

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY 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

AFFIDAVIT OF CRAIG GIDEON AFFIRMED JUNE 30, 2023

I, CRAIG GIDEON, of the City of Calgary, in the Province of Alberta, **AFFIRM AND SAY THAT:**

1. I am the Senior Director of the Social Branch of the Assembly of First Nations (“AFN”) and, in this capacity, I have been extensively briefed upon and involved in the negotiations with respect to the compensation for survivors of Canada’s discriminatory funding of the First Nations Child and Family Services (“FNCFS”) Program, and Canada’s narrow interpretation of Jordan’s Principle.

2. I, along with Class Counsel, AFN staff who are subject matter experts, and the advice of committees including Jordan's Principle Circle of Experts, have provided significant support and direction to the AFN legal team in these negotiations and related litigation. As such, I have knowledge of the matters to which I hereafter depose. Where I have relied on the information of others in making this affidavit, I have identified the source of the information and I verily believe this information to be true.
3. I have reviewed the Affidavit of Janice Ciavaglia, dated July 22, 2022, filed in these proceedings. My statements herein focus upon the developments since the date of Ms. Ciavaglia's Affidavit.
4. 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. The AFN is mandated by the AFN Charter to represent and protect the rights and interests of First Nations peoples in Canada, as set out in its Charter.
5. The AFN has been involved in advocacy regarding FNCFS policy and children's rights for nearly three decades. In particular, the AFN's 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.
6. I recognize that compensation does not constitute healing or justice for First Nations children or their families harmed by Canada's discrimination. Healing is an individual and collective journey that no amount of compensation can independently achieve. Justice will come from systemic changes to Canada's services for First Nations that ensure the current and future generations of First Nations children, youth and families are not subjected to the harms and discrimination of the past.
7. I also recognize the efforts and dedication of this panel to ensure that First Nations children and their caregivers receive the compensation they are rightfully owed under the Canadian Human Rights Act. Over recent months, I have participated in and provided direction to

the negotiations towards a revised final settlement agreement that I believe has taken the necessary steps to address the panels concerns regarding the previous agreement.

I. BACKGROUND

8. In 2007, the AFN and the Caring Society filed a complaint with the Canadian Human Rights Commission alleging discrimination in the provision of the FNCFS Program and Jordan's Principle.
9. On January 26, 2016, this panel issued its landmark ruling on this matter (the "**Merits Decision**"), substantiating the complaint and ordered Canada to immediately cease its discriminatory conduct.
10. On March 4, 2019, a class action was commenced in the Federal Court of Canada, seeking compensation for children who suffered comparable discrimination related to child apprehensions and the discriminatory application of Jordan's Principle, beginning on April 1, 1991, bearing Federal Court File No. T-402-19 (the "**Moushoom Class Action**"). The representative plaintiffs included Xavier Moushoom, Jeremy Meawasige by his Litigation Guardian, Jonavon Joseph Meawasige and Jonavon Joseph Meawasige.
11. On September 6, 2019, this Panel released its seminal compensation decision regarding Canada's discriminatory funding of the FNCFS program and its failure to implement Jordan's Principle (2019 CHRT 39) (the "**CHRT Compensation Decision**").
12. On October 4, 2019, Canada sought judicial review of the CHRT Compensation Decision.
13. In December 2019, the then Minister of Indigenous Services, the Honourable Marc Miller announced that Canada was prepared to enter into negotiations on compensation, wished to certify the Moushoom Class Action, and settle the litigation.
14. On January 15, 2020, the AFN Executive Committee instructed the AFN Secretariat to initiate an AFN class action regarding child welfare discrimination from 1991 onwards, and the denial or delay in receiving essential services under Jordan's Principle. This instruction was provided to ensure that First Nations discriminated against under the FNCFS Program and Jordan's Principle are thoroughly and fairly represented in the

compensation process, and that steps are taken to mitigate the harms that previous compensation processes have had on First Nations. Attached hereto and marked as **Exhibit “A”** is a copy of the Executive Motion authorizing AFN to commence its own class action.

15. On January 28, 2020, the AFN and the representative plaintiffs Ashley Dawn Louise Bach, Karen Osachoff, Melissa Walterson, Noah Buffalo-Jackson represented by his Litigation Guardians Carolyn Buffalo and Dick Eugene Jackson, filed a proposed class action in the Federal Court under Court File Number T-141-20, for removed children dating back to April 1, 1991 and for Jordan’s Principle discrimination dating back to December 12, 2007 (the “**AFN Class Action**”).
16. In 2020, the AFN and Moushoom agreed to consolidate their respective class actions and negotiate a resolution in the best interests of the combined class. The AFN and Moushoom class actions (collectively the “**Consolidated Class Action**”) were formally consolidated on July 7, 2021 by Madam Justice St-Louis. Attached hereto and marked as **Exhibit “B”** is a copy of the consolidation order. The Consolidated Class Action was ultimately certified on November 26, 2021, by Madam Justice Aylen.
17. Canada contested the certification of claims covering victims and survivors impacted by Canada’s discrimination in its provision of essential services and products prior to its recognition of Jordan’s Principle in December 2007. Accordingly, on July 16, 2021, the AFN and Zacheus Joseph Trout filed a proposed class action in the Federal Court (“**Trout Action**”) representing the Jordan’s Principle-like essential services claimants from April 1, 1991 to December 12, 2007.
18. On September 29, 2021, the Federal Court dismissed Canada’s applications for judicial review of the CHRT Compensation Decision and the Eligibility Decision, as well as other related Tribunal orders, in their entirety (2021 FC 969).
19. On October 29, 2021, Canada appealed 2021 FC 969 to the Federal Court of Appeal (Federal Court of Appeal File No. A-290-21). This appeal has been held in abeyance and has not yet been heard by the Federal Court of Appeal.

20. Canada eventually consented to the certification of the Trout Action, which was certified by the Federal Court on February 11, 2022. The Trout Action now extended potential eligibility for compensation well prior to the Panel’s timeline with respect to Jordan’s Principle–type claims of discrimination. The Trout Action Certification Order can be found at Schedule B of the Final Settlement Agreement.
21. From December 2020 to June 2022, the parties to the Consolidated Class Action, the AFN, Canada and Moushoom (the “**Class Action Parties**”) held intensive negotiations in an attempt to settle the Consolidated Class Action in a manner that would satisfy the Tribunal’s compensation orders.
 - (a) On December 31, 2021, the AFN, Moushoom counsel and Canada executed an Agreement-in-Principle on compensation (the “**Compensation AIP**”) and a separate Agreement-in-Principle on the long-term reform of the FNCFS Program. Canada committed \$20 billion for compensation for First Nations children and families impacted by the discriminatory funding practices of the FNCFS Program and its improper implementation of Jordan’s Principle and essential services dating back to 1991. The Compensation AIP also noted that the estimated class size was based on a report developed by experts and the data relied on was based on data received by ISC and modelling taking into account gaps in the data.
 - (b) With respect to the principles that guided the negotiation, the AFN and Moushoom counsel agreed to pursue a series of objectives:
 - (i) maintain and increase the awards under the CHRT Compensation Decision to the greatest extent possible;
 - (ii) ensure proportionality of compensation based on objective factors serving as proxies for harm;
 - (iii) ensure that where compromise was required, it would favour those claimants who experienced discrimination as children;
 - (iv) heed the lessons learned from past settlements and ensure a trauma-informed and culturally sensitive claims process;
 - (v) avoid any need for interview or cross-examination of survivors;

- (vi) create an easy and accessible claims process:
- (vii) provide significant supports throughout the claims process; and
- (viii) ensure all settlement funds are directed to survivors and their families.

22. In June 2022, the AFN, Canada and the Moushoom Class Action representative plaintiffs executed a historic settlement of \$20 billion for the Consolidated Class Action. The First Nations Child and Family Services Jordan's Principle, Trout Class Settlement Agreement dated June 30, 2022 (the "**2022 FSA**"), was intended to extend comparable compensation to all claimants eligible under the CHRT Compensation Order, subject to certain principled compromises where necessary to achieve a negotiated resolution. The 2022 FSA also extended compensation to individuals who experienced similar discrimination back to April 1, 1991, who were not entitled under this Panel's orders, due to the statutory limitations regarding how far back in time the Tribunal could compensate.
23. On August 11, 2022, the Federal Court approved a proposed notice plan advanced by the Class Action parties, which included the dissemination of the Short Form Notice of certification and settlement approval hearing, the form of which was previously approved by the Federal Court on June 24, 2022. The settlement approval hearing had previously been scheduled for September 19, 2022, but has been deferred since that time. A copy of the Short Form of Notice is attached hereto as **Exhibit "C"**.

II. TRIBUNAL'S DECISION AUTUMN 2022

24. In September 2022, the AFN and Canada sought this Panel's approval of the 2022 FSA as satisfying the CHRT Compensation Decision, the Eligibility Decision and related clarifying compensation orders, including 2020 CHRT 15, 2020 CHRT 7, 2020 CHRT 15, 2020 CHRT 20, 2020 CHRT 36 and 2021 CHRT 7 (collectively, the "**Tribunal's compensation orders**"). The Tribunal's approval of the 2022 FSA was a condition precedent to the Class Action Parties seeking Federal Court approval of the 2022 FSA. The AFN advanced the settlement premised on the direction of the AFN Executive Committee, pursuant to their delegated authority from the First Nations-in-Assembly, which includes the capacity to address fast-paced negotiations and litigation associated therewith - a practical and necessary AFN mandate and convention.

25. The Caring Society and the Canadian Human Rights Commission opposed the AFN and Canada's joint motion on the basis that the 2022 FSA did not satisfy the Tribunal's compensation orders, while the Chiefs of Ontario, Nishnawbe Aski Nation supported its endorsement by this Panel. Amnesty International took no position on the joint motion.
26. On October 24, 2022, this Panel delivered a letter decision with full reasons to follow, dismissing the motion sought by the AFN and Canada. On December 20, 2022, this Panel released its ruling (2022 CHRT 41) on the joint motion (the "**Motion Decision**"). This Panel found that the 2022 FSA substantially, but not fully satisfied the Tribunal's compensation orders, in that it disentitled or reduced certain entitlements for certain individuals who were awarded compensation under the Tribunal's compensation orders.
27. On December 7, 2022, the AFN First Nations-in-Assembly unanimously adopted Resolution No. 28/2022, which is attached hereto and marked as **Exhibit "D"**. AFN Resolution No. 28/2022, reflecting the consensus of the First Nations-in-Assembly, sets out the principles upon which a revised final settlement agreement would 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.
28. 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. Finally, it 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.
29. In January 2023, the Class Action Parties reconvened negotiations to address the specific derogations identified by the Tribunal, as directed in Resolution 28/2022, to reach a revised final settlement agreement that would fully satisfy the Tribunal's compensation orders and build upon the achievements of the 2022 FSA. The Caring Society participated in these negotiations, lending their experience to the Class Action Parties' efforts of addressing the derogations identified by the Tribunal.
30. I have observed and participated in the intensive negotiations since January 2023, which resulted in a collective agreement amongst the negotiating parties on a Revised Final Settlement Agreement (the "**Revised Agreement**") in April 2023. A true copy of the revised final settlement agreement, being the First Nations Child and Family Services Jordan's Principle, Trout Class Settlement Agreement, is attached hereto and marked as **Exhibit "F"**. The AFN, Canada and Moushoom counsel have agreed to the terms of the

Revised Agreement and the Caring Society fully supports the Revised Agreement as it pertains to satisfying the Tribunal's Compensation Orders.

31. The terms of the Revised Agreement were presented to the First Nations-in-Assembly on April 4, 2023, for their consideration and decision at the AFN's Special Chiefs Assembly. The Special Chiefs Assembly was timely, having been called for discussion on Canada's National Action Plan on the implementation of the *United Nations Declaration of the Rights of Indigenous Peoples*. 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.
32. The First Nations-in-Assembly passed Resolution 04/2023 supporting the revisions to the 2022 FSA. A true copy of Resolution 04/2023 is attached hereto and marked as **Exhibit "E"**.
33. Resolution 04/2023 reflects the First Nations-in-Assembly's:
 - (a) full support of the Revised Agreement, including authorization for AFN negotiators to make necessary minor edits to finalize the Revised Agreement;
 - (b) support of the AFN to seek an order from this Panel that the terms of the Revised Agreement fully satisfy the Tribunal's compensation orders;
 - (c) direction to the AFN to seek Federal Court approval of the Revised Agreement on an expedited basis once it had been approved by the Tribunal;
 - (d) call for the Prime Minister to make a formal and meaningful apology to the Representative Plaintiffs and survivors of Canada's discrimination and to those who have passed away;
 - (e) expression of continued support for the representative plaintiffs in the Class Action and support all survivors and victims of Canada's discrimination, by ensuring that compensation is paid, and adequate supports are provided, as soon as possible to

those who can be immediately identified and to ensure that compensation is provided to all who are eligible; and

- (f) direction to 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.

34. Pursuant to the direction of the First Nations-in-Assembly, the Revised Agreement was executed April 19, 2023.

35. The AFN, Canada and the Caring Society also executed minutes of settlement in this proceeding, reflecting the Caring Society's involvement in, and contribution to, the negotiations leading to the Revised Agreement and the Caring Society's support of the Revised Agreement (the "**Minutes of Settlement**"). A true copy of the Minutes of Settlement is attached hereto and marked as **Exhibit "G"**.

III. NEGOTIATIONS OF REVISED AGREEMENT

36. I attended many of the negotiations that led to the Revised Agreement and remained updated by AFN legal counsel. Throughout the negotiations, the AFN's Social Development portfolio holder and negotiation lead, Manitoba Regional Chief Cindy Woodhouse, remained informed regarding progress. Regional Chief Woodhouse provided crucial leadership and direction throughout these processes.

37. The AFN's primary goal was addressing the derogations from the Tribunal's compensation orders identified by the Tribunal and on improving the substance of the 2022 FSA where possible. The AFN's intention was to ensure that those who were entitled to compensation under the Tribunal's compensation orders would receive equivalent or greater compensation under the Revised Agreement.

38. The three primary groups that the Class Action Parties and the Caring Society viewed as needing to be included in the Revised Agreement were:

- (a) Children removed from their homes, families and communities and placed in non-ISC funded placements;

- (b) The estates of deceased caregiving parents and grandparents; and
 - (c) Certain caregiving parents and grandparents who, under the 2022 FSA, would not receive multiples of compensation in circumstances of multiple removals, or whose compensation may be reduced proportionately if there were an unexpectedly high number of qualified caregiving parents and grandparents.
39. In addition, the Revised Agreement also needed to provide for interest on compensation for those entitled under the Tribunal's compensation orders.
40. The AFN, Moushoom counsel and the Caring Society also reviewed in detail this Panel's comments with respect to qualification for Jordan's Principle compensation. The AFN, Moushoom counsel and the Caring Society developed language for the Revised Agreement to clarify the threshold for receiving a minimum of \$40,000 in compensation for this group of survivors.
41. From January to the end of March, 2023, the Class Action Parties and the Caring Society met approximately 17 times, both in-person and virtually, leading up to the finalization of the draft Revised Agreement in order to review the draft Revised Agreement on a line-by-line basis and discuss changes necessary to address the Tribunal's Ruling. The Class Action Parties and the Caring Society maintained a collaborative, dialogic approach throughout the revision process in order to achieve the best possible settlement in the interests of all victims of Canada's discrimination.
42. To accommodate the additional groups who are entitled to compensation under the terms of the Revised Agreement and to ensure the sufficiency of each budget within the Revised Agreement, the AFN, Moushoom Counsel and the Caring Society successfully negotiated an additional \$3.34394 billion in settlement funds, which was agreed to by Canada. The total amount of settlement funds payable under the Revised Agreement is \$23.34394 billion.
43. The AFN is confident that this additional compensation, when considered along with the settlement structure, estimated class sizes, and budgets in the Revised Agreement, is sufficient to ensure that the survivors entitled to compensation by virtue of the Tribunal's

compensation orders receive at minimum the entitlement to compensation they have been awarded under those orders, plus applicable interest.

44. The AFN is also confident that, to the greatest extent possible, those claimants who are *not* entitled under the Tribunal's compensation orders, but are entitled to compensation under the terms of the Revised Agreement with similar claim to those in the Tribunal's compensation orders, will receive equivalent compensation to those entitled by virtue of those orders. This was especially important for those who experienced discrimination by Canada as children. This was informally referred to as the "parity principle" between the CHRT cohort and the pre-CHRT cohort.
45. The parity principle was of great concern to the AFN to ensure that all First Nations survivors of Canada's discrimination, and especially those who experienced discrimination as children, to be treated the same, regardless of their legal entitlements, which AFN believes the Revised Agreement achieves to the greatest extent possible while fully satisfying the Tribunal's compensation orders. Compromises were made for the non-CHRT Period claimants only where absolutely necessary to achieve a successful resolution that would fully satisfy the Tribunal's compensation orders.

IV. CHANGES MADE TO THE REVISED AGREEMENT TO ADDRESS THIS PANEL'S CONCERNS

46. In order to amend the 2022 FSA in response to the Motion Decision, the Class Action Parties and the Caring Society undertook to:
 - (a) define the individuals entitled under the Tribunal's compensation orders who were not entitled or only partially entitled in the 2022 FSA;
 - (b) determine, on the best available evidence, the amount of additional funds required from Canada to satisfactorily compensate the additional individuals entitled to compensation under the Tribunal's orders who were not included in the 2022 FSA;
 - (c) determine a manner by which compensation payable to an estate of a deceased family member may be fairly distributed to the children of the estate;

- (d) clarify the entitlements of the Jordan's Principle claimants and the Jordan's Principle Family claimants; and
- (e) ensure that, in accordance with the First Nations-in-Assembly's direction, the distribution of compensation for certain groups may commence prior to the finalization of the entire claims process.

47. Below, I address the AFN's understanding of these issues and outline how the Revised Agreement responds to this Panel's concerns expressed in the Motion Decision.

A) Additional groups' entitlement to compensation

48. In the Motion Decision, this Panel clarified its intention to compensate those children who, with involvement of child welfare authorities, were placed off-reserve with a trusted adult who is not a member of the child's family (such as a family friend) but whose placement was neither not funded by ISC, and the caregiving parents or grandparents of these children. In order to provide compensation for individuals and caregiving parents or grandparents involved in kith placements under the Tribunal's compensation orders, the Revised Agreement includes two additional groups:

- (a) "**Kith Child Class**": those 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; and
- (b) "**Kith Family Class**": those Caregiving Parents or, Caregiving Grandparents if no Caregiving Parents, of an approved Kith Child Class Member placed in a Kith Placement between January 1, 2006, and March 31, 2022.

i) *Kith Child Class*

49. The Class Action Parties and the Caring Society considered how to ensure an objective, non-traumatizing process of identifying children who were placed in care with a non-

family member and outside of their community, but were not formally removed by a child welfare authority on an individual basis, and a process for assessing those claims received. It was clear to the AFN that a unique claims process would have to be tailored to the particular circumstances of the Kith Child Class and the Kith Family Class.

50. The Caring Society provided estimates, based on the best available evidence, that the number of children who would fall into the “Kith Child Class” within the period covered by the Tribunal’s orders would be approximately 13,000. Taking into consideration that this estimate did not account for the many Kith Class Children who already qualify as members of the Removed Child Class, compensation was thereafter sought for a total of 15,000 children who were estimated to be members of the Kith Child Class between April 1, 1991 and March 31, 2022.
51. The Revised Agreement budgets \$600 million to compensate the total estimated 15,000 Kith Child Class dating back to April 1, 1991. Each Kith Child Class member is entitled to \$40,000 in compensation, equivalent to the amount that those eligible for compensation were entitled to pursuant to the Tribunal’s compensation orders and subsequent clarification in the Motion Decision, including interest thereon.

ii) Kith Family Class

52. The Kith Family Class reflects the entitlements of the Removed Child Family Class, as the members of this class are the caregiving parent(s) or grandparent(s) who were caring for the child at the time the child was placed in a kith placement.
53. The entitlement of the Kith Family Class is limited to the period of April 1, 2006 and March 31, 2022 (the “**CHRT Period**”), reflecting the compensation they would receive pursuant to the Tribunal’s compensation orders and subsequent clarification in the Motion Decision. This is a principled exception to the parity principle that the AFN viewed as necessary to ensure that there are sufficient settlement funds available to the Kith Family Class during the CHRT Period and to prioritize the existing funds for the child survivors.

54. The Kith Family Class whose claims fall within the CHRT Period also may receive multiples of compensation where multiple children were removed and placed in a Kith Placement during the CHRT Period.
55. The Revised Agreement budgets \$702 million to compensate the Kith Family Class, which was extrapolated from the estimate for the number of eligible claimants under the Kith Child Class during the CHRT Period.

B. Additional compensation available to caregiving parents and grandparents for multiple removals of children

56. The 2022 FSA included an entitlement to additional compensation, up to a maximum of \$60,000 per caregiving parent or grandparent, rather than multiples of compensation for each child removed. This Panel was clear in the Motion Decision that it did not view itself as having jurisdiction to endorse a settlement that did not include *multiples* of compensation for caregiving parents or grandparents who endured the removal of multiple children.
57. The Class Action Parties and the Caring Society undertook to address this derogation by obtaining and budgeting additional funds for the possibility of multiple removals.
58. The Class Action Parties and the Caring Society agreed to an additional \$997 million specifically for removals of multiples children. This is in addition to the \$5.75 billion that had already been agreed to in the 2022 FSA for the Removed Child Family Class members, for a total of \$6.75 billion available to this class of survivors.
59. The additional budget of \$997 million was selected based upon the initial budget \$5.75 billion available to the Removed Child Family Class, which is sufficient for 143,750 caregiving parents or grandparents to claim compensation of \$40,000 each. The budget for multiple removals is sufficient for an additional 24,925 payments of compensation (at the base compensation level of \$40,000) to be paid for multiple removals. It was agreed that the additional funds were likely sufficient to compensate Removed Child Family Class members who endured the removal of multiple children with multiple amounts of compensation.

60. The terms of entitlement and assessment were not changed for the members of the Removed Child Family Class. The Revised Agreement maintains a method of assessing multiple claims with respect to a single Removed Child and entitles multiple caregiving parents and/or grandparents to receive compensation for each Removed Child.
61. In order to safeguard the amount of compensation available to the Removed Child Family Class Members within the CHRT Period, including the multiples of compensation, the Revised Agreement contemplates a cap of \$80,000 upon the Removed Child Family Class members falling *outside* of the CHRT Period. The AFN views this exception to the parity principle between CHRT and non-CHRT class members as a principled compromise so that additional funds would be directed towards child survivors without impacting the entitlement of caregiving parents or grandparents covered by the Tribunal's compensation orders and the Motion Decision.

