Docket: T1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

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 Services Canada)

Respondent

- and -

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL and NISHNAWBE ASKI NATION

Interested Parties

AFFIDAVIT OF CINDY BLACKSTOCK

I, Cindy Blackstock, of the City of Ottawa, in the Province of Ontario, **SOLEMNLY AFFIRM THAT:**

1. I am Gitxsan, a professor at McGill University's School of Social Work, and the Executive Director of the complainant, the First Nations Child and Family Caring Society of Canada (the **"Caring Society**"). As such, I have personal knowledge of the matters hereinafter deposed to save and except for those matters stated to be on information and belief and where so stated, I believe them to be true.

2. I have a PhD in social work and a master's degree in management as well as a master's degree in jurisprudence. I have been the Caring Society's Executive Director since 2002 and have worked in the field of child and family services for over 35 years.

3. As the Executive Director of the Caring Society, I have been directly involved in these proceedings. I affirm this affidavit in relation to the compensation motion brought by the Assembly of First Nations (the "**AFN**") and the Respondent, the Attorney General of Canada (on behalf of the Minister of Indigenous Services Canada) ("**Canada**"). As I understand it, the AFN and Canada are asking the Canadian Human Rights Tribunal (the "**Tribunal**") to declare that the Final Settlement Agreement made in the Consolidated Class Action: Court File Nos. T-402-19/T-141-20, (the "**FSA**") satisfies the Tribunal's various compensation orders, including 2019 CHRT 39 (the "**Compensation Entitlement Order**") and 2021 CHRT 7 (the "**Compensation Framework Order**") or, in the alternative, asks the Tribunal to vary its compensation orders. To date, I am unclear what specific amendments the AFN and Canada are requesting.

4. The Caring Society accepts the Tribunal's Compensation Entitlement Order and the Compensation Framework Order for individual compensation and defended these orders in Federal Court along with the AFN.

5. The Caring Society recognizes the significance of the FSA and acknowledges that Canada's commitment of $20 billion is a considerable amount of money. However, the Caring Society cannot support the relief sought in this motion as the FSA does not satisfy the Tribunal's Compensation Entitlement Order or the Compensation Framework Order. Specifically, it denies or provides a lesser value of compensation to some victims who have experienced the worst-case scenario of discrimination and creates significant uncertainty for other victims who have already been deemed eligible for $40,000 by the Tribunal.

The Caring Society's Involvement in the FSA

6. The Caring Society had some minimal involvement in the negotiations leading up to the FSA but was not at the table. As set out in my letter of January 21, 2022 (which is appended to the affidavit of Jasmine Kaur, dated August 5, 2022) the Caring Society was clear that it would not support amendments to the Tribunal's compensation orders

that reduced the awarded amount of $40,000 for any the child victims (including deceased children and those who are now adults).

7. To date, I have not received a formal response to my January 21, 2022, letter from the AFN, Canada, the representative plaintiffs, or class action counsel.

8. Unlike AFN and Moushoom class action counsel, who will receive significant legal fees as part of the FSA, the Caring Society and its legal team will not receive, nor desires, any financial compensation for legal or other fees arising from the FSA or this motion. We view the human rights compensation to be for the sole benefit of the victims entitled to compensation.

The Caring Society's Concerns Regarding the Relief Sought

9. It is disheartening that some victims of Canada's worst-case scenario discrimination, who have had their suffering and their infringement to dignity recognized by the Tribunal and upheld by the Federal Court, could have their entitlement to compensation reduced or erased and their rights to litigate against Canada waived if this motion is granted.

10. I am very concerned that victims, including children, in this proceeding could have their right to compensation under the *Canadian Human Rights Act* adversely infringed by an outside proceeding. This is particularly troubling as there has been little to no evidence filed by Canada or AFN regarding the impacts of the FSA on victims who will see their compensation erased or reduced and their legal rights to litigate against Canada waived.

11. Pursuant to the class action opt-out form publicly posted on the class action counsel website, victims who choose to opt out of the Class Action release their claim to compensation under the FSA and release their claim to any compensation under the Compensation Entitlement Order and Compensation Framework Order. It is unclear to me how this outside proceeding involving different parties can infringe on orders made by the Tribunal. A copy of the opt-out form is attached hereto as **Exhibit "A".**

12. The contradiction between the reductions and elimination of human rights compensation evident in the FSA and Canada's public statements that $40,000 would be the floor for compensation further adds to the injustice of the relief sought and its

potential impact on certain victims. For example, on January 4, 2022, both Minister Miller and Minister Hajdu made statements to the media suggesting that $40,000 would be the floor for victims receiving compensation. Minister Miller's statement can be found here: https://www.youtube.com/watch?v=bPv5Lu_P79A A copy of a January 4, 2022, CBC news article is attached hereto as **Exhibit "B"**.

13. It now appears to me that Canada is attempting to insulate itself from the reductions and/or elimination of compensation it owes to child, youth, and parent/caregiver victims in two ways. First, Canada is maintaining its appeal of the Federal Court's decision on compensation at the Federal Court of Appeal (T-1621-19) whilst the FSA shields the government from any further litigation brought by the very victims it so deeply harmed. Second, Canada tries to wash its hands of the reductions in human rights compensation in the FSA by saying it is up to AFN and the class action counsel to distribute the money. In my view, this smacks of the "old mindset" that the Tribunal has repeatedly pointed to and is completely incompatible with children's rights, human rights and reconciliation.

14. The Tribunal's compensation orders were welcomed in First Nations as they recognized the egregious harms to children, youth and families arising from Canada's wilful and reckless discrimination and provided some measure of justice. The Federal Court's dismissal of Canada's judicial review affirmed these sentiments. Now AFN and Canada seek to commandeer human rights compensation owing to individual children, youth, and families in a manner that reduces or eliminates victims' compensation rights.

