

<p style="text-align: center;">FEDERAL COURT CLASS PROCEEDING</p> <p>B E T W E E N:</p> <p style="text-align: center;">XAVIER MUSHOOM, JEREMY MEAWAISGE (by this 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 CLASS PROCEEDING</p> <p>B E T W E E N:</p> <p style="text-align: center;">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;">THE ATTORNEY GENERAL OF CANADA</p> <p style="text-align: right;">Defendant</p>
<p style="text-align: center;">FEDERAL COURT CLASS PROCEEDING</p> <p>B E T W E E N:</p> <p style="text-align: center;">ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT</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>

**SUPPLEMENTAL MOTION RECORD OF
THE FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA**

May 31, 2024

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TABLE OF CONTENTS

Tab No.	Description	Page No.
1.	Transcript of Cross-Examination of Dianne Corbiere dated May 15, 2024	1
A.	Exhibit A: November 23, 2023 Calendar Invite with Attachments	46
2.	Transcript of Cross-Examination of Joelle Gott dated May 21, 2024	61
A.	Exhibit 1: Email from Caring Society dated September 11, 2023	125
B.	Exhibit 2: Email from Caring Society dated September 6, 2023, with attachment	126
C.	Exhibit 3: Email from Cindy Blackstock dated October 3, 2023, with attachment	129
D.	Exhibit 4: Email from Cindy Blackstock dated November 1, 2023	137
E.	Exhibit 5: Email from Caring Society dated January 18, 2024	138
F.	Exhibit 6: Letter from Mohsen Seddigh dated February 2, 2024	140
G.	Exhibit 7: Email from Caring Society dated February 15, 2024, with attachment	147
H.	Exhibit 8: Letter from Mohsen Seddigh dated February 27, 2024, with attachment	157
3.	Responding Memorandum of Fact and Law of The First Nations Child and Family Caring Society of Canada	162

TAB 1

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

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

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

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

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

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant



FEDERAL COURT

CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

This is the Cross-Examination of DIANNE CORBIERE, a
non-party deponent, on her Affidavits Affirmed April 15,
2024 and May 13, 2024, taken via Zoom Video Conferencing
on the 15th day of May 2024

A P P E A R A N C E S :

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David Sterns
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For the Attorney General of
Canada

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20
21
22
23
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25

TABLE OF CONTENTS

INDEX OF EXAMINATIONS

DIANNE CORBIERE, AFFIRMED	6
CROSS-EXAMINATION BY MS. CLARKE	6

INDEX OF UNDERTAKINGS

Undertakings are found on the following pages: None noted.

INDEX OF REFUSALS

Refusals are found on the following pages: 20, 24, 38.

INDEX OF UNDER ADVISEMENTS

Under AdviseMENTS are found on the following pages:
None noted.

*** The list of undertakings, refusals and under adviseMENTS is provided as a service to counsel and does not purport to be complete or binding upon the parties.

TABLE OF CONTENTS (continued)

INDEX OF EXHIBITS

EXHIBIT	PAGE NO.
---------	----------

EXHIBIT A: Screenshot of E-Mail.....	44
--------------------------------------	----

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

May 15, 2024

Dianne Corbiere - 6

1 ---Upon Commencing at 2:06 p.m.

2 DIANNE CORBIERE, AFFIRMED

3 CROSS-EXAMINATION BY MS. CLARKE

4 MS. CLARKE:

5 1 Q. Good afternoon, Ms. Corbiere. My name is
6 Sara Clarke and I'm counsel for the First Nations Child
7 & Family Caring Society. I'm joined today by my
8 co-counsel David Taylor as well as our counsel Logan
9 Stack.

10 You're counsel for the Assembly of First
11 Nations in the Mushoom class action proceeding, correct?

12 A. Yes.

13 2 Q. And you've provided two affidavits in
14 support of the plaintiff's motion for an order approving
15 the claims process?

16 A. Yes.

17 3 Q. And the claims process that is being put
18 before the Court on this motion is focused only on the
19 Removed Child Class and the Removed Child Family Class,
20 correct?

21 A. Yes.

22 4 Q. And your affidavits in support of that
23 motion are dated April 15th and May 13th of this year?

24 A. Yes.

25 5 Q. Do you have those with you today?

May 15, 2024

Dianne Corbiere - 7

1 A. I do.

2 6 Q. And do you also have the Responding Motion
3 Record of the Caring Society?

4 A. Yes.

5 7 Q. Okay. We'll probably look at some of those
6 today but I don't intend to take you through everything
7 as we go. Would it be fair to assume that in your
8 affidavits, when you're using terms -- when you're using
9 the term Removed Child Class and Removed Child Family
10 Class, those are defined terms in the final settlement
11 agreement?

12 A. Yes.

13 8 Q. And those definitions also appear in
14 Appendix C of the claims process?

15 A. Hm-mm. Can you explain that? Can you show
16 me what you mean?

17 9 Q. Yes. I just want to make sure that we're
18 looking --

19 A. Can you put it on screen?

20 10 Q. I'm happy to put it on screen. Mr.
21 Taylor's helping me out with that today. It's on page 51
22 of the Motion Record which is Appendix C to the claims
23 process found at Schedule A to the Notice of Motion.

24 A. For me it's easier if you put it on screen
25 because I'm -- I have old eyes and trying to look at

May 15, 2024

Dianne Corbiere - 8

1 paper and look at you --

2 11 Q. No problem. No problem. We're just pulling
3 it up.

4 A. I'm still probably going to be like this
5 and --

6 12 Q. That's okay. If you have the physical
7 Motion Record in front of you it's on page 51 of the
8 Motion Record which is Appendix C to the claims process
9 document itself.

10 So my understanding is that the claims process
11 document has definitions that are specific to the claims
12 process itself which is what David just had up on -- as
13 Appendix B but then the claims process document also has
14 the defined terms from the settlement agreement at the
15 back in Appendix C, so that's what we're looking at
16 right now.

17 A. Okay. So what's the question again?

18 13 Q. So I just wanted -- I didn't mean for this
19 question to be a tricky one. I just wanted to confirm
20 that the definitions in Appendix C of the claims process
21 are the -- are from the final settlement agreement.

22 A. Yes, but I'm not sure that they're 100
23 percent the same. We tried to make the claims process
24 more user friendly as is our mandate with the final with
25 the settlement agreement.

May 15, 2024

Dianne Corbiere - 9

1 14 Q. Are you aware whether the definition of
2 Removed Child Class in the claims process is different
3 from the definition of the Removed Child Class in the
4 final settlement agreement?

5 A. No, I'm not aware if it's different.

6 15 Q. Okay.

7 A. Like everyone I go back and forth between
8 documents.

9 16 Q. Okay. Okay. That's okay. Were you also
10 counsel for the Assembly of First Nations at any point
11 during the Human Rights complaint before the Canadian
12 Human Rights Tribunal?

13 A. I was at the minor times but more in the
14 background.

15 17 Q. Do you remember when that was?

16 A. Well, my firm has been retained since 2007
17 but the main people working for the Assembly of First
18 Nations from my firm were David Nahwegahbow and Thomas
19 Milne, so I was engaged just on strategy so I wasn't
20 actually in appearance at the tribunal.

21 18 Q. Okay. Thank you. Okay. I'd like to ask
22 some questions around the eligibility and how that
23 intersects with the ISC database in the claims process.
24 Could you please turn up the claims process document, or
25 I can also have David put it back up on the screen if

May 15, 2024

Dianne Corbiere - 10

1 that's helpful.

2 A. Yeah. David can put it up.

3 19 Q. Sure. That would be great. So we're going
4 to start with Section 4 of the claims process which
5 starts on page 14 of the Motion Record so if you can
6 just scroll down, David, to Section 4.

7 So Section 4, Ms. Corbiere, this is the
8 section that the administrator will look to to determine
9 eligibility for class members who submit claims as a
10 removed child, is that correct?

11 A. Yes. The administrator will first review
12 the claims form and any supporting documentation.

13 20 Q. Okay. And if we turn over the page to
14 Section 4.4, the claims process provides that: "In
15 order to make an eligibility decision, the administrator
16 will review the database to determine whether:

17 A. The claimant is located on the ISC
18 database; and

19 B. Information available for the claimant on
20 the ISC database allows the administrator to make an
21 eligibility decision."

22 So first, when we're talking about ISC
23 database, is it fair to say that we're using the
24 definition in the claims process and not necessarily the
25 definition that you set out in your affidavit which is

May 15, 2024

Dianne Corbiere - 11

1 slightly different?

2 A. I don't know what you mean.

3 21 Q. Okay. So in -- in the -- I can read the
4 definition to you of ISC Database in the claims process.
5 It means: "A confidential database of records that
6 identified certain details of removal for certain
7 individuals who may be Removed Child Class members.
8 Where the removal and placement were funded by ISC,
9 Canada will provide the ISC database to the
10 administrator to be used exclusively and relied upon by
11 the administrator for the purpose of administrating the
12 claims process. The administrator may not provide any
13 data or records included in the ISC database to any
14 party."

15 In paragraph 25 of your April affidavit the
16 ISC database is defined -- is a defined term in
17 paragraph 25 where you say: "Additionally, the adopted
18 approach capitalizes on Federal Government accounting
19 records kept with Indigenous Services Canada of funds
20 paid by Canada during the class period toward each
21 Removed Child Class member.", and that's where you
22 define ISC database.

23 A. And what do I say is the definition of the
24 ISC database?

25 22 Q. That sentence that I just read to you,

May 15, 2024

Dianne Corbiere - 12

1 "Additionally, the adopted approach", et cetera, that's
2 defined as the ISC database in your affidavit.

3 A. I don't know if that's a definition. I'm
4 just explaining my understanding of the ISC database.
5 It's not -- I'm not going to replicate exactly what's in
6 the final settlement agreement or the claims process
7 forms so all -- my understanding of the ISC database is
8 what's in my affidavit. It is the accounting records
9 that Indigenous Services Canada, where they funded the
10 Removed Child Class. Yeah, I don't see the word
11 "definition" anywhere. I'm just italicizing ISC
12 database.

13 23 Q. Okay. Does the definition of ISC database
14 in the claims process apply to all of the Removed Child
15 Class cohort from 1991 to 2022?

16 A. It's intended to apply to everyone that
17 would be eligible under -- under this final settlement
18 agreement.

19 24 Q. And the ISC database is made up of records
20 received by the Federal Government, correct?

21 A. The ISC database is made up of documents
22 that the Federal Government has in its possession that
23 they were able to share with the administrator.

24 25 Q. Is your understanding that the records
25 that generate the ISC database is based on information

May 15, 2024

Dianne Corbiere - 13

1 received from First Nations Child and Family Services
2 agencies or -- and/or provincial and territorial
3 governments?

4 A. Yes.

5 26 Q. And those records or information are
6 provided to the Federal Government in relation to the
7 in-care costs of First Nations children ordinarily
8 resident on reserve who have been removed from their
9 homes and placed in care.

10 A. Probably more broad than that. It's any
11 kind of record where a First Nation individual is
12 identified to be paid for child welfare services by the
13 Federal Government's funding program for child welfare.

14 27 Q. So is your understanding that the records
15 include services outside of the in-care costs in
16 relation to those children?

17 A. I don't know. I haven't seen the records.
18 The only one who's seen the records is the administrator
19 and Canada, but it's intended to cover the Removed Child
20 Class as defined in the final settlement agreement. I
21 haven't seen the records.

22 28 Q. Okay. I just want to come back to your
23 answer though just to make sure that we're clear
24 together that the database is constructed of records
25 received by the Federal Government in relation to

May 15, 2024

Dianne Corbiere - 14

1 in-care costs, sometimes called maintenance costs. I
2 just want to clarify, I had understood your answer to
3 say that it may include information in relation to other
4 child welfare services.

5 A. No. I'm saying I didn't see any of the
6 records. My understanding is it is if the Federal
7 Government has funded services of First Nations children
8 on reserve, that's what's in the database.

9 29 Q. And that's what I'm trying to just make
10 sure we're on the same page. When you say services, do
11 you mean all child welfare services or in-care costs?

12 A. I guess it's in-care costs. I mean, I'm
13 not in -- a social worker in child welfare but it's
14 those that were funded by ISC for their child welfare
15 care.

16 30 Q. Okay. And the information --

17 A. From on reserve.

18 31 Q. Correct. That's also my understanding. And
19 the information that was provided to the Federal
20 Government was then used to reimburse agencies and
21 provincial and territorial governments for those in-care
22 costs, correct?

23 A. Yes.

24 32 Q. And you would agree with me that the
25 removed child has no role in generating the report or

May 15, 2024

Dianne Corbiere - 15

1 the accounting record that ultimately gets used for the
2 purposes of reimbursement.

3 A. That's right.

4 33 Q. And the child does not have any direct
5 contact with the Federal Government to ensure that the
6 Federal Government has received their accounting record
7 or their reimbursement request.

8 A. That's right.

9 34 Q. So you'll agree with me that it's possible
10 that there could be a Removed Child Class member whose
11 information is not put into the ISC database if there
12 were gaps, for example, in the information received by
13 the Federal Government.

14 A. I don't know that the database is
15 incomplete. I would not agree.

16 35 Q. Would you agree with me that it's possible
17 that there could be a Removed Child Class whose
18 information is not on the ISC database because the
19 provincial agency -- the province - pardon me - or the
20 provincial agency failed to send a report to Indigenous
21 Services Canada?

22 A. I understand from your experts that that
23 -- that might be possible.

24 36 Q. And it's also possible that a Removed
25 Child Class member may not appear on the ISC database if

May 15, 2024

Dianne Corbiere - 16

1 the child's individual information was inaccurately
2 recorded, either on the child protection side or on the
3 side of the Federal Government.

4 A. I don't agree with that either because
5 there's a lot of line items for individual persons.
6 There could be 50 entries so they -- they might --
7 they're going to be on the database so I don't agree
8 with that. I think that once we get to the end of
9 getting the database we'll be in a better position, you
10 know, to be able to make the statement that you're
11 making now.

12 37 Q. But if a child was in care for one month
13 and their date of birth and name was incorrectly
14 provided to the Federal Government, is it not possible
15 that that child's name and date of birth will then not
16 be on the ISC database?

17 A. Again, I'm not sure that they're not on
18 the ISC database. We are not complete in this process.

19 38 Q. The approach taken in the claims process
20 is in order for a Removed Child Class member to be
21 deemed eligible to receive compensation, their
22 identifying information must be located on the ISC
23 database, correct?

24 A. You're going to have to break that down
25 for me. Chunk it up.

May 15, 2024

Dianne Corbiere - 17

1 39 Q. Okay. So in order for a Removed Child
2 Class member to receive compensation under the claims
3 process, their identifying information must be on the
4 ISC database.

5 A. Yes.

6 40 Q. Okay. And if their information is not on
7 the ISC database, either now or to your point later when
8 the database is complete, that Removed Child Class
9 member will be found ineligible.

10 MR. STERNS: Just wait a second before you
11 answer that question. So you're talking about a
12 speculative time in the future. What we're talking about
13 right now is if the child is on the ISC database they
14 will get their payment. You're asking if they're not on
15 the ISC database. You provided no example of anyone
16 who's not on the ISC database and the witness has
17 already answered that the database is incomplete and it
18 is the -- it is the expectation -- sorry. It's the
19 expectation that any such child, if such child, if there
20 is such an example, will be considered -- I just want to
21 make sure --

22 THE DEPONENT: Excuse me, Robert Kugler.
23 You're not on mute.

24 MR. STERNS: Rob, can you --

25 MR. KUGLER: Sorry.

May 15, 2024

Dianne Corbiere - 18

1 MR. STERNS: So I just want to make sure that
2 we're all under the same understanding. As it stands
3 now, if you were going to get paid you have to be on the
4 ISC database. If in the future there's a person who fits
5 the example that you've mentioned and that is the case,
6 then that -- they'll -- and if it's one person, I don't
7 know what's going to happen. If it's more than one
8 person, that will be considered and then there will be a
9 separate -- there will be a separate discussion about
10 that. I just don't want the witness to be misled because
11 you seem to be trying to pin them down and we're dealing
12 with both actual facts, which we know there's almost
13 150,000 children on the ISC database currently, and then
14 you're dealing with hypothetical facts which I could
15 stop you but if you want to ask the question based on
16 hypothetical, I just want to make sure that we're all on
17 the same understanding.

18 MS. CLARKE: So I'm not asking a hypothetical
19 question and I probably should have situated my question
20 directly in the claims process document itself. Under
21 Section 4.4 and 4.5 of the claims process, which I will
22 happily ask Mr. Taylor to pull up again, the only -- I
23 had understood from Ms. Corbiere's earlier evidence that
24 the only way to make an eligibility decision under 4.4
25 is for the administrator to look at the ISC database.

May 15, 2024

Dianne Corbiere - 19

1 There is no mechanism -- there is no other mechanism in
2 the claims process for the administrator to approve
3 eligibility for a Removed Child Class member unless they
4 are located on the ISC database.

5 MR. STERNS: Well, sorry. You should actually
6 read the section because I -- are you interpreting the
7 section or are you asking about --

8 MS. CLARKE: I'm --

9 MR. STERNS: -- the section?

10 MS. CLARKE: I had understood that my
11 interpretation was the same as the witness' and if it's
12 not then I'm happy to obviously hear her evidence on
13 that, but I'd like to hear her evidence on that --

14 MR. STERNS: No, I understand, but you're
15 asking about interpretation of a document that we're all
16 reading and if you look at 4.5(b) it talks about if the
17 administrator is unable to locate the claim on the ISC
18 database or if the administrator locates -- so that's an
19 inconclusive eligibility so I'd prefer it if you would
20 actually take the witness to the actual document instead
21 of asking hypothetical questions not rooted in the
22 document.

23 And I'm not trying to be -- I'm not trying to
24 be difficult, I'm trying to be clear because you're
25 trying to pin down answers that don't seem to align with

May 15, 2024

Dianne Corbiere - 20

1 the -- with the agreement or with the intention.

2 MS. CLARKE: Okay. Well, let me ask the
3 witness this direct question.

4 41 Q. Can a Removed Child Class member be
5 approved for compensation if they are to not on the ISC
6 database?

7 MR. STERNS: Sorry. That is -- you have to
8 take the witness to the actual process --

9 MS. CLARKE: Well, let me ask it in this way.
10 Perhaps it would be helpful if Ms. Corbiere could review
11 4.5 -- pardon me. 4.4, 4.5, 4.6 and 4.7 together because
12 the answer to the question I think is rooted in a step
13 by step analysis of what the administrator can and
14 cannot do when they are provided with a completed claims
15 form.

16 MR. STERNS: I'm not going to allow the
17 question for the following reason: The document speaks
18 for itself. This witness is here to answer your
19 questions and not to -- not to interpret the document
20 that we can all read.

21 ---REFUSAL

22 MS. CLARKE: Okay. I'll put a pin in that one
23 now. I may come back to it at the end.

24 42 Q. So we'll look now at your April 15th
25 affidavit and I'll just ask Mr. Taylor to pull that up.

May 15, 2024

Dianne Corbiere - 21

1 Excellent. So we're looking at paragraph 30 of your
2 April 15th affidavit and specifically I want to ask you
3 some questions about the first bullet of paragraph 30
4 which is about de-duplication.

5 So it says here: "Pending some de-duplication
6 which may reduce the number the administrator has been
7 able to identify, approximately 131,632 individuals are
8 on the ISC database as of April 4, 2024." Do you see
9 that there?

10 A. Hm-mm.

11 43 Q. And not -- we don't need to pull that up
12 right now but in your May affidavit that number has been
13 updated to 149,638, is that correct?

14 A. Yes.

15 44 Q. Okay. Can you explain the de-duplication
16 process?

17 A. I cannot. It's just my understanding is
18 that, you know, they work on a process to be more
19 specific about the individuals that are in the database.
20 Apparently it's a common term but my focus has been just
21 making sure that we're precise getting, you know, as
22 many people in the database as possible and now we have
23 149,000 people which has far exceeded what our original
24 estimate was in 2021.

25 45 Q. Okay. So you're not sure how either ISC or

May 15, 2024

Dianne Corbiere - 22

1 the administrator is going about the de-duplicating of
2 the data in order to identify unique children as opposed
3 to individuals.

4 A. No, that is not my responsibility and I
5 just accept and will accept that once we have a final
6 database, all these details will be available, and they
7 are currently available, it's just I'm just giving
8 information and belief from what I was hearing from
9 Deloitte about a database that they're building for this
10 claims process that I don't have access to.

11 46 Q. Okay. We'll turn now to your May 13th
12 affidavit, and while Mr. Taylor's pulling that up, we're
13 going to be looking at paragraph 9 mostly where you talk
14 about information that you've received from Mr.
15 Bouthillette. Do you know, Ms. Corbiere, what his title
16 is at Indigenous Services Canada?

17 A. I do not.

18 47 Q. Okay. And we're going to go to paragraph
19 9. Okay. And we're looking at paragraph 9(b) which is
20 about the paper files. Do you know, Ms. Corbiere,
21 whether those paper records were scanned and digitized
22 first or whether the records were reviewed for
23 duplication and then scanned?

24 A. I don't know that. Similarly, I'm giving
25 information and belief from another party. I'm not part

May 15, 2024

Dianne Corbiere - 23

1 of the ISC team. I get the reports like yourselves on --
2 on the process and what they've been doing to get all of
3 these individual records more specific so that we could
4 all get the benefit of making sure that it will be a
5 user friendly, informed process for claimants. Get as
6 much information on our end before a claimant process
7 even begins.

8 48 Q. Okay. Just scrolling back up to paragraph
9 6. Sorry about that. I just want to look at the chart
10 that you have for the Summary of Unique Number of
11 Individuals contained in the ISC database. Are you able
12 to share with us today, Ms. Corbiere, the specific years
13 for which these numbers represent?