C. Potential for payment of compensation to an estate directly to children

62. The Class Action Parties and the Caring Society agreed that, to meet the Tribunal's compensation orders and the Motion Decision, the Revised Agreement would include a provision for the payment of compensation to estates. The estates of deceased victims of Canada's discrimination are not a defined group within the FSA, but all classes of estates who are within the scope of the Tribunal's compensation orders are eligible for compensation under the Revised Agreement. The estates of the Removed Child Class, Kith Child Class and Jordan's Principle Class within the CHRT Period will be eligible to claim and receive compensation under the Revised Agreement. Similarly, the Revised Agreement permits claims to be made on behalf of the estates of the Removed Child Family Class, Kith Family Class, and the Jordan's Principle Family Class.
63. It was also necessary to consider the burdensome and costly complications that may ensue when compensation is paid to an estate. With this in mind, it was agreed that the Revised Agreement should embed a mechanism to avoid complication, cost and burden upon claimants, especially the children of the Removed Child Family Class, Jordan's Principle Family Class and Kith Family Class. The Revised Agreement contemplates that compensation payable to estates of these three classes will be paid *directly* to the surviving

children of the deceased family member. Where there are multiple children of the same deceased family member, the Revised Agreement contemplates an equal division amongst the children of the compensation payable to the estate.

64. There are four primary risks that the Revised Agreement seeks to avoid by payment directly to the surviving children of deceased family members:
 - (a) First, the risk that compensation processed through an estates mechanisms, whether pursuant to the Indian Act or otherwise, would be payable to a family member or relative versus a child who is a survivor of Canada's discrimination;
 - (b) Second, that estates processing, including probate, can be a time-consuming process, especially for individuals who do not have an executor or personal representative who is able to process the compensation. This would delay the payment of compensation, contrary to the AFN's mandate to seek the distribution of compensation as soon as possible to victims and survivors;
 - (c) Third, the compensation payable to the survivors of an estate claimant is likely to be diluted through payment of estates-related taxes, including estates administration taxes; and
 - (d) Fourth, there is a risk of compensation being claimed by potential debtors of a deceased family member's estate.
65. The estates mechanism relies upon the fact that the claims of a Removed Child Family Class, Jordan's Principle Family Class, or Kith Family Class member are all, to an extent, dependant upon the claims of the children. The Administrator will receive claims from the children associated with each estate of a family class member and will more efficiently be able to pay compensation directly to the associated child survivors of the deceased victims.
66. This mechanism does not supersede the entitlement of the estate itself but provides for a more efficient and just distribution of compensation. While not expressly contemplated by the terms of the Revised Agreement, in the circumstance where there are no children identified by the Administrator who are associated with the claim of the family class

member, the compensation payable would be directed to the estate. The estate claimant will receive compensation in any event, meeting the terms of the Tribunal's compensation orders.

D. Clarifications to Jordan's Principle entitlements

67. Upon review of the Motion Decision, it was determined that revisions to the definitions of the Jordan's Principle Class were advisable, in order to (a) better direct the piloting of the assessment methodology that would follow its execution and (b) better direct the Administrator and other assessors who are involved in assessing Jordan's Principle and Trout claims. The goal of the 2022 FSA was to ensure that those children who suffered discrimination and were impacted as defined by the Tribunal's compensation orders will receive equivalent or greater compensation, which continued to underpin the AFN's efforts with the Revised Agreement.
68. It is important that the Revised FSA ensure that the Jordan's Principle Class fully overlaps with the Jordan's Principle claimants who are entitled to compensation under the Tribunal's compensation orders. In order to accomplish this, the Revised Agreement:
 - (a) Revises the names of the classes to and clarifies eligibility under the Jordan's Principle and Essential Service Classes ; and
 - (b) Aligns the definition of the Jordan's Principle Class with the language expressly used by the Tribunal, to ensure that the claimants entitled under the Tribunal's compensation orders receive compensation as members of the Jordan's Principle Class.
69. The new definition of the Jordan's Principle Class explicitly clarifies the intention that it:
 - (a) includes those individuals who experienced the highest level of impact (including pain, suffering or harm of the worst kind), and (b) fully overlaps with those children who are entitled to compensation under the Tribunal's compensation orders.
70. The 2022 FSA's budget for compensation of Jordan's Principle claimants was based upon an estimate provided by Canada utilizing a single quarter of the 2019-2020 fiscal year,

which estimated that there would be between 58,385 and 69,728 total claimants in the Jordan's Principle Class. Since the Motion Decision, the Class Action parties and Caring Society have considered the estimate in depth, and remain confident in the original estimate, based upon there being 65,000 potential claimants.

71. The combined budget for the Jordan's Principle Class and the Essential Services Class permits for the payment of \$40,000 to the 65,000 estimated claimants, with additional funds available from income generated upon the fund and a dedicated amount of interest available from the Interest Reserve Fund to members of the Jordan's Principle Class. This is separate from the budget of \$2.0 billion for the Trout Child Class – those with Jordan's Principle-type claims prior to the Jordan's Principle Class period.
72. Finally, the Revised Agreement continues to ensure that each eligible Jordan's Principle claimant entitled under the Tribunal's compensation orders will receive, at a minimum, the amount they would be paid under those orders. Any constraints upon the budgeted amounts, should they arise, will be addressed by adjusting the payment to the Essential Services Class, who are *not* entitled to compensation under the Tribunal's compensation orders. The budget is intended to fully meet the Tribunal's compensation orders.
73. The piloting of the Jordan's Principle, pursuant to the terms of the Revised Agreement, will take substantial efforts and time to ensure it accurately reflects the intentions of the Class Action Parties. The development of the piloting of the Jordan's Principle assessment criteria requires an integrated approach with the AFN, Moushoom legal counsel, and Jordan's Principle experts working together to ensure its success.
74. The piloting process will be built upon the clarifications in the Revised Agreement and the Framework of Essential Services, which is attached as an appendix thereto and is designed to provide objective criteria for the expedient administration of claims. The pilot will seek to develop an appropriate threshold for the Jordan's Principle Class, ensure objectivity in the assessment methodology, and gauge the responsiveness of the assessment. One of the central goals of the piloting process, which is further described hereinbelow, is to ensure that the results align with the direction provided by this Panel in the Tribunal's compensation orders. The framework of essential services and related instruments,

developed by way of First Nations-led expert consultations, will also be refined by way of this piloting process.

75. The integrated approach will continue during the piloting phase, which will be overseen by the First Nations-led Settlement Implementation Committee (“SIC”). The SIC will work along with the Administrator to train individuals in the Jordan’s Principle assessment methodology, and to refine the assessment criteria prior to seeking Federal Court approval. Once the SIC and the Administrator are satisfied with the piloting of the Jordan’s Principle assessment criteria, the claims process will ultimately be approved and overseen by the Federal Court. The implementation of the claims process will continue to be overseen by the Federal Court throughout the decades-long claims period.
76. While the time to pilot the Jordan’s Principle assessment methodology could mean that the payment of compensation for eligible members of the affected classes is not immediate, the benefit is that upon approval of the Revised Agreement by this Tribunal and the Federal Court, the settlement funds will begin benefiting from investment growth and collecting interest, including the amounts budgeted to the Jordan’s Principle Class. This gives additional certainty that Jordan’s Principle Class members, many of whom are still under the age of majority, will receive full compensation plus interest when they claim compensation.

E. The Interest Reserve Fund

77. The Revised Agreement continues to reflect the intention that claimants who do not receive compensation immediately should not be disadvantaged compared to those who receive settlement money early in the claims period and accordingly contemplates the upward adjustment for the time value of money for the period of time in which claimants are unable to advance their claim, including due to being below the age of majority at the time the settlement is implemented.
78. In addition to time value, the Revised Agreement now contemplates the payment of interest for certain classes. Following the Motion Decision, the Class Action Parties and the Caring Society considered the terms relating to interest in the Tribunal’s compensation orders for the CHRT Period and agreed that survivors were entitled to simple interest upon the

\$40,000 of compensation (or multiples of compensation). It was determined that the most appropriate mechanism to address interest would be the creation of a separate budget, known as the Interest Reserve Fund, which would be dedicated to paying interest on compensation amounts for those claimants who are entitled to interest, specifically those whose claims are within the CHRT Period.

79. The Revised Agreement sets an initial budget of \$1 billion for the payment of interest to the child class members whose claims fall within the CHRT Period and that said budget would come from the income on the overall settlement funds for the purposes of paying interest to the Removed Child Class, Jordan's Principle Class and the Kith Child Class.
80. The family members who are entitled to compensation under the Tribunal's compensation orders are also entitled to interest under the Revised Agreement. However, the interest payable to these individuals will be paid out of the income on the settlement funds rather than the Interest Reserve Fund.
81. For the purposes of assessing the income payable on the Interest Reserve Fund, AFN legal counsel requested from the actuary, Eckler Ltd., a projection of potential returns on the settlement funds over various time scenarios. Attached hereto and marked as **Exhibit "H"** is a projection received from Eckler Ltd. regarding the potential returns on the settlement fund, reflecting a projection return of 815 million to 1,050 million based on the initial 12-month investment period for the full amount of the settlement funds.
82. Having reviewed the estimate provided by the actuary, I am confident that, even in the low return scenario, there will be significant income generated on investment of the fund. To me, this reiterates the importance of receiving the settlement funds from Canada with all alacrity, in order to maximize the investment returns. The early receipt of a lump sum of \$23.34394 billion is aligned with the AFN First Nations-in-Assembly's direction that compensation should be paid as soon as possible to claimants who are eligible, even in the event that the entire distribution protocol is not finalized, as all survivors will benefit from the increases in overall compensation funds available.

F. Additional Clarifications to the Revised Agreement

i) Clarification regarding Jordan's Principle Family Class Assessment Methodology

83. The Class Action Parties and the Caring Society also wanted to ensure that the different types of impacts that may have been experienced due to Canada's delay, denial or service gap with respect to an essential service were addressed by the Jordan's Principle piloting.
84. The Class Action Parties and the Caring Society understood, and the evidence suggests, that the impacts experienced by the family members of children who experienced a delay, denial or gap in services under Jordan's Principle may be different than the impacts experienced by the children themselves. While both the child and the caregiving parent or grandparent experienced significant impacts as a result of Canada's discrimination, the nature of the impacts is, in many cases, different.
85. I have reviewed the Affidavit of Dr. Lucyna Lach dated June 20, 2023, and the accompanying report appended thereto. The report, entitled "Report Submitted to Moushoom Class Council Regarding Method for Assessment of Compensation for Caregiving Parents or Caregiving Grandparents" was provided to the AFN for its consideration on June 12, 2023. Having reviewed the report, I agree that it reflects the AFN's understanding of both the need for and the goals of the piloting process and the preliminary methodology the Class Action Parties and the Caring Society will pursue for its implementation. A copy of Dr. Lach's Affidavit is attached hereto as **Exhibit "I"**.
86. As noted by Dr. Lach, 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. The lived experience of caregiving parents and grandparents varies based on their individual, family, and community context.¹ While one may expect that a child's level of pain and suffering related to unmet needs would invoke an equal level of caregiver pain and suffering, Dr. Lach is clear that not all caregivers experience the impact of their child's

¹ Affidavit of Dr. Lucyna Lach dated June 20, 2023, Exhibit "A" Report Submitted to Moushoom Class Council Regarding Method for Assessment of Compensation for Caregiving Parents or Caregiving Grandparents at pg. 1 ["Lach Report"].

unmet needs in the same manner, noting the need to consider context and the variability of a caregivers experience.²

87. Dr. Lach highlights that while existing theoretical and empirical literature indicates that hardship and suffering can be assessed, such an assessment will require an adaptation of existing measures, piloting of that measure and establishing culturally appropriate methods for its administration.³ Accordingly, she proposes that the piloting be completed in two phases, the first composed focused on the development of an initial version of the questionnaires and forms that will thereafter be submitted to a larger pilot phase, the scope of which will be determined in consultation with statisticians and a First Nations informed steering committee. The proposed timeline would seek to conclude a final report for March of 2024.⁴

88. The AFN is of the view, and the evidence suggests, that Jordan's Principle piloting is necessary to ensure that objective criteria for the assessment of these individuals' 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. The piloting process is instrumental to this process, and will be dual-scoped in nature, one aspect focusing upon the assessment criteria for the children who experienced a denial, delay or service gap while the other focuses upon the impacts to the caregiving parents or grandparents of this child.

ii) Distribution of compensation for certain groups may commence prior to the finalization of the entire claims process

89. The First Nations-in-Assembly, in both Resolution 28/2022 and Resolution 04/2023, have directed the AFN to "[ensure] 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." The AFN is committed to ensuring that compensation flows in accordance with this direction.

² Lach Report at pg. 9.

³ Lach Report at pg. 15.

⁴ Lach Report at pg. 13-14.

90. The Revised Agreement contemplates a phased approach to the approval and implementation of the claims process. This permits Federal Court approval of the claims process for one group even if there are further groups for whom the distribution methodology is being finalized. A phased distribution is facilitated by four factors in the Revised Agreement:
- (a) There are distinct budgets for each class in the Revised Agreement;
 - (b) The regular advice by the actuary to the SIC to ensure there are sufficient funds in each of these budgets;
 - (c) The protection afforded by the Interest Reserve Fund to those individuals whose claims fall in the CHRT Period, who are entitled to interest upon their payment; and
 - (d) The unique assessment processes for each class in the Revised Agreement.
91. The inclusion of consideration for a phased approach to distribution in the Revised Agreement was necessary to meet the direction of the AFN Resolutions. For example, the claims process for Removed Child Class depends primarily upon data provided by ISC to create a database of every class member, whereas for the Kith Child Class, no comparable dataset exists. Therefore, the claims process for the Removed Child Class is likely to be completed in advance of the Kith Child Class claims process. The AFN has made clear through its Resolution that it does not want the thousands of survivors who could receive compensation as members of other classes to wait to receive their compensation pending Federal Court approval of all claims processes.
92. Accordingly, a phased approach, as provided for within the Revised Agreement, will ensure that individuals in classes with approved claims processes do not have to wait to receive their compensation while the claims processes for other classes are seeking approval. This will account for both the potential complexities associated with the Kith Child class, as well as the piloting and refinements associated with the Jordan's Principle claims process. It additionally takes into consideration the continued calls the AFN receives

from survivors reflecting on the continued hardships and concerns associated with delays in the payment of compensation in both this proceeding and past class action settlements.

iii) *Addition of Jordan's Principle Post-Majority Care Fund*

93. The Revised Agreement improves on the 2022 FSA by providing for an expansion of the Cy-Pres fund, aimed to support approved Jordan's Principle claimants with high needs. The Cy-Pres fund in the 2022 FSA was intended to support class members who are not entitled to direct compensation to connect with their family, or their First Nation, or cultural/land-based activities and recreation, among other supports. The Cy-Pres Fund, with a budget of \$50 million, is intact in the Revised Agreement and is now referred to as the "General Cy-Près Fund".
94. For years, First Nations individuals, leadership, Jordan's Principle Service Coordinators and others have raised the issue of a lack of supports for First Nations youth aging out of Jordan's Principle eligibility. The issue is also the subject of separate human rights complaints filed against the Government of Canada on behalf of Indigenous adults with disabilities in Manitoba.
95. To support First Nations claimants aging out of Jordan's Principle eligibility, an additional \$90 million was negotiated to establish a Jordan's Principle Post-Majority Care Fund, which is to be directed by a trust entity selected by the Caring Society, with input from the class action plaintiffs, to provide supports for approved Jordan's Principle claimants with high needs beyond the age of majority, up until their 26th birthday. The Caring Society is leading the design of this \$90 million trust agreement, the eligibility and distribution processes, and the financial oversight of the trust.
96. The AFN is of the view that the addition of the Jordan's Principle Post-Majority Care Fund is a positive element of the Revised Agreement and wholeheartedly supported the expansion of the Cy-Pres fund to support First Nations claimants aging out of Jordan's Principle eligibility to continue to receive the services and supports they need into adulthood.

iv) Extension of opt-out period to the maximum permissible by law

97. In response to concerns regarding the length of the opt-out period in the 2022 FSA, which had been set at February 19, 2023, being 6 months following the publication of the notice of certification, the Class Action Parties have since sought and received an extension of the initial opt-out date to August 23, 2023.

98. I am advised by AFN legal counsel and verily believe to be true that to date there have been no opt-out application received to the date of my Affidavit. Further to the Minutes of Settlement, and in the interest of ensuring a sufficient opt-out period as identified by the Tribunal, the AFN and Canada have agreed with the Caring Society to seek one further extension of the opt-out deadline to October 6, 2023.

99. I make this Affidavit in support of the Motion before this Panel and for no improper purpose.

100. 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, Ontario and the deponent located in Calgary, Alberta.

Affirmed before me, at the)
City of Ottawa, in the Province)
of Ontario, this 30th day of)
June, 2023.)

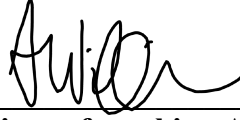


a Commissioner of Oaths / Notary Public



Craig Gideon

**This is Exhibit "A" referred to in
the Affidavit of Craig Gideon, Affirmed
before me, on this 30th day of June, 2023**



A commissioner for taking Affidavits



AFN EXECUTIVE COMMITTEE TELECONFERENCE

January 15, 2020

Draft Record of Decisions

Participants:

National Chief Perry Bellegarde
Regional Chief Kevin Hart, MB
Regional Chief Bobby Cameron, SK
Regional Chief RoseAnne Archibald, ON
Regional Chief Norman Yakeleya, NT
Regional Chief Terry Teegee, BC
Regional Chief Kluane Adamek, YT
Regional Chief Ghislain Picard, QC
Interim Regional Chief Andrea Paul, NS/NL
Rosalie LaBillois, Youth Council

AFN Staff:

Jon Thompson, A/CEO
Alex Freedman
Stuart Wuttke
Julie McGregor
Don Kelly
Joyce McDougall

Observers:

Arturo Calvo
Chief Leroy Denny


Motion #2:

The Executive Committee directs the AFN Secretariat to file a class action claim in the Federal Court of Canada regarding child welfare discrimination from 1991 to the present day, and the denial or delay in receiving essential services under Jordan's Principle. The AFN shall uphold the integrity of the compensation order issued by the Canadian Human Rights Tribunal in the class action process and incorporate those individuals from 1991 to 2006 into the base amount of \$40,000 for compensation. The Executive Committee directs the class action not focus solely on compensation, but broader reforms to the federal government's First Nation Child and Family Services program and Jordan's Principle.

Prior to filing the class action, the AFN shall advise the Moushoom group regarding the filing of AFN's class action as a courtesy. The AFN shall also seek the written assurance from the federal government that the AFN class action will be certified.

Moved by: Regional Chief Kevin Hart, MB
Seconded by: Regional Chief Norman Yakeleya, NT
Motion carried.

**This is Exhibit "B" referred to in
the Affidavit of Craig Gideon, Affirmed
before me, on this 30th day of June, 2023**



A commissioner for taking Affidavits

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

Schedule "A"

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

| |
|--|
| <p style="text-align: center;">FEDERAL COURT PROPOSED CLASS PROCEEDING</p> <p>BETWEEN:</p> <p>XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p style="text-align: center;">THE ATTORNEY GENERAL OF CANADA</p> <p style="text-align: right;">Defendant</p> |
| <p style="text-align: center;">FEDERAL COURT PROPOSED CLASS PROCEEDING</p> <p>BETWEEN:</p> <p>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</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p style="text-align: center;">HER MAJESTY THE QUEEN AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA</p> <p style="text-align: right;">Defendant</p> |

CONSOLIDATED STATEMENT OF CLAIM

I. NATURE OF THE ACTION

1. Year after year, decade after decade, generation after generation, the Crown has systematically discriminated against First Nation children because of their race, nationality and

ethnicity. In child welfare services, the discrimination has taken two forms.

2. **First**, the Crown has knowingly underfunded child and family services for First Nations children living on Reserve and in the Yukon. This underfunding has prevented child welfare service agencies from providing adequate Prevention Services to First Nations children and families. The underfunding persists despite the heightened need for such services on Reserve due to the inter-generational trauma inflicted on First Nations peoples by the legacy of the Residential Schools and the Sixties Scoop, and despite numerous calls to action by several official, independent fact-finders. The Crown has known about the severe inadequacies of its funding formulas, policies, and practices for years, but has not adequately addressed them.

3. At the same time that the Crown has underfunded Prevention Services to First Nations children and families living on Reserve and in the Yukon, it has fully funded the costs of care for First Nations children who are removed from their homes and placed into out-of-home care. This practice has created 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. Because of these funding formulas, policies, and practices, a child on Reserve must often be removed from their home in order to receive public services that are available to children off Reserve.

¹ All capitalized terms have the meanings assigned to them in “II. Defined Terms”, below.

4. The removal of a child from his/her home necessarily causes severe and long-lasting trauma to that child and his or her family. It is therefore only used as a last resort for children who do not live on a Reserve or in the Yukon. 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. The funding incentive to remove First Nations children from their homes accounts for the staggering number of First Nations children in state care. There are approximately three times the numbers of First Nations children in state care now than there were in Residential Schools at their apex in the 1940s.

5. The incentivized removal of First Nations children from their homes has caused traumatic and enduring consequences to First Nations children and their families. This action seeks individual compensation for on Reserve First Nations children and their family members who were victims of this systemic discrimination.

6. **Second**, the Crown has failed to comply with Jordan's Principle, a legal requirement designed to safeguard First Nations children's existing substantive equality rights guaranteed in the *Charter*. Jordan's Principle aims to prevent First Nations children from suffering gaps, delays, disruptions or denials in receiving necessary services and products contrary to their existing *Charter*-protected substantive equality rights. The Crown has admitted that Jordan's Principle is a "legal requirement" and thus an actionable wrong. However, the Crown has disregarded the rights embodied by Jordan's Principle and thereby denied crucial services and products to tens of thousands of First Nations children in breach of Jordan's Principle. This action seeks compensation for those First Nations children who suffered or died while awaiting the services or products that the Crown was legally required to provide but did not provide, in breach of Jordan's Principle and the substantive equality rights that it embodies.

7. Both forms of discrimination were directed at the Class because they were First Nations. The Crown's discriminatory policies and practices and other Impugned Conduct particularized herein breached section 15(1) of the *Charter*, the Crown's fiduciary duties to First Nations, and constituted negligence at common law and a fault at civil law.

8. The plaintiff AFN together with the Caring Society brought a complaint before the Tribunal to address this Impugned Conduct. In a landmark decision released in 2016, the Tribunal found that the Crown had systemically discriminated against First Nations children on both of the above grounds, contrary to the *CHRA*.

9. On March 4, 2019, Xavier Moushoom commenced a proposed class action under Court File Number T-402-19, seeking compensation for the Class on account of the Impugned Conduct dating back to 1991.

10. On September 6, 2019, the AFN and the Caring Society obtained a favourable decision from the Tribunal, which included an award of \$40,000 per affected individual for a period commencing in 2006.