Concerns with the Process in Which Relief is Being Sought

15. I drafted the 2007 complaint that gave rise to this historic litigation and co-signed it along with then Saskatchewan Regional Chief Lawrence Joseph. At the time, I chose the human rights regime as the forum to litigate Canada's mistreatment of First Nations children, youth, and their families because I understood that it was more flexible, informal, and adapted to the rights and needs of children. Consistent with the United Nations Convention on the Rights of the Child, I am grateful that the Panel has ensured proceedings are accessible to children and sensitive to First Nations' cultures.

16. In my view, the child-friendly open and transparent way this human rights complaint has been adjudicated has had a positive impact on First Nations children, youth,

families, and communities. The ability to watch the proceedings and the historical victories in the litigation has been instrumental in raising public awareness within Canada and within the First Nations communities about our collective human rights and the rights of children. Broadcasting the proceedings has also provided a valued mechanism for affected children, youth, and families to be informed on a matter that will directly impact them. Collectively, these measures have, in my view, built some trust in the human rights regime as a critical vehicle to redressing discrimination in our country.

17. I remain concerned about the summary way this motion is proceeding. The AFN and Canada are asking the Tribunal to alter its orders without identifying the specific changes being sought and in the absence of a clear evidentiary basis describing the impacts on victims. Moreover, I am concerned that the public and the victims in this case have little notice of what is being asked in this motion.

18. As stated in my letter to the Panel dated August 10th, 2022, I have found this Panel's active case management particularly helpful. I hope that it will continue its practice of actively guiding the parties in the next stages of our discussions on long term reform. The Caring Society is committed to evidence-based solutions that meet the needs of First Nations children, youth, and families and to cease Canada's discriminatory conduct and ensure it does not recur.

Other Concerns with this Compensation Motion

19. As noted by Tribunal in 2018 CHRT 4, the Panel is open to receiving evidence from First Nations should they be resistant to implementing the Tribunal's orders (para. 443). To this end, I am aware that some rights holders are not in support of the FSA or this motion brought by the AFN and Canada.

20. The Federation of Sovereign Indigenous Nations (which has sought interested party status in this proceeding) has passed resolutions in relation to the compensation awarded in this case as well as long term reform. Those resolutions are attached hereto as **Exhibit "C".**

21. The First Nations Summit, comprising approximately 150 of the First Nations in British Columbia, passed resolutions on long term reform and compensation, directing the

AFN to not seek a reduction of the compensation amounts for eligible victims from First Nations in British Columbia or to modify the compensations orders without the free, prior and informed consent of rights holders. Those resolutions are attached hereto as **Exhibit "D".**

22. The Class Action Clinic at Windsor Law is a non-for-profit organization that provides class members with summary advice, assistance with filing claims in settlement distribution processes and representations in court proceedings. I understand that the Class Action Clinic has concerns with the FSA and has shared those with class counsel. On August 30, 2022, I received a letter from the Class Action Clinic outlining those concerns, which is attached hereto as **Exhibit "E"**.

AFFIRMED BEFORE ME over video teleconference on this **30th** day of August 2022, in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*. The Commissioner was in Ottawa, Ontario and the affiant was in Ottawa, Ontario

_____
Commissioner for taking affidavits, etc.

_____
CINDY BLACKSTOCK

This is **Exhibit "A"** to the affidavit of Cindy Blackstock, affirmed before me this 30th day of August, 2022

A Commissioner for taking Affidavits etc.

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 **February 19, 2023** to be effective.

This is **Exhibit "B"** to the affidavit of Cindy Blackstock, affirmed before me this 30th day of August, 2022

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A Commissioner for taking Affidavits etc.

Politics

Ottawa releases early details of landmark $40B First Nations child welfare agreement

Agreement still needs sign-off from Canadian Human Rights Tribunal and Federal Court

Olivia Stefanovich, Nick Boisvert · CBC News · Posted: Jan 04, 2022 4:00 AM ET | Last Updated: January 4

People gather on Parliament Hill for Canada's first National Day for Truth and Reconciliation on Sept. 30, 2021. (Blair Gable/Reuters)

The federal government and First Nations leaders have struck a historic $40 billion agreement-in-principle to compensate young people harmed by Canada's discriminatory child welfare system while reforming the system that tore First Nations children from their communities for decades.

The non-binding agreement sets aside $20 billion for compensation and $20 billion for long-term reform of the on-reserve child welfare system.

If approved, the financial settlement would be the largest of its kind in Canadian history. The parties have until March 31 to finalize the agreement.

"First Nations from across Canada have had to work very hard for this day to provide redress for monumental wrongs against First Nation children. Wrongs fuelled by an inherently biased system," said Assembly of First Nations Manitoba Regional Chief Cindy Woodhouse during a news conference in Ottawa.

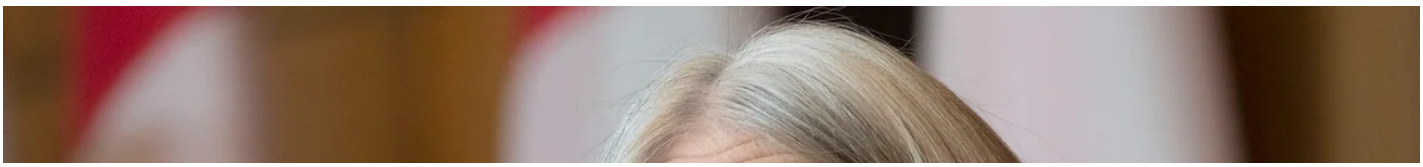
Woodhouse said that, instead of giving First Nations "help with food, clothing or shelter," the government's approach to child welfare funnelled Indigenous children into the foster care system.

Compensation will be made available to First Nations children on-reserve and in the Yukon who were removed from their homes between April 1, 1991 and March 31, 2022.