14 A. This is the specific information. I just
15 ask for generalities and, again, I haven't seen any of
16 the database so I was just receiving the update from
17 Guillaume.

18 49 Q. Do you know -- sorry. I'm sorry. Do you
19 know whether or not Deloitte has access to the years as
20 well as the numbers you've provided here?

21 A. I don't know.

22 50 Q. Would that be information you'd be
23 prepared to share as part of this process --

24 MR. STERNS: No.

25 MS. CLARKE: -- if it does exist?

May 15, 2024

Dianne Corbiere - 24

1 MR. STERNS: No, we're not providing the
2 undertaking.

3 ---REFUSAL

4 MS. CLARKE: Okay.

5 51 Q. Do you know whether or not the 149,638
6 number here represents 149,638 unique children?

7 A. Yes.

8 52 Q. Or what --

9 A. Individuals.

10 53 Q. Is it possible that the figure is the
11 result of adding together the yearly totals of children
12 in care for each year?

13 A. I don't know that but my understanding is
14 they're unique individuals. It says number of
15 individuals.

16 54 Q. I just wanted to see whether or not,
17 because there had been in your previous affidavit
18 questions around the de-duplication process, and I just
19 wanted to know whether or not it's your understanding
20 that these are unique individuals or whether or not it's
21 possible that there is a duplication here.

22 A. Summary of Unique Number of Individuals.

23 55 Q. Okay.

24 A. So I assume, and again, in the other
25 process, you know, the goal from our reports from

May 15, 2024

Dianne Corbiere - 25

1 Guillaume at Deloitte is that they are getting focused,
2 working on the database. It's still not complete in
3 making sure we're talking about a unique number of
4 individuals.

5 56 Q. Let's go back to paragraph 9(b) if we
6 could. Do you know whether all of the physical records
7 have now been digitized or whether or not that process
8 of digitization is ongoing?

9 A. I don't know. I -- I assume the region's
10 still -- they're working as a team and making sure that
11 by the end of this, and their goal is the end of 2025,
12 that all the records they have are going to be shared
13 with the administrator and it will be a part of this
14 database.

15 57 Q. Were physical records located in all
16 regions starting in 1991?

17 A. Yes, they had the regions all involved.
18 They worked with Regional Records Office to gather all
19 the relevant records.

20 58 Q. But do you know whether or not each region
21 had physical records going back to 1991?

22 A. Like I said, they -- I just go with the
23 reports that I receive and they tell me that they have
24 shared and will continue to share the data from April 1,
25 1991 to March 31, 2022 and that process is scheduled to

May 15, 2024

Dianne Corbiere - 26

1 be complete at the end of 2025.

2 59 Q. Did any of the physical records include
3 recordings or informations from agencies that did not
4 include identifying child information?

5 A. I don't know that.

6 MR. STERNS: I didn't understand the question.
7 Sorry. Maybe the witness did but let me see if I can
8 understand the question before you answer it. What was
9 the question?

10 MS. CLARKE: Did any of the physical records
11 include information or records from agencies that did
12 not include identifying child information.

13 MR. STERNS: Did they include information that
14 did not include?

15 MS. CLARKE: So my understanding, for example,
16 is in some regions, what they were providing to the
17 Federal Government was children in care numbers on a
18 monthly basis but they were not providing their name,
19 date of birth. So they might say, for example, we have
20 14 new children in care this month who are ordinarily
21 resident on reserve but they did not include to
22 Indigenous Services Canada their names and their dates
23 of birth.

24 MR. STERNS: Well, I don't know where you're
25 coming up with this information, Sarah, and I, you know,

May 15, 2024

Dianne Corbiere - 27

1 you say you've understood that and, you know, I don't
2 know. You understood -- if that's what -- I don't know.
3 Is that a question? I mean, she's reporting on the
4 information that's been provided to her and you've given
5 her a question that sort of -- I'm struggling to
6 understand quite frankly and is -- you know, so I don't
7 think it's a fair question to ask this witness.

8 MS. CLARKE: Okay.

9 THE DEPONENT: But I said I don't know.

10 MS. CLARKE:

11 60 Q. Yeah. That's okay.

12 A. Because I don't, and I don't share your
13 understanding.

14 61 Q. If we can go down to paragraph 9(d) where
15 your affidavit explains the quality controls. How was
16 the accuracy of the manual data entry being assessed?

17 A. I think they -- well, terrible term to use
18 but they double, triple checked. They had layers of
19 validations and teams that, especially on the manual
20 entries, verified that they all had the same information
21 before we received the data at the administrator. Not
22 we, I mean the administrator, because again, I have
23 never seen the data.

24 62 Q. Would that include then comparing one
25 person's data entry of a set of cases compared to

May 15, 2024

Dianne Corbiere - 28

1 another set of entries by another person? When you say
2 the layers of validation, I'm trying to understand what
3 you mean by that.

4 A. I'm just trying to explain what
5 information I received from -- from Canada on, you know,
6 the process to getting the data together for us, so when
7 I look at it, you know, they talk about reviewing, spot
8 checking, you know, so a very robust verification
9 process before they send the information to Deloitte.

10 63 Q. If we can look at 9(f), you state: "The
11 quality control team compares the automated" -- oh.
12 Thanks. Provides the -- oh, I just lost my spot. "The
13 quality control team compares the automated file against
14 the original file and confirms all the relevant
15 information has been imported from the original
16 document; i.e., reporting period, care costs, other
17 costs, all identifying information, et cetera."

18 Can you expand a bit on what "et cetera"
19 includes? Does it include, for example, date of entry
20 into care?

21 A. I cannot -- probably shouldn't have wrote
22 "et cetera" but I assume there's more information and
23 there's only so much you can remember from the reports
24 you receive at -- at these sessions.

25 64 Q. Do you know whether or not it includes the

May 15, 2024

Dianne Corbiere - 29

1 date of exit from care?

2 A. Well, I do know from the report that all
3 enhancements, there's enough data in the database to
4 address them except for where I say the other two, which
5 is if they were removed, you know, for Jordan's
6 Principle-like situations or if they were -- how many
7 homes were in there, so any of the other data that would
8 be relevant to the enhancements, Deloitte has identified
9 that it's in the database.

10 65 Q. Do you know --

11 A. Again, it's incomplete so -- and we're not
12 focused on that right now in the claims process so we
13 haven't been drilling down with Deloitte all that
14 information.

15 66 Q. Do you know whether the information
16 includes placement type?

17 A. Again, I don't know. I haven't seen the
18 data. I just take the reports and know that we have all
19 identifying child information records, reporting period,
20 care costs, other costs.

21 67 Q. Okay. In 9(g) you state: "The above
22 extracted data is uploaded to a database to standardize
23 it, run validations and then extract it and upload it to
24 Deloitte who in turn uploads it to its database."

25 How is completeness being assessed?

May 15, 2024

Dianne Corbiere - 30

1 A. Well, the work is incomplete. Canada
2 admits that, so does Deloitte, and that's why they're --
3 they have meetings amongst themselves and that's why
4 they're anticipating their goal is to be complete, this
5 database to be fully complete, by the end of 2025.

6 68 Q. Has the data that Deloitte has received to
7 date, the 149,000, et cetera, has that information been
8 compared to the aggregate data provided to Trocmé and
9 Gorham for their report?

10 A. By -- this data was not available to
11 Trocmé and Gorham for their report fully. This
12 individualized process that has been undertaken by
13 Canada only started after the Trocmé and Gorham Report
14 and after the taxonomy report in January. We -- you
15 know, and I can't talk about settlement privilege but we
16 were talking about the ISC database even before the
17 taxonomy report so they only started this work and
18 gathering all the records and doing all the work that
19 they're describing after we received the taxonomy report
20 at the end of January 2022.

21 69 Q. I understand that. I'm asking whether or
22 not the information that is now available, which I
23 understand was not available at the time of the Trocmé
24 and Gorham Report, whether or not that data has now gone
25 back and been compared to the aggregate data that was

May 15, 2024

Dianne Corbiere - 31

1 provided to Trocmé and Gorham.

2 MR. STERNS: Sorry. This is your own witness,
3 right? I mean, Professor Trocmé is your own witness so
4 I don't know. You might have done that. I don't know.
5 Did we do that? No.

6 MS. CLARKE: Okay.

7 70 Q. Has ISC or Deloitte to your knowledge
8 taken a sample of the --

9 MR. STERNS: I'm sorry. Sorry to interrupt. I
10 shouldn't have said no. I should have said we don't
11 know. We don't know, I don't think Dianne knows and if
12 it's been done by anybody, it might have been done by
13 you, that I don't know either, so scratch my no and just
14 replace it with an I don't know.

15 MS. CLARKE: Okay.

16 THE DEPONENT: I was going to say I don't know
17 but thanks, David.

18 MR. STERNS: Yeah. I should have just let you
19 say it. We'd get out of here faster.

20 MS. CLARKE:

21 71 Q. Do you know whether or not ISC or Deloitte
22 has taken a sample of the data it's received and
23 compared it against agency records to ensure
24 completeness?

25 A. We're not accessing agency records.

May 15, 2024

Dianne Corbiere - 32

1 72 Q. Scrolling down to paragraph 10(d), you
2 state: "Throughout the project ISC has worked with
3 business consulting firm Donna Cona and with Deloitte to
4 contract appropriate individuals to assist with the
5 project and quality control, template creation and
6 manual entry."

7 Who on the team to your knowledge has child
8 welfare expertise?

9 A. I don't know. I didn't ask that question.

10 73 Q. What did the training look like for the
11 coders to understand the child welfare placement
12 process?

13 A. I don't know that either.

14 74 Q. In assembling the ISC database so far, has
15 ISC to your knowledge in your discussions with Mr.
16 Bouthillette found any gaps in the data in the years
17 reviewed to date?

18 A. It's an incomplete process. We don't have
19 any gaps identified until we'll have a complete database
20 by the end of 2025 and I hope we meet that timetable
21 because the Removed Child Class is waiting.

22 75 Q. So your understanding is that there have
23 been no gaps identified by ISC or Deloitte up until this
24 point?

25 A. That's my understanding. We don't know.

May 15, 2024

Dianne Corbiere - 33

1 There may be at the end but to date we haven't
2 identified any gaps because the information is not
3 complete and it will be complete at the end of 2025.

4 76 Q. Okay. Let's turn to the issue of supports.
5 So if we can go back to the claims process document and
6 we're going to go to page 11 of the record. I can just
7 read the section to you, Ms. Corbiere, while Mr.
8 Taylor's pulling it up.

9 Section C under "General" says: "Claimants
10 will be supported by claims helpers free of charge in
11 navigating the claims process as provided for in the
12 settlement agreement, specifically Article 3.02(1)(j)
13 and consistent with Schedule I, Framework for Supports
14 for Claimants in Compensation Process."

15 Just a few general questions about this.
16 You're aware that Youth in Care and former Youth in Care
17 have been calling for mental health supports to be put
18 in place before, during and after applying for
19 compensation, correct?

20 A. No. What I know about the supports in
21 Schedule I is that all parties agreed to Schedule I,
22 which sets out the supports, including the non-party
23 Caring Society. The supports are being worked on. We
24 don't have a claims process so we will be updating the
25 parties. We have a working group. I said we have working

May 15, 2024

Dianne Corbiere - 34

1 groups for everything in implementation. We will have an
2 update very soon on Schedule I. The parties are working
3 together to develop the communication materials, you
4 know, and the communication materials are pretty
5 important because what we have heard is communication is
6 everything. People want to know and be ready before the
7 claims process begins. We have been offering supports to
8 the claimants when they call in if they -- they have
9 traumatic experiences, which they do. So this Schedule I
10 has been approved by the Court so we will be
11 implementing it and working with the parties prior to
12 the claims process, it will be communicated to the First
13 Nations across Canada and regional offices, et cetera,
14 of what the more details are about the supports.

15 77 Q. Did you have an opportunity to review the
16 Caring Society's Responding Motion Record?

17 A. Not in extensive details.

18 78 Q. Did you have an opportunity in particular
19 to look at the affidavit of Jasmine Kaur?

20 A. I didn't focus on supports because, as I
21 said, the supports in Schedule I have already been
22 approved by the Court and we are going to be rolling out
23 that process, including continuing to talk to all
24 parties in the Caring Society prior to the claims
25 process being launched about the supports that will be

May 15, 2024

Dianne Corbiere - 35

1 available so I didn't really focus, because the real
2 focus of this matter is -- is the claims process for the
3 Removed Child Class.

4 79 Q. I just wondered if you had any familiarity
5 with Exhibit C to Ms. Kaur's affidavit which is the
6 Youth in Care Canada, November 22, 2019 report by Ashley
7 Bach and Gabriel Fayant on compensation and supports in
8 the process of rolling out compensation?

9 A. Are you going to turn me to a section that
10 you want me to --

11 80 Q. Yes. So Mr. Taylor's trying to pull it up.
12 So Mr. Taylor is showing you Exhibit C to Ms. Kaur's
13 affidavit and I'm just wondering if you have any
14 familiarity with this report.

15 A. I'm familiar that this report was done and
16 I do know, based on information and belief from AFN,
17 that it's relevant to their work in long-term reform,
18 child welfare as well as it became part of what their
19 thinking was on supports. It also became part of the
20 cy-près fund thinking so -- but I have not read the
21 report because that wasn't an area I was focused on as
22 part of the team for the Assembly of First Nations.

23 81 Q. Thank you. Are the supports that we were
24 just talking about under Schedule I, are those going to
25 be available to all class members including, for

May 15, 2024

Dianne Corbiere - 36

1 example, brothers and sisters who may not be eligible
2 for direct compensation but may have access to the
3 cy-près fund?

4 A. Again, I don't know -- like, I talked
5 about the relevance of the supports. We are dealing with
6 the Removed Child Class claims process as well as the
7 Family Class. When we consulted on this process with the
8 regions and the issue of supports came up we said this
9 is something that's already been agreed to and we will
10 work with the parties and finalize in detail what that
11 support -- what that support -- what those supports will
12 be so I haven't focused on that for this specific motion
13 because it's premature.

14 We will, and I said this when I went to the
15 regions, we have agreed to the supports in Schedule I
16 and the Court has approved them, and if -- and if after
17 the claims process is launched that systemic issues are
18 identified as problems or lack of supports or problems
19 with the supports, and I said this to First Nations,
20 then you bring it to the SIC, the Settlement
21 Implementation Committee, so this has not been a part of
22 preparations in that much detail. We were consistent in
23 going to the regions and talking about the claims
24 process and we -- the only supports talked about was
25 Deloitte's. Deloitte's support responsibilities which I

May 15, 2024

Dianne Corbiere - 37

1 think you're going to have the opportunity to discuss
2 with...

3 82 Q. Just -- just to finish off on this issue
4 though, the claim helpers that are referenced in the
5 claims process document, they're not going to be
6 delivering direct supports to class members, correct?

7 A. Well, they're going to help them with the
8 claims process and they are intended to refer them as
9 required.

10 83 Q. So their -- yeah. Their role is really to
11 connect class members with services in the community but
12 they're not going to be doing individual counselling,
13 for example, or providing individual mental health
14 support.

15 A. No. They're there to be a kind hand to
16 lead anybody that needs help to go through that process
17 of filling out the claims form. That's what they're for.
18 And if the claimant needs help, they're to make
19 referrals where they can.

20 84 Q. And the plan on the supports is not to
21 build new services, except maybe for the dedicated phone
22 line, but instead to connect class members with existing
23 services in the community in line with the framework
24 that's been approved by the Federal courts.

25 MR. STERNS: I'm sorry. I'm not going to allow

May 15, 2024

Dianne Corbiere - 38

1 the witness to answer that question. It just seems to
2 come out of -- seems to come out of nowhere. The -- the
3 supports are in schedule to the FSA. If you want to ask
4 something about that, go right ahead, but I just don't
5 know where that came from.

6 ---REFUSAL

7 MS. CLARKE: Okay. It comes from Schedule I
8 but that's okay.

9 MR. STERNS: Oh. Okay. Well, we can all
10 read --

11 THE DEPONENT: Again --

12 MR. STERNS: We can all read Schedule I and I
13 don't know if there's anything you're asking in addition
14 to it, or if it's in Schedule I show us where it says
15 that in Schedule I.

16 MS. CLARKE: No, it's okay. I'm just trying to
17 make sure that we're all on the same page but if we're
18 taking the approach of the document says what it says
19 I'm happy to go down that route.

20 85 Q. My --

21 A. And again, as I said, it has not been
22 the --

23 MR. STERNS: Dianne, just --

24 THE DEPONENT: Oh, sorry.

25 MR. STERNS: Just -- thank you.

May 15, 2024

Dianne Corbiere - 39

1 MS. CLARKE:

2 86 Q. My understanding is that there is a
3 working group looking at the issues on supports called
4 the Compensation Wellness Supports Task Team. Are you
5 familiar with the work of the Task Team?

6 A. No.

7 87 Q. I shared with your counsel, or counsel
8 this morning, which Mr. Taylor will pull up now, a
9 screenshot of a calendar invite and some of the
10 documents that were attached to the calendar invite in
11 relation to the Supports Task Team. Did you have an
12 opportunity to review those today?

13 A. I had a quick look but it is not something
14 I'm familiar with and I asked Karen, because she was on
15 the e-mail, Karen Osachoff from my firm, and she was on
16 a personal leave for a couple of months up until the
17 Federal Court approval so she's not aware of this either
18 and she didn't get the report that you asked me to look
19 at so yeah, I'm not aware of this.

20 88 Q. It's my understanding that a number of
21 folks from the Assembly of First Nations have been
22 attending these meetings in relation to supports. Is
23 that your understanding?

24 A. The Assembly of First Nations have
25 different meetings for different purposes but as far as

May 15, 2024

Dianne Corbiere - 40

1 the implementation of Schedule I it is no longer the
2 Assembly of First Nations people identified here that
3 are responsible. It is now part of the working group
4 that is now being managed by and we're now reporting to
5 the Settlement Implementation Committee since they've
6 been approved since November 16th, so the work of this
7 group I am not aware of and if they did meet it hasn't
8 come to the working group presently or maybe it has, but
9 there are definitely a working group on Schedule I.

10 89 Q. Okay. And so that working group that
11 you're speaking about working on Schedule I, that is a
12 class action working group or can you explain what that
13 working group is?

14 A. Yes. It is the parties. It's the Mushroom
15 group, the AFN legal team and management, as well as
16 Canada, and after we're finished -- oh. After we're
17 finished, and for specific Deloitte stuff we've been
18 meeting with Deloitte, after we're finished, and I think
19 we've been reporting this to the parties and the Caring
20 Society, we intend to come back as a full group and
21 discuss, you know, Schedule I in more detail and we will
22 definitely be including the Caring Society.

23 90 Q. So I do -- I appreciate that you saw this
24 document today for the first time but I do have some
25 questions about what's in the minutes from October 20th

May 15, 2024

Dianne Corbiere - 41

1 and it would seem to me, based on your --

2 A. But I'm wondering, I don't even know if
3 they're real minutes. I've never seen them before. Like,
4 I can't verify any of this information so I'll be
5 reading something that you tell me is intended for
6 whatever purpose but I don't know what it is, and you
7 also see that nobody from the legal team attended this
8 meeting. That's not in this record, including AFN
9 in-house counsel.

10 91 Q. Yes. My understanding is that there have
11 been four meetings of this Task Force and that no
12 lawyers were participating in those meetings but that
13 multiple folks from the Assembly of First Nations were
14 in attendance.

15 A. Again...

16 92 Q. The action items that are listed in this
17 -- these minutes of -- these minutes - I was going to
18 call them minutes of settlement but that's not what they
19 are. They're just minutes from the meeting - seem to
20 discuss the various services and supports that are set
21 out in Schedule I. Do you have any information about the
22 action items that are found in these?

23 A. No.

24 93 Q. Okay.

25 A. We have our own separate process, since

May 15, 2024

Dianne Corbiere - 42

1 the final settlement has been approved by the Court, and
2 we have our own process with action items, et cetera, so
3 on and so forth. I have not been to all those meetings.
4 Again, I didn't make it a part of my affidavit because
5 it's not part of our motion, the plan for the supports.
6 Just that we're working on it.

7 94 Q. Can you, Mr. Taylor, scroll to the next
8 document? The holistic wellness supports relating to
9 compensation? Is this a document you've seen before,
10 Ms. Corbiere?

11 A. No.

12 95 Q. In this document there are funding
13 allocations for the various components related to the
14 delivery of supports so, for example, under component
15 one, the funding allocation is 6.34 million over the
16 first year. Do you see that?

17 A. For the first time.

18 96 Q. So this component of the schedule is not
19 something that you're familiar with?

20 A. No.

21 97 Q. And the funding allocation, do you know
22 where that comes from?

23 A. I'm not aware of the funding allocations
24 that are identified here. So you're just going to get me
25 to walk through a document that I haven't seen before

May 15, 2024

Dianne Corbiere - 43

1 until today.

2 98 Q. In the work that the class action parties
3 group is doing on supports, is there a component for
4 surge capacity for service coordination?

5 A. I am not prepared and I didn't prepare in
6 my affidavit to turn my mind to the details of the
7 supports because it's premature, it's still a work in
8 progress. We will be coming to the table with a supports
9 plan, communication materials, and all of your questions
10 can be answered then and that is not happening today. It
11 will be able to happen very soon though because what
12 we're hearing is, as you said, people want, you know,
13 clarity and more supports and they want them to be clear
14 and rolled out before the claims process begins and
15 we're now looking at a claims process that might not
16 begin for six months, so we have a lot of work to do to
17 get ready to deliver on these supports.

18 99 Q. Okay. Can we just go off the record for
19 five minutes? I'm just going to review my notes, Ms.
20 Corbiere, and subject to some small followups we may be
21 done so if we can just go off, please.