11. On January 28, 2020, the AFN and other plaintiffs also filed a proposed class action under Court File Number T-141-20 regarding the Impugned Conduct dating back to 1991.

12. Both groups of plaintiffs have come together to combine efforts in the best interests of the Class. The consolidated action seeks compensation for First Nations individuals who were victims of the Crown's systemic discrimination while they were under the age of majority and for family members who suffered the break-up of their families and other harm when their children were

removed from their homes and/or their Jordan's Principle substantive equality rights were breached.

13. This Consolidated Statement of Claim removes, with the Court's approval, the members of Jordan's Class and their corresponding Family Class members whose claims date back to between April 1, 1991 and December 12, 2007, that were previously part of Court File Number T-402-19 and/or Court File Number T-141-20. Those claims are proceeding separately as part of a new Statement of Claim in the Federal Court that captures all the pleaded facts and legal arguments belonging to those class members.

II. DEFINED TERMS

14. The capitalized terms in this statement of claim have the following meanings (including both the singular or plural as the context requires):

- (a) "**1965 Agreement**" means the Memorandum of Agreement Respecting Welfare Programs for Indians of 1965, a cost-sharing agreement between the **Crown** and the Province of Ontario for the provision of certain services to **First Nations** in Ontario, including but not limited to child and family services, child care, and social assistance.

- (b) "**AFN**" means the Assembly of First Nations, a national advocacy organization representing **First Nation** citizens in Canada, including more than 900,000 people living in 634 **First Nation** communities and in cities and towns across the country. Pursuant to Article 17 of the **AFN's** Charter, the Executive Committee consists of the National Chief, the **AFN** Regional Chiefs and the Chairman of the Council of Elders.

- (c) “**Caring Society**” means the First Nations Child and Family Caring Society, an umbrella service organization.
- (d) “**Child and Family Services Act**” means the *Child and Family Services Act*, R.S.O. 1990, c. C.11.
- (e) “**CHRA**” means *Canadian Human Rights Act*, R.S.C., 1985, c. H-6.
- (f) “**Class**” and “**Class Members**” means the **Removed Child Class**, **Jordan’s Class**, and **Family Class**, collectively.
- (g) “**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 this action is certified or such other date as the Court decides; 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 this action is certified or such other date as the Court decides.
- (h) “**Crown**” means Her Majesty in right of Canada as defined under the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50 and the agents of Her Majesty in right of Canada, including the various federal departments responsible for the funding formulas, policies and practices at issue in this action relating to **First Nations** children in Canada during the **Class Period**, as follows: the Department of Indian Affairs and Northern Development using the title Indian and Northern Affairs Canada (“**INAC**”) until 2011; Aboriginal Affairs and

Northern Development Canada (“**AANDC**”) from 2011 to 2015; Indigenous and Northern Affairs Canada (“**INAC**”) from 2015 to 2017; and Indigenous Services Canada and Crown-Indigenous Relations and Northern Affairs Canada, following the 2017 dissolution of **INAC**. In this claim, **INAC** and its predecessors or successors, are referred to interchangeably as the **Crown**, unless specifically named. The Crown is represented herein by the defendant Attorney General of Canada.

- (i) “**Directive 20-1**” means **INAC**’s national policy statement on the **FNCFS Program**, establishing **FNCFS Agencies** under the provincial or territorial child welfare legislation and requiring that **FNCFS Agencies** comply with provincial or territorial legislation and standards.
- (j) “**EPFA**” means the Enhanced Prevention Focused Approach, which the **Crown** implemented in 2007, starting in Alberta and later adding Saskatchewan, Manitoba, Quebec, Nova Scotia, and Prince Edward Island.
- (k) “**Family Class**” means all persons who are the brother, sister, mother, father, grandmother or grandfather of a member of the **Removed Child Class** and/or **Jordan’s Class**, or such other person(s) that the Court directs.
- (l) “**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*;

- (ii) individuals who are entitled to be registered under section 6 of the *Indian Act*, and, in the case of the **Removed Child Class** members, are entitled to be so registered 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 subparagraphs (i)-(iii) above, recognized as citizens or members of their respective **First Nations** whether under agreements, treaties or **First Nations'** customs, traditions and laws.
- (m) "**FNCFS Agencies**" means agencies that provided child and family services, in whole or in part, to the **Class** members pursuant to the **FNCFS Program** and other agreements except where such services were exclusively provided by the province or territory in which the community was located.
- (n) "**FNCFS**" or "**FNCFS Program**" means the **Crown's** First Nations Child and Family Services Program which funded, and continues to fund public services, including **Prevention Services, Protection Services** and **Post-Majority Services**, to **First Nations** children and communities.

- (o) “**Impugned Conduct**” means the totality of the **Crown’s** discriminatory practices, including unlawful underfunding and the breach of **Jordan’s Principle** as pleaded below.
- (p) “**Indian Act**” means the *Indian Act*, R.S.C., 1985, c. I-5.
- (q) “**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 public service or product, or whose receipt of a public 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, contrary to their substantive equality rights and **Jordan’s Principle**.
- (r) “**Jordan’s Principle**” is based on the following principles:
- (i) On December 12, 2007, the House of Commons unanimously passed a motion that the **Crown** should immediately adopt this child-first principle, based on **Jordan’s Principle**, to resolve jurisdictional disputes involving the care of **First Nation** children;
 - (ii) It is a child-first principle that applies equally to all **First Nation** children, whether resident on or off **Reserve**. It is not limited to **First Nation** children with disabilities, or those with discrete short-term issues creating critical needs for health and social supports or affecting their activities of daily living;
 - (iii) It addresses the needs of **First Nation** children by ensuring there are no gaps in government services or products to them. It can address, for example, but is not

limited to, gaps in such services as mental health, special education, dental, physical therapy, speech therapy, medical equipment and physiotherapy;

- (iv) When a government service is available to all other children, the government department of first contact must pay for the service to a **First Nation** child, without engaging in case conferring, policy review, service navigation or any other similar administrative procedure before funding is provided. Once the service is provided, the government department of first contact can seek reimbursement from another department/government;
- (v) When a government service or product is not necessarily available to all other children or is beyond the normative standard of care, the government department of first contact will still evaluate the individual needs of the **First Nation** child to determine if the requested service or product should be provided to ensure substantive equality in the provision of services and products to the child, to ensure culturally appropriate services and products to the child and/or to safeguard the best interests of the child. Where such services or products are to be provided, the government department of first contact will pay for the provision of the services or products to the **First Nation** child without engaging in case conferring, policy review, service navigation or any other similar administrative procedure before funding is provided. Once the service is provided, the government department of first contact can seek reimbursement from another department or government; and
- (vi) While **Jordan's Principle** can apply to jurisdictional disputes between governments (*i.e.*, between Federal, provincial or territorial governments) and to jurisdictional

disputes between departments within the same government, a dispute amongst government departments or between governments is not a necessary requirement for the application of **Jordan's Principle**.

- (s) "**Post-Majority Services**" means a range of services provided to individuals who were formerly in out-of-home care as children, to assist them with their transition to adulthood upon reaching the age of majority in the province or territory in which they reside.
- (t) "**Prevention Services**" means services intended to secure the best interests of **First Nation** children, including meeting their distinct cultural and linguistic needs, in the least disruptive manner within their families and communities.
- (u) "**Protection Services**" means those services intended to secure the best interests of **First Nation** children, including meeting their distinct cultural and linguistic needs, where the risk to the child cannot be prevented by **Prevention Services**.
- (v) "**Provincial/Territorial Funding Agreements**" means funding agreements signed by the **Crown** with a province or territory, other than Ontario, or with a non-**First Nations** operated child and family service entity to, amongst others, provide funding for **Prevention Services** or **Protection Services**.
- (w) "**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**.
- (x) “**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.
- (y) “**Residential Schools**” means schools for **First Nations**, Métis and Inuit children funded by the **Crown** from the 19th Century until 1996, which had the objective of assimilating children into Christian, Euro-Canadian society by stripping away their **First Nations**, Métis and Inuit rights, cultures, languages, and identities, a practice subsequently recognized as “cultural genocide”.
- (z) “**Sixties Scoop**” means the decades-long practice in Canada of taking Indigenous children, including **First Nations**, from their families and communities for placement in non-Indigenous foster homes or for adoption by non-Indigenous parents.
- (aa) “**Tribunal**” means the Canadian Human Rights Tribunal.

III. RELIEF SOUGHT

15. The plaintiffs, on behalf of the Class, claim:
- (a) an order certifying this action as a class proceeding and appointing the plaintiffs as representative plaintiffs for the Class and any appropriate sub-class thereof;
 - (b) a declaration that the Crown breached its common law, civil law, and fiduciary duties to the plaintiffs and the Class;
 - (c) a declaration that the Crown breached section 15(1) of the *Charter of Rights and Freedoms* (“*Charter*”), and that such breach was not justified under section 1 of the *Charter*;
 - (d) general and aggregate damages for breach of fiduciary duty, negligence, and under section 24(1) of the *Charter* in the amount of \$10,000,000,000, and an order that any undistributed damages be awarded for the benefit of Class members, pursuant to rule 334.28 of the *Federal Courts Rules*;
 - (e) an order pursuant to rule 334.26 of the *Federal Courts Rules* for the assessment of the individual damages of Class members;
 - (f) special damages in an amount to be determined prior to trial;
 - (g) punitive and exemplary damages of \$50,000,000 or such other sum as this Honourable Court deems appropriate;

- (h) damages for counsel fees and disbursements that the plaintiff AFN expended in the prosecution before the Tribunal;
- (i) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to rule 334.38 of the *Federal Courts Rules*;
- (j) costs of the action on a substantial indemnity basis or in an amount that provides full indemnity;
- (k) prejudgment and judgment interest pursuant to the *Federal Courts Act*, R.S.C., 1985, c. F-7; and
- (l) such further and other relief as this Honourable Court deems just and appropriate in the circumstances.

IV. THE PARTIES

A. The Plaintiffs

i. Xavier Moushoom - Member and Proposed Representative of the Removed Child Class and Family Class

16. Xavier Moushoom was born in Lac Simon in 1987 and is a member of the Anishinaabe Nation. Both of his parents are Residential Schools 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 sought treatment in Montreal, away from the family. As a child, Mr. Moushoom spoke Algonquin fluently with his grandmother.

17. In 1996, Mr. Moushoom was apprehended 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 thus entirely isolated from his family.

18. 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.

19. Mr. Moushoom was rarely granted access to his mother and family. As a result, Mr. Moushoom gradually lost his native Algonquin language, his culture, and his ties to the Lac Simon community.

20. By the time he became an adult, Mr. Moushoom had lost his roots, his culture, and his language. At 18, Mr. Moushoom was forced to leave his foster family because the Crown did not fund Post-Majority Services for First Nations individuals like Mr. Moushoom. He felt completely lost and unprepared for life.

21. 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 suffered from anxiety attacks and developed substance abuse problems that he would eventually overcome through his own determination and the help of his community.

**ii. Jeremy Meawasige (by his litigation guardian, Jonavon Joseph Meawasige) -
Member and Proposed Representative of Jordan's Class**

22. Jeremy Meawasige is a member of the Pictou Landing First Nation in Nova Scotia. He was born in 1994, and has suffered from multiple disabilities and high care needs throughout his life. As a child, Mr. Meawasige was diagnosed with hydrocephalus, cerebral palsy, spinal curvature, and autism. During the relevant time and up to this day, he can only speak a few words and cannot walk unassisted. He requires total personal care, and depends on the assistance of others for showering, diapering, dressing, spoon feeding, and all other personal hygiene needs.

23. Mr. Meawasige lives on the Pictou Landing Indian Reserve.

24. Mr. Meawasige's mother Maurina Beadle was his primary caregiver for most of his life. Ms. Beadle was able to care for her son in the family home without government support or assistance until she suffered a stroke in 2010. At that point, the Pictou Landing Band Council stepped in and started providing necessary services to Mr. Meawasige.

25. However, the funding that the Council received from the Crown was insufficient to meet Mr. Meawasige's needs. The Council applied for funding from the Crown for Mr. Meawasige under Jordan's Principle. The Crown refused that application on the ground that Mr. Meawasige did not meet the test, particularized below, that the Crown had established for Jordan's Principle. The Council and Ms. Beadle sought judicial review of the refusal decision. In April 2013, the Federal Court granted *certiorari*, quashed the refusal decision and ordered the Crown to pay for the services under Jordan's Principle.

26. The Crown's improper interpretation of Jordan's Principle caused the denial, delay and disruption of the receipt of public services and products that were essential to Mr. Meawasige. While Mr. Meawasige received funding for certain services after the Federal Court's 2013 decision, he has not received some other essential public services and products to this date.

27. On May 28, 2019, the Court appointed Ms. Beadle as litigation guardian for Mr. Meawasige in this proceeding. Sadly, Ms. Beadle suffered a stroke, and passed away on November 13, 2019.

28. Mr. Meawasige's brother, Jonavon Joseph Meawasige, is his proposed replacement litigation guardian.

iii. Jonavon Joseph Meawasige - Member and Proposed Representative of the Family Class

29. Jonavon Joseph Meawasige is the brother and legal custodian of the plaintiff Jeremy Meawasige. He is a member of the Pictou Landing First Nation in Nova Scotia.

iv. AFN

30. The AFN is a national advocacy organization representing First Nation citizens in Canada, which includes more than 900,000 people living in 634 First Nation communities and in cities and towns across the country. The AFN is an unincorporated association which is an appropriate party under rule 111 of the *Federal Courts Rules*. AFN is a complainant before the Tribunal in File Number T1340/7008.

31. The AFN was “mandated by resolution following a vote by the Chiefs in Assembly to pursue compensation for First Nation Children and youth in care, or other victims of discrimination and to request maximum compensation allowable under the Act based on the fact that the discrimination was willful and reckless, causing ongoing trauma and harm to children and youth, resulting in a humanitarian crisis” (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).

32. The AFN’s status as a Trustee to advance the claims of the Removed Child Class, Jordan’s Class and the Family Class before the Tribunal was decided in a final decision of the Tribunal dated September 6, 2019. The AFN successfully obtained from the Tribunal “an order for compensation to address the discrimination experienced by vulnerable First Nation Children and families in need of child and family support services on reserve.” The Tribunal’s compensation order covers some, but not all, of the damages of some Class members.

v. Ashley Dawn Louise Bach - Member and Proposed Representative of the Removed Child Class

33. Ashley Dawn Louise Bach was born in 1994 in Vancouver, BC. Her mother was a member of the Mishkeegogamang First Nation, in northern Ontario. Therefore, Ms. Bach was a First Nation child with Indian status and membership in the Mishkeegogamang First Nation.

15. Ms. Bach was removed at birth from her mother. She was not placed on a Reserve. She was put into a special needs, non-native foster care home in Langley, British Columbia. At age 5, Ms. Bach was adopted by a non-native foster family, and she had no access to First Nation culture.

She endured racism. In about 2012, at age 18, she left the hostile environment with her adopted family.

34. Since then, Ms. Bach has attempted to reconnect to her First Nation community, culture, language, and traditional territory. She has connected with some biological family members from her First Nation. Unfortunately, other biological family members passed away while she was still in the closed adoption, including her maternal grandmother, a residential school survivor who had requested to be “kept informed of what is happening with Ashley”, and one of her uncles.

vi. Karen Osachoff - Member and Proposed Representative of the Removed Child Class

35. Karen Osachoff was born in 1979 in Regina, Saskatchewan. She was named Erin Faye Kahnpace. She was a First Nation child with Indian status because she is a member of Pasqua First Nation in Treaty Four territory, which is now known as Southern Saskatchewan.

36. Ms. Osachoff was apprehended as an infant and spent time in foster care. In April 1982, by order of the Queen’s Bench of Saskatchewan, she was adopted by her adoptive parents. The court also ordered that her name be changed from Erin Faye Kahnpace to Karen Elizabeth Osachoff Denham. Ms. Osachoff was never told she has Indian status. In the fall of 1990, after her adoption broke down, Ms. Osachoff was apprehended and re-entered into the foster care system where she stayed until she was 18 years old.

37. In between foster care placements, Ms. Osachoff returned to her adoptive parents but never lived with them permanently again. During her time in the Saskatchewan child welfare system, Ms. Osachoff lived in various foster homes and attended various schools. Through her own

research, Ms. Osachoff discovered she was the youngest of eleven children, some of who were also apprehended and adopted out.

38. Ms. Osachoff never knew her parents, siblings, grandparents and community. Only because of her own efforts and research, she connected with her mother, some siblings, grandmothers and extended family.

20. In 2009, Ms. Osachoff graduated from the University of British Columbia Law School. In 2012, Ms. Osachoff was called to the Ontario Bar. In 2015, Ms. Osachoff was called to the British Columbia Bar (non-practicing member in British Columbia).

vii. Melissa Walterson - Member and Proposed Representative of the Family Class

39. Melissa Walterson is Ms. Osachoff's sister. She was born in Winnipeg, Manitoba, has Indian status and is registered on Nisichawayasihk Cree Nation in Manitoba. She currently resides in Manitoba. She reconnected with her sister in December 2019.

40. Because Ms. Osachoff and Ms. Walterson were separated, Ms. Walterson lost the love, care and companionship that she could reasonably have expected to receive from her sister had their separation not occurred.

viii. Noah Buffalo-Jackson (by his Litigation Guardian, Carolyn Buffalo) - Member and Proposed Representative of Jordan's Class

41. Noah Buffalo-Jackson was born on December 2, 2001. He was born 10 weeks premature and weighed only four pounds. He was diagnosed with Spastic Quadriparetic Cerebral Palsy Level 5 on the GMFCS. His diagnosis means that he has "an organic and chronic condition requiring

long-term rehabilitative treatment.” He will always be dependent upon his parents and caregivers. He needs help with everything from eating, dressing and brushing his teeth to exercising and will probably always need a wheelchair.

42. Despite Jordan’s Principle, Mr. Buffalo-Jackson’s rights were affected by discrimination on account of his race and disability.

43. Due to the Crown’s Impugned Conduct, Mr. Buffalo-Jackson’s parents have been denied funding to meet his basic needs, such as a van equipped with a lift. Because Mr. Buffalo-Jackson’s parents chose to care for him at home, they have been denied funding for, among other things, a nanny or aide and respite care.

ix. Carolyn Buffalo - Member and Proposed Representative of the Family Class

44. Carolyn Buffalo is Mr. Buffalo-Jackson’s mother and caregiver.

x. Dick Eugene Jackson also known as Richard Jackson - Member and Proposed Representative of the Family Class

45. Dick Eugene Jackson also known as Richard Jackson is Mr. Buffalo-Jackson’s father and caregiver.

B. The Defendant

46. The Defendant, the Attorney General of Canada, represents the Crown, and is liable and vicariously liable for the Impugned Conduct.

47. In particular, the Crown is liable and vicariously liable for the acts and omissions of its agents—INAC and its predecessors and successors—which were responsible for funding the services provided to the Class members by the FNCFS Agencies or the province/territory.

V. THE CROWN’S TREATMENT OF FIRST NATIONS CHILDREN

48. Pursuant to section 91(24) of the *Constitution Act, 1867*, Parliament has jurisdiction over First Nations peoples. Provinces and territories have jurisdiction over child and family welfare generally. Each province and territory has its own child and family services legislation.

49. Child and family services, also referred to as “child welfare”, consist of a range of services intended to prevent and respond to child maltreatment and to promote family wellness.

50. Starting in the 19th century, the Crown systemically separated First Nations children from their families and placed them in Residential Schools. Among other things, the Crown used the Residential Schools as child welfare care providers for the First Nations children who allegedly needed child and family services.

51. Following the closure of the Residential Schools, the Crown undertook the provision of child and family services for First Nations children and their families. However, Parliament did not pass federal legislation regarding First Nations child and family services.

52. Rather, the Crown chose to operate child welfare services in a federal legislative vacuum filled by two statutory provisions:

- (a) section 4 of the *Department of Indian Affairs and Northern Development Act*, R.S.C., 1985, c. I-6, gave the Minister of Indian Affairs and Northern Development authority

over all “Indian affairs” and “Yukon, the Northwest Territories and Nunavut and their resources and affairs”; and

- (b) section 88 of the *Indian Act* provided for the application of provincial or territorial child welfare legislation to First Nations as provincial or territorial “laws of general application”, with funding for those services from the Crown.

53. The Crown, through INAC and its predecessors and successors, required that FNCFS Agencies use provincial/territorial child welfare laws as a condition of funding. The funding itself was provided on the basis of formulas crafted by the Crown.

54. Thus, Parliament did not enact laws to govern the way essential services were to be provided to Class members and to ensure that they were provided fairly and adequately.

55. The Crown provided funding during the Class Period through four channels that worked on the basis of uniform policies, objectives, and short-comings common to the Class:

- (a) the 1965 Agreement;
- (b) Directive 20-1;
- (c) the EPFA; and
- (d) the Provincial/Territorial Funding Agreements.

56. Directive 20-1, which came into effect on April 1, 1991, was a cabinet-level spending measure that established uniform funding standards for the Removed Child Class and their related Family Class members. It governed and controlled federal funding to FNCFS Agencies for child

and family services to Removed Child Class and their related Family Class members where an agreement did not exist between the Crown and the province or territory.

57. The Crown designed its funding channels, including Directive 20-1, based on assumptions ill-suited to the Crown's stated objectives and without regard to the realities of First Nations communities.

58. This approach directly and foreseeably resulted in systemic shortcomings, ultimately assuring the chronic under-provision of essential services and products on which the Removed Child Class, Jordan's Class, and their related Family Class members relied. These shortcomings included the following:

- (a) funding models that incentivized the removal of Removed Child Class members from their homes and placed them in out-of-home care;
- (b) inflexible funding mechanisms that did not account for the particular needs of diverse First Nations communities on Reserves and in the Yukon, and the operating costs of an agency delivering services therein;
- (c) funding models that ignored the pressing need for Prevention Services, family support and culturally appropriate services;
- (d) inadequate funding for essential programs and services, and inadequate funding to align services with standards set by provincial or territorial legislation;
- (e) a 22% disparity in per-capita funding for Removed Child Class and their related Family Class members, compared with services delivered to children and families off

Reserve, despite the heightened needs of Removed Child Class and their related Family Class members and the increased costs of delivering those services to them; and

- (f) a self-serving, parsimonious interpretation by the Crown of Jordan's Principle, leading to Jordan's Class and their related Family Class members receiving delayed or inadequate public services or products or none at all.

59. In 2007, the Crown admitted these systemic deficiencies, and sought to rectify them in some provinces by implementing the EPFA. The Crown announced that the EPFA was designed to allow for a more flexible funding formula and an allocation of funds for Prevention Services.

60. Nonetheless, the implementation of the EPFA failed to remedy the systemic discriminatory funding of services to Removed Child Class and Family Class members. The EPFA suffered from the same shortcomings and false underlying assumptions that plagued Directive 20-1 and the Crown's other funding formulas.