Compensation will also be made available to those affected by what the government called its "narrow definition" of Jordan's Principle, used between Dec. 12, 2007 and Nov. 2, 2017. Compensation is being extended to children who did not receive an essential public service or faced delays in accessing such services between April 1, 1991 and Dec. 11, 2007.

The federal government says it will share additional details of the agreement so that prospective applicants can know whether they qualify. The AFN estimates that more than 200,000 children and youth could be eligible.

WATCH | Canada and First Nations strike $40 billion child welfare agreement:



Canada unveils details of $40B First Nations child welfare agreement

8 months ago | 2:43

The federal government and First Nations leaders have reached a landmark $40 billion agreement to compensate young people harmed by Canada's discriminatory child welfare system.

It's not clear yet when payments will be made or exactly how much each recipient will be paid.

The Canadian Human Rights Tribunal ruled in 2016 that $40,000 should be paid to each First Nations child unnecessarily placed in foster care.

"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.

The First Nations Child and Family Caring Society, the Assembly of First Nations (AFN) and lawyers for several related class action lawsuits completed negotiations with the federal government late the night of Dec. 31, after two months of intense talks.

'A plan for the future'

Some parents and caregivers also will be eligible for compensation.

The $20 billion dedicated to long-term reform of the child welfare system will be distributed over a period of five years, the government said.

"Today is about a plan for the future, with First Nations defining and determining a path forward grounded in our rights and the common goal to have our children succeed," said

Woodhouse.

Hajdu praised First Nations leaders for their decades of advocacy on behalf of children and Indigenous communities.

"No compensation amount can make up for the trauma people have experienced, but these agreements-in-principle acknowledge to survivors and their families the harm and pain caused by the discrimination in funding and services," Hajdu said.

Parties have until end of March to hammer out details

If the deal is finalized, some aspects of the agreement would kick in as early as April 1, according to two sources with knowledge of the negotiations. CBC is not naming them because they are not authorized to speak publicly about the agreement.

Those details include a commitment from Ottawa to launch an independent review of how Indigenous Services Canada treats First Nations children. The parties involved in the negotiations are to appoint a committee of experts within 60 days of the Canadian Human Rights Tribunal (CHRT) deciding whether to approve the agreement in principle.

The federal government is to give $2,500 annually over five years to each member of all 630 First Nations for various services to prevent child apprehensions, such as mental health and cultural supports, and to address multi-generational trauma lingering from residential schools and the on-reserve child welfare system. The money is to be given to their community agencies, not to the individuals themselves.

WATCH | Cindy Blackstock on the $40 billion agreement:

Cindy Blackstock: 'There's good words on paper, but nothing has changed for children'

8 months ago | 7:52

Cindy Blackstock, executive director of the First Nations Child and Family Caring Society, joins Power & Politics to discuss details of the First Nations child welfare compensation agreement, announced today by the federal government.

Ottawa also has agreed to provide support to youths aged out of care between the ages of 18 and 25, including those who are in that age bracket now. They will be eligible for services to help them find housing, improve their financial literacy and learn life skills, such as cooking.

Cindy Blackstock, executive director of the First Nations Child and Family Caring Society, told CBC News she hopes the agreement will provide a "roadmap" to satisfy the Canadian Human Rights Tribunal (CHRT) order to end discrimination against First Nations children.

"No child's life is better today than it was yesterday because of these words on paper," Blackstock said. "We have to see the government actually deliver this stuff."

- **Agreement reached on First Nations child welfare compensation**
- **Ottawa earmarks $40B for Indigenous child welfare compensation, program reform**

The agreement must be approved by the CHRT and the Federal Court before it is finalized.

The CHRT ordered Canada to compensate any child who has been in the care of the on-reserve child welfare system at any point between Jan. 1, 2006, and whenever the tribunal decides discrimination against First Nations kids has ceased.

If approved, the agreement could end a 15-year legal battle and provide compensation for tens of thousands of people.

A final agreement is expected to be approved in late 2022.

How it started

The First Nations Child and Family Caring Society and the Assembly of First Nations filed a complaint under the Canadian Human Rights Act in 2007 alleging the federal government discriminated against First Nations children by underfunding the on-reserve child welfare system and by not complying with Jordan's Principle — a policy that states the needs of a First Nations child requiring a government service take precedence over jurisdictional disputes over who pays for it.

In 2016, the Canadian Human Rights Tribunal found the federal government discriminated against First Nations children and said Canada's actions led to "trauma and harm to the highest degree, causing pain and suffering."

The tribunal ordered Ottawa to pay $40,000 — the maximum allowed under the Canadian Human Rights Act — to each child affected by the on-reserve child welfare system, along with their primary guardians, as long as the children weren't taken into foster care because of abuse.

Cindy Blackstock, executive director of the First Nations Child and Family Caring Society, filed a human rights complaint against Canada in 2007, which led to the agreement-in-principle. (CBC)

It also directed the federal government to pay $40,000 each to all First Nations children, along with their primary guardians, who were denied services or forced to leave home to access

services covered by Jordan's Principle from Dec. 12, 2007 — when the House of Commons adopted the policy — to Nov. 2, 2017, when the tribunal ordered Canada to change its definition of Jordan's Principle and review previously denied requests.

"This $40,000 is not a lot of money for a lost childhood, but it's some recognition to them and hopefully it provides a little foothold for them to have a brighter future," Blackstock said.

The order also stated compensation must be paid to the estates of deceased individuals who would have been eligible for compensation.

- **B.C. Indigenous leaders 'disgusted' by Ottawa's foster care compensation appeal, as feds vow talks**
- **Ottawa will appeal court ruling on Indigenous child welfare but says it's pursuing a compensation deal**

In the fall of 2019, the federal government submitted an application to the Federal Court to set aside the tribunal's order and dismiss the claim for compensation. That decision was widely condemned by First Nations leaders, the NDP, the Green Party and human rights organizations like Amnesty International.