22 ---Off the Record at 3:06 p.m. to 3:09 p.m.

23 MS. CLARKE: So we'd just like to mark the
24 last exhibit, just for identification purposes only, and
25 we can provide that to you, Madam Reporter, after we're

May 15, 2024

Dianne Corbiere - 44

1 done here. Subject to any reply, questions from my
2 friends, Mr. Sterns, I'm finished.

3 EXHIBIT A: Screenshot of E-Mail.

4 MR. STERNS: No questions from me. Thank you.
5 ---Whereupon the Examination Adjourned at 3:10 p.m.

6
7
8
9 I HEREBY CERTIFY THE FOREGOING
10 to be a true and accurate
11 transcription of my shorthand notes
12 to the best of my skill and ability.

13 

14 _____
15 Marcy Lancaster, C.S.R.

16 Reproductions of this transcript are in direct violation
17 of O.R. 587/91 Administration of Justice Act January 1,
18 1990, and are not certified without the original
19 signature of the Court Reporter
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**Exhibit "A" of
Dianne Corbriere's
Cross-Examination
on May 15, 2024**

FW: Compensation Wellness Supports Task Team - November Meeting



Cindy Blackstock <[redacted]> on behalf of Mariah Sylvester <[redacted]>

Accept Tentative Decline Propose New Time

Required: Sarah Clarke; Stephanie Wellman; Lauren Doxtater; Seneca Stacey-Allen; Jessica Quinn; Ashleigh Delaye; Melanie Morningstar; Nelson Alisappi; Zachariah General; Terry MacGillivray; Brenda Restoule; Carol Hopkins; Karen Osachoff; Erin Reimer; Richard Gray; Margaret Swan; Phyllis Hudson; Mary Teegee; +7 others

- 23-11-23 DRAFT Agenda-Compensation Wellness Supports.v2.docx 35 KB
1. Compensation Wellness Supports Meeting Summary.clean.docx 42 KB
2. Updated Framework for Supports for Claimants in Compensation Process_Implementation clean copy.docx 52 KB
3. DRAFT SOW Children's Compensation Mental Wellness Support To Send v4.docx 78 KB
4. Argyle - FNCFSJP - Communications Strategy.pdf
5. CONFIDENTIAL_Deloitte_Navigator Proposal.pdf

November 23, 2023 10:00 AM-12:00 PM https://us06web.zoom.us/j/89990311993?pwd=aLKHA7HhUULCnY1cNauDSQC NawcZ.1

Calendar entry for 'FW: Compensation Wellness Supports Task Team - November Meeting' on November 23, 2023, from 10:00 AM to 11:00 AM. Includes Zoom link and meeting details.

From: Mariah Sylvester <[redacted]>
Sent: November 16, 2023 11:16:10 AM (UTC-05:00) Eastern Time (US & Canada)
To: Mariah Sylvester <[redacted]>; Stephanie Wellman <[redacted]>; Lauren Doxtater <[redacted]>; Seneca Stacey-Allen <[redacted]>; Jessica Quinn <[redacted]>; Ashleigh Delaye <[redacted]>; Melanie Morningstar <[redacted]>; Nelson Alisappi <NALisappi@afn.ca>; Zachariah General <Zachariah.General@coo.org>; Terry MacGillivray <[redacted]>; Brenda Restoule <brenda.restoule@fpwc.ca>; Carol Hopkins <chopkins@nnapf.com> <chopkins@nnapf.com>; Karen Osachoff <[redacted]>; Erin Reimer <[redacted]>; Richard Gray <[redacted]>; Margaret Swan <[redacted]>; Phyllis Hudson <[redacted]>; Mary Teegee <[redacted]>; Joanne MacMillan <[redacted]> 'Charmaine Pyakutch'; Marcel Balfour <[redacted]>; Cindy Blackstock <[redacted]>; <[redacted]>; <[redacted]>
Cc: <[redacted]>
Subject: Compensation Wellness Supports Task Team - November Meeting
When: November 23, 2023 10:00 AM-12:00 PM.

Compensation Wellness Supports Task Team: MEETING SUMMARY

Date: October 20th, 2023, 3pm to 5pm ET

Location: Virtual

Attendees: Elder Roberta Oshkabewisens, Stephanie Wellman (AFN), Lauren Doxtater (AFN), Ashleigh Delaye (AFN), Jessica Quinn (AFN), Seneca Stacey-Allen (AFN), Courtney Ratt-McDougall (AFN), Nelson Alisappi (AFN), Charmaine Pyakutch (F-SIN), Kateri Coade (MCPEI), Richard Gray (CSSSPNQL), Allison Stark (ISC), Denis Bouthillette (ISC), Hannah Burnett (ISC), Stephanie Rees-Tregunno (ISC), Patty Ginn (ISC)

Guests Observers: Elodie Young (Deloitte), and Georgia Bobb (Deloitte)

1. **Opening Prayer** – Knowledge Keeper Roberta Oshkabewisens
2. **Welcoming remarks** – **Stephanie Wellman, Director, Social Development (AFN)**
Stephanie welcomed participants to the meeting and provided an overview of the agenda. Stephanie reminded the Committee that the Settlement Approval Hearing for the Final Settlement Agreement (FSA) will begin on October 23rd. Prior to the hearing, there will be a ceremony with the Representative Plaintiffs, Ministers, Elders, ISC and AFN staff, among others. Attendees will have access to on-site wellness supports, including a mental wellness room during the hearing. Wellness Support meeting participants were encouraged to watch the hearing virtually. AFN will share the observer link with participants.

Jamie Bryan, Director, Mental Wellness, Indigenous Services Canada (ISC), echoed AFN's opening remarks and elaborated on the support that ISC will be providing.

ACTION ITEM:

- 2.1. AFN to share livestream link for Federal Court hearing.
 - 2.1.1. Completed. AFN shared the link via email on October 23, 2023.

3. **Mental Wellness Supports Proposal Overview- Jamie Bryan (ISC)**
Jamie Bryan (ISC) provided an update on the Mental Wellness Supports Proposal and next steps. ISC's main focus during the Fall will be engagements with First Nations to determine which agencies have the capacity to provide mental wellness support during the surge of requests related to support services and identify agencies that could provide training or design training on best practices in supporting First Nations mental wellness. ISC will look to engage with organizations or academics that could fill this gap and asked the Compensation Wellness Supports task team to provide recommendations to ISC. ISC is conducting a scan of what training is available and will have a complete list to share with the task team as soon as possible.

Component 1: Surge Capacity for Service Coordination to support claimants

ISC communicated that funding for surge capacity support would be available this year, following the Federal Court of Canada's approval of the Final Settlement Agreement (FSA). ISC has been working internally to cash manage in order to fund service providers to deliver interim surge support service before the dollars are received by the department. ISC notes this task team expressed a preference for a regional approach as opposed to a centralized national approach. ISC also heard this after speaking with the regions during engagements with partner organizations. ISC acknowledged that conversations are still needed with service providers to determine if the recommended organizations are interested and have the capacity to provide

bridge support while Deloitte builds their Navigator supports and to provide the funding specifications. ISC noted from an administrative perspective, it is simpler to adjust existing funding agreements with agencies rather than creating a new agreement for new partners but will prepare for both scenarios.

AFN requested the list of potential agencies be shared with the committee for feedback and/or suggestions to fill the gaps. ISC agreed to send the list to the committee and further noted that this list is not complete, and they are still receiving feedback from the regions such as the Mental Wellness Cluster Leads and the Indian Residential School Resolution Healing Supports Focal Points. ISC communicated they will update and share the list as it grows and as they receive feedback from different organizations.

ACTION ITEM:

- 3.1. ISC to share the list of potential regional agencies for surge service coordination capacity with the task team.
 - 3.1.1. This action item is in progress.

Component 2: Development of dedicated Helpline or support enhancements to the Hope for Wellness Helpline

ISC sent the draft Statement of Work for the dedicated helpline to AFN and advised the document is still considered internal but has requested the document be shared with the committee for their feedback. The document will also be shared with Class Counsel for feedback and review.

ACTION ITEM:

- 3.2. AFN to share Statement of Work (SOW) for the dedicated phone line.
 - 3.2.1. Completed. The SOW was shared with participants on October 30, 2023.

Component 3: Development and provision of specialized training to trauma-informed health and cultural support workers as well as other mental wellness workers supporting Indigenous populations

ISC advised that Component three (3) has been presented to this task team, the National Advisory Committee (NAC), First Nations Mental Wellness Continuing Framework Implementation Secretariat, and the ISC Regions. ISC noted there has not been a lot of feedback. ISC to follow up with the First Nations Mental Wellness Continuing Framework Implementation Secretariat to help identify training organizations or academics who may be able to provide training that fills the identified service gaps. Thunderbird Partnership Foundation and First Peoples Wellness Circle have been initially identified as potential agencies that could support this work. AFN communicated that there are similar points contemplated within the Deloitte Navigation Proposal, and recommended that Deloitte and ISC coordinate to ensure a smooth transition.

ACTION ITEM:

- 3.3. ISC to follow up with the First Nations Mental Wellness Continuing Framework Implementation Secretariat to identify training organizations or academics to provide training.
 - 3.3.1. This action item is in progress.

Component 4: Bolstering and expanding existing network of health and cultural supports

Conversations have begun in ISC regions on the expansion of the Trauma-Informed Health Support. ISC is looking to work with regional offices to engage both existing networks (existing contribution agreements) as well as, new organizations and underserved areas. Registered Psychologists and Social Workers will have to continue to enroll with the department but will have access to sixty (60) 'fee for service' hours, where those professionals directly invoice the department. Claimants accessing this service will not be required to prove their eligibility for the class action.

AFN requested an update regarding "*Component 5: Access to mental health counselling for all class members*", regarding how claimants will know there is 1:1 counselling available and how to access counselling services. ISC stated that promotional materials can be drafted, similar to previous programs. ISC confirmed that materials can be drafted for Deloitte to give out as well and information can be added to the Government websites and shared with partners. Communications planning was flagged as a potential discussion item for a future meeting of this committee. The AFN raised concerns about the fee-for-service counselling process and flagged that ISC should be mindful of this as service providers may attempt to pursue quantity over quality of services provided to the class members. The AFN also flagged Canada's introduction of the #988 crisis line and recommended strong communications material to help differentiate between the two services.

AFN asked how the transition will take place between ISC's bridge support and Deloitte's Navigator services, noting the need for the transition to be seamless. It would be useful for this committee to review and provide input on the transition plan. ISC highlighted they will begin considering how to transition between supports to ensure continuity and that there are no missed connections or gaps in services.

ISC is looking for feedback on surge supports in 3 weeks' time; approaches to communications can be later, and the Statement of Work can be in about a month.

ACTION ITEMS:

- 3.4. ISC to provide list of potential service providers that have been approached or nominated to the committee for review and feedback.
 - 3.4.1. This action item is in progress.
 - 3.5. ISC to provide Terms and Conditions (T/C) on exceptional circumstances funding.
 - 3.5.1. This action item is in progress.
 - 3.6. ISC to follow up on the 5-year funding agreement T/C with the Department of Justice to determine if they can extend the funding period beyond 5 years at a time.
 - 3.6.1. This action item is in progress.
- 4. Deloitte Navigation Proposal – Dean Janvier, Partner, Deloitte,**
 Dean Janvier (Deloitte) presented the Navigator Support proposal to the task team. The Navigators will provide on-the-ground support to claimants in First Nations and urban centers. Navigator support will include for example, assistance completing application forms, accessing documentation,

connecting with mental health and wellness supports. Deloitte noted the Navigators are not mental health specialists and will not be providing any mental health support, however, they will be trained to be trauma-informed and culturally safe. Further, the Navigators will be trained to refer claimants to services and supports they may need. Deloitte advised the budget for the Navigators was submitted in August 2023 and is still awaiting approval. The budget includes money for the remaining fiscal year, including hiring and training Leads and an illustrative budget for 2024/25. The budget submitted was for the Removed Child Class and did not include the launch of other classes at the same time (Jordan's Principle or Kith). Deloitte states they will be re-submitting the budget and work plan that was intended to start in September 2023. Deloitte noted review of the revised framework and budget would be needed from the Parties, AFN, and the Caring Society, to ensure it includes all classes.

Deloitte stated that the next step is to create a comprehensive training and onboarding program. In the new year, Deloitte will begin hiring and training Navigators. Deloitte noted the need for meetings with the regions to seek feedback on the Navigator proposal and asked for AFN's help coordinating these engagements. Deloitte further elaborated that it would be ideal to engage with regions for their feedback so it can be included in the final plan and budget, which should be submitted in early 2024 and no later than March. Deloitte noted feedback was received from the Caring Society and requested others provide feedback on the proposal. AFN will do another call-out for feedback on the proposal.

AFN flagged the feedback from the Caring Society has been circulated to the Committee Members and that a reoccurring and key question from the Caring Society is surge capacity funding for First Nations service providers. AFN noted that this was brought to ISC's attention at a previous meeting and may not be a question specifically for Deloitte. ISC mentioned the question of exceptional circumstances has come up and another colleague is taking this back to see what flexibilities exist. AFN flagged that the funding commitment in the ISC Mental Wellness Supports Proposal only extends 5 years, but the commitment needs to be longer as this is a 20-year process. ISC to follow up with the Department of Justice regarding funding and language in the FSA, and AFN to follow up with counsel.

AFN raised the question of archivists to support claimants in completing forms. Deloitte communicated it is unsure if this is within its area of responsibility, however, it was noted that it would be helpful to have access to a team of archivists. AFN encouraged Deloitte to consider this, noting the limitation of the datasets for the Removed Child Class and the likelihood of gaps with information for Kith Class. AFN also noted that it will be helpful to have Deloitte participating in engagements on the Distribution Protocol throughout the winter for regions to identify their needs for how Deloitte can support claimants.

AFN Knowledge Keeper raised concerns with claimants calling seeking class action information and emotional and wellness support. AFN Knowledge Keeper advised claimants are not comfortable contacting the call center as they want to speak with a First Nations person. AFN) advised of the AFN Information Desk and stated both staff are First Nations and well informed about the class action

process and long-term reform. AFN Info Desk will connect with the Knowledge Keeper to provide contact information.

ACTION ITEMS:

- 4.1. AFN share Info Desk contact information with the Knowledge Keeper
 - 4.1.1. Completed. Information was provided on October 25, 2023.
- 4.2. Committee members to share feedback on Deloitte's proposal with AFN in 3 weeks (November 10, 2023).
 - 4.2.1. This action item is in progress.
- 4.3. AFN will request feedback from the committee on the Navigators proposal.
 - 4.3.1. This action item is in progress.
- 4.4. ISC to follow up with Department of Justice regarding funding and language in FSA on supports enduring for the whole life of the compensation process; AFN to follow up with counsel on this matter.
 - 4.4.1 This action item is in progress.
5. **Stephanie Wellman** (AFN) thanked participants for joining the meeting and noted action items, follow up documents and notes would be circulated by email. Knowledge Keeper **Roberta Oshkabewisens** offered a closing prayer.

2023-08-22

Holistic Wellness Supports Relating to Compensation Under the Class Actions on First Nations Child and Family Services and Jordan's Principle

A Focus on Implementation

Trauma-informed, culturally safe, and accessible health and cultural support components are meant to work in tandem to provide a wide variety of supports to claimants, class members and their families ranging from community based, to group, to individual level services, and inclusive of a wide variety of methodologies including cultural supports and traditions such as attending a sweat lodge, or western-style therapy based on the needs and focus of the individual or family. In this way, class members will not be limited to only one type of supports or modality.

Key Areas for Implementation in FY2023-24 – Validation of Approach

Outlined below is a proposed implementation plan for FY2023-24 for mental wellness components with an estimated timeline of late 2023 for funding to be available to recipients.

Component 1: Surge Capacity for Service Coordination to support claimants

***Purpose:** Recognizing that claimants and communities will have questions and concerns prior to the Central Administrator fully stepping into their navigational role, the purpose of this funding is provide a single infusion of funding to support communities and/or regions in their abilities to meet navigational needs and support claimants in a culturally safe way. The funding is intended to be used flexibly, and not prescriptively.*

***Decision Point:** Moving forward to allocate regional funding to support surge capacity being available as soon as possible.*

Proposed Implementation Plan	Funding Allocation	FNMWCF Alignment
<ul style="list-style-type: none"> Flow funding to ISC FNIHB Regional offices with allocations calculated through a population-based formula – please see below for allocations. Engagement to occur by ISC FNIHB Regional offices with existing regional partnership tables and structures to determine allocations to regional or community service delivery organizations (or other relevant recipients). This approach supports flexibility in order to ensure client navigation services are active as quickly as possible and allows to build on existing programs and structures. 	<ul style="list-style-type: none"> \$6.34M over 1 year, to support navigation and service coordination for eligible class action claimants. Funding recipients could include First Nation communities, self-governing communities, and off-reserve First Nations organizations, or pooled to provide support through a larger regional aggregate organization.. Funding might need to be available in FY2024-25 to ensure a bridge until the Central Administrator begins navigation services. 	<ul style="list-style-type: none"> Effective and innovative way to promote access to and enhance the consistency of existing supports and services; outreach, and providing consistent information. 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.

Proposed Allocations: Based on Census 2021 data, the population is defined as First Nations people residing both on and off reserve as well as those with and without status. This data was chosen to reflect the potential eligibility of the

2023-08-22

class membership – which will be available both on and off reserve and regardless of status. This data, however, may not best reflect the actual demographics of the class, which are not known at this time. As the Central Administer collects demographic data on the classes, Canada is open to using this aggregated data to better reflect the needs of the class.

Regional Amounts based on 2021 Census Data	
Region	Amount for Region
Atlantic	\$481,840
Quebec	\$705,008
Ontario	\$1,517,796
Manitoba	\$815,958
Saskatchewan	\$732,904
Alberta	\$880,626
BC/FNHA	\$1,089,212
Northern	\$117,290

Component 2: Development of a dedicated helpline or support enhancements to the Hope for Wellness Help Line

Purpose: Providing claimants, class members, and their families access to a confidential 24/7, culturally sensitive, linguistically accessible, phone line providing mental health support, and crisis support (including referrals, case management, and information on the settlement). Line will connect individuals and families to crisis intervention and other existing mental wellness services as appropriate.

Points for Decision: Validation of assumptions for moving forward in developing an implementation plan.

Proposed Implementation Plan	Funding Allocations	FNMWCF Alignment
<p>Move forward based on the following assumptions:</p> <ul style="list-style-type: none"> • A dedicated line is preferred over expanding the Hope for Wellness Helpline. • Confidentiality is acceptable over anonymity. • Case referral services and opt-in call backs / follow ups are preferred. • Service should be multi-modal and be available online, via text and on the phone. • Parties are collectively seeking a court order for an Indigenous organization to house this service as per the FSA. • Warm hand offs will be required with a variety of organizations and work is needed to identify for which organizations warm hand-offs are required. 	\$16M over five years	<ul style="list-style-type: none"> • Quality care system and competent service delivery. • Increase access to necessary services.

2023-08-22

Points for Consideration: *If an Indigenous organization is appointed through a court order to host this service, this will expedite the process of developing a contract. Due to requirements for Government of Canada procurement, the process of establishing a contract with an organization could take several months. If the court does not issue an order, ISC will likely need to go through a Request for Proposal process which could take up to approximately one year to complete. In the latter scenario, ISC will explore the possibility of a one-year interim contract to provide the service. Throughout implementation, ISC intends to support the Hope for Wellness helpline in meeting the mental health and crisis needs of class members.*

Component 3: Development and provision of specialized training to trauma-informed health and cultural support workers as well as other mental wellness workers supporting Indigenous populations.

Purpose: *Increase capacity of the mental health and cultural support workforce by providing opportunities to gain new skills and learn about the settlement agreement, class actions, and traumas associated with child welfare to effectively and appropriately support and respond to the specific needs of class members and their families.*

Decision Point: *Identifying potential organizations that could develop / deliver the type of specialized training modules that the existing and new workforce could access to provide supports to this class action claimant group.*

Proposed Implementation Plan	Funding Allocations	FNMWCF Alignment
<ul style="list-style-type: none"> • Engage with Indigenous organizations that could develop and deliver training and solicit a proposal. • If needed, look to re-profile part of the funding so sufficient time for training to be developed and delivered. ○ Indigenous organization to engage with stakeholders to determine the best approach for development and delivery of training. 	\$2M over 1 year.	<ul style="list-style-type: none"> • Community development, ownership capacity building. • Workforce development. • Cultural competence. • Quality care system and competence service delivery.

Key Areas for Implementation beyond FY2023-24 – Updates

Component 4: Bolstering and expanding the existing network of health and cultural supports

Purpose: *To support the provision of First Nations and Indigenous mental health, mental wellness, and culturally focused services to claimants through First Nations and Indigenous organizations in a way that respects culture as foundational to wellbeing and healing.*

Next steps: *Engagement for determining organizations that would be a good fit to support this work and developing options around allocations.*

2023-08-22

Elements for Further Discussion	Funding Allocations	FNMWCF Alignment
<ul style="list-style-type: none"> Leveraging the cultural, emotional and mental health supports that are available to survivors of Indian Residential Schools and Federal Indian Day Schools and families of former students, as well as those affected by the issue of Missing and Murdered Indigenous Women, Girls, and 2SLGBTQI+ people. The organizations that make up this network would be provided training specifically around the needs of the classes, focusing on the details of this settlement as well as the needs of youth, children, and families. Expanding the existing network of health and cultural supports to new First Nations organization, or to new services with existing organization, both on and off reserve, focusing on the unique developmental and age specific needs of children, youth, families, and young adults while continuing to have culture as the foundation of care and wellbeing. Based on the existing model used to fund the network, funding is broadly flexible 	<ul style="list-style-type: none"> \$184.1M over five years \$9.46 M in FY 2023-24 Would fund organizations both on and off reserve New organizations not currently in the network would be funded with priority those providing supports to children, youth, and families. 	<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 is culturally safe and appropriate.