61. These longstanding, systemic failures of the Crown's funding formulas effectively paralyzed the FNCFS Program and harmed generations of First Nations children and families, whose care the Crown undertook to provide.

62. In some instances, the Crown's funding methods and practices imposed on First Nations families what is known as "Care by Agreement", which follows provisions in provincial and territorial child-welfare legislation that allow for parents to voluntarily place their children in child-welfare custody often while maintaining parental guardianship. Care by Agreement became

another mechanism through which Removed Child Class members were separated from their families and placed in out-of-home care to receive the essential services that they required.

63. The Crown was well aware of these chronic problems. As early as the 1980s, the Crown was aware that its funding formulas and policies denied children essential services and products contrary to their substantive equality rights that were later given the name Jordan's Principle. Over the course of the Class Period, numerous independent reviews, parliamentary reports, and audits, including two reviews by the Auditor General of Canada and a joint review by INAC and the AFN, identified these deficiencies and decried their devastating impact on First Nations children and families.

64. The House of Commons' Special Committee on the Disabled and the Handicapped issued a report in 1981 where it stated:

Jurisdictional Disputes Between Governments

The Federal Government delivers services to Status Indians on reserves, and is willing to pay for services for the first year for those individuals who leave the reserve. In recent times, because of greatly increased migration of Status Indians from the reserves to urban centres, a dispute has developed between the Federal and Provincial Governments regarding the responsibility for delivering services to those individuals who are away from the reserve for more than a year. Some provinces, for their part, are reluctant or unwilling to foot the bill for a service that they consider to be the responsibility of the Federal Government. ... **The dispute over this matter of service to Status Indians away from the reserve leaves the Indians themselves confused since they are frequently left without any services while the two Governments are arguing over ultimate responsibility.** [emphasis added]

65. Twelve years later in 1993 when the *Charter* was in full force and effect, the House of Commons' Standing Committee on Human Rights and the Status of Disabled Persons made a

follow-up report stating: “the situation of these [Indigenous] people has not improved during the past decade”. The report stated:

Aboriginal people must not only contend with the fragmented nature of federal programs, but have to overcome the barriers imposed by federal/provincial jurisdictions. Like other disability issues, those related to Aboriginal people either cross federal/provincial boundaries or lie in an area of exclusive provincial responsibility.

...

The federal/provincial jurisdictional logjam shows up most graphically in the provisions of health and social services to Aboriginal people.... In all of this wrangling, both levels of government appear to have forgotten the needs of the people themselves. In this complex and overlapping web of service structures, some people even find themselves falling through the cracks and unequally treated compared to their fellow citizens. [emphasis added]

66. The Committee made the following recommendation:

The federal government should prepare, no later than 1 November 1993, a tripartite federal / provincial-territorial / band governmental action plan that will ensure ongoing consultation, co-operation and collaboration on all issues pertaining to Aboriginal people with disabilities. This action plan must contain specific agendas, realistic target dates and evaluation mechanisms. It should deal with existing or proposed transfers of the delivery of services to ensure that these transfers meet the needs of Aboriginal people with disabilities.

67. The Royal Commission on Aboriginal Peoples (1996), and subsequently the Report of the Truth and Reconciliation Commission of Canada called on the Crown to adequately fund child and family services and fully implement principles and equality protections that later became known as Jordan’s Principle. In so doing, the Truth and Reconciliation Commission found, among other things, that:

- (a) 3.6% of all First Nations children under the age of 14 were in out-of-home care, compared with 0.3% of non-Aboriginal children;

- (b) the rate of investigations involving First Nations children was 4.2 times the rate of non-Aboriginal investigations, and maltreatment allegations were more likely to be substantiated in the cases of First Nations children;
- (c) investigations of First Nations families for neglect were substantiated at a rate eight times greater than for the non-Aboriginal population;
- (d) the Crown's child-welfare system simply continued the assimilation that the Residential Schools system started; and
- (e) First Nations children are still being taken away from their parents because their parents are poor.

68. These reviews, reports, and audits fell largely on deaf ears.

69. Faced with the Crown's inaction and apathy, the plaintiff AFN and the Caring Society filed a complaint with the Canadian Human Rights Commission in February 2007. The complaint alleged that the Crown discriminated against First Nations peoples on Reserve and in the Yukon in the provision of child and family services and by its failure to properly implement Jordan's Principle, in violation of section 5 of the *CHRA*.

70. In 2008, the Canadian Human Rights Commission referred the complaint to the Tribunal.

71. On January 26, 2016, the Tribunal rendered a 176-page decision, finding that the Crown systemically discriminated against First Nations children on Reserve and in the Yukon in providing services contrary to section 5 of the *CHRA*.

72. Since then, the Tribunal has retained jurisdiction over the complaint and has issued multiple non-compliance orders against the Crown. On September 6, 2019, the AFN and Caring Society successfully obtained from the Tribunal “an order for compensation to address the discrimination experienced by vulnerable First Nation Children and families in need of child and family support services on reserve.” The Tribunal also ordered that the Crown discuss with the parties how to identify individuals to be compensated and in what manner those individuals would be compensated under the Tribunal’s order (*e.g.*, trust funds for minors, direct payments to adults, etc.).

A. Tribunal’s Findings Regarding Crown’s Funding Practices

73. The Tribunal found that, despite changes made to the FNCFS Program, the following systemic flaws plagued the delivery of child and family services:

- (a) The design and application of the Directive 20-1 funding formula provided funding based on flawed assumptions about children in out-of-home care and based on population thresholds that did not accurately reflect the service needs of many on Reserve communities. This resulted in inadequate fixed funding for operation (such as capital costs, multiple offices, cost of living adjustment, staff salaries and benefits, training, legal, remoteness, and travel) and Prevention Service costs. The inadequate fixed funding hindered the ability of FNCFS Agencies to provide provincially/territorially mandated child-welfare services, and prevented FNCFS Agencies from providing culturally appropriate services to First Nations children and families.

- (b) While the Crown systematically underfunded Prevention Services, it fully funded out-of-home care by reimbursing all such expenses at cost except for Post-Majority Services.
- (c) The Crown's practice of under-funding prevention and least disruptive measures while fully reimbursing the cost of children in out-of-home care created a perverse incentive to remove First Nations children from their homes as a first, not a last, resort, in order to ensure that a child received necessary services.
- (d) The structure and implementation of the EPFA funding formula perpetuated the incentives to remove children from their homes and incorporated the flawed assumptions of Directive 20-1 in determining funding for operations and prevention, and perpetuating the adverse impacts of Directive 20-1 in many communities.
- (e) The Crown failed to adjust Directive 20-1 funding levels, since 1995, along with funding levels under the EPFA since its implementation, to account for inflation and cost of living.
- (f) The Crown failed to update the 1965 Agreement in Ontario to ensure that on Reserve child and family services comply fully with the *Child and Family Services Act*.
- (g) The Crown failed to coordinate the FNCFS Program and the Provincial/Territorial Funding Agreements with other federal departments and government programs and services for First Nations children on Reserve, resulting in service gaps, delays, and denials for First Nations children and families.

B. Tribunal's Findings Regarding the Application of Jordan's Principle

74. Jordan's Principle is a child-first legal rule that guides the provision of public services and products to First Nations children. The Crown has admitted that Jordan's Principle is a legal rule, not merely a principle or aspiration. Jordan's Principle incorporates the Crown's longstanding obligations to treat Class members without discrimination and with a view to safeguarding their substantive equality.

75. The Crown's policies and funding formulas systemically denied First Nations children the public services and/or products that they needed, when they needed them and in a manner consistent with substantive equality and reflective of their cultural needs.

76. This state of affairs continued until the mid-2000s when the House of Commons formally named the *Charter*-protected substantive equality protections "Jordan's Principle" to honour the memory of Jordan River Anderson, a First Nation child who died in a hospital bed while officials from the governments of Canada and Manitoba bickered over who should pay for his specialized care close to his hospital. The Tribunal summarized Jordan's life story as follows:

Jordan River Anderson [was] a child who was born to a family of the Norway House Cree Nation in 1999. Jordan had a serious medical condition, and because of a lack of services on reserve, Jordan's family surrendered him to provincial care in order to get the medical treatment he needed. After spending the first two years of his life in a hospital, he could have gone into care at a specialized foster home close to his medical facilities in Winnipeg. However, for the next two years, AANDC, Health Canada and the Province of Manitoba argued over who should pay for Jordan's foster home costs and Jordan remained in hospital. They were still arguing when Jordan passed away, at the age of five, having spent his entire life in hospital.

77. Jordan's Principle mandates that all First Nations children should receive the public services and/or products they need, when they need them and in a manner consistent with

substantive equality and reflective of their cultural needs. The need for the legal rule arose from the Crown's practice of denying, delaying or disrupting services to First Nations children due to, among other reasons, jurisdictional payment disputes within the federal government or with provinces or territories.

78. Jordan's Principle reaffirms existing *Charter* and quasi-constitutional rights of First Nations children to substantive equality, and seeks to ensure substantive equality and the provision of culturally appropriate services. For that purpose, the needs of each individual child must be considered and evaluated, including by taking into account any needs that stem from historical disadvantage and the lack of on Reserve or surrounding services.

79. Jordan's Principle preserves human dignity by providing First Nations children with essential services and products without adverse differentiation including denials, disruptions or delays because of intergovernmental/interdepartmental funding squabbles. Jordan's Principle requires the government (federal, provincial or territorial) or department that first received the request to pay for the service or product. Once it has paid and the child has received the service or product, the payor can resolve jurisdictional issues about who was responsible to pay.

80. In breach of the letter and spirit of Jordan's Principle and the rights that underlie it, the Crown's bureaucratic arm unilaterally restricted its application to cases that could meet the following three criteria:

- (a) a jurisdictional dispute has arisen **between a provincial government and the federal government;**

- (b) the child has **multiple** disabilities requiring services from **multiple** service providers;
and
- (c) the service in question is a service that would be available to a child residing off Reserve **in the same location**.

81. The Tribunal found that the processes set up by the Crown (via memorandums of understanding between Health Canada and AANDC) to respond to Jordan's Principle requests made delays inevitable: the processes included a review of policy and programs, case conferencing and approvals from the Assistant Deputy Minister, before interim funding was provided. These processes exacerbated the very delay and disruption that Jordan's Principle was designed to prevent.

82. Not surprisingly, the Crown's narrow interpretation of Jordan's Principle resulted in no cases meeting its stringent criteria for Jordan's Principle. The Tribunal found that the Crown's stringent definition and its layered assessment of each case "defeats the purpose of Jordan's Principle and results in service gaps, delays and denials for First Nations children on reserve".

83. In fact, the Crown's application of Jordan's Principle was so stingy that an \$11-million fund set up by the Crown with Health Canada to address Jordan's Principle requests was never accessed. In essence, the Crown interpreted away Jordan's Principle, leaving tens of thousands of First Nations children to suffer or to be placed in out-of-home care in order to receive the public services or products that they needed and that they relied on the Crown to provide.

84. The Crown's wrongful application of Jordan's Principle further exacerbated the numbers of First Nations children in out-of-home care. Due to a lack of public services on Reserve, many

First Nations children were placed in out-of-home care in order to access the services and products that they needed.

85. In light of the above, the Tribunal ordered the Crown to cease its discriminatory practices, reform the FNCFS Program, and take measures to implement the full meaning and scope of Jordan's Principle.

C. The Binding Effect of Tribunal Findings

86. The Tribunal made numerous factual findings against the Crown, who participated as a party in that proceeding. Neither the Crown nor the complainants sought judicial review of the Tribunal's decision. The decision became final on March 2, 2016. Accordingly, the Crown is estopped in this action from re-litigating or denying the Tribunal's findings.

87. Prior to the Tribunal's decision and subsequent orders, the Crown took the position that no Jordan's Principle cases were made out. The Crown's Jordan's Principle fund was never accessed. After the Tribunal's decision and subsequent orders, the Crown issued over 165,000 remedial orders to address its previous failures to comply with Jordan's Principle and the fundamental substantive equality rights that underlie it.

88. None of the First Nation children whose services were delayed, disrupted or denied as a result of the Crown's unlawful actions have received, or will receive, full compensation a result of the Tribunal proceedings.

VI. THE CROWN'S DUTIES TO THE CLASS

A. The Crown Owes a Common Law Duty of Care to the Class

89. The Crown owes a duty of care to all First Nations Class members. Section 91(24) of the *Constitution Act, 1867* gave Parliament exclusive jurisdiction over First Nations, including the Class.

90. The Crown had full control over the provision of public services and products to the Class members throughout Canada by virtue of the application of its funding formulas and by its application of Jordan's Principle.

91. Parliament chose not to legislate on child and family and other public services provided to the Class members; rather, the Crown operated in this legislative vacuum using various funding formulas, policies, and practices that were established bureaucratically. Using these funding mechanisms, the Crown created, planned, established, operated, financed, supervised, controlled and/or regulated the provision of services and products to the Class members throughout Canada.

92. The Crown has known for decades that its funding formulas and policies were wholly insufficient for the provision of essential services and products to the Class members. The Crown knew or ought to have known that its policies and practices were having a devastating impact on the Class members and their communities.

93. This was especially true because all of the Removed Child Class and Jordan's Class members are, or were at the relevant time, vulnerable children at the mercy of the Crown for essential services. The Crown's duty of care to the Removed Child Class and the Family Class included a duty to adequately fund Prevention Services and least disruptive measures in the best interests of the children.

94. Furthermore, Jordan's Principle prescribed the content of the Crown's duty of care to the Class—and particularly Jordan's Class. This included the duty to ensure substantive equality for First Nations children, provide culturally appropriate services, and avoid gaps, delays, disruption, and denial of services to these children.

95. The Crown's proximity to the Class members is reinforced by the honour of the Crown, the fiduciary relationship that exists between the Crown and the Class, and by the fiduciary obligations it owes to the Class members in respect of their specific interests, including their health and welfare, and their essential connection to their First Nation histories, cultures, languages, customs, and traditions. Moreover, the Crown assumed an obligation towards First Nations peoples regarding the provision of child and family and other public services by virtue of its funding formulas, policies and practices.

B. The Crown Owed Fiduciary Obligations to the Class

96. The Crown stands in a special, fiduciary relationship with First Nations in Canada.

97. The Crown has exclusive constitutional and common law jurisdiction in respect of the Class, and has been specifically entrusted to recognize and affirm the rights of Aboriginal peoples in Canada, under section 35(1) of the *Constitution Act, 1982*.

98. The Crown has assumed and maintains a large degree of discretionary control over First Nations peoples' lives and interests in general, and the care and welfare of the Class members in particular.

99. Under section 18 of the *Indian Act*, the Crown holds Reserve lands for the use and benefit of First Nations for whom they were set apart. The Crown has discretionary authority over the use

of such lands for the purpose of the administration of First Nations affairs including, but not limited to, early childhood, education, social and health services.

100. Moreover, the Crown has expressly and impliedly undertaken to protect specific First Nations interests in the provision of child and family and certain other services and products to the Class members. These undertakings require the Crown to act loyally and in the best interests of First Nations, particularly children, on Reserve, in the Yukon and in The Northwest Territories.

101. The Crown's duties toward First Nations in general, and Class members specifically, are grounded in the honour of the Crown. In the case at bar, the honour of the Crown is at stake in the Crown's dealing with Indigenous people, which requires the Crown to always act honourably, with the utmost faith and integrity in the exercise of its discretionary powers towards the Class members.

102. Further, the Crown's constitutional and statutory obligations, policies, and the common law required the Crown to take steps to monitor, influence, safeguard, secure, and otherwise protect the vital interests of First Nations, including the Class members. These obligations required particular care with respect to the interests of children and their families, whose wellbeing and security were vulnerable to the Crown's exercise of its discretion.

103. The Crown's fiduciary duties as described in this claim are non-delegable in nature and continue notwithstanding any agreements between the Crown and its agents, or agreements with other levels of government.

VII. THE CROWN BREACHED ITS DUTIES TO THE CLASS

A. The Crown Breached *Charter* Equality Rights of the Class

104. Section 15(1) of the *Charter* entrenches equality rights for every individual:

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

105. The Crown's Impugned Conduct violated section 15(1) of the *Charter* and is not saved by section 1 of the *Charter*. The Impugned Conduct was directed exclusively at First Nations people and therefore discriminated on an enumerated ground, *i.e.*, race, national or ethnic origin. This distinction created a disadvantage for the Class by perpetuating historical prejudice caused by the legacy of the Residential Schools and Sixties Scoop. The distinction was substantively discriminatory. No pressing or substantial concern justified the Impugned Conduct under section 1 of the *Charter*.

i. The Impugned Conduct Created a Distinction Based on Race, National or Ethnic Origin

106. The Class members, as First Nations, possessed the enumerated characteristics of race, national and ethnic origin. The Impugned Conduct had a prejudicial effect on the Class members based on their membership in that group.

107. Through its funding formulas, policies, and practices, the Crown played an essential role in the provision of child and family services and other public services and products to the Class members.

108. Child and family services under the FNCFS Program and the Provincial/Territorial Funding Agreements were aimed at the members of the Removed Child Class and Family Class because they were First Nations. The determination of the persons to whom the services were offered was based entirely on the racial, national or ethnic identity of the Removed Child Class and Family Class.

109. Likewise, the members of Jordan's Class qualified for public services or products under Jordan's Principle expressly on the ground that they were First Nations children who needed a public service or product. The racial, national or ethnic identity of Jordan's Class members was the very reason for which Jordan's Principle and its substantive equality purpose applied to them.

110. The Tribunal found as a fact that the Crown's underfunding and other Impugned Conduct differentiated and adversely impacted First Nations children in the provision of certain services because of their race and national or ethnic origin. The Crown is estopped from challenging that finding.

ii. The Impugned Conduct Reinforced and Exacerbated Disadvantages

111. First Nations in Canada have historically suffered from the continuing effects of colonialism, systemic discrimination, and other disadvantages often directly linked to federal legislation, policies, and practices. This discrimination has manifested itself in numerous ways, including the tragic history of the Residential Schools and the Sixties Scoop.

112. The social and economic context in which the claims of the Class members have arisen further aggravated the negative impact of the Impugned Conduct on the Class members. The Impugned Conduct widened the gap between the historically disadvantaged group of the Class

members on the one hand, and the rest of society on the other, rather than narrowing it. The Crown added to the historical disadvantages suffered by the Class, and condemned many children to separation from their families, communities, and cultural identity.

113. More specifically, the Crown's design, management and control of the FNCFS Program, its funding formulas, and its restrictive interpretation of Jordan's Principle resulted in delays, disruptions, and denials of services and products, and created adverse impacts to the Class. For example:

- (a) The structure and implementation of the Crown's funding formulas created built-in incentives to remove the Removed Child Class members from their homes as a first, not a last, resort. This practice had the opposite effect of provincial/territorial child welfare legislation and standards, which focus on prevention and least disruptive measures. The Impugned Conduct had a devastating impact on these children and their families.
- (b) The Crown directed funding based on flawed assumptions about children in out-of-home care and population thresholds that did not accurately reflect the needs of the Class members.
- (c) The Crown provided inadequate fixed funding for operation and Prevention Service costs, hindering the ability of FNCFS Agencies to provide provincially/territorially mandated services to the Class.
- (d) The Crown's inadequate funding deprived the Class members of culturally appropriate services.
- (e) The structure and implementation of the Crown's funding formulas perpetuated the adverse impacts of Directive 20-1 on Class members and their communities.

- (f) The Crown failed to adjust Directive 20-1 funding levels for decades, and failed to adjust funding levels under the EPFA, since its implementation, to account for inflation and cost of living.
- (g) The Crown failed to update the 1965 Agreement in Ontario to ensure on Reserve communities could comply fully with the *Child and Family Services Act* and meet the needs of children in the context of their distinct First Nations cultures and realities.
- (h) The Crown failed to coordinate the FNCFS Program and other related funding formulas with other federal departments and government programs and services for First Nations on Reserve, resulting in service gaps, delays and denials for First Nations children and families.
- (i) The Crown failed to fund Post-Majority Services to Class members who were formerly in out-of-home care to assist them with the transition to adulthood.
- (j) The Crown narrowly defined and inadequately implemented Jordan's Principle, resulting in public service and product gaps, delays and denials in the provision of services to the members of Jordan's Class, causing them harm. As Jordan's Principle aims at its core to ensure the substantive equality guaranteed by section 15 of the *Charter*, the Crown's near erasure of Jordan's Principle was a direct affront to the Class members' section 15 equality right.

114. The discriminatory impact on the Class members was and is apparent and immediate. As a result of the Impugned Conduct, the Crown differentiated adversely in the provision of child and family, and other public services and products to the Class members compared to non-First Nations children and families, and children and families in similar circumstances off Reserve. The

members of the Class were denied equal child and family services because of their First Nations race, national or ethnic origin.

iii. Section 15 Violation Was not Justified Under Section 1

a. No Pressing or Substantial Objective for the Impugned Conduct

115. The Impugned Conduct had no pressing or substantial objective. It worked counter to and frustrated the Crown's professed objectives in the provision of essential services and products to the Class members.

116. The objectives of the FNCFS Program and other related funding formulas were to "ensure", "arrange", "support" and/or "make available" child and family services to First Nations children. More specifically, the principles of Directive 20-1 included a commitment to "expanding First Nations Child and Family Services on-reserve **to a level comparable to the services provided off reserve in similar circumstances** [...] in accordance with the applicable provincial child and family services legislation" [emphasis added].

117. In 2005, INAC issued the "First Nations Child and Family Services National Program Manual" in which the Crown listed the following objectives for the FNCFS Program:

- (a) to support culturally appropriate child and family services for First Nations children, in the best interest of the child, in accordance with the legislation and standards of the reference province;
- (b) to protect children from neglect and abuse;
- (c) to manage the FNCFS Program in accordance with provincial or territorial legislation and standards;

- (d) to provide to First Nations child and family services that are culturally relevant and comparable to those offered by the reference province or territory to residents living off Reserve in similar circumstances;
- (e) to increase the ability and capacity of First Nations families to remain together and to support the needs of First Nations children in their parental homes and communities; and
- (f) to ensure that the First Nations children receive a full range of child and family services reasonably comparable to those provided off Reserve by the reference province or territory.

