed Child Family Class Members; then

(h) Approved Trout Family Class Members.

3) For clarity, the discretion granted to the Settlement Implementation Committee in this Article is in addition to, and does not derogate from, the discretion afforded to the Settlement Implementation Committee under Article 6.13.

6.17 Adjustment for Time Value of Compensation Money

The compensation payable to an Approved Removed Child Class Member or an Approved Jordan's Principle Class Member who has not reached the Age of Majority by delivery of the notice of approval of settlement may be adjusted having regard to the period of time that passes before the Class Member reaches the Age of Majority. The Settlement Implementation Committee, upon the advice of the Investment Committee and the Actuary, will determine a consistent method for calculating the adjustment subject to the Court's approval.

ARTICLE 7 – KITH CHILD CLASS AND KITH FAMILY CLASS

7.01 Governing Principles

1) The Plaintiffs will design a Claims Process with the goal of minimising the risk of causing trauma to Class Members.

2) No member of the Kith Child Class will be required to submit to an interview, examination or other form of *viva voce* evidence taking.

3) The Plaintiffs will agree to require fair and culturally appropriate Supporting Documentation in accordance with this Agreement tailored to the specific circumstances of the Kith Child Class and Kith Family Class for the purposes of the Claims Process.

4) A Kith Child Class Member may claim compensation starting two years before they reach the Age of Majority, provided that no compensation is paid to that Class Member until after the Age of Majority.

5) Compensation under this Agreement will take the form of either direct payment to eligible Class Members, or eligible estates of deceased Class Members, who have claimed through the Claims Process and been approved by the Administrator or indirect benefit to the Class through the Cy-près Fund.

6) A Class Member who qualifies for compensation as a member of more than one class under this Agreement will receive the higher amount for which the Class Member qualifies amongst the applicable classes, and compensation under the classes will not be combined.

7) The Kith Child Class and the Kith Family Class will be the subject of a separately designed compensation and verification process in the Claims Process in accordance with Article 7.

8) The following principles will apply to the development of the Claims Process relating to the Kith Child Class:

    (a) The records related to the Kith Child Class, Kith Placements, Kith Caregivers, and Kith Agreements differ as between Child Welfare Authorities, provinces and regions, and such records are of a nature that necessitates unique evidentiary requirements in order to verify Claims and safeguard the integrity of the Claims Process. As such, the payment of compensation to the Kith Child Class will take place under a stream within the Claims Process that is independent of the other classes, in particular the Removed Child Class, to be developed pursuant to this Article.

    (b) The Parties and the Administrator will develop the Claims Process dedicated to the Kith Child Class with the participation of the Caring Society, and they will collectively take into account the views of and guidance from youth in care and youth formerly in care, as well as Child Welfare Authorities, to the extent that such views are applicable and in the best interests of the Class.

    (c) If required with respect to a Claim, verification should take place through the examination of personal records relating to the specific Child within the Child Welfare Information through the engagement of Child Welfare Authorities and/or Child Welfare Records Technicians.

(d) To the extent that some Claimants may be Children or individuals with varying accessibility needs at the time of submitting their Claims pursuant to this Article, the wellbeing and best interests of the Child will be a paramount consideration in the design of the Claims Process relating to such Kith Child Class Members.

7.02 Compensation to Kith Child Class

1) An Approved Kith Child Class Member will be entitled to receive Base Compensation of $40,000.

2) No Enhancement Payment applies to the Kith Child Class.

3) The Administrator will approve a Claimant as a Kith Child Class Member only if the Claimant has substantiated, or the Administrator has been able to otherwise verify, all of the following elements:

   (a) the First Nations Child was Ordinarily Resident on Reserve immediately before the Kith Placement;

   (b) the Child was placed with a Kith Caregiver during the Removed Child Class Period;

   (c) the Kith Caregiver lived off-Reserve, meaning the Kith Placement was off-Reserve; and

   (d) the Kith Placement occurred during a Child Welfare Authority involvement.

4) The Supporting Documentation for the Kith Child Class may incorporate the following examples, but only if such Supporting Documentation establishes all the required elements in Article 7.02(3):

   (a) a Kith Placement Agreement, establishing the required elements in Article 7.02(3), and other Supporting Documentation as may be required in the Claims Process;

   (b) statutory declarations from the Child Welfare Authority involved in the Claimant's Kith Placement, establishing the required elements in Article 7.02(3), and other Supporting Documentation as may be required in the Claims Process; or

   (c) other child-specific evidence establishing the required elements in Article 7.02(3), such as the individual to whom child-specific tax benefits were paid during the period in question, school records, passport application information, contact information from a doctor's file, records related to treaty payments, which options will be further defined and developed as part of the Claims Process.

5) The Budget for the Kith Child Class is the fixed amount of $600 million in compensation under this Agreement. There will be no reallocation to this class of any surpluses or revenues.

7.03 Kith Family Class

1) The Caregiving Parent(s) or, in the absence of Caregiving Parents, the Caregiving Grandparent(s) of an Approved Kith Child Class Member who was in a Kith Placement as of January 1, 2006 or between January 1, 2006 and March 31, 2022 may receive compensation under this Agreement.

2) A Kith Family Class Member who has Abused an eligible Child is not eligible for compensation in relation to that Child.

3) The Parties have budgeted the Base Compensation for an Approved Kith Family Class Member to be $40,000.

4) No Enhancement Payment applies to the Kith Family Class.

5) The Base Compensation of a Kith Family Class Member will not be multiplied based on the number of Kith Placements for a Child.

6) For the purposes of this Article and the Kith Family Class, a Stepparent is not considered a Caregiving Parent or a Caregiving Grandparent and is accordingly not eligible for compensation under this Article.

7) A maximum compensation amount of two Base Compensation payments per Child among Caregiving Parents or Caregiving Grandparents of a Child, regardless of number of Kith Placements, may be distributed under this Agreement, if otherwise eligible.

8) Where there was more than one Kith Placement regarding a Child, the Caregiving Parent or the Caregiving Grandparent in the earlier Kith Placement will take priority in receiving compensation. If the temporal order of such Kith Placements cannot be determined or is not determinative, the following priorities apply:

    (a) Category A: Caregiving Parents; then

    (b) Category B: Caregiving Grandparents.

9) The Administrator may only approve a Caregiving Parent or Caregiving Grandparent in relation to an already Approved Kith Child Class Member.

10) In the event of multiple Claims by more than two putative Caregiving Parents or Caregiving Grandparents, the Administrator may require further information and proof from those Claimants, but without the direct involvement of the affected Child, to

substantiate who, if any, amongst such Claimants met the definition of a Caregiving Parent or Caregiving Grandparent under this Agreement.

11) The final quantum of Base Compensation to be paid to each Approved Kith Family Class Member will be determined by the Settlement Implementation Committee in consultation with the Actuary, having regard to the number of Approved Kith Family Class Members and the Budget for the Kith Family Class under this Article, subject to Court approval.

12) Payments to Approved Kith Family Class Members who may be entitled to receive compensation under this Article before the expiration of the Claims Deadline may be made in installments in order to ensure sufficient funds exist to pay like amounts to like Claimants regardless of when they submitted their Claim.

7.04 Multiplication of Base Compensation for Certain Kith Family Class Members

1) An Approved Kith Family Class Member may receive multiple Base Compensation payments if and where the following conditions are met:

   (a) more than one Child of the Caregiving Parent or the Caregiving Grandparent, as the case may be, has been approved by the Administrator, or the Third-Party Assessor on appeal, as Approved Kith Child Class Members in a Kith Placement between January 1, 2006 and March 31, 2022;

   (b) the multiplication of the Base Compensation will correspond to the number of such Approved Kith Child Class Members who have been approved for compensation; and

   (c) the Approved Kith Family Class Member has established that they are a Caregiving Parent or Caregiving Grandparent to each of the such Approved Kith Child Class Member through Supporting Documentation.

2) The Budget for the Kith Family Class is the fixed amount of $702 million in compensation under this Agreement. There will be no reallocation to this class of any surpluses or revenues.

ARTICLE 8 – CY-PRÈS FUND

8.01 Governing Principles

1) The Plaintiffs will design a Cy-près Fund with the assistance of experts, subject to the Court's approval.

2) The Cy-près Fund's purposes are to benefit:

   a) Class Members who do not receive direct payment under this Agreement; and

b) Approved Jordan's Principle Class Members who require post-majority services.

3) The Cy-près Fund will be First Nations led.

4) There will be an annual report of the operation, including distribution, of the Cy-près Fund, which will be made publicly available. A copy of the annual report will also be provided to the Settlement Implementation Committee.

8.02 Support to Benefit Class Members Who Do Not Receive Direct Compensation

1) Within one year after the Court's approval of the Cy-près Fund pursuant to Article 8.01(1) (the "**General Fund**"), the Trustee will endow the trust entity administering the General Fund with $50,000,000 from the Trust Fund, to be paid from the income generated on the Settlement Funds pursuant to Article 6.16(2)(a).

2) The objective of the General Fund is to provide culturally sensitive and trauma-informed supports to the Class, including the following:

(a) Establish a fund, foundation or other similar vehicle whose leadership may include First Nations youth and children in care, formerly in care, their allies and those who experienced a Delay, Denial or Service Gap under Jordan's Principle, to offer grant-based supports to facilitate access to culture-based, community-based and healing-based programs, services and activities to Class Members and the Children of First Nations parents who experienced a Delay, Denial or Service Gap under Jordan's Principle.

i) Such grant-based supports may include funding the following:

(1) Family and community unification, reunification, connection and reconnection for youth in care and formerly in care:

i. facilitating First Nations youth in care and formerly in care to identify birth family and their First Nation, which may include accessing records or files, meeting family members or travelling to their First Nation;

ii. accessing holistic wellness supports for First Nations youth in care and formerly in care during the family and community reunification and reconnection process; and

iii. reducing the costs associated with travel and accommodations to visit community and family, including for First Nations youth in care and formerly in care, support person(s) or family members.

(2) Cultural access:

i. facilitating access to cultural programs, activities and supports, including: youth groups, ceremony, language, Elders and Knowledge Keepers, mentors, land-based activities, and culturally-based arts and recreation.

(3) Transition and Navigation supports:

i. Facilitating access for First Nations youth in care and formerly in care to transition supports for First Nations youth in care and formerly in care who are either not eligible for post-majority care and services under the reformed First Nations Child and Family Services Program or that are not covered elsewhere, in their transition to adulthood, including: safe and accessible housing, life skills and independent living, financial literacy, planning and services, continuing education, health and wellness supports.

ii. Facilitating access to navigational supports for Class Members and the children of First Nations parents who experienced a Delay, Denial or Service Gap under Jordan's Principle who are not eligible to receive post-majority services under Jordan's Principle or are not covered elsewhere.

iii. Facilitating access to a scholarship for the Jordan's Principle Class and the children of First Nations parents who experienced a Delay, Denial or Service Gap in the provision of services under Jordan's Principle. The scholarship will be designed to acknowledge the adverse effects associated with the experience of a Delay, Denial or Service Gap under Jordan's Principle.

(b) A National First Nations Youth In/From Care Network may also be established through the grants, or through the formation of a fund, foundation or similar organization, which may include funding an existing national network and existing regional networks. The networks would share best practices and updates, provide advocacy, discuss and make recommendations on policy. The structure, scope and membership of the networks is to be determined by First Nations Youth In/From Care.

8.03 Post-Majority Supports for Jordan's Principle

1) On the sixtieth (60^{th}) day following the Court's approval of the Cy-près Fund, the Trustee will transfer $90,000,000 from the Settlement Funds to the trust entity administering the Jordan's Principle Post-Majority Fund. The Jordan's Principle trust entity will administer the funds in accordance with this Article.

2) The Caring Society, with input from the Plaintiffs, will select the Jordan's Principle trust entity. Such entity will act in the best interests of the Jordan's Principle Post-Majority Fund Beneficiaries and in a manner that promotes public confidence.

3) The purpose of the Jordan's Principle Post-Majority Fund is to provide some additional supports to high needs Approved Jordan's Principle Class Members between the Age of Majority and such Class Members' 26th birthday necessary to ensure their personal dignity and well-being.

4) In cooperation with the Jordan's Principle trust entity, the Caring Society will have the following responsibilities in relation to the Jordan's Principle Post-Majority Fund:

    (a) designing the trust agreement reflecting the purpose of the Jordan's Principle Post-Majority Fund and the terms and conditions of same;

    (b) determining the eligibility criteria and process for accessing benefits under the Jordan's Principle Post-Majority Fund; and

    (c) receiving and reviewing an accounting from the Jordan's Principle trust entity on a quarterly basis.

5) Jordan's Principle Post-Majority Beneficiaries may access benefits under the Jordan's Principle Post-Majority Fund by making a request to the trust entity. If an Approved Jordan's Principle Class Member who is approaching or is past the Age of Majority contacts ISC through mechanisms for accessing Jordan's Principle, ISC will refer the Class Member to the trust entity. ISC will collaborate with the Caring Society and the Plaintiffs regarding public information that can be provided by ISC regarding the Jordan's Principle Post-Majority Fund.

6) Any income generated on the Jordan's Principle Post-Majority Fund which is not distributed to the Jordan's Principle Post-Majority Beneficiaries in any year will be accumulated in the Jordan's Principle Post-Majority Fund.

ARTICLE 9 – SUPPORTS TO CLASS IN CLAIMS PROCESS

1) The Parties will agree to culturally sensitive health, information, and other supports to be provided to Class Members in the Claims Process, as well as funding for health care professionals to deliver support to Class Members who suffer or may suffer trauma for the duration of the Claims Process, consistent with Schedule I, Framework for Supports for Claimants in Compensation Process, and the responsibilities of the Administrator in providing navigational and other supports under Article 3.02.

2) Canada will provide funding to the AFN in the amount of $2,550,000 to provide supports to First Nations Claimants for a five (5) year term beginning April 1, 2024, and ending March 31, 2029. This process will include administering a help desk with AFN line liaisons and providing culturally safe assistance to Claimants in completing relevant Claims Forms if not covered by the supports available to Class Members by the Administrator (the "**AFN Supports**"). By April 2028, the AFN may approach the Settlement Implementation Committee for an extension of the funding for the AFN Supports. Subject to the Settlement Implementation Committee's approval to an extension of the AFN Supports, Canada will provide further block funding to the AFN to continue the AFN Supports for a period agreeable to the AFN, the Settlement Implementation Committee, and Canada.

3) Canada will fund the enhancement of the Hope for Wellness Line to include training to their call operators and counsellors on the Actions and promote this service to Class Members as soon as possible and prior to the approval of the Settlement. The Parties will recommend that the Court will appoint a third-party Indigenous organization funded by Canada, to provide a culturally safe, youth-specific support line that would provide counselling services for youth and young adult class members and to refer to post-majority care services when appropriate.

4) Without limitation to the foregoing, Canada will pay for mental health, and cultural supports, navigators to promote communications and provide referrals to health services, help desk with AFN line liaisons, reasonable costs incurred by First Nations service providers in providing access to records to support Claimant eligibility from provinces, territories, and agencies, Child Welfare Records Technicians, and professional services (taxonomy and actuarial services), and reasonable fees relating to a structured settlement (if applicable) to be agreed. Canada will fund mental health and cultural supports based on evolving needs of the Class, with over half of the Class Members being adults expected to access compensation in the first five years, and transitioning to a focus on young adults in the remaining years of implementation of the Agreement, building on the existing suite of First Nations mental wellness services. Canada will work with the Parties to also adapt supports to include innovative, First Nations-led mental health and wellness initiatives.

5) The costs of supports pursuant to this Article are payable by Canada and will not be deducted from the Settlement Funds.

6) Canada will provide annual reports to the Settlement Implementation Committee on the health supports, trauma-informed mental supports set out in Schedule I, Framework for Supports for Claimants in Compensation Process.

ARTICLE 10 - EFFECT OF AGREEMENT

10.01 Releases

1) The Settlement Approval Order issued by the Court will declare that, except as otherwise agreed to in this Agreement and in consideration for Canada's obligations and liabilities under this Agreement, each Class Member or their Estate Executor, estate Claimant, or Personal Representative on behalf of such Individual Class Member or their estate (hereinafter collectively the "**Releasors**") has fully, finally and forever released Canada and its servants, agents, officers and employees, predecessors, successors, and assigns (hereinafter collectively the "**Releasees**"), from any and all actions, causes of action, claims, and demands of every nature or kind available, whether or not known or anticipated, which the Releasers had, now have or may in the future have against the Releasees in respect of the claims asserted or capable of being asserted in the Actions, including any claim with regard to the costs referred to under Article 12.02(3).

2) It is understood that Class Members retain their rights to make claims against third parties for the physical, sexual or emotional abuse they suffered, restricted to whatever liability such third party may have severally, not including any liability that the third party may have jointly or otherwise with Canada, such that the third party will have no basis to seek contribution, indemnity or relief over by way of equitable subrogation, declaratory relief or otherwise against Canada for the physical, sexual or emotional abuse they suffered. No compensation paid to a Class Member under this settlement will be imputed to payment for injuries suffered as a result of physical, sexual abuse or emotional abuse.

3) For greater certainty, each Releasor is deemed to agree that, if they make any claim or demand or take any action or proceeding against another person, persons or entity in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over, whether by statute, common law, or Quebec civil law, in relation to allegations and matters set out in the Actions, including for physical, sexual or emotional abuse they suffered while in care, the Releasor will expressly limit their claim so as to exclude any portion of Canada's responsibility, and in the event Canada is found to have any such liability, the Releasors will indemnify Canada to the full extent of any such liability including any liability as to costs.

4) Upon a final determination of a Claim made under and in accordance with the Claims Process, the Releasors are also deemed to fully and finally release the Parties, counsel for the Parties, Class Counsel, counsel for Canada, the Settlement Implementation Committee and its Members, the Administrator, and the Third-Party Assessor with respect to any claims that have arisen, arise or could arise out of the implementation of the Claims Process, including any claims relating to the calculation of compensation, the sufficiency of the compensation received, and the allocation and distribution of a Trust Fund Surplus.

10.02 Continuing Remedies

1) The Parties acknowledge and agree that, notwithstanding any provision of this Agreement, Class Members do not release, and specifically retain, their claims or causes of action for any breach by Canada of its ongoing obligations under this Agreement, including:

   (a) failing to pay the Settlement Funds in their entirety;

   (b) funding reasonable notice and other administration fees involved in carrying out this Agreement, including information and notice to the Class Members about certification, this Agreement, settlement approval, and the Claims Process, as well as third-party administration costs;

   (c) paying reasonable legal fees to Class Counsel, over and above the Settlement Funds;

   (d) communicating with provincial and territorial Deputy Ministers responsible for child and family services, health, and education, as well as other relevant Deputy Ministers regarding taxation, Children's Special Allowance, social assistance payments, post-majority care or other provincial/territorial benefits "claw backs" without affecting funding received through a Jordan's Principle request, whether pending or approved;

   (e) proposing a public apology by the Prime Minister;

   (f) working toward the intention of the Parties that the Settlement Funds, including any income earned on the Settlement Funds awaiting distribution, will be distributed to Class Members as compensation, as opposed to "income" subject to taxation; and

   (g) jointly seeking an order from the Tribunal declaring that the Compensation Orders are fully satisfied.

2) The Parties agree that, subject to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, the Parties will be entitled to seek relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement, without any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief allowed by law, this being in addition to damages and any other remedy to which the Parties may be entitled at law or in equity for any breach of this Agreement.

10.03 Canadian Income Tax and Social Benefits

1) Canada will make best efforts to ensure that any Class Member's entitlement to federal social benefits or social assistance benefits will not be negatively affected in any manner by the Class Member's receipt, directly or indirectly, of any payment in accordance with this Agreement, and that no such payment will be considered taxable income within the meaning of the *Income Tax Act*.

2) The Parties agree that the payments to Class Members, including payments of any income earned on the Settlement Funds, are in the nature of personal injury damages and are not taxable income and Canada will make best efforts to obtain a technical interpretation to the same effect from the Income Tax Rulings Directorate of the Canada Revenue Agency.

3) Upon approval of this Agreement by the Court, Canada will write to all provincial and territorial Deputy Ministers responsible for child and family services, health, and education, as well as other relevant Deputy Ministers, to encourage them to collaborate in:

   (a) exempting Class Member claims payouts under this Agreement from taxation, including payments of any income earned on the Settlement Funds, the Children's Special Allowance, social assistance payments, post-majority care or other provincial/territorial benefits "claw backs";

   (b) ensuring that receipt of any compensation under this Agreement will in no way affect funding received through a Jordan's Principle request, whether pending or approved; and

   (c) encouraging them to support Class Members during the term of the Agreement.

4) Canada will not in any way consider receipt of compensation under this Agreement as a factor in deciding any pending, approved or future requests pursuant to Jordan's Principle or with respect to individual entitlements under ISC programs where ISC makes a decision with respect to an individual's eligibility for funding.

ARTICLE 11 - IMPLEMENTATION OF THIS AGREEMENT

11.01 Settlement Approval Order

1) This Agreement is conditional upon the Tribunal confirming the full satisfaction of the Compensation Orders, as well as the approval by the Court of this Agreement.

2) Prior to seeking the Settlement Approval Order from the Court, the AFN and Canada will jointly seek an order from the Tribunal declaring that the Compensation Orders have been

fully satisfied. The Parties will take all reasonable steps to support the application before the Tribunal, including filing such evidence and submissions as may be required.

3) The AFN agrees to act as a lead applicant before the Tribunal in seeking the above order, and to take all reasonable steps to publicly promote and defend the Agreement.

4) The Representative Plaintiffs, or any of them, in the Consolidated Action and the Trout Action may seek interested party status and/or standing to make representations before, and to answer questions posed by, the Tribunal in respect of the satisfaction of the Compensation Orders, and Canada and the AFN consent to them obtaining such standing in a hearing.

5) The Parties will consent to the issuance of the Settlement Approval Order.

6) The Parties will take all reasonable measures to cooperate in requesting that the Court issue the Settlement Approval Order and related orders on notice of certification, Settlement Approval Hearing, and any other orders required for the implementation of this Agreement.

7) The Parties will schedule the Settlement Approval Hearing as soon as practicable considering the requirements of the Notice Plan, the decision required from the Tribunal and the Court's availability.

8) The Parties will consider seeking orders from provincial superior courts to obtain relevant data from provinces and territories should that become necessary and agree to cooperatively approach the provinces and territories to encourage their compliance.

9) The Parties will take all reasonable measures to cooperate in seeking federal, provincial and territorial privacy legislation exemptions and consents as may be needed to implement the Agreement.

11.02 Notice Plan

The Parties will seek approval from the Court of the Notice Plan as the means by which Class Members will be provided with notice pertaining to the Opt-Out Period and settlement approval.

ARTICLE 12 - SETTLEMENT IMPLEMENTATION COMMITTEE

12.01 Composition of Settlement Implementation Committee

1) A Settlement Implementation Committee will be formed in accordance with this Article, subject to approval by the Court.

2) The Settlement Implementation Committee will consist of five (5) members as follows:

(a) two First Nations members ("**Non-Counsel SIC Members**"); and

(b) three Counsel members ("**Counsel SIC Members**").

3) All Non-Counsel SIC Members and all Counsel SIC Members are subject to the Court's order appointing them as such.

4) No person will serve for more than two (2) five-year terms, consecutive or cumulative, as one of the Non-Counsel SIC Members and/or of the Counsel SIC Members.

5) The terms of the five members of the Settlement Implementation Committee will be staggered such that the end of their terms does not occur all at the same time. For that purpose, the first term of one (1) of the Non-Counsel SIC Members and one (1) of the Counsel SIC Members will not exceed three (3) years, which terms may be renewed for a subsequent term of five (5) years. The first term of the balance of the members of the Settlement Implementation Committee will be for five years.

6) The two Non-Counsel SIC Members will be First Nations individuals only, as defined in Article 1.01.

7) The two Non-Counsel SIC Members will be selected through a solicitation for applications conducted by the AFN Executive Committee.

8) For the first round of nominations prior to the establishment of the Settlement Implementation Committee, the AFN Executive Committee will recommend to the Court for approval two Non-Counsel SIC Members selected in accordance with this Article, one for an initial term of three years and one for an initial term of five years.

9) After the establishment of the Settlement Implementation Committee, the AFN Executive Committee will recommend to the Settlement Implementation Committee any necessary replacement Non-Counsel SIC Members as those positions become vacant from time to time under this Article for the purposes of seeking the Court's approval of the appointment of such members.

10) The three Counsel SIC Members will consist of one (1) lawyer appointed by Sotos LLP, one (1) lawyer appointed by Kugler Kandestin LLP, and one (1) lawyer appointed by the AFN Executive Committee.

11) For the first round of nominations prior to the establishment of the Settlement Implementation Committee, Sotos LLP, Kugler Kandestin LLP, and the AFN Executive Committee will each recommend one lawyer to the Court for approval in accordance with this Article. One of these three lawyers will be nominated for an initial term of three years and the other two for an initial term of five years in accordance with this Article. If Sotos LLP, Kugler Kandestin LLP, and the AFN Executive Committee cannot agree on which lawyer will be recommended to the Court for an initial term of three years, they will ask

the Court to select any one of the three recommended lawyers for a term of three years in the Court's full discretion.

12) After the establishment of the Settlement Implementation Committee, Sotos LLP, Kugler Kandestin LLP, and the AFN Executive Committee will recommend to the Settlement Implementation Committee the necessary number of replacement Counsel SIC Members separately for each of their respective counsel as those positions become vacant from time to time in accordance with this Article for the purposes of seeking the Court's approval of the appointment of such members.

13) A member of the Settlement Implementation Committee may be removed prior to the expiry of their term with a special majority vote of four (4) members of the Settlement Implementation Committee. Such a removal is not effective unless and until approved by the Court.

14) The Court may substitute any member of the Settlement Implementation Committee in accordance with this Article in the best interests of the Class.

15) A meeting of the Settlement Implementation Committee may be held if at least four (4) members are present. In making decisions under this Agreement, the Settlement Implementation Committee will make reasonable efforts to reach consensus. If consensus is not possible, the Settlement Implementation Committee will decide by majority vote unless specified otherwise in this Agreement.

16) If any member of the Settlement Implementation Committee believes that the majority of the Settlement Implementation Committee has taken a decision that is not in the best interests of the Class, that Member may refer the decision to confidential mediation in accordance with the ADR Chambers Mediation Rules. If the members of the Settlement Implementation Committee cannot agree on a mediator, they may ask the Court to appoint one. The reasonable costs of the mediation will be a disbursement of the Settlement Implementation Committee payable in accordance with Article 3.04. If the matter cannot be resolved at mediation, the matter may be referred to the Court for determination.

17) For the first two (2) years following the Claims Process Approval Date, the Settlement Implementation Committee will meet monthly, either in-person or virtually, and thereafter, the Settlement Implementation Committee will meet quarterly, unless the Settlement Implementation Committee believes that more frequent meetings are required. Notwithstanding this Article, the Settlement Implementation Committee may deal with administrative and urgent issues, if and when necessary.

18) The Settlement Implementation Committee, all Non-Counsel SIC Members, and all Counsel SIC Members will at all times act in their personal capacity and solely in the best interests of the Class, and not in the interests of any other party, stakeholder or entity.

19) In the event that either Sotos LLP or Kugler Kandestin LLP merges with another law firm, this Agreement will be binding on the successor firm.

20) If after the Claims Process Approval Date, Sotos LLP, Kugler Kandestin LLP or the AFN Executive Committee determine in their respective sole and unfettered discretion that they no longer need or want to nominate members to the Settlement Implementation Committee in accordance with this Article, they will advise the Settlement Implementation Committee in writing. In that event, the Court will determine a prospective replacement for such members in the best interests of the Class on the recommendation of the Settlement Implementation Committee.

12.02 Settlement Implementation Committee Fees

1) Canada's liability for the fees of Counsel SIC Members and any other counsel to whom work is delegated will be negotiated by the Parties by way of the process identified in Article 17, Legal Fees.

2) Counsel SIC Members may delegate the legal work reasonably necessary for the fulfillment of the Settlement Implementation Committee's responsibilities under this Agreement among Class Counsel or retain other counsel as Counsel SIC Members consider necessary.

3) Canada will pay a total of $750,000, separate and in addition to any other amounts in this Agreement to be paid at the direction of the AFN Executive Committee to fund an honorarium of $200 per hour to each of the Non-Counsel SIC Members for reasonable participation in the work of the Settlement Implementation Committee, up to a maximum of $1000 per day, subject to the Court's approval. The Settlement Implementation Committee may propose, and the Court may implement a change in the quantum of such honoraria from time to time.

12.03 Settlement Implementation Committee Responsibilities

1) In addition to matters specified elsewhere in this Agreement, the Settlement Implementation Committee's responsibilities will include the following:

   (a) monitoring the work of the Administrator and the Third-Party Assessor, and the Claims Process overall;

   (b) receiving and considering reports from the Administrator, including on administrative costs;

(c) engaging experienced practitioners as needed who are familiar with family and child welfare documents and records in each province and territory to assist with the work of the Administrator and the Third-Party Assessor, where necessary to substantiate allegations of Abuse, verify certain Claims where necessary, or conduct isolated audits of some Claims Forms where ISC data is insufficient or lacking;

(d) giving such process directions to the Administrator or the Third-Party Assessor as may be necessary in accordance with the mandate of the Settlement Implementation Committee and the provisions of this Agreement;

(e) proposing for the Court's approval such protocols as may be necessary for the implementation of this Agreement, including any amendments to the Claims Process and distribution protocol as may be necessary;

(f) addressing any other matter referred to the Settlement Implementation Committee by the Court;

(g) receiving, through the Investment Committee, and seeking Court approval on advice from the Actuary and investment experts on the investment of the Trust Fund;

(h) receiving a copy of the annual report of the Cy-près Fund and, if considered appropriate, communicating with the trustees of the Cy-près Fund;

(i) recommending to the Court any change of the Administrator;

(j) setting Terms of Reference for the Investment Committee regarding investment objectives and strategy (the "**Investment Committee Terms of Reference**") in accordance with the principles set out in Schedule G, Investment Committee Guiding Principles;

(k) engaging experts as reasonably needed including experts in First Nations data governance, trauma, community relations, health and social services, and the Actuary to assist with the Claims Process;

(l) receiving annual reports from Canada on the health supports, trauma-informed mental supports, and Claims Process supports provided to Class Members;

(m) providing an annual Settlement Implementation Report to the Court, which includes updates on the implementation of the Agreement, actuarial reporting on the Trust Fund and distribution, annual audited financial reporting, any issues with the Trust, any systemic issues in implementation and proposed or approved resolution to such issues, etc.; and

(n) providing the AFN Executive Committee with a concurrent copy of the annual Settlement Implementation Report, and ensuring that said report is posted on a public website.

2) The Settlement Implementation Committee may retain experts and consultants as reasonably required for the implementation of this Agreement. The fees and disbursements of such experts and consultants will be a disbursement of the Settlement Implementation Committee payable by Canada in accordance with Article 3.04.

3) The Settlement Implementation Committee may bring or respond to whatever motions or institute whatever proceedings it considers necessary to advance its responsibilities under this Agreement and the interests of Class Members.

12.04 Investment Committee

1) The Investment Committee will adhere to the Investment Committee Terms of Reference as set by the Settlement Implementation Committee.

2) The Investment Committee will be constituted of up to two (2) members that are not investment professionals but have relevant board experience regarding the management of funds and one (1) independent investment professional (the "**Investment Professional Member**").

3) The Investment Committee members will be nominated by the Settlement Implementation Committee to five (5) year renewable terms, subject to approval by the Court.

4) The reasonable fees of the Investment Committee, including the Investment Professional Member, will be payable by Canada to a maximum of four quarterly meetings per annum and will be subject to Court approval. The reasonable fees of any investment consultant retained by the Investment Committee will be payable by Canada, subject to Court Approval. Canada will not be responsible for the payment of fees for investment managers retained by the Investment Committee.

5) The Investment Committee will meet quarterly, or more frequently as required, during the first five (5) years following its establishment. In subsequent years, the Investment Committee will meet at least once annually, or more frequently if required and approved by the Settlement Implementation Committee. The Investment Committee will periodically, and no less than annually, review the viability of the investment strategy of the Trust Fund and submit such a review to the Settlement Implementation Committee.

ARTICLE 13 - OPTING OUT

13.01 Opting Out

A Class Member may Opt-Out of the Actions by:

(a) delivery to the Administrator of the Opt-Out Form; or

(b) after the Opt-Out Deadline, by individually obtaining leave of the Court to Opt-Out of the Actions if the Claimant was unable, as a result of physical or psychological illness or challenges, including homelessness or addiction, or other significant obstacles as found by the Court, to take steps to Opt-Out within the Opt-Out Deadline.

13.02 Automatic Exclusion for Individual Claims

A Class Member will be excluded from the Actions if the Class Member does not, before the expiry of the Opt-Out Deadline, discontinue a proceeding brought by the Class Member against Canada to the extent that the separate proceeding raises the common questions set out in the Certification Orders.

ARTICLE 14 - PAYMENTS FOR DECEASED INDIVIDUAL CLASS MEMBERS AND PERSONS UNDER DISABILITY

14.01 Persons Under Disability

If a Claimant who submitted a Claim to the Administrator within the Claims Deadline is or becomes a Person Under Disability prior to their receipt of compensation, the Personal Representative of the Claimant will be eligible to receive compensation on behalf of the Claimant for the sole benefit of the Claimant.

14.02 Approach to Compensation for Deceased Children

1) The estate's representative of a deceased Removed Child Class Member placed off-Reserve as of and after January 1, 2006, a deceased Kith Child Class Member, and a deceased Jordan's Principle Class Member, will be entitled to claim Base Compensation of $40,000 and interest and may be eligible to receive any applicable Enhancement Payments in accordance with this Agreement on behalf of the estate of the deceased Claimant.

2) The estate's representative of a deceased Removed Child Class Member (other than those in 14.02(1)), a deceased Essential Service Class Member, or a deceased Trout Child Class Member may be eligible for direct compensation and may be eligible to

receive any applicable Enhancement Payments in accordance with this Agreement on behalf of the estate of the deceased Claimant.

14.03 Approach to Compensation for Deceased Caregiving Parents and Caregiving Grandparents

1) A Claim may be made on behalf of a deceased Caregiving Parent or Caregiving Grandparent in relation to the following classes: Removed Child Family Class Members (of a Child placed off-Reserve with non-Family as of and after January 1, 2006), Kith Family Class Members, or Jordan's Principle Family Class Members.

2) Where a Claim is approved for a deceased Caregiving Parent or Caregiving Grandparent referred to in Article 14.03(1), Base Compensation of $40,000 and interest will be paid directly to the living Child or Children of the deceased Caregiving Parent or living grandchild or grandchildren of the deceased Caregiving Grandparent on a pro rata basis.

3) The estates of the Removed Child Family Class, other than those in Article 14.03(1) and the Trout Family Class under Article 6.09(3), are not eligible for compensation, unless a complete Claim was submitted by such a Class Member prior to death. Where a Claim was submitted by the deceased Claimant prior to death, compensation will be paid directly to the estate pursuant to Article 14.04 where a grant of authority has been made or in accordance with Article 14.05 where no grant of authority has been made.

14.04 Compensation if Deceased: Grant of Authority or the Like

1) This Article does not apply to the deceased Class Members identified in Article 14.03(1) and (2).

2) Where an Estate Executor or Estate Administrator of an Eligible Deceased Class Member has been appointed under the *Indian Act* or under the governing provincial or territorial legislation, the Estate Executor or Estate Administrator may submit a Claim for compensation in accordance with this Agreement.

3) A Claim made by an Eligible Deceased Class Member must include the following:

    (a) applicable Claims Form(s);

    (b) evidence that such Eligible Deceased Class Member is deceased and the date on which such Eligible Deceased Class Member died;

    (c) evidence in the following form identifying such representative as having the legal authority to receive compensation on behalf of the estate of the Eligible Deceased Class Member:

        i) if the claim to entitlement to receive compensation on behalf of an estate is based on a will or other testamentary instrument or on intestacy, a copy of a

grant of probate or a grant and letters testamentary or other document of like import, or a grant of letters of administration or other document of like import, issued by any court or authority in Canada; or

ii) if in Quebec, a notarial will, a probated holograph will, a probated or other document of like import made in the presence of witnesses in accordance with the *Civil Code of Quebec* and the *Indian Act*.

14.05 Compensation if Deceased: No Grant of Authority or the Like

1) This Article does not apply to deceased Class Members identified under Article 14.03(1) and (2).

2) For the purpose of this Article, "spouse" means either of two persons who:

(a) are legally married; or

(b) are not married, but:

i) have a common law relationship for a period of not less than one year, the time prescribed in accordance with the *Indian Act*, at the time of death; or

ii) have a relationship of some permanence if they are the parents of a child.

3) Except in the case of an estate of an Eligible Deceased Class Member where an eligible recipient is identified and otherwise eligible in accordance with Article 14.04, if a Claim is submitted to the Administrator on behalf of an Eligible Deceased Class Member without proof of a will or the appointment of an Estate Executor or Estate Administrator, the Administrator may, upon receiving Supporting Documentation, treat the Eligible Deceased Class Member's Claim in accordance with the priority level of heirs under the *Indian Act* in respect of distribution of property on intestacy as follows:

(a) The spouse of the Eligible Deceased Class Member at the time of death.

(b) Where the Eligible Deceased Class Member has no spouse, the child or children of the eligible Deceased Class Member. The compensation will be divided pro rata amongst all the children of the Eligible Deceased Class Member who are living at the time when the Claim is received by the Administrator.

(c) Where the Eligible Deceased Class Member has no spouse or child, the grandchildren of the Eligible Deceased Class Member. The compensation will be divided pro rata amongst all the grandchildren of the Eligible Deceased Class Member who are living at the time when the Claim is received by the Administrator.

(d) Where the Eligible Deceased Class Member has no spouse, child or grandchild, the parents of the Eligible Deceased Class Member. The compensation will be

divided pro rata between the parents of the Eligible Deceased Class Member who are alive when the Claim is received by the Administrator.

(e) Where an Eligible Deceased Class Member leaves no spouse, child, grandchild or parent, the sibling(s) of the Eligible Deceased Class Member. The compensation will be distributed equally among the siblings of the Eligible Deceased Class Member who are alive when the claim is received by the Administrator.

(f) Where the Eligible Deceased Class Member has no spouse, child, grandchild, parents or sibling(s), the grandparents of the Eligible Deceased Class Member. The compensation will be divided pro rata between the grandparents of the Eligible Deceased Class Member who are alive when the Claim is received by the Administrator.

4) Subject to sections 4(3) and 42 to 51 of the *Indian Act*, Canada, as represented by the Minister of Indigenous Services, may administer or appoint administrators for the estates of Eligible Deceased Class Members who are under Canada's jurisdiction and who have or are entitled to receive direct compensation under this Agreement.

5) Canada may consult with the Settlement Implementation Committee to utilize the existing ISC framework for the administration of the estates of Eligible Deceased Class Members consistent with the exercise of Ministerial discretion considering individual circumstances. Canada will conduct the administration process in a trauma-informed manner and with a view to ensuring that it is as expeditious, cost-effective, user-friendly, and culturally sensitive as possible. This may include:

(a) where Canada is advised that an Estate Executor or Estate Administrator has not already been appointed on behalf of the estate of an Eligible Deceased Class Member, Canada may appoint an Estate Administrator as needed who will act in accordance with their fiduciary and statutory duties, which may include submitting a Claim on behalf of such Class Member; and

(b) where Canada administers an estate of an Eligible Deceased Class Member, there will be no cost recovery against the estate for doing so and, except in exceptional circumstances, Canada will seek to minimize or eliminate any related third-party costs.

6) Subject to issues that may arise in individual cases, Canada may, but is not obligated to, exercise its discretion under the *Indian Act* to assume jurisdiction over the administration of the estates referred to above. Nothing in this Article should be taken to extend the jurisdiction under the *Indian Act* over the administration of estates.

7) A Caregiving Parent or Caregiving Grandparent who is excluded from compensation under Article 6.04(4) or Article 7.03(2) due to Abuse will not receive compensation from the estate of the deceased Child.

14.06 Release by the Estates of Eligible Deceased Class Members

Payments made in accordance with this Article will constitute a release by the estate of any Eligible Deceased Class Member, including on behalf of any beneficiaries of the estate of any Eligible Deceased Class Member who would otherwise be eligible to receive benefits.

14.07 Canada, Administrator, Class Counsel, Third-Party Assessor, Settlement Implementation Committee, and Investment Committee Held Harmless

Canada and its counsel, the Administrator, Class Counsel, AFN in-house counsel, the Third-Party Assessor, the Settlement Implementation Committee and its members, and the Investment Committee will be held harmless from any and all claims, counterclaims, suits, actions, causes of action, demands, damages, penalties, injuries, setoffs, judgments, debts, costs, expenses (including legal fees and expenses) or other liabilities of every character whatsoever by reason of or resulting from a payment or non-payment to or on behalf of an Eligible Deceased Class Member or a Person Under Disability, or to an Estate Executor, estate, or Personal Representative pursuant to this Agreement, and this Agreement will be a complete defence.

ARTICLE 15 - TRUSTEE AND TRUST

15.01 Trust

1) Subject to advice received by third-party professionals, the Parties agree to the following provisions.

2) No later than thirty (30) days following the appointment by the Court of the Trustee, Canada will settle a single trust (the "**Trust**") with ten dollars ($10), to be held by the Trustee in accordance with the terms of this Agreement.

3) The Plaintiffs will submit the initial investment strategy created with help from experts to the Court for approval together with this Agreement.

15.02 Trustee

The Court will appoint the Trustee to act as the trustee of the Trust, with such powers, rights, duties, and responsibilities as the Court orders. Without limiting the generality of the foregoing, the duties and responsibilities of the Trustee will include:

(a) to hold the Trust Fund;

(b) to invest the Settlement Funds in accordance with the Statement of Investment Policies and Procedures as instructed by the Investment Committee, having regard to the best interests of Class Members and the ability of the Trust to meet its financial obligations, subject to the Court's ongoing supervision;

(c) upon instructions from the Administrator and approval of the Settlement Implementation Committee in accordance with the policies of the Settlement Implementation Committee, to provide such amounts from the Trust to the Administrator and any other person as described in Article 3.02, Article 4.02, Article 8, and Article 18(3), as required from time to time in order to give effect to any provision of this Agreement, including the payment of compensation to Approved Class Members in the Claims Process;

(d) to engage, upon consultation with and approval of the Settlement Implementation Committee, the services of professionals to assist in fulfilling the Trustee's duties;

(e) to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;

(f) to keep such books, records and accounts as are necessary or appropriate to document the assets held in the Trust, and each transaction of the Trust;

(g) to take all reasonable steps and actions required under the *Income Tax Act* as set out in the Agreement;

(h) to report to the Administrator, Canada and the Settlement Implementation Committee on a quarterly basis the assets held in the Trust at the end of each such quarter, or on an interim basis if so requested; and

(i) to do such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry on the activities of the Trust or to carry out the provisions of this Agreement.

15.03 Trustee Fees

Canada will pay the reasonable fees, disbursements, and other costs of the Trustee relating to the management of the Trust Fund.

15.04 Nature of the Trust

The Trust will be established for the following purposes:

(a) to acquire the Settlement Funds payable by Canada;

(b) to hold the Settlement Funds in the Trust;

(c) to pay compensation in accordance with this Agreement;

(d) to invest cash in investments in the best interests of Class Members, as provided in this Agreement; and

(e) to do such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry out the provisions of this Agreement.

15.05 Legal Entitlements

The legal ownership of the assets of the Trust, including the Trust Fund, and the right to conduct the activities of the Trust, including the activities with respect to the Trust Fund, will be, subject to the specific limitations and other terms contained herein, vested exclusively in the Trustee, and the Class Members or any other beneficiaries of the Trust have no right to compel or call for any partition, division or distribution of any of the assets of the Trust or a rendering of accounts. No Class Member or any other beneficiary of the Trust will have or is deemed to have any right of ownership in any of the assets of the Trust.

15.06 Records

The Trustee will keep such books, records, and accounts as are necessary or appropriate to document the assets of the Trust and each transaction of the Trust. Without limiting the generality of the foregoing, the Trustee will keep at its principal office records of all transactions of the Trust and a list of the assets held in trust, including each Fund, and a record of each Fund's account balance from time to time.

15.07 Quarterly Reporting

The Trustee will deliver to the Administrator, Canada, and the Settlement Implementation Committee, within thirty (30) days after the end of each calendar quarter, a quarterly report setting forth the assets held as at the end of such quarter in the Trust and each Fund (including the term, interest rate or yield and maturity date thereof) and a record of the Trust's account balance during such quarter.

15.08 Annual Reporting

1) The Auditors will deliver to the Administrator, the Trustee, Canada, the Settlement Implementation Committee, the AFN Executive Committee and the Court, within sixty (60) days after the end of each calendar year (the calendar year-end being the fiscal year-end for the Trust):

(a) the audited financial statements of the Trust for the most recently completed fiscal year, together with the report of the Auditors thereon;

(b) a report setting forth a summary of the assets held in trust as at the end of the fiscal year for each Fund and the disbursements made by the Trust during the preceding fiscal year; and

(c) the audited financial statements of the Administrator.

2) The Administrator will ensure that the documents in Article 15.08(1)(a)-(c) are posted on a public website.

15.09 Method of Payment

The Trustee will have sole discretion to determine whether any amount paid or payable out of the Trust is paid or payable out of the income of the Trust or the capital of the Trust.

15.10 Additions to Capital

Any income of the Trust not paid out in a fiscal year will at the end of such fiscal year be added to the capital of the Trust.

15.11 Tax Elections

For each taxation year of the Trust, the Trustee will file any available elections and designations under the *Income Tax Act* and equivalent provisions of the *Income Tax Act* of any province or territory and take any other reasonable steps such that the Trust and no other person is liable to taxation on the income of the Trust, including the filing of an election under the *Income Tax Act* and equivalent provisions of the *Income Tax Act* of any province or territory for each taxation year of the Trust and the amount to be specified under such election will be the maximum allowable under the *Income Tax Act* or the *Income Tax Act* of any province or territory, as the case may be.

15.12 Canadian Income Tax

1) Canada will make best efforts to exempt any income earned by the Trust from federal taxation, and Canada will take into account the measures that it took in similar circumstances for the class action settlements addressed in section 81 (1) (g.3) of the *Income Tax Act*.

2) The Parties agree that the payments to Class Members, including payments of any income earned on the Settlement Funds, are in the nature of personal injury damages and are not taxable income and Canada will make best efforts to obtain a technical interpretation to the same effect from the Income Tax Rulings Directorate of the Canada Revenue Agency.

ARTICLE 16 – AUDITORS

16.01 Appointment of Auditors

On the recommendation of the Settlement Implementation Committee, the Court will appoint Auditors with such powers, rights, duties and responsibilities as the Court directs. On the recommendation of the Parties, or of their own motion, the Court may replace the Auditors at any time. Without limiting the generality of the foregoing, the duties and responsibilities of the Auditors will include:

(a) to audit the accounts for the Trust in accordance with generally accepted auditing standards on an annual basis;

(b) to provide the reporting set out in Article 15.08;

(c) to audit the financial statements of the Administrator in relation to the administration of this Agreement; and

(d) to file the financial statements of the Trust together with the Auditors' report thereon with the Court and deliver a copy thereof to Canada, the Settlement Implementation Committee, the Administrator, and the Trustee within sixty (60) days after the end of each financial year of the Trust.

16.02 Payment of Auditors

Canada will pay the reasonable fees, disbursements, and other costs of the Auditors in accordance with Article 3.04, as approved by the Court.

ARTICLE 17 - LEGAL FEES

17.01 Class Counsel Fees

1) Canada will pay Class Counsel the amount approved by the Court, plus applicable taxes, in respect of their legal fees and disbursements for the prosecution of the Actions to the date of the Settlement Approval Hearing, together with advice to Class Members regarding the Agreement and Acceptance, over and above the Settlement Funds. Subject to Article 12.02(1), Canada will also pay the reasonable legal fees of Class Counsel for their work on or for the Settlement Implementation Committee and the Investment Committee. A disagreement between the Parties over legal fees will not prevent the Parties from signing this Agreement. Canada and Class Counsel will participate in mediation if they are unable to agree upon the legal fees, to be presided over by a mediator to be agreed upon by and between Canada and Class Counsel or, failing agreement, appointed by the Court. In the event that Canada and Class Counsel are not able to agree upon legal fees during mediation, fees will be subject to the approval of the

Court, subject to appeal. Canada will have standing to make submissions to the Court regarding such fees.

2) No such amounts will be deducted from the Settlement Funds.

3) Class Counsel will not charge individual Class Members any amounts for legal services rendered in accordance with this Agreement. Such assistance to Class Members will not be considered to constitute or be cause for a conflict.

17.02 Ongoing Legal Services

1) Following the Implementation Date, responsibility for representing the interests of the Class as a whole (as distinct from assisting a particular Class Member or Class Members, as reasonably requested) will pass from Class Counsel to the Settlement Implementation Committee, and Class Counsel will have no further obligations in that regard.

2) In addition to the legal services provided to the Settlement Implementation Committee in Article 12, Counsel SIC Members may also respond to legal inquiries from Class Members about this Agreement that are beyond the training and/or competence of the navigational support services provided by the Administrator. Legal fees for such services are subject to Article 12.02(1).

17.03 Ongoing Fees

1) The Settlement Implementation Committee will maintain appropriate records of payment, fees and disbursements for Ongoing Legal Services.

2) The Settlement Implementation Committee may submit the bills relating to Counsel SIC Members to Canada for payment on a monthly basis, subject to Article 12.02(1).

3) The Settlement Implementation Committee will seek approval of its accounts from the Court on an annual basis.

ARTICLE 18 - GENERAL DISPUTE RESOLUTION

1) Where a dispute arises regarding any right or obligation under this Agreement ("**Dispute**"), the parties to the Dispute will refer the Dispute to confidential mediation in accordance with the ADR Chambers Mediation Rules. If the parties to the Dispute cannot agree on a mediator, they may ask the Court to appoint one (the "**Dispute Resolution Process**").

2) If the Dispute cannot be resolved through the Dispute Resolution Process, it can be referred to the Court for determination.

3) The costs of dispute resolution amongst members of the Settlement Implementation Committee, in accordance with the Dispute Resolution Process, or by referral to the Court, may be paid out of the Trust Fund in circumstances where deemed appropriate by the mediator or the Court.

4) Where Canada is a party to a matter referred to the Dispute Resolution Process, the mediator will have the discretion to award costs of the mediation against any party.

5) For greater certainty, this Article will not apply to disputes regarding Claimants in the Claims Process, including eligibility for membership in the Class, extension of the Claims Deadline for an individual Class Member or compensation due to any Class Member.

ARTICLE 19 - TERMINATION AND OTHER CONDITIONS

19.01 Termination of Agreement

1) Except as set forth in Article 18.01(2), this Agreement will continue in full force and effect until all obligations under this Agreement are fulfilled and the Court orders that the Agreement has terminated.

2) Notwithstanding any other provision in the Agreement, the following provisions will survive the termination of this Agreement:

   (a) Article 10.01 – Releases

   (b) Article 21 – Confidentiality

   (c) Article 23 – Immunity

19.02 Amendments

Except as expressly provided in this Agreement, no amendment may be made to this Agreement unless agreed to by the Parties in writing, and if the Court has issued the Settlement Approval Order, then any amendment will only be effective once approved by the Court. A material amendment to the Schedules hereto will require the Court's approval.

19.03 Non-Reversion of Settlement Funds

No amount or earned interest that remains after the distribution of the Settlement Funds will revert to Canada. Such amounts will instead be further distributed in accordance with the distribution protocol designed and approved for the Claims Process.

19.04 No Assignment

1) No compensation payable, in whole or in part, under this Agreement to a Class Member can be assigned, charged, pledged, hypothecated and any such assignment, charge, pledge, or hypothecation is null and void except as expressly provided for in this Agreement.

2) Unless the Court orders otherwise pursuant to a protocol to be approved, no person may collect a fee or disbursement from a Claimant for completing Claims Forms or providing Supporting Documentation.

3) Except for directions made pursuant to Article 6.14, any payment to which a Claimant is entitled will solely be made to the Claimant, and not in accordance with any directions to the contrary, unless the Court has ordered otherwise.

4) Any payments in respect of a Deceased Class Member or a Person Under Disability will be made in accordance with Article 14.

5) In the absence of fraud, any amount paid pursuant to this Agreement is not refundable in the event that it is later determined that the Claimant was not entitled to receive or be paid all or part of the amount so paid, but the Claimant may be required to account for any amount that they were not entitled to receive against any future payments that they would otherwise be entitled to receive pursuant to this Agreement.

ARTICLE 20 – WARRANTIES AND REPRESENTATIONS ON SIZE OF THE CLASS

1) The Parties acknowledge that, in preparing the Joint Report, the Experts relied on data from ISC to determine the Estimated Removed Child Class Size. Both the Plaintiffs and Canada were aware that parts of this data came from third parties, was incomplete and, in some cases, inaccurate. The Parties, including Canada, took account of the nature of this data in entering into this Agreement.

2) Canada warrants and represents that it provided to the Experts all of the data in Canada's possession relating to the Estimated Removed Child Class Size. However, Canada does not represent or warrant the accuracy of the data it provided nor the accuracy of the Joint Report of the Experts.

ARTICLE 21 – CONFIDENTIALITY

21.01 Confidentiality

Any information provided, created, or obtained in the course of implementing this Agreement will be kept confidential and will not be used for any purpose other than this Agreement unless otherwise agreed by the Parties.

21.02 Destruction of Class Member Information and Records

1) Subject to Article 21.02(2), two (2) years after completing the payment of all compensation under this Agreement, the Administrator will destroy all Class Member information and documentation in its possession, unless a Class Member or their Estate Executor or estate Claimant specifically requests the return of such information within the two-year period. Upon receipt of such request, the Administrator will forward the Class Member information as directed. Before destroying any information or documentation in accordance with this Article, the Administrator will prepare an anonymized statistical analysis of the Class in accordance with the Claims Process.

2) Prior to the destruction of the records, the Administrator will create and provide to Canada a list showing the Approved Class Member's: (i) name, (ii) Indian registration number, (iii) Band or First Nation affiliation, (iv) birthdate, (v) class membership, and (vi) amount and date of payment with respect to each compensation payment made. Notwithstanding anything else in this Agreement, this list must be retained by Canada in strict confidence and can only be used in a legal proceeding or settlement where it is relevant to demonstrating that a Claimant received a payment under this Agreement.

3) The destruction of records in the possession or control of Canada is subject to the application of any relevant provincial or federal legislation such as the *Privacy Act*, the *Access to Information Act*, the *Personal Information Protection and Electronic Documents Act* and the *Library and Archives of Canada Act*.

21.03 Confidentiality of Negotiations

Save as may otherwise be agreed between the Parties, the undertaking of confidentiality as to the discussions and all communications, whether written or oral, made in and surrounding the negotiations leading to the AIP and this Agreement continues in force. The Parties expressly agree that the AIP and the materials and discussions related to it are inadmissible as evidence to determine the meaning and scope of this Agreement, which supersedes the AIP.

ARTICLE 22 – COOPERATION

22.01 Cooperation on Settlement Approval and Implementation

Upon execution of this Agreement, the Representative Plaintiffs in the Actions, the AFN, Class Counsel, and Canada will make best efforts to obtain approval of this Agreement by the Court and to support and facilitate participation of Class Members in all aspects of this Agreement. If this Agreement is not approved by the Court, the Parties will negotiate in good faith to attempt to cure any defects identified by the Court but will not be obligated to agree to any material amendment to the Agreement executed by the Parties.

22.02 Public Announcements

Upon the issuance of the Settlement Approval Order, the Parties will release a joint public statement announcing the settlement in a form to be agreed by the Parties and, at a mutually agreed time, will make public announcements in support of this Agreement. The Parties will continue to speak publicly in favour of the Agreement as reasonably requested by any Party.

22.03 Termination of Judicial Review Application and Appeal

1) Within five (5) business days of the Implementation Date, Canada and the AFN will file a Notice of Discontinuance with the Federal Court in relation to their respective judicial review applications of 2022 CHRT 41 on a without costs basis.

2) Within five (5) business days of the Implementation Date, Canada will file a Notice of Discontinuance with the Federal Court of Appeal for Court File No. A-290-21 on a without costs basis.

22.04 Training and Education

The Parties will ensure that the Administrator, members of the Settlement Implementation Committee, members of the Investment Committee, the Trustee, the Third-Party Assessor, and any other individuals responsible to act in the best interests of the Class Members receive First Nations specific cultural competency training and training regarding the history of colonialism including residential schools and this proceeding with a particular focus on the egregious impacts of systemic discrimination on children, youth, families and Nations. Training will also be provided on the CHRT Proceeding.

22.05 Involvement of the Caring Society

1) The Caring Society will have standing to make submissions on any applications brought for Court approval by the Settlement Implementation Committee or the Parties pertaining to the administration and implementation of this Agreement after the Settlement Approval

hearing, including approval of the Claims Process and distribution protocol to the extent that issues impact the rights of the following classes:

(a) Removed Child Class Members placed off-Reserve as of and after January 1, 2006, and Removed Child Family Class Members in relation to Children placed off-Reserve as of and after January 1, 2006, including deceased members of these classes;

(b) Kith Child Class Members and Kith Family Class Members, including deceased members of these classes; and

(c) Jordan's Principle Class Members and Jordan's Principle Family Class Members, including deceased members of these classes.

2) The Caring Society is entitled to notice and receipt of all applications brought in relation to matters in Article 22.05(1) in advance of any hearing before the Court in keeping with the timeline requirements under the *Federal Courts Rules*.

ARTICLE 23 – IMMUNITY

Canada and its counsel, Class Counsel, AFN and its in-house counsel, the Administrator, the Settlement Implementation Committee and its Members and counsel, the Investment Committee, and the Third-Party Assessor will be released from, be immune to, and be held harmless from any and all claims, counterclaims, suits, actions, causes of action, demands, damages, penalties, injuries, setoffs, judgments, debts, costs, expenses (including legal fees and expenses) or other liabilities of every character whatsoever by any reason, except fraud relating to the Actions and to this Agreement, and this Agreement will be a complete defence.

ARTICLE 24 – PUBLIC APOLOGY

Upon execution of this Agreement, Canada will propose to the Office of the Prime Minister that the Prime Minister make a public apology for the discriminatory conduct underlying the Class Members' claims and the past and ongoing harm it has caused.

ARTICLE 25 – COMPLETE AGREEMENT

1) This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and cancels and supersedes any prior or other understandings and agreements between or among the Parties with respect thereto, including the AIP. There

are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between or among the Parties with respect to the subject matter hereof other than as expressly set forth or referred to in this Agreement.

2) The Parties acknowledge that the Caring Society has entered into separate minutes of settlement with the AFN and Canada regarding the Compensation Orders.

[The remainder of this page is left intentionally blank. Signature pages follow.]

IN WITNESS WHEREOF, the Parties have each executed this Agreement with effect as of the Effective Date.

CANADA, as represented by the Attorney General of Canada

(Authorized signatory)

Attorney General of Canada

for the defendant in Moushoom Action, AFN Action and Trout Action

Print Name:

Position:

THE PLAINTIFFS in Moushoom Action and Trout Action, as represented by class counsel

BY:

(Authorized signatory)

Sotos LLP/Kugler Kandestin LLP/Miller Titerle + Co.

for the plaintiffs

Print Name:

Position:

THE PLAINTIFFS in AFN Action, as represented by class counsel

BY:

(Authorized signatory)

Nahwegahbow, Corbiere/Fasken LLP/Stuart Wuttke

for the plaintiffs

Print Name:

Position:

SCHEDULES

Schedule A: Order dated February 23, 2023 on Opt-Out Deadline

Federal Court Cour fédérale

Date: 20230223

Docket: T-402-19
T-141-20
T-1120-21

Ottawa, Ontario, February 23, 2023

PRESENT: The Honourable Madam Justice Aylen

Docket: T-402-19

BETWEEN:

XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

Docket: T-141-20

AND BETWEEN:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON by his Litigation Guardian, Carolyn Buffalo, CAROLYN BUFFALO, and DICK EUGENE JACKSON also known as RICHARD JACKSON

Plaintiffs

and

HIS MAJESTY THE KING
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

Docket: T-1120-21

AND BETWEEN:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER

UPON INFORMAL MOTION made by the Plaintiffs, in writing, for an order extending the deadline previously set by this Court for opting out of these actions for a further one hundred and eighty days (180) days;

CONSIDERING that the Defendant consents to the relief sought;

THIS COURT ORDERS that:

1. The period of time in which class members may opt-out of these actions is extended to August 23, 2023.

2. Class Counsel and the Administrator shall post this Order on the websites dedicated to these actions.

3. There shall be no costs of this motion.

"Mandy Aylen"
Judge

Schedule B: Order dated August 11, 2022 on Appointment of Administrator

Federal Court Cour fédérale

Date: 20220811

Docket: T-402-19
T-141-20
T-1120-21

Ottawa, Ontario, August 11, 2022

PRESENT: The Honourable Madam Justice Aylen

CLASS PROCEEDING

BETWEEN:

XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige) AND JONAVON JOSEPH MEAWASIGE

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

T-141-20

BETWEEN:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON (by his litigation guardian, Carolyn Buffalo), CAROLYN BUFFALO AND DICK EUGENE JACKSON also known as RICHARD JACKSON

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

T-1120-21

BETWEEN:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER

UPON MOTION by the Plaintiffs, heard at a special sitting of the Court on August 8, 2022, for:

(a) An order approving the proposed notice plan for the distribution of the Notices of Certification and Settlement Approval Hearing, substantially in the form appended as Schedule "A" to the Notice of Motion [Notice Plan];

(b) An order that Canada pay the reasonable costs of giving notice in accordance with the Notice Plan;

(c) An order appointing Deloitte LLP as the administrator for notice, opt-out and the claims implementation in the proposed settlement in these class proceedings;

(d) An order that Canada pay the reasonable costs and disbursements of the administrator in accordance with the terms of the proposed settlement agreement, including subject to Canada's right to dispute the reasonableness of such costs and disbursements; and

(e) Such further and other relief as this Honourable Court may deem just and appropriate;

CONSIDERING the Plaintiffs' motion record and the submissions of counsel for the parties at the hearing of the motion;

AND CONSIDERING that the Defendant consents to the relief sought;

AND CONSIDERING that the Court is satisfied that the Notice Plan meets the requirements of Rules 334.32 and 334.34 and shall constitute good and sufficient service upon class members of the certification of these proceedings and of the Settlement Approval Hearing;

AND CONSIDERING that the provision of notice to class members of any approval of the Settlement Agreement will be the subject of a future notice plan to be submitted to the Court for approval;

AND CONSIDERING that the Court is satisfied that the balance of the relief sought should be granted;

THIS COURT ORDERS that:

1. The Notices of Certification and Settlement Approval Hearing shall be delivered in the manner set out in the Notice Plan attached hereto as Schedule "A" commencing immediately upon the issuance of this Order and continuing until the commencement of the Settlement Approval Hearing.

2. The Defendant shall pay the reasonable costs of giving notice in accordance with the Notice Plan, including the costs of translation of the notices.

3. In the event that the proposed settlement agreement is approved, the notice plan for the distribution of the notice of approval of the proposed settlement shall be the subject of a future order of this Court.

4. Deloitte LLP is hereby appointed as the Administrator in the proposed settlement of these class proceedings.

5. The Defendant shall pay the reasonable costs and disbursements of the Administrator in accordance with the terms of the proposed settlement agreement, including subject to the Defendant's right to dispute the reasonableness of such costs and disbursements.

6. The Administrator shall, within ninety days of the date of this Order, provide the parties with a detailed estimate of the anticipated costs in an illustrative budget based on expected claims/services for the administration during the first year of the administration including the anticipated costs of case setup, monthly

overhead, claim intake, claim processing, support centre and distribution and communication/noticing.

7. There shall be no costs of this motion.

"Mandy Aylen"
Judge

SCHEDULE "A"

NOTICE PLAN

(Certification and Settlement Approval Hearing)

First Nations Child and Family Services, Jordan's Principle and Trout Essential Services

I. BACKGROUND

A. Parties

The parties to this matter are as follows:

(a) Xavier Moushoom, Jeremy Meawasige by his litigation guardian, Jonavon Joseph Meawasige, and Jonavon Joseph Meawasige (together, the "**Moushoom Plaintiffs**");

(b) Assembly of First Nations ("**AFN**"), Ashley Dawn Louise Bach, Karen Osachoff, Melissa Walterson, Noah Buffalo-Jackson by his litigation guardian, Carolyn Buffalo, Carolyn Buffalo, and Dick Eugene Jackson also known as Richard Jackson (together, the "**AFN Plaintiffs**");

(c) AFN and Zacheus Joseph Trout (together, the "**Trout Plaintiffs**"), and;

(d) Her Majesty the Queen in Right of Canada ("**Canada**") (collectively, "**Parties**").

B. Background of the litigation

The Moushoom Plaintiffs commenced a Federal Court class action against Canada over the discriminatory provision of child and family services and essential services to First Nations dating back to April 1, 1991. The AFN Plaintiffs subsequently commenced a similar action in the Federal Court. The Moushoom Plaintiffs and AFN Plaintiffs later agreed to advance the matter jointly and cooperatively in the best interests of the class.

The Federal Court ordered the consolidation of the claims in July 2021 ("**Consolidated Action**"). The Federal Court also ordered the separate prosecution of the claims relating to delays, denials or gaps in the provision of essential services between 1991 and 2007, and therefore the Trout Plaintiffs commenced an action in July 2021 ("**Trout Action**", and together with the Consolidated Action, "**Actions**").

The Federal Court certified the Consolidated Action on November 26, 2021, and the Trout Action on February 11, 2022.

C. The Class

The Actions and the Final Settlement Agreement affect several groups of people (*i.e.*, the class) as follows: The Removed Child Class, The Removed Child Family Class, The Jordan's Principle Class, The Jordan's Principle Family Class, The Trout Child Class, and The Trout Family Class. These classes were defined in the certification orders.

II. FACTORS AFFECTING NOTICE DISSEMINATION

This plan is designed to notify the class members of certification and the settlement approval hearing in a trauma-informed and culturally sensitive manner, and to provide them with the opportunity to see, read, or hear the notice of certification and settlement approval hearing, understand their rights, and respond if they choose to.

The following factors inform the dissemination method needed to achieve an appropriate notice effort: class size, location of class members, the literacy and education level of class members, and the languages spoken by class members.

A. Targeted Groups

i. First Nations Composition of the Class

The Actions solely concern First Nations people amongst the Indigenous population (not Inuit or Métis).[1] Given the publicity that has surrounded these class proceedings and the overlapping proceedings before the Canadian Human Rights Tribunal, many class members are expected to be aware of the proceedings.

ii. Class Size

The class is primarily a subset of the First Nations population in Canada. The 2016 Census[2] shows that 977,235 individuals identified as being First Nations.[3] The more recent 2021 Census relating to First Nations people is expected to be released on September 21, 2022.[4] Relevant information that becomes available in the 2021 Census will form part of any ongoing notice dissemination at that time, and for the next phase of notice in this proposed settlement further particularized below.

The Parties retained experts to estimate the size of the Removed Child Class. They estimated the size of the Removed Child Class to be 115,000 based on historical data on First Nations children whose out of home care was funded by Indigenous Services Canada between April 1991 and March 2022. The number of Removed Child Family Class members is unknown. The Office of the Parliamentary Budget Officer has estimated that on average there may be 1.5 parents or grandparents per First Nations child.[5]

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[1] With the exception of non-common law caregiving parents and caregiving grandparents, where a First Nations condition does not exist in the class definition and those class members may be from the general population or non-First Nations Indigenous persons.

[2] Statistics Canada. 2018. *Canada [Country]* (table). *Aboriginal Population Profile*. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/index.cfm?Lang=E (accessed July 24, 2022).

[3] Statistics Canada. 2018. *Canada [Country]* (table). Aboriginal Population Profile. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/index.cfm?Lang=E (accessed July 24, 2022).

[4] See Statistics Canada: https://www12.statcan.gc.ca/census-recensement/2021/ref/prodserv/release-diffusion-eng.cfm.

[5] Compensation for the delay and denial of services to First Nations children, February 23, 2021, page 7: <https://publications.gc.ca/collections/collection_2021/dpb-pbo/YN5-219-2021-eng.pdf>.

The information on the size of the Jordan's Principle Class and the Trout Child Class is far less precise because reliable data does not exist. One method of arriving at a rough estimate has been to extrapolate the number of individual service requests accepted under the current Jordan's Principle service delivery program to the past. An extrapolation of this form with a pre-COVID quarter of individual requests since Canada has been found to be compliant with Jordan's Principle yields an estimated Jordan's Principle Class size of between 58,385 and 69,728—with a conservatively high median class size estimate of 65,000 class members. On the same basis as above, the Trout Child Class can be roughly estimated at 104,000 for the period of 1991-2007, by the simple multiplication of the median Jordan's Principle Class size estimate by the longer time period of 1991-2007. The number of Jordan's Principle Family Class and Trout Family Class members is unknown.

iii. Place of Residence

Class members are located throughout Canada, on and off First Nations reserves, within First Nations communities including northern and remote communities, and within the non-Indigenous population. Those residing outside of a First Nation community are in rural and urban areas. A percentage of the class members are incarcerated or currently reside outside of Canada.

The 2016 census data reported that 334,385 First Nations people were living on reserves.[6] This compares to 642,845-First Nations people living outside reserves.[7]

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[6] Statistics Canada. 2018. *Canada [Country]* (table). Aboriginal Population Profile. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/index.cfm?Lang=E (accessed July 24, 2022).

[7] Statistics Canada. 2018. *Canada [Country]* (table). *Aboriginal Population Profile*. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018.nhttp://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/index.cfm?Lang=E (accessed July 24, 2022).

Ontario, British Columbia and Alberta are home to the largest First Nations populations in Canada, although most of the First Nations population in Canada is generally concentrated in the prairie provinces and the West Coast. The following chart shows the First Nations population in Canada, by province/territory:[8]

Location	First Nations
Canada	977,235
Ontario	236,680
Quebec	92,655
British Columbia	172,520
Alberta	136,585
Manitoba	130,505
Saskatchewan	114,570
Nova Scotia	25,830
New Brunswick	17,575
Newfoundland and Labrador	28,375
Prince Edward Island	1,875
Northwest Territories	13,185
Nunavut	190
Yukon	6,690

The population reporting of First Nations identity is prevalent both in urban centres and northern and remote communities. Metropolitan areas, such as Toronto, Winnipeg, Edmonton and Vancouver contain large populations of First Nations who live outside reserves: The following chart shows the number of First Nations residents of some metropolitan areas:[9]

Metropolitan Area	Population of First Nations
Toronto	27,805
Ottawa-Gatineau	17,790

[8] Statistics Canada. 2018. Canada [Country] (table). Aboriginal Population Profile. 2016 Census. Statistics Canada. Ottawa. Released Date modified October 2, 2020. http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/index.cfm?Lang=E (accessed July 24, 2022).

[9] Statistics Canada. 2018. *Canada [Ontario]* (table). Aboriginal Population Profile. 2016 Census. Statistics Canada. Ottawa. Released Date modified October 2, 2020. https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/hlt-fst/abo-aut/Table.cfm?Lang=Eng&T=103&S=102&O=D&RPP=25 (please note to toggle between provinces at the link in order to find the related data for the cities) (accessed July 26, 2022).

Sudbury	7,395
Thunder Bay	11,340
Hamilton	9,695
London	8,725
St. Catherines - Niagara	6, 815
Winnipeg	38,700
Edmonton	33,885
Calgary	17,955
Vancouver	35,765
Victoria	9,935
Prince George	7,050
Kelowna	5,235
Kamloops	6,340
Montreal	16,130
Quebec City	6,230
Saskatoon	15,775
Regina	13,150
Prince Albert	9,045
Halifax	7,955

iv. Anticipated Age of Class Members

Communications will be attentive to different experiences amongst class members to ensure awareness and understanding of all class members. The class members targeted for notice are mostly expected to be youths and young adults.

The experts retained by the Parties estimated that about 44,000 of the Removed Child Class were under the age of majority as of March 2022. Insofar as the Family of Removed Child Class members is concerned: parents and grandparents are expected to be almost exclusively adults. Siblings are expected to include both minors and adults. As such, the class is mostly young but includes several generations of First Nations: children, youth, parents, and grandparents.

The Jordan's Principle Class is likewise expected to include minors for a number of years given that the end date of that class affecting children is November 2, 2017. The Trout Child Class, which ended in 2007, is expected to consist almost entirely of adults. The age range of the

Jordan's Principle Family Class and the Trout Family Class is expected to be similar to the Removed Child Family Class.

In general terms, the 2016 Census showed a national trend toward a younger First Nations population. The following figure shows a breakdown of the age distribution. The age composition of the First Nations population in Canada is generally as follows:[10]

Age	First Nation Population
Total	977,230
0 to 24 years	456,530
25 to 34 years	136,920
35 to 44 years	116,625
45 to 54 years	117,945
55 to 64 years	87,135
65 years and over	62,075
65 to 74 years	43,610
75 years and over	18,460

v. Literacy and Education Level

Literacy and education levels are expected to vary widely amongst the class members. While a significant number of class members did not complete a high school diploma, some have received higher university education. This is further exacerbated by the wide age range of class members, which often interrelates with education levels.

Amongst the general population of First Nations people of 20 years or older, 196,305 individuals had not obtained a high school or equivalent level of education. Conversely, 603,305 individuals

[10] Statistics Canada, 2016 Census of Population, Statistics Canada Catalogue no. 98-400-X2016156. Ottawa. Released Date modified: June 19, 2019. (accessed July 24, 2022). https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/details/page.cfm?Lang=E&Geo1=PR&Code1=01&Data=Count&SearchText=Canada&SearchType=Begins&B1=All&C1=All&SEX_ID=1&AGE_ID=1&RESGEO_ID=1

had obtained that level of education. In percentage terms, this represents 32% and 68% of the First Nations population, respectively.[11]

vi. Languages

The majority of First Nations people (826,295 individuals) have identified English or French as their mother tongue, while approximately 166,120 individuals have identified a First Nations language as their mother tongue.[12] These numbers represent approximately 83% of the First Nations population and 17% of the population, respectively. Those First Nations who identified an Indigenous language as a mother tongue were more likely to reside on reserve, at 74%.[13]

The Federal Court has ordered that the long-form notice, short-form notice and the opt-out form in this case be translated into four First Nations languages: Cree, Dene, Mi'kmaq, and Ojibway. These four languages were spoken as the mother tongue of the largest number of First Nations. Cree has the largest number of speakers, at 89,550, with Ojibway, Dene, and Mi'kmaq, following at 34,835, 9,950, and 7,010, respectively.[14]

III. NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING

A. The two phases of notice in the settlement, and the focus of this notice plan

[11] Statistics Canada. 2018. Canada [Country] (table). Aboriginal Population Profile. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. (accessed July 26, 2022); Statistics Canada. 2018. Canada [Country] (table). Aboriginal Population Profile. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. (accessed July 26, 2022).

[12] Statistics Canada. 2018. Canada [Country] (table). Aboriginal Population Profile. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. (accessed July 26, 2022); Statistics Canada. 2018. Canada [Country] (table). Aboriginal Population Profile. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. (accessed July 26, 2022).

[13] Statistics Canada. 2018. Canada [Country] (table). Aboriginal Population Profile. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. (accessed July 26, 2022).

[14] Statistics Canada. 2018. Canada [Country] (table). Aboriginal Population Profile. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. (accessed July 26, 2022); Statistics Canada. 2018. Canada [Country] (table). Aboriginal Population Profile. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. (accessed July 26, 2022).

The Parties anticipate that notice will be given to the class members in two phases. **This plan only deals with the first phase of notice distribution**, further described below, while the distribution of notice regarding the process to claim compensation will be subject to a further plan specific to that purpose and subject to judicial approval at a future date. The two phases of notice are as follows:

(a) **Phase I**: This phase, which is the subject of this notice plan, disseminates the notices already approved by the Court. The approved notices adopt a trauma-informed, culturally and age-appropriate method of communication. They announce that the Actions have been certified pursuant to the Federal Court's certification orders. The notices advise class members of their legal rights as a result of certification, including the binding nature of the Actions on all class members who do not opt out of the settlement. Further, the notices advise of the procedures and deadlines whereby those who wish to opt-out of the settlement may do so. This phase also describes the proposed Final Settlement Agreement, the dates and location for the settlement approval hearing, where and how to access information about the settlement, as well as providing information on how to object, if desired. The Parties expect many class members to already be aware of the Actions and the proposed settlement, and for class members to have significant interest in the settlement approval hearing.

(b) **Phase II**: This phase will be the subject of a further notice plan and includes a more extensive notice plan that is in effect for a longer period. Notice in the second phase announces the approval of the settlement by the Federal Court

and outlines the settlement and its benefits. It also provides information on how to access the claims process. Given that there are multiple distinct classes, this phase will provide instructions and direct class members to dedicated support to assist in clarifying eligibility, filling out claim forms, and obtaining supporting documentation. The Phase II notice plan will be presented to the Court at a later date.

B. Phase I Notice Plan

i. Notice of Certification

In its order certifying the Consolidated Action on November 26, 2021, the Court stated: "The form of notice of certification, the manner of giving notice and all other related matters shall be determined by separate order(s) of the Court." The Federal Court's certification order in the Trout Action dated February 11, 2022 was to the same effect.

The Federal Court approved the short-form and long-form notice of certification and settlement approval hearing on June 24, 2022. This included a short-form notice, a long-form notice, and an opt-out form. The Federal Court's June 24, 2022 order and its schedules is enclosed as **Schedule "A"** to this notice plan.

In this phase of notice, class members are advised that the Federal Court has certified the Actions. The dissemination of this notice triggers the opt-out period and the opt-out right of the class members. The short-form notice and the long-form notice approved by the Federal Court provide accessible information to class members about their options, the implications of opting out of the Actions, and how they can opt out should they choose to.

Any class member who wishes to be excluded from the Actions needs to complete the opt-out form approved by the Federal Court on June 24, 2022 and submit the completed opt-out form to the administrator before the expiry of the six-month deadline from the date on which notice is disseminated to the class pursuant to this notice plan.

Class members who have already commenced a proceeding that raises the common questions of law or fact set out in the certification orders are excluded from the Actions and cannot benefit from the Final Settlement Agreement if those class members do not discontinue such individual proceedings before the opt-out deadline. Class members who do not opt out of the Actions will be bound by the results achieved in the Actions, including the terms of the Final Settlement Agreement if approved by the Federal Court.[15]

ii. Notice of Settlement Approval Hearing

The notices advise of the date that the court has set for the settlement approval hearing and provide specific information about the hearing in order to allow class members to attend in person, participate, or to file objections to the settlement in advance. In this case, class members will have virtual attendance options in order to maximize opportunity for class members across the country to participate in the settlement approval process.

Class members who wish to object to the settlement must send their written objections to the administrator so that the comments can be compiled and sent to the Federal Court in advance of the hearing. The Federal Court can only approve or deny the Final Settlement Agreement and cannot change the terms of the Final Settlement Agreement.

[15] Rule 344.21 of the *Federal Courts Rules*, SOR/98-106.

IV. NOTICE PLAN DELIVERY

The approved short-form and long-form notices direct class members to the extensive mental health and wellness supports that the Parties have negotiated as part of the Final Settlement Agreement. Those supports are summarized in "Schedule C: Framework for Supports for Claimants in Compensation Process" to the Final Settlement Agreement, which is enclosed hereto as **Schedule "B"**.

Given the vulnerability of many class members, notice must take into account that concepts such as opt-out may not be easily understandable to some class members and a real risk exists that such class members think they need to opt out in order to receive compensation under the Final Settlement Agreement. Therefore, the approved notices seek to explain the implications of opting out and the approval of the Final Settlement Agreement clearly and in plain language.

The distribution of notice in this phase is expected to start immediately upon approval by the Federal Court of this notice plan and the appointment of the proposed administrator, both of which are necessary in order to disseminate notice to the class.

The proposed method of disseminating Phase I notice includes four approaches described below. These approaches will enable Phase I notice to reach class members for the purposes of certification and settlement approval.

The notice plan for Phase II will be developed and submitted to the Court for approval at a later date.

A. Direct Communication with Class Members

During the course of this litigation, class counsel have maintained a website dedicated to this case where class members can obtain information, learn how to contact class counsel and register for updates. This website is: https://www.sotosclassactions.com/cases/first-nations-youth/. The

AFN has also created a website where class members can obtain information and register for updates: http://www.fnchildcompensation.ca/.

Through these websites, thousands of interested class members and organizations assisting class members have signed up for updates. The information provided includes name, email address, phone number (optional) and mailing address (optional). Further, when class members contact class counsel by phone and do not have an email, their information and mailing address is recorded and entered into the database.

This information enables direct communication with such class members by email or regular mail, where no email exists. This direct communication will include the short-form and long-form notice of certification and settlement approval under this notice plan.

Further, class counsel and the AFN have travelled and established communication channels with First Nations child and family service providers and First Nations leadership across Canada. Class counsel have presented on the Actions before First Nations child and family stakeholders in British Columbia and Quebec and attended related gatherings in Saskatchewan. The AFN consulted with First Nations leadership to provide updates of the status on the negotiations, the structure of the settlement, and the substance of the Final Settlement Agreement at approximately 50 such briefings across the country. Further meetings and presentations are planned and invitations to provide information sessions across communities are always welcomed.

B. Dissemination by the Assembly of First Nations

The AFN is a national advocacy organization that works to advance the collective aspirations of First Nations individuals and communities across Canada on matters of national or international nature and concern. The AFN hosts two Assemblies a year where mandates and directives for the

organization are established through resolutions directed and supported by elected Chiefs or proxies from member First Nations across Canada.

The AFN is guided by an Executive Committee consisting of an elected National Chief and Regional Chiefs from each province and territory. Representatives from five national councils (Knowledge Keepers, Youth, Veterans, 2SLGBTQQIA+ and Women) support and guide the decisions of the Executive Committee.

The AFN is thus connected to 634 First Nation communities in the country and will circulate the short-form notice and long-form notice to class members through those communications channels.

C. Dissemination through Social Media

Given that the targeted population is generally younger, the notices will be disseminated through targeted advertising on social media, including Facebook and Instagram. These media enable the selection of criteria that ensure that the notices are brought to the attention of individuals and organizations with an interest in the subject matter of this litigation through an efficient, relevant, and trauma-informed process.

Given that internet accessibility will vary across the regions and provinces, the use of social media will complement, where possible, the other dissemination approaches specified in this notice plan.

D. Circulation Through Indigenous Media

Notice will also be published in the following Indigenous newspapers/publications upon approval and may be repeated in some or all of these media during the opt-out period, which is six months from the date of dissemination of notice: First Nations Drum, The Windspeaker, Mi'kmaq Maliseet Nations News, APTN National News.

V. CONCLUSION

The notice plan for the Actions recognizes the scope and breadth of the class members, particularly in terms of age of the target, individual experiences, geographic distribution, language representation and familiarity with traditional and social media means of communication.

The notice plan seeks a proportionate, multi-faceted, culturally appropriate, relevant and trauma-informed approach to notice dissemination, backed by extensive mental health and wellbeing supports available to class members.

As ordered by the Federal Court, the notice plan is intended to commence at least one month prior to the settlement approval hearing date set by the court. As approved by the Federal Court, the notices provide sufficient information on certification and the Final Settlement Agreement in plain language so that class members understand how the Final Settlement Agreement may affect them. The approved notices also specify the terms upon which judicial approval is being sought, providing critical information on the settlement approval hearing itself in terms of logistics and class members' right to participate or file an objection to the proposed settlement.

Schedule C: Provincial and Territorial Ages of Majority

Province / Territory	Age of Majority	Governing Statute / Provision
Alberta	18 years old	"Every person attains the age of majority and ceases to be a minor on attaining the age of 18 years" Source: *Age of Majority Act,* RSA 2000, c A-6, s 1
British Columbia	19 years old	"From April 15, 1970, (a) a person reaches the age of majority on becoming age 19 instead of age 21, and (b) a person who on that date has reached age 19 but not 21 is deemed to have reached majority on that date" Source: *Age of Majority Act,* RSBC 1996, c 7, s 1(1)
Manitoba	18 years old	"Every person attains the age of majority, and ceases to be a minor, on attaining the age of 18 years" Source: *The Age of Majority Act*, CCSM 1988, c A-7, s 1
New Brunswick	19 years old	"A person attains the age of majority and ceases to be a minor on attaining the age of 19 years" Source: *Age of Majority Act,* RSNB 2011, c 103, s 1(1)
Newfoundland And Labrador	19 years old	"Every person who attains the age of 19 years (a) attains the age of majority; and (b) ceases to be a minor person" Source: *Age Of Majority Act,* SNL 1995, c A-4.2, s 2
Northwest Territories	19 years old	"Every person attains the age of majority, and majority ceases to be a minor, on attaining the age of 19 years" Source: *Age of Majority Act,* RSNWT 1988, c A-2, s 2

Nova Scotia	19 years old	"Every person attains the age of majority, and ceases to be a minor, on attaining the age of nineteen years" Source: *Age of Majority Act,* RSNS 1989, c 4, s 2(1)
Nunavut	19 years old	"Every person attains the age of majority, and ceases to be a minor, on attaining the age of 19 years" Source: *Age of Majority Act,* RSNWT (Nu) 1988, c A-2, s 2
Ontario	18 years old	"Every person attains the age of majority and ceases to be a minor on attaining the age of eighteen years" Source: *Age of Majority and Accountability Act,* RSO 1990, c A.7, s 1
Prince Edward Island	18 years old	"Every person attains the age of majority and ceases to be a minor on attaining the age of eighteen years" Source: *Age of Majority Act,* RSPEI 1988, c A-8, s 1
Quebec	18 years old	"Full age or the age of majority is 18 years. On attaining full age, a person ceases to be a minor and has the full exercise of all his civil rights" Source: *Civil Code of Quebec*, c CCQ-1991, c 64, s 153
Saskatchewan	18 years old	"Every person attains the age of majority and ceases to be a minor on attaining the age of eighteen years" Source: *Age of Majority Act*, RSS 1978, c A-6, s 2(1)
Yukon	19 years old	"Every person reaches the age of majority, and ceases to be a minor, on reaching the age of 19 years" Source: *Age of Majority Act,* RSY, c 2, s 1

Schedule D: Certification Order dated November 26, 2021 in Court File Nos. T-402-19 and T-141-20 (2021 FC 1225)

Federal Court Cour fédérale

Date: 20211126

Docket: T-402-19
T-141-20

Citation: 2021 FC 1225

Ottawa, Ontario, November 26, 2021

PRESENT: The Honourable Madam Justice Aylen

CLASS PROCEEDING

BETWEEN:

XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, JONAVON JOSEPH MEAWASIGE) AND JONAVON JOSEPH MEAWASIGE

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

BETWEEN:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON (by his litigation guardian, CAROLYN BUFFALO), CAROLYN BUFFALO AND DICK EUGENE JACKSON also known as RICHARD JACKSON

Plaintiffs

and

HER MAJESTY THE QUEEN

AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER AND REASONS

UPON MOTION by the Plaintiffs, on consent and determined in writing pursuant to Rule 369 of the *Federal Courts Rules*, for an order:

(a) Granting the Plaintiffs an extension of time to make this certification motion past the deadline in Rule 334.15(2)(b);

(b) Certifying this proceeding as a class proceeding and defining the class;

(C) Stating the nature of the claims made on behalf of the class and the relief sought by the class;

(d) Stipulating the common issues for trial;

(e) Appointing the Plaintiffs specified below as representative plaintiffs;

(f) Approving the litigation plan; and

(g) Other relief;

CONSIDERING the motion materials filed by the Plaintiffs;

CONSIDERING that the Defendant has advised that the Defendant consents in whole to the motion as filed;

CONSIDERING that the Court is satisfied, in the circumstances of this proceeding, that an extension of time should be granted to bring this certification motion past the deadline prescribed in Rule 334.15(2)(b);

CONSIDERING that while the Defendant's consent reduces the necessity for a rigorous approach to the issue of whether this proceeding should be certified as a class action, it does not relieve the Court of the duty to ensure that the requirements of Rule 334.16 for certification are met [see *Varley v Canada (Attorney General)*, 2021 FC 589];

CONSIDERING that Rule 334.16(1) of the *Federal Courts Rules* provides:

Subject to subsection (3), a judge shall, by order, certify a proceeding as a class proceeding if	Sous réserve du paragraphe (3), le juge autorise une instance comme recours collectif si les conditions suivantes sont réunies :
(a) the pleadings disclose a reasonable cause of action;	a) les actes de procédure révèlent une cause d'action valable;
(b) there is an identifiable class of two or more persons;	b) il existe un groupe identifiable formé d'au moins deux personnes;
(c) the claims of the class members raise common questions of law or fact, whether or not those common questions predominate over questions affecting only individual members;	c) les réclamations des membres du groupe soulèvent des points de droit ou de fait communs, que ceux-ci prédominent ou non sur ceux qui ne concernent qu'un membre;
(d) a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact; and	d) le recours collectif est le meilleur moyen de régler, de façon juste et efficace, les points de droit ou de fait communs;
(e) there is a representative plaintiff or applicant who	e) il existe un représentant demandeur qui :
(i) would fairly and adequately represent the interests of the class,	(i) représenterait de façon équitable et adéquate les intérêts du groupe,

(ii) has prepared a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members as to how the proceeding is progressing,	(ii) a élaboré un plan qui propose une méthode efficace pour poursuivre l'instance au nom du groupe et tenir les membres du groupe informés de son déroulement,
(iii) does not have, on the common questions of law or fact, an interest that is in conflict with the interests of other class members, and	(iii) n'a pas de conflit d'intérêts avec d'autres membres du groupe en ce qui concerne les points de droit ou de fait communs,
(iv) provides a summary of any agreements respecting fees and disbursements between the representative plaintiff or applicant and the solicitor of record.	(iv) communique un sommaire des conventions relatives aux honoraires et débours qui sont intervenues entre lui et l'avocat inscrit au dossier.

CONSIDERING that, pursuant to Rule 334.16(2), all relevant matters shall be considered in a determination of whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact, including whether: (a) the questions of law or fact common to the class members predominate over any questions affecting only individual members; (b) a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate proceedings; (c) the class proceeding would involve claims that are or have been the subject of any other proceeding; (d) other means of resolving the claims are less practical or less efficient; and (e) the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means;

CONSIDERING that:

(a) The conduct of the Crown at issue in this proposed class action proceeding, as set out in the Consolidated Statement of Claim, concerns two alleged forms of

discrimination against First Nations children: (i) the Crown's funding of child and family services for First Nations children and the incentive it has created to remove children from their homes; and (ii) the Crown's failure to comply with Jordan's Principles, a legal requirement that aims to prevent First Nations children from suffering gaps, delays, disruptions or denials in receiving necessary services and products contrary to their *Charter*-protected equality rights.

(b) As summarized by the Plaintiffs in their written representations, at its core, the Consolidated Statement of Claim alleges that:

(i) The Crown has knowingly underfunded child and family services for First Nations children living on Reserve and in the Yukon, and thereby prevented child welfare service agencies from providing adequate Prevention Services to First Nations children and families.

(ii) The Crown has underfunded Prevention Services to First Nations children and families living on Reserve and in the Yukon, while fully funding the costs of care for First Nations children who are removed from their homes and placed into out-of-home care, thereby creating a perverse incentive for First Nations child welfare service agencies to remove First Nations children living on Reserve and in the Yukon from their homes and place them in out-of-home care.

(iii) The removal of children from their homes caused severe and enduring trauma to those children and their families.

(iv) Not only does Jordan's Principle embody the Class Members' equality rights, the Crown has also admitted that Jordan's Principle is a "legal requirement" and thus an actionable wrong. However, the Crown has disregarded its obligations under Jordan's Principle and thereby denied crucial services and products to tens of thousands of First Nations children, causing compensable harm.

(v) The Crown's conduct is discriminatory, directed at Class Members because they were First Nations, and breached section 15(1) of the *Charter*, the Crown's fiduciary duties to First Nations and the standard of care at common and civil law.

(c) With respect to the first element of the certification analysis (namely, whether the pleading discloses a reasonable cause of action), the threshold is a low one. The question for the Court is whether it is plain and obvious that the causes of action are doomed to fail [see *Brake v Canada (Attorney General)*, 2019 FCA 274 at para 54]. Even without the Crown's consent, I am satisfied that the Plaintiffs have pleaded the necessary elements for each cause of action sufficient for purposes of this motion, such that the Consolidated Statement of Claim discloses a reasonable cause of action.

(d) With respect to the second element of the certification analysis (namely, whether there is an identifiable class of two or more persons), the test to be applied is whether the Plaintiffs have defined the class by reference to objective criteria such that a person can be identified to be a class member without reference to the merits

of the action [see *Hollick v Toronto (City of)*, 2001 SCC 68 at para 17]. I am satisfied that the proposed class definitions for the Removed Child Class, Jordan's Class and Family Class (as set out below) contain objective criteria and that inclusion in each class can be determined without reference to the merits of the action.

(e) With respect to the third element of the certification analysis (namely, whether the claims of the class members raise common questions of law or fact), as noted by the Federal Court of Appeal in *Wenham v Canada (Attorney General)*, 2018 FCA 199 at para 72, the task under this part of the certification determination is not to determine the common issues, but rather to assess whether the resolution of the issues is necessary to the resolution of each class member's claim. Specifically, the test is as follows:

> The commonality question should be approached purposively. The underlying question is whether allowing the suit to proceed as a representative one will avoid duplication of fact-finding or legal analysis. Thus an issue will be "common" only where its resolution is necessary to the resolution of each class member's claim. It is not essential that the class members be identically situated vis-à-vis the opposing party. Nor is it necessary that common issues predominate over non-common issues or that the resolution of the common issues would be determinative of each class member's claim. However, the class members' claims must share a substantial common ingredient to justify a class action. Determining whether the common issues justify a class action may require the court to examine the significant of the common issues in relation to individual issues. In doing so, the court should remember that it may not always be possible for a representative party to plead the claims of each class member with the same particularity as would be required in an individual suit. (*Western Canadian Shopping Centres*, above at para 39; see also *Vivendi Canada Inc. v. Dell'Aniello*, 2014 SCC 1, [2014] 1 S.C.R. 3 at paras 41 and 44-46.)

Having reviewed the common issues (as set out below), I am satisfied that the issues share a material and substantial common ingredient to the resolution of each class

member's claim. Moreover, I agree with the Plaintiff that the commonality of these issues is analogous to the commonality of similar issues in institutional abuse claims which have been certified as class actions (such as the Indian Residential Schools and the Sixties Scoop class action litigation). Accordingly, I find that the common issue element is satisfied.

(f) With respect to the fourth element of the certification analysis (namely, whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of fact and law), the preferability requirement has two concepts at its core: (i) whether the class proceeding would be a fair, efficient and manageable method of advancing the claim; and (ii) whether the class proceeding would be preferable to other reasonably available means of resolving the claims of class members. A determination of the preferability requirement requires an examination of the common issues in their context, taking into account the importance of the common issues in relation to the claim as a whole, and may be satisfied even where there are substantial individual issues [see *Brake*, *supra* at para 85; *Wenham*, *supra* at para 77 and *Hollick*, *supra* at paras 27-31]. The Court's consideration of this requirement must be conducted through the lens of the three principle goals of class actions, namely judicial economy, behaviour modification and access to justice [see *Brake*, *supra* at para 86, citing *AIC Limited v Fischer*, 2013 SCC 69 at para 22].

(g) Having considered the above-referenced principles and the factors set out in Rule 334.16(2), I am satisfied a class proceeding is the preferable procedure for the just

and efficient resolution of the common questions of fact and law. Given the systemic nature of the claims, the potential for significant barriers to access to justice for individual claimants and the Plaintiffs' stated concerns regarding the other means available for resolving the claims of class members, I am satisfied that the proposed class action would be a fair, efficient and manageable method of advancing the claims of the class members.

(h) With respect to the fifth element of the certification analysis (namely, whether there are appropriate proposed representatives), I am satisfied, having reviewed the affidavit evidence filed on the motion together with the detailed litigation plan, that the proposed representative plaintiffs (as set out below) meet the requirements of Rule 334.16(1)(e);

CONSIDERING that the Court is satisfied that all of the requirements for certification are met and that the requested relief should be granted;

THIS COURT ORDERS that:

1. The Plaintiffs are granted an extension of time, *nunc pro tunc*, to bring this certification motion past the deadline in Rule 334.15(2)(b) of the *Federal Courts Rules*.

2. For the purpose of this Order and in addition to definitions elsewhere in this Order, the following definitions apply and other terms in this Order have the same meaning as in the Consolidated Statement of Claim as filed on July 21, 2021:

(a) **"Class"** means the Removed Child Class, Jordan's Class and Family Class, collectively.

(b) **"Class Counsel"** means Fasken Martineau Dumoulin LLP, Kugler Kandestin LLP, Miller Titerle + Co., Nahwegahbow Corbiere and Sotos LLP.

(c) **"Class Members"** mean all persons who are members of the Class.

(d) **"Class Period"** means:

(i) For the Removed Child Class members and their corresponding Family Class members, the period of time beginning on April 1, 1991 and ending on the date of this Order; and

(ii) For the Jordan's Class members and their corresponding Family Class members, the period of time beginning on December 12, 2007 and ending on the date of this Order.

(e) **"Family Class"** means all persons who are brother, sister, mother, father, grandmother or grandfather of a member of the Removed Child Class and/or Jordan's Class.

(f) **"First Nation"** and **"First Nations"** means Indigenous peoples in Canada, including the Yukon and the Northwest Territories, who are neither Inuit nor Métis, and includes:

(i) Individuals who have Indian status pursuant to the *Indian Act*, R.S.C., 1985, c.I-5 [*Indian Act*];

(ii) Individuals who are entitled to be registered under section 6 of the *Indian Act* at the time of certification;

(iii) Individuals who met band membership requirements under sections 10-12 of the *Indian Act* and, in the case of the Removed Child Class members, have done so by the time of certification, such as where their respective First Nation community assumed control of its own membership by establishing membership rules and the individuals were found to meet the requirements under those membership rules and were included on the Band List; and

(iv) In the case of Jordan's Class members, individuals, other than those listed in sub-paragraphs (i)-(iii) above, recognized as citizens or members of their respective First Nations whether under agreement, treaties or First Nations' customs, traditions and laws.

(g) **"Jordan's Class"** means all First Nations individuals who were under the applicable provincial/territorial age of majority and who during the Class Period were denied a service or product, or whose receipt of a service or product was delayed or disrupted, on grounds, including but not limited to, lack of funding or lack of jurisdiction, or as a result of a jurisdictional dispute with another government or governmental department.

(h) **"Removed Child Class"** means all First Nations individuals who:

(i) Were under the applicable provincial/territorial age of majority at any time during the Class Period; and

(ii) Were taken into out-of-home care during the Class Period while they, or at least one of their parents, were ordinarily resident on a Reserve.

(i) **"Reserve"** means a tract of land, as defined under the *Indian Act*, the legal title to which is vested in the Crown and has been set apart for the use and benefit of an Indian band.

3. This proceeding is hereby certified as a class proceeding against the Defendant pursuant to Rule 334.16(1) of the *Federal Courts Rules*.

4. The Class shall consist of the Removed Child Class, Jordan's Class and Family Class, all as defined herein.

5. The nature of the claims asserted on behalf of the Class against the Defendant is constitutional, negligence and breach of fiduciary duty owed by the Crown to the Class.

6. The relief claimed by the Class includes damages, *Charter* damages, disgorgement, punitive damages and exemplary damages.

7. The following persons are appointed as representative plaintiffs:

(a) For the Removed Child Class: Xavier Moushoom, Ashley Dawn Louise Bach and Karen Osachoff;

(b) For the Jordan's Class: Jeremy Meawasige (by his litigation guardian, Jonavon Joseph Measwasige) and Noah Buffalo-Jackson (by his litigation guardian, Carolyn Buffalo); and

(c) For the Family Class: Xavier Moushoom, Jonavon Joseph Meawasige, Melissa Walterson, Carolyn Buffalo and Dick Eugene Jackson (also known as Richard Jackson),

all of whom are deemed to constitute adequate representative plaintiffs of the Class.

8. Class Counsel are hereby appointed as counsel for the Class.

9. The proceeding is certified on the basis of the following common issues:

(a) Did the Crown's conduct as alleged in the Consolidated Statement of Claim [Impugned Conduct] infringe the equality right of the Plaintiffs and Class Members under section 15(1) of the *Canadian Charter of Rights and Freedoms*? More specifically:

(i) Did the Impugned Conduct create a distinction based on the Class Members' race, or national or ethnic origin?

(ii) Was the distinction discriminatory?

(iii) Did the Impugned Conduct reinforce and exacerbate the Class Members' historical disadvantages?

(iv) If so, was the violation of section 15(1) of the *Charter* justified under section 1 of the *Charter*?

(v) Are *Charter* damages an appropriate remedy?

(b) Did the Crown owe the Plaintiffs and Class Members a common law duty of care?

(i) If so, did the Crown breach that duty of care?

(c) Did the Crown breach its obligations under the *Civil Code of Québec*? More specifically:

(i) Did the Crown commit fault or engage its civil liability?

(ii) Did the Impugned Conduct result in losses to the Plaintiffs and Class Members and if so, do such losses constitute injury to each of the Class Members?

(iii) Are Class Members entitled to claim damages for the moral and material damages arising from the foregoing?

(d) Did the Crown owe the Plaintiffs and Class Members a fiduciary duty?

(i) If so, did the Crown breach that duty?

(e) Can the amount of damages payable by the Crown be determined partially under Rule 334.28(1) of the *Federal Courts Rules* on an aggregate basis?

(i) If so, in what amount?

(f) Did the Crown obtain quantifiable monetary benefits from the Impugned Conduct during the Class Period?

(i) If so, should the Crown be required to disgorge those benefits?

(ii) If so, in what amount?

(g) Should punitive and/or aggravated damages be awarded against the Crown?

(i) If so, in what amount?

10. The Plaintiffs' Fresh as Amended Litigation Plan, as filed November 2, 2021 and attached hereto as Schedule "A", is hereby approved, subject to any modifications necessary as a result of this Order and subject to any further orders of this Court.

11. The form of notice of certification, the manner of giving notice and all other related matters shall be determined by separate order(s) of the Court.

12. The opt-out period shall be six months from the date on which notice of certification is published in the manner to be specified by further order of this Court.

13. The timetable for this proceeding through to trial shall also be determined by separate order(s) of the Court.

14. Pursuant to Rule 334.39(1) of the *Federal Courts Rules*, there shall be no costs payable by any party for this motion.

"Mandy Aylen"
Judge

ANNEX A

Court File Nos. T-402-19 / T-141-20

FEDERAL COURT
PROPOSED CLASS PROCEEDING

BETWEEN:

XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
PROPOSED CLASS PROCEEDING

BETWEEN:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON,
NOAH BUFFALO-JACKSON by his Litigation Guardian, Carolyn Buffalo, CAROLYN BUFFALO, and DICK EUGENE JACKSON also known as RICHARD JACKSON

Plaintiffs

and

HER MAJESTY THE QUEEN
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

FRESH AS AMENDED LITIGATION PLAN

November 2, 2021

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I. DEFINITIONS

1. The definitions below will be used throughout this Litigation Plan. Any term defined in the Consolidated Statement of Claim that is also used in this Litigation Plan has the same meaning as that included in the Consolidated Statement of Claim or as otherwise defined by the Court.

Aggregate Damages Distribution Process means the system directed by the Court for the **Class Action Administrator** to distribute aggregate damages to **Approved Class Members**;

Approved Class Member(s) means **Approved Removed Child Class Member(s)** and/or **Approved Jordan's Class Member(s)** and/or **Approved Family Class Members**;

Approved Family Class Member(s) means a Family Class Member who has been approved by the **Class Action Administrator** as meeting the criteria for being a Family Class Member, including the brother, sister, mother, father, grandmother or grandfather of an Approved Removed Child Class Member (regardless of whether the Approved Removed Child Class Member is alive) and whose approval as a Family Class Member has not been successfully challenged;

Approved Jordan's Class Member(s) means a Jordan's Class Member who has been approved by the **Class Action Administrator** as meeting the criteria for being a Jordan's Class Member and whose approval as a Jordan's Class Member has not been successfully challenged;

Approved Removed Child Class Member(s) means a Removed Child Class Member who has been approved by the **Class Action Administrator** as meeting the criteria for being a Removed Child Class Member and whose approval as a Removed Child Class Member has not been successfully challenged;

Certification Notice means the information set out in Schedule A to this Litigation Plan, as may be subsequently amended and as approved by the Court;

CHRT Decision means the decision of the **CHRT** in the **CHRT Proceeding** dated January 26, 2016, bearing citation 2016 CHRT 2;

CHRT means the Canadian Human Rights Tribunal;

CHRT Proceeding means the proceeding before the **CHRT** under file number T1340/7008;

Claim Form means the form set out in Schedule C to this Litigation Plan used by the Removed Child Class Members and/or the Jordan's Class Members and/or the Family Class Members to submit a claim, as may be subsequently amended and as approved by the Court;

Class Action Administrator means any settlement administrator or other appropriate firm appointed by the Court to assist in the administration of the class proceeding;

Class Counsel means the consortium of law firms acting as co-counsel in this class proceeding, with the firms of Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Company, Nahwegahbow, Corbiere and Faskens LLP as Solicitors of Record;

Class Member(s) means an individual who falls within the definition of the Removed Child Class and/or the Jordan's Class and/or the Family Class, as pleaded in the Consolidated Statement of Claim and as approved by the Court;

Common Issues means the issues listed in the Notice of Motion for Certification, or as found by the Court, as may be subsequently amended and as approved by the Court;

Common Issues Notice means the information set out in the notice regarding the **Common Issues** to be certified by the Court at Certification, as may be subsequently amended and as approved by the Court;

Crown Class Member Information means information to be provided by the Crown, at the request of the plaintiffs and/or as ordered by the Court, to the **Class Action Administrator** and/or **Class Counsel** regarding the names and last known contact information of all individuals who meet the criteria of Class Members as set out in the Consolidated Statement of Claim or as otherwise defined by the Court, including: (a) a list of all known Class Members' names and last known addresses using the information in the Crown's possession or under its control[1] as well as all individuals who received a product or service pursuant to Jordan's Principle following the CHRT Decision (estimated by the Crown in its representations to the CHRT to be individuals having received over 165,000 services under Jordan's Principle as of October 2018).

Individual Damage Assessment Form means the form set out in Schedule D to this Litigation Plan, as may be subsequently amended and as approved by the Court, to be used by **Approved Class Member(s)** to elect an individual assessment of their damages and commence an individual damage assessment under the **Individual Damage Assessment Process**;

Individual Damage Assessment Process means the procedure and system to be approved by the Court following the **Common Issues** trial to be used to assess and distribute damages to **Approved Class Member(s)** who have requested an individual damage assessment by submitting an **Individual Damage Assessment Form**;

Notice Program means the process, set out in the Litigation Plan, for communicating the **Certification Notice** and/or the **Common Issues Notice** to **Class Members**, as may be subsequently amended and as approved by the Court;

---

[1] Where Class Members are known to be represented by counsel, only their name should be provided along with their counsel's name and address.

Opt Out Form means the form set out in Schedule B to this Litigation Plan used by Class Members to opt out of the class proceeding, as may be subsequently amended and as approved by the Court;

Opt Out Period means the deadline, proposed by the plaintiffs as six months from the date on which notice of certification to the Class is published in the manner to be specified by the Court or as otherwise determined by the Court, to opt out of the class proceeding;

Opt Out Procedures means the procedures, set out in the Litigation Plan, for Class Members to opt out of this class proceeding, as may be subsequently amended and as approved by the Court; and

Special Opt Out Procedures means the procedures, set out in the Litigation Plan, for Class Members who have already commenced a civil proceeding in Canada or who are known by the Crown to have already retained legal counsel to opt out of this class proceeding, as may be subsequently amended and as approved by the Court.

II. OVERVIEW

2. The plaintiffs have commenced this action on behalf of First Nations individuals who allege that the Crown has engaged in the discriminatory underfunding of child and family services and breached the equality obligations underlying Jordan's Principle. The class action advances the rights of tens of thousands of First Nations children, former children and family members.

3. This Litigation Plan is advanced as a workable method of advancing the proceeding on behalf of the Class and of notifying Class Members as to how the class proceeding is progressing, pursuant to rule 334.16(1)(e)(ii) of the *Federal Court Rules*. The Litigation Plan is modelled on the class action relating to the Indian Residential Schools.[2]

4. This Litigation Plan sets out a detailed plan for the common stages of this litigation, and sets out, on a without prejudice basis, an early plan for how the individual stage of the action may progress. Given the early stage of the litigation, the plan is necessarily subject to substantial revisions as the case progresses.

5. The plaintiffs are mindful that the CHRT has awarded statutory compensation to a subset of the Class Members pursuant to the CHRA (*First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 39). If CHRT compensation is paid to any Class Members, the plaintiffs will seek a determination from the Court as to whether the Crown is entitled to a set-off or deduction of damages in this action for such amounts.

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[2] See *Baxter v Canada (Attorney General)*, 2006 CanLII 41673 (Ont Sup Ct), and subsequent orders of the Court. See also information available on the website of the Indian Residential Schools Adjudication Secretariat, online <http://www.iap-pei.ca/home-eng.php>.

III. PRE-CERTIFICATION PROCESS

A. The Parties

i. The Plaintiffs

6. The plaintiffs have proposed three classes:

   (a) the Removed Child Class, represented by Xavier Moushoom, Ashley Dawn Louise Bach, and Karen Osachoff;

   (b) the Family Class, represented by Xavier Moushoom, Jonavon Joseph Meawasige, Melissa Walterson, Carolyn Buffalo, and Dick Eugene Jackson also known as Richard Jackson; and

   (c) the Jordan's Class, represented by Jeremy Meawasige, by his litigation guardian, Jonavon Joseph Meawasige; and Noah Buffalo-Jackson, by his litigation guardian, Carolyn Buffalo.

ii. The Defendant

7. The defendant is the Crown.

B. The Pleadings

i. Consolidated Statement of Claim

8. The plaintiffs have delivered a Consolidated Statement of Claim issued with leave of the Honourable Justice St-Louis dated July 7, 2021.

ii. Statement of Defence

9. The Crown has not delivered a Statement of Defence.

iii. Third Party Claim

10. The Crown has not issued any Third Party Claim.

C. Pre-Certification Communication Strategy

i. Responding to Inquiries from Putative Class Members

11. Both before and since the commencement of this class proceeding, Class Counsel have received many communications from Class Members affected by this class proceeding.

12. With respect to each inquiry, the individual's name, address, email and telephone number is added to a confidential database. Class Members are asked to register on the websites of Class Counsel. Once registered, they receive regular updates on the progress of the class proceeding in French and English. Any individual Class Members who contact Class Counsel are responded to in their preferred language.

ii. Pre-Certification Status Reports

13. In addition to responding to individual inquiries, Class Counsel have created a webpage concerning the class proceeding in English and French (see: https://sotosclassactions.com/cases/current-cases/first-nations-youth/). The most current information on the status of the class proceeding is posted and is updated regularly in English and French.

14. Copies of the publicly filed court documents and court decisions are accessible from the webpage. In addition, phone numbers for Class Counsel in Quebec and Ontario as well as email contact information are provided.

15. Class Counsel send update reports to Class Members who have provided their contact information and have indicated an interest in being notified of further developments in the class proceeding.

iii. Pre-certification outreach

16. Class Counsel have presented the proposed class action to a council of First Nations social services delivery personnel for the Province of Québec and the region of Labrador, as well as the First Nations youth directors forum in British Columbia. Class Counsel are in the process of arranging similar presentations to affected communities in Québec and elsewhere in Canada.

D. Settlement Conference

i. Pre-Certification Settlement Conference

17. The plaintiffs have participated in a pre-Certification mediation to determine whether any or all of the issues arising in the class proceeding can be resolved. Mediation is ongoing and may require that some of the targeted timelines in this Litigation Plan be amended on agreement of the parties or as otherwise ordered by the Court to allow negotiations to advance.

E. Timetable

IV. POST-CERTIFICATION PROCESS

A. Timetable

i. Plaintiffs' Timetable for the Post-Certification Process

18. The plaintiffs intend to proceed to trial on an expedited basis or a hybrid summary judgment/*viva voce* trial. It is anticipated that all of the documentary evidence produced by the Crown in the CHRT Proceeding will be relevant and producible in this class proceeding. Because of the extensive documentary production in the CHRT Proceeding, the plaintiffs expect few, if any, disputes as to documentary productions in this case relating to the time period covered by the CHRT Proceeding (*i.e.*, 2006-present). Furthermore, in light of the extensive testimony given at the CHRT Proceeding, it is anticipated that oral discovery can proceed quickly after certification and can be completed in a limited period of time. The plaintiffs have less clarity at this time regarding productions pertaining to the 1991-2006 period.

19. The plaintiffs propose that the following post-Certification process timetable, as explained in detail below:

Certification Notice to Class Members commences	at a date to be determined by the Court after certification
Exchange Affidavits of Documents within	90 days after Certification Notice to Class Members

Motions for Production of Documents, Multiple Examinations of Crown representatives or for Examinations of Non-Parties to be conducted within	120 days after Certification Notice to Class Members
Examinations for Discovery to be conducted within	150 days after Certification Notice to Class Members
Certification Notice to Class Members completed within	60 days from a date to be determined by the Court
Trial Management Conference re: Expert Evidence	180 days after Certification Notice to Class Members
Motions arising from Examinations for Discovery within	180 days after Certification Notice to Class Members
Undertakings answered within	200 days after Certification Notice to Class Members
Further Examinations, if necessary, within	240 days after Certification Notice to Class Members
Common Issues Pre-Trial to be conducted	290 days after Certification Notice to Class Members
Opt Out Period deadline	Six months after Notice of Certification to Class Members
Common Issues Trial or Hybrid Trial to be conducted within	330 days after Certification Notice to Class Members

B. Certification Notice, Notice Program and Opt Out Procedures

i. Certification Notice

20. The Certification Notice and all other notices to Class Members provided by the plaintiffs will, once finalized and approved by the Court, be translated into French. The plaintiffs will explore whether it will be necessary to translate the Certification Notice and/or other notices into some First Nations languages, subject to Court approval.

21. The Certification Notice will, subject to further amendments, be in the form set out in Schedule A hereto.

ii. Notice Program

22. The plaintiffs propose to communicate the Certification Notice to Class Members through the following Notice Program.

23. The plaintiffs will provide Certification Notice to Class Members by arranging to have the Certification Notice (and its translated versions whenever possible) communicated/published in the following media starting on a date to be determined by the Court, as frequently as may be reasonable or as directed by the Court under rule 334.32 of the *Federal Courts Rules*. In particular, the plaintiffs propose the following means of providing Certification Notice:

(a) A press release on the start date of notice of certification to the Class to be determined by order of the Court;

(b) Direct communication with Class Members:

(i) by email or regular mail to the last known contact information of Class Members provided by the Crown (*i.e.*, Crown Class Member Information);

(ii) by email or regular mail to all Class Members who have provided their contact information to Class Counsel, including through the Class Proceeding's webpage;

(iii) by regular mail to the last known addresses of all Status Card holders in Canada born on or after April 1, 1991;

(c) Distribution by the Assembly of First Nations to its membership of First Nations bands across Canada;

(d) Email to First Nations children's aid societies across Canada;

(e) Circulation through the following media:

(i) Aboriginal newspapers/publications such as First Nations Drum, The Windspeaker, Mi'kmaq Maliseet Nations News, APTN National News;

(ii) radio outlets, such as Aboriginal radio CFWE, CBC national and CBC regional;

(iii) television outlets, such as on The Aboriginal Peoples Television Network; and / or

(iv) social media outlets, such as Facebook and Instagram.

iii. Opt Out Procedures

24. The plaintiffs propose Opt Out Procedures for Class Members who do not wish to participate in the class proceeding.

25. The Certification Notice will include information about how to Opt Out of the class proceeding and will provide information about how to obtain and submit the appropriate Opt Out Forms to the Class Action Administrator and/or Class Counsel.

26. There will be one standard Opt Out Form for all Class Members.

27. Class Members will be required to file the Opt Out Form with the Class Action Administrator and/or Class Counsel within the Opt Out Period.

28. The Class Action Administrator or Class Counsel shall, within 30 days after the expiration of the Opt Out Period, deliver to the Court and the Parties an affidavit listing the names of all persons who have opted out of the Class Action.

iv. Special Opt Out Procedures

29. The plaintiffs propose Special Opt Out Procedures for Class Members who are either named party plaintiffs in a civil proceeding in Canada or who are known by the Crown to have retained legal counsel in respect of the subject matter of this action with the express purpose of starting a separate action against the Crown.

30. Ongoing civil actions by Class Members who do not opt out of the Class Action should be dealt with in a manner to be determined by this Court or by the Court in which such proceedings are brought.

C. Identifying and Communicating with Class Members

i. Identifying Class Members

31. As stated above, the plaintiffs intend to request the Crown Class Member Information.

ii. Database of Class Members

32. Class Counsel will maintain a confidential database of all Class Members who contact Class Counsel. The database will include each individual's name, address, telephone number, and/or email address where available.

iii. Responding to Inquiries from Class Members

33. Class Counsel and their staff respond to each inquiry by Class Members.

34. Class Counsel have a system in place to allow for responses to inquiries by Class Members in their language of choice whenever possible.

iv. Post Certification Status Reports

35. In addition to responding to individual inquiries, Class Counsel will continually update the webpage dedicated to this class action with information concerning the status of the class proceeding.

36. Class Counsel will send update reports to Class Members who have provided their contact information. These update reports will be sent as necessary or as directed by the Court.

D. Documentary Production

i. Affidavit/List of Documents

37. The plaintiffs will be required to deliver an Affidavit of Documents within 90 days after after notice of certification is given to Class Members. The Crown will similarly be required to deliver a List of Documents within 90 days after notice of certification is given to Class Members.

38. The Parties are expected to serve Supplementary Affidavits (or Lists) of Documents as additional relevant documents are located.

ii. Production of Documents

39. All Parties are expected to provide, at their own expense, electronic copies of all Schedule "A" productions at the time of delivering their Affidavit of Documents. All productions are to be made in electronic format.

40. Documentary productions are to include, but not be limited to, all documents produced and exhibits tendered in the CHRT Proceedings.

iii. Motions for Documentary Production

41. Any motions for documentary production shall be made within 120 days after certification notice is given to Class Members.

iv. Document Management

42. The Parties will each manage their productions with a compatible document management system, or as directed by the Court. All documents are to be produced in OCR format.

43. All productions should be numbered and scanned electronically to enable quick access and efficient organization of documents.

E. Examinations for Discovery

44. Examinations for Discovery will take place within 150 days after certification notice is given to Class Members.

45. The plaintiffs expect to request the Crown's consent to examine more than one Crown representative. In the event that a dispute arises in this regard, the plaintiffs propose to bring a motion within 120 days after certification notice is given to Class Members.

46. The plaintiffs anticipate that the Examination for Discovery of a properly selected and informed officer of the Crown will take approximately 10 days, subject to refusals and undertakings.

47. The plaintiffs anticipate that the Examination for Discovery of the representative plaintiffs will take approximately one day, subject to refusals and undertakings.

F. Interlocutory Matters

i. Motions for Refusals and Undertakings

48. Specific dates for motions for undertakings and refusals that arise from the Examinations for Discovery will be requested upon Certification. Motions for refusals and undertakings will be heard within 180 days after certification notice is given to Class Members.

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ii. Undertakings

49. Undertakings are to be answered within 200 days after certification notice is given to Class Members.

iii. Re-attendances and Further Examinations for Discovery

50. Any re-attendances or further Examinations for Discovery required as a result of answers to undertakings or as a result of the outcome of the motions for refusals and undertakings should be completed within 240 days after certification notice is given to Class Members.

G. Expert Evidence

i. Identifying Experts and Issues

51. A Trial Management Conference will take place following Examinations for Discovery at which guidelines for identifying experts and their proposed evidence at trial will be determined.

H. Determination of the Common Issues

i. Pre-Trial of the Common Issues

52. Upon Certification, the Court will be asked to assign a date for a Pre-Trial relating to the Common Issues trial.

53. The plaintiffs expect that a full day will be required for a Pre-Trial and will request that the Pre-Trial be held within 290 days after certification notice is given to Class Members and, in any event, at least 90 days before the date of the Common Issues trial.

ii. Trial of the Common Issues

54. Upon Certification, the Court will be asked to assign a date for the Common Issues trial.

55. The plaintiffs propose that the trial of the Common Issues be held 330 days after certification notice is given to Class Members.

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56. The length of time required for the Common Issues trial will depend on many factors and will be determined at the Trial Management Conference.

V. POST COMMON ISSUES DECISION PROCESS

A. Timetable

i. Plaintiffs' Timetable for the Post-Common Issues Decision Process

57. The plaintiffs propose that the following timetable be imposed by the Court following the Court's judgment on the Common Issues:

Common Issues Notice provided	Within 90 days of Common Issues decision
Individual Issue Hearings, if any, begin	120 days after decision
Individual Damage Assessments, if any, begin	240 days after decision
Deadline to Submit Claim Forms (as of right)	Within 1 year of decision
Deadline to Submit Claim Forms (as of right in prescribed circumstances or with leave of the Court)	1 year after decision

B. Common Issues Notice

i. Notifying Class Members

58. The Common Issues Notice will, subject to further amendments, be substantially in the form approved by the Court at the Common Issues trial. The Common Issues Notice may contain, amongst others, information on any aggregate damages awarded and any issues requiring individual determination, as approved by the Court.

59. The plaintiffs propose to circulate the Common Issues Notice within 90 days after the Common Issues judgment.

60. The Common Issues Notice will be circulated in the same manner as set out above dealing with the Certification Notice or as directed by the Court.