The government said at the time that it did not oppose compensation. It argued that the tribunal did not have jurisdiction to order specific compensation amounts in the manner of a class action lawsuit.

"The issue here is not whether the discrimination ... existed ... Canada has accepted that result," said Sony Perron, the associate deputy minister of Indigenous Services Canada (ISC), in an affidavit filed with the Federal Court.

"The issue ... is that the tribunal has issued a sweeping decision that will significantly impact ISC (Indigenous Services Canada) and Crown-Indigenous relations and that raises important questions of public policy that only cabinet can decide."

The government also took issue with the fact that the order would award the same amount of money to someone who spent one day in care as it would to someone who spent an entire childhood there.

In September 2021, the Federal Court dismissed the government's judicial review application.

In his ruling — released on the eve of the first National Day of Truth and Reconciliation — Justice Paul Favel said negotiations could help realize the goal of reconciliation and would be "the preferred outcome for both Indigenous people and Canada."

One month later, the government announced it intended to appeal the decision, but would put litigation on hold as it entered negotiations mediated by former senator Murray Sinclair, who chaired the Truth and Reconciliation Commission.

While the talks resulted in an agreement-in-principle, the federal government will not drop its Federal Court appeal until the agreement is approved.

This is **Exhibit "C"** to the affidavit of Cindy Blackstock, affirmed before me this 30th day of August, 2022

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A Commissioner for taking Affidavits etc.

Health and Social Development Secretariat
Health & Social Development Commission
MOTION RECORD

MOTION NUMBER: 2022-907-12-001

PURPOSE: **Support for 2022 AFN Resolution Regarding Full Implementation of a Reformed Funding Approach for First Nations Child & Family Services and Jordan's Principle**

MEETING DATE: **July 12, 2022**

That the Health and Social Development Commission support the actions outlined in the resolution submitted to the 2022 Assembly of First Nations – General Assembly regarding the Full Implementation of a Reformed Funding Approach for First Nations Child & Family Services and Jordan's Principle as follows:

1. Call upon Canada to immediately release the full $19.08 Billion in funding provided for in the Agreement in Principle on First Nations child and family services, Jordan's Principle, and Indigenous Services Canada (ISC) departmental reform.

2. Direct that funding provided under the Agreement in Principle, and under any subsequent Final Agreement, be disbursed to First Nations and/or their authorized child & family service providers.

3. Direct that a clear and transparent process be developed to prevent under any circumstances the interruption of existing child & family services, including prevention services and least disruptive measures;

4. Direct that a clear and transparent process be developed to protect First Nations from exposure to legal liability resulting from the delivery of child & family services;

5. Direct that a clear and transparent process be developed for sharing information with all First Nations chiefs about the Final Agreement negotiations;

6. Direct that a clear and transparent process be developed for the meaningful participation of the National Advisory Committee on First Nations child welfare (NAC) and of First Nations chiefs in the Final Agreement negotiations;

7. Direct that a clear and transparent process be developed for First Nations chiefs to provide free, prior and informed consent before a Final Agreement is completed;

8. Direct that the timeframe to end the Tribunal's jurisdiction and fully implement the reformed funding approach in the Agreement in Principle be extended until such time that there are sufficient guarantees of non-discrimination beyond the 5 years specified in the AIP;

9. Direct that the timeframe to end the Tribunal's jurisdiction and fully implement the reformed funding approach in the Agreement in Principle be extended until such time as a fully-developed and transparent Alternative Dispute Resolution mechanism is developed with meaningful consultation with First Nations and approved by the Canadian Human Rights Tribunal;

10. Direct that the timeframe to end the Tribunal's jurisdiction and fully implement the reformed funding approach in the Agreement in Principle be extended until such time that First Nations are aware of the proposed long term funding approaches and have had sufficient time to exercise their free, prior, and informed consent to any such approach that will directly affect First Nations and their citizens.

MOVED BY: **Dexter Kinequon, proxy for Chief Tammy Cook-Searson, PAGC**

SECONDED BY: **Chief Robert Head, Independent**

10 In Favour

OPPOSED:	0	**ABSTENTIONS:**	0	**CARRIED:**	X	**DEFEATED:**	

Health and Social Development Secretariat
Health & Social Development Commission
MOTION RECORD

MOTION NUMBER: 2022-07-12-002

PURPOSE: **Support for 2022 AFN Resolution Regarding Compensation for Children and Families Who Suffered Discrimination**

MEETING DATE: **July 12, 2022**

That the Health and Social Development Commission support the actions outlined in the resolution submitted to the 2022 Assembly of First Nations – General Assembly regarding compensation for children and families who suffered discrimination in the delivery of First Nations Child & Family Services and Jordan's Principle services as follows:

1. Direct that the Final Agreement on Compensation, including all details regarding eligibility and any provisions that may result in First Nations children, youth and caregivers not receiving the full $40,000 they are currently entitled to receive under the existing CHRT orders be brought before the Chiefs-in-Assembly for full review and for their free, prior and informed consent;

2. Call upon Canada to immediately pay the compensation owed to eligible victims and provide necessary supports pursuant to the Canadian Human Rights Tribunal orders;

3. Direct that AFN negotiators and lawyers working on AFN's behalf are not authorized to reduce the CHRT compensation amounts for eligible victims or limit the scope of eligible victims and must respect the compensation framework agreement and compensation entitlement order as a minimum standard as set out in 2019 CHRT 39 and 2021 CHRT 7;

4. Seek the free, prior, and informed consent of First Nations chiefs before filing submissions to the Canadian Human Rights Tribunal regarding any of the compensation orders;

5. Direct that any negotiations with Canada on any matters arising from 2016 CHRT 2 and subsequent orders affecting 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;

6. Direct that negotiations of the Final Agreement on Long-Term Reform of FNCFS and Jordan's Principle and negotiations of the Final Agreement on Compensation remain mutually independent and non-contingent;

7. Direct that there be full disclosure on the amount of legal fees sought by class action legal counsel;

8. Direct that decision-making regarding the class action is free of any conflict of interest or the appearance of conflict of interest arising from legal fees legal counsel will receive upon completion of the Final Agreement on Compensation.