118. The Impugned Conduct was counter to these objectives and other objectives announced by the Crown for the betterment of public services and products provided to the Class members. The Crown methodically implemented funding formulas and interpreted Jordan's Principle in ways that it knew, or ought to have known, would hinder these objectives and perpetuate the systemic, historic disadvantages suffered by the Class members.

b. The Means Adopted Were Not Proportional or Minimal

119. Parliament chose not to legislate on the provision of public services and products to Class members. Instead, the Crown filled the federal statutory vacuum that ensued with funding formulas, policies, and practices that gave rise to the Impugned Conduct.

c. No Rational Connection Between the Discriminatory Distinction and Any Valid Objective

120. No rational connection existed between the Impugned Conduct toward the Class members on the one hand and the Crown's objectives in this respect. The Impugned Conduct disadvantaged the plaintiffs and the Class, and did not advance any of the stated objectives of the Crown regarding the provision of public services and products to Class members.

d. Impugned Conduct Did Not Fall Within a Range of Reasonable Alternatives

121. There was no clear legislative goal to be attained by the Impugned Conduct. The Crown's conduct was contrary to its stated policy goals. The Crown's conduct was also contrary to its constitutional and fiduciary obligations to the Class members. Therefore, the Impugned Conduct falls outside a range of reasonable alternatives available to the Crown.

122. Only one alternative was constitutionally available to the Crown: to provide non-discriminatory public services and products to Class members consistent with its historic, constitutional, and statutory obligations to First Nations children and their families. The Crown failed to do that.

e. Detrimental Effects of Impugned Conduct on Equality Rights Disproportionate to Any Legislative Objective

123. The Impugned Conduct has detrimentally impacted the *Charter*-protected equality rights of the Class members, many of whom are or were children and were affected because they were children. Children who are denied essential services, who receive deficient care, and/or who are separated from their families suffer detrimental effects often far more serious and lasting than adults. Similarly, family members of apprehended children and of those children whose Jordan's Principle substantive equality rights were violated suffer serious and lasting harm. The Impugned Conduct has had a disproportionate effect on the equality rights of the Class members.

B. The Crown Breached Its Fiduciary Duties and Duty of Care

124. The Crown's Impugned Conduct during the Class Period, including the following particulars, constituted a systemic breach of its common law duty of care and its fiduciary duties to the Class:

- (a) The Crown's funding formulas incentivized, and foreseeably caused, the removal of Removed Child Class members from their homes as a first resort rather than as a last resort, by covering maintenance expenses at cost and providing insufficient fixed budgets for Prevention Services and least disruptive measures.
- (b) The Crown failed to ensure that an appropriate child welfare program for the Class members, as First Nations children, was delivered in the provinces and territories.
- (c) By separating the Removed Child Class members from their homes and communities, the Crown's funding formulas deprived Class members of their right to the non-discriminatory provision of essential services, denied many of the Removed Child Class and Family Class members the opportunity to remain together or be reunited in a timely manner, and further deprived Removed Child Class members of their language and cultural identity.
- (d) The Crown created funding formulas without consideration for the specific needs of the First Nations communities or the individual families and children residing therein.
- (e) The assumptions built into the Crown's funding formulas, in terms of children in out-of-home care, families in need and population levels, did not reflect the actual needs of the Class members or their communities, making provincial or territorial operational standards unattainable for them.
- (f) In cases where the Crown provided separate funding for Prevention Services, the Crown's static funding formula did not provide for the increasing operational costs of FNCFS Agencies, including the costs of salaries, benefits, capital expenditures,

cost of living, and travel for FNCFS Agencies to attract and retain staff and, generally, to provide service levels in line with provincial or territorial requirements.

- (g) The Crown did not fund Post-Majority Services to Removed Child Class members who were formerly in out-of-home care to assist them with the transition to adulthood.

125. The Crown breached its common law and fiduciary duties to Jordan's Class through its narrow interpretation, and complete disregard, of Jordan's Principle. The Crown's approach deprived Jordan's Class members of essential protections on which they relied, and which the Crown undertook to provide.

126. Specifically, the Crown, through its adoption of Jordan's Principle, acknowledged its longstanding duty to protect the unique interests of First Nations children, including Jordan's Class. Its performance of this duty constituted a dishonourable exercise of discretion that critically affected these children, who it knew were eminently vulnerable.

127. In the aftermath of the Residential Schools and Sixties Scoop, the Crown undertook to assist First Nations in their journey toward reconciliation and recovery. It undertook to support their communities, culture and welfare, and protect them from further disadvantage and abuse. In so doing, it encouraged First Nations peoples, and particularly First Nations children in the Class, to repose trust in the Crown. The Impugned Conduct constituted a dishonest, disloyal and dishonourable betrayal of this trust, placing the interests of the Crown and others ahead of the interests of Class members.

128. At all times during the Class Period, the Crown retained a degree of supervisory jurisdiction over the Class. It did not, and could not, delegate its fiduciary and common law duties in respect of the important interests it undertook to protect.

VIII. DAMAGES

A. Damages Suffered by the Plaintiffs and Class Members

129. As a result of the Crown's breach of its constitutional, statutory, common law, civil law, and fiduciary duties, including breaches by agents of the Crown, the plaintiffs and other Class members suffered injuries and damages, including but not limited to the relief sought above, and for the following:

- (a) the Impugned Conduct denied the Class members non-discriminatory child and family services;
- (b) Removed Child Class members were removed from their homes and communities to be placed in care and lost their cultural identity;
- (c) Removed Child Class and Jordan's Class members suffered physical, emotional, spiritual, and mental pain and disabilities;
- (d) Removed Child Class and Jordan's Class members suffered sexual, physical, and emotional abuse while being in out-of-home care;
- (e) Removed Child Class and Jordan's Class members lost the opportunity to access essential public services and products in a timely manner;

- (f) Jordan's Class members had to fund out of pocket substitutes, where available, for public services and products delayed or improperly denied by the Crown; and
- (g) Family Class members suffered loss of guidance, care and companionship, family bonds, language, culture, community ties and resultant psychological trauma.

B. Section 24(1) Charter Damages

130. The plaintiffs and Class members suffered loss as a result of the Crown's breach of section 15(1) of the *Charter*. An award of damages under section 24(1) the *Charter* is appropriate in this case because it would compensate the Class members for the loss they have suffered. *Charter* damages would also vindicate the Class members' equality rights under the *Charter* and deter future discriminatory funding of child and family services by the Crown.

C. Disgorgement

131. The Crown's failure to provide adequate and equal funding for services and products to the Class members constituted a breach of its fiduciary duties, through which the Crown inequitably obtained quantifiable monetary benefits over the course of the Class Period. The Crown should be required to disgorge those benefits, plus interest.

D. Punitive and Exemplary Damages

132. The high-handed way that the Crown conducted its affairs warrants the condemnation of this Court. The Crown, including its agents, had complete knowledge of the fact and effect of its negligent and discriminatory conduct with respect to the provision of public services and products to Class members. It proceeded in callous indifference to the foreseeable injuries that the Class

members would, and did suffer. The Crown had already caused unimaginable harm and suffering to First Nations through Residential Schools and the Sixties Scoop, and knew, or should have known, that the Impugned Conduct would perpetuate and exacerbate those harms to First Nations children and their families.

IX. PLEADED STATUTES AND CIVIL CODE OF QUEBEC

133. In addition to the foregoing, the Impugned Conduct breached the Family Class members' rights under the *Family Compensation Act*, R.S.B.C. 1996, c. 126; *Fatal Accidents Act*, R.S.A. 2000, c. F-8; *Tort-Feasors Act*, R.S.A. 2000, c. T-5; *The Fatal Accidents Act*, R.S.S. 1978 c.F-11; *Fatal Accidents Act*, C.C.S.M. c. F150; *Family Law Act*, R.S.O. 1990, c. F.3; *Fatal Accidents Act*, R.S.P.E.I. 1988, c. F-5; *Fatal Accidents Act*, R.S.N. 1990, c. F-6; *Fatal Accidents Act*, R.S.N.B. 2012, c. 104; *Fatal Injuries Act*, R.S.N.S. 1989, c. 163; *Fatal Accidents Act*, R.S.Y. 2002, c. 86; *Fatal Accidents Act*, R.S.N.W.T., 1988, c. F-3; and *Fatal Accidents Act*, R.S.N.W.T. 1988, c. F-3, all as amended.

134. Where the actions of the Crown and its agents and servants took place in Quebec, the Impugned Conduct constituted a fault pursuant to Article 1457 of the *Civil Code of Quebec*. The Crown knew or ought to have known that the Impugned Conduct, including its denials of service and adverse impacts, would cause tremendous harm to the Class members. The Members of the Removed Child Class sustained bodily and moral injuries as a direct and immediate consequence of the Impugned Conduct. These injuries include, but are not limited to, loss of companionship, family bonds, language, culture, community ties and resultant psychological trauma. Jordan's Class members also sustained bodily and moral injuries through the Crown's denial or delayed delivery of public services and products that they were owed.

135. In addition to the *Civil Code of Quebec* and any other statute pleaded in this claim, the plaintiffs rely upon the common law and the following statutes and authorities, amongst others, all as amended:

- (a) *An Act respecting First Nations, Inuit and Metis children, youth and families*, S.C. 2019, c. 24;
- (b) *Canadian Human Rights Act*, R.S.C., 1985, c. H-6;
- (c) *Child and Family Services Act*, R.S.O. 1990, c. C.11;
- (d) *Child and Family Services Act*, S.N.W.T. 1997, c 13;
- (e) *Child Protection Act*, R.S.P.E.I. 1988, c. C-5.1;
- (f) *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46;
- (g) *Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12;
- (h) *Children and Family Services Act*, S.N.S. 1990, c. 5;
- (i) *Children and Youth Care and Protection Act*, S.N.L. 2010, c. C-12.2;
- (j) *Constitution Act, 1867 and Constitution Act, 1982*;
- (k) *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50;
- (l) *Department of Indian Affairs and Northern Development Act*, R.S.C., 1985, c. I-6;
- (m) *Family Services Act*, S.N.B. 1980, c. F-2.2;

- (n) *Federal Courts Act*, R.S.C., 1985, c. F-7;
- (o) *Federal Courts Rules*, SOR /98-106;
- (p) *Indian Act*, R.S.C., 1985, c. I-5;
- (q) *Interpretation Act*, R.S.C., 1985, c. I-21;
- (r) *The Child and Family Services Act*, C.C.S.M. c. C80;
- (s) *The Child and Family Services Act*, S.S. 1989-90, c. C-7.2;
- (t) *The United Nations Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p.3;
- (u) UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295*; and
- (v) *Youth Protection Act*, C.Q.L.R. c. P-34.1.

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Schedule "B"

Court File No.

**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

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules* serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date _____ Issued by _____
(Registry Officer)

Address of
local office: 30 McGill Street
Montréal, Québec
H2Y 3Z7

TO: The Attorney General of Canada
Quebec Regional Office
Department of Justice Canada
East Tower, 9th Floor
200 Rene-Levesque Boulevard West
Montreal Québec H2Z 1X4

I. NATURE OF THE ACTION

1. The Crown¹ has systemically discriminated against First Nations children because of their race, nationality and ethnicity. This discrimination has taken many insidious forms. This action relates to the Crown's decades-long policy of allowing jurisdictional and other funding gaps delay, disrupt, and deny essential services to First Nations children and their families.

2. Whenever First Nations children needed services or products, they faced a wall of Crown bureaucracy, lack of funding and the shirking of responsibility by Crown agents and referring them to other departments and governments where a similar response awaited them. In many instances, the Crown simply ignored the needs and requests of First Nations children for services. This conduct deprived First Nations children of essential services available to non-First Nations children or which would have been required to ensure substantive equality under the *Canadian Charter of Rights and Freedoms* ("**Charter**"). The Crown failed to provide services that responded to the actual needs of First Nations children.

3. This Impugned Conduct breached the equality rights of First Nations children protected under section 15 of the *Charter* as well as the Crown's duties to the Class under the common law, statute, and civil law.

4. The Crown knew for decades that First Nations children and families faced these discriminatory challenges. It did nothing to address the discrimination. Eventually, on December 12, 2007, the House of Commons unanimously passed a motion endorsing a principle named "Jordan's Principle" in honour of one of the victims of the discrimination, calling on the Crown to

¹ All capitalized terms have the meanings assigned to them in "II. Defined Terms", below.

adopt a child-first approach to First Nations children. The Crown again did nothing to stop the discrimination until the Tribunal found in 2016 that the Crown's conduct was discriminatory. The Crown once again did nothing until after the Tribunal issued multiple non-compliance orders.

5. This action seeks compensation for those First Nations children and families who suffered or died while awaiting the services or products that the Crown was legally required to provide but did not provide, in breach of their *Charter*-protected equality rights. The action is on behalf of individuals harmed between 1991 and the House of Commons' December 12, 2007 motion relating to Jordan's Principle.

6. On March 4, 2019, Xavier Moushoom commenced a proposed class action under Court File Number T-402-19, seeking compensation for the Class in this action, as well as certain other First Nations children and family members, on account of the Impugned Conduct dating back to April 1, 1991. On January 28, 2020, the AFN and other plaintiffs also filed a proposed class action under Court File Number T-141-20 regarding the Impugned Conduct dating back to April 1, 1991. Both groups of plaintiffs came together to combine efforts and prosecute one action ("**Consolidated Action**").

7. In consolidating the two actions, the Crown agreed to consent to the certification of the Consolidated Action but subject to the separate prosecution of the case on behalf of the Class Members herein whose claims relate to the 1991-2007 time period, hence the commencement of this separate action on behalf of the Class Members by a separate proposed representative plaintiff. All of the Class Members were previously members of the putative classes defined in Court File Number T-402-19 and/or Court File Number T-141-20.

8. In summary, the Consolidated Action covers the following class members:

| Class | Class Period |
|--|----------------------------------|
| First Nations alleging, amongst others, the Crown's funding and operation of First Nations child and family services systemically discriminated against First Nations and caused the disproportionately high numbers of apprehended First Nations children from Reserves (defined in the Consolidated Action as the Removed Child Class) | 1991-present |
| First Nations alleging, amongst others, the Crown's provision of other services and its handling of jurisdictional and funding disputes with other governments and government departments caused First Nations children's receipt of services to be denied, delayed or hindered contrary to their equality rights (defined in the Consolidated Action as the Jordan's Class) | 2007-present |
| Family members of the above two classes of First Nations children | Same corresponding periods above |

9. This action covers the following class members as particularized herein:

| Class | Class Period |
|---|--------------|
| First Nations alleging, amongst others, the Crown's provision of services and its handling of jurisdictional and funding disputes with other governments and government departments caused First Nations children's receipt of services to be denied, delayed or hindered contrary to their equality rights (defined in this action as the Child Class) | 1991-2007 |
| Family members of the above First Nations children | 1991-2007 |

II. DEFINED TERMS

10. The capitalized terms in this statement of claim have the following meanings (including both the singular or plural as the context requires):

- (a) “**AFN**” means the Assembly of First Nations, a national advocacy organization representing **First Nation** citizens in Canada, including more than 900,000 people living in 634 **First Nation** communities and in cities and towns across the country.
- (b) “**Caring Society**” means the First Nations Child and Family Caring Society, an umbrella service organization.
- (c) “**Child 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, lack of jurisdiction, or as a result of a jurisdictional dispute with another government or governmental department.
- (d) “**CHRA**” means *Canadian Human Rights Act*, R.S.C., 1985, c. H-6.
- (e) “**Class**” and “**Class Members**” means the **Child Class** and **Family Class**, collectively.
- (f) “**Class Period**” means the period of time beginning on April 1, 1991 and ending on December 11, 2007 or such other period as the Court decides.
- (g) “**Crown**” means Her Majesty in right of Canada as defined under the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50 and the agents of Her Majesty in right of Canada, including any federal departments responsible for the funding formulas, policies and

practices at issue in this action relating to **First Nations** children in Canada since April 1, 1991, including: the Department of Indian Affairs and Northern Development (“**DIAND**”) using the title Indian and Northern Affairs Canada (“**INAC**”) until 2011; Aboriginal Affairs and Northern Development Canada from 2011 to 2015; Indigenous and Northern Affairs Canada from 2015 to 2017; and Indigenous Services Canada and Crown-Indigenous Relations and Northern Affairs Canada, following the 2017 dissolution of **INAC**. In this claim, **INAC** and its predecessors or successors, Health and Welfare Canada, Health Canada and any other department or agent of the Crown are referred to interchangeably as the **Crown**, unless specifically named.

- (h) “**Directive 20-1**” means **INAC**’s national policy statement on the **FNCFS Program**, establishing **FNCFS Agencies** under the provincial or territorial child welfare legislation and requiring that **FNCFS Agencies** comply with provincial or territorial legislation and standards.
- (i) “**Family Class**” means all persons who are the brother, sister, mother, father, grandmother or grandfather of a member of the **Child Class**, or such other person(s) that the Court directs.
- (j) “**First Nation**” and “**First Nations**” means Indigenous peoples in Canada 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*;
 - (iii) individuals who have met band membership requirements under sections 10-12 of the *Indian Act* by the date of trial or resolution otherwise of this action, 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 agreements, treaties or **First Nations'** customs, traditions, and laws by the date of trial or resolution otherwise of this action.

- (k) "**FNCFS Agency**" and "**FNCFS Agencies**" means agencies that provided child and family and other services, in whole or in part, to the **Class Members** pursuant to the **FNCFS Program** and other agreements except where such services were exclusively provided by the province or territory in which the community was located.

- (l) "**FNCFS**" or "**FNCFS Program**" means the **Crown's** First Nations Child and Family Services Program which funded services to **First Nations** children and communities.

- (m) "**Impugned Conduct**" means the totality of the **Crown's** discriminatory practices pleaded in paragraphs 12-46 below.

- (n) "**Indian Act**" means the *Indian Act*, R.S.C., 1985, c. I-5.

- (o) "**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.

- (p) “**Residential Schools**” means schools for **First Nations**, Métis and Inuit children funded by the **Crown** from the 19th Century until 1996, which had the objective of assimilating children into Christian, Euro-Canadian society by stripping away their **First Nations**, Métis and Inuit rights, cultures, languages, and identities, a practice subsequently recognized as “cultural genocide”.
- (q) “**Sixties Scoop**” means the decades-long practice in Canada of taking Indigenous children, including **First Nations**, from their families and communities for placement in non-Indigenous foster homes or for adoption by non-Indigenous parents.
- (r) “**Tribunal**” means the Canadian Human Rights Tribunal.

III. RELIEF SOUGHT

11. The plaintiffs, on behalf of the Class, claim:
 - (a) an order certifying this action as a class proceeding and appointing the plaintiff Zacheus Joseph Trout as representative plaintiff for the Class and any appropriate sub-class thereof;
 - (b) general and aggregate damages for breach of fiduciary duty, negligence, and under section 24(1) of the *Charter* in the amount of \$1,000,000,000 and an order that any undistributed damages be awarded for the benefit of Class Members, pursuant to rule 334.28 of the *Federal Courts Rules*;
 - (c) an order pursuant to rule 334.26 of the *Federal Courts Rules* for the assessment of the individual damages of Class Members;
 - (d) special damages in an amount to be determined prior to trial;
 - (e) punitive and exemplary damages of \$50,000,000 or such other sum as this Honourable Court deems appropriate;
 - (f) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to rule 334.38 of the *Federal Courts Rules*;
 - (g) costs of the action on a substantial indemnity basis or in an amount that provides full indemnity;

- (h) prejudice and judgment interest pursuant to the *Federal Courts Act*, R.S.C., 1985, c. F-7; and
- (i) such further and other relief as this Honourable Court deems just and appropriate in the circumstances.

IV. THE PARTIES

A. The Plaintiffs

i. AFN

12. The AFN is a national advocacy organization representing First Nation citizens in Canada, which includes more than 900,000 people living in 634 First Nation communities and in cities and towns across the country. The AFN is an unincorporated association which is an appropriate party under rule 111 of the *Federal Courts Rules*. The AFN is a complainant before the Tribunal in File Number T1340/7008.

13. The AFN was “mandated by resolution following a vote by the Chiefs in Assembly to pursue compensation for First Nation Children and youth in care, or other victims of discrimination and to request maximum compensation allowable under the Act based on the fact that the discrimination was willful and reckless, causing ongoing trauma and harm to children and youth, resulting in a humanitarian crisis” (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).

14. The AFN successfully obtained from the Tribunal “an order for compensation to address the discrimination experienced by vulnerable First Nation Children and families in need of child

and family support services on reserve.” The Tribunal’s compensation order covers some, but not all, of the damages of some Class Members.

ii. Zacheus Joseph Trout – Proposed Representative Plaintiff

15. The plaintiff and proposed representative plaintiff Zacheus Joseph Trout lives in Cross Lake First Nation in northern Manitoba. Mr. Trout and his wife Veronica have had six children. Two of their children were Sanaye Mary Frances Trout who was born on July 20, 1998, and Jacob Zacheus Trout, born on June 28, 2002.

16. Sanaye and Jacob suffered from Batten Disease, a neurological disorder that normally begins at an early age in childhood and, if left untreated, is fatal. Batten Disease causes seizures, vision loss, and the loss of cognitive functions. Sanaye and Jacob suffered extreme sickness all their lives as a result of it.

17. Despite their conditions and dire need for medical attention, Sanaye and Jacob fell within a jurisdictional gap between the Province of Manitoba and the Crown. Due to inadequate services and funding to meet the needs of their children’s care, Mr. Trout and his wife had to quit their jobs to be able to provide 24-hour care to Sanaye and Jacob, taking turns to sleep.

18. Mr. Trout and his family fought for 13 years for services and products that Sanaye and Jacob desperately needed and were denied or received with undue delay, such as feeding tubes, diapers, and formula. For example, health officials gave the family only six syringes per month for Sanaye, even though she needed to receive six injections a day. The family had to reuse these syringes, causing infections and more seizures. The family was given two feeding bags per month to feed their children four times a day. They had to reuse the bags, which caused more problems

with bacteria and infections. Likewise, the Crown refused for more than a year to provide inclined beds that Jacob and Sanaye needed at home, causing them sleep problems and more seizures.

19. Jacob and Sanaye both died before they reached the age of 10.

B. The Defendant

20. The Defendant, the Attorney General of Canada, represents the Crown, and is liable and vicariously liable for the Impugned Conduct.

21. In particular, the Crown is liable and vicariously liable for the acts and omissions of its agents—amongst others, INAC and its predecessors and successors, Health and Welfare Canada, and Health Canada—which were responsible for funding the services provided to the Class Members.

V. THE CROWN'S TREATMENT OF FIRST NATIONS CHILDREN

A. The Crown's Provision of Services to First Nations Children and Families

22. Pursuant to section 91(24) of the *Constitution Act, 1867*, Parliament has jurisdiction over First Nations peoples and many aspects of public health. Provinces and territories have jurisdiction over healthcare and social welfare generally.

23. The Crown did not legislate on the needs of First Nations children for essential services, including child and family services, health, etc.

24. Regarding child and family services, the Crown bureaucratically designed some service funding mechanisms for First Nations children. These mechanisms, which formed the FNCFS Program, started with the Memorandum of Agreement Respecting Welfare Programs for Indians of 1965, a cost-sharing agreement between the Crown and the Province of Ontario. Subsequently

on April 1, 1991, the Crown brought into effect Directive 20-1, a cabinet-level spending measure that established uniform funding standards for the Class.