Proposed Allocations for FY2023-24: Based on estimates of what would be feasible to allocate this fiscal year, the table below outlines what could be provided to the existing trauma-informed mental health and cultural supports network to support initial implementation. This is based on the same data and rationalization as the allocations for the surge capacity funding. ISC Regional offices would allocate funding to existing organizations in the network utilizing existing practices at regional partnership tables and making use of existing contribution agreements.

Allocations are weighted based on percentage of total First Nations population living in each region, as defined by Census 2021 data, for all First Nations regardless of residency or status

Region	Allocated Amount	Based on Percentage of Total First Nations Populations
National	\$662,200	7% of total
Atlantic	\$668,633	7.60%
Quebec	\$978,315	11.12%
Ontario	\$2,106,193	23.94%
Manitoba	\$1,132,277	12.87%
Saskatchewan	\$1,017,026	11.56%
Alberta	\$1,222,014	13.89%
BC/FNHA	\$1,511,462	17.18%
Northern	\$162,759	1.85%

2023-08-22

Component 5: Access to mental health counselling for all class members

Purpose: To provide access to mental counselling for all class members to ensure paying for counselling is not a barrier in accessing this form of care for individuals or families’ mental wellbeing, and to support the important role cultural practitioners and ceremonialists play in First Nations mental wellbeing.

Elements for Further Discussion	Funding Allocations	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 would not be dependent on place of residence or Non-Insured Health Benefits eligibility. • Efforts will be made to expand the list of providers (as needed) to include those with a specific pediatric and youth focus in their practices. • Counselling would be provided by registered health professionals, culture-based practitioners/ceremonialists in private practice and is 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 for coverage, depending on regulatory college specifications. 	<ul style="list-style-type: none"> • \$65M over 5 years 	<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.

BACKGROUND

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, who may not be class 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 led by First Nations partners, to guide culture as foundation and holistic navigation supports.
- Supporting the largest class action client cohort to date which is 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

2023-08-22

annex builds on and will be integrated with 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 through 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 existing contribution agreements 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 funding to support enhanced capacity to the network.
- 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 suggest that client utilization could be high as 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 help line with chat/text function and case management supports for class members provided 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.

2023-08-22

PRINCIPLES	DESCRIPTION
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).
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.

DRAFT

TAB 2

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

FEDERAL COURT
CLASS PROCEEDINGS

B E T W E E N:

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

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

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

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

I N D E X O F P R O C E E D I N G S

DESCRIPTION	PAGE NO.
JOELLE GOTT; Affirmed	5
Cross-Examination by Ms. Clarke	5
Cross-Examination by Mr. Seddigh	54

I N D E X O F U N D E R T A K I N G S

Undertakings are found on the following pages:

N/A

I N D E X O F U N D E R A D V I S E M E N T S

Under advisements are found on the following pages:

N/A

I N D E X O F O B J E C T I O N S

Objections are found on the following pages:

38, 40, 44

The list of undertakings, under advisements and refusals is provided as a service to counsel and does not purport to be complete or binding upon the parties.

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I N D E X O F E X H I B I T S

EXHIBIT NUMBER	DESCRIPTION	PAGE NUMBER
1	September 11/23 email	8
2	September 6/23 email and Advice document	13
3	October 3/23 email and Child & Youth Records attachment	16
4	November 1/23 email	18
5	January 18/24 email	22
6	February 2/24 letter	23
7	February 15/24 email and attachment	24
8	February 27/24 letter	56

May 21, 2024

J. Gott

5

1 -- Upon commencing at 1:05 p.m.

2 JOELLE GOTT; Affirmed

3 CROSS-EXAMINATION BY MS. CLARKE:

4 1 Q. Good afternoon, Ms. Gott. My name is
5 Sarah Clarke, and I'm counsel with the First Nations
6 Child and Family Caring Society. You're a partner at
7 Deloitte LLP? Is that correct?

8 A. Correct.

9 2 Q. In the Financial Advisory Sources Group.

10 A. Correct.

11 3 Q. And you are currently part of Deloitte's
12 team operating as the Administrator in this proceeding.

13 A. Correct.

14 4 Q. You swore an Affidavit on April 12, 2004?

15 A. Correct.

16 5 Q. And do you have access to that document?

17 A. 2024?

18 6 Q. What did I say?

19 A. I thought you said 2004.

20 7 Q. 2024. 2024, sorry. Do you have that with
21 you today?

22 A. Yes.

23 MR. CHEN: We have it on the screen.

24 BY MS. CLARKE:

25 8 Q. Okay. And that Affidavit was sworn in

May 21, 2024

J. Gott

6

1 support of the claims process for the Removed Child
2 Class and the Removed Child Family Class, correct?

3 A. Correct.

4 9 Q. What is your specific role in the
5 Administrator's team?

6 A. So I, as a co-lead, oversee the Deloitte's
7 role as the Administrator on this matter, with my
8 co-leads, and am responsible for the delivery of the
9 administration on behalf of Deloitte.

10 10 Q. Now, in your April 12 Affidavit you set
11 out in various places engagement and discussions that
12 Deloitte has had with the parties and sometimes with the
13 Caring Society, correct?

14 A. Correct.

15 11 Q. And you'll agree with me that the Caring
16 Society has provided some feedback to Deloitte on a
17 number of issues over the last 10 or 12 months.

18 A. Correct.

19 12 Q. And one of those issues that we provided
20 feedback on in terms of to Deloitte has been how to
21 engage with some of the Child Welfare agencies, correct?

22 A. Correct.

23 13 Q. And you'll recall that the Caring Society
24 suggested that Deloitte engage with some of the Child
25 Welfare agencies after certain preliminary steps be

May 21, 2024

J. Gott

7

1 undertaken before sitting down with the agencies.

2 A. Correct.

3 14 Q. Okay. So I'm showing you an email dated
4 September 11, 2023 from me to you, as well as other
5 members of your team, and Class counsel.

6 MR. CHEN: Can we just get a moment to...

7 BY MS. CLARKE:

8 15 Q. Do you recall receiving this email?

9 A. I don't recall receiving it, but I'm sure
10 I did.

11 16 Q. I just want to go through some of the
12 items on this list.

13 A. M'hm.

14 17 Q. Specifically bullet number three:

15 Preparation of a logic model
16 regarding where the necessary
17 records are likely held based on
18 when the various agencies received
19 delegation versus provincial
20 records.

21 Do you recall whether Deloitte undertook any of that
22 preparation?

23 A. Not specifically, no.

24 18 Q. What about two bullets down:

25 Overview of the voluntary placement

May 21, 2024

J. Gott

8

1 agreement provisions in each CFS
2 statute going back to 1991.

3 Do you recall whether or not Deloitte undertook any of
4 that work?

5 A. I don't believe it did.

6 19 Q. And with respect to the last bullet:
7 Overview of the ACF 7G
8 recommendations and how those apply
9 to the distribution protocol
10 process.

11 Do you recall whether or not anyone on your team
12 undertook that work?

13 A. Yes, that was...(inaudible).

14 THE COURT REPORTER: Sorry, I didn't hear the
15 answer.

16 THE DEPONENT: Yes, that was reviewed by
17 members of the team.

18 THE COURT REPORTER: Thank you.

19 MS. CLARKE: So I'd like to mark that email as
20 Exhibit 1.

21 THE COURT REPORTER: Exhibit No. 1 marked in
22 evidence.

23 -- EXHIBIT NO. 1: September 11/23 email

24 BY MS. CLARKE:

25 20 Q. Now, you'll agree with me that another

May 21, 2024

J. Gott

9

1 area that the Caring Society provided feedback was on
2 supports, and in particular the navigational supports
3 that Deloitte will be providing under the Settlement
4 Agreement, correct?

5 A. Correct.

6 21 Q. So I'm showing you an email dated
7 September 6, 2023. And this is an email from me to you
8 and various Class Actions counsel with an attachment,
9 you'll see behind it, called "Caring Society Advice for
10 Class Counsel, Deloitte and Argyle". And so I'll just
11 let you review that for a moment.

12 MR. CHEN: Before the witness answers, I just
13 want to point out, there's a notation in the attachment
14 section that says "Confidential".

15 MS. CLARKE: Correct.

16 MR. CHEN: As you know, I'm probably a
17 week-and-a-half into this case, but -- and I don' know
18 how this email arises, but to the extent there are any
19 confidentiality issues, I would assume parties that are
20 attending will raise some objection to these being
21 marked, as obviously the first one has been marked.

22 MS. CLARKE: Certainly. So for your
23 information, we did not include in the exhibit the
24 confidential draft.

25 MR. CHEN: Okay.

May 21, 2024

J. Gott

10

1 MS. CLARKE: So that's not attached. What's
2 attached to the email is Dr. Blackstock's preparation of
3 this Caring Society Advice. So we were very mindful of
4 that issue, and we've not included that document as an
5 exhibit.

6 MR. CHEN: Okay, thank you.

7 MR. SEDDIGH: It will all depend on where the
8 questions are going, right?

9 MS. CLARKE: So just so we're clear, who's --
10 you may also be jumping in?

11 MR. SEDDIGH: Yes.

12 MS. CLARKE: Okay. Is that okay with you?

13 MR. CHEN: That's fine. I mean, yes, I didn't
14 expect anyone to, you know, serve a direction to attend,
15 but I'm not -- I don't think I'm going to fuss over
16 who's going to ask questions, as long as it's in a
17 structured fashion.

18 MS. CLARKE: Okay.

19 THE COURT REPORTER: Could I just find out who
20 that was speaking, then?

21 MR. SEDDIGH: There's only two males in the
22 room. The gentleman on the screen is Jonathan Chen.
23 The other voice, which is me, is outside the screen, is
24 Mohsen Seddigh. There's no one else.

25 THE COURT REPORTER: Oh, I thought there was

May 21, 2024

J. Gott

11

1 another male there. Thank you.

2 MR. SEDDIGH: I'll move over so you can see me
3 as well.

4 BY MS. CLARKE:

5 22 Q. I would like to ask you some questions
6 about the Caring Society Advice for Class Counsel
7 document, which is behind the email.

8 A. M'hm.

9 23 Q. And first, just so we're all clear on the
10 record, when we see the word "navigator" now, is it fair
11 to say that, in the claims process, that's been replaced
12 with claim helper or claims helper?

13 A. Umm, yes, but there's other roles as well
14 as part of navigational supports.

15 24 Q. Okay, that's fair. That's fair. I want
16 to ask you some questions about number 2, which talks
17 about the current allocation strategy with respect to
18 Navigators.

19 A. M'hm.

20 25 Q. Our understanding is that the navigators
21 are being allocated pursuant to population throughout
22 the country. Is that your understanding?

23 A. I'm not sure. I know there was a
24 reallocation at one point. I'm just not sure on what
25 basis.

May 21, 2024

J. Gott

12

1 26 Q. Do you know whether or not the First
2 Nations Canadian Incidence Study on Reported Child Abuse
3 and Neglect was reviewed in consideration of that
4 reallocation?

5 A. I don't know.

6 27 Q. With respect to number 5, are you aware
7 whether service providers who will be referred to are
8 aware of the documents that you will be referring them
9 to and the consent for those referrals?

10 A. When you refer to the service providers --

11 28 Q. When claims helpers refer Class Members to
12 services, has there been communication with those
13 service providers regarding those referrals?

14 A. I'm not sure.

15 29 Q. With respect to number 6, do you know
16 whether youth organizations have been consulted in the
17 development of the claims helpers program or the Claims
18 helpers' helpers?

19 A. I'm not sure.

20 30 Q. Over the page to number 10. Do you know
21 whether claims helpers have received any support or
22 training regarding the needs of persons who are
23 neuro-diverse, have FASD, have a disability, or are
24 members of the LGBTQA2S+ communities?

25 A. I'm not aware, but just to clarify, the

May 21, 2024

J. Gott

13

1 claims helpers have not been hired yet. So the training
2 materials are being developed.

3 31 Q. With respect to number 13, do you know
4 whether the communication plan includes informing groups
5 like alternative caregivers, teachers, or health workers
6 who youth may reach out to for assistance as the claims
7 process unfolds.

8 A. I don't know.

9 MS. CLARKE: I'd like to mark the email and
10 the Advice document as Exhibit No. 2.

11 THE COURT REPORTER: Exhibit No. 2 marked in
12 evidence.

13 -- EXHIBIT NO. 2: September 6/23 email and Advice
14 document

15 BY MS. CLARKE:

16 32 Q. I'm showing you another email dated
17 October 3rd, 2023. This is an email from Dr. Blackstock
18 to you and to Mr. D. Janvier, who's also at Deloitte,
19 correct?

20 A. Correct.

21 33 Q. Attached to the email is a document
22 entitled "Child and Youth and Care Records Locations".
23 If you could just take a moment to review the email and
24 the document, I just have some questions about it.

25 A. Okay, thank you.

May 21, 2024

J. Gott

14

1 MR. CHEN: I'll just note for the record the
2 witness was handed an email with an attachment that was
3 six pages single-spaced. I appreciate there are
4 questions, but keep that in context.

5 MS. CLARKE: Yes, of course, thank you.

6 BY MS. CLARKE:

7 34 Q. So, first, do you remember receiving this
8 email?

9 A. I don't remember receiving it, but I'm
10 sure I did.

11 35 Q. And what was your general process when you
12 received that from Dr. Blackstock on this matter?

13 A. My understanding with respect to
14 navigation supports and Child Welfare records is, we
15 would defer to AFN to set up a meeting to discuss these
16 matters. And I note Stephanie Wellman from AFN was cc'd
17 on this.

18 36 Q. That's right, correct. Can I just ask you
19 a couple of questions about the document, the reference
20 document. If you could turn to page 3 of the document.
21 I just want to focus on the last three bullets on the
22 page.

23 A. M'hm.

24 37 Q. Do you know whether or not these
25 particular questions were ever asked of the provinces or

1 ...(inaudible)...in relation to having better
2 understandings of the records?

3 A. There was discussions with Canada around a
4 process undertaken on another class action to confirm
5 children removed from their families, Indigenous
6 children.

7 38 Q. But do you know whether or not there were
8 ever discussions directly with the provinces where the
9 provinces were actually doing the removal and Services
10 Canada was funding replacement?

11 A. Other than with the Attorney Generals of
12 each province, I'm not aware.

13 39 Q. Just over the page, there's a suggested
14 question about the accuracy of Child in Care records
15 from mainstream agencies. Do you know whether or not
16 there were ever discussions with mainstream agencies
17 that were removing children from Reserve with respect to
18 their views about records?

19 A. I'm not aware.

20 40 Q. And finally over to page 5, do you know
21 whether or not there were ever any discussions with
22 FNCFS agencies regarding their views about the accuracy
23 of the records for children in care?

24 A. I'm not aware.

25 MS. CLARKE: And if we could mark the email

1 and attachment as Exhibit 3, please.

2 THE COURT REPORTER: Exhibit No. 3 marked in
3 evidence.

4 -- EXHIBIT NO. 3: October 3/23 email and Child & Youth
5 Records attachment

6 MR. CHEN: I think you have a couple more
7 emails, maybe not. I don't want to repeat this too many
8 times, but being new to it, I assume these emails are
9 not complete in the sense that they don't contain all of
10 the correspondence back and forth? Is that right?

11 MS. CLARKE: Some of them have threads, and
12 some of them are direct emails from -- for example, that
13 is a direct email from Dr. Blackstock's...(inaudible).

14 MR. CHEN: I just want to make sure the Court
15 has the context of the report. That's my --

16 MS. CLARKE: Fair enough. If the reading is
17 getting too much and you want to go off the record to do
18 that, that's fine with me.

19 MR. CHEN: It probably will speed things up if
20 there's an email you want her to look at. It's up to
21 you though.

22 MS. CLARKE: I booked the whole afternoon.

23 BY MS. CLARKE:

24 41 Q. Okay, I am showing you another email now,
25 a shorter one, dated November 1, 2023. This is an email

May 21, 2024

J. Gott

17

1 from Dr. Blackstock to you and Mr. Janvier regarding
2 follow up on her Advice document and her October 3rd
3 document that we just looked at. Do you recall
4 receiving this email?

5 A. I don't recall, but I'm sure I received
6 it.

7 42 Q. Do you recall whether you ever responded
8 to Dr. Blackstock directly in relation to this email?

9 A. I don't recall. I do know that we would
10 defer to AFN to set up any meetings with the Caring
11 Society on the topics of the navigators.

12 43 Q. So does that mean that no one from
13 Deloitte would have provided direct feedback to the
14 Caring Society in relation to the suggestion it was
15 making?

16 A. I don't believe I responded. I can't
17 speak for Mr. Janvier.

18 44 Q. But in terms of your understanding that
19 you would defer to AFN, does that mean that Deloitte
20 would not be substantively responding to the feedback
21 that the Caring Society was providing?

22 A. Again, I don't believe I sent any direct
23 feedback, but I can't speak to Mr. Janvier's responses.

24 MS. CLARKE: Okay. If we can mark that
25 November 1, 2023 email as Exhibit 4.

May 21, 2024

J. Gott

18

1 THE COURT REPORTER: Exhibit No. 4 marked in
2 evidence.

3 -- EXHIBIT NO. 4: November 1/23 email

4 BY MS. CLARKE:

5 45 Q. I'm going to suggest to you, Ms. Gott,
6 that the Caring Society attempted to meet with Deloitte
7 on a number of occasions throughout the fall of 2023 to
8 discuss both the navigational supports and issues of the
9 Child Welfare records.

10 MR. CHEN: Can you be a bit more precise with
11 that question?

12 MS. CLARKE: I can.

13 BY MS. CLARKE:

14 46 Q. There were a number of emails that came
15 from either Dr. Blackstock or members of the Caring
16 Society legal team. Well, let me put it this way: Do
17 you recall that there were a number of emails, including
18 the email that we just looked at, that came from either
19 Dr. Blackstock or members of the Caring Society legal
20 team attempting to meet with Deloitte to discuss the
21 navigational supports as well as the Child Welfare
22 records issue?

23 MR. CHEN: I don't mean to be -- I hope I'm
24 not coming off as...(inaudible). If you're referring to
25 emails, perhaps you could just show her the email?

May 21, 2024

J. Gott

19

1 MS. CLARKE: I can. It's an 11-page email
2 thread that goes back between September and December of
3 2023, and -- or 2023, and I was trying to save us from
4 reviewing an 11-page email thread. I just wanted to
5 know if the witness recalls that there were emails
6 attempting to meet with Deloitte to talk about these
7 issues.

8 MR. CHEN: Sure...(inaudible).

9 THE DEPONENT: I do recollect there was
10 outreach from the Caring Society and Deloitte regarding
11 navigators and Child Welfare...(inaudible).

12 BY MS. CLARKE:

13 47 Q. And you'll agree with me that we never had
14 anything about those issues, just Deloitte and the
15 Caring Society.

16 A. I don't believe so. As I stated, I
17 believe the approach was that we would defer to the AFN
18 to organize those meetings.

19 48 Q. Okay. Now, in terms of the claim process
20 itself, as you set out in your Affidavit, Deloitte
21 engaged with the Caring Society on the development of
22 the claims process along with the other Class Action
23 parties. And that's set out in paragraph 8 of your
24 Affidavit.

25 A. Correct.

May 21, 2024

J. Gott

20

1 49 Q. And paragraph 8 has a number of sub
2 numbered paragraphs where you set out the various issues
3 and timings of meetings, et cetera.

4 A. Correct.

5 50 Q. Do you recall that in January of 2024 the
6 Caring Society provided written feedback on the claims
7 process document?

8 A. I don't recall that it was that date, but
9 I know we received written feedback.

10 51 Q. So I'm going to show you an email dated
11 January 18, 2024, which was sent to you and various
12 counsel for the Class Action parties. Do you recall
13 receiving this email?

14 A. I don't recall receiving it. I'm sure I
15 did receive it.

16 52 Q. When you say you don't recall, do you mean
17 you don't recall the specific day you received it, or
18 you have no recollection of the content of this email
19 whatsoever?

20 A. I recollect that the Caring Society had
21 commented with these concerns. I don't recollect the
22 specific email.

23 53 Q. And do you know whether or not these
24 concerns were considered by Deloitte as it was preparing
25 to discharge its duties as the Administrator under the

1 final Settlement Agreement?

2 A. The comments would have been collected and
3 reviewed with the sub-committee and then executed as
4 directed by the sub-committee.

5 54 Q. So would part of Deloitte's role in those
6 discussions have been to bring this feedback forward?
7 Would that have been the expectation?

8 A. When I look at the addressee on this,
9 there are members of the sub-committee, so they would be
10 aware.

11 55 Q. But was that your -- were you involved in
12 bringing forward these concerns?

13 A. Not necessarily.

14 56 Q. Would someone on the Deloitte team have
15 been pinpointed to bring these concerns forward?

16 A. Not necessarily, given that the
17 sub-committee members were included in this email. And
18 we also had a working draft of the distribution protocol
19 that the parties and the Caring Society had access to,
20 to provide comments that everybody could view as well.
21 Correct.

22 57 Q. And I'll just note for the record that
23 this email attached to that draft claims process, we did
24 not provide it here.

25 A. M'hm.

May 21, 2024

J. Gott

22

1 58 Q. Because it was a work in progress at that
2 time.

3 A. Okay.

4 MR. CHEN: Thank you.

5 MS. CLARKE: Okay. So I'd like to mark this
6 email as Exhibit No. 5.

7 THE COURT REPORTER: Exhibit No. 5 marked in
8 evidence.

9 -- EXHIBIT NO. 5: January 18/24 email

10 BY MS. CLARKE:

11 59 Q. Do you recall, Ms. Gott, that following
12 the Caring Society's comments on the claims process
13 document, that Sotos wrote to the Caring Society in
14 response to the comments that had been made on the draft
15 claims process? Do you recall that generally?