C. Claim Forms

i. Use of Claim Forms

61. The Court will be asked to approve under rule 334.37 the use of standardized Claim Forms by Class Members who may be entitled to a portion of the aggregate damage award or who may be entitled to have an individual assessment.

ii. Obtaining and Filing Claim Forms

62. The procedure for obtaining and filing Claim Forms will be set out in the Common Issues Notice.

63. The plaintiffs propose to use a single standard Claim Form, substantially in the form attached as Schedule C, for all three classes, subject to further amendments and as approved by the Court.

64. The plaintiffs propose that counselling be made available to Class Members in need of support and assistance when completing the Claim Forms. Where necessary, a process for appointing a guardian or trustee to assist the Class Members will be developed.

65. Before completing a Claim Form, Class Members will be able to review information about them in the possession of Canada relevant to their claim (the Crown Class Member Information). That information may include:

(a) any records relating to the Class Member's voluntary or involuntary placement in out-of-home care during the Class Period;

(b) any records relating to a need by the Class Member for a service or product;

(c) any records relating to a request made by the Class Member for a service or product;

(d) any records relating to the denial of a service or product to the Class Member;

(e) any records relating to any service(s) or product(s) provided by the Crown to the Class Member; and/or

(f) any records relating to the family status or family relationship between a Family Class Member and a Removed Child Class Member or a Jordan's Class Member.

66. Class Members will be required to file the appropriate Claim Form with the Class Action Administrator and/or Class Counsel within the deadlines set out below or as directed by the Court.

67. The Class Action Administrator will be responsible for receiving all Claim Forms.

iii. Deadline for Filing Claim Forms

68. Class Members will be advised of the deadline for filing Claim Forms in the Common Issues Notice.

69. The plaintiffs propose that Class Members be given one year, or such period as set out by the Court, after the Common Issues judgment to file Claim Forms as of right.

70. The plaintiffs propose that Class Members be entitled to file Claim Forms more than one year after the Court's judgment on the Common Issues in certain circumstances prescribed by the Court (*i.e.*, lack of awareness of entitlement, etc.) or with leave of the Court (*i.e.*, based on mental or physical health issues, etc.).

D. Determining and Categorizing Class Membership

i. Approving Removed Child Class Members

71. The Class Action Administrator will determine whether an individual submitting a Claim Form as a Removed Child Class Member properly qualifies as a Class Member.

72. In addition, the Class Action Administrator will determine and categorize the duration of the Removed Child Class Member's presence in out-of-home care. The Class Action Administrator will also determine the number of out-of-home care locations that the Removed

Child Class Member was placed in, as well as whether such locations were on or off Reserve and whether such locations were within the community of the Class Member.

73. The Class Action Administrator will make these determinations by referring to the information set out in the Claim Form as well as the Crown Class Member Information.

74. The Class Action Administrator will, where appropriate and necessary, request in writing further information from the individual filing the Removed Child Class Claim Form or the Crown to make these determinations.

ii. Approving Jordan's Class Members

75. The Class Action Administrator will determine whether an individual submitting a Claim Form as a Jordan's Class Member properly qualifies as a Class Member.

76. The Class Action Administrator will make these determinations following guidelines determined by the Court at the Common Issues trial in part by referring to the information set out in the Claim Form. Such guidelines may include: (a) whether the Class Member needed a service or product at any point during the Class Period; (b) whether the Class Member was denied that service or product; (c) whether the Class Member's receipt of a service or product was delayed or disrupted; (d) whether such denial, delay or disruption was based on lack of funding, lack of jurisdiction or a jurisdictional dispute between governments or government departments; and/or (e) whether such denial, disruption or delay happened while the Class Member was under the applicable provincial/territorial age of majority.

77. The Class Action Administrator will also make these determinations in part by referring to the Crown Class Member Information regarding the number of Class Members who have received a service or product under Jordan's Principle since the CHRT Decision.

78. The Class Action Administrator will, where appropriate and necessary, request in writing further information from the individual submitting the Jordan's Class Claim Form or the Crown to make these determinations.

iii. Approving Family Class Members

79. The Class Action Administrator will determine whether an individual submitting a Family Class Claim Form properly qualifies as a Family Class Member.

80. These determinations will be made by the Class Action Administrator by referring to Crown Class Member Information and the information set out in the Claim Form with respect to the relationship of the proposed Family Class Member with an Approved Removed Child Class Member.

81. The Class Action Administrator will, where appropriate and necessary, request in writing further information from the individual filing the Claim Form to make these determinations.

iv. Deceased Class Members

82. The estate of a deceased Class Member may submit a Claim Form if the deceased Class Member died on or after April 1, 1991.

83. If the deceased Class Member would otherwise have qualified as an Approved Class Member, the estate will be entitled to be compensated in accordance with the Aggregate Damages Distribution Process. The estate will not have the option to proceed under the Individual Damage Assessment Process except with leave of the Court.

v. Notifying Class Members, Challenging and Recording Decisions

84. Within 30 days of receipt of a Claim Form, the Class Action Administrator will notify the individual of its decision on whether the individual is an Approved Class Member. Individuals

who are not approved as Class Members will be provided with information on the procedures to follow to challenge the decision of the Class Action Administrator. The plaintiffs propose that these procedures include an opportunity to resubmit an amended Claim Form with supporting documentation capable of verifying that the individual is a Class Member.

85. All interested parties will be provided with the ability to appeal a decision by the Class Action Administrator to the Court or in a manner to be prescribed. Class Counsel may challenge the decision on behalf of affected individuals.

86. The Class Action Administrator will keep records of all Approved Class Members and their respective Claim Forms and will provide this information to Class Counsel, the Crown and other interested parties on a monthly basis. Class Counsel and/or other interested parties will have 30 days after receiving this information to challenge the Class Action Administrator's decision by advising the Class Action Administrator and the other affected parties in writing of the basis for their challenge. The responding party will be given 30 days thereafter to respond in writing to the challenge at which time the Class Action Administrator will reconsider its decision and advise all parties.

E. Aggregate Damages Distribution Process

i. Distribution of Aggregate Damages

87. The Class Action Administrator will distribute the aggregate damages to all Approved Class Members in the manner directed by the Court.

88. The plaintiffs will propose that Approved Class Members be entitled to a proportion of the aggregate damages as determined by the Class Action Administrator based on factors to be approved by the Court, including but not limited to: (a) the duration of the Class Member's

presence in out-of-home care; (b) the number of out-of-home care locations where the Class Member was placed as a child; (c) the duration of deprivation from a service or product as a result of a delay, denial or disruption contrary to Jordan's Principle; and (d) the family relationship of the Family Class Member to a given Removed Child Class Member.

89. The Class Action Administrator, upon advising Approved Class Members of its decision on their membership as set out above, will within a reasonable period of time to be determined by the Court, advise the Approved Class Members of the proportion of aggregate damages owing to each Approved Class Member under the Aggregate Damages Distribution Process to be approved by the Court.

90. In addition, if applicable, the Class Action Administrator will provide Approved Class Members with a package of materials including: information on how to collect their aggregate damage awards, information on Class Members' ability to proceed through the Individual Damage Assessment Process, copies of the Individual Damage Assessment Form along with a guide on how to complete the form, and contact information for obtaining independent legal advice and counselling. Such information is to be provided in a culturally responsive and appropriate style, making full use of interactive media, including video tutorials.

ii. Seeking an Individual Damage Assessment

91. Approved Class Members, when notified of their entitlement to aggregate damages, may be given information on their right to have their compensation individually assessed under the Individual Damage Assessment Process set out below.

F. Individual Damage Assessment Process

i. Individual Damage Assessment Forms

92. When Approved Class Members are notified of their aggregate damage entitlement and information on their right to proceed under the Individual Damage Assessment Process, they will be provided with an Individual Damage Assessment Form as set out in Schedule D.

93. If applicable, the plaintiffs propose that a request for individual damages be made by sending an Individual Damage Assessment Form to the Class Action Administrator, and that only those individuals who wish to proceed through the Individual Damage Assessment Process be required to submit Individual Damage Assessment Forms.

ii. Individual Damage Assessments

94. The Court may be asked to approve the use of an Individual Damage Assessment Process after a judgment on the Common Issues or otherwise as directed by the Court.

95. The Individual Damage Assessment Process would be available to all Approved Class Members except those who are found by the Court not to be entitled to individual damages following the Common Issues trial.

iii. Individual Issue Hearings

96. The Court will be asked to provide directions, or to appoint persons to conduct references under rule 334.26 of the *Federal Courts Rules* or appoint a judge to conduct test cases involving selected Approved Class Members who are proceeding under the Individual Damage Assessment Process to asstst with the matters that may or may not remain in issue after the determination of the Common Issues, such as:

(a) Hearing rules for individual assessments;

(b) A compensation matrix for individual damages;

(c) Assistance in resolving disputes relating to the definitions of key terms such as "cultural and language loss", "pain and suffering", "physical abuse", and "sexual abuse"; and

(d) Other matters raised by the Court or the parties during the Common Issues litigation.

G. Class Proceeding Funding and Fees

i. Plaintiffs' Legal Fees

97. The plaintiffs' fees are to be paid on a contingency basis, subject to the Court's approval under rule 334.4 of the *Federal Courts Rules*.

98. The agreement between the representative plaintiffs and Class Counsel states that legal fees and disbursements to be paid to Class Counsel shall be on the following basis:

(a) Aggregate damages recovery: 20% of the first two hundred million dollars ($200,000,000) in recovery by settlement or judgment, plus 10% of any amounts recovered by settlement or judgment beyond the first two hundred million dollars; and

(b) Individual damages recovery: 25% of settlement or judgment.

ii. Funding of Disbursements

99. Funding of legal disbursements for the representative plaintiffs has been, and will continue to be, available through Class Counsel, unless the plaintiffs and Class Counsel subsequently deem it to be in the best interests of the Class to obtain third-party funding. Class Counsel will advise the Court of such third-party funding and seek approval thereof.

H. Settlement Issues

i. Settlement Offers and Negotiations

100. The plaintiffs have been conducting settlement negotiations with the Crown with a view to achieving a fair and timely resolution.

ii. Mediation and Other Non Binding Dispute Resolution Mechanisms

101. The plaintiffs have been participating in mediation and negotiations in an effort to try to resolve the dispute or narrow the issues in dispute between the Parties.

I. Review of the Litigation Plan

i. Flexibility of the Litigation Plan

102. This Litigation Plan will be reconsidered on an ongoing basis and may be revised under the continued case management authority of the Court before or after the determination of the Common Issues or as the Court sees fit.

October 29, 2021

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SCHEDULE "A"

FIRST NATIONS YOUTH CARE (THE MILLENNIUM SCOOP) CLASS ACTION

PROPOSED NOTICE OF CERTIFICATION

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ CAREFULLY.

The Nature of the Lawsuit

In March 2019, Sotos LLP, Kugler Kandestin LLP and Miller Titerle + Co. (collectively "Class Counsel") commenced an action on behalf of First Nations plaintiffs in the Federal Court of Canada in Montreal, against the Attorney General of Canada (the "Crown").

The lawsuit claims that starting in 1991 the Crown instituted discriminatory funding policies across Canada that led to First Nations children being removed from their homes and communities and placed in out-of-home care. The lawsuit also claims that the Crown delayed, disrupted or denied the delivery of needed public services and products to First Nations youth contrary to Jordan's Principle.

The action was brought on behalf of a Class of:

(a) all First Nations youths who were taken into out-of-home care since April 1, 1991, while they or at least one of their parents were ordinarily resident on a Reserve;

(b) all First Nations youths who were denied a public service or product, or whose receipt of a public service or product was delayed or disrupted, on the grounds of lack of funding or lack of jurisdiction, or as a result of a jurisdictional dispute with another government or governmental department (contrary to Jordan's Principle);

(c) family members of the Class Members cited in (a) above.

By order dated [**INSERT DATE**], The Honourable Justice St-Louis certified the action as a class proceeding, appointing Xavier Moushoom and Jeremy Meawasige (by his litigation guardian, Maurina Beadle) as representative plaintiffs for the class.

The Court found that the following issues affecting the Class will be tried at a Common Issues trial:

- [**INSERT CERTIFIED COMMON ISSUE**]
- ...

Participation in the Class Action

If you fall within the class definition, you are automatically included as a member of the Class, unless you choose to opt out of the Class Action, as explained below. All members of the Class will be bound by the judgment of the Court, or any settlement reached by the parties and approved by the Court.

At this juncture, the Court has not taken a position as to the likelihood of recovery for the representative plaintiffs or the Class, or with respect to the merits of the claims or defences asserted by the Crown.

Fees and Disbursements

You do not need to pay any legal fees out of your own pocket. A retainer agreement has been entered into between the representative plaintiffs and Class Counsel with respect to legal fees. The agreement provides that the law firms have been retained on a contingency fee basis, which means they will only be paid their fees in the event of a successful result in the litigation or a Court-approved settlement.

You will not be responsible for Defendant's legal costs if the class action is unsuccessful. Any fee paid to lawyers for the Class is subject to the Court's approval.

Opt Out

If you are a class member and wish to exclude yourself from this class proceeding ("opt out"), you must complete and return the "Class Member Opt Out" form by no later than [**INSERT DATE**]. The Opt Out form may be downloaded at: [**INSERT WEBSITE ADDRESS**].

Class members who choose to opt out within the above noted deadline will not recover any monies if the representative plaintiffs are successful in this action. If class members do not choose to opt out by the deadline, they will be bound by any judgment ultimately obtained in this class action, whether favourable or not, or any settlement if approved by the Court.

Contact Information

If you have any questions or concerns about the matters in this Notice or the status of the class action, you may contact Class Counsel in a number of ways.

By phone: [**INSERT PHONE NUMBER**]

By email: [**INSERT EMAIL**]

Toll-Free Hotline: [**INSERT TELEPHONE**]

By mail: [**INSERT ADDRESS**]

SCHEDULE "B"

OPT OUT FORM

TO:
[CLASS ACTION ADMINISTRATOR TO BE APPOINTED]
[Address]
[Email]
[Fax]
[Phone number]

ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]

I do not want to participate in the class action styled as ***Xavier Moushoom et al v. The Attorney General of Canada*** regarding the claims of discrimination against First Nations children. I understand that by opting out, I will not be eligible for the payment of any amounts awarded or paid in the class action, and if I want an opportunity to be compensated, I will have to make an individual claim and decide whether to engage a lawyer at my own expense.

Dated: _____

_____
Signature

_____
Full Name

_____
Address

_____
City, Province, Postal Code

_____
Telephone

_____
Email

This Notice must be delivered by regular mail, email or fax on or before_____, 201_ to be effective.

SCHEDULE "C"

CLAIM FORM

TO:
[CLASS ACTION ADMINISTRATOR TO BE APPOINTED]
[Address]
[Email]
[Fax]
[Phone number]

ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]

I, _____ (insert full name(s), including maiden name if applicable), have received Notice of the National Class Action styled as ***Xavier Moushoom et al v. The Attorney General of Canada*** regarding the claims of discrimination against First Nations children. My date of birth is _____ (insert day, month, year of birth).

I believe that I am a Class Member and I wish to submit a claim as a member of the following Class or Classes (mark the applicable item(s) with an X):

[_] Removed Child Class

[_] Jordan's Class

[_] Family Class

If you selected the Removed Child Class, please summarize below your placement(s) in out-of-home care since April 1, 1991:

Number of foster home(s)	**Number of years of placement in foster home(s)**	**Was foster home(s) on-reserve or off-reserve?**	**Was foster home(s) within your own First Nations community?**

If you selected the Jordan's Class, please summarize below the public services or products that you needed since April 1, 1991, and that were denied, delayed or disrupted:

Product(s) or service(s) needed	**Was a request made for the**	**Was the service(s) or product(s) denied, delayed or disrupted?**	**The date(s) of need, request, and/or denial,**

	service(s) or product(s)?		delay or disruption

If you selected the Family Class, please summarize below your relationship to the member(s) of the Removed Child Class:

Full name(s) and claim number of the Approved Removed Child Class Member in your family	Your relationship to the Class Member (only the brother, sister, mother, father, grandmother or grandfather of an Approved Removed Child Class Member)

My mailing address is:

_____
Street name, Apartment #

_____
City, Province

_____
Postal Code

_____
Telephone Number(s)

_____
Email address

Signed: _____ Date: _____

SCHEDULE "D"

INDIVIDUAL DAMAGE ASSESSMENT FORM

TO:
[CLASS ACTION ADMINISTRATOR TO BE APPOINTED]
[Address]
[Email]
[Fax]
[Phone number]

ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]

I, _____ [insert full name(s), including maiden name if applicable], have been notified that I am an Approved Removed Child Class Member or Approved Jordan's Class Member. My claim number is _____ [insert assigned claim number].

I have been provided with a package of information outlining and explaining my option to request an individual damage assessment in accordance with the Individual Damage Assessment Process.

I am also aware that I can obtain independent legal advice with respect to this request and can obtain assistance to complete this form at no charge to me by contacting [insert assigned contact #].

Below is information relating to my experience in out-of-home care and the impacts and harms that resulted from my experience:

[The Individual Damage Assessment Form will be designed after a Court decision on the Common Issues. The goal of the Individual Damage Assessment Form though will be to obtain, amongst others, the following information from Approved Class Members:

- *Information relating to the Class Member's age at apprehension, the foster households where the Class Member was placed, duration of out-of-home care;*
- *Information relating to any abuse on the Class Member, including each incident of a compensable harm/wrong, such as the dates, places, times of the incidents and information about the alleged perpetrator for each incident;*
- *Information relating to compensable impacts, including cultural and language impacts;*
- *A narrative relating to the experience of the individual while in care;*
- *The reason(s) for apprehension;*
- *Whether expert evidence will be provided to support a claim for certain consequential harms such as past and future income loss;*

- *Information on the treatment records including records of customary or traditional counsellors or healers they will be submitting to assist in proving either the abuse or the harm suffered or both,*
- *Authorizations for the Crown to obtain documents; and*
- *Such further and other information that is deemed necessary and appropriate.]*

Below is information relating to my experience with the denial/delay/disruption of the receipt of a public service or product and the impacts and harms that resulted from my experience:

[The Individual Damage Assessment Form will be designed after a Court decision on the Common Issues. The goal of the Individual Damage Assessment Form though will be to obtain, amongst others, the following information from Approved Class Members:

- *Any conditions or circumstances that required a public service or product;*
- *Reasons for denial of a public service or product;*
- *Department(s) of contact;*
- *Authorizations for the Crown to obtain documents; and*
- *Such further and other information that is deemed necessary and appropriate.]*

Signed: _____ Date: _____

Schedule E: Certification Order dated February 11, 2022 in Court File No. T-1120-21 (2022 FC 149)

Federal Court Cour fédérale

Date: 20220211

Docket: T-1120-21

Citation: 2022 FC 149

Ottawa, Ontario, February 11, 2022

PRESENT: The Honourable Madam Justice Aylen

CLASS PROCEEDING

BETWEEN:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER AND REASONS

UPON MOTION by the Plaintiffs, on consent and determined in writing pursuant to Rule 369 of the *Federal Courts Rules*, for an order:

(a) Granting the Plaintiffs an extension of time to make this certification motion past the deadline in Rule 334.15(2)(b);

(b) Certifying this proceeding as a class proceeding and defining the class;

(c) Stating the nature of the claims made on behalf of the class and the relief sought by the class;

(d) Stipulating the common issues for trial;

(e) Appointing the Plaintiff, Zacheus Joseph Trout, as representative plaintiff;

(f) Approving the litigation plan; and

(g) Other relief;

CONSIDERING the motion materials filed by the Plaintiffs;

CONSIDERING that the Defendant has advised that the Defendant consents in whole to the motion as filed;

CONSIDERING that the Court is satisfied, in the circumstances of this proceeding, that an extension of time should be granted to bring this certification motion past the deadline prescribed in Rule 334.15(2)(b);

CONSIDERING that while the Defendant's consent reduces the necessity for a rigorous approach to the issue of whether this proceeding should be certified as a class action, it does not relieve the Court of the duty to ensure that the requirements of Rule 334.16 for certification are met [see *Varley v Canada (Attorney General)*, 2021 FC 589];

CONSIDERING that Rule 334.16(1) of the *Federal Courts Rules* provides:

Subject to subsection (3), a judge shall, by order, certify a proceeding as a class proceeding if

(a) the pleadings disclose a reasonable cause of action;

(b) there is an identifiable class of two or more persons;

(c) the claims of the class members raise common questions of law or fact, whether or not those common questions predominate over questions affecting only individual members;

(d) a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact; and

(e) there is a representative plaintiff or applicant who

(i) would fairly and adequately represent the interests of the class,

(ii) has prepared a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members as to how the proceeding is progressing,

(iii) does not have, on the common questions of law or fact, an interest that is in conflict with the interests of other class members, and

(iv) provides a summary of any agreements respecting fees and disbursements between the representative plaintiff or applicant and the solicitor of record.

Sous réserve du paragraphe (3), le juge autorise une instance comme recours collectif si les conditions suivantes sont réunies :

a) les actes de procédure révèlent une cause d'action valable;

b) il existe un groupe identifiable formé d'au moins deux personnes;

c) les réclamations des membres du groupe soulèvent des points de droit ou de fait communs, que ceux-ci prédominent ou non sur ceux qui ne concernent qu'un membre;

d) le recours collectif est le meilleur moyen de régler, de façon juste et efficace, les points de droit ou de fait communs;

e) il existe un représentant demandeur qui :

(i) représenterait de façon équitable et adéquate les intérêts du groupe,

(ii) a élaboré un plan qui propose une méthode efficace pour poursuivre l'instance au nom du groupe et tenir les membres du groupe informés de son déroulement,

(iii) n'a pas de conflit d'intérêts avec d'autres membres du groupe en ce qui concerne les points de droit ou de fait communs,

(iv) communique un sommaire des conventions relatives aux honoraires et débours qui sont intervenues entre lui et l'avocat inscrit au dossier.

CONSIDERING that, pursuant to Rule 334.16(2), all relevant matters shall be considered in a determination of whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact, including whether: (a) the questions of law or fact common to the class members predominate over any questions affecting only individual members; (b) a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate proceedings; (c) the class proceeding would involve claims that are or have been the subject of any other proceeding; (d) other means of resolving the claims are less practical or less efficient; and (e) the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means;

CONSIDERING that:

(a) The conduct of the Crown at issue in this proposed class action proceeding, as set out in the Statement of Claim, concerns discrimination against First Nations children in the provision of essential services and the Crown's failure to prevent First Nations children from suffering gaps, delays, disruptions or denials in receiving services and products contrary to their *Charter*-protected equality rights. The Plaintiffs allege that the Crown's conduct was discriminatory, directed at Class Members because they were First Nations, and breached section 15(1) of the *Charter*, the Crown's fiduciary duties to First Nations and the standard of care at common and civil law.

(b) With respect to the first element of the certification analysis (namely, whether the pleading discloses a reasonable cause of action), the threshold is a low one. The question for the Court is whether it is plain and obvious that the causes of action are doomed to fail [see

Brake v Canada (Attorney General), 2019 FCA 274 at para 54]. Even without the Crown's consent, I am satisfied that the Plaintiffs have pleaded the necessary elements for each cause of action sufficient for purposes of this motion, such that the Statement of Claim discloses a reasonable cause of action.

(c) With respect to the second element of the certification analysis (namely, whether there is an identifiable class of two or more persons), the test to be applied is whether the Plaintiffs have defined the class by reference to objective criteria such that a person can be identified to be a class member without reference to the merits of the action [see *Hollick v Toronto (City of)*, 2001 SCC 68 at para 17]. I am satisfied that the proposed class definitions for the Child Class and Family Class (as set out below) contain objective criteria and that inclusion in each class can be determined without reference to the merits of the action.

(d) With respect to the third element of the certification analysis (namely, whether the claims of the class members raise common questions of law or fact), as noted by the Federal Court of Appeal in *Wenham v Canada (Attorney General)*, 2018 FCA 199 at para 72, the task under this part of the certification determination is not to determine the common issues, but rather to assess whether the resolution of the issues is necessary to the resolution of each class member's claim. Specifically, the test is as follows:

> The commonality question should be approached purposively. The underlying question is whether allowing the suit to proceed as a representative one will avoid duplication of fact-finding or legal analysis. Thus an issue will be "common" only where its resolution is necessary to the resolution of each class member's claim. It is not essential that the class members be identically situated vis-à-vis the opposing party. Nor is it necessary that common issues predominate over non-common issues or that the resolution of the common issues would be determinative of each class member's claim. However, the class members' claims must

> share a substantial common ingredient to justify a class action. Determining whether the common issues justify a class action may require the court to examine the significant of the common issues in relation to individual issues. In doing so, the court should remember that it may not always be possible for a representative party to plead the claims of each class member with the same particularity as would be required in an individual suit. (Western Canadian Shopping Centres, above at para 39; see also Vivendi Canada Inc. v. Dell'Aniello, 2014 SCC 1, [2014] 1 S.C.R. 3 at paras 41 and 44-46.)

Having reviewed the common issues (as set out below), I am satisfied that the issues share a material and substantial common ingredient to the resolution of each class member's claim. Moreover, I agree with the Plaintiffs that the commonality of these issues is analogous to the commonality of similar issues in institutional abuse claims which have been certified as class actions (such as the Indian Residential Schools and the Sixties Scoop class action litigation), as well as those certified in the Moushoom class action (T-402-19/T-141-20). Accordingly, I find that the common issue element is satisfied.

(e) With respect to the fourth element of the certification analysis (namely, whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of fact and law), the preferability requirement has two concepts at its core: (i) whether the class proceeding would be a fair, efficient and manageable method of advancing the claim; and (ii) whether the class proceeding would be preferable to other reasonably available means of resolving the claims of class members. A determination of the preferability requirement requires an examination of the common issues in their context, taking into account the importance of the common issues in relation to the claim as a whole, and may be satisfied even where there are substantial individual issues [see *Brake*, *supra* at para 85; *Wenham*, *supra* at para 77 and *Hollick*, *supra* at paras 27-31]. The

Court's consideration of this requirement must be conducted through the lens of the three principle goals of class actions, namely judicial economy, behaviour modification and access to justice [see *Brake*, *supra* at para 86, citing *AIC Limited v Fischer*, 2013 SCC 69 at para 22].

(f) Having considered the above-referenced principles and the factors set out in Rule 334.16(2), I am satisfied a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of fact and law. Given the systemic nature of the claims, the potential for significant barriers to access to justice for individual claimants and the concerns regarding the other means available for resolving the claims of class members, I am satisfied that the proposed class action would be a fair, efficient and manageable method of advancing the claims of the class members.

(g) With respect to the fifth element of the certification analysis (namely, whether there are appropriate proposed representatives), I am satisfied, having reviewed the affidavit evidence filed on the motion together with the detailed litigation plan, that the proposed representative plaintiff meets the requirements of Rule 334.16(1)(e);

CONSIDERING that the Court is satisfied that all of the requirements for certification are met and that the requested relief should be granted;

THIS COURT ORDERS that:

1. The Plaintiffs are granted an extension of time, *nunc pro tunc*, to bring this certification motion past the deadline in Rule 334.15(2)(b) of the *Federal Courts Rules*.

2. For the purpose of this Order and in addition to definitions elsewhere in this Order, the following definitions apply and other terms in this Order have the same meaning as in the Statement of Claim:

(a) **"Child Class"** means all First Nations individuals who were under the applicable provincial/territorial age of majority and who, during the Class Period, did not receive (whether by reason of a denial or a gap) an essential public service or product relating to a confirmed need, or whose receipt of said service or product was delayed, on grounds, including but not limited to, lack of funding or lack of jurisdiction, or as a result of a service gap or jurisdictional dispute with another government or governmental department.

(b) **"Class" means** the Child Class and Family Class, collectively.

(c) **"Class Counsel"** means Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Co., Nahwegahbow Corbiere and Fasken Martineau Dumoulin LLP.

(d) **"Class Members"** mean all persons who are members of the Class.

(e) **"Class Period"** means the period of time beginning on April 1, 1991 and ending on December 11, 2007.

(f) **"Family Class"** means all persons who are brother, sister, mother, father, grandmother or grandfather of a member of the Child Class.

(g) **"First Nation"** and **"First Nations"** means Indigenous peoples in Canada, including the Yukon and the Northwest Territories, who are neither Inuit nor Métis, and includes:

i. Individuals who have Indian status pursuant to the *Indian Act*, R.S.C., 1985, c.I-5 [*Indian Act*];

ii. Individuals who are entitled to be registered under section 6 of the *Indian Act* at the time of certification;

iii. Individuals who met band membership requirements under sections 10-12 of the *Indian Act*, such as where their respective First Nation community assumed control of its own membership by establishing membership rules and the individuals were found to meet the requirements under those membership rules and were included on the Band List; and

iv. Individuals, other than those listed in sub-paragraphs (i)-(iii) above, recognized as citizens or members of their respective First Nations whether under agreement, treaties or First Nations' customs, traditions and laws by the date of trial or resolution otherwise of this action.

3. This proceeding is hereby certified as a class proceeding against the Defendant pursuant to Rule 334.16(1) of the *Federal Courts Rules*.

4. The Class shall consist of the Child Class and Family Class, all as defined herein.

5. The nature of the claims asserted on behalf of the Class against the Defendant is constitutional, negligence and breach of fiduciary duty owed by the Crown to the Class.

6. The relief claimed by the Class includes damages, *Charter* damages, disgorgement, punitive damages and exemplary damages.

7. Zacheus Joseph Trout is appointed as representative plaintiff and is deemed to constitute an adequate representative of the Class, complying with the requirements of Rule 334.16(1)(e).

8. Class Counsel are hereby appointed as counsel for the Class.

9. The proceeding is certified on the basis of the following common issues:

   (a) Did the Crown's conduct as alleged in the Statement of Claim [Impugned Conduct] infringe the equality right of the Class under section 15(1) of the *Canadian Charter of Rights and Freedoms*? More specifically:

      i. Did the Impugned Conduct create a distinction based on the Class' race, or national or ethnic origin?

      ii. Was the distinction discriminatory?

      iii. Did the Impugned Conduct reinforce and exacerbate the Class' historical disadvantages?

iv. If so, was the violation of section 15(1) of the *Charter* justified under section 1 of the *Charter*?

v. Are *Charter* damages an appropriate remedy?

(b) Was the Crown negligent towards the Class? More specifically:

i. Did the Crown owe the Class a duty of care?

ii. If so, did the Crown breach that duty of care?

(c) Did the Crown breach its obligations under the *Civil Code of Québec*? More specifically:

i. Did the Crown commit fault or engage its civil liability?

ii. Did the Impugned Conduct result in losses to the Class and if so, do such losses constitute injury to each of the members of the Class?

iii. Are members of the Class entitled to claim damages for the moral and material damages arising from the foregoing?

(d) Did the Crown owe the Class a fiduciary duty? If so, did the Crown breach that duty?

(e) Can the amount of damages payable by the Crown be determined partially under Rule 334.28(1) of the *Federal Courts Rules* on an aggregate basis? If so, in what amount?

(f) Did the Crown obtain quantifiable monetary benefits from the Impugned Conduct during the Class Period? If so, should the Crown be required to disgorge those benefits and if so, in what amount?

(g) Should punitive and/or aggravated damages be awarded against the Crown? If so, in what amount?

10. The Litigation Plan attached hereto as Schedule "A" is hereby approved, subject to any modifications necessary as a result of this Order and subject to any further orders of this Court.

11. The form of notice of certification, the manner of giving notice and all other related matters shall be determined by separate order(s) of the Court.

12. Notice of certification shall be given at the same time as the notice of certification of the companion Moushoom class action (Court File Nos. T-402-19/T-141-20), which shall be determined by separate order of this Court.

13. The opt-out period shall be six months from the date on which notice of certification is published in the manner to be specified by further order of this Court.

14. Pursuant to Rule 334.39(1) of the *Federal Courts Rules*, there shall be no costs payable by any party for this motion.

"Mandy Aylen"
Judge

ANNEX A

Court File No. T-1120-21

FEDERAL COURT
PROPOSED CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

LITIGATION PLAN

September 24, 2021

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I. DEFINITIONS

1. The definitions below will be used throughout this Litigation Plan. Any term defined in the Statement of Claim that is also used in this Litigation Plan has the same meaning as that included in the Statement of Claim or as otherwise defined by the Court.

Aggregate Damages Distribution Process means the system directed by the Court for the **Class Action Administrator** to distribute aggregate damages to **Approved Class Members**;

Approved Class Member(s) means **Approved Child Class Member(s)** and/or **Approved Family Class Members**;

Approved Family Class Member(s) means a Family Class Member who has been approved by the **Class Action Administrator** as meeting the criteria for being a Family Class Member, including the brother, sister, mother, father, grandmother or grandfather of an Approved Child Class Member (regardless of whether the Approved Child Class Member is alive) and whose approval as a Family Class Member has not been successfully challenged;

Approved Child Class Member(s) means a Child Class Member who has been approved by the **Class Action Administrator** as meeting the criteria for being a Child Class Member and whose approval as a Child Class Member has not been successfully challenged;

Certification Notice means the information set out in Schedule A to this Litigation Plan, as may be subsequently amended and as approved by the Court;

CHRT Proceeding means the proceeding before the **CHRT** under file number T1340/7008;

Claim Form means the form set out in Schedule C to this Litigation Plan used by the Child Class Members and/or the Family Class Members to submit a claim, as may be subsequently amended and as approved by the Court;

Class Action Administrator means any settlement administrator or other appropriate firm appointed by the Court to assist in the administration of the class proceeding;

Class Counsel means the consortium of law firms acting as co-counsel in this class proceeding, with the firms of Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Company, Nahwegahbow Corbiere, and Fasken LLP as Solicitors of Record;

Class Member(s) means an individual who falls within the definition of the Child Class and/or the Family Class, as pleaded in the Statement of Claim and as approved by the Court;

Common Issues means the issues listed in the Notice of Motion for Certification, or as found by the Court, as may be subsequently amended and as approved by the Court;

Common Issues Notice means the information set out in the notice regarding the **Common Issues** to be certified by the Court at Certification, as may be subsequently amended and as approved by the Court;

Crown Class Member Information means information to be provided by the Crown, at the request of the plaintiffs and/or as ordered by the Court, to the **Class Action Administrator** and/or **Class Counsel** regarding the names and last known contact information of all individuals who meet the criteria of Class Members as set out in the Statement of Claim or as otherwise defined by the Court, including a list of all known Class Members' names and last known addresses using the information in the Crown's possession or under its control.[1]

Individual Damage Assessment Form means the form set out in Schedule D to this Litigation Plan, as may be subsequently amended and as approved by the Court, to be used by **Approved Class Member(s)** to elect an individual assessment of their damages and commence an individual damage assessment under the **Individual Damage Assessment Process**;

Individual Damage Assessment Process means the procedure and system to be approved by the Court following the **Common Issues** trial to be used to assess and distribute damages to **Approved Class Member(s)** who have requested an individual damage assessment by submitting an **Individual Damage Assessment Form**;

Notice Program means the process, set out in this Litigation Plan, for communicating the **Certification Notice** and/or the **Common Issues Notice** to **Class Members**, as may be subsequently amended and as approved by the Court;

Opt Out Form means the form set out in Schedule B to this Litigation Plan used by Class Members to opt out of the class proceeding, as may be subsequently amended and as approved by the Court;

Opt Out Period means the deadline, proposed by the plaintiffs as 180 days post Certification or as determined by the Court, to opt out of the class proceeding;

Opt Out Procedures means the procedures, set out in the Litigation Plan, for Class Members to opt out of this class proceeding, as may be subsequently amended and as approved by the Court; and

Special Opt Out Procedures means the procedures, set out in the Litigation Plan, for Class Members who have already commenced a civil proceeding in Canada or who are known

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[1] Where Class Members are known to be represented by counsel, only their name should be provided along with their counsel's name and address.

by the Crown to have already retained legal counsel to opt out of this class proceeding, as may be subsequently amended and as approved by the Court.

II. OVERVIEW

2. The plaintiffs have commenced this action on behalf of First Nations individuals who allege that the Crown has breached their equality rights, depriving them of public services and products. The class action advances the rights of thousands of First Nations children and family members.

3. This Litigation Plan is advanced as a workable method of advancing the proceeding on behalf of the Class and of notifying Class Members as to how the class proceeding is progressing, pursuant to rule 334.16(1)(e)(ii) of the *Federal Court Rules*. The Litigation Plan is modelled on the class action relating to the Indian Residential Schools,[2] with numerous alterations made in order to streamline the procedure and to take into account lessons learned from that settlement.

4. This Litigation Plan sets out a detailed plan for the common stages of this litigation, and sets out, on a preliminary without prejudice basis, an early plan for how the individual stage of the action may progress. Given the early stage of the litigation, the plan is necessarily subject to substantial revisions as the case progresses.

III. PRE-CERTIFICATION PROCESS

5. The plaintiffs are litigating this action in parallel with a closely interrelated consolidated class action (Court File Nos. T-402-19 / T-141-20) about First Nations child and family services

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[2] See *Baxter v Canada (Attorney General)*, 2006 CanLII 41673 (Ont Sup Ct), and subsequent orders of the Court. See also information available on the website of the Indian Residential Schools Adjudication Secretariat, online <http://www.iap-pei.ca/home-eng.php>.

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and Jordan's Principle. Therefore, much of the work and processes are shared between the two actions.

A. The Parties

i. The Plaintiffs

6. The plaintiffs have proposed two classes:

   (a) the Child Class; and

   (b) the Family Class.

7. The proposed representative plaintiff is Zacheus Joseph Trout.

ii. The Defendant

8. The defendant is the Crown.

B. The Pleadings

i. Statement of Claim

9. The plaintiffs have delivered a Statement of Claim.

ii. Statement of Defence

10. The Crown has not delivered a Statement of Defence.

iii. Third Party Claim

11. The Crown has not issued any Third Party Claim.

C. Preliminary Motions

12. The plaintiffs propose that any preliminary motions be dealt with at the Motion for Certification or as directed by the Court.

D. Pre-Certification Communication Strategy

i. Responding to Inquiries from Putative Class Members

13. Both before and since the commencement of this class proceeding, Class Counsel have received many communications from Class Members affected by this class proceeding.

14. With respect to each inquiry, the individual's name, address, email and telephone number are added to a confidential database. Class Members are asked to register on the websites of Class Counsel. Once registered, they receive updates on the progress of the class proceeding in French and English. Any individual Class Members who contact Class Counsel are responded to in their preferred language.

ii. Pre-Certification Status Reports

15. In addition to responding to individual inquiries, Class Counsel have created a webpage concerning the class proceeding in English and French (see: https://sotosclassactions.com/cases/current-cases/first-nations-youth/). The most current information on the status of the class proceeding is posted and is updated regularly in English and French.

16. Copies of the publicly filed court documents and court decisions are accessible from the webpage. In addition, phone numbers for Class Counsel in Quebec and Ontario as well as email contact information are provided.

17. Class Counsel sends update reports to Class Members who have provided their contact information and have indicated an interest in being notified of further developments in the class proceeding.

iii. Pre-certification outreach

18. Class Counsel have presented the proposed class action to a council of First Nations social services delivery personnel for the Province of Québec and the region of Labrador, as well as the First Nations youth directors forum in British Columbia. Class Counsel are in the process of arranging similar presentations to affected communities in Québec and elsewhere in Canada.

E. Settlement Conference

i. Pre-Certification Settlement Conference

19. The plaintiffs will participate in a pre-Certification Settlement Conference to determine whether any or all of the issues arising in the class proceeding can be resolved.

20. The plaintiffs propose that a pre-Certification Settlement Conference be conducted at least one month after the Motion for Certification and responding materials, if any, have been filed with the Court.

F. Timetable

i. Plaintiffs' Proposed Timetable for the Pre-Certification Process

21. The plaintiffs propose that the pre-Certification process timetable set out below be imposed by Court Order at an early case conference.

	Deadline
Plaintiffs' Certification Motion Record	Date of Serving and Filing the Notice of Motion for Certification and Motion Record ("**DOF**")
Respondent's Motion Record, if any	Within 90 days from DOF
Plaintiffs' Reply Motion Record, if any	Within 120 days from DOF

Cross-examinations, if any, to be completed	Within 150 days from DOF
Undertakings answered	Within 180 days from DOF
Motions arising from cross-examinations, if any, heard	Within 210 days from DOF
Further cross-examinations, if necessary, completed by	Within 230 days from DOF
Plaintiffs' Memorandum of Fact and Law	Within 250 days from DOF
Respondent's Memorandum of Fact and Law	Within 280 days from DOF
Plaintiffs' Reply, if any	Within 300 days from DOF
Motion for Certification and all other Motions commencing	Within 310 days from DOF

IV. POST-CERTIFICATION PROCESS

A. Timetable

i. Plaintiffs' Timetable for the Post-Certification Process

22. The plaintiffs intend to proceed to trial on an expedited basis or a hybrid summary judgment/*viva voce* trial.

23. The plaintiffs propose that the following post-Certification process timetable, as explained in detail below, be imposed by the Court upon Certification:

Certification Notice to Class Members commences	Upon Certification
Exchange Affidavits of Documents within	70 days from certification
Motions for Production of Documents, Multiple Examinations of Crown representatives or for Examinations of Non-Parties to be conducted within	110 days from certification

Examinations for Discovery to be conducted within	140 days from certification
Certification Notice to Class Members completed within	90 days from certification
Trial Management Conference re: Expert Evidence	170 days from certification
Motions arising from Examinations for Discovery within	190 days from certification
Undertakings answered within	160 days from certification
Further Examinations, if necessary, within	210 days from certification
Common Issues Pre-Trial to be conducted	250 days from certification
Opt Out Period deadline	180 days from certification
Common Issues Trial or Hybrid Trial to be conducted within	300 days from certification

B. Certification Notice, Notice Program and Opt Out Procedures

i. Certification Notice

24. The Certification Notice and all other notices to Class Members provided by the plaintiffs will, once finalized and approved by the Court, be translated into French. The plaintiffs will explore whether it will be necessary to translate the Certification Notice and/or other notices into some First Nations languages, subject to Court approval.

25. The Certification Notice will, subject to further amendments, be in the form set out in Schedule A hereto.

ii. Notice Program

26. The plaintiffs propose to communicate the Certification Notice to Class Members through the following Notice Program.

27. The plaintiffs will provide Certification Notice to Class Members by arranging to have the Certification Notice (and its translated versions whenever possible) communicated/published in the following media within 90 days of Certification, as frequently as may be reasonable or as directed by the Court under rule 334.32 of the *Federal Courts Rules*. In particular, the plaintiffs propose the following means of providing Certification Notice:

(a) A press release within 15 days of the Certification order being issued;

(b) Direct communication with Class Members:

(i) by email or regular mail to the last known contact information of Class Members provided by the Crown (*i.e.*, Crown Class Member Information);

(ii) by email or regular mail to all Class Members who have provided their contact information to Class Counsel, including through the Class Proceeding's webpage;

(c) Distribution to the Assembly of First Nations for circulation to its membership of First Nations bands across Canada;

(d) Email to First Nations children's aid societies across Canada;

(e) Circulation through the following media:

(i) Aboriginal newspapers/publications such as First Nations Drum, The Windspeaker, Mi'kmaq Maliseet Nations News, APTN National News; and

(ii) social media outlets, such as Facebook and Instagram.

iii. Opt Out Procedures

28. The plaintiffs propose Opt Out Procedures for Class Members who do not wish to participate in the class proceeding.

29. The Certification Notice will include information about how to Opt Out of the class proceeding and will provide information about how to obtain and submit the appropriate Opt Out Forms to the Class Action Administrator and/or Class Counsel.

30. There will be one standard Opt Out Form for all Class Members.

31. Class Members will be required to file the Opt Out Form with the Class Action Administrator and/or Class Counsel within the Opt Out Period, proposed by the plaintiffs as 180 days post Certification or as directed by the Court.

32. The Class Action Administrator or Class Counsel shall, within 30 days after the expiration of the Opt Out Period, deliver to the Court and the Parties an affidavit listing the names of all persons who have opted out of the Class Action.

iv. Special Opt Out Procedures

33. The plaintiffs propose Special Opt Out Procedures for Class Members who are either named party plaintiffs in a civil proceeding in Canada or who are known by the Crown to have retained legal counsel in respect of the subject matter of this action with the express purpose of starting a separate action against the Crown.

C. Identifying and Communicating with Class Members

i. Identifying Class Members

34. As stated above, the plaintiffs intend to request the Crown Class Member Information.

ii. Database of Class Members

35. Class Counsel will maintain a confidential database of all Class Members who contact Class Counsel. The database will include each individual's name, address, telephone number, and email address where available.

iii. Responding to Inquiries from Class Members

36. Class Counsel and their staff will respond to each inquiry by Class Members.

37. Class Counsel will have a system in place to allow for responses to inquiries by Class Members in their language of choice whenever possible.

iv. Post Certification Status Reports

38. In addition to responding to individual inquiries, Class Counsel will continually update the webpage dedicated to this class action with information concerning the status of the class proceeding.

39. Class Counsel will send update reports to Class Members who have provided their contact information. These update reports will be sent as necessary or as directed by the Court.

D. Documentary Production

i. Affidavit/List of Documents

40. The plaintiffs will be required to deliver an Affidavit of Documents within 70 days after Certification. The Crown will similarly be required to deliver a List of Documents within 70 days after Certification.

41. The Parties are expected to serve Supplementary Affidavits (or Lists) of Documents as additional relevant documents are located.

ii. Production of Documents

42. All Parties are expected to provide, at their own expense, electronic copies of all Schedule "A" productions at the time of delivering their Affidavit of Documents. All productions are to be made in electronic format.

iii. Motions for Documentary Production

43. Any motions for documentary production shall be made within 110 days of Certification.

iv. Document Management

44. The Parties will each manage their productions with a compatible document management system, or as directed by the Court. All documents are to be produced in OCR format.

45. All productions should be numbered and scanned electronically to enable quick access and efficient organization of documents.

E. Examinations for Discovery

46. Examinations for Discovery will take place within 140 days of Certification.

47. The plaintiffs expect to request the Crown's consent to examine more than one Crown representative. In the event that a dispute arises in this regard, the plaintiffs propose to bring a motion within 110 days after Certification.

48. The plaintiffs anticipate that the Examination for Discovery of properly selected and informed officers of the Crown will take approximately 10 days, subject to refusals and undertakings.

49. The plaintiffs anticipate that the Examination for Discovery of the representative plaintiffs will take approximately one day, subject to refusals and undertakings.

F. Interlocutory Matters

i. Undertakings

50. Undertakings are to be answered within 160 days of Certification.

ii. Motions for Refusals and Undertakings

51. Specific dates for motions for undertakings and refusals that arise from the Examinations for Discovery will be requested upon Certification. Motions for refusals and undertakings will be heard within 190 days of Certification.

iii. Re-attendances and Further Examinations for Discovery

52. Any re-attendances or further Examinations for Discovery required as a result of answers to undertakings or as a result of the outcome of the motions for refusals and undertakings should be completed within 210 days of Certification.

G. Expert Evidence

i. Identifying Experts and Issues

53. A Trial Management Conference will take place following Examinations for Discovery at which guidelines for identifying experts and their proposed evidence at trial will be determined.

H. Determination of the Common Issues

i. Pre-Trial of the Common Issues

54. Upon Certification, the Court will be asked to assign a date for a Pre-Trial Conference relating to the Common Issues trial.

55. The plaintiffs expect that a full day will be required for a Pre-Trial Conference and will request that the Pre-Trial be held 250 days after Certification and, in any event, at least 90 days before the date of the Common Issues trial.

ii. Trial of the Common Issues

56. Upon Certification, the Court will be asked to assign a date for the Common Issues trial.

57. The plaintiffs propose that the trial of the Common Issues be held 300 days after Certification.

58. The length of time required for the Common Issues trial will depend on many factors and will be determined at the Trial Management Conference.

V. POST COMMON ISSUES DECISION PROCESS

A. Timetable

i. Plaintiffs' Timetable for the Post-Common Issues Decision Process

59. The plaintiffs propose that the following timetable be imposed by the Court following the Court's judgment on the Common Issues:

Common Issues Notice provided	Within 90 days of Common Issues decision
Individual Issue Hearings, if any, begin	120 days after decision
Individual Damage Assessments, if any, begin	240 days after decision
Deadline to Submit Claim Forms (as of right)	Within 1 year of decision
Deadline to Submit Claim Forms (as of right in prescribed circumstances or with leave of the Court)	1 year after decision

B. Common Issues Notice

i. Notifying Class Members

60. The Common Issues Notice will, subject to further amendments, be substantially in the form approved by the Court at the Common Issues trial. The Common Issues Notice may contain, amongst others, information on any aggregate damages awarded and any issues requiring individual determination, as approved by the Court.

61. The plaintiffs propose to circulate the Common Issues Notice within 90 days after the Common Issues judgment.

62. The Common Issues Notice will be circulated in the same manner as set out above dealing with the Certification Notice or as directed by the Court.

C. Claim Forms

i. Use of Claim Forms

63. The Court will be asked to approve under rule 334.37 the use of standardized Claim Forms by Class Members who may be entitled to a portion of the aggregate damage award or who may be entitled to have an individual assessment.

ii. Obtaining and Filing Claim Forms

64. The procedure for obtaining and filing Claim Forms will be set out in the Common Issues Notice.

65. The plaintiffs propose to use a single standard Claim Form, substantially in the form attached as Schedule C, for all three classes, subject to further amendments and as approved by the Court.

66. The plaintiffs propose that counselling be made available to Class Members in need of support and assistance when completing the Claim Forms. Where necessary, a process for appointing a guardian or trustee to assist the Class Members will be developed.

67. Before completing a Claim Form, Class Members will be able to review information about them in the possession of Canada relevant to their claim (the Crown Class Member Information). That information may include:

(a) any records relating to the Class Member's voluntary or involuntary placement in out-of-home care during the Class Period;

(b) any records relating to a need by the Class Member for a service or product;

(c) any records relating to a request made by the Class Member for a service or product;

(d) any records relating to the denial of a service or product to the Class Member;

(e) any records relating to any service(s) or product(s) provided by the Crown to the Class Member; and/or

(f) any records relating to the family status or family relationship between a Family Class Member and a Child Class Member.

68. Class Members will be required to file the appropriate Claim Form with the Class Action Administrator and/or Class Counsel within the deadlines set out below or as directed by the Court.

69. The Class Action Administrator will be responsible for receiving all Claim Forms.

iii. Deadline for Filing Claim Forms

70. Class Members will be advised of the deadline for filing Claim Forms in the Common Issues Notice.

71. The plaintiffs propose that Class Members be given one year, or such period as set out by the Court, after the Common Issues judgment to file Claim Forms as of right.

72. The plaintiffs propose that Class Members be entitled to file Claim Forms more than one year after the Court's judgment on the Common Issues in certain circumstances prescribed by the Court (*i.e.*, lack of awareness of entitlement, etc.) or with leave of the Court (*i.e.*, based on mental or physical health issues, etc.).

D. Determining and Categorizing Class Membership

i. Approving Child Class Members

73. The Class Action Administrator will determine whether an individual submitting a Claim Form as a Child Class Member properly qualifies as a Class Member.

74. The Class Action Administrator will make these determinations following guidelines determined by the Court at the Common Issues trial in part by referring to the information set out in the Claim Form. Such guidelines may include: (a) whether the Class Member needed a service or product at any point during the Class Period; (b) whether the Class Member was denied that service or product; (c) whether the Class Member's receipt of a service or product was delayed or disrupted; (d) whether such denial, disruption or delay was based on lack of funding, lack of jurisdiction or a jurisdictional dispute between governments or government departments; and/or (e) whether such denial, disruption or delay happened while the Class Member was under the applicable provincial/territorial age of majority.

75. The Class Action Administrator will also make these determinations in part by referring to the Crown Class Member Information regarding the number of Class Members who have received a service or product under Jordan's Principle under orders made in the CHRT Proceeding.

76. The Class Action Administrator will, where appropriate and necessary, request in writing further information from the individual submitting the Child Class Claim Form or the Crown to make these determinations.

ii. Approving Family Class Members

77. The Class Action Administrator will determine whether an individual submitting a Family Class Claim Form properly qualifies as a Family Class Member.

78. These determinations will be made by the Class Action Administrator by referring to Crown Class Member Information and the information set out in the Claim Form with respect to the relationship of the proposed Family Class Member with an Approved Child Class Member.

79. The Class Action Administrator will, where appropriate and necessary, request in writing further information from the individual filing the Claim Form to make these determinations.

iii. Deceased Class Members

80. The estate of a deceased Class Member may submit a Claim Form if the deceased Class Member died on or after April 1, 1991.

81. If the deceased Class Member would otherwise have qualified as an Approved Class Member, the estate will be entitled to be compensated in accordance with the Aggregate Damages Distribution Process. The estate will not have the option to proceed under the Individual Damage Assessment Process except with leave of the Court.

iv. Notifying Class Members, Challenging and Recording Decisions

82. Within 30 days of receipt of a Claim Form, the Class Action Administrator will notify the individual of its decision on whether the individual is an Approved Class Member. Individuals who are not approved as Class Members will be provided with information on the procedures to follow to challenge the decision of the Class Action Administrator. The plaintiffs propose that these procedures include an opportunity to resubmit an amended Claim Form with supporting documentation capable of verifying that the individual is a Class Member.

83. All interested parties will be provided with the ability to appeal a decision by the Class Action Administrator to the Court or in a manner to be prescribed. Class Counsel may challenge the decision on behalf of affected individuals.

84. The Class Action Administrator will keep records of all Approved Class Members and their respective Claim Forms and will provide this information to Class Counsel, the Crown and other interested parties on a monthly basis. Class Counsel and/or other interested parties will have 30 days after receiving this information to challenge the Class Action Administrator's decision by advising the Class Action Administrator and the other affected parties in writing of the basis for their challenge. The responding party will be given 30 days thereafter to respond in writing to the challenge at which time the Class Action Administrator will reconsider its decision and advise all parties.

E. Aggregate Damages Distribution Process

i. Distribution of Aggregate Damages

85. The Class Action Administrator will distribute the aggregate damages to all Approved Class Members in the manner directed by the Court.

86. The plaintiffs will propose that Approved Class Members be entitled to a proportion of the aggregate damages as determined by the Class Action Administrator based on factors to be approved by the Court, including but not limited to: (a) the duration of deprivation from a service or product as a result of a delay, denial or disruption; (b) the importance of the service or product to the child; and (c) the family relationship of the Family Class Member to a given Child Class Member.

87. The Class Action Administrator, upon advising Approved Class Members of its decision on their membership as set out above, will within a reasonable period of time to be determined by the Court, advise the Approved Class Members of the proportion of aggregate damages owing to each Approved Class Member under the Aggregate Damages Distribution Process to be approved by the Court.

88. In addition, if applicable, the Class Action Administrator will provide Approved Class Members with a package of materials including: information on how to collect their aggregate damage awards, information on Class Members' ability to proceed through the Individual Damage Assessment Process, copies of the Individual Damage Assessment Form along with a guide on how to complete the form, and contact information for obtaining independent legal advice and counselling. Such information is to be provided in a culturally responsive and appropriate style, making full use of interactive media, including video tutorials.

ii. Seeking an Individual Damage Assessment

89. Approved Class Members, when notified of their entitlement to aggregate damages, may be given information on their right to have their compensation individually assessed under the Individual Damage Assessment Process set out below.

F. Individual Damage Assessment Process

i. Individual Damage Assessment Forms

90. When Approved Class Members are notified of their aggregate damage entitlement and information on their right to proceed under the Individual Damage Assessment Process, they will be provided with an Individual Damage Assessment Form as set out in Schedule D.

91. If applicable, the plaintiffs propose that a request for individual damages be made by sending an Individual Damage Assessment Form to the Class Action Administrator, and that only those individuals who wish to proceed through the Individual Damage Assessment Process be required to submit Individual Damage Assessment Forms.

ii. Individual Damage Assessments

92. The Court may be asked to approve the use of an Individual Damage Assessment Process after a judgment on the Common Issues or otherwise as directed by the Court.

93. The Individual Damage Assessment Process would be available to all Approved Class Members except those who are found by the Court not to be entitled to individual damages following the Common Issues trial.

iii. Individual Issue Hearings

94. The Court will be asked to provide directions, or to appoint persons to conduct references under rule 334.26 of the *Federal Courts Rules* or appoint a judge to conduct test cases involving selected Approved Class Members who are proceeding under the Individual Damage Assessment Process to assist with the matters that may or may not remain in issue after the determination of the Common Issues, such as:

(a) Hearing rules for individual assessments;

(b) A compensation matrix for individual damages;

(c) Assistance in resolving disputes relating to the definitions of key terms such as "essential service", "delay", and "jurisdictional dispute"; and

(d) Other matters raised by the Court or the parties during the Common Issues litigation.

G. Fees

i. Plaintiffs' Legal Fees

95. The plaintiffs' fees are to be paid on a contingency basis, subject to the Court's approval under rule 334.4 of the *Federal Courts Rules*.

96. The agreement between the representative plaintiffs and Class Counsel states that legal fees and disbursements to be paid to Class Counsel shall be on the following basis:

(a) Aggregate damages recovery: 20% of the first two hundred million dollars ($200,000,000) in recovery by settlement or judgment, plus 10% of any amounts recovered by settlement or judgment beyond the first two hundred million dollars; and

(b) Individual damages recovery: 25% of settlement or judgment.

ii. Funding of Disbursements

97. Funding of legal disbursements for the representative plaintiffs has been, and will continue to be, made through Class Counsel, unless the plaintiffs and Class Counsel subsequently deem it to be in the best interests of the Class to obtain third-party funding, in which case Class Counsel will advise the Court of such third-party funding and seek approval thereof.

H. Settlement Issues

i. Settlement Offers and Negotiations

98. The plaintiffs will conduct settlement negotiations with the Crown from time to time with a view to achieving a fair and timely resolution.

ii. Mediation and Other Non Binding Dispute Resolution Mechanisms

99. The plaintiffs will participate in mediation or other non-binding dispute resolution mechanisms, if and when appropriate, in an effort to try to resolve the dispute or narrow the issues in dispute between the Parties.

I. Review of the Litigation Plan

i. Flexibility of the Litigation Plan

100. This Litigation Plan will be reconsidered on an ongoing basis and may be revised under the continued case management authority of the Court before or after the determination of the Common Issues or as the Court sees fit.

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SCHEDULE "A"

PROPOSED NOTICE OF CERTIFICATION

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ CAREFULLY.

The Nature of the Lawsuit

As of March 2019, Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Co., Nahwegahbow Corbiere, and Fasken LLP (collectively "Class Counsel") have prosecuted an action on behalf of First Nations plaintiffs in the Federal Court of Canada in Montreal, against the Attorney General of Canada (the "Crown").

The lawsuit claims that between April 1, 1991 and December 11, 2007 the Crown instituted discriminatory policies across Canada, delaying, disrupting or denying the delivery of needed public services and products to First Nations youth.

The action was brought on behalf of a Class of:

(a) all First Nations youths who were denied a public service or product, or whose receipt of a public service or product was delayed or disrupted, on the grounds of lack of funding or lack of jurisdiction, or as a result of a jurisdictional dispute with another government or governmental department between April 1, 1991 and December 11, 2007;

(b) family members of the Class Members cited in (a) above.

By order dated **[INSERT DATE]**, The Honourable Justice **[INSERT NAME]** certified the action as a class proceeding, appointing Zacheus Joseph Trout as representative plaintiffs for the class.

The Court found that the following issues affecting the Class will be tried at a Common Issues trial:

- **[INSERT CERTIFIED COMMON ISSUE]**
- …

Participation in the Class Action

If you fall within the class definition, you are automatically included as a member of the Class, unless you choose to opt out of the Class Action, as explained below. All members of the Class will be bound by the judgment of the Court, or any settlement reached by the parties and approved by the Court.

At this juncture, the Court has not taken a position as to the likelihood of recovery for the representative plaintiffs or the Class, or with respect to the merits of the claims or defences asserted by the Crown.

Fees and Disbursements

You do not need to pay any legal fees out of your own pocket. A retainer agreement has been entered into between the representative plaintiffs and Class Counsel with respect to legal fees. The agreement provides that the law firms have been retained on a contingency fee basis, which means they will only be paid their fees in the event of a successful result in the litigation or a Court-approved settlement.

You will not be responsible for Defendant's legal costs if the class action is unsuccessful. Any fee paid to lawyers for the Class is subject to the Court's approval.

Opt Out

If you are a class member and wish to exclude yourself from this class proceeding ("opt out"), you must complete and return the "Class Member Opt Out" form by no later than **[INSERT DATE]**. The Opt Out form may be downloaded at: **[INSERT WEBSITE ADDRESS]**.

Class members who choose to opt out within the above noted deadline will not recover any monies if the representative plaintiffs are successful in this action. If class members do not choose to opt out by the deadline, they will be bound by any judgment ultimately obtained in this class action, whether favourable or not, or any settlement if approved by the Court.

Contact Information

If you have any questions or concerns about the matters in this Notice or the status of the class action, you may contact Class Counsel in a number of ways.

By phone: [**INSERT PHONE NUMBER**]

By email: [**INSERT EMAIL**]

Toll-Free Hotline: [**INSERT TELEPHONE**]

By mail: [**INSERT ADDRESS**]

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SCHEDULE "B"

OPT OUT FORM

TO:
[CLASS ACTION ADMINISTRATOR TO BE APPOINTED]
[Address]
[Email]
[Fax]
[Phone number]

ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]

I do not want to participate in the class action entitled ***Zacheus Joseph Trout et al v. The Attorney General of Canada*** regarding the claims of discrimination against First Nations children. I understand that by opting out, I will not be eligible for the payment of any amounts awarded or paid in the class action, and if I want an opportunity to be compensated, I will have to make an individual claim and decide whether to engage a lawyer at my own expense.

Dated: _____

_____
Signature

_____
Full Name

_____
Address

_____
City, Province, Postal Code

_____
Telephone

_____
Email

This Notice must be delivered by regular mail or email on or before_____, 202_ to be effective.

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SCHEDULE "C"

CLAIM FORM

TO:
[CLASS ACTION ADMINISTRATOR TO BE APPOINTED]
[Address]
[Email]
[Fax]
[Phone number]

ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]

I, _____ (insert full name(s), including maiden name if applicable), have received Notice of the National Class Action entitled ***Zacheus Joseph Trout et al v. The Attorney General of Canada*** regarding the claims of discrimination against First Nations children. My date of birth is _____ (insert day, month, year of birth).

I believe that I am a Class Member and I wish to submit a claim as a member of the following Class or Classes (mark the applicable item(s) with an X):

[_] Child Class

[_] Family Class

If you selected the Child Class, please summarize below the public services or products that you needed between April 1, 1991 and December 11, 2007, and that were denied, delayed or disrupted:

Product(s) or service(s) needed	**Was a request made for the service(s) or product(s)?**	**Was the service(s) or product(s) denied, delayed or disrupted?**	**The date(s) of need, request, and/or denial, delay or disruption**

If you selected the Family Class, please summarize below your relationship to the member(s) of the Child Class:

Full name(s) and claim number of the Approved Child Class Member in your family	**Your relationship to the Class Member (only the brother, sister, mother, father, grandmother or grandfather of an Approved Child Class Member)**

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My mailing address is:

Street name, Apartment #

City, Province

Postal Code

Telephone Number(s)

Email address

Signed: _____ Date: _____

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SCHEDULE “D”

INDIVIDUAL DAMAGE ASSESSMENT FORM

TO:
[CLASS ACTION ADMINISTRATOR TO BE APPOINTED]
[Address]
[Email]
[Fax]
[Phone number]

ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]

I, _____ [insert full name(s), including maiden name if applicable], have been notified that I am an Approved Child Class Member. My claim number is _____ [insert assigned claim number].

I have been provided with a package of information outlining and explaining my option to request an individual damage assessment in accordance with the Individual Damage Assessment Process.

I am also aware that I can obtain independent legal advice with respect to this request and can obtain assistance to complete this form at no charge to me by contacting [insert assigned contact #].

Below is information relating to my experience with the denial/delay/disruption of the receipt of a public service or product and the impacts and harms that resulted from my experience:

[The Individual Damage Assessment Form will be designed after a Court decision on the Common Issues. The goal of the Individual Damage Assessment Form though will be to obtain, amongst others, the following information from Approved Class Members:

- *Any conditions or circumstances that required a public service or product;*
- *Reasons for denial of a public service or product;*
- *Department(s) of contact;*
- *Authorizations for the Crown to obtain documents; and*
- *Such further and other information that is deemed necessary and appropriate.]*

Signed: _____ Date: _____

Schedule F: Framework of Essential Services

First Nations Child and Family Services and Jordan's Principle Class Action

Framework of Essential Services

Who can claim compensation for not receiving an essential service from Canada or receiving it after delay?

A claim for compensation can be made if:

1. An essential service was needed by the claimant; and

2. The claimant or someone on behalf of the claimant asked Canada for an essential service that was denied or delayed in being provided. Or, the claimant needed the essential service, but it was not available or accessible to them (there was a gap in services), even if they did not ask for the service.

What is an "essential service"?

A service is considered essential if the claimant's condition or circumstances required it and the delay in receiving it, or not receiving it at all, caused material impact on the child.

Examples of types and categories of essential services are attached as an appendix to this Framework.

If the claimant needed a service that is not on the list of examples, it may still be considered an essential service under the settlement if not receiving the service had a material impact on the child.

What timeframe is covered?

Claimants are covered by this settlement if they needed the essential service as a child at any time from April 1, 1991 to November 2, 2017.

How to make a claim?

1. If the claimant requested a service from Canada that was delayed or denied, they may provide a copy of the letter, email or other document submitted to Canada requesting the service. If they do not have a copy, they may provide a statutory declaration confirming that they requested the service.

2. If the claimant did not request a service from Canada but required an essential service that was not available or accessible, they need to provide confirmation from a professional saying what essential service they needed, why it was essential and when they needed it, either through historical documentation or contemporary confirmation by a professional.

Confirmation can be in two forms depending on the answer to the following question:

Does the claimant have any kind of historical document stating that an essential service was needed?

If the answer is **YES**, please follow **Procedure A.**

If the answer is **NO**, please follow **Procedure B.**

Procedure A (to be completed if claimant has historical documentation confirming that an essential service(s) was/were needed)

1. Complete the Claim Form (when available).
2. Provide copies of the historical documentation confirming that an essential service(s) was/were needed.
3. If the historical documentation lacks specifics on the confirmed need for the identified essential service, a professional may complete the Professional Confirmation of Essential Services Form.
4. Complete the questionnaire (when available).

Procedure B (to be completed if the claimant has NO historical documentation stating that an essential service(s) was needed.

1. Complete the Claim Form (when available).
2. A professional completes the Professional Confirmation of Essential Services Form (when available).
3. Complete the questionnaire (when available).

What is historical documentation?

Historical documentation refers to old documents such as a health record or an assessment conducted by a health, social care professional, educator, or other professional or individual with expertise and knowledge of the need for this essential service and/or support.

Is there help in claiming compensation?

Yes. Once the claim form and other supporting documents are available, they will be released online at www.fnchildcompensation.ca. Support in completing these forms will be available through the Administrator.

Appendix – Examples of Essential Services

1. Some services provided by, or under the guidance and direction of, health, social care, and educational professionals who specialize in:

    a) Recommending services and supports with activities of daily living and safety in the home, school and community (e.g., occupational therapists, *adapted feeding devices*)

    b) Helping individuals with expressive and receptive language skills (e.g., speech and language pathologists, *augmentative and alternative communication*)

    c) Helping individuals with movement of their hands, arms, and legs (e.g., physiotherapists, *mobility devices*)

    d) Giving and interpreting hearing tests and recommending assistive devices related to hearing (e.g., assessment of hearing by audiologists, *hearing devices*)

    e) Testing vision and recommending corrective eyewear (e.g., optometrists, *advising on eyewear*)

    f) Teaching children with learning needs (e.g., special needs education teachers; supported child development consultants)

    g) Promoting infant, early childhood or adolescent development[1] (e.g., infant development consultants, child and youth workers, or early childhood educators).

    h) Conducting psychoeducational assessments, and provision of counselling (e.g., psychologists, social workers)

    i) Addressing delayed or problematic behaviours (e.g., early childhood educators, behavioural specialists, child and youth workers, social workers,)

    j) Recommending a specialized diet or nutritional intake (e.g., nutritionist, dietitian)

2. Equipment, products, processes, methods and technologies that are recommended in a cognitive assessment or individualized education plan.

3. Medical equipment, such as:

    a) Equipment, products and technology used by people to assist with daily activities (e.g., environmental aids, including lifts and transfer aids and professional installation thereof)

[1] Development refers to physical, social, cognitive, and mental health development

b) Products and technology for personal indoor and outdoor mobility and transportation (e.g., mobility aids that include standing and positioning aids and wheelchairs)

c) Hospital bed

d) Medical equipment related to diagnosed illnesses (e.g., percussion vests, oxygen, insulin pumps, feeding tubes)

e) Prostheses and orthotics

f) Specialized communication equipment (e.g., equipment, products, and technologies that allow people to send and receive information that would otherwise be done verbally)

4. Medical transportation related to access to essential services, supports or products where the lack of transportation prevented access to the recommended service (e.g., people in remote/isolated, semi-isolated communities)

5. Specialized dietary requirements

6. Treatment for mental health and/or substance misuse, including inpatient treatment

7. Oral health (excluding orthodontics), such as:

    a. Oral surgery services, including general

    b. Restorative services, including cavities and crowns

    c. Endodontic services, including root canals

    d. Dental treatment required to restore damage resulting from unmet dental needs

8. Respite care

9. Surgeries

Schedule G: Investment Committee Guiding Principles

SCHEDULE "G"

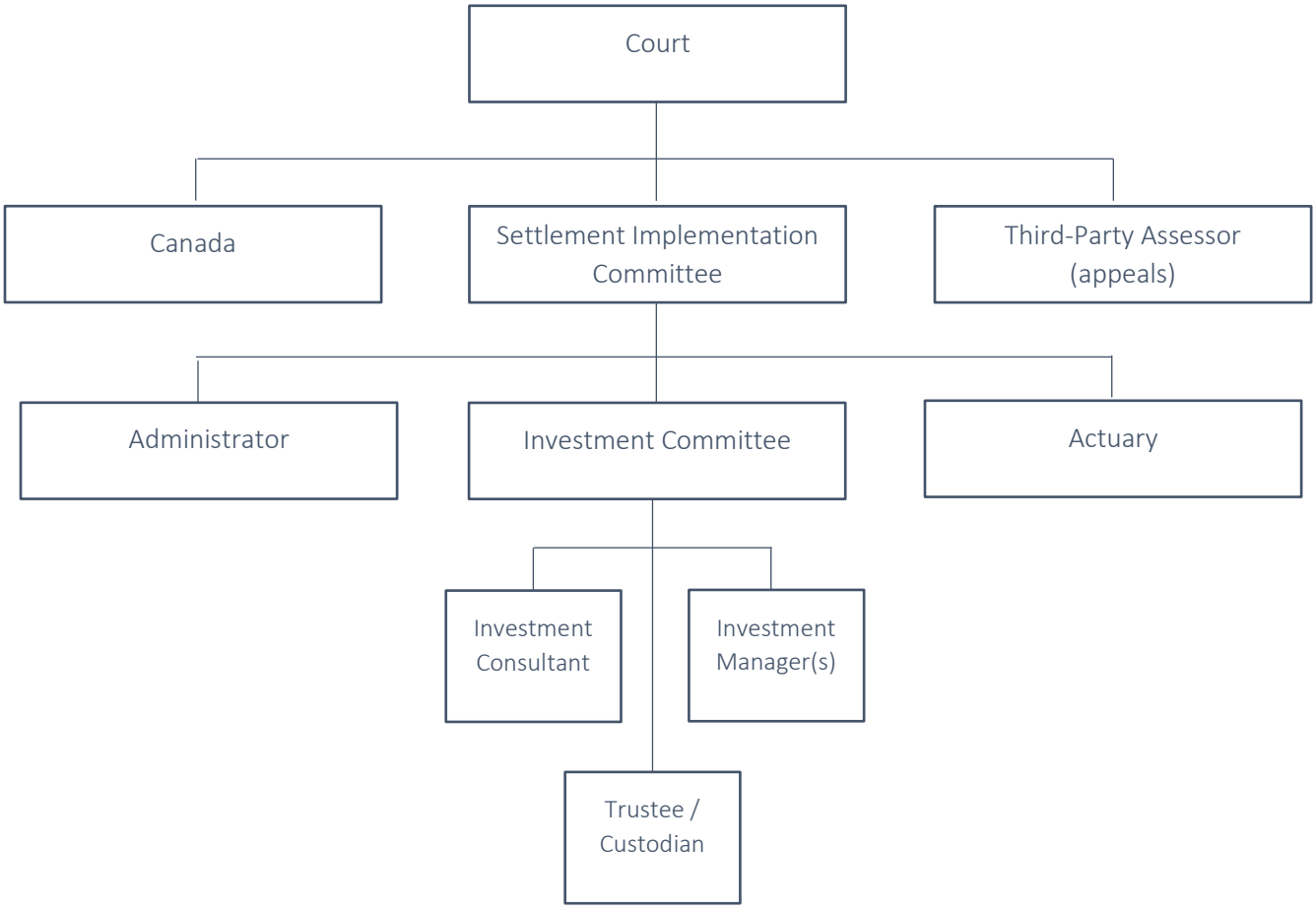
Investment Committee Guiding Principles

This Schedule sets out the principles that shall inform the drafting of the Investment Committee Terms of Reference by the Settlement Implementation Committee, as set out in the Final Settlement Agreement.

Basic Governance Structure relating to Investment Committee:

1. **In order to facilitate the effective management of the Settlement Funds, the Investment Committee should be constituted in a manner that is directly overseen by the Settlement Implementation Committee.** The Investment Committee should be permitted to make decisions within the scope of the Terms of Reference with independence, but is accountable to the Settlement Implementation Committee and, ultimately, the Court. The Investment Committee must be able to communicate with both the Administrator and the Actuary, whether independent of, or through the Settlement Implementation Committee.

2. **The Settlement Implementation Committee should be responsible for oversight of the entire process, including resolving any issues that may arise from time to time.** Where necessary, the Settlement Implementation Committee is the body responsible for seeking guidance from the Court, on behalf of the Class, the Administrator, the Actuary or the Investment Committee.



3. **The Investment Committee should be guided by a statement of investment goals established by the Settlement Implementation Committee.** These goals should not be prescriptive of methods, but rather establish desired outcomes, with the implementation to achieve these outcomes assigned to the Investment Committee.

4. **The Investment Committee should be empowered, through its Terms of Reference to take the following actions:**

    a. Establish, review and maintain a Statement of Investment Policies and Procedures, consistent with the investment goals established by the Settlement Implementation Committee;

    b. Review investment goals and recommending changes to the investment goals to the Settlement Implementation Committee;

    c. On advice from the Investment Consultant and the Actuary, review the asset mix of the Trust to ensure it is consistent with the Trust's return objectives and risk tolerances. As required, modify the asset allocation to ensure the Trust remains prudently invested and diversified to achieve its long-term objectives.

    d. Identify and recommend to the Settlement Implementation Committee an Investment Consultant and corporate trustee for the Fund and for an expenses fund, in the case that implementation expenses are pre-paid by Canada.

    e. Determine the number of investment managers to use from time to time. Select and appoint investment manager(s), set the mandate for each investment manager, terminate investment manager(s) and/or rebalance the funds among the investment manager(s), all based on the advice of the Investment Consultant.

    f. Periodically (bi-annually, annually, semi-annually, or quarterly) review the performance of the Investment Consultant, custodian and corporate trustee and report the results of the review to the Settlement Implementation Committee.

    g. Engage the Investment Consultant to provide advice as considered appropriate from time to time.

    h. Receive, review and approval of reports from the Investment Consultant, investment manager(s) and corporate trustee for the Fund.

    i. Direct the Investment Consultant and/or investment manager(s) to implement any decisions of the Investment Committee.

j. Delegate to the investment manager(s) such decisions regarding the investment of the Fund consistent with the Statement of Investment Policies and Procedures.

k. Monitor compliance of the Trust's investment and investment procedures with the Statement of Investment Policies and Principles.

l. With assistance from the Investment Consultant, monitor the investment performance of the Fund as a whole. Monitor and review all aspects of the performance and services of the Investment Manager(s) including style, risk profile and investment strategies.

m. Monitor risks to the Fund with respect to the overall compensation plan.

    i. With assistance from the Investment Consultant, conduct an annual risk review of the Fund in conjunction with the review by the Settlement Implementation Committee and at such other times as the Investment Committee considers prudent.
    ii. Implement such risk mitigation strategies as considered prudent and report results to the Settlement Implementation Committee.

n. Provide assistance to the Auditor as required.

o. Make recommendations to the Settlement Implementation Committee regarding any Court Approved Protocols and policies that affect the investments of the Fund, including adoption, amendment and termination.

p. Receive periodic reports from the Actuary regarding expected future compensation payments (amount and timing) and based on advice from the Investment Consultant, determine whether any changes to the Statement of Investment Policies and Procedures is necessary or if any changes to the mandates given to the investment manager(s) is necessary.

q. Take direction from and being responsive to the Settlement Implementation Committee on a timely basis.

Schedule H: Opt-Out Form

First Nations Child and Family Services and Jordan's Principle Class Action

OPT-OUT FORM

TO: Deloitte LLP, Claims Administrator
Mail: PO Box 7030, Toronto, ON, M5C 2K7
Email: fnchildclaims@deloitte.ca
Fax: 416-815-2723
Phone: 1-833-852-0755

I do not want to participate in the class actions styled as ***Xavier Moushoom et al v. The Attorney General of Canada*** and ***Zacheus Trout et al v. The Attorney General of Canada*** regarding the claims of discrimination against First Nations children and families. I understand that by opting out, **I will NOT be eligible for the payment of any amounts** awarded or paid in the class actions, and those associated with the Canadian Human Rights Tribunal File No.: T1340/7008. If I want an opportunity to be compensated, I will have to make a separate individual claim and if I decide to pursue my own claim, and I want to engage a lawyer this will be at my own expense.

Please state your reason for opting out: _____

If you are sending this form on behalf of someone else, what is your full name and relationship to that person: Full Name: _____ Relationship: _____

Date: _____ _____
Signature

_____
Full Name of the Person Opting Out

_____
Date of Birth of the Person Opting Out

_____
Indian Registry/Status Number (if available)
of the Person Opting Out

_____
Address of the Person Opting Out

_____
Reserve/Town/City, Province, Postal Code

_____
Telephone

_____
Email

This notice must be delivered on or before **August 23, 2023** to be effective.

Schedule I: Framework for Supports for Claimants in Compensation Process

Holistic Wellness Supports Relating to Compensation Under the Class Actions on First Nations Child and Family Services and Jordan's Principle

The parties to the compensation settlement negotiations regarding First Nations Child and Family Services (FNCFS) and Jordan's Principle recognize the need to provide trauma-informed, culturally safe, and accessible health and cultural supports to class members as they navigate the compensation process, as well as supports they may require following the claims process and over the course of their lives. Given that First Nations partners have emphasized the cultural appropriateness of the Indian Residential Schools Resolution Health Support Program (IRS-RHSP), the presented components are services that mirror the IRS-RHSP with special consideration for the needs of children, youth and families. The approach would seek to build from and emphasize the best practices and innovation demonstrated through the IRS-RHSP and support the First Nations mental wellness continuum and continuity of services for class members. Funding provided to First Nations service providers under the IRS-RHSP does not exclude other community members from accessing cultural and emotional supports. This approach would continue in the current claims process. Fee for service mental health counselling is available to class members regardless of their eligibility for Non-Insured Health Benefits.

Components for the approach are based on the following considerations:

- Ensuring services are aligned with the First Nations Mental Wellness Continuum Framework (FNMWCF), which is widely endorsed and developed with First Nations partners, to guide culture as foundation and holistic navigation supports.
- Supporting the largest class action client cohort to date, and unique given the focus on children and youth and/or adverse childhood experiences.
- Recognizing the generational nature of this compensation, mental health and cultural supports will need to be available over the duration of the claims process and flexible to accommodate differing timelines on compensation and support needs as class members reach the age of majority. The approach outlined in this annex builds on the existing network of service providers to enable access to a continuity of services, including First Nations community-based programs, mental wellness teams, Non-Insured Health Benefits counselling and other services.
- Supporting, including funding, regional First Nations partners and First Nations governments to implement supports in the claims process.
- Mental health and cultural supports provided by service providers under contribution agreement will be accessible to all impacted community members.
- Adult class members will be appropriately served by the existing network of health and cultural supports with enhancements to capacity.
- Children and youth will be better served by specialized trauma-informed services, provided through existing First Nations organizations that are already serving children, youth, and families.
- Lessons learned from the Missing and Murdered Indigenous Women and Girls (MMIWG) Inquiry are that client utilization ramped up more quickly than in the first years of the IRS-RHSP. This is likely due to increased awareness and availability of services.
- There is a need for a specific line with chat/text function and case management supports for class members on a confidential basis to easily navigate access to trauma-informed services supported by culturally relevant assessments and comprehensive case management.
- The role of case management is to prevent class members having to repeat their stories and minimize re-traumatization.
- Collaboration with Correctional Services of Canada (CSC), provincial and territorial correctional services and youth detention centers (YDC) is needed to ensure services are provided to class members that are in custody.
- Collaboration with a variety of educational providers (community based, federal, and provincial and territorial) is needed to ensure that services are provided/referred in a way that is accessible to school-aged children, including leveraging expertise in existing youth programs and mental wellness teams that work closely with schools.

Guiding principles for building options:

PRINCIPLES	DESCRIPTION
Child & youth focus, competent service	Healthy child [and youth] development is a key social determinant of health and is linked to improved health outcomes in First Nations families and communities. Successful services for Indigenous children and youth include programs that: are holistic, community-driven and owned; build capacity and leadership; emphasize strengths and resilience; address underlying health determinants; focus on protective factors; incorporate Indigenous values, knowledge and cultural practices; and meaningfully engage children, youth, families and the community (FNMWCF, p. 16 & Considerations for Indigenous child and youth population mental health promotion in Canada). Creating safe and welcoming environments where First Nations children, youth and families are assured their needs will be addressed in a timely manner is essential. Child development expertise, neuro-diverse services and other considerations must be accounted for.
Client-centred care within holistic family and community circle/context	Services and supports build on individual, family and community strengths, considers the wholistic needs of the person, [family and community] (e.g., physical, spiritual, mental, cultural, emotional and social) and are offered in a range of settings (Honouring Our Strengths, p. 41). Services are accessible regardless of status eligibility and place of residence. Services consider neuro-diversity, especially in the case of children and youth.
Trauma-informed, Child development-informed	Trauma-informed care involves understanding, recognizing, and responding to the effects of all types of trauma experienced as individuals at different development stages of life and understands trauma beyond individual impact to be long-lasting, transcending generations of whole families and communities. A trauma-informed care approach emphasizes physical, psychological and emotional safety for both consumers and providers, and helps survivors (individuals, families, and communities) rebuild a sense of control and empowerment. Trauma-informed services recognize that the core of any service is genuine, authentic and compassionate relationships. With trauma-informed care, communities, service providers or frontline workers are equipped with a better understanding of the needs and vulnerabilities of First Nations clients affected by trauma (FNMWCF: Implementation Guide, p. 81).
Provision of culturally safe assessments	Assessment frameworks, tests, and processes must be developed from an Indigenous perspective, including culturally appropriate content (Thunderbird Partnership Foundation's *A Cultural Safety Toolkit for Mental Health and Addiction Workers In-Service with First Nations People*).
Provision of coordinated & comprehensive continuum of services (i.e. awareness of other programs & services)	Active planned support for individuals and families to find services in the right element of care transition from one element to another and connect with a broad range of services and supports to meet their needs. A comprehensive continuum of essential services includes: Health Promotion, Prevention, Community Development, Education, Early Identification and Intervention, Crisis Response, Coordination of Care and Care Planning, Withdrawal Management, Trauma-informed Treatment, Support and Aftercare (Honouring Our Strengths, p.3 & FNMWCF, p. 45). The Continuum of Services will aim to prevent class members needing to repeat their stories.
Enhanced care coordination & planning	Ensure timely connection, increased access, and cultural relevancy [and safety] across services and supports. It is intended to maximize the benefits achieved through effective planning, use, and follow-up of available services. It includes collaborative and consistent communication, as well as planning and monitoring among various care options specific to individual's holistic needs. It relies upon a range of individuals to provide ongoing support to facilitate access to care (Honouring Our Strengths, p. 60 & FNMWCF, p. 17).
Culturally competent workforce through ongoing self-reflection	Awareness of one's own worldviews and attitudes towards cultural differences, including both knowledge of and openness to the cultural realities and environments of the individuals served. A process of ongoing self-reflection and organizational growth for service providers and the system as a whole to respond effectively to First Nations people (Honouring Our Strengths, p. 8).

PRINCIPLES	DESCRIPTION
Culturally-informed and sustainable workforce: long-term development of First Nations service providers	Education, training and professional development are essential building blocks to a qualified and sustainable workforce of First Nations service providers through long-term approaches, whereby ensuring service continuity. Building and refining the skills of the workforce can be realized by ensuring workers are aware of what exists through both informal and formal learning opportunities, supervision, as well as sharing knowledge within and outside the community (FNMWCF, p. 48).
Community-based multi-disciplinary teams (i.e. Mental Wellness Teams)	Grounded in culture and community development, multi-disciplinary teams are developed and driven by communities, through community engagement and partnerships. It supports an integrated approach to service delivery (multi-jurisdictional, multi-sectoral) to build a network of services for First Nations people living on and off reserve (FNMWCF, p. 52, Honouring Our Strengths, p. 79). This approach could link with, or build within, navigation supports for class members to assess their eligibility and access the claims process.
Community-based programming	Comprehensive, culturally relevant, and culturally safe community-based services and supports are developed in response to community needs. Community-based programs considers all levels of knowledge, expertise and leadership from the community (FNMWCF, p. 44).
Flexible service delivery	Services are developed to embrace diversity and are flexible, responsive, accessible and adaptable to multiple contexts to meet the needs of First Nations peoples, family, and community across the lifespan (FNMWCF, p. 45). There will need to be special consideration for remote communities.

Component 1: Service Coordination and Care Teams approach for supports to claimants

Elements	FNMWCF Alignment
• Interdisciplinary Care Teams for class members to support coordinated, seamless access to services and supports, wherever possible. • Service Coordinators housed in First Nations organizations across the country to exercise case management role and pull assigned team leads for administrative, financial literacy and health and cultural supports (including professional oversight/supervision when necessary) depending on the class member's needs. Service Coordinators would not be delivering the services themselves but acting as the central point of contact for class members. • Care Teams are based on partnerships between various local/regional organizations (e.g., First Nations financial institutions, IRS-RHSP providers, peer support networks, etc.). • The Final Settlement Agreement would indicate what the base standard for Care Team services must include and the description of Service Coordination functions. • Wherever possible, services are available in local/regional First Nations languages. • Community contact person to be identified as an extension of the sub-regional Care Team. • A national/regional network of Service Coordinators would be brought together for feedback and this would be shared with the Settlement Implementation Committee. These networks would also offer peer support, training, evaluation.	• Effective and innovative way to increase access to and enhance the consistency of services; outreach, assessment, treatment, counselling, case management, referral, and aftercare. • Culture as foundation. • Developed and driven by communities. • Based on community needs and strengths. • Effective model for developing relationships that support service delivery collaborations both with provinces and territories and between community, cultural, and clinical service providers.

Component 2: Bolstering existing network of health and cultural supports

Elements	FNMWCF Alignment
• Leveraging and expanding the existing network of health and cultural supports housed within First Nations and Indigenous organizations, with an emphasis on child and family-focused supports, to provide trauma-informed care while class members navigate the settlement process. Some of the organizations would be part of the existing network of IRS-RHSP, MMIWG, day schools and other service providers, while others could be new providers, particularly to increase access for children and youth.	• Enhanced flexible funding. • Community development, ownership and capacity building. • Self-determination. • Culture as foundation. • First Nations play key role in hiring of personnel to ensure personnel is recognized by their community. • Communities can ensure service provision are culturally safe and appropriate.

Component 3: Access to mental health counselling to all class members

Elements	FNMWCF Alignment
• Mental health counselling for individuals, families and communities is provided by regulated health professionals (i.e. psychologists, social workers, culture-based practitioners/ceremonialists) who are in good standing with their respective regulatory body and are enrolled with ISC. Access to counselling is not dependent on residence or Non-Insured Health Benefits eligibility. • Counselling would be provided in health professionals, culture-based practitioners/ceremonialists private practice and are primarily paid by ISC on a fee-for-service basis. Counsellors can travel into communities and be reimbursed on a per diem basis. • Virtual mental health counselling will be eligible, depending on regulatory college specifications.	• Enhanced flexible funding. • Community development, ownership and capacity building. • Self-determination. • To increase access to services to class members and their families as defined by First Nations partners.

Component 4: Support enhancement to the Hope for Wellness Help Line or dedicated line

Elements	FNMWCF Alignment

• Dedicated support team for class action members that is accessible in First Nations languages, including:
  ○ Access to specialized child and youth expertise, including trauma-informed, child development perspective.
  ○ Case management function.
  ○ Referrals to dedicated Care Teams through Service Coordinators (component 1).
  ○ Referral to information line relating to the application process.
• Phone line employees will receive training on the class actions, the course of the CHRT complaint and other related legal, policy and social documentation.
	• Quality care system and competent service delivery.
	• Increase access to necessary services.

Schedule J: Summary Chart of Essential Service, Jordan's Principle, and Trout Approach

Summary Chart of Essential Service, Jordan's Principle, and Trout Approach

CLASS		CRITERIA	COMPENSATION
Essential Service Class (2007-2017)	**Jordan's Principle Class Members**	• Approved Essential Service Class Members who are determined to have experienced the highest level of impact (including pain, suffering or harm of the worst kind) in relation to a Delay, Denial or Service Gap pursuant to Schedule F, Framework of Essential Services, subject to piloting. • The Parties' intention is that the way that the highest level of impact is defined, and the associated threshold set for membership in the Jordan's Principle Class, fully overlap with the First Nations children entitled to compensation under the Compensation Orders.	Minimum $40,000*
	Other Essential Service Class Members	• All Other Approved Essential Service Class Members who do not meet the Jordan's Principle Class threshold of impact described above pursuant to Schedule F, Framework of Essential Services.	Up to but not more than $40,000

* Plus applicable interest on $40,000.

Trout Child Class (1991-2007)	• Approved Trout Child Class Members who are determined to have experienced the highest level of impact (including pain, suffering or harm of the worst kind) in relation to a Delay, Denial or Service Gap pursuant to Schedule F, Framework of Essential Services, subject to piloting.	Minimum $20,000
	• All Other Approved Trout Child Class Members who do not meet the threshold of impact described above pursuant to Schedule F, Framework of Essential Services.	Up to but not more than $20,000

This is **Exhibit "B"** to the Affidavit of Robert Kugler, sworn
remotely before me at the City of Toronto, in the Province of Ontario,
on October 16, 2023 in accordance
Administering Oath or Declaration Remotely

Adil Abdulla

Commissioner for taking Affidavit
(or as may be)

Addendum to

First Nations Child and Family Services, Jordan's Principle, and Trout Class Settlement Agreement

(as revised on April 19, 2023)

WHEREAS:

A. The parties to these proceedings (Federal Court File Nos. T-402-19, T-141-20, and T-1120-21), Xavier Moushoom, Jeremy Meawasige (by his Litigation Guardian, Jonavon Joseph Meawasige), Jonavon Joseph Meawasige, Ashley Dawn Louise Bach, Karen Osachoff, Melissa Walterson, Noah Buffalo-Jackson (by his Litigation Guardian, Carolyn Buffalo), Carolyn Buffalo, Dick Eugene Jackson also known as Richard Jackson, Zacheus Joseph Trout, Assembly of First Nations, and His Majesty the King in Right of Canada (the "**Parties**") reached a Final Settlement Agreement dated April 19, 2023 ("**FSA**").

B. The Parties have since identified four clarifications or corrections that need to be made to the FSA.

C. Through this addendum, the Parties intend to make those four amendments to the FSA, and the Parties do not intend to affect any other part, Article, right, entitlement, burden, obligation, support or protection in the FSA, unless specifically stated herein.

D. All defined terms in this addendum have the same meaning as those in the FSA, unless stated otherwise.

E. Upon execution, this addendum will form an integral part of the FSA, the whole subject to the Court's approval.

NOW THEREFORE in consideration of the mutual agreements, covenants, and undertakings set out herein, the Parties agree as follows:

1. Interest Entitlement for the Kith Child Class

1. Article 6.15(2)(b) and all corresponding references to an interest payment to the Kith Child Class in the FSA are amended to state and be consistent in their meaning with the following:

   Approved Kith Child Class Members **placed during the CHRT Interest Accrual Period**.

2. For further clarity, notwithstanding anything to the contrary in the FSA, no Kith Child Class Member is entitled to the payment of interest unless the Kith Child Class Member was in a Kith Placement during the CHRT Interest Accrual Period.

2. Inclusion of the Yukon and Exclusion of the Northwest Territories from the Kith Child Class

1. Article 7.02(3)(a) and all corresponding references to the Kith Child Class in the FSA are amended to state and be consistent in their meaning with the following:

> the First Nations Child was Ordinarily Resident on Reserve **or was living in the Yukon, but excluding individuals living in the Northwest Territories,** immediately before the Kith Placement.

2. For further clarity, notwithstanding anything to the contrary in the FSA, no individual will be approved as a Kith Child Class Member unless at the time of the Kith Placement, that individual was Ordinarily Resident on Reserve or in the Yukon. Individuals living in the Northwest Territories at the time of the Kith Placement are excluded from the Kith Child Class.

3. Option to Invest Compensation Funds

1. Article 6.14(a) is amended to state:

> At least six (6) months**, or a lesser period of time as advised by experts and determined by the Settlement Implementation Committee to be in the best interests of the Class,** prior to issuing payment, the Administrator will contact the Approved Class Member to ask whether the Class Member wishes to direct a portion or all of the amount to which the Class Member is entitled to an investment vehicle.

4. Commencement of the Claims Period

1. Article 1.01, definition of "Claims Deadline" is amended to state:

> "**Claims Deadline**" means the date that is:
>
> (a) three (3) years after the Claims Process Approval Date applicable to each class: for Class Members who have reached the Age of Majority or died before the Claims Process Approval Date applicable to those Class Members;
>
> (b) three (3) years after the date on which a Class Member reaches the Age of Majority: for Class Members who have not reached the

Age of Majority by the time of the Claims Process Approval Date applicable to their class; or

(c) three (3) years after the date of death: for Class Members who were under the Age of Majority and alive by the time of the Claims Process Approval Date applicable to their class and who died or die prior to reaching the Age of Majority; or

(d) an extension of the deadlines in (a)-(c) above by 12 months: for Class Members individually approved on request by the Administrator on the grounds that the Claimant faced extenuating personal circumstances and was unable to submit a Claim as a result of physical or psychological illness or challenges, including homelessness, incarceration or addiction, or due to unforeseen community circumstances such as epidemics, community internet connectivity, pandemics, natural disasters, community-based emergencies or service disruptions at a national, regional or community level.

(e) Notwithstanding sub-Articles (a)-(c), above, the Parties may request from the Court an extension of time after the Claims Process Approval Date applicable to the first Claims Process to mark the commencement of the three-year period during which Class Members may make a Claim. Such an extension may only be granted with respect to the first Claims Process that is ready for the Court's approval. Such an extension is intended to be limited to the amount of time reasonably needed to prepare all necessary implementation elements of the Claims Process to enable the commencement of the Claims Process, not to exceed six months from the first Claims Process Approval Date.

[The remainder of this page is left intentionally blank. Signature pages follow.]

IN WITNESS WHEREOF, the Parties have each executed this addendum with effect as of October 10, 2023.

CANADA, as represented by the Attorney General of Canada

(Authorized signatory)

Attorney General of Canada

for the defendant in Moushoom Action, AFN Action and Trout Action

Print Name: Paul B. Vickery

Position: counsel & legal agent

THE PLAINTIFFS in Moushoom Action and Trout Action, as represented by class counsel

BY:

(Authorized signatory)

Sotos LLP / Kugler Kandestin LLP / Miller Titerle + Co.

for the plaintiffs

Print Name: Robert Kugler

Position: Class Counsel

THE PLAINTIFFS in AFN Action, as represented by class counsel

BY:

(Authorized signatory)

Nahwegahbow, Corbiere / Fasken LLP / Stuart Wuttke, General Counsel, AFN

for the plaintiffs

Print Name: Dianne Corbiere

Position: Counsel for Plaintiffs

This is **Exhibit "C"** to the Affidavit of Robert Kugler, sworn remotely before me at the City of Toronto, in the Province of Ontario, on October 16, 2023 in accordance Administering Oath or Declaration Remotely

Adil Abdulla

Commissioner for taking Affidavit
(or as may be)

Tribunal File No: T1340/7008

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

Honouring First Nations Children, Youth and Families

We honour all the 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.

We are so grateful to Residential School Survivors, Sixties Scoop Survivors, the families of Murdered and Missing Women and Girls and 2SLGBTQQIA persons, First Nations leadership, and the many allies, particularly the children and youth who called for the full implementation of Jordan's Principle, substantively equal child welfare supports and fair compensation for those who were harmed. We thank you for continuing to stand with First Nations children, youth, and families to ensure the egregious discrimination stops and does not recur.

We honour and give thanks to Jordan River Anderson, founder of Jordan's Principle, and his family along with the representative plaintiffs, including Ashley Dawn Bach, Karen Osachoff, Melissa Walterson, Noah Buffalo-Jackson, Carolyn Buffalo, Richard Jackson, Xavier Moushoom, Jeremy Meawasige, Jonavon Meawasige, the late Maurina Beadle, and Zacheus Trout and his two late children, Sanaye and Jacob. We also recognize Youth in and from care, Residential School and Sixties Scoop Survivors who shared their truths to ensure funding for culturally competent and trauma informed supports are available to all affected by 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.

MINUTES OF SETTLEMENT

A. These Minutes of Settlement are intended to resolve the Canadian Human Rights Tribunal Compensation Decisions. The Assembly of First Nations (the "**AFN**"), Canada and the First Nations Child and Family Caring Society (the "**Caring Society**") have collaborated to revise the Final Settlement Agreement in line with the Tribunal's decisions.

B. In 2007, the Caring Society and the AFN commenced this human rights complaint, alleging that Canada discriminated against First Nations children and families on the prohibited grounds of race and national or ethnic origin in the provision of child and family services and in Canada's failure to fully implement Jordan's Principle. The AFN, the Caring Society and Canada are collectively referred to herein as the Parties.

C. In 2016 CHRT 2, the Canadian Human Rights Tribunal (the "**Tribunal**") found that Canada discriminated against First Nations children on reserve and in the Yukon in a systemic way on the prohibited grounds of race and national or ethnic origin, by underfunding the First Nations Child and Family Services Program ("**FNCFS Program**"), and through its design, management, and control. Canada's wilful and reckless discrimination was linked to the unnecessary separation of First Nations children from their families. With respect to Jordan's Principle, the Tribunal found that Canada wilfully and recklessly discriminated against First Nations children on the prohibited grounds of race and national or ethnic origin pursuant to its narrow definition and inadequate implementation of Jordan's Principle, resulting in adverse service gaps, delays, and denials for First Nations children. The Tribunal established Canada's liability for systemic discrimination on the prohibited grounds of race and national or ethnic origin and ordered Canada to cease the discriminatory practices, take measures to redress and prevent discrimination from reoccurring, reform the FNCFS Program, and implement the full meaning and scope of Jordan's Principle.

D. Between 2019 and 2021, three class actions were commenced in the Federal Court seeking compensation for discrimination dating back to April 1, 1991, including a class action commenced by the AFN (the "**Consolidated Class Action**"). The AFN is a party to both the class actions and this proceeding. The Caring Society is not a party to the Consolidated Class Action.

E. In 2019 CHRT 39 (the "**Compensation Entitlement Order**") the Tribunal determined that Canada's systemic discrimination on the prohibited grounds of race and national or ethnic origin caused harms of the worst kind to First Nations children and families, ordering compensation to the victims of Canada's systemic racial discrimination. The Tribunal set an end date of 2017 for compensation for the Jordan's Principle child and family victims and an open-end date with respect to removed children and their parents/caregiving

grandparents pending a further order. In 2021 CHRT 7, the Tribunal ordered the implementation of a framework for the distribution of the compensation, (the "**Compensation Framework Order**").

F. On September 29, 2021, Justice Favel of the Federal Court of Canada dismissed Canada's judicial review and upheld the Compensation Entitlement Order. Canada appealed the decision to the Federal Court of Appeal.

G. In 2022 CHRT 8, the Tribunal established March 31, 2022, as the end date for compensation payable to removed children and their parents/caregiving grandparents under the Compensation Entitlement Order.

H. In June 2022, the class action parties, to the Consolidated Class Action (including Canada and AFN) signed a final settlement agreement (the "**2022 FSA**"). In September 2022, the AFN and Canada brought a motion to the Tribunal seeking a declaration that the 2022 FSA is fair, reasonable and satisfies the Compensation Entitlement Order and all related clarifying orders and in the alternative, an order varying the Compensation Entitlement Order, Compensation Framework Order and other compensation orders, to conform to the 2022 FSA.

I. The Tribunal dismissed the Canada and AFN motion in October 2022, with full reasons at 2022 CHRT 41. The Tribunal found that the 2022 FSA substantially satisfied the Compensation Entitlement Order. However, it failed to fully satisfy the Compensation Entitlement Order as the 2022 FSA disentitled, or reduced entitlements, for certain victims/survivors already entitled to compensation awarded by the Tribunal under the Compensation Entitlement Order and made entitlements for other victims unclear.

J. Following the release of 2022 CHRT 41, the First Nations-in-Assembly unanimously adopted Resolution No. 28/2022. On April 4, 2023, the First Nations-in-Assembly unanimously adopted Resolution No. 04/2023, fully supporting the revised settlement agreement. First Nations- In-Assembly Resolutions No. 28/2022 and No. 04/2023 are attached hereto as Schedule "A".

K. The Parties to this proceeding and the parties to the Consolidated Class Action engaged in negotiations resulting in a revised final settlement agreement drafted to account for the direction in First Nations-in-Assembly Resolution No. 28/2022 and to satisfy the Tribunal's 2022 CHRT 41 decision (the "**Agreement**") attached hereto as Schedule "B".

NOW THEREFORE in consideration of the mutual agreements, covenants, and undertakings set out herein, the Parties agree as follows:

1. As the Caring Society is not a party to the Consolidated Class Action, the Caring Society's involvement in reviewing and commenting on the Agreement is focused on the victims identified by the Tribunal for compensation pursuant to the *Canadian Human Rights Act* within this proceeding.

2. In the opinion of the Parties, the Agreement, as revised by the Parties, now satisfies the Compensation Entitlement Order, the Compensation Framework Order, and all other Tribunal orders related to compensation such that the victims of Canada's discriminatory conduct shall be compensated pursuant to the direction of the Tribunal and in satisfaction of the Tribunal's orders, including the Tribunal's direction and guidance set out in 2022 CHRT 41.

3. As directed by the First Nations-in-Assembly Resolution 04/2023, the Parties shall cooperate to bring a consent motion to the Tribunal seeking its approval of the Agreement in full satisfaction of the Compensation Entitlement Order and the Compensation Framework Order (the "**Joint Compensation Motion**"). Each Party shall file affidavit evidence in support of the Joint Compensation Motion.

4. The Parties commit to supporting the Agreement as it relates to the victims identified by the Tribunal and to make no submissions to the Tribunal suggesting that the balance of the Agreement ought not to be approved.

5. As part of the relief sought on the Joint Compensation Motion, the Parties shall request that the Tribunal retain jurisdiction on compensation until the Federal Court approves the Agreement and the appeal period has expired or until any appeals are resolved. The Parties shall further request that upon approval of the Agreement by the Federal Court on a final basis, the Tribunal's jurisdiction in this proceeding in relation to compensation shall come to an end and that the Federal Court shall supervise the implementation of the Agreement. Should the Tribunal approve the Joint Compensation Motion but the Federal Court reject all or part the Agreement at the Settlement Approval Hearing, or if the Federal Court order approving the Agreement is overturned on appeal, Canada and the AFN shall support the Caring Society's participation in any further steps at the Federal Court / Federal Court of Appeal and, if needed, at the Supreme Court of Canada in relation to seeking approval of the Agreement.

6. The Parties agree that the funds payable by Canada in the amount of $23,343,940,000 and any other commitments and safeguards specifically set out in the Agreement satisfy Canada's obligations with respect to payments associated with the Tribunal's Compensation Entitlement Order, the Compensation Framework Order and all other Tribunal orders related to compensation.

7. As part of the $23,343,940,000 funds payable under the Agreement, $90,000,000 will be transferred to a trust entity for the purposes of providing additional supports to high needs members of the Approved Jordan's Principle Class between the Age of Majority and the Class Member's 26th birthday necessary to ensure their personal dignity and well-being (the "**Jordan's Principle Post-Majority Fund**"). The terms of the Jordan's Principle Post-Majority Fund are set out in the Agreement and include the following:

    a. In cooperation with the Jordan's Principle trust entity, the Caring Society will have the following responsibilities in relation to the Jordan's Principle Post-Majority Fund:

        i. Designing the trust agreement reflecting the purpose of the Jordan's Principle Post-Majority Fund and the terms and conditions of same;

        ii. Determining the eligibility criteria and process for accessing benefits under the Jordan's Principle Post-Majority Fund; and

        iii. Receive and review an accounting from the Jordan's Principle trust entity on a quarterly basis.

    b. Jordan's Principle Post Majority Beneficiaries may access benefits under the Jordan's Principle Post-Majority Fund by making a request to the trust entity. If a Jordan's Principle Approved Class Member who is approaching or is past the Age of Majority contacts Indigenous Services Canada, or its successor, through mechanisms for accessing Jordan's Principle, Indigenous Services Canada will refer the Class Member to the trust entity. Indigenous Services Canada will collaborate with the Caring Society and the plaintiffs to the Consolidated Class Action regarding public information that can be provided by Indigenous Services Canada regarding the Jordan's Principle Post-Majority Fund.

    c. Any income generated on the Jordan's Principle Post Majority Fund which is not distributed to the Jordan's Principle Post Majority Beneficiaries in any year will be accumulated in the Jordan's Principle Post Majority Fund.

8. Canada will pay $5 million to the Caring Society to facilitate the Caring Society's participation in the implementation and administration of the Agreement over the approximately twenty (20) year term of the Agreement on a non-profit basis.

9. As part of the approval of the Agreement at the Federal Court, Canada and the AFN will seek a further extension of the Opt-Out Deadline to October 6, 2023.

10. By signing these Minutes of Settlement, each Party confirms that in their opinion the Agreement satisfies the Tribunal's Compensation Entitlement Order, the Compensation Framework Order and all other Tribunal orders related to compensation.

11. No Party will judicially review the Tribunal's order should it determine that the Agreement satisfies its compensation orders and grant the relief sought on the Joint Compensation Motion.

12. Nothing in these Minutes of Settlement impacts any commentary with respect to the administration of the Agreement following its implementation.

13. Upon approval of the Agreement by the Tribunal and the Federal Court, and the resolution of any judicial reviews and appeals, no further orders for compensation shall be sought by any Party to this proceeding relating to the victims subject to the Tribunal's compensation orders or the Consolidated Class Action.

14. Upon approval of the Agreement by the Tribunal, each Party agrees that it shall not engage in the Federal Court proceeding to oppose or promote others to oppose the terms of the Agreement at the Settlement Approval Hearing.

15. Within five (5) business days of the later of the following dates, Canada and the AFN shall file a Notice of Discontinuance in relation to their respective judicial review applications of 2022 CHRT 41, with the Federal Court on a without costs basis:

    (a) the day following the last day on which an individual may appeal or seek leave to appeal the decision of the Federal Court, approving the Agreement ("**Federal Court Settlement Approval Order**"); or

    (b) the date on which the last of any appeals of the Federal Court Settlement Approval Order are finally determined.

16. Within five (5) business days of the expiry of the appeal period or the date on which the last of any appeals of the Federal Court Settlement Approval Order are finally determined, Canada shall file a Notice of Discontinuance with the Federal Court of Appeal for Court File No. A-290-21 on a without costs basis.

17. In consideration of the agreement by Canada to assume the obligations and pay the amounts referred to in the Agreement in order to enable its implementation, the Caring Society and the AFN, "the Releasors," hereby release, remise and forever discharge Canada and its servants, agents, officers and employees,

predecessors, successors, and assigns (hereinafter collectively the "**Releasees**"), from any claim for compensation arising from this proceeding and all actions, causes of action, claims, and demands of every nature or kind available, whether or not known or anticipated, which the Releasors had, now have or may in the future have against the Releasees, in any capacity, whether personal or representative, in respect of the claims asserted or capable of being asserted with regard to compensation for the discrimination found to have occurred by the Tribunal in this proceeding or asserted and all claims asserted or capable of being asserted in the Consolidated Class Action. For clarity, this release in no way affects the ongoing long-term reform issues in the Tribunal proceeding in Tribunal File No. T1340/7008.

18. If the Tribunal dismisses the Joint Compensation Motion these Minutes of Settlement, including any releases given thereunder to the Releasees, shall be null and void.

Dated this 19th day of April, 2023.

CANADA, as represented by the Ministers of Indigenous Services and Crown-Indigenous Relations

The Honourable Patty Hajdu, P.C., M.P.
Minister of Indigenous Services

The Honourable Marc Miller, P.C., M.P.
Minister of Crown-Indigenous Relations

THE ASSEMBLY OF FIRST NATIONS

Cindy Woodhouse
Regional Chief

THE FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA

Cindy Blackstock, PhD
Executive Director

Schedule “A” – First Nations-in-Assembly Resolutions

Assembly of First Nations

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SPECIAL CHIEFS ASSEMBLY
December 6,7,8, 2022, Ottawa, ON

Resolution no. 28/2022

TITLE:	**Final Settlement Agreement on Compensation for First Nations Children and Families**
SUBJECT:	Child and Family Services
MOVED BY:	Council Chairperson Khelsilem, Squamish Nation, BC.
SECONDED BY:	Chief Patsy Corbiere, Aundeck Omni Kaning First Nation
DECISION	Carried by consensus

WHEREAS:

A. The Assembly of First Nations (AFN) Chiefs-in-Assembly honour all the children, youth, and families, those with us and those lost, who experienced egregious harms by Canada and its colonial structures, the impacts of which continue to be felt today. We dedicate ourselves to ensuring justice for all affected children and families.

B. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states that:

- **i.** Article 2: Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.
- **ii.** Article 7(2): Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.
- **iii.** Article 22 (2): States shall take measures, in conjunction with Indigenous peoples, to ensure that Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Certified copy of a resolution adopted on the 7th day of December, 2022 in Ottawa, Ontario

ROSEANNE ARCHIBALD, NATIONAL CHIEF

28 – 2022

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46 Irene Roundpoint Lane, Akwesasne, ON K6H 0G5 Tel. / Tél.: 613-241-6789 Fax / Téléc.: 613-932-0415

iv. Article 40: Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

C. The First Nations Child and Family Caring Society (Caring Society), as represented by Cindy Blackstock, and AFN, as represented by the former National Chief Phil Fontaine, filed a human rights claim in 2007 alleging that Canada's inequitable provision of First Nations child and family services and its choice not to implement Jordan's Principle was discriminatory.

D. The Canadian Human Rights Tribunal (CHRT) substantiated the claim in 2016 CHRT 2 and ordered Canada to immediately cease its discriminatory conduct towards First Nations children and families.

E. Consistent with the direction of the First Nations-in-Assembly *AFN Resolution 85/2018, Financial Compensation for Victims of Discrimination in the Child Welfare System* pursuant to the Canadian Human Rights Act, the CHRT ordered Canada to pay $40,000.00 per eligible victim for Canada's "willful and reckless" discrimination of the worst kind.

F. On September 28, 2021, the Federal Court dismissed the Government of Canada's application for judicial review of the Canadian Human Rights Tribunal's compensation orders.

G. The Government of Canada then appealed the 2021 Federal Court Decision and announced it wished to address the human rights damages within two larger class actions: *Moushoom et al. v. Attorney General of Canada* and the Assembly of First Nations class action.

H. In 2022, the AFN and Canada engaged in negotiations and concluded a settlement of $20 billion for compensation to be paid to victims of Canada's discrimination. The agreement provided additional compensation above that which the CHRT awarded and deviated from the CHRT orders in some regards.

I. Canada and AFN filed a joint motion to have their Final Agreement approved by the Tribunal, and on October 24, 2022, the CHRT issued a letter decision confirming that the Final Settlement Agreement on compensation signed by Canada, the AFN, and other class action parties does not fully satisfy its orders.

Certified copy of a resolution adopted on the 7th day of December, 2022 in Ottawa, Ontario

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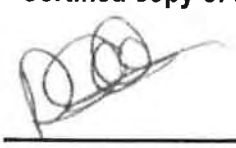
SPECIAL CHIEFS ASSEMBLY
December 6,7,8, 2022, Ottawa, ON **Resolution no. 28/2022**

THEREFORE, BE IT RESOLVED that the First Nations-in-Assembly:

1. Support compensation for victims covered by the proposed Final Settlement Agreement (FSA) on compensation and those already legally entitled to $40,000 plus interest under the Canadian Human Rights Tribunal (CHRT) compensation orders to ensure that all victims receive compensation for Canada's willful and reckless discrimination.
2. Direct Canada to fund post-majority supports tailored to the specific needs of each child and young adult victims up to age 26 who are eligible for compensation until such time that community-based supports funded by Canada can adequately support all victims for the duration of the compensation period.
3. Direct the Assembly of First Nations (AFN) to immediately seek a minimum of 12 months following the announcement of a revised Final Settlement Agreement for claimants to determine whether they will participate in the class action. Persons entitled to compensation shall determine whether they will participate in the class action based on complete information, including the terms of any settlement.
4. Call upon Canada to immediately place the minimum of $20 billion earmarked for compensation in an interest-bearing account held by an independent and reputable major financial institution and immediately pay the compensation to all victims of Canada's discrimination, including those eligible under the class action and under the CHRT orders.
5. Support the principles on which the FSA is built, including taking a trauma-informed approach, employing objective and non-invasive criteria, and ensuring a First Nations-driven and culturally-informed approach to compensating individuals.
6. Continue to support the Representative Plaintiffs and all victims of Canada's discrimination by ensuring that compensation is paid as quickly as possible to all those who can be immediately identified and to continue to work efficiently to compensate those who may need more time.
7. Ensure that the AFN returns to the First Nations-in-Assembly to provide regular progress reports and seek direction on any outstanding implementation issues.

Certified copy of a resolution adopted on the 7th day of December, 2022 in Ottawa, Ontario



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SPECIAL CHIEFS' ASSEMBLY
APRIL 3, 4, 5 & 6, 2023; OTTAWA, ON

Resolution no.04/2023

TITLE:	**Revised Final Settlement Agreement on Compensation for First Nations Children and Families**
SUBJECT:	Child and Family Services
MOVED BY:	Ogimaa Kwe Linda Debassige, M'Chigeeng First Nation, ON
SECONDED BY:	Chief Derek Nepinak, Pine Creek First Nation, MB
DECISION	Carried by Consensus

WHEREAS:

A. The First Nations-in-Assembly honour all the children, youth, and families, those with us and those lost, who experienced egregious harms by Canada and its colonial structures, the impacts of which continue to be felt today. We dedicate ourselves to ensuring justice for all affected children, youth, and families.

B. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:

i. Article 2: Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

ii. Article 7 (2): Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

iii. Article 22 (2): States shall take measures, in conjunction with Indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Certified copy of a resolution adopted on the 4th day of April 2023 in Ottawa, Ontario

ROSEANNE ARCHIBALD, NATIONAL CHIEF

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iv. Article 40: Indigenous peoples have the right to access to prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

C. The First Nations-in-Assembly commend the Representative Plaintiffs for their strength and resilience in pursuing the Class Action against Canada's discrimination under the First Nations Child and Family Services (FNCFS) Program and the improper implementation of Jordan's Principle seeking fair and equitable compensation for individuals impacted by this profound discrimination.

D. In 2022, Canada and the Assembly of First Nations (AFN) sought the Canadian Human Rights Tribunal's (CHRT) approval of the $20 billion Final Settlement Agreement (FSA) on Compensation. On October 24, 2022, the CHRT issued a letter decision confirming that the FSA on Compensation substantially, but not fully, satisfied its orders on compensation. The CHRT provided its full reasons on December 20, 2022 (2022 CHRT 41).

E. The First Nations-in-Assembly mandated the AFN by way of Resolution 28/2022, *Final Settlement Agreement on Compensation for First Nations Children and Families*, to, among other items:

i. support compensation for those entitled under the FSA and those entitled to $40,000 plus interest under the CHRT compensation orders;

ii. direct the AFN to return to the First Nations-in-Assembly to provide regular progress reports and seek direction on implementation issues, and,

iii. expressed support for the Representative Plaintiffs and all victims and survivors of Canada's discrimination and sought to ensure that compensation would be paid as quickly as possible.

F. The Representative Plaintiffs, youth in care and formerly in care, and those with lived experience in other class actions have expressed that supports for class members are imperative to their wellbeing, including mental wellness supports, financial literacy, and supports for youth past the age of majority, including for high needs Jordan's Principle recipients.

G. Canada, the AFN, Moushoom counsel, and the First Nations Child and Family Caring Society of Canada ('Caring Society') thereafter came together to amend the FSA on Compensation to address the concerns identified by the CHRT in 2022 CHRT 41. In these negotiations, the AFN advanced the mandates directed by the First Nations-Assembly in Resolution 28/2022.

Certified copy of a resolution adopted on the 4th day of April 2023 in Ottawa, Ontario

ROSEANNE ARCHIBALD, NATIONAL CHIEF

H. The Parties have negotiated a revised Final Settlement Agreement (Revised FSA) on Compensation, providing over $23 billion in compensation for the survivors and victims of Canada's discrimination, while addressing the issues highlighted by the CHRT in 2022 CHRT 41 and pursuing fair compensation for the Classes dating back to 1991.

I. The Representative Plaintiffs, the AFN, and the Caring Society are recommending that the First Nations-in-Assembly endorse the Revised FSA on Compensation.

J. Pending approval of the Revised FSA, the AFN will present the revised agreement to the CHRT for approval. Once approved by the CHRT, the revised agreement will then be presented to the Federal Court of Canada for approval to ensure the timely distribution of compensation to the survivors and victims of Canada's discrimination.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

1. Fully support the Revised Final Settlement Agreement (Revised FSA) on Compensation in principle and authorize the Assembly of First Nations (AFN) negotiators to make the necessary minor edits to complete the Revised FSA.
2. Support the AFN in seeking an order from the Canadian Human Rights Tribunal (CHRT) confirming that the Revised FSA on compensation fully satisfies its compensation orders.
3. Direct the AFN, upon the endorsement of the Revised FSA on Compensation by the CHRT, to seek approval of Revised FSA on Compensation by the Federal Court of Canada on an expedited basis.
4. Call on the Prime Minister of Canada to make a formal and meaningful apology to the Representative Plaintiffs and the survivors of Canada's discrimination and those who have passed away.
5. Continue to support the Representative Plaintiffs and all survivors and victims of Canada's discrimination by ensuring that compensation is paid, and adequate supports are provided as quickly as possible to all those who can be immediately identified and to continue to work efficiently to ensure that compensation reaches all those who are eligible.
6. Direct the AFN to return to the First Nations-in-Assembly to provide regular progress reports on supports, implementation and the claims process and seek direction where required.

Certified copy of a resolution adopted on the 4th day of April 2023 in Ottawa, Ontario

ROSEANNE ARCHIBALD, NATIONAL CHIEF

Schedule “B” – the Final Settlement Agreement

First Nations Child and Family Services, Jordan's Principle, and Trout Class Settlement Agreement

(as revised on April 19, 2023)

Honouring First Nations Children, Youth, and Families

We honour all the 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.

We are so grateful to Residential School Survivors, Sixties Scoop Survivors, the families of Murdered and Missing Women and Girls and 2SLGBTQQIA persons, First Nations leadership, and the many allies, particularly the children and youth who called for the full implementation of Jordan's Principle, substantively equal child welfare supports and fair compensation for those who were harmed. We thank you for continuing to stand with First Nations children, youth, and families to ensure the egregious discrimination stops and does not recur.

We honour and give thanks to Jordan River Anderson, founder of Jordan's Principle, and his family along with the representative plaintiffs, including Ashley Dawn Bach, Karen Osachoff, Melissa Walterson, Noah Buffalo-Jackson, Carolyn Buffalo, Richard Jackson, Xavier Moushoom, Jeremy Meawasige, Jonavon Meawasige, the late Maurina Beadle, and Zacheus Trout and his two late children, Sanaye and Jacob. We also recognize Youth in and from care, Residential School and Sixties Scoop Survivors who shared their truths to ensure funding for culturally competent and trauma informed supports are available to all affected by 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.

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Schedule C: Provincial and Territorial Ages of Majority

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Schedule E: Certification Order dated February 11, 2022 in Court File No. T-1120-21 (2022 FC 149)

Schedule F: Framework of Essential Services

Schedule G: Investment Committee Guiding Principles

Schedule H: Opt-Out Form

Schedule I: Framework for Supports for Claimants in Compensation Process

Schedule J: Summary Chart of Essential Service, Jordan's Principle, and Trout Approach

SETTLEMENT AGREEMENT

THIS AGREEMENT is dated effective as of April 19, 2023 ("**Effective Date**").