25. The Crown's child and family service funding policies shared a common feature: they were based on assumptions ill-suited to the realities of First Nations communities. These underfunded or completely ignored the needs of the Class for essential services. Directly and foreseeably, these funding mechanisms resulted in systemic shortcomings and ultimately assured the chronic under-provision of services on which the Class Members relied. The Crown's inflexible funding mechanisms and models ignored First Nations' pressing need for culturally appropriate child and family services. The Crown provided inadequate funding for programs and services, and inadequate funding to align services with standards set by provincial or territorial legislation.

26. Regarding other essential services (*e.g.*, health and social services relating to physical and mental health, special education, dental health, physical therapy, speech therapy, medical equipment, and physiotherapy, etc.), the Crown completely ignored for decades that the Class Members were trapped in jurisdictional limbo between the Crown and provincial governments or between different departments of the same government. In response to Class Members' requests for essential services, government and government departments very often shirked responsibility, pointed to another government or government department as the responsible authority, and failed to address the needs of First Nations children and families. The Crown put no mechanism in place to ensure that Class Members received essential services and products without delay.

27. The Crown's failure to address the jurisdictional and funding challenges that deprived Class Members of essential, often life-saving services further strained the underfunded FNCFS

Agencies that had to expend their scant child and family resources toward responding to Class Members whose needs for essential services the Crown systematically ignored.

28. In addition to the denial and delay in the provision of essential services, the Crown's funding policies led to unprecedented numbers of First Nations children being apprehended and removed from their homes and communities, at times to receive basic services that were not available in First Nations communities. The Crown's policies of covering the expenses of apprehended First Nations children at cost while not funding prevention services to keep the children in their homes and communities further incentivized these discriminatory apprehensions. Many Class Members had to leave their First Nations communities and migrate to non-First Nation urban and other centres to receive essential services.

A. The Crown Knew About Systemic Jurisdictional and Funding Problems

29. For decades, the Crown knew or ought to have known that its funding formulas and policies as well as jurisdictional barriers systemically denied the Class essential services and products contrary to their constitutional equality rights. Prior to and over the course of the Class Period, independent reviews and parliamentary reports identified these deficiencies and decried their devastating impact on First Nations children and families. The House of Commons' Special Committee on the Disabled and the Handicapped issued a report in 1981 where it stated:

Jurisdictional Disputes Between Governments

The Federal Government delivers services to Status Indians on reserves, and is willing to pay for services for the first year for those individuals who leave the reserve. In recent times, because of greatly increased migration of Status Indians from the reserves to urban centres, a dispute has developed between the Federal and Provincial Governments regarding the responsibility for delivering services to those individuals who are away from the reserve for more than a year. Some provinces, for their part, are reluctant or unwilling to foot the bill for a service that they consider to be the responsibility of the Federal Government. ... **The dispute over this matter of service**

to Status Indians away from the reserve leaves the Indians themselves confused since they are frequently left without any services while the two Governments are arguing over ultimate responsibility. [emphasis added]

30. Twelve years later in 1993 when the *Charter* was in force and effect, the House of Commons' Standing Committee on Human Rights and the Status of Disabled Persons issued a follow-up report stating: "the situation of these [Indigenous] people has not improved during the past decade". The report further stated:

Aboriginal people must not only contend with the fragmented nature of federal programs, but have to overcome the barriers imposed by federal/provincial jurisdictions. Like other disability issues, those related to Aboriginal people either cross federal/provincial boundaries or lie in an area of exclusive provincial responsibility.

...

The federal/provincial jurisdictional logjam shows up most graphically in the provisions of health and social services to Aboriginal people.... In all of this wrangling, both levels of government appear to have forgotten the needs of the people themselves. In this complex and overlapping web of service structures, some people even find themselves falling through the cracks and unequally treated compared to their fellow citizens. [emphasis added]

31. The Committee made the following recommendation:

The federal government should prepare, no later than 1 November 1993, a tripartite federal / provincial-territorial / band governmental action plan that will ensure ongoing consultation, co-operation and collaboration on all issues pertaining to Aboriginal people with disabilities. This action plan must contain specific agendas, realistic target dates and evaluation mechanisms. It should deal with existing or proposed transfers of the delivery of services to ensure that these transfers meet the needs of Aboriginal people with disabilities.

32. The Royal Commission on Aboriginal Peoples (1996) called on the Crown to resolve the “program and jurisdiction rigidities” plaguing the provision of services to the Class. The Royal Commission made the following recommendations, amongst others, in this respect:

Governments recognize that the health of a people is a matter of vital concern to its life, welfare, identity and culture and is therefore a core area for the exercise of self-government by Aboriginal nations.

Governments act promptly to

- (a) conclude agreements recognizing their respective jurisdictions in areas touching directly on Aboriginal health;
- (b) agree on appropriate arrangements for funding health services under Aboriginal jurisdiction; and
- (c) establish a framework, until institutions of Aboriginal self-government exist, whereby agencies mandated by Aboriginal governments or identified by Aboriginal organizations or communities can deliver health and social services operating under provincial or territorial jurisdiction.

33. In 2000, the Joint National Policy Review prepared for the AFN and the Crown highlighted some of these issues and made the following recommendation:

DIAND, Health Canada, the provinces/territories and First Nation agencies must give priority to clarifying jurisdiction and resourcing issues related to responsibility for programming and funding for children with complex needs such as handicapped children, children with emotional and/or medical needs. Services provided to these children must incorporate the importance of cultural heritage and identity.

34. In 2002, a 20-month-old First Nation child suffered life-threatening injuries as a result of child abuse. An FNCFS Agency and the Province of Saskatchewan had provided some services to his family at different times during the period between 1999 and 2002. An inquest into the services followed, which resulted in what became known as *The “Baby Andy” Report*. The inquest found that because of federal jurisdictional barriers faced by First Nations, the province intervened only in child welfare matters that were considered to be life and death incidents of child abuse or

neglect. *The “Baby Andy” Report* recommended: “the provisions of the agreements that provide for the development of a process to respond to case-specific questions related to jurisdiction and resolve any disputes that may arise”.

35. In 2005, *Wen:De: We are Coming to the Light of Day* (“**Wen:De**”) reported on a survey of FNCFS Agencies regarding the jurisdictional and funding barriers faced by the Class. Survey responses “indicated that the 12 agencies had experienced 393 jurisdictional disputes this past year requiring an average of 54.25 person hours to resolve each incident”.

36. According to *Wen:De*, First Nations children with special medical needs were apprehended from their homes to be primarily transferred to hospitals and institutions. Because of the government dysfunction particularized above, this extreme measure was often the only means of meeting their needs. Due to jurisdictional disputes, these First Nations children were not only taken out of their own homes but were often denied the chance to again live in a family environment. Inadequate funding and inter-jurisdictional dysfunction resulted in a situation where children with complex medical needs were either left to suffer on Reserve without the proper resources, or alternatively were institutionalized with little likelihood of ever having the opportunity to live in a home environment.

37. *Wen:De* proposed a “Jordan’s Principle” in honour of Jordan River Anderson, a child born to a family of the Norway House Cree Nation in 1999. Jordan had a serious medical condition, and due to lack of services on Reserve, Jordan’s family surrendered him to provincial care to get the medical treatment that he needed. After spending the first two years in a hospital, he could have gone into care at a specialized foster home close to his medical facilities in Winnipeg. However, for the next two years, the Crown and the Province of Manitoba argued over who should pay for

Jordan's foster home costs while Jordan remained in hospital. They were still arguing about jurisdiction when Jordan passed away in 2005, at the age of five, having spent his entire life in hospital.

38. *Wen:De* stated that despite section 15 of the *Charter* and international law requiring that First Nations children receive equal benefit under the law, the Crown's apathy and inaction denied them that protection:

This continual jurisdictional wrangling results in program fragmentation, problems with coordinating programs and reporting mechanisms, gaps in service delivery - thereby leaving First Nations children to fall through the cracks. In short, neither the federal or provincial/territorial governments have effectively addressed the community needs of First Nations despite awareness of the impact of "policies of avoidance".

... We recommend that a child first principle be adopted whereby the government (provincial or federal) who first receives a request for payment of services for a First Nations child will pay without disruption or delay when these services are otherwise available to non Aboriginal children in similar circumstances. The government then has the option of referring the matter to a jurisdictional dispute resolution process.

... In Jordan's memory we recommend that this new child first approach to resolving jurisdictional disputes be called Jordan's Principle and be implemented without delay.

39. The Crown did nothing to address these long-standing problems. It adopted a policy of neglect and avoidance.

B. Tribunal Proceeding and House of Commons' Motion

40. Faced with the Crown's apathy and disregard for First Nations children and families, the AFN and the Caring Society filed a complaint with the Canadian Human Rights Commission in February of 2007. The complaint alleged, amongst others, that the Crown discriminated against First Nations by failing to address the above-noted issues in violation of the *CHRA*:

These [jurisdictional] disputes result in First Nations children on reserve being denied or delayed receipt of services that are otherwise available to Canadian children. Additionally, these disputes draw from already taxed FNCFSAs human resources as FNCFSAs staff spend an average of 54 hours per incident resolving these disputes. Jordan's Principle, a child-first solution to resolving these disputes, has been developed and endorsed by over 230 individuals and organizations. This solution is cost neutral and would ensure that children's needs are met whilst still allowing for the resolution of the dispute.

41. On December 12, 2007, the House of Commons unanimously passed Motion 296, stating: "That, in the opinion of the House, the government should immediately adopt a child first principle, based on Jordan's Principle, to resolve jurisdictional disputes involving the care of First Nations children". This motion came about as a result of the Crown's persistent violation of the Class Members' equality rights described above. Motion 296 was not a statute that created statutory rights, but a motion affirming First Nations children and families' existing constitutional and quasi-constitutional equality rights.

42. The Canadian Human Rights Commission referred the AFN and Caring Society's complaint to the Tribunal. On January 26, 2016, the Tribunal rendered a decision, finding that the Crown systemically discriminated against First Nations children contrary to the equality protections in section 5 of the *CHRA*. The Tribunal found that the design, management and control of the FNCFS Program and the Crown's manner of addressing jurisdictional issues resulted in denials of services and created various adverse impacts for First Nations children and families. The Tribunal held that these breaches included the violation of the equality rights embedded in "Jordan's Principle".

43. The Tribunal has held that the equality protections owed to the Class under the rubric of Jordan's Principle include, amongst others, the following:

- (a) The equality protections embedded in Jordan's Principle make it a child-first principle that applies equally to all First Nations children, whether resident on or off Reserve. They are not limited to First Nations children with disabilities, or those with discrete short-term issues creating critical needs for health and social supports or affecting their activities of daily living.
- (b) The equality protections embedded in Jordan's Principle address the needs of First Nations children by ensuring there are no gaps in government services to them. They can address, for example, but are not limited to, gaps in such services as mental health, special education, dental, physical therapy, speech therapy, medical equipment, and physiotherapy.
- (c) When a government service, including a service assessment, is available to all other children, the government department of first contact should pay for that service to a First Nation child, without engaging in administrative case conferencing, policy review, service navigation or any other similar administrative procedure before the recommended service is approved and funding is provided. The Crown may only engage in clinical case conferencing with professionals with relevant competence and training before the recommended service is approved and funding is provided to the extent that such consultations are reasonably necessary to determine the requestor's clinical needs. Where professionals with relevant competence and training are already involved in a First Nation child's case, the Crown should consult those professionals and should only involve other professionals to the extent that those professionals already involved cannot provide the necessary clinical information. The Crown may also consult with the family, First Nation community or service providers to fund services. After the recommended service is

approved and funding is provided, the government department of first contact can seek reimbursement from another department/government.

(d) When a government service, including a service assessment, is not necessarily available to all non-First Nations children or is beyond the normative standard of care, the government department of first contact must still evaluate the individual needs of the First Nation child to determine if the requested service should be provided to ensure substantive equality in the provision of services to the First Nation child, to ensure culturally appropriate services to the child and/or to safeguard the best interests of the child.

(e) While the equality protections embedded in Jordan's Principle can apply to jurisdictional disputes between governments (*i.e.*, between federal, provincial or territorial governments) and to jurisdictional disputes between departments within the same government, a dispute amongst government departments or between governments is not a necessary requirement for the First Nations children's entitlement to formally and substantively equal services.

44. Prior to the Tribunal's 2016 decision and subsequent orders, the Crown took the position that no Jordan's Principle cases were made out. A fund that the Crown had set up after the Class Period under the rubric of Jordan's Principle was never accessed because of the onerous requirements that the Crown had established. After the Tribunal's decision and subsequent non-compliance orders, the Crown issued hundreds of thousands of remedial orders to address some of its previous failures to comply with Jordan's Principle and the fundamental substantive equality rights that underlie it. The Crown did not address the harm done to the Class.

45. On September 6, 2019, the AFN and Caring Society successfully obtained from the Tribunal "an order for compensation to address the discrimination experienced by vulnerable First

Nation Children and families in need of child and family support services on reserve.” The Tribunal’s compensation decision relates to the period immediately after December 12, 2007, but does not provide access to justice to the Class Members because their claims predate December 12, 2007. None of the First Nations children and families in the Class whose services were delayed, disrupted or denied as a result of the Crown’s unlawful actions have received, or will receive, compensation as a result of the Tribunal proceedings.

C. The Binding Effect of Tribunal’s Findings

46. The plaintiffs plead and incorporate the findings of the Tribunal as a correct statement of the law under the *CHRA* (not asserted herein), but equally as a correct statement of the law under section 15 of the *Charter*, the common law, and civil law. The Crown did not seek judicial review of the Tribunal’s decision. The Crown is therefore estopped or prevented by doctrine of *res judicata* or issue estoppel from asserting a contrary position here.

VI. THE CROWN’S DUTIES TO THE CLASS

A. The Crown Owed a Common Law Duty of Care to the Class

47. The Crown owed a duty of care to the Class Members. The Crown’s duty of care to the Class included a duty to adequately and free of discrimination fund essential services in the best interests of First Nations children. The Crown’s duty of care to the Class also included the duty to ensure formal and substantive equality for First Nations children, provide culturally appropriate services, and avoid gaps, delays, disruption, and denial of services to these children.

48. The Crown had constitutional control over the provision of services to the Class Members throughout Canada. Yet, Parliament chose not to legislate on child and family, health and other essential services for Class Members. Rather, the Crown used various bureaucratically established

funding formulas, policies, and practices. The Crown created, planned, established, operated, financed, supervised, controlled and/or regulated these formulas, policies, and practices throughout Canada.

49. The Crown adopted a policy of avoidance with respect to the jurisdictional and funding problems that the Class faced. The Crown simply ignored the problems and sufferings that the Class Members experienced.

50. The Crown knew or ought to have known for decades that its policies were wholly insufficient for the provision of essential services and products to the Class Members. The Child Class members were vulnerable children at the mercy of the Crown for services. The Crown knew or ought to have known that its policies and practices were having a devastating impact on the Class Members.

51. The Crown's proximity to the Class Members is reinforced by the honour of the Crown, the fiduciary relationship that exists between the Crown and the Class, and by the fiduciary obligations that the Crown owes to the Class Members in respect of their specific interests, including their health and welfare, and their essential connection to their First Nation histories, cultures, languages, customs, and traditions. Moreover, the Crown assumed an obligation towards First Nations peoples regarding the provision of essential services by virtue of its funding formulas, policies and practices.

B. The Crown Owed Fiduciary Obligations to the Class

52. The Crown stands in a special, fiduciary relationship with First Nations in Canada.

53. The Crown has exclusive constitutional and common law jurisdiction in respect of the Class, and has been specifically entrusted to recognize and affirm the rights of Indigenous peoples in Canada, under section 35(1) of the *Constitution Act, 1982*.

54. The Crown has assumed and maintains a large degree of discretionary control over First Nations peoples' lives and interests in general, and the care and welfare of the Class Members in particular.

55. Under section 18 of the *Indian Act*, the Crown holds Reserve lands for the use and benefit of First Nations for whom they were set apart. The Crown has discretionary authority over the use of such lands for the purpose of the administration of First Nations affairs including, but not limited to, early childhood, education, social and health services.

56. Moreover, the Crown has expressly and impliedly undertaken to protect specific First Nations interests in the provision of services and products to the Class Members. These undertakings require the Crown to act loyally and in the best interests of First Nations, particularly children, on and off Reserve.

57. The Crown's duties toward First Nations in general, and Class Members specifically, are grounded in the honour of the Crown. The honour of the Crown is at stake in the Crown's dealing with Indigenous people, which requires the Crown to always act honourably, with the utmost faith and integrity in the exercise of its discretionary powers towards the Class Members.

58. Further, the Crown's constitutional and statutory obligations, policies, and the common law required the Crown to take steps to monitor, influence, safeguard, secure, and otherwise protect the vital interests of First Nations, including the Class Members. These obligations required

particular care with respect to the interests of children and their families, whose wellbeing and security were vulnerable to the Crown's exercise of its discretion.

59. The Crown's fiduciary duties as described in this claim are non-delegable in nature and continue notwithstanding any agreements between the Crown and its agents, or agreements with other levels of government.

VII. THE CROWN BREACHED ITS DUTIES TO THE CLASS

C. The Crown Breached *Charter* Equality Rights of the Class

60. Section 15(1) of the *Charter* entrenches equality rights for every individual:

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

61. The Crown's Impugned Conduct violated section 15(1) of the *Charter* and is not saved by section 1 of the *Charter*. The Impugned Conduct was directed exclusively at First Nations people and therefore discriminated on an enumerated ground, *i.e.*, race, national or ethnic origin. This distinction created a disadvantage for the Class by perpetuating historical prejudice caused by the legacy of the Residential Schools and Sixties Scoop. The distinction was discriminatory. No pressing or substantial concern justified the Impugned Conduct under section 1 of the *Charter*.

i. The Impugned Conduct Created a Distinction Based on Race, National or Ethnic Origin

62. The Class Members, as First Nations, possessed the enumerated characteristics of race, national, and ethnic origin. The Impugned Conduct had a prejudicial effect on the Class Members based on their membership in that group.

63. Through its funding formulas, policies, and practices, the Crown played an essential role in the provision of services and products to the Class Members.

64. The Crown's provision of services to First Nations children and families was aimed at the Class Members because they were First Nations. The members of the Child Class qualified for essential services from the Crown expressly on the ground that they were First Nations children who needed a service. The racial, national or ethnic identity of Class Members was the very reason for which protected equality rights applied to them. The determination of the persons to whom the services were offered or not was based entirely on the racial, national or ethnic identity of the Class.

65. The Tribunal found as a fact that the Impugned Conduct differentiated and adversely impacted First Nations children in the provision of essential services because of their race and national or ethnic origin. The Crown is estopped from challenging that finding as the Crown did not seek judicial review of it.

ii. The Impugned Conduct Reinforced and Exacerbated Disadvantages

66. First Nations in Canada have historically suffered from the continuing effects of colonialism, systemic discrimination, and other disadvantages often directly linked to federal

legislation, policies, and practices. This discrimination has manifested itself in numerous ways, including the tragic history of the Residential Schools and the Sixties Scoop.

67. The social and economic context in which the claims of the Class Members have arisen further aggravated the negative impact of the Impugned Conduct on the Class Members. The Impugned Conduct widened the gap between the historically disadvantaged group of the Class Members on the one hand, and the rest of society on the other, rather than narrowing it. The Crown added to the historical disadvantages suffered by the Class Members, by condemning them to denials or delays in the receipt of essential services and products.

68. More specifically, the Crown's policy of avoidance, and its design, management and control of its funding formulas resulted in delays, disruptions, and denials of services and products, and created adverse impacts on the Class. For example:

- (a) The Crown failed to coordinate the FNCFS Program and other related funding formulas with other federal departments and government programs and services for First Nations, resulting in service gaps, delays and denials for First Nations children and families.
- (b) The Crown ignored for decades pleas that jurisdictional problems were resulting in service and product gaps, delays and denials in the provision of essential services to the members of the Child Class, causing them harm.
- (c) The Crown systemically underfunded First Nations child and family services based on flawed assumptions about children in out-of-home care and population thresholds that did not accurately reflect the needs of the Class Members, thus restricting the ability of the FNCFS Agencies to fill the gaps in services to the Class.

69. The discriminatory impact on the Class Members was apparent and immediate. As a result of the Impugned Conduct, the Crown differentiated adversely in the provision of child and family, and other essential services and products to the Class Members compared to non-First Nations children and families. The members of the Class were denied formally and substantively equal services because of their First Nations race, national or ethnic origin.

iii. Section 15 Violation Was not Justified Under Section 1

a. No Pressing or Substantial Objective for the Impugned Conduct

70. The Impugned Conduct had no pressing or substantial objective. It worked counter to and frustrated the Crown's professed objectives in the provision of services to the Class Members. The Crown systemically ignored the Class Members' needs and implemented funding formulas and policies in ways that it knew, or ought to have known, would perpetuate the systemic, historic disadvantages suffered by the Class Members.

b. The Means Adopted Were Not Proportional or Minimal

71. Parliament chose not to legislate on the provision of essential services and products to Class Members. The Crown adopted a policy of avoidance, ignoring the jurisdictional and funding barriers afflicting the Class. No means were adopted to be proportional or minimal.

c. No Rational Connection Between the Discriminatory Distinction and Any Valid Objective

72. No rational connection existed between the Impugned Conduct toward the Class Members on the one hand and the Crown's objectives in this respect. The Impugned Conduct disadvantaged the Class, and did not advance any of the stated objectives of the Crown regarding the provision of services and products to Class Members.

d. Impugned Conduct Did Not Fall Within a Range of Reasonable Alternatives

73. There was no clear legislative goal to be attained by the Impugned Conduct. The Crown's conduct was contrary to its stated policy goals. The Crown's conduct was also contrary to its constitutional and fiduciary obligations to the Class Members. Therefore, the Impugned Conduct falls outside a range of reasonable alternatives available to the Crown.

74. Only one alternative was constitutionally available to the Crown: to provide non-discriminatory services to Class Members consistent with its historic, constitutional, and statutory obligations to First Nations children and their families. The Crown failed to do that.

e. Detrimental Effects of Impugned Conduct on Equality Rights Disproportionate to Any Legislative Objective

75. The Impugned Conduct detrimentally impacted the *Charter*-protected equality rights of the Class Members, many of whom were children and were affected because they were children. Children who are denied essential services, or who are separated from their families to receive services suffer detrimental effects often far more serious and lasting than adults. Similarly, family members of children denied essential services suffer serious and lasting harm as further particularized below. The Impugned Conduct has had a disproportionate effect on the equality rights of the Class Members.