16 A. Can you rephrase that or repeat that?

17 60 Q. That did not come out eloquently, I
18 apologize. Why don't I just show you the letter. So
19 I'm showing you a letter dated February 2nd, 2024,
20 addressed to the Caring Society, in relation to the
21 email that we just looked at. So take a moment to look
22 at that.

23 A. Okay. Thank you.

24 61 Q. First, do you recall -- I see that you're
25 cc'd on the last page of the letter. Do you recall

May 21, 2024

J. Gott

23

1 receiving this letter?

2 A. Yes.

3 62 Q. Were you consulted about the contents of
4 this letter?

5 A. No.

6 63 Q. Do you know whether or not anyone at
7 Deloitte was consulted about the contents of this
8 letter?

9 A. I don't.

10 MS. CLARKE: Okay. I'd like to mark this as
11 the next exhibit, Exhibit No. 6.

12 THE COURT REPORTER: Exhibit No. 6 marked in
13 evidence.

14 -- EXHIBIT NO. 6: February 2/24 letter

15 BY MS. CLARKE:

16 64 Q. You may recall, Ms. Gott, that the Caring
17 Society then responded to the Sotos letter on
18 February 15th, 2024, and you were also copied on that
19 correspondence.

20 A. Thank you.

21 65 Q. Do you recall receiving this letter?

22 A. Yes.

23 66 Q. And do you recall whether or not Deloitte
24 shared any of the concerns raised in this letter with
25 Class Counsel?

May 21, 2024

J. Gott

24

1 A. After receiving this letter we shared
2 concerns with Class Counsel?

3 67 Q. Did you raise further concerns with Class
4 Counsel from anything raised in this letter?

5 A. I don't recall.

6 MS. CLARKE: Okay. I'd like to mark this
7 letter and the attached...(inaudible)... as Exhibit 7.

8 THE COURT REPORTER: Exhibit 7 marked in
9 evidence.

10 -- EXHIBIT NO. 7: February 15/24 email and
11 attachment

12 MS. CLARKE: So those are all the exhibits. I
13 have some more questions about your Affidavit, but if
14 you'd like to take a break, I'm happy to take a break.

15 MR. CHEN: It's up to the witness, but before
16 we leave this document, I raised the concern about the
17 completeness. I take it...(inaudible)...correspondence
18 and that's the end of it?

19 MS. CLARKE: That is the end of that
20 correspondence, yes.

21 MR. CHEN: Like, the entire discussion, or
22 just this correspondence? There's no followup to this
23 letter, is basically what I --

24 MS. CLARKE: Not that I recall. We can check
25 on the break for you.

May 21, 2024

J. Gott

25

1 MR. CHEN: Thank you. That's all. That's the
2 only reassurance.

3 MS. CLARKE: We can check on that for you.
4 Okay. Would you like to take a break?

5 THE DEPONENT: I'm fine to keep going.

6 MS. CLARKE: Okay.

7 MR. SEDDIGH: Before we go on break, I had a
8 comment for the record. Okay? And it's an objection to
9 you effectively splitting your case, putting in your
10 responding materials on cross-examination, putting
11 voluminous evidence as part of the -- this evidence as
12 cross-examination.

13 I'll confer with my colleagues and the parties
14 in terms of the fairness, the fair process and issues
15 that raises, in terms of after the reply is delivered,
16 raise certain issues in the responding motion record.
17 And on this last cross-examination, effectively past the
18 deadline of which we have to seek an extension from
19 because of the witness's availability, you have put most
20 of the issues into the record that our reply record is
21 obviously may or may not be necessarily responsive to.

22 I just want to make sure I flag that for the
23 record. And I'll confer, and I'll say, you know, we're
24 also dealing with a situation where any disruption to
25 the schedule causes delay, which puts us in a very tough

1 position. But I just want to make sure that objection
2 is clear on the record. If you want to take a break
3 now, I'm done with my objection.

4 MS. CLARKE: That's okay, I don't need to take
5 a break. Just so we're all clear, all of the evidence
6 that we just put to the witness is in response to her
7 specific Affidavit, where she's raised in a number of
8 places throughout her evidence engagement of the Caring
9 Society on the specific development of the Claims
10 process. And we're entitled to test her evidence on --

11 MR. SEDDIGH: For sure.

12 MS. CLARKE: -- cross-examination on the
13 Affidavit because of the way that her evidence has gone
14 in.

15 MR. SEDDIGH: Yes, but you put in a responding
16 record with...(inaudible)...any of this, and that's
17 generally where you do it, so that if there's anything
18 to be addressed, it can be addressed in reply. I think
19 we both made --

20 MS. CLARKE: I think we put our positions on
21 the record, and if we have to follow up with each other
22 as we move forward, we will do that. Thank you.

23 BY MS. CLARKE:

24 68 Q. Okay. I want to now ask you some
25 questions about the Claims process and the

1 Administrator's duties as you've set out in your
2 Affidavit. So if you could turn first to page 8 of your
3 Affidavit, which is paragraph 14, and then there are
4 some sub-paragraphs that I'd like to look at. So in
5 paragraph 14 --

6 A. Let me just get there.

7 MR. CHEN: ... (inaudible) ... page 7.

8 BY MS. CLARKE:

9 69 Q. You're right. So just starting at the
10 bottom of the page, if you just want to review
11 (a) (iii), (iv) and (v) specifically. I just have some
12 questions about those. So my understanding --

13 A. Okay.

14 70 Q. -- from that is that you're putting
15 forward some of the planned activities required for the
16 Administrator's duties that are set out in the FSA. And
17 those include things such as:

18 Planning to ensure staffing for the
19 performance of our duties under the
20 FSA, including the provision of
21 adequate training and instructing
22 of personnel;

23 Planning for First Nations
24 participation and the reflection of
25 First Nations perspectives,

1 appropriate cultural knowledge, use
2 of proper experts, and a
3 trauma-informed and child- and
4 youth-focused approach to the
5 Class.

6 And then in (v):

7 Planning for preparation of Claims
8 Helpers as part of navigational
9 supports to Class Members in the
10 Claims Process as outlined in the
11 FSA.

12 So first with respect to sub-paragraph (iii), which is
13 the planning duties, do you know what training
14 specifically is going to be offered in relation to Child
15 Welfare?

16 A. Partially, yes. We have a program that's
17 being developed by Dr. Lana Potts regarding First Nation
18 history and then the Child Welfare system that all our
19 staff, including navigational supports, will be required
20 to take.

21 There will be 4 Seasons of Learning
22 Reconciliation that's offered by the First Nation
23 University that all the staff, including the
24 navigational supports, will be provided.

25 There is also other training that will happen

1 specifically for the claims helpers that's being
2 designed currently, and other training as deemed
3 necessary.

4 71 Q. And who is designing the training for the
5 claims helpers?

6 A. That would be combination of the lead team
7 Shenday (ph.) and Dr. Lana Potts, as well as our
8 communications partner Argyle Communications.

9 72 Q. And when will the training, the initial
10 training that you spoke about for all the staff, when
11 will that be launched?

12 A. The 4 Seasons of Reconciliation is already
13 launched. That's existing. And the training that's
14 being developed by Dr. Potts is in the process of being
15 developed. I'm not sure when it will be released.

16 73 Q. And in sub-paragraph (iv) then, you speak
17 about use of experts and trauma-informed and a child-
18 and youth-focused approach. Who is doing the piece
19 around the trauma-informed approach?

20 A. We have a psychiatrist as a subject matter
21 expert we are liaising with.

22 74 Q. Do you know who that is?

23 A. I don't have...(inaudible). We also are
24 relying on our child welfare expert within Deloitte in
25 terms of our child welfare...(inaudible)...for lack of a

May 21, 2024

J. Gott

30

1 better word.

2 THE COURT REPORTER: Keep your voice up,
3 please.

4 THE DEPONENT: Sorry. Our child welfare
5 leader of Deloitte Canada.

6 BY MS. CLARKE:

7 75 Q. Can you remind me who that is?

8 A. Her name is Alexis Martin, I believe.

9 76 Q. And then just with respect to
10 sub-paragraph (v) and the claims helpers, how many
11 claims helpers are going to be required, if you know?

12 A. Last count, I believe just under 200
13 initially.

14 77 Q. And when will the hiring be complete?

15 A. Depends on when the launch date is set,
16 but well in advance of the launch date to be sure that
17 they're ready to assist the Claimants.

18 78 Q. Okay. If you can turn to paragraph 16 of
19 your Affidavit, which starts at the bottom of page 14.

20 A. Okay.

21 79 Q. Okay. And you talk a little bit about the
22 work involved in crafting the proposed claims process,
23 including a):

24 The process to identify eligible

25 Class Members and grounds for

May 21, 2024

J. Gott

31

1 denial of eligibility under the
2 FSA.

3 And lower down in (d):

4 Verification of eligibility
5 criteria - First Nations
6 individuals, parents/grandparents,
7 ordinarily resident, circumstances
8 and funding of removal/placement.

9 Now, under the claims process that is being put forward
10 to the Court, you'll agree with me that eligibility is
11 directly tied to a Removed Child being located on the
12 ISC database.

13 A. Say that again, please?

14 80 Q. In order to be approved as a eligible or
15 an approved Removed Child Class Member under the claims
16 process, that child must be located on the ISC database,
17 correct?

18 MR. CHEN: I wonder if it's easier to bring up
19 the claims process --

20 MS. CLARKE: Sure.

21 MR. CHEN: -- and draw us to something
22 specific --

23 MS. CLARKE: Sure.

24 MR. CHEN: -- so we can see it?

25 MS. CLARKE: So that's found at section 4.4 of

May 21, 2024

J. Gott

32

1 the claims process.

2 MR. CHEN: Do you have 4.4 up? Oh, it's on
3 the screen.

4 BY MS. CLARKE:

5 81 Q. So is your understanding that in order for
6 the Administrator to approve a Claimant, that for the
7 Removed Child Class only, I'm speaking about
8 the...(inaudible)...first --

9 A. Yes.

10 82 Q. -- that Removed Child Class Member's
11 identifying information will need to be on the ISC
12 database.

13 A. Currently, yes.

14 MR. CHEN: I take it you're not asking for a
15 legal interpretation? Obviously the Settlement
16 Agreement says -- about the claims process says what it
17 says. But the witness is not here to interpret the --
18 provide a legal interpretation.

19 MS. CLARKE: I'm not asking for a legal
20 interpretation, but given that the Administrator is
21 going to be approving and denying or providing
22 inconclusive eligibility letters, I think her evidence
23 on how it works is really important.

24 MR. CHEN: Yes, that's fair. I just want to
25 make sure that we're on the same page.

May 21, 2024

J. Gott

33

1 MS. CLARKE: We're on the same page.

2 BY MS. CLARKE:

3 83 Q. And if a child's information is not on the
4 ISC database now, under 4.7, the Administrator will
5 issue an inconclusive eligibility letter of some kind.
6 Is that right?

7 A. That is --

8 MR. SEDDIGH: I'm just going to caution the
9 witness...(inaudible)... at this time answer some
10 questions. Despite what my friend may think is fair, I
11 will say the document says what it says. And whatever
12 you put to this witness is not going to matter. At the
13 end of the day, it's a claims process that goes before
14 the Court. It's up to the Court....

15 MR. CHEN: ...(inaudible)...claims process
16 before the Court?

17 MR. SEDDIGH: She just should be cautious so
18 that anything you want to extract is not really, at the
19 end of the day, does not have location for a Class in
20 terms of how they understand this, how this is
21 publicized. The document is a public document. It says
22 what it says.

23 MR. CHEN: The only thing I would add is that
24 -- I completely hear my friend. I thought you were just
25 getting her to confirm exactly what is said on some --

1 the clause itself. If that's what the intent was, she
2 can confirm that's what the word says. I just don't
3 want you to take anything more than that from what the
4 witness is saying. But whether or not there's a value
5 of getting the witness to confirm that's what the
6 paragraph says, I will grant you --

7 MS. CLARKE: I think it's important that the
8 witness confirm her understanding, as the Administrator,
9 as someone one who is going to be approving and denying
10 Claims. So that's why I'm asking her these questions.

11 MR. CHEN: Right, right. I think what the
12 clause says is pretty clear. I think that's what you
13 were asking her to confirm.

14 MS. CLARKE: I'm asking her understanding of
15 what it says. That's what I'm asking. So if you're
16 objecting to me asking her what her understanding of
17 what this means, let me know. Because that's what I'm
18 asking her. I don't need her to confirm what the words
19 say on the page. We can all read it.

20 MR. CHEN: I agree.

21 MS. CLARKE: I'm asking her for her
22 understanding of what her job's going to be when the
23 Administrator starts to submit Claims.

24 MR. CHEN: Right. And I don't know if her
25 understanding is going to be any different than what the

1 words say. Perhaps we can just clarify it. But the
2 claims process is obviously the claims process.

3 BY MS. CLARKE:

4 84 Q. So if a Removed Child Class Member submits
5 a claim to the Administrator, and their information is
6 not on the ISC database now, they will be deemed
7 inconclusive, correct?

8 MR. CHEN: Just to clarify, is what you're
9 asking section 4.7(a)?

10 MS. CLARKE: So part of the issue is that you
11 have to read it altogether. You can't really just read
12 one section. You have to read the entire eligibility
13 section together. So that's partly why I didn't go
14 directly to the claims process document, because it's
15 got a lot of different pulleys and levers, and you have
16 to read it altogether. So I am asking the witness's
17 understanding that when the Administrator sees a claims
18 form and that Removed Child Class's information is not
19 on the ISC database, that child will be deemed
20 inconclusive right now.

21 MR. CHEN: Yeah, but isn't that what the
22 claims process says?

23 MS. CLARKE: I'm asking the witness if that's
24 her understanding.

25 MR. CHEN: Okay. So you're asking her to

May 21, 2024

J. Gott

36

1 confirm, though, what is on --

2 MS. CLARKE: I'm not asking her to confirm the
3 words, Mr. Chen. I'm asking her to confirm that that's
4 what the process is going to be if it's approved.

5 MR. CHEN: So I just want to make sure I
6 understand. The question is, is her understanding any
7 different than what the claim process sets out in this
8 section --

9 MS. CLARKE: That's not my question. She can
10 either answer my question, or you can refuse the
11 question and we can move on.

12 MR. CHEN: Perhaps you can just ask the
13 question again. Because I'm having trouble splitting
14 the difference here. Because you're asking exactly what
15 the clause tells. You're asking what that clause says.

16 MS. CLARKE: That's your interpretation of my
17 question. That's not my question.

18 MR. CHEN: So feel free to ask it again.

19 MS. CLARKE: Okay.

20 BY MS. CLARKE:

21 85 Q. So if the Administrator receives a claims
22 form from a Removed Child Class Member and their
23 information is not on the ISC database, the
24 Administrator will deem that claim inconclusive,
25 correct?

May 21, 2024

J. Gott

37

1 MR. SEDDIGH: No, but again, I think he's
2 trying to tell you exactly what a caution...
3 (inaudible)...the page you're on. If your question is,
4 'Do you understand your job?' perhaps you could ask
5 that. You understand what you need to do. But in terms
6 of the details of this, I've heard my friend also saying
7 it speaks for itself. It should be --

8 MS. CLARKE: I'm asking the witness what the
9 Administrator is going to do when they receive a claims
10 form with certain information on it, not to read to me
11 what it says. If that's her understanding of what the
12 Administrator is going to do.

13 MR. SEDDIGH: If the Administrator is going to
14 comply with the claims process?

15 MS. CLARKE: That's not my question.

16 MR. CHEN: No, no, in fairness, I think that
17 was your question. What is she going to do when she
18 receives a certain, you know, claims form. I'm reading
19 the claims process, and you're asking what will happen
20 if a certain claims form comes in.

21 MS. CLARKE: That's right. I'm asking what
22 the Administrator is going to do when they get a claims
23 form with certain information on it. And they do
24 multiple steps that are required as part of the claims
25 process. What they're then going to do when there's an

1 outcome.

2 MR. CHEN: And, no, the concern I have is just
3 that it speaks -- the claims process directs the Claims
4 Administrator specifically what to do when a certain
5 category of information comes in. So you're asking --

6 MS. CLARKE: That's your question. That's not
7 my question. Okay? My question is, what is the
8 Administrator going to do under this claims process in
9 the situation that I have provided to the witness. She
10 can answer the question; it can be objected to. But I'm
11 not asking the question that you're asking me to ask
12 her. I'm asking the question that I'm asking.

13 MR. SEDDIGH: Everyone seems to have a problem
14 with your question.

15 MS. CLARKE: Then object to the question.
16 Right? Object to the question. If you have a problem
17 with the question, let's object to the question --

18 MR. CHEN: No, if I'm not clear, I am
19 objecting to the question.

20 OBJECTION

21 MS. CLARKE: Okay.

22 MR. CHEN: I think what you're asking is if
23 the Claims Administrator is going to deviate in any way
24 from the claims process.

25 MS. CLARKE: That's not my question, but if

1 you're objecting to the question, I did not understand
2 it was an objection.

3 MR. CHEN: Maybe that's my fault, but yes.

4 MS. CLARKE: Okay. I will take that as an
5 objection. All right. Fair enough.

6 BY MS. CLARKE:

7 86 Q. On the launch date under the claims
8 process as you currently understand, if a Removed Child
9 Class Member completes a claims form as required and
10 provides the Administrator with a Court Order
11 demonstrating all of the indicia of a Removed Child
12 Class Member under the FSA, can, from your
13 understanding, the Administrator approve that claim even
14 if they're not on the ISC database?

15 MR. CHEN: There's a lot to that question. I
16 think I'm going to object on the same basis, because
17 you're asking, again, what Claims Administrator is going
18 to do in accordance with the claims process.

19 MS. CLARKE: I'm asking this witness's
20 understanding of what the Administrator's role will be
21 when it receives certain information from Class Members,
22 yes.

23 MR. CHEN: Sorry, is there a specific section
24 though that you're referring to when you ask that
25 question?

May 21, 2024

J. Gott

40

1 MS. CLARKE: I'm referring to the entirety of
2 section 4.

3 MR. CHEN: The entirety of section 4.

4 MS. CLARKE: Yes.

5 MR. CHEN: I'll object on the same basis if
6 what you're asking is what the Claims Administrator will
7 do when certain things happen, and it's covered by the
8 claim process.

9 OBJECTION

10 MS. CLARKE: Okay. I'll take your objection.

11 BY MS. CLARKE:

12 87 Q. Does the witness want to answer so that we
13 can deal with it on the motion? Under 95(2)? Or would
14 you prefer to just have her not answer the question?

15 MR. CHEN: Well, let me just -- we'll answer
16 it under objection.

17 MR. SEDDIGH: Let me ask her, have you ever
18 seen an Order like that? Court Order like that?

19 THE DEPONENT: Sorry, what's the question?

20 MR. SEDDIGH: Asked if there's a Court Order
21 that establishes Class. I think I heard a hypothetical
22 about a Court Order that satisfies both...
23 (inaudible)...eligibility.

24 THE COURT REPORTER: I can't hear the
25 question.

May 21, 2024

J. Gott

41

1 MR. CHEN: Do you want to rephrase? Just so
2 we're clear, as I said earlier, the question is very
3 long. I was expecting you to repeat it again. There
4 was a lot of layers to that question.

5 MS. CLARKE: In fairness to this witness, this
6 witness has a lot of experience in discussing these
7 issues. So a lot of what I'm asking her is not new. In
8 fairness to you, I understand it's new for you. But
9 this is an issue that has been discussed, and if she
10 would like to answer Mr. Seddigh's question first, I'm
11 fine with that, which was, have you ever seen a Court
12 Order that would establish eligibility of a Removed
13 Child Class Member under the FSA?

14 MR. SEDDIGH: Just to, again, clear the
15 record, my friend says this is an issue that's been
16 discussed. I don't know where that comes from. I have
17 personally. I don't know where this Order that has all
18 the eligibility issues covered comes from. I don't know
19 if the witness has seen one. Maybe you could ask her if
20 she's seen anything like this. But to say this has been
21 an issue that's been discussed --

22 MS. CLARKE: In the Caring Society documents
23 that were provided to the witness today, that she has
24 been previously provided throughout the fall of 2023,
25 the issue of Court Orders and records has been raised

1 throughout the documentation a number of times.

2 MR. SEDDIGH: Speculation is speculation. Do
3 you want to put a specific Order to this witness? Is
4 there an example of that? Are you asking a
5 hypothetical? Sorry if I have to interject, but that
6 then translates into, Oh, there's Court Orders that have
7 all the answers. This can't be...(inaudible).

8 BY MS. CLARKE:

9 88 Q. Okay. So my general understanding of
10 cross-examination rules is only I can ask the question.
11 So I'm going to suggest that you don't answer my friend
12 Mr. Seddigh's question. I am prepared to rephrase the
13 question, and you can either try to answer it to the
14 best -- again, please understand, I'm only asking you
15 what you know. If you don't know the answer, you can
16 say that you don't know, okay? This is not a memory
17 test. I'm only asking you about information that you
18 know through your experience of working on this
19 proceeding to date.

20 So my question is, as the Administrator, is
21 your understanding that if you were to receive a claims
22 form from a Removed Child Class Member who is not found
23 on the ISC database -- are you with me so far?

24 A. M'hm.

25 89 Q. -- and that Class Member has provided the

May 21, 2024

J. Gott

43

1 Administrator with a Court Order indicating that they
2 have satisfied the requirements of the FSA for
3 eligibility, could the Administrator approve that claim?