MOVED BY: **Chief Roberta Soo-Oyewaste, FHQ**

SECONDED BY: **Councillor Barry Sanderson, PAGC**

11 in Favour

OPPOSED:	0	**ABSTENTIONS:**	0	**CARRIED:**	X	**DEFEATED:**	

This is **Exhibit "D"** to the affidavit of Cindy Blackstock, affirmed before me this 30th day of August, 2022

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A Commissioner for taking Affidavits etc.

First Nations Summit

RESOLUTION #0622.22

SUBJECT: CANADIAN HUMAN RIGHTS TRIBUNAL CASE ON FIRST NATIONS CHILD AND FAMILY SERVICES, JORDAN'S PRINCIPLE, AND REFORM OF INDIGENOUS SERVICES CANADA (ISC) AND THE RELATED AGREEMENT IN PRINCIPLE DATED DECEMBER 31, 2021

WHEREAS:

A. The First Nations Child & Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) filed a discrimination claim in 2007 alleging Canada's inequitable funding of First Nations child and family services and its choice to not implement Jordan's Principle were discriminatory.

B. The Canadian Human Rights Tribunal substantiated the discrimination claim in 2016 CHRT 2 and ordered Canada to immediately cease its discriminatory conduct towards First Nations children and families, including those who are members of First Nations in British Columbia.

C. Canada chose not to comply with the order resulting in 21 non-compliance and Procedural orders and 3 Federal Court orders against Canada since 2016.

D. In the wake of First Nations and public pressure related to the children in unmarked graves near residential schools and the Federal Court's dismissal of two of Canada's appeals, the federal government finally admitted that the discrimination was ongoing and asked the parties to negotiate a resolution.

E. The complainants (Caring Society & AFN) and the interested parties (Chiefs of Ontario & Nishnawbe Aski Nation) and Canada entered into negotiations to resolve outstanding discrimination pursuant to the Canadian Human Rights Tribunal orders.

F. On December 31, 2021, an Agreement in Principle (AIP) was signed as a framework for the negotiation of a Final Agreement on First Nations child and family services, Jordan's Principle, and reform of Indigenous Services Canada.

G. The AIP sets December 31, 2022, as the end of the Canadian Human Rights Tribunal's jurisdiction and April 1, 2023, as the implementation date for the "fully reformed' First Nations child and family services.

H. The Canadian Human Rights Tribunal issued an order (2022 CHRT 8) by consent of the parties providing prevention, post-majority and other measures coupled with an order on capital (2021 CHRT 41) that secures over 75% of the $19.08 billion over 5 years announced as part of the AIP.

I. Community driven research to inform long term funding solutions for First Nations child and family services for First Nations, with and without agencies, is not due to be completed until the Spring of 2023 and dates for a final funding approach on Jordan's Principle are still being defined.

THEREFORE, BE IT RESOLVED:

1. That the First Nations Summit Chiefs in Assembly call on Canada to:

    a. immediately release the full $19.08 billion dollars in funding, in accordance with and as provided for in the Agreement-in-Principle on First Nations Child and Family Services (AIP), Jordan's Principle, and Indigenous Services Canada (ISC) departmental reform;

    b. ensure that the Final Agreement must include provisions to cease Canada's operational and administrative discrimination and prevent its recurrence on an ongoing basis beyond Year 5 of the AIP;

    c. extend the timeframe to end the Canadian Human Rights Tribunal's (the Tribunal) jurisdiction and fully implement the reformed funding approach in the Agreement in Principle, with an extension of one year until such time that First Nations are aware of the proposed long-term funding approaches and have had sufficient time to exercise their free, prior, and informed consent to any such approach that will directly affect BC First Nations and their citizens; and

    d. extend the timeframe to end the Tribunal's jurisdiction and fully implement the reformed funding approach in the Agreement in Principle until such time as a fully-developed and transparent Alternative Dispute Resolution mechanism is implemented and approved by the Tribunal.

2. That the First Nations Summit Chiefs in Assembly direct the First Nations Summit Political Executive to advocate that:

    a. any negotiations on the Final Agreement that affect First Nations children, youth and families who are citizens of First Nations in British Columbia be conducted in an open and transparent manner with meaningful consultation with First Nations and First Nations' Child and Family Services and Jordan's Principle experts in British Columbia;

    b. the Assembly of First Nations ensures the meaningful participation of the National Advisory Committee on First Nations child welfare (NAC), BC Indigenous Child & Family Services Directors, Indigenous governing bodies and First Nation title and rights holders, in any proposals affecting First Nations' Child and Family Services and Jordan's Principle in British Columbia;

    c. the Assembly of First Nations only sign a Final Agreement in this matter after receiving in writing the free, prior, and informed consent of First Nations in British Columbia.

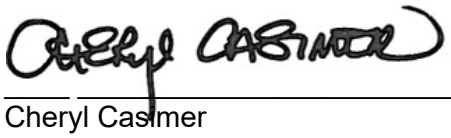
3. That the First Nations Summit Chiefs in Assembly affirm that the Assembly of First Nations must seek the free, prior, and informed consent of First Nations in British Columbia prior to implying or stating our position regarding matters flowing from 2016 CHRT 2 or the AIP.