D. The Crown Breached Its Fiduciary Duties and Duty of Care

76. The Crown's Impugned Conduct during the Class Period, including the following particulars, constituted a systemic breach of its common law duty of care and its fiduciary duties to the Class:

- (a) The Crown's inaction and apathy regarding the jurisdictional barriers, lack of funding and other service gaps led to delay and denial of essential services and products to the Class contrary to their equality rights.
- (b) The Crown created policies and funding formulas without consideration for the specific needs of the First Nations communities, families, and children. The assumptions built into the Crown's funding formulas did not reflect the actual needs of the Class Members or their communities, making provincial or territorial operational standards unattainable for them.
- (c) The Crown's policy of avoidance further strained the chronically underfunded FNCFS Agencies who also had to deal with the needs of the Child Class for essential services.
- (d) By separating some Class Members from their homes and communities to receive essential services or by effectively forcing their migration from their communities, the Crown's funding formulas and policies deprived Class Members of their right to the non-discriminatory provision of essential services, denied many of the Child Class and Family Class members the opportunity to remain together or be reunited in a timely manner, and deprived some Child Class members of their language and cultural identity.

77. Even after the House of Commons passed the Jordan's Principle motion, the Crown continued breaching its constitutional, common law, and fiduciary duties through its narrow interpretation of, and complete disregard for, First Nations children's equality rights included in Jordan's Principle.

78. The Crown's approach deprived Child Class members of essential protections on which they relied, and which the Crown undertook to provide. Specifically, the Crown, through its subsequent adoption of Jordan's Principle, acknowledged its longstanding duty to protect the unique interests of First Nations children, including the Child Class. The Crown's performance of this duty constituted a dishonourable exercise of discretion that critically affected these children, who it knew were eminently vulnerable.

79. In the aftermath of the Residential Schools and Sixties Scoop, the Crown undertook to assist First Nations in their journey toward reconciliation and recovery. It undertook to support their communities, culture and welfare, and protect them from further disadvantage and abuse. In so doing, it encouraged First Nations peoples, and particularly First Nations children in the Class, to repose trust in the Crown. The Impugned Conduct constituted a dishonest, disloyal and dishonourable betrayal of this trust, placing the interests of the Crown and others ahead of the interests of Class Members.

80. At all times during the Class Period, the Crown retained a degree of supervisory jurisdiction over the Class. It did not, and could not, delegate its fiduciary and common law duties in respect of the important interests it undertook to protect.

VIII. DAMAGES

E. Damages Suffered by the Class Members

81. As a result of the Crown's breach of its constitutional, statutory, common law, civil law, and fiduciary duties, including breaches by agents of the Crown, the Class Members suffered injuries and damages, including but not limited to the relief sought above, and for the following:

- (a) the Impugned Conduct denied the Class Members non-discriminatory services;

- (b) some Child Class members were removed from their homes and communities, or had to migrate away from their communities with their families, to receive essential services, and thus lost their cultural identity;
- (c) Child Class and Family Class members suffered physical, emotional, spiritual, and mental pain and disabilities;
- (d) The Child Class members lost the opportunity to access essential services and products in a timely manner;
- (e) Child Class members developed physical and mental health complications as a result of the denial or delay in the receipt of services;
- (f) Class Members had to fund out of pocket substitutes, where available, for services and products delayed or improperly denied by the Crown; and
- (g) Family Class members suffered loss of guidance, care and companionship, family bonds, language, culture, community ties and resultant psychological trauma, financial harm as result of having to provide the care and services that the Crown refused to provide in a timely manner or at all.

F. Section 24(1) *Charter* Damages

82. The Class Members suffered loss as a result of the Crown's breach of section 15(1) of the *Charter*. An award of damages under section 24(1) the *Charter* is appropriate in this case because it would compensate the Class Members for the loss they have suffered. *Charter* damages would

also vindicate the Class Members' equality rights under the *Charter* and deter future discriminatory conduct by the Crown.

G. Disgorgement

83. The plaintiffs seek disgorgement of the revenues and other monetary benefits generated by the Crown as a result of the Impugned Conduct. The Crown's failure to resolve funding gaps and jurisdictional issues, and to provide adequate and equal funding for services to the Class Members constituted a breach of its duties, through which breach the Crown inequitably obtained quantifiable monetary benefits over the course of the Class Period. Disgorgement is appropriate because (a) actionable misconduct is alleged; (b) compensatory damages may be inadequate; and (c) the circumstances of this case and the gravity of the Impugned Conduct warrant such a reward.

84. The Crown should be required to disgorge those benefits, plus interest.

H. Punitive and Exemplary Damages

85. The high-handed manner in which the Crown conducted its affairs warrants the condemnation of this Court. The Crown, including its agents, had complete knowledge of the fact and effect of its negligent and discriminatory conduct with respect to Class Members. It proceeded in callous indifference to the foreseeable injuries that the Class Members would, and did suffer. The Crown had already caused unimaginable harm and suffering to First Nations through Residential Schools and the Sixties Scoop, and knew, or should have known, that the Impugned Conduct would perpetuate and exacerbate those harms to First Nations children and their families.

IX. PLEADED STATUTES AND *CIVIL CODE OF QUEBEC*

86. In addition to the foregoing, the Impugned Conduct breached the Family Class members' rights under the *Family Compensation Act*, R.S.B.C. 1996, c. 126; *Fatal Accidents Act*, R.S.A. 2000, c. F-8; *Tort-Feasors Act*, R.S.A. 2000, c. T-5; *The Fatal Accidents Act*, R.S.S. 1978 c.F-11; *Fatal Accidents Act*, C.C.S.M. c. F150; *Family Law Act*, R.S.O. 1990, c. F.3; *Fatal Accidents Act*, R.S.P.E.I. 1988, c. F-5; *Fatal Accidents Act*, R.S.N. 1990, c. F-6; *Fatal Accidents Act*, R.S.N.B. 2012, c. 104; *Fatal Injuries Act*, R.S.N.S. 1989, c. 163; *Fatal Accidents Act*, R.S.Y. 2002, c. 86; *Fatal Accidents Act*, R.S.N.W.T., 1988, c. F-3; and *Fatal Accidents Act*, R.S.N.W.T. 1988, c. F-3, all as amended.

87. Where the actions of the Crown and its agents and servants took place in Quebec, the Impugned Conduct constituted a fault pursuant to Article 1457 of the *Civil Code of Quebec*. The Crown knew or ought to have known that the Impugned Conduct, including its denials of service and adverse impacts, would harm the Class Members. The Members of the Child Class sustained bodily and moral injuries as a direct and immediate consequence of the Impugned Conduct. These injuries include, but are not limited to, loss of companionship, family bonds, language, culture, community ties and resultant psychological trauma. Child Class members also sustained bodily and moral injuries through the Crown's discriminatory denial or delayed delivery of services and products.

88. In addition to the *Civil Code of Quebec* and any other statute pleaded in this claim, the plaintiffs rely upon the common law and the following statutes and authorities, amongst others, all as amended:

- (a) *An Act respecting First Nations, Inuit and Metis children, youth and families*, S.C. 2019, c. 24;
- (b) *Canadian Human Rights Act*, R.S.C., 1985, c. H-6;
- (c) *Child and Family Services Act*, R.S.O. 1990, c. C.11;
- (d) *Child and Family Services Act*, S.N.W.T. 1997, c 13;
- (e) *Child Protection Act*, R.S.P.E.I. 1988, c. C-5.1;
- (f) *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46;
- (g) *Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12;
- (h) *Children and Family Services Act*, S.N.S. 1990, c. 5;
- (i) *Children and Youth Care and Protection Act*, S.N.L. 2010, c. C-12.2;
- (j) *Constitution Act, 1867 and Constitution Act, 1982*;
- (k) *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50;
- (l) *Department of Indian Affairs and Northern Development Act*, R.S.C., 1985, c. I-6;
- (m) *Family Services Act*, S.N.B. 1980, c. F-2.2;
- (n) *Federal Courts Act*, R.S.C., 1985, c. F-7;
- (o) *Federal Courts Rules*, SOR /98-106;
- (p) *Indian Act*, R.S.C., 1985, c. I-5;

- (q) *Interpretation Act*, R.S.C., 1985, c. I-21;
- (r) *The Child and Family Services Act*, C.C.S.M. c. C80;
- (s) *The Child and Family Services Act*, S.S. 1989-90, c. C-7.2;
- (t) *The United Nations Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p.3;
- (u) UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295*; and
- (v) *Youth Protection Act*, C.Q.L.R. c. P-34.1.

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Lawyers for the plaintiff Assembly of First Nations

**This is Exhibit "C" referred to in
the Affidavit of Craig Gideon, Affirmed
before me, on this 30th day of June, 2023**



A commissioner for taking Affidavits

SCHEDULE “A”

Short Form Notice of Certification and Settlement

Federal Child Welfare and Jordan’s Principle Class Action

The Federal Court of Canada has approved this notice.

The plaintiffs and Canada have reached a \$20 billion settlement of this class action taken on behalf of First Nations children and some of their family members. If you qualify, you may be entitled to payment under this settlement.

This notice provides information about the lawsuit and the settlement. More detailed information is available [online here](#). You can also sign up to receive updates on the compensation process at the same link.

This notice also gives you a chance to remove yourself (opt out) from the class action. You should only remove yourself from the class action if you do not want to receive payment in this settlement and be bound by the settlement.

If you want to stay in the class action and be eligible to submit a claim for payment in this settlement, you do not need to do anything now.

If you would like help to better understand this notice, there is contact information below. You can make an appointment for a call with someone who will explain it to you and answer your questions.

What is the class action about?

The class action claims that from April 1, 1991 until March 31, 2022, Canada discriminated against First Nations children living on reserves or in the Yukon who were removed from their homes by child welfare agencies operating in First Nations communities and placed in out-of-home care.

The class action also covers claims that between 1991 and November 2, 2017, where Canada failed to provide (or delayed in providing) essential services to First Nations children who had a confirmed need for such essential services. This treatment discriminated against the children and broke a legal rule known as Jordan’s Principle.

Are you included in the class action?

In general, you are included in the class action if you are in one of the following groups:

Category 1: First Nations children living on-reserve or in the Yukon who were removed from their homes by child welfare agencies and placed into state care, foster care or group homes at any time between April 1, 1991 and March 31, 2022. This group also includes First Nations children who were not living on-reserve but one of their parents was ordinarily resident on a reserve at the time of their removal.

Category 2: First Nations children (living both on-reserve and off-reserve) who were confirmed to need an essential service but faced a delay, denial or a gap in receiving that essential service between April 1, 1991 and November 2, 2017;

Category 3: The parents, grandparents or siblings of one of the individuals above.

More details about who is included in the class action can be found [here](#).

What is the proposed settlement?

The plaintiffs and Canada have agreed to a settlement that requires that Canada pay \$20 billion in compensation. The settlement must be approved by the court before it becomes effective.

If the settlement is approved by the court, each removed child described in Category 1 may receive \$40,000 or more in compensation depending on how many people are approved for compensation. Parents or grandparents who were caring for a person in Category 1 at the time of removal may also be entitled to up to \$40,000 or up to a maximum of \$60,000 in cases of multiple removed children. Siblings of a removed child will not be entitled to any payment under the settlement.

Each person in Category 2 who:

- (a) lacked timely access to, or experienced a denial or gap in receiving an essential service that they were confirmed to have needed between December 12, 2007 and November 2, 2017 (under Jordan's Principle) are entitled to compensation. Those who suffered significant impact as a result of this may receive \$40,000 or more. Others may receive less than \$40,000 and up to \$40,000, depending on how many claimants are approved. The actual amounts that each claimant will receive cannot be determined until a later date when the number of people making a claim is known.

OR

- (b) lacked timely access to, or experienced a denial or gap in receiving an essential service that they were confirmed to have needed between April 1, 1991 and December 11, 2007 are entitled to receive compensation. Those who suffered significant impact as a result of this may receive \$20,000 or more. Others may receive less than \$20,000 and up to \$20,000, depending on how many claimants are approved. The actual amounts that each claimant will receive cannot be determined until a later date when the number of people making a claim is known.

Caregiving parent(s) or caregiving grandparent(s) of the persons in Category 2 who suffered the most significant hardship may also be entitled to compensation, under Category 3.

A fund of \$50 million will be established to assist First Nations children and families impacted by Canada's discrimination.

What are my options?

1. **Stay in the class action:** If you wish to stay in the class and be eligible to submit a claim for payment under the settlement, you do not need to do anything at this time.
2. **Remove yourself from the class action (opt out):** If you do not want to participate in this class action, and you do not want to receive a payment under the settlement, you need to remove yourself by submitting an Opt-Out Form by this date:
_____.

If you submit the Opt-Out Form, you will not receive compensation from the settlement.

To remove yourself from the lawsuit, please visit [URL] to fill out and submit an Opt-Out Form online, or mail a print copy of the Opt-Out Form to [ADDRESS] requesting to be removed from this class action. You can also receive a copy of the Opt-Out Form from the Administrator by contacting [1-800 NUMBER].

The deadline to submit an Opt-out Form and remove yourself from the lawsuit is **[DATE]**.

What if I want to object to or comment on the settlement?

The Federal Court will hold a hearing to decide if the \$20 billion settlement and the lawyers' fees should be approved. It is expected that the hearing will take place on **September 19-23, 2022** in Ottawa, but it is possible that this date might change. If the date changes, a new date will be posted here. Register here to receive notification by email of any change to the hearing date and/or place.

The hearing will take place in person and will be broadcasted online. Details of the hearing will be posted here.

You do not have to attend the hearing or provide any comments on the settlement in order to be eligible to receive compensation.

If you want to object to or comment on the settlement or the lawyers' fees that will be requested, you have two options:

1. **Object or provide comments in writing:** You may send any comments to _____ . Your comments will be sent to the Federal Court before the hearing.
2. **Object in person:** Ask to speak in court about the proposed settlement or the lawyers' fees on September 19-23, 2022, either in person at the Federal Court in Ottawa or by videoconference.

If you want to object, you must send your written comments or request to speak at the hearing by **September 12, 2022**.

Canadian Human Rights Tribunal decision

The settlement of the lawsuit will also be reviewed by the Canadian Human Rights Tribunal (Tribunal). A hearing before the Tribunal is expected to take place in June or July of 2022.

The Tribunal will be asked to make a ruling that the \$20 billion settlement of the lawsuit satisfies its previous compensation [order against Canada \(2019 CHRT 39\)](#). If the Tribunal finds that the \$20 billion settlement satisfies its compensation order against Canada, then the \$20 billion settlement will replace the compensation order, and you will not be allowed to claim a payment under the Tribunal's order. Also, if the Tribunal finds that the \$20 billion settlement of this lawsuit satisfies its compensation order, and if the Federal Court approves the settlement, then you will not be able to claim compensation under the Tribunal's compensation order even if you opt out of this lawsuit.

If the Tribunal does not find that the settlement satisfies its compensation order, then the settlement will come to an end and the September hearing before the Federal Court will not proceed. If that happens, you will receive another notice.

It is possible that some people who are entitled to a payment under the Tribunal's compensation order, in particular those persons in Category 3 above, may not receive direct compensation under the settlement of this lawsuit, or they may receive less money than they would be entitled to under the Tribunal's compensation order.

Are there any negative consequences of staying in the class action?

By staying in the class action, you will be eligible to submit a claim for compensation. However, by staying in the class action you will not be able to sue Canada. You can still sue an agency, foster parent or group home. You cannot apply to the Canadian Human Rights Tribunal for compensation, about the same discriminatory conduct that is the subject of the class action.

Who is representing the class?

The class is represented by the following plaintiffs: Xavier Moushoom, Jeremy Meawasige (by his litigation guardian, Jonavon Joseph Meawasige), Jonavon Joseph Meawasige, Ashley Dawn Louise Bach, Karen Osachoff, Melissa Walteson, Noah Buffalo-Jackson (by his litigation guardian, Carolyn Buffalo), Carolyn Buffalo, Dick Eugene Jackson, and Zacheus Joseph Trout. The Assembly of First Nations is also a plaintiff in the class action.

The plaintiffs are represented by five law firms from across Canada: [Sotos LLP](#), [Kugler Kandestin LLP](#), [Miller Titerle + Co.](#), [Nahwegahbow Corbiere](#) and [Fasken Martineau Dumoulin LLP](#).

You do not have to pay the lawyers, or anyone else, to be a part of this lawsuit or to receive payment in the settlement.

How will the lawyers be paid?

The lawyers will be paid by Canada. No amount paid to the lawyers will be taken from the \$20 billion settlement or from any payments that are made to class members.

The amount that the lawyers will be paid will be negotiated between the plaintiff lawyers and Canada. If they agree to an amount of fees, then the lawyers will ask the Court to approve the amount at the hearing currently scheduled for September 19-23, 2022.

More details on the legal fees that will be requested will be posted [here](#) after the negotiations have concluded.

Want more information about the class action or the settlement?

More information about the case _____

Need support or assistance?

Support services are available _____

To learn more about your options and determine if you are included, please visit: [URL] or call [1-800 NUMBER].

For more information about the settlement and your options, please contact:

**This is Exhibit "D" referred to in
the Affidavit of Craig Gideon, Affirmed
before me, on this 30th day of June, 2023**



A commissioner for taking Affidavits

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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
 Page 1 of 3

SPECIAL CHIEFS ASSEMBLY
December 6,7,8, 2022, Ottawa, ON

Resolution no. 28/2022

- 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



ROSEANNE ARCHIBALD, NATIONAL CHIEF

28 – 2022
 Page 2 of 3

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

28 – 2022
Page 3 of 3

**This is Exhibit "E" referred to in
the Affidavit of Craig Gideon, Affirmed
before me, on this 30th day of June, 2023**



A commissioner for taking Affidavits

**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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SCHEDULES

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

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 (60th) 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 "**Releasers**") 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 Releaser 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 Releaser 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 Releasers 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 Releasers 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.]

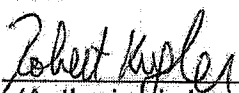
IN WITNESS WHEREOF, the Parties have each executed this Agreement with effect as of the Effective Date.

CANADA, as represented by the Attorney General of Canada

THE PLAINTIFFS in Moushoom Action and Trout Action, as represented by class counsel



(Authorized signatory)

BY:


(Authorized signatory)

Attorney General of Canada
for the defendant in Moushoom
Action, AFN Action and Trout Action

Sotos LLP / Kugler Kandestin LLP /
Miller Titerle + Co.
for the plaintiffs


Print

Print Name:

Name: Paul B. Vickery
Position: legal agent & counsel

Position: Robert Kugler
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

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 Census² 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

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

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. <http://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/hltfst/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, 2SLGBTQQA+ 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 | <p>“Every person attains the age of majority and ceases to be a minor on attaining the age of 18 years”</p> <p>Source: <i>Age of Majority Act</i>, RSA 2000, c A-6, s 1</p> |
| British Columbia | 19 years old | <p>“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”</p> <p>Source: <i>Age of Majority Act</i>, RSBC 1996, c 7, s 1(1)</p> |
| Manitoba | 18 years old | <p>“Every person attains the age of majority, and ceases to be a minor, on attaining the age of 18 years”</p> <p>Source: <i>The Age of Majority Act</i>, CCSM 1988, c A-7, s 1</p> |
| New Brunswick | 19 years old | <p>“A person attains the age of majority and ceases to be a minor on attaining the age of 19 years”</p> <p>Source: <i>Age of Majority Act</i>, RSNB 2011, c 103, s 1(1)</p> |
| Newfoundland And Labrador | 19 years old | <p>“Every person who attains the age of 19 years (a) attains the age of majority; and (b) ceases to be a minor person”</p> <p>Source: <i>Age Of Majority Act</i>, SNL 1995, c A-4.2, s 2</p> |
| Northwest Territories | 19 years old | <p>“Every person attains the age of majority, and majority ceases to be a minor, on attaining the age of 19 years”</p> <p>Source: <i>Age of Majority Act</i>, RSNWT 1988, c A-2, s 2</p> |

| | | |
|----------------------|--------------|--|
| Nova Scotia | 19 years old | <p>“Every person attains the age of majority, and ceases to be a minor, on attaining the age of nineteen years”</p> <p>Source: <i>Age of Majority Act</i>, RSNS 1989, c 4, s 2(1)</p> |
| Nunavut | 19 years old | <p>“Every person attains the age of majority, and ceases to be a minor, on attaining the age of 19 years”</p> <p>Source: <i>Age of Majority Act</i>, RSNWT (Nu) 1988, c A-2, s 2</p> |
| Ontario | 18 years old | <p>“Every person attains the age of majority and ceases to be a minor on attaining the age of eighteen years”</p> <p>Source: <i>Age of Majority and Accountability Act</i>, RSO 1990, c A.7, s 1</p> |
| Prince Edward Island | 18 years old | <p>“Every person attains the age of majority and ceases to be a minor on attaining the age of eighteen years”</p> <p>Source: <i>Age of Majority Act</i>, RSPEI 1988, c A-8, s 1</p> |
| Quebec | 18 years old | <p>“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”</p> <p>Source: <i>Civil Code of Quebec</i>, c CCQ-1991, c 64, s 153</p> |
| Saskatchewan | 18 years old | <p>“Every person attains the age of majority and ceases to be a minor on attaining the age of eighteen years”</p> <p>Source: <i>Age of Majority Act</i>, RSS 1978, c A-6, s 2(1)</p> |
| Yukon | 19 years old | <p>“Every person reaches the age of majority, and ceases to be a minor, on reaching the age of 19 years”</p> <p>Source: <i>Age of Majority Act</i>, RSY, c 2, s 1</p> |

**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

(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,

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) 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 Ayles"

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 control¹ 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.

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 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 refusals and undertakings 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.

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.

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 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 “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 | SOTOS LLP 180 Dundas Street West Suite 1200 Toronto ON M5G 1Z8 David Sterns (LSO# 36274J) dsterns@sotosllp.com Mohsen Seddigh (LSO# 70744I) mseddigh@sotosllp.com Jonathan Schachter (LSO# 63858C) jschachter@sotosllp.com Tel: 416-977-0007 Fax: 416-977-0717 Lawyers for the Plaintiffs | KUGLER KANDESTIN 1 Place Ville-Marie Suite 1170 Montréal QC H3B 2A7 Robert Kugler rkugler@kklex.com Pierre Boivin pboivin@kklex.com William Colish wcolish@kklex.com Tel: 514-878-2861 Fax: 514-875-8424 | MILLER TITERLE + CO. 300 - 638 Smithe Street Vancouver BC V6B 1E3 Joelle Walker joelle@millertiterle.com Tamara Napoleon tamara@millertiterle.com Erin Reimer erin@millertiterle.com Tel: 604-681-4112 Fax: 604-681-4113 |
| | | | Lawyers for the plaintiffs Xavier Moushoom, Jeremy Meawasige (by his litigation guardian, Jonavon Joseph Meawasige), Jonavon Joseph Meawasige |

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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:

- o [INSERT CERTIFIED COMMON ISSUE]
- o ...

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 |
|--|----------------------------------|--|----------------------------|
| | | | |
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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 Ayles**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

20

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

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

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>>.

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:

- o [INSERT CERTIFIED COMMON ISSUE]
- o ...