BETWEEN:

XAVIER MOUSHOOM, JEREMY MEAWASIGE by his Litigation Guardian, Jonavon Joseph Meawasige, and JONAVON JOSEPH MEAWASIGE

(together, the "**Moushoom Plaintiffs**")

AND:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON by his Litigation Guardian, Carolyn Buffalo, CAROLYN BUFFALO, and DICK EUGENE JACKSON also known as RICHARD JACKSON

(together, the "**AFN Plaintiffs**")

AND:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

(together, the "**Trout Plaintiffs**")

AND:

HIS MAJESTY THE KING IN RIGHT OF CANADA

("**Canada**")

(collectively, "**Parties**")

WHEREAS:

A. On March 4, 2019, the Moushoom Plaintiffs commenced a proposed class action in the Federal Court under Court File Number T-402-19 (the "**Moushoom Action**"), seeking compensation for discrimination dating back to April 1, 1991.

B. On January 28, 2020, the AFN Plaintiffs also filed a proposed class action in the Federal Court under Court File Number T-141-20 (the "**AFN Action**") regarding similar allegations dating back to April 1, 1991.

C. On July 7, 2021, the Honourable Justice St-Louis ordered that the Moushoom Action and the AFN Action be consolidated with certain modifications (the "**Consolidated Action**").

D. The parties to the Consolidated Action engaged in mediation in accordance with the Federal Court Practice Guidelines for Aboriginal Law Proceedings (dated April 2016) to resolve all or some of the outstanding issues in the Consolidated Action. The Honourable Leonard Mandamin acted as mediator from November 1, 2020 to November 10, 2021.

E. On July 16, 2021, the Trout Plaintiffs filed a proposed class action in the Federal Court under Court File Number T-1120-21 (the "**Trout Action**") regarding the Crown's discriminatory provision of essential services and products between April 1, 1991 and December 11, 2007.

F. On September 29, 2021, in reasons indexed at 2021 FC 969, Justice Favel of the Federal Court of Canada upheld the Canadian Human Rights Tribunal (the "**Tribunal**") decision made in Tribunal File: T1340/7008 (the "**CHRT Proceeding**") and indexed at 2019 CHRT 39, 2020 CHRT 15, and 2021 CHRT 7 (collectively , the "**Compensation Orders**") in which the Tribunal awarded compensation to Children and their caregiving parents or caregiving grandparents impacted by Canada's systemic discrimination in the underfunding of child and family services on reserve and in the Yukon, and its narrow interpretation of Jordan's Principle. Canada appealed to the Federal Court of Appeal from Justice Favel's decision.

G. On or about November 1, 2021, the Parties entered into negotiations outside of the Federal Court mediation process.

H. The Parties, by agreement, appointed the Honourable Murray Sinclair to act as chair of the negotiations.

I. The Parties worked collaboratively to determine the class sizes of the Consolidated Action and the Trout Action.

J. The Parties separately engaged experts ("**Experts**") to prepare a joint report on the estimated size of the Removed Child Class, as defined herein, on which the Parties would rely for settlement discussions (the "**Joint Report**").

K. The Experts relied on data provided by Indigenous Services Canada ("**ISC**") in preparing the Joint Report. ISC communicated to the Experts and Class Counsel that the data often came from third-party sources and was in some cases incomplete and inaccurate. The Joint Report referred to and took into account these factors.

L. The Experts estimated that there were 106,200 Removed Child Class Members from 1991 to March 2019. The Experts advised that this class size must be adjusted to 115,000 to cover the period from March 2019 to March 2022 (the "**Estimated Removed Child Class Size**"). The Estimated Removed Child Class Size was determined based on the data received from ISC and modelling and took into account gaps in the data.

M. Canada provided to the Plaintiffs estimates of the Jordan's Principle Class Size, which were between 58,385 and 69,728 for the period from December 12, 2007 to November 2, 2017 (the "**Jordan's Principle Class Size Estimates**"). The Parties understand that the Jordan's Principle Class Size Estimates were based on a single 2019-2020 quarter and that extrapolating from that quarter therefore has limitations.

N. Based on the Jordan's Principle Class Size Estimates, the Plaintiffs estimated the size of the Trout Class, as defined below, to be approximately 104,000.

O. Based on the Parliamentary Budget Officer Report, *Compensation for the Delay and Denial of Services to First Nations Children*, dated February 23, 2021, there are an estimated 1.5 primary caregivers per First Nations Child.

P. On November 26, 2021, the Federal Court granted certification of the Consolidated Action on consent of the parties.

Q. On February 11, 2022, the Federal Court granted certification of the Trout Action on consent of the parties.

R. The Moushoom Plaintiffs, the AFN Plaintiffs, and the Trout Plaintiffs (collectively, the "**Representative Plaintiffs**") and Canada concluded an agreement in principle ("**AIP**") on December 31, 2021, which set out the principal terms of their agreement to settle the Consolidated Action and the Trout Action (collectively, the "**Actions**").

S. On March 24, 2022 (in 2022 CHRT 8), the Tribunal established March 31, 2022, as the end date for compensation to individuals included in the Removed Child Class and the Removed Child Family Class.

T. The Parties engaged in several months of intensive negotiations and drafted a final settlement agreement dated June 30, 2022 ("**Previous FSA**").

U. Pursuant to the Previous FSA, the Parties sought approval from the Court of Short-Form and Long-Form Notices of Certification and Settlement Approval Hearing, as well as the Opt-out Form. The Plaintiffs' motion was heard on June 22, 2022. On June 24, 2022, the Court granted the motion and approved the documents. The Court also heard submissions on the appropriate Opt-Out Deadline and determined that the Opt-Out Deadline would be six months from the date on which the notices are published.

V. Pursuant to the Previous FSA, the Parties sought approval from the Court of their notice plan for the distribution of Notices of Certification and Settlement Approval Hearing. The Parties published the approved Short-Form and Long-Form Notices of Certification and Settlement Approval Hearing accordingly as of August 19, 2022. On February 10, 2023, the Parties sought on consent a six-month extension of the Opt-Out Deadline to August

23, 2023, bringing the total time to Opt-Out to approximately one year, which extension the Court granted by an order dated February 23, 2023 attached hereto as Schedule A.

W. The Previous FSA was, amongst other things, conditional on the Tribunal confirming the satisfaction of the Compensation Orders.

X. The Plaintiffs brought and briefed the settlement approval motion to the Court. Canada and the Assembly of First Nations ("**AFN**") also brought a joint motion on July 22, 2022 to the Tribunal for an order confirming the satisfaction of the Compensation Orders. The First Nations Child and Family Caring Society of Canada ("**Caring Society**") and the Canadian Human Rights Commission opposed the joint motion. The motion was heard on September 14-15, 2022.

Y. On October 24, 2022, the Tribunal issued a letter decision dismissing the joint motion. On December 20, 2022, the Tribunal issued its full reasons in 2022 CHRT 41 ("**Joint Motion Decision**") for denying the joint motion. The Tribunal found that the Previous FSA substantially satisfied the Compensation Orders, but stated and clarified that with respect to the individuals covered by the Compensation Orders: (a) certain removed children not in a placement that was funded by Canada should be eligible for compensation; (b) estates of deceased Caregiving Parents or Caregiving Grandparents should be eligible for compensation; (c) the Caregiving Parents or Caregiving Grandparents of certain Removed Child Class Members who had more than one child removed from them should receive multiplications of $40,000 based on the number of removed children; and (d) Jordan's Principle children eligible under the Compensation Orders should receive $40,000. This Agreement intends to address the Joint Motion Decision.

Z. The Parties and the Caring Society thereafter explored ways of addressing the Joint Motion Decision, such that the Tribunal can find the Agreement fully satisfies the Tribunal's orders. The Parties and the Caring Society have now agreed to this updated Agreement, which addresses the issues raised in the Joint Motion Decision and is intended to be a full and final settlement of the Consolidated Action, Trout Action, and the Compensation Orders.

AA. In entering into this Agreement, the Parties:

i) Intend a fair, comprehensive and lasting settlement of all claims raised or capable of being raised in the Consolidated Action, the Trout action and the CHRT Proceeding including that:

(a) Canada knowingly underfunded child and family services for First Nations Children living on Reserve and in the Yukon;

(b) Canada failed to comply with Jordan's Principle, a human rights principle designed to safeguard First Nations Children's existing substantive equality

rights guaranteed in the *Canadian Charter of Rights and Freedoms* ("***Charter***"); and

(c) Canada failed to provide First Nations Children with essential services available to non-First Nations Children or which would have been required to ensure substantive equality under the *Charter*;

ii) Intend that the Claims Process be administered in an expeditious, cost-effective, user-friendly, culturally sensitive, and trauma-informed manner;

iii) Desire to:

(a) safeguard the best interests of the Class Members who are minors and Persons under Disability;

(b) minimize the administrative burden on Class Members; and

(c) ensure culturally informed and trauma-informed mental health and cultural support services, as well as navigational assistance are available to Class Members.

BB. This settlement agreement is designed such that some Class Members, or subsets of Class Members, receive direct compensation, while some others may be eligible to indirectly benefit from the Agreement without receiving direct compensation.

NOW THEREFORE in consideration of the mutual agreements, covenants, and undertakings set out herein, the Parties agree as follows:

ARTICLE 1 – INTERPRETATION

1.01 Definitions

In this Agreement, the following definitions apply:

"**Abuse**" means sexual abuse (including sexual assault, sexual harassment, sexual exploitation, sex trafficking and child pornography) or serious physical abuse causing bodily injury, but does not include neglect or emotional maltreatment.

"**Actions**" has the meaning set out in the Recitals.

"**Actuary**" means the actuary or firm of actuaries appointed by the Court on the recommendation of the Settlement Implementation Committee who is, or in the case of a

firm of actuaries, at least one of the principals of which is, a Fellow of the Canadian Institute of Actuaries.

"**Administrator**'' means Deloitte LLP, appointed by the Court by order dated August 11, 2022 attached hereto as Schedule B, and any successor(s) for Deloitte LLP appointed from time to time pursuant to this Agreement.

"**AFN Supports**" has the meaning set out in Article 9.

"**Age of Majority**" means the age at which a Class Member is legally considered an adult under the provincial or territorial law of the province or territory where the Class Member resides, attached hereto as Schedule C.

"**Agreement**" means this settlement agreement, including the Schedules attached hereto.

"**Approved Essential Service Class Member**" means a Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to the criteria set in this Agreement.

"**Approved Jordan's Principle Class Member**" means a Jordan's Principle Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to the criteria set in this Agreement.

"**Approved Jordan's Principle Family Class Member**" means a Jordan's Principle Family Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to the criteria set in this Agreement.

"**Approved Kith Child Class Member**" means a Kith Child Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to Article 7.

"**Approved Kith Family Class Member**" means a Kith Family Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to Article 7.

"**Approved Removed Child Class Member**" means a Removed Child Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to Article 6.

"**Approved Removed Child Family Class Member**" means the Caregiving Parent or Caregiving Grandparent of a Removed Child Class member, whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to Article 6.

"**Approved Trout Child Class Member**" means a Trout Child Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to the criteria set in this Agreement.

"**Approved Trout Family Class Member**" means a Trout Family Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to the criteria set in this Agreement.

"Assessment Home" means a home designed for an initial short-term placement where the needs of a Child are being assessed in order to match them to a longer term placement.

"**Auditors**" means the auditors appointed by the Court and their successors appointed from time to time pursuant to the provisions of Article 16.

"**Band**" has the meaning set out in the *Indian Act*.

"**Band List**" has the meaning set out in sections 10-12 of the *Indian Act*.

"**Banking Facilities**" means an investment account or instrument at any single or syndicate of Schedule I Chartered Canadian Banks and their related treasury and custody entities, as approved by the Court.

"**Base Compensation**" means the amount of compensation (excluding any applicable Enhancement Payment and interest payment) approved by the Court as set out in this Agreement as part of the Claims Process, to be paid to an Approved Removed Child Class Member, an Approved Jordan's Principle Class Member, an Approved Trout Child Class Member, an Approved Kith Child Class Member, an Approved Removed Child Family Class Member, an Approved Trout Family Class Member, an Approved Jordan's Principle Family Class Member, or an Approved Kith Family Class Member. Such Base Compensation may be different for different Classes and may be made in more than one installment as the implementation of the Claims Process may require.

"**Budget**" means each of the budgets set out in Articles 6 and 7.

"**Business Day**'' means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the province or territory in which the person who needs to take action pursuant to this Agreement is ordinarily resident or a holiday under the federal laws of Canada applicable in the said province or territory.

"**Canada**" has the meaning set out in the preamble.

"**Caregiving Grandparent**" and "**Caregiving Grandparents**" means a biological or adoptive caregiving grandmother or caregiving grandfather of the affected Child who lived with and assumed and exercised parental responsibilities over a Removed Child Class

Member at the time of the removal of the Child, or over a Kith Child Class Member at the time of the involvement of the Child Welfare Authority and the Child's Kith Placement, or over a Jordan's Principle Class Member or Trout Child Class Member at the time of the Delay, Denial or Service Gap with respect to the Child's Confirmed Need for an Essential Service. An adoption in this context means a verifiable provincial, territorial or custom adoption. Relationships of a foster parent or Stepparent to a Child are excluded from giving rise to a Caregiving Grandparent relationship under this Agreement.

"**Caregiving Parent**" and "**Caregiving Parents**" means the caregiving mother or caregiving father of the affected Child, living with, and assuming and exercising parental responsibilities over a Removed Child Class Member at the time of the removal of the Child, or over a Kith Child Class Member at the time of the involvement of the Child Welfare Authority and the Child's Kith Placement, or over a Jordan's Principle Class Member or Trout Child Class Member at the time of the Delay, Denial or Service Gap with respect to the Child's Confirmed Need for an Essential Service. Caregiving Parent includes the biological parents, adoptive parents or Stepparents for each applicable Class, except as where expressly provided for otherwise in this Agreement. A foster parent is excluded as a Caregiving Parent under this Agreement. An adoption in this context means a verifiable provincial, territorial or custom adoption.

"**Certification Orders**" mean collectively the order of the Court dated November 26, 2021, certifying the Consolidated Action as a class proceeding and the order of the Court dated February 11, 2022, certifying the Trout Action as a class proceeding, copies of which are attached hereto as Schedules D and E.

"Child" or **"Children"** means an individual under the Age of Majority of the individual's place of residence as set out in Schedule C, Provincial and Territorial Ages of Majority:

(a) at the time of removal, for the purposes of the Removed Child Class;

(b) at the time of the involvement of the Child Welfare Authority and the Kith Placement, for the purposes of Kith Child Class; and

(c) at the time of the Delay, Denial or Service Gap with respect to the individual's Confirmed Need for an Essential Service, for the purposes of the Essential Service Class, the Jordan's Principle Class, and the Trout Child Class.

"**Child Welfare Authority"** for the purposes of the Kith Child Class means an administrative body that is mandated to prevent and respond to Child maltreatment pursuant to provincial/territorial child welfare legislation and *An Act Respecting First Nations, Inuit and Métis Children, Youth and Families*, S.C. 2019, c. 24.

"**Child Welfare Information**" for the purposes of the Kith Child Class includes documents, records, case notes, statistics, reports, third party records and any other form

of information produced and/or collected by a Child Welfare Authority in relation to services and supports provided to First Nations Children, youth, and families pursuant to provincial or territorial child and family services legislation.

"**Child Welfare Records Technician**" means one or more individuals with sufficient expertise in child welfare and administrative information retained by the Administrator on advice of the Settlement Implementation Committee for the purposes of the verification of a Claim under this Agreement through provincial authorities, agencies or other Child Welfare Authorities, including in matters such as the verification of the Claims made by Kith Child Class Members or Kith Family Class Members. Child Welfare Records Technicians may be existing employees of a Child Welfare Authority as well as independent technicians retained pursuant to this Agreement.

"**CHRT Interest Accrual Period**" means:

(a) with respect to Approved Removed Child Class Members who were placed off-Reserve with non-Family as of and after January 1, 2006 and their corresponding Approved Removed Child Family Class Members: as of the last day of the calendar quarter of the removal until the Implementation Date;

(b) with respect to Approved Kith Child Class Members and Approved Kith Family Class Members as of and after January 1, 2006: as of the last day of the calendar quarter of the placement with a Kith Caregiver until the Implementation Date; and

(c) with respect to Approved Jordan's Principle Class Members and Approved Jordan's Principle Family Class Members: as of the last day of the calendar quarter of the Service Gap, Delay or Denial until the Implementation Date.

"**Claim**" means a claim for compensation made by or on behalf of a Class Member.

"**Claimant**" means a person who makes a Claim by completing and submitting a Claims Form to the Administrator, or on whose behalf a Claim is made by such Class Member's Estate Executor, estate Claimant or Personal Representative.

"**Claims Deadline**" means the date that is:

(a) three (3) years after the Claims Process Approval Date applicable to each class: for Class Members who have reached the Age of Majority or died before the Claims Process Approval Date applicable to those Class Members;
(b) three (3) years after the date on which a Class Member reaches the Age of Majority: for Class Members who have not reached the Age of Majority by the time of the Claims Process Approval Date applicable to their class; or
(c) three (3) years after the date of death: for Class Members who were under the Age of Majority and alive by the time of the Claims Process Approval Date

applicable to their class and who died or die prior to reaching the Age of Majority; or

(d) an extension of the deadlines in (a)-(c) above by 12 months: for Class Members individually approved on request by the Administrator on the grounds that the Claimant faced extenuating personal circumstances and was unable to submit a Claim as a result of physical or psychological illness or challenges, including homelessness, incarceration or addiction, or due to unforeseen community circumstances such as epidemics, community internet connectivity, pandemics, natural disasters, community-based emergencies or service disruptions at a national, regional or community level.

"**Claims Form**" means a written declaration in respect of a Claim by a Class Member with Supporting Documentation or such other form as may be recommended by the Administrator and agreed to by the Settlement Implementation Committee.

"**Claims Process**" means the process, including a distribution protocol, to be further designed and detailed in accordance with this Agreement for the distribution of compensation under this Agreement to eligible Class Members. The Claims Process also includes the Incarcerated Class Members Process and such other processes as may be recommended by the Administrator and experts, agreed to by the Plaintiffs and approved by the Court, for the submission of Claims, determination of eligibility, assessment, verification, determination of possible enhancement, payment of compensation to Class Members, and the role of the Third-Party Assessor. The distribution protocol within the Claims Process may be created and submitted to the Court for approval in one package or in several parts relating to different classes as and when each of such parts becomes ready following the Implementation Date.

"**Claims Process Approval Date**" with respect to each class means the date on which the distribution protocol in the Claims Process for that class has been approved by the Court.

"**Class**" means Jordan's Principle Class, Jordan's Principle Family Class, Removed Child Class, Removed Child Family Class, Trout Child Class, Trout Family Class, Kith Child Class, Kith Family Class, and Essential Service Class, collectively. Reference to a "class" or "classes" with a lower case "c" is to any of the Jordan's Principle Class, Jordan's Principle Family Class, Removed Child Class, Removed Child Family Class, Trout Child Class, Trout Family Class, Kith Child Class, Kith Family Class, or Essential Service Class, as may apply within the context of such reference.

"**Class Counsel**" means Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Company, Nahwegahbow Corbiere, and Fasken LLP, collectively.

"**Class Member**" and "**Class Members**" means any one or more individual members of the Class.

"**Confirmed Need**" means the need of a member of the Jordan's Principle Class, Trout Child Class or Essential Service Class as confirmed by Supporting Documentation as defined for Essential Service Class, Jordan's Principle Class, and Trout Child Class.

"**Court**" means the Federal Court of Canada.

"**Cy-près Fund**" has the meaning set out in Article 8.

"**Delay**" means unreasonable delay and it is presumed that delay is unreasonable where a member of the Essential Service Class, Jordan's Principle Class, or Trout Child Class requested an Essential Service from Canada but they did not receive a determination on their request within 12 hours for an urgent case, or 48 hours for other cases, provided that contextual factors, as specified in the Claims Process, do not suggest otherwise.

"**Denial**" means where a member of the Essential Service Class, Jordan's Principle Class, or Trout Child Class requested an Essential Service from Canada and that request was either denied or the member of the Essential Service Class, Jordan's Principle Class, or Trout Child Class did not receive a response as to acceptance or denial.

"**Eligible Deceased Class Member**" means:

(a) a deceased Caregiving Parent or Caregiving Grandparent eligible to receive compensation as a Removed Child Family Class Member (of a Child placed off-Reserve with non-Family as of and after January 1, 2006), a Kith Family Class Member, or a Jordan's Principle Family Class Member;

(b) a deceased adult eligible to receive compensation as a Removed Child Class Member, a Kith Class Member, a Jordan's Principle Class Member, an Essential Services Class Member, or a Trout Class Member; and

(c) a deceased adult Claimant who submitted a Claim prior to death.

"**Eligibility Decision**" has the meaning set out in Article 5.02.

"**Enhancement Factor**" means any objective criterion agreed to by the Plaintiffs and approved by the Court that may be used by the Administrator to enhance the Base Compensation of some members of the Removed Child Class, Jordan's Principle Class or Trout Child Class.

"**Enhancement Payment**" means an amount, based on Enhancement Factors, that may be payable to an Approved Removed Child Class Member, an Approved Jordan's Principle Class Member, or an Approved Trout Child Class Member, in addition to a Base Payment. In determining eligibility for and the quantum of an Enhancement Payment, the

Settlement Implementation Committee may provide guidelines that take into account the amount of interest payment that an Approved Removed Child Class Member or an Approved Jordan's Principle Class Member has received on their Base Compensation, with a view to considering equity or parity amongst Class Members who may receive an interest payment and those Class Members who may not receive an interest payment under this Agreement.

"**Essential Service**" means a service, product or support that was required due to the Child's particular condition or circumstance, the failure to provide which would have resulted in material impact on the Child, as assessed in accordance with Schedule F, Framework of Essential Services.

"**Essential Service Class**" means a First Nations individual who did not receive from Canada (whether by reason of a Denial or a Service Gap) an Essential Service relating to a Confirmed Need, or whose receipt of said Essential Service relating to a Confirmed Need was delayed by Canada, on grounds, including but not limited to, lack of funding or lack of jurisdiction, as a result of a jurisdictional dispute with another government or federal governmental department(s) during the period between December 12, 2007 and November 2, 2017 (the "**Essential Service Class Period**"), while they were under the Age of Majority.

"**Estate Administrator**" includes an executor or administrator appointed or designated under federal, provincial or territorial legislation, as applicable under the circumstances.

"**Estate Executor**" means the executor, administrator, trustee or liquidator of an Eligible Deceased Class Member's estate.

"**Family**" includes a parent, stepparent, grandparent, adult sibling, aunt, uncle or adult first cousin of the Child.

"**First Nations**" in reference to individuals means:

(a) with respect to all Class Members: individuals who are registered pursuant to the *Indian Act*;

(b) with respect to all Class Members: individuals who were entitled to be registered under sections 6(1) or 6(2) of the *Indian Act*, as it read as of February 11, 2022 (the latter date of the Certification Orders);

(c) additionally with respect to the Removed Child Class only: individuals who met Band membership requirements under sections 10-12 of the *Indian Act* by February 11, 2022 (the latter date of the Certification Orders) such as where their respective First Nation community assumed control of its own membership by establishing membership rules and the individuals were found to meet the

requirements under those membership rules and were included on the Band List prior to February 11, 2022;

(d) additionally with respect to the Jordan's Principle Class only: individuals who met Band membership requirements under sections 10-12 of the *Indian Act* pursuant to paragraph (c), above, AND who suffered a Delay, Denial, or Service Gap between January 26, 2016 and November 2, 2017;

(e) additionally with respect to the Jordan's Principle Class only: individuals who were recognized as citizens or members of their respective First Nation prior to February 11, 2022 (the latter date of the Certification Orders) as confirmed by First Nations Council Confirmation, whether under final agreement, self-government agreement, treaties or First Nations' customs, traditions and laws, AND who suffered a Delay, Denial, or Service Gap between January 26, 2016 and November 2, 2017.

"**First Nations Council Confirmation**" means a written confirmation, the form and contents of which will be agreed upon amongst the Plaintiffs subject to the Court's approval, from a First Nation designed for the purposes of the Claims Process to the effect that an individual is recognized as a citizen or member of their respective First Nation whether under treaty, agreement or First Nations' customs, traditions or laws.

"**Framework of Essential Services**" is the approach to Essential Services and Confirmed Need, enclosed as Schedule F, Framework of Essential Services, developed with the assistance of experts, and agreed to by the Plaintiffs for the purposes of the Claims Process. The Framework of Essential Services is subject to further piloting by qualified experts and necessary re-adjustments agreed to by the Plaintiffs, or the Settlement Implementation Committee after the Approval of this Agreement.

"**Group Home**" means a staff-operated home funded by ISC where several Children are living together. Some Group Homes are parent-operated, where a couple with professional youth care training operate a Group Home together.

"**Implementation Date**" of this Agreement means the later of:

(a) the day following the last day on which a Class Member may appeal or seek leave to appeal the Settlement Approval Order; or

(b) the date on which the last of any appeals of the Settlement Approval Order are finally determined.

"**Incarcerated Class Members Process**" means the process for communicating the Claims Process specifically to Class Members incarcerated in federal penitentiaries, provincial prisons, and other penal and correctional institutions or institutions where

individuals are held involuntarily due to matters such as a lack of criminal responsibility due to a mental disorder.

"***Income Tax Act***" means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp), as amended.

"***Indian Act***" means the *Indian Act*, R.S.C. 1985, c. I-5, as it read as of February 11, 2022 (the latter date of the Certification Orders).

"**Investment Committee**" means an advisory body constituted in accordance with this Agreement and Schedule G, Investment Committee Guiding Principles.

"**ISC**" has the meaning in the Recitals and includes any predecessor or successor department.

"**Jordan's Principle**" is a child-first human rights principle grounded in substantive equality that protects and promotes the substantive equality rights of all First Nations Children whether resident on- or off-Reserve, including in the Northwest Territories and Yukon. Jordan's Principle is named in honour of Jordan River Anderson of Norway House Cree Nation and his family.

"**Jordan's Principle Class**" or "**Jordan's Principle Class Member**" means an Essential Service Class Member who experienced the highest level of impact (including pain, suffering or harm of the worst kind) associated with the Delay, Denial, or Service Gap of an Essential Service that was the subject of a Confirmed Need. The Parties intend that the way that the highest level of impact is defined, and the associated threshold set for membership in the Jordan's Principle Class, fully overlap with the First Nations children entitled to compensation under the Compensation Orders.

"**Jordan's Principle Family Class**" means all persons who are the brother, sister, mother, father, grandmother or grandfather of a member of the Jordan's Principle Class at the time of Delay, Denial or Service Gap. Amongst the Jordan's Principle Family Class, only the Caregiving Parents or Caregiving Grandparents may receive direct compensation if otherwise eligible under this Agreement.

"Jordan's Principle Post-Majority Beneficiaries" means the beneficiaries eligible for benefits from the Jordan's Principle Post-Majority Fund.

"**Jordan's Principle Post-Majority Fund**" means $90,000,000 set aside from the Settlement Funds for the benefit of high-needs Approved Jordan's Principle Class Members necessary to ensure their personal dignity and well-being.

"**Kith Caregiver**" means an adult who is not a member of the Child's Family, does not live on-Reserve, and who cared for a Kith Child Class Member without receiving any funding in relation to the Child's Kith Placement.

"**Kith Child Class**" or "**Kith Child Class Member**" means a First Nations Child placed with a Kith Caregiver in a Kith Placement during the Removed Child Class Period and who meets the conditions specified herein and in Article 7.

"**Kith Family Class**" or "**Kith Family Class Member**" includes only the Caregiving Parents or, in the absence of Caregiving Parents, the Caregiving Grandparents of an Approved Kith Child Class Member who was placed in a Kith Placement between January 1, 2006 and March 31, 2022 pursuant to the conditions specified herein and in Article 7.

"**Kith Placement**" means where a First Nations Child resides with a Kith Caregiver outside of the Child's Family and off-Reserve, and a Child Welfare Authority was involved in the Child's placement.

"**Kith Placement Agreement**" means an agreement between a Caregiving Parent or Caregiving Grandparent of a Kith Child Class Member and a Child Welfare Authority relating to a Kith Placement of that Kith Child Class Member.

"**Non-kin Foster Home**" means any family-based care funded by ISC.

"**Non-paid Kin or Community Home**" means an informal placement, other than a Kith Placement, that has been arranged within the family support network, and the Child Welfare Authority does not have temporary custody and the placement is not funded by ISC.

"**Northern or Remote Community**" means a community as agreed upon by the Plaintiffs and set out in the Claim Process.

"**Notice Plan**" means the notice plan to be approved by the Court for dissemination of notices to Class Members.

"**Ongoing Fees**" has the meaning set out in Article 17.03.

"**Opt-Out**" means: (a) the delivery by a Class Member to the Administrator of the Opt-Out Form with the intention of being removed from the Actions before the Opt-Out Deadline; or (b) after the Opt-Out Deadline, a Class Member obtaining leave of the Court to opt out of the Actions in accordance with this Agreement.

"**Opt-Out Deadline**" means August 23, 2023 or such other date as the Court may determine, after which Class Members may no longer Opt-Out of the Actions, except with leave of the Court.

"**Opt-Out Form**" means the opt-out form as approved by the Court and enclosed hereto as Schedule H, Opt-Out Form.

"**Ordinarily Resident on Reserve**" means:

(a) a First Nations individual who lives in a permanent dwelling located on a First Nations Reserve at least 50% of the time and who does not maintain a primary residence elsewhere;

(b) a First Nations individual who is living off-Reserve while registered full-time in a post-secondary education or training program who is receiving federal, Band or Aboriginal organization education/training funding support and who:

a. would otherwise reside on-Reserve;

b. maintains a residence on-Reserve;

c. is a member of a family that maintains a residence on-Reserve; or

d. returns to live on-Reserve with parents, guardians, caregivers or maintainers when not attending school or working at a temporary job.

(c) a First Nations individual who is temporarily residing off-Reserve for the purpose of obtaining care that is not available on-Reserve and who, but for the care, would otherwise reside on-Reserve;

(d) a First Nations individual who is temporarily residing off-Reserve for the primary purpose of accessing social services because there is no reasonably comparable service available on-Reserve and who, but for receiving said services, would otherwise reside on-Reserve;

(e) a First Nations individual who at the time of removal or placement with a Kith Caregiver met the definition of ordinarily resident on reserve for the purpose of receiving child welfare and family services funding pursuant to a funding agreement between Canada and the province or territory in which the individual resided (including Ordinarily Resident on Reserve individuals funded through the cost-shared model under the Canada-Ontario 1965 Indian Welfare Agreement);

(f) for the purposes of Class Members in the Yukon, “on-Reserve” in this Agreement is inclusive of areas within the “Community Boundary” as defined in the *Umbrella Final Agreement Between the Government of Canada, the Council for Yukon Indians and the Government of the Yukon* as of February 11, 2022 (the latter date of the Certification Orders), and “off-Reserve” in this Agreement is correspondingly inclusive of areas outside the “Community Boundary” as of February 11, 2022 (the latter date of the Certification Orders).

“**Out-of-home Placement**” means a distinct location where a Removed Child Class Member has been placed pursuant to a removal, such as an Assessment Home, Non-kin Foster Home, Paid Kinship Home, Group Home, a Residential Treatment Facility, or other

similar placement funded by ISC, except for the members of the Kith Child Class pursuant to Article 7.

"**Paid Kinship Home**" means a formal placement that has been arranged within the family support network and paid for by ISC, where the Child Welfare Authority has temporary or full custody.

"**Parties**" means the Plaintiffs and Canada;

"**Person Under Disability**" means:

(a) a person under the Age of Majority under the legislation of their province or territory of residence; or

(b) an individual who is unable to manage or make reasonable judgments or decisions in respect of their affairs by reason of mental incapacity including those for whom a Personal Representative has been appointed, or designated by operation of the law, pursuant to the applicable provincial, territorial or federal legislation.

"**Personal Representative**" means the person appointed, or designated by operation of the law, pursuant to the applicable provincial, territorial or federal legislation to manage or make reasonable judgments or decisions in respect of the affairs of a Person Under Disability who is an eligible Claimant and includes an administrator for property.

"**Plaintiffs**" means collectively the Moushoom Plaintiffs, the AFN Plaintiffs and the Trout Plaintiffs.

"**Professional**" means a professional with expertise relevant to a Child's Confirmed Need(s), for example: a medical professional or other registered professionals available to a Class Member in their place of residence and community (particularly in a Northern or Remote Community where there may not have been, or be, access to specialists, but there may have been access to community health nurses, social support workers, and mental health workers), or an Elder or Knowledge Keeper who is recognized by the Child's specific First Nations community.

"**Recitals**" means the recitals to this Agreement.

"**Removed Child Class**" or "**Removed Child Class Member**" means First Nations individuals who, at any time during the period between April 1, 1991 and March 31, 2022 (the "**Removed Child Class Period**"), while they were under the Age of Majority, were removed from their home by child welfare authorities or voluntarily placed into care, and whose placement was funded by ISC, such as an Assessment Home, a Non-kin Foster Home, a Paid Kinship Home, a Group Home, or a Residential Treatment Facility or another ISC-funded placement while they, or at least one of their Caregiving Parents or Caregiving Grandparents, were Ordinarily Resident on Reserve or were living in the

Yukon, but excluding children who lived in a Non-paid Kin or Community Home through an arrangement made with their caregivers and excluding individuals living in the Northwest Territories at the time of removal.

"**Removed Child Family Class**" means all persons who are the brother, sister, mother, father, grandmother or grandfather of a member of the Removed Child Class at the time of removal.

"**Reserve**" means a tract of land, as defined under the *Indian Act*, the legal title to which is vested in the Crown and has been set apart for the use and benefit of a Band.

"**Residential Treatment Facility**" means a treatment program for several Children living in the treatment facility with 24-hours-a-day trained staff, including locked or secure and unlocked residences, funded by ISC.

"**Service Gap**" means an Essential Service that is subject to a Confirmed Need, as determined in accordance with Schedule F, Framework of Essential Services, but was not available to an Essential Service, Jordan's Principle or Trout Class Member.

"**Settlement Approval Hearing**" means a hearing of the Court to determine a motion to approve this Agreement.

"**Settlement Approval Order**" means the draft order submitted to the Court regarding the approval of this Agreement, the form and content of which will be agreed upon amongst the Parties, if and as approved by the Court.

"**Settlement Funds**" means a total of $23,343,940,000 ($23.34394 billion), which Canada will pay to settle the claims of the Class in accordance with this Agreement.

"**Settlement Implementation Committee**" or "**Settlement Implementation Committee and its Members**" means a committee established pursuant to Article 12.

"**Settlement Implementation Report**" has the meaning set out in Article 12.03(1)(m).

"**Spell in Care**" applies to the Removed Child Class and means a continuous period in care, which starts when a Child is taken into out-of-home care and ends when the Child is discharged from care, by returning home, moving into another arrangement in a Non-paid Kin or Community Home, being adopted, or living independently at the Age of Majority. ISC data considers a Spell in Care by the start and end dates of each continuous period of Out-of-home Placement.

"**Stepparent**" means a person, other than an adoptive parent, who is First Nations and a spouse of the biological Caregiving Parent of a Removed Child Class Member, Jordan's Principle Class Member, or Trout Child Class Member, and lived with that Child's biological Caregiving Parent and contributed to the support of the Child, for at least three

(3) years, prior to the removal of the Child, or the occurrence of the Delay, Denial or the Service Gap.

"**Supporting Documentation**" means:

(a) for the Removed Child Class: such documentation required to be submitted by a Removed Child Class Member in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;

(b) for the Essential Service Class, Jordan's Principle Class, and Trout Child Class: such documentation required to be submitted by a member of the Essential Service Class, Jordan's Principle Class, and Trout Child Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;

(c) for the Removed Child Family Class: such documentation required to be submitted by a member of the Removed Child Family Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;

(d) for the Jordan's Principle Family Class: such documentation required to be submitted by a member of the Jordan's Principle Family Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;

(e) for the Trout Family Class: such documentation required to be submitted by a member of the Trout Family Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;

(f) for the Kith Child Class: such documentation required to be submitted by a member of the Kith Child Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;

(g) for the Kith Family Class: such documentation required to be submitted by a member of the Kith Family Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form; and

(h) for Eligible Deceased Class Members: the documentation to be required to be submitted in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form.

"**Time in Care**" means the total amount of time that a Removed Child Class Member spent in care regardless of the number of Spells in Care.

"**Third-Party Assessor**" means the person or persons appointed by the Court to carry out the duties of the Third-Party Assessor as stated in this Agreement, to be particularized in the Claims Process, and their successors appointed from time to time, as approved by the Court.

"**Trout Child Class**" or "**Trout Child Class Member**" means First Nations individuals who, during the period between April 1, 1991 and December 11, 2007 (the "**Trout Child Class Period**"), while they were under the Age of Majority, did not receive from Canada (whether by reason of a Denial or a Service Gap) an Essential Service relating to a Confirmed Need, or whose receipt of said Essential Service was delayed by Canada, on grounds, including lack of funding or lack of jurisdiction, or as a result of a Service Gap or jurisdictional dispute with another government or governmental department.

"**Trout Family Class**" means all persons who are the brother, sister, mother, father, grandmother or grandfather of a member of the Trout Child Class at the time of Delay, Denial or Service Gap. Amongst the Trout Family Class, only the Caregiving Parents or Caregiving Grandparents may receive direct compensation if otherwise eligible under this Agreement.

"**Trust**" means the trust established pursuant to Article 15.

"**Trust Fund**" has the meaning set out in Article 4.

"**Trustee**" means the trustee appointed by the Court pursuant to Article 15 for the purposes of this Agreement. The Trustee may be constituted by deed of trust, a society, or non-profit corporation as directed by the Plaintiffs.

1.02 Headings

The division of this Agreement into paragraphs and the use of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

1.03 Extended Meanings

In this Agreement, words importing the singular number include the plural and vice versa, and words importing any gender or no gender include all genders. The term "including" means "including without limiting the generality of the foregoing". Any reference to a government ministry, department or position will include any predecessor or successor government ministry, department or position.

1.04 Interpretation

The Parties acknowledge that they have reviewed and participated in settling the terms of this Agreement and they agree that there will be no presumptive rule of construction to

the effect that any ambiguity in this Agreement is to be resolved in favour of any particular Party.

1.05 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as enacted on the date of such reference and not as the statute may from time to time be amended, re-enacted, or replaced, and the same applies to any regulations made thereunder.

1.06 Business Day

Where the time on or by which any action required to be taken hereunder expires or falls on a day that is not a Business Day, such action may be done on the next succeeding day that is a Business Day.

1.07 Currency

All references to currency herein are to lawful money of Canada.

1.08 Compensation Inclusive

The amounts payable to Class Members under this Agreement are inclusive of any prejudgment or post-judgment interest, except as otherwise specified in Article 6.15, Article 6.16, or under Article 7.

1.09 Schedules

The following Schedules to this Agreement are incorporated into and form part of this Agreement:

Schedule A: Order dated February 23, 2023 on Opt-Out Deadline

Schedule B: Order dated August 11, 2022 on Appointment of Administrator

Schedule C: Provincial and Territorial Ages of Majority

Schedule D: Certification Order dated November 26, 2021 in Court File Nos. T-402-19 and T-141-20 (2021 FC 1225)

Schedule E: Certification Order dated February 11, 2022 in Court File No. T-1120-21 (2022 FC 149)

Schedule F: Framework of Essential Services

Schedule G: Investment Committee Guiding Principles

Schedule H: Opt-Out Form

Schedule I: Framework for Supports for Claimants in Compensation Process

Schedule J: Summary Chart of Essential Service, Jordan's Principle, and Trout Approach

1.10 Binding Agreement

This Agreement is binding upon the Parties, and for Canada and Class Members, upon their estates, heirs, Estate Executors, estate Claimants, and Personal Representatives.

1.11 Applicable Law

This Agreement will be governed by the laws of Canada, together with the laws of the province or territory where the Class Member is ordinarily resident, as applicable, save where otherwise specified in this Agreement.

1.12 Counterparts

This Agreement may be executed electronically and in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same Agreement.

1.13 Official Languages

As soon as practicable after the execution of this Agreement Class Counsel will arrange for the preparation of an authoritative French version. The French version will be of equal weight and force at law.

1.14 Ongoing Supervisory Role of the Court

Notwithstanding any other provision of this Agreement, the Court will maintain exclusive jurisdiction to supervise the implementation of this Agreement in accordance with its terms, including the adoption of protocols and statements of procedure, and the Parties attorn to the jurisdiction of the Court for that purpose. The Court may give any directions or make any orders that are necessary for the purposes of this Article.

ARTICLE 2 - EFFECTIVE DATE OF AGREEMENT

2.01 Date when Binding and Effective

On the Implementation Date, this Agreement will become binding in accordance with Article 11 on all Class Members who have not Opted-Out by the Opt-Out Deadline.

2.02 Effective Upon Approval

None of the provisions of this Agreement will become effective unless and until the Court approves this Agreement.

2.03 Legal Fees Severable

Class Counsel's fees for prosecuting the Actions have been or will be negotiated separately from this Agreement and remain subject to approval by the Court. The Court's decision on Class Counsel's fees will have no effect on the implementation of this Agreement. If the Court refuses to approve the fees of Class Counsel, the remainder of the provisions of this Agreement will remain in full force and effect and in no way will be affected, impaired or invalidated.

ARTICLE 3 – ADMINISTRATION

3.01 Designation of Administrator

The Administrator administers the Claims Process with such powers, rights, duties and responsibilities as are set out in this Article and such other powers, rights, duties and responsibilities as are determined by the Settlement Implementation Committee and approved by the Court. Following the establishment of the Settlement Implementation Committee and on the recommendation of the Settlement Implementation Committee, the Court may replace the Administrator at any time.

3.02 Duties of the Administrator

1) The Administrator's duties and responsibilities include the following:

   (a) in consultation with the Settlement Implementation Committee, developing, installing, and implementing systems, forms, information, guidelines and procedures for processing Claims and appeals of the decisions of the Administrator to the Third-Party Assessor in accordance with this Agreement and the Claims Process;

   (b) in consultation with the Settlement Implementation Committee, developing, installing, and implementing systems and procedures for making payments of compensation in accordance with this Agreement and the Claims Process;

   (c) receiving funds from the Trust and the Trustee to make payments to Class Members in accordance with this Agreement and the Claims Process;

   (d) ensuring adequate staffing for the performance of its duties under this Agreement, and training and instructing personnel;

(e) ensuring, in consultation with the Settlement Implementation Committee, First Nations participation and the reflection of First Nations perspectives, appropriate cultural knowledge, use of proper experts, and a trauma-informed and child- and youth-focused approach to the Class;

(f) keeping or causing to be kept accurate accounts of its activities and its administration and preparing annual audited financial statements, as well as reports, and records as are required by the Settlement Implementation Committee, the Auditors and the Court;

(g) reporting to the Settlement Implementation Committee on a monthly basis respecting:

i) Claims received and Claims determined including associated timelines for determination;

ii) Claims deemed ineligible and the reason(s) for that determination; and

iii) appeals from the Administrator's decisions and the outcomes of those appeals.

(h) identifying and reporting to the Settlement Implementation Committee systemic issues, including suspected or potential irregular or fraudulent Claims, in the implementation of the Agreement and the Claims Process as such issues arise and in any event no later than on a quarterly basis, and working with the Settlement Implementation Committee and any experts as may be required to find a resolution to such systemic issues—a systemic issue being an issue that affects more than one Class Member;

(i) responding to inquiries from Claimants respecting Claims and Claims Forms;

(j) providing navigational supports to Class Members in the Claims Process as outlined out in Schedule I, Framework for Supports for Claimants in Compensation Process, including: (i) assistance with the filling out and submission of Claims Forms; (ii) assistance with obtaining Supporting Documentation; (iii) assistance with appeals to the Third-Party Assessor pursuant to this Agreement; (iv) reviewing Claims Forms, Supporting Documentation, and First Nations Council Confirmations; and (v) determining a Claimant's eligibility for compensation in the Class;

(k) maintaining a database with all information necessary to permit the Settlement Implementation Committee and the Actuary to assess the financial sufficiency of the Trust Fund;

(l) in appropriate circumstances, requiring further Supporting Documentation in

relation to a claimed Confirmed Need from a different Professional. In case of doubt, the Administrator will consult with the Settlement Implementation Committee for direction;

(m) communicating with Claimants in either English or French, as the Claimant elects, and if a Claimant expresses the desire to communicate in a language other than English or French, making best efforts to accommodate such Claimant;

(n) verifying Claims in accordance with this Agreement;

(o) reporting annually to the Court on the Administrator's above tasks;

(p) determining requests for the extension of the Claims Deadline by individual Class Members facing extenuating personal circumstances, such as where a Claimant was unable as a result of physical or psychological illness or challenges, including homelessness, incarceration or addiction, or due to unforeseen circumstances such as epidemics, community internet connectivity, pandemics, natural disasters, community-based emergencies or service disruptions at a national, regional, or community level, to submit a Claim before the Claims Deadline, subject to further direction on such circumstances from the Settlement Implementation Committee; and

(q) such other duties and responsibilities as the Court or the Settlement Implementation Committee may from time to time direct.

2) In carrying out its duties and responsibilities outlined in this Agreement, the Administrator will:

(a) act in accordance with the principles governing the administration of Claims set out in this Article, in particular that the Claims Process intends to be cost-effective, user-friendly, culturally sensitive, trauma-informed, and non-traumatizing to Class Members;

(b) ensure quality assurance processes are documented and transparent;

(c) comply with the service standards established by the Plaintiffs; and

(d) perform other duties and responsibilities as the Court or the Settlement Implementation Committee may from time to time direct.

3) Except as otherwise provided in this Agreement and the Claims Process, the Administrator will request on a monthly basis such funds from the Trustee as may be necessary to pay approved Claims. The Trustee will provide such funds to the

Administrator, and the Administrator will pay such funds to the Class Members in accordance with this Agreement and the Claims Process.

3.03 Appointment of the Third-Party Assessor

On the recommendation of the Parties until the approval of this Agreement, and of the Settlement Implementation Committee thereafter, the Court will appoint as necessary from time to time one or more Third-Party Assessors composed of experts, including First Nations experts, with demonstrated knowledge of, and experience in, First Nations child and family services and Jordan's Principle. On the recommendation of the Settlement Implementation Committee, the Court may replace a Third-Party Assessor at any time. The Third-Party Assessor will perform the duties of the Third-Party Assessor set out in this Agreement and the Claims Process.

3.04 Responsibility for Costs

1) Canada will pay:

   (a) the reasonable costs of giving notice in accordance with the Notice Plan to be developed by the Parties, including Canada and the Settlement Implementation Committee, as approved and ordered by the Court;

   (b) the reasonable costs and disbursements of the Administrator, the Third-Party Assessor, the Trustee, the Auditors, the Actuary, Child Welfare Records Technicians, and any experts, advisors or consultants retained by the Settlement Implementation Committee for the purpose of implementing this Agreement;

   (c) the costs of the administration of the Trust;

   (d) legal fees pursuant to Article 17;

   (e) the costs of the supports for Class Members throughout the Claims Process as outlined in Schedule I, Framework for Supports for Claimants in Compensation Process; and

   (f) the costs of the Dispute Resolution Process in accordance with Article 18.

2) The Settlement Implementation Committee will provide a forecast of the costs and disbursements of the administration of this Agreement to Canada on an annual basis, on or before December 1 of each year regarding the year ahead, which forecast may be revised due to unforeseen circumstances. In such case, the Settlement Implementation Committee will advise Canada in writing. Canada may dispute the reasonableness of the forecast or any revision of it.

3) None of the costs payable by Canada pursuant to this Article will be deducted from the Settlement Funds.

ARTICLE 4 - TRUST FUND

4.01 Establishment of the Trust Fund

1) As soon as practicable after the appointment and settlement of the Trust in accordance with Article 15, the Trustee will establish investment trust account(s) at Banking Facilities for the purposes of receiving and investing the Settlement Funds and paying compensation to eligible Class Members.

2) The Trustee will collaborate with Canada to establish a transfer and drawdown schedule for payments to enable the orderly payment of the Settlement Funds. Canada will have no input or role in the selection of the Banking Facilities or the Trustee's selection of deposit or financial instruments.

3) On or after thirty (30) Business Days following the Implementation Date, and in accordance with Article 1.01, the Trustee on the recommendation of the Investment Committee may direct Canada to make payments to the Trust up to the total of the Settlement Funds.

4) By no later than 120 days following the Implementation Date, Canada will make payments to the Trust of Settlement Funds in the total amount of $23,343,940,000 ($23.34394 billion).

4.02 Distribution of the Trust Fund

The Trustee will periodically, on request based on estimated approved Claims, pay the Administrator from the trust account(s) under Article 4.01 for the purpose of distributing the Trust Fund for the benefit of the Class Members in accordance with this Agreement, including by paying compensation in accordance with Articles 6 and 7 through the Claims Process.

ARTICLE 5 - CLAIMS PROCESS

5.01 Principles Governing Claims Administration

1) The design and implementation of the distribution protocol within the Claims Process will be within the sole discretion of the Plaintiffs, subject to the approval of the Court. The Plaintiffs will establish the Claims Process and may seek input from the Caring Society, as well as from experts and First Nations stakeholders as the Plaintiffs deem in the best interests of the Class Members. The Plaintiffs will finalize the distribution protocol within the Claims Process in accordance with this Agreement, and will submit same for approval of the Court.

2) Notwithstanding Article 5.01(1), Canada will have standing to make submissions on the Claims Process at the hearing on the motion to approve same before the Court.

3) The Claims Process is intended to be expeditious, cost-effective, user-friendly, culturally sensitive, trauma-informed, and non-traumatizing, with any necessary accommodations for persons with disabilities or vulnerabilities. The Administrator will identify and implement service standards for the Claims Process no later than 180 days after the Claims Process Approval Date for any given class.

4) The Administrator and the Third-Party Assessor will, in the absence of reasonable grounds to the contrary, presume that a Claimant is acting honestly and in good faith with respect to any Claim.

5) In considering a Claims Form, Supporting Documentation, or a First Nations Council Confirmation, the Administrator and the Third-Party Assessor will draw all reasonable inferences that can be drawn in favour of the Claimant.

6) The Administrator will make reasonable efforts to obtain verification of each Claim within six (6) months of the receipt of the completed Claim, with all required elements. If the Administrator identifies systemic issues with its ability to verify some or all Claims in accordance with the Claims Process within six (6) months, the Administrator will refer the matter to the Settlement Implementation Committee to determine whether a different service standard should be applied to any of the classes.

7) In designing the Claims Process, the Administrator and the Plaintiffs will develop standards relating to the processing of Claims in compliance with this Agreement, insofar as this Agreement recognizes that Class Members' circumstances may require flexibility in the type of documentation necessary to support the Claims Forms due to challenges such as the Child's age or developmental status at the time of the events, the disappearance of records over time, the retirement or death of Professionals involved in a Child's case, and systemic barriers to accessing Professionals. In recognition of same, for example, Article 6.08(5) allows for Supporting Documentation that is contemporaneous or current where appropriate.

8) The Claims Process regarding the determination of Claims from members of the Kith Child Class will establish criteria and standards specific to the processing of such Claims, which take into account the Parties' intention and acknowledgement that specific standards, Supporting Documentation, eligibility, and Claims verification apply to the Kith Child Class as compared to the Removed Child Class to ensure the integrity of the Claims Process while also respecting the general principles set out in Article 5.01(7) and Article 7.01.

9) The Claims Process regarding the determination of Claims from members of the Essential Service Class, the Jordan's Principle Class, and the Trout Child Class will include a review for the purpose of making a recommendation on eligibility and compensation to the Administrator by an individual with specific culturally appropriate health and social training on Jordan's Principle, Essential Services, Confirmed Needs, Professionals, and Supporting Documentation. The Eligibility Decision will be made by the Administrator having received a recommendation under this Article.

10) In order to distribute payment to Claimants as soon as reasonably possible following the Implementation Date, the distribution protocol in the Claims Process for each class may be designed, piloted where required, and submitted for approval to the Court before the distribution protocol for other classes is finalized and approved. For example, if the distribution protocol within the Claims Process for the Removed Child Class is finalized and approved by the Court, compensation may be distributed to the Removed Child Class in accordance with this Agreement in advance of the finalization and approval of the distribution protocol for other classes.

5.02 Eligibility Decisions and Enhanced Compensation Decisions

1) The Administrator will make the decision on eligibility and compensation with respect to all classes ("**Eligibility Decision**").

2) The Administrator will review each Claims Form, Supporting Documentation, First Nations Council Confirmation, recommendation under Article 5.01(9), and such other information as the Administrator considers relevant to determine whether each Claimant is eligible for compensation.

3) A First Nations Council Confirmation is required for Claimants under the Jordan's Principle Class who solely meet the definition of "First Nations" as defined in Article 1.01 based on having been recognized as a member or citizen by their respective First Nations under agreement, treaties or First Nations' customs, traditions and laws on or before February 11, 2022 (the latter date of the Certification Orders).

4) Within six months of the receipt of a completed Claim with all required elements, including verification of the Claim by the Administrator, the Administrator will provide written reasons (including instructions on the appeal process) to a Claimant in any case of:

    (a) an Eligibility Decision;

    (b) a decision that a member of the Removed Child Family Class or the Kith Family Class is not entitled to receive compensation due to Abuse under Article 6.04(4) or Article 7.03(2);

(c) a decision that a Claimant is not entitled to an Enhancement Payment available to that Class; or

(d) a decision to refuse to extend the Claims Deadline with respect to a Class Member.

5) Only a Claimant approved by an Eligibility Decision may be entitled to payment pursuant to Article 6 or Article 7.

6) A Claimant will have 60 days to commence an appeal to the Third-Party Assessor in accordance with the Claims Process upon receipt of:

(a) an Eligibility Decision that a Claimant is not a Class Member;

(b) a decision that a Claimant is not entitled to an Enhancement Payment as defined in the Claims Process;

(c) a refusal to extend the Claims Deadline with respect to an individual Class Member; or

(d) a dispute amongst Removed Child Family Class Members under Article 6.05 or amongst Kith Family Class Members under Article 7.03.

7) The Third-Party Assessor's decision on an appeal pursuant to Article 5.02(6) will be final and not subject to judicial review, further appeal or any other remedy by legal action.

8) The Third-Party Assessor will comply with the procedure and timeline standards established in the Claims Process for an appeal from a decision of the Administrator.

9) There will be no right of appeal by a Class Member who belongs to a category, such as brothers and sisters, that is not entitled to receive direct payment under this Agreement.

ARTICLE 6 - COMPENSATION

6.01 General Principles Governing Compensation

1) The Plaintiffs will design a Claims Process with the goal of minimising the risk of causing trauma to Class Members.

2) No member of the Removed Child Class, Jordan's Principle Class, or Trout Child Class will be required to submit to an interview, examination or other form of *viva voce* evidence taking.

3) The Plaintiffs will agree to require fair and culturally appropriate Supporting Documentation in accordance with this Agreement tailored to each different class for the purposes of the Claims Process.

4) A Class Member may claim compensation starting two (2) years before they reach the Age of Majority, provided that no compensation is paid to that Class Member until after the Age of Majority. A Class Member may only receive compensation under the terms of this Agreement after the Age of Majority, except in the case of an Exceptional Early Payment in accordance with Article 6.10. The Claims Process will include a means by which a Child may register with the Administrator at any time in order to receive updates on the implementation of this Agreement.

5) Enhancement Factors have been selected as appropriate proxies for harm, based on expert opinion, and are designed to enable proportionate compensation to the Removed Child Class, the Jordan's Principle Class, and the Trout Child Class.

6) Compensation under this Agreement will take the form of either direct payment to eligible Class Members, or eligible estates of deceased Class Members, who have claimed through the Claims Process and been approved by the Administrator or indirect benefit to the Class through the Cy-près Fund.

7) A Class Member who qualifies for compensation as a member of more than one class under this Agreement will receive the higher amount for which the Class Member qualifies amongst the applicable classes, and compensation under the classes will not be combined.

8) The Kith Child Class and the Kith Family Class will be the subject of a separately designed compensation and verification process in the Claims Process in accordance with Article 7.

6.02 Governing Principles on Removed Children

1) This Agreement seeks to adopt a trauma-informed and culturally sensitive approach to compensating the Removed Child Class and the Caregiving Parents or Caregiving Grandparents of the Removed Child Class.

2) To the extent possible and based on objective criteria, the Agreement seeks to bring proportionality to the compensation process such that members of the Removed Child Class who suffered the most harm may receive higher compensation in the Claims Process.

3) For the Removed Child Class, eligibility for compensation and Enhancement Factors will be based on objective criteria and data primarily from ISC and Supporting Documentation as the case may be.

6.03 Removed Child Class Compensation

1) Base Compensation payable to an Approved Removed Child Class Member will not be multiplied by the number of Spells in Care.

2) An Approved Removed Child Class Member will be entitled to receive Base Compensation of $40,000.

3) An Approved Removed Child Class Member may be entitled to an Enhancement Payment based on the following Enhancement Factors ("**Removed Child Enhancement Factors**"):

    (a) the age at which the Removed Child Class Member was removed for the first time;

    (b) the Time in Care;

    (c) the age of a Removed Child Class Member at the time they exited the child welfare system;

    (d) whether a Removed Child Class Member was removed to receive an Essential Service relating to a Confirmed Need;

    (e) whether the Removed Child Class Member was removed from a Northern or Remote Community; and

    (f) the number of Spells in Care for a Removed Child Class Member and/or, if possible, the number of Out-of-home Placements applicable to a Removed Child Class Member who spent more than one (1) year in care.

4) The Plaintiffs will design a system of weighting the Removed Child Enhancement Factors for the Removed Child Class based on the input of experts that will reflect the relative importance of each Enhancement Factor as a proxy for harm.

5) The Plaintiffs have determined a Budget of $7.25 billion for the Removed Child Class, subject to Articles 6.11, 6.12, and 6.13.

6.04 Caregiving Parents or Caregiving Grandparents of Removed Child Class

1) Amongst the Removed Child Family Class, only the Caregiving Parents or Caregiving Grandparents may receive direct compensation if otherwise eligible under this Agreement. Brothers and sisters are not entitled to direct compensation but may benefit indirectly from this Agreement through the Cy-près Fund.

2) A foster parent is not entitled to compensation under this Agreement and is not entitled or permitted to claim compensation on behalf of a Child under this Agreement.

3) The Base Compensation of an Approved Removed Child Family Class Member will not be multiplied based on the number of removals or Spells in Care for a Child.

4) A Caregiving Parent or Caregiving Grandparent who has committed Abuse that has resulted in the Removed Child Class Member's removal is not eligible for compensation in relation to that Child. However, a Caregiving Parent or Caregiving Grandparent is not

barred from receiving compensation as a member of the Removed Child Class, the Kith Child Class, the Essential Service Class, the Trout Child Class or the Jordan's Principle Class if the Caregiving Parent or Caregiving Grandparent is otherwise eligible for compensation as a Child member of one of those classes under this Agreement.

5) A maximum compensation amount of two Base Compensation payments per Child among Caregiving Parents or Caregiving Grandparents of a Child, regardless of number of Spells in Care or removals, may be distributed under this Agreement.

6) Where the Child was removed more than once from a Caregiving Parent or a Caregiving Grandparent, the Caregiving Parent or the Caregiving Grandparent from whom the Child was first removed will be eligible to receive compensation.

7) The first time that a Child is removed from either a Caregiving Parent or Caregiving Grandparent will determine who receives compensation: whoever the Child was removed from earlier will take eligibility priority to receive a Base Compensation. For example, if the Child was removed from two Caregiving Grandparents in 2008 and later removed from a Caregiving Parent in 2010, the two Caregiving Grandparents receive two Base Compensation payments and no other person receives compensation.

8) Where the Class Member's eligibility cannot be determined in accordance with Article 6.04(6) or Article 6.04(7), or where the Child was first removed from more than two Caregiving Parents or Caregiving Grandparents, eligibility will be determined according to the following priority list:

    (a) Category A: Caregiving Parents who are not Stepparents; then

    (b) Category B: Caregiving Grandparent(s); then

    (c) Category C: Stepparents.

9) The Parties have budgeted the Base Compensation for an Approved Removed Child Family Class Member to be $40,000.

10) The final quantum of Base Compensation to be paid to each Approved Removed Child Family Class Member will be determined by the Settlement Implementation Committee in consultation with the Actuary, having regard to the number of Approved Removed Child Family Class Members and the Budget for the Removed Child Family Class under this Article, and the requirement to pay Base Compensation of $40,000 to Caregiving Parents and Caregiving Grandparents of Children in care as of or removed between January 1, 2006 and March 31, 2022 and placed off-Reserve with non-Family, subject to Court approval.

11) Payments to Approved Removed Child Family Class Members who may be entitled to receive compensation under this Article before the expiration of the Claims Deadline may

be made in installments in order to ensure sufficient funds exist to pay like amounts to like Claimants regardless of when they submitted their Claim.

12) The Plaintiffs have determined a Budget of $5.75 billion for the Removed Child Family Class.

6.05 Sequencing and Priorities in Compensation for Removed Child Family Class Members

1) The Administrator will not pay any Claims by a Caregiving Parent (Category A), Caregiving Grandparent (Category B) or Stepparent (Category C) until the expiration of the Claims Deadline, in order to determine:

   (a) From whom the Child was removed first;

   (b) Whether one, two, or no Caregiving Parent(s) (who are not Stepparents), or Caregiving Grandparent(s), who cared for the Child at the time of the first removal (Category A) are approved with respect to the same Child;

   (c) whether more than two other Caregiving Grandparents (Category B) or Stepparents (Category C) have submitted a Claim with respect to the same Child; and

   (d) the amount of compensation, if any, payable to each such Claimant in accordance with this Article.

2) Notwithstanding Article 6.05(1), the Claims Process may include provisions for exceptional circumstances to the following effect: The Administrator may approve a Claim by a putative Category A, Category B, or Category C Claimant before the expiration of the Claims Deadline in accordance with the timelines specified in Article 5.02(4), and if they are determined to be Approved Removed Child Family Class Members, the Administrator may pay their compensation in accordance with the timelines specified in Article 6.14, subject to all other applicable limitations under this Agreement only if the Claimant has submitted Claims Forms and Supporting Documentation substantiating that all other biological parent(s), adoptive parent(s), stepparent(s), biological and adoptive grandparent(s), if applicable, of the Child have expressly renounced their entitlement to make a Claim under this Agreement or if the Child was the subject of a single removal at birth and the Child was a ward of the state as a result of that removal until the Age of Majority.

3) In the event of Claims by more than two putative Caregiving Parents (Category A), the Administrator may require further information and proof from those Claimants, but without the direct involvement of the affected Child, to substantiate who, if any, amongst such

Claimants meet the definition of a Caregiving Parent entitled to compensation under this Agreement.

4) Where only one Caregiving Parent (Category A), who cared for the child at the time of the first removal has submitted a Claim that has been approved with respect to the Child, only one Caregiving Grandparent (Category B) who was living in the same household as the Caregiving Parent may be deemed to be eligible to receive the remaining Base Compensation payment under this Agreement, regarding that Child, and no other parent, grandparent, or stepparent of that Child will receive a Base Compensation under this Agreement. If such Caregiving Grandparent (Category B) is also eligible for compensation with respect to one or more other removed Children between January 1, 2006 and March 31, 2022 who were placed off-Reserve with non-Family, they will be entitled to a maximum of $80,000 in compensation under this Agreement with respect to multiplications of the Base Compensation under Article 6.06.

5) In the event of Claims by multiple putative Caregiving Grandparents (Category B) beyond the available number of Base Compensation payment(s) with respect to the same Child, the Administrator may require further information and proof from those Claimants, but without the direct involvement of the affected Child, to substantiate who, if any, amongst such Claimants meet the definition of a Caregiving Grandparent entitled to compensation under this Agreement.

6) If only one Base Compensation remains with respect to a Child, and two Stepparents (Category C) have been approved by the Administrator, or on appeal to the Third-party Assessor, such Stepparents will share pro rata that one Base Compensation.

7) Any dispute amongst Caregiving Parents, Caregiving Grandparents or Stepparents will be subject to a summary adjudicative determination by the Third-Party Assessor in accordance with the Claims Process.

6.06 Multiplication of Base Compensation for Certain Removed Child Family Class Members

1) An Approved Removed Child Family Class Member who is a Caregiving Parent or a Caregiving Grandparent will receive multiple Base Compensation payments if and where more than one Child of the Caregiving Parent or the Caregiving Grandparent, as the case may be, has been removed from their Family, and placed off-Reserve with non-Family at any time during the Removed Child Class Period.

2) The multiplication of the Base Compensation will correspond to the number of such Children who were removed from the Caregiving Parent or the Caregiving Grandparent and placed off-Reserve with non-Family. For greater certainty, a Child who was placed on-Reserve does not entitle a Caregiving Parent or a Caregiving Grandparent to a

multiplication of the Base Compensation. For example, two Caregiving Parents who had two of their Children removed from their care and placed off-Reserve with non-Family will each be entitled to $80,000 in compensation if otherwise eligible for compensation under this Agreement.

3) No other Removed Child Family Class Member may receive a multiplication of the Base Compensation regardless of the number of Children removed from such Removed Child Family Class Member and regardless of whether a Child was placed on-Reserve or off-Reserve.

4) Notwithstanding Article 6.06(1) and Article 6.06(2), an Approved Removed Child Family Class Member will be entitled to a maximum of two (2) Base Compensation payments, up to a maximum of $80,000 of compensation regardless of the number of Children removed in the following cases:

   (a) the Approved Removed Child Family Class Member had two or more Children removed and placed off-Reserve with non-Family between April 1, 1991 and December 31, 2005 (excluding those who remained in care as of January 1, 2006);

   (b) all Approved Removed Child Family Class Members who are Stepparents who had two or more Children removed and placed off-Reserve with non-Family during the Removed Child Class Period; or

   (c) all Approved Removed Child Family Class Members who are Category B Caregiving Grandparents during the Removed Child Class Period in cases where one Category A Caregiving Parent has been approved for compensation under this Agreement with respect to the affected Child.

5) The Settlement Implementation Committee may, on advice from the Actuary, reassess eligibility for multiplications of Base Compensation under this Article for Caregiving Parents or Caregiving Grandparents who are the subject of Article 6.06(4), including the potential reduction of two Base Compensation payments or, conversely, removal of the cap of two (2) Base Compensation payments set out in Article 6.06(4).

6) The Plaintiffs have determined a Budget of $997 million for the multiplication of Base Compensation paid pursuant to this article.

6.07 Governing Principles Regarding Essential Service, Jordan's Principle, and Trout Classes

1) To the extent possible, this Agreement applies the same methodology to the Essential Service Class, Jordan's Principle Class, and Trout Child Class.

2) This Agreement intends to:

(a) be trauma-informed regarding the Jordan's Principle Class, Essential Service Class, and the Trout Child Class;

(b) avoid subjective assessments of harm, individual trials, or other cumbersome methods of making Eligibility Decisions with respect to these classes; and

(c) use objective criteria to assess Class Members' needs and circumstances as a proxy for the impact experienced by such Class Members in a discriminatory system.

3) The Base Compensation of an Approved Jordan's Principle Class Member or an Approved Trout Child Class Member will not be multiplied based on the number of Essential Services that were the subject of the Child's Confirmed Need.

6.08 Essential Service Class, Jordan's Principle Class, and Trout Child Class

1) The Plaintiffs will design the portion of the Claims Process with respect to members of the Essential Service Class, Jordan's Principle Class, and the Trout Child Class in accordance with this Article. A summary of the approach in this Article as an interpretive aid is attached as Schedule J, Summary Chart of Essential Service, Jordan's Principle, and Trout Approach. In the case of a conflict, the Articles in this Agreement will govern.

2) Eligibility for compensation for members of the Essential Service Class, Jordan's Principle Class, and the Trout Child Class will be determined based on those Class Members' Confirmed Need for an Essential Service if:

(a) a Class Member's Confirmed Need was not met because of a Denial of a requested Essential Service;

(b) a Class Member experienced a Delay in the receipt of a requested Essential Service for which they had a Confirmed Need; or

(c) a Class Member's Confirmed Need was not met because of a Service Gap even if the Essential Service was not requested.

3) The Framework of Essential Services, based on advice from experts, establishes a method to assess:

(a) whether the Child had a Confirmed Need for an Essential Service;

(b) whether an Essential Service was subject to a Delay, Denial or Service Gap; and

(c) the impact of the Delay, Denial or Service Gap, as assessed by objective criteria (including related to the pain, suffering or harm) associated with the Delay, Denial or Service Gap.

4) A Claimant will be considered to have established a Confirmed Need if the Claimant has provided Supporting Documentation and has been approved by the Administrator.

5) Supporting Documentation will include verification of a recommendation by a Professional consistent with the following principles, where applicable:

    (a) Permissible proof includes contemporaneous and/or current proof of assessment, referral or recommendation to account for the difficulties in retaining and obtaining historic records during the Trout Child Class Period and Essential Service Class Period.

    (b) Permissible proof includes proof of assessment, referral or recommendation from a Professional within that Professional's expertise as may be available to the Class Member in their place of residence, including those in a Northern and Remote Community.

    (c) In order to establish a Confirmed Need, the Professional must specify in all cases the Essential Service that the Claimant needed, and the reason for the need, and when the need can reasonably be expected to have existed.

    (d) A Claimant may establish that they requested an Essential Service from Canada during the Trout Child Class Period or Essential Service Class Period by way of a statutory declaration. Proof of a request for an Essential Service is the only instance where a statutory declaration may be adduced as Supporting Documentation for the purposes of the Trout Child Class, Essential Service Class, Jordan's Principle Class, Jordan's Principle Family Class, and the Trout Family Class.

6) If the Administrator, or the Third-Party Assessor on appeal, determines that a Class Member has provided Supporting Documentation establishing a Confirmed Need for an Essential Service, the Administrator, or the Third-Party Assessor on appeal, will determine whether the Claimant faced a Denial, Delay or a Service Gap.

7) Where a Class Member has provided Supporting Documentation establishing a Confirmed Need for an Essential Service and where the Administrator has determined that the Class Member experienced a Denial, Delay or a Service Gap, that Class Member will be:

    (a) an Approved Essential Service Class Member or an Approved Jordan's Principle Class Member, depending on the criteria specified in this Agreement, if the Claimant's Confirmed Need occurred within the Essential Service Class Period;

    (b) an Approved Trout Child Class Member if the Claimant's Confirmed Need occurred within the Trout Child Class Period.

8) The Plaintiffs have determined a total Budget of $3.0 billion dollars for the Essential Service Class (inclusive of the Jordan's Principle Class) and collectively, subject to Articles 6.11, 6.12, and 6.13 ("**Essential Service Budget**").

9) The Plaintiffs have determined a Budget of $2.0 billion dollars for the Trout Child Class, subject to Articles 6.11, 6.12, and 6.13 ("**Trout Child Budget**").

10) A Claimant may be determined to be a Jordan's Principle Class Member if they have established a Confirmed Need for an Essential Service and have been determined to have experienced the highest level of impact (including pain, suffering or harm of the worst kind) in relation to a Delay, Denial or Service Gap, and including impact in relation to conditions and circumstances such as an illness, disability or impairment, based on objective criteria and expert advice pursuant to the method specified in Schedule F, Framework of Essential Services. In this regard:

    (a) Such impact (including pain, suffering or harm) is to be assessed through culturally sensitive Claims Forms and instruments such as a questionnaire designed in consultation with experts. Subject to the Court's approval, the selection of which Claimants qualify under this category will be based on objective factors (which may include the severity of pain, suffering or harm) and the number of Claimants.

    (b) The threshold of impact for qualification as a member of the Jordan's Principle Class is subject to the results of piloting of the method developed in accordance with Schedule F, Framework of Essential Services.

11) An Approved Jordan's Principle Class Member will be entitled to receive Base Compensation of $40,000.

12) An Approved Essential Service Class Member other than a Jordan's Principle Class Member will receive up to but not more than $40,000 in compensation based on a pro rata share of the Essential Service Budget after deducting the total estimated amount of compensation to be paid to all Approved Jordan's Principle Class Members.

13) An Approved Trout Child Class Member will receive a minimum of $20,000 in compensation if they have established a Confirmed Need for an Essential Service and have been determined to have experienced the highest level of impact (including pain, suffering or harm of the worst kind) in relation to a Delay, Denial or Service Gap, including impact in relation to conditions and circumstances such as an illness, disability or impairment, based on objective criteria and expert advice pursuant to the method specified in Schedule F, Framework of Essential Services. In this regard:

    (a) Such impact (including pain, suffering or harm) is to be assessed through culturally sensitive Claims Forms and instruments such as a designed in consultation with experts. Subject to the Court's approval, the selection of which Claimants qualify

under this category will be based on objective factors (which may include the severity of pain, suffering or harm) and the number of Claimants.

(b) The threshold of impact for qualification as a member of the Trout Child Class is subject to the results of piloting of the method developed in accordance with Schedule F, Framework of Essential Services.

14) An Approved Trout Child Class Member who has not established a Claim under Article 6.08(13) will receive up to but not more than $20,000 in compensation having regard to the Trout Child Class Budget, based on a pro rata share of the Trout Child Budget after deducting the total amount of compensation to be paid to Approved Trout Child Class Members who have established a claim under Article 6.08(13).

15) In the event of a Trust Fund Surplus pursuant to Article 6.11 based on advice from the Actuary after approved Claims under Article 6.08(10) and Article 6.08(13) are paid or projected to be paid, Approved Jordan's Principle Class Members, and Approved Trout Child Class Members who have established a claim under Article 6.08(13) may be entitled to an Enhancement Payment.

6.09 Caregiving Parents or Caregiving Grandparents of Jordan's Principle Class and Trout Child Class

1) Only the Caregiving Parents or the Caregiving Grandparents of Approved Jordan's Principle Class Members may be entitled to compensation if it is determined by the Administrator, or on appeal by the Third-Party Assessor, that such Caregiving Parents or Caregiving Grandparents themselves experienced the highest level of impact (including pain, suffering or harm of the worst kind).

2) Such Approved Jordan's Principle Family Class Members will be entitled to receive Base Compensation of $40,000.

3) Only the Caregiving Parents or Caregiving Grandparents of the Approved Trout Child Class Members who have established a Claim under Article 6.08(13) may be entitled to compensation if it is determined by the Administrator, or on appeal by the Third-Party Assessor, that such Caregiving Parents or Caregiving Grandparents themselves experienced the highest level of impact (including pain, suffering or harm of the worst kind). The Base Compensation of Approved Trout Family Class Members will be determined by the Settlement Implementation Committee with the assistance of the Actuary regarding the forecasted number of Claimants, based on objective factors (which may include the severity of pain, suffering or harm) and the number of Claimants.

4) The impact experienced by such Caregiving Parents or Caregiving Grandparents will be assessed through objective criteria and expert advice pursuant to a method to be developed and specified in parallel with Schedule F, Framework of Essential Services

regarding Children. Such impact (including pain, suffering or harm) may be assessed through culturally sensitive Claims Forms designed in consultation with experts. Subject to the Court's approval, the selection of which Claimants qualify under this category will be based on objective factors (which may include the severity of pain, suffering or harm) and the number of Claimants.

5) The selection of the objective factors and the threshold for qualification under this Article is subject to the results of piloting of the method of assessment developed in accordance with this Article.

6) The Base Compensation of an Approved Jordan's Principle Family Class Member or an Approved Trout Family Child Class Member will not be multiplied based on the number of Essential Services that were the subject of the Confirmed Need of the Approved Jordan's Principle Class Member or the Approved Trout Child Class Member whose Claim grounds the Caregiving Parent or Caregiving Grandparent's eligibility to seek compensation under this Article.

7) All other Jordan's Principle Family Class Members and Trout Family Class Members will not receive direct compensation under this Agreement, but are intended to benefit indirectly from the Cy-près Fund.

8) The Budget for the Jordan's Principle Family Class and the Trout Family Class collectively is the fixed amount of $2.0 billion dollars ("**Jordan's Principle and Trout Family Budget**"). There will be no reallocation to these classes of any surpluses or revenues.

6.10 Exceptional Early Payment of Compensation Funds

1) Notwithstanding Article 6.01(4), the Administrator may exceptionally approve the payment of compensation to a Claimant who has not reached the Age of Majority in accordance with this Article.

2) An individual under the Age of Majority may be eligible to receive an amount of compensation to fund or reimburse the cost of a life-changing or end-of-life wish experience or needs (the "**Exceptional Early Payment**"), if they provide Supporting Documentation establishing that:

    (a) they meet the requirements, other than age, to be an Approved Removed Child Class Member or an Approved Jordan's Principle Class Member; and

    (b) they are suffering from a terminal or severe degenerative life-threatening condition that has placed their life in jeopardy.

3) An individual who establishes eligibility for an Exceptional Early Payment in accordance with this Article must provide reasonable proof of a chosen life-changing or end-of-life wish experience and the approximate cost of that experience.

4) The Administrator will assess a Claimant's eligibility for an Exceptional Early Payment to fund or reimburse the cost in an amount up to, but no more than $40,000.

5) The Administrator will determine the Claim for an Exceptional Early Payment in the best interests of the Child and on an expedited basis commensurate with the Child's circumstances. The Administrator will require such documentation in good faith as is required to assess:

    (a) the Claimant's eligibility;

    (b) the Claimant's terminal or severe degenerative life-threatening condition;

    (c) the validity of the Claimant's life-changing or end-of-life experience request;

    (d) the age and circumstances of the Child and whether the Child needs any protection; and

    (e) the approximate cost of the life-changing or end-of-life wish experience.

6) Where a Class Member has received an Exceptional Early Payment and later submits a Claim for compensation, the amounts paid as Exceptional Early Payment will be deducted from that Claimant's total entitlement, if any, to compensation under this Agreement.

6.11 Priorities in Distribution of Surplus

1) On the advice of the Actuary or a similar advisor, the Settlement Implementation Committee may determine at any time or from time to time that there are unallocated or surplus funds on the Settlement Funds in the Trust Fund (a "**Trust Fund Surplus**").

2) The Settlement Implementation Committee may propose that a Trust Fund Surplus be designated and that there be a distribution of any Trust Fund Surplus for the benefit of the Class Members in accordance with this Article and the Claims Process, subject to the approval of the Court.

3) The Settlement Implementation Committee, having proposed that a surplus be designated and that there be a distribution of such Trust Fund Surplus, will bring motions before the Court for approval of the designation of a surplus and the proposed distribution of any Trust Fund Surplus. The designation and any allocation of a Trust Fund Surplus will be effective on the later of:

    (a) the day following the last day on which an appeal or a motion seeking leave to appeal of either of the approval orders in respect of such designation and allocation may be brought under the *Federal Courts Rules*, SOR /98-106; and

    (b) the date on which the last of any appeals of either of the approval orders in respect of such designation and allocation is finally determined.

4) In no event will any amount from the Trust Fund, including any Trust Fund Surplus, revert to Canada, and Canada will not be an eligible recipient of any Trust Fund Surplus.

5) In allocating the Trust Fund Surplus, the Settlement Implementation Committee will have due regard to the order of priorities set out below:

    i) Approved Removed Child Class Members;

    ii) Approved Jordan's Principle Class Members;

    iii) Approved Trout Child Class Members;

    iv) Approved Essential Service Class Members;

    v) Approved Removed Child Family Class Members.

6.12 Reallocation of Budgets

1) The Settlement Implementation Committee will adopt the Budgets with respect to compensation allocated to different classes in accordance with the amounts listed in Article 6 and Article 7.

2) The Settlement Implementation Committee will arrange for an actuarial review of the Trust Fund to be conducted at least once every three (3) years and more frequently if the Settlement Implementation Committee considers it appropriate. The actuarial review will be conducted by the Actuary in accordance with accepted actuarial practice in Canada. The actuarial review will determine:

    (a) the value of the assets available to meet all outstanding and future expected Claims;

    (b) the present value of all outstanding and future expected Claims using where necessary such reasonable assumptions as determined by the Actuary to be appropriate;

    (c) an actuarial buffer to provide a reasonable margin of protection due to adverse deviations from the assumptions utilized; and

    (d) the actuarial surplus and/or the actuarial deficit of funds in a Budget.

3) If based on the Actuary's advice the total compensation to be paid to the number of approved Class Members within a class is, or is expected to be, below the Budget, the Settlement Implementation Committee may transfer some amount from that Budget to another Budget.

4) If more than one (1) Budget has a higher than estimated total compensation to be paid to the number of approved Class Members, the Settlement Implementation Committee may

make such transfer of funds in accordance with the following order of priorities, subject to Court approval:

i) Approved Removed Child Class Members;

ii) Approved Jordan's Principle Class Members;

iii) Approved Trout Child Class Members;

iv) Approved Essential Service Class Members;

v) Approved Removed Child Family Class Members.

6.13 Income on Trust Fund

Subject to Article 6.15 and Article 6.16, the Settlement Implementation Committee may allocate income earned by the Trust Fund to any class, in its discretion, in accordance with the following order of priorities, favouring those classes where higher than estimated total compensation to be paid to the approved Class Members exists:

i) Approved Removed Child Class Members;

ii) Approved Jordan's Principle Class Members;

iii) Approved Trout Child Class Members;

iv) Approved Essential Service Class Members;

v) Approved Removed Child Family Class Members.

6.14 Option to Invest Compensation Funds

The Administrator will provide payment to Class Members who have been approved for compensation within nine (9) months of the approval of the Class Member's Claim, but in all cases, only after taking the following steps:

(a) At least six (6) months prior to issuing payment, the Administrator will contact the Approved Class Member to ask whether the Class Member wishes to direct a portion or all of the amount to which the Class Member is entitled to an investment vehicle.

(b) The form of notice to the Class Member will be determined by the Settlement Implementation Committee.

(c) If the Class Member indicates their desire that a certain amount be invested, the funds will be held or directed to an account or investment instrument to which the trustee is directed to send the payment by the Claimant.

(d) Once the Class Member's investment account is established, the fees, costs and taxes payable on the investment capital or returns will be borne by the Class Member's individual investment, as applicable.

6.15 Interest Payments to Certain Child Class Members

1) To facilitate the adjustment of compensation for the time value of money, the Settlement Implementation Committee, upon the advice of the Investment Committee and the Actuary will create an interest reserve fund, intended to ensure payment of 1.75 per cent annualized simple interest upon the Base Compensation amount payable in respect of the CHRT Interest Accrual Period ("**Interest Reserve Fund**").

2) The following Class Members are entitled to receive interest pursuant to this Article:

   (a) Approved Removed Child Class Members who were placed off-Reserve with non-Family during the CHRT Interest Accrual Period;

   (b) Approved Kith Child Class Members; and

   (c) Approved Jordan's Principle Class Members.

3) The entitlement of an Approved Removed Child Class Member, an Approved Kith Child Class Member, or an Approved Jordan's Principle Class Member to receive interest from the Interest Reserve Fund will commence on the 1st day of the yearly quarter following their removal or following the date on which the Child faced a Delay, Denial or Service Gap with respect to an Essential Service that was the subject of a Confirmed Need for the Child and runs for the balance of the CHRT Interest Accrual Period.

4) The Interest Reserve Fund will have an initial Budget of $1 billion.

5) The Actuary will calculate expected returns on the Settlement Funds from time to time and will recommend to the Settlement Implementation Committee additions to or transfers from the Interest Reserve Fund.

6.16 Income generated above the Interest Reserve Fund

1) The Settlement Implementation Committee may allocate any income earned on the Settlement Funds above the amount guaranteed by the Interest Reserve Fund, upon the advice of the Investment Committee and the Actuary, in accordance with Article 6.13 and Article 6.16.

2) The allocation of income generated above the Interest Reserve Fund will be distributed in accordance with the following priorities:

   (a) The endowment of the sum of $50 million to the Cy-près Fund pursuant to Article 8.02(1); then

(b) Approved Removed Child Family Class Members of Children placed off-Reserve with non-Family, Approved Kith Family Class Members, and Approved Jordan's Principle Family Class Members during the CHRT Interest Accrual Period, up to 1.75 per cent simple annualized interest from the date of the accrual of interest during the CHRT Interest Accrual Period; then

(c) Approved Removed Child Class Members other than those listed in Article 6.15(2)(a); then

(d) Approved Jordan's Principle Class Members; then

(e) Approved Trout Child Class Members; then

(f) Approved Essential Service Class Members; then

(g) Other Approved Removed Child Family Class Members; then

(h) Approved Trout Family Class Members.

3) For clarity, the discretion granted to the Settlement Implementation Committee in this Article is in addition to, and does not derogate from, the discretion afforded to the Settlement Implementation Committee under Article 6.13.

6.17 Adjustment for Time Value of Compensation Money

The compensation payable to an Approved Removed Child Class Member or an Approved Jordan's Principle Class Member who has not reached the Age of Majority by delivery of the notice of approval of settlement may be adjusted having regard to the period of time that passes before the Class Member reaches the Age of Majority. The Settlement Implementation Committee, upon the advice of the Investment Committee and the Actuary, will determine a consistent method for calculating the adjustment subject to the Court's approval.

ARTICLE 7 – KITH CHILD CLASS AND KITH FAMILY CLASS

7.01 Governing Principles

1) The Plaintiffs will design a Claims Process with the goal of minimising the risk of causing trauma to Class Members.

2) No member of the Kith Child Class will be required to submit to an interview, examination or other form of *viva voce* evidence taking.

3) The Plaintiffs will agree to require fair and culturally appropriate Supporting Documentation in accordance with this Agreement tailored to the specific circumstances of the Kith Child Class and Kith Family Class for the purposes of the Claims Process.

4) A Kith Child Class Member may claim compensation starting two years before they reach the Age of Majority, provided that no compensation is paid to that Class Member until after the Age of Majority.

5) Compensation under this Agreement will take the form of either direct payment to eligible Class Members, or eligible estates of deceased Class Members, who have claimed through the Claims Process and been approved by the Administrator or indirect benefit to the Class through the Cy-près Fund.

6) A Class Member who qualifies for compensation as a member of more than one class under this Agreement will receive the higher amount for which the Class Member qualifies amongst the applicable classes, and compensation under the classes will not be combined.

7) The Kith Child Class and the Kith Family Class will be the subject of a separately designed compensation and verification process in the Claims Process in accordance with Article 7.

8) The following principles will apply to the development of the Claims Process relating to the Kith Child Class:

    (a) The records related to the Kith Child Class, Kith Placements, Kith Caregivers, and Kith Agreements differ as between Child Welfare Authorities, provinces and regions, and such records are of a nature that necessitates unique evidentiary requirements in order to verify Claims and safeguard the integrity of the Claims Process. As such, the payment of compensation to the Kith Child Class will take place under a stream within the Claims Process that is independent of the other classes, in particular the Removed Child Class, to be developed pursuant to this Article.

    (b) The Parties and the Administrator will develop the Claims Process dedicated to the Kith Child Class with the participation of the Caring Society, and they will collectively take into account the views of and guidance from youth in care and youth formerly in care, as well as Child Welfare Authorities, to the extent that such views are applicable and in the best interests of the Class.

    (c) If required with respect to a Claim, verification should take place through the examination of personal records relating to the specific Child within the Child Welfare Information through the engagement of Child Welfare Authorities and/or Child Welfare Records Technicians.

(d) To the extent that some Claimants may be Children or individuals with varying accessibility needs at the time of submitting their Claims pursuant to this Article, the wellbeing and best interests of the Child will be a paramount consideration in the design of the Claims Process relating to such Kith Child Class Members.

7.02 Compensation to Kith Child Class

1) An Approved Kith Child Class Member will be entitled to receive Base Compensation of $40,000.

2) No Enhancement Payment applies to the Kith Child Class.

3) The Administrator will approve a Claimant as a Kith Child Class Member only if the Claimant has substantiated, or the Administrator has been able to otherwise verify, all of the following elements:

   (a) the First Nations Child was Ordinarily Resident on Reserve immediately before the Kith Placement;

   (b) the Child was placed with a Kith Caregiver during the Removed Child Class Period;

   (c) the Kith Caregiver lived off-Reserve, meaning the Kith Placement was off-Reserve; and

   (d) the Kith Placement occurred during a Child Welfare Authority involvement.

4) The Supporting Documentation for the Kith Child Class may incorporate the following examples, but only if such Supporting Documentation establishes all the required elements in Article 7.02(3):

   (a) a Kith Placement Agreement, establishing the required elements in Article 7.02(3), and other Supporting Documentation as may be required in the Claims Process;

   (b) statutory declarations from the Child Welfare Authority involved in the Claimant's Kith Placement, establishing the required elements in Article 7.02(3), and other Supporting Documentation as may be required in the Claims Process; or

   (c) other child-specific evidence establishing the required elements in Article 7.02(3), such as the individual to whom child-specific tax benefits were paid during the period in question, school records, passport application information, contact information from a doctor's file, records related to treaty payments, which options will be further defined and developed as part of the Claims Process.

5) The Budget for compensation to the Kith Child Class, inclusive of any adjustments to individual compensation to account for the time value of compensation to Approved Kith Child Class Members who have not reached the Age of Majority by delivery of the notice of approval of this Agreement, is the fixed amount of $600 million in compensation under this Agreement. There will be no reallocation to this class of any surpluses or revenues.

7.03 Kith Family Class

1) The Caregiving Parent(s) or, in the absence of Caregiving Parents, the Caregiving Grandparent(s) of an Approved Kith Child Class Member who was in a Kith Placement as of January 1, 2006 or between January 1, 2006 and March 31, 2022 may receive compensation under this Agreement.

2) A Kith Family Class Member who has Abused an eligible Child is not eligible for compensation in relation to that Child.

3) The Parties have budgeted the Base Compensation for an Approved Kith Family Class Member to be $40,000.

4) No Enhancement Payment applies to the Kith Family Class.

5) The Base Compensation of a Kith Family Class Member will not be multiplied based on the number of Kith Placements for a Child.

6) For the purposes of this Article and the Kith Family Class, a Stepparent is not considered a Caregiving Parent or a Caregiving Grandparent and is accordingly not eligible for compensation under this Article.

7) A maximum compensation amount of two Base Compensation payments per Child among Caregiving Parents or Caregiving Grandparents of a Child, regardless of number of Kith Placements, may be distributed under this Agreement, if otherwise eligible.

8) Where there was more than one Kith Placement regarding a Child, the Caregiving Parent or the Caregiving Grandparent in the earlier Kith Placement will take priority in receiving compensation. If the temporal order of such Kith Placements cannot be determined or is not determinative, the following priorities apply:

    (a) Category A: Caregiving Parents; then

    (b) Category B: Caregiving Grandparents.

9) The Administrator may only approve a Caregiving Parent or Caregiving Grandparent in relation to an already Approved Kith Child Class Member.

10) In the event of multiple Claims by more than two putative Caregiving Parents or Caregiving Grandparents, the Administrator may require further information and proof

from those Claimants, but without the direct involvement of the affected Child, to substantiate who, if any, amongst such Claimants met the definition of a Caregiving Parent or Caregiving Grandparent under this Agreement.

11) The final quantum of Base Compensation to be paid to each Approved Kith Family Class Member will be determined by the Settlement Implementation Committee in consultation with the Actuary, having regard to the number of Approved Kith Family Class Members and the Budget for the Kith Family Class under this Article, subject to Court approval.

12) Payments to Approved Kith Family Class Members who may be entitled to receive compensation under this Article before the expiration of the Claims Deadline may be made in installments in order to ensure sufficient funds exist to pay like amounts to like Claimants regardless of when they submitted their Claim.

7.04 Multiplication of Base Compensation for Certain Kith Family Class Members

1) An Approved Kith Family Class Member may receive multiple Base Compensation payments if and where the following conditions are met:

   (a) more than one Child of the Caregiving Parent or the Caregiving Grandparent, as the case may be, has been approved by the Administrator, or the Third-Party Assessor on appeal, as Approved Kith Child Class Members in a Kith Placement between January 1, 2006 and March 31, 2022;

   (b) the multiplication of the Base Compensation will correspond to the number of such Approved Kith Child Class Members who have been approved for compensation; and

   (c) the Approved Kith Family Class Member has established that they are a Caregiving Parent or Caregiving Grandparent to each of the such Approved Kith Child Class Member through Supporting Documentation.

2) The Budget for the Kith Family Class is the fixed amount of $702 million in compensation under this Agreement. There will be no reallocation to this class of any surpluses or revenues.

ARTICLE 8 – CY-PRÈS FUND

8.01 Governing Principles

1) The Plaintiffs will design a Cy-près Fund with the assistance of experts, subject to the Court's approval.

2) The Cy-près Fund's purposes are to benefit:

a) Class Members who do not receive direct payment under this Agreement; and

b) Approved Jordan's Principle Class Members who require post-majority services.

3) The Cy-près Fund will be First Nations led.

4) There will be an annual report of the operation, including distribution, of the Cy-près Fund, which will be made publicly available. A copy of the annual report will also be provided to the Settlement Implementation Committee.

8.02 Support to Benefit Class Members Who Do Not Receive Direct Compensation

1) Within one year after the Court's approval of the Cy-près Fund pursuant to Article 8.01(1) (the "**General Fund**"), the Trustee will endow the trust entity administering the General Fund with $50,000,000 from the Trust Fund, to be paid from the income generated on the Settlement Funds pursuant to Article 6.16(2)(a).

2) The objective of the General Fund is to provide culturally sensitive and trauma-informed supports to the Class, including the following:

(a) Establish a fund, foundation or other similar vehicle whose leadership may include First Nations youth and children in care, formerly in care, their allies and those who experienced a Delay, Denial or Service Gap under Jordan's Principle, to offer grant-based supports to facilitate access to culture-based, community-based and healing-based programs, services and activities to Class Members and the Children of First Nations parents who experienced a Delay, Denial or Service Gap under Jordan's Principle.

i) Such grant-based supports may include funding the following:

(1) Family and community unification, reunification, connection and reconnection for youth in care and formerly in care:

i. facilitating First Nations youth in care and formerly in care to identify birth family and their First Nation, which may include accessing records or files, meeting family members or travelling to their First Nation;

ii. accessing holistic wellness supports for First Nations youth in care and formerly in care during the family and community reunification and reconnection process; and

iii. reducing the costs associated with travel and accommodations to visit community and family, including for First Nations youth in care and formerly in care, support person(s) or family members.

(2) Cultural access:

i. facilitating access to cultural programs, activities and supports, including: youth groups, ceremony, language, Elders and Knowledge Keepers, mentors, land-based activities, and culturally-based arts and recreation.

(3) Transition and Navigation supports:

i. Facilitating access for First Nations youth in care and formerly in care to transition supports for First Nations youth in care and formerly in care who are either not eligible for post-majority care and services under the reformed First Nations Child and Family Services Program or that are not covered elsewhere, in their transition to adulthood, including: safe and accessible housing, life skills and independent living, financial literacy, planning and services, continuing education, health and wellness supports.

ii. Facilitating access to navigational supports for Class Members and the children of First Nations parents who experienced a Delay, Denial or Service Gap under Jordan's Principle who are not eligible to receive post-majority services under Jordan's Principle or are not covered elsewhere.

iii. Facilitating access to a scholarship for the Jordan's Principle Class and the children of First Nations parents who experienced a Delay, Denial or Service Gap in the provision of services under Jordan's Principle. The scholarship will be designed to acknowledge the adverse effects associated with the experience of a Delay, Denial or Service Gap under Jordan's Principle.

(b) A National First Nations Youth In/From Care Network may also be established through the grants, or through the formation of a fund, foundation or similar organization, which may include funding an existing national network and existing regional networks. The networks would share best practices and updates, provide advocacy, discuss and make recommendations on policy. The structure, scope and membership of the networks is to be determined by First Nations Youth In/From Care.

8.03 Post-Majority Supports for Jordan's Principle

1) On the sixtieth (60^{th}) day following the Court's approval of the Cy-près Fund, the Trustee will transfer $90,000,000 from the Settlement Funds to the trust entity administering the Jordan's Principle Post-Majority Fund. The Jordan's Principle trust entity will administer the funds in accordance with this Article.

2) The Caring Society, with input from the Plaintiffs, will select the Jordan's Principle trust entity. Such entity will act in the best interests of the Jordan's Principle Post-Majority Fund Beneficiaries and in a manner that promotes public confidence.

3) The purpose of the Jordan's Principle Post-Majority Fund is to provide some additional supports to high needs Approved Jordan's Principle Class Members between the Age of Majority and such Class Members' 26th birthday necessary to ensure their personal dignity and well-being.

4) In cooperation with the Jordan's Principle trust entity, the Caring Society will have the following responsibilities in relation to the Jordan's Principle Post-Majority Fund:

    (a) designing the trust agreement reflecting the purpose of the Jordan's Principle Post-Majority Fund and the terms and conditions of same;

    (b) determining the eligibility criteria and process for accessing benefits under the Jordan's Principle Post-Majority Fund; and

    (c) receiving and reviewing an accounting from the Jordan's Principle trust entity on a quarterly basis.

5) Jordan's Principle Post-Majority Beneficiaries may access benefits under the Jordan's Principle Post-Majority Fund by making a request to the trust entity. If an Approved Jordan's Principle Class Member who is approaching or is past the Age of Majority contacts ISC through mechanisms for accessing Jordan's Principle, ISC will refer the Class Member to the trust entity. ISC will collaborate with the Caring Society and the Plaintiffs regarding public information that can be provided by ISC regarding the Jordan's Principle Post-Majority Fund.

6) Any income generated on the Jordan's Principle Post-Majority Fund which is not distributed to the Jordan's Principle Post-Majority Beneficiaries in any year will be accumulated in the Jordan's Principle Post-Majority Fund.

ARTICLE 9 – SUPPORTS TO CLASS IN CLAIMS PROCESS

1) The Parties will agree to culturally sensitive health, information, and other supports to be provided to Class Members in the Claims Process, as well as funding for health care professionals to deliver support to Class Members who suffer or may suffer trauma for the duration of the Claims Process, consistent with Schedule I, Framework for Supports for Claimants in Compensation Process, and the responsibilities of the Administrator in providing navigational and other supports under Article 3.02.

2) Canada will provide funding to the AFN in the amount of $2,550,000 to provide supports to First Nations Claimants for a five (5) year term beginning April 1, 2024, and ending March 31, 2029. This process will include administering a help desk with AFN line liaisons and providing culturally safe assistance to Claimants in completing relevant Claims Forms if not covered by the supports available to Class Members by the Administrator (the "**AFN Supports**"). By April 2028, the AFN may approach the Settlement Implementation Committee for an extension of the funding for the AFN Supports. Subject to the Settlement Implementation Committee's approval to an extension of the AFN Supports, Canada will provide further block funding to the AFN to continue the AFN Supports for a period agreeable to the AFN, the Settlement Implementation Committee, and Canada.

3) Canada will fund the enhancement of the Hope for Wellness Line to include training to their call operators and counsellors on the Actions and promote this service to Class Members as soon as possible and prior to the approval of the Settlement. The Parties will recommend that the Court will appoint a third-party Indigenous organization funded by Canada, to provide a culturally safe, youth-specific support line that would provide counselling services for youth and young adult class members and to refer to post-majority care services when appropriate.

4) Without limitation to the foregoing, Canada will pay for mental health, and cultural supports, navigators to promote communications and provide referrals to health services, help desk with AFN line liaisons, reasonable costs incurred by First Nations service providers in providing access to records to support Claimant eligibility from provinces, territories, and agencies, Child Welfare Records Technicians, and professional services (taxonomy and actuarial services), and reasonable fees relating to a structured settlement (if applicable) to be agreed. Canada will fund mental health and cultural supports based on evolving needs of the Class, with over half of the Class Members being adults expected to access compensation in the first five years, and transitioning to a focus on young adults in the remaining years of implementation of the Agreement, building on the existing suite of First Nations mental wellness services. Canada will work with the Parties to also adapt supports to include innovative, First Nations-led mental health and wellness initiatives.

5) The costs of supports pursuant to this Article are payable by Canada and will not be deducted from the Settlement Funds.

6) Canada will provide annual reports to the Settlement Implementation Committee on the health supports, trauma-informed mental supports set out in Schedule I, Framework for Supports for Claimants in Compensation Process.

ARTICLE 10 - EFFECT OF AGREEMENT

10.01 Releases

1) The Settlement Approval Order issued by the Court will declare that, except as otherwise agreed to in this Agreement and in consideration for Canada's obligations and liabilities under this Agreement, each Class Member or their Estate Executor, estate Claimant, or Personal Representative on behalf of such Individual Class Member or their estate (hereinafter collectively the "**Releasors**") has fully, finally and forever released Canada and its servants, agents, officers and employees, predecessors, successors, and assigns (hereinafter collectively the "**Releasees**"), from any and all actions, causes of action, claims, and demands of every nature or kind available, whether or not known or anticipated, which the Releasers had, now have or may in the future have against the Releasees in respect of the claims asserted or capable of being asserted in the Actions, including any claim with regard to the costs referred to under Article 12.02(3).

2) It is understood that Class Members retain their rights to make claims against third parties for the physical, sexual or emotional abuse they suffered, restricted to whatever liability such third party may have severally, not including any liability that the third party may have jointly or otherwise with Canada, such that the third party will have no basis to seek contribution, indemnity or relief over by way of equitable subrogation, declaratory relief or otherwise against Canada for the physical, sexual or emotional abuse they suffered. No compensation paid to a Class Member under this settlement will be imputed to payment for injuries suffered as a result of physical, sexual abuse or emotional abuse.

3) For greater certainty, each Releasor is deemed to agree that, if they make any claim or demand or take any action or proceeding against another person, persons or entity in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over, whether by statute, common law, or Quebec civil law, in relation to allegations and matters set out in the Actions, including for physical, sexual or emotional abuse they suffered while in care, the Releasor will expressly limit their claim so as to exclude any portion of Canada's responsibility, and in the event Canada is found to have any such liability, the Releasors will indemnify Canada to the full extent of any such liability including any liability as to costs.

4) Upon a final determination of a Claim made under and in accordance with the Claims Process, the Releasors are also deemed to fully and finally release the Parties, counsel for the Parties, Class Counsel, counsel for Canada, the Settlement Implementation Committee and its Members, the Administrator, and the Third-Party Assessor with respect to any claims that have arisen, arise or could arise out of the implementation of the Claims Process, including any claims relating to the calculation of compensation, the sufficiency of the compensation received, and the allocation and distribution of a Trust Fund Surplus.

10.02 Continuing Remedies

1) The Parties acknowledge and agree that, notwithstanding any provision of this Agreement, Class Members do not release, and specifically retain, their claims or causes of action for any breach by Canada of its ongoing obligations under this Agreement, including:

   (a) failing to pay the Settlement Funds in their entirety;

   (b) funding reasonable notice and other administration fees involved in carrying out this Agreement, including information and notice to the Class Members about certification, this Agreement, settlement approval, and the Claims Process, as well as third-party administration costs;

   (c) paying reasonable legal fees to Class Counsel, over and above the Settlement Funds;

   (d) communicating with provincial and territorial Deputy Ministers responsible for child and family services, health, and education, as well as other relevant Deputy Ministers regarding taxation, Children's Special Allowance, social assistance payments, post-majority care or other provincial/territorial benefits "claw backs" without affecting funding received through a Jordan's Principle request, whether pending or approved;

   (e) proposing a public apology by the Prime Minister;

   (f) working toward the intention of the Parties that the Settlement Funds, including any income earned on the Settlement Funds awaiting distribution, will be distributed to Class Members as compensation, as opposed to "income" subject to taxation; and

   (g) jointly seeking an order from the Tribunal declaring that the Compensation Orders are fully satisfied.

2) The Parties agree that, subject to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, the Parties will be entitled to seek relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement, without any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief allowed by law, this being in addition to damages and any other remedy to which the Parties may be entitled at law or in equity for any breach of this Agreement.

10.03 Canadian Income Tax and Social Benefits

1) Canada will make best efforts to ensure that any Class Member's entitlement to federal social benefits or social assistance benefits will not be negatively affected in any manner by the Class Member's receipt, directly or indirectly, of any payment in accordance with this Agreement, and that no such payment will be considered taxable income within the meaning of the *Income Tax Act*.

2) The Parties agree that the payments to Class Members, including payments of any income earned on the Settlement Funds, are in the nature of personal injury damages and are not taxable income and Canada will make best efforts to obtain a technical interpretation to the same effect from the Income Tax Rulings Directorate of the Canada Revenue Agency.

3) Upon approval of this Agreement by the Court, Canada will write to all provincial and territorial Deputy Ministers responsible for child and family services, health, and education, as well as other relevant Deputy Ministers, to encourage them to collaborate in:

   (a) exempting Class Member claims payouts under this Agreement from taxation, including payments of any income earned on the Settlement Funds, the Children's Special Allowance, social assistance payments, post-majority care or other provincial/territorial benefits "claw backs";

   (b) ensuring that receipt of any compensation under this Agreement will in no way affect funding received through a Jordan's Principle request, whether pending or approved; and

   (c) encouraging them to support Class Members during the term of the Agreement.

4) Canada will not in any way consider receipt of compensation under this Agreement as a factor in deciding any pending, approved or future requests pursuant to Jordan's Principle or with respect to individual entitlements under ISC programs where ISC makes a decision with respect to an individual's eligibility for funding.

ARTICLE 11 - IMPLEMENTATION OF THIS AGREEMENT

11.01 Settlement Approval Order

1) This Agreement is conditional upon the Tribunal confirming the full satisfaction of the Compensation Orders, as well as the approval by the Court of this Agreement.

2) Prior to seeking the Settlement Approval Order from the Court, the AFN and Canada will jointly seek an order from the Tribunal declaring that the Compensation Orders have been

fully satisfied. The Parties will take all reasonable steps to support the application before the Tribunal, including filing such evidence and submissions as may be required.

3) The AFN agrees to act as a lead applicant before the Tribunal in seeking the above order, and to take all reasonable steps to publicly promote and defend the Agreement.

4) The Representative Plaintiffs, or any of them, in the Consolidated Action and the Trout Action may seek interested party status and/or standing to make representations before, and to answer questions posed by, the Tribunal in respect of the satisfaction of the Compensation Orders, and Canada and the AFN consent to them obtaining such standing in a hearing.

5) The Parties will consent to the issuance of the Settlement Approval Order.

6) The Parties will take all reasonable measures to cooperate in requesting that the Court issue the Settlement Approval Order and related orders on notice of certification, Settlement Approval Hearing, and any other orders required for the implementation of this Agreement.

7) The Parties will schedule the Settlement Approval Hearing as soon as practicable considering the requirements of the Notice Plan, the decision required from the Tribunal and the Court's availability.

8) The Parties will consider seeking orders from provincial superior courts to obtain relevant data from provinces and territories should that become necessary and agree to cooperatively approach the provinces and territories to encourage their compliance.

9) The Parties will take all reasonable measures to cooperate in seeking federal, provincial and territorial privacy legislation exemptions and consents as may be needed to implement the Agreement.

11.02 Notice Plan

The Parties will seek approval from the Court of the Notice Plan as the means by which Class Members will be provided with notice pertaining to the Opt-Out Period and settlement approval.

ARTICLE 12 - SETTLEMENT IMPLEMENTATION COMMITTEE

12.01 Composition of Settlement Implementation Committee

1) A Settlement Implementation Committee will be formed in accordance with this Article, subject to approval by the Court.

2) The Settlement Implementation Committee will consist of five (5) members as follows:

(a) two First Nations members ("**Non-Counsel SIC Members**"); and

(b) three Counsel members ("**Counsel SIC Members**").

3) All Non-Counsel SIC Members and all Counsel SIC Members are subject to the Court's order appointing them as such.

4) No person will serve for more than two (2) five-year terms, consecutive or cumulative, as one of the Non-Counsel SIC Members and/or of the Counsel SIC Members.

5) The terms of the five members of the Settlement Implementation Committee will be staggered such that the end of their terms does not occur all at the same time. For that purpose, the first term of one (1) of the Non-Counsel SIC Members and one (1) of the Counsel SIC Members will not exceed three (3) years, which terms may be renewed for a subsequent term of five (5) years. The first term of the balance of the members of the Settlement Implementation Committee will be for five years.

6) The two Non-Counsel SIC Members will be First Nations individuals only, as defined in Article 1.01.

7) The two Non-Counsel SIC Members will be selected through a solicitation for applications conducted by the AFN Executive Committee.

8) For the first round of nominations prior to the establishment of the Settlement Implementation Committee, the AFN Executive Committee will recommend to the Court for approval two Non-Counsel SIC Members selected in accordance with this Article, one for an initial term of three years and one for an initial term of five years.

9) After the establishment of the Settlement Implementation Committee, the AFN Executive Committee will recommend to the Settlement Implementation Committee any necessary replacement Non-Counsel SIC Members as those positions become vacant from time to time under this Article for the purposes of seeking the Court's approval of the appointment of such members.

10) The three Counsel SIC Members will consist of one (1) lawyer appointed by Sotos LLP, one (1) lawyer appointed by Kugler Kandestin LLP, and one (1) lawyer appointed by the AFN Executive Committee.

11) For the first round of nominations prior to the establishment of the Settlement Implementation Committee, Sotos LLP, Kugler Kandestin LLP, and the AFN Executive Committee will each recommend one lawyer to the Court for approval in accordance with this Article. One of these three lawyers will be nominated for an initial term of three years and the other two for an initial term of five years in accordance with this Article. If Sotos LLP, Kugler Kandestin LLP, and the AFN Executive Committee cannot agree on which lawyer will be recommended to the Court for an initial term of three years, they will ask

the Court to select any one of the three recommended lawyers for a term of three years in the Court's full discretion.

12) After the establishment of the Settlement Implementation Committee, Sotos LLP, Kugler Kandestin LLP, and the AFN Executive Committee will recommend to the Settlement Implementation Committee the necessary number of replacement Counsel SIC Members separately for each of their respective counsel as those positions become vacant from time to time in accordance with this Article for the purposes of seeking the Court's approval of the appointment of such members.

13) A member of the Settlement Implementation Committee may be removed prior to the expiry of their term with a special majority vote of four (4) members of the Settlement Implementation Committee. Such a removal is not effective unless and until approved by the Court.

14) The Court may substitute any member of the Settlement Implementation Committee in accordance with this Article in the best interests of the Class.

15) A meeting of the Settlement Implementation Committee may be held if at least four (4) members are present. In making decisions under this Agreement, the Settlement Implementation Committee will make reasonable efforts to reach consensus. If consensus is not possible, the Settlement Implementation Committee will decide by majority vote unless specified otherwise in this Agreement.

16) If any member of the Settlement Implementation Committee believes that the majority of the Settlement Implementation Committee has taken a decision that is not in the best interests of the Class, that Member may refer the decision to confidential mediation in accordance with the ADR Chambers Mediation Rules. If the members of the Settlement Implementation Committee cannot agree on a mediator, they may ask the Court to appoint one. The reasonable costs of the mediation will be a disbursement of the Settlement Implementation Committee payable in accordance with Article 3.04. If the matter cannot be resolved at mediation, the matter may be referred to the Court for determination.

17) For the first two (2) years following the Claims Process Approval Date, the Settlement Implementation Committee will meet monthly, either in-person or virtually, and thereafter, the Settlement Implementation Committee will meet quarterly, unless the Settlement Implementation Committee believes that more frequent meetings are required. Notwithstanding this Article, the Settlement Implementation Committee may deal with administrative and urgent issues, if and when necessary.

18) The Settlement Implementation Committee, all Non-Counsel SIC Members, and all Counsel SIC Members will at all times act in their personal capacity and solely in the best interests of the Class, and not in the interests of any other party, stakeholder or entity.

19) In the event that either Sotos LLP or Kugler Kandestin LLP merges with another law firm, this Agreement will be binding on the successor firm.

20) If after the Claims Process Approval Date, Sotos LLP, Kugler Kandestin LLP or the AFN Executive Committee determine in their respective sole and unfettered discretion that they no longer need or want to nominate members to the Settlement Implementation Committee in accordance with this Article, they will advise the Settlement Implementation Committee in writing. In that event, the Court will determine a prospective replacement for such members in the best interests of the Class on the recommendation of the Settlement Implementation Committee.

12.02 Settlement Implementation Committee Fees

1) Canada's liability for the fees of Counsel SIC Members and any other counsel to whom work is delegated will be negotiated by the Parties by way of the process identified in Article 17, Legal Fees.

2) Counsel SIC Members may delegate the legal work reasonably necessary for the fulfillment of the Settlement Implementation Committee's responsibilities under this Agreement among Class Counsel or retain other counsel as Counsel SIC Members consider necessary.

3) Canada will pay a total of $750,000, separate and in addition to any other amounts in this Agreement to be paid at the direction of the AFN Executive Committee to fund an honorarium of $200 per hour to each of the Non-Counsel SIC Members for reasonable participation in the work of the Settlement Implementation Committee, up to a maximum of $1000 per day, subject to the Court's approval. The Settlement Implementation Committee may propose, and the Court may implement a change in the quantum of such honoraria from time to time.

12.03 Settlement Implementation Committee Responsibilities

1) In addition to matters specified elsewhere in this Agreement, the Settlement Implementation Committee's responsibilities will include the following:

   (a) monitoring the work of the Administrator and the Third-Party Assessor, and the Claims Process overall;

   (b) receiving and considering reports from the Administrator, including on administrative costs;

(c) engaging experienced practitioners as needed who are familiar with family and child welfare documents and records in each province and territory to assist with the work of the Administrator and the Third-Party Assessor, where necessary to substantiate allegations of Abuse, verify certain Claims where necessary, or conduct isolated audits of some Claims Forms where ISC data is insufficient or lacking;

(d) giving such process directions to the Administrator or the Third-Party Assessor as may be necessary in accordance with the mandate of the Settlement Implementation Committee and the provisions of this Agreement;

(e) proposing for the Court's approval such protocols as may be necessary for the implementation of this Agreement, including any amendments to the Claims Process and distribution protocol as may be necessary;

(f) addressing any other matter referred to the Settlement Implementation Committee by the Court;

(g) receiving, through the Investment Committee, and seeking Court approval on advice from the Actuary and investment experts on the investment of the Trust Fund;

(h) receiving a copy of the annual report of the Cy-près Fund and, if considered appropriate, communicating with the trustees of the Cy-près Fund;

(i) recommending to the Court any change of the Administrator;

(j) setting Terms of Reference for the Investment Committee regarding investment objectives and strategy (the "**Investment Committee Terms of Reference**") in accordance with the principles set out in Schedule G, Investment Committee Guiding Principles;

(k) engaging experts as reasonably needed including experts in First Nations data governance, trauma, community relations, health and social services, and the Actuary to assist with the Claims Process;

(l) receiving annual reports from Canada on the health supports, trauma-informed mental supports, and Claims Process supports provided to Class Members;

(m) providing an annual Settlement Implementation Report to the Court, which includes updates on the implementation of the Agreement, actuarial reporting on the Trust Fund and distribution, annual audited financial reporting, any issues with the Trust, any systemic issues in implementation and proposed or approved resolution to such issues, etc.; and

(n) providing the AFN Executive Committee with a concurrent copy of the annual Settlement Implementation Report, and ensuring that said report is posted on a public website.

2) The Settlement Implementation Committee may retain experts and consultants as reasonably required for the implementation of this Agreement. The fees and disbursements of such experts and consultants will be a disbursement of the Settlement Implementation Committee payable by Canada in accordance with Article 3.04.

3) The Settlement Implementation Committee may bring or respond to whatever motions or institute whatever proceedings it considers necessary to advance its responsibilities under this Agreement and the interests of Class Members.

12.04 Investment Committee

1) The Investment Committee will adhere to the Investment Committee Terms of Reference as set by the Settlement Implementation Committee.

2) The Investment Committee will be constituted of up to two (2) members that are not investment professionals but have relevant board experience regarding the management of funds and one (1) independent investment professional (the "**Investment Professional Member**").

3) The Investment Committee members will be nominated by the Settlement Implementation Committee to five (5) year renewable terms, subject to approval by the Court.

4) The reasonable fees of the Investment Committee, including the Investment Professional Member, will be payable by Canada to a maximum of four quarterly meetings per annum and will be subject to Court approval. The reasonable fees of any investment consultant retained by the Investment Committee will be payable by Canada, subject to Court Approval. Canada will not be responsible for the payment of fees for investment managers retained by the Investment Committee.

5) The Investment Committee will meet quarterly, or more frequently as required, during the first five (5) years following its establishment. In subsequent years, the Investment Committee will meet at least once annually, or more frequently if required and approved by the Settlement Implementation Committee. The Investment Committee will periodically, and no less than annually, review the viability of the investment strategy of the Trust Fund and submit such a review to the Settlement Implementation Committee.

ARTICLE 13 - OPTING OUT

13.01 Opting Out

A Class Member may Opt-Out of the Actions by:

(a) delivery to the Administrator of the Opt-Out Form; or

(b) after the Opt-Out Deadline, by individually obtaining leave of the Court to Opt-Out of the Actions if the Claimant was unable, as a result of physical or psychological illness or challenges, including homelessness or addiction, or other significant obstacles as found by the Court, to take steps to Opt-Out within the Opt-Out Deadline.

13.02 Automatic Exclusion for Individual Claims

A Class Member will be excluded from the Actions if the Class Member does not, before the expiry of the Opt-Out Deadline, discontinue a proceeding brought by the Class Member against Canada to the extent that the separate proceeding raises the common questions set out in the Certification Orders.

ARTICLE 14 - PAYMENTS FOR DECEASED INDIVIDUAL CLASS MEMBERS AND PERSONS UNDER DISABILITY

14.01 Persons Under Disability

If a Claimant who submitted a Claim to the Administrator within the Claims Deadline is or becomes a Person Under Disability prior to their receipt of compensation, the Personal Representative of the Claimant will be eligible to receive compensation on behalf of the Claimant for the sole benefit of the Claimant.

14.02 Approach to Compensation for Deceased Children

1) The estate's representative of a deceased Removed Child Class Member placed off-Reserve as of and after January 1, 2006, a deceased Kith Child Class Member, and a deceased Jordan's Principle Class Member, will be entitled to claim Base Compensation of $40,000 and interest and may be eligible to receive any applicable Enhancement Payments in accordance with this Agreement on behalf of the estate of the deceased Claimant.

2) The estate's representative of a deceased Removed Child Class Member (other than those in 14.02(1)), a deceased Essential Service Class Member, or a deceased Trout Child Class Member may be eligible for direct compensation and may be eligible to

receive any applicable Enhancement Payments in accordance with this Agreement on behalf of the estate of the deceased Claimant.

14.03 Approach to Compensation for Deceased Caregiving Parents and Caregiving Grandparents

1) A Claim may be made on behalf of a deceased Caregiving Parent or Caregiving Grandparent in relation to the following classes: Removed Child Family Class Members (of a Child placed off-Reserve with non-Family as of and after January 1, 2006), Kith Family Class Members, or Jordan's Principle Family Class Members.

2) Where a Claim is approved for a deceased Caregiving Parent or Caregiving Grandparent referred to in Article 14.03(1), Base Compensation of $40,000 and interest will be paid directly to the living Child or Children of the deceased Caregiving Parent or living grandchild or grandchildren of the deceased Caregiving Grandparent on a pro rata basis.

3) The estates of the Removed Child Family Class, other than those in Article 14.03(1) and the Trout Family Class under Article 6.09(3), are not eligible for compensation, unless a complete Claim was submitted by such a Class Member prior to death. Where a Claim was submitted by the deceased Claimant prior to death, compensation will be paid directly to the estate pursuant to Article 14.04 where a grant of authority has been made or in accordance with Article 14.05 where no grant of authority has been made.

14.04 Compensation if Deceased: Grant of Authority or the Like

1) This Article does not apply to the deceased Class Members identified in Article 14.03(1) and (2).

2) Where an Estate Executor or Estate Administrator of an Eligible Deceased Class Member has been appointed under the *Indian Act* or under the governing provincial or territorial legislation, the Estate Executor or Estate Administrator may submit a Claim for compensation in accordance with this Agreement.

3) A Claim made by an Eligible Deceased Class Member must include the following:

    (a) applicable Claims Form(s);

    (b) evidence that such Eligible Deceased Class Member is deceased and the date on which such Eligible Deceased Class Member died;

    (c) evidence in the following form identifying such representative as having the legal authority to receive compensation on behalf of the estate of the Eligible Deceased Class Member:

        i) if the claim to entitlement to receive compensation on behalf of an estate is based on a will or other testamentary instrument or on intestacy, a copy of a

grant of probate or a grant and letters testamentary or other document of like import, or a grant of letters of administration or other document of like import, issued by any court or authority in Canada; or

ii) if in Quebec, a notarial will, a probated holograph will, a probated or other document of like import made in the presence of witnesses in accordance with the *Civil Code of Quebec* and the *Indian Act*.

14.05 Compensation if Deceased: No Grant of Authority or the Like

1) This Article does not apply to deceased Class Members identified under Article 14.03(1) and (2).

2) For the purpose of this Article, "spouse" means either of two persons who:

(a) are legally married; or

(b) are not married, but:

i) have a common law relationship for a period of not less than one year, the time prescribed in accordance with the *Indian Act*, at the time of death; or

ii) have a relationship of some permanence if they are the parents of a child.

3) Except in the case of an estate of an Eligible Deceased Class Member where an eligible recipient is identified and otherwise eligible in accordance with Article 14.04, if a Claim is submitted to the Administrator on behalf of an Eligible Deceased Class Member without proof of a will or the appointment of an Estate Executor or Estate Administrator, the Administrator may, upon receiving Supporting Documentation, treat the Eligible Deceased Class Member's Claim in accordance with the priority level of heirs under the *Indian Act* in respect of distribution of property on intestacy as follows:

(a) The spouse of the Eligible Deceased Class Member at the time of death.

(b) Where the Eligible Deceased Class Member has no spouse, the child or children of the eligible Deceased Class Member. The compensation will be divided pro rata amongst all the children of the Eligible Deceased Class Member who are living at the time when the Claim is received by the Administrator.

(c) Where the Eligible Deceased Class Member has no spouse or child, the grandchildren of the Eligible Deceased Class Member. The compensation will be divided pro rata amongst all the grandchildren of the Eligible Deceased Class Member who are living at the time when the Claim is received by the Administrator.