RESOLUTION #0622.22
SUBJECT: CANADIAN HUMAN RIGHTS TRIBUNAL CASE ON FIRST NATIONS CHILD AND FAMILY SERVICES, JORDAN'S PRINCIPLE, AND REFORM OF INDIGENOUS SERVICES CANADA (ISC) AND THE RELATED AGREEMENT IN PRINCIPLE DATED DECEMBER 31, 2021

MOVED BY: Chief Sheri Sellars, Xatśūll First Nation
SECONDED BY: Mary Teegee, Proxy, Cheslatta Carrier Nation
DATED: June 16, 2022

Passed by consensus.

ENDORSED BY:



Cheryl Casimer

Robert Phillips

Hugh Braker

First Nations Summit

RESOLUTION #0622.23

SUBJECT: CANADIAN HUMAN RIGHTS TRIBUNAL COMPENSATION ORDERS (2019 CHRT 39 AND 2021 CHRT 7) AND THE ASSEMBLY OF FIRST NATIONS AND MOUSHOUM CLASS ACTIONS ON FIRST NATIONS CHILD AND FAMILY SERVICES AND JORDAN'S PRINCIPLE

WHEREAS:

A. The First Nations Child & Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) filed a discrimination complaint in 2007 alleging Canada's inequitable provision of First Nations child and family services and its choice to not implement Jordan's Principle were discriminatory.

B. The Canadian Human Rights Tribunal substantiated the discrimination in 2016 CHRT 2 and ordered Canada to immediately cease its discriminatory conduct towards First Nations children and families, including those who are members of First Nations in British Columbia.

C. Consistent with the direction of the Chiefs in Assembly (AFN resolution no. 85/2018) pursuant to the Canadian Human Rights Act, Canada has been ordered to pay $40,000.00 per eligible victim for Canada's "willful and reckless" discrimination of the "worst order." Compensation orders in 2019 CHRT 30 and 2021 CHRT 7 were upheld by the Federal Court (T-1621-19 in 2021 FC 969).

D. The Government of Canada appealed the Federal Court Decision (2021 FC 969) and has announced it wishes to address the human rights damages within two larger class actions: Moushoum et al v. Attorney General of Canada and the Assembly of First Nations class action.

E. 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 Agreement to resolve the compensation issue for both the human rights damages and the class actions.

F. Canada and the AFN class action counsel served notice to the Canadian Human Rights Tribunal that they will be concluding a final agreement on compensation imminently and seeking an expedited hearing regarding the Tribunal's compensation orders as upheld by the Federal Court in the Summer of 2022.

G. 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.

THEREFORE, BE IT RESOLVED:

1. That the First Nations Summit Chiefs in Assembly call upon Canada to immediately pay the compensation owed to eligible victims and provide necessary supports pursuant to Canadian Human Rights Tribunal orders.

SUBJECT: CANADIAN HUMAN RIGHTS TRIBUNAL COMPENSATION ORDERS (2019 CHRT 39 AND 2021 CHRT 7) AND THE ASSEMBLY OF FIRST NATIONS AND MOUSHOUM CLASS ACTIONS ON FIRST NATIONS CHILD AND FAMILY SERVICES AND JORDAN'S PRINCIPLE

2. 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;

    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.

3. 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.

MOVED BY: Mary Teegee, Proxy, Cheslatta Carrier Nation
SECONDED BY: Chief Maureen Chapman, Sq'ewá:lxw First Nation
DATED: June 16, 2022

Passed by consensus.

ENDORSED BY:

Cheryl Casimer

Robert Phillips

Hugh Braker

This is **Exhibit "E"** to the affidavit of Cindy Blackstock, affirmed before me this 30th day of August, 2022

_____

A Commissioner for taking Affidavits etc.

Jasminka Kalajdzic
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CLASS ACTION CLINIC
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August 30, 2022

By Email to: cblackst@fncaringsociety.com

Cindy Blackstock
Executive Director
First Nations Child and Family Caring Society of Canada
Suite 202, 350 Sparks Street
Ottawa, ON K1R 7S8

Dear Ms. Blackstock:

RE: Concerns with First Nations Youth Settlement Proposal

We are writing you to set out the Class Action Clinic's concerns with the proposed Final Settlement Agreement ("FSA") in the First Nations Youth Class Actions bearing Federal Court File Nos. T-402-19 and T-1751-21. We understand that the Caring Society will be making submissions to the Canadian Human Rights Tribunal regarding the FSA and the Assembly of First Nations' ("AFN") request that it be approved by the Tribunal. We hope our comments are helpful to you.

In addition to some substantive objections we have with the FSA, we are also concerned with the very short notice class members have had regarding the upcoming settlement approval hearing currently scheduled to begin on September 19, 2022 (the "Settlement Approval Hearing. We set out our concerns regarding timing of the Settlement Approval Hearing in a letter to class counsel dated July 8, 2022, a copy of which is enclosed. Although class counsel acknowledged our letter, they have maintained that the proposed settlement is fair and the notice adequate. As you may recall, it was after sending this letter and failing to receive a response that we reached to you and the Caring Society with our concerns.

We explain our perspective on the FSA below, but first set out the Clinic's expertise.

Class Action Clinic Expertise

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.[1]

Our Concerns with the Notice of the Settlement Approval Hearing

On January 4, 2022, Indigenous Services Canada announced that Agreements-in-Principle were reached regarding compensation for the discriminatory underfunding of First Nations child and family services.[2] At that time, it was proposed that a finalized settlement agreement in the class actions would be signed by the end of March 2022. By order of Justice Aylen dated January 14, 2022, the Settlement Approval Hearing was scheduled for September 19, 2022.

An order approving the content of the Notice of Certification and Settlement Approval Hearing (the "Notice"), was issued on June 24, 2022, weeks prior to the FSA being finally executed by the parties and four months later than originally planned. Justice Aylen subsequently approved the Notice Plan and appointed Deloitte LLP as the administrator for notice, opt-out, and claims implementation by order dated August 11, 2022. It was not until Friday, August 19 at approximately 5 p.m. Eastern

[1] *Crisante v. DePuy Orthopaedics*, 2021 ONSC 3703 at note 4.