4 MR. SEDDIGH: The Court Order point confuses
5 me. What Court Order are you speaking of?

6 MS. CLARKE: A child protection court order.
7 A provincial court that sets out that a child was
8 removed from their Reserve and placed in an ISC-funded
9 placement.

10 MR. SEDDIGH: And to date has there been a
11 Court Order of that kind? Obviously, they would know.

12 MS. CLARKE: I'm sorry, no. So can I just ask
13 if the witness understands the question?

14 MR. SEDDIGH: Go ahead.

15 BY MS. CLARKE:

16 90 Q. Do you understand the question?

17 A. I think I understand the question.

18 91 Q. Okay.

19

20

21 92 Q. Okay.

22

23

24 93 Q. Thank you. So I'll come back to my
25 question if that's okay. If the Administrator receives

1 a claims form from a Removed Child Class Member who was
2 not found on the ISC database, I provided the
3 Administrator with a Court Order as we just discussed,
4 could the Administrator, under the claims process,
5 approve that claim?

6 MR. SEDDIGH: My caution remains. It's up to
7 Deloitte's counsel, but, you know, the witness not
8 having seen anything like this and speculating about it,
9 it's dangerous to the Class.

10 MR. CHEN: So as the Claims Administrator, I
11 will tell you we want to take into account, of course,
12 the interests of all, and obviously we're bound by the
13 Settlement Agreement and claims process. I do have
14 concerns of, you know, the hypothetical nature of this
15 question. But that said, I'll let her answer under
16 objection, and the parties can deal with it. But, you
17 know, if --

18 MS. CLARKE: Okay.

19 MR. CHEN: -- the claims process says what it
20 says. To the extent you would like her understanding,
21 you can answer under objection.

22 OBJECTION

23 THE DEPONENT: Okay. Can I hear the question
24 again, please?

25

May 21, 2024

J. Gott

45

1 BY MS. CLARKE:

2 94 Q. If the Administrator receives completed
3 claims form from a Removed Child Class Member who did
4 not appear on the ISC database but provided Deloitte
5 with a copy of the Court Order, the Child Welfare Court
6 Order that we discussed, could the Administrator approve
7 that claim?

8 MR. SEDDIGH: Before you answer, can you
9 clarify, how a person is a Removed Child Class --

10 MS. CLARKE: I'm going to leave this line of
11 questioning now, because there have been too many
12 interjections, and we're obviously not getting anywhere.
13 So I'm going to leave my question on the record, and if
14 you choose to answer it in writing, you'll be able to do
15 so. It will be in writing. But the question will be
16 clear and in writing. Okay? So let's leave that one.

17 MR. SEDDIGH: Maybe one day we'll see such an
18 Order?

19 MS. CLARKE: Pardon me?

20 MR. SEDDIGH: Maybe one day we'll see such an
21 Order that has all the answers?

22 MS. CLARKE: Okay. So would you like to take
23 a break now?

24 THE DEPONENT: Let's just keep going.

25 MS. CLARKE: Okay.

May 21, 2024

J. Gott

46

1 BY MS. CLARKE:

2 95 Q. We're going to go back to your Affidavit.
3 And I'm taking you to paragraph 14, which is on page 10.
4 It actually starts on page 7, but I'm looking at, in
5 particular, if I could draw your attention to sub (d),
6 sub (ii), which is on page 10. And here you say:

7 Regarding Caregiving Parents or
8 Caregiving Grandparents
9 eligibility, we collaborated with
10 the Parties to research and
11 develop, among other things:

12 Number (ii):

13 We have been collaborating with the
14 Parties towards the development of
15 a process relating to some
16 Caregiving Parents or Caregiving
17 Grandparents who are excluded under
18 the FSA on account of Abuse of the
19 Removed Child Class Member,
20 including: research regarding
21 available documentation from public
22 records, registries and Child
23 Welfare Authorities related to
24 criminal records or cause for the
25 child's removal; and indication

1 that a given Caregiving Parent or
2 Caregiving Grandparent inflicted
3 Abuse on a Removed Child Class
4 Member, example, reporting by
5 others and publicly available
6 information.

7 So first of all, what specific research was undertaken
8 regarding the collecting of information related to
9 abuse?

10 A. So we conducted research with our
11 financial crime group on what public records might be
12 available, including criminal records, child abuse
13 registries, et cetera, that they have sufficient
14 information to determine whether a caregiver was
15 criminally charged and convicted of abuse as defined
16 under the Settlement Agreement or at a particular time
17 for a particular child.

18 96 Q. Okay. And you'll agree with me that the
19 Removed Child Class Member is not being asked directly
20 about abuse in relation to their Caregiving Parents or
21 Caregiving Grandparents under the current approach taken
22 here.

23 A. The Administrator is not reaching out to
24 the Removed Children to ask them about abuse. It's not
25 -- it's not allowed under the Settlement Agreement, to

1 my knowledge.

2 97 Q. And the form itself, which we can turn up
3 if you want to look at it, it's page 68 of the Motion
4 Record. But the form itself does not, as you've
5 indicated, ask the Removed Child Class Member whether or
6 not they were abused in relation to their removal by
7 their parent or children or grandparent.

8 A. Right. The Removed Child Claim Form does
9 not ask the child to confirm whether or not their
10 removal was related to abuse.

11 98 Q. And the Claims Form also does not include
12 any information about abuse whatsoever. Do you recall
13 that?

14 A. There's no reference to abuse in the
15 Removed Child Claim Form.

16 99 Q. And if we can just turn to 14(m) as in
17 mother, sub (ii), which is on page 13. In sub (ii),
18 which at the bottom of 13, you say:

19 The work on the Abuse portion of
20 the Claims Process is ongoing.
21 Given that the Claims of Caregiving
22 Parents or Caregiving Grandparents
23 will not be processed before
24 approximately four years following
25 the launch of the Claims Process,

May 21, 2024

J. Gott

49

1 after the expiration of the Claims
2 Deadline we continue to work with
3 the plaintiffs to develop a
4 trauma-informed approach to Abuse
5 determination - one of the most
6 sensitive and potentially
7 traumatizing implementation points
8 in the Settlement Agreement.

9 Is it fair to say that there's currently no formal
10 process for a Removed Child Class Member to advise the
11 Administrator that their Parent or Caregiving
12 Grandparent abused them?

13 MR. CHEN: Just so I understand, when you say
14 formal process?

15 BY MS. CLARKE:

16 100 Q. The Claims Form does not provide any space
17 for the Removed Child Class Member to indicate to the
18 Administrator that their Parent abused them or their
19 Caregiving Parent -- Grandparent abused them. Correct?

20 A. My understanding of the Settlement
21 Agreement is we are not permitted to question children
22 about their Caregivers and or abuse.

23 101 Q. Okay.

24 A. So, no, it does not include that in the --

25 102 Q. It's not on the form. And currently

1 there's no other process available for that information
2 to get to the Administrator.

3 A. Currently the Claim Form for the
4 Caregivers has a big part of their sign-off includes
5 confirming that the removal or removals were not due to
6 abuse. There's no other process in place at this time.

7 103 Q. Were any experts on the collecting of
8 information in relation to abuse consulted with by the
9 Administrator? Not in relation to the public
10 information that --

11 A. Correct.

12 104 Q. -- may be available as you shared with us.
13 But just in relation to the trauma-informed methods that
14 may be available to collecting such information.

15 A. Was research done? Is that the question?

16 105 Q. Were experts talked to?

17 A. Umm, other than those that are part of the
18 Parties of the Caring Society, no, that I'm aware of.

19 106 Q. Okay. My last area of questioning is on
20 the claims helpers, but I think you've answered most of
21 those questions, so just give me a minute here. Okay.
22 If we can just take a 10-minute break, I just want to
23 make sure I have what I need, and we'll come back.

24 -- Upon recessing at 2:29 p.m.

25 -- Brief recess

May 21, 2024

J. Gott

51

1 -- Upon resuming at 2:40 p.m.

2 JOELLE GOTT; Resumed

3 CONTINUED CROSS-EXAMINATION BY MS. CLARKE:

4 107 Q. Ms. Gott, when we were talking about the
5 January 18th, 2024 email, you had mentioned that --

6 MR. CHEN: That's one of the ones you marked.

7 MS. CLARKE: Correct, Exhibit No. 5.

8 MR. CHEN: January 18, 2024?

9 MS. CLARKE: Correct.

10 BY MS. CLARKE:

11 108 Q. You had mentioned in your evidence that
12 there were members of the subcommittee on this email?

13 A. M'hm.

14 109 Q. Could you just identify for me who those
15 members are, please?

16 A. That would include Mo and...

17 MR. CHEN: ...(inaudible).

18 MR. SEDDIGH: ...(inaudible).

19 THE DEPONENT: Sorry.

20 BY MS. CLARKE:

21 110 Q. Is that a change --

22 A. I think it depended on who -- like, not
23 all members were included. I think Robert Cowper showed
24 up at some of those meetings. It would have included
25 Nathan.

May 21, 2024

J. Gott

52

1 111 Q. Nathan Surkan?

2 A. Yes. And I don't see anybody else in
3 here.

4 112 Q. Are there other members of the
5 subcommittee that are not on this email that you can
6 recollect?

7 A. Vera.

8 113 Q. Vera Toppings from Faskens?

9 A. Yes.

10 114 Q. And anyone else?

11 A. There may have been other representatives
12 from Plaintiff counsel, but I don't recall.

13 115 Q. And what was the name of the subcommittee?
14 Or what was their role?

15 A. The role was the advancement of crafting
16 the claims process.

17 116 Q. Okay. When we were talking about the A7G
18 report, you had mentioned in your evidence that members
19 of the team had reviewed that before. Do you recall
20 that?

21 A. Yes.

22 117 Q. Do you know whether or not any of the
23 recommendations from the A7G report made their way into
24 the Claims process?

25 A. I don't know.

May 21, 2024

J. Gott

53

1 118 Q. Do you know whether or not any of the
2 recommendations made their way into the navigational
3 support approach, now the claims helpers approach?

4 A. I don't know.

5 119 Q. You also in your evidence had mentioned
6 Deloitte's work with Alexis Martin?

7 A. M'hm.

8 120 Q. Do you know whether or not she had any
9 specific knowledge or expertise in First Nations Child
10 Welfare?

11 A. I don't know.

12 MS. CLARKE: Those are my questions, thank
13 you.

14 MR. SEDDIGH: I have some questions for this
15 witness on this --

16 MS. CLARKE: Well, I think Mr. Chen has an
17 ability to redirect, but I don't believe that you do,
18 Mr. --

19 MR. SEDDIGH: I get to ask questions as
20 representing...(inaudible)...so --

21 THE COURT REPORTER: If you could speak up,
22 counsel, please.

23 MR. SEDDIGH: I want to ask my questions.

24 MR. CHEN: I can tell you we don't object to,
25 frankly, any of the parties asking the...(inaudible)...

1 questions.

2 MS. CLARKE: Okay. Maybe we can go off the
3 record for a minute.

4 -- Upon recessing at 2:44 p.m.

5 -- Brief recess

6 -- Upon resuming at 2:48 p.m.

7 MS. CLARKE: So Mr. Seddigh would like to ask
8 some questions of the witness. The Caring Society does
9 not agree that it's proper for Mr. Seddigh to ask his
10 own witness questions. But, nonetheless, given the
11 schedule that we have, the questions will be asked and
12 the Caring Society objects, but we'll proceed on that
13 basis.

14 MR. SEDDIGH: Thank you, counsel. And from
15 our point of view and position, just to be clear, we
16 don't agree that it's my witness I'm asking questions
17 of, but it's a witness from the Administrator, which has
18 its own obligations...(inaudible).

19 CROSS-EXAMINATION BY MR. SEDDIGH:

20 121 Q. So, Ms. Gott, thank you so much for your
21 time today. I believe you recall my friend Ms. Clarke
22 here took you to a number of emails and letters today
23 and that she marked as exhibits. Do you remember that?

24 A. Yes.

25 122 Q. These included various numbered exhibits

May 21, 2024

J. Gott

55

1 that she took you to, and they were marked as exhibits,
2 I believe, 1 through 7. Exhibit 6 was a letter from me
3 dated February 2nd, 2024 in response to her January 18
4 email setting out what the response on our end was. Do
5 you remember that? I think she marked it as Exhibit 6.
6 She'll tell me.

7 MR. CHEN: I guess Ms. Clarke is just
8 confirming.

9 MS. CLARKE: Exhibit 6 is the letter from
10 Sotos February --

11 MR. SEDDIGH: February 2nd?

12 MS. CLARKE: -- 2nd.

13 BY MR. SEDDIGH:

14 123 Q. Yes. And Exhibit 7 was my friend's
15 response, Ms. Clarke's response, dated February 15th,
16 2024. Do you remember that?

17 A. Yes.

18 124 Q. And my friend I believe said there was no
19 followup to that line of correspondence?

20 MS. CLARKE: No, I said I would check on the
21 break, counsel --

22 MR. SEDDIGH: Yes.

23 MS. CLARKE: -- and in fairness, I forgot to
24 do that. I did.

25

May 21, 2024

J. Gott

56

1 BY MR. SEDDIGH:

2 125 Q. I'll verify no blame cast on counsel. So
3 I'm going to share my screen. I'm on Zoom as well as in
4 the room, so you'll see what document that is. Do you
5 see the screen?

6 A. Yes.

7 126 Q. That is a letter dated February 27, 2024,
8 from me to my friend Ms. Clarke. Do you see that?

9 A. Yes.

10 127 Q. Just make sure that -- do you remember you
11 were copied on this email in response to the same line
12 of email chain?

13 A. Yes.

14 MR. SEDDIGH: I want to mark this as
15 Exhibit 8, madam reporter?

16 THE COURT REPORTER: Sorry, was that 8?

17 MR. SEDDIGH: Yes, please.

18 THE COURT REPORTER: Yes, Exhibit 8 marked in
19 evidence.

20 MR. SEDDIGH: Thank you.

21 -- EXHIBIT NO. 8: February 27/24 letter

22 MR. CHEN: Just to clarify...(inaudible).

23 MR. SEDDIGH: Yes, it's the same line of back
24 and forth. I could put it up, but I don't need to. The
25 witness has...(inaudible)...she's copied on it. That's

May 21, 2024

J. Gott

57

1 all I need.

2 BY MR. SEDDIGH:

3 128 Q. So going back to the January 18, 2024
4 email, Ms. Gott, which my friend said attached some
5 comments on the actual draft claims process, if you
6 recall. She marked it as Exhibit 5.

7 A. Yes.

8 129 Q. So my recollection is Ms. Clarke said
9 there was a Word document with some comments in it.
10 It's too long. We didn't attach it to --

11 MS. CLARKE: Just to be clear, I said we
12 didn't attach it because it was privileged.

13 MR. SEDDIGH: Privileged, yes. That's one
14 reason. But I just want to make sure that we have the
15 point here there was an attachment to this email that
16 had comments on the draft claim process at that time.

17 THE DEPONENT: I'm looking at the email, but
18 I'm not seeing an attachment, unless --

19 BY MR. SEDDIGH:

20 130 Q. Do you want to read the first line of that
21 email?

22 A. "Attached". It says, "Attached", but I
23 don't see it marked in the email.

24 131 Q. The attachment is not. But --

25 A. Typically an email, when there's an

May 21, 2024

J. Gott

58

1 attachment, you see it below the re line.

2 132 Q. Right.

3 A. So it's actually attached. So I don't see
4 -- but the name of the document that was attached, for
5 example.

6 133 Q. Do you have any reason to believe they
7 didn't provide comments?

8 A. No.

9 134 Q. That there was an attachment to this that
10 had my friends or Caring Society's comments on the draft
11 claims process at the time? Do you remember that? It
12 was a Word document?

13 A. I don't recall. I mean...

14 135 Q. Do you remember receiving comments from
15 the Caring Society on the draft claims process?

16 A. Yes.

17 136 Q. There was a document, the Word version had
18 comments on it?

19 A. Yes, I do.

20 137 Q. Okay. So I put it to you, you have no
21 reason to think that was not the document that was
22 attached to this.

23 A. Correct.

24 138 Q. This was dated January 18th.

25 A. The email, yes.

May 21, 2024

J. Gott

59

1 139 Q. Okay. My friends on that same email, if
2 you have it open, asked you who is on that subcommittee.

3 A. Correct.

4 140 Q. And you identified me, Nathan Surkan, my
5 colleague Rob Cowper, who attended a few but not
6 all...(inaudible)...on the counsel's side. On
7 Deloitte's side, who was on that?

8 A. Zoia Petrossian, and at times Guillaume
9 Vadeboncoeur.

10 141 Q. Are you member of that committee?

11 A. Yes.

12 142 Q. Do you attend the meetings of that
13 committee?

14 A. Yes.

15 143 Q. So I'm going to ask you, do you remember
16 if the subcommittee met to go through the Caring
17 Society's comments on the claims process?

18 A. I don't recall, but I would expect, yeah.

19 144 Q. I'll be more specific. On January 25th,
20 2024, since the date I was...(inaudible)...calendar,
21 there was a meeting of the subcommittee to go through
22 the Caring Society's comments. Does that refresh your
23 memory? Make it a date --

24 A. Yes.

25 145 Q. If you want to --

May 21, 2024

J. Gott

60

1 A. I don't know the date, but I would -- if
2 that was the subject of the meeting, I would assume
3 that's what we spoke about. We were in attendance.

4 146 Q. Do you remember the subcommittee going
5 through the comments provided by the Caring Society?

6 A. I do remember going through certain
7 elements of these.

8 147 Q. Yeah, but I'm not asking you about what's
9 in the letter --

10 A. Oh.

11 148 Q. -- or the email, but the attachment, the
12 actual Word document seen on the screen and folks going
13 through the comments.

14 A. Those comments would have been reviewed
15 definitely by my partner Zoia Petrossian. Whether we
16 discussed them explicitly in that meeting, I can't
17 recall.

18 149 Q. So I put it to you that the subcommittee
19 met. I don't personally -- I see you on the calendar --

20 MS. CLARKE: I just want to be really clear
21 that you're now leading the witness with your own
22 evidence. You put evidence to her --

23 MR. SEDDIGH: Yes.

24 MS. CLARKE: -- and now you're leading your
25 own evidence.

May 21, 2024

J. Gott

61

1 MR. SEDDIGH: She says she doesn't remember,
2 so I'm going to put the version of what happened to her.
3 Either she remembers it or doesn't remember it, or
4 whatever that --

5 MS. CLARKE: And that would be considered
6 leading the witness.

7 MR. SEDDIGH: Yep. I --

8 MS. CLARKE: I just wanted to note my
9 objection, but you're leading the witness.

10 MR. SEDDIGH: Duly noted.

11 MR. CHEN: So just for the record, my position
12 is I don't object to the leading nature of the question,
13 given his --

14 MS. CLARKE: Given that it's his witness?

15 MR. CHEN: No, that's not what I'm saying. I
16 mean, I think we, Deloitte, is here as Claims
17 Administrator, right, and...(inaudible)...here either as
18 Class Counsel or partisan...(inaudible)...in situ, but I
19 don't object to it.

20 BY MR. SEDDIGH:

21 150 Q. So let me go back to my question. So you
22 said your partner Zoia Petrossian was on the January 18
23 email as part of a subcommittee, correct?

24 A. Correct.

25 151 Q. Who would have gone through these comments

May 21, 2024

J. Gott

62

1 provided by my friend and the Caring Society.

2 A. Correct.

3 152 Q. And do you have any reason to believe that
4 the subcommittee did not meet to through the comments
5 one by one...(inaudible).

6 A. Can you ask that again?

7 THE COURT REPORTER: Sorry, I can't hear.

8 MR. SEDDIGH: You need to speak up.

9 THE DEPONENT: Oh, can you ask that again.

10 BY MR. SEDDIGH:

11 153 Q. So as you were privy to the way the
12 subcommittee worked in this claims process; is that
13 correct?

14 A. Correct.

15 154 Q. And you generally attended the meetings.

16 A. Correct.

17 155 Q. And so a series of comments on the actual
18 draft documents came attached to this email, which my
19 friends...(inaudible). And you said you believe your
20 partner Zoia Petrossian, either way, would have gone
21 through the comments. What the proposition that I put
22 to you is, the committee met to go through these
23 comments. Do you have any reason to believe that's not
24 correct?

25 A. No.

1 156 Q. Thank you. My friend had some questions
2 for you regarding what's generally referred
3 to...(inaudible)... supports and the question of
4 navigators and what's now called claims helpers in the
5 documents. Do you remember that?

6 A. Yes.

7 157 Q. And you have been involved in the
8 development of the claims helper program included in
9 that? Is that correct?

10 A. Yes, peripherally.

11 158 Q. So is the implementation work, the
12 development of that package, finished? Or is it still
13 in the works?

14 A. It's still in the works. The materials
15 were -- the training is in the works. But the structure
16 of the plan is -- has been agreed to by the parties and
17 including Caring.

18 159 Q. Thank you. No further questions.

19 A. Thank you.

20 MR. CHEN: No one else on my end has
21 questions? All right, no re-exam.

22

23 -- Whereupon the Examination is concluded at 3:00 p.m.

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I hereby certify that this is the
Cross-Examination of JOELLE GOTT,
taken before me to the best of my
skill and ability, on the 21st
day of May, 2024.

MARY BRAIS, CSR
Court Reporter

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original signature of the Court Reporter

EXHIBIT No. 1
EXAMINATION OF J. Gott
on April 12, 2024 Aff.
Moushoem VS A.G.
DATE May 21, 2024
NETWORK COURT REPORTING

Sarah Clarke

From: Sarah Clarke
Sent: September 11, 2023 1:17 PM
To: Joelle Gott; Petrossian, Zoia; David Sterns; Robert Kugler; Mohsen Seddigh; Geoff Cowper; Dianne Corbiere; Stuart Wuttke; Vadeboncoeur, Guillaume
Cc: David Taylor
Subject: RE: Feedback on Deloitte/Argyle & the Financial literacy proposal

Good morning everyone,

Thank you for a good meeting on Friday afternoon.