(d) Where the Eligible Deceased Class Member has no spouse, child or grandchild, the parents of the Eligible Deceased Class Member. The compensation will be

divided pro rata between the parents of the Eligible Deceased Class Member who are alive when the Claim is received by the Administrator.

(e) Where an Eligible Deceased Class Member leaves no spouse, child, grandchild or parent, the sibling(s) of the Eligible Deceased Class Member. The compensation will be distributed equally among the siblings of the Eligible Deceased Class Member who are alive when the claim is received by the Administrator.

(f) Where the Eligible Deceased Class Member has no spouse, child, grandchild, parents or sibling(s), the grandparents of the Eligible Deceased Class Member. The compensation will be divided pro rata between the grandparents of the Eligible Deceased Class Member who are alive when the Claim is received by the Administrator.

4) Subject to sections 4(3) and 42 to 51 of the *Indian Act*, Canada, as represented by the Minister of Indigenous Services, may administer or appoint administrators for the estates of Eligible Deceased Class Members who are under Canada's jurisdiction and who have or are entitled to receive direct compensation under this Agreement.

5) Canada may consult with the Settlement Implementation Committee to utilize the existing ISC framework for the administration of the estates of Eligible Deceased Class Members consistent with the exercise of Ministerial discretion considering individual circumstances. Canada will conduct the administration process in a trauma-informed manner and with a view to ensuring that it is as expeditious, cost-effective, user-friendly, and culturally sensitive as possible. This may include:

(a) where Canada is advised that an Estate Executor or Estate Administrator has not already been appointed on behalf of the estate of an Eligible Deceased Class Member, Canada may appoint an Estate Administrator as needed who will act in accordance with their fiduciary and statutory duties, which may include submitting a Claim on behalf of such Class Member; and

(b) where Canada administers an estate of an Eligible Deceased Class Member, there will be no cost recovery against the estate for doing so and, except in exceptional circumstances, Canada will seek to minimize or eliminate any related third-party costs.

6) Subject to issues that may arise in individual cases, Canada may, but is not obligated to, exercise its discretion under the *Indian Act* to assume jurisdiction over the administration of the estates referred to above. Nothing in this Article should be taken to extend the jurisdiction under the *Indian Act* over the administration of estates.

7) A Caregiving Parent or Caregiving Grandparent who is excluded from compensation under Article 6.04(4) or Article 7.03(2) due to Abuse will not receive compensation from the estate of the deceased Child.

14.06 Release by the Estates of Eligible Deceased Class Members

Payments made in accordance with this Article will constitute a release by the estate of any Eligible Deceased Class Member, including on behalf of any beneficiaries of the estate of any Eligible Deceased Class Member who would otherwise be eligible to receive benefits.

14.07 Canada, Administrator, Class Counsel, Third-Party Assessor, Settlement Implementation Committee, and Investment Committee Held Harmless

Canada and its counsel, the Administrator, Class Counsel, AFN in-house counsel, the Third-Party Assessor, the Settlement Implementation Committee and its members, and the Investment Committee will be held harmless from any and all claims, counterclaims, suits, actions, causes of action, demands, damages, penalties, injuries, setoffs, judgments, debts, costs, expenses (including legal fees and expenses) or other liabilities of every character whatsoever by reason of or resulting from a payment or non-payment to or on behalf of an Eligible Deceased Class Member or a Person Under Disability, or to an Estate Executor, estate, or Personal Representative pursuant to this Agreement, and this Agreement will be a complete defence.

ARTICLE 15 - TRUSTEE AND TRUST

15.01 Trust

1) Subject to advice received by third-party professionals, the Parties agree to the following provisions.

2) No later than thirty (30) days following the appointment by the Court of the Trustee, Canada will settle a single trust (the "**Trust**") with ten dollars ($10), to be held by the Trustee in accordance with the terms of this Agreement.

3) The Plaintiffs will submit the initial investment strategy created with help from experts to the Court for approval together with this Agreement.

15.02 Trustee

The Court will appoint the Trustee to act as the trustee of the Trust, with such powers, rights, duties, and responsibilities as the Court orders. Without limiting the generality of the foregoing, the duties and responsibilities of the Trustee will include:

(a) to hold the Trust Fund;

(b) to invest the Settlement Funds in accordance with the Statement of Investment Policies and Procedures as instructed by the Investment Committee, having regard to the best interests of Class Members and the ability of the Trust to meet its financial obligations, subject to the Court's ongoing supervision;

(c) upon instructions from the Administrator and approval of the Settlement Implementation Committee in accordance with the policies of the Settlement Implementation Committee, to provide such amounts from the Trust to the Administrator and any other person as described in Article 3.02, Article 4.02, Article 8, and Article 18(3), as required from time to time in order to give effect to any provision of this Agreement, including the payment of compensation to Approved Class Members in the Claims Process;

(d) to engage, upon consultation with and approval of the Settlement Implementation Committee, the services of professionals to assist in fulfilling the Trustee's duties;

(e) to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;

(f) to keep such books, records and accounts as are necessary or appropriate to document the assets held in the Trust, and each transaction of the Trust;

(g) to take all reasonable steps and actions required under the *Income Tax Act* as set out in the Agreement;

(h) to report to the Administrator, Canada and the Settlement Implementation Committee on a quarterly basis the assets held in the Trust at the end of each such quarter, or on an interim basis if so requested; and

(i) to do such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry on the activities of the Trust or to carry out the provisions of this Agreement.

15.03 Trustee Fees

Canada will pay the reasonable fees, disbursements, and other costs of the Trustee relating to the management of the Trust Fund.

15.04 Nature of the Trust

The Trust will be established for the following purposes:

(a) to acquire the Settlement Funds payable by Canada;

(b) to hold the Settlement Funds in the Trust;

(c) to pay compensation in accordance with this Agreement;

(d) to invest cash in investments in the best interests of Class Members, as provided in this Agreement; and

(e) to do such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry out the provisions of this Agreement.

15.05 Legal Entitlements

The legal ownership of the assets of the Trust, including the Trust Fund, and the right to conduct the activities of the Trust, including the activities with respect to the Trust Fund, will be, subject to the specific limitations and other terms contained herein, vested exclusively in the Trustee, and the Class Members or any other beneficiaries of the Trust have no right to compel or call for any partition, division or distribution of any of the assets of the Trust or a rendering of accounts. No Class Member or any other beneficiary of the Trust will have or is deemed to have any right of ownership in any of the assets of the Trust.

15.06 Records

The Trustee will keep such books, records, and accounts as are necessary or appropriate to document the assets of the Trust and each transaction of the Trust. Without limiting the generality of the foregoing, the Trustee will keep at its principal office records of all transactions of the Trust and a list of the assets held in trust, including each Fund, and a record of each Fund's account balance from time to time.

15.07 Quarterly Reporting

The Trustee will deliver to the Administrator, Canada, and the Settlement Implementation Committee, within thirty (30) days after the end of each calendar quarter, a quarterly report setting forth the assets held as at the end of such quarter in the Trust and each Fund (including the term, interest rate or yield and maturity date thereof) and a record of the Trust's account balance during such quarter.

15.08 Annual Reporting

1) The Auditors will deliver to the Administrator, the Trustee, Canada, the Settlement Implementation Committee, the AFN Executive Committee and the Court, within sixty (60) days after the end of each calendar year (the calendar year-end being the fiscal year-end for the Trust):

(a) the audited financial statements of the Trust for the most recently completed fiscal year, together with the report of the Auditors thereon;

(b) a report setting forth a summary of the assets held in trust as at the end of the fiscal year for each Fund and the disbursements made by the Trust during the preceding fiscal year; and

(c) the audited financial statements of the Administrator.

2) The Administrator will ensure that the documents in Article 15.08(1)(a)-(c) are posted on a public website.

15.09 Method of Payment

The Trustee will have sole discretion to determine whether any amount paid or payable out of the Trust is paid or payable out of the income of the Trust or the capital of the Trust.

15.10 Additions to Capital

Any income of the Trust not paid out in a fiscal year will at the end of such fiscal year be added to the capital of the Trust.

15.11 Tax Elections

For each taxation year of the Trust, the Trustee will file any available elections and designations under the *Income Tax Act* and equivalent provisions of the *Income Tax Act* of any province or territory and take any other reasonable steps such that the Trust and no other person is liable to taxation on the income of the Trust, including the filing of an election under the *Income Tax Act* and equivalent provisions of the *Income Tax Act* of any province or territory for each taxation year of the Trust and the amount to be specified under such election will be the maximum allowable under the *Income Tax Act* or the *Income Tax Act* of any province or territory, as the case may be.

15.12 Canadian Income Tax

1) Canada will make best efforts to exempt any income earned by the Trust from federal taxation, and Canada will take into account the measures that it took in similar circumstances for the class action settlements addressed in section 81 (1) (g.3) of the *Income Tax Act*.

2) The Parties agree that the payments to Class Members, including payments of any income earned on the Settlement Funds, are in the nature of personal injury damages and are not taxable income and Canada will make best efforts to obtain a technical interpretation to the same effect from the Income Tax Rulings Directorate of the Canada Revenue Agency.

ARTICLE 16 – AUDITORS

16.01 Appointment of Auditors

On the recommendation of the Settlement Implementation Committee, the Court will appoint Auditors with such powers, rights, duties and responsibilities as the Court directs. On the recommendation of the Parties, or of their own motion, the Court may replace the Auditors at any time. Without limiting the generality of the foregoing, the duties and responsibilities of the Auditors will include:

(a) to audit the accounts for the Trust in accordance with generally accepted auditing standards on an annual basis;

(b) to provide the reporting set out in Article 15.08;

(c) to audit the financial statements of the Administrator in relation to the administration of this Agreement; and

(d) to file the financial statements of the Trust together with the Auditors' report thereon with the Court and deliver a copy thereof to Canada, the Settlement Implementation Committee, the Administrator, and the Trustee within sixty (60) days after the end of each financial year of the Trust.

16.02 Payment of Auditors

Canada will pay the reasonable fees, disbursements, and other costs of the Auditors in accordance with Article 3.04, as approved by the Court.

ARTICLE 17 - LEGAL FEES

17.01 Class Counsel Fees

1) Canada will pay Class Counsel the amount approved by the Court, plus applicable taxes, in respect of their legal fees and disbursements for the prosecution of the Actions to the date of the Settlement Approval Hearing, together with advice to Class Members regarding the Agreement and Acceptance, over and above the Settlement Funds. Subject to Article 12.02(1), Canada will also pay the reasonable legal fees of Class Counsel for their work on or for the Settlement Implementation Committee and the Investment Committee. A disagreement between the Parties over legal fees will not prevent the Parties from signing this Agreement. Canada and Class Counsel will participate in mediation if they are unable to agree upon the legal fees, to be presided over by a mediator to be agreed upon by and between Canada and Class Counsel or, failing agreement, appointed by the Court. In the event that Canada and Class Counsel are not able to agree upon legal fees during mediation, fees will be subject to the approval of the

Court, subject to appeal. Canada will have standing to make submissions to the Court regarding such fees.

2) No such amounts will be deducted from the Settlement Funds.

3) Class Counsel will not charge individual Class Members any amounts for legal services rendered in accordance with this Agreement. Such assistance to Class Members will not be considered to constitute or be cause for a conflict.

17.02 Ongoing Legal Services

1) Following the Implementation Date, responsibility for representing the interests of the Class as a whole (as distinct from assisting a particular Class Member or Class Members, as reasonably requested) will pass from Class Counsel to the Settlement Implementation Committee, and Class Counsel will have no further obligations in that regard.

2) In addition to the legal services provided to the Settlement Implementation Committee in Article 12, Counsel SIC Members may also respond to legal inquiries from Class Members about this Agreement that are beyond the training and/or competence of the navigational support services provided by the Administrator. Legal fees for such services are subject to Article 12.02(1).

17.03 Ongoing Fees

1) The Settlement Implementation Committee will maintain appropriate records of payment, fees and disbursements for Ongoing Legal Services.

2) The Settlement Implementation Committee may submit the bills relating to Counsel SIC Members to Canada for payment on a monthly basis, subject to Article 12.02(1).

3) The Settlement Implementation Committee will seek approval of its accounts from the Court on an annual basis.

ARTICLE 18 - GENERAL DISPUTE RESOLUTION

1) Where a dispute arises regarding any right or obligation under this Agreement ("**Dispute**"), the parties to the Dispute will refer the Dispute to confidential mediation in accordance with the ADR Chambers Mediation Rules. If the parties to the Dispute cannot agree on a mediator, they may ask the Court to appoint one (the "**Dispute Resolution Process**").

2) If the Dispute cannot be resolved through the Dispute Resolution Process, it can be referred to the Court for determination.

3) The costs of dispute resolution amongst members of the Settlement Implementation Committee, in accordance with the Dispute Resolution Process, or by referral to the Court, may be paid out of the Trust Fund in circumstances where deemed appropriate by the mediator or the Court.

4) Where Canada is a party to a matter referred to the Dispute Resolution Process, the mediator will have the discretion to award costs of the mediation against any party.

5) For greater certainty, this Article will not apply to disputes regarding Claimants in the Claims Process, including eligibility for membership in the Class, extension of the Claims Deadline for an individual Class Member or compensation due to any Class Member.

ARTICLE 19 - TERMINATION AND OTHER CONDITIONS

19.01 Termination of Agreement

1) Except as set forth in Article 18.01(2), this Agreement will continue in full force and effect until all obligations under this Agreement are fulfilled and the Court orders that the Agreement has terminated.

2) Notwithstanding any other provision in the Agreement, the following provisions will survive the termination of this Agreement:

   (a) Article 10.01 – Releases

   (b) Article 21 – Confidentiality

   (c) Article 23 – Immunity

19.02 Amendments

Except as expressly provided in this Agreement, no amendment may be made to this Agreement unless agreed to by the Parties in writing, and if the Court has issued the Settlement Approval Order, then any amendment will only be effective once approved by the Court. A material amendment to the Schedules hereto will require the Court's approval.

19.03 Non-Reversion of Settlement Funds

No amount or earned interest that remains after the distribution of the Settlement Funds will revert to Canada. Such amounts will instead be further distributed in accordance with the distribution protocol designed and approved for the Claims Process.

19.04 No Assignment

1) No compensation payable, in whole or in part, under this Agreement to a Class Member can be assigned, charged, pledged, hypothecated and any such assignment, charge, pledge, or hypothecation is null and void except as expressly provided for in this Agreement.

2) Unless the Court orders otherwise pursuant to a protocol to be approved, no person may collect a fee or disbursement from a Claimant for completing Claims Forms or providing Supporting Documentation.

3) Except for directions made pursuant to Article 6.14, any payment to which a Claimant is entitled will solely be made to the Claimant, and not in accordance with any directions to the contrary, unless the Court has ordered otherwise.

4) Any payments in respect of a Deceased Class Member or a Person Under Disability will be made in accordance with Article 14.

5) In the absence of fraud, any amount paid pursuant to this Agreement is not refundable in the event that it is later determined that the Claimant was not entitled to receive or be paid all or part of the amount so paid, but the Claimant may be required to account for any amount that they were not entitled to receive against any future payments that they would otherwise be entitled to receive pursuant to this Agreement.

ARTICLE 20 – WARRANTIES AND REPRESENTATIONS ON SIZE OF THE CLASS

1) The Parties acknowledge that, in preparing the Joint Report, the Experts relied on data from ISC to determine the Estimated Removed Child Class Size. Both the Plaintiffs and Canada were aware that parts of this data came from third parties, was incomplete and, in some cases, inaccurate. The Parties, including Canada, took account of the nature of this data in entering into this Agreement.

2) Canada warrants and represents that it provided to the Experts all of the data in Canada's possession relating to the Estimated Removed Child Class Size. However, Canada does not represent or warrant the accuracy of the data it provided nor the accuracy of the Joint Report of the Experts.

ARTICLE 21 – CONFIDENTIALITY

21.01 Confidentiality

Any information provided, created, or obtained in the course of implementing this Agreement will be kept confidential and will not be used for any purpose other than this Agreement unless otherwise agreed by the Parties.

21.02 Destruction of Class Member Information and Records

1) Subject to Article 21.02(2), two (2) years after completing the payment of all compensation under this Agreement, the Administrator will destroy all Class Member information and documentation in its possession, unless a Class Member or their Estate Executor or estate Claimant specifically requests the return of such information within the two-year period. Upon receipt of such request, the Administrator will forward the Class Member information as directed. Before destroying any information or documentation in accordance with this Article, the Administrator will prepare an anonymized statistical analysis of the Class in accordance with the Claims Process.

2) Prior to the destruction of the records, the Administrator will create and provide to Canada a list showing the Approved Class Member's: (i) name, (ii) Indian registration number, (iii) Band or First Nation affiliation, (iv) birthdate, (v) class membership, and (vi) amount and date of payment with respect to each compensation payment made. Notwithstanding anything else in this Agreement, this list must be retained by Canada in strict confidence and can only be used in a legal proceeding or settlement where it is relevant to demonstrating that a Claimant received a payment under this Agreement.

3) The destruction of records in the possession or control of Canada is subject to the application of any relevant provincial or federal legislation such as the *Privacy Act*, the *Access to Information Act*, the *Personal Information Protection and Electronic Documents Act* and the *Library and Archives of Canada Act*.

21.03 Confidentiality of Negotiations

Save as may otherwise be agreed between the Parties, the undertaking of confidentiality as to the discussions and all communications, whether written or oral, made in and surrounding the negotiations leading to the AIP and this Agreement continues in force. The Parties expressly agree that the AIP and the materials and discussions related to it are inadmissible as evidence to determine the meaning and scope of this Agreement, which supersedes the AIP.

ARTICLE 22 – COOPERATION

22.01 Cooperation on Settlement Approval and Implementation

Upon execution of this Agreement, the Representative Plaintiffs in the Actions, the AFN, Class Counsel, and Canada will make best efforts to obtain approval of this Agreement by the Court and to support and facilitate participation of Class Members in all aspects of this Agreement. If this Agreement is not approved by the Court, the Parties will negotiate in good faith to attempt to cure any defects identified by the Court but will not be obligated to agree to any material amendment to the Agreement executed by the Parties.

22.02 Public Announcements

Upon the issuance of the Settlement Approval Order, the Parties will release a joint public statement announcing the settlement in a form to be agreed by the Parties and, at a mutually agreed time, will make public announcements in support of this Agreement. The Parties will continue to speak publicly in favour of the Agreement as reasonably requested by any Party.

22.03 Termination of Judicial Review Application and Appeal

1) Within five (5) business days of the Implementation Date, Canada and the AFN will file a Notice of Discontinuance with the Federal Court in relation to their respective judicial review applications of 2022 CHRT 41 on a without costs basis.

2) Within five (5) business days of the Implementation Date, Canada will file a Notice of Discontinuance with the Federal Court of Appeal for Court File No. A-290-21 on a without costs basis.

22.04 Training and Education

The Parties will ensure that the Administrator, members of the Settlement Implementation Committee, members of the Investment Committee, the Trustee, the Third-Party Assessor, and any other individuals responsible to act in the best interests of the Class Members receive First Nations specific cultural competency training and training regarding the history of colonialism including residential schools and this proceeding with a particular focus on the egregious impacts of systemic discrimination on children, youth, families and Nations. Training will also be provided on the CHRT Proceeding.

22.05 Involvement of the Caring Society

1) The Caring Society will have standing to make submissions on any applications brought for Court approval by the Settlement Implementation Committee or the Parties pertaining to the administration and implementation of this Agreement after the Settlement Approval

hearing, including approval of the Claims Process and distribution protocol to the extent that issues impact the rights of the following classes:

(a) Removed Child Class Members placed off-Reserve as of and after January 1, 2006, and Removed Child Family Class Members in relation to Children placed off-Reserve as of and after January 1, 2006, including deceased members of these classes;

(b) Kith Child Class Members and Kith Family Class Members, including deceased members of these classes; and

(c) Jordan's Principle Class Members and Jordan's Principle Family Class Members, including deceased members of these classes.

2) The Caring Society is entitled to notice and receipt of all applications brought in relation to matters in Article 22.05(1) in advance of any hearing before the Court in keeping with the timeline requirements under the *Federal Courts Rules*.

ARTICLE 23 – IMMUNITY

Canada and its counsel, Class Counsel, AFN and its in-house counsel, the Administrator, the Settlement Implementation Committee and its Members and counsel, the Investment Committee, and the Third-Party Assessor will be released from, be immune to, and be held harmless from any and all claims, counterclaims, suits, actions, causes of action, demands, damages, penalties, injuries, setoffs, judgments, debts, costs, expenses (including legal fees and expenses) or other liabilities of every character whatsoever by any reason, except fraud relating to the Actions and to this Agreement, and this Agreement will be a complete defence.

ARTICLE 24 – PUBLIC APOLOGY

Upon execution of this Agreement, Canada will propose to the Office of the Prime Minister that the Prime Minister make a public apology for the discriminatory conduct underlying the Class Members' claims and the past and ongoing harm it has caused.

ARTICLE 25 – COMPLETE AGREEMENT

1) This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and cancels and supersedes any prior or other understandings and agreements between or among the Parties with respect thereto, including the AIP. There

are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between or among the Parties with respect to the subject matter hereof other than as expressly set forth or referred to in this Agreement.

2) The Parties acknowledge that the Caring Society has entered into separate minutes of settlement with the AFN and Canada regarding the Compensation Orders.

[The remainder of this page is left intentionally blank. Signature pages follow.]

IN WITNESS WHEREOF, the Parties have each executed this Agreement with effect as of the Effective Date.

CANADA, as represented by the Attorney General of Canada

(Authorized signatory)

Attorney General of Canada

for the defendant in Moushoom Action, AFN Action and Trout Action

Print Name: Paul B. Vickery

Position: legal agent & counsel

THE PLAINTIFFS in Moushoom Action and Trout Action, as represented by class counsel

BY:

(Authorized signatory)

Sotos LLP / Kugler Kandestin LLP / Miller Titerle + Co.

for the plaintiffs

Print Name: Robert Kugler

Position: Class Counsel

THE PLAINTIFFS in AFN Action, as represented by class counsel

BY:

(Authorized signatory)

Nahwegahbow, Corbiere / Fasken LLP / Stuart Wuttke, General Counsel, AFN

for the plaintiffs

Print Name: Dianne Corbiere

Position: Class Counsel

This is **Exhibit "D"** to the Affidavit of Robert Kugler, sworn remotely before me at the City of Toronto, in the Province of Ontario, on October 16, 2023 in accordance Administering Oath or Declaration Remotely

Adil Abdulla

Commissioner for taking Affidavit
(or as may be)

Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

2022 CHRT 41 (CanLII)

Citation: 2022 CHRT 41
Date: December 20, 2022
File No.: T1340/7008

Between:

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 and Northern Affairs Canada)

Respondent

- and -

Chiefs of Ontario

- and -

Amnesty International

- and -

Nishnawbe Aski Nation

Interested parties

Ruling

Members: Sophie Marchildon
Edward P. Lustig

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I. Introduction

[1] The Panel congratulates the AFN and Canada for making important steps forward towards reconciliation and for their collaborative work on the Final Settlement Agreement on compensation for the class members in the class action (FSA). The FSA is outstanding in many ways, it promises prompt payment, it is a First Nations controlled distribution of funds, and it allows compensation in excess of what is permitted under the *CHRA* for many victims/survivors. The FSA aims to compensate a larger number of victims/survivors going back to 1991. The Panel wants to make clear that it recognizes First Nations inherent rights of self-government and the importance of First Nations making decisions that concern them. This should always be encouraged. The Panel believes this was the approach intended in the FSA which was First Nations-led.

II. Context

[2] In 2016, the Tribunal released *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 [*Merit Decision*] and found that this case is about children and how the past and current child welfare practices in First Nations communities on reserves, across Canada, have impacted and continue to impact First Nations children, their families and their communities. The Tribunal found that Canada racially discriminated against First Nations children on reserve and in the Yukon in a systemic way not only by underfunding the First Nations Child and Family Services Program (FNCFS) but also in the manner that it designed, managed and controlled it. One of the worst harms found by the Tribunal was that the FNCFS Program failed to provide adequate prevention services and sufficient funding. This created incentives to remove First Nations children from their homes, families and communities as a first resort rather than as a last resort. Another major harm to First Nations children was that zero cases were approved under Jordan's Principle given the narrow interpretation and restrictive eligibility criteria developed by Canada. The Tribunal found that beyond providing adequate funding, there is a need to refocus the policy of the program to respect human rights principles and sound social work practice in the best interest of

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children. The Tribunal established Canada's liability for systemic and racial discrimination and ordered Canada to cease the discriminatory practice, take measures to redress and prevent it from reoccurring, and reform the FNCFS Program and the *1965 Agreement* in Ontario to reflect the findings in the *Merit Decision*. The Tribunal determined it would proceed in phases for immediate, mid-term and long-term relief and program reform and financial compensation so as to allow immediate change followed by adjustments and finally, sustainable long-term relief. This process would allow the long-term relief to be informed by data collection, new studies and best practices as identified by First Nations experts, First Nations communities and First Nations Agencies considering their communities' specific needs, the National Advisory Committee on child and family services reform and the parties.

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[3] The Tribunal also ordered Canada to cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of Jordan's Principle. Jordan's Principle orders and the substantive equality goal were further detailed in subsequent rulings. In 2020 CHRT 20 the Tribunal stated that:

> Jordan's Principle is a human rights principle grounded in substantive equality. The criterion included in the Tribunal's definition in 2017 CHRT 14 of providing services "above normative standard" furthers substantive equality for First Nations children in focusing on their specific needs which includes accounting for intergenerational trauma and other important considerations resulting from the discrimination found in the *Merit Decision* and other disadvantages such as historical disadvantage they may face. The definition and orders account for First Nations' specific needs and unique circumstances. Jordan's Principle is meant to meet Canada's positive domestic and international obligations towards First Nations children under the *CHRA*, the Charter, the *Convention on the Rights of the Child* and the *UNDRIP* to name a few. Moreover, the Panel relying on the evidentiary record found that it is the most expeditious mechanism currently in place to start eliminating discrimination found in this case and experienced by First Nations children while the National Program is being reformed. Moreover, this especially given its substantive equality objective which also accounts for intersectionality aspects of the discrimination in all government services affecting First Nations children and families. Substantive equality is both a right and a remedy in this case: a right that is owed to First Nations children as a constant and a sustainable remedy to address the discrimination and prevent its reoccurrence. This falls well within the scope of this claim.

[4] Consequently, the Tribunal determined all the above need to be adequately funded. This means in a meaningful and sustainable manner so as to eliminate the systemic discrimination and prevent it from reoccurring.

[5] The Tribunal issued a series of rulings and orders to completely reform the Federal First Nations Child and Family Services Program. In 2019, the Tribunal ruled and found Canada's systemic and racial discrimination caused harms of the worst kind to First Nations children and families. The Tribunal ordered compensation to victims/survivors and, at the request of the complainants and interested parties, the Tribunal made binding orders against Canada to provide compensation to victims/survivors. The Tribunal then issued a series of compensation process decisions at the parties' requests and this process came to an end in late 2020 when Canada decided to judicially review the Tribunal's compensation decisions and halt the completion of the compensation process's last stages which would have allowed distribution of the compensation to victims/survivors.

[6] The Tribunal announced in 2016 that it would deal with compensation later, hoping the parties would resolve this before the Tribunal ruled and made definitive orders. The Tribunal can clarify its existing compensation orders but it cannot completely change them in a way that removes entitlements to victims/survivors. The approach to challenge these key determinations is through judicial review.

[7] The Tribunal encouraged the parties for years to resolve compensation issues.

[8] The Panel was clear in 2016 CHRT 10 that it hoped that reconciliation could be advanced through the parties resolving remedial issues through negotiations rather than adjudication (para. 42). The Panel noted in 2016 CHRT 16 that some of the parties cautioned the Tribunal about the potential adverse impacts that remedial orders could have (para. 13). Accordingly, the Tribunal strongly encouraged the parties to negotiate remedies, including on the issue of compensation. The Tribunal offered to work with the parties in mediation-adjudication to help the parties craft remedies that would best satisfy their needs and most effectively provide redress to victims. Only Canada declined.

[9] The issue left unresolved, the Tribunal was obligated to rule on compensation and the compensation process. In addressing compensation, the Tribunal was required to make

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challenging decisions addressing novel issues. Canada advanced multiple arguments opposing compensation. The Tribunal has made legal findings based on the evidence and linking the evidence to harms justifying orders under the *CHRA*. This exercise is made by the Panel who exercise a quasi-judicial role under quasi-constitutional legislation. The Tribunal, guided by all the parties in this case, including the AFN, made bold and complex decisions in the best interests of First Nations children and families. The Tribunal's decisions have been upheld by the Federal Court. Now that the Tribunal has issued those compensation decisions on quantum and categories of victims, they are no longer up for negotiation. They are a baseline. Negotiation involves compromise, which can sometimes result in two steps forward and one step back and this may be found acceptable by the parties to the negotiation. However, negotiation cannot be used to take a step backwards from what the Tribunal has already ordered.

[10] Once it found systemic discrimination, the Panel worked with rigor to carefully craft sound findings of fact and law that recognized fundamental rights for First Nations children and families in Canada and protect and vindicate those rights. The same Panel that made those liability findings against Canada is asked to let go of its approach to adopt a class action approach serving different legal purposes. The Panel was conscious that class actions were forthcoming and made sure they were not hindered by the Tribunal's compensation process. Now it is the Tribunal's decisions that are being hindered by the FSA applying an early-stage class action lens. Indeed, the parties did not finalize the compensation distribution process to allow for the distribution of funds for the compensation already ordered by this Tribunal in 2019. They pursued another approach instead that did not fully account for the *CHRA* regime and the Tribunal's orders.

[11] In May 2022, the AFN and Canada advised the Tribunal that they needed a hearing in June to present the FSA. The Tribunal set aside all summer to deal with the matter expeditiously and to have sufficient time to properly consider over 3000 pages of documents but the AFN and Canada advised that class counsel were not yet ready to sign the FSA. The FSA was finally signed on July 4, 2022, and announced publicly but was only presented to the Tribunal on July 22, 2022. The motion to address the FSA was heard in September to afford fairness to all parties. The Panel agrees the victims/survivors have been waiting

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long enough and emphasizes that they could have been compensated at any time since the Tribunal's decision in 2016 and even more so after the *Compensation Decision* in 2019.

[12] The Panel appreciates the parties' work to prepare for this hearing on a short-time frame and the submissions they provided both in writing before the hearing and at the hearing. There were a few issues on which the Panel had outstanding questions after the hearing. The Panel Chair requested that the parties address these outstanding questions. Once again, the Panel thanks the parties for responding to these questions promptly.

[13] The Panel emphasizes that it acknowledges First Nations inherent rights to self-determination and self-governance. The Panel recognizes the that the Canadian legal system views this motion as balancing individual and collective rights, while First Nations may frame the dialogue around responsibilities. The Tribunal emphasizes that First Nations rights holders are best placed to make decisions for their own citizens in or outside the courts. The Tribunal stresses the important fact that First Nations are free to make agreements concerning their citizens. The Tribunal understands the difficult choices made by the AFN and why the AFN has made them. First Nations had to work with $20 billion when they were asking much more for all cases.

III. Summary of the Parties' Positions

A. AFN and Canada

(i) Initial Submissions

[14] On July 22, 2022, the AFN and Canada submitted a joint notice of motion and supporting materials.

[15] The AFN and Canada requested a declaration that the Final Settlement Agreement (FSA) fully satisfies the terms of the Panel's *Compensation Decision*, related compensation orders and the Compensation Framework. In the alternative, the AFN and Canada request the Tribunal to amend the various compensation orders and the Compensation Framework to conform to the FSA. In any event, the Tribunal's declaration or amendments would be conditional on the Federal Court approving the FSA.

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[16] The AFN has the support of the Attorney General of Canada and the representative plaintiffs of the class actions before the Federal Court.

(a) Context

[17] The AFN outlines the context that led to this motion. It explains how Canada sought to engage in negotiations to provide compensation for children covered by the class action proceedings and the CHRT proceedings through a global compensation settlement. Simultaneously, Canada engaged in negotiations on long-term reform of the First Nations Child and Family Services Program (FNCFS Program) and Jordan's Principle. The FSA provides $20 billion in compensation to survivors.

[18] The AFN identifies its history of trying to address the discrimination in the FNCFS Program, dating back to 1998 and involving reports such as the National Policy Review and the Wen:de reports.

[19] The AFN indicates that it was the only party in these CHRT proceedings to advance a claim for individual compensation for children, parents and siblings affected by Canada's discrimination. The Tribunal ultimately awarded the maximum compensation available under the *CHRA* to affected First Nations children and caregiving parents and grandparents. This compensation was for children removed from their homes, families and communities and those who experienced a delay, denial or gap in the delivery of an essential service. The AFN notes that the Tribunal retained jurisdiction to address issues that arose in the compensation process. Furthermore, the Tribunal sought to promote a dialogic approach with discussions and negotiations between the parties. The AFN explains how the parties engaged in subsequent discussions and also came back to the Tribunal for further rulings on compensation. The Tribunal retained jurisdiction on all its compensation rulings, including retaining jurisdiction over the Compensation Framework.

[20] The AFN notes that the compensation decisions were upheld by the Federal Court on judicial review. During those arguments, the AFN and Caring Society argued that Canada should pay compensation to every child affected by the FNCFS Program that was taken into out-of-home care and to children affected by Canada's narrow interpretation of Jordan's

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Principle. Compensation should be paid to both children and their parents or grandparents. The AFN highlights the comments in the Federal Court decision encouraging the parties to engage in good faith discussions to achieve a fair and just settlement.

[21] The AFN describes the class action suits brought in the Federal Court. The class actions provide compensation for victims of Canada's discrimination dating back to 1991. The classes of victims eligible for compensation under the class actions drew on the victims identified in the Compensation decision. It establishes six classes of victims:

A) Removed child class: First Nations children removed from their homes between 1991 and 2022 as minors while they or one of their parents was ordinarily resident on reserve.

B) Removed child family class: Parents, grandparents or siblings of members of the removed child class.

C) Jordan's Principle class: All First Nations minors living in Canada who between 2007 and 2017 had a confirmed need for an essential service and faced a denial, delay or service gap with respect to that needed essential service.

D) Trout child class: Similar to the Jordan's Principle class, but covering First Nations children between 1991 and 2007.

E) Jordan's Principle family class: Parents, grandparents or siblings of members of the Jordan's Principle class.

F) Trout family class: Parents, grandparents or siblings of members of the Trout child class.

[22] The AFN indicates its estimates on the size of each class. The Removed child class is estimated at 115,000 members. The Removed child family class is estimated to have 1.5 caregiving parents or grandparents eligible for compensation for each child, with some caregivers having multiple removed children. The other classes are harder to estimate. The Jordan's Principle class is estimated to be between 58,385 and 69,728 members. The Trout child class is estimated at 104,000. There is no estimate for the Jordan's Principle and Trout family class sizes.

[23] The AFN recounts the history of the negotiations that resulted in the FSA. Discussions first occurred through a mediator as part of the Federal Court process relating to the class actions. In addition to the parties to the class actions, the Caring Society

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participated in these mediations. Following this, negotiations occurred under the supervision of the Honourable Murray Sinclair. These negotiations primarily involved the parties to the class actions, with some consultations with the Caring Society and other parties before the Tribunal. These negotiations led to an Agreement-in-Principle.

[24] The Agreement-in-Principle provided $20 billion to release Canada of all compensation claims under the Tribunal proceedings and class actions. Any unused compensation funds would not revert back to Canada. The parties acknowledged there was uncertainty on the number of victims eligible for compensation. The design of the distribution of the funds was up to the class action plaintiffs. The Agreement-in-Principle also addressed the opt-out period, the fact that the orders would satisfy the Tribunal compensation process, the tax treatment of compensation, notice, legal fees and a request for a public apology. The parties used the Agreement-in-Principle as the basis to develop the FSA.

[25] The AFN indicates that class counsel and the AFN had the following objectives when developing the FSA:

A) maintain and increase the awards under the Tribunal's Compensation Decision to the greatest extent possible;

B) ensure proportionality in compensation based on objective factors;

C) where compromises are required, compensation should favour children;

D) a trauma informed and culturally sensitive process;

E) no obligation for survivors to undergo an interview or cross-examination to receive compensation;

F) a claims process that is easy and simple enough not to require professional assistance to get compensation;

G) provide support to survivors through the compensation process; and

H) the entire settlement fund amounts go to survivors without deductions for counsel fees or payments to third parties.

(b) FSA Terms

[26] The AFN summarizes the terms of the FSA.

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[27] The preamble codifies the objectives of the FSA. This includes administering the funds in an expeditious, cost-effective, user-friendly, culturally sensitive and trauma-informed manner. Overall, the objectives aim to ensure survivors are well supported in the process and do not experience barriers and re-traumatization.

[28] The $20 billion in settlement funds are to be paid into trust once all possibilities of appeal from the settlement order have been exhausted.

[29] The AFN summarizes the classes covered by the FSA as follows:

A) Removed child class: A First Nations individual who

   i. while under the age of majority;

   ii. while they or at least one of their caregivers were ordinarily resident on reserve or living in the Yukon;

   iii. were removed from their home by child welfare authorities or voluntarily placed into care between April 1, 1991 and March 31, 2022;

   iv. whose placement was funded by ISC.

B) Removed child family class: All brothers, sisters, mothers, fathers, grandmothers and grandfathers of a member of the removed child class at the time of removal.

C) Jordan's Principle class: First Nations individuals who, between December 12, 2007 and November 2, 2017, did not receive from Canada an essential service (whether by denial or service gap) relating to a confirmed need, or whose receipt of an essential service relating to a confirmed need was delayed by Canada on ground including a lack of funding or jurisdiction, or a result of a service gap or jurisdictional dispute.

D) Jordan's Principle family class: All brothers, sisters, mothers, fathers, grandmothers or grandfathers of a member of the Jordan's Principle Class at the time of the delay, denial or service gap.

E) Trout child class: First Nations individuals who, between April 1, 1991 and December 11, 2007, did not receive from Canada an essential service (whether by denial or service gap) relating to a confirmed need, or whose receipt of an essential service relating to a confirmed need was delayed by Canada on grounds including a lack of funding or jurisdiction, or a result of a service gap or jurisdictional dispute.

F) Trout family class: All brothers, sisters, mothers, fathers, grandmothers or grandfathers of a member of the Trout Child Class at the time of the delay, denial or service gap.

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[30] First Nations individuals includes individuals registered pursuant to the *Indian Act*, those entitled to be registered under s. 6(1) or 6(2) of the *Indian Act* as it read on February 11, 2022, and those included on Band Membership lists and who met the Band Membership requirements under s. 10-12 of the *Indian Act* by February 11, 2022. For purposes of the Jordan's Principle class, it also includes individuals recognized by their First Nation by February 11, 2022.

[31] The AFN estimates that $7.25 billion will be used to compensate the removed child class, $5.75 billion for the removed child family class, $3 billion for the Jordan's Principle class, $2 billion to the Trout child class and $2 billion for the Jordan's Principle and Trout family classes.

[32] The AFN indicates that the parties will recommend an administrator to be appointed by the court. The administrator will be responsible for developing processes to compensate individual claimants and ensuring the funds flow in a trauma-informed manner. The administrator will be responsible for ensuring appropriate standards are maintained in how the funds are distributed to beneficiaries. This is consistent with the objectives of the claims process, that aims to minimize the administrative burden on survivors. The administrator will provide regular reports, which will assist a First Nations led Settlement Implementation Committee and ultimately the Federal Court in overseeing the process and addressing any systemic issues that arise.

[33] The AFN identifies that the FSA will have a comprehensive plan to provide notice to beneficiaries. There will be an opt-out period. Beneficiaries will have three years to make a claim once they reach the age of majority, with extensions possible for personal circumstances.

[34] A Cy-près fund will benefit beneficiaries who do not receive direct compensation. The fund will have an endowment of $50 million and support activities such as family reunification, access to cultural activities, access to transitional supports and facilitating access to services for Jordan's Principle beneficiaries who may lose access to services upon attaining the age of majority.

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[35] The AFN highlights that the full $20 billion in compensation funds will benefit survivors because Canada has agreed to pay the costs of administering the settlement and counsel fees separately. In addition, the $20 billion will be invested and any interest will also benefit survivors.

[36] The AFN notes that Canada will make best efforts to ensure that the benefits are not taxable income and do not affect federal, provincial or territorial social assistance benefits.

[37] The AFN explains that the FSA provides wellness supports for beneficiaries. These include service coordination, bolstering the existing network of health and cultural supports, access to mental health counselling, and access to a youth specific support line.

[38] The AFN explains the process for compensating the estates of deceased children who are entitled to compensation. It also indicates that there is a process in place for individuals who lack legal capacity because of a disability.

[39] The FSA contemplates Canada proposing to the Office of the Prime Minister that the Prime Minister make an apology.

[40] The AFN notes that there are some areas where more work is required. These areas include finalizing the Jordan's Principle assessment methodology, approving the plan to give notice to beneficiaries, assembling data in Canada's control, appointing an administrator, and receiving approval of the FSA by the Federal Court.

(c) Arguments

[41] First, the AFN argues that the Tribunal should support the FSA because it has the support of the AFN, Canada and class action counsel. The AFN has their full support in its submissions. The AFN indicates it supports the FSA because it ensures the timely payment of compensation, significantly expands the number of survivors eligible for compensation, and provides that those who suffered the greatest harm will receive the greatest compensation. The AFN views the FSA as the most effective and efficient means of paying out the significant compensation for First Nation victims of Canada's discrimination. The AFN emphasises that it has pushed for individual compensation since the start of the

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Tribunal's case and notes that, as the national political governing body for First Nations, it is best positioned to understand the impact of the compensation on First Nations across Canada.

[42] Second, the AFN argues that the Tribunal has the jurisdiction to endorse the FSA. The AFN highlights the broad remedial powers under the *CHRA*. It identifies how the Tribunal has used the broad remedial authority in this case to craft the existing orders in this case, including retaining jurisdiction that provides the Tribunal broad discretion to return to a matter. The AFN relies on the dialogic approach as endorsed by the Federal Court. The AFN views the dialogic approach as encouraging the parties to engage in negotiations and having sufficient flexibility to support the negotiations that occurred in this case. The *CHRA* supports the Tribunal being flexible and innovative in providing human rights remedies.

[43] Given this context of the Tribunal's remedial powers, the AFN argues the Tribunal's retained jurisdiction is sufficiently broad to permit it to consider the FSA as satisfying its compensation orders. The Tribunal has explicitly retained the jurisdiction on remedial issues which provides it jurisdiction to consider the AFN and Canada's proposal to endorse the FSA. The FSA is a product of negotiations as contemplated with the dialogic approach.

[44] Third, the AFN argues that the Tribunal has discretion in the manner in which it evaluates the FSA as satisfying the Tribunal's compensation orders. The AFN submits that there are no precedents directly on point for when the parties successfully negotiated a settlement outside the Tribunal's process that satisfies a compensation order. There are some parallels with the Compensation Framework negotiated by the parties but there are still differences in the circumstances. The AFN accordingly submits the Tribunal should interpret its broad remedial jurisdiction to consider whether the FSA satisfies the Tribunal's compensation orders.

[45] Generally speaking, the AFN contends that the Tribunal should apply a test of whether the FSA reasonably and in a principled manner satisfies the Tribunal's compensation orders and the underlying principle of promoting the rights of survivors. The AFN suggests specific factors that can help make this assessment. These include whether the FSA meets the Tribunal and *CHRA*'s compensation objectives, international human

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rights principles, the results of the dialogic process, and reconciliation. The AFN also asks the Tribunal to draw on principles considered by the Federal Court in approving class action settlements compensating First Nations individuals for Canada's historic discrimination. In such circumstances, the Federal Court considers whether the settlement is fair and reasonable and whether it is in the best interests of the class as a whole. This can involve considering the settlement terms and conditions, the likelihood of success or recovery through litigation, the future expense and duration of further litigation, the dynamics of settlement negotiations and positions taken therein, the risks of not unconditionally approving the settlement, and the position of the representative plaintiffs. Of particular significance are the litigation risks of not approving the agreement and the view of the representative plaintiffs.

[46] Fourth, the AFN sets out how the different parts of the FSA align with and build on the Tribunal's compensation orders.

[47] The quantum of compensation is fair, reasonable and principled. The AFN argues it meets or exceeds the objectives of the Tribunal's orders. The total compensation of $20 billion is significant. The amounts payable to individuals will be meaningful and the total compensation is historic and reflects the magnitude of the harms.

[48] The AFN submits that the compensation mechanism is reasonable and takes advantage of experience gained from previous First Nations settlements. The mechanism minimizes re-traumatizing victims. It also prioritizes access to justice, efficiency and expediency. In order to achieve this, the FSA adopts an approach that is modeled on the Indian Residential School Settlement common experience payment. There is a presumption in favour of qualification for compensation with low burdens of proof and evidentiary requirements on survivors. Proportionality in compensation relies on objective factors whenever possible.

[49] The AFN explains that members of the removed child class would receive, at a minimum, the $40,000 in damages ordered by the Tribunal. The FSA expands compensation temporally to cover children affected by Canada's discriminatory funding back to April 1, 1991 when Directive 20-1 came into force. This expands the number of

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children eligible for compensation by about 56,000. The AFN argues that the eligibility is also expanded to children who were removed from their home but were not removed from their community because they were placed in ISC funded care within their community. In addition to expanding eligibility, basing eligibility on ISC funded care links compensation to the discriminatory practice that incentivised removals and placements over preventative measures and it facilitates the identification of affected children. The AFN indicates that there is compensation for victims in this category who suffered exceptional harm based on objective proxies of harm such as a child's age and number of years in care. This allows the compensation to exceed the statutory maximum the Tribunal could order. The exact value of these enhancement payments is not yet known, both because the number of beneficiaries is not yet known and the relative weight of different factors is not yet known.

[50] The AFN indicates that compensation for the removed child family class is similarly based on ensuring a minimum payment of $40,000 to eligible beneficiaries. It also expands the eligible beneficiaries as the number of eligible children is increased. The AFN argues that the FSA expands the caregivers eligible for compensation beyond biological parents and grandparents as contemplated in the Tribunal's orders to now include adoptive and step caregivers.

[51] The AFN argues that the FSA expands the scope of eligible beneficiaries with the Trout child class and the Trout family class. These classes expand eligibility for Jordan's Principle to cover the period between 1991 and 2007 both for affected children and caregivers. The FSA will provide up to $20,000 for children who do not have objective aggravating factors and up to $40,000 for those children with objective aggravating factors. Caregivers of children who suffered the highest levels of impact may be entitled to some direct compensation. Including these beneficiaries is significant as their harm predates the recognition of Jordan's Principle.

[52] The AFN supports the establishment of a Cy-près fund that will primarily benefit class members who do not receive direct compensation. It will be endowed with $50 million. This includes siblings of affected children. The benefits of the Cy-près fund are consistent with the Tribunal's concern that this sort of fund be in addition to, rather than instead of, direct compensation.

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[53] The AFN contends that the FSA supports the Tribunal's concern that any compensation process minimizes trauma to survivors. This is consistent with the objectives of the Tribunal's compensation orders. It does this both by requiring the administrator to take a trauma-informed approach and requiring the administrator to follow a presumption that claimants are acting in good faith and requiring the administrator to draw all reasonable inferences in favour of claimants. Some further examples include a guarantee that none of the child victims will be required to submit to an interview or examination and the Cy-près fund's objective of providing culturally sensitive and trauma-informed services. The supports during the compensation process include service coordination, bolstering existing health and cultural supports, access to mental health counselling, and enhanced helpline services.

[54] The AFN argues that the supports available to victims under the FSA supports and expands the initiatives contemplated under the Tribunal's compensation orders. The supports that are available are robust. They will also remain available until all beneficiaries have completed the claims process. In addition to the supports aimed at ensuring a culturally sensitive and trauma-informed approach, navigators will be available to help claimants navigate the process. Canada will provide further funding for five years to the AFN to implement First Nations-led supports. The Cy-près fund aims to provide benefits to class members who are not eligible for direct compensation.

[55] The AFN explains that it has a notice plan that aims to ensure every beneficiary will receive notice in order to submit a claim. Individuals who sign up will receive notice when they are eligible to make a claim for compensation.

[56] The AFN indicates that the FSA provides an opt-out period of six-months. Individuals may opt out of the compensation process during that time. If the Tribunal declares that the FSA satisfies its compensation orders, such individuals would not be able to pursue compensation under the Tribunal's orders.

[57] There are a number of further ways in which the FSA mirrors the Tribunal's compensation orders. These include the administrator in charge of distributing compensation, the distribution protocol, Canada funding supports to beneficiaries as they navigate the process, efforts to ensure the compensation is tax-free and does not affect

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social assistance benefits, a right for survivors to appeal denials of benefits, and protections to ensure survivors are the ones who benefit from the compensation.

[58] Fifth, the AFN argues that while the FSA seeks alignment with the Tribunal's compensation orders, where there are necessary deviations, they are consistent with the principles underlying the Tribunal's compensation orders. The AFN argues that compromises were required because of the fixed amount of compensation available, the complexities and lack of data for Jordan's Principle and Trout class members, and expanding eligibility back to 1991. Compromises were designed to favour children who suffered substantial impacts.

[59] The AFN indicates there are two points where the removed child family class may deviate from the Tribunal's Compensation Framework. First, caregiving parents and grandparents will receive additional compensation up to $60,000 in the event they had multiple children removed rather than multiples of $40,000. The second change is that if there is an unexpected number of claimants, compensation may be reduced to ensure that all caregiving parent and grandparent victims receive compensation. The maximum compensation of $60,000 similarly ensures there are enough funds to compensate all eligible caregiving parents and grandparents. Further, family class members who are not eligible for direct compensation can still benefit from the Cy-près fund.

[60] The AFN contends that the process for compensating Jordan's Principle victims generally follows the principles identified by the Tribunal. The FSA aims to ensure that children who suffered discrimination and were objectively impacted are compensated through a process that is objective and efficient and the definition of essential services is reasonable. The process focuses on establishing a confirmed need for an essential service that was the subject of a delay, denial or service gap. Those claimants who are most impacted will receive at least $40,000 while those who are less seriously impacted will receive up to $40,000. This accounts for the significant uncertainty in the class size and is expected to result in children who were eligible for Jordan's Principle compensation under the Tribunal's orders receiving at least $40,000. The framework to determine what is an essential service will be developed with the assistance of experts. The starting point is the list of services currently eligible for Jordan's Principle funding. The process is designed to

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be flexible so that it can consider services that are essential for a particular child but are not generally essential services. The process does not require interviews or examinations of claimants. There is a recognition that the type of documentation required to support a claim might vary.

[61] The AFN explains that only caregiving parents and grandparents of Jordan's Principle and Trout class children who suffered a significant impact will be eligible for compensation. This reduction in eligibility occurred because the number of caregiving parents and grandparents was unknown. Caregivers who do not receive a direct benefit would nonetheless benefit from the Cy-près fund.

[62] The AFN indicates that the exclusion for caregivers who committed abuse limits the definition of abuse to sexual abuse and serious physical abuse. In particular, it does not include neglect or emotional maltreatment that may qualify as psychological abuse. This limits the need to assess the reason for the child's removal. A caregiver who is denied compensation may challenge the denial but this will not involve the removed child.

[63] The AFN notes that compensation for estates is available to the estates of children and also to family class members who complete an application prior to their death. The FSA contemplates situations where there is no appointed estate executor and cases where beneficiaries are persons with a disability that prevents them from having the legal capacity to manage their own finances.

[64] The AFN acknowledges that a release from liability was not contemplated in the Tribunal's orders but submits that its limited nature, applying only to Canada and not other service providers or governments. The FSA also does not foreclose individuals seeking compensation above the FSA entitlements for personal harm suffered as a result of the child welfare system.

[65] Sixth, the AFN identifies a number of specific factors that support endorsing the FSA. These include international human rights, reconciliation, the dialogic approach, litigation risk, and participation of the representative plaintiffs.

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[66] The AFN submits that international human rights law, and in particular the *UNDRIP*, support the FSA. In particular, articles 7 and 8 protect First Nations from the forced removal of their children and forced assimilation. The *United Nations Covenant on the Rights of the Child* recognizes the rights of children. While the Tribunal's orders were an effective means of redress for children affected by discrimination during a certain period, reconciliation measures also provide effective redress.

[67] The AFN views the FSA as promoting the goals of reconciliation. The words and intention of the FSA promote reconciliation. It will recommend an apology from the Prime Minister. The result was a product of negotiations instead of litigation. The FSA furthers the work of the Tribunal's compensation orders. Importantly, this process and the compensation process it will create are First Nations-led. The FSA reflects First Nations knowledge, experience and expertise. The AFN has consistently sought individual compensation, as the FSA achieves. The AFN represents First Nation rights-holders who endorsed the FSA through their representatives.

[68] The AFN argues that the FSA was ultimately the result of the dialogic approach. This is consistent with the Tribunal's desire for the compensation process to be defined by the parties. The AFN indicates that while the dialogue primarily involved the AFN, Canada and Moushoom class counsel, the involvement of the Caring Society and the representative plaintiffs enriched the discussions. These were First Nations lead negotiations. The Caring Society was kept informed at various points in the negotiations.

[69] The AFN contends that the threat of future litigation supports endorsing the FSA. Legal proceedings are fraught with uncertainty and Canada has filed an appeal of the Tribunal's compensation orders with the Federal Court of Appeal. The certainty of the settlement is preferable to proceeding with this continued litigation risk. Even if the class action litigation succeeds, there is no guarantee of receiving greater compensation. The Trout class members are particularly vulnerable if the case were to proceed to litigation, as Jordan's Principle had not yet been recognized. Members of the removed child class who experienced discrimination prior to 2005 are also vulnerable because they are not entitled to compensation under the Tribunal's orders. Even within the Tribunal proceedings, there are significant outstanding issues in the Compensation Framework that the parties have

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solved in the FSA. Furthermore, the compensation would start flowing expeditiously under the FSA.

[70] The AFN highlights the representative plaintiffs' support for the FSA. This support is significant, as these individuals have been involved in the process from the outset. They provided their input. They recognize the need for a result that is fair and equitable and recognizes the need to expeditiously compensate survivors in a way that minimizes re-traumatizing victims.

[71] In conclusion, the AFN contends that the FSA satisfies the Tribunal's compensation orders. The $20 billion will effectively implement the Tribunal's orders and result in the expeditious financial compensation of survivors. The compensation quantum and process are designed to restore dignity to victims. It is not an implementation of the Tribunal's compensation decisions but reflects a negotiated settlement based on the same principles. This is the best resolution available for First Nations across Canada. It builds on the work done by the Tribunal.

(ii) Reply Submissions

[72] In its reply submissions, the AFN reiterates the significant quantum of the settlement agreement, both in direct compensation and in terms of program reform. The AFN also reiterates the significant encouragement from both the Tribunal and the Federal Court to engage in negotiations. The AFN contends that the Caring Society misunderstands the FSA and in fact participated in its development. Furthermore, the Caring Society opposed individual compensation to survivors and instead favoured payments into a trust fund. The Commission's technical arguments should also be rejected. The Commission's concern for precedent fails to consider that the FSA is unprecedented in scale and scope. Any individuals entitled to compensation under the Tribunal's orders who might not receive it under the FSA will nonetheless benefit from the Cy-près fund. The FSA was largely supported by First Nations leadership and was a First Nations-led process. Not accepting it will create significant litigation risk, delay and general uncertainty. The settlement funds are at risk if the Tribunal does not approve the FSA.

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[73] First, the AFN indicates that it is following the direction from Justice Favel's decision to engage in good faith negotiations. The Federal Court decision should not be read as finding that the Tribunal's compensation orders are final and cannot be revisited.

[74] Second, the AFN submits that the compensation order is not final. The Panel explicitly stated that it retained jurisdiction and welcomed suggestions and clarification on the compensation process, wording, or content of the orders. The FSA clearly addresses the ambiguity of what is meant by children "in care." The AFN disagrees with the Commission's reading of *Hughes v. Elections Canada,* 2010 CHRT 4 and argues that instead demonstrates the latitude available to the Tribunal for remedial orders. The AFN contends that this case is distinguishable from cases about finality cited by the Commission and Caring Society as those cases were in an employment context that lack the complexity and need for reconciliation in the current case. Furthermore, the AFN is not asking the Tribunal to entirely revisit the remedies issues, as there are a number of uncertainties and outstanding issues with the Compensation Framework. The remedies in this case are not yet final. The AFN finds the Caring Society's arguments to include broad categories of beneficiaries as creating uncertainty.

[75] Third, the AFN argues that the Panel is not *functus officio* and that the principle of finality does not require the Tribunal to reject the FSA. The AFN argues that the FSA brings finality to the litigation, while rejecting it creates uncertainty, confusion and continued litigation. Tribunals have greater flexibility to retain jurisdiction than courts do and this is the sort of situation where tribunals should apply that flexibility. First, the lack of appeal rights in the *CHRA* means that the Tribunal should take a less formalistic and more flexible approach to reconsidering decisions. The availability of judicial review is not a right of appeal. The AFN relies on *Merham v Royal Bank of Canada*, 2009 FC 1127 for the proposition that the Tribunal can retain jurisdiction even after a judicial review. Second, the doctrine of finality applies more flexibly when a Tribunal is asked to consider whether a novel course of action complies with its orders. The AFN relies on *Rogers Sugar Ltd v United Food and Commercial Workers Union, Local 832*, 1999 CanLII 14235 (MB QB) for the proposition that a tribunal can answer questions about whether a course of action not contemplated at the time of the order complies with its order. None of the parties contemplated the more

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advantageous FSA at the time of its compensation orders. The FSA has the overwhelming support of First Nations across the country and there should not be further delays in providing compensation.

[76] Fourth, the AFN contends that the Tribunal's retained jurisdiction enables it to grant the relief sought. The Panel is seized to determine whether the parties have satisfactorily settled the outstanding compensation issues. The Tribunal's continued jurisdiction is not limited to procedural matters. Contrary to the Commission's contention, *Doucet-Boudreau v Nova Scotia (Minister of Education)*, [2003] 3 SCR 3 in fact supports the Tribunal's broad retained jurisdiction. Further, the Caring Society is incorrect that endorsing the FSA would overturn the Tribunal's earlier orders – those would remain as powerful precedents.

[77] Fifth, the AFN disputes that its motion is premature. The significant size of the FSA makes it unrealistic not to have a phased approach. The staged approach in this proceeding was designed to promote consultation with First Nations. The Jordan's Principle compensation in particular is complex, and the phased approach ensures that it can be implemented in trauma-informed and culturally relevant manner. Furthermore, the AFN disagrees that Jordan's Principle compensation remains vague and uncertain. The Federal Court evidence includes the AFN's impact assessment matrix for Jordan's Principle and an expert report. The existing detail on Jordan's Principle compensation represents an evolution and more detail on eligibility for compensation.

[78] Sixth, the AFN contends that the Caring Society second-guesses the terms of the FSA. The AFN argues that the Panel should focus on the benefits of the FSA – the 116,000 removed children who are expected to receive compensation. This expands the scope compared to the Tribunal's original orders. The AFN argues that the Jordan's Principle compensation will entitle children who have suffered physical, developmental, or lasting or permanent harm will receive a minimum of $40,000, with an intention to provide these children more than $40,000. The AFN indicates that the children who may receive less than $40,000 may not have been eligible for compensation under the Tribunal's orders. The AFN believes that the list of essential services, which differs from the list proposed by the Caring Society, is in the best interests of the class.

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[79] The AFN also disputes the Caring Society's claim that the Tribunal has not distinguished between biological parents. The AFN relies on 2020 CHRT 15 at paras. 32, 44, and 45 for the proposition that the Tribunal limited compensation to caregivers who were biologically related to affected children. The AFN maintains that expanding the eligible list of caregivers would subject children to more intensive questioning to determine which caregiver could properly receive compensation.

[80] Given that the opt-out provisions from the Tribunal's Compensation Framework have not been finalized, it is impossible to conclude that the FSA does not conform to the Tribunal's opt out provisions.

[81] Seventh, tinkering with the FSA will unwind the careful construction of the agreement. All the provisions of the FSA are interconnected and changing any one provision may jeopardize the $20 billion settlement. The law on approval of class action settlements is clear that the settlement is either approved or rejected as a whole.

[82] Eighth, the AFN was the only party to request individual compensation and is the national representative organisation of First Nations. It is not precluded from seeking a variation of the Tribunal's compensation orders. Through its resolutions from the Chiefs in Assembly, the Tribunal has found that the AFN has the mandate to speak on behalf of affected children. Similarly, the AFN contends that the First Nation interested parties – the Chiefs of Ontario and Nishnawbe Aski Nation – provide their unqualified support for the FSA. The AFN argues that it is best positioned to speak on behalf of the First Nation victims in this case.

B. Canada

[83] Canada did not submit initial submissions in support of the motion and instead relied on the AFN's submissions. Canada did, however, submit reply submissions.

[84] Overall, Canada argues that the FSA is the product of negotiation and that endorsing it supports reconciliation. The Tribunal has the jurisdiction to significantly amend its compensation orders, if necessary, as it did this in 2022 CHRT 8. The support of representatives of First Nation rights holders favours approving the FSA.

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[85] More specifically, Canada explains that the Tribunal can modify its earlier orders. The Tribunal has retained jurisdiction and can change a previous decision if new circumstances arise. The issue for the Tribunal is whether the FSA satisfies its previous orders. Some flexibility is required, as it would otherwise be impossible for the parties to negotiate a settlement which differed in any way from the Tribunal's orders. This would undermine the dialogic approach. This approach was endorsed by Justice Favel in the judicial review. Furthermore, the Federal Court's judicial review did not endorse the Tribunal's orders as the sole possible outcome but only as a reasonable outcome that allows space for other orders. The Tribunal's retained jurisdiction does not distinguish between substantive and clerical revisions of previous orders, as demonstrated with the substantive amendments in 2022 CHRT 8. The expressions of the Tribunal's retained jurisdiction to promote dialogue and the quasi-constitutional nature of the *CHRA* provide ample authority for the Tribunal to grant the requested orders. No settlement is perfect as they necessarily involve balancing benefits and compromises. This is not an attempt to undermine the Tribunal but instead an attempt to move forward with parties who represent the First Nations rights holders.

[86] Canada contends that the settlement should be approved because it is fair and reasonable. It does not perfectly match the compensation orders but some flexibility is required. The AFN and Moushoom class counsel have devised a method of compensating claimants proportional to the harm they suffered. The AFN consulted with First Nations leadership and the Caring Society in this process. The FSA extends compensation to cover an additional 15 years and provides some beneficiaries with compensation that will exceed what the Tribunal ordered.

[87] Canada indicates that the Caring Society's argument that the Tribunal's orders covered removed children placed in non-ISC funded placements is a new argument that should not be raised at this late stage in the proceedings. This is an attempt to add a new group of beneficiaries that would significantly alter the Tribunal's existing orders. This group has not been previously raised before the Tribunal so there is no evidence or argument relating to them.

[88] Canada denies that the motion is premature. The phased approach aims to ensure the final approach approved by the Federal Court has broad support from First Nations and

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claimants. Individual claimants who are not satisfied by this approach will have the full information they need before choosing whether to opt out.

C. Amnesty International

[89] Amnesty International indicated it would not file submissions on this motion.

D. Chiefs of Ontario

[90] The Chiefs of Ontario (COO) indicated that its leadership council agreed that the FSA was fair, reasonable and for the most part satisfies the Tribunal's compensation orders. The COO clarified it did not accept the FSA ''without qualification'' as described by the AFN.

[91] The COO undertook a consultation process to ensure that the FSA had support throughout the regions and First Nations it represents. While settlements rarely give all parties exactly what they want, the COO ultimately accepted the FSA despite its difficulties and deficiencies. It presents a reasonable outcome that brings finality to the process and compensates survivors without further delays.

E. Nishnawbe Aski Nation

[92] The Nishnawbe Aski Nation (NAN) supports the motion as the FSA substantively satisfies the Tribunal's compensation orders. NAN recognises that the FSA is not perfect but it respects the rights of its citizens to receive meaningful compensation. The FSA provides safeguards to protect survivors in remote communities.

[93] NAN identified concerns that distributing large settlement funds in remote communities can have significant negative consequences for survivors. NAN is pleased that the current process builds on past experiences to address these challenges.

[94] NAN understands that the Tribunal made its awards of $40,000 considering the maximum compensation it could order. NAN also understands Canada would not agree to provide unlimited compensation funds for the FSA. Accordingly, NAN supports the concept of proportionality even if it means certain beneficiaries receive less than $40,000.

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[95] Further, NAN supports finality. It recognizes that the parties want finality for the settlement agreement and that there are dispute resolution mechanisms built into the FSA such that the Tribunal's retained jurisdiction of compensation matters would not be necessary.

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F. Caring Society

[96] The Caring Society opposes the motion.

[97] The Caring Society emphasises that this case involves children. It is important that the approach to the case recognises the particular circumstances of children and the harms that they suffered. The Tribunal's remedies were tailored to the established evidence of harms. Canada opposed this case throughout. Now, an outside class action would provide more compensation to some victims before the Tribunal but would significantly detract from the Tribunal's awards in other ways and oust the Tribunal's jurisdiction. While the Tribunal retains jurisdiction, the compensation orders themselves are final. The Tribunal must ensure all victims entitled to compensation under its orders receive it. The uncertainty on Jordan's Principle compensation also makes this motion premature. If the Tribunal nonetheless assesses the merits of the FSA, the Tribunal should still reject the FSA. It does not clearly satisfy the Tribunal's compensation orders.

(i) Facts

[98] The Caring Society provides an overview of pertinent facts, starting from the filing of the complaint to the substance of the FSA.

[99] The AFN and Caring Society filed the complaint in 2007 as a last resort after trying to address the underlying issues through negotiations with Canada. Canada continually obstructed the process. The Tribunal found that Canada retaliated against Dr. Blackstock and separately awarded abuse of process costs against Canada for delaying the process by failing to disclose a large number of highly relevant documents. The Tribunal heard and accepted largely uncontradicted evidence about the harm caused by Canada's discrimination. This evidence demonstrated the harm of both removals under the First

Nations Child and Family Services Program and from the narrow implementation of Jordan's Principle. The Tribunal recognized the suffering First Nations children experienced. The Tribunal found that Canada was aware of the discrimination and refused to act to rectify it.

[100] In terms of compensation, the Caring Society requested $20,000 plus interest for Canada's wilful and reckless conduct for each child affected by Canada's discrimination. The Caring Society requested that these funds be paid into a trust fund. The AFN strongly advocated for the maximum compensation available to be paid to every victim of Canada's discrimination and did not restrict this request to those in ISC-funded care. Canada argued there was insufficient evidence to justify the requested compensation.

[101] The Tribunal ordered $40,000 in compensation to defined categories of child victims and eligible caregiving parents and grandparents. The end date for compensation was still to be determined since the Tribunal found the discrimination was ongoing. The Tribunal emphasized that its remedies were based on the evidence presented. The orders did not make any distinctions between First Nations children placed in ISC-funded care and those in other care arrangements, as it was the removal itself that was the harm. These remedies are based on human rights principles, not tort principles. They apply regardless of the existence of a class action.

[102] The Caring Society reviews the development of the Compensation Framework and presents it as an example of the dialogic framework in action. It involved negotiations between the parties but required many issues to be adjudicated by the Tribunal. This process provided an opportunity for consultations and for the other parties to receive information from Canada. The dialogic approach where the parties could draw on the Tribunal's expertise to address disputes contributed to the success in developing the Compensation Framework. This process was upheld during the judicial review.

[103] The Compensation Framework established key aspects for compensating beneficiaries. It defines a "necessary/unnecessary removal" in s. 4.2.1. The definition focuses on the impact of the removal on the child and not the source of funding. Similarly, the definitions of "essential service," "service gap," and "unreasonable delay" focus on the experience of the child. An "essential service" captures substantive equality for First Nations

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children seeking social services and that it is essential because the absence of the service would cause the child to suffer real harm. It would not cover all services eligible for funding under Jordan's Principle. A "service gap" evolved in response to Canada's arguments and requires that the child's need must be confirmed and the service must be recommended by a professional. While some objective confirmation of need was required, Canada was not required to be aware of the need. An "unreasonable delay" was a delay of more than 12 hours for an urgent request and 48 hours for non-urgent requests unless Canada could demonstrate that the delay did not prejudice the affected First Nations child.

[104] On the issue of compensating estates, the Tribunal found that it would be unfair not to compensate estates of victims who had passed away while waiting to receive compensation.

[105] The Caring Society is not a party to the class actions. The Caring Society did, however, participate in some discussions and set out its position that it would not support a settlement that reduced the compensation for affected children below the $40,000 the Tribunal ordered Canada to pay. The Caring Society was not invited to participate in drafting the FSA although it provided some feedback. There was no recourse to an adjudicator on points of disagreement while the FSA was being drafted.

[106] The Caring Society outlines three key departures from the Tribunal's orders and uncertainty about Jordan's Principle.

[107] First and most significantly in the Caring Society's view, the FSA excludes First Nations children removed from their home, family and community and placed into non-ISC funded care. The Caring Society contends that Canada's discriminatory conduct includes underfunding preventive services and least disruptive measures which incentivized children being unnecessarily taken into care. The focus was not on whether the placement was funded by Canada. Some First Nations children were placed in ISC funded care after they were removed, while others were not. In any event, they suffered harm from the removal. While funding actual costs for foster care placements exacerbated the harm, that was not Canada's only discriminatory conduct. Focusing on the funding source is contrary to the Tribunal's focus on the experiences of the affected children.

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[108] The FSA disentitles the estates of deceased caregiving parents and grandparents. The Tribunal rejected this position as it would have allowed Canada to benefit from delaying compensation to victims of its discrimination. Excluding this category of beneficiaries is not consistent with the objectives of the *CHRA*.

[109] The FSA differs from the compensation the Tribunal ordered for caregiving parents and grandparents. The Tribunal ordered $40,000 in compensation to a parent or grandparent who was the primary caregiver for a First Nations child eligible for compensation unless the child was removed for reasons of sexual, physical or emotional abuse. The Tribunal made no distinction between biological and adoptive parents.

[110] The FSA does not guarantee the same compensation. The limited pot of funding does not guarantee all eligible caregiving parents and grandparents will receive $40,000 if they had a child removed. For Jordan's Principle parents and caregiving grandparents, only some classes are eligible for compensation. Reducing the compensation some caregiving parents and grandparents are entitled to and eliminating it for others is not in keeping with the human rights approach adopted in this case.

[111] The FSA does not provide certainty that Jordan's Principle and Trout class members will receive comparable compensation. Compensation will be based on a confirmed need for an eligible service. Only First Nations children who experienced a "significant impact" will be guaranteed to receive $40,000. This differs from the Tribunal's approach. As such, the definition of "significant impact" will be significant in determining whether children eligible for compensation under the Tribunal's orders would receive it under the FSA. The term is not currently defined.

[112] The Caring Society contends that the opt-out in the FSA replaces the opt-out in the Compensation Framework and is not clearly adapted to the circumstance where half the victims are still children. The AFN and Canada did not seek the Tribunal's approval for the opt out form despite the fact that it waives rights under both the class action and the Tribunal process. The FSA requires victims to decide if they will opt out of the FSA by February 2023, by which time they may not yet have a full picture of their rights under the FSA. The requirement to opt out of both the Tribunal process and the class action puts victims who

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would receive less than $40,000 under the FSA in an untenable position. While this is a moot point if the Tribunal suspends its compensation process in favour of the FSA, it otherwise creates uncertainty.

[113] The release is also broadly worded. It is unclear if Canada would attempt to use it to limit the enforcement of a long-term reform order from the Tribunal.

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(ii) Arguments

[114] The Caring Society identifies three issues. First, the Caring Society contends the Tribunal does not have the jurisdiction to modify its previous decisions as requested by the AFN and Canada. Second, the motion is premature given the details that have yet to be established in the FSA. Third, even if the Tribunal can revisit its earlier decisions, it should not approve the FSA.

[115] First, the Caring Society argues that the Tribunal does not have the jurisdiction to modify its previous decisions as requested. Vertical *stare decisis* obliges the Tribunal to follow the Federal Court's judicial review upholding the compensation orders. The Caring Society supports the Tribunal's retained jurisdiction to address outstanding compensation issues. This should not, however, extend to re-adjudicating final decisions. *Chandler v Alberta Association of Architects,* [1989] 2 SCR 848 does not empower a Tribunal to remain seized such that it decides a matter differently, which is what the AFN and Canada are seeking in this motion. Consistency and finality remain important, especially in this case where the Federal Court has decided a judicial review.

[116] The AFN and Canada have failed to specify the amendments they seek. This lack of specificity undermines procedural fairness, the rule of law and the principle of finality. Furthermore, the amendments cannot reduce compensation as parties cannot contract out of human rights obligations. It is contrary to the objectives of the *CHRA* to allow Canada to change venues to avoid human rights legislation by reaching an agreement with only certain parties to the Tribunal case.

[117] While the *CHRA* allows a complaint to be dismissed because it was adequately addressed elsewhere, it does not prevent the Tribunal from awarding compensation on the basis that other proceedings could award compensation.

[118] Second, the Caring Society contends that the motion is premature. The FSA does not provide certainty as to which victims eligible for compensation under the Tribunal's orders will be eligible for compensation. The eligibility for Jordan's Principle claimants is particularly vague, as there is no indication of the threshold required for materiality. Claimants cannot materially assess whether their circumstances will meet the eligibility criteria. There is no public guidance on how a significant impact will be determined, which may affect the quantity of compensation for Jordan's Principle and Trout class claimants. The definition of delay has also not yet been determined.

[119] The Caring Society contends that the eligibility for removed children to receive compensation is premised on a misconception about what triggers the eligibility for compensation. From the Caring Society's perspective, it was always clear that it was the act of removal that triggered eligibility for compensation because that effectively captured the harm from Canada's discriminatory conduct. If there is now a dispute about the meaning of "in care" in the Tribunal's orders, that is appropriately resolved through the dialogic approach and seeking clarification from the Tribunal if required.

[120] The final point of uncertainty is the potential impact of the release on the Tribunal's supervision of long-term reform initiatives.

[121] Third, the Tribunal ought to apply a human rights lens if it considers whether it should endorse the FSA.

[122] In applying the human rights framework, the Tribunal relied on evidence of harm to make its compensation orders. The AFN and Canada should have a corresponding obligation to lead evidence to establish why victims are no longer worthy of the compensation the Tribunal has awarded them.

[123] The Tribunal should apply a human rights lens rather than a class action or tort lens. The Tribunal therefore should not approach this motion as a court approving a class action

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settlement. The Federal Court endorsed the Tribunal's dialogic approach. The dialogic approach does not, however, encompass modifying the Tribunal's compensation orders without evidence after they have been upheld on judicial review and over the objections of other parties. The Caring Society submits that it would create a problematic precedent for other cases if the Tribunal were to accept revoking compensation for victims who suffered the worst case of discrimination. Remedial orders from human rights tribunals must be final rather than a bargaining chip. The *CHRA* provides for the Commission to approve human rights settlement agreements but there is no comparable requirement for settlements outside the human rights regime. The Tribunal is the proper forum for resolving human rights claims and allowing another process to invalidate the Tribunal's orders undermines the human rights regime.

[124] This case is particularly significant because the former s. 67 created a presumption for many First Nation individuals that the human rights regime was not able to protect them. This case was instrumental in changing that but modifying the compensation orders could undermine trust in human rights among First Nations communities.

[125] The Tribunal has continuously emphasised the best interests of the First Nations children affected by this case. The Tribunal should continue to apply this lens. The Caring Society submits that the Tribunal process has never drawn compensation distinctions based on the type of placement. Children had no control over their placement once they were removed and who funded it. Furthermore, it does not reflect the reason for the child's removal from their home – namely, that Canada's discriminatory provision of the FNCFS Program meant that they were not adequately supported with the least disruptive measures and experienced the trauma of being removed from their homes.

[126] The Caring Society is concerned that granting the motion would be a dangerous precedent for the human rights regimes. Victims will be vulnerable if human rights damages can be set aside through a civil process. It is unfair to force victims to defend their entitlements against an outside process. It is particularly problematic to accept the federal government negotiating a reduction in the compensation it will pay victims.

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G. Commission

[127] The Commission focuses its submissions on administrative law principles. It recognizes that the FSA would result in significant compensation for a large number of individuals if it were to be implemented. The Commission makes no submissions on whether the FSA is a good resolution for its intended beneficiaries.

[128] The Commission submits that the Tribunal has jurisdiction to consider whether the FSA will satisfy its compensation orders. However, the FSA does not satisfy the Tribunal's compensation orders.

[129] In terms of the AFN's alternative relief of amending the Tribunal's orders, the Commission submits that the Tribunal lacks the jurisdiction to substantively amend its compensation orders. The Tribunal's compensation orders are final. The Tribunal is *functus officio*. While tribunals should apply this principle flexibly, none of the exceptions justifying the Tribunal revisiting its earlier rulings applies in this motion. Finality is particularly important in this case given the duration of the case.

[130] The Commission reviews *Attorney General of Canada v. Canadian Human Rights Commission*, 2013 FC 921 (*Berberi*), *Canada (Attorney General) v. Grover*, 1994 CanLII 18487 (FC) and *Hughes v Transport Canada*, 2021 CHRT 34 to identify the sort of situation in which the Tribunal could retain jurisdiction and the limits on that ability.

[131] The Tribunal's retained jurisdiction relates to making additional orders to ensure its compensation orders are effectively implemented. It does not extend to changing the substance of its prior remedial orders. If it is broader, it is to add or specify categories of beneficiaries, not to reduce or narrow beneficiaries.

[132] Canada sought to review the compensation orders as final orders rather than as interim or interlocutory orders. The route to challenge or vary the orders is through judicial review, now at the Federal Court of Appeal. To simultaneously ask the Tribunal to revisit the orders challenges established principles and procedures of administrative law. The Federal Court of Appeal would not have the appropriate record before it if the Tribunal were to substantively vary its orders. There would also be a risk that both the Federal Court of

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Appeal and the Tribunal are simultaneously reviewing the orders. If the Tribunal amended its orders first, the Federal Court of Appeal might find that the judicial review was moot, necessitating an entirely new judicial review if there was a desire to challenge the orders. Re-opening the case would also strain the Tribunal's resources as more litigants sought to challenge final Tribunal decisions.

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[133] In the event that the Tribunal reconsiders its orders, the Commission contends that the Tribunal should apply a human rights lens based on the *CHRA*. The Tribunal's role under the *CHRA* is to provide redress for victims of a discriminatory practice, which requires examining the FSA to determine whether it provides appropriate compensation to victims based on a human rights lens. The Tribunal must apply principles of fairness and access to justice in balancing the expanded beneficiary list under the FSA with those individuals who will receive less compensation or be denied compensation. The Tribunal's focus needs to be on those individuals covered by its prior orders. The Tribunal should not apply a class actions framework.

H. Post-Hearing Submissions

[134] After the hearing, the Panel Chair requested further submissions on specific questions. The first question sought clarification on whether the parties negotiating the FSA negotiate it on the basis that the Tribunal's orders provided compensation for ISC-funded placements of First Nations children. The second question followed up and on the first and asked if a misapprehension of the scope of the Tribunal's orders affected First Nations' support for the FSA. The third question invited further comments from the parties on the issue of individual versus collective rights that the AFN raised in its reply submissions. These submissions are addressed in the reasons as they arise.

IV. Functus officio and Finality

A. Law on *functus officio* and finality

[135] The Panel has previously reviewed the principles of *functus officio* and finality in 2020 CHRT 7:

[54] Furthermore, the Federal Court in *Grover v. Canada (National Research Council)* (1994), 1994 CanLII 18487 (FC), 80 FTR 256, 28 Admin LR (2d) 231 (F.C.) [*Grover*], a case that this Panel relied on in previous decisions in this case (see for example, 2017 CHRT 14, at para. 32, see also 2018 CHRT 4 at para. 39), an application for judicial review of a Tribunal decision had to decide whether the Tribunal had the power to reserve jurisdiction with regards to a remedial order. *Grover* is summarized as follows in *Berberi v. Attorney General of Canada*, 2011 CHRT 23 [*Berberi*]:

> [13] …The Tribunal had ordered that the complainant be appointed to a specific job, but retained jurisdiction to hear further evidence with regards to the implementation of the order. The Federal Court held that although the Act does not contain an express provision that allows the Tribunal to reopen an inquiry, the wide remedial powers set out therein, coupled with the principle that human rights legislation should be interpreted liberally, in a manner that accords full recognition and effect to the rights protected under such legislation, enables the Tribunal to reserve jurisdiction on certain matters in order to ensure that the remedies ordered by the Tribunal are forthcoming to complainants (see *Grover* at paras. 29-36). The Federal Court added:
>
> [14] It is clear that the Act compels the award of effective remedies and therefore, in certain circumstances the Tribunal must be given the ability to ensure that their remedial orders are effectively implemented. Therefore, the remedial powers in subsection 53(2) should be interpreted as including the power to reserve jurisdiction on certain matters in order to ensure that the remedies ordered by the Tribunal are forthcoming to complainants. The denial of such a power would be overly formalistic and would defeat the remedial purpose of the legislation. <u>In the context of a rather complex remedial order</u>, it makes sense for the Tribunal to remain seized of jurisdiction with respect to remedial issues in order to facilitate the implementation of the remedy. This is consistent with the overall purpose of the legislation and with the flexible approach advocated by Sopinka J. in Chandler, supra. It would frustrate the mandate of the legislation to require the complainant to seek the enforcement of an unambiguous order in the Federal Court or to file a new complaint in order to obtain the full remedy awarded by the Tribunal. (*Grover* at para. 33)
>
> [15] Similarly, in *Canada (Attorney General) v. Moore*, 1998 CanLII 9085 (FC), [1998] 4 F.C. 585 [*Moore*], the Federal Court had to determine whether the Tribunal exceeded its jurisdiction by reconsidering and changing a cease and desist order. Having found the complaint to be substantiated, the Tribunal

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made a general direction in its order and gave the parties the opportunity to work out the details of the order while the Tribunal retained jurisdiction. After examining the reasoning in *Grover* and *Chandler*, the Federal Court stated:

[16] The reasoning in these cases supports the conclusion that the Tribunal has broad discretion to return to a matter and I find that it had discretion in the circumstances here. Whether that discretion is appropriately exercised by the Tribunal will depend on the circumstances of each case. That is consistent with the principle set out in *Chandler v. Alberta Association of Architects*, relied upon by the applicant, which dealt with the decision of a board other than the Canadian Human Rights Tribunal. (*Moore* at para. 49)

[17] The Federal Court determined that the Tribunal had reserved jurisdiction and there was no indication that the Tribunal viewed its decision as final and conclusive in a manner that would preclude it from returning to a matter included in the order. Therefore, on the authority of *Grover*, the Federal Court concluded that subsection 53(2) of the Act empowered the Tribunal to reopen the proceedings (see *Moore* at para. 50).

[18] The Tribunal jurisprudence that has considered the *functus officio* principle and interpreted *Grover* and *Moore*, has generally found that absent a reservation of jurisdiction from the Tribunal on an issue, the Tribunal's decision is final unless an exception to the functus officio principle can be established (see *Douglas v. SLH Transport Inc.*, 2010 CHRT 25; *Walden v. Canada (Social Development),* 2010 CHRT 19; *Warman v. Beaumont*, 2009 CHRT 32; and, *Goyette v. Voyageur Colonial Ltée*, (November 16, 2001), TD 14/01 (CHRT)). However, recent Federal Court jurisprudence, decided several years after *Grover* and *Moore* and which examined the authority of the Commission to reconsider its decisions, provides further guidance on the application of the *functus officio* principle to administrative tribunals and commissions.

(*Berberi* at paras. 13-18, emphasis ours)

[21] The application of the functus officio principle to administrative tribunals must be flexible and not overly formalistic (see *Chandler* at para. 21). In *Grover*, in determining whether the Tribunal could supervise the implementation of its remedial orders, the Federal Court recognized that the Tribunal has the power to retain jurisdiction over its remedial orders to ensure that they are effectively implemented. In *Moore*, in deciding whether the Tribunal could reconsider and change a remedial order, the Federal Court expanded on the reasoning

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> in *Grover* and stated that "the Tribunal has broad discretion to return to a matter..." (*Moore* at para. 49). In *Grover* and *Moore*, while the retention of jurisdiction by the Tribunal was a factor considered by the Federal Court in determining whether the Tribunal appropriately exercised its discretion to return to a matter, ultimately, it was not the only factor considered by the Court. In addition to examining the context of each case, the Tribunal must also consider whether "there are indications in the enabling statute that a decision can be reopened in order to enable the tribunal to discharge the function committed to it by enabling legislation" (*Chandler* at para. 22). This method of analyzing the Tribunal's discretion to return to a matter is consistent with the Federal Court's reasoning in *Kleysen* and *Merham*. The question then becomes: considering the *Act* and the circumstances of the case, should the Tribunal return to the matter in order to discharge the function committed to it by the *Canadian Human Rights Act*?
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> [22] The primary focus of the *Act* is to "...identify and eliminate discrimination" (*Robichaud v. Canada (Treasury Board)*, 1987 CanLII 73 (SCC), [1987] 2 S.C.R. 84 at para. 13). In this regard, subsection 53(2) of the *Act* grants the Tribunal broad remedial discretion to eliminate discrimination when a complaint of discrimination is substantiated (see *Grover* at para. 31). Therefore, as the Federal Court has stated, "subsection 53(2) should be interpreted in a manner which best facilitates the compensation of those subject to discrimination" (*Grover* at para. 32). The Act does not provide a right of appeal of Tribunal decisions, and judicial review is not the appropriate forum to seek out the implementation of a Tribunal decision. As the Federal Court indicated to the Complainant: "The Applicant is at liberty to seek an order from the Tribunal with respect to implementation of the remedy" (*Berberi v. Canadian Human Rights Tribunal and Attorney General of Canada (RCMP)*, 2011 FC 485 at para. 65). When the Tribunal makes a remedial order under subsection 53(2), that order can be made an order of the Federal Court for the purposes of enforcement under section 57 of the *Act*. Section 57 allows decisions of the Tribunal to "...be enforced on their own account through contempt proceedings because they, like decisions of the superior Courts, are considered by the legislator to be deserving of the respect which the contempt powers are intended to impose" (*Canada (Human Rights Commission) v. Warman*, 2011 FCA 297 at para. 44).
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> (*Berberi*, at paras. 21-22)

[55] The Panel agrees with the above reasoning outlined in *Berberi* on the retention of jurisdiction over remedial orders to ensure that they are effectively

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implemented and has adopted and followed this approach from the *Merit Decision* and onward.

[56] Additionally, the Tribunal used a similar approach to remedies in *Grant v. Manitoba Telecom Services Inc.*, 2013 CHRT 35 [*Grant*] once the decision on the merits was rendered:

> [3] The Tribunal retained jurisdiction on many of the remedies requested by the Complainant, including the missed pension contributions, in order to get further submissions and clarification from the parties.
>
> [4] Both parties were given the opportunity to provide additional submissions on the Complainant's outstanding remedial requests from *Grant (decision)* on a conference call on July 10, 2012.
>
> (*Grant* at paras. 3-4, emphasis ours).
>
> [7] In *Grant (remedies)*, the Tribunal again retained jurisdiction in the event the parties were unable to reach an agreement on the pension remedy, among others.
>
> [8] The parties have been unable to work out the details of the Complainant's lost pension and disagree on what remedy the Tribunal ordered with respect thereof.
>
> (*Grant*, 2013 CHRT 35 at paras 7-8, emphasis ours).

[57] The Tribunal in *Grant* provided further direction on the remedy in that subsequent ruling. Of interest, this case was challenged at the Federal Court after the decision on the merits while the Tribunal was deciding further remedies. The application for judicial review was ultimately discontinued.

[136] The Tribunal continues to rely on its previous analysis outlined above and will now address the additional case law raised in the parties' submissions.

[137] *Chandler v. Alberta Association of Architects*, [1989] 2 SCR 848 involved a review of the Practice Review Board of the Alberta Association of Architects (the Board) issuing an intention to resume its hearing to address remedies. The Board initially made findings of misconduct and issued related penalties. However, those findings and penalties were struck because the Board lacked the jurisdiction to issue them. The Board only had the power to issue recommendations. After the findings of misconduct and related penalties were overturned, the Board gave notice to the parties that it intended to reconvene to make recommendations that were within its jurisdiction.

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[138] Broadly speaking, the majority of the Supreme Court concluded that the Board had never issued a valid remedy decision. It was therefore entitled to receive further submissions and issue a remedy within its jurisdiction.

[139] In reaching this conclusion, the majority commented that as a general rule, a tribunal cannot revisit a decision because it has changed its mind, made an error or there has been a change in circumstances. It may only alter a decision if authorized by statute, where the error is clerical or there was an error in expressing the manifest intention of the tribunal.

[140] Given that this general rule is based on the policy principle of finality, it must be applied flexibly. That flexibility was appropriate in this case where the Board had not granted any valid remedy. However, this flexibility would not allow a tribunal to alter its remedies once it has issued a valid remedial decision:

> I do not understand Martland J. to go so far as to hold that *functus officio* has no application to administrative tribunals. Apart from the English practice which is based on a reluctance to amend or reopen formal judgments, there is a sound policy reason for recognizing the finality of proceedings before administrative tribunals. As a general rule, once such a tribunal has reached a final decision in respect to the matter that is before it in accordance with its enabling statute, that decision cannot be revisited because the tribunal has changed its mind, made an error within jurisdiction or because there has been a change of circumstances. It can only do so if authorized by statute or if there has been a slip or error within the exceptions enunciated in *Paper Machinery Ltd. v. J. O. Ross Engineering Corp., supra*.
>
> To this extent, the principle of functus officio applies. It is based, however, on the policy ground which favours finality of proceedings rather than the rule which was developed with respect to formal judgments of a court whose decision was subject to a full appeal. For this reason, I am of the opinion that its application must be more flexible and less formalistic in respect to the decisions of administrative tribunals which are subject to appeal only on a point of law. Justice may require the reopening of administrative proceedings in order to provide relief which would otherwise be available on appeal.
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> …
>
> Furthermore, if the tribunal has failed to dispose of an issue which is fairly raised by the proceedings and of which the tribunal is empowered by its enabling statute to dispose, it ought to be allowed to complete its statutory task. If, however, the administrative entity is empowered to dispose of a matter by one or more specified remedies or by alternative remedies, the fact

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> that one is selected does not entitle it to reopen proceedings to make another or further selection.

[141] In its reply submissions, the AFN relies on *Canada (Attorney General) v. Symtron Systems Inc.*, 1999 CanLII 9343 (FCA) for the proposition that the availability of judicial review does not play a determinative role in the Tribunal's ability to revisit its earlier decisions. *Symtron Systems* involved a complaint under NAFTA to the Canadian International Trade Tribunal by an American company, Symtron, that the Department of Defence had not properly evaluated whether a competitor complied with the minimum RFP requirements. The CITT's initial decision directed the Department of Defence to review whether Symtron and the successful proponent met the RFP requirement. The review was silent on the main reason the competitor was alleged to not meet the requirements. Symtron brough the case back to the CITT, which concluded that the Department of Defence had not addressed whether the competitor, International Code Fire Services, met the RFP requirements. The Department of Defence and the competitor sought judicial review.

[142] On judicial review, the Federal Court of Appeal found that *functus officio* did not apply to the second complaint to the CITT because it was a new complaint. Nonetheless, the FCA commented that the CITT must allow "some latitude when faced with a new complaint which might, in other circumstances, be the subject of an appeal or an action for enforcement."

[143] Aside from the distinguishing feature that *Symtron Systems* involved a new complaint, *Symtron Systems* says little about the degree of flexibility a tribunal should have. The specific facts in *Symtron Systems* seem to contemplate approaching the tribunal's jurisdiction flexibly to ensure a remedy is effectively implemented. There was no suggestion in that case that the flexibility extends to revoking or narrowing an earlier remedial decision. Instead, the flexibility is more in line with how the Tribunal has previously interpreted its retained jurisdiction in this case to provide the flexibility to ensure that its remedies are effectively implemented.

[144] The AFN also relies on *Merham v. Royal Bank of Canada*, 2009 FC 1127 for the proposition that an administrative decision-maker can reconsider a decision even after it has been upheld on judicial review.

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[145] *Merham* involved a human rights complaint to the Commission by Mr. Merham against his manager at RBC. The Commission dismissed the complaint when it was first submitted and the Commission's decision was upheld on a judicial review. Mr. Merham did not challenge the judicial review but successfully brought a small claims court action against his manager that called into question his manager's truthfulness during the Commission investigation. Mr. Merham asked the Commission to reconsider its decision in light of this new evidence. The Commission issued brief reasons indicating it had reviewed Mr. Merham's new evidence and declined to further investigate his complaint.

[146] The Court found that the Commission had jurisdiction to reconsider its decisions even though the decision was upheld on judicial review. However, this is "a discretionary power which must be used sparingly in exceptional and rare circumstances" (para. 25).

[147] Nonetheless, the Federal Court upheld the Commission's decision not to further investigate the complaint. The Commission was reasonable in concluding that Mr. Merham's new evidence would not affect the disposition of the case.

[148] *Merham* is of minimal assistance to the AFN. In some cases, if new information comes to light, it might be appropriate for the Tribunal to reconsider its earlier substantive decision. However, the nature of the new information in *Merham* is significantly different than in the current case. The new evidence in *Merham*, according to Mr. Merham's submissions, cast doubt on the evidentiary basis for the Commission's decision. By contrast, in the current decision, the AFN and Canada do not argue that there is new evidence that contradicts the Tribunal's factual findings that the First Nations children identified in the Tribunal's compensation decisions experienced discrimination. Instead, the AFN and Canada wish to replace the Tribunal's orders with a settlement they subsequently negotiated in a class action. That is distinguishable from the circumstances in *Merham* where the Commission was asked to reconsider its decision.

[149] The AFN also relies on *Rogers Sugar Ltd v United Food and Commercial Workers Union, Local 832*, 1999 CanLII 14235 (MB QB) for the proposition that a tribunal can answer questions about whether a course of action not contemplated at the time of the order complies with its order. None of the parties contemplated the more advantageous FSA at

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the time of the Tribunal's compensation orders. The AFN contends that the FSA has the overwhelming support of First Nations across the country and there should not be further delays in providing compensation.

[150] In *Rogers Sugar*, the Court of Queen's Bench of Manitoba examined the arbitrator's decisions concerning the appropriate calculations and amounts for severance payments according to the collective agreement.

[151] Subsequent to the parties' receipt of the award, a dispute arose concerning the calculation of severance pay in the case of permanent employees. The parties asked the arbitrator if the company's method of calculating severance pay as represented by the company's spreadsheet was the appropriate method. The arbitrator confirmed that it was appropriate. No written ruling of this decision was received. The parties continued to disagree on the meaning of the arbitrator's ruling and consequently agreed to approach the arbitrator once more. On September 17, 1997, a letter was sent setting out both points of view. A written letter was sent to the arbitrator setting out the particular issue in dispute the second time, namely, whether the arbitrator's award was intended to completely replace the current language of the collective agreement, in particular the reference to "fraction of a year" set out in the collective agreement. On September 26, 1997, the arbitrator provided the parties with a written decision.

[152] The company submitted that the first consensual approach to the arbitrator to clarify the calculation of the severance pay provisions awarded was appropriate and within the arbitrator's reserved jurisdiction to implement his June 4th award. However, when the arbitrator was asked for a second clarification in September, his decision was not a clarification but rather a reversal of his clarification issued on August 15, 1997.

[153] The Court found the doctrine of *functus officio* applies even if the parties' consent since consent cannot clothe the arbitrator with jurisdiction he does not have. However, the Court cited *Chandler* for the need for flexibility when administrative tribunals apply this principle. The principle is based on the policy ground which favours finality of proceedings. The arbitrator was not *functus officio* and did not exceed his jurisdiction when it clarified its order on both occasions, he was within his retained jurisdiction of implementing his award

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and was attempting to clarify his decision in response to specific questions asked. The Court wrote this “must be understood in the context of the question which was placed before him” (para. 33). In sum, “the arbitrator’s actions in both August and September of 1997 were in the nature of clarification and therefore he was not functus” (para. 33, emphasis added). Notably, the Court did not find the arbitrator to reverse a previous decision that he had made but rather clarified an unclear order.

[154] It also stands for the proposition that flexibility and a less formalistic approach must be applied by administrative tribunals when asked to reopen a matter: “Justice may require the reopening of administrative proceedings in order to provide relief which would otherwise be available on appeal (in a court proceeding). (p. 862) (Chandler was followed in Canada Post Corp. v. C.U.P.W. (1991), 84 D.L.R. (4th) 574.)” (para. 31). The Court stated the principle of *functus officio* is subject to two exceptions. It does not apply where there has been a slip or a clerical error in drawing up the judgment. It also does not apply when there has been an error in expressing the manifest intention of the fact finder.

[155] This second case clarifying the manifest intention of the fact finder applies in the Tribunal’s current case should the parties request that the Tribunal clarify the non-ISC, categories of removed children further discussed below and also supports previous requests for clarification. This also supports the Tribunal's approach to retained jurisdiction and previous decisions that, for example, clarified that the estates of otherwise eligible victims were within the scope of the Tribunal’s initial *Compensation Decision* and are owed compensation. Similarly, the Tribunal is not precluded from approving the FSA because it includes beneficiaries that the Tribunal had not previously been asked to consider. However, the case does not support disentitlements for the purpose of compromise through negotiation and in light of a cap on compensation.

[156] In fact, in light of the parties' disagreements in *Rogers Sugar,* the arbitrator clarified that he had no intention to reduce entitlement. The written decision states: “It was not my intention to reduce in any way the existing entitlement for severance (permanent employees) while I was adding some additional entitlement for those with long service. Therefore, the “fraction of a year” was meant to remain,” (para. 9). The arbitrator later further clarified his order.

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[157] *Rogers Sugar* supports the Tribunal's approach to considering the FSA, to reconvene for a hearing on the contested issue of non-ISC removed children and for further clarification of its orders. However, it does not support an amendment to its previous compensation orders to remove entitlements to victims/survivors when no errors were made concerning those victims/survivors.

[158] The AFN submits that *Zutter v. British Colombia (Council of Human Rights)*, [1995] 57 BCAC 241, 1995 CanLII 1234 (BC CA) applies here and that it stands for the proposition that a Human Rights Tribunal may reconsider its own decisions simply by virtue of the fact that it is a Human Rights Tribunal.

[159] The Panel disagrees with the AFN's interpretation of this decision and finds the facts and issues entirely different from the case at hand:

> [1] The issue on this appeal is whether the British Columbia Council of Human Rights (the "Council") has the jurisdiction to re-open a complaint which has been discontinued by the Council under s. 14(1)(a) of the *Human Rights Act*, S.B.C. 1984, c. 22 (the "Act").

[160] For unclear reasons, Mr. Zutter was not notified of the decision to discontinue the complaint until September 23, at which time he discovered that no written response to the investigation report summary had ever been received by the Council. He dismissed his solicitor and lodged a complaint with the Law Society. The Court was advised that the solicitor in question was subsequently disciplined for his failure to represent Mr. Zutter adequately (para. 12).

> [13] In the meantime, Zutter once again turned to the Coalition for assistance, and on 30 September 1991 the Coalition wrote asking the Council to re-open the matter and consider the submissions which, by reason of his solicitor's ineptitude, Zutter had been denied the opportunity to make before Council took its decision to discontinue his complaints. Relying on s. 15 of the Act, the Council responded by stating that it did not have the statutory authority to reconsider its decision:
>
> > 15. A determination under section 14(1)(a), an order under section 14(1)(d)(ii) or section 14(3) or the dismissal of a complaint under section 14(1)(d)(i) shall be communicated in writing to the complainant and the person who is alleged to have contravened this Act, and, where the proceedings are discontinued or the complaint is dismissed, no further

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> proceedings under this Act shall be taken in relation to the subject matter of the discontinued proceedings or the dismissed complaint.

[14] A further request to re-open, made on Zutter's behalf by the B.C. Public Interest Advocacy Centre in December of 1991, was rejected by the Council in a letter dated 7 February, 1992, the relevant portions of which read as follows:

> The Council does not consider that, once notice of the investigation report and a reasonable opportunity for response have been provided, the principle of procedural fairness imposes a duty to enquire as to the status of a party's response, particularly where the party is represented by legal counsel. In the Council's view, the process of disclosure following completion of the investigation is dictated by the requirements of procedural fairness and is not part of the investigative process as such.
>
> For the above reasons, The Council concludes that the required standard of procedural fairness has been met. Therefore, your request that the Council reconsider its decision of July 25, 1991 is denied.

[161] The Court found:

> [23] … it cannot be doubted that from Zutter's point of view, and indeed from that of any reasonable person, the result to him is unfair in the ordinary sense of that word. Thus, it would be an unfortunate irony if the Council, whose very existence and remedial purpose is characterized by the fundamental values of fairness and justice, nonetheless lacked the jurisdiction to remedy that unfairness.
>
> …
>
> [31] I do not accept the argument of the appellants that the equitable jurisdiction described by Martland J. in *Grillas* must be viewed as subservient to the doctrine of functus officio, in the case of all administrative tribunals except those where such jurisdiction is expressly stated to exist, in order to give effect to the "sound policy" of finality in the proceedings of such tribunals. That policy will necessarily govern the manner in which the jurisdiction to reconsider is exercised by the Council, thus ensuring its restrictive application, just as the power of this Court to admit fresh evidence is carefully and restrictively exercised in deference to the same policy.
>
> [32] The equitable jurisdiction to reconsider was recognized to exist in, and found to have been properly exercised by, the administrative tribunals under consideration in *Re Lornex Mining Corporation Ltd*., 1976 CanLII 1123 (BC SC), [1976] 5 W.W.R. 554 (B.C.S.C.), in *Re Ombudsman of Ontario and the Minister of Housing* (1979), 1979 CanLII 1933 (ON SC), 103 D.L.R. (3d) 117

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> (Ont.H.C.), aff'd, (1980), 1980 CanLII 1740 (ON CA), 117 D.L.R. (3d) 613 (Ont.C.A.), and more recently *in Attorney General of Canada v. Grover and Canadian Human Rights Commission* (4 July, 1994), T-1945-93 [reported 1994 CanLII 18487 (FC), 24 C.H.R.R. D/390] (F.C.T.D.). In each case, the jurisdiction was exercised notwithstanding the absence of any express acknowledgement of its existence in the tribunal's enabling statute. The judge below applied the first two of these authorities when reaching his conclusion that the Council had jurisdiction to reconsider its decision to discontinue Zutter's complaints in the circumstances of this case, and I am of the view that he was right to do so.

[162] This paragraph citing *Grover*, supports the Tribunal's approach to retention of jurisdiction on remedial orders including on long-term reform and the orders requested from the parties in 2022 CHRT 8. However, it does not go as far as supporting removing compensation entitlements to victims/survivors that were vindicated in Tribunal orders subsequently affirmed by the Federal Court. Even in the absence of a Federal Court decision, once the Tribunal has made compensation entitlements orders to victims/survivors, it cannot disentitle them absent a Federal Court order to do so for unreasonableness.

B. The Tribunal's retained jurisdiction on the compensation issue and the issues of functus officio and finality of its orders

[163] **The Tribunal is not functus to consider if the FSA fully satisfies the Tribunal's orders and finds it substantially but not fully satisfies the Tribunal's orders.**

[164] As it will be demonstrated below, the Panel remained seized of all its compensation orders to ensure effective implementation of its orders.

[165] Further, the Panel is not barred by the Federal Court decision from reviewing the FSA in order to consider if the FSA fully satisfies the Tribunal's orders.

[166] From 2019 to 2022 the Tribunal issued a series of rulings on the issue of compensation. We will look at them in turn and highlight some portions that are relevant to this motion.

[167] The first compensation ruling also called by the parties as the *Compensation Entitlement Decision* is 2019 CHRT 39. This decision is extensive and focuses on the

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evidence of harm, pain and suffering to First Nations children and families and the government's actions which were found to be devoid of caution. The *CHRA* is structured in a way where the remedies are at the discretion of the Tribunal Member(s) once the complaint is substantiated. There are many cases where discrimination has been found and no special compensation was awarded. This stems from the fact that the evidence of conduct that is devoid of caution must be established on a balance of probabilities. In some cases, this may not be found by the Tribunal. In this case, the Panel provided extensive reasons to support its findings of fact and legal conclusions. All the other compensation rulings follow the same reasoning found in the *Compensation Entitlement Decision*. The quantum of compensation awarded was also established at the Complainants' request, including the AFN who was mandated by the Chiefs-in-Assembly to seek the maximum compensation amounts under the *CHRA (*see AFN directed by the *Chiefs in Assembly resolution no.85/2018)*. The Tribunal agreed and also ensured that victims/survivors who desire to obtain more than the maximum amount of compensation under the *CHRA* could do so through other recourses. Of note, the AFN welcomed the *Compensation Entitlement Decision* and also defended it in Federal Court. The Federal Court agreed with the AFN, the Caring Society and the Commission. The decision was found to be reasonable. As will be evident in reviewing the compensation decisions, the quantum for compensation was established in the first compensation decision and was never revisited throughout the series of rulings. What was asked following the *Compensation Entitlement Decision* was to clarify and add entitlements, not remove them, based on the evidence and to clarify definitions. The balance of the requests was for the purpose of establishing a compensation process, trust funds and the approval of a framework for compensation.

[168] At the beginning, of the first compensation ruling, the Tribunal provided reasons and set the table for the compensation process:

> XV. Process for compensation
>
> [258] The Panel in considering access to justice, efficiency and expeditiousness has opted for the above orders to avoid a case-by-case assessment of degrees of pain and suffering for each child, parent or grandparent referred to in the orders above. As stated by the NAN, there is no perfect solution on this issue, the Panel agrees. The difficulty of the task at hand does not justify denying compensation to victims/survivors. In

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recognizing that the maximum of $20,000 is warranted for any of the situations described above, the case-by-case analysis of pain and suffering is avoided and it is attributed to a vulnerable group of victims/survivors who as exemplified by the evidence in this case have suffered as a result of the systemic racial discrimination. Some children and parents or grandparents may have suffered more than others however, the compensation remedies are capped under the *CHRA* and the Panel cannot award more than the maximum allowed even if it is a small amount in comparison to the degree of harm and of racial discrimination experienced by the First Nations children and their families. The maximum compensation awarded is considered justifiable for any child or adult being part of the groups identified in the orders above.

[259] This type of approach to compensation is similar to the Common Experience Payment compensation in the IRSSA outlined above. The Common Experience Payment recognized that the experience of living at an Indian Residential School had impacted all students who attended these institutions. The CEP compensated all former students who attended for the emotional abuse suffered, the loss of family life, the loss of language, culture, etc. (see Affidavit of Mr. Jeremy Kolodziej's dated April 4 2019 at, para. 10).

[260] The Panel prefers AFN's request that compensation be paid to victims directly following an appropriate process instead of being paid in a fund where First Nations children and families could access services and healing activities to alleviate some of the effects of the discrimination they experienced. The Panel is not objecting to a trust fund per se, rather it objects that the compensation be paid in a trust fund to finance services and healing activities in lieu of financial compensation as suggested by the Caring Society. Such meaningful activities should be offered by Canada however, not in replacement of financial compensation to victims/survivors. Financial compensation belongs to the victims/survivors who are the ones who should be empowered to decide for themselves on how best to use this financial compensation.

[261] However, the Panel also acknowledges the Caring Society's argument that it is not appropriate to pay $40,000 to a 3-year-old. Therefore, there is a need to establish a process where the children who are under 18 or 21 years old have the compensation paid to them secured in a fund that would be accessible upon reaching majority.

[262] In terms of Jordan's Principle, many children who were denied services and who are still living with their parents could have the compensation funds administered by their parents or grandparents until the age of majority.

[263] For all the other children who have no parents, grandparents or responsible adult family members and who are underage, a trust fund could be an option amongst others that should be part of the discussions referred to below.

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> [264] Special protections for mentally disabled children and parents or grandparents who abuse substances that may affect their judgment should be considered in the process.
>
> [265] It would be preferable that the social benefits of victims/survivors not be affected by compensation remedies. This can form part of the process for compensation discussions.
>
> [266] The possibility for individual victims/survivors to opt-out should form part of this compensation process.
>
> [267] Given that the parties and interested parties in this case are all First Nations except the Commission and the AGC and, that they all have different views on the appropriate definition of a First Nations child in this case, it is paramount that this form part of the discussions on the process for compensation. The Panel reiterates that it recognizes the First Nations human rights and Indigenous rights of self-determination and self-governance.
>
> [268] If a trust fund and/or committee is proposed, it may be valuable to also include non-political members on the trust fund and/or committee such as adult victims/survivors, Indigenous women, elders, grandmothers, etc.
>
> [269] Additionally, the Panel recognizes the need for a culturally safe process to locate the victims/survivors identified above namely, First Nations children and their parents or grandparents. The process needs to respect their rights and their privacy. The Indian registry and Jordan's Principle process and record are tools amongst other possible tools to assist in locating victims/survivors. There is also a need to establish an independent process for distributing the compensation to the victims/survivors. The AFN and the Caring Society have both expressed an interest to assist in that regard. Therefore, Canada shall enter into discussions with the AFN and the Caring Society on this issue. The Commission and the interested parties should be consulted in this process however, they are not ordered to participate if they decide not to. The Panel is not making a final determination on the process here rather, it will allow parties to discuss possible options and return to the Tribunal with propositions if any, no later than December 10, 2019. The Panel will then consider those propositions and make a determination on the appropriate process to locate victims/survivors and to distribute compensation. (emphasis added).
>
> [270] As part of the compensation process consultation, the Panel welcomes any comment/suggestion and request for clarification from any party in regards to moving forward with the compensation process and/or the wording and/or content of the orders. For example, if categories of victims/survivors should be further detailed and new categories added. (2019 CHRT 39)

[169] This clearly indicates that the Tribunal did not recognize that it was *functus* on the issue of compensation or that all orders were complete. Notably, however, the question of quantum of compensation was never up for discussion and no suggestion was made by the

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Tribunal or the parties to modify the quantum of compensation or to reduce or disentitle categories already recognized by the Tribunal in its compensation orders. In fact, this aspect was final and supported by findings and reasons and sent a strong deterrent message to Canada and a message of hope to the victims/survivors whose rights were vindicated by those findings and corresponding orders. Further, the Tribunal's reasons illustrate the significant difference between systemic human rights remedies and those flowing from tort law. The Tribunal noted the important purpose of individual compensation for victims of discrimination:

> was necessary to deter the reoccurrence of the discriminatory practice or of similar ones, and more importantly to validate the victims/survivors' hurtful experience resulting from the discrimination.
>
> (2019 CHRT 39 at para 14).

[170] Indeed, in the *Compensation Entitlement Decision*, 2019 CHRT 39, at para. 206, the Tribunal also made clear that its obligations are to safeguard the human rights of the victims/survivors it identified, irrespective of any proposed class proceedings:

> The fact that a class action has been filed does not change the Tribunal's obligations under the *Act* to remedy discrimination and if applicable, as it is here, to provide a deterrent and discourage those who discriminate, to provide meaningful systemic and individual remedies to a group of vulnerable First Nations children and their families who are victims/survivors in this case.

[171] More recently, the Nova Scotia Court of Appeal, made significant comments in *Disability Rights Coalition v. Nova Scotia (Attorney General),* 2021 NSCA 70, regarding the important societal purpose of deterrence in cases involving government behaviour:

> [254] In *Vancouver (City) v. Ward*, 2010 SCC 27 ("Ward") the Supreme Court of Canada cited the critical role that deterrence plays in arriving at damage awards against governments to compensate for rights violations. Deterrence is a real, necessary and significant factor:
>
> > [29] […] Deterrence, like vindication, has a societal purpose. Deterrence seeks to regulate government behaviour, generally, in order to achieve compliance with the Constitution. […] Similarly, deterrence as an object of Charter damages is not aimed at deterring the specific wrongdoer, but rather at influencing government behaviour in order to secure state compliance with the Charter in the future.
>
> […]

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> [256] In *Walsh*, the Alberta Court of Appeal also commented on the importance of an award acting as a deterrent against future discriminatory conduct:
>
> > [31] Human rights legislation must be accorded a broad and purposive interpretation having regard to its fundamental purpose: to recognize and affirm that all persons are equal in dignity and rights and to protect against and compensate for discrimination. In addition to compensating victims of discrimination, the remedial authority under human rights legislation serves another important societal goal: to prevent future discrimination by acting as both a deterrent and an educational tool: *Robichaud v. Brennan*, [1987] 2 S.C.R. 84 (S.C.C.).
> >
> > [32] Damage awards that do not provide for appropriate compensation can minimize the serious nature of the discrimination, undermine the mandate and principles that are the foundation of human rights legislation, and further marginalize a complainant. Inadequate awards can have the unintended but very real effect of perpetuating aspects of discriminatory conduct.
> >
> > [33] Human rights tribunals recognize that both pecuniary and non-pecuniary, or general, damages can and should be awarded in appropriate cases.
>
> [257] We are of the view that the Board erred in failing to take into account the deterrent impact of any damage award that it might make, (emphasis added).

[172] The Panel also awarded interest on compensation in the *Compensation Entitlement Decision* which reinforces the finality of the quantum of compensation awarded.

> [274] Subject to the rules made under section 48.9, an order to pay compensation under this section may include an award of interest at a rate and for a period that the member or panel considers appropriate.
>
> [275] As such, the Panel grants interest on the compensation awarded, at the current Bank of Canada rate, as follows:
>
> [276] The compensation for pain and suffering and special compensation includes an award of interest for the same periods covered in the above orders. This approach was used by the Tribunal in the past (see for example, *Grant v. Manitoba Telecom Services Inc*., 2012 CHRT 20 at, para. 21).
>
> (2019 CHRT 39)

[173] This being said, the Panel agrees with Canada and the AFN that the Federal Court in affirming the Tribunal's orders found the Tribunal had made reasonable decisions within

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the range of different reasonable outcomes. This is not to be understood that once final orders on compensation quantum and categories of victims/survivors have been made, they can later be changed to accommodate a settlement that reduces or removes some entitlements to include others within a fixed amount of money. This exercise may be reasonable when orders have not yet been made. The agreement occurred after the evidence-based findings and orders were made confirming compensation entitlement to categories of victims/survivors by this Tribunal. This important fact is determinative in considering the FSA. The Tribunal was open to adding people which is exactly what the FSA does and on this point the Tribunal is very pleased.

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[174] However, the Tribunal never envisioned reducing compensation quantum or disentitling the victims/survivors who have already been recognized before the Tribunal through evidence-based findings in previous rulings. The difficulty would not have occurred but for the fixed amount of $20 billion that Canada offered, which forced First Nations to make difficult choices. We will return to this aspect below.

[175] The request that the Tribunal approve the FSA would have been entirely different and more appropriate if the FSA had been presented to the Tribunal before the Tribunal had issued its orders or if the FSA included all victims/survivors covered by the Tribunal's orders.

[176] The compensation process continues at this time and the Tribunal foresaw that the parties could appear before the Tribunal to seek clarifications and further orders on process and implementation. An example of seeking clarification is when the parties' different interpretation of the Tribunal's orders impacts the implementation of the orders.

[177] Now the Tribunal has made entitlement orders upheld by the Federal Court. The Tribunal's decision remains untouched at this time. It is open to the parties to come back before the Tribunal for the implementation phase.

[178] Moreover, the parties could not contract out or ask the Tribunal to amend its evidence-based findings establishing systemic racial discrimination and related orders in the *Merit Decision* to a finding that there never was racial discrimination and, therefore, no remedy is required. In the same vein, if evidence-based findings are made that victims/survivors have suffered and should be compensated, the parties cannot contract out

or ask the Tribunal to amend its previous evidence-based findings and related orders to a finding that certain victims/survivors entitled by this Tribunal have not suffered and should no longer receive compensation.

[179] This is significantly different than asking the Tribunal to make a finding based on new evidence presented that demonstrates that some aspects of the discrimination found by this Tribunal has ceased in compliance with the injunction-like order made by this Panel to cease the discriminatory practice or that some amendment requests may enhance the Tribunal's previous orders to eliminate discrimination (2022 CHRT 8). The Tribunal's retention of jurisdiction is to ensure its orders are effectively implemented. This includes not narrowing its orders (see for example Jordan's Principle definition in 2017 CHRT 14) and eliminating the discrimination found in a complex nation-wide case involving First Nations from all regions. This is done through reporting, motions, clarification requests, etc. and findings are made on the evidence.

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[180] Moreover, in 2022 CHRT 8, the Tribunal accepted to make a finding based on the evidence, its previous findings and orders to amend its orders to establish an end date for compensation:

> Pursuant to 2019 CHRT 39 at paragraphs 245, 248, 249 and 254, establish March 31, 2022, as the end date for compensation for removed First Nations children and their parents/caregiving grandparents
>
> (2022 CHRT 8 at para. 172.9).

[181] Of note, this finding was made on the evidence presented that linked the increased sustainable prevention funding and community-based programs with the ceasing of removals of children from their homes, families and communities:

> [149] The above findings demonstrate the need for culturally appropriate and safe prevention services that address the key drivers resulting in First Nations children entering care and the need for adequately funded and sustainable prevention services that are tailored to the distinct needs of First Nations children, families and communities.
>
> [150] The elimination of the mass removal of children is achievable when a real shift is made from reactive services that bring children into care to preventive services, especially when prevention services are developed and delivered by the First Nations children's respective First Nations communities.

> The evidence provided by the parties demonstrates that this shift will be made possible with the April 1, 2022 implementation of increased prevention funds provided to First Nations and First Nations child and family service providers across Canada.
>
> [151] Finally, the consent orders discussed above are in line with the Panel's findings and orders. The Panel believes the full and timely implementation of those orders will significantly improve the lives of First Nations children, families and communities.
>
> (2022 CHRT 8)

[182] The Panel agrees with Canada that this is not the first time the Tribunal has significantly amended an order, as demonstrated by the order in 2022 CHRT 8 discussed above. Although consent is not a precondition to jurisdiction, both the Commission and the Caring Society agreed that the Tribunal had the authority to make that order. The 2022 CHRT 8 order made substantive changes to this Tribunal's previous orders. It ordered Canada to fund post-majority care at actual costs; fund additional research by the Institute of Fiscal Studies and Democracy; fund prevention measures on an ongoing basis at $2500, adjusted for inflation, per person for those persons on reserve and in the Yukon; and, finally, it set March 31, 2022, as the end date for compensation for removed children and their caregiving parents and grandparents.

[183] The Panel finds that the 2022 CHRT 8 amendments clearly are in line with the retained jurisdiction to ensure discrimination is eliminated and does not reoccur.

[184] The preceding example supports the fact that the Tribunal had retained jurisdiction to ensure effective implementation of its orders. The Tribunal expanded its orders and amended its orders to establish an end date for compensation based on the evidence provided that removals of children from their communities are being eliminated through sustainable and adequately funded community-led and developed programs.

[185] Moreover, to determine if the Tribunal can amend its orders, one needs to look at the nature of the amendments sought and the evidence supporting the amendments. Furthermore, a close look at the orders linked to the findings and reasons is necessary to determine if the nature of the amendments sought is permissible.

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[186] Following the *Compensation Entitlement Decision*, the Tribunal issued another ruling, 2020 CHRT 7, explaining the nature and purpose of the Tribunal's retention of jurisdiction:

> [51] The Panel in its *Compensation Decision*, has clearly left the orders open to possible amendments in case any party, including Canada, wanted to add or clarify categories of victims/survivors or wording amendments to the ruling similar to the process related to the Tribunal's ruling in 2018 CHRT 4 and also informed by the process surrounding the Tribunal's rulings in 2017 CHRT 14 and 2017 CHRT 35. While this practice is rare, in this specific ground-breaking and complex case it is beneficial and also acknowledges the importance of the parties' input and expertise in regards to the effectiveness of the Panel's orders, (emphasis added).
>
> [52] The Panel explicitly retained jurisdiction over compensation (see *Compensation Decision* at para. 277), including on a number of issues as part of the compensation process consultation, welcoming any comments, suggestions and requests for clarification from any party in regards to moving forward with the compensation process and the wording or content of the orders. For example, whether the categories of victims/survivors should be further specified or new categories added (see *Compensation Decision* at para. 270), (emphasis added).
>
> [53] This is a clear indication that the Panel was open to suggestions for possible modifications of the *Compensation Decision* Order, welcoming comments and suggestions from any party. The Panel originally chose the January 1, 2006 and December 2007 cut-off dates following the Caring Society's requests in its last compensation submissions with the understanding that the evidence before the Tribunal supported those dates and also supported earlier dates as well. Considering this, instead of making orders above what was requested, the Panel opted for an order including the possibility of making amendments or further compensation orders. The Panel was mindful that parties upon discussion of the compensation orders and process may wish to add or further specify categories of compensation beneficiaries. This process is complex and requires flexibility, (emphasis added).
>
> …
>
> [74] The Panel relies on its *Compensation Decision* Order in 2019 CHRT 39 and adds the following further orders:
>
> [75] Canada is ordered to pay compensation under s. 53(2)(e) pain and suffering ($20,000) and s. 53(3) wilful and reckless discriminatory practice ($20,000) to First Nations children living on reserve and in the Yukon Territory, who were removed from their homes and taken into care for compensable reasons prior to or on January 1, 2006 and remained in care on January 1, 2006, per the Tribunal's *Compensation Decision* Order.

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> [76] Canada is also ordered to pay compensation under s. 53(2)(e) pain and suffering ($20,000) and s. 53(3) wilful and reckless discriminatory practice ($20,000) to First Nations parents or caregiving grandparents living on reserve and in the Yukon Territory of First Nations children living on reserve and in the Yukon Territory, who were removed from their homes and were taken into care for compensable reasons prior to or on January 1, 2006 and remained in care on January 1, 2006, per the Tribunal's *Compensation Decision* Order.
>
> …
>
> [151] The Panel relies on its *Compensation Decision* Order in 2019 CHRT 39 and adds the following further order:
>
> [152] Canada is ordered to pay compensation under s. 53(2)(e) pain and suffering ($20,000) and s. 53(3) wilful and reckless discriminatory practice ($20,000) to the estates of all First Nations children and parents or caregiving grandparents who have died after suffering discriminatory practices described in the Compensation Decision Order, including the referenced period in the Order above mentioned in Question 2.