[2] https://www.canada.ca/en/indigenous-services-canada/news/2022/01/agreements-in-principle-reached-on-compensation-and-long-term-reform-of-first-nations-child-and-family-services-and-jordans-principle.html

Time that we received similar mass emails from Sotos LLP and the AFN sent in accordance with the Notice Plan and enclosing the Notice announcing that the Settlement Approval Hearing is to proceed on September 19, 2022. At or about that same time, the AFN and Sotos also updated their websites[3] to include a copy of the Notice.

Despite the delay in delivering a finalized agreement, the date of the Settlement Approval Hearing was not postponed. In our letter to class counsel, we noted that the time between the dissemination of the Notice and the Settlement Approval Hearing (now known to be 31 days) is too short a time for a proper consideration of the FSA.

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.[4]

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).[5] 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).[6]

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

[3] http://www.fnchildcompensation.ca/ and https://www.sotosclassactions.com/cases/first-nations-youth/

[4] *Bancroft-Snell v. Visa Canada Corporation*, 2019 ONCA 822 at para 3.

[5] https://www.residentialschoolsettlement.ca/hearings.html

[6] https://www.albertanativenews.com/proposed-settlement-of-sixties-scoop-class-action/ and https://sixtiesscoopsettlement.info/wp-content/uploads/2020/06/Memorandum-of-Fact-and-Law-Plaintiffs-April-19-2018.pdf.

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.

For all of these reasons, we asked class counsel to postpone the Settlement Approval Hearing by two to three months, which still would have been less than the six-months' notice envisioned in Justice Aylen's January timetable. Class Counsel declined our request.

Objections to Settlement Terms

Based on our review of the Settlement, there are several substantive issues with both the adequacy of the monetary compensation and the process by which class members will have to make their claims.

(a) Quantum of Settlement Fund

According to the factum of the Complainant in the CHRT Declaration motion, the $20 billion settlement amount in the class actions is, "to the best of the parties' knowledge, […] more than sufficient to compensate the Class."[7] In the same factum, however, the Complainant states that there is "no direct information […] available on the number of individuals who meet the definition

[7] Factum of the Complainant, Assembly of First Nations, dated July 22, 2022, at para. 119 [Factum of the Complainant].

of the Jordan's Principle Class or the Trout Class", the estimates are "necessarily speculative", and "there are no estimates of the number of Jordan's Principle and Trout Family Class Members."[8]

Despite this lack of data, the $20 billion sum is fixed. While we recognize the historic size of the settlement fund and that the parties made efforts to estimate the number of First Nations youth entitled to compensation, we do not believe that the risk of the fund being insufficient should be borne by the class. Underestimates of class size are not uncommon and can have significant effects on the availability of funds for class member compensation.

As an example, one month prior to the claims deadline in the Federal Indian Day Schools class action, an update was posted on the class action website indicating that 150,000 claims had been filed, exceeding actuarial estimates by 10,000-30,000 claims. If similar underestimates occur in this case, class members may see their net recovery reduced by up to 25%, or $10,000 on a $40,000 claim. [9]

(b) Removed Child Family Class Cap

Under Articles 6.04(3) and (8) of the FSA, parents of multiple children *may* receive a maximum of $60,000 in total instead of $40,000 Base Compensation per child. The CHRT ruling on which liability is based, however, entitles parents to *at least* $40,000 per child, regardless of the number of children in the family.[10] The Tribunal awarded $20,000, the maximum amount for pain and suffering under the CHRA, to each First Nations child removed from their homes, families and community since 2006, *and to each* of their caregiving parents/grandparents. The Tribunal emphasized that its "order applies for each child removed from the home, family and community as a result of the above-mentioned discrimination."

The Tribunal made the same order with respect to caregivers of children who experienced a delay, denial or gap in the delivery of an essential service. It awarded an additional $20,000 in compensation for Canada's willful and reckless behaviour on the basis that Canada knew that its policies were harming children and nevertheless put its financial interest over the best interests of First Nations children.

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[8] Factum of the Complaint at paras. 38-40.

[9] https://indiandayschools.com/en/news/june-13-2022-extension-of-claims-process/

[10] *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 at paras. 245-257. The Tribunal's decision was upheld on judicial review: *Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada*, 2021 FC 969 and is currently under appeal at the Federal Court of Appeal.

The proposed cap, therefore, is inconsistent with the CHRT's compensation decision, as affirmed by the Federal Court. Moreover, caregiving parents/grandparents of multiple children may not even receive $60,000 if the parties have underestimated the size of the Removed Child Family Class Fund.[11]

(c) Appointment of Deloitte LLP as Claims Administrator

Deloitte LLP has been appointed as the "administrator for notice, opt-out and the claims implementation" should the FSA be approved. Deloitte is currently the claims administrator responsible for claims implementation of the Federal Indian Day Schools Class action settlement. Unfortunately, Deloitte's approach in that case has been to prefer expediency, efficiency, and cost-effectiveness over access to justice for class members.

When the claims process in that case began in January 2020, there was an initial tide of claims filed. Many of these claims were filed as "Level 1" claims, compensation for which is capped at $10,000/claimant, and which requires no information about the type of harm experienced by class members. Many of these early filing class members subsequently learned that higher amounts of compensation are available under the settlement (up to $200,000 for "Level 5" claims) and sought to amend their claims to seek compensation at a higher level. While Deloitte initially allowed claimants to amend their claims provided their claim had not yet been finally processed, the firm later decided that such changes would no longer be permitted as they created practical and administrative difficulties.