As a recap, the Caring Society is suggesting that the following work be undertaken in order to prepare for engagement with the FNCFS Agencies and the NAC:

- Request from Canada and the provinces when each FNCFS Agency received its full delegation
- Discussion with the provinces regarding the status of their records for those eligible before a FNCFS Agencies was delegated
- Preparation of a logic model regarding where the necessary records are likely held based on when the various agencies received delegation v. provincial records
- Overview of the privacy requirements for each CFS statute and what is required as "consent" in order for disclosure of those records to be provided
- Overview of the voluntary placement agreement provisions in each CFS statute (going back to 1991)
- Overview of the A7G recommendations and how those apply to the distribution protocol process

We look forward to hearing from you on these important aspects.

Many thanks,
Sarah

Sarah Clarke

CLARKE CHILD & FAMILY LAW
36 Toronto Street, Suite 950
Toronto, ON M5C 2C5

Tel: 416.260.3030
Fax: 647.689.3286

This message is intended only for the persons to whom it is addressed. It should not be read by or delivered to any person, as it may contain privileged or confidential information. If you have received this message in error, please notify me immediately at [REDACTED]

Sarah Clarke

From: Sarah Clarke
Sent: September 6, 2023 6:31 AM
To: Joelle Gott; Petrossian, Zoia; David Sterns; Robert Kugler; Mohsen Seddigh; Geoff Cowper; Dianne Corbiere; Stuart Wuttke; Vadeboncoeur, Guillaume
Cc: David Taylor
Subject: Feedback on Deloitte/Argyle & the Financial literacy proposal
Attachments: CONFIDENTIAL_Deloitte_Navigator Proposal.pdf; Caring Society Advice for Class Counsel.docx

Good morning everyone,

I am passing along Dr. Blackstock's review of the Navigator proposal and her comments on the approach. This was shared with Stephanie last week but I wanted to make sure it made its way to everyone. Please advise as to the status of her comments and when a revised proposal may be made available for a final review.

As an important point, the acronym "JP" should not be used to describe Jordan's Principle. The Elders of Norway House Cree Nation ask that Jordan's Principle always be fully pronounced and spelt out - it recognizes his spirit and memory.

Surge capacity of community (and urban) services for addictions, mental health, law enforcement, CFS and domestic violence are required to safeguard vulnerable recipients. Dr. Blackstock also recommend community preparedness kits with info on the compensation and recommended steps to prevent the worst outcomes. Consistent with the advice from youth in care, supports should be available prior to, during, and after compensation.

Dr. Blackstock also reviewed the [REDACTED] proposal from AFAO and colleagues. The priority for this amount of money should be the community based service surge support v. financial literacy. We have existing tools developed by youth in care and the experience of the Caring Society is that RBC (at least) was willing to provide supports in person via their branches if requested which can include having trained Indigenous employees available for free. The Caring Society cannot support [REDACTED] proposal in light of the greater need for community surge supports and other viable financial literacy options.

Please let me know if you have any questions.

Many thanks,
Sarah

Sarah Clarke

CLARKE CHILD & FAMILY LAW
36 Toronto Street, Suite 950
Toronto, ON M5C 2C5

Tel: 416.260.3030
Fax: 647.689.3286

This message is intended only for the persons to whom it is addressed. It should not be read by or delivered to any person, as it may contain privileged or confidential information. If you have received this message in error, please notify me immediately at [REDACTED]

Caring Society Advice for Class Counsel , Deloitte and Argyle

August 30, 2023

1. Advocate for surge capacity funding for First Nations service providers to respond to higher needs relating to the compensation (i.e.: addictions, mental health, domestic violence, law enforcement, youth centers, child and family, etc.) – this is absolutely vital as the current constellation of supports will be inadequate to meet the needs of recipients.
2. The current allocation strategy is not based on evidence and not likely to succeed. Allocation of *navigators* should be done based on data on the number of children in care per province and adjusted for claims under Jordan’s Principle as required. The current approach does not account for the evidence demonstrating that the majority of children in care are from BC, Alberta, Saskatchewan and Manitoba. Data also suggest that 72 percent of First Nations youth in care are off reserve so the capacity there should be bolstered. Review data in the First Nations Canadian Incidence Study on Reported Child Abuse and Neglect for more information.
3. Develop a navigator recruitment strategy that does not attract people away from existing First Nations services.
4. Avoid overselling what the supports can accomplish- be realistic about the limitations of the proposed supports.
5. Ensure service providers who you anticipate referring people to are aware of any documents referring to them and consent to such referrals.
6. Consult with experts (including trusted youth organizations) to flush out how to communicate and effective working methods with youth and young adults taking into full account the A7G reports relevant to compensation and accountability (*Children Back; Land Back, Accountability in our Lifetime, and Justice, Equity and Culture: the First Ever YICC gathering of First Nations Youth Advisors*) and the science on emerging adulthood.
7. Ensure *navigation* supports are available Prior, during and after the claims period.
8. Ensure there is clinical capacity and clinical supervision of “navigators” particularly in the areas of mental health, addiction, domestic violence and working with young people – this should be available 24/7.

9. There is an over-reliance on de-escalation. It should be framed as realistic de-escalation. It is important that people are trained to identify situations where de-escalation can work and where it will not.
10. Proactively identify groups of First Nations claimants that may require more tailored supports based on existing data. For example, how are the needs of persons who are neuro-diverse, have FASD, have a disability or are members of the LGBTQAI2S+ communities being accommodated? We generated a chart of key constituencies as part of the CHRT process- use that as a basis.
11. Identify high risk First Nations that are currently experiencing crisis with mental health and addictions and/or climate emergency and proactively reach out to provide supports in advance of compensation and develop strategies for mitigating serious crisis and critical incidence that happen during or after compensation. For example, what response will happen if a First Nation asks for a pause in the compensation roll out due to a suicide or overdose crisis? Consider including a national crisis response team to address significant issues that may arise in relation to expected increase in drug use.
12. Prepare responses for youth in care or from care who are not entitled to compensation under this agreement but may be entitled under other class actions.
13. Ensure the communication plan includes informing groups like alternate caregivers, teachers, or health workers who youth may reach out to for assistance.
14. Ensure communication methods and content are tailored to a younger audience (use text functions that use less data and are anonymous).
15. Change the taxonomy used for “navigators” so it more accurately reflects the job and does not confuse with the “navigators” Canada deploys for other services.
16. Avoid using “Indigenous” as this agreement only applies to First Nations and
17. be clear about how culturally appropriate is going to be achieved.
18. Do a copy edit of materials before circulating.

EXHIBIT No. 3
EXAMINATION OF J. Gott
on April 12, 2024 A.F.F.
Marshorn VS A.G.
DATE May 21, 2024
NETWORK COURT REPORTING

Sarah Clarke

Subject: Feedback on the supports
Attachments: Child and Youth Records.pdf

From: Cindy Blackstock <[REDACTED]>
Sent: October 3, 2023 2:32 PM
To: [REDACTED]
Cc: Stephanie Wellman <[REDACTED]>
Subject: Re: Feedback on the supports

Good morning, Dean and Joelle

I am pleased to attach a document to guide records location for child in care/ kith placement compensation recipients. With Stephanie's assistance this document ought to be reviewed by the National Advisory Committee for further review, but I am sending it to you to assist you as you develop your records location plan.

I would kindly remind you of my request for feedback on the detailed advice I provided on supports over a month ago. I am happy to provide advice in the best interest of children and want to ensure it is being seriously considered.

Have a good day,

Cindy

From: Cindy Blackstock
Sent: September 29, 2023 12:14 PM
To: [REDACTED]
Cc: Stephanie Wellman <[REDACTED]>
Subject: Feedback on the supports

Good morning Dean and Joelle,

As you will recall, I submitted extensive suggestions regarding the compensation supports/navigator process a number of weeks ago. I would be most grateful to receive a response to that feedback as the Federal Court process is advancing and communities are wanting clarity on the types of supports that are available.

Can you please provide me with a specific date as to when I will hear back about my suggestions?

Also, I have prepared a summary document on records that I am hoping to send to you next week.

Thank you,
Cindy

Cindy Blackstock
Executive Director

First Nations Child & Family Caring Society [REDACTED]
613-230-5885

New Address Alert!

The Caring Society will be moving to the address below on February 18, 2022:

First Nations Child & Family Caring Society

350 Sparks Street, Unit 202

Ottawa ON

K1R 7S8

Child and Youth in Care Records Location

DRAFT: MUST BE REVIEWED BY NAC

Cindy Blackstock

September 20, 2023

1. Background

This document provides general information to guide the location of records for First Nations children placed in alternative care. The word “apprehension” is not used as it is a dated, draws its meaning from police work, and limits the class as the CHRT included children placed in alternative care via agreement. It is also to keep in mind that records for Kith children will largely be held by fully delegated agencies or the province/Yukon as the definition requires child welfare involvement (which will translate into protection delegation in many cases).

It will be important to identify the child and family service, privacy and adoption legislation and amendments throughout the claims period by province and in the Yukon. This will assist in using the proper terms for locating children placed in alternative care or a Kith Placement and any relevant records storage requirements.

The records management of the Department has not been tested but has been widely criticized (see testimony during the CHRT). I anticipate the most difficult records to access will be those for persons in the 1991-2005 group.

Directive 20-1 came into force in 1991 and provided a developmental pathway for First Nations agencies to be established. Prior to that there were a handful of what are known as “pre-directive” agencies. Overwhelmingly, First Nations children received child and family services from the provinces/Yukon between 1991-1995. During this time the province/Yukon are the only records holders of child and family other than removals and adoptions that would be documented in the courts. Some jurisdictions also have custom adoption as part of their child welfare legislation (i.e.: Yukon, BC)

Agencies came online in an incremental way with the vast majority being established by the end of the 1990’s. When an agency was established, opened child in care and family service files would be transferred from the province to the agency. In the main, closed files would remain with the province unless otherwise agreed to. As detailed at length in evidence before the Tribunal, First Nations agencies are required to report children placed in alternative care to ISC and to their respective province. A chief complaint from agencies was, and is, that this required double data entry from the agency as the two reporting systems were not generally aligned.

The Provincial Courts will typically only have records for children who were found to be in need of protection, removed, and/or placed under a supervision order and/or adopted and for which a presentation or subsequent hearing was required. Relevant to Kith Placements, a “supervision order” may be made whereby children can be placed outside of the home, family, and community whilst the family receives services and periodic reports are issued to the courts until the risk to the child is addressed.

The provinces (particularly BC, Alta, Yukon, and a small number in Ontario) have continued to provide child and family services to First Nations children throughout the claims period. This happened in two ways: 1) First Nations with no agencies wherein the provinces have all the records and 2) Partially delegated First Nations where the agencies have some child in care records but generally do not do child protection (i.e.: depending on the agency delegation level). Where the province serves a First Nation without an agency, records of children in alternative care will be held by the province. Where a partially delegated First Nation agency holds guardianship delegation (overseeing children in care) then the agency will have the child in care file and will have reported to both ISC and the province on said child.

Respecting Kith Placements, the key question to be answered is where agencies/provincial workers would record a voluntary change in placement that occurred during a child welfare investigation. This is likely in what is known as a Family Service file. Family service files are generally opened under the name of the child's guardian so if the child's guardian changes over time there can be multiple family service files. However, in some jurisdictions the family file is opened under the biological mother's last name. Learning from the provinces how these files are open and tracked will be important to retrieving the right records.

Other sources of file data include adoption and resource files. Provincial child welfare laws often provide for permanency in the calculation of a child's best interest. This means that children in care can be placed for adoption after they remain in care for specific periods of time (per the applicable child welfare law) and a return to family is no longer viable. Adoption files are accompanied by legal orders and can be sealed. Resource files (files kept on alternative placements such as customary care, foster, group and institutional care) are another possible information source. These files may include the identities of children placed in these arrangements.

The provinces and Yukon will receive a significant number of calls regarding records as the Canadian Incidence Study on Reported Child Abuse and Neglect has repeatedly shown that the preponderance of First Nations children in care are off reserve. In 2019, the number of First Nations children in care off reserve was 72% (FNCIS, 2019).

Given the expanse of time in this class, and the serious deficits Directive 20-1 had for First Nations Agency records keeping/management, many of the files will be in paper form particularly for the group from 1991-2005. Records management was also influenced by the type of funding arrangement Canada applied in the region with Directive 20-1 providing the least support, EPFA a marginal improvement and the 65 Welfare Agreement was better.

Another downside of the discrimination is that some agencies simply could not stay open given the serious funding deficits (i.e.: an agency in Quebec). This meant that some agencies closed and the responsibility for children in care would revert to the province.

As agencies and provinces will have different processes and locations to archive files and/or file data, adequate time for file retrieval is necessary.

2. Provinces/Yukon

Given the role of the provinces as both direct service delivery agent as it evolved over time and the receiver of reports on children in alternative care (as per delegation requirements) they will have records on a preponderance of children in alternative care. There are key initial questions to ask the provinces:

POSSIBLE GENERAL QUESTIONS

- What are your views about the accuracy of child in care records relating to First Nations children on reserve and in the Yukon between 1991-2022?
- Do you have any knowledge of the accuracy of the Indigenous Services Canada (formerly known as Indian Affairs, Indian Affairs Canada, etc.) relating to First Nations children in care on reserve and in the Yukon between 1991-2022?
- In what file categories (child in care file, family service file, etc.) were records of children placed in alternative care recorded. Did those file categories change over time from 1991-2022?
- In what file type would records of a child moved during a child welfare intervention but not brought into care under a formal voluntary agreement or removal (also known as Kith placements) be recorded? Did those file types change between 1991- 2022?
- Does the province maintain files on alternative placements that include records of children placed in those homes? If so, in what file type and did those file types change between 1991-2022?
- Does the province record when a child is removed due to sexual or physical abuse and, if so, on what file types is this information recorded? Did this type of recording change between 1991-2022? Are these records searchable?
- What are the record storage/retention policies that have been in effect from 1991-2002. The goal of this question is to understand what records may have been destroyed, placed in archives, etc.)
- In what form are the records (i.e.: paper, electronic and if electronic have formats been updated so they continue to be accessible)?
- What policy existed to record the First Nations identity of a child and their parents (i.e.: status number, First Nation) at different points of time during the claims period? How reliable is this data?
- What policy existed to record whether a family of a child in care or Kith placement was located on and off reserve between 1991-2022?
- Who can access child in care records and what are the relevant privacy provisions in the child welfare legislation and other relevant statutes?
- What are their views about the integrity (reliability and validity) of ISC records of children in care? This is material to how often provincial records may be relied upon).

POSSIBLE GENERAL QUESTIONS WHERE AGENCIES EXIST

- What are your views about the accuracy of agency child in care records for the applicable years they have operated between 1991-2022?
- Is there a specific or unique method that voluntary agreements/arrangements were tracked? Is there a method to search for such records and if so, has that method changed over time between 1991-2022?
- How did the province document when an agency received delegation for protection/guardianship and thus kept children in care and Kith files?
- What policies did the province have in place about child in care and Kith children file transfers to agencies (i.e.: open files were transferred only; open and closed files, etc.)
- How did agency reporting to ISC regarding children in care and Kith children change between 1991-2022 (format, requirements)?
- How did agency reporting to ISC regarding children in care and Kith children change between 1991-2022 (format, requirements)?
- Were there agencies that ceased operations or paused operations causing the province to resume case/records management?

As is already very clear, the provinces will want financial resources and information if there is any expectation that they make their records available and they will also likely want supports for persons who are receiving compensation.

Some provinces will likely qualify for standing at Federal Court as they are guardians of some of the children who will be receiving compensation so addressing their concerns is vital for the success of the case and more importantly ensuring culturally based access to compensation.

3. Agencies

As evidenced at the Tribunal, Directive 20-1 did not include sufficient funds for records management and included no funding for computers. This means that agencies were particularly disadvantaged in terms of record keeping and management. While some agencies managed to get some computers donated by their First Nations (most in Sask or BC) or the province (Mi'kmaw) others continued pen and paper until at least 2016 (New Brunswick). This means that there will be paper records for a longer duration of time. Moreover, there was no funding in Directive 20-1 for things like fireproof file cabinets or secured file rooms making agency records more vulnerable to destruction. In general, agencies were required to follow records management per the provincial delegation, but Canada's discrimination meant that some agencies were unable to do so.

Agencies should be asked the following noting that although the entire class period is cited that they should respond only from the point of time they began managing child in care files:

POSSIBLE GENERAL QUESTIONS

- What are your views about the accuracy of provincial child in care records relating to First Nations children in care on reserve and in the Yukon between 1991-2022?
- Do you have any knowledge of the accuracy of the Indigenous Services Canada (formerly known as Indian Affairs, Indian Affairs Canada, etc.) relating to First Nations children in care on reserve and in the Yukon between 1991-2022?
- What are your views about the accuracy of agency child in care records relating to First Nations children on reserve and in the Yukon between 1991-2022?
- When did you receive your delegation from the province?
- When did you begin providing protection services (if applicable)?
- When did you begin providing guardianship services (if applicable)?
- Does your agency have a mandate to do adoptions under the provincial statute (custom or provincial)? If so since when?
- What file type (child in care file, family service file, etc.) includes records of children placed in alternative care? Did those file types change over time from 1991-2022?
- In what file type would records of a child moved during a child welfare intervention but not brought into care under a formal voluntary agreement or removal (also known as Kith placements) be recorded? Did those file types change from the time the agency began operating until 2022? Did those file categories change over time from 1991-2022?
- What were the agency reporting requirements for children in care or Kith children to ISC from the time the agency provided protection and/or guardianship services to 2022?
- What were the agency reporting requirements for children in care or Kith children to the province from the time the agency provided protection and/or guardianship services to 2022?
- Does the agency record when a child is removed or placed in a Kith placement due to sexual or physical abuse and, if so, on what file types is this information recorded? Did this type of recording change between 1991-2022? Is it possible to search your agency records based on the type of verified protection concern?
- What were the record storage/retention policies that have been in effect from 1991-2002. (The goal of this question is to understand what records may have been destroyed, placed in archives, etc.)
- In what form are the records (i.e.: paper, electronic and if electronic have formats been updated so they continue to be accessible)?
- What policy existed to record the First Nations identity of a child and their parents (i.e.: status number, First Nation) at different points of time during the claims period? How reliable is this data?
- Who can access child in care records and what are the relevant privacy provisions in your child welfare legislation and other relevant statutes?
- What are their views about the integrity (reliability and validity) of ISC records of children in care? This is material to how often provincial records may be relied upon).

- Where are child in care files, family service files, resource files (if they include child placement information) archived and how long will it take for retrieval?

POSSIBLE TAILORED QUESTIONS FOR PARTIALLY DELEGATED AGENCIES

- Does your delegation include guardianship for children in care by removal or formal agreement? If so, since when?
- Does your delegation include working with Kith children? If so, since when?
- Is your agency authorized to do adoptions/custom adoptions of children in care? If so, since when?
- Does your agency accompany provincial authorities or a fully delegated First Nations agency on child protection investigations where children are removed?
- If so, where are the records of the removal kept? For further clarity- does your agency keep notes on the removal separate from the provincial/First Nations agency? If so, what is the nature of those records, where are they stored and in what format?

As is already very clear, the agencies will want clear guidance on how to manage statutory privacy obligations, supports for children, youth and families receiving compensation. They will also need financial resources and records location support if there is any expectation that they make their records available and they will also likely want supports for persons who are receiving compensation.

Moreover, it is important to understand that Agencies, like the provinces, will likely have standing in any Federal Court proceedings as they are the guardians of some of the children in care who are entitled to compensation.

This document should be read in concert with the feedback on supports that the Caring Society provided to Deloitte and Class Counsel and adopts our previous recommendations to document all the privacy obligations by province/Yukon, disclose compensation supports and provide archivists/genealogists and other records supports to agencies..

EXHIBIT No. 4 137
EXAMINATION OF J. GOTT
on April 12, 2024 A.F.F.
Mushroom VS A.G.
DATE May 21, 2024
NETWORK COURT REPORTING

Sarah Clarke

Subject: Supports and records feedback

From: Cindy Blackstock
Sent: November 1, 2023 6:38 AM
To: Janvier, Dean [REDACTED]; Gott, Joelle [REDACTED]

Cc: Stephanie Wellman [REDACTED]
Subject: Supports and records feedback

Good morning Deana and Joelle

I am writing again to follow up on my feedback provided to you on supports (August 30, 2023) and records (October 3, 2023).

As the FSA was approved in Federal Court last week it is vital that a comprehensive and effective support plan be put in place. Can you please provide me with a specific date as to when you can let me know which, if any, of my suggestions Deloitte plans to adopt?

As a courtesy to you, I wanted to let you know that the Caring Society will be making submissions to the Federal Court regarding supports at the Distribution Protocol approval hearing.