[187] Again, none of the reasons above support a compensation disentitlement or a reduction of quantum. Rather, they support adding and clarifying orders, not removing entitlements. The quantum in the *Compensation Entitlement Decision* is also followed in the added orders. This reinforces the finality of the quantum orders. In adding more beneficiaries entitled to compensation, the amounts of compensation already ordered are applied to them in the same manner. No request was made by the AFN to reduce the amounts of compensation to those added categories. In fact, the AFN and the Caring Society argued to add them as forming part of the Tribunal's previous compensation orders. The Tribunal examined the evidence and submissions and made findings justifying the additional orders.

[188] Further, the Tribunal's willingness to clarify compensation entitlements and the possibility of adding, not removing, beneficiaries in light of the evidence presented is clear:

> [154] Furthermore, the Panel requests submissions on this point and, on whether First Nations children living on reserve or off-reserve who, as a result of Canada's racial discrimination found in this case, experienced a gap, delay and/or denial of services, were deprived of essential services and were removed and placed in out-of-home care in order to access services prior to December 12, 2007 or on December 12, 2007 and their parents or caregiving grandparents living on reserve or off-reserve should receive compensation. The Panel also requests submissions on whether First Nations children living on reserve or off-reserve who were not removed from the home but experienced a gap, delay and/or denial of services, were deprived of essential

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> services as a result of the discrimination found in this case prior to December 12, 2007 or on December 12, 2007 and their parents or caregiving grandparents living on reserve or off-reserve should be compensated.
>
> [155] The Panel will establish a schedule for parties to make submissions on the questions and comments identified in the two preceding paragraphs.
>
> [156] Additionally, the interested parties, the Chiefs of Ontario and the Nishnawbe Aski Nation have requested further amendments to the compensation orders to broaden the compensation orders to include off-reserve First Nations children and to include a broader class of caregivers reflecting caregiving practices in many First Nations communities including aunties, uncles, cousins, older siblings, or other family members/kin who were acting in a primary caregiving role, amongst other things. The Panel has questions for the interested parties and parties on these issues. The Panel will establish a schedule for parties to make submissions on the Panel's questions and will make a determination once the questions are fully answered. Depending on the outcome, the Panel may further amend the compensation orders. (emphasis added).
>
> [157] The Panel retains jurisdiction until the issue of the process for compensation has been resolved by consent order or otherwise and will then revisit the need for further retention of jurisdiction on the issue of compensation. This does not affect the Panel's retention of jurisdiction on other issues in this case.
>
> (2020 CHRT 7)

[189] In a subsequent ruling, 2020 CHRT 15, the Panel referred to its previous compensation orders and quantum when asked to broaden its order and provide clarifications:

> [2] In the *Compensation Decision*, Canada was ordered to pay compensation in the amount of $40,000 to victims of Canada's discriminatory practices under the First Nations Child and Family Services Program (FNCFS program) and Jordan's Principle. This Panel ordered Canada to enter into discussions with the Assembly of First Nations (AFN) and the First Nations Child and Family Caring Society of Canada (Caring Society) and to consult with the Canadian Human Rights Commission (Commission) and the interested parties, the Chiefs of Ontario (COO) and the Nishnawbe Aski Nation (NAN), to co-develop a culturally safe compensation process framework including a process to locate the victims/survivors identified in the Tribunal's decision, namely First Nations children and their parents or grandparents. The parties were given a mandate to explore possible options for the compensation process framework and return to the Tribunal. The AFN, the Caring Society and Canada have jointly indicated that many of the COO, the NAN and the Commission's suggestions were incorporated into the Draft Compensation Framework and Draft Notice Plan. The Panel believes that this is a positive outcome.

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> [3] However, some elements of the Draft Compensation Framework are not agreed upon by all parties and interested parties. In particular the two interested parties, the COO and the NAN, made additional requests to broaden the scope of the Compensation Decision orders with which the other parties did not agree, as it will be explained below. Further, the COO and the NAN made a number of specific requests for amendments to the Draft Compensation Framework. The NAN's requests mainly focus on remote First Nations communities, some of which will be discussed below. This reflects the complexity of this case in many regards. The Panel is especially mindful that each First Nation is unique and has specific needs and expertise. The Panel's work is attentive to the inherent rights of self-determination and of self-governance of First Nations which are also important human rights. When First Nations parties and interested parties in this case present competing perspectives and ask this Tribunal to prefer their strategic views over those of their First Nations friends, it does add complexity in determining the matter. Nevertheless, the Panel believes that all the parties and interested parties' views are important, valuable and enrich the process. This being said, it is one thing for this Panel to make innovative decisions yet, it is another to choose between different First Nations' perspectives. However, a choice needs to be made and the Panel agrees with the joint Caring Society, AFN, and Canada submissions and the AFN's additional submissions on caregivers which will be explained below. At this point, the Panel's questions have now been answered and the Panel is satisfied with the proposed Draft Compensation Framework and Draft Notice Plan and will not address all of the interested parties' suggestions that were not accepted by the other parties (i.e. the Caring Society, the AFN and Canada) ordered to work on the Draft Compensation Framework. The Panel will address the contentious issue involving specific definitions including some suggestions from the NAN concerning remote First Nations communities and two substantial requests from the COO and the NAN to broaden the scope of compensation below. For the reasons set out below, the Panel agrees with the Caring Society, the AFN and Canada's position on the COO and the NAN's requests.

(Emphasis added)

[190] The Tribunal's retention of jurisdiction allowed it to address wording clarifications related to the compensation orders:

> [4] Discussions between Canada, the AFN and the Caring Society on a compensation scheme commenced on January 7, 2020. The discussions resulting in the Draft Compensation Framework and Draft Notice Plan have been productive, and the parties have been able to agree on how to resolve most issues. At this point, there remains disagreement on three important definitions on which the parties cannot find common ground. These definitions are "essential service", "service gap" and "unreasonable delay". While the Panel is not imposing the specific wording for the definitions, the Panel

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> provides reasons and guidance to assist the parties in finalizing those definitions as it will be explained below.
>
> (2020 CHRT 15)

[191] The compensation process was viewed by the parties as follows and the Tribunal agreed:

> [5] The Caring Society, the AFN and Canada wish to clarify the proposed process for the completion of the Tribunal's orders on compensation. As the AGC outlined in its April 30, 2020 letter, the Complainants and the Respondent are submitting the Draft Compensation Framework and Draft Notice Plan for the Tribunal's approval in principle. Once the Tribunal releases its decision on the outstanding Compensation Process matters, the Draft Compensation Framework will be adjusted to reflect said orders and will undergo a final copy edit to ensure consistency in terms. The Complainants and the Respondent will then consider the document final and will provide a copy to the Tribunal to be incorporated into its final order. The Panel agrees with this proposed process.
>
> (2020 CHRT 15)

[192] In light of the above, the Tribunal approved the Draft Compensation Framework and Draft Notice Plan "in principle" and discussed the opt out provision:

> [12] The Panel has studied the Draft Compensation Framework and Draft Notice Plan alongside all the parties', including interested parties', submissions and requests. The Panel approves the Draft Compensation Framework and Draft Notice Plan "in principle", with the exception of the issues addressed below. The "in principle" approval should be understood in the context that this framework is not yet finalized and that the parties will modify this Draft Compensation Framework and Draft Notice Plan to reflect the Panel's reasons and orders on the outstanding issues regarding compensation. The Draft Compensation Framework, Draft Notice Plan and the accompanying explanations in the joint Caring Society, AFN and Canada submissions provide the foundation for a Nation-wide compensation process. The opt-out provision in the Draft Compensation Framework addresses the right of any beneficiary to renounce compensation under this process and pursue other recourses should they opt to do so. The opt-out provision protects the rights of people who disagree with this process and who prefer to follow other paths. The Panel expects that the parties will file a final Draft Compensation Framework and final Draft Notice Plan seeking a consent order from this Tribunal.
>
> (2020 CHRT 15)

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[193] The Tribunal's orders in 2020 CHRT 20 and 2020 CHRT 36 have impacted the compensation entitlement in broadening the categories of victims once the Tribunal had clarified the First Nation children who are recognized by their Nation are eligible under Jordan's Principle.

[194] Again, none of the above findings support a reduction of quantum or a disentitlement of compensation for any category of victims/survivors recognized in the Tribunal's orders.

[195] None of the orders entertain or envision a disentitlement of compensation once orders have been made. On the contrary, the Tribunal ensured the victims/survivors could opt out and/or also pursue other recourses to obtain more compensation if they so desired. The Tribunal had discussions with parties on expanding, not removing, categories of beneficiaries. However, the parties submitted adding beneficiaries may jeopardize the entire compensation process:

> [10] The NAN also made submissions in favour of such broadened compensation orders as described above. However, upon consideration, the Panel does not want to jeopardize the compensation process as a whole.
>
> (2020 CHRT 15)

[196] The Tribunal was cautioned by the AFN to reject the NAN's requests to expand compensation. The AFN feared that it would jeopardize the compensation process. The Tribunal agreed with the AFN.

[197] Moreover, the Tribunal's retention of jurisdiction on compensation was necessary given the Tribunal's supervisory role in the compensation process. As it will be further demonstrated below, the same can be said about the compensation payment process under the Compensation Framework once the guide is finalized by the parties.

[198] Of note, Canada itself viewed the compensation orders as final and argued against reopening those orders:

> [9] Canada argues that their comments on the temporal scope above do not suggest a reopening of these compensation orders under Jordan's Principle. Additionally, Canada submits that the complaint mentioned Jordan's Principle and did not mention services prior to the adoption of Jordan's Principle in December 2007.

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…

> [176] The Panel retains jurisdiction until the process for compensation issue has been resolved by consent order or otherwise and will then revisit the need for further retention of jurisdiction on the issue of compensation. This does not affect the Panel's retention of jurisdiction on other issues in this case.
>
> (2020 CHRT 15)

[199] In 2021 CHRT 6, the Tribunal addressed its retention of jurisdiction as follows:

> [135] The Tribunal retains jurisdiction on all its compensation orders including the approval and implementation of the Compensation Process. The Tribunal's retention of jurisdiction in relation to the compensation issue does not affect the Tribunal's retained jurisdiction on any other aspects of the case for which the Panel continues to retain jurisdiction.

[200] Further, the Tribunal also discussed the retention of jurisdiction on the compensation issue in 2021 CHRT 7:

> [41] The Panel retains jurisdiction on all its Compensation orders including the order in this ruling and will revisit its retention of jurisdiction as the Panel sees fit in light of the upcoming evolution of this case or once the individual claims for compensation have been completed.
>
> (emphasis added)

[201] The retention of jurisdiction read with the reasons in 2021 CHRT 7 make clear that the retention of jurisdiction at this point is for the implementation of the compensation orders and processing of claims under the Framework for the Payment of Compensation (Compensation Framework) under 2019 CHRT 39 and accompanying schedules. This was necessary given the Tribunal's supervisory role in the payment of compensation:

> [27] The Draft Compensation Framework includes provisions for processing claims. The process involves a multi-level review and appeal process (9.1-9.6). The process remains under the ultimate supervision of the Tribunal (9.6).
>
> (2021 CHRT 7)

[202] Section 9.6 of the Compensation Framework reads as follows:

> 9.6. Potential beneficiaries denied compensation can request the second-level review committee to reconsider the decision if new information that is relevant to the decision is provided, or appeal to an appeals body composed of individuals agreed to by the Parties and hosted by the Central Administrator. The appeals body will be non-political and independent of the

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> federal public service. The Parties agree that decisions of the appeals body may be subject to further review by the Tribunal. The reconsideration and appeals process will be fully articulated in the Guide.

[203] Under the Compensation Framework, the Tribunal may review the decision of the appeals body to ensure its compensation orders are properly interpreted and followed by the appeals body.

[204] In 2021 CHRT 7, the Panel examined the Framework for the Payment of Compensation under 2019 CHRT 39 and accompanying schedules as detailed in the Draft Compensation Framework filed on December 23, 2020.

[205] The Panel carefully examined the parties' Framework for the Payment of Compensation under 2019 CHRT 39 and accompanying schedules as detailed in the Draft Compensation Framework filed on December 23, 2020 to ensure this was in line with its orders. Otherwise, the Panel would have asked questions and requested adjustments. While the Panel's orders prevailed, the compensation process needed to reflect the Tribunal's reasons and orders in order to be approved by the Tribunal.

[206] The Panel found the Draft Compensation Framework to be in line with its previous orders which speaks to the analysis conducted by this Tribunal on the issue of compensation and the continuity of 2019 CHRT 39:

> [33] The Panel reviewed the Draft Compensation Framework submitted on December 23, 2020 and acknowledges it contains the appropriate changes reflecting the Panel's recent compensation rulings.
>
> (2021 CHRT 7, emphasis added).
>
> [37] After careful consideration of the specifics of this consent order request, which is summarized above, the Panel finds that the consent order sought is appropriate and just in light of the specific facts of the case, the evidence presented, its previous orders and the specifics of the consent order sought.
>
> (2021 CHRT 7, emphasis added).

[207] The parties themselves understood the need for consistency with the Tribunal's orders and that they could not deviate from these orders even if on consent:

> 1.2. The Framework is intended to be consistent with the Tribunal's Compensation Entitlement Order. Where there are discrepancies between this Framework and the Compensation Entitlement Order, or such further

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> orders from the Tribunal as may be applicable, those orders will prevail and remain binding.
>
> (Compensation Framework, emphasis added).

[208] The parties only completed the Compensation Framework once the Tribunal had made orders on contentious and outstanding questions on eligibility for compensation as explained above and other clarifications.

> 1.3. The Framework is intended to facilitate and expedite the payment of compensation to the beneficiaries described in the Compensation Entitlement Order, as amended by subsequent Tribunal decisions.
>
> (Compensation Framework, emphasis added).

[209] This is also reflected in the Framework for example, section 4.2.5.

> "First Nations child" means a child who:
>
> > a) was registered or eligible to be registered under the Indian Act;
> >
> > b) had one parent/guardian who is registered or eligible to be registered
> >
> > under the Indian Act;
> >
> > c) was recognized by their Nation for the purposes of Jordan's Principle; or
> >
> > d) was ordinarily resident on reserve, or in a community with a self-government
> >
> > agreement.
> >
> > (emphasis added).

[210] This reflects the Tribunal's orders in 2020 CHRT 20.

[211] The compensation orders are reflected in the Compensation Framework in many areas. For example, the parties requested the Tribunal's clarification on specific definitions such as "Essential service", "Service gap", "Unreasonable delay" and "confirmed need" prior to finalizing the Compensation Framework:

> 4.2.3.1. For purposes of s. 4.2.2. "confirmed needed" and "recommended by a professional" must be interpreted as per 4.2.2.2.
>
> (Compensation Framework)

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[212] The Tribunal viewed the Compensation Framework as now forming part of its orders and agreed to issue a consent order. Consent orders, while more flexible given the parties' agreement, are still subject to section 53 of the *CHRA* and once issued are part of the Tribunal's orders. They must be implemented and are not recommendations or aspirational documents.

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[213] Of note, the Tribunal analyzed and made findings on the Compensation Framework in 2021 CHRT 7 in order to approve it. This is made clear when reading the ruling. For example, 2021 CHRT 7 states:

> [22] Section 4 stipulates which First Nations children and caregivers are eligible for compensation. It addresses children who were necessarily or unnecessarily removed from their families (4.2.1). In relation to Jordan's Principle, it outlines what constitutes an essential service, service gap, and unreasonable delay (4.2.2). It defines the meaning of the term First Nations child in the context of compensation (4.2.5). Generally, a First Nations child includes a child who is registered or eligible to be registered under the *Indian Act*, has a parent who is registered or eligible to be registered under the *Indian Act*, is recognized by their First Nation for the purpose of Jordan's Principle, or was ordinarily resident on a reserve or in a community with a self-government agreement (4.2.5).
>
> [23] Section 5 outlines various provisions to locate and identify eligible beneficiaries.

[214] This is an example of the Tribunal reviewing the Compensation Framework and highlighting specific parts of the Compensation Framework. It is clear when reading all the compensation rulings in order including the last ruling approving the Compensation Framework that the approved Compensation Framework was found to be in line with the Tribunal's orders:

> 4. Definitions of Beneficiaries
>
> 4.1. A "beneficiary" of compensation is a person, living or deceased, described at paras. 245-257 of the Compensation Entitlement Order, as expanded by the Tribunal's decision in 2020 CHRT 7, at paras 125-129.
>
> (Compensation Framework)

[215] The parties themselves described the Tribunal's decision in 2019 CHRT 39 as the *Compensation Entitlement Decision* and acknowledged it was further expanded in 2020 CHRT 7.

[216] After its analysis, the Tribunal found:

> [19] The purpose of the *Draft Compensation Framework* is to "facilitate and expedite payment of compensation" to beneficiaries (1.3). It is intended to be **consistent with**, and subordinate to, the Tribunal's orders (1.2).
>
> (2021 CHRT 7, emphasis added).
>
> …
>
> [40] Pursuant to section 53 of the *CHRA* and its previous rulings, the Tribunal approves the Framework for the Payment of Compensation under 2019 CHRT 39 along with accompanying schedules as submitted by the parties on December 23, 2020. The Tribunal will make the Framework available to the public upon request.
>
> (2021 CHRT 7, emphasis added)

[217] This is not the first time the Tribunal is being asked to challenge eligibility to previous compensation orders. NAN requested an amendment to the Draft Compensation Framework to change the time period for which First Nations children would be eligible for Jordan's Principle compensation. The Tribunal answered it could no longer do so:

> [16] In 2021 CHRT 6, released February 11, 2021, the Tribunal addressed the approach for compensating victims/survivors who are legally unable to manage their own finances. The Tribunal determined that it was appropriate and within the Tribunal's legal authority to approve a compensation regime where an Appointed Trustee, as defined in the Draft Compensation Framework, would manage the compensation funds for victims/survivors who lack the legal capacity to do so themselves. Further, the Tribunal rejected a request by NAN to challenge the eligibility criteria for compensation given the Tribunal had already ruled on the issue and upheld the scope of compensation payments set out in the Draft Compensation Framework.
>
> (2021 CHRT 7, emphasis added)

[218] Of note, the Tribunal's title in 2021 CHRT 6 explains the intent of the ruling: Compensation Process Ruling on Four Outstanding Issues in Order to Finalize the Draft Compensation Framework. (emphasis added).

[219] At paragraph [6], the Tribunal wrote:

> [6] … This ruling provides the reasons contemplated in the Panel's December 14, 2020 letter. Following this letter ruling, the parties were able to finalize the Draft Compensation Framework and, on December 23, 2020 they submitted

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> the final version to obtain a final consent order on the issue of the compensation process.
>
> (2021 CHRT 6, emphasis added).

[220] A closer look to some of the submissions made by the parties and reasons from this Panel demonstrate the finality of the compensation eligibility orders:

> [110] NAN opposes section 4.2.5.2 of the Draft Compensation Framework's restriction of the timeframe of discrimination for which First Nations children who are not eligible for *Indian Act* status are entitled to compensation and section 4.2.5.3's restriction of these children's eligibility for compensation for wilful and reckless discrimination under section 53(3) of the *CHRA*. NAN opposes relying on the colonial *Indian Act* to differentiate categories of beneficiaries. NAN relies on its earlier submissions from March 20, 2019 on identifying First Nations children for the purpose of Jordan's Principle. NAN argues that it was always of the view that Jordan's Principle applied to all First Nations children and that Canada should have been of this view as well. NAN relies on evidence cited in *Daniels v. Canada*, 2013 FC 6 to demonstrate Canada's knowledge. Further, the treaty relationships, which Canada recognizes, do not allow Canada to unilaterally determine First Nations identity. Further, NAN does not find it persuasive for Canada to argue that Canada believed a provision designed to prevent jurisdictional gaps in services for First Nations children only applied to First Nations children eligible for *Indian Act* status. Accordingly, the *Merit Decision* cannot represent a clear break from the past as contemplated in *Hislop*. NAN argues that Canada's exclusion of First Nations children without *Indian Act* status was unreasonable according to the criteria established in *Hislop*, para. 107. In addition, NAN argues the different timeframes for which beneficiaries are entitled to compensation will complicate the process.
>
> [111] Canada, the AFN and the Caring Society submitted a joint response opposing NAN's request to remove sections 4.2.5.2 and 4.2.5.3 from the Draft Compensation Framework. They note that the provisions were not drafted with the intent to deny compensation to any eligible beneficiaries and that, to the extent of any inconsistency with the Tribunal's orders, section 1.2 ensures the Tribunal's orders take precedence. They argue that while NAN would prefer an earlier start date for compensation than that provided in section 4.2.5.2, the issue has already been litigated and should not be reconsidered. Canada, the AFN and the Caring Society considered it unreasonable to award damages for wilful and reckless conduct while the eligibility criteria for Jordan's Principle were unclear. They submit that while sections 4.2.5.2 and 4.2.5.3 do not precisely mirror specific language in the Tribunal's orders, any potential beneficiary who disagrees with the provisions will have an opportunity to contest them.

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> [112] The Panel generally agrees with the merit of the NAN's additional submissions. Moreover, the Panel notes the NAN opposes relying on the colonial *Indian Act* to differentiate categories of beneficiaries.
>
> [113] However, as mentioned above, the eligibility for compensation under Jordan's Principle orders have already been argued and answered by this Tribunal. Furthermore, the Panel finds the joint response from the AFN, the Caring Society and Canada referred to in para. 111 above to be acceptable especially in light of sections 1.2 and 9.6 of the Draft Compensation Framework.
>
> [129] The Tribunal has provided a number of decisions and rulings directly addressing the victims' entitlement to compensation for discriminatory conduct. Most notably, the *Merit Decision* found that Canada's programs and funding discriminated against First Nations children and amounted to discriminatory conduct. In the Compensation Decision, the Tribunal found that the victims on whose behalf the complaint was brought were entitled to compensation. The Tribunal addressed the quantum of compensation and considered some general eligibility parameters such as which classes of family members were entitled to compensation. The Tribunal also recognized the value in directing the parties to negotiate further aspects of the compensation process.
>
> (2021 CHRT 6, emphasis added)

[221] The following paragraph also speaks to the Tribunal's view that the retention of jurisdiction on the compensation issue at this point was separate from the other issues in these proceedings:

> [42] This does not affect the Panel's retention of jurisdiction on other issues in this case.
>
> (2021 CHRT 7)

[222] Before the FSA was presented to the Tribunal for approval, the parties requested a number of consent orders and amendments to the Tribunal's previous orders.

[223] The Tribunal's ruling in 2022 CHRT 8 clearly demonstrates the analysis to determine if the requested orders are in line with the Tribunal's findings and orders and if such amendments can be made:

> **(viii) Amendment to 2021 CHRT 12**
>
> Order request # 8. Pursuant to 2021 CHRT 12 at paragraph 42(5), adding the following paragraph to the Tribunal's order in 2021 CHRT 12:

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> [42.1] In amendment to paragraph 42(1), Canada shall, as of April 1, 2022, fund prevention/least disruptive measures for non-Agency First Nations (as defined in 2021 CHRT 12) at $2500 per person resident on reserve and in the Yukon, on the same terms as outlined in 2018 CHRT 4 at paragraph 421.1 with respect to FNCFS Agencies.

[106] On March 7, 2022, Stephanie Wellman's provided a very helpful affidavit and evidence attached. Upon review of the evidence attached to the affidavit, the Panel finds the evidence to be consistent with the affirmed declaration. Stephanie Wellman indicates that:

> 70. First Nations have long advocated for adequate prevention funding for FNCFS. It has been well documented in reports, such as the Wen:de We are Coming to the Light of Day, Royal Commission on Aboriginal Peoples filed into the record as Exhibit HR-2, and the Joint National Policy Review (2000) filed into the record as Exhibit HR-1, that the current funding formula for the FNCFS Program inadequately invests in prevention.
>
> 71. Prevention within the FNCFS Program reform context must aim to ensure that children remain in their family and First Nation as a priority, with removal as a last resort. Prevention, including early intervention policies, must be adequately practiced and funded in each community.

[107] The Panel agrees and has considered the above-mentioned evidence and has made multiple findings in that regard, e.g. 2018 CHRT 4:

> [161] The Panel has always recognized that there may be some children in need of protection who need to be removed from their homes. However, in the *[Merit] Decision*, the findings highlighted the fact that too many children were removed unnecessarily, when they could have had the opportunity to remain at home with prevention services.

[108] Stephanie Wellman also affirms prevention "must be developed and mobilized to the standards that communities set and at the levels that communities decide" (March 7, 2022 Affidavit at para. 71).

[109] The Panel finds this is consistent with the spirit of its rulings requiring Canada to consider the unique and distinct needs of First Nations communities and to avoid a one-size fits-all top-down approach. In 2018 CHRT 4, the Panel wrote:

> [163] The Panel has always believed that specific needs and culturally appropriate services will vary from one Nation to another and the agencies and communities are best placed to indicate what those services should look like. This does not mean accepting the unnecessary continuation of removal of the children for lack of data and accountability. While at the same

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> time, refusing to fund prevention on actuals resulting in, the continuation of making more investments in maintenance (emphasis added).

[110] Stephanie Wellman adds that:

> 72. Canada must consider prevention and reform within the context of First Nations social determinants of health and wellbeing, including environment, education, gender, economic opportunities, community safety, housing and infrastructure, meaningful access to culture and land, access to justice, and individual and community self-determination, among others.
>
> 73. Prevention must address the structural and systemic reasons for First Nations' higher rates of involvement with child and family services. For example, housing, water, racism, infrastructure inadequacies, poverty, etc. All these impact child and family wellbeing, and prevention must therefore encompass the systemic drivers of First Nations' overrepresentation in child and family services. Systemic change must also recognize the colonization of First Nations as a fundamental underlying health, social and economic determinant.
>
> 74. Prevention must include evidence-based primary, secondary, and tertiary culturally based programming situated in a life-course continuum: from pre-natal development to birthing, childhood, adolescence, adulthood, as Elders, and through death and post-death.

[111] The Panel entirely agrees with the above. This corroborates the evidence in this case and is in line with the Panel's findings in the Merit Decision and in 2018 CHRT 4:

> [166] It is important to remind ourselves that this is about children experiencing significant negative impacts on their lives. It is also urgent to address the underlying causes that promote removal rather than least disruptive measures (see the [*Merit*] *Decision* at paras. 341-347), (emphasis added).

[112] As explained above and in previous rulings, the Panel made clear that the discriminatory underfunding, especially the lack of funding for prevention including least disruptive measures was a big part of the issue.

[113] For example, in 2018 CHRT 4, a prevention/least disruptive measures focused ruling by this Tribunal, found (emphasis omitted):

> [93] The fundamental core of Canada's systemic discrimination is that it fails to fund First Nation Child Welfare based on need, including addressing and redressing historical disadvantages. The Panel in its decision wrote that it's "...focus is whether funding is being determined based on an evaluation of the

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> distinct needs and circumstances of First Nations children and families and the communities" (…).
>
> …
>
> [119] The Panel finds that the current manner in which prevention funds are distributed while unlimited funds are allocated to keep children in care is harming children, families, communities and Nations in Canada.
>
> …
>
> [150] Canada cannot justify paying enormous amounts of money for children in care when the cost is much higher than prevention programs to keep the child in the home. This is not an acceptable or sound fiscal or social policy. This is a decision made by Canada unilaterally and it is harming the children. (…), (see the *Decision* at paras. 262 and para. 297).
>
> …
>
> [180] The Panel reiterates that the best interest of the child is the primary concern in decisions that affect children. See, for instance, UNCRC, article 3 and article 2 which affirm that all children should be treated fairly and protected from discrimination. (see also the [Merit] Decision at paras.447-449). The Panel found that removing children from their families as a first resort rather than a last resort was not in line with the best interests of the child. This is an important finding that was meant to inform reform and immediate relief (see the [Merit] Decision at paras 341-349).
>
> …
>
> [191] The United Nations CESCR recommended that Canada review and increase its funding to family and child welfare services for Indigenous Peoples living on reserves and fully comply with the Tribunal's January 2016 [Merit] Decision. The CESCR also called on Canada to implement the Truth and Reconciliation Commission's recommendations with regards to Indian Residential Schools. (see Economic and Social Council, CESCR, concluding observations on the sixth periodic report of Canada, March 4223, 2016, E/C.12/CAN/CO/6, paras.35-36; See also Affidavit of Dr. Cindy Blackstock, December 17, 2016, at para. 33, Exhibit L).

[114] The Panel entirely agrees with this wise approach to prevention reform proposed by the parties in order to generate real and lasting systemic change. Moreover, the evidence filed supports this finding.

[115] As set out in Ms. Wellman's March 7, 2022 Affidavit:

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> 76. The per capita costs are based on current prevention services and actual spending described in the case studies analyzed by the IFSD. For instance, the $2,500 per capita cost is based on a case study of K'wak'walat'si Child and Family Services (KCFS), which serves the 'Namgis First Nation and the village of Alert Bay on Cormorant Island off the coast of British Columbia. Since 2007, not a single child in 'Namgis First Nation has been placed in care. This success has been largely credited to the introduction of comprehensive prevention programming.

[116] This success story is referenced in Stephanie Wellman's affidavit and also included in the IFSD report #1, Enabling Children to Thrive filed in evidence. The report states that a case for prevention is clear from both FNCFS agency cases and from existing research. The unanimity from agencies and experts on the importance and need for a focus on prevention services and funding to match cannot be overemphasized (pp.93-94). This report is relevant and reliable especially given the methodology employed and the expert actors involved including the advisory role of the National Advisory Committee.

[117] Stephanie Wellman's affidavit continues:

> 77. These best practices in prevention are further modelled after Carrier Sekani Family Services (CSFS), a large prevention focused organization. The agency's life cycle model (from cradle to grave), informed by its own research, extends across health and social programs and services. From intensive family preservation to telehealth initiatives, CSFS has empowered its staff to innovate, try, fail, and succeed, in support of the people and communities they serve.
>
> 78. By providing a budget of $2,500 per capita for prevention, Canada would enable service providers and communities to deliver this best practice life cycle model of prevention.

[118] This is also consistent with previous findings by this Panel. In 2018 CHRT 4, the Panel said (emphasis omitted):

> [118] The orders are made in the best interests of children and are meant to reverse incentives to place children in care.
>
> [119] The Panel finds that the current manner in which prevention funds are distributed while unlimited funds are allocated to keep children in care is harming children, families, communities and Nations in Canada.
>
> [120] The best way to illustrate this is to reproduce Ms. Lang's answer to the AFN's question: AFN: So if every child in Ontario that's on First Nations was apprehended, INAC would pay costs for those apprehensions correct? (…) So my question is, it's kind of peculiar to me that the federal government has no

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qualms, no concerns whatsoever about costs of taking children into care and that's an unlimited pot, and when it comes to prevention services, they're not willing to make that same sacrifice. To me that just does not make sense. Now as a Program director, is that the case where if every child in Ontario that's First Nation on reserve is apprehended tomorrow, you would pay the maintenance costs on all those apprehensions? Ms. Lang: for eligible expenditures, yes.

[121] This is a striking example of a system built on colonial views perpetuating historical harm against Indigenous peoples, and all justified under policy. While the necessity to account for public funds is certainly legitimate it becomes troubling when used as an argument to justify the mass removal of children rather than preventing it. There is a need to shift this right now to cease discrimination. The Panel finds the seriousness and emergency of the issue is not grasped with some of Canada's actions and responses. This is a clear example of a policy that was found discriminatory and that is still perpetuating discrimination. Consequently, the Panel finds it has to intervene by way of additional orders. In further support of the Panel's finding, compelling evidence was brought in the context of the motions' proceedings.

…

[148] Of particular note, Wen:De Report Three recommends a new funding stream for prevention/least disruptive measures (at pp. 19-21). At page 35, Wen:De Report Three indicates that increased funding for prevention/least disruptive measures will provide costs savings over time:

> Bowlus and McKenna (2003) estimate that the annual cost of child maltreatment to Canadian society is 16 billion dollars per annum. As increasing numbers of studies indicate that First Nations children are overrepresented amongst children in care and Aboriginal children in care; they compose a significant portion of these economic costs (Trocme, Knoke and Blackstock, 2004; Trocme, Fallon, McLaurin and Shangreaux, 2005; McKenzie, 2002). A failure of governments to invest in a substantial way in prevention and least disruptive measures is a false economy – The choice is to either invest now and save later or save now and pay up to 6-7 times more later (World Health Organization, 2004.), (see 2018 CHRT 4 at. paras. 148-149 citing the *Merit Decision*).

…

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> [160] This is the time to move forward and to take giants steps to reverse the incentives that bring children into care using the findings in the *[Merit] Decision*, previous reports, the parties' expertise and also everything gathered by Canada through its discussions since the *[Merit] Decision*.

[119] The 2018 CHRT 4 immediate relief orders on actuals were made in 2018 after the Caring Society and the AFN, urged the Panel to order them. The parties made compelling arguments and brought evidence to support it. The Panel indicated that the orders could be amended as the quality of information increased. The Panel recognized "that in light of its orders and the fact that data collection will be further improved in the future and the NAC's work will progress, more adjustments will need to be made as the quality of information increases." (see 2018 CHRT 4 at para. 237). This is the case here. The evidence in the record demonstrates that there is a need to amend the previous prevention orders given that a number of issues arose as part of the implementation phase of the 2018 CHRT 4 orders.

[120] Moreover, the parties were able to establish that the process for reimbursement to actuals was causing hardships for First Nations and First Nations Agencies. Dr. Blackstock has affirmed that:

> 19. … While the funding at actuals approach has been effective in ensuring more prevention services are provided to children, youth, and families, ISC determining eligible prevention expenses has been problematic particularly given the lack of social work expertise within the department.

[121] Further, Dr. Blackstock also affirmed that "the "request-based" nature of the actuals process has also posed an obstacle for some FNCFS Agencies, who may lack capacity to make the request." (March 4, 2022 affidavit at para. 19). The Tribunal finds this was previously demonstrated in these proceedings (see for example, 2020 CHRT 24 at. paras 34-36).

[122] Moreover, recent relevant and reliable evidence contained in the IFSD report #2, Funding First Nations child and family services (FNCFS): A performance budget approach to well-being, July 31, 2020 found at p. 29 that:

> The significant 48% increase in FNCFS program spending in 2018–19 is attributed to the CHRT-mandated payments (the FNCFS program spending is projected to decrease by 9% in 2019–20) …. Case study analysis suggests that the CHRT payments have had immediate impacts on programming and operations. The supplementary investments, however, are one-time payments and not guaranteed beyond the next fiscal year. This reality puts progress on prevention programming and practices at risk.

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[123] The above also supports the need for greater prevention funding as per the order requests including the eligibility for these funds to be carried forward by the First Nation and/or First Nations Child and Family Service providers(s).

[124] Furthermore, Dr. Blackstock affirms that "[g]reater "up-front" funding will allow FNCFS Agencies to focus their energies and resources on program development and delivery." (March 4, 2022 affidavit at para. 19).

[125] The Panel finds the evidence supports the need for a shift from the "request-based" nature of the actuals process where ISC determines eligible prevention expenses to a comprehensive community-level programming. The implementation of these orders will provide families with supports they need and in providing First Nations, FNCFS Agencies with greater resources "up front" to begin addressing the structural risk factors that contribute to the over-representation of First Nations children in care. This will also provide greater funding to First Nations without FNCFS Agencies.

[126] The IFSD report also supports this shift.

[127] The Panel agrees and is really pleased with these order requests. The parties' hard work will generate real change for First Nations children and youth. This responds to the Tribunal's 2018 call for giant steps towards a shift.

[128] As indicated in Stephanie Wellman's March 7, 2022 Affidavit:

> 75. The $2,500 per capita level of prevention funding is based on the case studies conducted by the IFSD in its Phase 1 report, which resulted in two fundamentally different approaches to prevention programming. This ranged from a First Nation with minimal prevention programming ($800) to comprehensive community-level programming targeted to the entire community, operating on a prevention basis ($2,500). The $2,500 per capita amount is to be considered the level necessary for agencies or communities to reasonably deliver best practices in prevention.

[129] As noted in IFSD report # 2, *Funding First Nations child and family services (FNCFS): A performance budget approach to well-being* at p. 248:

> … In its Phase 1 study, [*Enabling First Nations Children To Thrive*], December 15, 2018, that costed the FNCFS system, IFSD estimated (based on actual models) that per capita expenditures for prevention should range from $800 to $2,500 across the entire community. At $800, programming is principally youth-focused and may not be CFS focused. At $2,500 per person, a full lifecycle approach to programming can be possible with linkages between health, social and development programming. …
>
> The First Nation's current per capita CFS expenditure estimates align to previous findings for communities unaligned to an FNCFS agency (ranging from $500 to $1,000 based on the

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> population source). As the First Nation contemplates its next steps in CFS, it may wish to consider increasing its per capita budget to expand its resources for program and service delivery. IFSD estimated that the average cost of a child in care to be $63,000 per year. With opportunities for prevention program that have demonstrated positive results, there are various options for supporting the well-being of children, families and communities through wrap-around holistic services.

[130] As noted in IFSD report #1, *Enabling First Nations Children To Thrive* these costs would be on-going in nature and subject to changes in population and inflation. Per person spending on prevention should range from $800–$2,500 with total annual costs of $224M to $708M (p. 10).

[131] The report provides further details at pages 87-88:

> Prevention was the focus of experts and agencies, and consistently defined as the most significant funding gap that agencies are facing. The gap in prevention funding is a challenge and is connected to the system's current funding structure that incentivizes the placement of children in care.
>
> Shifting to a prevention-focused approach will require increased investment and a change in funding structure, such that agencies have the ability to allocate resources to meet community need. To cost-estimate an increase in prevention funding for FNCFS agencies, benchmarks of current prevention spending were identified and a range of per capita investments in prevention were defined: $800, $2,000 and $2,500.
>
> The per capita costs are based on current prevention services and actual spending described in case studies. The prevention cost estimates are premised on the assumption that prevention should target the entire population in the agency's catchment and not only the child population served.

[132] Moreover, as defined in 2021 CHRT 12, Non-Agency communities also form part of the Tribunal's previous orders. The Panel agrees that they should also benefit from the increased ongoing prevention funding as detailed in order request # 8. As explained above, this will greatly benefit their communities.

[133] The parties were successful in demonstrating the need for the requested orders # 7 as modified and 8. The Panel entirely agrees with the order requests # 7 & 8 and finds they are justified and supported by the evidence. Furthermore, the Tribunal has the authority to make those orders as it will be explained below.

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[224] Three important aspects can be drawn from this approach. First, the Tribunal always relies on evidence to support its findings and orders. Second, the Tribunal analyses if the requested orders are in line with its previous reasons, findings and orders. Third, the focus of the retention of jurisdiction is to achieve sustainable reform and long-term relief that build on short-term and long-term orders in the best interest of First Nations children and families as defined by First Nations themselves.

[225] This approach is consistent with the clearly expressed intent by the Tribunal to issue short-term, mid-term and long-term relief and for long-term relief to be informed by the short-term and mid-term phases.

[226] The Panel previously wrote in 2018 CHRT 4:

> [387] It took years for the First Nations children to get justice. Discrimination was proven. Justice includes meaningful remedies. Surely Canada understands this. The Panel cannot simply make final orders and close the file. The Panel determined that a phased approach to remedies was needed to ensure short term relief was granted first, then long term relief, and reform which takes much longer to implement. The Panel understood that if Canada took 5 years or more to reform the Program, there was a crucial need to address discrimination now in the most meaningful way possible with the evidence available now.
>
> …
>
> [415] The Panel also recognizes that in light of its orders, and the fact that data collection will be further improved in the future and the NAC's work will progress, more adjustments will need to be made as the quality of information increases.

[227] The Tribunal has clearly expressed on a number of occasions that it will retain jurisdiction until sustainable long-term relief and reform has been addressed in a way that is responsive to the Tribunal's findings and role to eliminate the discrimination found and prevent its reoccurrence or similar discriminatory practices to arise. The Tribunal has always focused on the need to uphold the principle of substantive equality considering the specific needs of First Nations children, families, communities and Nations as an integral part of eliminating the systemic discrimination found. Those specific needs are accounted for in First Nations-led and designed prevention programs for example.

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[228] The Tribunal recently discussed its retention of jurisdiction on all its orders in 2022 CHRT 8:

> [175] Pending a complete and final agreement on long term relief on consent or otherwise and consistent with the approach to remedies taken in this case and referred to above, the Panel retains jurisdiction on the Consent Orders contained in this ruling. The Panel will revisit its retention of jurisdiction once the parties have filed a final and complete agreement on long-term relief or as the Panel sees fit considering the upcoming evolution of this case.
>
> [176] This does not affect the Panel's retention of jurisdiction on other issues and orders 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.

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[229] All the above support the conclusion that the Tribunal's retention of jurisdiction allows the Tribunal to examine the FSA in order to determine if it is in line with its orders and victims/survivors receive appropriate compensation. The Tribunal is not *functus officio* in that regard. Furthermore, the principle of *functus officio* and finality applies to the Tribunal and must be applied flexibly considering the factual matrix of the case, findings, reasons and orders already made in this case. This is a case-by-case exercise based on law, facts and the evidence that involves applying the case law to the matter at hand with a careful review of the Tribunal's retention of jurisdiction and the purpose for such retention of jurisdiction. In this case, as demonstrated above, the quantum for compensation is final. The categories of victims/survivors who are entitled to compensation is final in the sense that they cannot be reduced or disentitled unless their compensation is found unreasonable by a reviewing Court.

[230] The Tribunal considered the request for compensation by direct and specific reference to the evidence in this case. This fundamental tenet of justice was underscored by the Federal Court in its upholding of the Tribunals' orders, concluding that the Tribunal's jurisdiction to make the orders flowed not only from the parameters and objectives of the *CHRA*, but also from the evidentiary foundation upon which the Tribunal grounded its decisions:

> Ultimately, the Compensation Decision is reasonable because the *CHRA* provides the Tribunal with broad discretion to fashion appropriate remedies to fit the circumstances. To receive an award, the victims did not need to testify

> to establish individual harm. The Tribunal already had extensive evidence of Canada's discrimination; the resulting harm experienced by First Nations children and their families (the removal of First Nations children from their homes); and Canada's knowledge of that harm. Further, the Tribunal did not turn the proceedings into a class action because the nature and rationale behind the awards are different from those ordered in a class action. From the outset, First Nations children and families were the subject matter of the complaint and Canada always knew that the Respondents were seeking compensation for the victims. If Canada wanted to challenge these aspects of the Complaint, it should have done so earlier. Canada may not collaterally attack the Merit Decision or other decisions in this proceeding.
>
> (2021 FC 969 at para. 231, emphasis added).

[231] The Tribunal is responsible for applying the *CHRA* and the human rights framework reflected in that legislation. While the AFN and Canada have brought this motion to seek the Tribunal's approval for an agreement under the class actions that would settle both the class actions and the complaint before the CHRT, that does not change the fact that the Tribunal is tasked with applying the *CHRA*. It does not have jurisdiction to apply tort or class actions law, and has consistently throughout this case ensured that it does not do so.

[232] Given that its jurisdiction comes from the *CHRA*, the Tribunal's role is not duplicative of a court approving a class action settlement. The Tribunal does not have that power and it would be entirely duplicative of the court's role. Further, the Tribunal is not at the stage of the proceedings of deciding whether to approve an early-stage settlement, where liability and compensation are still contested. Instead, the Tribunal is assessing whether its existing orders are satisfied or, in the alternative, whether it should modify them. The Tribunal has consistently taken an evidence-based approach in assessing this case and considers whether the evidence demonstrates its existing orders are satisfied or justifies revisiting its previous orders trough the dialogic approach.

[233] The Tribunal notes that the Federal Court upheld the Tribunal's use of the dialogic approach to the compensation orders, noting that this provided flexibility so that the Tribunal could fulfil its statutory mandate to address discrimination:

> I agree with the Tribunal's reliance on *Grover v Canada (National Research Council)* (1994), 1994 CanLII 18487 (FC), 24 CHRR 390 [Grover] where the task of determining "effective" remedies was characterized as demanding "innovation and flexibility on the part of the Tribunal…" (2016 CHRT 10 at para

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> 15). Furthermore, I agree that "the [*CHRA*] is structured so as to encourage this flexibility" (2016 CHRT 10 at para 15). The Court in *Grover* stated that flexibility is required because the Tribunal has a difficult statutory mandate to fulfill (at para 40). The approach in *Grover*, in my view, supports the basis for the dialogic approach. This approach also allowed the parties to address key issues on how to address the discrimination, as my summary in the Procedural History section pointed out.
>
> (2021 FC 969 at para 138, citing to *Grover v Canada (National Research Council)* (1994), 1994 CanLII 18487 (FC).

[234] Justice Favel, in the Federal Court's judicial review, aptly captured the fact that compensation under the *CHRA* is not equivalent to tort damages:

> The *CHRA* is not designed to address different levels of damages or engage in processes to assess fault-based personal harm. The Tribunal made human rights awards for pain and suffering because of the victim's loss of freedom from discrimination, experience of victimization, and harm to dignity.
>
> (2021 FC 969 at para 189).

[235] Further, the AFN's argument that the FSA provides finality is partly true and partly wrong. It is true in the literal sense that if not challenged, the FSA could end litigation and bring finality and promptly compensate most, but not all, recognized victims/survivors in the near future. This is the concept that certain disputes must achieve a resolution from which no further appeal may be taken, and from which no collateral proceedings may be permitted to disturb that resolution. The very fact this joint motion is opposed and if it is fully granted may lead to a judicial review of this ruling speaks to the risk of the FSA not achieving finality in that sense.

[236] It is wrong by ignoring another paramount aspect of the need for finality in human rights proceedings as correctly described by the Caring Society: the assurance that once rights have been recognized and vindicated (which is no small task for complainants and victims who often face powerful respondents challenging their claim at every turn), they are no longer up for debate by outside actors or respondents who may disagree with the orders made against them and therefore contract out of their human rights obligations under the *CHRA*.

[237] The AFN and Canada are so focused on the FSA that they ignore the grave injustice of reducing or disentitling victims/survivors once evidence-based findings and orders that

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benefit victims have been made by a human rights tribunal. This more broadly sets a dangerous precedent for victims/survivors in Canada.

[238] Canada has consistently argued against the Tribunal's jurisdiction at every stage of this case, from the case's initial referral to the Tribunal, to the Tribunal's remedial jurisdiction to the Tribunal's ability to retain jurisdiction to use the dialogic approach to implement an effective remedy. Canada, in this motion, is proposing an even broader jurisdiction than the Tribunal has ever considered or found where the Tribunal would be able to alter its final compensation orders not because of any issue with the Tribunal's ruling but because Canada and the AFN have reached a tentative settlement of a separate class action.

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[239] This question is also a question of the integrity of the human rights regime and of the Tribunal's.

(i) Human Rights Regime

[240] The Federal Court, in this case, addressed the Tribunal's specific role conferred by Parliament:

> Finally, given that Parliament tasked the Tribunal with the primary responsibility for remedying discrimination, I agree that the Court should show deference to the Tribunal in light of its statutory jurisdiction outlined above.
>
> (2021 FC 969 at para 139).

[241] Parliament's intention when it adopted the *CHRA* was to create a system particularly tailored to address the social wrong of discrimination.

[242] This Panel recognizes, as described by the Caring Society, the rights of the child are human rights that recognize childhood as an important period of development with special circumstances. This is also recognized by all levels of Courts in Canada and was discussed in this Panel's *Merit Decision*, 2016 CHRT 2 at para. 346:

> A focus on prevention services and least disruptive measures in the provincial statutes mentioned above is inextricably linked to the concept of the best interest of the child: a legal principle of paramount importance in both Canadian and international law (see *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4 (CanLII) at para. 9;

and, *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para. 75 [*Baker*]). As explained by Professor Nicholas Bala:

> [L]eading Canadian precedents, federal and provincial statutes and international treaties are all premised on the principle that decisions about children should be based on an assessment of their best interests. This is a central concept for those who are involved making decisions about children, not only for judges and lawyers, but for also assessors and mediators (see 2016 CHRT 2 at, para. 346).

[243] Child welfare services, or child and family services, are services designed to protect children and encourage family stability. Hence the best interest of the child is a paramount principle in the provision of these services and is a principle recognized in international and Canadian law. This principle is meant to guide and inform decisions that impact all children, including First Nations children (2016 CHRT 2 at para. 3):

> [179] This also corresponds to Canada's international commitments recognizing the special status of children and Indigenous peoples. Also, the Panel found that Canada provides a service through the FNCFS Program and other related provincial/territorial agreements and method of funding the FNCFS Program and related provincial/territorial agreements significantly controls the provision of First Nations children and family services on reserve and in the Yukon to the detriment of First Nations children and families.
>
> (2019 CHRT 39)

[244] The Tribunal agrees with the Caring Society who submits that the Tribunal ought to apply a human rights framework that centers the child and parent/caregiver experience of harm in determining this motion. The Tribunal agrees with the four criteria the Caring Society identifies as important to the analysis:

> (i) a critical examination of the evidence adduced in relation to the victims who will be impacted by the deviations in the Compensation FSA;
>
> (ii) the nature of compensation awarded as a quasi-constitutional right under the *CHRA* and the meaning of retracting that acknowledgement;
>
> (iii) the best interests of First Nations children and their families, particularly given the historical and intergenerational trauma experienced by the victims, as already acknowledged by the Tribunal; and
>
> (iv) the potential of creating a dangerous precedent where human rights compensation can be bargained for outside of the dialogic approach and outside of the protections that the human rights regime provides.

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[245] The Tribunal is tasked with implementing the *CHRA* and must ensure the human rights regime is not cast aside in favour of civil claims. The process before the Tribunal has already awarded remedies to compensate for Canada's discrimination. To revisit or undermine those orders raises issues of finality on quantum and entitlements. There is not a legal basis for the sort of change to the Tribunal's existing entitlement orders being requested by Canada and the AFN.

[246] The Caring Society correctly recognizes that the Tribunal carefully crafted its remedies in this case to match the evidence of demonstrated harm to specific First Nations children and caregivers affected by Canada's systemic racial discrimination. These conclusions are based on applying evidence collected over the course of a decade to the legal framework of the *CHRA*.

[247] Canada challenged this process at every step in front of the Tribunal and sought to judicially review the Panel's compensation decisions. The judicial review has been dismissed, and so the Tribunal's orders are enforceable absent a successful appeal to the Federal Court of Appeal.

[248] The Tribunal also agrees with the Caring Society's concern that the FSA, unlike the Tribunal's orders, requires victims/survivors to give up the right to further recourse in order to accept compensation. This is particularly concerning for victims who are receiving less compensation under the FSA than they would be entitled to under the Tribunal's orders. Further, many of these victims are children whose human rights are particularly important to safeguard. It is not the victims/survivor's fault that Canada's extensive discrimination affected a large number of victims. The victims should not be required to give up their rights to compensation to shield Canada from further liability. The potential for other causes of action against Canada, including *Charter* claims, should not negate the victims/survivors' ability to access compensation under the *CHRA*.

[249] Denying entitlements once recognized in orders is an unfair and unjust outcome that the Tribunal cannot endorse given the *CHRA*'s objectives and mandate. The Tribunal's authority flows from its quasi-constitutional legislation and the Tribunal is, according to the Supreme Court, the "final refuge of the disadvantaged and the disenfranchised."

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[250] Furthermore, a perpetrator cannot circumvent the Tribunal and Courts by contracting out its human rights obligations in the effort of derogating to existing orders. Canada opposed the compensation requests and then the Tribunal orders and challenged them at the Federal Court and now the Federal Court of Appeal. While it is noble to try to resolve the issues and stop litigation in the interest of reconciliation, this nobility is tarnished when vulnerable victims/survivors who are children or are caregiving parents or grandparents who suffered multiple losses of their children or are deceased are now disentitled by Canada who signed the FSA. This is not healthy reconciliation. This is also the opposite of what the Tribunal intended when it encouraged the parties to negotiate and resolve outstanding matters. The Tribunal did not envision that progress and negotiation would derogate from its binding orders in a way that reduces compensation or disentitles some victims/survivors who were recognized in the Tribunal's orders.

[251] Throughout these proceedings, Canada opposed the complaint and tried to shield itself by arguing that it did not provide the services directly, it opposed remedies, it narrowed the interpretations of the orders on multiple occasions, etc. Now it tries to shield itself from some Tribunal orders by hiding behind the fact the First Nations made those difficult decisions to compromise and carve out victims/survivors from the FSA to add others from the class actions. This is only occurring because Canada placed a cap on compensation. While the amount of compensation is impressive, what is more impressive is the length and breadth of Canada's systemic racial discrimination over decades impacting hundreds of thousands of victims who deserve compensation.

[252] Canada remains responsible for fulfilling its human rights obligations, both in general and the specific orders from the Tribunal. Canada is not absolved of this responsibility by putting the FSA forward as a First Nations-led process. First Nations were constrained by the fixed amount of compensation Canada was willing to provide, which did not ensure all victims/survivors identified through the Tribunal process would be compensated in line with the Tribunal's orders.

[253] Moreover, it would undermine the *CHRA*'s ability to protect human rights if respondents were able to avoid liability by reaching an agreement with only certain parties to a human rights case to remove the case from the Tribunal's jurisdiction in favour of an

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alternative forum. It would reduce the ability of victims to receive a remedy that acknowledges that their human rights have been violated.

[254] The potential for setting a dangerous precedent is significant and could have widespread impacts on the human rights system. The AFN acknowledges in its submissions that there does not appear to be a precedent along the lines of what the AFN and Canada are requesting. While the AFN contends that this case is unique and unlikely to be replicated, the Tribunal is not convinced that it should sacrifice human rights principles on the assumption that this case is unique. To that end, the Caring Society urges the Tribunal to consider the broader and precedential implications of this motion on the integrity of the human rights regimes throughout Canada, including its specific impact on other First Nations human rights cases. The Tribunal agrees with the Caring Society that setting aside human rights remedies in an alternative forum would leave victims of discrimination vulnerable. The Caring Society is particularly concerned about the implications this has for the human rights regime when the federal government is responsible for the discrimination. The Tribunal has consistently sought to address the systemic discrimination in this case by holding Canada accountable:

> Human rights laws are remedial in nature. They aim to make victims of discrimination "whole" and to dissuade respondents from discriminating in the future. Both of these important policy goals can be achieved by conferring compensation to the victims in this case who are deceased: it ensures that the estate of the victim is compensated for the pain and suffering experienced by the victim and ensures that Canada is held accountable for its racial discrimination and wilful and reckless discriminatory conduct.
>
> (2020 CHRT 7 at para 130).

[255] It is not appropriate that victims/survivors of discrimination should be required to defend their entitlement to compensation from a collateral attack seeking to remove the Tribunal's jurisdiction and override the orders entitling them to compensation. This is particularly concerning where successful complainants are not entitled to legal fees from successfully advancing their case before the Tribunal, making hiring counsel more challenging (see *Canada (Canadian Human Rights Commission) v. Canada (Attorney General),* 2011 SCC 53, [2011] 3 SCR 471).

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[256] It is well established that "contracting out of" a human right is not permissible. As emphasized by the Supreme Court:

> Although the Code contains no explicit restriction on such contracting out, it is nevertheless a public statute and it constitutes public policy in Ontario as appears from a reading of the Statute itself and as declared in the preamble. It is clear from the authorities, both in Canada and in England, that parties are not competent to contract themselves out of the provisions of such enactments and that contracts having such effect are void, as contrary to public policy….The Ontario Human Rights Code has been enacted by the Legislature of the Province of Ontario for the benefit of the community at large and of its individual members and clearly falls within that category of enactment which may not be waived or varied by private contract; therefore this argument cannot receive effect.
>
> (*Ontario Human Rights Commission v. Etobicoke*, 1982 CanLII 15 (SCC), [1982] 1 S.C.R. 202).

[257] Further, it would be an absurd interpretation of the *CHRA* to allow an outside process to which not all parties have agreed to participate to usurp the role of the Tribunal to order compensation to victims/survivors of discrimination as identified in a Tribunal process. The Tribunal agrees with the Caring Society that public trust in the human rights system is likely to be eroded if orders to compensate victims of discrimination are not binding on respondents and can be bargained away. The Tribunal process allows for the public affirmation of human rights that the current motion would, if granted, undermine. This is particularly true in the current case where the parties have returned to the Tribunal multiple times to compel Canada to remedy its discriminatory conduct. In those rulings, the Tribunal had to confirm that its orders were legally binding on Canada and that Canada was obliged to address the systemic racial discrimination.

[258] Granting the AFN and Canada's motion now would contradict the Tribunal's previous rulings that indicated that its remedial orders required implementation. The Caring Society urges the Tribunal to once again reassert the important principle that human rights orders are binding and that compliance is not negotiable. Human rights regimes are meant to offer comprehensive protection over discrimination complaints. Allowing settlement agreements reached in the context of a civil claim to invalidate a ruling made by human rights tribunals could have a series of unintended negative consequences on human rights regimes. The

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Supreme Court of Canada in *Honda Canada Inc. v. Keays,* 2008 SCC 39, [2008] 2 SCR 362 distinguished common law remedy from human rights remedies:

> [63] In this case, the trial judge awarded punitive damages on the basis of discriminatory conduct by Honda. Honda argues that discrimination is precluded as an independent cause of action under *Seneca College of Applied Arts and Technology v. Bhadauria*, 1981 CanLII 29 (SCC), [1981] 2 S.C.R. 181. In that case, this Court clearly articulated that a plaintiff is precluded from pursuing a common law remedy when human rights legislation contains a comprehensive enforcement scheme for violations of its substantive terms. The reasoning behind this conclusion is that the purpose of the Ontario *Human Rights Code* is to remedy the effects of discrimination; if breaches to the Code were actionable in common law courts, it would encourage litigants to use the Code for a purpose the legislature did not intend — namely, to punish employers who discriminate against their employees. Thus, a person who alleges a breach of the provisions of the Code must seek a remedy within the statutory scheme set out in the Code itself. Moreover, the recent amendments to the Code (which would allow a plaintiff to advance a breach of the Code as a cause of action in connection with another wrong) restrict monetary compensation to loss arising out of the infringement, including any injuries to dignity, feelings and self-respect. In this respect, they confirm the Code's remedial thrust.

[259] More importantly, the Tribunal frowns on reducing compensation or disentitling victims/survivors once they have been vindicated at the Tribunal and upheld by the Federal Court. This dangerous precedent would send a very negative message to victims/survivors in this case and other human rights cases in Canada and could potentially become a powerful deterrent to pursue human rights recourses under the *CHRA*. Victims/survivors would never have the peace of mind that their substantiated complaints and awarded remedies would be forthcoming to them if, at any time before remedies are implemented, these remedies can be taken away from them without the need for a successful judicial review.

[260] This is even more troubling when we consider the nature of the complaints before the Tribunal in this case. The very nature of human rights rests upon the protection of vulnerable groups. From the beginning the Tribunal found and wrote that this case is about children and the Tribunal's mandate to eliminate discrimination and prevent similar practices from arising. Permitting reductions or disentitlements of compensation for victims/survivors

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who have been recognized in evidence-based findings and corresponding orders does not breathe life into human rights. Rather, it takes its breath away.

[261] This cannot be how the human rights regime is administered in Canada.

[262] The Tribunal also agrees with the following Commission arguments that explain the human rights regime under the *CHRA*:

> 42. The *CHRA* does not expressly address the issue of finality. However, section 57 explains that a Tribunal order to award compensation under section 53(2)(e) or section 53(3) may be made an order of the Federal Court for the purpose of enforcement.
>
> 43. While this Tribunal has broad remedial discretion, this authority is constrained by the *CHRA* framework and by the evidence presented.
>
> 44. The *CHRA* requires this Tribunal to balance flexibility and innovation in remedies with natural justice principles.
>
> 45. The dialogic approach does not mean this Tribunal can reconsider its orders in perpetuity. It is meant to facilitate the implementation of orders. It is not intended to be used to negotiate out of binding legal obligations.

[263] Substantive variations of this Tribunal's orders may lead to new litigation or proceedings that disturb established legal principles. If courts and tribunals could continuously revisit and vary their decisions, the administration of justice would not work the way it was meant to, and it would be procedurally unfair to the parties. When a party is not satisfied with a decision of this Tribunal, it can bring an application for judicial review at the Federal Court. It is only in very limited situations that a court or a tribunal can vary, amend, or reconsider an order or a decision, (see *Hughes v Transport Canada*, 2021 CHRT 34 at paras 61-62).

[264] The Tribunal further agrees with the Commission that simultaneously seeking recourse through the judicial review or appellate processes while also returning to this Tribunal for the same outcome (i.e., to re-litigate or change the remedies ordered) creates a problematic precedent and challenges established principles and procedures of administrative law.

[265] The Tribunal agrees with the Commission and "acknowledges the AFN's submission that "the FSA will significantly expand the number of survivors who would otherwise not be

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entitled to compensation" by including classes of beneficiaries that go beyond the scope of the Tribunal inquiry. Equally, some people who are entitled to a remedy under this Tribunal's compensation orders will not receive one under the FSA. In taking these factors into account, this Tribunal must apply principles of fairness and access to justice" (Commission Submissions, para. 65).

[266] The *CHRA* provides this Tribunal with a specialized framework and statutory mandate purposely designed to meet the unique needs of victims/survivors of discrimination. It is the proper framework to apply when considering how this Tribunal may exercise its discretion. It contemplates the adjudication and remediation of group complaints such as this. Class actions are judicial proceedings that are governed by separate objectives, legal principles, case law, and rules of procedure. All of this is distinguishable from the case at hand. It is not necessary for this Tribunal to apply class action governing factors and jurisprudence to decide whether to vary its orders to conform to the FSA. Expanding or reducing the scope of the groups of complainants included in this Tribunal's compensation orders to mirror the class action groups would require new evidence and a hearing on the merits of these issues. Further, the groups of complainants this Tribunal ordered to be paid compensation are protected from alteration by the principle of finality of quantum and of categories.

[267] The Tribunal must be allowed to complete its task to ensure victims/survivors of the discrimination are compensated. This task cannot involve reducing or removing some victims/survivors' rights to entitlement.

[268] Furthermore, in determining if the victims/survivors will be compensated, the Tribunal cannot divorce the task from the evidence and findings that warrant the remedy. In the same way, in performing an analysis of if victims/survivors will be compensated, the Tribunal must first have found liability under the *CHRA,* then determine who the victims/survivors are, if they have suffered and what is the appropriate remedy. This is an exercise based on evidence and precedes the implementation phase where the Tribunal examines if the remedy is owed to the victims/survivors. This is not to say that both analyses cannot be done at the same time in a ruling. Rather, this is to highlight the adjudicative process one must follow under the *CHRA.*

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[269] This being said, to make findings on the effectiveness of implementation or if the remedy is forthcoming, the Tribunal must first know what it is that needs to be forthcoming. Consequently, the Tribunal looks at its orders and the evidence on implementation to make findings on their effectiveness. This is not an open door to reduce or remove entitlements. It is a door to improve, refine, clarify orders if need be to ensure they effectively compensate the victims.

[270] One main argument raised in this motion is that the negotiation requires compromise and compromises needed to be made given the fixed amount provided. This is an exercise that is best done at earlier stages of proceedings and prior to orders being made.

[271] Another important argument is the one made on reconciliation. If victims/survivors who have been recognized by a human rights Tribunal and the Federal Court are later removed for the greater good of making a final deal to serve others is this a good example of reconciliation? We think not. On the contrary, it is quite concerning. This is even more concerning when the voices of those excluded are the deceased and children.

[272] Canada and the AFN also highlight that this FSA is First Nations-led. The Tribunal appreciates this important fact. However, sovereign nations who are members of the AFN are not exempt from international human rights scrutiny in regards of their citizens. Moreover, states like Canada cannot contract out of their human rights obligations by invoking the sovereignty of First Nations especially when some First Nations call upon Canada to indicate that they have not provided their consent on the FSA.

[273] The AFN and Canada removed the finality aspect of the Tribunal's orders on quantum and recognized categories of victims/survivors in order to achieve finality in the FSA. This benefits Canada in many ways at the expense of some victims/survivors but may create another problem.

[274] The Panel is concerned that the AFN and Canada may have opened themselves to potential liability if the disentitled victims under the Tribunal's orders opt out of the FSA and seek to pursue a recourse against the AFN and/or Canada for removing them from the FSA and changing their opting out options. This point is more of a comment for reflection and is not determinative on this motion.

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[275] The parties have not addressed how First Nations governments who are the rights holders will have to deal with victims/survivors once recognized and now disentitled by their own First Nations who may seek justice. The AFN submits that few First Nations peoples avail themselves of the Commission and Tribunal's proceedings. While it is true that First Nations face barriers advancing human rights claims, during the course of the last decade, the Tribunal's experience is that there has been an increase of First Nations cases referred to the Tribunal by the Commission. The Members of this Panel have travelled across the country and heard numerous First Nations cases that often resolve through mediation. The Panel chair had the privilege of hearing a case in a NAN community in a northern and remote area and others in British Columbia and Nova Scotia. Member Lustig chairs a number of First Nations cases and is the adjudicator who ruled in *Beattie v Aboriginal Affairs and Northern Development Canada*, 2014 CHRT 1.

[276] Moreover, the results for First Nations as a result of these proceedings and the parties collective work cannot be understated. For example, since the Tribunal's 2016 ruling, **2.13 million** services have been approved under Jordan's Principle according to Indigenous Services Canada's Jordan's Principle webpage. This is one of the many examples of real change beginning to address the systemic discrimination in this case. The fact the AFN's new executive now changed its mind cannot undo the evidence of change in this case which is a result of the parties' work before this Tribunal to hold Canada accountable. Further, the Tribunal recently relied on this case in a complaint from a rights-holding First Nation concerning the discriminatory underfunding of policing services and substantiated the complaint (see *Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public Safety Canada*, 2022 CHRT 4 (CanLII)). So far, the *Merit Decision* is cited in over 50 cases by Tribunals and Courts involving First Nations cases and Non-First Nations cases in Canada.

[277] Furthermore, the *Compensation Entitlement Decision* was relied upon in other recent human rights cases where the principles of compensation for infringements of human dignity and egregious cases have been discussed: *RR v. Vancouver Aboriginal Child and Family Services Society* (No. 6), 2022 BCHRT 116 (CanLII); *R.L. v. Canadian National Railway*

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Company, 2021 CHRT 33; *Hugie v. T-Lane Transportation and Logistics*, 2021 CHRT 27; *André v. Matimekush-Lac John Nation Innu*, 2021 CHRT 8.

[278] The Tribunal agrees with the Caring Society that it should consider the legacy of the now repealed section 67 of the *CHRA* that was seen in many First Nation communities as excluding them from the protections of the *CHRA*. This case has changed that perception and the results of this case, in particular the compensation orders, were greeted with celebration in many First Nations communities. In addition to validating the experiences of victims/survivors of Canada's discrimination, this built confidence in the human rights process as an option for First Nations to seek redress. Reversing the Tribunal's compensation orders would undermine this progress and faith in the human rights system. It would send a message that the human rights of First Nations People are negotiable.

[279] The Tribunal remains open to ensure the compensation remedy is forthcoming to the victims/survivors and may require further action however, this is not to say it is fair, just and acceptable to reduce entitlements or disentitle victims/survivors who have been vindicated in the Tribunal's findings.

[280] On this point the Tribunal answers two specific questions as follows:

> 1. Are all the categories of victims/survivors in the Tribunal's orders covered by the FSA?
>
> a. No.
>
> 2. If the answer to question 1 is no, can the Tribunal find that the FSA fully satisfies the Tribunal's orders if categories of victims/survivors have been removed from the Tribunal's orders?
>
> a. No.

V. The FSA and the Specific derogations from the Tribunal's Compensation Orders

[281] The parties addressed four potential derogations from the Tribunal's compensation orders in the FSA:

> 1) Entitlement for First Nations children removed and placed in non-ISC funded placements

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2) Estates of deceased caregiving parents and grandparents are not entitled to compensation

3) Certain caregiving parents and grandparents will receive less compensation

4) Some Jordan's Principle victims/survivors may receive less compensation

[282] The Tribunal will address them in turn here. Furthermore, the Tribunal reviewed the FSA in its entirety and finds it substantially satisfies the Tribunal's compensation orders. Given the FSA does not fully satisfy the Tribunal's compensation orders and consequently, cannot be fully approved in its current form, the Tribunal will only focus on the main derogations from the Tribunal's orders given this is the reason for the denial of part of this motion. In sum, the Tribunal will not conduct a clause-by-clause analysis of the FSA in this ruling as it is not necessary or determinative to discuss where the FSA is in line with the Tribunal's orders or where it does vary in an acceptable way (not reducing or removing entitlements to victims/survivors).

A. Entitlement for children removed and placed in non-ISC funded placements

[283] The FSA adds another requirement in order to award compensation to First Nations children. The Tribunal decisions provide compensation for children removed from their homes, families and communities as a result of the FNCFS Program's systemic discrimination. The FSA narrows it to removed children who were also placed in ISC-funded care. In light of the evidence presented throughout this case, the Tribunal ordered the maximum compensation available under the *CHRA* for the great harms caused by the removal of First Nations children rather than the number of years in care or the other harms that occurred in care. The Tribunal explained that a removed child or caregiving parent or grandparent had other recourses in addition to this maximum compensation that they could pursue to obtain higher amounts of compensation for the additional harms they suffered. The FSA and class actions focus on these additional harms and the Tribunal agrees this is an appropriate focus for the FSA and the class actions. However, the requirement of removal and placement in care in an ISC-funded location cannot be considered a proper interpretation of the Tribunal's findings and orders. The Panel disagrees with the AFN and

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Canada's interpretation of the Tribunal's orders on this point. The Caring Society properly characterized the Tribunal's findings and orders in that regard.

[284] Moreover, the AFN's interpretation of the children eligible for compensation because of their removal by child and family services was raised for the first time in this motion. The AFN may have some valid points about the challenges in identifying the children covered by the Tribunal's Compensation Orders. However, the manner in which these arguments were raised does not permit the Tribunal to assess the AFN's underlying arguments. While there was some limited evidence presented as part of this motion, the parties' arguments essentially focused on what the Tribunal had determined in previous motions. This was appropriate given the nature of this motion. The AFN's arguments about the ambiguity in which children are covered by the Tribunal's orders and the challenges in providing compensation to certain children are better addressed in a separate motion where the parties have sufficient notice to lead evidence on this point. The Tribunal is open to further clarifying and addressing implementation challenges for these victims/survivors. In fact, if there is ambiguity or outstanding challenges that will delay compensation, those issues should be resolved now so that the parties are able to implement the Compensation Framework promptly. There appears to be a dispute about what the Tribunal meant by the term in ''in care'' and this could have been clarified earlier or at least during the time the parties to the FSA were negotiating. This category called by the parties as Non-ISC children is viewed by the AFN and Canada as a new category and the Caring Society views this as a category already included in the scope of the Tribunal's orders.

[285] The parties now disagree on the interpretation of the Tribunal's orders on who are the removed children and if only ISC funded placements are to be considered for the purpose of removed children.

[286] Instead of seeking clarification with the Tribunal as was done on a number of occasions in the past, as part of the compensation process, the AFN and Canada went with their own interpretation which was incorporated in the FSA. The Tribunal addressed clarifications on compensation motions, on average, in two months, except for the very complex issue of First Nations eligibility under Jordan's Principle which took much longer. The Caring Society, recognized by this Tribunal for their expertise in child welfare, disagrees

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with the AFN and Canada's interpretation and shares the same views as this Panel on this point.

[287] The AFN may have some valid points about the challenges in identifying the children covered by the Tribunal's compensation orders. This is not an issue that the Tribunal was asked to address at the time it made its compensation orders or when asked to add the estates or clarify other aspects such as the children in care as of January 1, 2006 or the definitions of essential services, etc.

[288] The appropriate manner to address this was by way of a motion for clarification of the Tribunal's orders and not by way of this motion. The manner in which these arguments were raised does not permit the Tribunal to assess the AFN's underlying arguments. While there was some limited evidence presented as part of this motion, the parties' arguments essentially focused on what the Tribunal had determined in previous motions. This was appropriate given the nature of this motion.

[289] However, the FSA's attempt to unilaterally remove these victims from the scope of the Tribunal's compensation through the class action proceeding is close to being a collateral attack on the Tribunal's decisions. This being said, the Tribunal has considered the AFN's new submissions on this point and finds that determining whether using ISC-funded placements as a measure of eligibility is appropriate would require a notice of motion clearly raising the issue and allowing an opportunity to fully assess relevant evidence. This motion is not the appropriate manner to do so as it would be procedurally unfair with the tight timelines on this motion that prevent those who oppose the AFN and Canada's views on this point from leading contrary evidence and properly challenging the AFN's evidence.

[290] The Tribunal will now turn to a brief review of its previous rulings.

[291] In the *Merit Decision*, the Panel discussed the term "in care":

> [117] Protection services are triggered when the safety or the well-being of a child is considered to be compromised. If the child cannot live safely in the family home while measures are taken with the family to remedy the situation, child welfare workers will make arrangements for temporary or permanent placement of the child in another home where he or she can be cared for. This is called placing the child "in care". The first choice for a caregiver in this

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> situation would usually be a kin connection or a foster family. Kinship care includes children placed out-of-home in the care of the extended family, individuals emotionally connected to the child, or in a family of a similar religious or ethno-cultural background.
>
> …
>
> [119] There are circumstances, however, when the risk to the child's safety or well-being is too great to be mitigated at home, and the child cannot safely remain in his or her family environment. In such circumstances, most provincial statutes require that a social worker first look at the extended family to see if there is an aunt, an uncle or a grandparent who can care for the child. It is only when there is no other solution that a child should be removed from his or her family and placed in foster care under a temporary custody order. Following the issuance of a temporary custody order, the social worker must appear in court to explain the placement and the plan of care for the child and support of the family. The temporary custody order can be renewed and eventually, when all efforts have failed, the child may be placed in permanent care.

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(i) Removed children and the parties' differing interpretations post Federal Court ruling

[292] The Panel provided compensation for the removals of children from their homes, families and communities based on the strong evidence that established the link between Canada's discriminatory practice and the evidence of harm for pain and suffering and wilful and reckless conduct. It is not the goal here to be reexplaining what was already explained at length in previous decisions now upheld by the Federal Court as reasonable. The parties now disagree on the interpretation of the Tribunal's orders on who are the removed children and if only ISC funded placements are to be considered for the purpose of removed children.

[293] The Tribunal's decision in 2019 CHRT 39, addressed the link between the evidence and the harms it was compensating. The Tribunal focused on harms to dignity and the Tribunal also ordered a critical and unprecedented human rights remedy that directly impacts the victims/survivors in this case: human rights compensation for the infringement of dignity, pain and suffering and acknowledgement of the federal government's wilful and reckless conduct.

(ii) Non-ISC Removed children

[294] The Panel's summary reasons and views on the issue of compensation were outlined in 2019 CHRT 39 as follows:

> [13] This ruling is dedicated to all the First Nations children, their families and communities who were harmed by the unnecessary removal of children from your homes and your communities. The Panel desires to acknowledge the great suffering that you have endured as victims/survivors of Canada's discriminatory practices. The Panel highlights that our legislation places a cap on the remedies under sections 53 (2) (e) and 53 (3) of the *CHRA* for victims the maximum being $40,000 and that this amount is reserved for the worst cases. The Panel believes that the unnecessary removal of children from your homes, families and communities qualifies as a worst-case scenario which will be discussed further below and, a breach of your fundamental human rights. The Panel stresses the fact that this amount can never be considered as proportional to the pain suffered and accepting the amount for remedies is not an acknowledgment on your part that this is its value. No amount of compensation can ever recover what you have lost, the scars that are left on your souls or the suffering that you have gone through as a result of racism, colonial practices and discrimination. This is the truth. In awarding the maximum amount allowed under our Statute, the Panel recognizes, to the best of its ability and with the tools that it currently has under the *CHRA*, that this case of racial discrimination is one of the worst possible cases warranting the maximum awards. The proposition that a systemic case can only warrant systemic remedies is not supported by the law and jurisprudence. The *CHRA* regime allows for both individual and systemic remedies if supported by the evidence in a particular case. In this case, the evidence supports both individual and systemic remedies. The Tribunal was clear from the beginning of its [*Merit*] *Decision* that the Federal First Nations child welfare program is negatively impacting First Nations children and families it undertook to serve and protect. The gaps and adverse effects are a result of a colonial system that elected to base its model on a financial funding model and authorities dividing services into separate programs without proper coordination or funding and was not based on First Nations children and families' real needs and substantive equality. Systemic orders such as reform and a broad definition of Jordan's Principle are means to address those flaws.
>
> [14] Individual remedies are meant to deter the reoccurrence of the discriminatory practice or of similar ones, and more importantly to validate the victims/survivors' hurtful experience resulting from the discrimination.
>
> [15] When the discriminatory practice was known or ought to have been known, the damages under the wilful and reckless head send a strong message that tolerating such a practice of breaching protected human rights is unacceptable in Canada. The Panel has made numerous findings since the

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> hearing on the merits contained in 10 rulings. Those findings were made after a thorough review of thousands of pages of evidence including testimony transcripts and reports. Those findings stand and form the basis for this ruling. It is impossible for the Panel to discuss the entirety of the evidence before the Tribunal in a decision. However, compelling evidence exists in the record to permit findings of pain and suffering experienced by a specific vulnerable group, namely First Nations children and their families. While the Panel encourages everyone to read the 10 rulings again to better understand the reasons and context for the present orders, some ruling extracts are selected and reproduced in the pain and suffering, Jordan's Principle and Special compensation sections below for ease of reference in elaborating this Panel's reasons. The Panel finds the Attorney General of Canada's (AGC's) position on compensation unreasonable in light of the evidence, findings and applicable law in this case. The Panel's reasons will be further elaborated below.

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[295] Later, in the *Compensation Entitlement Decision*, the Tribunal further described the harm done to First Nations children and their families which is linked to the removal of the child:

> [147] The children who were unnecessarily removed from their homes, will not be vindicated by a system reform nor will their parents. Even the children who are reunified with their families cannot recover the time they lost with their families. The loss of opportunity to remain in their homes, their families and communities as a result of the racial discrimination is one of the most egregious forms of discrimination leading to serious and well documented consequences including harm and suffering found in the evidence in this case.
>
> [148] As it will be discussed below, the evidence is sufficient to make a finding that each child who was unnecessarily removed from their home, family and community has suffered. Any child who was removed and later reunited with their family has suffered during the time of separation.
>
> [149] The use of the "words unnecessarily removed" account for a distinction between two categories of children: those who did not need to be removed from the home and those who did. If the children are abused sexually, physically or psychologically those children have suffered at the hands of their parents/caregivers and needed to be removed from their homes. However, the children should have been placed in kinship care with a family member or within a trustworthy family within the community. Those First Nations children suffered egregious and compound harm as a result of the discrimination by being removed from their extended families and communities when they should have been comforted by safe persons that they knew. This is a good example of violation of substantive equality.
>
> [150] The Panel believes that in those situations only the children should be compensated and not the abusers. The Panel understands that some of the

abusers have themselves been abused in residential or boarding schools or otherwise and that these unacceptable crimes of abuse are condemnable. The suffering of First Nations Peoples was recognized by the Panel in the Decision. However, not all abused children became abusers even without the benefit of therapy or other services. The Panel believes it is important for the children victims/survivors of abuse to feel vindicated and not witness financial compensation paid to their abusers regardless of the abusers' intent and history.

[151] Additionally, the Panel also recognizes that the suffering can continue for life for First Nations children and their families even when families are reunited given the gravity of the adverse impacts of breaking families and communities.

[152] Besides, there is sufficient evidence before the Tribunal to make findings of pain and suffering experienced by victims/survivors who are the First Nations children and their families.

…

[154] Furthermore, an analysis of the Tribunal's findings makes it clear that the Tribunal's orders are aimed at improving the lives of First Nations children and that the First Nations children and families are the ones who suffer from the discrimination. The Tribunal made findings of systemic racial discrimination and agrees this case is a case of systemic racial discrimination. The Panel also made numerous findings of adverse impacts toward First Nations children and families, adverse impacts that cause serious harm and suffering to children: the two are interconnected. While a finding of discrimination and of adverse impacts may not always lead to findings of pain and suffering, in these proceedings it clearly is the case. A review of the 2016 CHRT 2 and subsequent rulings demonstrates this. There is no reason not to accept that both coexist in this case. The individual rights that were infringed upon by systemic racial discrimination warrant remedies alongside systemic reform already ordered by the Tribunal (see 2016 CHRT 2, 10, 16 and 2017 CHRT 7, 14, 35 and 2018 CHRT 4).

[155] Also, the Tribunal has already made numerous findings relating to First Nations children and their families' adverse impacts and suffering in past rulings. Some of these findings can be found in the compilation of citations below:

> The FNCFS Program, corresponding funding formulas and other related provincial/territorial agreements only apply to First Nations people living on-reserve and in the Yukon. It is only because of their race and/or national or ethnic origin that they suffer the adverse impacts outlined above in the provision of child and family services. Furthermore, these adverse impacts **perpetuate the historical disadvantage and <u>trauma suffered</u> by Aboriginal people**, in particular as a result of the

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> Residential Schools system (see 2016 CHRT 2 at, para. 459). (…)
>
> **The Panel acknowledges the suffering of those First Nations children and families who are or have been denied an equitable opportunity to remain together or to be reunited in a timely manner. We also recognize those First Nations children and families who are or have been adversely impacted by the Government of Canada's past and current child welfare practices on reserves** (see 2016 CHRT 2 at, para. 467).

[296] The Panel focused on the effects of the systemic discrimination and how those effects caused harms and led to removals of First Nations children. A number of findings were made in the *Compensation Entitlement Decision*. Some important findings are reproduced below to highlight the Tribunal's focus on removals:

> [164] The Panel finds that First Nations children and families are harmed and penalized for being poor and for lacking housing. Those are circumstances that are most of the time beyond the parents' control.
>
> [165] The Wen:de report goes on to say that:
>
> > (...) providing an adequate range of neglect focused services is likely more complicated on reserve than off reserve due to existing service deficits within the government and voluntary sector. A study conducted by the First Nations Child and Family Caring Society in 2003 found that First Nations children and families receive very limited benefit from the over 90 billion dollars in voluntary sector services provided to other Canadians annually. Moreover, there are far fewer provincial or municipal government services than off reserve. This means that First Nations families are less able to access child and family support services including addictions services than their non-Aboriginal counterparts (Nadjiwan & Blackstock, 2003). Deficits in support services funding were also found in the federal government allotment for First Nations child and family services (MacDonald & Ladd, 2000.) **This report found that the federal government funding for least disruptive measures (a range of services intended to safely keep First Nations children who are experiencing or at risk of experiencing child maltreatment safely at home) is inadequately funded. When one considers the key drivers resulting in First Nations children entering care (substance misuse, poverty and poor housing) and couples that with the dearth in support services, unfavorable conditions to support First**

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Nations families to care for their children emerges (see Wen:de at, pp.13-14) (emphasis ours).

Although there has been no longitudinal studies exploring the experiences of Aboriginal children in care throughout the care continuum (from report to continuing custody), data suggests that Aboriginal children are much more likely to be admitted into care, stay in care and become continuing custody wards. It is possible that the over representation of Aboriginal children in child welfare care is a result of the structural risk factors (poverty, poor housing and substance misuse) not being adequately addressed through the provision of targeted least disruptive measures at both the level of the family and community. The lack of service provision may result in minimal changes to home conditions over the period of time the child remains in care and thus it is more likely the child will not return home (see Wen:de pp.13-14).

The lack of services, opportunities and deplorable living conditions characterizing many of Canada's reserves has led to mass urbanization of Aboriginal peoples (…)

Funding First Nations have made a direct connection between the state of children's health and the colonization and attempted assimilation of Aboriginal peoples: The legacy of dependency, cultural and language impotence, dispossession and helplessness created by residential schools and **poorly thought out federal policies continue to have a lasting effect. - Substandard infrastructure and services have been made worse by federal-provincial disagreements over responsibility**.

The most profound impact of the lack of clarity relating to jurisdiction results in what **many commentators have suggested are gaps in services and funding –resulting in the suffering of First Nations children.** As articulated by McDonald and Ladd in their comprehensive Joint Policy Review (prepared for the Assembly of First Nations and DIAND): First Nations agencies are expected through their delegation of authority from the provinces, the expectation of their communities, and by DIAND, to provide a comparable range of services on reserve with the funding they receive through Directive 20.1. The formula, however, provides the same level of funding to agencies regardless of how broad, intense or costly, the range of services is (see Wen:de at, pp.90-91).

The issues raised by FNCFS providers demonstrate the tangible effects of funding limitations on the ability of agencies to address the needs of children. **Without funding for**

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> **provision of preventative services many children are not given the service they require or are unnecessarily removed from their homes and families**. In some provinces the option of removal is even more drastic as children are not funded if placed in the care of family members. The limitations placed on agencies quite clearly jeopardize the well-being of their clients, Aboriginal children and families. As a society we have become increasingly aware of the social devastation of First Nations communities and have discussed at length the importance of healing and cultural revitalization. **Despite this knowledge, however, we maintain policies which perpetuate the suffering of First Nations communities and greatly disadvantage the ability of the next generation to effect the necessary change.** (see Wen:de at, p.93).

[166] The Supreme Court of Canada found that the removal of a child from a parent's custody affects the individual dignity of that parent:

> In *Godbout v. Longueuil*, La Forest J. held that: …the autonomy protected by the s. 7 right to liberty encompasses only those matters that can properly be characterized as fundamentally or inherently personal such that, by their very nature, they implicate basic choices going to the core of what it means to **enjoy individual dignity and independence**… choosing where to establish one's home is, likewise, a quintessentially private decision going to the very heart of personal or individual autonomy.
>
> Although the liberty to choose where one resides is clearly not an inalienable right, it may be considered a **strong argument that children should only be forced to leave their family homes in the most extreme circumstances. This is not the case here as Aboriginal children are removed from their homes in far greater numbers than non-Aboriginal children for the purposes of receiving services**.
>
> **Alternatively, it may be argued that placement of children in care, due to lack of services, amounts to an infringement of the parent's right to security of the person, under s.7.** (see Wen:de at, pp.96-97) (emphasis ours).

[167] According to the Supreme Court of Canada, the removal of a child from a parent's custody adversely impacts the psychological integrity of that parent causing distress, in *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, 1999 CanLII 653 (SCC), [1999] 3 S.C.R. 46.

> The Supreme Court of Canada found the right to security of the person encompasses psychological integrity and may be infringed by state action which causes significant emotional distress:

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> Moreover, it was held that the loss of a child constitutes the kind of psychological harm which may found a claim for breach of s.7. Lamer J., for the majority, held: I have little doubt that state removal of a child from parental custody pursuant to the state's parens patriae jurisdiction constitutes a serious interference with the psychological integrity of the parent…As an individual's status as a parent is often fundamental to personal identity, the stigma and distress resulting from a loss of parental status is a particularly serious consequence of the state's conduct.
>
> The Court went on to state that there are circumstances where loss of a child will not found a prima facie breach of s.7, including when a child is sent to prison or conscripted into the army. Clearly, these circumstances can be distinguished from the removal of a child from his/her home due to the government's failure to provide adequate funding and services (see Wen:de at, pp.96-97) (emphasis ours).
>
> **The federal funding formula, directive 20-1, impacts a very vulnerable segment of our society, Aboriginal children.** The protection of these children from state action, infringing on their most fundamental rights and freedoms, is clearly in line with the spirit of ss.7 and 15 of the Charter. Research conducted on the issue of child welfare plainly shows differentiation in the quality of services provided on and off reserve and to aboriginal and non-aboriginal children. This type of differentiation is unacceptable in a society that prides itself on protection of the vulnerable. (Wen:de at, pp.96-97) (emphasis ours).

[168] Furthermore, compelling evidence in other reports filed in evidence also discusses the psychological damage, pain and suffering endured by First Nations children and their families:

> WE BEGIN OUR DISCUSSION of social policy with a focus on the family because it is our conviction that much of the failure of responsibility that contributes to the current imbalance and distress in Aboriginal life centres around the family. Let us clarify at the outset that the failure of responsibility that we seek to understand and correct is not a failure of Aboriginal families. Rather, it is a failure of public policy to recognize and respect Aboriginal culture and family systems and to ensure a just distribution of the wealth and power of this land so that Aboriginal nations, communities and families can provide for themselves and determine how best to pursue a good life. (see RCAP, vol. 3, at, p. 8).
>
> **Many experts in the child welfare field are coming to believe that the removal of any child from his/her parents is inherently damaging, in and of itself**…. The effects of

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> apprehension on an individual Native child will often be much more traumatic than for his non-Native counterpart. Frequently, when the Native child is taken from his parents, he is also removed from a tightly knit community of extended family members and neighbours, who may have provided some support. In addition, he is removed from a unique, distinctive and familiar culture. The Native child is placed in a position of triple jeopardy (see RCAP, Gathering strength, vol. 3, at, pp. 23-24).

[169] The Panel finds there is absolutely no doubt that the removal of children from their families and communities is traumatic and causes great pain and suffering to them:

> At our hearings in Kenora, Josephine Sandy, who chairs Ojibway Tribal Family Services, explained what moved her and others to mobilize for change:
>
> Over the years, I watched the pain and suffering that resulted as non-Indian law came to control more and more of our lives and our traditional lands. I have watched my people struggle to survive in the face of this foreign law.
>
> **Nowhere has this pain been more difficult to experience than in the area of family life.** I and all other Anishnabe people of my generation have seen the pain and humiliation created by non-Indian child welfare agencies in removing hundreds of children from our communities in the fifties, sixties and the seventies. My people were suffering immensely as we had our way of life in our lands suppressed by the white man's law.
>
> **This suffering was only made worse as we endured the heartbreak of having our families torn apart by non-Indian organizations created under this same white man's law**.
>
> **People like myself vowed that we would do something about this. We had to take control of healing the wounds inflicted on us in this tragedy.**
>
> Josephine Sandy Chair, Ojibway Tribal Family Services Kenora, Ontario, 28 October 1992,
>
> (see RCAP, Gathering strength, vol. 3, at, p. 25) (emphasis ours).

[171] More recently, the Panel made findings that support the findings for pain and suffering of First Nations children and their families when the families are torn apart:

> Ms. Marie Wilson, one of the three Commissioners for the TRC mandated to facilitate truth-telling about the residential school experience and lead the country in a process of ongoing healing

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> and reconciliation, swore an affidavit that was filed into evidence in the motions' proceedings. She affirms that she personally bore witness to fifteen hundred statements made to the TRC. Many were from those who grew up as children in the foster care system as it currently exists. She also heard from hundreds of parents with children taken into care. Over and over again, she states the Commissioners heard that the worst part of the Residential schools was not the sexual abuse but rather the rupture from the family and home and everything and everyone familiar and cherished. This was the worst aspect and the most universal amongst the voices they heard. (see 2018 CHRT 4 at, para. 122).
>
> Ms. Wilson notes in her affidavit that children removed from their parents to be placed in foster care shared similar experiences to those who went to residential schools. The day they remember most vividly was the day they were taken from their home. She mentions, as the Commissioners have said in their report, that child welfare may be considered a continuation of or, a replacement for the residential school system. (see 2018 CHRT 4 at, para. 123).
>
> Ms. Wilson affirms that they, (the TRC), intentionally centered their 5 first calls to Action specifically on child welfare. This was to shed a focused and prominent light on the fact that the harms of residential schools happened to children, that the greatest perceived damage to them was their removal from their home and family; and that the legacy of residential schools is not only continuing but getting worse, with increasing numbers of child apprehensions through the child welfare system. (see 2018 CHRT 4 at, para. 124).

[…]

[184] The evidence is ample and sufficient to make a finding that each First Nations child who was unnecessarily removed from their home, family and community has suffered. Any child who was removed and later reunited with their family has suffered during the time of separation and from the lasting effects of trauma from the time of separation.

[185] The evidence is ample and sufficient to make a finding that each parent or grandparent who had one or more children under her or his care who was unnecessarily removed from their home, family and community has suffered. Any parent or grandparent if the parents were not caring for the child who had one or more children removed from them and later reunited with them has suffered during the time of separation. The Panel intends to compensate one or both parents who had their children removed from them and, if the parents were absent and the children were in the care of one or more grandparents, the grandparents caring for the children should be compensated. While the

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> Panel does not want to diminish the pain experienced by other family members such as other grandparents not caring for the child, siblings, aunts and uncles and the community, the Panel decided in light of the record before it to limit compensation to First Nations children and their parents or if there are no parents caring for the child or children, their grandparents.
>
> [186] The Panel also recognizes that the suffering can continue even when families are reunited given the gravity of the adverse impacts of breaking apart families and communities.
>
> [187] The Panel addressed the adverse impacts to children throughout the Decision. The Panel found a connection between the systemic racial discrimination and the adverse impacts and that those adverse impacts are harmful to First Nations children and their families. All are connected and supported by the evidence. The Panel acknowledged this suffering in its unchallenged Decision. It did not have individual children who testified to the adverse impacts that they have experienced nevertheless the Panel found that they did suffer those adverse impacts and found systemic racial discrimination based on sufficient evidence before it. The adverse impacts identified in the Decision and suffered by children and their families were found to be the result of the systemic racial discrimination in Canada's FNCFCS Program, funding formulas, authorities and practices.

[297] The Tribunal cannot reproduce all its lengthy findings in the *Compensation Entitlement Decision*, 2019 CHRT 39, and subsequent compensation process rulings. The above excerpts are to emphasize the point that, given the evidence before it, the Tribunal compensated removals of First Nations children as opposed to the time they spent in care. While the Tribunal agrees the systemic and racial discrimination is focused on how the Federal FNCFS Program adversely impacted First Nations children and families on reserve and in the Yukon, the Tribunal did not focus on ISC funded placements. This motion is the first time that the Tribunal heard of this narrower interpretation.

[298] Further, the AFN's submissions in this motion show that they were considered and then removed for reasons that the Tribunal was not able to consider at the time it made its compensation orders. The AFN argues in its supplementary written submissions that the only children entitled to compensation under the Tribunal's orders but not entitled to compensation under the FSA are those children placed into kith placements, being placements with friends. The AFN contends that this was a principled exclusion on the basis that kinship placements were already excluded from the scope of compensation and, to the AFN's mind, there was not a significant difference for First Nations between a kith and

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kinship placement. Given that the AFN did not see a significant difference between kith and kinship placements, the AFN maintains that it was a principled compromise during the negotiations to exclude kith placements from the scope of compensation under the FSA. The AFN also contends that expert evidence subsequent to the Tribunal approving the Compensation Framework indicates that it is not practical to collect data to enable compensation for children in kith and kinship placements. Using other methods to identify these children would result in retraumatizing them.

[299] The Tribunal does not have sufficient evidence before it to accept the AFN's contention that restricting the scope of compensation to children placed in ISC-funded care would only exclude children placed in kith and kinship care and not other First Nations children removed from their homes, families and communities. The Caring Society correctly indicates that the terminology for different types of placements varies across Canada as different provincial legislation uses different terms.

[300] The Caring Society's interpretation is correct when it submits that the Compensation Framework itself also indicates a broad-based approach. Contrary to the class action Final Settlement Agreement, which privileges using ISC records to determine eligibility, the CHRT Compensation Framework contemplates ISC proactively reaching out to professionals, service providers and provincial/territorial governments to identify beneficiaries (sections 5.3-5.5) and specifically contemplates obtaining assistance from child and family service agencies across the country (section 5.6(c)) and from provincial and territorial governments (section 5.7(a)). The CHRT Compensation Framework further states that the work required for service providers to bring this information forward will be funded by Canada (sections 5.4 and 5.6(b)). The CHRT Compensation Framework stated that the result of the information gathering efforts by ISC, FNCFS Agencies and provincial/territorial governments would be a "Compensation List", being a list of individuals on which there was agreement regarding eligibility for compensation (section 8.3). Individuals not on the Compensation List would still be able to apply to have their claim considered (section 8.7).

[301] The Caring Society's assertion is correct that the detailed process outlined in sections 5.3 to 5.8 to generate section 8.3's CHRT Compensation List, as well as the residual ability to apply for compensation included in section 8.7, would not have been required if

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compensation was limited to ISC-funded placements. As the AFN has made clear in its submissions, ISC-funded placements can be identified by ISC data alone, and do not require access to the wide array of sources identified in the CHRT Compensation Framework. The Tribunal agrees this in and of itself is evidence of the Compensation Framework's broad approach to implementing the Tribunal's orders. This approach was agreed to by the Caring Society and the AFN, and by Canada subject to its objections in its judicial review.

[302] Further, the Tribunal has insufficient evidence to understand how many children would be excluded by limiting compensation to those First Nations children placed in ISC-funded care. While the Tribunal would be concerned even if it is a small number of children who would be excluded, the Tribunal did not have an opportunity to assess how many children were at risk of being excluded.

[303] The AFN and Canada support their request to use ISC-funded placements as a measure of eligibility because of the challenges identifying First Nations children in other types of placements. As noted consistently in its retention of jurisdiction, the Tribunal is open to addressing issues that arise in implementing its orders. However, the nature of this motion did not allow the Tribunal to test the evidence relating to the challenges asserted by the AFN. The timelines required for this motion to meet the AFN and Canada's deadlines in the Federal Court were such that procedural fairness did not allow the other parties to test the AFN's assertion that it would not be feasible to identify affected First Nations children outside of ISC-funded placements. There was not enough time for the other parties to conduct a detailed cross-examination of the AFN's witnesses and for the other parties to call their own evidence, which may have included expert evidence. This is particularly true given that the more detailed information provided by the AFN was filed as a result of the Panel's follow-up questions after the hearing.

[304] As such, the Tribunal is not in a position based on the current evidentiary record to make a determination of how significant the challenges are in compensating First Nations children who were in non-ISC funded placements.

[305] It is unfair to those victims/survivors whose rights are now advocated by the Caring Society to remove compensation from them without adjudication and findings of the

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difficulties in locating them. The evidence raised in response to the Panel Chair's questions do not allow the Panel to make the appropriate findings at this time. The Panel welcomes a further consideration by way of a motion of this discrete issue and any other interpretation issues, such as the issue of biological parents, that appear to be contentious.

[306] Of note, at the time of the compensation hearing that led to the *Compensation Decision*, 2019 CHRT 39, the AFN, joined by other First Nations parties, urged the Tribunal demonstrate courage and to order compensation even if it could be difficult to locate beneficiaries. The First Nations parties argued that the difficulty of identifying victims should not prevent the Tribunal from making orders. This is what the Tribunal did:

> [188] The Panel need not hear from every First Nations child to assess that being forcibly removed from their homes, families and communities can cause great harm and pain. The expert evidence has already established that. The *CHRA* regime is different than that of a Court where a class action may be filed. The *CHRA* model is based on a human rights approach that is purposive and liberal and that is aimed at vindicating the victims of discriminatory practices whether considered systemic or not (see section 50 (3) (c) of the *CHRA*). We are talking about the mass removal of children from their respective Nations. (see 2018 CHRT 4 at, paras. 47, 62, 66, 121, and 133). The Tribunal's mandate is within a quasi-constitutional statute with a special legislative regime to remedy discrimination. This is the first process to employ when deciding issues before it. If the *CHRA* and the human rights case law are silent, it may be useful to look to other regimes when appropriate. In the present case, the *CHRA* and human rights case law voice a possible way forward. The novelty and unchartered territory found in a case should not intimidate human rights decision-makers to pioneer a right and just path forward for victims/survivors if supported by the evidence and the Statute. As argued by the Commission, sufficiency of evidence is a material consideration.

[307] As it will be explained below, the Tribunal did not have any indication the parties would adopt this interpretation. This is confirmed by the finalization of the Draft Compensation Framework which will be further addressed below.

[308] Moreover, the question of other factors that play a role in removals was addressed by this Panel in the *Compensation Entitlement Decision*, 2019 CHRT 39:

> [177] Also, to the question what if the child was unnecessarily removed as a result of multiple factors and not solely because of Canada's actions? The Panel answers that while the Panel acknowledges that child welfare issues

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> are multifaceted and may involve the interplay of numerous underlying factors (see for example, 2016 CHRT 2 [*Merit*] *Decision* at, para. 187) this does not alleviate Canada's responsibility in the suffering of First Nations children and their families who bore the adverse impacts of Canada's control over the provision of child and family services on First Nations reserves and in the Yukon by the application of the funding formulas under the FNCFS Program.

[309] The Tribunal focused on the adverse impacts of the Federal Program causing harm to First Nations children and families and not whether the First Nations child was placed in ISC funded care. What happens if as a result of the Federal Program, a First Nations child is removed and placed in care but not funded by ISC? The Tribunal was not confronted with this question until now and, therefore, could not have made any order with this rationale in mind.

[310] The Tribunal confirms the proper characterization of the Tribunal's orders is held by the Caring Society as summarized below. Notably, the Caring Society's accurate understanding of the Tribunal's rulings and the absence of a disagreement on the interpretation until now even when the parties were working collaboratively on the compensation process suggests the issue became one when choices were made on who should be removed under the FSA to ensure sufficient funds were there for the other categories of victims/survivors and regardless of binding orders from this Tribunal.

[311] In January 2022, the Caring Society wrote to the AFN and advised the AFN it would not agree to a reduction of compensation for children victims/survivors who were entitled to the maximum compensation under the Tribunal's orders. The Caring Society also wrote that any adult victims (i.e., parents and caregiving grandparents) eligible to receive $40,000 in compensation per 2019 CHRT 39 and 2021 CHRT 7 shall not have their entitlement unduly infringed save and except in circumstances where class action counsel and Canada can demonstrate that lower amounts are just compensation for the infringement of dignity and wilful and reckless discrimination found by the Tribunal, (see letter of January 21, 2022, exhibit A, to the affidavit of Jasmine Kaur, dated August 5, 2022).

[312] The AFN and Canada did not seek prior clarification from the Tribunal on this point even though the parties came back to the Tribunal to request an amendment to the end date for compensation and other long-term reform orders.

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[313] However, the Tribunal has indicated in its letter-decision that it is open to clarify this order should the parties wish to obtain clarification and if changes are needed. This should be dealt with after a motion with proper notice and new evidence is provided in order to ensure fairness to the victims/survivors.

[314] The Panel agrees with the Caring Society that there appears to be a fundamental misunderstanding regarding the scope of Canada's discriminatory conduct in this case: the Tribunal ordered compensation for Canada's conduct (including the under-funding of prevention services and least disruptive measures) incentivizing children being unnecessarily moved from their home, family and community during child welfare involvement. The case did not address whether a child was placed in care funded by ISC after their removal.

The Tribunal never limited Canada's liability, and children's eligibility, based on whether a child's placement after removal was funded by ISC. Canada's funding of actual maintenance costs contributed to the systemic racial discrimination by creating an incentive to place children in care but did not limit discrimination to those children placed in care funded by ISC. The Panel's experience throughout has been to focus on the harm experienced by the affected children based on Canada's discriminatory and underfunded provision of child and family services.

[315] This was addressed in 2019 CHRT 39:

> [180] Those formulas are structured in such a way that they promote negative outcomes for First Nations children and families, namely the incentive to take children into care. The result is many First Nations children and families are denied the opportunity to remain together or be reunited in a timely manner (see 2016 CHRT 2 [*Merit*] *Decision* at, paras. 111; 113; 349).
>
> [181] The Panel already found the link between the removal of children and Canada's responsibility in numerous findings including the following: "Yet, this funding formula continues. As the Auditor General puts it, "Quite frankly, one has to ask why a program goes on for 20 years, the world changes around it, and yet the formula stays the same, preventative services aren't funded, and all these children are being put into care." (see 2016 CHRT 2 Decision at, para. 197).

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[316] In 2019 CHRT 39 at para. 168, the Tribunal found “experts in the child welfare field are coming to believe that the removal of any child from his/her parents is inherently damaging in and of itself […] The effects of apprehension on an individual Native child will often be much more traumatic than for his non-Native counterpart.”

[317] The Tribunal recognized that removing a child from their family is always a harmful event and particularly problematic when it could have been prevented with appropriate services. The Tribunal found that the discriminatory underfunding of prevention services increased the likelihood of children being unnecessarily removed from their homes (2016 CHRT 2 at paras 314 and 346; 2019 CHRT 39 at paras 165 and 177). This initial removal was discriminatory regardless of whether the child’s subsequent placement was funded by ISC.

[318] The Tribunal agrees with the Caring Society, the insidious nature of the discrimination spread throughout the continuum of child and family services: from the moment a referral was received to the long-term placement of a child, and all the services (or lack of services) in between. One of the critical findings of the Tribunal was its determination that the failure to equitably fund prevention services and least disruptive measures led to higher rates of children having to unnecessarily leave their homes, (2016 CHRT 2 at paras 314 and 346; 2019 CHRT 39 at paras 165 and 177).

[319] The Tribunal agrees with the Caring Society that it never squarely defined the meaning of “in care” in its reasons because such a definition was never needed, as the systemic discrimination acutely arose from the discriminatory underfunding and lack of preventative services and least disruptive measures that led to the removal. This discrimination was further exacerbated by Canada’s funding models that covered the actual costs of maintenance, further incentivizing the removal of First Nations children to be placed in foster care and other state funded placements. But the systemic discrimination was never confined in the way that is now being suggested in this motion – First Nations children who were removed were harmed and experienced an infringement of their human rights and dignity when they were deprived to receive preventative services and least disruptive measures due to Canada’s discriminatory conduct.

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[320] The Tribunal will not revisit all its findings as this is not a review of its previous decisions nor should a collateral attack occur as part of this motion. The appropriate way is to bring a motion to allow the Tribunal to consider new information and evidence and determine if an amendment is warranted in light of the legal analysis provided above and continued below.

[321] The Tribunal will now turn to the parties' work on the Compensation Framework and how the Tribunal interpreted such work.

[322] As explained above, the Tribunal in order to issue the consent order in 2021 CHRT 7 considered the Compensation Framework and accompanying schedules. This included schedule B: Taxonomy of compensation categories for First Nations Children, Youth and Families: Canadian Human Rights Tribunal Ruling 2019 CHRT 39 (the Taxonomy). The Compensation Framework references the Taxonomy and explains its role in the compensation process and in locating the potential beneficiaries:

> a) The Taxonomy was designed for child and family services providers to assist in the process of identifying and locating potential beneficiaries; however, a feasibility investigation is underway to determine if, and how, it can assist other service providers to identify beneficiaries.
>
> b) Canada will fund any adaptations required to apply this Taxonomy to meet the needs of specific service provider communities, as determined by the independent experts who drafted the taxonomy in Schedule "B".
>
> c) Identifying children who were necessarily and unnecessarily removed will likely require assistance from child and family service agencies across the country. The Taxonomy is intended to guide their review of individual records in their possession so as to expedite the process of identifying and locating potential beneficiaries and ultimately validation of claims for compensation.
>
> 5.6 The report entitled "Canadian Human Rights Tribunal (CHRT) Ruling 2019 CHRT 39: Taxonomy of compensation categories for First Nations children, youth and families" dated November 2019 and authored by Marina Sistovaris, PhD, Professor Barbara Fallon, PhD, Marie Saint Girons, MSW and Meghan Sangster, Med, MSW of the Policy Bench: Fraser Mustard Institute for Human Development will assist in the identification of potential beneficiaries (the "Taxonomy"). The Taxonomy is attached as Schedule "B".

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[323] The Taxonomy was also found to be in line with the Tribunal's reasons and orders and therefore was accepted by the Tribunal before it rendered its last ruling on compensation in 2021 CHRT 7.

[324] The Taxonomy is informative in many aspects and supports the Tribunal's reasons and orders. The Taxonomy's purpose is as follows:

> The purpose of this briefing note is to: (1) develop a taxonomy of compensation categories; and (2) frame questions that will help guide individuals appointed by the Canadian Human Right Tribunal (CHRT) to carry out the process of identifying individuals eligible to receive compensation according to the conditions set out by 2019 CHRT 39. The development of compensation categories and framing of questions involved:
>
> a) a content review of the 2019 CHRT 39 ruling;
>
> b) mapping out the compensation categories, identifying common themes and defining key terms and concepts;
>
> c) reviewing provincial and territorial child welfare legislation, identifying and defining key terms and concepts;
>
> d) analyzing and synthesizing information concerning the 2019 CHRT 39 ruling and child welfare legislation in Canada; and
>
> e) framing questions corresponding to the compensation categories.

[325] The Taxonomy clearly follows the Tribunal's reasons and orders and takes into account the subsequent compensation rulings that were issued as clarification:

> 2.0 Background
>
> On September 6, 2019, the CHRT issued the eighth non-compliance order—2019 CHRT 39—concerning compensation for First Nations children, youth and families negatively impacted by Canada's child welfare system. The CHRT found that Canada's "willful and reckless conduct" and discriminatory child welfare practices have contributed to the ongoing pain and suffering of First Nations children, families and communities. According to the Tribunal's ruling, the Government of Canada is required to pay First Nations children, youth and families the maximum amount of compensation permitted under the 1985 *Canadian Human Rights Act* (*CHRA*) who were: unnecessarily placed in care since January 1, 2006; necessarily placed in care but outside of their extended families since January 1, 2006 or denied or delayed receiving services between December 12, 2007 and November 2, 2017 as a result of the Government of Canada's discriminatory application of Jordan's Principle.

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(emphasis added).

[326] The Taxonomy document is also instructive on the categories of beneficiaries covered under the Tribunal's orders. Again, the Tribunal upon review of the taxonomy document did not identify discrepancies, contradictions or concerns:

> 4.0 Compensation Categories
>
> Three central compensation categories are extrapolated from the 2019 CHRT 39 ruling:
>
> > Category 1: Compensation for First Nations Children and their Parents or Grandparents in Cases of Unnecessary Removal of a Child in the Child Welfare System;
> >
> > Category 2: Compensation for First Nations Children in Cases of Necessary Removal of a Child in the Child Welfare System
> >
> > Category 3: First Nations Children and their Parents or Grandparents in Cases of Unnecessary Removal of a Child to Obtain Essential Services and/or Experienced Gaps, Delays and Denials of Services that Would Have Been Available under Jordan's Principle.
>
> These have been further divided into subcategories, for which the eligibility requirements are explained below. Each category is detailed in the taxonomy document.

[327] Further, the taxonomy document also describes out-of-home care placements and includes kinship care and a variety of placements:

> 5.9 Out-of-Home Care/Placement
>
> Out-of-Home Care/Placement: "[E]ncompasses the placements and services provided to children and families when children are removed from their home due to abuse and/or neglect" (Child Welfare Information Gateway, n.d.: Overview Out-of-Home Care). Placement outcomes include:
>
> > a) "Kinship Out of Care: An informal placement has been arranged within the family support network; the child welfare authority does not have temporary custody.
> >
> > b) Customary Care: [A] model of Indigenous child welfare service that is culturally relevant and incorporates the unique traditions and customs of each First Nation.
> >
> > c) Kinship in Care: A formal placement has been arranged within the family support network; the child welfare authority has temporary or full custody and is paying for the placement.

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> d) Foster Care (Non-Kinship): Include any family-based care, including foster homes, specialized treatment foster homes, and assessment homes.
>
> e) Group Home: Out-of-home placement required in a structured group living setting.
>
> f) Residential/Secure Treatment: Placement required in a therapeutic residential treatment centre to address the needs of the child." (Fallon et al., 2015, p. 105).

Out-of-home placement can sometimes lead to reunification, adoption, or legal guardianship:

> Reunification: "[T]he return of children to their family following placement in out-of-home care" (Canadian Child Welfare Research Portal, n.d., Reunification).
>
> Adoption: "The social, emotional, and legal process through which children who will not be raised by their birth parents become full and permanent legal members of another family while maintaining genetic and psychological connections to their birth family" (Child Welfare Information Gateway, n.d., Glossary).
>
> Legal guardianship: "Guardianship is most frequently used when relative caregivers wish to provide a permanent home for the child and maintain the child's relationships with extended family members without a termination of parental rights. Caregivers can assume legal guardianship of a child in out-of-home care without termination of parental rights, as is required for an adoption." (Child Welfare Information Gateway, n.d., Guardianship).

[328] The Tribunal agrees with the parties who submit the Compensation Framework is more akin to a reference document and, therefore, the Tribunal's orders prevail. However, the Tribunal made its orders in 2021 CHRT 7 and incorporated the Compensation Framework in its orders after finding it was in line with its findings and orders. The Compensation Framework is therefore highly relevant to determine if the non-ISC funded placements were included in the Tribunal's orders. While the Compensation Framework can be further amended and is less static than the formal entitlement and quantum orders made by this Tribunal, it is a clear indication of what the Tribunal considered at the time it made its orders. The fact that the AFN and Canada now limit its meaning and value to support carving out certain children does not change what the Tribunal considered at the time it made its compensation orders. Moreover, if the Compensation Framework referring to the taxonomy

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document ought to be set aside for the purposes of analyzing the compensation and related beneficiaries, there was no need for the parties to wait for its finalization after the Tribunal clarified definitions and categories. This is not the logic that was followed in this case regardless of what the AFN and Canada are now stating. The Tribunal was asked to clarify a number of orders and definitions for the parties to be able to finalize the Compensation Framework. The parties requested those clarifications and advised the Tribunal this would assist in finalizing the Compensation Framework. The Tribunal ordered the parties to develop a compensation process. The Compensation Framework is part of that process. Denying it now to justify the FSA is of no help. The Compensation Framework needed to be finalized before developing a guide for compensation distribution which is one of the final stages of the compensation process. This guide was not developed given that Canada judicially reviewed the Tribunal's compensation rulings. Back-peddling to erase this to support disentitlements is of no use and is completely rejected here. A better view of this, is if new evidence which is properly tested demonstrates impossibilities or serious impracticalities for this category of beneficiaries, then, further order requests in keeping with the best interests of those children, could potentially be made given this evidence was not available at the time the Tribunal made its orders.

[329] Further, the Tribunal considered the Framework and how it described removals of children in broad and non-exhaustive terms. This was found in line with the Tribunal's findings and orders:

> 4.2.1. "Necessary/Unnecessary Removal" includes:
>
> > a) children removed from their families and placed in alternative care pursuant to provincial/territorial child and family services legislation, including, but not limited to, kinship and various custody agreements entered into between authorized child and family services officials and the parent(s) or caregiving grandparent(s);
> >
> > b) children removed due to substantiated maltreatment and substantiated risks for maltreatment; and
> >
> > c) children removed prior to January 1, 2006, but who were in care as of that date.

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[330] The Framework explains how the description above applies to the compensation process and identification of potential beneficiaries of the Tribunal's compensation:

> 4.2. For greater certainty, the following definitions apply for the purpose of identifying beneficiaries:

[331] To be clear, the Panel agrees with the AFN that compensation is linked to the systemic discrimination found by this Tribunal in the provision of services through the Federal FNCFS Program. However, the nuance newly made by the AFN and Canada does not reflect the spirit of the Tribunal's rulings. It transforms the focus from what led to the removals to once removed who pays for this child's care.

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B. Estates of caregiving parents and grandparents

[332] Estates of deceased caregiving parents and grandparents in the FSA are not entitled to direct financial compensation unless the caregiver passes away after submitting an application for compensation. In contrast, the Tribunal's orders provide compensation to the estates of eligible caregivers regardless of when they passed.

[333] This is a clear derogation from the Tribunal's orders. As such, the key consideration is whether the Tribunal is prepared to accept this derogation, either by amending its orders or granting the AFN and Canada's request to find the FSA satisfies the Tribunal's orders notwithstanding this clear derogation.

[334] The parties to the FSA indicate that they are seeking to achieve proportional compensation commensurate to harm suffered within a historically large, but fixed settlement amount. To achieve this, one area where the parties have taken a more limited approach to compensation than what was ordered by the Tribunal is with respect to the estates of deceased class members: only the deceased members of the Removed Child, Jordan's Principle and Trout Child classes as described in the FSA are entitled to compensation. The AFN and Canada submit in the joint motion that the fundamental principles guiding the parties was that, where compromise is necessary, compensation for children must be given priority. The parties are mindful of the Panel's observation that "the discriminatory practices at stake involved the forced separation of families and communities,

and could therefore have intergenerational impacts." Although there are limits on which estates of class members will be eligible for compensation, safeguarding compensation for deceased members of the child classes allows compensation to still flow through to the heirs of those children who were the youngest victims of the discriminatory practices.

[335] The FSA establishes a mechanism for those who do not receive direct compensation to benefit from the terms of the FSA by way of the establishment of a Cy-près fund of $50 million. The First Nations-led Cy-près Fund will be endowed with $50 million.

[336] The FSA contemplates that some members of the various family classes may not receive direct compensation but will benefit from the Cy-près Fund.

[337] The Tribunal, encouraged by the AFN, already rejected in its *Compensation Decision* that compensation be paid into a support fund in lieu of direct financial compensation and found this should be paid in addition to financial compensation.

[338] The FSA disentitles the estates of deceased caregiving parents and grandparents to direct financial compensation.

[339] Canada opposed paying compensation to estates. The Tribunal rejected this position as part of its *Compensation Decision* as it would have allowed Canada to benefit from delaying compensation to victims of its discrimination which is not consistent with the objectives of the *CHRA.*

[340] The Tribunal understands why the AFN made this choice and that this choice is a possible option when negotiating a settlement. However, entitlement orders were already made by this Tribunal after evidence-based findings and orders. Agreeing with the AFN's choice would collaterally attack the Tribunal's findings and orders that granted compensation to the estates of deceased parents or grandparents. When the Tribunal entitled those estates to compensation, it did so in light of the evidence and found the orders were warranted under the *CHRA*, quasi-constitutional legislation that confers discretion to Tribunal members to order compensation if justified. This is made even stronger when those orders were found reasonable by the Federal Court. The fact that a cap has now been placed for compensation by Canada and the need to include class action victims/survivors

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who were outside these proceedings to allow Canada to settle all claims related to its widespread systemic discrimination does not trump the Tribunal's orders. Canada cannot contract out from its obligations under the *CHRA* and Tribunal orders by simply stating this is the AFN's choice. Allowing this would transform the human rights regime and usurp the Tribunal and reviewing Court's roles. Moreover, this is the AFN's choice because of the added class actions and the fixed funds. Notably, the AFN requested compensation for estates of deceased parents and grandparents. The Tribunal considered their submissions alongside the other parties' submissions and considered the evidence and found this was warranted.

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[341] The AFN and Canada have not convinced the Tribunal that its previous orders can be amended to reduce compensation or disentitle victims. Since orders are not simple recommendations, they cannot be disregarded. This could undermine the human rights process and the previous orders made in this case including the orders made in March 2022 that support an end date for compensation. There is a fundamental difference between settlements which may require compromise for financial or other reasons and the Tribunal proceedings. At the Tribunal, when a respondent advances financial hardship, it is allowed to present such arguments and supporting evidence as part of an undue hardship defence under section 15 (2) of the *CHRA*. The Tribunal considers the evidence and arguments of all parties and determines if the complaint is substantiated or if the respondent's defences stand and the complaint is dismissed. This is done through tested and weighed evidence and thorough consideration of the law, the arguments and all materials. Such a defence is not easy to make since it has to be demonstrated with the evidence. This goes to say that the Tribunal makes decisions based on facts, law and evidence. Of note, the Tribunal already found that Canada did not advance such a defence in this case.

[342] This is an important reason why the Tribunal is not convinced by the AFN and Canada's arguments on this point. Canada cannot indirectly do what it could not do before the Tribunal.

[343] Furthermore, settlements often occur prior to orders being made and if orders have already been made, settlements must not find ways to evade the orders.

[344] While estates are not people, the heirs of those estates are and they were signaled by the Tribunal's decision subsequently upheld by the Federal Court that they were entitled to compensation. It is unfair to now remove this from them because of financial choices resulting from merging proceedings and imposing a financial cap. These arguments are insufficient to justify an amendment to the Tribunal's orders on this point. As it will be revisited below, the Tribunal cannot amend its orders to reduce compensation or to disentitle victims/survivors. The Tribunal could accept variations of its orders if it does not remove gains for victims/survivors or a different compensation process and if supported by the evidence, which is a key consideration for this Tribunal for any order.

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[345] Finally, while the Tribunal recognizes the importance of respecting the inherent rights of self-governing First Nations who decide for themselves, which has been honored for the reform aspect of these proceedings and also reflected as part of the Tribunal in 2018 CHRT 4 orders, in terms of compensation, the Tribunal would have more latitude if it was not asked to reduce or revoke individual rights of victims/survivors.

[346] There is a real difficulty to have a complainant requesting orders, leading evidence and then changing its mind in part because a respondent controls the process in limiting the amounts of funds for multiple proceedings against it without regard for previous orders.

[347] When the AFN requested the Tribunal's compensation orders it did so on behalf of self-governing First Nations supported by evidence and resolutions.

[348] The Tribunal found it had resolutions and were mandated to request the orders. The Tribunal notes that the AFN also brought these complaints and actively advocated for the individual compensation the Tribunal ordered. It did this on the basis of resolutions by the Chiefs-in-Assembly. Now the AFN changed its mind and now asks this Tribunal to honor a First Nations-led process that rescinds some First Nations Peoples rights because of compromise.

[349] If honoring the inherent right of self-government of First Nations under the *CHRA* means that we must honour the First Nations who change their minds after orders are made with disregard to the evidence that led to those orders, the Tribunal believes it should be clearly expressed in legislative amendments because it is counterintuitive to the current

human rights regime and the legitimacy of the Tribunal's mandate. Otherwise, Tribunal orders must be seen as binding and victims/survivors regardless of their national origin must be able to rely on these orders once they are made. Again, changing one's mind in this case after orders are made is less an issue if rights are not infringed upon and if the evidence supports it and the retention of jurisdiction allows it.