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].

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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 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.

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: _____

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 development¹ (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"

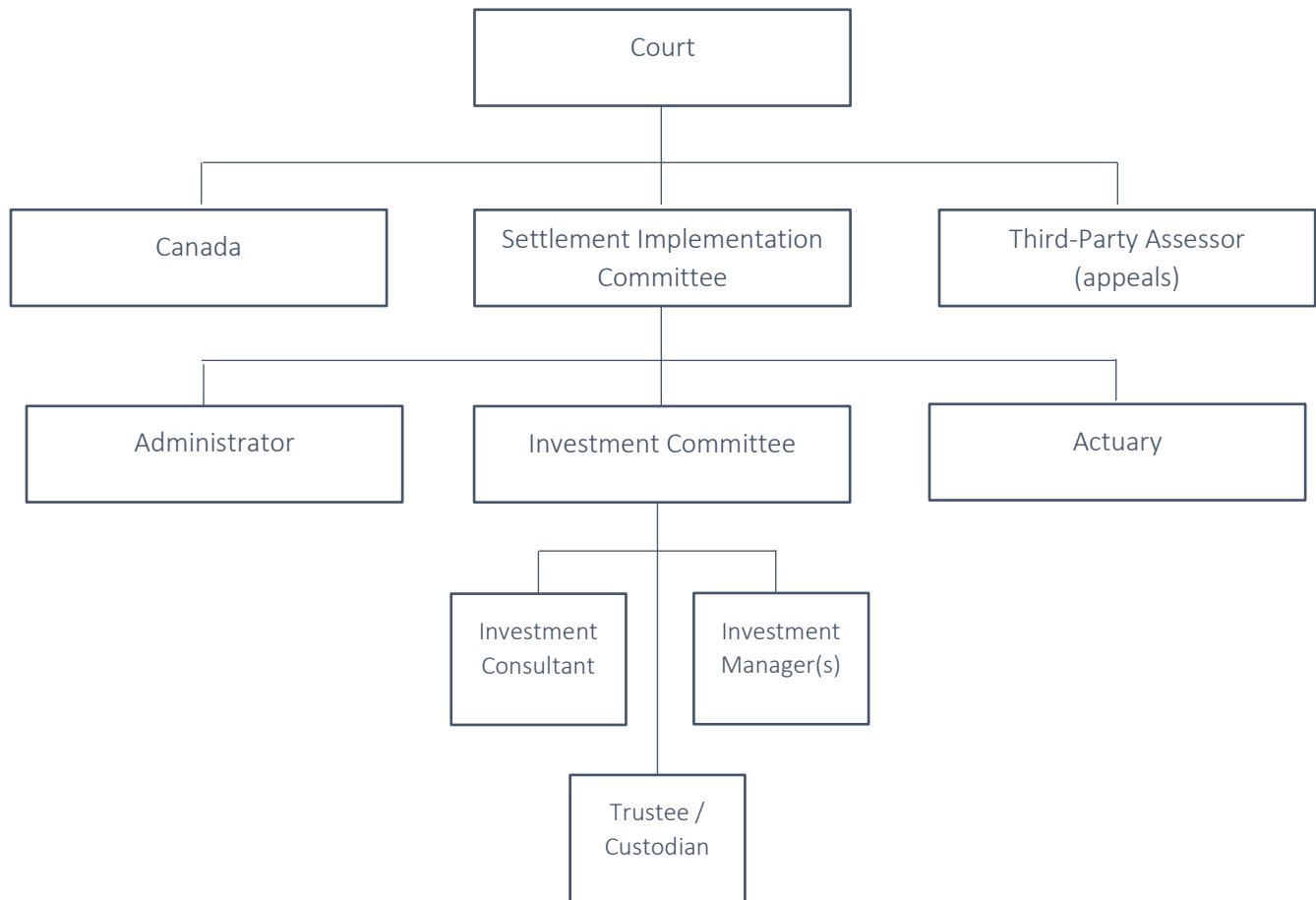
Investment Committee Guiding Principles

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 <i>A Cultural Safety Toolkit for Mental Health and Addiction Workers In-Service with First Nations People</i>). |
| 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 |
|--|--|
| <ul style="list-style-type: none"> • 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. | <ul style="list-style-type: none"> • 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 |
|---|---|
| <ul style="list-style-type: none"> 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. | <ul style="list-style-type: none"> 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 |
|--|--|
| <ul style="list-style-type: none"> 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. | <ul style="list-style-type: none"> 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 |
|---|---|
| <ul style="list-style-type: none"> Dedicated support team for class action members that is accessible in First Nations languages, including: <ul style="list-style-type: none"> 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. | <ul style="list-style-type: none"> 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 |
|--|---|--|
| <p>Essential Service Class (2007-2017)</p> <p>Jordan's Principle Class Members</p> <p>Other Essential Service Class Members</p> | <ul style="list-style-type: none"> 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. 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. | <p>Minimum \$40,000*</p> <p>Up to but not more than \$40,000</p> |

* Plus applicable interest on \$40,000.

| | | |
|--|---|---|
| <p>Trout Child Class</p> <p>(1991-2007)</p>  | <ul style="list-style-type: none"> • 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. | <p>Minimum \$20,000</p> |
| | <ul style="list-style-type: none"> • 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. | <p>Up to but not more than \$20,000</p> |

**This is Exhibit "F" referred to in
the Affidavit of Craig Gideon, Affirmed
before me, on this 30th day of June, 2023**

A handwritten signature in black ink, appearing to be 'A. Wilson', written over a horizontal line.

A commissioner for taking Affidavits

Assembly of First Nations

55 Metcalfe Street, Suite 1600
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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

04 – 2023
 Page 1 of 3

**SPECIAL CHIEFS' ASSEMBLY
APRIL 3, 4, 5 & 6, 2023; OTTAWA, ON**

Resolution no. 04/2023

- 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.

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ROSEANNE ARCHIBALD, NATIONAL CHIEF

04 – 2023
Page 2 of 3

**SPECIAL CHIEFS' ASSEMBLY
APRIL 3, 4, 5 & 6, 2023; OTTAWA, ON**

Resolution no. 04/2023

- 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

04 – 2023
Page 3 of 3

**This is Exhibit "G" referred to in
the Affidavit of Craig Gideon, Affirmed
before me, on this 30th day of June, 2023**



A commissioner for taking Affidavits

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.

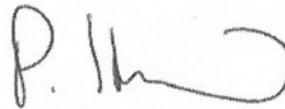
10. By signing these Minutes of Settlement, each Party confirms that in their opinion the Agreement satisfies the Tribunal's Compensation Entitlement Order, the Compensation Framework Order and all other Tribunal orders related to compensation.
11. No Party will judicially review the Tribunal's order 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 Releasers," 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 Releasers 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**

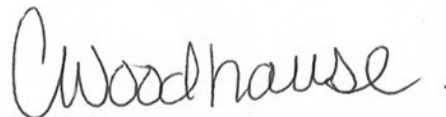


The Honourable Patty Hajdu, P.C., M.P.
Minister of Indigenous Services




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

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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

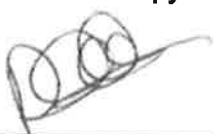
28 – 2022
 Page 1 of 3

SPECIAL CHIEFS ASSEMBLY
December 6,7,8, 2022, Ottawa, ON

Resolution no. 28/2022

- 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



ROSEANNE ARCHIBALD, NATIONAL CHIEF

28 – 2022
 Page 2 of 3

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

28 – 2022
Page 3 of 3

Assembly of First Nations

55 Metcalfe Street, Suite 1600
 Ottawa, Ontario K1P 6L5
 Telephone: 613-241-6789 Fax: 613-241-5808
 www.afn.ca



Assemblée des Premières Nations

55, rue Metcalfe, Suite 1600
 Ottawa (Ontario) K1P 6L5
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 www.afn.ca

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

04 – 2023
 Page 1 of 3

**SPECIAL CHIEFS' ASSEMBLY
APRIL 3, 4, 5 & 6, 2023; OTTAWA, ON**

Resolution no. 04/2023

- 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

04 – 2023
Page 2 of 3

**SPECIAL CHIEFS' ASSEMBLY
APRIL 3, 4, 5 & 6, 2023; OTTAWA, ON**

Resolution no. 04/2023

- 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

04 – 2023
Page 3 of 3

Schedule “B” – the Final Settlement Agreement

**This is Exhibit "H" referred to in
the Affidavit of Craig Gideon, Affirmed
before me, on this 30th day of June, 2023**



A commissioner for taking Affidavits

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.

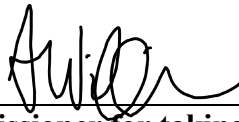
Please let me know if you should have any questions.

Yours sincerely,



Euan Reid, FCIA, FIA

**This is Exhibit "I" referred to in
the Affidavit of Craig Gideon, Affirmed
before me, on this 30th day of June, 2023**

A handwritten signature in black ink, appearing to read "A. Wilson", written over a horizontal line.

A commissioner for taking Affidavits

Tribunal File No: T1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY 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

**AFFIDAVIT OF LUCYNA M. LACH
SWORN JUNE 20, 2023**

I, Lucyna M. Lach, of the City of Montreal, in the Province of Quebec, MAKE OATH
AND SAY:

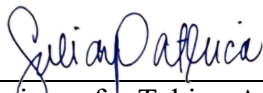
1. I am an Associate Professor, at School of Social Work, Faculty of Arts, and Associate Member of the Departments of Paediatrics, Neurology and Neurosurgery, Faculty of Medicine at McGill University, and, as such, have knowledge of the matters contained in this Affidavit.

-2-

2. I have been retained to provide expert evidence in the Moushoom/AFN class actions, which interrelate with this matter. I have been asked by the Assembly of First Nations to provide my methodology report on the caregiving parents and caregiving grandparents of Jordan's Principle claimants under the Final Settlement Agreement signed April 19, 2023.

3. A said report is attached to this Affidavit as **Exhibit "A"**. My curriculum vitae is attached to my report.

SWORN 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 June 20, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)



LUCYNA M. LACH

Patricia Kim Julian Son, a Commissioner, etc.,
Province of Ontario, for
Sotos LLP, Barristers and Solicitors.
Expires April 27, 2025

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 June 20, 2023 in accordance with the O. Reg. 431/20, Administering Oath or Declaration Remotely



Commissioner for Taking Affidavits (or as may be)

Patricia Kim Julian Son, a Commissioner, etc.,
Province of Ontario, for
Sotos LLP, Barristers and Solicitors.
Expires April 27, 2025

**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 theses, presentations, peer-reviewed articles and chapters. I regard this as 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.

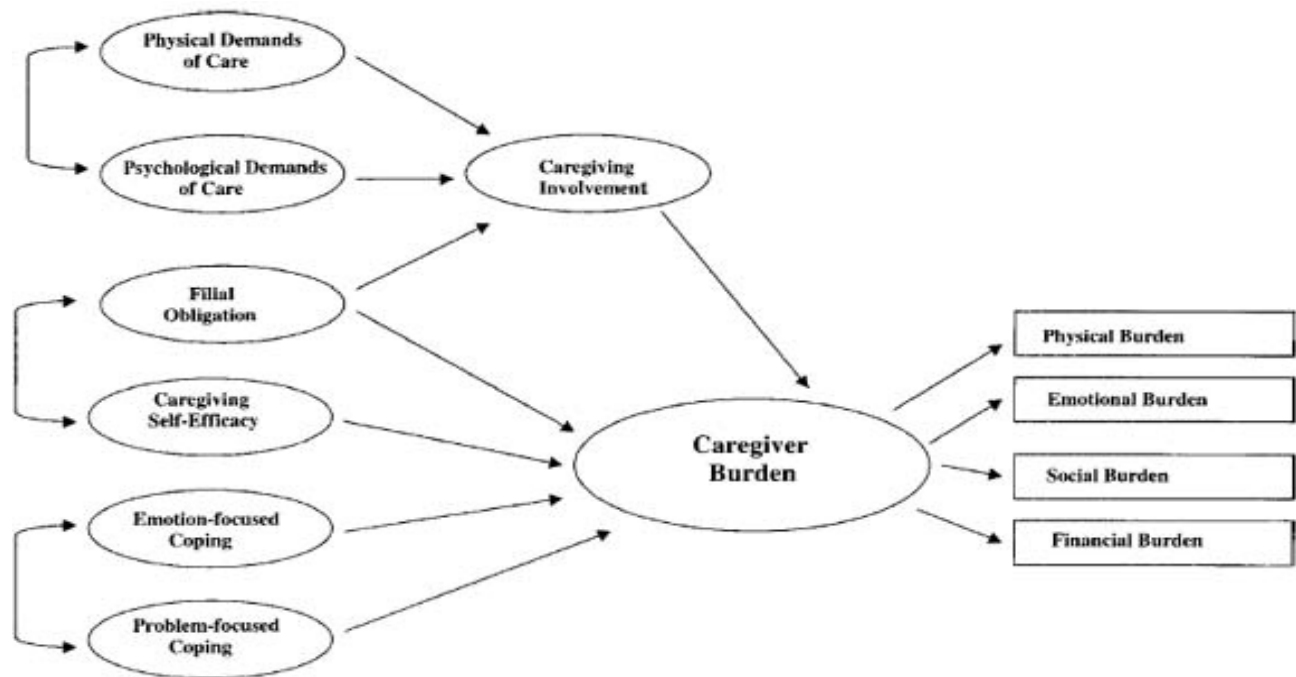
V. Is the impact that caregiving parents and grandparents experienced the same as, or different from, what their children experienced?

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)

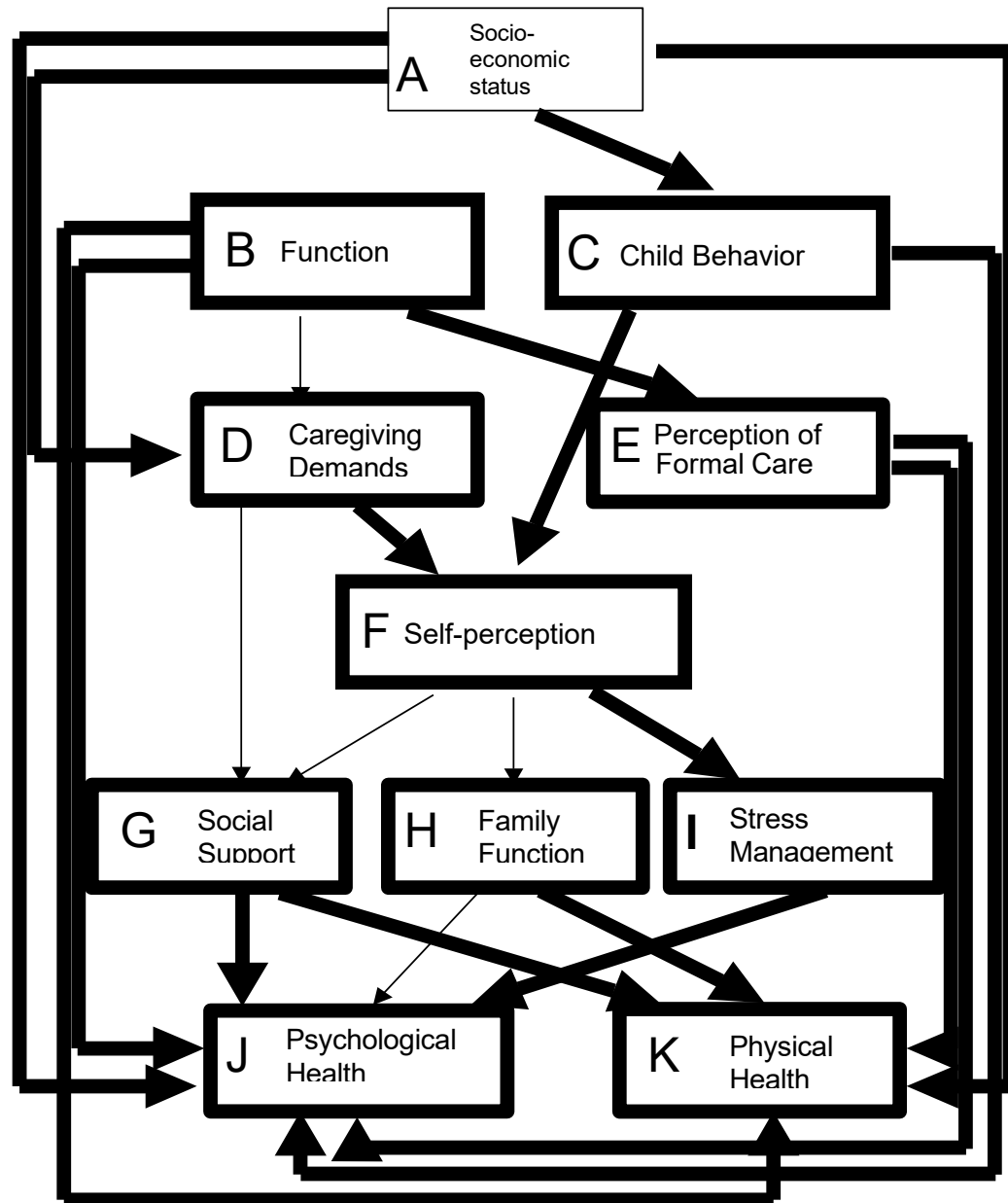
Figure 1.



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.

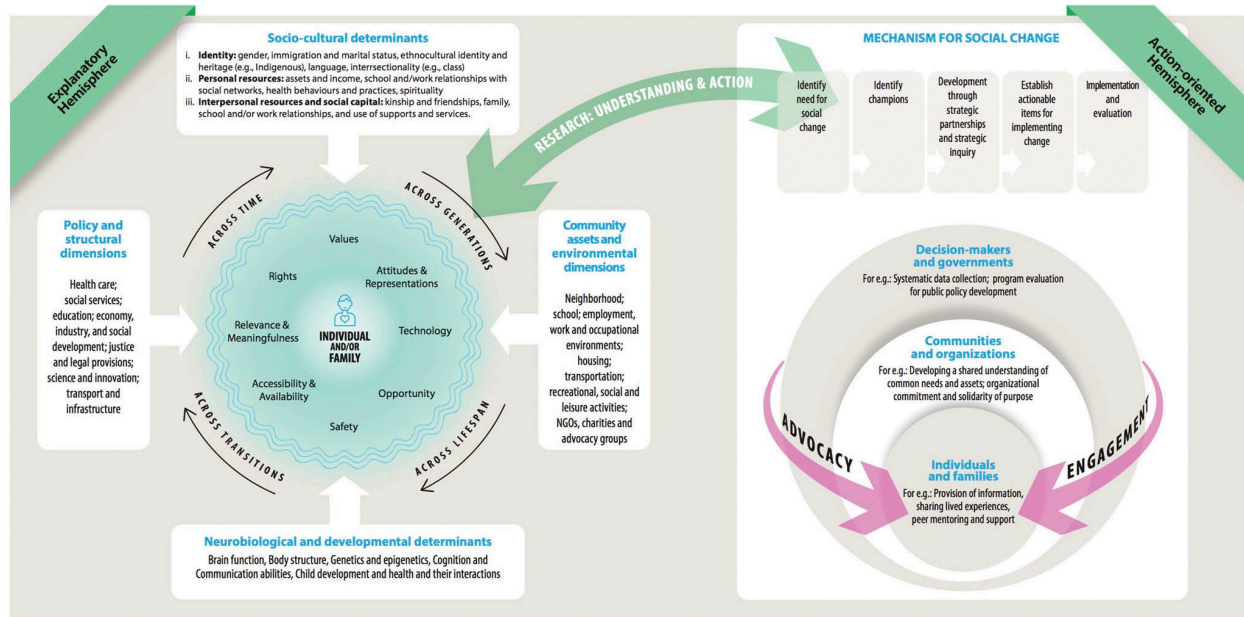
Figure 2.



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:

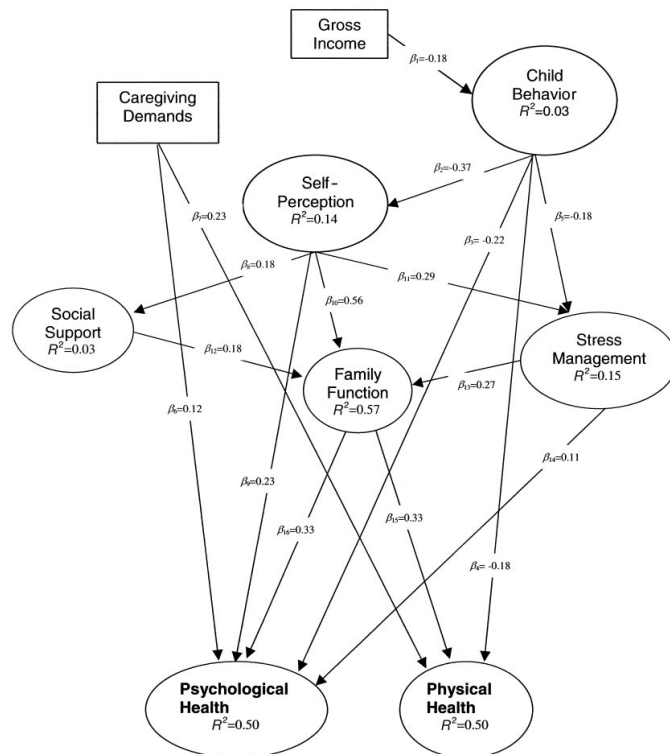


Canadian Framework for Social Determinants of Health Among Children with Neurodisabilities and their Families - see (Filipe et al., 2021)

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.*

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Curriculum Vitae

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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); Zeldá 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 âgées 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 DISABILITY 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-Josée 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 MENTALE JEUNESSE: CARACTERISTIQUES DES INTERVENTIONS THERAPEUTIQUE ET QUALITE DES SERVICES. Lucie Nadeau, Andre Delorme (Co-PIs), Sara Fraser, Vania Jimenez-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 ADMINISTRATIVE HEALTH SERVICES DATA TO UNDERSTAND DETERMINANTS OF HEALTH. Jamie Brehaut, Dafna Kohen, Peter Rosenbaum, Anton Miller, **Lucyna M. Lach**, Marni 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 Services 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 recherche 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 Recherche 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 Recherche en Adaptation-Réadaptation, Fonds de Recherche 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 Recherche 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 SOUTIEN DANS SA PARTICIPATION SOCIALE.** Sylvie Tétrault, Monique Carrière
- \$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., Nicholas, 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.

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- 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/dmnc.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.
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- 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: 10.1111/cch12326

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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](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, L.M.**, 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 views 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 neurodisabilities 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 Canadian 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: Clinical 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 Disabilities*. 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*. Université 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 Educational and Counselling Psychology, 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.**, Garipey 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.**, Garipey 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., Guevremont, 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., Guevremont, 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. Quality 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, L.M., 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%2%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 Mississauga, 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 Métropolitain (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.