Only after being urged by class counsel to provide notice of this change in policy, Deloitte no longer allowed changes to claim levels by June 2020. This decision has resulted in some class members who experienced serious childhood physical and sexual abuse to receive as little as 5% of the compensation owed to them.

Many class members have contacted the Clinic detailing this experience and we are aware of at least one motion which was brought to allow such amended claims to be considered. Unfortunately, the case management judge agreed that Deloitte's approach was appropriate.[12] Deloitte's decision to limit class members' substantive rights to compensation in preference of an expedient, efficient, and less costly process has caused a significant access to justice barrier for Day Schools class members who have been re-traumatized by the claims process. We are concerned that should such issues arise in the context of this case, Deloitte may again choose to prefer economic efficiency over class members' substantive right to compensation.

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[11] FSA, Article 6.04(11).

[12] *McLean v. Canada (Attorney General)*, 2021 FC 987.

Conclusion

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.

Finally, we wish to take this opportunity to thank you for all your hard work in pursuing justice for First Nations children, youth, and families across Canada. Your determination and commitment to their interests is truly inspiring.

Yours very truly,

Jasminka Kalajdzic, Clinic Director

Andrew Eckart, Staff Lawyer

JK/AJE

Encl.

CLASS ACTION CLINIC
Windsor Law

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July 8, 2022

By Email to:

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Dear counsel:

RE: Settlement Approval Hearing and Notice Timeline

The Class Action Clinic is in possession of your recently filed Motion and Supplemental Motion Records for Notice Approval and the issued Order of Justice Aylen dated June 24, 2022. Having reviewed these records, including the recently released and announced Settlement Agreement, the Clinic wishes to raise some concerns with your proposed timeline for the issuance of notice in advance of the Settlement Approval Hearing currently scheduled for September 19, 2022.

If we understand your materials correctly, the Notice Plan for the Settlement Approval will be ready for approval and dissemination by mid-August. This leaves potential Class Members approximately thirty days' notice of the Settlement Approval Hearing scheduled to begin September 19, 2022.

The Clinic's Concerns Regarding Notice

We are concerned that this proposed window is insufficient to notify Class Members of a proposed Settlement Agreement, review it, seek advice and clarification regarding its contents, and make an informed decision about participating in the Settlement Approval Hearing. Class Members should be afforded the opportunity to have an educated opportunity to review the Settlement Agreement and adequately prepare to raise objections and present their views to the court. Besides the right to opt-out, the right to object is the only other participatory right a class member has in a class action.

A review of a few other class actions highlights the importance of Class Member participation in, and notification of, a Settlement Approval hearing. The Indian Residential School Settlement Agreement held nine Settlement Approval Hearings, Canada-wide from late August 2006 to mid-October 2006 (over a period of two and a half months).[1] 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).[2][3]

While we recognize that the six-month opt-out period in this case greatly benefits Class Members, allowing for objections to the Settlement Agreement for such a small fraction of that time impedes Class Members' ability to meaningfully contribute to the Settlement Agreement or flag areas of concern, particularly with respect to the claims process.

The Importance of a Trauma-Informed Approach

We also wish to underscore the importance of implementing a trauma-informed approach at every step of the class action process. Tight timelines have the potential to place unnecessary stresses on an already marginalized and vulnerable population. Class Members in this case, Indigenous youth subjected to trauma, are highly vulnerable to re-victimization and re-traumatization.

For Class Members deciding to object to a proposed Settlement Agreement, it will likely require processing 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 healing and the needs of the Class. To systemically disadvantage traumatized Class Members runs counter to the broader narrative of reconciliation at the heart of the First Nations Youth Class Action.

[1] https://www.residentialschoolsettlement.ca/hearings.html
[2] https://www.albertanativenews.com/proposed-settlement-of-sixties-scoop-class-action/
[3] https://sixtiesscoopsettlement.info/wp-content/uploads/2020/06/Memorandum-of-Fact-and-Law-Plaintiffs-April-19-2018.pdf

The Motion Record for Notice Approval states that there are likely over 70,000 Class Members that are minors. Given this, timelines should be adapted accordingly as survivors of childhood trauma are at the highest risk of developing complex trauma. Moreover, minors will likely need significant support throughout the process that could further interfere with their ability to object in the 30 or so days between the issuance of notice and the Settlement Approval Hearing.

Our Recommendations

On January 4, 2022, the Agreement in Principle was announced, and it was proposed that a finalized Settlement Agreement would be signed in March 2022. The Settlement Approval Hearings were scheduled for September 2022 by order of Justice Aylen on January 14, 2022.

The finalized Settlement Agreement was only signed on July 4, 2022, four months after the initial proposed date. Despite the delay in a finalized agreement, the date of the Settlement Approval Hearing has not been postponed. What was initially proposed as a six-month period to review the finalized Settlement Agreement in advance of its approval, has been reduced to two months.

As a Clinic with a mandate to serve the need and protect the interests of class members across Canada, we view the proposed timeline as a rushed attempt to meet the pre-set dates of the Settlement Approval Hearing which in turn limits class member participation. It prioritizes administrative efficiency over ensuring that those who want to participate in the hearing have their voices heard. As this is a very important case recognizing institutional harms against Indigenous youth, creating barriers to participation continues to uphold oppressive power dynamics and the inequitable colonialist structures that this Class Action is said to address.

The Class Action Clinic calls upon Class Counsel to reconsider the scheduling of the Approval Hearing such that Class Members have at least two to three months to review the Proposed Settlement Agreement in advance of the Hearing, as the current proposed timeline is not trauma-informed, nor sufficient for meaningful review. We also ask that Class Counsel provide the Class Action Clinic with the materials for the motion scheduled for August as well as the Settlement Approval Hearing, once they are prepared, for our review.

We are available to discuss our concerns further as ultimately, the Class Action Clinic desires an outcome that is also in the best interests of the Class.

Yours very truly,

Andrew Eckart
AJE/LC