[350] For the above reasons, the Tribunal cannot find the FSA fully satisfies the Tribunal's orders for this category of victims. Moreover, the Tribunal cannot amend its orders to reflect the FSA as it would be rescinding its findings and orders making them meaningless, non-authoritative and fleeting. Further, the arguments in support of the amendments have not convinced the Tribunal that these amendments are justified or that they can be done in this human rights framework.

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C. Certain caregiving parents and grandparents will receive less compensation

[351] The AFN indicates there are two points where the removed child family class may deviate from the Tribunal's Compensation Framework. First, caregiving parents and grandparents will receive additional compensation up to $60,000 in the event they had multiple children removed rather than multiples of $40,000.

[352] The second change is that if there is an unexpected number of claimants, compensation may be reduced to ensure that all caregiving parent and grandparent victims receive compensation.

[353] The maximum compensation of $60,000 similarly ensures there are enough funds to compensate all eligible caregiving parents and grandparents.

[354] Further, family class members who are not eligible for direct compensation can still benefit from the Cy-près fund.

[355] Again, the AFN clearly admits a derogation from the Tribunal's orders and the main reason is to ensure there are sufficient funds available for everyone in light of the fixed amount of funds for compensation in the FSA.

[356] The Tribunal's orders account for the compound effect on a caregiving parent or grandparent who has already experienced the pain and suffering of the removal of a child and now experiences the egregious harm of losing another one or more children as a result of the systemic racial discrimination. The FSA reduces the amount of compensation for those victims/survivors who were retraumatized and suffered greatly. Losing more than one child heightens the presence of a willful and reckless behavior; it does not reduce it. The Tribunal emphasized that, given this was the worst-case scenario, maximum compensation should be paid for the removal of each child. While the harm suffered warrants more than $40,000 per child removed, the *CHRA* places a cap on compensation. The FSA chips away at the heart of the willful and reckless discriminatory practice found and the orders that signal to Canada that its behavior was devoid of caution and caused compounded harm to parents and grandparents in removing more than one child.

[357] Those findings were made after carefully considering the evidence and submissions and nothing in this joint motion changes this. While the Tribunal understands the need for compromise as part of the settlement negotiations, the result is that the Tribunal orders that recognized this category of victims/survivors will be significantly reduced not based on evidence but rather to ensure everyone can receive some compensation within the fixed pot of compensation funds.

[358] The Tribunal appreciates that the AFN wanted to prioritize children in the FSA. However, this choice between parent or grandparent and child does not form part of the Tribunal's compensation orders. Under the Tribunal compensation process no one needs to yield compensation to the other. Moreover, the FSA needed to adopt such an approach given the broader number of victims/survivors and the fixed pot of compensation funds. This was not a consideration before the Tribunal when it made its compensation orders. Again, Canada did not make an undue hardship cost defence to limit compensation.

[359] This is the equivalent of asking the Tribunal to change its findings concerning the harms suffered by the parents and grandparents who saw multiple children removed. Similar to the reasons stated above, this is akin to a collateral attack to the Tribunal's compensation decisions. Furthermore, as it will be explained below, amendments cannot be made to reduce the entitlements that were made by this Tribunal based on evidence and

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the law. Even if we were wrong on this point, no convincing evidence was presented to justify such an amendment.

[360] Again, for the above reasons, the Tribunal cannot find the FSA fully satisfies the Tribunal's orders for this category of victims/survivors.

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D. Some Jordan's Principle victims/survivors may receive less compensation

[361] The AFN contends that the process for compensating Jordan's Principle victims generally follows the principles identified by the Tribunal. The FSA aims to ensure that children who suffered discrimination and were objectively impacted are compensated through a process that is objective and efficient and the definition of essential services is reasonable. The process focuses on establishing a confirmed need for an essential service that was the subject of a delay, denial or service gap. Those claimants who are most impacted will receive at least $40,000 while those who are less seriously impacted will receive up to $40,000. The FSA dedicates a budget of $3 billion to the Jordan's Principle child class. The larger budget estimated for the Jordan's Principle class despite the smaller projected size of that class accounts for the intention to ensure—to the extent possible in a class of unknown size—payment of $40,000 to those Jordan's Principle survivors who would have benefitted from a $40,000 payment under the Tribunal's Compensation Order.

[362] The AFN also submits the FSA and the claims process described therein which is to be developed by the parties generally follow the principles established by the Tribunal and set criteria that are amenable to objective implementation. The goal in the FSA is to ensure that those children who suffered discrimination and were objectively impacted are compensated consistent with the Tribunal's reasoning that the compensation process should be objective and efficient, and the definition of essential services must be reasonable. The process primarily focuses on a confirmed need for an essential service that was the subject of a delay, denial or service gap within the bounds of reasonableness.

[363] Notably, the AFN submits this accounts for the significant uncertainty in the class size and is expected to result in children who were eligible for Jordan's Principle compensation under the Tribunal's orders receiving at least $40,000.

[364] The framework to determine what is an essential service will be developed with the assistance of experts.

[365] The starting point is the list of services currently eligible for Jordan's Principle funding. The process aims to treat children as significantly impacted if there is evidence to support such a conclusion. The process is designed to be flexible so that it can consider services that are essential for a particular child but are not generally essential services. The process does not require interviews or examinations of claimants. There is a recognition that the type of documentation required to support a claim might vary.

[366] The AFN explains that only caregiving parents and grandparents of Jordan's Principle and Trout class children who suffered a significant impact will receive compensation. This narrowed eligibility occurred because the number of caregiving parents and grandparents was unknown. Caregivers who do not receive a direct benefit would nonetheless benefit from the Cy-près fund.

[367] There is no dispute on the fact that this also is a derogation from the Tribunal's orders. The AFN clearly submits this approach departs from the Tribunal's orders.

[368] There are outstanding items in the FSA to be determined on which the plaintiffs are actively in conversations with a First Nations-led Circle of Experts. These include finalizing the Jordan's Principle assessment methodology. Members of the Jordan's Principle Class and the Trout Child Class will be determined based on their "Confirmed Need" for an "Essential Service."

[369] Under the Tribunal's approach, all First Nations children eligible for compensation related to Jordan's Principle are entitled to $40,000 in compensation. However, under the FSA, only children who experienced a "Significant Impact" will be guaranteed to receive $40,000, although they may receive more than this. The concept of a "Significant Impact" is set out in the Framework of Essential Services.

[370] The definition of a "Significant Impact" will evidently determine whether First Nations children will be guaranteed at least $40,000 under the FSA or whether they may be in a category that could receive less than $40,000. "Significant Impact" is defined in the

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Framework of Essential Services, which was developed after the FSA and made public on August 19, 2022. The Framework of Essential Services defines a service as “essential” if the claimant’s condition or circumstances required it and the delay in receiving it, or not receiving it at all, caused material impact on the child.

[371] Canada disagrees with the Caring Society that this motion is premature because there are steps yet to be taken leading to the implementation of the settlement, primarily dealing with the details of the Jordan’s Principle assessment methodology and the distribution protocol, which is scheduled to be reviewed by the Federal Court on December 20, 2022.

[372] Canada submits that it is clear from the explanation set out in the September 6, affidavit of Janice Ciavaglia and attached report that the parties are proceeding on a phased basis that includes ongoing consultation with experts, rights holders and claimants in order to ensure that when finalized and approved by the Court, there will be broad acceptance by First Nations and claimants of the process. Canada supports this approach and submits that the motion is not premature as the interests of potential claimants will be adequately considered by the Federal Court in its review of the methodology and protocol.

[373] The Tribunal agrees with the Caring Society that it is impossible at the current point in time to know whether the implementation of Jordan’s Principle under the FSA will result in the First Nations children identified under the Tribunal’s orders receiving $40,000 under the FSA. This remains a source of uncertainty and there is little evidence of whether Jordan’s Principle eligibility under the FSA will be interpreted in such a manner that it provides the victims/survivors under the Tribunal’s orders the full entitlement they would have received under those orders.

[374] While the Tribunal understands the rationale for the FSA’s phased approach on this aspect, the Tribunal is at a very different stage in the proceedings and has a different mandate and uses a different approach under the *CHRA*. The Tribunal makes findings based on the evidence before it. The Tribunal ensured it remained seized of the compensation aspects that are not finalized which required additional evidence. For the compensation process as a whole under the Compensation Framework, the Tribunal

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remains seized of all its compensation decisions, including to ensure the implementation of the Compensation Framework.

[375] The FSA sets out future work that is required before there can be certainty regarding which victims/survivors under the Tribunal compensation orders will be eligible under the FSA. While the way the parties to the FSA are proceeding may be appropriate under the Federal Court process, the Tribunal is asked to accept the end of its jurisdiction on the compensation issue without having the full picture or evidence on this point as opposed to the Federal Court who will supervise the implementation of the FSA.

[376] Further, the Tribunal's role includes making findings on the evidence presented and, on this point, it is difficult to make proper findings to fully assess this important category which indicates that the request may be premature for this Tribunal for this category.

[377] In order to be eligible for a guaranteed $40,000 Jordan's Principle compensation under the FSA, First Nations children must have both experienced a denial or delay in receiving an essential service and have experienced a "significant impact" because of the delay or denial. Article 6.06(3) of the FSA indicates that a "significant impact" will be defined in the Framework of Essential Services:

> 3) The Framework of Essential Services will establish a method to assess two categories of Essential Services based on advice from experts relating to objective criteria:
>
> > (a) Essential Services relating to Children whose circumstances, based on an Essential Service that they are confirmed to have needed, are expected to have included significant impact ("Significant Impact Essential Service"); and
> >
> > (b) Essential Services that are not expected to have necessarily related to significant impact ("Other Essential Service").

[378] Nonetheless, the Framework on Essential Services does not provide further guidance on a "significant impact" and what is required to engage the higher level of compensation. Neither is "Significant Impact" a defined term in the FSA. Without this information, individual claimants cannot determine whether they could be entitled to more or less compensation under the FSA than they would be eligible to obtain under the Tribunal's orders.

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[379] The uncertainties in benefits from the outstanding definition of an “essential service” reflects the early stages of a negotiated settlement. That is appropriate for an attempt to settle a class action in the early stages but it is not appropriate for the current Tribunal process where entitlements to compensation have already been determined based on the evidence. Moreover, this does not harmonize well with a Tribunal that has already made findings on evidence and corresponding orders. Further, as mentioned above, this may depart from the Tribunal’s orders for this category and therefore cannot be considered to fully satisfy the Tribunal’s orders. As for the request for amendment of the Tribunal’s orders to reflect this departure, the request is premature since there are uncertainties at this time, the amendments are understandably not well defined by the AFN and Canada given the uncertainties and, finally, there is a real potential for reduction in compensation for some victims and disentitlements for others which is not permissible.

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E. Conclusion on Derogations

[380] While it is obvious that one of the reasons the AFN and Canada are proposing compromising the compensation ordered to victims/survivors in this case is the fixed amount of funds Canada provided to resolve this issue, the Tribunal is not suggesting that Canada should provide unlimited funding. The compensation orders require finite compensation to a finite class of victims/survivors. While the exact number of victims/survivors eligible for compensation is not known, it is not an unlimited number.

[381] The Tribunal’s intent was never to allow parties to bargain away the compensation. Given the serious discrimination in this case, the Tribunal intended to provide the maximum compensation to recognized victims/survivors under the Tribunal’s orders and allow them to avail themselves of other recourses should they wish to do so, which would potentially allow them to obtain more than what is possible under the *CHRA* limit of $40,000 in compensation. The FSA, while advantageous for the majority of victims/survivors, it reduces this already low amount for other victims. The core message of the Tribunal’s *Compensation Decision* was received by the AFN and Canada for most children but not for the caregiving parent and grandparent victims, including their estates. Nevertheless, the Tribunal found they are entitled to the maximum compensation permissible under the *CHRA*.

[382] Finally, once the evidence before the Tribunal establishes pain and suffering, remedies must follow. Compromises and caps on fixed funds in negotiations do not change this proposition.

[383] This Tribunal previously found "when evidence establishes pain and suffering, an attempt to compensate for it must be made'' (see *Grant v. Manitoba Telecom Services Inc.*, 2012 CHRT 10, at para. 115, emphasis added). In 2015 CHRT 14 at para. 124, the Tribunal relying on this principle found that

> Dr. Blackstock experienced feelings of shame and humiliation resulting from this public professional rejection, in front of the Chiefs of Ontario whom she was seeking to advise, are understandable and warrants some form of compensation. … $10,000 constitutes a reasonable award for the prejudice Dr. Blackstock experienced.

[384] Overall, the Tribunal awarded $20,000 in compensation to Dr. Blackstock for being retaliated against by Canada in this very case. This must be kept in perspective when assessing compensation when parents or grandparents, living or deceased, experienced the painful experience of having children removed from their homes when they could have remained with appropriate prevention services in place and the application of appropriate measures. This is what the Tribunal has done in its compensation decisions.

VI. Opting-out provision

[385] Article 11 of the FSA does not specify the opting out deadline, however, Canada in its submissions indicated the opt out process approved by the Federal Court gives claimants until February 19, 2023, to opt out. Claimants will have the ability to become aware of the full details of the methodology approved by the Court before making the decision as to whether to opt out.

[386] Canada further submits that since acceptance by the Tribunal of the settlement as satisfying its order is a pre-condition to implementation of the settlement, claimants will also be aware of the decision made by the Tribunal before they must determine whether to opt out of the settlement.

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[387] The Tribunal finds this point raised by Canada reinforces the importance of victims/survivors having adequate time to consider the FSA and the Tribunal's decision on this motion and previous compensation decisions with the benefit of an appropriate opt-out period.

[388] The Tribunal agrees with the Caring Society that under the FSA, victims/survivors will need to opt-out of the class action within a short time frame. Further, the short time to make an opt out decision, particularly for child victims, is made more challenging because the FSA has incomplete definitions of terms and criteria that will directly affect compensation entitlements. This situation places some victims/survivors in an unfair position wherein they are being forced to make a decision to opt out without knowing what they can receive under the FSA versus their entitlement to human rights compensation pursuant to the Tribunal's orders. The unfairness deepens as the FSA seems to force victims/survivors to opt out of both avenues of compensation if they are dissatisfied with the class action deal struck at the Federal Court. Such an opt-out scheme would place victims/survivors who are receiving less than their CHRT entitlement of $40,000 in an untenable situation whereby they either accept reduced entitlements under the FSA or opt-out of the FSA to be left to litigate against Canada from scratch. Such a proposal deepens the infringement of dignity for victims/survivors and may revictimize them and is therefore inconsistent with a human rights approach. This is concerning.

[389] Moreover, the evidence in these proceedings has demonstrated many times that some First Nations often lack capacity by no fault of their own to respond rapidly to deadlines. For example, in 2020 CHRT 24, the Chiefs of Ontario objected to a firm, 13-month, deadline imposed by Canada to submit claims for retroactive reimbursement of Band Representative Services and a firm deadline for current-year claims for Band Representative Services. COO argued this period was too short. This Tribunal agreed with the COO.

[390] This is even more of an issue for individual victims/survivors given the incomplete information provided to the public by the AFN and Canada on the Tribunal's compensation orders.

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VII. Informing the public about the FSA

[391] As part of its answers to the Caring Society's cross-examination questions, the AFN provided a link to its website and compensation information page on at least two occasions: August 23, 2022 and August 29, 2022.

[392] On August 23, 2022, the AFN provided Ms. Janice Ciavaglia's answers to the First Nations Child and Family Caring Society of Canada's cross-examination questions in relation to her affidavit affirmed on July 22, 2022. The AFN organized the questions and answers in a clear chart and in item number 36, the AFN wrote as follows:

> Question 36: What will AFN's messaging be to those removed children who are eligible under the Tribunal's Compensation Entitlement Order and Compensation Framework Order but are not eligible for direct compensation under the FSA?
>
> Answer: I object to this question on the basis of relevance. However, in the interest of moving this motion along, I will answer it.
>
> The AFN has taken active steps to keep its constituents, including potential class members, aware of the class action proceeding to date, including through traditional media, the AFN's social media, and through the AFN-led website www.fnchildcompensation.ca.

[393] On August 29, 2022, the AFN provided a response to the Caring Society's follow-up questions to Ms. Ciavaglia. The AFN's response is reproduced below:

> Question 1: In response to your answers to Questions #50 and #51, can you confirm whether the FSA's eligibility for Jordan's Principle includes "products and supports" as set out by the Tribunal in 2020 CHRT 15 and the Compensation Framework Order or whether eligibility will be restricted to "a service" as set out in the FSA definition of "Essential Service"?
>
> Answer: "Essential Service" includes the provision of a product or service, and is not restrictive. The examples listed in the appendix to the parties' agreed upon Framework of Essential Services, for example # 2 and 3, illustrate the breadth of the term (http://www.fnchildcompensation.ca/wp-content/uploads/2022/08/Framework-of-Essential-Services-August-19-2022.pdf).

[394] The above made the AFN compensation webpage and information part of the evidence before the Tribunal. The Panel consulted this webpage as part of its deliberations

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for the Federation of Sovereign Indigenous Nations' interested party status request motion. The Tribunal referred to the link and contents in 2022 CHRT 26.

[395] The Panel printed the information on the compensation webpage at the time it made its letter-decision in case the contents would be modified and updated later. For ease of reference, the relevant information is reproduced below.

[396] The Panel understands that these public communications solely advise the public how the FSA improves the Tribunal's orders and not where deviations or, more importantly, disentitlements are made in the FSA. The Panel has underlined important sections of the AFN's public message below.

> Background
>
> Since 1998, the AFN has engaged with Canada to address significant deficiencies and inequities inherent in the funding from the Government of Canada for the FNCFS Program, and the adverse impacts on the First Nations children and families involved with the FNCFS Program. The AFN has also been advocating for the full and proper application of Jordan's Principle to ensure that all First Nations children have access to the supports and services they need, no matter where they live.
>
> The AFN and First Nations Child and Family Caring Society of Canada (Caring Society) filed a human rights complaint with the CHRT in 2007. The complaint was substantiated by the CHRT in 2016 and Canada was ordered to reform the FNCFS Program and fully implement Jordan's Principle to eliminate its discriminatory practices.
>
> The AFN was the only Party to the CHRT litigation who requested that compensation be paid directly to survivors. The CHRT agreed with the AFN that compensation was required and ultimately awarded $40,000, the maximum amount for pain and suffering under the Canadian Human Rights Act (CHRA), to First Nations who faced discrimination in Canada's underfunding of the FNCFS Program and the narrow application of Jordan's Principle. The Government of Canada issued an appeal of the CHRT's Compensation Order, which remains active.
>
> On January 28, 2020, the AFN and the representative plaintiffs, including Ashley Dawn Louise Bach, Karen Osachoff, Melissa Walterson, Noah Buffalo-Jackson, Carolyn Buffalo, and Dick Eugene Jackson, filed a proposed class action, dating back to 1991 ("AFN Class Action"). The AFN Class Action sought compensation for First Nations children and family members harmed by Canada's discrimination under the FNCFS Program and narrow application of Jordan's Principle. The AFN, Moushoom class counsel and Canada have engaged in negotiations over the last two years.

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While the CHRT's compensation orders were profound, the maximum amount of compensation under the CHRA is limited to $40,000. The AFN sought to increase both the number of survivors eligible for compensation and the amount of compensation that they may receive, and achieved this by expanding on the CHRT's compensation orders in a number of ways.

First, the CHRT imposed a cut-off point at which a child must have been in care to be eligible for compensation, which is January 1, 2006. The eligibility period under the Class Action begins on the date at which the discriminatory funding system was implemented by Canada: April 1, 1991. It also extends the date of eligibility for Jordan's Principle claimants to the same date, in recognition of the longstanding and persistent gaps in services and supports for First Nations children. This extends the period for compensation by an additional 15 years.

The second extension relates to the whether a child was placed outside of their community. The CHRT compensation order required that a child had to be "placed outside their homes, families and communities" in order to be eligible for compensation. The Final Settlement Agreement includes all First Nations children who were removed under the FNCFS Program, regardless if they were placed within or outside of their community.

The third expansion is the inclusion of enhancement factors to ensure that individuals who experienced the greatest harm as a result of Canada's discrimination are provided with additional compensation. Under the Final Settlement Agreement, Survivors will be entitled to a **$40,000 base payment** and additional monetary enhancements based on their individual circumstances, which include:

- the age when an individual was removed from their home
- the age at which they exited care
- the amount of time an individual spent in care
- the number of times they were placed in care
- if an individual was removed to receive an essential service
- if an individual was removed from a northern or remote community
- if an individual was subjected to a delay, denial or service gap that resulted in significant harm

Finally, the AFN advocated for additional supports for survivors that are not contemplated under the CHRT's Compensation Order, including mental wellness supports for Survivors, financial literacy and coaching, family and community unification supports, and more. The Final Settlement Agreement is the first of its kind as it is First Nations driven, and First Nations will oversee the implementation of the agreement.

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> The AFN will continue to provide updates at fnchildcompensation.ca. The AFN has also established an Information Desk which can be reached at 1-888-718-6496 or fnchildcompensation@afn.ca.
>
> We acknowledge that this process may bring up strong emotional responses; support from the Hope for Wellness Helpline is available now at 1-855-242-3310.

[397] This public information available on the AFN's website does not inform the victims/survivors or their families that they may see their compensation reduced or completely removed. For some under Jordan's Principle, there are uncertainties that remain at the time the Tribunal makes this ruling.

[398] Any reasonable person reading this information would think they are entitled to $40 thousand as a minimum and that the FSA ONLY improves on the Tribunal's orders. This is clearly misleading and lacking in transparency. This could also mean that no one would oppose the FSA.

[399] The Tribunal found no information on the AFN website or filed in evidence that clearly informed members of the public that some of the compromises led to reductions or disentitlements of compensation for some victims/survivors recognized in the Tribunal's orders. The Tribunal was provided with insufficient information as part of this motion that would provide insurances that those who would disagree could opt-out and would have sufficient time to do so.

[400] This is even more concerning when the opt out provision ends as early as February 2023 as per the FSA and, if the Tribunal declares that the FSA satisfies its compensation orders, such individuals would not be able to pursue compensation under the Tribunal's orders.

[401] Further, a media article was filed by the Caring Society as part of the evidence: "Ottawa releases early details of landmark $40B First Nations child welfare agreement, reports on Canada's statement on the FSA", (see Exhibit B to Dr. Blackstock's affidavit dated August 30, 2022). The Tribunal may consider this information given section 50(3)(c) of the *CHRA*.

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[402] Notably, there is no indication Indigenous Services Minister Patty Hadju advised the public that compromises were made and compromises that led to compensation reductions or disentitlements had to be done to achieve a settlement.

[403] The Minister stated: "Our expectation is that $40,000 is the floor and there may be circumstances where people are entitled to more," said Indigenous Services Minister Patty Hajdu.

[404] Any reasonable person reading her statement may think the FSA ONLY enhances the compensation ordered by this Tribunal, not that it diminishes it for some.

[405] Nowhere does the Minister say this may not be the case for all the victims/survivors who form part of the Tribunal's orders. This is still a misleading statement even when setting aside the contested non-ISC funded removed children category.

[406] This information and the Caring Society's arguments on this point were not successfully challenged by Canada as part of this motion.

[407] Media and public information displayed on websites for the purposes of public information on compensation need to inform on the whole truth including how the FSA deviates from the Tribunal's orders to allow the victims/survivors and those who assist them to make an informed decision. There is no issue with highlighting the improvements. The concerning part is omitting that some of the people who are entitled to compensation under this Tribunal's orders may see their compensation reduced or taken away under the FSA.

[408] Given the large number of victims/survivors who were disentitled by the AFN and Canada are children or are deceased, proceeding with speed does not ensure fairness to those victims/survivors. The Tribunal under the *CHRA* must balance expeditiousness with the principles of fairness and natural justice therefore this is a concern for the Tribunal. This justifies an extension of the opt-out period beyond February 2023.

[409] Furthermore, the Tribunal considered the letter from Windsor Law Class Action Clinic (the Clinic), filed in evidence as exhibit E to Dr. Blackstock's affidavit dated August 30, 2022.

[410] The Class Action Clinic has relevant Expertise in terms of class actions:

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> The Class Action Clinic's central mission is to serve the needs of class members across Canada. Launched in October 2019, we are the first not-for-profit organization designed to provide class members summary advice, assistance with filing claims in settlement distribution processes, and representation in court proceedings. The Clinic is also dedicated to creating greater awareness about class actions through public education, outreach, and research. The Clinic does not initiate or conduct class actions, and it is not funded by either the plaintiffs' or defence bar, or any industry group. Its sole purpose is to help individual class members, and in doing so, better fulfill the access to justice promise of the class action regime. A more complete description of our services can be found on the Clinic's website: www.classactionclinic.com.
>
> The Clinic is directed by Jasminka Kalajdzic, an Associate Professor of Law at the University of Windsor, and one of Canada's leading class action scholars. She was co-lead researcher with Prof. Catherine Piché of the Law Commission of Ontario's Class Action Project. Andrew Eckart, formerly a class action litigator, serves as the full-time Staff Lawyer and oversees the work of law student case workers. Mr. Eckart also represents Clinic clients in court proceedings.
>
> Since 2021, the Clinic has represented objecting class members in several class action settlements. Justice Belobaba described the Clinic as making a "valuable contribution" in settlement approval hearings and encouraged the Clinic, on the record, to continue this work.

[411] The Clinic provided wise points for consideration which were not accepted by class action counsel:

> Class members are entitled to sufficient time to review a proposed settlement of this complexity and magnitude, to seek advice and clarification regarding its contents, and to make an informed decision about participating in settlement approval hearings. Class members also need the additional time to adequately prepare their objections (if any) and present their views to the court. This right of review is not perfunctory; besides the right to opt-out of a class action, the right to object to a proposed settlement is the only other participatory right a class member has in a class action. *Bancroft-Snell v. Visa Canada Corporation*, 2019 ONCA 822 at para 3.
>
> A review of a few other class actions highlights the importance of class member participation in and notification of a settlement approval hearing. The parties in the Indian Residential School Settlement Agreement, for example, held nine settlement approval hearings, Canada-wide from late August 2006 to mid-October 2006 (over a period of two and a half months). In the Sixties Scoop Class Action, notice of the settlement approval hearings was disseminated as early as mid-January 2018 in advance of the mid-May 2018 hearings (five months).

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Unlike these examples, we understand that the current make-up of the class in this case includes people who are still minors, making the issue of timing critical. In our view, this aspect alone necessitates more, not less, time for class members to seek assistance, review, and assess the provisions of the FSA before the Settlement Approval Hearing.

The right to adequate notice is even more important in class actions involving trauma survivors. Tight timelines have the potential to place unnecessary stresses on an already marginalized and vulnerable population. Class members in this case, First Nations youth subjected to trauma, are highly vulnerable to re-victimization and re-traumatization.

Class members reviewing and then deciding whether to object to the FSA must process traumatic experiences perpetuated by government systems. Asking survivors of trauma to do this in the very short time of one month or to not object at all disregards their healing and needs. To systemically disadvantage traumatized class members runs counter to the broader narrative of reconciliation at the heart of the First Nations Youth Class Action.

Our concerns regarding re-traumatization are heightened given that the majority of the class is made up of people who suffered while they were, or still are, minors. Survivors of childhood trauma are at the highest risk of developing complex trauma. Moreover, minors likely need significant support throughout the process that could further interfere with their ability to object in the 31 days between the issuance of Notice and the Settlement Approval Hearing.

While we recognize that the six-month opt-out period in this case greatly benefits class members, allowing for objections to the FSA for only a small fraction of that time impedes class members' ability to meaningfully flag areas of concern, particularly with respect to the claims process.

…

We have significant concerns that the FSA may fall short of providing access to justice that is so highly deserved for these class members who have suffered from decades of discriminatory and shameful underfunding of services by Canada. The size of the settlement and its impact on so many people who have been systematically marginalized and traumatized requires us all to analyze the FSA thoroughly and with a critical lens.

We commend the parties for crafting an FSA that includes the participation of Indigenous consultants in developing the claims process; provides a lengthy claims period; provides rights of appeal; institutes a system of "navigators" to provide assistance with claims; and does not revert any of the $20 billion to the defendant. Yet we remain concerned that claims of efficiency, expediency, and cost-effectiveness will prevent some class members from receiving their entitlement to compensation. The purpose of a class action settlement like this is not to achieve rough justice, but rather to ensure that all those who are entitled to compensation are able to ***access it.***

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(emphasis ours).

[412] The Tribunal agrees with the Clinic's comments above. The Tribunal recognizes that AFN class counsel stated at the hearing that everywhere in Canada people have told them to move forward with compensation now, to get it done now. While this is not evidence, the Tribunal does not doubt it's true. What the Tribunal is more concerned about is how the message is communicated to those who were considered beneficiaries of the Tribunal's orders who have now been removed from the FSA. Moreover, it is ideal if compensation moves ahead in the near future, however, as mentioned above, akin to the *CHRA* analysis, expeditiousness must be exercised alongside rules of fairness and natural justice. This is the Tribunal's focus as per its quasi-constitutional statute.

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VIII. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Free, Prior and Informed Consent (FPIC), Self-government, AFN resolutions

[413] As previously said in the letter-decision, FPIC is not determinative in disposing of this motion. The AFN also commented on the issue of FPIC and, in response to the Panel's follow-up questions, clarified that this was in response to the Caring Society's comments and encouraged the Panel not to get distracted by this question as it was not necessary to embark on such an analysis. Further, the parties did not provide extensive submissions and supporting documentation to allow the Tribunal to settle this complex question. Upon consideration the Panel agrees with the AFN and finds it is not central to determining the essential aspects of this motion.

[414] While the Tribunal requested further submissions on FPIC and *UNDRIP* after the hearing in light of the AFN raising collective rights during oral submissions, the Tribunal ultimately concludes that it is not necessary to address this issue to dispose of this motion.

[415] Given these aspects are not determinative of this motion, the Tribunal will not embark in a full discussion on FPIC's application in Canada or the AFN's governance. Rather, it will elaborate on the contextual and noteworthy elements to explain why it does not find these elements determinative of this motion except for the opting out portion.

[416] Nevertheless, the Tribunal considered the issues and will elaborate on the reasons provided in the letter-decision here.

[417] The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), GA Res. 61/295, UN GAOR, 61st Sess., Supp. No 49 Vol III, UN Doc A/61/49 (2007) is an international instrument adopted by the United Nations on September 13, 2007, to enshrine the existing inherent rights that "constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world." (Article 43). The *UNDRIP* protects collective rights that may not be addressed in other human rights legislation that emphasize individual rights, and it also safeguards the individual rights of Indigenous People.

[418] The *UNDRIP* stipulates that all Peoples have the right to self-determination, this is partly expressed in the principle known as Free, Prior and Informed Consent (FPIC).

[419] Free, prior and informed consent is a human rights norm grounded in the fundamental rights to self-determination and to be free from racial discrimination guaranteed by the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights* and the *International Convention on the Elimination of All Forms of Racial Discrimination,* (see, A/HRC/39/62, para.3). The provisions of the *UNDRIP*, including those referring to free, prior and informed consent, do not create new rights for Indigenous Peoples, but rather provide a contextualized elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of Indigenous Peoples (see A/HRC/9/9, para. 86). Free, prior and informed consent is also grounded in the human rights framework devised to dismantle the structural bases of racial discrimination against Indigenous Peoples, (see, A/HRC/39/62, para.9).

[420] According to section 32 of *UNDRIP*, free, prior and informed consent (FPIC) is required prior to the approval and/or commencement of any project that may affect the lands, territories and resources that Indigenous Peoples customarily own, occupy or otherwise use in view of their collective rights to self-determination and to their lands, territories, natural resources and related properties.

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[421] UN human rights bodies have recognized that FPIC is essential to protect a wide range of Indigenous Peoples' fundamental rights, including the right to culture, the right to food and the right to health.

[422] *UNDRIP* contains five specific references to free, prior and informed consent (see arts. 10, 11, 19, 29 and 32), providing a non-exhaustive list of situations when such consent should apply.

[423] Free, prior and informed consent may be required for adoption and implementation of legislative or administrative measures (See, A/HRC/39/62) and also Article 19 which states:

> States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

[424] *UNDRIP* states that any limitations on rights, including FPIC, must be "determined by law and in accordance with international human rights obligations," "non-discriminatory" and "strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society" (art. 46(2) of *UNDRIP*).

[425] Moreover, the Tribunal has relied on *UNDRIP* in past rulings and found it is an important instrument to consider in a human rights analysis in First Nations cases especially in this one involving mass removals of First Nations children from their homes, communities and Nations. The Tribunal found that national legislation such as the *CHRA* must be interpreted so as to be harmonious with Canada's commitments expressed in international law including the *UNDRIP*, (2018 CHRT 4 at para. 81).

[426] Canada has moved forward from only accepting the *UNDRIP* without reserve to adopting the *UNDRIP* into domestic law by way of the *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14. There is no doubt that *UNDRIP* and *FPIC* apply to the state of Canada. Canada cannot shield its responsibilities to First Nations rights holders especially when rights holders voice their disagreements on issues affecting them. On this point, the Tribunal agrees with the Caring Society.

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[427] The above demonstrates the evolving views on the application of FPIC from strictly land and natural resources issues to a broader spectrum of issues concerning Indigenous Peoples and their involvement and participation in important decisions that concern them. Therefore, the Tribunal agrees with the Caring Society that FPIC is not strictly a lands and natural resources process and therefore rejects the AFN's argument on this point.

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[428] The Tribunal agrees with the AFN that FPIC is not entirely settled in Canadian law and finds that, even between different First Nations, perspectives vary on this issue. This is also exemplified in these proceedings where BC Chiefs signatories at the First Nations Summit Chiefs in Assembly adopted resolutions #0622.22 and #0622.23 have expressed that:

> Chiefs in British Columbia have not seen the Final Agreement on Compensation and are therefore unable to exercise free, prior, and informed consent on any changes to the compensation orders. Their right to FPIC was not respected in the FSA and That the First Nations Summit Chiefs in Assembly call upon the AFN to conduct any negotiations with Canada on any matters arising from 2016 CHRT 2 and subsequent orders affecting First Nations children, youth, and families in British Columbia in an open and transparent manner consistent with free, prior and informed consent of First Nations in British Columbia.

[429] The AFN does not view FPIC as applying here. The Tribunal does not propose to resolve this complex issue here.

[430] Further, the Tribunal agrees that the AFN is not a state and that FPIC does not impose these obligations on the organization but rather on Canada as a state. The Tribunal also agrees with *UNDRIP* that Indigenous Peoples have the right to make their own decisions, and to engage with other governments and processes through the systems of governance and decision-making that they have freely chosen for themselves. Such essential dimensions of self-determination are clearly affirmed in *UNDRIP* (see e.g., articles 3, 5, 18 and 19). Federal, provincial and territorial governments cannot ignore the decisions made by Indigenous Peoples. Neither can they tell Indigenous Peoples how these decisions should be made.

[431] Furthermore, consistent with the right to self-determination, indigenous peoples have always had the inherent power to make binding agreements between themselves and other

polities. The contemporary concept and practice of mutually negotiated, consensual agreement among indigenous peoples and State governments is deeply grounded in the historic treaty-making process that characterized indigenous-State relations for several hundred years in many regions of the world and persists in many places where those treaties remain the law of the land, even if they have often been dishonoured. Historically and today, it can be challenging for indigenous peoples to negotiate with States under conditions of colonization and the many other limitations that often characterize the situation of indigenous peoples around the world, (See, A/HRC/39/62, para. 4).

[432] The Tribunal agrees with these principles and believes they apply to Canada in its dealings with First Nations. The Tribunal therefore agrees with the Caring Society's argument on this point.

[433] "States are obligated not just to respect, but also to protect, promote and fulfil human rights, and this obligation applies with respect to the rights of indigenous peoples." (See, Human Rights Council, Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya: Extractive Industries and Indigenous Peoples, U.N. Doc A/HRC/24/41 (1 July 2013), at para. 44, online: Human Rights Council https://www.refworld.org/docid/522db2b54.html

[434] The Tribunal also has recognized Indigenous rights as human rights in previous rulings.

[435] Taking into consideration the specific needs of First Nations children, families and communities were core findings made by this Tribunal. Further, the Tribunal has continually emphasized in its findings and orders the principle of substantive equality and the importance of taking into account the specific needs of children, families, communities and Nations to give full meaning to this principle. This is an obligation for Canada.

[436] However, the Tribunal's understanding of the AFN's mandate has always been to advance the rights and interests of their members who are First Nations rights holders who provide direction to the Assembly by way of Chiefs-in-Assembly resolutions. This ensures the views of rights-holders and the specific needs of communities are respected and expressed. In a previous hearing, counsel for the AFN explained that he viewed the AFN

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like the United Nations. The Panel liked the analogy of sovereign nations meeting to make decisions that concern them. The Panel understood that the Chiefs-in-Assembly resolutions adequately reflect this and ensure an effective process to express their consent after meaningful consultation. Chiefs-in-Assembly resolutions are referenced in previous decisions. This was given considerable weight by the Panel when accepting the AFN's past submissions given the representativity of First Nations through the resolutions made by Chiefs-in-Assembly. In all of the previous rulings made by the Panel, there never was a situation where the Tribunal received evidence of other First Nations disagreeing with the AFN's requested orders. Usually, the AFN provides Chiefs-in-Assembly resolutions which bring assurances to the Panel that the rights-holders agree with the requested orders. This is an efficient way to proceed instead of hearing from each of the over 600 First Nations in Canada who are members of the AFN, which could paralyze the Tribunal's proceedings. Further, the AFN Resolutions are the essential mechanism by which First Nations provide specific mandates and direction to the AFN.

[437] Furthermore, the Tribunal's *Compensation Decision* (2019 CHRT 39), at paragraph 34 clearly relies on the Assembly of First Nations' resolution: Special Chiefs Assembly, Resolution No. 85/2018, December 4, 5 and 6, 2018 (Ottawa, ON) re Financial Compensation for Victims of Discrimination in the Child Welfare System. Moreover, the Tribunal's finding that, pursuant to AFN resolution 85/201, the AFN is empowered to speak on behalf of First Nations children that have been discriminated against by Canada was upheld by the Federal Court (2021 FC 969 at para. 160).

[438] The Tribunal accepts the AFN's explanation that the AFN Executive are "First Nations leadership", being comprised of Regional Chiefs duly elected by the First Nations in each region across Canada and the National Chief who is elected by all the First Nations across Canada. Under the AFN's Charter, the Executive Committee is empowered to take positions on behalf of First Nations consistent with their properly delegated mandates from the Chiefs-in-Assembly. The approval of the FSA was within their delegated purview.

[439] A question remains as to why an important question such as compensation and the FSA was not addressed in a resolution from the Chiefs-in-Assembly. While the AFN indicates the Chiefs-in-Assembly were presented with the FSA and that no objection to the

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FSA was raised by the Chiefs-in-Assembly at the annual general assembly which immediately followed the FSA's execution, the FSA was already signed at the time that it was presented. Paragraph 52 makes it clear that the FSA was executed on June 30, 2022, prior to the annual general assembly.

[440] The AFN states that the Chiefs-in-Assembly did not object to the FSA. However, little is said on the absence of a resolution from the Chiefs-in-Assembly or the resolutions signed by the BC Chiefs. While the Panel agrees with the AFN that requiring all First Nations to agree may jeopardize any agreement, a resolution from the Chiefs-in-Assembly recognizes this reality and provides some assurances to the Panel on such important questions.

[441] In this case, the Panel does not have a resolution on the FSA from the AFN in the evidence and the Panel has resolutions voted on by some First Nations who have expressed concerns about the FSA to the AFN. Upon a full consideration of the issues since the recent interested party request ruling and, given that the Tribunal's approval of the FSA could result in ceasing the Tribunal's supervision of the financial compensation aspect of the case if the Tribunal later declares the FSA fully satisfies the Tribunal's orders, the opting-out process for First Nations at the Federal Court does not assist the Tribunal in making a determination in this motion. While the Tribunal recognizes the AFN's right to proceed via executive committee decisions and that First Nations rights-holders may agree with this process as part of the AFN charter and rules, the BC resolutions filed in evidence suggest otherwise for some rights-holders. If the AFN now proceeds by way of executive resolutions for important decisions such as the FSA with the agreement of rights holders, the Tribunal would appreciate having a better understanding of this process and how the AFN proposes the Tribunal should deal with those concerns raised by First Nations rights-holders. In this motion, the AFN did not provide a comprehensive response to assist the Tribunal on this issue.

[442] Over the last decade, no First Nations non-party has opposed the AFN decisions as part of these proceedings. Moreover, many resolutions from the Chiefs-in-Assembly were filed in evidence for the Panel to consider. Therefore, the need to question what rights-holders' views were on important issues such as the FSA was not present before this motion

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and may not reoccur after it. In sum, the Tribunal's questions and concerns arose out of the new evidence presented in this motion, the arguments presented and the change in the AFN's process in front of this Tribunal to not provide resolutions from Chiefs-in-Assembly for such a major issue. Moreover, some compromises in the FSA do not align with the previous Chiefs-in-Assembly resolution no.85/2018 seeking the maximum compensation under the *CHRA*. Given this resolution, it is reasonable to expect a new or an amended resolution supporting the compromises, namely reductions and disentitlements for some victims/survivors.

[443] The Tribunal also had First Nations rights holders in mind when it wrote in 2018 CHRT 4:

> [443] The Panel encourages Canada in the future to provide evidence to the Tribunal if a province, territory or First Nation resists or acts as a roadblock to Canada's implementation of the Panel's rulings. This will assist the Panel in understanding their views and Canada's efforts to comply with our orders and, will provide context and may refrain us to make orders against Canada. Absent this evidence, the Panel makes orders to eliminate the discrimination in the short term while understanding the importance of the Nation-to-Nation relationship.

[444] A Nation-to-Nation relationship is not solely the relationship between the AFN and Canada; it is a relationship between First Nations and Canada.

[445] Further, the evidence that some First Nations were calling upon Canada to immediately pay the compensation owed to eligible victims/survivors and provide necessary supports pursuant to Canadian Human Rights Tribunal orders did not come as a result of Canada or the AFN's evidence to inform the Tribunal that not all were in agreement with the FSA but rather it was advanced by the Caring Society:

> That the First Nations Summit Chiefs in Assembly affirm that:
>
> > a. the Assembly of First Nations (AFN) and Canada are not authorized to seek a reduction in the compensation amounts for eligible victims who are members of First Nations in British Columbia or modify the compensation framework agreement and compensation entitlement order as set out in 2019 CHRT 39 and 2021 CHRT 7 without the free, prior, and informed consent of First Nations in British Columbia;

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> b. the AFN and Canada are not authorized to make representations to the Tribunal or any other body implying the consent of First Nations in British Columbia without our free, prior, and informed consent on the Final Agreement and any motions, or any relief made to the Canadian Human Rights Tribunal or Federal Court.

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[446] This Tribunal ensured the different perspectives of First Nations rights-holders would be respected and also discussed this in 2018 CHRT 4:

> [66] This being said, the Panel fully supports Parliament's intent to establish a Nation-to-Nation relationship and that reconciliation is Parliament's goal (see *Daniels v. Canada (Indian Affairs and Northern Development*, [2016] 1 SCR 99), and commends it for adopting this approach. The Panel ordered that the specific needs of communities be addressed and this involves consulting the communities. However, the Panel did not intend this order to delay addressing urgent needs. It foresaw that while agencies would have more resources to stop the mass removal of children, best practices and needs would be identified to improve the services while the program is reformed, and ultimately child welfare would reflect what communities need and want, and the best interest of children principle would be upheld. It is not one or the other; it is one plus the other.
>
> (emphasis changed)

[447] Moreover, the orders in this same ruling reflect the Tribunal's desire to respect First Nations self-governance and self-determination.

[448] Canada also has a duty to consult and must act honorably in all its dealings with First Nations, Inuit and Metis Peoples (Aboriginal Peoples). Those principles were discussed in the *Merit Decision* and will not be revisited here. Suffice is to say that Canada has many legal obligations in Canadian law to ensure it consults First Nations who are affected by its actions and decisions.

[449] The evidence in this motion includes resolutions from BC First Nations who disagreed with some aspects of the FSA as discussed above and were requiring further consultation which Canada cannot ignore.

[450] Moreover, after the motion hearing, in response to follow-up questions from the Tribunal, further resolutions were filed as Exhibit "C" to the affidavit of Doreen Navarro with the Tribunal and accepted into the evidentiary record. The BC Assembly of First Nations

had their Annual General Meeting on September 21, 22, & 23, 2022 and adopted Resolution 33/2022 that was signed by First Nations Chiefs. The subject of the resolution was Compensation For Children And Families Who Suffered Discrimination In The Delivery Of First Nations Child & Family Services And Jordan's Principle Services.

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[451] Notably, the context leading to the resolution is summarized as follows by the BCAFN:

> Canada and counsel for both class actions announced an Agreement in Principle on the compensation on December 31, 2021, with an intent to develop a Final Settlement Agreement to resolve the compensation issue for both the human rights damages and the class actions; The AFN Chiefs did not pass any resolutions supporting the Agreement in Principle on compensation or authorizing negotiators the deviate from the CHRT orders on compensation or from the AFN's resolution calling for the maximum allowable amount for every victim of discrimination under the FNCFS program; The First Nations Summit passed a resolution on June 16, 2022 (FNS Resolution #0622.23) affirming that the AFN and Canada are not authorized to modify the CHRT's compensation entitlement order without the free, prior and informed consent of First Nations in British Columbia; On June 30, the AFN, class action parties and the Government of Canada reached a Final Settlement Agreement on compensation and immediately (without seeking the free, prior and informed consent of First Nations or their chiefs) filed a motion with the Canadian Human Rights Tribunal seeking an expedited hearing regarding the Tribunal's compensation orders; Article 10 of the Final Settlement Agreement on compensation requires the AFN, among other things, "to take all reasonable steps to publicly promote and defend the Agreement"; At the Tribunal hearing, which took place on September 15 and 16, 2022, the Caring Society argued that the Final Settlement Agreement negatively impacts the rights of a number of children and families by reducing or eliminating their right to CHRT compensation and by waiving their rights to litigate against Canada for the harms they experienced flowing from Canada's discrimination—even if they receive no financial compensation under the Final Settlement Agreement; During the Tribunal hearing on September 16, 2022, AFN legal counsel was asked by the Tribunal if there were any objections to the Final Settlement Agreement by First Nations or others, and though they were in possession of the FNS resolution the AFN counsel did not disclose the FNS's objections in answer to the question. Chiefs in British Columbia have not been consulted on the Final Settlement Agreement and are therefore unable to exercise free, prior, and informed consent on any changes to the CHRT compensation orders.

[452] This led to the resolution that reads as follows:

THEREFORE BE IT RESOLVED THAT:

> 1. The BCAFN Chiefs-in-Assembly call upon Canada to immediately pay the CHRT-ordered compensation in the amount of $40,000 plus interest owed to eligible victims and provide necessary supports pursuant to the CHRT orders;
>
> 2. The BCAFN Chiefs-in-Assembly affirm that AFN negotiators are not authorized to seek a reduction in the compensation amounts for eligible victims who are members of BC First Nations and must respect the compensation framework agreement and compensation entitlement order as set out in 2019 CHRT 39 and 2021 CHRT 7;
>
> 3. The BCAFN Chiefs-in-Assembly express concern regarding the AFN's agreement to Article 10 in the Final Settlement Agreement as it abrogates the AFN's duty to represent the interests of First Nations as authorized by the AFN Chiefs in Assembly and direct that the AFN:
>
> > a. withdraw its consent to this section of the agreement or in the alternative
> >
> > b. fully disclose this obligation to First Nations governments, First Nations experts, the Courts and Tribunal, and the public and that an independent panel of experts and lawyers be appointed by the BCAFN to examine the Final Settlement Agreement and inform positions arising from it; The BCAFN Chiefs-in-Assembly affirm that the AFN is not authorized to sign provisions such as Article 10 of the Final Settlement Agreement on behalf of BCAFN Chiefs-in-Assembly without their free, prior, and informed consent;
>
> […]
>
> 5. The BCAFN Chiefs-in-Assembly direct the AFN negotiators to seek the free, prior and informed consent of BC First Nations Chiefs before making any legal representations on any Final Agreement on Compensation that may have an impact on First Nations children, youth and families in British Columbia; and The BCAFN Chiefs-in-Assembly direct that any negotiations with Canada or class action counsel on any matters arising from 2016 CHRT 2 and subsequent orders or legal proceedings affecting BC First Nations children, youth, and families must be conducted in an open and transparent manner consistent with free, prior and informed consent of First Nations.

[453] Of note, the resolution is signed by Terry Teegee, who is a BC Regional Chief who is also part of the AFN Executive Committee. While the BC Chiefs did not testify at the

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hearing, the Tribunal finds this official resolution signed by a Regional Chief carries weight and is relevant and reliable evidence. Moreover, the resolution is attached to an affidavit filed in evidence.

[454] The Tribunal heard extensive evidence at the hearing on the merits about the FNCFS Program in British Colombia and made findings that will not be revisited here. However, this is to say that the Tribunal is aware of the fact there are a large number of First Nations and First Nations agencies in BC that benefit from the Tribunal's findings and orders.

[455] Finally on this point, the Panel does not believe that this ruling should be interpreted to preclude self-government or other agreements in the future or as a refusal of this motion based on an AFN executive decision rather than a Chiefs-in-Assembly resolution. While the Tribunal had questions in light of what is explained above, this is not determinative in this motion.

[456] The real difficulty in this joint motion is the fact that entitlements orders were already made for victims/survivors by this Tribunal, the orders were upheld by the Federal Court and the compromises were made subsequently.

A. Individual rights versus collective rights

[457] The Tribunal understood that the AFN was arguing that the Tribunal should consider First Nation collective rights in preference to individual rights at the oral hearing prompting follow-up questions from the Tribunal. However, the AFN subsequently clarified its comments and the Tribunal does not believe that this issue must be resolved as part of these proceedings and, more importantly, while the Tribunal agrees these rights must be balanced, the issue is not determinative of this motion. Further, the parties post-hearing submissions on this issue were brief and, given this was not determinative of this motion, the Tribunal did not require additional submissions.

[458] The *UNDRIP* recognizes collective rights and protects collective identities, assets and institutions, notably culture, internal decision-making and the control and use of land and natural resources. The collective character of Indigenous rights is inherent in Indigenous culture and serves as a rampart against disappearance by forced assimilation.

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[459] Free, prior and informed consent operates fundamentally as a safeguard for the collective rights of Indigenous Peoples. Therefore, it cannot be held or exercised by individual members of an Indigenous community. *UNDRIP* provides for both individual and collective rights of Indigenous Peoples. Where *UNDRIP* deals with both individual and collective rights, it uses language that clearly distinguishes "indigenous peoples" from "individuals." Understandably, however, none of the provisions of *UNDRIP* dealing with free, prior and informed consent (arts. 10, 11, 19, 28, 29 and 32) make any reference to individuals. To "individualize" these rights would frustrate the purpose they are supposed to achieve, (see, A/HRC/39/62, para.13).

[460] The AFN submits that First Nations collective rights arise from the fact that they are Peoples under customary international law. The criteria defining what constitutes "a people" in customary international law are as follows: first, a group must be a social unit with a clear identity and characteristics of their own; second, the group must have a relationship with a territory and, finally, the group must claim to be something more than simply an ethnic, linguistic or religious minority.

[461] Current international law operates on two levels. On the first level, international law influences how the states of the world interact. Similar to domestic law, the second level of international law is concerned with the relationship between a state and persons within its territory. International law with respect to the second level focuses on human rights abuses and the mistreatment of individuals. The Tribunal agrees with this characterization.

[462] The Tribunal also agrees with the AFN that the status of First Nations collective rights ought to be determined in other fora, where the full scope and context of the nature and source of First Nation rights can be weighed and determined. Much is at stake and the AFN urges this Panel to restrict its ruling to the issue before it – whether the FSA satisfies this Panel's compensation orders.

[463] However, the Tribunal disagrees with the assertion from the AFN that by solely focusing on the rights of First Nations through a human rights lens, the Caring Society demotes the status of First Nations as Peoples to that of a minority population within the Canadian state.

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[464] The Tribunal agrees with the Caring Society's views that Individual and collective rights are not mutually exclusive in nature. Individual human rights (including the right to effective remedies) and a collectivity's rights can and should co-exist.

[465] One of the most compelling arguments on this point was advanced by the Caring Society in explaining the Tribunal's approach in this case. Individuals experienced widespread and deep levels of discrimination by Canada, which also had an impact on rights-holding collectives. In approaching remedies, the Tribunal broadened the consultation required of Canada beyond the Commission, to ensure that the voices of First Nations and those with significant expertise could be heard via representative organizations in order to inform immediate and long-term relief. The Tribunal has also created provisions in its orders for individual First Nations to negotiate more specific arrangements with Canada. Importantly, the Tribunal has created space for particular First Nations interests to participate on discrete questions through its use of the "interested party" mechanism in the Tribunal's Rules. The Tribunal believes this is an accurate interpretation of what has occurred in these proceedings.

[466] Finally, this issue will not be resolved as part of this motion and as previously said, is not determinative of this motion.

IX. The request to amend the Tribunal's compensation orders to reflect the terms of the FSA is denied

[467] **The request to amend the Tribunal's compensation orders to reflect the terms of the FSA is denied.**

[468] The Tribunal found this decision very difficult since it was given the hard choice to approve the FSA as it is or amend its orders to reflect the changes in the FSA or reject it and deny timely compensation to a large number of victims/survivors which is not the Tribunal's goal or desire. Some of those changes improve, enhance and broaden the Tribunal's orders above what is permitted under the *CHRA* and the Tribunal is pleased with this outcome. The Tribunal is in favor of compensation being distributed sooner rather than

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later. However, some of those changes are detrimental for some and undermine the Tribunal's orders.

[469] Canada argues that if the excessively formalistic and limited interpretation of the authority of the Tribunal argued for by the Caring Society and the Canadian Human Rights Commission were accepted by the Tribunal, it would arguably become impossible for parties to negotiate a settlement which differed in any particular way from a prior Tribunal order. This would leave the Tribunal hamstrung and unable to endorse the very thing the dialogic approach and Justice Favel's reasons seek to encourage.

[470] The Tribunal understands this legitimate preoccupation and can confirm this is not the case here. There are other major differences between the FSA and the Tribunal's orders that the Tribunal is willing to accept if all recognized victims/survivors in the Tribunal's orders are included in the FSA. For example, ending the Tribunal's jurisdiction on compensation by changing who exercises the supervisory role of the compensation process for a single process supervised by the Federal Court. There are other differences in the FSA that the Tribunal also accepts such as the broadened categories of entitled victims/survivors and the increased quantum of compensation above the $40,000 statutory limit. While the *CHRA* does not allow the Tribunal to amend its orders to reflect this change, the Tribunal can declare/find the FSA fully satisfies the Tribunal's orders on this point. The Tribunal does not insist on an exact copy of its rulings. Rather, it insists on the respect of final orders on quantum and categories of victims/survivors eligible to compensation under the Tribunal's orders.

[471] If all the legally recognized victims/survivors as part of the Tribunal's orders who are the only ones who currently benefit from evidence-based Tribunal findings following adjudication were included in the FSA, the Tribunal could have granted this motion and recognized it fully satisfies the Tribunal's orders.

[472] The Tribunal's main reason not to endorse the FSA is that it derogates from the Tribunal's existing orders in reducing compensation to some victims/survivors to accommodate the fixed quantity of funds under the FSA and the much larger number of victims/survivors in the class actions competing for these funds. No substantive findings or

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orders have been made concerning the victims in the class actions, yet in the FSA some displace some of the victims/survivors whose rights have been vindicated in these proceedings.

[473] If this is permitted, what message would be sent by the very Tribunal who has a mandate to ensure the protection of the most vulnerable victims/survivors who have now been recognized? Further, how is this a reasonable and legal outcome?

[474] The Tribunal is not a political body in charge of making financial and political choices between people. Once it has reviewed the evidence and made findings and found that orders are warranted, the Tribunal cannot change its mind and rescind this unless it made an error, a reviewing Court overturns a finding or new and compelling evidence justifies it. Consistent with the reasons and case law analyzed above, the AFN and Canada must not be allowed to reopen a final order on quantum in the context of this motion. The Tribunal has not been presented with any evidence of any error in concluding that the victims/survivors in this case suffered the most egregious harms and are entitled to the $40,000 in recognition of their pain and suffering and Canada's willful and reckless conduct, this being the maximum that the Tribunal is allowed to award under the *CHRA*.

[475] Even if the Tribunal were to leave aside the question of the non-isc children and Jordan's Principle categories, the Tribunal cannot find that the FSA fully satisfies its orders given the other 2 derogations explained above. Moreover, the Tribunal cannot amend its orders to reduce or disentitle the victims/survivors to account for the reasons put forward by the AFN and Canada.

[476] The AFN and Canada provided meaningful arguments imported from the class action process; some have been addressed above. The Tribunal will address other important ones in turn here.

A. The Compromise factor in reaching the FSA and human rights lens

[477] The parties to the FSA submit that every settlement requires compromise. The Tribunal does not dispute that.

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[478] The AFN submits that this Panel has jurisdiction to accept all compromises made by the parties to the negotiations, provided any given compromise was made on a principled and rational basis. The Tribunal agrees that the compromises were made on a principled and rational basis for First Nations. The issue is Canada and the AFN's decision to proceed in negotiations with the assumption that it was acceptable to reduce and disentitle victims/survivors already recognized by the Tribunal in its orders. While it is a practical reality of negotiations that they require compromise, that does not elevate the obligation to compromise in settlement negotiations to the same legal force as binding orders issued pursuant to the *CHRA*.

[479] The AFN and Canada rely on a recent Federal Court decision and submit that no settlement is perfect, (see *Tk'emlúps te Secwépemc First Nation v. Canada*, 2021 FC 988 at para. 64). The Tribunal accepts this assertion. Further, the AFN and Canada add that this settlement, however, represents the significant efforts of the parties to engage in the dialogic approach, as encouraged by the Federal Court. Settlements necessarily include balancing of benefits and compromises, and in this case the benefits are clear.

[480] That the FSA has clear benefits is generally true. However, the Tribunal finds whether it is more advantageous depends on which side of the fence you are on as a victim/survivor. For some of the victims/survivors whose rights were recognized by the Tribunal's findings and orders who may now see their compensation reduced or taken away, unfortunately, this is not true and the FSA provides no benefit. The Tribunal's first duty is to the victims/survivors it already recognized and their best interests.

[481] The Tribunal agrees with the AFN that the amounts payable to individuals will be meaningful and the total compensation is historic and reflects the magnitude of the harms. The nuance here for this Tribunal is the fact that some compromises to entitlements were made to account for the fixed amount of compensation agreed to by Canada which suggests the magnitude of the harms may be greater than the impressive $20 billion amount of compensation.

[482] Furthermore, the AFN and Canada have not convinced the Tribunal that compromise is part of the human rights analysis here once orders have been made or that compromise

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outweighs the need to preserve the victims/survivors' rights recognized in orders in the Tribunal's proceedings. In other words, the role of compromise in litigation does not extend to derogating from binding Tribunal orders.

[483] If Canada had struck an agreement with the Caring Society and disregarded pleas from the AFN to not reduce compensation to the victims/survivors and disregard hard-fought gains, the AFN could raise this injustice and would be right to do so.

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B. New information namely the FSA since the Tribunal rendered its orders

[484] The AFN submits the Tribunal can consider the FSA and can amend its orders to reflect the FSA. The Tribunal for the above-mentioned reasons partly agrees. Again, the Tribunal does not believe it can modify final orders on quantum for the categories already recognized in its orders. Moreover, insufficient evidence was led or submissions provided in terms of what those amendments should look like. The Tribunal agrees with the Caring Society that the AFN and Canada failed to specify the amendments they seek. This lack of specificity undermines procedural fairness. Moreover, this does not allow the Tribunal to reduce or disentitle compensation to victims/survivors already included in the Tribunal's orders.

C. The remedy is forthcoming to the victims

[485] The FSA would proceed more expeditiously if no one judicially reviews this ruling, which is unlikely given the opposing views. Furthermore, the expeditiousness is at the expense of fairness for the victims/survivors in these proceedings. The parties decided to put on hold the last elements of the Tribunal's compensation process to develop the FSA. While the Tribunal understands this, it is not a delay attributable to the Tribunal. The parties can develop the guide for compensation distribution in a short timeframe and submit it to the Tribunal for approval. This could expedite compensation. In terms of Canada's appeal of the compensation decisions and the potential for years before the remedy is forthcoming, the Tribunal notes that this could have been avoided in not removing victims/survivors recognized in the Tribunal's orders from the FSA. Second, there is no guarantee that further

delays would not occur with the FSA given the parties who oppose it in these proceedings and the risk of judicial review on either side.

D. The broader scope and enhanced compensation for some victims/survivors

[486] The broader scope and enhanced compensation for some victims/survivors is the most compelling rationale for endorsing the FSA. The Tribunal is entirely in favour of this expansion and recognizes its advantages. This is why the Tribunal seriously considered approving the FSA and found this decision to be a challenging one.

[487] While all compelling and important factors to consider, the Tribunal has a human rights focus. It cannot support reduced or eliminated compensation to victims already recognized in the Tribunal's orders. This negative message is contrary to the Tribunal's function under the *CHRA* to ensure the discrimination found is eliminated and does not reoccur and ensuring the victims/survivors are made whole. These enhancements, no matter how laudable and desirable, do not give the Tribunal authority to reduce or eliminate compensation to victims/survivors currently recognized under the Tribunal's orders.

[488] The AFN and Canada submit that in such circumstances, the Federal Court considers whether the settlement is fair and reasonable and whether it is in the best interests of the class as a whole. This can involve considering the settlement terms and conditions, the likelihood of success or recovery through litigation, the future expense and duration of further litigation, the dynamics of settlement negotiations and positions taken therein, the risks of not unconditionally approving the settlement, and the position of the representative plaintiffs. Of particular significance are the litigation risks of not approving the agreement and the view of the representative plaintiffs.

[489] The Tribunal mentioned above that it is not bound by a class action analysis. While some of the criteria above may be instructive, the Tribunal is governed by the legal framework explained in this ruling.

[490] Further, the AFN's request to proceed expeditiously did not allow the parties or the Tribunal in these proceedings to ask questions to the adult representative plaintiffs to understand their perspective and for this Tribunal to make findings. The AFN offered to

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introduce the representative plaintiffs at the hearing once the evidence had closed and confirmed it had no intention of having the representative plaintiffs testify at the hearing. The Tribunal enquired if their testimony was requested and offered to schedule hearing dates if this was needed however, the AFN said that it was not.

[491] Further, the AFN and Canada add that this FSA was First Nations led and fosters reconciliation. The Tribunal accepts this and, as explained in this ruling, did consider this in making its decision.

[492] The Tribunal is not stating that it cannot amend its orders if the FSA does not mirror the Tribunal's orders. The Tribunal can amend its orders to clarify, enhance, or reflect the parties' wishes if they consent and do not remove recognized rights.

[493] The Tribunal emphasizes that the *CHRA* is a restorative piece of legislation.

[494] In fact, special programs are permitted in the *CHRA* when it has the policy goal to provide equity for some segments of society who are the subject of discrimination (see section 16 of the *CHRA*). This was discussed in *Action travail des femmes* and relied upon in the Tribunal's *Compensation Decision* in 2021 CHRT 6:

> [66] For the SCC, paragraph 2 of the Special Temporary Measures Order, ordering the CN to implement a special employment program, was specifically designed to address and remedy the type of systemic discrimination against women in the case under examination. Therefore, the SCC addressed the specific issue of the scope of the remedial powers established under section 41(2)(a) (now 53(2)(a)) of the *CHRA*, taking into account the power granted to the Tribunal to order measures regarding the "adoption of a special program, plan or arrangement referred to in subsection 15(1) (now 16(1)), to prevent the same or a similar practice occurring in the future" (*Action Travail des femmes*, at p. 1139).
>
> [67] Concurring with the dissenting opinion of Justice MacGuigan of the Federal Court of Appeal in the case under appeal, the SCC held that section 41(2)(a) (now 53(2)(a)) is "designed to allow human rights tribunals to prevent future discrimination against identifiable protected groups" (*Action Travail des femmes,* at p 1141). In cases of systemic discrimination, the prevention of reoccurrence of discriminatory practices often requires referring to historical patterns of discrimination in order to design appropriate strategies for the future (*Action Travail des femmes*, at p. 1141). Furthermore, the SCC held that the type of measure ordered by the Tribunal in the case under examination may be the only means to achieve the purpose of the *CHRA*, that

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is to combat and prevent future discrimination (*Action Travail des femmes*, at p. 1141, 1145), (emphasis added).

[68] In these cases, remedy and prevention cannot be dissociated, since "there is no prevention without some form of remedy" (Action Travail des femmes, at p. 1142). Thus, the remedies available under section 53(2)(a) CHRA are directed toward a specific protected group and are not only *compensatory in nature, but also prospective*. As a result, with a view to achieve the prevention objective of the *CHRA*, a "special program, plan or arrangement" as referred to in subsection 16 (1) *CHRA* serves three main purposes: (1) countering the effect of systemic discrimination; (2) addressing the attitudinal problem of stereotyping, and; (3) Creating a critical mass, which may have an impact on the "continuing self-correction of the system" (*Action Travail des femmes*, at pp 1143-44), (emphasis added).

[69] In sum, while ruling that the Tribunal had the power to order such a special measure, the SCC summarized its findings as follows:

> For the sake of convenience, I will summarize my conclusions as to the validity of the employment equity program ordered by the Tribunal. To render future discrimination pointless, to destroy discriminatory stereotyping and to create the required "critical mass" of target group participation in the work force, it is essential to combat the effects of past systemic discrimination. In so doing, possibilities are created for the continuing amelioration of employment opportunities for the previously excluded group. The dominant purpose of employment equity programs is always to improve the situation of the target group in the future. MacGuigan J. stressed in his dissent that "the prevention of systemic discrimination will reasonably be thought to require systemic remedies" (p. 120). Systemic remedies must be built upon the experience of the past so as to prevent discrimination in the future. Specific hiring goals, as Hugessen J. recognized, are a rational attempt to impose a systemic remedy on a systemic problem. The Special Temporary Measures Order of the Tribunal thus meets the requirements of s. 41(2)(a) of the Canadian Human Rights Act. It is a "special program, plan or arrangement" within the meaning of s. 15(1) and therefore can be ordered under s. 41(2)(a). The employment equity order is rationally designed to combat systemic discrimination in the Canadian National St. Lawrence Region by preventing "the same or a similar practice occurring in the future".
>
> (*Action Travail des femmes*, at pp 1145-46).

[70] The Panel has relied on several occasions on the principles established by the Supreme Court of Canada in Action Travail des femmes, see for

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example: 2016 CHRT 2 at para. 468; 2016 CHRT 10, at para. 12-18; 2018 CHRT 4, at para. 21-39; 2019 CHRT 39, at para. 97.

[495] Furthermore, no concept of removing ordered entitlements suggested by the AFN and Canada is found in the *CHRA* itself, the spirit of the *CHRA* or a proper human rights analysis. A careful consideration of the Panel's work in this case makes clear the Panel views its role under the *CHRA* as proactive to eliminate and prevent discrimination, not make orders and take them away.

[496] In 2021 CHRT 6, the Tribunal wrote:

> [61] To the contrary, in the interpretation of the *CHRA*, it is important to take into account the purpose of the *CHRA*, that is to extend the present laws in Canada as set forth in section 2 in order to give effect to the principle that every human being should be given equal opportunity to live his or her life without discrimination (*Action Travail des femmes*, at p 1133). It should be recalled that human rights legislations are intended to give effect to rights of vital importance, **ultimately enforceable by a court of law** (*Action Travail des femmes*, at p 1134). As a result, while the meaning of the words of the *CHRA* is important, rights must be given full recognition and effect (Action Travail des femmes, at p 1134). This is also in line with the federal Interpretation Act, RSC 1985, c I-21, according to which statutes are deemed remedial and thus, must receive a fair, large and liberal interpretation with a view to give effect to their objects and purpose (*Action Travail des femmes*, at p 1134).
>
> [62] This comprehensive method of interpretation of human rights legislation was first stated in *Insurance Corporation of British Columbia v. Heerspink*, 1982 CanLII 27 (SCC), [1982] 2 S.C.R. 145, where Justice Lamer acknowledged the fundamental nature of human rights legislation: they are "not to be treated as another ordinary law of general application. It should be recognized for what it is, a fundamental law" (Action Travail des femmes, at pp 1135-36, citing *Heerspink*, at p. 158). This principle of interpretation was later confirmed and further articulated in *Winnipeg School Division No. I* v. *Craton*, 1985 CanLII 48 (SCC), [1985] 2 S.C.R. 150, at p. 156, where Justice McIntyre, writing for a unanimous Court, stated that:
>
> > Human rights legislation is of a special nature and declares public policy regarding matters of general concern. It is not constitutional in nature in the sense that it may not be altered, amended, or repealed by the Legislature. It is, however, of such nature that it may not be altered, amended, or repealed, nor may exceptions be created to its provisions, save by clear legislative pronouncement.
> >
> > (cited in Action Travail des femmes, at 1136).

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> [65] These principles must equally be applied when interpreting the remedial powers granted to the Tribunal under the *CHRA*.

[497] An analysis of section 53 of the *CHRA* where the Tribunal has recognized victims/survivors in its orders and can change its mind later for the reasons advanced in this motion including unproven financial constraints is not appropriate and does not keep with the SCC's reasons in *Action Travail des femmes*.

[498] The Tribunal cannot make the alternative order requested to amend its previous orders to conform to the FSA or to elevate the FSA over the Tribunal's orders in case of conflict. The Tribunal reaches this conclusion after considering the applicable case law discussed, the *CHRA* and human rights regime all discussed above, its previous findings and its previous orders.

[499] Moreover, the FSA's legal framework is driven by the current class actions. Canada did not ensure that an appropriate human rights lens respecting its current human rights obligations and binding orders against it in this case was applied to allow it to agree to the FSA.

[500] The Tribunal is fully aware that applying a human rights lens and its statutory powers to the issue does not provide statutory authority to change or amend the Tribunal's orders in removing rights to categories of victims/survivors so that the Tribunal's orders conform to the FSA. This is not permissible by law. The Tribunal is not a political body, it is an adjudicative body deriving its authority from statute and it cannot disturb the legal recourses under the *CHRA* regime to deny quasi-constitutional rights.

[501] The AFN's argument that this would result in parties never being able to settle litigation outside of the Courts is not accurate. The issue here is this was done after orders were made and resulted in contracting out some of the victims/survivors' human rights to compensation who were already recognized in legal orders amounting to a collateral attack of the Tribunal's quantum and eligibility orders.

[502] The Tribunal cannot overstate the importance of securing victims/survivors' rights across Canada. This requires the Tribunal to ensure that first the victims/survivors in this case and other victims who may include Indigenous Peoples and Nations, can pursue a

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human rights case under the *CHRA* through to a final resolution with fair recourse. Victims/survivors must be able to rely on the finality of findings of discrimination and compensation ordered by the Tribunal. Human rights are fundamental rights that are not intended to be bargaining chips that parties can negotiate away. Similar to how human rights legislation establishes minimum standards parties cannot contract out of, the Tribunal's compensation orders generate binding compensation obligations on Canada. Canada cannot contract out of these obligations through an alternative proceeding.

[503] The case is quite different with long-term reform where not all issues have been adjudicated by the Tribunal. The Tribunal supports First Nations-led solutions to eliminate discrimination if the evidence advanced proves to eliminate the systemic discrimination found in an effective and sustainable manner that responds to the specific needs of First Nations children, families and also communities. The Tribunal reminds the parties that it is a Tribunal created by statute with a mandate to eliminate discrimination in Canada once findings are made, always based on evidence and not opinion. The Tribunal is still seized of the matter and will need to make findings before ending its jurisdiction to ensure the racial and systemic discrimination is eliminated and does not reoccur. The First Nations parties' expertise is key in this important task.

[504] Moreover, the *CHRA* does not grant fleeting rights: once entitlements are recognized under the *CHRA*, they cannot be removed. Once a finding and a compensation order is made to vindicate rights, they may not be revoked absent an order from a reviewing court**.**

[505] The Tribunal does not believe it has a legal basis for granting all the amendments requested by the AFN and Canada or for finding that the FSA fully satisfies the Tribunal's compensation orders. Granting the requested orders would disentitle certain victims/survivors from compensation under the Tribunal's orders.

[506] The Tribunal is nonetheless urged to accept the FSA even if it is not identical to the Tribunal's orders because it would provide expedited compensation to the victims/survivors being compensated under the FSA. However, this is subject to the Tribunal's conditions below on the opt-out provision and the FSA including all the victims/survivors recognized in the Tribunal's orders.

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X. Conclusion

[507] The Tribunal finds as follows:

[508] The Tribunal is not *functus* to consider if the FSA fully satisfies the Tribunal's orders.

[509] The Tribunal finds the FSA substantially satisfies the Tribunal's orders. The FSA can potentially fully satisfy the Tribunal's orders if it is amended to include all the categories of victims/survivors and the compensation amounts included in the Tribunal's orders and to include the possibility for them to opt-out of the FSA in a manner that is fully responsive and rectifies the areas of concerns mentioned above.

[510] The Tribunal cannot declare or find the FSA fully satisfies the Tribunal's orders given that some victims/survivors who were recognized by and awarded compensation by this Tribunal have been removed or provided with reduced compensation. The Tribunal's orders were upheld by the Federal Court. The evidence currently before the Tribunal does not permit a finding that the FSA fully satisfies the Tribunal's orders. This difficulty is more than technical; it is a real legal one.

[511] The Tribunal finds the FSA respects numerous and many important components of the Tribunal's compensation orders such as not retraumatizing victims, avoiding children testifying and using a culturally appropriate process. The Panel generally accepts the FSA and finds it more advantageous on many aspects and understands the principled choices made by First Nations. The Panel also sees great value in having one process supervised by the Federal Court for the compensation issue. The Panel would likely have approved a settlement along the lines of the FSA if it had been asked to do so prior to issuing its *Compensation Entitlement Decision* or if all victims/survivors already recognized by the Tribunal's orders were included.

[512] The Tribunal always contemplated adding more categories of compensable victims and was open to doing so if it was needed and supported by the evidence but the AFN declined this option in its submissions given that they had concerns that the compensation process with Canada would reach an impasse. The compensation orders were still judicially reviewed. The Tribunal never envisioned removing recognized categories of

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victims/survivors after it made its findings and orders based on evidence of harm. After the Tribunal makes an order entitling a category of victims/survivors to compensation, those orders have finality and the only options for removing the entitlement is through judicial review. While the Tribunal agrees it did not have the FSA before it at the time it made its orders, the Tribunal finds no legal basis justifying the denial of compensation to categories of victims/survivors recognized by this Tribunal. Moreover, the Tribunal would review the victims/survivors' eligibility for compensation if directed by the reviewing court.

[513] The Tribunal stresses this context to emphasize that it urged the parties to negotiate an agreement on compensation to avoid making very specific orders that First Nations later argue against. This can easily be avoided with deals in earlier stages of proceedings where no compensation has been ordered. The purpose of the Tribunal's retained jurisdiction on compensation was always to clarify, add and refine the orders. It was never to reduce, disentitle or remove victims/survivors from the purview of its orders. A careful reading of the Tribunal's decisions makes this clear.

[514] The FSA is driven both by the class action cases and class action law. It does not apply a human rights lens and does not uphold Canada's human rights obligations under the Tribunal's orders. While the AFN in its submissions urges the Tribunal to consider a class action lens, the AFN has not persuaded the Tribunal why the Tribunal should apply this lens instead of an assessment based on existing human rights jurisprudence, especially as articulated in earlier decisions in this case. Even if the Tribunal were to use a class action lens, the AFN and Canada have not sufficiently explained how the factors that apply to a class action analysis would be applicable in the current context where many of the beneficiaries of the class action have an existing entitlement to compensation under valid Tribunal orders. While these orders are under judicial review, this is considerably different from the most typical class action context where none of the class action beneficiaries have any legal entitlement to compensation at the time of a settlement approval hearing. Further, the AFN does not sufficiently address how the class action framework applies when considering victims/survivors who would lose entitlement to compensation that they are currently owed by Canada.

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[515] Furthermore, the Tribunal believes that Justice Favel's comments on reconciliation cannot be interpreted to disentitle victims/survivors who were recognized by this Tribunal.

[516] The Tribunal does not believe it has a legal basis for granting the amendments requested by the AFN and Canada or for finding that the FSA fully satisfies the Tribunal's compensation orders. Granting the requested orders would reduce or disentitle certain victims/survivors from compensation under the Tribunal's orders. In addition, in requesting an amendment, Canada and the AFN have not addressed how the Tribunal would proceed given that it is being asked to amend its orders to reflect the FSA which includes, laudably, compensation in excess of what the Tribunal can order under the *CHRA*. The Tribunal is nonetheless urged to accept this position because it would provide expedited compensation to the victims/survivors being compensated under the FSA. However, the Tribunal is not persuaded the expedited compensation would actually occur given the possibility of challenging the Tribunal's decision on this joint motion by way of judicial review and the possibility the FSA class action settlement is not approved in the Federal Court. Therefore, there is a risk of providing a false hope to those entitled to compensation under the FSA about the timeframe in which they would receive compensation.

[517] This does not dispose of the Tribunal's retained jurisdiction to ensure systemic discrimination is eliminated. Canada cannot contract out the Tribunal's quasi-constitutional responsibility to eliminate the discrimination found and prevent similar discriminatory practices from arising. It has to occur after an evidence-based finding that satisfies the Tribunal that discrimination is eliminated and prevented from reoccurring or on consent of all, not just some, parties in the Tribunal proceedings and based on compelling evidence that the systemic racial discrimination will be eliminated. The Tribunal urges Canada in the spirit of reconciliation to remove the pressure on victims/survivors and First Nations and extend its December 30, 2022, deadline to the agreements to at least March 2023. The Tribunal has requested a minimum of 60 business days to consider outstanding aspects of the long-term reform and will take the appropriate time needed to consider the matter.

[518] The AFN in its oral arguments at the September 2022 hearing submitted that discrimination continues. This can be revisited in the long-term issue.

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XI. Order

A. The Tribunal grants the motion in part and Declares/Finds

[519] The FSA substantially satisfies the Tribunal's orders and, given that the Tribunal cannot order non-parties to negotiate or amend the FSA, recommends:

A. Canada negotiates with the class action and Tribunal parties and allocates funds to cover all victims entitled to compensation under the Tribunal decisions. The amounts already ordered by the Tribunal should be the floor.

B. For example, Canada can pay compensation funds of $20 billion or more if insufficient into a trust within 21 days following the letter-decision in order to generate interest until the time it is ready to roll out compensation in order to compensate human rights victims who were included in the Tribunal's orders but excluded under the FSA.

C. If the Federal Court does not approve the FSA, the funds could revert to Canada.

D. This may not be sufficient to cover the excluded categories. The parties to the FSA may need to consider other options.

E. If all the victims/survivors identified and the compensation amounts in the Tribunal's orders are accounted for in the FSA and there is a possibility for them to opt-out of the FSA in a manner that rectifies the areas of concern mentioned above, the Tribunal will be able to find the FSA fully satisfies the Tribunal's orders.

[520] Alternatively:

A. Given the real potential for delaying compensation from additional litigation and judicial reviews that may arise from either side as a result of this joint motion, the Tribunal recommends removing the Tribunal approval from the FSA and make the necessary amendments to settle all three class actions and move forward at the Federal Court for approval and pay compensation in early 2023 to victims/survivors covered in the class actions. The parties to these proceedings can finalize their unfinished work in a timely manner and come back before the Tribunal to start distributing compensation to victims/survivors in the near future. Again, the Federal Court approved the Panel's compensation decisions and determined that they were reasonable, this is a compelling reason supporting our reasons in this decision. This alternative can be achieved regardless of Canada's judicial review at the Federal Court of Appeal.

B. Furthermore, the Tribunal notes the comments from the parties during the hearing that they are not yet in a position to distribute compensation under the Tribunal's orders and the Compensation Framework. The Tribunal reminds the parties that,

2022 CHRT 41 (CanLII)

absent a stay of the orders, the parties have an obligation to continue to address outstanding compensation issues so that they are in a position to set the earliest implementation date possible.

[521] The Tribunal's role includes all Peoples in Canada and must protect victims/survivors especially children. The Tribunal signals to all victims/survivors in Canada that once your rights have been recognized and vindicated, they cannot be taken from you by respondents, third parties or the same Tribunal who has vindicated your rights unless ordered by higher Courts.

[522] The Tribunal believes that the great work accomplished by the parties in these proceedings and the parties to the FSA can be kept alive and move forward if all victims/survivors are included or if the Tribunal's full approval is no longer required.

XII. Retention of jurisdiction

[523] The Tribunal retains jurisdiction on the compensation issue within the scope explained in this ruling and will revisit its retention of jurisdiction as the Tribunal sees fit in light of the upcoming evolution of this case or once the individual claims for compensation have been completed.

[524] This does not modify the Tribunal's previous decisions/rulings and orders or the retention of jurisdiction on long-term relief, reform or other previous decisions/rulings and orders in this case.

Signed by

Sophie Marchildon
Panel Chairperson

Edward P. Lustig
Tribunal Member

Ottawa, Ontario
December 20, 2022

2022 CHRT 41 (CanLII)

Canadian Human Rights Tribunal

Parties of Record

2022 CHRT 41 (CanLII)

Tribunal File: T1340/7008

Style of Cause: First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)

Ruling of the Tribunal Dated: December 20, 2022

Date and Place of Hearing: September 15 and 16, 2022
Ottawa, Ontario and videoconference

Appearances:

David Taylor and Sarah Clarke, counsel for the First Nations Child and Family Caring Society of Canada, the Complainant

Stuart Wuttke and Adam Williamson, counsel for Assembly of First Nations, the Complainant

Anshumala Juyal, Jessica Walsh and Brian Smith, counsel for the Canadian Human Rights Commission

Paul Vickery and Christopher Rupar, counsel for the Respondent

Maggie Wente and Darian Baskatawang, counsel for the Chiefs of Ontario, Interested Party

Julian Falconer and Christopher Rapson, counsel for the Nishnawbe Aski Nation, Interested Party

This is **Exhibit "E"** to the Affidavit of Robert Kugler, sworn remotely before me at the City of Toronto, in the Province of Ontario, on October 16, 2023 in accordance Administering Oath or Declaration Remotely

Adil Abdulla

Commissioner for taking Affidavit
(or as may be)

ECKLER

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372 727
office +1 604.682.1381
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Direct Line: 604-673-6087
Email Address: ereid@eckler.ca

June 27, 2023

Class Counsel:
Robert Kugler, Kugler Kandestin LLP
Geoff Cowper, KC, Fasken Martineau DuMoulin LLP **Via email**

Dear Geoff and Robert,

Re: First Nations Child Welfare - Investment of Settlement Funds

Under the First Nations Child and Family Services, Jordan's Principle, and Trout Class Final Settlement Agreement dated April 19, 2023 (the "FSA"), Canada will make payments of $23,343,940,000 (the "Settlement Funds").

Over time, the Settlement Funds are expected to generate investment income from coupon and principal payments on bonds, and will be subject to capital gains or losses as the bond market rises and falls. The yields currently available on Government of Canada bonds are summarised in the table below.

Bond Duration	Government of Canada Marketable Bond: Average Yields
1 to 3 year	4.55%
3 to 5 year	3.79%
5 to 10 year	3.38%
Over 10 years	3.21%

Source: Bank of Canada data as at June 26, 2023

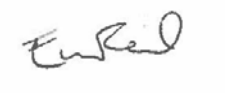
The figures in the table above suggest that if the Settlement Funds were fully invested today in bonds issued by the Government of Canada, with a mixture of durations, they would be expected to generate investment returns of around 3.5%-4.5% per year on average.

This equates to a return of around $35 - 45 million per $1 billion of funds invested, or $815 - 1,050 million based on the initial 12-month investment period for the full Settlement Funds of around $23.3 billion.

The longer-term return on assets will ultimately depend on the asset mix chosen by the Investment Committee, which may include assets other than bonds.

Please let me know if you should have any questions.

Yours sincerely,



Euan Reid, FCIA, FIA

This is **Exhibit "F"** to the Affidavit of Robert Kugler, sworn
remotely before me at the City of Toronto, in the Province of Ontario,
on October 16, 2023 in accordance
Administering Oath or Declaration Remotely

Adil Abdulla

Commissioner for taking Affidavit
(or as may be)

MEMO

TO	Class Counsel
FROM	Euan Reid
CC	Naomi Denning, Jill Wagman
DATE	October 12, 2023
RE	**First Nations Child Welfare Trust: Projected Cash Flows**

1. Background

The settlement funds under the First Nations Child and Family Services, Jordan's Principle, and Trout Class Final Settlement Agreement dated April 19, 2023 (the "FSA"), are expected to be paid by Canada in the fourth quarter of 2023. Following payment, the Settlement Funds will be invested for an initial period of around 12 months before the first compensation payments are made to Class Members.

By investing in the capital markets, we expect that the Settlement Funds will earn returns that will enable the payment of additional compensation to eligible claimants. Over the estimated 20-year lifetime of the settlement and based on the assumptions set out in this memo, we estimate additional payments of around $6.1 billion in excess of the $23.3 billion to be paid by Canada.

To help refine the structure of the Initial Investment Strategy, we have estimated the timing and amounts of future payment of the settlement funds to eligible claimants.

2. Methodology and assumptions

With the claims process yet to begin, there is a great deal of uncertainty about the future cash flows. We have based our estimates on figures set out in the FSA, in the Gorham/Trocmé report, and on discussions with Class Counsel and with Deloitte, the Administrator.

In general, we have taken a conservative approach to the assumed timing of payments, with our estimates erring on the side of payments to claimants happening later than might be the case. We are aware that the parties to the Settlement Agreement are working hard to ensure that eligible claims are paid as quickly as possible within the terms of the FSA.

2.1 Class size

We have used the following estimates of the size of each class. We understand that these figures are estimates of the number of eligible claimants, and we have assumed that 100% of eligible claimants will submit a claim and receive compensation. While we understand from discussions with Class Counsel and Deloitte that the take-up rate is likely to be very high, this assumption is likely to be conservative.

Class	Class period	Estimated class size	Source
Removed Child Class	Apr 1, 1991 – Mar 31, 2022	115,000	FSA, recital L
Removed Child Family Class	Apr 1, 1991 – Mar 31, 2022	172,500	FSA, recital O (1.5 parents/ grandparents per child)
Kith Child Class	Apr 1, 1991 – Mar 31, 2022	15,000	Deloitte

Class	Class period	Estimated class size	Source
Kith Child Family Class	Jan 1, 2006 – Mar 31, 2022	17,550	Deloitte
Jordan's Principle Class	Dec 12, 2007 – Nov 2, 2017	64,000	FSA, recital M provided a range of 58,385-69,728. We have used approximately the mid-point of these estimates.
Trout Child Class	Apr 1, 1991 – Dec 11, 2007	104,000	FSA, recital N

The Essential Services Class includes the Jordan's Principle Class. We are not aware of an estimate of the number of eligible Essential Services Class claimants that are not eligible for the Jordan's Principle Class.

2.2 Age profile

Removed Child Class: The Gorham/Trocmé report includes an estimate that 44,000 out of 115,000 eligible children were under the age of majority in March 2022. Allowing for the passage of time, we have estimated that a further 5,000 will reach the age of majority by the time the claims period begins, giving a total of 39,000 that are under the age of majority and 76,000 that are over. Children under the age of majority are assumed to reach majority evenly over a period of 16 years.

Kith Child Class: Since the class period is the same for the Kith Class as the Removed Child Class, we have assumed the same age profile applies to both. Accordingly, we have assumed that 5,100 of the 15,000 eligible Kith Child claimants will be under the age of majority and 9,900 will be over, and children under the age of majority will reach majority evenly over a period of 16 years.

Trout Child Class: The Trout Class Period ended in 2007, and claims are not expected to begin being paid until 2025 at the earliest (18 years later). We have assumed that all eligible Trout Child Class claimants will be over the age of majority when the claims period begins.

Essential Services Class: The Essential Services Class Period ran from 2007-2017. We therefore expect claimants to be younger than the Removed Child Class (1991-2022), on average. For the purpose of these estimates, we have assumed that 60% will be under the age of majority (compared to around 34% for the Removed Child Class), and children under the age of majority will reach majority evenly over a period of 10 years. These are broad estimates, and not based on any analysis of underlying data.

Family classes: We have assumed that all eligible parents and grandparents will be over the age of majority when their claim is approved. We understand from discussions with Deloitte that there may be some that are under the age of majority, but in our view this is unlikely to be material to our cash flow estimates.

2.3 Timing of claims approval

We understand from discussions with Deloitte that the claims windows for each class may be staggered. Claimants have 3 years from eligibility to submit a claim. The Administrator must then make reasonable efforts to verify a claim within 6 months of receiving a complete claim, and must make payment within 9 months of approval.

From section 2.2 above, we have assumed that there are 76,000 eligible Removed Children over the age of majority when the 3-year claims period begins. We have assumed that the claims window will open in 2024, and 5,000 claims will be paid in 2024. The remaining 71,000 initially eligible claims are assumed to be spread over 4 years (allowing for a spread of approvals during the 3-year claims window, and a further 15 months before the Administrator must make the payment).

Although the claims process has not yet been agreed by the parties to the settlement, the FSA requires (in article 6.05) in all but exceptional circumstances that family claims are not paid until the end of the 3-year claims window, allowing time for any competing claims to come forward. We have therefore assumed that the first Removed Child Family Class payments will be made in 2027, and these will be spread over 2 years.

We have assumed that the claims window for the Kith Class, the Jordan's Principle Class and the Trout Class will begin one year later, in 2025, and the Essential Services Class (other than Jordan's Principle) will follow in 2026.

These assumptions are summarised below:

Class	Claims window begins	First payment	Spreading period
Removed Child Class	2024	2024	4 (from 2025)
Removed Child Family Class	2024	2027	2
Kith Child Class	2025	2026	4
Kith Child Family Class	2025	2026	2
Jordan's Principle Class	2025	2026	4
Essential Services Class, excluding Jordan's Principle	2026	2027	4
Jordan's Principle Family Class	2025	2027	2
Trout Child Class	2025	2026	4
Trout Family Class	2025	2027	2

The FSA provides for Exceptional Early Payment of compensation in certain circumstances. We have assumed that the amount of Exceptional Early Payments will be immaterial.

2.4 Enhancement payments, multiplication of Base Compensation and assumed compensation

Removed Child Class: The Budget for the Removed Child Class is $7.25 billion. Based on the estimate of 115,000 eligible claims and Base Compensation of $40,000, $4.6 billion will be spent on Base Compensation. We have assumed that the remaining $2.65 billion will be spent in full on Enhancement Payments. We have assumed that the first Enhancement Payments will be made in 2027, to all eligible claimants who have received a payment by that date. This allows time for all those over the age of majority to have submitted a claim within the 3-year window, and for the Settlement Implementation Committee to determine the structure of the Enhancement Factors allowing for the actual claims that have been submitted. After 2027, we have assumed that Enhancement Payments will be made at the same time as Base Compensation.

Removed Child Family Class: For the Removed Child Family Class, the Budget is $5.75 billion, plus $997 million for multiplication of Base Compensation. We have assumed that the multiplication payments will be made at the same time as Base Compensation, with the full budget of $997 million paid in 2027 and 2028.

Kith Classes**:** The total expected payments for the Kith Child Class (15,000 x $40,000) and the Kith Family Class (17,550 x $40,000) correspond exactly the Budgets of $600 million and $702 million respectively.

Trout Child Class: The compensation payable to Trout Child Class claimants under the FSA is a minimum of $20,000 if they have established a Confirmed Need for an Essential Service, and a maximum of $20,000 otherwise. We have assumed that the average payment will be equal to the Budget of $2 billion divided by the estimated 104,000 claims, ie $19,231.

Essential Services Class: The total Budget for the Essential Service Class (inclusive of the Jordan's Principle Class) is $3 billion. The Base Compensation for Jordan's Principle Class members is $40,000, and other Essential Services Class members are entitled to a maximum of $40,000, based on a pro-rata share of the remaining Budget after Jordan's Principle Class members have been compensated. The total expected to be paid to Jordan's Principle Class members is 64,000 x $40,000, ie $2.56 billion, leaving $440 million to be shared among other Essential Services Class members. We have assumed that these claimants will have the same age profile as Jordan's Principle claimants, and will be paid one year later, on average.

Jordan's Principle and Trout Family Class: The Budget for the Jordan's Principle Family Class and the Trout Family Class collectively $2.0 billion. In the absence of estimates for the number of such claims, we have assumed that the full $2.0 billion Budget will be paid out in 2029 and 2030, based on the assumed timing in section 2.3 above.

2.5 Jordan's Principle Post-Majority Fund

The FSA requires that $90 million be set aside from the Settlement Funds for the benefit of high-needs Jordan's Principle Class members. We have assumed this will be carried out in 2024.

2.6 Interest Reserve Fund

The Interest Reserve Fund, with a budget of $1 billion, is intended to ensure payment of interest on the Base Compensation in respect of the CHRT Interest Accrual Period for Removed Child Class Members who were placed off-Reserve with non-Family during the CHRT Interest Accrual Period, Kith Child Class Members, and Jordan's Principle Class Members. Under the FSA, interest is payable to these classes at a simple annualized rate of 1.75%.

The FSA requires that $50 million of income generated on the Settlement Funds be transferred to the Cy-près Fund. We have assumed that this will be carried out in 2024 (allowing a short period for the fund to generate income).

We have assumed that the remainder of the $1 billion budget for the Interest Reserve Fund will be distributed each year pro-rata, based on ratio of the compensation payments projected for that year to the total expected payments.

2.7 Distribution of actuarial surpluses

The FSA provides that the Settlement Implementation Committee may determine, on the advice of the Actuary, that there are surplus funds. Surplus funds may be distributed to certain classes, with the approval of the Court.

The amount of any future surpluses will depend on many highly uncertain factors, including:

- The investment returns on the Settlement Funds;
- The numbers of eligible claims;
- The timing of eligible claims;
- The actuarial assumptions used.

In order to project the possible scale of future surpluses, we have used the following assumptions:

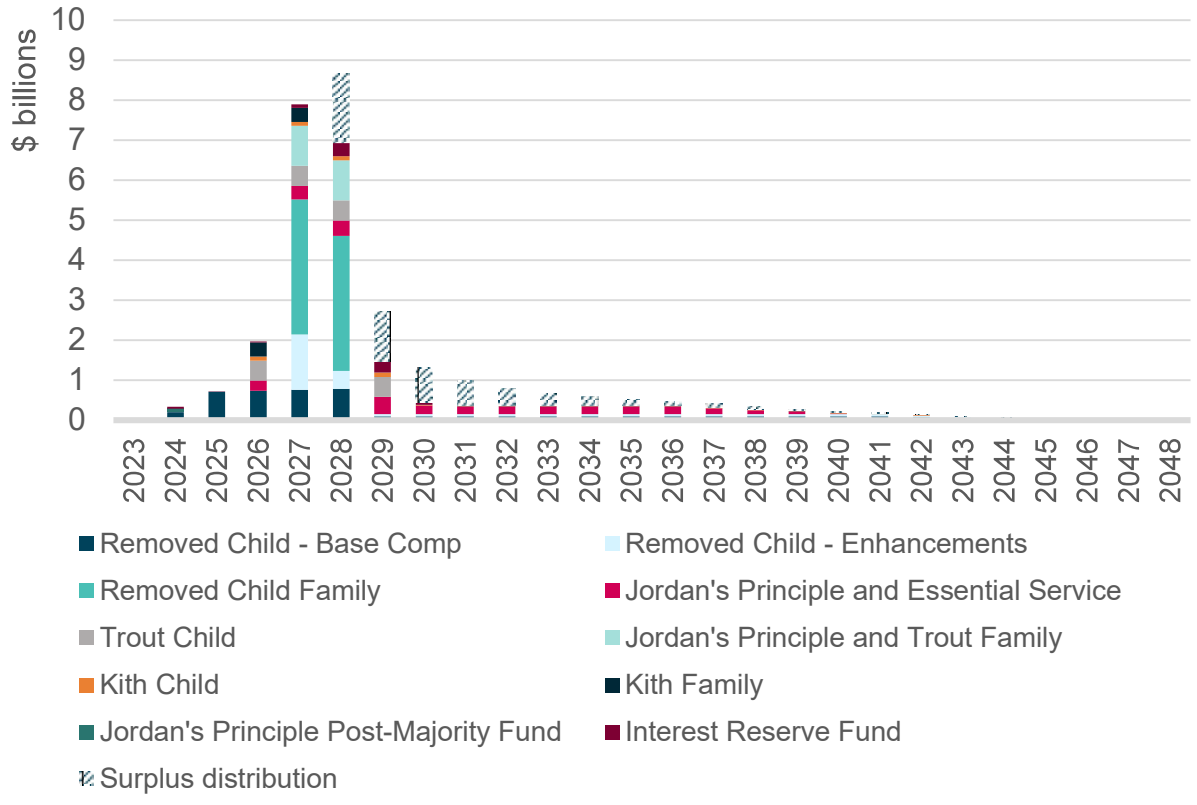
- Investment returns each year at 4.4%. This is based on the expected yield for the Settlement Funds, using the forward yield curve as at Jan 2024 and assuming $15bn is invested in 0-2 year Federal bonds and $8bn is invested in 2-5 years Federal bonds, with up to 20% invested in Provincial bonds. We have assumed the same annual return for the period after 5 years, noting that the majority of the funds are projected to have been paid out by then, so returns in later years are on a smaller pool of assets and so are less material to the results. We note that the estimated yield may change if the balance between the 0-2 year and 2-5 year allocations is changed as a result of the analysis presented here.

- A discount rate of 3.4% per year used to calculate the actuarial liabilities, ie allowing for a margin for conservatism of 1.0% per year. This is purely for illustration, and the extent of any margins in the assumptions would be subject to careful consideration at the time of an actuarial valuation. The actuarial liabilities represent the discounted value of the projected future compensation payments.

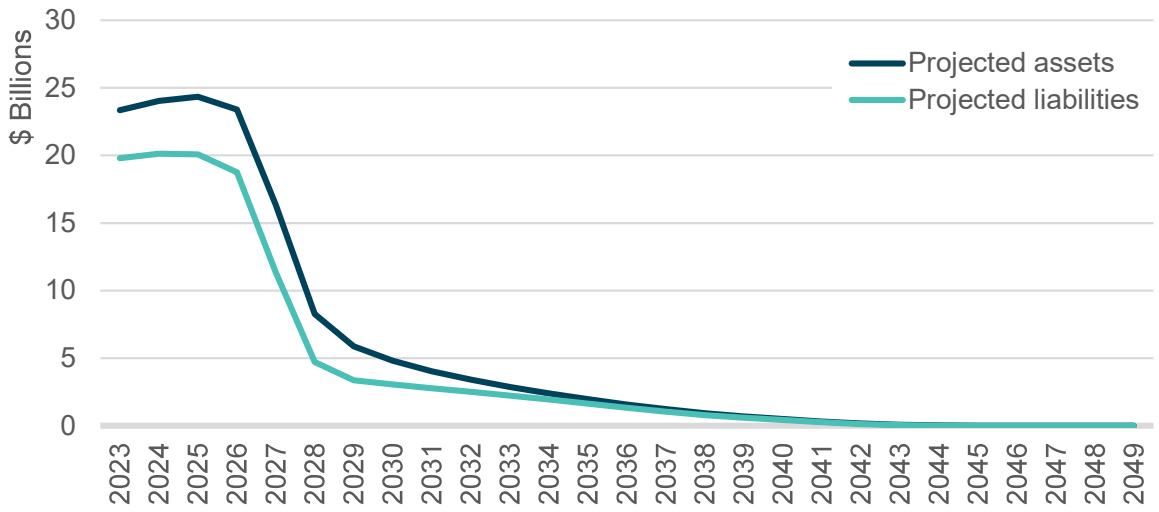
When distributing any surpluses, we expect that the Settlement Implementation Committee will wish to strike a balance between paying out funds to eligible claimants as soon as possible, and avoiding the risk of an actuarial shortfall arising in later years. To reflect this balance, we have assumed that no surpluses will be distributed until 2028, and from that point onwards only 35% of the projected surplus will be distributed each year.

3. Results

The estimated amounts and timing of the distribution of the Settlement Funds are illustrated in the chart below, with the detailed figures shown in the Appendix. Given the considerable uncertainty that remains about how many claims will ultimately be approved, and when they will be paid, our projections are by their nature very approximate.



The projected assets and actuarial liabilities are illustrated in the following chart. As noted above, these are shown for illustration only, as a means to include the distribution of future surpluses in the projected cash flows.



Appendix: Projected compensation payments ($ millions)

Year	Removed Child - Base Comp	Removed Child - Enhancements	Removed Child Family	Essential Service	Trout Child	Jordan's Principle and Trout Family	Kith Child	Kith Family	Jordan's Principle Post-Majority Fund	Interest Reserve Fund	Surplus distribution	Total	Total - excluding surplus
2023	-	-	-	-	-	-	-	-	-	-	-	-	-
2024	200	-	-	-	-	-	-	-	90	50	-	340	340
2025	710	-	-	-	-	-	-	-	-	9	-	719	719
2026	734	-	-	256	500	-	99	351	-	30	-	1,715	1,715
2027	759	1,384	3,374	338	500	1,000	102	351	-	72	-	7,798	7,798
2028	783	451	3,374	383	500	1,000	105	-	-	329	1,781	8,662	6,881
2029	98	56	-	428	500	-	109	-	-	279	1,265	2,689	1,425
2030	98	56	-	217	-	-	13	-	-	49	893	1,536	644
2031	98	56	-	180	-	-	13	-	-	25	632	1,041	409
2032	98	56	-	180	-	-	13	-	-	16	449	812	363
2033	98	56	-	180	-	-	13	-	-	15	321	682	361
2034	98	56	-	180	-	-	13	-	-	15	232	593	361
2035	98	56	-	180	-	-	13	-	-	15	168	530	361
2036	98	56	-	180	-	-	13	-	-	15	124	485	361
2037	98	56	-	142	-	-	13	-	-	15	91	453	361
2038	98	56	-	97	-	-	13	-	-	15	68	391	323
2039	98	56	-	52	-	-	13	-	-	13	51	327	276
2040	98	56	-	7	-	-	13	-	-	11	38	267	229
2041	98	56	-	-	-	-	13	-	-	9	28	210	182
2042	73	42	-	-	-	-	13	-	-	7	21	156	135
2043	49	28	-	-	-	-	10	-	-	5	15	107	92
2044	24	14	-	-	-	-	6	-	-	4	11	59	48
2045	-	-	-	-	-	-	3	-	-	2	8	13	5
2046	-	-	-	-	-	-	-	-	-	0	5	5	0
2047	-	-	-	-	-	-	-	-	-	-	11	11	-
Total	**4,600**	**2,650**	**6,747**	**3,000**	**2,000**	**2,000**	**600**	**702**	**90**	**1,000**	**6,211**	**29,600**	**23,389**

This is **Exhibit "G"** to the Affidavit of Robert Kugler, sworn remotely before me at the City of Toronto, in the Province of Ontario, on October 16, 2023 in accordance Administering Oath or Declaration Remotely

Adil Abdulla

Commissioner for taking Affidavit
(or as may be)

Federal Court Cour fédérale

Date: 20230816

Docket: T-402-19
T-141-20
T-1120-21

Ottawa, Ontario, August 16, 2023

PRESENT: The Honourable Madam Justice Aylen

CLASS PROCEEDING

BETWEEN:

XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige) AND JONAVON JOSEPH MEAWASIGE

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

T-141-20

BETWEEN:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON (by his litigation guardian, Carolyn Buffalo), CAROLYN BUFFALO AND DICK EUGENE JACKSON also known as RICHARD JACKSON

Plaintiffs

and

HIS MAJESTY THE KING
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

T-1120-21

BETWEEN:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER

UPON MOTION by the Plaintiffs, in writing, for: (a) an order approving the revised Short-Form and Long-Form Notices of Certification and Settlement Approval Hearing; and (b) extending the opt-out deadline to October 6, 2023;

CONSIDERING the Plaintiffs' motion record;

AND CONSIDERING that the Defendant consents to the relief sought;

AND CONSIDERING that, by Order dated June 24, 2022, the Court approved an earlier version of the Short-Form and Long-Form Notices of Certification and Settlement Approval Hearing and fixed the opt-out deadline. However, as a result of a subsequent need to amend the

Settlement Agreement, the Settlement Agreement approval hearing did not proceed as contemplated in the June 24, 2022 Order;

AND CONSIDERING that, by Order dated February 23, 2023, the Court extended the opt-out deadline to August 23, 2023;

AND CONSIDERING that the Court is satisfied that the requested relief should be granted;

THIS COURT ORDERS that:

1. The revised Short-Form Notice of Certification and Settlement Approval Hearing and the revised Long-Form Notice of Certification and Settlement Approval Hearing substantially in the form attached as Schedules "A" and "B", respectively, to the Notice of Motion are hereby approved, subject to the right of the parties to make non-material amendments as may be necessary or desirable, and subject to the right of the parties to summarize, communicate and publicize these notices for the benefit of the class, and subject to necessary language translations of revised notices into French prior to publication, and language translations into some First Nations languages before or during publication, as may be agreed on by the parties.

2. The opt-out deadline is hereby extended to October 6, 2023.

"Mandy Aylen"
Judge

This is **Exhibit "H"** to the Affidavit of Robert Kugler, sworn
remotely before me at the City of Toronto, in the Province of Ontario,
on October 16, 2023 in accordance
Administering Oath or Declaration Remotely

Adil Abdulla

Commissioner for taking Affidavit
(or as may be)

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 Digitally signed by Judy Dubois
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This is **Exhibit "I"** to the Affidavit of Robert Kugler, sworn
remotely before me at the City of Toronto, in the Province of Ontario,
on October 16, 2023 in accordance
Administering Oath or Declaration Remotely

Adil Abdulla

Commissioner for taking Affidavit
(or as may be)

Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2023 CHRT 44
Date: September 26, 2023
File No.: T1340/7008

Between:

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 and Northern Affairs Canada)

Respondent

Decision

Members: Sophie Marchildon
Edward P. Lustig

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I. Introduction

[1] This is a good day for human rights, First Nations children and families in Canada and a significant step towards reconciliation. The Panel congratulates the parties and all people involved in reaching this milestone and more importantly, the Panel recognizes the First Nations children and families who were harmed as a result of Canada's discriminatory practices and whose lives are paving the way for justice. This is the largest settlement of its kind in Canadian history. Sadly, this stems from the magnitude of harms that were inflicted upon First Nations children, families, communities and Nations. Canada ought to bear this in mind as an important reminder so as to never repeat history. The cycle of harm must be broken.

> "History will judge us by the difference we make in the everyday lives of children."
>
> — Nelson Mandela

[2] The Panel honors the First Nations leadership in Canada who voiced the importance of not leaving anyone behind and the First Nations parties' courage for leading further negotiations. 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.

[3] The Tribunal declined to fully endorse the previous FSA because it did not fully satisfy the compensation orders the Tribunal found the victims/survivors were entitled to under the *Canadian Human Rights Act*, RSC 1985 c H-6. The Tribunal in rejecting the previous FSA was really hoping for a better outcome as a result of further negotiations. The Tribunal believes that even if this took many additional months to arrive to this Revised Settlement, it was well worth it for the victims/survivors of human rights violations.

[4] According to the parties, this is the largest compensation settlement in Canadian history so far 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.

[5] 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.

[6] Complete justice will be achieved when First Nations children will have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have 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 elimination of the systemic racial discrimination found and the need to prevent similar practices from arising. The Tribunal has found this requires a complete reform. Making available to First Nations children and communities the rights, opportunities and privileges they have been denied and ensuring Canada ceases the discriminatory practices at issue in this case requires a transformation that will protect generations to come. This continues to be the Tribunal's focus.

[7] 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.

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

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

[10] 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.

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

[12] 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.

[13] The Panel is pleased that Canada demonstrated effective leadership in going back to negotiations and for doing the right thing in reincluding the victims/survivors that were left out of the previous settlement agreement (2022 FSA).

[14] The work is not finished, there is much more to do. Compensation is but one aspect of this case. Racial and systemic discrimination must be eliminated and similar practices must not arise or be perpetuated.

[15] Finally, while there is more to do, this milestone deserves to be celebrated as it will be transformative for thousands of First Nations children and families.

A. Context

[16] In 2016, the Tribunal released *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 [*Merit Decision*] and found that this case is about children and how the past and current child welfare practices in First Nations communities on reserves, across Canada, have impacted and continue to impact First Nations children, their families and their communities. The Tribunal found that Canada racially discriminated against First Nations children on reserve and in the Yukon in a systemic way not only by underfunding the First Nations Child and Family Services Program (FNCFS) but also in the manner that it designed, managed and controlled it. One of the worst harms found by the Tribunal was that

the FNCFS Program failed to provide adequate prevention services and sufficient funding. This created incentives to remove First Nations children from their homes, families and communities as a first resort rather than as a last resort. Another major harm to First Nations children was that zero cases were approved under Jordan's Principle given the narrow interpretation and restrictive eligibility criteria developed by Canada. The Tribunal found that beyond providing adequate funding, there is a need to refocus the policy of the program to respect human rights principles and sound social work practice in the best interest of children. The Tribunal established Canada's liability for systemic and racial discrimination and ordered Canada to cease the discriminatory practice, take measures to redress and prevent it from reoccurring, and reform the FNCFS Program and the *1965 Agreement* in Ontario to reflect the findings in the *Merit Decision*. The Tribunal determined it would proceed in phases for immediate, mid-term and long-term relief and program reform and financial compensation so as to allow immediate change followed by adjustments and finally, sustainable long-term relief. This process would allow the long-term relief to be informed by data collection, new studies and best practices as identified by First Nations experts, First Nations communities and First Nations Agencies considering their communities' specific needs, the National Advisory Committee on child and family services reform and the parties.

[17] The Tribunal also ordered Canada to cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of Jordan's Principle. Jordan's Principle orders and the substantive equality goal were further detailed in subsequent rulings. In 2020 CHRT 20 the Tribunal stated that:

> **Jordan's Principle is a human rights principle grounded in substantive equality. The criterion included in the Tribunal's definition in 2017 CHRT 14 of providing services "above normative standard" furthers substantive equality for First Nations children in focusing on their specific needs which includes accounting for intergenerational trauma and other important considerations resulting from the discrimination found in the *Merit Decision* and other disadvantages such as historical disadvantage they may face. The definition and orders account for First Nations' specific needs and unique circumstances. Jordan's Principle is meant to meet Canada's positive domestic and international obligations towards First Nations children under the *CHRA*, the *Canadian Charter of Rights and Freedoms*, the *Convention on the***

> ***Rights of the Child*** **and the** ***UNDRIP*** **to name a few. Moreover, the Panel relying on the evidentiary record found that it is the most expeditious mechanism currently in place to start eliminating discrimination found in this case and experienced by First Nations children while the National Program is being reformed. Moreover, this especially given its substantive equality objective which also accounts for intersectionality aspects of the discrimination in all government services affecting First Nations children and families. Substantive equality is both a right and a remedy in this case: a right that is owed to First Nations children as a constant and a sustainable remedy to address the discrimination and prevent its reoccurrence. This falls well within the scope of this claim.** (emphasis changed)

[18] Consequently, the Tribunal determined all the above need to be adequately funded. This means in a meaningful and sustainable manner so as to eliminate the systemic discrimination and prevent it from reoccurring.

[19] The Tribunal issued a series of rulings and orders to completely reform the Federal First Nations Child and Family Services Program. In 2019, the Tribunal ruled and found Canada's systemic and racial discrimination caused harms of the worst kind to First Nations children and families. The Tribunal ordered compensation to victims/survivors and, at the request of the complainants and interested parties, the Tribunal made binding orders against Canada to provide compensation to victims/survivors. The Tribunal then issued a series of compensation process decisions at the parties' requests and this process came to an end in late 2020 when Canada decided to judicially review the Tribunal's compensation decisions and halt the completion of the compensation process's last stages which would have allowed distribution of the compensation to victims/survivors.

[20] The Tribunal announced in 2016 that it would deal with compensation later, hoping the parties would resolve this before the Tribunal ruled and made definitive orders. The Tribunal can clarify its existing compensation orders but it cannot completely change them in a way that removes entitlements to victims/survivors. The approach to challenge these key determinations is through judicial review.

[21] The Tribunal encouraged the parties for years to resolve compensation issues.

[22] The Panel was clear in 2016 CHRT 10 that it hoped that reconciliation could be advanced through the parties resolving remedial issues through negotiations rather than

adjudication (para. 42). The Panel noted in 2016 CHRT 16 that some of the parties cautioned the Tribunal about the potential adverse impacts that remedial orders could have (para. 13). Accordingly, the Tribunal strongly encouraged the parties to negotiate remedies, including on the issue of compensation. The Tribunal offered to work with the parties in mediation-adjudication to help the parties craft remedies that would best satisfy their needs and most effectively provide redress to victims. Only Canada declined.

[23] The issue left unresolved, the Tribunal was obligated to rule on compensation and the compensation process. In addressing compensation, the Tribunal was required to make challenging decisions addressing novel issues. Canada advanced multiple arguments opposing compensation. The Tribunal has made legal findings based on the evidence and linking the evidence to harms justifying orders under the *CHRA*. This exercise is made by the Tribunal who exercise a quasi-judicial role under quasi-constitutional legislation. The Tribunal, guided by all the parties in this case, including the AFN, made bold and complex decisions in the best interests of First Nations children and families. The Tribunal's decisions have been upheld by the Federal Court. Now that the Tribunal has issued those compensation decisions on quantum and categories of victims, they are no longer up for negotiation. They are a baseline. Negotiation involves compromise, which can sometimes result in two steps forward and one step back and this may be found acceptable by the parties to the negotiation. However, negotiation cannot be used to take a step backwards from what the Tribunal has already ordered.

[24] Once it found systemic discrimination, the Panel worked with rigor to carefully craft sound findings of fact and law that recognized fundamental rights for First Nations children and families in Canada and protect and vindicate those rights.

[25] Indeed, on September 6, 2019, the Tribunal rendered its decision on compensation (2019 CHRT 39), wherein it ordered Canada to compensate and pay interest to: (i) certain victims of discrimination under the FNCFS Program who were removed from their homes, families and communities; (ii) their parents or caregiving grandparents and, (iii) 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 (later confirmed to include children

in out-of-home placements on January 1, 2006), and First Nations children who were denied the essential services needed, or received the essential services after an unreasonable delay, because the Government of Canada failed to meet the legal requirements of Jordan's Principle (the "Compensation Entitlement Order").

[26] The Tribunal ordered Canada to consult with the Caring Society and the AFN to develop a compensation distribution framework to arrive at a final order for the distribution of the compensation ordered.

[27] 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.

[28] On February 21, 2020, the Caring Society, the AFN, and Canada submitted a first 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. While many aspects of the compensation framework were the result of negotiation and consensus, certain issues were resolved through adjudication before the Tribunal.

[29] The Tribunal ultimately addressed the issues raised before it by the parties and issued further orders clarifying various elements of its Compensation Entitlement Order, including: the age of majority, eligibility for those who remained in care as at Jan 1, 2006 and the eligibility for the estates of deceased victims (2020 CHRT 7); the definitions of "service gap", "essential service" and "unreasonable delay" for the purpose of Jordan's Principle compensation (2020 CHRT 15); the definition of a "First Nations child" in relation to eligibility under Jordan's Principle (2020 CHRT 20); and that compensation owing to minor beneficiaries and those without legal capacity be held in trust (2021 CHRT 6).

[30] On February 12, 2021, the Tribunal approved the final Compensation Framework as revised by the parties (2021 CHRT 7). While this Order substantively addressed aspects of the distribution process for compensation, the parties understood that a significant amount of future work would be required by the parties to address items which included, but were

not limited to, how eligibility would be determined, the operation of the implementation process and the continued role of the Tribunal. This work remained subject to Canada's judicial review of the Compensation Entitlement Order and the Tribunal's orders regarding eligibility under Jordan's Principle (2020 CHRT 20 and 2020 CHRT 36), as addressed in Federal Court File Nos. T-1621-19 and T-1559-20.

[31] The judicial reviews were heard on June 14-18, 2021. On September 29, 2021, the Federal Court dismissed Canada's applications in their entirety (2021 FC 969).

[32] On October 29, 2021, Canada appealed the Federal Court's order (2021 FC 969) upholding the Compensation Entitlement Decision to the Federal Court of Appeal (Federal Court of Appeal File No. A-290-21).

The Class Actions and Procedural History of the Revised Final Settlement Agreement

[33] On March 4, 2019, a class action was commenced in the Federal Court seeking compensation for First Nations children who suffered comparable discrimination related to a lack of prevention services leading to the placement of First Nations children in out-of-home care as well as the discriminatory application of Jordan's Principle, beginning on April 1, 1991 (Federal Court File No. T-402-19) ("Moushoom Class Action").

[34] On January 28, 2020, a proposed class action was filed by the AFN and other representative plaintiffs seeking compensation for removed First Nations children and those who experienced discrimination under Jordan's Principle (Federal Court File No. T-141-20) ("AFN Class Action"). A separate class action involving Canada's discrimination in the provision of essential services, products and supports prior to December 2007 was commenced on July 16, 2021 by the AFN and the representative plaintiff Zacheus Trout (Federal Court File No. T-141-20) ("Trout Class Action").

[35] The Moushoom Class Action and the AFN Class Action were consolidated on July 7, 2021 and certified on November 26, 2021 (2021 FC 1225). The Trout Class Action was certified on February 11, 2022 (together, the three class actions are referred to as the "Federal Court Class Actions").

[36] On December 31, 2021, the parties to the to the Federal Court Class Actions concluded an Agreement-in-Principle ("AIP") addressing compensation. On June 30, 2022, a final settlement agreement was reached (the "2022 FSA") and in July 2022, the AFN and Canada brought a motion to the Tribunal seeking a declaration that the 2022 FSA was fair, reasonable, and satisfied the Compensation Entitlement Order and all related clarifying orders (the "Joint Motion"). In the alternative, AFN and Canada sought an order varying the Compensation Entitlement Order, the Compensation Framework Order and other compensation orders, to conform to the 2022 FSA.

[37] The Panel agreed the victims/survivors have been waiting long enough and emphasized that they could have been compensated at any time since the Tribunal's decision in 2016 and even more so after the *Compensation Decision* in 2019.

[38] The Tribunal heard the Joint Motion in September 2022 and dismissed the Joint Motion by letter decision on October 25, 2022, with full reasons set out in 2022 CHRT 41 and can be accessed online at: https://canlii.ca/t/k08tm.

[39] The Tribunal in 2022 CHRT 41 on the Joint Motion found that the 2022 FSA substantially satisfied the Compensation Entitlement Order. However, the Tribunal identified three (3) key areas where the 2022 FSA departed from the compensation orders, disentitled or reduced entitlements for certain victims already entitled to compensation which, as it will be explained below, was contrary to human rights principles carefully applied in the Tribunal's findings on compensation and corresponding orders. These derogations included the following:

> (a) children removed from their homes, families and communities and placed in non-ISC funded placements were improperly excluded from receiving compensation (2022 CHRT 41 at paras. 283-331);
>
> (b) the estates of deceased caregiving parents and grandparents were excluded from receiving compensation, which was not in keeping with 2020 CHRT 7 (2022 CHRT 41 at paras. 332-350);
>
> (c) certain caregiving parents and grandparents would receive less compensation either in circumstances of multiple removals or if there was an unexpected number of claimants which required a reduction in compensation

> to the class to ensure that all caregiving parent and grandparent victims received compensation (2022 CHRT 41 at paras. 351-360).

[40] The Tribunal also raised concerns regarding eligibility under Jordan's Principle and the uncertainties introduced in the 2022 FSA regarding the class action approach, with questions around the meaning of "significant impact" and the definition of "essential service". The Tribunal determined that uncertainty existed with respect to whether the implementation of Jordan's Principle under the 2022 FSA would result in the victims identified by the Tribunal receiving $40,000.

[41] The Tribunal also expressed concern about the opt-out regime in the 2022 FSA (2022 CHRT 41 at paras. 385-390).

[42] The Tribunal said in 2022 CHRT 41 at paragraph 10:

> that the same Panel that made those liability findings against Canada is asked to let go of its approach to adopt a class action approach serving different legal purposes. The Panel was conscious that class actions were forthcoming and made sure in its compensation decision they were not hindered by the Tribunal's compensation process. Now it is the Tribunal's decisions that are being hindered by the FSA applying an early-stage class action lens. Indeed, the parties did not finalize the compensation distribution process to allow for the distribution of funds for the compensation already ordered by this Tribunal in 2019. They pursued another approach instead that did not fully account for the CHRA regime and the Tribunal's orders.

[43] Notably, in 2022 CHRT 41 at paragraph 169, the Tribunal stated the question of quantum of compensation was never up for discussion and no suggestion was made by the Tribunal or the parties to modify the quantum of compensation or to reduce or disentitle categories already recognized by the Tribunal in its compensation orders. In fact, this aspect was final and supported by findings and reasons and sent a strong deterrent message to Canada and a message of hope to the victims/survivors whose rights were vindicated by those findings and corresponding orders. Further, the Tribunal's reasons illustrate the significant difference between systemic human rights remedies and those flowing from tort law. The Tribunal noted the important purpose of individual compensation for victims of discrimination:

> was necessary to deter the reoccurrence of the discriminatory practice or of similar ones, and more importantly to validate the victims/survivors' hurtful experience resulting from the discrimination.
> (2019 CHRT 39 at para 14).

[44] The Tribunal reiterated that in the Compensation Entitlement Decision, 2019 CHRT 39, at para. 206, the Tribunal also made clear that its obligations are to safeguard the human rights of the victims/survivors it identified, irrespective of any proposed class proceedings:

> The fact that a class action has been filed does not change the Tribunal's obligations under the *Act* to remedy discrimination and if applicable, as it is here, to provide a deterrent and discourage those who discriminate, to provide meaningful systemic and individual remedies to a group of vulnerable First Nations children and their families who are victims/survivors in this case.

[45] The Tribunal in its reasons rejecting the 2022 FSA, the Tribunal mentioned that it is responsible for applying the *CHRA* and the human rights framework reflected in that legislation.

[46] Moreover, in 2022 CHRT 41, the Tribunal reasoned as follows:

> More importantly, the Tribunal frowns on reducing compensation or disentitling victims/survivors once they have been vindicated at the Tribunal and upheld by the Federal Court. This dangerous precedent would send a very negative message to victims/survivors in this case and other human rights cases in Canada and could potentially become a powerful deterrent to pursue human rights recourses under the *CHRA*. Victims/survivors would never have the peace of mind that their substantiated complaints and awarded remedies would be forthcoming to them if, at any time before remedies are implemented, these remedies can be taken away from them without the need for a successful judicial review (See at, para. 259).
>
> This is even more troubling when we consider the nature of the complaints before the Tribunal in this case. The very nature of human rights rests upon the protection of vulnerable groups. From the beginning the Tribunal found and wrote that this case is about children and the Tribunal's mandate to eliminate discrimination and prevent similar practices from arising. Permitting reductions or disentitlements of compensation for victims/survivors who have been recognized in evidence-based findings and corresponding orders does not breathe life into human rights. Rather, it takes its breath away, (See at, para. 260).
>
> This cannot be how the human rights regime is administered in Canada (See at, para. 261).

> Once rights have been recognized and vindicated (which is no small task for complainants and victims who often face powerful respondents challenging their claim at every turn), they
>
> are no longer up for debate by outside actors or respondents who may disagree with the orders made against them and therefore cannot contract out of their human rights obligations under the *CHRA* (See 2022 CHRT 41. at, para. 236).
>
> The Tribunal cannot overstate the importance of securing victims/survivors' rights across Canada. […] Human rights are fundamental rights that are not intended to be bargaining chips that parties can negotiate away. Similar to how human rights
>
> legislation establishes minimum standards parties cannot contract out of, the Tribunal's compensation orders generate binding compensation obligations on Canada. Canada cannot contract out of these obligations through an alternative
>
> Proceeding, (See 2022 CHRT 41, at, para. 502).

[47] The Tribunal urged the parties to this proceeding and the parties to the Federal Court Class Actions to work together to allocate additional funds to cover all victims/survivors entitled to compensation as already ordered by the Tribunal and to uphold the human rights regime in a manner that respects and acknowledges those orders and the pain and suffering of all victims/survivors identified by the Tribunal in its previous reasons and orders.

[48] On December 7, 2022, the First Nations-in-Assembly unanimously adopted Resolution 28/2022 regarding compensation for the victims of Canada's discrimination. Resolution 28/2022 included the following critical direction:

> Support compensation for victims covered by the 2022 FSA on compensation and those already legally entitled to $40,000 plus interest under the Canadian Human Rights Tribunal (CHRT) compensation orders to ensure that all victims receive compensation for Canada's wilful and reckless discrimination.
>
> Support the principles on which the FSA is built, including taking a trauma-informed approach, employing objective and non-invasive criteria, and ensuring a First Nations-driven and culturally informed approach to compensation individuals.
>
> Continue to support the Representative Plaintiffs and all victims of Canada's discrimination by ensuring that compensation is paid out as quickly as

possible to all those who can be immediately identified and to continue to work efficiently to compensate those who may need more time.

[49] With the guidance set out by the Tribunal in 2022 CHRT 41 and the direction and support provided by First Nations leadership, the parties to the Federal Court Class Actions and the Caring Society engaged in negotiations resulting in the Revised Agreement. The Revised Agreement was approved by the First Nations-in-Assembly on April 4, 2023, and executed by the parties to the Federal Court Class Actions on April 19, 2023. As the Caring Society was not a party to the Federal Court Class Actions, the AFN, the Caring Society and Canada executed Minutes of Settlement in this proceeding on April 19, 2023.

B. Issue to be decided by this Tribunal

[50] The parties submitted the following notice of motion to the Tribunal:

> **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**
>
> **THIS CONSENT 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. …
>
> **AND TAKE NOTICE THAT THIS CONSENT MOTION IS FOR** orders confirming that the revised First Nations Child and Family Services, Jordan's Principle and Trout Class Final Settlement Agreement (the "**Revised Agreement**"), made respecting Federal Court File Nos. T-402-19 (*Moushoom et al v Attorney General of Canada*), T-141-20 (*Assembly of First Nations et al v His Majesty the King)* and T-1120-21 *(Trout et al v Attorney General of Canada)* 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.

[51] The parties jointly submit that the Revised Agreement presented to the Tribunal on this motion heeds the Tribunal's guidance and the direction from the First Nations-in-Assembly: the derogations have been remedied; the uncertainties in relation to eligibility under Jordan's Principle have been addressed; the approach to compensation in relation to

the estates of parents/caregiving grandparents has been varied to ensure a better outcome for children impacted by Canada's discrimination; and compensation to parents and caregiving grandparents under Jordan's Principle has been aligned with the spirit and intent of the Tribunal's finding in this case. The Assembly of First Nations, the Caring Society, the Human Rights Commission, the Chiefs of Ontario, the Nishnawbe Aski Nation and Canada consent to this motion. The Revised Agreement can be consulted online at: https://afn.bynder.com/m/21fa33f66e9b73d1/original/04-2023-Compensation-Final-Settlement-Agreement-April-17-with-schedule

C. Decision

[52] After careful consideration, the Panel agrees.

The joint motion is allowed.

D. Legal framework

[53] The Tribunal relies on the same legal framework detailed in length in its reasons in 2022 CHRT 41 to support the finding that it has jurisdiction to determine if the Revised Settlement fully satisfies the Tribunal's compensation orders. The Panel outlined the proper approach to reviewing a request for a consent order in 2020 CHRT 36 at para. 51:

> The first step for this consent order is to do the analysis under section 53 of the *CHRA* in order to determine if the consent order sought is within the Tribunal's authority under the *Act*. If the answer is negative, the analysis stops there and the Tribunal cannot make such an order. If the answer is affirmative, the Tribunal then determines if the consent order sought is appropriate and just in light of the specific facts of the case, the evidence presented, its previous orders and the specifics of the consent order sought.

[54] Moreover, the legal framework pertaining to the requested orders will be addressed in turn in the analysis below.

E. Analysis

(i) Has the Revised Agreement addressed the Tribunal's concerns raised in 2022 CHRT 41 and does it now fully satisfy the Tribunal's orders?

[55] The Tribunal will not embark on a clause-by-clause comment of a very voluminous document. The Tribunal has carefully reviewed the Revised Agreement and will comment only on the parts that it had found problematic in 2022 CHRT 41 and that needed changes in order to fully satisfy the Tribunal's orders. In sum, the Tribunal agrees that the rest of the Settlement Agreement and claims process set out in the Revised Agreement and further measures to be developed by class counsel in consultation with experts and approved by the Federal Court satisfies the requirements under the compensation framework as ordered in 2019 CHRT 39 and 2021 CHRT 7. The Revised Agreement does not require children to testify and will be culturally appropriate and safe. This formed part of the Tribunal's compensation orders. Indeed, the Tribunal stressed the importance of avoiding the retraumatizing of children in its compensation orders. The Revised Agreement adopts a trauma informed approach best suited in this case. Further, subject to the Federal Court's approval, a Settlement Implementation Committee composed of five members will be established and will include two First Nations members and three Counsel members. As per the Tribunal's orders, subject to some exceptions, the compensation will be paid directly to the victims/survivors or in a trust fund until they have reached the age of majority as determined by law and administered by a Court appointed independent Trustee. Upon careful consideration and, in applying a human rights lens, the Tribunal finds the Revised Agreement in the best interests of First Nations children and families who are entitled to compensation under the Tribunal's orders.

[56] For the above reasons, the Tribunal only needs to focus on the sections that will be discussed below.

[57] Of note, the Revised agreement now includes a request for an apology from the Prime Minister, standing in Federal Court for the Caring Society, a longer opt-out deadline for victims/survivors and interest on compensation as per the Tribunal's compensation orders. The Tribunal will also discuss these in turn below.

[58] While the Tribunal ruled that a settlement need not mirror all the Tribunal's compensation orders as long as the spirit of its orders is honoured, it cannot disentitle, reduce or strip away the victims/survivors' compensation guaranteed in the Tribunal's orders. Therefore, ensuring this is remedied in the Revised Agreement is the focus and the framework in the Tribunal's analysis of the Revised Agreement.

[59] A summary of joint submissions from the parties is reproduced below. The Tribunal decided that it was wise to use the parties' own description of how they consider having addressed the Tribunal's concerns instead of rewording them. The Tribunal will address them in turn and provide its reasons under each of the parties' descriptions.

(ii) The Derogations Regarding Kith Placements and Multiple Removals Have Been Remedied

[60] In 2022 CHRT 41, the Tribunal found that the 2022 FSA settlement amount of $20,000,000,000 did not include a budget to compensate First Nations children removed from their homes, families and communities who were placed in placements not funded by Canada ("Non-ISC Funded Placements").

[61] The joint parties submit that the Revised Agreement now includes compensation for First Nations children removed from their homes, families and communities and placed in alternative non-ISC funded placements and compensation for their parents/caregiving grandparents. These placements are referred to as "Kith Placements" in the Revised Agreement. Children placed in Kith Placements, as well as their parents/caregiving grandparents, are entitled to $40,000 plus applicable interest.

[62] Article 7 of the Revised Agreement sets out the principal eligibility requirements for First Nations children removed from their homes, families and communities, and placed in Kith Placements. Given the challenges with the available documentation for Kith Placements, the parties will craft a separate and unique approach for the verification of eligible class members under this category. The approach will involve the participation of the Caring Society, as well as input from youth in care and youth formerly in care and First Nations Child and Family Services Agencies ("FNCFS Agencies"), (See, Article 7.01(8),

Revised Agreement, Exhibit “F” to the AFN Affidavit). No member of the Kith Child Class will be required to submit to any form of interview or *viva voce* (oral) evidence taking and the claims process will be designed with the goal of minimizing risk of causing harm. Further, the joint parties state that compensation in relation to Kith Placements will require a specific approach given that data relevant to Kith Placements is often collected in a different manner than those in ISC-funded placements. The process for determining eligibility will be structured with guidance from records management experts, youth in care and youth formerly in care, and input from the Caring Society. The Revised Agreement fully satisfies the Compensation Entitlement Order in relation to these victims (See, Article 7.01(1) and (2), Revised Agreement, Exhibit “F” to the AFN Affidavit).

[63] The Revised Agreement provides for a budget of $600 million for the Kith Child Class and $702 million for the Kith Family Class, (See, Article 7.02 (5) and 7.04(2), Revised Agreement, Exhibit “F” to the AFN Affidavit). These are new amounts being committed by Canada and are not a redistribution of funding under the 2022 FSA. These amounts meet or exceed the Caring Society’s estimates of the budget required to compensate the likely number of victims in each category, (See Annex A).

[64] As set out in Annex A, the Caring Society based its estimates on data obtained from iterations of the Canadian Incidence Study of Reported Child Abuse and Neglect (FNCIS-2019) providing information on placements for First Nations children. The Caring Society reviewed existing data from the Canadian Incidence Study on Reported Child Abuse and Neglect (2019 FN-CIS) to extrapolate the number of First Nations children in Non-ISC Funded Placements.

[65] This data was used to extrapolate population sizes based on information available regarding children in “ISC-funded” placements, provided by the Parliamentary Budget Officer and experts retained by the class action parties. Recognizing the ongoing gaps in child welfare data, the evidence used for these calculations is the best available. The data is valid and reliable and the Caring Society’s calculation assumptions are conservative, in order to avoid underestimating the number of potential victims.

[66] Table 16 of the 2019 FN-CIS attached to Dr. Blackstock's affidavit dated, June 30, 2023, as Exhibit "F", notes that 2,365 First Nations children were removed to placements not funded by Canada in 2019. This amounted to roughly 40% of all placements made in 2019.

[67] The Caring Society also verified the proportion of placements not funded by Canada in the 2003 report Understanding Overrepresentation of First Nations Children in Canada's Child Welfare System: An Analysis of the Canadian Incidence Study of Reported Child Abuse and Neglect (CIS-2003) (also known as Mesnmimk Wasatek: catching a drop of light) ("2003 FNCIS"), which estimated 1,554 First Nations children being removed to placements not funded by Canada in 2003. This amounted to roughly 45% of all placements made in 2003. A true copy of Table 7-6 from the 2003 FN-CIS is attached to Dr. Blackstock's affidavit dated, June 30, 2023, as Exhibit "G".

[68] Using these two figures, the Caring Society assessed that the estimated number of children removed to placements funded by ISC under the FNCFS Program from January 1, 2006 to March 31, 2022 (including children already in care on January 1, 2006) would represent roughly 57.5% of all First Nations children living on-reserve who had been removed from their homes.

[69] The Caring Society is of the view that the budgeted amounts for the Kith Child Class and the Kith Family Class are fair and reasonable. These amounts reflect the Caring Society's own work to extrapolate, based on existing data, the number of First Nations children likely in the Kith Child Class in order to evaluate the sufficiency of proposed budgets, (See Dr. Blackstock' s Affidavit dated, June 30, 2023, at para 40). As a result, the Caring Society is comfortable and confident that the budgets in relation to Kith Placements will fully satisfy the Tribunal's orders in relation to these children and families.

[70] The Caring Society also received analysis of the 2019 FN-CIS data from Dr. Fallon regarding the proportion of First Nations children resident on-reserve who were removed in 2019 and placed in Non-ISC Funded Placements located more than a 30-minute drive from their residence. A true copy of this analysis is attached to Dr. Blackstock's affidavit dated, June 30, 2023, as, Exhibit "H". This data was used to serve as a proxy for children placed

outside of their communities. Data regarding unfunded placements with "kith" (adults who do not have a blood relationship to the child, also referred to as "fictive kin") as opposed to "kin" (a child's relatives) are unclear. A 2017 Policy Brief from the Children's Advocacy Alliance in Nevada estimated that 20-30% of children in "kinship" places are placed with "fictive kin" (i.e., individuals to whom the child is not related, but with whom there is a relationship of trust with the family). A true copy of the Children's Advocacy Alliance Policy Brief is attached to Dr. Blackstock's affidavit dated, June 30, 2023, as Exhibit "I".

[71] Furthermore, data in a 2017 report produced by researchers at the University of Melbourne noted that 17.5% of children in statutory kinship care in Australia were placed with non-relatives. A true copy of Table 2 from this report is attached to Dr. Blackstock's affidavit, dated, June 30, 2023, as Exhibit "J".

[72] The Attorney General submits that during the negotiations that followed the Tribunal's rejection of the 2022 FSA, Canada agreed to add an additional $3.34394 billion to the $20 billion already committed to in the Agreement-in-Principle and June 2022 Final Settlement Agreement. This amount includes additional funds to ensure that: a. Non-ISC funded or "kith" placements are compensated, including children and their caregivers, (See Dr. Valerie Gideon's affidavit dated June 30, 2023, at para. 10).

[73] The victims/survivors forming the Kith Child Class are First Nations children placed with a Kith Caregiver (an adult who is not a member of the Child's Family who lived off reserve and cared for the child without receiving funding in terms of the placement), in a Kith Placement (a First Nations Child residing with Kith Caregiver and the placement was associated with a child welfare authority) during the period between April 1, 1991, and March 31, 2022, thus extending the compensation for these children contemplated by the Tribunal back to the advent of the Direction 20-1, in line with the timeline for compensation for the Removed Child Class. Members of the Kith Child Class are not eligible for enhancements, but will receive the full compensation they would have received under their CHRT entitlement plus Tribunal-directed interest, which has been preserved in the Revised Agreement by way of an Interest Reserve Fund, (See, Revised Agreement art. 6.15(1)-(2), 7.02(2)). The amount of $600 million with respect to the budget for the Kith Child Class was drawn from the Caring Society's evidence-based consideration of the potential class size for

children between 2006-2022. The AFN defers and relies upon the Caring Society's submissions as to the 2006-2022 class size.

[74] With respect to the caregiving parents or in their absence, caregiving grandparents of Kith Child Class members, compensation has been limited to the period of the Tribunal's Compensation Orders, being from January 1, 2006 to March 31, 2022, (See, Revised Agreement art. 7.03(1)). These Kith Family Class Members, (See, Revised Agreement art. 1.01 definition "Kith Family Class"), similar to the Removed Child Family Class, are not eligible for compensation if they abused an eligible child in alignment with the Tribunal Compensation Orders, (See, Revised Agreement art. 7.03(2)). The Kith Family Class members may also receive multiples of compensation where multiple children were removed and placed in a Kith Placement between January 1, 2006 and March 31, 2022, (See, Revised Agreement art. 7.03 (4)). The budget for the Kith Family Class was set at $702 million in compensation, which was extrapolated from the projected size of the Kith Child Class over the period covered by the Tribunal's compensation orders, (See Dr. Gideon's affidavit dated June 30, 2023, at. para. 55). The AFN again defers to the Caring Society in this regard.

[75] The AFN submits that the collective efforts on addressing the payment of compensation for non-ISC funded placements by way of the establishment of the Kith Child Class and Kith Family Class have resulted in the effective implementation of the Tribunal Compensation Orders. Compensation under the Revised Agreement is predicated on compensating those whose removal was a result of the discriminatory FNCFS Program, not who funded the removal. Thus, the Revised Agreement accounts for the harms these victims/survivors experienced as a result of the infringement of their human rights and dignity when they or their children were deprived of the opportunity for preventative services and least disruptive measures due to Canada's discriminatory conduct. The Kith Class entitlements entirely align with and provide for the effective implementation of the Compensation Orders in relation to these victims/survivors, in a manner which is in the best interests of First Nations children and families. The AFN submits that Revised Agreement fully satisfies the Tribunal's Compensation Orders in relation to these victims/survivors.

[76] Given this category of beneficiaries was found to have been excluded completely under the 2022 FSA, the Tribunal needs to determine 1) Does the Revised agreement now include this category of beneficiaries previously excluded under the 2022 FSA? 2) If the answer is yes, is this category of beneficiaries included in a fair and equitable manner ensuring there are sufficient compensation funds set aside for the compensation ordered by this Tribunal. In order to make this finding, the Tribunal must also look at the evidence provided and determine if the process to locate the beneficiaries is fair and, if this process is reasonable and supported by reliable evidence.

[77] Further, the Tribunal explained its jurisdiction to analyse the 2022 FSA in order to determine if it fully satisfies the Tribunal's orders in 2022 CHRT 41. The Tribunal continues to rely on those legal findings and framework. Briefly, the Tribunal found that it was not functus officio to consider if the 2022 FSA fully satisfies the Tribunal's orders. The same reasoning applies here for the Revised Agreement. In sum, the purpose of the Tribunal's retained jurisdiction on compensation was always to clarify, add and refine the orders. It was never to reduce, disentitle or remove victims/survivors from the purview of its orders. A careful reading of the Tribunal's decisions makes this clear (See, para. 513). The Tribunal detailed its reasons at length in the 2022 CHRT 41 and they will not all be repeated here. The Tribunal found this category of victims and survivors was excluded from the 2022 FSA and did not reflect the Tribunal's compensation orders.

[78] The Tribunal stated at para. 297:

> (…) the systemic and racial discrimination is focused on how the Federal FNCFS Program adversely impacted First Nations children and families on reserve and in the Yukon, the Tribunal did not focus on ISC funded placements.
> (emphasis omitted)

[79] Further, at paragraph 314, the Tribunal found that:

> The Panel agrees with the Caring Society that there appears to be a fundamental misunderstanding regarding the scope of Canada's discriminatory conduct in this case: the Tribunal ordered compensation for Canada's conduct (including the under-funding of prevention services and least disruptive measures) incentivizing children being unnecessarily moved from their home, family and community during child welfare involvement. The

> case did not address whether a child was placed in care funded by ISC after their removal. The Tribunal never limited Canada's liability, and children's eligibility, based on whether a child's placement after removal was funded by ISC. Canada's funding of actual maintenance costs contributed to the systemic racial discrimination by creating an incentive to place children in care but did not limit discrimination to those children placed in care funded by ISC. The Panel's experience throughout has been to focus on the harm experienced by the affected children based on Canada's discriminatory an underfunded provision of child and family services.

[80] Moreover, at paragraph 317, the Tribunal found:

> [317] The Tribunal recognized that removing a child from their family is always a harmful event and particularly problematic when it could have been prevented with appropriate services. The Tribunal found that the discriminatory underfunding of prevention services increased the likelihood of children being unnecessarily removed from their homes (2016 CHRT 2 at paras 314 and 346; 2019 CHRT 39 at paras 165 and 177). This initial removal was discriminatory regardless of whether the child's subsequent placement was funded by ISC.

[81] Furthermore, at paragraph 472 The Tribunal found that the:

> Tribunal's main reason not to endorse the FSA is that it derogates from the Tribunal's existing orders in reducing compensation to some victims/survivors to accommodate the fixed quantity of funds under the FSA and the much larger number of victims/survivors in the class actions competing for these funds. No substantive findings or orders have been made concerning the victims in the class actions, yet in the FSA some displace some of the victims/survivors whose rights have been vindicated in these proceedings. In others, those victims/survivors had to be included for the Tribunal to make a finding that the FSA fully complied with the Tribunal's orders.

[82] Moreover, the Panel agreed with the AFN that compensation is linked to the systemic discrimination found by this Tribunal in the provision of services through the Federal FNCFS Program. However, the Tribunal found that the nuance newly made by the AFN and Canada did not reflect the spirit of the Tribunal's rulings. It transformed the focus from what led to the removals to who pays for a removed child's care (See, 2022 CHRT 41 at, para. 331).

[83] Upon consideration, the Tribunal accepts the joint parties' uncontested evidence. The data analysis and process to identify this category of beneficiaries is fair and reasonable and while this is untested evidence, all parties consent on this point. Moreover, the Tribunal finds the evidence provided is relevant and reliable and supports a finding on a balance of

probabilities in favour of this process adopted on consent of the parties. The Tribunal finds the evidence demonstrates that it is more probable than not that the compensation funds will cover all the victims/survivors included in this category of beneficiaries that is now aligned with the Tribunal's compensation orders.

[84] For these reasons, the Tribunal finds the victims/survivors in this category of beneficiaries have now been included in the Revised Agreement in full compliance with this Tribunal's orders under section 53(2) of the *CHRA* and as identified in 2019 CHRT 39 and further clarified in 2022 CHRT 41. Furthermore, the Tribunal has jurisdiction to make the requested order and finds this fully satisfies the Tribunal's compensation orders on this category of victims/survivors.

(iii) The Revised Agreement now provides compensation in relation to multiple removals as set out in the Compensation Entitlement Order

[85] In 2022 CHRT 41, the Tribunal found the 2022 FSA fell short in terms of the quantum of compensation ordered by this Tribunal for this category of victims/survivors. The Tribunal reasoned as follows:

> [356] The Tribunal's orders account for the compound effect on a caregiving parent or grandparent who has already experienced the pain and suffering of the removal of a child and now experiences the egregious harm of losing another one or more children as a result of the systemic racial discrimination. The FSA reduces the amount of compensation for those victims/survivors who were retraumatized and suffered greatly. Losing more than one child heightens the presence of a willful and reckless behavior; it does not reduce it. The Tribunal emphasized that, given this was the worst-case scenario, maximum compensation should be paid for the removal of each child. While the harm suffered warrants more than $40,000 per child removed, the *CHRA* places a cap on compensation. The FSA chips away at the heart of the willful and reckless discriminatory practice found and the orders that signal to Canada that its behavior was devoid of caution and caused compounded harm to parents and grandparents in removing more than one child.
>
> [357] Those findings were made after carefully considering the evidence and submissions and nothing in this joint motion changes this. While the Tribunal understands the need for compromise as part of the settlement negotiations, the result is that the Tribunal orders that recognized this category of victims/survivors will be significantly reduced not based on evidence but rather

> to ensure everyone can receive some compensation within the fixed pot of compensation funds.

[86] Therefore, the Tribunal made orders to ensure that parents or grandparents who had children in their care who were removed as a result of the systemic racial discrimination found would receive the maximum compensation of $40,000 under the *CHRA* per child removed. This means one child removed: $40,000, two children removed: $80,000, three children removed: $120,000, etc. In the 2022 FSA, there was an amount of maximum $ 60,000 for multiple removals of children which did not comply with the Tribunal's orders.

[87] In response, the class action parties, with the assistance of the Caring Society, contemplated the number of claimants who could potentially be able to claim for multiple removals and developed a budget in the amount of $997 million for same, which was accepted by Canada and incorporated into the settlement funds of the Revised Agreement (See Dr. Valerie Gideon's Affidavit dated June 30, 2023, at paras. 57-59 and Revised Agreement art. 6.06(6)). While the Revised Agreement provides for the payment for multiplications for all members of the Removed Child Family Class, it does place some restrictions on those members who do not have an existing entitlement under the Tribunal's Compensation Orders. This does not impact upon those with an existing CHRT entitlement. The restriction for non-CHRT compensation includes a cap of $80,000 in compensation for those who had two or more children removed between the period of April 1, 1991 and December 31, 2005 (and who were no longer in care on January 1, 2006) and Stepparents, (See, Revised Agreement 6.06(1)-(4)). These are not deviations from the Compensation Orders as these members of the Removed Child Family Class have no pre-existing Tribunal entitlements. The Revised Agreement also contemplates the potential adjustment of eligibility and compensation for these specific members of the Removed Child Family Class who have no existing Tribunal entitlements, including the potential for increases to the $80,000 cap.

[88] Whether to include stepparents and the appropriate limitations upon eligibility to align with First Nations conceptions of family structures was the subject of a mediation between the Parties to the Revised Agreement in 2022. For clarity:

a) The Revised Agreement requires that Stepparents, who are not entitled to compensation under the Compensation Orders, be First Nations in order to be eligible for compensation.

b) The requirement that individuals are First Nations does not apply to caregiving parents and/or grandparents who are entitled to compensation under the Compensation Orders.

c) Step-grandparents are not eligible for compensation under the Revised Agreement or under the Compensation Orders, regardless of their First Nations status.

[89] The Revised Agreement also places an $80,000 cap on sequential removals and the potential for adjustment of this compensation on caregiving grandparents where a caregiving parent (not a stepparent) has been approved for compensation under the Revised Agreement with respect to the affected child, (See, Revised Agreement 6.06(4)(c)). The AFN submits that this cap does not amount to a divergence from the Compensation Decision or the Tribunal's related Compensation Orders, but instead acts as a clarification of the Tribunal's intentions, the scope of which was developed by the parties to the Revised Agreement and Minutes of Settlement further to the dialogic process. A minor clarification to the Compensation Framework is required in the following scenario: where a caregiving parent has claimed compensation for the removal of a child, and the child is subsequently removed from the care of a caregiving grandparent, the Revised Agreement limits the multiplication of compensation to $80,000.

[90] In sum, the joint parties submit that a First Nations parent/caregiving grandparent will receive multiple base compensation payments of $40,000 plus applicable interest if and when more than one child has been removed from their family and placed off-reserve with a non-family member. The multiplication of the base compensation payment will correspond to the number of children who were removed from the First Nations parent/caregiving grandparent and placed off-reserve. The parties are of the view that the Revised Agreement now fully addresses this derogation.

[91] The parties to the Tribunal proceedings considered the development of compensation in line with the Tribunals direction, ultimately developing the following text in the Compensation Framework as endorsed by the Tribunal in 2021 CHRT 7 at s. 4.4:

> Where a child was removed more than once, the parents (or one set of caregiving grandparents) **shall** be paid compensation for a removal at the first instance. A different grandparent or set of grandparent(s) (or the child's parents where they were not the primary caregivers at the time of the first or prior removal) **may** be entitled to compensation for a subsequent removal where they assumed the primary caregiving role where the parents (or the other grandparents) were not caring for the child,
> (emphasis added).

[92] The joint parties submit that what is clear upon an examination of the provisions related to the payment for sequential removals is the fact that the Tribunal, via its endorsement of the Compensation Framework, expected that the parents, or one set of caregiving parents, would be entitled to for the removal at first instance, as illustrated by the use of **"shall".** This entitlement for removal at first instance is mirrored in the context of the Revised Agreement, (See, Revised Agreement art. 6.06(1)). The Compensation Framework thereafter establishes the potential for different caregiving grandparent(s) or parents, where not the caregiver at the removal of first instance, to claim compensation for a subsequent removal. To be clear, this provision did not establish an entitlement, but merely the possibility by way of the use of **"may".**

[93] The AFN submits that limiting compensation for caregiving grandparents where a caregiving parent has already advanced a claim for compensation to the affected child is a reasonable clarification of the Tribunal's Compensation Orders, providing certainty to scope of entitlement where none previously existed in the context of the Tribunal's proceedings, as well as reflecting the wishes and efforts of all the parties to the Revised Agreement and Minutes of Settlement, as well as the First Nations-in-Assembly.

[94] The class action parties' and the Caring Society's efforts to address the payment of compensation for multiple removals for the Removed Child Family Class results in the effective implementation of the Tribunal Compensation Orders in this regard. While a clarification by the Tribunal is required, it is supported by the approach as endorsed by the Tribunal in the Compensation Framework and substantially aligns with the Tribunal's previous orders/reasons. Finally, the provisions in relation to multiple removals amount to relief that builds upon the Tribunal's Compensation Orders in a manner that ensures clarity with respect to the entitlement to compensation for victims/survivors and that those with an

existing Tribunal entitlement will receive their full due. The Revised Agreement therefore fully satisfies the Compensation Orders in relation to these victims/survivors.

[95] The Tribunal confirms that the joint parties' interpretation of the Tribunal's orders is correct. The Tribunal in its compensation orders envisioned the payment of the maximum compensation amount for each child removed at the first instance. The Tribunal did not envision multiple payments if the same child was removed multiple times. The Compensation Framework adopted by the Tribunal offers this as a possibility however, the parties are correct in their interpretation of the terms "shall" and "may". The Tribunal views the term "shall" as an obligation while the term "may" is only a possibility depending on the specific circumstances that had to be further developed and determined by the parties. The final decision in the event of a disagreement and after the appeal process falls upon this Tribunal under the Compensation Framework in light of the evidence before it. Furthermore, the Draft Compensation Framework includes provisions for processing claims. The process involves a multi-level review and appeal process (9.1-9.6). The process remains under the ultimate supervision of the Tribunal (9.6). The Tribunal's orders take precedence over the Compensation Framework in the event of any inconsistency.

[96] Moreover, the purpose of the Draft Compensation Framework is to "facilitate and expedite payment of compensation" to beneficiaries (1.3). It is intended to be consistent with, and subordinate to, the Tribunal's orders (1.2).

[97] Further, the AFN submits the Revised Agreement directly ameliorates this derogation. A parent/caregiving grandparent is now entitled under the Revised Agreement to receive multiple base compensation payments of $40,000 plus applicable interest if and when more than one child has been removed from the family home and placed off-reserve with a non-family member, (See, Article 6.06(1), Revised Agreement, Exhibit "F" to the AFN Affidavit). The Revised Agreement sets out that multiplication of the base compensation payment will correspond directly to the number of First Nations children removed and placed off-reserve with non-family, (See, Article 6.06(2), Revised Agreement, Exhibit "F" to the AFN Affidavit).

[98] Again, all parties consent. Consequently, the evidence provided was not refuted or tested. Upon careful consideration of the Revised Agreement and all related materials, the Tribunal finds the available data analysis, calculations and estimates to be fair and reasonable. Moreover, the Tribunal finds the evidence and arguments relevant and reliable and support a finding that the Revised Agreement fully satisfies the Tribunal's orders in this category of victims/survivors entitled to compensation.

[99] For example, the Revised Agreement now budgets $997 million specifically to ensure that parents/caregiving grandparents who have experienced multiple losses of First Nations children from their care will be compensated, (See, Article 6.06(6), Revised Agreement, Exhibit "F" to the AFN Affidavit). Recognizing the limitations of available data, the Caring Society has used the best available evidence to calculate a budget that ought to provide sufficient funds to fully compensate parents/caregiving grandparents for all instances in which their children were removed from their homes, families and communities, (See, Dr. Blackstock's Affidavit dated June 30, 2023, at para 32). As set out in Annex A, the Caring Society's calculations are based on estimates of the number of children impacted by the FNCFS Program provided by the Parliamentary Budget Officer and by experts retained by the class action parties, and on Census data noting the approximate overall number of caregivers per First Nations child.

[100] As mentioned above, the estimates were provided by the Parliamentary Budget Officer and experts and on Census data and accepted by the joint parties. The Tribunal finds this information reliable. Section 50 (3) (c) of the *CHRA* allows the Tribunal to consider other information as part of its consideration of matters. This is particularly useful when the evidence is untested and provided on consent and may have a lesser probative value than when the evidence has been tested in a hearing.

[101] This being said, the Tribunal is satisfied that sufficient evidence and other information support the requested orders for a finding that the Revised Settlement Agreement fully satisfies the Tribunal's compensation orders in this category.

[102] Furthermore, as already mentioned above and in previous rulings, the Tribunal has the authority to clarify its orders. The Tribunal continues to rely on its legal findings and reasons as discussed in previous rulings and further detailed in 2022 CHRT 41.

[103] The Tribunal agrees with the clarification request from the joint parties and in light of the above, finds that it is helpful to provide this further clarification. Therefore, the Tribunal clarifies 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.

[104] The Tribunal finds that parents/caregiving grandparents are now entitled under the Revised Agreement to receive multiple compensation payments of $40,000 plus applicable interest if and when more than one child has been removed from their home. Therefore, the Revised Agreement now fully satisfies the Tribunal's orders on this point.

(iv) Estates of Caregiving Parents and Grandparents

[105] The Tribunal determined that compensation should be paid to the estates of beneficiaries who experienced Canada's discriminatory conduct but passed away before being able to receive compensation (2020 CHRT 7, at paras. 77-151).

[106] The spirit of this order also highlights the important public interest and deterrent components included in the remedy:

> [79] Significantly, Canada ought not benefit from a financial windfall simply because children, youth and family members have died waiting for Canada's discrimination to end. This is particularly so given the Tribunal's findings that Canada's discrimination is wilful and reckless and ongoing in the case of the First Nations Child and Family Service Program. Additionally, the Caring Society contends that one of the purposes of compensation pursuant to the *CHRA* is to remove the economic incentive for discrimination by ensuring that some measure of the cost savings respondents achieve by discriminating are returned to victims. Indeed, allowing Canada to financially benefit due to its own delays in having this case resolved could set a dangerous precedent and entice other respondents to delay cases in the future where a particularly vulnerable group or individual brings a case forward,
> (emphasis added).

[107] In 2022 CHRT 41, the Tribunal found that the 2022 FSA fell short of the compensation ordered by this Tribunal:

> [332] Estates of deceased caregiving parents and grandparents in the FSA are not entitled to direct financial compensation unless the caregiver passes away after submitting an application for compensation. In contrast, the Tribunal's orders provide compensation to the estates of eligible caregivers regardless of when they passed.
>
> [333] This is a clear derogation from the Tribunal's orders.

[108] In response to the Tribunal's concerns regarding the estates of deceased caregiving parents and caregiving grandparents, the Revised Agreement at, section 14.03(1)-(2), provides for claims to be made on behalf of Removed Child Family Class Members (of a child placed off-Reserve with non-family as of and after January 1, 2006), Kith Family Members, or Jordan's Principle Family Class Members. Specifically for these caregiving parents and grandparents, the Revised Agreement provides that where a claim has been approved, base compensation in the amount of $40,000 and interest will be paid directly to their living child or children on a pro rata basis. The AFN submits that this entitlement overlaps entirely with the cohort of victims with an existing Tribunal entitlement. If there are no surviving children, the compensation will be paid to the estate of the deceased caregiving parent or grandparent.

[109] The Revised Agreement now includes the estates of deceased First Nations caregiving parents and grandparents and specifically provides for $40,000 in relation to those victims who have passed away while waiting for compensation to be resolved. The joint parties submit this fully aligns with the Tribunal's orders.

[110] However, the Revised Agreement sets out a mechanism to pay compensation owing to the estates of First Nations parents/caregiving grandparents directly to the child(ren) of the deceased. Instead of the $40,000 flowing into the estates of the deceased First Nations parent/caregiving grandparent, the compensation will be paid directly to the children – a variation that puts children at the centre of this process. If there are no surviving children, the compensation will flow to the estate of the deceased First Nations parent/caregiving grandparent.

[111] Therefore, the joint parties seek a variation of 2020 CHRT 7. All parties in this case consent.

[112] This variation achieves multiple benefits: (i) it acknowledges the compounded harm and suffering experienced by a child victim who has lost a parent/caregiving grandparent by providing additional compensation; (ii) it avoids the complex and lengthy procedural requirements related to estates; (iii) it ensures that the full benefit of the compensation for which the estate is eligible is directed to the surviving children of that First Nations parent/caregiving grandparent; and (iv) ensures that the compensation funds will not be subject to potential estate administration taxes.

[113] The AFN submits that the approach is principled, as it effectively prioritizes the children/grandchildren heirs of these deceased caregiving parents and grandparents at least one of whom would be victims/survivors themselves, and thus the basis for the deceased caregiving parent's or grandparent's claim for compensation. Effectively, the settlement funds to which the deceased's estate would be entitled under the Tribunal's compensation orders would be treated akin to life insurance, allowing it to bypass the estate and be paid directly to the named beneficiary of same (children/grandchildren) with the commensurate benefits. This includes the expedited delivery of compensation, avoiding the potential diminishment of the benefit of settlement funds to surviving First Nations children/grandchildren as a result of the deceased's estate being indebted, as well as the potential levy of estate administration taxes, (See Dr. Valerie Gideon' Affidavit dated June 30, 2023, at para. 64).

[114] This directly accords with the principles enumerated both in the Compensation Framework which sought to avoid the diminishment of victims/survivors' compensation as a result of tax consequences, as well as the efforts of the Revised Agreement to ensure that any compensation payable would remain tax exempt and not negatively impact any social benefits that victims/survivors are receiving (consistent with the Tribunal's guidance in 2019 CHRT 39 at para 265, see also, Compensation Framework at s. 10.9, Revised Agreement art. 10.03).

[115] The AFN submits that this evidence supports the relief sought with respect to varying the compensation entitlement of estates of deceased caregiving parents and grandparents who have an existing entitlement under 2020 CHRT 7, and that it also substantially aligns with the Tribunal's reasons within the context of the related Compensation Orders. It is also in the best interest of the First Nations children and families who are the victims/survivors of Canada's discrimination by ensuring that the children/grandchildren heirs of same receive their undiminished compensation. For the AFN, this amounts to a reasonable variation which has been supported by all the parties to the Revised Agreement and Minutes of Settlement, as well as the First Nations-in-Assembly. The AFN submits that with the adoption of this principled and evidence informed variation of the Tribunal's Compensation Order, which is in the best interest of First Nations class members, the Revised Agreement fully satisfies the Tribunal's Compensation Orders by ensuring that the Tribunal's compensation entitlement for these deceased caregiving parents and grandparents effectively flows to their children or grandchildren.

[116] In addition to providing further compensation to the children of deceased parents/caregiving grandparents, the proposed amendment would facilitate victims' ability to access compensation. Distributing money to beneficiaries when someone passes away can be a complex undertaking, with certain procedural requirements varying across the country. This process can be particularly complex when the deceased fails to leave directions, the deceased lived on reserve, or when the estate that receives the compensation has not already been through the court process of probate. Stringent bank rules and regulations for access to and distribution of the Estate funds add to these procedural hurdles, sometimes making distribution to beneficiaries frustrating, costly, and lengthy, (See, Alberta Law Reform Institute, Estate Administration: Final Report (Edmonton: August 2013), at paras. 188-212 (Alberta); Law Commission of Ontario, Simplified Procedures for Small Estates: Final Report (Toronto: August 2015), at pp. 16-17, 25-28 and 48-61 (Ontario). See for example *Wills, Estates and Succession Act*, SBC 2009, c 13, s 144 (British Columbia); *Trustee Act*, RSO 1990, c T.23, s 49 (Ontario); *Estate Administration Act*, RSY 2002, c 77, ss 97 (Yukon)).

[117] There are also concerns regarding who the compensation will benefit if directed to the estates of parents/caregiving grandparents. Pursuant to estate laws across the country, creditors take precedence over beneficiaries, (See, for example *Trustee Act*, RSO 1990, c T.23, ss 53, 57-59 (Ontario); *Civil Code of Québec*, CQLR c CCQ-1991, ss 2644-2659 (Quebec); *Estate Administration Act*, RSY 2002, c 77, ss 96-104 (Yukon). Where an estate is bankrupt, section 136 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, applies to determine the priority of creditors). For example, in Ontario, an estate trustee is required to pay the debts of the estate in the following order before any distribution can be made to beneficiaries: (i) reasonable funeral expenses; (ii) expenses related to the administration of the estates, including probate fees, professional fees and compensation for the executor/estate trustee; (iii) secured creditors; (iv) taxes; and (v) unsecured creditors, (See, *Trustee Act*, RSO 1990, c T.23, ss 48-59).

[118] The AFN submits that paying compensation directly to the children of the deceased parent/caregiving grandparent avoids many of the complications, costs and delays associated with estate administration. It avoids the complex requirements of probate, circumvents the payment of compensation to creditors, reduces expenses and thus maintains the entirety of the compensation payment and gives control over the compensation directly to the children of deceased parents/caregiving grandparents. It is also entirely in line with the approach taken by Quebec's Tribunal des droits de la personne in *Commission des droits de la personne (Succession de Poirier) c Bradette Gauthier*, in which Quebec's Commission des droits de la personne sought an order that compensation be paid directly to the deceased complainant's children, (See*, Commission des droits de la personne (Succession de Poirier) c. Bradette Gauthier*, 2010 QCTDP 10 at paras 6 and 130).

[119] The Caring Society notes that the Commission's submission of March 9, 2020, suggesting that payments to estates would be appropriate in the context where it was difficult to locate proper beneficiaries does not apply in this context. There is an unquestionable link between the compensation payable to a deceased parent/caregiving grandparent and the lived experience of that person's surviving child(ren).

[120] The Caring Society submits that First Nations children and youth in this case have suffered egregious harms as a result of Canada's discriminatory conduct. This harm is compounded by the loss of a parent/caregiving grandparent, (See Dr. Blackstock's Affidavit dated June 30, 2023 at para 55). Thus, distributing the Tribunal's compensation directly to the children and youth of the deceased parent/caregiving grandparent acknowledges this compound harm, allowing the Tribunal to make an order reflective of the suffering experienced by these victims/survivors.

[121] First Nations children who have lost a parent face compounded harms: the harm inflicted by Canada's discriminatory conduct and the harm of losing a parent. Evidence from the National Inquiry into Missing and Murdered Indigenous Women and Girls (the MMIW Inquiry) and academic literature demonstrates that bereaved children face significant challenges, (See, Dr. Blackstock's Affidavit dated, June 30, 2023, at paras 56-58). The Revised Agreement provides a unique opportunity to provide additional compensation to First Nations who have lost a parent.

[122] In 2019 CHRT 39, at paras 13 and 258, the Tribunal acknowledged that the cap under the *CHRA* may not correspond to the level of suffering experienced by the victims in this case. The variation sought on this motion is a meaningful way that First Nations children and youth who have been impacted by Canada's discrimination along with the compounded harm of losing a parent may be compensated in excess of $40,000 plus interest. This is in the best interests of the child victims/survivors in this case and is an amendment that reflects both the spirit and scope of the Tribunal's previous compensation orders.

[123] This variation also reflects the spirit and intent of the *Merit Decision*, the Compensation Entitlement Order and the Tribunal's general approach in putting children first.

[124] A consent order sought as part of a Settlement Agreement provides more flexibility for the Tribunal to approve it as long as the orders sought are within the Tribunal's broad – but not unlimited - powers. In other words, the Tribunal cannot issue a consent order if it does not have the power under the *CHRA*. Further, as already said many times in 2022

CHRT 41, settlements and or consent orders are not a means to disentitle or reduce compensation already ordered. They are a firm foundation to be built upon.

[125] The Tribunal finds this consent order is not a mere clarification request. It is a variation of an order made by this Tribunal. This Tribunal already explained at length in 2022 CHRT 41 why it was not prepared to disentitle compensation to victims who had passed away waiting for the discrimination to be remedied. However, the consent order request does not propose to disentitle or reduce the compensation ordered by the Tribunal. The Tribunal finds the request does not propose a fundamental change of the order. Rather, it proposes a different first step in the process.

[126] The criteria to vary an order were discussed in 2022 CHRT 41:

> [344] While estates are not people, the heirs of those estates are and they were signaled by the Tribunal's decision subsequently upheld by the Federal Court that they were entitled to compensation. It is unfair to now remove this from them because of financial choices resulting from merging proceedings and imposing a financial cap. These arguments are insufficient to justify an amendment to the Tribunal's orders on this point. As it will be revisited below, the Tribunal cannot amend its orders to reduce compensation or to disentitle victims/survivors. The Tribunal could accept variations of its orders if it does not remove gains for victims/survivors or a different compensation process and if supported by the evidence, which is a key consideration for this Tribunal for any order.
> (emphasis added)

[127] The Tribunal continues to rely on this legal finding and other legal findings discussed in 2022 CHRT 41, at paras. 155-201 and in all its other compensation orders.

[128] For example, in 2021 CHRT 7, the Tribunal indicated some of the important factors that are considered in an effective compensation remedy. This analysis and factors continue to apply here:

> [36] Furthermore, the Panel finds the entire compensation process is a part of the compensation remedy that is focused on a process that considers not just financial compensation but also other relevant factors such as creating a culturally safe and appropriate process to provide compensation in light of the specific circumstances of this case including historical patterns of discrimination, the vulnerability of victims/survivors who are minors or adults who lack legal capacity, access to justice, a clear and equitable process across Canada, the avoidance of unnecessary administrative burdens, etc.

(emphasis added).

[129] Furthermore, the main points gravitate around the following questions: Is there new evidence and compelling argument to consider that would support a finding to vary an order or a new process that would add and/or help refine the orders? Will this void the previous order and/or reduce the quantum of compensation or disentitle victims or simply add and refine the order in light of the new evidence, information and arguments provided in the best interest of First Nations children and families? The Tribunal believes it is the latter.

[130] Dr. Blackstock affirms in her affidavit that parental estates are now included in the Revised Agreement. The Caring Society set out to extrapolate, based on existing data, the number of parents whose children were removed from their homes, families, and communities, who would not have survived to the date of settlement approval.

[131] The Caring Society selected April 1, 2006 to March 31, 2023 as the date range over which it would estimate the number of parents whose children were removed from their homes, families and communities who passed away prior to the date of settlement approval. The Caring Society selected this period, as the First Nations-specific mortality information that it had access to was based on annualized statistics, making it difficult to select "partial year" periods to reflect deaths between January 1, 2006, and March 31, 2006, or from April 1, 2023 to settlement approval.

[132] More specifically, Dr. Blackstock affirms that the Caring Society's estimation of the number of parents of First Nations children removed from their homes, families and communities who passed away between January 1, 2006 and March 31, 2023 was based on a 2018 paper authored by Randall Akee, of the University of California, Los Angeles' Department of Public Policy and by Donna Feir, of the University of Victoria's Department of Economics, titled First People Lost: Determining the State of Status First Nations Mortality in Canada Using Administrative Data. A copy of Professor Akee and Professor Feir's paper is attached to Dr. Blackstock's Affidavit, dated June 30, 2023, as Exhibit "K".

[133] The Caring Society did not conduct similar estimates for parents of children who experienced discrimination related to Jordan's Principle who themselves experienced a "worst case scenario" of compensation. Given that the piloting exercise has not yet been

conducted, there is insufficient information to establish the "cohort" of parents from which to calculate the number of parents who would not have passed away prior to settlement approval. However, the Caring Society's view is that mortality within this cohort can be considered by the Federal Court, on submissions from all parties including the Caring Society, as one of the factors in determining the reasonableness of the claims process proposed to distribute the $2,000,000,000 budget established for compensation to the parents of victims falling within the Jordan's Principle and Trout Classes.

[134] For the Caring Society, an important aspect of the Revised Agreement (which we acknowledge is a deviation from the Tribunal's order in 2020 CHRT 7) includes the provision that compensation that would otherwise be paid to the estates of deceased parents will be paid directly to the children of those deceased parents.

[135] Dr. Blackstock affirms that privileging children as beneficiaries of parental estates is an important and sacred component of the Revised Agreement.

[136] Dr. Blackstock's evidence refers to the National Inquiry into Missing and Murdered Indigenous Women and Girls (the "MMIWG Inquiry"), where she served as an expert witness, where evidence was shared regarding the harmful impacts on First Nations children who lose a parent, particularly when that loss is the result of a violent death. Experiencing loss of a parent or caregiver, particularly to violence, can result in children and youth harbouring intense feelings of loss and anger, unresolved trauma, depression and, at times, suicide.

[137] The MMIWG Inquiry also noted these children can face an increased risk of experiencing mental health challenges, substance misuse, involvement in the criminal justice system, becoming a young parent, and dying while young. Additional harmful impacts include weakened or permanently ruptured ties with siblings, extended family, and home communities; loss of culture, language, and sense of identity; risks of abuse of neglect; and an increased risk of homeless and poverty. The relevant sections of the MMIW Inquiry Report are attached to Dr. Blackstock's Affidavit dated June 30, 2023, as Exhibit "L".

[138] Dr. Blackstock affirms that academic literature also demonstrates that bereaved children face significant challenges.

[139] Evidence suggests that bereaved children are vulnerable for increased risk for social impairment – not only during the immediate post bereavement period but extending into adulthood. They also face educational challenges, social challenges, and mental health challenges. Moreover, depending on the family's circumstances at the time of the death, children and youth may face housing instability, family instability and a significant loss of love and nurturing required for healthy development. A selection of academic literature on this topic is attached to Dr. Blackstock's Affidavit dated June 30, 2023, as Exhibit "M".

[140] Throughout this case, the Caring Society's primary focus has been on supporting and advocating for the rights of First Nations children, youth and families harmed by Canada's discrimination. The Revised Agreement provides a unique opportunity to provide additional compensation to First Nations children and youth who have lost a parent – a traumatic experience for all children but an experience compounded by their experiences of discrimination in this case.

[141] In Dr. Blackstock's view, taking a child centered approach to directly compensating these children aligns with the spirit of the Tribunal's work and honours the memories of the children and youth who have passed on. Most children and youth who died during the long history of this case were surrounded by loving families and the child's estate ought to benefit those left behind.

[142] The Tribunal has carefully considered all evidence and arguments and it finds the MMIWG report relevant to this question. As found in previous rulings, the MMIWG Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls vol. 1a and vol. b, report is reliable. This National inquiry heard hundreds of witnesses and experts and this led to calls to justice in the form of recommendations that were accepted by Canada.

[143] The MMIWG report also found that when failure to find continuity or a sense of belonging can lead youth to adopt addictive lifestyles or to adopt unhealthy self-images leading to suicidal thoughts or attempts, (See MMIWG report at page 426). Importantly, the same analysis also showed that the strongest protective influence against Indigenous youth suicide was "high support, whether social or familial, (See MMIWG report at page 427).

[144] Further, Dr. Blackstock was recognized as an expert in child welfare before this Tribunal, she testified and/or provided affidavits for the Tribunal multiple times and her evidence was of great assistance to the Tribunal. Her resume filed in evidence has 50 pages of relevant experience and expertise. In other words, her evidence is reliable. More importantly, Dr. Blackstock has demonstrated throughout this case her quest for the best interest of children and her child-centric approach which is in line with the Tribunal's focus.

[145] The Tribunal finds the process, estimations and calculations part of the evidence and referred to above to be reasonable and accepts this evidence.

[146] Further, on a principled basis, the Tribunal finds it is more probable than not that First Nations children harmed by the systemic racial discrimination found by this Tribunal who lose a parent, experience compound harm - even if the scientific articles filed in evidence as part of this joint motion - are inconclusive and do not support such a finding. The Tribunal agrees with Dr. Blackstock's position on compound harm and her evidence. However, the Tribunal prefers the MMIWG report and other evidence in the record than the scientific articles provided. The Tribunal does arrive at the same conclusion as Dr. Blackstock without the articles. The Tribunal has already made findings of harms linked to the separation between a child and a parent. In 2019 CHRT 39:

> [147] The children who were unnecessarily removed from their homes, will not be vindicated by a system reform nor will their parents. Even the children who are reunified with their families cannot recover the time they lost with their families. The loss of opportunity to remain in their homes, their families and communities as a result of the racial discrimination is one of the most egregious forms of discrimination leading to serious and well documented consequences including harm and suffering found in the evidence in this case. (emphasis added)
>
> [155] […]
>
> > […]
> > As will be seen in the next section, the adverse effects generated by the FNCFS Program, corresponding funding formulas and other related provincial/territorial agreements perpetuate disadvantages historically suffered by First Nations people, (see 2016 CHRT 2 at, para. 394. 2019 CHRT 39, at para. 155),
> > (emphasis changed).

[147] The trauma of losing a parent or grandparent through separation was found by this Tribunal to cause serious harm and suffering to a child and, as found by the Tribunal above, is in addition to the other aspects of the systemic racial discrimination. The Tribunal finds this also applies to the death of a parent or grandparent or family member. Moreover, Mary Wilson, former Truth and Reconciliation Commissioner, provided affidavit evidence on the harm of separating a child and a parent that was considered by this Tribunal:

> She affirms that she personally bore witness to fifteen hundred statements made to the TRC. Many were from those who grew up as children in the foster care system as it currently exists. She also heard from hundreds of parents with children taken into care. Over and over again, she states the Commissioners heard that the worst part of the Residential schools was not the sexual abuse but rather the rupture from the family and home and everything and everyone familiar and cherished. This was the worst aspect and the most universal amongst the voices they heard.
> (see 2018 CHRT 4 at para. 122).

> Ms. Wilson notes in her affidavit that children removed from their parents to be placed in foster care shared similar experiences to those who went to residential schools. The day they remember most vividly was the day they were taken from their home. She mentions, as the Commissioners have said in their report, that child welfare may be considered a continuation of or, a replacement for the residential school system.
> (see 2018 CHRT 4 at para. 123).

[148] Moreover, losing the hope of an opportunity of reunification with a deceased parent or grandparent for example, can add further suffering to the child. Another example would be of a child who was removed and later finally reunited with a parent or grandparent who then passes away. It is reasonable to find that it is more probable than not that these situations would add further harm and trauma to a child's soul.

[149] The Tribunal made findings on the MMIWG report in previous rulings. Therefore, the full MMIWG report is part of the Tribunal's record. This supports Dr. Blackstock's evidence discussed above:

> Noting the inequities, participants across all four Guided Dialogues also emphasized the negative impact that foster care experiences have on the long-term safety and well-being of Indigenous women, girls, 2SLGBTQQIA people, and families as a whole. These impacts include:

> • weakened or permanently ruptured ties with parents, siblings, extended family, and home communities, (See MMIWG report vol. 1 b at page 113).
>
> (…) allow parents and children to remain together throughout the healing process, and provide specialized support for children experiencing trauma, violence, or neglect in their family home;
>
> "Keep the families together during times of healing and a transition. Provide them with the support they need to work out their issues and rebuild their life.", (See MMIWG report vol. 1 b at page 115).

[150] Furthermore, the evidence and findings discussed above demonstrate the suffering and negative consequences associated with the separation between children and their parents. Therefore, it is reasonable to find that permanent separation caused by the death of a parent or of a grand parent can amount to compound harm for their children.

[151] Moreover, the administrative burdens referred to by the AFN are a factor to be considered by the Tribunal in the compensation process as explained above. The evidence supports the AFN's position and qualifies as a refinement of the order for an optimal implementation of the compensation orders. However, the Tribunal does not view the evidence as new evidence that was unavailable at the time the Tribunal heard the compensation matter and that now arises justifying a reopening of a final matter. This would be an incorrect characterization of the facts and of the evidence. This qualifies more appropriately as new considerations and examples of hardship forming part of the process and the implementation of the order. The Tribunal has remained seized of the implementation of its compensation orders and has made clear that refinements and additions during the compensation process and its implementation could be made if justified. This is the case here.

[152] In other words, the authority to vary the Tribunal's order as found in 2022 CHRT 41 flows from its ongoing supervisory role of the implementation of its orders and its retained jurisdiction. Moreover, this consent order request does not remove gains for victims/survivors which is in line with the Tribunal's 2022 CHRT 41 ruling.

[153] The Tribunal finds the quantum and spirit of the order honouring deceased victims of Canada's systemic racial discrimination remains unchanged under the Revised Agreement.

Rather, it is a different compensation process at the first step that is requested here and placing the living First Nations children of the deceased victims at the forefront. Further, the compensation payment to estates remains as a second step when the deceased victims do not have living children.

[154] This important information on the administrative burdens and the compound harm was not put before the Tribunal when it arrived at its findings and orders regarding estates. While this is not sufficient to reopen a final matter according to the case law, it is sufficient according to the Tribunal's previous orders, its retained jurisdiction on the compensation process and implementation and the Tribunal's clear intent to leave the door open for possible improvements, refinements and additions to further the implementation of its orders in the best interest of First Nations children and families.

[155] The requested order does not modify final orders on quantum. Moreover, the requested order does not deny, reduce or disentitle compensation to the deceased victims rather it provides a priority rank for their living child or children to receive compensation on a pro rata basis. The Tribunal finds this recognizes both the harms borne by the deceased and their living children and avoids unnecessary administrative burdens and costs.

[156] Moreover, as seen above, in 2021 CHRT 7, the Tribunal indicated some of the important factors that are considered in an effective compensation remedy. The Tribunal also specified that the compensation process ought to be informed by the First Nations parties in this case. The full paragraph is reproduced below:

> [36] Furthermore, the Panel finds the entire compensation process is a part of the compensation remedy that is focused on a process that considers not just financial compensation but also other relevant factors such as creating a culturally safe and appropriate process to provide compensation in light of the specific circumstances of this case including historical patterns of discrimination, the vulnerability of victims/survivors who are minors or adults who lack legal capacity, access to justice, a clear and equitable process across Canada, the avoidance of unnecessary administrative burdens, etc. Consequently, the Panel finds the compensation process remedy in this case can be viewed as a "special program, plan or arrangement" that is informed by First Nations parties in this case and a broad and liberal interpretation of sections 16 (1), 53(2)(a), 53 (2)(e) and 53 (3) of the *CHRA* and Supreme Court and Tribunal decisions discussed in 2021 CHRT 6 at paras. 51-79. Finally, on this point, the Panel determined that the *CHRA* analysis and reasoning found

> in the scope of *CHRA* remedial provisions section in 2021 CHRT 6 at paras. 51-79 and 80 applies to the *Draft Compensation Framework* as a whole and supports the Panel's approval of the *Draft Compensation Framework* dated December 23, 2020,
> (emphasis added).

[157] Both the AFN and the Caring Society refer to some of the above factors to be considered by the Tribunal namely, administrative burdens and the vulnerability of victims/survivors who are minors.

[158] For the above reasons, the Tribunal finds the Revised Agreement provides a base compensation in the amount of $40,000 and interest to be paid directly to the living child or children on a pro rata basis. When there are no living children, the compensation is to be paid to the victims' estate similar to the Tribunal's original order. This entitlement overlaps entirely with the cohort of victims with an existing Tribunal entitlement. If there are no surviving children, the compensation will be paid to the estate of the deceased caregiving parent or grandparent.

[159] In the case at hand, focusing on the children's compound harms first, is in line with a human rights approach and, the spirit of the Tribunal's views in this case.

[160] The same reasoning can be applied here to justify the variation requested.

[161] Moreover, the Tribunal discussed compensation flowing to the heirs of the victims in 2020 CHRT 7 at para. 140:

> In these circumstances, it is entirely appropriate to direct Canada to make payments that will flow through estates to the heirs of the victims of its discriminatory practices. This outcome is responsive to the nature of the harms, and best advances the goal of reconciliation between First Nations peoples and the Crown.

[162] Adopting a priority rank that focuses on children who are heirs of the deceased victims is a reasonable variation of the Tribunal's order justifying such an amendment.

[163] For the above reasons, the Tribunal finds there is compelling evidence and arguments in support of the variation in the best interest of First Nations children and families. The requested variation will remove many administrative burdens resulting in an

effective implementation of the Tribunal's compensation orders for this category of victims. The Tribunal finds that it has the jurisdiction to vary the order found in 2020 CHRT 7:

> [152] Canada is ordered to pay compensation under s. 53(2)(e) pain and suffering ($20,000) and s. 53(3) wilful and reckless discriminatory practice ($20,000) to the estates of all First Nations children and parents or caregiving grandparents who have died after suffering discriminatory practices described in the *Compensation Decision Order*, including the referenced period in the Order above mentioned in Question 2.

[164] The order varying 2020 CHRT 7 in the order below now provides 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.

[165] Finally on this point, the Tribunal finds the Revised Agreement now fully satisfies the Tribunal's orders.

(v) The Uncertainties Regarding Jordan's Principle Have Been Addressed

[166] The Tribunal in assessing the 2022 FSA in 2022 CHRT 41 made a number of findings that highlighted some uncertainties for the Jordan's Principle compensation category:

> [373] … it is impossible at the current point in time to know whether the implementation of Jordan's Principle under the FSA will result in the First Nations children identified under the Tribunal's orders receiving $40,000 under the FSA. […] there is little evidence of whether Jordan's Principle eligibility under the FSA will be interpreted in such a manner that it provides the victims/survivors under the Tribunal's orders the full entitlement they would have received under those orders.
>
> […]
>
> [375] The FSA sets out future work that is required before there can be certainty regarding which victims/survivors under the Tribunal compensation orders will be eligible under the FSA.
>
> […]

> [377] In order to be eligible for a guaranteed $40,000 Jordan's Principle compensation under the FSA, First Nations children must have both experienced a denial or delay in receiving an essential service and have experienced a "significant impact" because of the delay or denial. Article 6.06(3) of the FSA indicates that a "significant impact" will be defined in the Framework of Essential Services:
>
> […]
>
> [378] … the Framework on Essential Services does not provide further guidance on a "significant impact" and what is required to engage the higher level of compensation. Neither is "Significant Impact" a defined term in the FSA. Without this information, individual claimants cannot determine whether they could be entitled to more or less compensation under the FSA than they would be eligible to obtain under the Tribunal's orders.
>
> [379] The uncertainties in benefits from the outstanding definition of an "essential service" reflects the early stages of a negotiated settlement. … there is a real potential for reduction in compensation for some victims and disentitlements for others which is not permissible.

[167] The Tribunal found this may depart from the Tribunal's orders for this category and therefore cannot be considered to fully satisfy the Tribunal's orders and the request is premature since there are uncertainties at this time (See 2022 CHRT 41 at para. 379).

[168] This differed from the Tribunal's approach, which awarded $40,000 plus interest to a First Nations child who experienced a denial, gap, or unreasonable delay in the delivery of "essential services" that would have been available pursuant to a non-discriminatory definition and approach to Jordan's Principle.

[169] Moreover, the definition of "Delay" did not accord with the requirements of the Compensation Framework and instead were to be defined as "a timeline to be agreed to by the Parties and specified in the Claims Process''.

[170] The joint parties submit the Revised Agreement addresses these uncertainties and the overall approach to Jordan's Principle has been refined in harmony with the Tribunal's orders.

[171] The joint parties submit that the 2022 FSA did not include final criteria for determining eligibility for Jordan's Principle compensation. The parameters for determining eligibility for Jordan's Principle compensation in the Revised Agreement now more clearly reflect the

Tribunal's approach pursuant to Jordan's Principle. The approach for determining eligibility for Jordan's Principle in keeping with this approach is to be subject to robust piloting before implementation.

[172] The definition of Jordan's Principle Class Member has been revised and now states: "Jordan's Principle Class Member" means an Essential Service Class Member who experienced the highest level of impact (including pain, suffering or harm of the worst kind) associated with the Delay, Denial, or Service Gap of an Essential Service that was the subject of a Confirmed Need. The Parties intend that the way that the highest level of impact is defined, and the associated threshold set for membership in the Jordan's Principle Class fully overlap with the First Nations children entitled to compensation under the Compensation Orders who will receive a minimum of $40,000 in addition to interest." (See, Revised Agreement, Article 1.01, Exhibit "F" to the AFN Affidavit). This aligns with the Tribunal's language in the Compensation Decision, specifically accounting for the harms and the impacts of Canada's discrimination.

[173] The definition of the Jordan's Principle Class explicitly provides for the class action parties' and the Caring Society's intention that those with a Tribunal entitlement will receive it. Based on the estimate of 65,000 approved claimants for Essential Services Class and the Jordan's Principle Class, all members of the Jordan's Principle Class would be able to receive at least $40,000. The Jordan's Principle Class is also entitled to interest in accordance with the Tribunal's orders, which has been ring-fenced in the Interest Reserve Fund, (See, Revised Agreement art. 6.15(1)-(2)).

[174] If the number of claimants was unexpectedly higher, the Revised Agreement provides that Jordan's Principle Class Members (those who suffered the highest level of impact, which is intended to overlap with all the Jordan's Principle children entitled to compensation under the Tribunal's Compensation Orders) will receive a minimum of $40,000, in addition to interest. The remaining funds in the budget would be shared pro rata by the lesser impacted Essential Service Class Members, (See, Revised Agreement, Art. 6.08(10)-(12)). Conversely, if the number of claimants is lower, upon the advice from the Federal Court-appointed Actuary, Jordan's Principle Class Members may be entitled to enhancement payments, (See, Revised Agreement, art. 6.08(15)). The Revised

Agreement's primary focus in relation to the Essential Service Class is to ensure that Jordan's Principle Class members receive their entitlements as directed by the Tribunal.

[175] The term "Compensation Orders" is defined in the Preamble of the Revised Agreement as 2019 CHRT 39, 2020 CHRT 15, and 2020 CHRT 7, thus encompassing the terminology, guidance and approaches set out by the Tribunal in those orders. The Caring Society agrees with the AFN's submission on Jordan's Principle that there is no intention or requirement for a "jurisdictional dispute" in order for compensation to be paid to victims.

[176] The joint parties submit the definition of "Delay" has been amended to reflect the 12-hour and 48-hour timeframes ordered by the Tribunal in the Compensation Framework Order. While the 2022 FSA had left the definition of "Delay" as something to be determined in the future, the Revised Agreement is now directly in line with the Tribunal's orders, (See, Article Revised Agreement, 1.01, Exhibit "F" to the AFN Affidavit).

[177] The AFN submits that while the Revised Agreement still provides for the need to develop the threshold by which the highest level of impact with be objectively determined, it now specifies that the underlying basis for developing this threshold necessary for inclusion in the Jordan's Principle Class is ensuring full overlap with those children entitled to compensation under the Tribunals Compensation Orders, which is set out within the definition of the Jordan's Principle Class, (See Revised Agreement art 1.01 Definition "Jordan's Principle Class").

[178] This underlying principle informs each element of the means by which the threshold of impact level shall be determined under the Revised Agreement, and thereby whether an individual falls under the Essential Services Class or the Jordan's Principle Class, including the framework for essential services, accompanying instruments, such as the claims forms and questionnaire, as well as the associated robust and broad piloting, (See, Revised Agreement arts. 1.01 Definitions "Framework of Essential Services", "Essential Services", "Schedule F: Framework of Essential Services", 6.08(2)-(3), 6.08(10)(a)-(b)).

[179] The "framework of essential services", as developed with the assistance of experts, facilitates the streamlining of the compensation process and facilitates professional confirmation of the individual's need for an essential service. The framework is designed to

allow claimants to identify whether they had a confirmed need for a service that was essential for the purposes of compensation. These objective criteria allow for the expedient administration of claims, avoiding the need for case-by-case individual and subjective inquiry for inclusion in the Essential Service Class, (See, Revised Agreement arts. 1.01 Definitions "Framework of Essential Services", "Essential Services", "Schedule F: Framework of Essential Services", 6.08(2)-(3).33).

[180] The Revised Agreement continues to provide for instruments such as culturally sensitive claims forms and a questionnaire, which will assist the Administrator at the second stage of the analysis, being a determination of whether a child's circumstances indicate the highest level of impact and thereby eligibility for inclusion into the Jordan's Principle Class, with the accompanying minimum compensation of $40,000 and interest, in alignment with their Tribunal entitlement under the Compensation Orders, (See, Revised Agreement, art. 6.08(10)(a)). Critically, these instruments and questionnaire remain subject to Jordan's Principle expert consultations, which are First Nations-led and continue to be facilitated by the AFN.

[181] The AFN states that the Revised Agreement also provides that the threshold of impact for qualification as a member of the Jordan's Principle Class is subject to the results of piloting of the method developed in accordance with the framework of essential services. The AFN is currently involved with advancing these piloting efforts, which will include a number of potential Essential Service Class and Jordan's Principle Class members, in a manner that respects the need for full overlap with those with an existing entitlement under the Tribunal's compensation orders, and which minimizes any burdens on the victims/survivors. The piloting efforts will also assist in refining the framework of essential services, as well as the supporting instruments, such as the claims forms and questionnaire, (See Dr. Valerie Gideon's affidavit dated June 30, 2023, at paras. 73-75).

[182] Further, the pilot is to be evidence-based, premised on the efforts of the AFN's circle of experts, as well as additional independent researchers. All are of the view that the finalization of an effective approach premised on the framework of essential services, as well as the development of the threshold for inclusion in the Jordan's Principle Class premised on the highest level of harm, requires piloting. This pilot is intended to gauge the

quality and efficiency of the approach to compensation established for Jordan's Principle in the Revised Agreement, allowing for the refinement of each component of the claims assessment process and ensuring that it is in alignment with the Tribunal's Compensation Orders. This is the central component of these efforts, and is the primary outcome measured. The pilot will also assist in other important aspects of the compensation process, including gauging the effectiveness of the cultural and trauma-informed supports. All of these efforts and the ultimate determination remain subject to Federal Court approval and oversight.

[183] Finally, the Caring Society submits that with respect to the budget of $3,000,000,000 for compensation to children eligible for compensation under the Tribunal's orders regarding discrimination related to Canada's implementation of Jordan's Principle, the Caring Society's view is that, based on available evidence, this budget is sufficient. As detailed in Annex A, the Caring Society's best estimate of the number of children eligible for compensation under the Tribunal's Jordan's Principle orders is approximately 61,500 (based on demographic data from ISC regarding the number of individual children accessing services through Jordan's Principle in FY 21-22). However, there is significant uncertainty regarding that number, such that the $3 billion budget is an essential element of the Revised Agreement's ability to satisfy the Tribunal's compensation orders. This budget allows for base compensation for up to 75,000 First Nations children, and possibly more with growth on the portion of the settlement funds that will remain in trust.

[184] The Tribunal finds the evidence supports the joint parties' methodology described above. The Tribunal finds the calculations to set aside sufficient compensation funds for all eligible claimants to be thoughtful, reasonable and fair. Consequently, the Tribunal accepts those calculations and this methodology.

[185] Furthermore, the Revised Agreement ensures that those who suffered a worst-case scenario of discrimination in relation to Jordan's Principle receive $40,000 plus interest. This is directly in keeping with the guidance of the Tribunal in the Compensation Entitlement Order and the Eligibility Decision.

[186] The Tribunal finds that all the uncertainties described above have now been carefully addressed in the Revised Agreement in a manner that fully satisfies this Tribunal. There is now a clear methodology, clear definitions and clear criteria. There is no reduction in compensation for any victims/survivors, nor any disentitlements. There will be sufficient funds set aside to cover all eligible claimants. There is evidence that Jordan's Principle eligibility under the Revised Agreement will be interpreted in a manner that provides the victims/survivors under the Tribunal's orders the full entitlement they would have received under those orders. The future work that is required is clearly identified and accompanied by a defined and reasonable process and oversight by the Federal Court if the Revised Agreement is approved by the Federal Court.

(vi) Need for Clarification regarding Parents/Caregiving Grandparents under Jordan's Principle

[187] The AFN, the Caring Society and Canada seek a clarification of the Compensation Entitlement Order in relation to parents/caregiving grandparents under Jordan's Principle.

[188] In the case of a removed child, both the First Nations child and First Nations parent/caregiving grandparent are directly impacted by the lack of equitable FNCFS services available to the family. When a child is removed from a parent/caregiving grandparent, both experience direct discrimination, pain and suffering of the worst kind.

[189] Conversely, where a child experienced discrimination as a result of Canada's failure to fully implement Jordan's Principle, the First Nations parent/caregiving grandparent may not have a derivative experience of harm that equates to their child's experience. The parties are of the view that the Tribunal intended to compensate adults who were directly impacted at the highest level by Canada's discriminatory conduct.

[190] In order to capture the true intention of the Tribunal, the Revised Agreement provides that parents/caregiving grandparents of a child eligible for compensation pursuant to Jordan's Principle will receive compensation if they experienced the highest level of impact, including pain, suffering, or harm of the worst kind. The Revised Agreement contemplates

different measures of impact to parents and the child who experienced a Jordan's Principle delay, denial or service gap.

[191] This approach is consistent with the Tribunal's overall approach in its Compensation Orders, which target the worst-case scenarios of discrimination in this case. Removals, by their very nature affect a parent's individual dignity in a fundamental way. Denials, service gaps, and the impact of unreasonable delays with respect to essential services are not necessarily interchangeable as between parents and children. To be sure, many First Nations parents (or caregiving grandparents) of a Jordan's Principle child have experienced worst-case scenarios resulting from discrimination against their children, such as: the death or removal of a child, and a family's forced relocation off-reserve. Therefore, the Revised Agreement contemplates differential criteria for assessing impacts to parents as opposed to those experienced by the impacted child.

[192] The impact that Caregiving Parents or Caregiving Grandparents have experienced will be assessed through objective criteria and expert advice, as developed through Schedule F: Framework of Essential Services and through piloting. These criteria will be subject to the Federal Court's approval, wherein the Caring Society will have standing.

[193] The Tribunal has already explained its authority to clarify its orders above. In sum, this flows from the Tribunal's retained jurisdiction and supervisory role for the effective implementation of its orders.

[194] The Tribunal finds that providing clarity as requested by the joint parties would be helpful.

[195] In a previous ruling, the Tribunal determined that some measure of reasonableness is acceptable:

> [147] The Panel also agrees with the AFN and the Caring Society's positions on the definition of what is an "essential service" mentioned above. The Panel agrees that an "essential service" should be whether the service in question was necessary to ensure substantive equality in the provision of services, products and/or supports to the First Nations child. The Panel also agrees that a conduct that widened the gap between First Nations children and the rest of Canadian society and caused pain and suffering should be compensable

> whenever it occurred, and not only when it had an adverse impact on the health or safety of a First Nations child.
>
> [148] Nevertheless, the Panel agrees with Canada that not all supports, products and services as currently approved by Canada since the Tribunal's rulings in 2017 CHRT 14 and 2017 CHRT 35 are equally necessary and lack thereof or delay cause harm to First Nations children. Therefore, some measure of reasonableness is acceptable. The examples provided in the *Merit Decision* and subsequent rulings and *Compensation Decision* refer to the clear examples of harm to children caused by Canada's discriminatory practices. However, as already explained in the *Merit Decision* and subsequent rulings, the adverse impacts experienced by First Nations children and their caregiving parents or grandparents as a result of Canada's discrimination amount to harm and the Panel opted for a compensation process that would avoid measuring the level of harm borne by each victim. However, some measure of reasonableness should be applied given that some examples recently brought forward by Canada may not be considered real harm by this Panel. The Panel is not privy to the parties' discussions and the full context surrounding those examples of services and is not in a position to make findings on an untested affidavit however, one example stands out. If a request for a laptop at school is made in July for the September start of the school year, Canada must make this determination within the prescribed timeframe despite the laptop not being required for two months (see Affidavit of Dr. Gideon of April 30, 2020, at para. 9). This is an example where it is difficult to see any harm to a child. A reasonableness analysis is particularly helpful in this case.
> (2020 CHRT 15 at paras. 147-48).

[196] The Tribunal further explained that compensation should accord with a reasonable interpretation of what is "essential":

> The Panel agrees with Canada that to be compensable, a product, support or service must accord with a reasonable interpretation of what is "essential" and that the definition should foresee this and should be finalised by the Caring Society, the AFN and Canada. However, the Panel disagrees that Canada's definition does that in an effective way given it is too narrow for the reasons mentioned above. This reasonable interpretation of what is essential must be done through an adequate substantive equality lens. The Panel agrees with the AFN and the Caring Society's arguments on this point.
> (2020 CHRT 15 at para. 151).

[197] The Tribunal agrees that some measure of reasonableness is also acceptable in the eligibility criteria applicable for caregiver parents/grandparents. The Tribunal agrees 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. This is in line with the Tribunal's reasoning and orders, *(see Grant v. Manitoba Telecom Services Inc.,* 2012 CHRT 10 at para.115 recently cited in *Jane Doe v. Canada (Attorney General),* 2018 FCA 183*,* at para. 29.). The reasoning above continues to apply and applies to caregiving parents (or caregiving grandparents).

[198] The Tribunal cautions parties not to import the stricter criteria of causal link/connection in human rights cases which was rejected by the Supreme Court in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center),* 2015 SCC 39 (CanLII), [2015] 2 SCR 789, at paras 50-51*.* Indeed, the Supreme Court wrote*: "*It is therefore neither appropriate nor accurate to use the expression "causal connection" in the discrimination context" (para. 51). This legal criteria has a different connotation than the terms used in other disciplines such as social work. The legal term causal link or causal connection is applied in medical malpractice and many litigation cases. Further, it is applied often in considering wage loss under the *CHRA*. For the Tribunal, the balance of probabilities and analysis to assess harm evaluates whether it is more probable than not that there exists a connection between the discrimination and the pain and suffering. In terms of assessing the pain and suffering (and Canada's wilful and reckless conduct), the Tribunal performs a principled and purposive analysis keeping in mind that the maximum compensation is reserved for the worst-case scenarios.

[199] The Tribunal believes that it is more probable than not that a parent or grandparent witnessing the child in their care suffering greatly would also suffer greatly. Perhaps not to the same degree as the child - sometimes less and sometimes more. The Tribunal believes this does not discount the parent or grandparent's resilience, courage, and dignity. They often are heroes who are so focused on the well-being of their child that they often discount their own feelings in order to be strong for that child. For example, a young child with terminal cancer who receives pain medication that effectively controls the pain and who does not comprehend the concept of death, suffers on many levels but not because of the concept of permanence attached to death. Their parents or grandparent's while not physically suffering,

have to watch their child suffer and have this added moral and psychological pain of losing their child. It this situation, it is reasonable that both have experienced similar levels of pain and suffering.

[200] While this differs a little from the parties' arguments on this point, it is not in complete contradiction. The Tribunal also accepts that many caregiving parents/grandparents will not experience the same level of pain and suffering as their children. The approach adopted by the parties to the Revised Agreement includes flexibility to consider who has experienced the highest amount of suffering.

[201] The Tribunal accepts to clarify its order. However, the Tribunal does not rely on the articles filed in evidence to do so given they were not particularly helpful or conclusive. Moreover, there seems to be a disconnect between a reasonable understanding of human behaviour and what is found in some scientific studies. Further, the Tribunal is often asked to make compensation orders without the benefit of scientific evidence to support harms. If this were required, many complainants would not get justice.

[202] The Tribunal agrees that not all caregiving parents and grandparents under this category have suffered harm in the worst-case scenario akin to when a child has been removed from their care. In this category, there are some that suffered immensely and others who have suffered less. Not applying reasonableness here could result in some measure of unfairness and discount tremendous harm experienced by some parents/grandparents who, for example, lost children that died versus some parents/grandparents who did not obtain sporting equipment when their children needed it. Such evidence forms part of the Tribunal's record. Further, some of the tremendous harms mentioned above were discussed in previous rulings.

[203] Moreover, the Tribunal is satisfied that the process, explained by the parties above, will ensure that a reasonableness criterion is applied for this category of claimants in a fair manner, ensuring that those who suffered the most receive fair compensation.

[204] For those reasons, and given the Tribunal's previous orders and reasons, the clarification request aligns completely with the Tribunal's approach to the compensation remedies.

[205] Furthermore, the Tribunal finds the Revised Agreement now fully satisfies the Tribunal's orders on this point.

(vii) Opt-out provision

[206] The Tribunal was clear in the 2022 FSA Motion Decision on the importance of ensuring that victims/survivors have adequate time to consider the 2022 FSA and the Tribunal's 2022 FSA Motion Decision and previous Compensation Orders with the benefit of an appropriate opt-out period. It was of the view that the initial opt-out date of February 19, 2023, as described within the AFN's and Canada's materials on the 2022 FSA Motion Decision was too short and placed the victims/survivors in an untenable situation:

> The unfairness deepens as the FSA seems to force victims/survivors to opt out of both avenues of compensation if they are dissatisfied with the class action deal struck at the Federal Court. Such an opt-out scheme would place victims/survivors who are receiving less than their CHRT entitlement of $40,000 in an untenable situation whereby they either accept reduced entitlements under the FSA or opt-out of the FSA to be left to litigate against Canada from scratch. Such a proposal deepens the infringement of dignity for victims/survivors and may revictimize them and is therefore inconsistent with a human rights approach. This is concerning. (See 2022 CHRT 41, at para. 388).

[207] The Tribunal's concerns about the opt-out regime in the 2022 FSA (2022 CHRT 41 at paras. 385-390) have now been addressed. The parties to the Federal Court Class Actions have addressed the Tribunal's comments regarding the opt-out deadline. The opt-out deadline has already been extended to August 23, 2023 by the Federal Court (See, Article 1.01, Revised Agreement, Exhibit "F" to the AFN Affidavit and February 23, 2023, order of Justice Aylen in T-402-19), and, in the Minutes of Settlement, the AFN and Canada have agreed to seek a further extension to October 6, 2023, subject to Federal Court approval. Therefore, the Tribunal is now satisfied with this outcome.

[208] The Tribunal finds the Revised Agreement now fully satisfies the Tribunal's orders on this point.

(viii) Interest

[209] The Tribunal's Compensation Entitlement Order directed victims to receive interest to the date of judgment pursuant to subsection 53(4) of the *CHRA* at the Bank of Canada rate in keeping with the approach in *Grant v. Manitoba Telecom Services Inc*., 2012 CHRT 20. The 2022 FSA did not contemplate the payment of interest to the victims identified by the Tribunal. The Tribunal finds that this has been addressed in the Revised Agreement and now all victims/survivors identified by the Tribunal are entitled to receive interest to the date the settlement approval order is final in addition to their base compensation of $40,000.

[210] Finally on this point, the Tribunal finds the Revised Agreement now fully satisfies the Tribunal's orders.

(ix) Caring Society's standing in Federal Court proceedings concerning the Revised Agreement

[211] The Caring Society will have standing at the Claims Process hearing and therefore, should an issue arise with the applicability of the eligibility criteria, the Caring Society will have the opportunity to provide submissions to the Federal Court regarding the parameters of pain, suffering or harm of the worst kind for Jordan's Principle parents.

[212] The Caring Society will have ongoing involvement in the Federal Court proceedings (in which it will have standing on matters related to the Tribunal's orders, pursuant to the Revised Agreement). The Caring Society will be entitled to notice of proceedings before the Federal Court related to matters impacting the rights of the beneficiaries of the Tribunal's compensation orders, as well as the standing to make submissions on any applications pertaining to the administration and implementation of the Revised Agreement on compensation as it relates to those matters, (See, Article 22.05, Revised Agreement, Exhibit "F" to the AFN Affidavit).

[213] The Revised Agreement also provides for the Caring Society's involvement and participation following the end of the Tribunal's jurisdiction. Specifically, the Caring Society will have standing to make submissions to the Federal Court regarding the administration and implementation of the Revised Agreement after the Settlement Approval hearing,

including approval of the Claims Process and distribution protocol, to the extent that issues impact the rights of the victims identified by the Tribunal. The Tribunal finds this provision provides for the ongoing role the Caring Society would have had under the Compensation Framework Order.

(x) Apology from the Prime Minister

[214] As mentioned above, 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.

[215] The terms of the Revised Agreement continue to call for an apology by the Prime Minister, (See, Revised Agreement at art. 24). The Tribunal cannot order apologies. However, the Tribunal completely agrees with this approach included in the Revised Agreement. The Tribunal also agrees with the Caring Society that the best apology Canada can offer is changed behaviour, so that this may be the last generation of First Nations children and youth that have to recover from their childhoods. This Tribunal believes this is true measurable reconciliation and the very reason as to why the Tribunal has remained, and continues to remain, seized of the implementation phase of its orders, and to monitor the reform ensuring the systemic racial discrimination is eliminated.

(xi) Role of the Federal Court

[216] The Revised Agreement is subject to the Supervisory role of the Federal Court should the Federal Court approve the Revised Settlement. This is an optimal approach given the class actions and the representative plaintiffs who are parties to the Revised Agreement. The Tribunal does not have jurisdiction over those class actions - the Federal Court does. This is why the Federal Court is asked to approve the Revised Agreement. Otherwise, the Tribunal alone could not approve it. Federal Court approval of the Revised Settlement would end the Tribunal's jurisdiction on the compensation orders. The Tribunal agrees with this outcome. The details are included in the order below.

(xii) Tribunal's interpretation of specific points in the Revised Agreements

[217] The Panel also wishes to address two points about its interpretation of the Revised Agreement.

[218] 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.

[219] 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.

[220] 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 finding that the Revised Agreement fully satisfies the Tribunal's compensation orders 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.

[221] 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.

F. Conclusion

[222] As explained above, the Tribunal finds that all categories of victims/survivors who were originally disentitled or had their entitlements reduced or who were not considered under the 2022 FSA have now been included in the Revised Settlement. This inclusion is done in a manner that fully accounts for the Tribunal's compensation orders on quantum, categories of victims/survivors and interest on compensation. The compensation will also be done in a manner that is culturally appropriate and safe for children and all victims/survivors and avoids having children testify. Therefore, the Tribunal finds the Revised Agreement fully satisfies all the Tribunal's compensation orders.

[223] As part of their submissions for this motion the Caring Society has described the Tribunal's approach in this case:

> Throughout this sacred and important case for First Nations children, youth and families, the Canadian Human Rights Tribunal ("Tribunal") has focused on the human rights of First Nations children and youth, placing their right to substantive equality at the forefront of its analysis. The remedies ordered by the Tribunal acknowledge the egregious and harmful nature of the discrimination flowing from Canada's flawed and inequitable provision of child and family services and its discriminatory definition and approach to Jordan's Principle. The Tribunal awarded individual compensation to victims of Canada's wilful and reckless conduct to recognize the harm, trauma and victimization of First Nations children and families stemming from Canada's systemic violations of the *Canadian Human Rights Act* ("CHRA").

The Tribunal finds this is an appropriate characterization of the spirit of the Tribunal's compensation ruling.

[224] Further, the Tribunal emphasizes that its analysis has always placed the right of First Nations children and families to substantive equality at the forefront of all its rulings and orders including those related to Jordan's Principle, reform, cessation of the discriminatory

practice and preventing it from reoccurring; and immediate, mid-term and long-term remedies. This continues to be the Tribunal's focus.

[225] Finally, the Panel looks forward to the next steps to be completed in this journey - namely complete reform; sustainable, long-term remedies for multiple generations to come; and the cessation of the discriminatory practice and the prevention of its reoccurrence.

G. Orders

Pursuant to section 53(2) of the *CHRA*, the Tribunal makes the following 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 in 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 Agreement or of an appeal having been commenced.

H. 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 and reform, 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, if any, leading to final orders or, as the Panel sees fit considering the upcoming evolution of this case.

Signed by

Sophie Marchildon
Panel Chairperson

Edward P. Lustig
Tribunal Member

Ottawa, Ontario
September 26, 2023

Canadian Human Rights Tribunal

Parties of Record

Motion dealt with in writing without appearance of parties

Written representations by:

David P. Taylor, Sarah Clarke and Kevin Droz, counsel for the First Nations Child and Family Caring Society of Canada, the Complainant

Stuart Wuttke, Dianne Corbiere, D. Geoffrey Cowper K.C. and Adam Williamson, counsel for Assembly of First Nations, the Complainant

Brian Smith, counsel for the Canadian Human Rights Commission

Christopher Rupar, Paul Vickery, Sarah-Dawn Norris and Jonathan Tarleton, counsel for the Respondent

Maggie Wente, Sinéad Dearman Jessie Stirling and Darian Baskatawang, counsel for the Chiefs of Ontario, Interested Party

Julian Falconer and Christopher Rapson and Natalie Posala, counsel for the Nishnawbe Aski Nation, Interested Party

This is **Exhibit "J"** to the Affidavit of Robert Kugler, sworn remotely before me at the City of Toronto, in the Province of Ontario, on October 16, 2023 in accordance Administering Oath or Declaration Remotely

Adil Abdulla

Commissioner for taking Affidavit
(or as may be)

REMOVED CHILD ENHANCEMENT PAYMENTS

A. The FSA states that an Approved Removed Child Class Member may be entitled to an Enhancement Payment based on certain Enhancement Factors;

B. The Enhancement Factors that have been identified are:

   a. The age when the Removed Child was removed for the first time (i.e. if under a certain age, that is a proxy for greater harm which merits an Enhancement Payment);

   b. The Time in care (the longer the time spent in care, the greater the harm on an objective basis);

   c. The age of a Removed Child upon exiting the child welfare system (i.e. children who age out of care are deemed to have objectively suffered greater harm);

   d. Removed Children who are placed into care in order to receive an Essential Service;

   e. Removed Children who are removed from a Northern or Remote Community (given that such children are deemed to have been removed far from home, it is a proxy for greater objective harm);

   f. The number of spells in care for a Removed Child; and

   g. The number of out-of-home Placements applicable to a Removed Child who spent more than 1 year in care.

C. The FSA has a budget of $7.25 billion for the Removed Child Class;

D. The Joint Expert Report advises that there are likely 115,000 Removed Children. Assuming the accuracy of this estimate, Base Compensation totalling $4.6 billion will be paid to Removed Children, leaving $2.65 billion available for Enhancement Payments;

E. As Enhancement Payments will not be made until claims have been submitted and analyzed over the first three years of the claims process, the $2.65 billion available for Enhancement Payments are expected to generate substantial interest income;

F. Subject to receipt and analysis of a database to be provided by Indigenous Services Canada pertaining to the Removed Child Class ("**ISC Database**"), to conferring with experts and to approval by the Settlement Implementation Committee ("**SIC**"), Class Counsel have analyzed the expert report of Professor Nico Trocmé and Actuary Peter Gorham ("**Trocmé/Gorham Report**") to propose a draft scenario for the pay-out of Enhancement Payments based on the Enhancement Factors ("**Class Counsel Draft Proposal**");

G. The Class Counsel Draft Proposal is based on the following principles and guidelines:

1. Removed Children who were removed from a Northern or Remote Community shall be entitled to an Enhancement Payment equal to 10% of their Base Compensation, subject to a maximum aggregate budgeted amount of $50 million ("**Northern and Remote Community Enhancement Budget**").

   The Northern and Remote Community Enhancement Budget is sufficient to pay an Enhancement Payment of $4,000 to 10,000 individuals (this is an estimate of Class Counsel).

   In the event that there is a surplus in the Northern and Remote Community Enhancement Budget, the SIC shall have the right to transfer said surplus to a different Enhancement Payment Budget.

   In the event that the Northern and Remote Community Enhancement Budget is insufficient to pay the Enhancement Payments set forth above, then said Enhancement Payments shall be paid on a *pro rata* basis.

2. Removed Children who were removed when they were under **6 years of age** shall receive an Enhancement Payment as follows, subject to a maximum aggregate budgeted amount of $600 million ("**Age at Time of Removal Enhancement Budget**"):

   a. Removed between the ages of 3 and 6 – Enhancement Payment equal to 10% of Base Compensation ($4,000);

   b. Removed between the ages of 1 and 3 – Enhancement Payment equal to 20% of Base Compensation ($8,000);

   c. Removed under the age of 1 – Enhancement Payment equal to 45% of Base Compensation ($18,000).

Based on extrapolations from the Trocmé/Gorham Report, Class Counsel have estimated that 17,250 Removed Children were removed between the ages of 3 and 6, 23,920 were removed between the ages of 1 and 3, and 16,330 were removed while under the age of 1. Based on these assumptions, the Age at Time of Removal Enhancement Budget will allow for the following Enhancement Payments:

(i) $4,000 for 17,250 Removed Children, for a total of $69 million;

(ii) $8,000 for 23,920 Removed Children, for a total of $191.36 million;

(iii) $18,000 for 16,330 Removed Children, for a total of $293.94 million.

In the event that there is a surplus in the Age at Time of Removal Enhancement Budget, the SIC shall have the right to transfer said surplus to a different Enhancement Payment Budget.

In the event that the Age at Time of Removal Enhancement Budget is insufficient to pay the Enhancement Payments set forth above, then said Enhancement Payments shall be paid on a *pro rata* basis.

3. Removed Children who exited the child welfare system at the age of majority (i.e. who aged out of care) shall each receive 25% of their Base Compensation as an Enhancement Payment, subject to a maximum aggregate budgeted amount of $200 million ("**Age Out-of-Care Enhancement Budget**").

   Based on extrapolations from the Trocmé/Gorham Report, Class Counsel have estimated that 17,250 Removed Children exited the child welfare system upon attaining the age of majority. Such individuals shall each receive $10,000 as an Enhancement Payment, for a total of $172.5 million.

   In the event that there is a surplus in the Age Out-of-Care Enhancement Budget, the SIC shall have the right to transfer said surplus to a different Enhancement Payment Budget.

   In the event that the Age Out-of-Care Enhancement Budget is insufficient to pay the Enhancement Payments set forth above, then said Enhancement Payments shall be paid on a *pro rata* basis.

4. Removed Children who needed to be removed from their homes in order to receive critical essential services that could not be provided on-reserve shall be entitled to receive 125% of their Base Compensation as an Enhancement

Payment, subject to a maximum aggregate budgeted amount of $275 million ("**Removed for Essential Service Enhancement Budget**").[1]

The Trocmé/Gorham Report does not enable Class Counsel to estimate the number of claimants who qualify for this Enhancement Payment. However, the Removed for Essential Service Enhancement Budget is sufficient to pay a $50,000 Enhancement Payment to 4,650 claimants who qualify.

In the event that there is a surplus in the Removed for Essential Service Enhancement Budget, the SIC shall have the right to transfer said surplus to a different Enhancement Payment Budget.

In the event that the Removed for Essential Service Enhancement Budget is insufficient to pay the Enhancement Payments set forth above, then said Enhancement Payments shall be paid on a *pro rata* basis.

5. Removed Children who were in care for more than one (1) year shall receive an Enhancement Payment as follows, subject to a maximum aggregate budgeted amount of $1.6 billion ("**Time in Care Enhancement Budget**"):

   a. In-care for 1-3 years – an Enhancement Payment equal to 25% of Base Compensation ($10,000);

   b. In-care for 3-6 years – an Enhancement Payment equal to 75% of Base Compensation ($30,000);

   c. In-care for more than 6 years – an Enhancement Payment equal to 150% of Base Compensation ($60,000).

   Extrapolating from the Trocmé/Gorham Report, Class Counsel have estimated that 26,600 Removed Children were in care for 1-3 years, 11,700 were in care for 3-6 years, and 12,800 were in care for more than 6 years. Based on these estimates, the Time in Care Enhancement Budget will allow for the following Enhancement Payments:

   (i) $10,000 for 26,600 Removed Children, for a total of $266 million;

   (ii) $30,000 for 11,700 Removed Children, for a total of $351 million;

   (iii) $60,000 for 12,800 Removed Children, for a total of $768 million.

[1] Claimants will require documents substantiating that the removal was for purposes of receiving a critical Essential Service, to be decided upon by the SIC.

In the event that there is a surplus in the Time in Care Enhancement Budget, the SIC shall have the right to transfer said surplus to a different Enhancement Payment Budget.

In the event that the Time in Care Enhancement Budget is insufficient to pay the Enhancement Payments set forth above, then said Enhancement Payments shall be paid on a *pro rata* basis.

6. Removed Children who were in care for more than one (1) year and who either had multiple Spells in Care or were in multiple out-of-home Placements[2] are entitled to Enhancement Payments as follows, subject to a maximum aggregate budgeted amount of $400 million ("**Number of Spells Enhancement Budget**"):

   a. For Removed Children who had 2 Spells in Care OR who were in 2 out-of-home Placements, they shall each be entitled to an Enhancement Payment equal to 15% of their Base Compensation ($6,000);

   b. For Removed Children who had 3 Spells in Care OR who were in 3 out-of-home Placements, they shall each be entitled to an Enhancement Payment equal to 50% of their Base Compensation ($20,000);

   c. For Removed Children who had 4 Spells in Care OR who were in 4 out-of-home Placements, they shall each be entitled to an Enhancement Payment equal to 100% of their Base Compensation ($40,000);

   d. For Removed Children who had 5 Spells in Care OR who were in 5 out-of-home Placements, they shall each be entitled to an Enhancement Payment equal to 200% of their Base Compensation ($80,000);

   e. For Removed Children who had 6 or more Spells in Care OR who were in 6 or more out-of-home Placements, they shall each be entitled to an Enhancement Payment equal to 250% of their Base Compensation ($100,000).

   Extrapolating from the Trocmé/Gorham Report, Class Counsel are limited in their ability to estimate the number of individuals who will qualify for an Enhancement Payment out of the Number of Spells Enhancement Budget and the level of enhancement. Class Counsel have prepared the Class Counsel Draft Proposal based on the following assumptions:

[2] Claimants will require documents substantiating that they were in multiple out-of-home placements, to be determined by the SIC.

(i) 15,918 Removed Children had 2 Spells in Care OR were in 2 out-of-home Placements, and will each receive an Enhancement Payment of $6,000, for a total of $95,508 million;

(ii) 1,000 Removed Children had 3 Spells in Care OR were in 3 out-of-home Placements, and will each receive an Enhancement Payment of $20,000, for a total of $20 million;

(iii) 1,000 Removed Children had 4 Spells in Care OR were in 4 out-of-home Placements, and will each receive an Enhancement Payment of $40,000, for a total of $40 million;

(iv) 1,000 Removed Children had 5 Spells in Care OR were in 5 out-of-home Placements, and will each receive an Enhancement Payment of $80,000, for a total of $80 million;

(v) 1,000 Removed Children had 6 or more Spells in Care OR were in 6 or more out-of-home Placements, and will each receive an Enhancement Payment of $100,000, for a total of $100 million.

In the event that there is a surplus in the Number of Spells Enhancement Budget, the SIC shall have the right to transfer said surplus to a different Enhancement Payment Budget.

In the event that the Number of Spells Enhancement Budget is insufficient to pay the Enhancement Payments set forth above, then said Enhancement Payments shall be paid on a *pro rata* basis.

7. Removed Children in respect of whom multiple Enhancement Factors apply shall qualify for multiple Enhancement Payments.

8. Schedule A, attached, is a spreadsheet setting out the Enhancement Payments based on the above assumptions and limitations.

9. Schedule B, attached, is an illustration of the compensation a Removed Child who meets the criteria for multiple Enhancement Factors may receive.

SCHEDULE A

FSA budget	$7,250,000,000
Based on joint Expert Report, number of likely Removed Children:	115,000
Base Compensation:	$40,000
Total Base Compensation to be paid out:	**$4,600,000,000**
Balance available for Enhancement Payments in addition to interest income to be generated:	$2,650,000,000

ENHANCEMENT PAYMENTS

Enhancement Payment Category for Removed Children	Additional Criteria	No. of claimants who are in the Class	Enhancement Payment (EP)	Total Estimate of EP	Max Budget	Percentage of Total EP Budget	Comments
Were removed from a Northern or Remote Community (10% Base Compensation)	n/a	10,000	$4,000	$40,000,000	$50,000,000	2%	*The Trocmé/Gorham Report does not provide a provisional estimate on the number of claimants who were removed from a Northern or Remote Community. This is an estimate of Class Counsel.
Were removed when they were X years of age Between the ages of 3 and 6 = 10% Base Comp Between the ages of 1 and 3 = 20% Base Comp Under the age of 1 = 45% Base Comp	Ages 3 to 6	17,250	$4,000	$69,000,000	$600,000,000	23%	*The Trocmé/Gorham Report estimates that 50% of the children who were part of the 2000-2004 cohort entered care at 6 years or younger, and that 14.2% of the children had their first episode in care before they turned 1 year old (p. 41). Based on a class size of 115 000 Removed Children, we can extrapolate to obtain a number of 57 500 Removed Children having entered care at 6 years or younger. From those 57 500, 16 330 (14.2%) entered care before they turned one year old. The percentages shown in Figure 1 (p. 41 of Trocmé/Gorham Report) can be extrapolated to estimate that 23 920 (20.8%) entered care between 1 and 3, and the remaining 17 250 (15%) entered between 3 and 6.
	Ages 1 to 3	23,920	$8,000	$191,360,000			
	Under age of 1	16,330	$18,000	$293,940,000			
Exited the child welfare system at the age of majority (25% Base Compensation)	n/a	17,250	$10,000	$172,500,000	$200,000,000	8%	*Figure 3 of Appendix 6 of the Trocmé/Gorham Report (p. 42) shows the percentage of children for the years 2000, 2002 and 2004 by age at last exit from care. Based on Figure 3, approximately 12% of children exited at the age of 18 years or older. This percentage can be extrapolated to arrive at an estimated 17 250 Removed Children out of 115 000 (that is, 12% of 115 000) that exited the child welfare systen at the age of majority.
Were removed from their home in order to receive a critical Essential Service (125% Base Compensation)	n/a	4,650	$50,000	$232,500,000	$275,000,000	10%	*The Trocmé/Gorham Report does not provide a provisional estimate on the number of claimants who were removed from their home in order to receive an Essential Service. This is an estimate of Class Counsel.
Were in Care for: > 1 year to ≤ 3 years = 25% Base Comp > 3 years to ≤ 6 years = 75% Base Comp > 6 years = 150% Base Comp	>1 to ≤ 3 years	26,600	$10,000	$266,000,000	$1,600,000,000	60%	*The Trocmé/Gorham Report provides the following estimates in regard to time spent in care: 1 up to 3 years = 26 638 members 3 up to 6 years = 11 695 members 6 years or more = 12 778 members
	> 3 to ≤ 6 years	11,700	$30,000	$351,000,000			
	> 6 years	12,800	$60,000	$768,000,000			
Were in Care for > 1 year AND were the subject of multiple spells in Care or multiple out-of-home Placements (OOHP): 2 Spells in Care or 2 OOHP = 15% Base Comp 3 Spells in Care or 3 OOHP = 50% Base Comp 4 Spells in Care or 4 OOHP = 100% Base Comp 5 Spells in Care or 5 OOHP = 200% Base Comp 6 or more Spells in Care or 6 or more OOHP = 250% Base Comp	2 Spells or 2 OOHP	15,918	$6,000	$95,508,000	$400,000,000	15%	*It can be estimated that 51 100 Removed Children were in care for > 1 year (cells C16+C17+C18 = 51 100). *Based on available entry and exit dates relative to the total number of days in care reported by ISC, the Trocmé/Gorham Report (p. 19) estimates that from the 2000-2004 cohorts examined, about 62 % of children appeared to have been continuously in care. The rest of the children (38%) were assumed to have multiple periods of time in care (although the number of spells could not be estimated). As such, we can estimate that about 19 418 Removed Children (i.e., 38% of 51 100) had more than one spell. The distribution of that number across the sub-catogories of the number of Spells or OOHP is an estimate of Class Counsel.
	3 Spells or 3 OOHP	1,000	$20,000	$20,000,000			
	4 Spells or 4 OOHP	1,000	$40,000	$40,000,000			
	5 Spells or 5 OOHP	1,000	$80,000	$80,000,000			
	6 Spells or 6 OOHP	1,000	$100,000	$100,000,000			

Total Enhancement Payments:	**$2,719,808,000**	
Total Max Budget:		**$3,125,000,000**

SCHEDULE B

	Estimated individual maximum compensation for Removed Children (excluding removal to receive an Essential Service)
Base compensation for Removed Children	40,000.00 $
Enhancement Payment Category for Removed Children	
Enhancement Payment for Northern and Remote Community removal	4,000.00 $
Enhancement Payment for removal under the age of 1 at time of removal	18,000.00 $
Enhancement Payment for exit from Care at the age of majority	10,000.00 $
Enhancement Payment for having been in care for > 6 years	60,000.00 $
Enhancement Payment for having been in care for > 1 year AND the subject of 6 or more spells	100,000.00 $
TOTAL:	232,000.00 $

	Estimated individual compensation for Removed Children who were removed to receive an Essential Service
Base compensation for Removed Children	40,000.00 $
Enhancement Payment Category for Removed Children	
Enhancement Payment for removal to receive an Essential Service	50,000.00 $
TOTAL:	90,000.00 $ (plus any other applicable Enhancement Payment)

This is **Exhibit "K"** to the Affidavit of Robert Kugler, sworn remotely before me at the City of Toronto, in the Province of Ontario, on October 16, 2023 in accordance Administering Oath or Declaration Remotely

Adil Abdulla

Commissioner for taking Affidavit
(or as may be)

Court File Nos. T-402-19 / T-141-20 / T-1120-21

FEDERAL COURT
CLASS PROCEEDING

BETWEEN:

XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

BETWEEN:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON by his Litigation Guardian, Carolyn Buffalo, CAROLYN BUFFALO, and DICK EUGENE JACKSON also known as RICHARD JACKSON

Plaintiffs

and

HER MAJESTY THE QUEEN
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
PROPOSED CLASS PROCEEDING

BETWEEN:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

SETTLEMENT AGREEMENT IN PRINCIPLE
(Compensation)

WHEREAS:

(a) On March 4, 2019, Xavier Moushoom commenced a proposed class action under Court File Number T-402-19 (the "**Moushoom Action**"), seeking compensation for discrimination dating back to April 1, 1991.

(b) On January 28, 2020, the Assembly of First Nations and other plaintiffs also filed a proposed class action under Court File Number T-141-20 (the "**AFN Action**") regarding similar allegations dating back to April 1, 1991.

(c) On July 7, 2021, the Honourable Justice St-Louis ordered that the Moushoom Action and the AFN Action be consolidated with certain modifications (the "**Consolidated Action**").

(d) The parties to the Consolidated Action engaged in mediation in accordance with the Federal Court Guidelines for Aboriginal Law Proceedings (dated April 2016) to resolve all or some of the outstanding issues in the Consolidated Action.

(e) The Assembly of First Nations and Zacheus Joseph Trout filed a proposed class action under Court File Number T-1120-21 (the "**Trout Action**") regarding the Crown's discriminatory provision of services and products between April 1, 1991 and December 11, 2007. The certification hearing for the Trout Action has been scheduled for September 2022.

(f) The Honourable Leonard Mandamin acted as mediator from November 1, 2020 to November 10, 2021.

(g) On September 29, 2021, in reasons indexed at 2021 FC 969, Justice Favel of the Federal Court of Canada upheld the Canadian Human Rights Tribunal decision made in Tribunal File: T1340/7008 (the "**CHRT Proceeding**") with respect to compensation.

(h) On November 26, 2021, the Federal Court granted certification of the Consolidated Action on consent of the parties.

(i) On or about November 1, 2021, the parties entered into negotiations outside of the Federal Court mediation process.

(j) The parties, by agreement, appointed The Honourable Murray Sinclair to act as chair of the negotiations.

(k) The parties worked collaboratively to determine the class sizes of the Consolidated Action and the Trout Action.

(l) The parties separately engaged experts ("**Experts**") to prepare a joint report on the estimated size of the Removed Child Class, as defined herein, on which the parties would rely for settlement discussions (the "**Joint Report**").

(m) The Experts relied on data provided by Indigenous Services Canada ("**ISC**") in preparing the Joint Report. ISC communicated to the experts and plaintiffs counsel that the data often came from third-party sources and was in some cases incomplete and inaccurate. The Joint Report referred to and took into account these factors.

(n) The Experts estimated that there were 106,200 Removed Child Class Members from 1991 to March 2019. The Experts advised that this class size must be adjusted to 115,000 to cover the period from March 2019 to March 2022 (the "**Estimated Removed Child Class Size**"). The Estimated Removed Child Class Size was determined based on the data received from ISC and modelling taking into account gaps in the data.

(o) Canada provided to the plaintiffs estimates of the Jordan's Principle Class Size, which were between 58,385 and 69,728 for the period from December 12, 2007 to November 2, 2017 (the "**Jordan's Principle Class Size Estimates**").

(p) Based on the Jordan's Principle Class Size Estimates, the plaintiffs estimated the size of the Trout Class, as defined below, to be 104,000.

(q) Based on the Parliamentary Budget Office Report, *Compensation For The Delay and Denial of Services to First Nations Children*, dated February 23, 2021, there are 1.5 primary caregivers per First Nations child.

NOW THEREFORE in consideration of the mutual agreements, covenants, and undertakings set out herein, the parties agree as follows:

DEFINITIONS

1. For purposes of this settlement, the following terms shall have the following meanings:

"**Removed Child Class**" means all First Nations* individuals who:

(i) were under the applicable provincial/territorial age of majority at any time during the Removed Child Class Period**; and

(ii) were taken into out-of-home care during the Removed Child Class Period while they, or at least one of their parents, were ordinarily resident on a Reserve*** or were living in the Yukon.

* First Nations means Indigenous peoples in Canada, including the Yukon and the Northwest Territories, who are neither Inuit nor Métis, and includes:

i. individuals who have Indian status pursuant to the *Indian Act*;
ii. individuals who are entitled to be registered under section 6 of the *Indian Act* at the time of certification; and
iii. individuals who met band membership requirements under sections 10-12 of the *Indian Act* by the time of certification, such as where their respective First Nation community assumed control of its own membership by establishing membership rules and the individuals were found to meet the requirements under those membership rules and were included on the Band List.

** **Removed Child Class Period** means the period between April 1, 1991 and March 31, 2022.

*** **Reserve** means a tract of land, as defined under the *Indian Act*, the legal title to which is vested in the Crown and has been set apart for the use and benefit of an Indian band.

"**Removed Child Family Class**" means all persons who are the brother, sister, mother, father, grandmother or grandfather of a member of the Removed Child Class.

"**Jordan's Principle Class**" means all First Nations individuals who were under the applicable provincial/territorial age of majority and who, during the period between December 12, 2007 and November 2, 2017, did not receive (whether by reason of a denial or a gap) an essential public service or product relating to a confirmed need, or whose receipt of said public service or product was delayed, on grounds, including but not limited to, lack of funding or lack of jurisdiction, or as a result of a jurisdictional dispute with another government or governmental department, contrary to their substantive equality rights and Jordan's Principle.

"**Jordan's Principle Family Class**" means all persons who are the brother, sister, mother, father, grandmother or grandfather of a member of the Jordan's Principle Class.

"**Trout Class**" means all First Nations individuals who were under the applicable provincial/territorial age of majority and who, during the period between April 1, 1991 and December 11, 2007, did not receive (whether by reason of a denial or a gap) an essential public service or product relating to a confirmed need, or whose receipt of said public service or product was delayed, on grounds, including but not limited to, lack of funding or lack of jurisdiction, or as a result of a jurisdictional dispute with another government or governmental department, contrary to their substantive equality rights.

"**Trout Family Class**" means all persons who are the brother, sister, mother, father, grandmother or grandfather of a member of the Trout Class.

The Removed Child Family Class, the Jordan's Principle Family Class and the Trout Family Class definitions are subject to limitations, restrictions and exclusions, as the plaintiffs may decide, in the comprehensive settlement agreement.

2. The parties acknowledge that the intent of this agreement is to ensure that Canada be released from the claims of all Class members in the Consolidated Action and the Trout Action, including all claimants envisaged by the compensation order in the CHRT Proceeding, who do not opt-out. The parties agree to reflect this requirement in negotiating the comprehensive settlement agreement.

SETTLEMENT AMOUNT

3. Canada will pay a total of $20,000,000,000 ($20 billion) (the "**Settlement Funds**") to settle the claims of the Removed Child Class, the Removed Child Family Class, the Jordan's Principle Class, the Jordan's Principle Family Class, the Trout Class, and the Trout Family

Class. Canada will pay the Settlement Funds into an interest-bearing trust account upon the expiry of the appeal period from the judgment approving the settlement, if applicable.

NON-REVERSION OF SETTLEMENT FUNDS

4. No amount or earned interest that remains after the distribution of the Settlement Funds shall revert to Canada. Such amounts will instead be further distributed in accordance with the distribution protocol designed and approved under paragraph 7, below (the "**Distribution Protocol**").

WARRANTIES AND REPRESENTATIONS ON SIZE OF THE SETTLED CLASS

5. The parties acknowledge that, in preparing the Joint Report, the Experts relied on data from ISC to determine the Estimated Removed Child Class Size. Both the plaintiffs and Canada were aware that parts of this data came from third parties, was incomplete and, in some cases, inaccurate. The parties, including Canada, took account of the nature of this data in entering into this settlement.

6. Canada warrants and represents that it provided to the Experts all of the data in Canada's possession relating to the Estimated Removed Child Class Size; however, Canada does not represent or warrant the accuracy of the data it provided nor the accuracy of the Joint Report of the Experts.

DISTRIBUTION

7. The design and implementation of the Distribution Protocol, as well as the breakdown of the Settlement Funds (the "**Breakdown**") shall be within the sole discretion of the plaintiffs to the

Consolidated Action and the Trout Action, subject to the approval of the Court. The plaintiffs will establish the Distribution Protocol and may seek input from the First Nation Child and Family Caring society, as well as from such other experts and First Nations stakeholders as the plaintiffs deem in the best interests of the class members. The Breakdown shall be determined by the Plaintiffs and class counsel, and agreed upon as part of the comprehensive settlement agreement.

8. Notwithstanding paragraph 7 above, Canada shall have standing to make submissions on the Distribution Protocol at the hearing on the motion to approve same before the Federal Court.

RELEASE

9. As consideration for the payment of the Settlement Funds and the other obligations set forth herein, Canada shall be fully and finally released and discharged from any and all compensation claims asserted in the CHRT Proceeding, the Consolidated Action and the Trout Action for damages of all kind, including, without limitation, compensatory damages, punitive damages and exemplary damages either at common law, equity or civil law, and damages for the violation of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6, and the *Canadian Charter of Rights and Freedoms* by all members of the Removed Child Class, the Removed Child Family Class, the Jordan's Principle Class, the Jordan's Principle Family Class, the Trout Class, and the Trout Family Class who do not opt out of the class action within the Opt-out Period defined in paragraph 12, below.

CONSENT TO CERTIFICATION OF TROUT ACTION

10. Canada will consent to certification of the Trout Action upon the signing by the parties of this Agreement in Principle. The form and content of the certification order is to be agreed upon

within 14 days of the signing of this agreement. Any disagreement as to the form and content of the certification order is to be decided by the Federal Court.

CONSENT TO ORDER OF CANADIAN HUMAN RIGHTS TRIBUNAL

11. The Assembly of First Nations and Canada will jointly seek an order from the Canadian Human Rights Tribunal declaring that the Order for compensation has been fully satisfied. Class counsel, on behalf of some or all of the representative plaintiffs to the Consolidated Action and the Trout Action, will seek interested party status and/or standing to make representations before, and to answer questions posed by, the Canadian Human Rights Tribunal in respect of same. Canada consents to class counsel obtaining such standing, and the Assembly of First Nations may take whatever position it wishes in respect thereof. The parties will take all necessary steps to support the application, including filing such evidence and submissions as may be required.

OPT-OUT

12. The opt-out deadline will be six (6) months after distribution of the Notice of Certification and Settlement Approval Hearing or such other date as may be directed by the Court (the "**Opt-out Period**").

OWNERSHIP AND CONTROL OF HISTORICAL RECORDS

13. Provisions as to the ownership and control of documents will be agreed upon as part of the comprehensive settlement agreement to be entered into by the parties.

SOCIAL BENEFITS

14. Upon approval of the comprehensive settlement agreement by the Federal Court, Canada will write to all provincial and territorial Deputy Ministers responsible for child and family services, health, and education, as well as other relevant Deputy Ministers, to encourage them to collaborate in:

    (a) exempting class member claims payouts under this settlement agreement from taxation, the Children's Special Allowance, social assistance payments, post-majority care or other provincial/territorial benefits "claw backs"; and

    (b) ensuring that receipt of any compensation under this settlement shall in no way affect funding received through a Jordan's Principle request, whether pending or approved.

15. Canada shall not in any way consider receipt of compensation under this settlement as a factor in deciding any pending, approved or future requests pursuant to Jordan's Principle.

TAXABILITY

16. It is the intention of the parties that the Settlement Funds, including the interest earned on the Settlement Funds awaiting distribution, will be distributed to class members as compensation, as opposed to "income" subject to taxation. Furthermore, Canada will seek an opinion from the Canada Revenue Agency that compensation received by any class member from the Settlement Funds as well as any interest income on the Settlement Funds awaiting distribution, including any structured payment if applicable, is not "income" for income tax purposes, and

that such amounts are accordingly exempt from taxation. Such opinion will be provided prior to the finalization of the comprehensive settlement agreement.

SUPPORT TO CLASS MEMBERS AND ADDITIONAL COSTS OF THE COMPENSATION PROCESS

17. As part of the comprehensive settlement agreement, the parties will negotiate provisions as to the parameters of culturally sensitive health, information, and other supports to be provided to class members during the claims period, as well as funding for health care professionals to deliver support to class members who suffer or may suffer trauma for the duration of the claims process.

18. The parties agree that provisions as to the funding to the Assembly of First Nations for the provision of assistance to claimants in completing relevant compensation forms will be negotiated by the parties as part of the comprehensive settlement agreement to be entered into by them.

19. Without limitation to the foregoing, Canada will pay for mental health, and cultural and spiritual supports, navigators to promote communications and provide referrals to health services, AFN line liaisons, trustees to manage funds, records to support claimant eligibility from provinces, territories, and agencies, and professional services (taxonomy and actuarial services), and reasonable fees relating to a structured settlement (if applicable) to be agreed. For greater clarity, this agreement shall not be interpreted as an agreement by any party that structured settlements, financial literacy or like programs for adults are required or in order; these items will be the subject of discussion and agreement for the comprehensive settlement agreement.

20. No such amounts will be deducted from the Settlement Funds.

NOTICE AND OTHER ADMINISTRATION FEES

21. Canada will fund reasonable notice and other administration fees involved in carrying out this settlement agreement, including, but not limited to, information and notice to the class members about certification, this settlement and the claims process, as well as third-party administration costs. Details of this provision will be agreed upon as part of the comprehensive settlement agreement to be entered into by the parties.

22. No such amounts will be deducted from the Settlement Funds.

LEGAL FEES

23. Canada will pay reasonable legal fees to class counsel, over and above the Settlement Funds. A disagreement between the parties over legal fees shall not prevent the parties from signing the comprehensive settlement agreement. Canada and class counsel shall participate in mediation if they are unable to agree upon the legal fees, to be presided over by a mediator to be agreed upon by and between Canada and class counsel or, failing agreement, appointed by the Federal Court. In the event that Canada and class counsel are not able to agree upon legal fees during mediation, , fees will be subject to the approval of the Federal Court. Canada shall have standing to make submissions to the Court regarding such fees.

24. No such amounts will be deducted from the Settlement Funds.

PUBLIC APOLOGY

25. Canada will propose to the Office of the Prime Minister that the Prime Minister make a public apology for the discriminatory conduct underlying the class members' claims and the past and ongoing harm it has caused.

DISPUTES

26. The judge case-managing the Consolidated Action shall be seized of and have jurisdiction over any disputes arising as to the interpretation of this agreement in principle.

COMPREHENSIVE SETTLEMENT AGREEMENT

27. The parties shall draft a comprehensive settlement agreement by no later than March 31, 2022. The comprehensive settlement agreement will set out in full detail all aspects of the proposed settlement, including notice to class members, administration of the settlement, the Distribution Protocol, Breakdown of the Settlement Funds, investment of funds, the creation of a *cy près* fund for emergency relief, and all other matters relevant to this settlement.

28. This settlement is conditional upon the CHRT confirming the satisfaction of its Order for compensation and the Compensation Framework Order, as well as the approval by the Federal Court of a final comprehensive settlement agreement to be entered into by the parties.

29. Canada enters into this Agreement in Principle on the condition that an agreement in principle be reached on long-term reform. If this condition is not fulfilled or waived by Canada by March 31, 2022, then the plaintiffs are entitled to take the position that there is no longer agreement

as to the amount of the Settlement Funds, unless such deadline is extended by the parties in writing.

30. This settlement may be signed in counterpart and exchanged by electronic means.

31. The parties agree to draft the present agreement in principle in English. *Les parties conviennent de rédiger la présente entente de principe en anglais.*

Signed at TORONTO, this 29th day of DECEMBER 2021:

CANADA, as represented by the Attorney General of Canada
BY:

Attorney General of Canada
for the defendant

THE PLAINTIFFS, as represented by class counsel
BY:

Sotos LLP/Kugler Kandestin LLP/Miller Titerle + Co.
for the plaintiffs
Xavier Moushoom, Jeremy Meawasige (by his litigation guardian Jonavon Meawasige), Jonavon Joseph Meawasige, and Zacheus Joseph Trout

Nahwegahbow, Corbiere/Fasken LLP/Stuart Wuttke
for the plaintiffs
Assembly of First Nations, Ashley Dawn Bach, Karen Osachoff, Melissa Walterson, Noah Buffalo-Jackson By His Litigation Guardian, Carolyn Buffalo, Carolyn Buffalo, and Dick Eugene Jackson Also Known as Richard Jackson

Date signed December 31, 2021

Court File Nos. T-402-19 / T-141-20 / T-1120-21

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON by his Litigation Guardian, Carolyn Buffalo, CAROLYN BUFFALO, and DICK EUGENE JACKSON also known as RICHARD JACKSON

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF KIM BLANCHETTE
(PHASE I NOTICE AND OPT-OUT - SWORN OCTOBER 16, 2023)

I, Kim Blanchette, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY:

1. I am the Senior Vice President, Reputation, Risk and Corporate Training and Senior Advisor to Settlement Communications, at Believeco:Partners Inc. doing business as Argyle ("Argyle"). Argyle, and I personally, have been involved in the matters that I depose to in this affidavit. As such, have knowledge of the matters to which I hereinafter depose. Where the matters referenced in this affidavit are based on information I have received from others, I have stated the source of the information, and believe such information to be true.

2. This affidavit is sworn in respect to the Plaintiffs' motion for approval of the First Nations Child and Family Services, Jordan's Principle and Trout Class Final Settlement Agreement executed June 30, 2022 (the "Final Settlement Agreement") and the revised motion for approval of said Agreement executed April 19, 2023.

3. Pursuant to the Order of Madam Justice Aylen, dated August 11, 2022, Deloitte LLP was appointed by the Court to act as administrator (the Administrator) for notice, Opt-out and claims implementations in the proposed settlement for these proceedings. Argyle has been engaged by Deloitte as the communications agency to support communications, engagement, and outreach.

4. In the same order dated August 11, 2022, the Court approved the Phase I Notice Plan in this proceeding for the purposes of distributing notice of opt-out and settlement approval

hearing to the class. We have therefore worked in accordance with that Notice Plan.

5. Since August 2022, the Phase I Notice Plan has resulted in:
    a. Social media advertisements that received 14,293,146 impressions, 173,456 clicks, 3,986 base comments and 15,356 post shares;
    b. 4,233 followers of the "First Nations Child and Family Services and Jordan's Principle Class Action" Facebook page; posts on the page have received a total of 268 engagements, 91 comments and 217 shares;
    c. 2,902 calls to the Information Line; and
    d. Sixteen (16) completed Opt-out forms were received by either Argyle (via the online portal) or the Administrator directly.

6. Argyle supported the Administrator's functions in the Phase I Notice Plan (once in 2022 and again in 2023). In August 2022, in accordance with the Notice Plan, and in cooperation with the Administrator, Class Counsel, the Assembly of First Nations and Canada, Argyle:

    a. Developed an Opt-out process including an online and mail-in approach to ensure class members clearly understood the consequences of opting-out and had multiple options to share their intention to Opt-out of the settlement.

    b. Launched a national 1-800 Information Line, staffed with experienced operators with trauma-informed training to aid class members seeking more information about the settlement, their options for opting-out as well as providing connections

to Class Counsel, the Administrator and wellness supports.

c. Placed social media advertisements on Facebook and Instagram focusing on the settlement and Opt-out options as well as directing to the website for additional information.

d. Supported Class Counsel in the development of advertisements for placement on Indigenous news websites as directed in the Notice Plan: *The Windspeaker*, *Mi'kmaq Maliseet Nations News*, *First Nations Drum*, APTN National News.

e. Supported Class Counsel in the placement of print advertisements (on September 1, 2022) as directed in the Notice Plan: *Mi'kmaq Maliseet Nations News*.

f. Created and maintained a "First Nations Child and Family Services and Jordan's Principle Class Action" page on Facebook, to disseminate news and information regarding the Settlement Agreement and Settlement Approval Hearing, which was launched on August 19, 2022.

7. From August 31, 2023, to October 6, 2023 (which will continue until the Settlement Approval Hearing on October 23, 2023), Argyle has provided communications services to individuals, including management of the 1-800 Information Line, responding to enquiries and placing additional social media advertisements to alert potential Class Members about extensions in the Opt-out period.

8. Argyle supported the Administrator functions in the execution of the revised Phase I Notice Plan. In September 2023, in accordance with the revised Notice Plan, and in cooperation with the Administrator, Class Counsel, the Assembly of First Nations and Canada, Argyle:

    a. Updated information and messaging on the Opt-out process including an online and mail-in approach to ensure class members clearly understood the consequences of Opting-out and had multiple options to share their intention to Opt-out of the Settlement.

    b. Continued to manage national 1-800 Information Line, staffed with experienced operators with trauma-informed training to provide assistance to individuals seeking more information about the settlement, their options for opting-out as well as providing connections to Class Counsel, the Administrator and wellness supports.

    c. Placed social media advertisements on Facebook and Instagram focussing on the settlement, the Settlement Approval Hearing, and Opt-out options as well as directing to the website for additional information.

    d. Supported Class Counsel in the development of ads for placement on Indigenous news site websites as directed in the Notice Plan: *The*

Windspeaker, Mi'kmaq Maliseet Nations News, APTN National News.

e. Supported Class Counsel in the placement of print advertisements (on September 1, 2023) as directed in the Notice Plan: *Mi'kmaq Maliseet Nations News*.

f. Updated the "First Nations Child and Family Services and Jordan's Principle Class Action" page on Facebook, to disseminate news and information regarding the Settlement Agreement and Settlement Approval motion Hearing, which was launched on September 1, 2023. Updated the page with new information on the revised Settlement Agreement, the upcoming Settlement Approval Hearing, updates on the Opt-out period, along with continued community management which includes responding to community members' questions and comments on Facebook.

g. The advertisements directed Class Members to the Assembly of First Nations website fnchildcompensation.ca.

h. Developed and launched a dedicated Administrator's website (fnchildclaims.ca) for the Settlement with information on the Settlement Agreement, the Short and Long-Form Notices and Opt-out instructions.

i. Argyle was advised by the Administrator that the Short-Form Notice and the Long-Form Notice were distributed by Class Counsel (Sotos) and the Assembly of First Nations to their respective email distribution lists on September 12, 2023 and September 22, 2023 respectively.

9. Some key metrics and outcomes of these specific activities include:

a. Three (3) social media advertisements in multiple flights starting in August 2022; received 13,828,485 impressions, 169,794 clicks, 3,905 base comments and 15,174 post shares.

b. In total, 4,233 individuals follow the "First Nations Child and Family Services and Jordan's Principle Class Action" Facebook page; posts on the page have received a total of 268 engagements, 91 comments and 217 shares and 2,902 calls to the Information Line.

c. As at October 6, 2023, sixteen (16) completed opt-out forms were received by either Argyle (via the online portal) or the Administrator directly. I have been advised by Mohsen Seddigh of Sotos that all 16 individuals who submitted Opt-out forms have been contacted by Class Counsel (Sotos). The last Opt-out form was received in February 2023.

d. These individuals provided reasons on the opt-out form for opting out. Their reasons suggest that they mistakenly filled out the form in order to receive compensation, despite the several warnings about the opposite effect of opting out.

e. The following are the reasons provided by these individuals (without personal identifying information):

Opt Out #	Reason Cited
1	“Emotional Pain”
2	“Familletoucher”
3	“not sure”
4	“I was in foster care”
5	“Broke my arm in 4 derations”
6	“i am a vitim of residential school both my parents and i was in and out of different foster homes which was not a positive influence inmylife, i was witness to others being sexually abused and othetrs beaten by foster parents as well i was a ictim aswell, and i do not wishthat for any other children.”
7	“I remember as a child, being brought into a different room at a certain time, in North Oyster”
8	“i was in CFS care at as child”
9	“Aged out”
10	“try”

11	[Blank]
12	“Applying First Time”
13	“Applying For The First Time”
14	“Foster Care”
15	“Placement 1988 moi juste l age de 16ans”
16	“I was forced into foster care in 2013, and still in foster care currently.”

10. These metrics span the continuous and uninterrupted execution of both the Notice issued on August 19, 2022, and September 1, 2023 (during approximately 14 months of dissemination):

Required communication	**August 19, 2022 – August 31, 2023 (*estimates)**	**September 1, 2023 – October 6, 2023 (*estimates)**
Completed Opt-out forms	16	None
Social media advertisements	11,790,390 impressions 149,299 clicks 3,347 base comments 13,918 post shares	2,502,756 impressions 24,157 clicks 639 base comments 1,438 post shares
Engagement with the First Nations Child and Family Services and	Engagement over the past year (see date range above): 3,676 followers	Additional engagement since September 1, 2023 (see date range above):

Jordan's Principle Class Action Facebook page	178 engagements 153 shares of posts 79 comments	557 followers 97 engagements 65 shares of posts 26 comments
Calls to the Information Line	2,677	225
Impressions from Indigenous media placement (digital and print)	262,500* (expected performance measures from the tactics)	262,500* (expected performance measures from the tactics)

11. Argyle will continue to monitor the metrics of the Notice Plan.

SWORN BEFORE ME BY Kim Blanchette of Calgary, Alberta, currently in Halifax, Nova Scotia, on October 16, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits
(or as may be)

Mohsen Seddigh

KIM BLANCHETTE

Court File Nos. T-402-19 / T-141-20 / T-1120-21

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON by his Litigation Guardian, Carolyn Buffalo, CAROLYN BUFFALO, and DICK EUGENE JACKSON also known as RICHARD JACKSON

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

FRESH AS AMENDED WRITTEN REPRESENTATIONS
(Motion for Settlement Approval)

October 16, 2023

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OVERVIEW

1. The plaintiffs move for approval of the proposed final settlement agreement dated April 19, 2023, as amended by way of Addendum dated October 10, 2023 ("**FSA**").[1] The defendant, His Majesty the King in Right of Canada ("**Canada**"), represented by the Attorney General of Canada, consents to the motion.

2. In these actions, the plaintiffs claim that:

   (a) Canada chronically underfunded the First Nations Child and Family Services program ("**FNCFS**") on reserves and in the Yukon, and operated it in a discriminatory manner, which systemically incentivized the removal of First Nations children from their families, communities, and cultures; and

   (b) Canada failed to provide non-discriminatory access to essential health and social services, in breach of section 15 of the *Charter* and Jordan's Principle – a legal obligation created to prevent First Nations children from suffering delays, denials, or gaps in receiving essential services contrary to First Nations children's equality rights.

3. Class members suffered a range of harms, including severe and sometimes permanent trauma; cultural alienation; separation from their families and loved ones; and inadequate health and social service care that led to highest levels of adverse impact and suffering.

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[1] Affidavit of Robert Kugler, sworn October 16, 2023 ("**Kugler Affidavi**t"), Exhibits "A" and "B", Second Supplementary Motion Record of the Plaintiffs ("**MR 3**").

4. The FSA provides over $23.34 billion in compensation for those harms – by far the largest settlement in Canadian history and believed to be the third largest settlement in the world.

5. In addition to the amount recovered, the FSA has the following advantages, among others:

(a) its implementation will be fully First Nations-led;

(b) the claims process will be trauma-informed and culturally sensitive, and has been approved in extensive consultations with First Nations stakeholders;

(c) survivors will not be exposed to an adversarial process or the need to submit for an interview or examination, minimizing the risk of re-traumatization;

(d) there are fully-funded supports to help class members navigate the claims process, and to address mental health, cultural, administrative, legal, and financial needs in going through the process;

(e) there are protections against previous predatory practices of non-class counsel, who have attempted to take advantage of class members' lack of sophistication in navigating the claims process;

(f) there is a sizeable *cy-près* fund which will:

(i) enable class members who are not eligible for direct payments to indirectly benefit from the FSA; and

(ii) provide relief to high needs Jordan's Principle class members who are beyond the age of majority;

(g) the income on the principal settlement funds under the FSA is expected to be in the billions of dollars, all of which will be distributed to the class, with no reduction for legal, administrative, or other fees or disbursements;

(h) any funds remaining at the conclusion of the claims period will be used solely for the benefit of the class, and none will revert to the defendant.

6. The FSA also satisfies a compensation order made by the Canadian Human Rights Tribunal ("**CHRT**"), which partially overlaps with these proceedings, and satisfies all of the parties to that proceeding.

7. The FSA is the product of three years of extensive, complex, arm's-length negotiations; outreach, consultations with and directions from First Nations leadership, communities, and stakeholders; and the extensive use of experts throughout to properly tackle the many complexities and sensitivity of the issues involved in these class proceedings.

8. The FSA represents a monumental step toward reconciliation and provides life-changing relief to hundreds of thousands of historically marginalized First Nations youths and families. It is also historic in having been First Nations-led throughout its negotiation, design and, if approved, its implementation.

9. The FSA is fair and reasonable. It should be approved.

PART I – THE FACTS

A. Background

10. The plaintiffs advanced claims for two related categories of unlawful conduct:

(a) Canada operated the FNCFS in a manner that systemically incentivized the removal of First Nations children from their families, communities, and cultures; and

(b) Canada failed to provide non-discriminatory access to essential health and social services, in breach of section 15 of the *Charter* and Jordan's Principle.

11. The claims are made on behalf of nine classes in two proceedings. The different claims, classes, and actions are discussed in more depth below.

B. The Removed Child Claims

12. For decades, Canada underfunded child and family services for First Nations children living on reserve and in the Yukon. In particular, it underfunded supportive prevention services that would allow First Nations children to remain in their homes. Meanwhile, it funded at cost the removal of those children from their families and communities. This created a perverse incentive. Children on reserve and in the Yukon must often be removed from their home to receive public services that are available to children off reserve.[2]

13. This persisted despite the heightened need for such services on reserve due to the inter-generational trauma inflicted on First Nations people by the legacy of the Indian residential schools and the Sixties Scoop. Canada knew of the deficiencies in the FNCFS program for

---

[2] Consolidated Statement of Claim at paras 2-3. See also *First Nations Child and Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indian and Northern Affairs Canada),* 2016 CHRT 2 at para 384.

many years, but took limited and inadequate action to address the problem.[3] Numerous governmental and independent reports were published on the subject, including the 2000 National Policy Review, the 2005 Wen:De reports, and the First Nations component of the periodic Canadian Incidence Study of Reported Child Abuse and Neglect. These reports detail significant inequities in the FNCFS program and the harmful impacts therefrom, including the ongoing overrepresentation of First Nations children in care.[4]

14. The removal of a child from their home causes severe and, in some cases, permanent trauma. It is therefore only used as a last resort for non-Indigenous children. Because of the underfunding of prevention services and the full funding of out-of-home care, however, First Nations children on reserve and in the Yukon have been removed from their homes as a first resort, and not as a last resort. This funding incentive accounts for the staggering overrepresentation of First Nations children in state care.[5]

15. The incentive to remove First Nations children from their homes has caused traumatic and enduring consequences to First Nations children, including the representative plaintiffs. Many of these children already suffer the effects of trauma inflicted by the Crown on their parents, grandparents, and ancestors by Indian residential schools and the Sixties Scoop.[6]

---

[3] Affidavit of Janice Ciavaglia affirmed September 6, 2022 ("**Ciavaglia Affidavit**") at para 8, Motion Record of the Plaintiffs ("**MR 1**"), Tab 8.
[4] Ciavaglia Affidavit at para 8, MR 1, Tab 8.
[5] Consolidated Statement of Claim at para 4.
[6] Consolidated Statement of Claim at para 5.

16. The stories of the representative plaintiffs for the Removed Child Class and Removed Child Family Class, outlined below, are both heartbreaking and illustrative of the significant harm caused to this class.

(i) *Xavier Moushoom*

17. Xavier Moushoom was born in Lac Simon in 1987. He is a member of the Anishinaabe Nation.[7]

18. Both of Mr. Moushoom's parents are Indian residential school survivors. From 1987 to 1995, Mr. Moushoom lived with his mother—who suffered from alcohol abuse—and his brother on the Lac Simon Reserve. Mr. Moushoom's father also battled alcohol abuse problems and was absent for most of his childhood. As a child, Mr. Moushoom spoke Algonquin, practiced fishing and trapping, spent time in the forest to recharge, and learned of his ancestral traditions.[8]

19. In 1996, Mr. Moushoom was removed from his home and placed in out-of-home care in Lac Simon. To this day, he does not know the reason for his apprehension. Mr. Moushoom's brother was also apprehended and placed in a different foster home. Mr. Moushoom was entirely isolated from his family, to great detrimental effect. Without any explanation of why they were separated, Mr. Moushoom often wondered as a child if his family did not want him anymore.[9]

---

[7] Déclaration solennelle de Xavier Moushoom sworn August 23, 2022 ("**Moushoom Declaration**") at para 2, MR 1, Tab 2.
[8] Moushoom Declaration at paras 3-10, MR 1, Tab 2.
[9] Moushoom Declaration at paras 11-13, MR 1, Tab 2.

20. In 1997, Mr. Moushoom was moved to a different foster family outside of his community in Val D'Or. From the age of 9 until 18, Mr. Moushoom was moved from one foster family to another. In total, he lived in fourteen different foster homes in Val D'Or.[10]

21. Mr. Moushoom was rarely granted access to his family. A social worker determined whether he was allowed to see his mother, and Mr. Moushoom recalls begging for visits and needing to prove that he deserved to visit her. As a result of this separation, Mr. Moushoom gradually lost his native Algonquin language, his culture, and his ties to the Lac Simon community.[11]

22. At 18, Mr. Moushoom was forced to leave his foster family because the Crown did not fund post-majority support services for First Nations individuals like Mr. Moushoom. He felt he had no sense of self, no sense of direction, and had no idea how to reintegrate himself into his former community.[12]

23. After staying with his foster family for an additional three months without financial support, Mr. Moushoom returned to live with his mother in Lac Simon. In the years that followed, Mr. Moushoom developed substance abuse problems that he would eventually overcome through his own determination and with the help of his community.[13]

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[10] Moushoom Declaration at paras 14-16, MR 1, Tab 2.
[11] Moushoom Declaration at paras 18-19, MR 1, Tab 2.
[12] Moushoom Declaration at paras 20-22, MR 1, Tab 2.
[13] Moushoom Declaration at paras 23-24, 31, MR 1, Tab 2.

24. Mr. Moushoom's two younger brothers were also placed in foster families outside of Lac Simon. One of his brothers passed away recently without returning to the community or their family, despite Mr. Moushoom's attempts to enable his brother to reunite with them.[14]

(ii) Ashley Dawn Louise Bach

25. Ashley Dawn Louise Bach was born in 1994 in Vancouver, British Columbia. She is a member of the Mishkeegogamang First Nation.[15]

26. Ms. Bach was removed from her mother at birth, and placed in a non-First Nations foster home in Langley, British Columbia. When she was two years old, Mishkeegogamang Fist Nation communicated to the government that they lacked the resources to provide for Ms. Bach's special needs within their community.[16]

27. She was adopted by her foster family at the age of five. She had no access to her First Nations culture or community, and endured racism.[17] Since turning eighteen in 2012, Ms. Bach has attempted to reconnect with her First Nations community, culture, language, and territory, as well as her biological family.[18] However, several of her biological family members passed away while she was sequestered with her adopted family, including her maternal grandmother and one of her uncles.[19]

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[14] Moushoom Declaration at paras 27–29, MR 1, Tab 2.
[15] Affidavit of Ashley Dawn Louise Bach affirmed September 6, 2022 ("**Bach Affidavit**") at para 3, MR 1, Tab 6.
[16] Bach Affidavit at para 4, MR 1, Tab 6.
[17] Bach Affidavit at para 4, MR 1, Tab 6.
[18] Bach Affidavit at para 5, MR 1, Tab 6.
[19] Bach Affidavit at para 5, MR 1, Tab 6.

28. During the course of these proceedings, Ms. Bach discovered that her biological father and several of her aunts and uncles had attempted to adopt her but were denied.[20] She learned that her maternal grandmother had asked to keep in touch with her, so she could be involved in Ms. Bach's life, but this request was never honoured.[21] She also learned that she had been labelled a disabled child with complex needs, and that her First Nation had tried to bring her home, but was unable to do so due to underfunding—a fact they raised repeatedly with the government.[22]

(iii) *Karen Osachoff*

29. Karen Osachoff is a member of Pasqua First Nation in Saskatchewan. She was apprehended from her family in 1982 and adopted by a non-First Nations family in Saskatoon, Saskatchewan.[23]

30. At the age of eleven, Ms. Osachoff began running away from her adoptive home.[24] She spent time on the streets, with other First Nations people; she was re-apprehended by social services multiple times.[25] Neither her adoptive parents, the police, or social services understood the effects of intergenerational trauma that had led to her initial apprehension. Ms. Osachoff was labelled a problem child, and was treated with stricter rules and greater control instead of care, companionship, or access to her community.[26]

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[20] Bach Affidavit at para 17, MR 1, Tab 6.
[21] Bach Affidavit at para 17, MR 1, Tab 6.
[22] Bach Affidavit at para 18, MR 1, Tab 6.
[23] Affidavit of Karen affirmed September 6, 2022 ("**Osachoff Affidavit**") at paras 3-5, MR 1, Tab 7.
[24] Osachoff Affidavit at para 6, MR 1, Tab 7.
[25] Osachoff Affidavit at para 6, MR 1, Tab 7.
[26] Osachoff Affidavit at para 7, MR 1, Tab 7.

31. Ms. Osachoff never returned permanently to her adoptive family. From age eleven to eighteen, Ms. Osachoff was moved between multiple foster homes. She lived intermittently on the street.[27] She drank alcohol and took various drugs as a child to cope with her circumstances, and suffered sexual, mental, physical, and emotional abuse.[28] She did not reconnect with her biological family until she was fifteen, at which point two of her biological brothers had already passed away. She did not learn of two of her brothers or her sister Melissa, whose story is detailed below, until recently.[29]

32. Her relationships with her biological family are strained as a result of the long period of disconnection. Some of them view her as "white" because of her upbringing, and do not fully accept her. The only brother with whom she was close, Sheldon, has since died.[30]

33. At eighteen, Ms. Osachoff aged out of the foster system. She suffered in an ongoing period of darkness until she moved to Coast Salish territory in 1999, at the age of 20, and connected positively with a First Nations community for the first time in her life.[31] With their support, Ms. Osachoff passed her General Education Development course, and went on to obtain Bachelor of Arts and Juris Doctor degrees.[32]

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[27] Osachoff Affidavit at para 8, MR 1, Tab 7.
[28] Osachoff Affidavit at para 12, MR 1, Tab 7.
[29] Osachoff Affidavit at para 9, MR 1, Tab 7.
[30] Osachoff Affidavit at para 11, MR 1, Tab 7.
[31] Osachoff Affidavit at paras 13-14, MR 1, Tab 7.
[32] Osachoff Affidavit at para 14, MR 1, Tab 7.

(iv) Melissa Walterson

34. Melissa Walterson is Karen Osachoff's biological sister. She is a member of the Nisichawayasihk Cree Nation in Manitoba.[33] Ms. Walterson was adopted by a non-First Nations family at birth; she and Ms. Osachoff did not know of each other's existence until 2019.[34] Although Ms. Walterson represents the Removed Child Family Class, her experience as a First Nations child growing up in a non-Indigenous household is relevant. Though she grew up in a generally supportive and functional adoptive family, she suffered discrimination and racism her entire life.[35] At times, she felt she had to reject her First Nations identity and culture to fit in.[36] Ms. Walterson's participation in this action has driven a wedge between her and her adoptive family.[37]

35. Since learning of her sister's existence, Ms. Walterson has kept in regular contact with Ms. Osachoff; when speaking to her, she feels a sense of belonging and a bond that she has missed out on for much of her life.[38] Ms. Walterson will unfortunately never meet a number of her siblings, who passed away before she had a chance to connect with them.[39]

C. The Essential Services Claims

36. For decades, Canada has failed to provide First Nations children with adequate and non-discriminatory access to essential health and social services and products.[40]

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[33] Affidavit of Melissa affirmed September 6, 2022 ("**Walterson Affidavit**") at paras 3-4, MR 1, Tab 5.
[34] Walterson Affidavit at paras 4, 8, MR 1, Tab 5.
[35] Walterson Affidavit at para 9, MR 1, Tab 5.
[36] Walterson Affidavit at para 11, MR 1, Tab 5.
[37] Walterson Affidavit at para 25, MR 1, Tab 5.
[38] Walterson Affidavit at paras 13-14, MR 1, Tab 5.
[39] Walterson Affidavit at para 14, MR 1, Tab 5.
[40] Trout Statement of Claim at paras 37-41.

37. In recent times, this failure has been named Jordan's Principle in the First Nations context, a legal obligation that a government department presented with a request for essential services by a First Nations child must pay for those services before arguing over which level of government (federal, provincial, or territorial) or which department should pay. It is named after Jordan River Anderson, a First Nations child born with complex illnesses. He was medically approved to move to a specialized foster home, but was forced to remain in the hospital while the federal and provincial governments fought over who would fund his in-home care. He died in the hospital, having never gotten an opportunity to go home.[41]

38. Canada has admitted that it is legally obliged to comply with Jordan's Principle; it is a human rights and constitutional duty that carries civil consequences. However, Canada essentially ignored this obligation for decades and denied crucial health and social services and products to many First Nations children.[42]

39. The Jordan's Principle and Trout representative plaintiffs have bravely shared their stories in the hopes that their stories help ensure that present and future governments understand the trauma and suffering that arises from discriminatory health and social services affecting children.

(v) *Jeremy and Jonavon Meawasige*

40. Jeremy Meawasige, by his litigation guardian, Jonavon Meawasige, is a representative plaintiff for the certified Jordan's Principle Class. In his personal capacity, Jonavon

[41] Consolidated Statement of Claim at paras 76-77.
[42] Consolidated Statement of Claim at paras 78-84.

Meawasige also represents the Jordan's Principle Family Class. It is a role he took on from their late mother, Maurina Beadle.[43]

41. Jeremy suffers from multiple disabilities, including hydrocephalus, cerebral palsy, spinal curvature, and autism.[44] He requires total personal care, including bathing, dressing, feeding, and diapering.[45] He must sometimes be restrained for his own safety, as he can become self-abusive.[46] Jeremy's mother, Ms. Beadle, provided for Jeremy without government assistance until she suffered a partially-disabling stroke.[47] Her community, via the Pictou Landing Band Council, rallied to provide funding for Jeremy's care. However, the amount of support required consumed the vast majority of their available healthcare funding.[48] Canada's refusal to provide any additional support, even after a consideration of Jordan's Principle, became the subject of litigation before this Court. The Court found that Canada had violated Jordan's Principle and was obliged to pay for Jeremy's care.[49]

(vi) *Noah Buffalo-Jackson, Carolyn Buffalo, and Dick Eugene Jackson*

42. Noah Buffalo-Jackson and his parents, Carolyn Buffalo and Richard Jackson, are residents of Maskwacis (also known as Hobbema), Alberta. Ms. Buffalo is a member of Montana Cree Nation.[50] Mr. Jackson is a member of Saddle Lake Cree Nation.[51]

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[43] Affidavit of Jonovan Meawasige affirmed September 25, 2023 ("**Meawasige Affidavit**") at para 10, MR 3.
[44] *Pictou Landing Band Council v Canada (Attorney General),* 2013 FC 342 at para 6.
[45] Meawasige Affidavit at para 4, MR 3.
[46] Meawasige Affidavit at para 5, MR 3.
[47] *Pictou Landing Band Council v Canada (Attorney General),* 2013 FC 342 at paras 7-8.
[48] *Pictou Landing Band Council v Canada (Attorney General),* 2013 FC 342 at paras 9, 11.
[49] *Pictou Landing Band Council v Canada (Attorney General),* 2013 FC 342 at paras 124-127.
[50] Affidavit of Carolyn Buffalo affirmed September 6, 2022 ("**Buffalo Affidavit**") at para 2, Supplementary Motion Record of the Plaintiffs ("**MR 2**"), Tab 1.
[51] Buffalo Affidavit at para 7, MR 2, Tab 1.

43. Noah suffers from Spastic Quadriparetic Cerebral Palsy Level 5; it is a chronic condition that requires long-term rehabilitative treatment.[52] One of his doctors characterized his condition as being a four out of five on the scale of "normal" to "catastrophic".[53] Noah requires assistance with all personal care, including eating, dressing, hygiene, and exercise. He is wholly dependent on his parents.[54]

44. Ms. Buffalo and Mr. Jackson struggled to obtain adequate support for Noah from the beginning. Noah was born with a cleft palate. When he was two, his parents took him to a feeding clinic, only to find that he was slowly starving as a result of his inability to eat enough food.[55] Initially, neither the First Nations and Inuit Health Branch nor the Province of Alberta would provide any help; the latter declined due to their residence on reserve.[56] Although Alberta eventually provided funding, for a time Ms. Buffalo and Mr. Jackson were forced to cover the costs for Noah's care themselves.[57]

45. The Buffalo-Jacksons have received little or no support in taking a break from Noah's care. Ms. Buffalo, a lawyer, has watched her peers' practices take off while she struggles to balance her role as both a professional and a caregiver.[58] Unless a family member is willing to help for free, Ms. Buffalo and Mr. Jackson must pay out of pocket whenever they need assistance with Noah's care.[59] There is no daycare suitable for a special needs child on-

[52] Buffalo Affidavit at para 8, MR 2, Tab 1.
[53] Buffalo Affidavit at para 9, MR 2, Tab 1.
[54] Buffalo Affidavit at paras 9-10, MR 2, Tab 1.
[55] Buffalo Affidavit at paras 11-12, MR 2, Tab 1.
[56] Buffalo Affidavit at paras 13-14, MR 2, Tab 1.
[57] Buffalo Affidavit at para 14, MR 2, Tab 1.
[58] Buffalo Affidavit at paras 32-33, MR 2, Tab 1.
[59] Buffalo Affidavit at para 21, MR 2, Tab 1.

reserve or in their area.[60] Although Alberta has sometimes provided supplements when Noah was able to get into a licensed daycare, these payments were temporary.[61] Sometimes they have had to pay Noah's regular babysitter to provide 24-hour care; Alberta would not assist with this cost.[62]

46. At one point, Alberta was willing to pay for a nanny to assist with Noah's care. However, the Buffalo-Jacksons' modest house had no room for a live-in nanny, and neither the federal nor provincial government offered any solution.[63]

47. Noah has also had issues with schooling. Because he lives on reserve, he was denied the funding necessary to support him at the school his brother and sister attended in Ponoka, Alberta.[64] Noah lost the opportunity to go to school with his siblings.[65] Ms. Buffalo and Mr. Jackson instead enrolled Noah at their local school, where Ms. Buffalo believes he received a substandard education given a lack of funding and support for his special needs.[66]

48. Ms. Buffalo understands that if Noah were surrendered into care, his foster parents would receive funding to make their home and vehicle handicapped-accessible, and could access funds for a care aide and respite care.[67] Conversely, despite requests for assistance, the Buffalo-Jacksons were denied any funding to replace or modify their own van, which is no

[60] Buffalo Affidavit at para 23, MR 2, Tab 1.
[61] Buffalo Affidavit at para 24, MR 2, Tab 1.
[62] Buffalo Affidavit at para 23, MR 2, Tab 1.
[63] Buffalo Affidavit at para 26, MR 2, Tab 1.
[64] Buffalo Affidavit at paras 15-16, MR 2, Tab 1.
[65] Buffalo Affidavit at para 15, MR 2, Tab 1.
[66] Buffalo Affidavit at paras 17-18, MR 2, Tab 1.
[67] Buffalo Affidavit at para 28, MR 2, Tab 1.

longer suitable for Noah's needs and causes him discomfort and possible injury each time he travels in it.[68]

49. Ms. Buffalo and Mr. Jackson have refused to place Noah in care, despite the significant and ongoing sacrifices they are forced to make to properly care for him.[69] The Buffalo-Jacksons will soon be forced to move from their home on reserve in order to live in a house that is accessible for him, leaving behind the land and community where their family has lived for generations.[70]

(vii) Zacheus Joseph Trout

50. The Trout Child Class is named after the two late children of representative plaintiff, Zacheus Joseph Trout, of Cross Lake First Nation in Manitoba. Sanaye and Jacob Trout both had Batten disease, a rare genetic neurological disorder that normally begins in early childhood. Batten disease is severe, causing seizures, vision loss, and loss of cognitive function. Left untreated, it is fatal. Treatment for Sanaye and Jacob involved full-time care, including the use of feeding tubes, diapers, formula, and numerous daily injections.[71]

51. Mr. Trout and his wife struggled to obtain adequate care for their children, which was not available on reserve. Each government agency they turned to directed them somewhere else. Their struggle to find help lasted 13 years.[72]

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[68] Buffalo Affidavit at paras 30-31, MR 2, Tab 1.
[69] Buffalo Affidavit at para 27, MR 2, Tab 1.
[70] Buffalo Affidavit at para 29, MR 2, Tab 1.
[71] Affidavit of Zacheus Joseph Trout sworn September 2, 2022 ("**Trout Affidavit**) at paras 4, 9-11, MR 1, Tab 4.
[72] Trout Affidavit at para 8, MR 1, Tab 4.

52. It is difficult to describe the effect this deficiency in services had on Mr. Trout and his family. He refers to it as having an "unspeakable mental and emotional toll".[73] Both Mr. Trout and his wife had to quit their jobs to provide round-the-clock care to their children and took turns to sleep.[74]

53. What little they were provided in assistance was grossly inadequate. For example, Mr. Trout was provided with only six syringes per month for Sanaye, when she needed six injections a day.[75] Similarly, the children were provided only two feeding bags per month, when they required feeding four times a day.[76] Mr. Trout was forced to reuse syringes and feeding bags, causing infections.[77] As no one would provide funding for the specialized beds they required, the children suffered from additional sleep problems, seizures, bouts of pneumonia and respiratory issues.[78] Mr. Trout and his wife had to hold the children at an incline while they were fed, and sometimes the children fell from their beds in the night.[79]

54. Jacob and Sanaye suffered from a lack of adequate services until the end of their short lives. Both passed away by the age of 10.[80]

D. Procedural History

55. On March 4, 2019, Xavier Moushoom commenced a proposed class action with court file number T-402-19, seeking compensation for:

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[73] Trout Affidavit at para 15, MR 1, Tab 4.
[74] Trout Affidavit at para 7, MR 1, Tab 4.
[75] Trout Affidavit at para 9, MR 1, Tab 4.
[76] Trout Affidavit at para 10, MR 1, Tab 4.
[77] Trout Affidavit at paras 9-10, MR 1, Tab 4.
[78] Trout Affidavit at paras 11-13, MR 1, Tab 4.
[79] Trout Affidavit at para 13, MR 1, Tab 4.
[80] Trout Affidavit at para 14, MR 1, Tab 4.

(a) children who suffered discrimination related to the FNCFS since April 1, 1991, and

(b) the discriminatory delivery of essential services and non-compliance with Jordan's Principle since April 1, 1991 (the "**Moushoom Class Action**").

56. Later, Jeremy Meawasige by his Litigation Guardian, Jonavon Joseph Meawasige (and prior to him, their late mother Maurina Beadle), and Jonavon Joseph Meawasige were joined as plaintiffs.[81]

57. On January 28, 2020, the Assembly of First Nations ("**AFN**") and some proposed representative plaintiffs commenced a second proposed class action, with court file number T-141-20, about the same subject matter ("**AFN Class Action**").

58. The proposed representative plaintiffs in the AFN Class Action were later amended to be Ashley Dawn Louise Bach, Karen Osachoff, Melissa Walterson, Noah Buffalo-Jackson by his Litigation Guardian, Carolyn Buffalo, Carolyn Buffalo, and Dick Eugene Jackson also known as Richard Jackson.

59. In 2020, the two groups of plaintiffs agreed to consolidate the Moushoom Class Action and the AFN Class Action to work as a unified front in the best interests of the class. The claims were formally consolidated on July 7, 2021 by Madam Justice St-Louis (collectively, the "**Consolidated Class Action**").[82]

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[81] Affidavit of William Colish affirmed September 2, 2022 ("**Colish Affidavit**") at para 13, MR 1, Tab 9.
[82] Colish Affidavit at para 15, MR 1, Tab 9.

60. For reasons described below, Madam Justice St-Louis bifurcated the case, ordering that claims relating to delays, denials, or gaps in essential services before December 11, 2007 be separately prosecuted, and granting leave to Zacheus Joseph Trout and the AFN to commence an action that separately continued those claims.[83]

61. On July 16, 2021, Mr. Trout and the AFN commenced a proposed class action, with court file number T-1120-21, dealing only with Moushoom claims relating to delays, denials, and gaps in the provision of essential services between April 1, 1991 and December 11, 2007 (the "**Trout Action**").[84]

62. On November 26, 2021, Madam Justice Aylen certified the Consolidated Class Action.[85]

63. Canada opposed the Trout Action, which was set for a contested hearing, until near the end of the negotiations when Canada changed course and Madam Justice Aylen later certified the Trout Action on consent on February 11, 2022.[86]

E. The CHRT Proceeding

64. The Consolidated Class Action partly overlaps with a proceeding before the CHRT.

65. In 2007, the AFN and the First Nations Child and Family Caring Society of Canada (the "**Caring Society**") filed a complaint with the Canadian Human Rights Commission against Canada. The Canadian Human Rights Commission referred it to the CHRT.[87]

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[83] Colish Affidavit at para 16, MR 1, Tab 9.
[84] Colish Affidavit at para 17, MR 1, Tab 9.
[85] Colish Affidavit at para 18, MR 1, Tab 9.
[86] Colish Affidavit at para 19, MR 1, Tab 9.
[87] Colish Affidavit at para 21, MR 1, Tab 9.

66. The complaint made similar allegations to the ones at issue in these class actions, but only on behalf of:

(a) First Nations children removed and placed off-reserve between 2006 and 2022;

(b) First Nations children who faced a denial, delay, or gap in the provision of essential services (i.e. breaches of Jordan's Principle) between 2007 and 2017;[88] and

(c) Some caregiving parents and grandparents of those children.[89]

67. On January 26, 2016, the CHRT rendered its decision on the merits of the complaint. It found that Canada had discriminated against First Nations children and families on reserves and in the Yukon by, amongst others, underfunding the FNCFS and by adopting a prohibitively restrictive interpretation of Jordan's Principle.[90]

68. In September 2019, the CHRT decided that affected First Nations children and their caregiving parents and grandparents should receive human rights compensation.[91] The CHRT subsequently clarified and expanded on its compensation ruling in several related

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[88] See generally: *First Nations Child and Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indian and Northern Affairs Canada),* 2016 CHRT 2; Colish Affidavit at para 23, MR 1, Tab 9

[89] *First Nations Child & Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 39 at paras 245, 250.

[90] *First Nations Child and Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indian and Northern Affairs Canada),* 2016 CHRT 2 at paras 456-467.

[91] *First Nations Child & Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 39.

decisions (collectively, the "**Compensation Decision**").[92] The CHRT retained an ongoing supervisory role with respect to the compensation payments ordered.

69. Canada sought judicial review of the Compensation Decision. In September 2021, the Compensation Decision was upheld by the Federal Court. The Court noted that the CHRT had extensive evidence of Canada's discrimination; the resulting harm experienced by the First Nations children and their families; and Canada's knowledge of that harm.[93]

F. The Settlement Negotiations

70. Starting in 2019, the parties to the class actions engaged in lengthy, extensive, and complex negotiations.

71. Canada always contested the essential services claims of First Nations children and parents before 2007. Canada made it a pre-condition for negotiating the Consolidated Class Action that those claims be severed. That is why those claims were separated out into the Trout Action, and Madam Justice St-Louis' consolidation order expressly preserved Canada's right to contest the certification and merits of the Trout Action.[94]

72. In October 2021, the Court set a timetable for a contested certification hearing in the Trout Action to take place in September 2022.[95]

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[92] *First Nations Child & Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2020 CHRT 7; 2020 CHRT 15; 2020 CHRT 20; 2020 CHRT 36; 2021 CHRT 6.
[93] *Canada (Attorney General) v First Nations Child and Family Caring Society of Canada,* 2021 FC 969 at paras 85, 300.
[94] Order of Madam Justice St-Louis dated July 7, 2021.
[95] Order of Madam Justice Aylen dated October 18, 2021.

73. In the interim, from November 2020 to September 2021, the parties to the Consolidated Class Action and the Caring Society engaged in mediation in accordance with the Federal Court Guidelines for Aboriginal Law Proceedings. The Honourable Leonard Mandamin acted as mediator. The negotiations covered not only compensation for certain classes in the Consolidated Class Action, but also long-term reform.[96] The parties were far apart and unable to reach an agreement despite a year of mediation.[97]

74. In November 2021, the parties entered into negotiations outside of the Federal Court mediation process. The Honourable Murray Sinclair acted as chair of the negotiations. The objective of these intensive negotiations was to reach a comprehensive settlement for all classes in the Consolidated Class Action (and, near the end of the negotiations, the Trout Action), and to resolve outstanding issues related to the Compensation Decision.[98]

75. Canada insisted that a settlement of the class action be conditional on agreement on the long-term reform of the FNCFS program,[99] a matter involving various non-parties in these proceedings who were parties in the CHRT proceedings, and the CHRT itself. The compensation proposals relating to the various classes of survivors were also presented to the Caring Society and the other parties to the CHRT proceeding, the Chiefs of Ontario, and Nishnawbe Aski Nation, with significant opportunity for consultation and discussion. Numerous meetings occurred among various parties to the Class Action and the CHRT proceedings in furtherance of the objective of reaching a global resolution.[100]

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[96] Colish Affidavit at para 26, MR 1, Tab 9.
[97] Colish Affidavit at para 29, MR 1, Tab 9.
[98] Colish Affidavit at para 30, MR 1, Tab 9.
[99] Agreement in Principle at para 29, Exhibit K to the Kugler Affidavit, MR 3.
[100] Colish Affidavit at para 30, MR 1, Tab 9.

76. On December 31, 2021, after well over a year of intensive mediation and negotiations, the parties reached an agreement in principle ("**AIP**") for a global resolution.[101] A separate agreement in principle was concluded on long-term reform, which is not part of these proceedings or this motion.[102]

77. The AIP on compensation set out the principal terms of settlement and formed the basis of the settlement. It established key commitments by the parties, including a $20 billion settlement amount in consideration of the release of Canada of all claims contemplated by these class actions and the CHRT's Compensation Decision.[103]

78. The parties engaged in an additional six months of intensive negotiations to craft a comprehensive settlement agreement consistent with the objective of designing a trauma-informed, culturally safe claims process through which to deliver compensation to survivors of Canada's discrimination.[104] On June 30, 2022, the final settlement agreement was finalized and executed by all parties ("**First FSA**").[105]

79. Throughout the negotiations for the First FSA, the parties were able to fully develop and voice their positions through vigorous debate. The representative plaintiffs were repeatedly consulted and asked to provide input on the negotiations.

80. Class counsel retained Dr. Lucyna M. Lach of McGill University to head a multi-disciplinary group of experts to develop a methodology for objectively assessing harms

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[101] Colish Affidavit at paras 24-30, 49-50, MR 1, Tab 9.
[102] Colish Affidavit at para 49, MR 1, Tab 9.
[103] Colish Affidavit at para 49, MR 1, Tab 9.
[104] Colish Affidavit at para 51, MR 1, Tab 9.
[105] Final Signed Settlement Agreement with Schedules dated June 30, 2022 ("**First FSA**"), Exhibit K to the Colish Affidavit, MR 1, Tab 9.

suffered by the Jordan's Principle and Trout Classes. The proposed assessment framework, which is subject to piloting and testing prior to implementation, seeks to rank the impact of the discrimination on claimants based on objective factors, eliminating the need for in-person interviews or examinations as part of the claims process.[106]

81. The AFN recruited a number of First Nations experts who have on-the-ground expertise in the delivery of essential services to First Nations individuals, as well as in measurement of health and wellness from First Nations' perspectives. The AFN engaged this "Circle of Experts" to ensure that the methodology is First Nations-led. The AFN Circle of Experts met a number of times. The opinions expressed by this Circle of Experts later informed the approach to the Jordan's Principle method that is in the process of being piloted.[107]

82. The AFN engaged in extensive consultation by providing ongoing updates on the status of the negotiations and the substance of the settlement across all of its regions. AFN internal and external legal counsel, along with key AFN team members, presented the draft First FSA and received feedback and comment on the compensation amount and structure. The regions generally expressed support for the First FSA and the importance of distributing compensation to individuals as soon as possible.[108]

83. Each of the representative plaintiffs fully supported the First FSA, particularly because of:

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[106]Report dated September 6, 2022 ("**Lach Report**"), Exhibit A to the Affidavit of Dr. Lucyna Lach sworn September 6, 2022 ("**Lach Affidavit**), MR 1, Tab 10; Ciavaglia Affidavit at para 37, MR 1, Tab 8.
[107] Ciavaglia Affidavit at paras 37, 39-43, MR 1, Tab 8.
[108] Ciavaglia Affidavit at paras 12-18, MR 1, Tab 8.

(a) the ability for class members to receive payments promptly, rather than after a lengthy litigation process;

(b) the trauma-informed and culturally competent claims process;

(c) the principle of proportionality, by which class members who suffered greater harms will receive higher compensation; and

(d) the decision to prioritize compensation to child class claimants.[109]

G. The First Settlement

84. Canada insisted that the First FSA settle all litigation. Thus, it was conditional on the CHRT granting an order finding that the settlement satisfied its Compensation Decision.[110]

85. In September 2022, the AFN and Canada jointly sought the CHRT's approval of the First FSA as satisfying the CHRT's compensation orders.[111]

86. Only two parties opposed the joint motion: the Caring Society and the Canadian Human Rights Commission. One took no position, and all First Nations parties supported the motion.[112]

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[109] Osachoff Affidavit at paras 33-38, MR 1, Tab 7; Walterson Affidavit at paras 33-43, MR 1, Tab 5; Affidavit of Dick Eugene Jackson, also known as Richard Jackson, affirmed September 7, 2022 ("**Jackson Affidavit**") at paras 14-24, MR 2, Tab 2; Buffalo Affidavit at paras 50-57, MR 2, Tab 1; Bach Affidavit at paras 31-43, MR 1, Tab 6; Trout Affidavit at paras 26-30, MR 1, Tab 4; Meawasige Affidavit at para 28, MR 3.
[110] Kugler Affidavit at para 9, MR 3.
[111] Kugler Affidavit at para 10, MR 3.
[112] Kugler Affidavit at para 11, MR 3.

87. The CHRT heard the motion and did not make an order from the bench. [113] Therefore, the settlement approval hearing scheduled before this Court the following week was vacated.[114]

88. On December 20, 2022, the CHRT released its reasons on the joint motion.[115]

89. The CHRT stated that the First FSA substantially satisfied the Compensation Decision. However, it did not mirror the Compensation Decision in four respects:

(a) The CHRT clarified that its Compensation Decision covered First Nation children ordinarily living on a reserve who were voluntarily sent by their caregivers to stay with non-family ("**kith**") off-reserve when child welfare authorities were involved;

(b) The CHRT concluded that the estates of deceased parents and grandparents of affected children had to be compensated;

(c) The CHRT concluded that parents and grandparents who had more than one child affected should be paid multiples of the payments awarded by the CHRT – for example, if a parent had four children taken into care, each of the four children was entitled to $40,000, while the parent was entitled to $160,000; and

[113] Kugler Affidavit at para 12, MR 3.
[114] Kugler Affidavit at para 13, MR 3.
[115] *First Nations Child & Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2022 CHRT 41.

(d) The CHRT requested more certainty and clarity on the parties' approach to Jordan's Principle and a longer opt-out period.[116]

90. The CHRT concluded that it could not grant the order requested unless the settlement fully overlapped with the Compensation Decision.[117]

91. The CHRT's decision meant the end of the First FSA.[118]

H. The Revised Settlement

92. Class counsel were cognizant that, without consent of all parties to the CHRT proceeding, the CHRT might reject any future settlement – re-traumatizing the representative plaintiffs and class members. Thus, any revised settlement hinged on obtaining the consensus of not only all the parties to these class proceedings, but also all the parties to the CHRT proceeding, who owed no obligation to this Court, nor had any legal or fiduciary duties to the representative plaintiffs or to the class.[119]

93. Significant uncertainty followed. From that point until the FSA was executed in April 2023, it was never certain that an agreement could be reached.[120]

94. In February 2023, the parties to these proceedings and the Caring Society met in Ottawa to probe the possibility of addressing the concerns raised by the CHRT.[121] A few dozen

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[116] Kugler Affidavit at para 17, MR 3; *First Nations Child & Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2022 CHRT 41.
[117] Kugler Affidavit at para 16, MR 3
[118] Kugler Affidavit at para 18, MR 3.
[119] Kugler Affidavit at para 19, MR 3.
[120] Kugler Affidavit at para 22, MR 3.
[121] Kugler Affidavit at para 24, MR 3.

rounds of intensive negotiations followed, both in-person and remote, both plenary and bilateral, in various locations.[122]

95. On April 19, 2023, the parties resolved the major outstanding issues and executed the FSA. Concurrently, the parties to the CHRT proceedings signed minutes of settlement to govern their obligations with respect to the FSA and made a renewed motion to the CHRT.[123]

96. It is the revised settlement agreement – the FSA – that is before the Court for approval.

97. The FSA adds nearly $3 billion to address the CHRT's concerns with the First FSA.

98. The plaintiffs and class counsel refused to take any existing settlement funds from some class members to satisfy the CHRT's concerns for others. Therefore, all of the previously budgeted settlement amounts are retained. The only difference is that additional funds were added.[124] Thus, the FSA retains the structure and features of the First FSA that the CHRT called "outstanding".[125]

99. Since the parties are not seeking approval of the First FSA, these written submissions do not address its terms in any depth. If the Court is interested, a more detailed comparative analysis is provided in the supporting affidavit evidence on this motion.[126]

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[122] Kugler Affidavit at para 26, MR 3.
[123] Kugler Affidavit at para 94, MR 3.
[124] Kugler Affidavit at para 31, MR 3.
[125] *First Nations Child & Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2022 CHRT 41 at para 1.
[126] See Kugler Affidavit at paras 29-93, MR 3; Affidavit of Amber Potts affirmed October 16, 2023 ("**Potts Affidavit**") at paras 21 and 25, MR 3.

I. The Terms of the Revised Settlement

100. The provisions of the FSA are complex and nuanced. A general overview of the agreement and its key elements is below.

(i) The Preamble

101. The preamble to the FSA confirms that the parties' desire to:

(a) ensure that the claims process is administered in an expeditious, cost-effective, user-friendly, culturally sensitive, and trauma-informed manner;

(b) safeguard the best interests of class members;

(c) minimize the administrative burden on class members;

(d) ensure culturally informed and trauma-informed mental health and cultural support services, as well as navigational assistance are available to class members; and

(e) provide for some class members to receive direct compensation, while ensuring that those who do not receive direct benefits may indirectly benefit from the FSA.[127]

(ii) The Total Settlement Funds

102. Under the FSA, Canada is required to pay **$23,343,940,000 ($23.34394 billion)** to settle the claims of the class.[128]

[127] Final Settlement Agreement entered April 17, 2023 ("**FSA**"), preamble at T(ii)-(iii), U, MR 3.
[128] FSA, arts 1.01 *sub nom* "Settlement Funds", "Implementation Date", 4.01(2), MR 3.

103. Additionally, billions of dollars of interest and income will accrue on these settlement funds, all of which will go to the benefit of the class only.[129] None will ever revert to Canada:

> No amount or earned interest that remains after the distribution of the Settlement Funds will revert to Canada. Such amounts will instead be further distributed in accordance with the distribution protocol designed and approved for the Claims Process.[130]

(iii) *The Classes*

104. The settlement reflected in the FSA comprises nine classes. The simplified definitions of each are as follows:

(a) "**Removed Child Class**" means all First Nations individuals who:

(i) while under the age of majority, and

(ii) while they, or at least one of their caregivers were ordinarily resident on reserve or living in the Yukon,

(iii) were removed from their home by child welfare authorities or voluntarily placed into care between April 1, 1991 and March 31, 2022; and

(iv) whose placement was funded by Indigenous Services Canada ("**ISC**").[131]

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[129] Kugler Affidavit at para 68 and Exhibit E, MR 3.
[130] FSA, art 19.03, MR 3.
[131] FSA, art 1.01 *sub nom* "Removed Child Class", MR 3.

(b) "**Removed Child Family Class**" means all brothers, sisters, mothers, fathers, grandmothers, and grandfathers of a member of the Removed Child Class at the time of removal.[132]

(c) "**Essential Service Class**" means all First Nations individuals who, between December 12, 2007 and November 2, 2017, did not receive from Canada an essential service (whether by denial or service gap) relating to a confirmed need, or whose receipt of an essential service relating to a confirmed need was delayed by Canada on grounds including a lack of funding or jurisdiction, or as a result of a service gap or jurisdictional dispute.[133]

(d) "**Jordan's Principle Class**" means all members of the Essential Service Class who experienced the highest level of impact (including pain, suffering or harm of the worst kind).[134]

(e) "**Jordan's Principle Family Class**" means all brothers, sisters, mothers, fathers, grandmothers or grandfathers of a member of the Jordan's Principle Class at the time of the delay, denial or service gap.[135]

(f) "**Trout Child Class**" means all First Nations individuals who, between April 1, 1991 and December 11, 2007, did not receive from Canada an essential service (whether by denial or service gap) relating to a confirmed need, or whose receipt of an essential service relating to a confirmed need was delayed by Canada on

[132] FSA, art 1.01 *sub nom* "Removed Child Family Class", MR 3.
[133] FSA, art 1.01 *sub nom* "Essential Service Class", MR 3.
[134] FSA, art 1.01 *sub nom* "Jordan's Principle Class", MR 3.
[135] FSA, art 1.01 *sub nom* "Jordan's Principle Family Class", MR 3.

grounds such as a lack of funding or jurisdiction, or a result of a service gap or jurisdictional dispute.[136]

(g) "**Trout Family Class**" means the brothers, sisters, mothers, fathers, grandmothers or grandfathers of a member of the Trout Child Class at the time of the delay, denial or service gap.[137]

(h) "**Kith Child Class**" means First Nations Children placed with an unpaid non-family caregiver off-reserve during the Removed Child Class Period at a time when a child welfare authority was involved in the First Nations Child's case.[138]

(i) "**Kith Family Class**" means the caregiving parents or, in the absence of caregiving parents, the caregiving grandparents of an Approved Kith Child Class Member who was in a placement between January 1, 2006 and March 31, 2022.[139]

105. For the Family Classes, caregiving parents and caregiving grandparents of members of the Removed Child Class or the Kith Child Class may be entitled to direct compensation. Similarly, caregiving parents or caregiving grandparents of members of the Jordan's Principle Class and the Trout Child Class may be entitled to direct compensation where the parent or grandparent themselves suffered the impugned harm.[140]

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[136] FSA, art 1.01 *sub nom* "Trout Child Class", MR 3.
[137] FSA, art 1.01 *sub nom* "Trout Family Class", MR 3.
[138] FSA, art 1.01 *sub nom* "Kith Child Class", MR 3.
[139] FSA, art 1.01 *sub nom* "Kith Family Class", MR 3.
[140] FSA, art 6.09, MR 3.

106. The FSA defines "caregiving parents" and "caregiving grandparents" broadly and flexibly. Foster parents are excluded.[141] The FSA defines "First Nations" broadly and flexibly. It captures the nuances and specific circumstances of members of different classes.[142]

(iv) *The Budgets for Each Class*

107. The $23.34 billion in settlement funds was budgeted amongst the classes based on class size estimates. The budgets include the following:

(a) $7.25 billion to the Removed Child Class;[143]

(b) $5.75 billion to the Removed Child Family Class;[144]

(c) $997 million for any multiplications of base compensation owed to members of the Removed Child Family Class;[145]

(d) $3 billion to the Essential Service Class and Jordan's Principle Class;[146]

(e) $2 billion to the Trout Child Class;[147]

(f) $2 billion to the Jordan's Principle Family Class and the Trout Family Class;[148]

(g) $600 million to Kith Child Class;[149]

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[141] FSA, art 1.01 *sub nom* "Caregiving Grandparent", "Caregiving Parent", MR 3.
[142] FSA, art 1.01 *sub nom* "First Nations", MR 3.
[143] FSA, art 6.03(5), MR 3
[144] FSA, art 6.04(12), MR 3.
[145] FSA, art 6.06(6), MR 3.
[146] FSA, art 6.08(8), MR 3
[147] FSA, art 6.08(9), MR 3.
[148] FSA, art 6.09(8), MR 3.
[149] FSA, art 7.02(5), MR 3.

(h) $702 million to Kith Family Class;[150] and

(i) $1 billion to an Interest Reserve Fund.[151]

(v) General Principles for Payments

108. The FSA sets out criteria for entitlement to a payout and the principles for determining the amount that each class member may receive.[152]

109. The general mechanism contemplated by the FSA is the payment of a base compensation amount, plus the possibility of enhanced payment for those individuals who were most impacted by Canada's discriminatory conduct.

110. The payments are structured on the principles of proportionality and fairness amongst the class members. The representative plaintiffs advocated strongly for this approach.[153] Compensation is proportionate to the impact on the individual, so that similarly harmed class members receive similar treatment under the FSA. It is unacceptable to treat all class members the same or dilute settlement funds among an overly broad group.

(vi) Payments for Removal Claims

111. Eligible Removed Child Class members receive a base compensation of $40,000.[154] That amount may be augmented on account of:

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[150] FSA, art 7.04(2), MR 3.
[151] FSA, art 6.15(4), MR 3.
[152] FSA, arts 6, 7, MR 3.
[153] Colish Affidavit at para 63, MR 1, Tab 9; Kugler affidavit at paras 75, 126, MR 3.
[154] FSA, art 6.03(2), MR 3.

(a) interest;[155]

(b) time value (to create parity amongst class members accessing payouts over the course of a claims process expected to last two decades);[156] and

(c) enhancement factors,[157] further detailed below.

112. Eligible Removed Child Family Class members receive a base compensation of $40,000 (in some cases, multiplied by the number of affected children[158]), with no enhancement.[159] Compensation is available for up to two caregiving parents or grandparents per child, with conflicts amongst purported caregivers to be resolved based on a pre-defined priority list.[160] The priority rules relieve child class members from making potentially fraught choices about which family members will be compensated. Caregivers who have committed sexual or serious physical abuse resulting in the Removed Child Class Member's removal are not eligible for compensation in relation to that child.[161]

(vii) *Payments for Essential Services Claims*

113. Members of the Essential Service Class, Jordan's Principle Class, and Trout Child Class will be eligible if they had a confirmed need for an essential service and:[162]

(a) they requested the essential service and it was denied;

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[155] FSA, art 6.15, MR 3.
[156] FSA, art 6.17, MR 3.
[157] FSA, art 6.03(3), MR 3.
[158] FSA, art 6.06, MR 3.
[159] FSA, art 6.04(9), MR 3.
[160] FSA, art 6.05, MR 3.
[161] FSA, art 6.04(4), MR 3.
[162] FSA, art 1.01 *sub nom* "Essential Service Class", "Trout Child Class", MR 3.

(b) they requested the essential service and faced an unreasonable delay; or

(c) there was a service gap such that the essential service was not available,[163] even if the essential service was not requested.[164]

114. Claimants will be required to provide supporting documtation that the essential service was recommended by a professional at the relevant time.[165] The definition of "professional" includes community nurses and other professionals available in remote communities who nevertheless have relevant expertise, to reflect the fact that not all First Nations have easy access to family physicians or specialists.[166]

115. As a result of the class size uncertainty, the parties elected to ensure that claimants who suffered greater harms be defined as the Jordan's Principle Class in order to ensure that they will receive *at least* $40,000, while those who suffered lesser harms will receive *at most* $40,000.[167] Funds will be distributed first to those who suffered greater harms, with the remainder to be distributed *pro rata* to those who suffered lesser harms.[168]

116. Compensation for Trout Child Class Members will be determined on the same principles as the Essential Service Class (and Jordan's Principle Class) members, but with a base compensation rate of $20,000—i.e. those who suffered greater harms will receive *at least* $20,000, while those who suffered lesser harms will receive *at most* $20,000.[169] The lower

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[163] FSA, art 1.01 *sub nom* "Service Gap", MR 3.
[164] FSA, art 1.01 *sub nom* "Delay", MR 3.
[165] Colish Affidavit at para 87, MR 1, Tab 9.
[166] FSA, art 1.01 *sub nom* "Professional", MR 3.
[167] FSA, art 6.08(11)-(15), MR 3.
[168] Colish Affidavit at paras 82-83, MR 1, Tab 9; FSA, art 6.08(12), MR 3.
[169] Colish Affidavit at para 85, MR 1, Tab 9.

amount for Trout Child Class claimants reflects the heightened litigation risk for the Trout Action, which advanced novel essential service claims that had never been advanced in a Canadian class action before, had no overlap with the Compensation Decision or any other CHRT decision, and completely predated Jordan's Principle.[170]

117. For the child classes, the determination of a claimant's compensation category (greater or lesser harm) will be based on objective factors, assessed through a three part process:

(a) a culturally-sensitive claims form;

(b) a confirmation from a professional that the claimant needed an identified essential service; and

(c) a First Nations-centred, expert-designed questionnaire, referred to as the Impact Assessment Questionnaire in the expert report of Dr. Lach filed with this motion.[171]

118. Enhancement factors regarding the Jordan's Principle Class and Trout Child Class will also be determined with the input of experts in the field.[172] Such factors can include illness, disability, or impairment, amongst others.[173]

119. Members of the Jordan's Principle Family Class who themselves suffered the highest level of impact receive a base compensation of $40,000. Objective factors will be employed to determine whether caregiving parents or grandparents suffered harm themselves as a result

[170] Ciavaglia Affidavit at para 92, MR 1, Tab 8.
[171] Lach Report, MR 1, Tab 10.
[172] Ciavaglia Affidavit at para 94, MR 1, Tab 8.
[173] Lach Report, MR 1, Tab 10.

of the delay, denial, or gap in their child's access to the identified essential service.[174] Subsequent to the FSA, Dr. Lach developed a related methodology specific to the assessment of direct impact on caregiving parents or caregiving grandparents:

> [I]mpact that caregiving parents and grandparents experienced is related to, but not directly associated with (in a causal-linear kind of way), the impact that their children experienced. The lived experience of caregiving parents and grandparents varies based on their individual, family, and community context. Some may have been living in the context of severe deprivation, while others had access to resources that helped them to manage their child's needs. Therefore, one cannot directly align the impact of unmet needs on the child with harm that caregivers endured. Impact on caregivers requires a more nuanced and separate evaluation that takes into consideration their individual, family, and community level strengths and abilities. Not doing so would contribute to pathologizing, diminishing, and dismissing the strengths and abilities of First Nations caregiving contexts at the individual, family, and community levels.[175]

120. Other members of the various family classes may not receive direct compensation, but will benefit from the *cy-près* fund, described below.[176]

(viii) *Payments for Kith Claims*

121. The base compensation entitlement of the Kith Child Class is the same as that available to the Removed Child Class ($40,000), but no enhancement payments are available to this class.[177]

122. The Kith Family Class similarly traces the method applicable to certain Removed Child Family Class Members, with certain nuances. For example, the eligibility of a Kith Family

[174] Lach Report, MR 1, Tab 10.
[175] Lach Report at p 2, MR 1, Tab 10.
[176] FSA, arts 6.04(1)-(2), MR 3.
[177] FSA, art 7.02, MR 3.

Class Member is contingent on the existence of an Approved Kith Child[178] in light of the unique evidentiary complexities of this class.[179]

(ix) Removed Child Enhancement Factors

123. For the Removed Child Class, the plaintiffs and the experts identified objective factors that aggravated the harm suffered, such that the class members deserve enhanced compensation. Those factors include the following:

(a) the age at which the Removed Child Class Member was removed for the first time;

(b) the total number of years that a Removed Child Class Member spent in care;

(c) the age of a Removed Child Class Member at the time they exited the child welfare system;

(d) whether a Removed Child Class Member was removed to receive an essential service relating to a confirmed need;

(e) whether the Removed Child Class Member was removed from a northern or remote community; and

(f) the number of spells in care for a Removed Child Class Member and/or, if it can be determined, the number of out-of-home placements applicable to a Removed Child Class Member who spent more than one year in care.[180]

[178] FSA, art 7.03(1), MR 3.
[179] FSA, art 7.01(8), MR 3.
[180] FSA, art 6.03(3), MR 3.

124. The plaintiffs' experts identified each of these factors as a reasonable objective proxy for the level of harm that the class member suffered.[181]

125. The FSA does not specify how much in enhancement payments class members receive with one or multiple enhancement factors. Once the available budget, the number of class members eligible to receive enhanced payments and the relative weight for each factor are determined, a dollar value will be assigned to each factor and distributions will be made to eligible class members.[182] In the interim, class counsel developed an initial approach to enhancement payments based on information extrapolated from the Trocmé Gorham Report (described below under Part I(J)), which is subject to consultation with experts and ultimately the approval of the Settlement Implementation Committee ("**SIC**").

126. Based on class counsel's initial approach, Removed Children who meet the criteria for multiple enhancement factors may receive total payouts of approximately $230,000.[183]

(x) *Claims Period*

127. Individuals who have reached the age of majority are entitled to file claims for up to three years following the implementation of the claims process.[184] This lengthy period is intended to maximize the number of eligible class members who will claim compensation.

128. The FSA is also responsive to the fact that many class members are still minors, most notably members of the Removed Child Class, Jordan's Principle Class, and Kith Child

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[181] Colish Affidavit at para 67, MR 1, Tab 9.
[182] Colish Affidavit at para 69, MR 1, Tab 9.
[183] Kugler Affidavit at para 89, MR 3.
[184] FSA, art 1.01 *sub nom* "Claims Deadline", MR 3; Addendum to the FSA dated October 10, 2023 ("**Addendum**"), art 4, MR 3.

Class. Therefore, the claims period for these individuals is linked to when each such child attains the age of majority.[185] Age of majority is defined in the FSA as the governing provincial age for each claimant.[186] The claims period will remain open for individuals to claim for three years following the date on which they reach the age of majority.

129. In exceptional circumstances, the FSA provides flexibility for a claim to be filed and paid prior to an individual reaching the age of majority to assist with end of life wishes.[187]

130. The claims deadline may be extended where an individual was unable to claim due to extenuating personal circumstances, recognizing the need for flexibility for this class.[188]

131. The above lengthy claim periods, coupled with the robust and dynamic Phase II Notice Plan submitted for the Court's approval immediately after this motion, will ensure that all class members, adult or minor, have ample fair opportunity to submit their claims and benefit from the FSA if eligible.

(xi) *The Cy-près Fund*

132. The FSA establishes a First Nations-led *cy-près* fund as a mechanism to benefit those class members who do not receive direct compensation under the FSA, as well as certain high needs Jordan's Principle Class members.[189] This is achieved through two funds within the *cy-près* fund as follows.[190]

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[185] FSA, art 1.01 *sub nom* "Claims Deadline", MR 3; Addendum, art 4, MR 3.
[186] Schedule C to the FSA, MR 3.
[187] FSA, art 6.10, MR 3.
[188] FSA, art 1 *sub nom* "Claims Deadline" (c), MR 3.
[189] FSA, art 8, MR 3.
[190] Kugler Affidavit at paras 76-77, MR 3.

133. The *cy-près* fund will be endowed with:

(a) $50 million for supports to class members who did not receive direct compensation, funded by the interest earned on the settlement funds;[191] and

(b) $90 million for post-majority supports, funded by allocated settlement funds.[192]

134. Supports for those who do not receive compensation are being designed with the assistance of experts. They include:

(a) family and community unification, reunification, connection and reconnection for youth in care and formerly in care;

(b) reducing the costs associated with travel and accommodations to visit community and family, including for First Nations youth in care and formerly in care, support person(s) or family members; and

(c) facilitating access to culture-based, community-based, and healing-based programs, services, and activities to class members and the children of First Nations parents who experienced a delay, denial, or service gap in the receipt of an essential service.[193]

135. The funds for post-majority supports will provide additional supports to high needs Jordan's Principle Class Members until the age of 26 necessary to ensure their personal

[191] FSA, art 8.02(1), MR 3.
[192] FSA, art 8.03(1), MR 3.
[193] FSA, art 7.01(5)(a), MR 3.

dignity and well-being.[194] As such, this fund is geared towards a particularly vulnerable segment of the class with high needs.

(xii) Estates

136. The FSA contains detailed provisions regarding deceased class members.

137. The estates of the following deceased child class members may be eligible to claim the payouts that those class members would have been entitled to receive, as if they were alive:

(a) deceased Removed Child Class Members;

(b) deceased Essential Service Class Members;

(c) deceased Jordan's Principle Class Members;

(d) deceased Trout Child Class Members; and

(e) deceased Kith Child Class Members.[195]

138. Amongst the above, the deceased class members whose claims overlap with the CHRT's Compensation Decision fall within a rigid regime that ensures settlement funds go to their estates.[196] A more flexible regime, with the permissive language "may", governs the balance of the above child class members. Regarding this latter group, without the requirement to satisfy the Compensation Decision, the parties had flexibility to ensure actuarial responsibility and to leave flexibility in implementation in the event that living

[194] FSA, art 8.03(3), MR 3.
[195] FSA, art 14.02, MR 3.
[196] Kugler Affidavit at paras 58-61, MR 3.

class members prove to be more in need of larger payouts than the estates of deceased class members.

139. The FSA envisions two categories of estates of the deceased child class members:

(a) executor or administrator has been appointed: where an estate executor or estate administrator of an eligible deceased class member has been appointed under the *Indian Act* or under the governing provincial or territorial legislation, the executor or administrator of the estate can claim for the estate under the FSA;[197] or

(b) no executor or administrator has been appointed: where no estate executor or administrator has been appointed, a priority list of recipients consistent with the priority level of heirs under the *Indian Act* applies rather than compelling formal estate administration.[198] This priority list includes spouse, child, grandchild, parent, sibling, grandparent of the deceased class member in that order.[199]

140. The estates of certain deceased caregiving parents or caregiving grandparents have an entitlement to a payout under the FSA as follows:

(a) Removed Child Family Class Members (of a Child placed off-Reserve with non-Family as of and after January 1, 2006);

(b) Jordan's Principle Family Class Members; and

[197] FSA, art 14.04, MR 3.
[198] FSA, art 14.05, MR 3.
[199] FSA, art 14.05(3), MR 3.

(c) Kith Family Class Members.[200]

141. The reasoning behind the recognition of direct payment to such estates is the CHRT's Compensation Decision. The CHRT identified the direct payouts to these estates as one of its reasons for rejecting the First FSA.[201] However, the actual payout to such estates of deceased caregivers is made *pro rata* to the living children or grandchildren of those class members, regardless of whether the children or grandchildren were class members.[202]

142. For the balance of deceased family class members, the FSA preserves the First Nations-informed approach in the First FSA: funds are generally preserved to go towards higher payouts to more significantly harmed living child class members rather than the estates of deceased caregivers[203] or their immediate children or grandchildren who may not be class members.[204] The exception to this child-first principle is that the FSA allows certain family class estates to be paid if the eligible class member's complete claim was submitted to the Administrator prior to death.[205]

(xiii) *No Encroachment on Settlement Funds*

143. To ensure that all of the $23.34 billion settlement funds go toward payouts to class members, the parties have negotiated that Canada will be responsible to pay, over and

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[200] FSA, art 14.03(1), MR 3.
[201] *First Nations Child & Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2022 CHRT 41 at para 332.
[202] FSA, art 14.03(2), MR 3.
[203] Kugler Affidavit at para 58, MR 3.
[204] FSA, art 14.03(2), MR 3.
[205] FSA, art 14.03(3), MR 3.

above the settlement funds, the costs of notice to the class, class counsel fees, health and wellness supports, claims process supports, administration, and implementation costs.[206]

(xiv) Legal Fees Separable

144. Class counsel's legal fees are to be paid by Canada at an amount to be decided by the Court, with no fees to be deducted from the settlement funds.[207] These fees are inclusive of ongoing legal support for claimants throughout the claims process.[208]

145. Throughout the negotiations on the FSA, it was critical to the plaintiffs and class counsel that legal fees be negotiated separately from (and subsequent to) the FSA, to avoid the amount of legal fees having any effect on negotiations concerning compensation for the class. As such, legal fees are severable. Therefore, the FSA and the compensation provided thereunder will survive irrespective of outcome on legal fees.[209]

146. The question of fees is the subject of a separate contested motion before the Court after this settlement approval motion, conditional on the approval of the FSA.

(xv) Taxability and Social Benefits

147. Canada has further committed to make best efforts to ensure that payouts received under the FSA will not impact any social benefits or assistance that class members would otherwise receive from Canada or from a province or territory.[210] Additionally, Canada has

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[206] FSA, art 3.04, MR 3; Gideon Affidavit at paras 13-14, MR 3; Colish Affidavit at paras 98-102, MR 1, Tab 9.
[207] FSA, art 17.01, MR 3; Colish Affidavit at paras 123-124, MR 1, Tab 9.
[208] FSA, art 17.02, MR 3.
[209] FSA, art 17.01, MR 3; Colish Affidavit at paras 123-124, MR 1, Tab 9.
[210] FSA, art 10.03(1), MR 3.

committed to making best efforts to ensure that compensation paid through the claims process will not be considered income for tax purposes.[211]

(xvi) Interest

148. Given the length of time over which the settlement will be administered, a substantial amount of the settlement funds will be invested in accordance with the guidance of an Investment Committee (comprised of an independent investment professional and individuals with relevant board experience regarding the management of funds) and actuaries.[212] The Investment Committee must adhere to the Investment Committee Guiding Principles, and is supervised by the SIC, which in turn is supervised by the Court.[213]

149. Initial actuarial estimates indicate that if the settlement funds were fully invested today in bonds issued by the Government of Canada, with a mixture of durations, they would be expected to generate investment returns of approximately 3.5%-4.5% per year on average, which would equate to a return of $815-1,050 million based on the initial 12-month investment period for the full settlement funds of over $23.34 billion.[214]

150. It is intended that throughout the lifetime of the claims process, the settlement funds will accrue significant gains. The entirety of the interest and income gained upon the principal invested will be directed to class members.[215]

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[211] FSA, art 10.03(2), MR 3. See also Gideon Affidavit at paras 19-20, MR 3.
[212] FSA, art 12.04, MR 3.
[213] Schedule G to the FSA, MR 3.
[214] Kugler Affidavit, Exhibit E, MR 3.
[215] FSA, art 6.10, MR 3.

(xvii) Oversight Over Administration

151. The administrator will provide ongoing reporting with respect to the implementation of the FSA and on any systemic issues relating to the implementation or the claims process with a view to addressing such issues.[216] An independent SIC and, ultimately, the Court will have ongoing oversight with respect to the implementation of the FSA.[217]

152. The SIC is First Nation-led and will consist of members of the First Nations community, as well as a lawyer appointed by the AFN, and two lawyers appointed by class counsel.[218]

153. The SIC's mandate is to implement the FSA in the best interests of the entire class.[219] It will oversee the administration process and address systemic issues that may arise. This oversight role is crucial to the successful implementation of a claims process that is trauma-informed, expeditious, and culturally appropriate.[220]

154. The SIC will allow for flexibility in the claims process and will be able to respond to systemic issues. It can engage experts in trauma, community relations, and health and social services, amongst others, to provide advice on the implementation of the settlement, if required.[221] It will also be responsible for bringing motions or protocols before the Court to adjust the claims process, as needed, in response to systemic issues that may arise.[222]

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[216] FSA, art 3.02, MR 3.
[217] FSA, art 12, MR 3.
[218] FSA, art 12.01, MR 3.
[219] FSA, art 12.01(18), MR 3.
[220] FSA, arts 3.02(3), 5(3), MR 3.
[221] FSA, art 12.03(1)(k), MR 3.
[222] FSA, arts 12.03(1)(e)-(f), 12.03(2), MR 3.

155. The SIC will be in place throughout the claims period, which will last approximately 20 years following the approval of the FSA.

(xviii) Supports to Class Members

156. The FSA provides substantial supports for class members participating in the Claims Process, all of which is to be funded by Canada at no cost to the class.[223] These supports will be funded based on the evolving needs of the class, which will all be adapted to include innovative, First Nations-led initiatives.[224] At all times, a phone line (Hope for Wellness Line) will be made available to provide a culturally-safe, youth specific support that would provide counselling services for youth and young adult class members and to refer them to post-majority care services when appropriate.[225]

157. These supports can be grouped into two broad categories.

158. First, mental wellness, trauma, and cultural supports: In an effort to ensure that the full breadth of necessary supports would be included in Canada's funding obligation, in February of 2022 a group comprised of participants from the AFN, AFN class counsel, Moushoom class counsel, and Canada along with relevant experts, was formed to draft a framework for supports available to claimants.[226] These efforts eventually culminated in Schedule I to the FSA, the "Framework for Supports for Claimants Throughout the Claims Process" ("**Supports Framework**").[227] The principles governing these supports are amply detailed in Schedule I, which recognizes "the need to provide trauma-informed, culturally

[223] FSA, art 9(5), MR 3.
[224] FSA art 9(4), MR 3.
[225] FSA art 9(3), MR 3.
[226] Colish Affidavit at paras 99-100, MR 1, Tab 9.
[227] Schedule "C" to the FSA, MR 3.

safe, and accessible health and cultural supports to class members as they navigate the compensation process, as well as supports they may require following the claims process and over the course of their lives".[228] The Supports Framework outlines the holistic wellness supports that will be made available to claimants. These supports are significant in scope, and generally include: (i) service coordination and a care teams approach for supports to claimants; (ii) the bolstering of the existing network of health and cultural supports; (iii) the provision of access to mental counselling to all class members; and (iv) support enhancement for either the Hope for Wellness Help Line or the establishment of a new dedicated phone line.[229]

159. With respect to the service coordination and care teams approach, this will include coordinated, seamless access to service and supports wherever possible, addressing administrative, financial literacy and health and culture supports depending on class members needs, to be provided in a culturally appropriate and trauma informed manner.[230]

160. Second, navigational supports during the claims process: These supports fall within the responsibilities of the Administrator to provide to the class members. The FSA defines them as including:

(a) assistance with the filling out and submission of claims forms;

(b) assistance with obtaining supporting documentation;

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[228] Schedule I to the FSA, MR 3.
[229] Schedule C to the FSA *sub nom* "Components", MR 3.
[230] Schedule I to the FSA, MR 3.

(c) assistance with appeals to the Third-Party Assessor;

(d) reviewing claims forms and supporting documentation; and

(e) determining a claimant's eligibility for compensation in the class.[231]

161. As detailed in the supporting Affidavit of Dean Janvier, the Administrator has been in the process of developing these supports in consultation with the parties and First Nations stakeholders in anticipation of the commencement of the claims process.[232] The parties and the Administrator are working to ensure that these supports are in place when the first claims process opens.[233]

162. In addition, the FSA provides for financial literacy and investment options to enable class members to preserve their compensation, and reduce vulnerability to financial predators.[234] These supports are crucial given the vulnerability of the class members. Therefore, class counsel and the plaintiffs have dedicated a great deal of attention to ensuring that each class member has the opportunity to be protected from financial exploitation. One example of such options is structured settlements to allow class members who may not feel comfortable managing the funds on their own or who may feel vulnerable to financial exploitation, to choose to receive periodic payments over time with interest, backed by a 100% guarantee by a registered Canadian life insurance company. Structured settlements

[231] FSA, art 3.02(1)(j), MR 3.
[232] Affidavit of Dean Janvier, affirmed October 12, 2023 ("**Janvier Affidavit**") at paras 5-14, MR 3.
[233] Janvier Affidavit at para 12, MR 3.
[234] FSA, art 6.14, MR 3; Schedule I to the FSA, MR 3.

are common in personal injury cases involving persons with disabilities. However, this would be the first case to use a structured settlement in a class action.[235]

(xix) Public Apology

163. The FSA contemplates Canada proposing to the Office of the Prime Minister that the Prime Minister make a public apology for the discriminatory conduct at the heart of the matter, and for the past and ongoing harm it has caused.[236]

(xx) Administrator

164. The Federal Court appointed Deloitte LLP ("**Administrator**") as the administrator of the proposed settlement.[237] The duties of the Administrator include:

(a) developing and implementing systems, forms, guidelines and procedures for the processing of claims and addressing appeals;

(b) developing procedures for the payment of compensation;

(c) receiving settlement funds from the Trust;

(d) ensuring appropriate staffing;

(e) ensuring First Nations participation and a trauma-informed approach;

(f) accounting for its activities;

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[235] Kugler Affidavit at paras 88-89, MR 3.
[236] FSA, art 24, MR 3.
[237] FSA, art 3.01, MR 3.

(g) addressing request of claimants; and

(h) regular reporting.[238]

165. In carrying out its duties, the Administrator is governed by certain principles, including ensuring that the claims process is cost-effective, user-friendly, culturally sensitive, trauma-informed, and non-traumatizing to class members. The Administrator must ensure quality assurance processes are documented, comply with service standards established by the plaintiffs, and comply with other duties or responsibilities as directed by the Court.[239]

166. Since its appointment, the Administrator has collaborated extensively and intensively with the parties in developing the various complex components of the implementation of the FSA, including the claims process. Broadly speaking, the areas of focus to date have fallen into two categories:

(a) communications, administration of notice, and opt-out; and

(b) claims process implementation, including:

(i) administration of the claims process; and

(ii) supports to class members as they navigate the claims process, including:

(A) trauma, health, and mental wellness support; and

[238] FSA, art 3.02(1), MR 3.
[239] FSA, art 3.01(2), MR 3.

(B) claims support, such as assisting class members to complete and submit claims forms and in obtaining supporting documentation.[240]

167. The extensive work undertaken and the complex nature of the various tasks make a detailed discussion difficult. At class counsel's request, Deloitte partners Joelle Gott and Dean Janvier have prepared two affidavits providing the Court with an update on the various tasks thus far at hand and the status of the implementation efforts underway.[241]

(xxi) *Notice to the Class*

168. The notice plan for the first phase of notice, which relates to certification, opt-out and the settlement approval hearing, was approved by the Court on August 11, 2022.[242] The form of notice (including opt-out form) and notice plan received the Court's approval on June 24 and August 11, 2022, respectively.[243]

169. Implementation of the notice plan began on August 19, 2022, in accordance with the Court's order.[244] Pursuant to the plan:

(a) a notice website and Facebook page were made available;

(b) a paid Instagram and Facebook campaign was launched;[245]

(c) class counsel and AFN websites were updated to include the approved notices;

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[240] Affidavit of Joelle Gott sworn October 12, 2023 ("**Gott Affidavit**") at para 6, MR 3.
[241] See generally Gott Affidavit and Janvier Affidavit, MR 3.
[242] Order of Madam Justice Aylen dated June 24, 2022.
[243] Colish Affidavit at paras 106-107, MR 1, Tab 9.
[244] Colish Affidavit at paras 110-111, MR 1, Tab 9.
[245] Colish Affidavit at para 119, MR 1, Tab 9.

(d) class counsel and the AFN sent mass emails to all individuals who had signed up on their respective websites for case updates;

(e) notices have been published in all but one of the specified Indigenous news outlets;[246] and

(f) the AFN distributed the notices to all First Nations communities across the country.[247]

170. The dissemination of notice continued uninterrupted during the months that followed until the Court recently approved on August 16, 2023 revised notices providing details of the present settlement approval hearing and the FSA.

171. Since then and pursuant to the previously approved phase I notice plan, the revised notices have continued to be disseminated to the class.[248] The statistics regarding the reach of notice, within the digital channels where tracking is possible (as opposed to, for instance, print media), are as follows:[249]

Required communication	**August 19, 2022 – August 31, 2023 (*estimates)**	**September 1, 2023 – October 6, 2023 (*estimates)**
Social media advertisements	11,790,390 impressions 149,299 clicks 3,347 base comments 13,918 post shares	2,502,756 impressions 24,157 clicks 639 base comments 1,438 post shares

[246] Colish Affidavit at para 114, MR 1, Tab 9.
[247] Colish Affidavit at para 111, MR 1, Tab 9.
[248] Affidavit of Kim Blanchette, sworn October 16, 2023 ("**Blanchette Affidavit**") at para 5, MR 3.
[249] Blanchette Affidavit at para 10, MR 3.

Engagement with the First Nations Child and Family Services and Jordan's Principle Class Action Facebook page	Engagement over the past year (see date range above): 3,676 followers 178 engagements 153 shares of posts 79 comments	Additional engagement since September 1, 2023 (see date range above): 557 followers 97 engagements 65 shares of posts 26 comments
Calls to the Information Line	2,677	225
Impressions from Indigenous media placement (digital and print)	262,500* (expected performance measures from the tactics)	262,500* (expected performance measures from the tactics)

(xxii) Opt-Outs

172. This class action has had the longest known opt-out period in any Canadian class action: 14 months.[250]

173. It appears, however, that nobody has opted out of the class. Sixteen opt-out forms have been received.[251] The Administrator and/or class counsel have contacted the opt-out claimants to ensure that their desire to be excluded is genuine and not out of error.[252] Based on the reasons provided, all opt-outs generally appear to be in error, with the class members thinking that they need to provide an opt-out form to receive compensation. One individual intended to opt-out but did not appear to meet the class definition.[253]

[250] Kugler Affidavit at paras 80-85, MR 3.
[251] Colish Affidavit at para 120, MR 1, Tab 9. Blanchette Affidavit at para 9, MR 3.
[252] Colish Affidavit at para 121, MR 1, Tab 9.
[253] See details in Blanchette Affidavit at para 9, MR 3.

(xxiii) Work Required to Implement the Settlement

174. The FSA is the culmination of approximately three years of collaboration and intensive negotiation among the parties. Since executing the FSA on April 19, 2023, the parties and the Administrator have been engaged in intensive work on several fronts to address the complexities involved in implementing the FSA.

175. Given the First Nations-led nature of these proceedings, one of the key components of the efforts of class counsel and the parties has been geared towards adequate community consultation through the AFN. Consultation, however, is time-consuming and not necessarily compatible with hard deadlines in all instances.[254] The claims process needs to be submitted to consultation through the AFN's regions to ensure that community views are heard and considered before the claims process is submitted to the Court for review and approval:

> This consultation with the regions should be granted appropriate time and flexibility to ensure that it is meaningful. Therefore, the AFN does not view hard deadlines for the claims process, whether imposed by the parties or the Court, to be advisable. The AFN is committed, and has significant motivation, to distribute compensation to our people as soon as possible.[255]

176. The plaintiffs are scheduled to provide the Court with a detailed update on implementation during the hearing week of October 23, 2023, so those details will not be repeated here.

[254] Potts Affidavit at para 39, MR 3.
[255] Potts Affidavit at para 40, MR 3.

(xxiv) Addendum

177. During the course of the work done since April 19, 2023 when the FSA was executed, the parties became aware of four focussed corrections or clarifications that needed to be made to the FSA. The parties therefore executed an addendum to the FSA on October 10, 2023.[256]

178. The four amendments include: two clarifications to the Kith Child Class entitlements regarding interest and the inclusion of the Yukon and exclusion of the Northwest Territories, consistent with the balance of these class proceedings.[257] Two claims process-related amendments to create flexibility on when financial investment advice and options are provided to eligible claimants to maximize their use of the options presented to them,[258] and the start date of the first claims process to ensure all elements of the claims process are in place before the class members' three-year claim period starts running.[259]

J. The Class Size Estimates

179. To assess the reasonableness of a settlement, the parties required estimates of the size of each class. In some instances, class size estimates were difficult to produce given the dearth of direct data available in certain circumstances. However, ultimately, all parties were satisfied that the estimates were sufficient to allow for an informed decision on whether the total settlement funds would provide for a fair and reasonable settlement.[260]

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[256] Kugler Affidavit at paras 138-140, MR 3.
[257] Addendum, arts 1-2, MR 3.
[258] Addendum, art 3, MR 3.
[259] Addendum, art 4, MR 3.
[260] Colish Affidavit at paras 7-9, MR 1, Tab 9. Kugler Affidavit at paras 46 and 49, MR 3.

180. Since the Compensation Decision, some reports were authored on the scope of the decision, including reports by the Parliamentary Budget Officer in February 2021 and April 2022,[261] and a January 2022 report by the University of Toronto and McGill, prepared for Indigenous Services Canada ("**ISC**").[262]

181. Class counsel commissioned an independent expert opinion on the size of the Removed Child Class by Professor Nico Trocmé in collaboration with actuary, Peter Gorham (the "**Trocmé Gorham Report**").[263] The Trocmé Gorham Report was originally completed in January 2021; estimates were updated in February 2022 to extend the class period to March 31, 2022, the agreed upon end of the class period for the Removed Child Class and the Removed Child Family Class.[264]

182. The Trocmé Gorham Report relied on direct data available from ISC on funded child removals. The experts used educated assumptions to fill in gaps and corrected inaccuracies as necessary. The final estimate for the Removed Child Class was roughly 116,000 class members, over the class period of April 1, 1991 to March 31, 2022.[265]

183. Estimates for the Jordan's Principle Class and Trout Child Class proved more difficult because:

(a) the nature and scope of Canada's Jordan's Principle service program (where some data exists) has evolved since its inception, evolving from a way to address

[261] Exhibit D to the Colish Affidavit, MR 1, Tab 9.
[262] Exhibit G to the Colish Affidavit, MR 1, Tab 9.
[263] Exhibit E to the Colish Affidavit, MR 1, Tab 9.
[264] Exhibit F to the Colish Affidavit, MR 1, Tab 9.
[265] Colish Affidavit at para 35, MR 1, Tab 9.

jurisdictional disputes to a more holistic, child-first principle grounded in the *Charter* rights of First Nations children; and

(b) there is little or no data on needed essential services for the vast majority of the class period, as the concept of "Jordan's Principle" did not exist until 2005, and was not tracked until 2017.[266]

184. Under the FSA, eligibility criteria for these classes will be determined by the plaintiffs subject to the Court's approval.[267]

185. The parties were able to roughly estimate the Jordan's Principle Class and Trout Child Class size by extrapolating from more recently collected data relating to services requested under Jordan's Principle service delivery program, gathered prior to the pandemic in early 2020.[268] The estimates were adjusted to account for possible duplication in requests—*i.e.*, a single child with multiple, separate requests—or overlap between group and individual requests.[269] The resulting estimates are 65,000 class members for the Jordan's Principle Class, and roughly extrapolated (based on years only) to 104,000 for the Trout Child Class.[270]

186. The Kith Child Class was equally challenging to estimate. The best available evidence, which all parties, including the Caring Society, relied on suggested that there would be

[266] Colish Affidavit at para 46, MR 1, Tab 9.
[267] Colish Affidavit at paras 47, MR 1, Tab 9.
[268] Colish Affidavit at paras 41-42, MR 1, Tab 9.
[269] Colish Affidavit at para 42, MR 1, Tab 9.
[270] Colish Affidavit at paras 44-45, MR 1, Tab 9.

approximately 15,000 such children between April 1, 1991 and March 31, 2022.[271] The CHRT found this number reliable enough to satisfy its Compensation Decision.[272]

187. There was no direct data available for the Family Classes. However, the 2021 Parliamentary Report estimated that First Nations children live with an average of roughly 1.5 biological parents, or grandparents if parents are absent.[273] This data was used to estimate the Family Class size. The Kith Family Class only applies to the caregiving parents or caregiving grandparents of Kith Child Class Members in a placement during the time period of 2006 through 2022.[274]

K. The CHRT is Satisfied

188. After signing the FSA, the parties collaborated on a new joint motion for orders required under the FSA to the effect that the FSA, if approved by this Court, fully satisfies the CHRT's Compensation Decision. The CHRT granted that order by a letter decision dated July 26, 2023 and full reasons dated September 26, 2023.[275]

189. As such, the FSA is fully and unconditionally before the Court for consideration for approval.

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[271] Kugler Affidavit at para 46, MR 3.
[272] *First Nations Child and Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2023 CHRT 44 at para 83.
[273] Exhibit G to the Colish Affidavit, MR 1, Tab 9.
[274] Kugler Affidavit at para 49, MR 3.
[275] Kugler Affidavit at paras 95-96, Exhibit H and I, MR 3.

PART II – ISSUES

190. There are two issues to be decided on this motion:

(a) Should the FSA be approved as fair and reasonable?

(b) Should some of the representative plaintiffs receive honoraria?

PART III – SUBMISSIONS

A. Legal Principles Governing Settlement Approval

191. Under Rule 334.29 of the *Federal Court Rules*,[276] class proceedings may only be settled with the approval of a judge. The test is whether the settlement is fair and reasonable and in the best interests of the class as a whole.[277]

192. The standard is not "perfection", and the Court does not have the power to modify or alter the terms of a proposed settlement; rather, the settlement must be considered as a whole, and the Court must accept or reject it on that basis.[278] In *Ford*,[279] Justice Cumming stated:

> In general terms, a court must be assured that the settlement secures appropriate consideration for the class in return for the surrender of litigation rights against the defendants. However, the court must balance the need to scrutinize the settlement against the recognition that there may be a number of possible outcomes within a "zone or range of reasonableness":
>
> > ... all settlements are the product of compromise and a process of give and take and settlements rarely give all parties exactly what they want. Fairness is not a standard of perfection. Reasonableness allows for a range of possible resolutions. A less than perfect settlement may be in the best interests of those affected by it when

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[276] *Federal Court Rules*, SOR/98-106.
[277] *Merlo v Canada*, 2017 FC 533 at para 16.
[278] *Tk'emlúps te Secwepemc First Nation v Canada*, 2021 FC 988 at para 37.
[279] *Ford v F Hoffman-La Roche Ltd*, 2005 CanLII 8751 (Ont Sup Ct) at para 115.

> compared to the alternative of the risks and costs of litigation. [citations omitted]

193. To reject a settlement, the Court must conclude that the settlement does not fall within this zone or range of reasonable outcomes.[280] As the Court stated in *McLean*:[281]

> Reasonableness does not dictate a single possible outcome so long as the settlement falls within the zone. Not every provision must meet the test of reasonableness - some will, some will not. This result is inherent in the negotiation and compromises of a settlement. As discussed by Justice Shore in *Riddle* at paragraph 33, the settlement must be looked at as a whole and the alternatives of no agreement must also be factored into the analysis…

194. The focus is on the interests of the class as a whole. Individual class members' interests should not be assessed in isolation.[282] In assessing the fairness and reasonableness of the proposed settlement, the court considers the following non-exhaustive list of factors:[283]

(a) the likelihood of recovery or likelihood of success;

(b) the amount and nature of discovery, evidence or investigation;

(c) the number of objectors and nature of objections;

(d) the presence of arm's length bargaining and the absence of collusion;

(e) the information conveying to the court the dynamics of, and the positions taken by, the parties during negotiations;

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[280] *Tataskweyak Cree Nation v Canada (Attorney General)*, 2021 FC 1415 at para 63.
[281] *McLean v Canada*, 2019 FC 1075 at para 77.
[282] *Tk'emlúps te Secwepemc First Nation v Canada*, 2021 FC 988 at para 39.
[283] *McLean v Canada*, 2019 FC 1075 at paras 66-67.

(f) communications with class members during litigation; and

(g) the recommendation and experience of counsel.[284]

195. Each factor is discussed below. Taken together, they support the conclusion that the FSA is fair, reasonable, and in the best interests of the Class.

B. Likelihood of Success at Trial

196. Despite the Compensation Decision, these proceedings are fraught with risk and uncertainty. Canada has filed an appeal of the judicial review decision upholding the Compensation Decision. In the absence of a settlement, the judicial review of the CHRT proceedings alone could make its way to the Supreme Court of Canada. The minority of class members who are covered by the Compensation Decision's baseline of compensation risk the loss of the CHRT's compensation award. The larger majority of the class would likewise experience protracted and difficult litigation but for the FSA.

197. The certainty of a settlement resolving the proceedings, combined with the monumental compensation amount, is preferable to the risks associated with continuing to defend the Compensation Decision at the Federal Court of Appeal or to proceed with litigating the class action through to a trial.

198. If compelled to litigate, like many First Nations class proceedings, the plaintiffs face evidentiary hurdles in proving historical or semi-historical wrongs.[285] Many harms were

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[284] *Tk'emlúps te Secwepemc First Nation v Canada*, 2021 FC 988 at para 38; *Tataskweyak Cree Nation v Canada (Attorney General)*, 2021 FC 1415 at para 64.
[285] *Tk'emlúps te Secwepemc First Nation v Canada*, 2021 FC 988 at para 44; *Tataskweyak Cree Nation v Canada (Attorney General)*, 2021 FC 1415 at para 66.

suffered decades ago, while the now-adult class members were children. In the case of more recent discrimination, the class members are still minors, and face the difficulties in gathering evidence from minors. More importantly, trying the case on its merits carries a significant risk of re-traumatization, as plaintiffs would be forced to testify in support of their claims.[286] If aggregated damages are not awarded, virtually the entire class would be exposed to that re-traumatization risk, which the FSA expressly avoids.[287]

199. Even if successful on the merits at trial, there is no guarantee that any damages awarded by the Court would exceed $23.34 billion.

200. Members of the Trout Class and Trout Family Class face more uncertainty given that the Trout Action is based upon Canada's discrimination *prior* to the recognition of Jordan's Principle by the House of Commons in 2007. Similarly, members of the Removed Child Class and the Removed Child Family Class for the period from 1991 to 2005 were excluded from the CHRT proceedings and thus not entitled to compensation under the Compensation Decision. Likewise, members of the Removed Child Class and the Removed Child Family Class who were apprehended from their families but placed within their communities have no overlap with the CHRT and need to litigate all their claims from scratch. If tried on the merits, these classes face evidentiary burdens and novel claims risks resulting in less compensation than what would be available to them under the FSA.

201. The FSA enables the establishment of a claims process that avoids any confrontation by Canada of any claimant. That is the very opposite of our adversarial trial system. This is

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[286] *McLean v Canada*, 2019 FC 1075 at para 83; *Tataskweyak Cree Nation v Canada (Attorney General)*, 2021 FC 1415 at para 67.
[287] Potts Affidavit at para 32, MR 3.

an advantage that cannot be underestimated in a case involving First Nations children and young adults who have experienced trauma. This is also an advantage that is generally unavailable if a matter is litigated, as courts must allow defendants to challenge claims made by plaintiffs.

C. Investigation and Evidence

202. Although the CHRT proceedings involved a more limited group of complainants over a shorter time period, the work done in those proceedings enabled negotiations with a wealth of knowledge about the case. This combination of thorough pre-litigation investigation and significant remaining evidentiary hurdles supports the settlement.[288]

D. Terms and Conditions

203. The terms and conditions of the FSA, summarized above, are comprehensive, fair, and meet the plaintiffs' objectives, namely to:

(a) ensure proportionality of compensation based on objective proxies for harm;

(b) ensure that the settlement favoured the children who suffered harm;

(c) ensure a trauma-informed and culturally sensitive process;

(d) avoid any need for the interview or examination of class members in order for them to advance a claim;

(e) create an accessible claims process;

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[288] *McLean v Canada*, 2019 FC 1075 at paras 97-99.

(f) provide comprehensive supports throughout the claims process; and

(g) ensure all settlement funds and income on them are directed to class members and their families.[289]

204. The scope and amount involved in this settlement cannot be overstated. The $23.34 billion settlement amount far outstrips any class action settlement known in Canada in any context. It is more than four times the amount of compensation that was delivered under Indian Residential Schools Settlement ("**IRSS**").[290] The scope of the settlement is also vast, as life-changing compensation will be delivered to hundreds of thousands of survivors of Canada's discrimination. The individual amounts of compensation will have life-changing impacts for many of the most vulnerable and marginalized First Nations survivors of FNCFS and those deprived of timely access to essential health and social services.

205. Many of the terms most important to class members would be impossible to obtain through litigation, particularly regarding trauma minimization and safeguards to ensure all settlement funds go directly to class members without any reversion to the defendant.

206. On the first point, the FSA was negotiated to reduce the risk of negative impacts to class members in the claims process. The implementation of previous class action settlements has resulted in First Nations individuals experiencing many negative impacts on their well-being.[291] A fundamental lesson learned is that in class action proceedings addressing historical wrongs to First Nations, the process must be designed to avoid re-traumatization.

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[289] Colish Affidavit at para 51, MR 1, Tab 9.
[290] Colish Affidavit at para 53, MR 1, Tab 9.
[291] Potts Affidavit at para 10, MR 3.

In particular, the experiences of survivors in the Independent Assessment Process under the IRSS has resulted in significant criticism for re-victimizing Indian residential school survivors in the claims process.[292]

207. As the Court has noted, if compensation is paid in a manner that minimizes re-traumatization, it may also help to bring closure to a painful past, the value of which cannot be underestimated.[293] The parties' intentions in this regard are enshrined in the wording of the FSA. Specific safeguards include, amongst others:

(a) the Administrator must consider its duties in a trauma-informed manner;[294]

(b) the claims process must be trauma-informed and non-traumatizing to class members, including a guarantee that none of the child classes will be required to submit to an interview, examination, or other form of *viva voce* evidence taking;[295]

(c) enhanced payments will be based on objective factors and data available from ISC wherever possible, to minimize the potential trauma of having to provide supporting documentation in support of a claim;[296]

(d) the Administrator must presume claimants are acting honestly and in good faith, and draw all reasonable inferences in favour of class members;[297]

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[292] *Tk'emlúps te Secwepemc First Nation v Canada*, 2021 FC 988, citing *Fontaine v Canada (Attorney General),* 2018 ONSC 103 at para 202.
[293] *Tk'emlúps te Secwepemc First Nation v Canada*, 2021 FC 988 at para 63.
[294] FSA, art 3.02(2), MR 3.
[295] FSA, arts 5.01(2), 7.01(2), MR 3.
[296] FSA, art 6.02(3), MR 3.
[297] FSA, arts 5.01(4)-(5), MR 3.

(e) provisions regarding the *cy-près* fund recognize that its objective is the provision of culturally sensitive and trauma-informed benefits to members of the class who would be ineligible for direct compensation;[298] and

(f) substantial supports are provided to the class throughout the claims process, at no charge to the class members, including mental health, cultural supports, administrative and financial literacy supports, and trained navigators who will promote communications and provide referrals to health services and assistance with the claims process.[299]

208. Many of the above unique features of the FSA are not achievable through a litigated outcome. They have the strong support of First Nations leadership, expressed in the following words in a unanimous resolution of the First Nations Chiefs in Assembly:

> Support the principles on which the FSA is built, including taking a trauma-informed approach, employing objective and non-invasive criteria, and ensuring a First Nations-driven and culturally-informed approach to compensating individuals.[300]

209. On the second point, the FSA was drafted to ensure all settlement funds are available for the benefit of the class. Class counsel's fees are dealt with separately, over and above the FSA, and are paid directly by Canada with the Court's approval, and not out of the settlement funds. This ensures that the amount of the fees would not affect the settlement amount—a factor previously cited by this Court in support of settlement approval.[301]

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[298] FSA, art 8.02(2), MR 3.
[299] FSA, art 9, MR 3.
[300] Resolution no. 28/2022, Exhibit A to the Potts Affidavit, MR 3.
[301] *Tk'emlúps te Secwepemc First Nation v Canada*, 2021 FC 988 at para 51; *Tataskweyak Cree Nation v Canada (Attorney General)*, 2021 FC 1415 at para 75.

Finally, legal fees are severable, meaning the question of legal fees will have no impact on the FSA:

> The Court's decision on Class Counsel's fees will have no effect on the implementation of this Agreement. If the Court refuses to approve the fees of Class Counsel, the remainder of the provisions of this Agreement will remain in full force and effect and in no way will be affected, impaired or invalidated.[302]

210. Class counsel and the plaintiffs made every effort to ensure that claimants will be able to navigate the claims process without the assistance of outside counsel, to ensure they will receive the full value of their compensation funds without deducting any legal fees. It is essential to ensure that class members are not victimized by predatory individuals seeking a percentage of a claimant's entitlement simply for filling out a straightforward form. Under the FSA, supports and navigators are available to claimants to assist, in a culturally appropriate manner, with filling out and submitting claims form, obtaining supporting documentation and, if required, assistance with the appeals process.[303] Additional aid is available from class counsel, at no cost to the claimants.[304] These provisions are intended to avoid the need for paid assistance during the claims process, to better protect class members.

211. This is in addition to the non-class counsel protocol submitted to the Court for approval on a concurrent motion that is aimed at protecting the class.

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[302] FSA, art 2.03, MR 3.
[303] Schedule I to the FSA, MR 3. Janvier Affidavit, MR 3.
[304] FSA, art 17.01(3), MR 3.

212. Although there are elements to inform the design of the claims process which are currently in development and the subject of First Nations consultations,[305] this should not hinder approval of the FSA. First, the claims process and distribution protocol are subject to the further approval of the Court; therefore, the Court will have the opportunity to consider only this element in detail prior to any implementation of the settlement. Second, following the approval of the FSA, the plaintiffs can, with the benefit of the significant expertise of the Administrator and outside experts, focus their efforts on testing and piloting the claims process prior to seeking court approval.

213. The FSA takes a phased approach to the claims process:

> The distribution protocol within the Claims Process may be created and submitted to the Court for approval in one package or in several parts relating to different classes as and when each of such parts becomes ready following the Implementation Date.[306]

214. This phased approach follows the directions of First Nations leadership, "ensuring that compensation is paid, and adequate supports are provided as quickly as possible to all those who can be immediately identified and to continue to work efficiently to ensure that compensation reaches all those who are eligible".[307]

215. This phased approach is also consistent with the Court approvals sought to date given the complexity and sensitivity of the issues involved in these proceedings. Throughout these proceedings, the plaintiffs have purposefully approached each element—from certification, to notice plan approval, to notice to the class, to the appointment of an administrator, to

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[305] Potts Affidavit at paras 39-40, MR 3.
[306] FSA, art 1.01 *sub nom* "Claims Process", MR 3.
[307] Resolution no. 04/2023, Exhibit B to the Potts Affidavit, MR 3.

settlement approval—in a staggered manner to ensure that all aspects have been fully considered and reasoned before being submitted to the Court for approval. The approval of the FSA now with subsequent approval of the claims process and distribution protocol to be considered next similarly allows for the extensive work, consultation and vigorous testing required to take place in the intervening months with the safeguard of the Court's ultimate oversight of the process prior to implementation.

E. Future Expenses and Likely Duration of Litigation

216. Continued litigation will likely be long, complex, expensive, and may ultimately jeopardize compensation for class members. The prompt payment of compensation is one of the tangible benefits to resolving this matter as expeditiously as possible. The survivors of Canada's discrimination have been forced to wait for resolution of the issue of their damages for too long. The Court's approval of the FSA will ensure that the settlement funds will be made available to the impacted individuals far sooner without continued judicial proceedings, ensuring that those most impacted will not be subjected to the uncertainty of protracted litigation. The Court summed up a comparable situation in evaluating the terms of a settlement agreement in *Tk'emlúps*:

> [W]hile acknowledging that no amount of money can right the wrongs or replace that which has been lost…. what is certain is that continuing with this litigation will require class members to re-live the trauma for many years to come, against the risk and the uncertainty of litigation. Bringing closure to this painful past has real value which cannot be underestimated.[308]

[308] *Tk'emlúps te Secwepemc First Nation v Canada*, 2021 FC 988 at para 63.

F. Recommendations of Neutral Parties

217. The FSA has benefited from an unprecedented level of consultation with First Nations leadership and communities,[309] and a significant amount of third-party review, comment, and criticism. Furthermore, negotiations took place under the supervision of the Honourable Leonard Mandamin, and then intensive settlement discussions were facilitated by the Honourable Murray Sinclair. These eminent First Nations jurists assisted the parties in dealing with numerous challenging and important issues, and enabled the parties to finalize this monumental and historic agreement.

218. First Nations leadership has unanimously and unequivocally supported the FSA:

> Fully support the Revised Final Settlement Agreement (Revised FSA) on Compensation in principle and authorize the Assembly of First Nations (AFN) negotiators to make the necessary minor edits to complete the Revised FSA.[310]

G. Number of Objectors

219. Nobody has yet contacted the Administrator to express an intention to object to the FSA in writing or in person at the settlement approval hearing.[311] Given that there are approximately 400,000 class members, many of whom are eligible for significant compensation as a result of suffering enduring harm, the fact that there are no objectors is a clear indication that the FSA is fair and reasonable to the class.

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[309] Ciavaglia Affidavit at para 14, MR 1, Tab 8.
[310] Resolution no. 04/2023, Exhibit B to the Potts Affidavit, MR 3.
[311] Colish Affidavit at para 112, MR 1, Tab 9.

H. Arm's Length Bargaining

220. The parties both believe this settlement to be the best outcome of this litigation. That said, this has been an adversarial, difficult case of litigation and negotiation, as evidenced by the nearly three-year long period of intensive negotiations. Both the plaintiffs and Canada have advanced their positions in this and prior proceedings and all parties are prepared to proceed to trial if settlement fails. Canada has preserved its rights through its pending appeal on the judicial review decision of the Compensation Decision to advance its interests should the FSA be rejected.

221. While some parts of the class proceedings remained contested, the parties engaged in more than three years of intensive negotiations and mediation, which eventually helped them achieve a global resolution that now even the CHRT, a panel that has countenanced no compromise in its firm human rights stance,[312] has found satisfactory to the extent that its Compensation Decision is covered by the FSA.[313]

222. The CHRT rendered a decision bringing the First FSA to an end before it could reach the next stage. The parties then had to probe resumed negotiations not only amongst themselves, but also among non-parties who expressly disavowed any duty or obligation to any class member but those covered by the Compensation Decision.

223. The process has been as transparent and open to external feedback and comment as is practicable in a settlement privileged environment. Negotiations were overseen first by

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[312] *First Nations Child & Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2022 CHRT 41 at para 482.

[313] *First Nations Child and Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2023 CHRT 44.

Court-appointed mediator and retired Federal Court Judge, the Honourable Mr. Mandamin for a year-long mediation, and second by the Honourable Mr. Sinclair, chairman of the Indian Residential Schools Truth and Reconciliation Commission. At all stages, the plaintiffs' negotiating positions have been communicated to and informed by instructions from the representative plaintiffs and by feedback received from First Nations stakeholders and leadership via the Chiefs in Assembly and the AFN's community consultations across the country.[314]

224. There is a strong presumption of fairness when a proposed settlement is negotiated at arm's-length by class counsel as was the case here.[315]

I. Communications with Class Members

225. Throughout negotiations, class counsel and the AFN have been in close contact with the representative plaintiffs, class members, and First Nations communities more broadly.[316]

226. Counsel for the plaintiff, the AFN, provided ongoing updates to First Nations leadership on negotiations, the structure of the settlement, and the substance of what would be included in the FSA.[317] They provided approximately 50 briefings to the AFN Executive, AFN regional chiefs, and Chiefs' Assemblies.[318] Two recent unanimous resolutions of all First Nations Chiefs in Assembly have endorsed the recent negotiations after the First FSA, and the FSA.[319]

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[314] Colish Affidavit at paras 6, 28, MR 1, Tab 9; Ciavaglia Affidavit at paras 13-14, MR 1, Tab 8.
[315] *Tataskweyak Cree Nation v Canada (Attorney General)*, 2021 FC 1415 at para 97.
[316] Ciavaglia Affidavit at paras 13-14, MR 1, Tab 8.
[317] Ciavaglia Affidavit at para 14, MR 1, Tab 8.
[318] Ciavaglia Affidavit at para 14, MR 1, Tab 8.
[319] Exhibits "A" and "B" to the Potts Affidavit, MR 3.

227. The FSA was approved by each representative plaintiff, the AFN Executive Committee, and finally the Chiefs-in-Assembly at the AFN Annual General Assembly.[320]

J. Recommendation of Class Counsel

228. Class counsel view this settlement as the best possible resolution to complex and lengthy proceedings.

K. Appropriateness of Cy-Près for Certain Class Members

229. Rule 334.28(2) of the *Federal Court Rules* allows the Court to make "any order in respect of the distribution of monetary relief, including an undistributed portion of an award that is due to a class or subclass or its members". In cases where some or all class members would receive only a small portion of a settlement, such that direct distribution is impracticable, courts have approved *cy-près* distributions to relevant not-for-profit entities instead of direct payments to class members.[321] In *Sun-Rype Products Ltd. v. Archer Daniels Midland Company* made under analogous BC legislation, the Supreme Court of Canada held that "the precedent for cy-près distribution is well established… [a]nd, while its very name, meaning 'as near as possible', implies that it is not the ideal mode of distribution, it allows the court to disburse the money to an appropriate substitute for the class members themselves".[322]

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[320] Ciavaglia Affidavit at para 18, MR 1, Tab 8.
[321] Michael A. Eizenga et al, *Class Actions Law and Practice, 2nd Edition*, LexisNexis Canada (looseleaf) at para 9.20.
[322] *Sun-Rype Products Ltd v Archer Daniels Midland Company*, 2013 SCC 58 at paras 25-26.

230. In approving a *cy-près* distribution, the Court should consider whether the proposed donation will: (i) indirectly benefit the class; and/or (ii) have the consequence of behaviour modification for the defendant.

231. In this case, part of the *cy-près* fund is devoted to supporting class members who may not recover direct compensation. The amount ($50 million) is substantial, and provides a powerful tool for modifying Canada's behaviour with respect to the discrimination at issue in this litigation. The overwhelming legal and factual uncertainties in including siblings, parents or grandparents who had no caregiving role with respect to the affected child in a viable settlement render the *cy-près* fund a fair and reasonable option that benefits such class members. Furthermore, if direct payouts were provided to such class members, the settlement funds would be unfairly diluted in a manner inconsistent with the principle of proportional compensation, which governed the negotiations and was fully supported by all representative plaintiffs.[323] The parties have instead elected to ensure that those most affected—the children themselves, and their direct caregiving parents or grandparents—will be adequately compensated, while making indirect but relevant provision for the remaining family class members through the *cy-près* fund.

232. Another part of the *cy-près* fund ($90 million) provides relief to high need, post-majority Jordan's Principle Class members, and thus constitutes added benefit to the class.[324]

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[323] Osachoff Affidavit at paras 36-37, MR 1, Tab 7; Walterson Affidavit at paras 36-39, MR 1, Tab 5; Bach Affidavit at paras 32, 37, MR 1, Tab 6; Buffalo Affidavit at paras 52-54, MR 2, Tab 1; Meawasige Affidavit at para 22, MR 3; Moushoom Affidavit at para 52, MR 1, Tab 2; Trout Affidavit at paras 26-27, MR 1, Tab 4.
[324] FSA, art 8.03, MR 3.

L. Honoraria for Representative Plaintiffs

233. Class counsel submit that honoraria of $15,000 should be awarded to each representative plaintiff to be paid out of class counsel's legal fees, with the exception of the representative plaintiff, Ms. Karen Osachoff, who wishes to decline any honorarium awarded.

234. Although no specific rule governs the payment of an honorarium to a representative plaintiff, the Federal Court has the discretion to award such payments and has done so in numerous previous cases.[325] Honoraria are meant to recognize the meaningful contributions to class members' pursuit of access to justice.[326]

235. Factors weighing in favour of an honorarium include where a representative plaintiff has:

(a) forfeited their privacy in a high-profile class litigation;[327]

(b) publicly re-lived their trauma in order to advance the claim;[328]

(c) engaged with class members and community members to raise awareness and counter misinformation;[329] and

(d) endured cross examinations, and was prepared to testify at trial.[330]

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[325] *Lin v Airbnb, Inc*, 2021 FC 1260 at para 118.
[326] *Lin v Airbnb, Inc*, 2021 FC 1260 at para 119.
[327] *McLean v Canada*, 2019 FC 1077 at para 57; *Merlo v Canada*, 2017 FC 533 at paras 68-74; *Lin v Airbnb, Inc*, 2021 FC 1260 at para 119.
[328] *McLean v Canada*, 2019 FC 1077 at para 59; *Tk'emlúps te Secwepemc First Nation v Canada*, 2021 FC 988 at para 48.
[329] *Tk'emlúps te Secwepemc First Nation v Canada*, 2021 FC 988 at para 50.
[330] *Condon v Canada*, 2018 FC 522 at para 116.

236. The representative plaintiffs in this case have been exemplary advocates for the class despite their own trauma. They have spent significant time and effort in advancing this case for their respective classes by:

(a) foregoing their privacy;

(b) communicating extensively with class counsel;

(c) reviewing documents, preparing affidavits, and instructing counsel;

(d) travelling to attend meetings, including mediation and settlement meetings;

(e) meeting with experts; and

(f) raising awareness with class members, including by speaking directly with class members in their communities and across the country and the media, and speaking in their capacity as representative plaintiffs at the AFN's Annual General Assembly in support of the settlement.[331]

237. Additional sacrifices and investments were required of the representative plaintiffs given the specific harms at issue. The nature of an Indigenous class action involving systemic discrimination against children is meaningfully different from one involving, for example, product liability or a purely monetary harm. To advance the class members' interests, representative plaintiffs in this action have publicly disclosed and re-lived traumatic and deeply personal stories. Doing so was painful and retraumatizing. Some representative

[331] Moushoom Affidavit at paras 37-46, MR 1, Tab 2; Trout Affidavit at paras 16-30, MR 1, Tab 4; Bach Affidavit at paras 44-50, MR 1, Tab 6; Walterson Affidavit at paras 44-50, MR 1, Tab 5; Buffalo Affidavit at paras 59-64, MR 2, Tab 1; Jackson Affidavit at paras 25-30, MR 2, Tab 2.

plaintiffs unfortunately suffered harm to the relationships with their adoptive families in choosing to pursue this action.[332]

238. Additionally, the representative plaintiffs had to live through the politicization, public set-back, trauma, uncertainty, and stress caused through the nullification of the First FSA and its immediate aftermath.[333] As described by one of the representative plaintiffs, Jonavon Meawasige:

> I was shocked when the settlement was rejected by the Canadian Human Rights Tribunal, to say the least.
>
> I especially had a hard time with it because in the media my [late] mother's name was being used against the settlement without anyone consulting with me or asking me what my mother or brother or I thought.
>
> No one asked if I supported the settlement, or if my mother would have supported the settlement. I would not have supported the settlement if I did not believe that my mother also supported it.
>
> This was a difficult time for me and my family.[334]

239. The representative plaintiffs have made exceptional and unique efforts and sacrifices in carrying these class actions forward through ups and downs and unprecedented challenges in favour of the class—these efforts and sacrifices represent conduct that the Court has previously found deserving of an honorarium.[335] Furthermore, the same amount requested for these representative plaintiffs was previously granted by the Court in an analogous, but less personal and complex, Indigenous class action.[336]

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[332] Bach Affidavit at para 16, MR 1, Tab 6; Walterson Affidavit at paras 25-27, MR 1, Tab 5.
[333] Kugler Affidavit at para 19, MR 3.
[334] Meawasige Affidavit, paras 29-32, MR 3.
[335] *McLean v Canada*, 2019 FC 1077 at para 59; *Tk'emlúps te Secwepemc First Nation v Canada*, 2021 FC 2010 at para 48.
[336] *Tk'emlúps te Secwepemc First Nation v Canada*, 2021 FC 2010 at para 52.

PART IV – ORDERS SOUGHT

240. The plaintiffs respectfully seek the following orders from this Court:

(a) a declaration that the FSA is fair, reasonable and in the best interests of the class;

(b) an order approving the FSA pursuant to Rule 334.29(1) of the Federal Courts Rules;

(c) a declaration that the FSA is binding on the representative plaintiffs, on all class members, and on the defendant;

(d) an order dismissing these proceedings against the defendant, without costs;

(e) an order approving a $15,000 honorarium payment to each of the following representative plaintiffs:

(i) Xavier Moushoom;

(ii) Jeremy Meawasige (by his litigation guardian, Jonavon Joseph Meawasige);

(iii) Jonavon Joseph Meawasige;

(iv) Zacheus Joseph Trout;

(v) Ashley Dawn Louise Bach;

(vi) Melissa Walterson;

(vii) Noah Buffalo-Jackson (by his Litigation Guardian, Carolyn Buffalo);

(viii) Carolyn Buffalo; and

(ix) Dick Eugene Jackson also known as Richard Jackson;

(f) an order that if the FSA is not approved, the FSA is null and void and the parties are all restored, without prejudice, to their respective positions as such existed prior to the proposed settlement on April 18, 2023; and

(g) such further and other relief as counsel may request and this Honourable Court may deem just and appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of October, 2023.

SOTOS LLP

Per: KUGLER KANDESTIN LLP

Per: MILLER TITERLE + CO.

Per: NAHWEGAHBOW, CORBIERE

Per: FASKEN MARTINEAU DUMOULIN

SCHEDULE "A" – LIST OF AUTHORITIES

CASES	
1.	*Canada (Attorney General) v First Nations Child and Family Caring Society of Canada*, 2021 FC 969
2.	*Condon v Canada*, 2018 FC 522
3.	*First Nations Child and Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2
4.	*First Nations Child & Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 39
5.	*First Nations Child & Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2020 CHRT 7
6.	*First Nations Child & Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2020 CHRT 15
7.	*First Nations Child & Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2020 CHRT 20
8.	*First Nations Child & Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2020 CHRT 36
9.	*First Nations Child & Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2021 CHRT 6
10.	*First Nations Child & Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2022 CHRT 41
11.	*First Nations Child and Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2023 CHRT 44
12.	*Fontaine v Canada (Attorney General)*, 2018 ONSC 103

13.	*Ford v F Hoffman-La Roche Ltd*, 2005 CanLII 8751 (Ont Sup Ct)
14.	*Lin v Airbnb, Inc*, 2021 FC 1260
15.	*McLean v Canada*, 2019 FC 1075
16.	*McLean v Canada*, 2019 FC 1077
17.	*Merlo v Canada*, 2017 FC 533
18.	*Pictou Landing Band Council v Canada (Attorney General),* 2013 FC 342
19.	*Sun-Rype Products Ltd v Archer Daniels Midland Company*, 2013 SCC 58
20.	*Tataskweyak Cree Nation v Canada (Attorney General)*, 2021 FC 1415
21.	*Tk'emlúps te Secwepemc First Nation v Canada*, 2021 FC 988
22.	*Tk'emlúps te Secwepemc First Nation v Canada*, 2021 FC 2010
SECONDARY SOURCES	
23.	Michael A. Eizenga et al, *Class Actions Law and Practice, 2nd Edition*, LexisNexis Canada (looseleaf)

SCHEDULE "B" – RELEVANT STATUTES

***Federal Court Rules*, SOR/98-106**

Approval

334.29 (1) A class proceeding may be settled only with the approval of a judge.

Binding effect

(2) On approval, a settlement binds every class or subclass member who has not opted out of or been excluded from the class proceeding