Thank you

Cindy

Sarah Clarke

Subject: Claims Process - Removed Child Class & Removed Child Family Law

From: Sarah Clarke
Sent: Thursday, January 18, 2024 5:11 PM
To: Dianne Corbiere [redacted] Stuart Wuttke [redacted] Geoff Cowper [redacted]
[redacted] David Sterns [redacted] Robert Kugler [redacted]; Alexandre Paquette-
Dénommé [redacted] Mohsen Seddigh [redacted] Vickery, Paul [redacted]
[redacted] Rupar, Christopher [redacted] Norris, Sarah-Dawn [redacted]
[redacted] Gott, Joelle [redacted] Petrossian, Zoia [redacted]
Vadeboncoeur, Guillaume [redacted] Nathan Surkan [redacted]
Cc: David Taylor [redacted] Logan Stack [redacted] Cindy Blackstock [redacted]

Subject: Claims Process - Removed Child Class & Removed Child Family Law

Good afternoon,

Attached please find the Caring Society's preliminary comments on the Claims Process Document for the Removed Child Class and Removed Child Family Class. In addition to the comments found herein, please note the following:

- a. The Caring Society continues to be very concerned about the lack of planning and communications around supports and records. This is critical and supports must be in place and service provides need to be on notice before the Launch Date, including allied service providers. While we understand that there is a working group focused on the issue of supports, we continue to await a response from Deloitte and counsel to our suggestions and continue to await an opportunity to meet with Deloitte about this. We have extended an invitation on a number of occasions but to date have not met with Deloitte. We remain available to meet.
- b. The Caring Society continues to be concerned about the lack of planning around communication with the provinces and the agencies. There are a number of issues raised in the Removed Child Class / Removed Child Family Class Claims Process that will require input, information and cooperation with the provinces and agencies. We continue to await a response to Dr. Blackstock's document regarding records and responses to our questions about further meetings with the provinces. We also continue to await a response from Deloitte regarding our suggested approach to meeting with the National Advisory Committee.
- c. The Claims Process does not include an avenue for claimants who are eligible but are not located on the ISC database. The Caring Society is concerned about this process moving forward without a clear path for those who do not appear on the database. The Caring Society is strongly of the view that this is not an item that should be left to a later date. This is not in keeping with the representations collectively made to the Tribunal and is not in keeping with the terms of the FSA. We look forward to receiving a revised draft of the Claims Process that includes an avenue for these children.
- d. The Claims Process requirements in relation to Deceased Claimants is quite confusing. We suggest in our comments that this approach be streamlined and follow the outline in the FSA.

As we continue to review and consider the Claims Process document, we will share further comments and suggestions. We look forward to receiving a copy of the revised draft and an update regarding when consultations will begin.

Thanks,
Sarah

Sarah Clarke
CLARKE CHILD & FAMILY LAW
36 Toronto Street, Suite 950
Toronto, ON M5C 2C5

Tel: 416.260.3030
Fax: 647.689.3286

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EXHIBIT No. 6
EXAMINATION OF J. Gott
on April 12, 2024 Aff.
Moushoom VS A.G.
DATE May 21, 2024
NETWORK COURT REPORTING

140

180 Dundas Street West, Suite 1200
Toronto, Ontario M5G 1Z8
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Mohsen Seddigh
Phone: 416.572.7320
Email: [REDACTED]

Assistant: Georgia Scott-McLaren
Phone: 416.977.5333 ext. 310
Email: [REDACTED]

File No:

February 2, 2024

VIA EMAIL

Sarah Clarke
CLARKE CHILD & FAMILY LAW
36 Toronto Street, Suite 950
Toronto, ON M5C 2C5
Tel: 416.260.3030

Dear Ms. Clarke

Re: Draft Claims Process: Removed Child Class & Removed Child Family Law

Caring Society Comments and Concerns

Thanks for your email of January 18, 2024 and your comments on the draft claims process enclosed to same.

The working group has met at length to consider your comments and implement the ones that they could. Further, the plaintiffs have conferred to address the matters that you raise, given that you phrase them as concerns. The following summarizes the plaintiffs' responses as requested.

As always, we seek and welcome the constructive participation and contribution of the Caring Society.

However, we cannot accede to every request and suggestion of the Caring Society that affects the class.

The relationship of the parties should be understood within the context of the Caring Society's distinctive position with respect to this proceeding and the class. The Caring Society has a narrower interest than the other parties. It has only ever shown an interest in a subset of the class that the Caring Society views as covered by the Tribunal's orders. The Caring Society has consistently disavowed any obligation to, or interest in, the rest of the class.

This narrow focus is reflected in the FSA, as well as the Minutes of Settlement dated April 19, 2023, which the Caring Society negotiated, including a \$5-million budget outside the purview of the Court's supervision, specifically to advocate for the interests of that subgroup of the class only.

The plaintiffs, the plaintiffs' counsel, and the administrator have obligations to the entire class and cannot prefer the interests of one group to another.

We take no issue with the Caring Society's chosen approach and focus. However, we cannot be governed by the same narrow approach as the Caring Society's.



Even with respect to class members who may fall within the Caring Society's area of interest, we may not always be able to agree with the Caring Society's position if in our view it is against the best interests of the class.

The example of caregiver abuse is one where, under the Caring Society's approach, up to 30% of First Nations caregivers could be excluded from the FSA on account of broad notions of abuse arising from poverty and neglect, while the actual number of First Nations parents who committed sexual and serious physical abuse is a small fraction of that group. The plaintiffs, guided by the affected communities, do not agree with that broad conceptualization of parental abuse as it disregards the intergenerational context of the harm at issue in this case and harshly penalizes many of the parents who lost their children to poverty and a broken system.

A. The Comments and Proposed Edits in the Draft Claims Process

As indicated above, we have carefully reviewed the comments and suggestions within the draft claims process and implemented those that were practical and compatible with the approach adopted by the plaintiffs, described below.

The Caring Society has been invited to our plenary meetings along with everyone else, and has had access to drafts. This will remain the case throughout the implementation of the settlement.

We ask that future comments be integrated into the drafting and discussion process rather than sent at or near the end.

In this instance, the Caring Society was given access to the online folder housing the working draft of the claims process on September 26, 2023, at the same time as most plaintiffs' counsel (and long before Canada was given a draft of the document).

The Caring Society has been privy to the various iterations of this document and has been invited to all the plenary meetings where decision points have been debated and decided. Caring Society counsel participated in all of these meetings except for the latest on January 12, 2024, when you advised you were busy with other undertakings and could not partake.

Engaging with the issues as they are debated and decided facilitates due consideration of the Caring Society's points as part of the collaborative discussions where decisions are made. Raising them after the fact is far less constructive if only because it limits our ability to engage or change course after extensive deliberation.

In that light, some of the comments you have made on the document are helpful and have been incorporated.

Some of the comments, however, indicate no engagement at all with the process or awareness of the work undertaken to discuss each issue and come to a landing on them in the best interests of

the class. For that reason, we repeat some information here that the Caring Society has been privy to throughout. You will see some examples below that relate to the concerns you have expressed.

B. The Scope of This Claims Process

As the Caring Society may recall from the in-person plenary meeting in Montreal on November 21, 2023, following months of deliberation and debate, the decision was eventually made to focus the first claims process on the growing number of class members (currently more than 96,000) who can be summarily identified on the ISC database and their caregivers.

The concomitant decision in Montreal was that the process for Removed Child Class Members, if any, who are not on the ISC database will be the next phase in light of the complexities involved.

This draft claims process reflects that approach.

As Canada works toward completion of the ISC database in the coming months or years, with its multiple overlapping periods and data sources, it is not yet clear to us if there are any Removed Child Class Members who will not be on the ISC database. Again, this has been extensively discussed at the meetings at which you were present coupled with detailed updates on the process by Deloitte whose data team has been analyzing the data provided so far.

At every meeting subsequent to November 21, 2023, we have refreshed our collective memories on the decided approach with respect to this claims process and how the draft reflects that approach.

The concern you express in your email and comments on the draft now, with the implication of delaying compensation for everyone until we have tackled the complexities of class members – if any – who may not be on the ISC database formed a major part of the deliberations.

The decision was made to proceed as this claims process reflects.

This approach follows the directions of the Chiefs in Assembly and what we hear from class members to expedite compensation to those who are more summarily identifiable while pushing ahead with the work regarding others.

We cannot reverse course at this stage to delay the launch date for everyone in the class pending clarification of the complexities of those class members, if any, that may prove not to be on the ISC database.

The concern you express in your email and comments now was not raised by the Caring Society at any of the meetings you attended where this approach was extensively discussed.

C. Why This Claims Process Does Not Include References to Kith Classes

The separation of the claims processes for the kith classes and removed child classes was one of the requests of the Caring Society and the AFN during the meetings when this approach was discussed and decided.

The plaintiffs agreed after extensively discussing the pros and cons of bifurcating these claims processes.

Kith as a term is not common or familiar and there is little benefit to discussing the kith class in a claims process that does not relate to the kith classes. Its use can confuse the class rather than help. As you may recall from the meetings, this risk of confusion animated a significant portion of the debate.

The plaintiffs have already communicated the separation of the kith classes from the Removed Child Class to the Chiefs in Assembly and the Court.

It is too late at this stage to reverse that bifurcation, especially in light of the delays that will inevitably ensue in having to revamp the process and approach.

D. Allegations Regarding Supports and Records

The claims process embeds the requirement that the process be launched with FSA supports in place.

The Caring Society has provided its vision of supports, which the plaintiffs and Deloitte have examined and considered.

Further, your client personally attended several of the parties' plenary meetings. She discussed her views on supports at length in the presence of all parties and Deloitte at least at two of those meetings on September 15, 2023, and November 21, 2023.

A substantial part of the day-long plenary meeting of the parties in Montreal on November 21, 2023 was yielded to your client who fully expressed her views and asked questions until she had to leave at 3 PM.

Supports must be consistent with the FSA as approved by the Court, specifically Schedule I and Article 3.02(1)(g)(j).

The Caring Society's vision of supports, which appears to, for example, require the fixing of unfortunate systemic issues such as housing on-reserve and the opioids crisis, amongst others, may or may not fit within the FSA. (There are other ongoing class proceedings that seek to address systemic issues regarding on-reserve housing and the opioids crisis, which the Caring Society can support.)



The Caring Society was directly involved in negotiations on the revised FSA and should have raised its views on supports, if different than the FSA, at that time.

If the Caring Society's position is that the claims process cannot be launched unless your client's requests are all accepted, we strongly disagree as this will again cause delay in the compensation process.

The class members rightfully expect us to move forward with the compensation process. Getting side-tracked in political and public relations campaigns to expand the scope of the supports that were agreed to and approved by the Court in the FSA will not assist us in reaching that goal.

Deloitte has met with the Caring Society several times together with the parties. Deloitte has repeatedly acknowledged and thanked you for your comments, which they advised they have considered closely. Deloitte cannot, however, take instructions from the Caring Society. The administrator is answerable to the entire class and the Court.

E. Allegations Regarding Provinces and Agencies

As mentioned above, this claims process is focussed on the tens of thousands of class members identified on the ISC database and their caregivers.

The process addressing those who are not on the ISC database, if any, is expressly left to the next phase.

The proposition of delaying the entire group of tens of thousands of readily identifiable class members until the matter of agencies and provinces is finalized is, in our view, contrary to basic fairness and the best interests of the class.

Regarding the provinces, we did indeed have a first meeting with the provincial attorneys general to explore a potential path forward, but our efforts to re-convene and re-engage them again have since not been met with significant enthusiasm. Counsel for the province of Quebec has asked us not to contact them about this case anymore.

We are still engaging with the provinces, but as you might understand, we have no mechanism to compel provincial Crowns, including by seeking the assistance of the Federal Court. We can only engage the provinces in a voluntary process. We acknowledge that your colleague, David Taylor, provided us with the contact information of some further individuals within provincial governments in the Maritimes and the territories, which we appreciated. We have included those individuals in the ongoing communications with the provinces. If you have other suggestions, we welcome and similarly consider them with due attention.



Regarding the agencies, we recognize that the Caring Society is an advocacy organization on behalf of the agencies that apprehended the children and therefore may have records on some of the removed children.

The nature of any such records within agencies was examined for approximately one year by a team led by Professors Trocmé and Fallon who delivered their January 31, 2022 Taxonomy Report and found “the limitations of administrative data which include variation in data collection methods and data quality; accessibility issues arising from ethical, privacy and confidentiality concerns; and impact of infrastructure and funding on the quality of administrative data systems were amplified due to the fragmented service delivery systems to First Nations children”.

Class counsel and Deloitte met with you on February 22, 2023 to discuss the complexities of this issue. At that February 22, 2023 meeting, we left the matter in that you were going to set up an initial meeting with a few sample agencies that the Caring Society knows well to have some exploratory discussions.

We are still waiting for that meeting to be convened.

You more recently provided a non-exhaustive list of pre-conditions before your client would consider sending a letter to gauge some agencies’ interest in attending a meeting to discuss the matter.

Some of your pre-conditions form precisely the reason why a meeting with some agencies may be helpful to this process (e.g., that we create a logic model regarding the necessary records that are likely held by those agencies based on when the various agencies received delegation vs. provincial records); some are outside our control (e.g., discussion with the provinces regarding the status of their records for those eligible before a FNCFS Agency was delegated); some are undefined, ambiguous and of unclear relevance to an exploratory meeting with a sample of agencies (such as the pre-condition that we have youth in care voices inform the claims process, and to be able to point to how the claims process has been informed by the recommendations of youth).

We acknowledge that the Caring Society is at complete liberty not to assist with the process despite its submissions to the Tribunal that everyone involved should roll up their sleeves to locate the kith kids.

However, we disagree with the concern you express at this stage that this claims process cannot proceed before your client’s pre-conditions are satisfied. We are concerned your client may never be satisfied with anything we or the administrator can provide given the nature of the pre-conditions, described above, all in return for arranging a meeting with a sample of agencies.



F. Claims Process Requirements in Relation to Deceased Claimants

You were personally involved in the drafting of Article 14 of the FSA on estates as you will recall. The draft claims process closely tracks and seeks to implement the terms of Article 14, which are complicated and at every corner run into practicality issues.

We have welcomed and seriously considered your concrete suggestions during the discussions. For example, at our latest in-person meeting in Toronto on December 15, 2023, you asked that we revise the list of entitled children/grandchildren to include any and all children and grandchildren of an eligible deceased caregiver regardless of child welfare impact, despite the numerous practical issues that would ensue, in order to be consistent with your more recent submission to the Tribunal.

We agreed to that and have made that change despite its amplification of practical difficulties in identifying such children and grandchildren outside the child welfare context.

We hope this helps address your concerns.

Yours truly,
SOTOS LLP



Mohsen Seddigh

- c. Dianne Corbiere, Nahwegahbow Corbiere LLP
- Stuart Wuttke, Assembly of First Nations
- Geoff Cowper, Fasken Martineau Dumoulin LLP
- Robert Kugler, Kugler Kandestin LLP
- David Sterns, Sotos LLP
- Joelle Gott, Deloitte LLP
- Paul Vickery, Christopher Rupar, Sarah-Dawn Norris, Department of Justice

EXHIBIT No. 7 **147**
EXAMINATION OF J. Gott
on April 12, 2024 AAC
Mushroom LLC A.G.
DATE May 21, 2024
NETWORK COURT REPORTING

Sarah Clarke

From: Sarah Clarke
Sent: February 15, 2024 7:26 PM
To: Mohsen Seddigh; [REDACTED] 'Stuart Wuttke'; Geoff Cowper; David Sterns; Robert Kugler; Alexandre Paquette-Dénommé; Vickery, Paul; Rugar, Christopher; Norris, Sarah-Dawn; Gott, Joelle; Petrossian, Zoia; Vadeboncoeur, Guillaume; Nathan Surkan
Cc: David Taylor; Logan Stack; Cindy Blackstock; [REDACTED]
Subject: RE: Claims Process - Removed Child Class & Removed Child Family Law
Attachments: Letter.M.Seddigh.Feb.15.2024.pdf

Good evening,

Please see the attached responding letter from the Caring Society.

Many thanks,
Sarah

Sarah Clarke

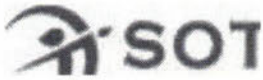
CLARKE CHILD & FAMILY LAW
36 Toronto Street, Suite 950
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Fax: 647.689.3286

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From: Mohsen Seddigh <MSeddigh@sotos.ca>
Sent: Friday, February 2, 2024 5:24 PM
To: Sarah Clarke <[REDACTED]> dgcorbiere@nncfirm.ca; 'Stuart Wuttke' <[REDACTED]> Geoff Cowper <[REDACTED]> David Sterns <[REDACTED]> Robert Kugler <[REDACTED]> Alexandre Paquette-Dénommé <[REDACTED]> Vickery, Paul <[REDACTED]> Rugar, Christopher <[REDACTED]> Norris, Sarah-Dawn <[REDACTED]> Gott, Joelle <[REDACTED]> Petrossian, Zoia <[REDACTED]> Vadeboncoeur, Guillaume <[REDACTED]> Nathan Surkan <[REDACTED]>
Cc: David Taylor <[REDACTED]> Logan Stack <[REDACTED]> Cindy Blackstock <[REDACTED]>
Subject: RE: Claims Process - Removed Child Class & Removed Child Family Law

Please see attached. Regards


Mohsen Seddigh

Partner

Office: 416.572.7320

Cell: 647.996.8228

180 Dundas Street West, Suite 1200

Toronto, Ontario M5G 1Z8

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From: Sarah Clarke [REDACTED]
Sent: Thursday, January 18, 2024 5:11 PM
To: [REDACTED] 'Stuart Wuttke' [REDACTED] Geoff Cowper [REDACTED] David Sterns [REDACTED]; Robert Kugler <[REDACTED]> Alexandre Paquette-Dénommé <[REDACTED]> Mohsen Seddigh <[REDACTED]> Vickery, Paul <[REDACTED]> Rugar, Christopher <[REDACTED]> Norris, Sarah-Dawn <[REDACTED]> Gott, Joelle <[REDACTED]> Petrossian, Zoia <[REDACTED]> Vadeboncoeur, Guillaume <[REDACTED]> Nathan Surkan <[REDACTED]>
Cc: David Taylor <[REDACTED]> Logan Stack <[REDACTED]> Cindy Blackstock [REDACTED]
Subject: Claims Process - Removed Child Class & Removed Child Family Law

Good afternoon,

Attached please find the Caring Society's preliminary comments on the Claims Process Document for the Removed Child Class and Removed Child Family Class. In addition to the comments found herein, please note the following:

- (a) The Caring Society continues to be very concerned about the lack of planning and communications around supports and records. This is critical and supports must be in place and service providers need to be on notice before the Launch Date, including allied service providers. While we understand that there is a working group focused on the issue of supports, we continue to await a response from Deloitte and counsel to our suggestions and continue to await an opportunity to meet with Deloitte about this. We have extended an invitation on a number of occasions but to date have not met with Deloitte. We remain available to meet.
- (b) The Caring Society continues to be concerned about the lack of planning around communication with the provinces and the agencies. There are a number of issues raised in the Removed Child Class / Removed Child Family Class Claims Process that will require input, information and cooperation with the provinces and agencies. We continue to await a response to Dr. Blackstock's document regarding records and responses to our questions about further meetings with the provinces. We also continue to await a response from Deloitte regarding our suggested approach to meeting with the National Advisory Committee.

- (c) The Claims Process does not include an avenue for claimants who are eligible but are not located on the ISC database. The Caring Society is concerned about this process moving forward without a clear path for those who do not appear on the database. The Caring Society is strongly of the view that this is not an item that should be left to a later date. This is not in keeping with the representations collectively made to the Tribunal and is not in keeping with the terms of the FSA. We look forward to receiving a revised draft of the Claims Process that includes an avenue for these children.
- (d) The Claims Process requirements in relation to Deceased Claimants is quite confusing. We suggest in our comments that this approach be streamlined and follow the outline in the FSA.

As we continue to review and consider the Claims Process document, we will share further comments and suggestions. We look forward to receiving a copy of the revised draft and an update regarding when consultations will begin.

Thanks,
Sarah

Sarah Clarke

CLARKE CHILD & FAMILY LAW
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[REDACTED]



February 15, 2024

Mohsen Seddigh

Sotos Class Actions

180 Dundas Street West #1200

Toronto, ON M5G 1Z8

Dear Mr. Seddigh

Re: Caring Society's Comments Regarding the Distribution Protocol

We are in receipt of your correspondence dated February 2, 2024. We had anticipated that your letter would respond to the Caring Society's numerous suggestions regarding the Distribution Protocol and we are disappointed to see only a few substantive responses. The balance of your letter contained a number of mischaracterizations of the Caring Society's positions and involvement.

It is unfortunate that we need to spend time correcting the record. This is a distraction from the Caring Society's efforts to stop Canada's discrimination and prevent it from recurring and to ensure that compensation claimants receive the compensation and supports they are entitled to. Consistent with these overarching objectives noted above, the Caring Society is happy to work with Class Counsel to achieve the best possible results for all class members; however, it is not productive for us to engage in your process if the result is letters like the one to which we are responding. Going forward, if Class Counsel have questions or need clarification regarding the Caring Society's position please reach out so that positions can be discussed. If this misinformation and mischaracterization continues, it will be clear to the Caring Society that it can no longer effectively discharge its duties to the victims identified by the Tribunal through discussions with Class Counsel. If this occurs, the Caring Society will make its representations directly to the Federal Court.

The Caring Society's interest in the Distribution Protocol

As you point out, the Revised FSA provides standing for the Caring Society to address the interests of class members who are also beneficiaries of the Tribunal's compensation orders, which are now final orders. In focusing on those claimants, the Caring Society is not "disavowing" any care or regard for all other Class Members. Your comments in this regard are unhelpful, unproductive, and run contrary to the spirit of cooperation and collaboration that First Nations leadership expects from all of us. When the Caring Society has disagreed with the path taken by Class Counsel in the past, particularly during the previous FSA, we have done so in a constructive, accountable and transparent manner, focusing on the rights of the victims in this case. That should continue to be our collective approach going forward.

With that said, we do not understand, based on your letter, there to be any tension between the needs of Class Members falling in or out of the scope of the Tribunal's orders. Certainly, our comments to this point have not sought to focus on any such difference.

Kith Child Class

Nowhere in my email of January 18, 2024, or comments in the Distribution Protocol does the Caring Society suggest reversing the bifurcation of the Removed Child Class and the Kith Child Class for the purposes of distribution.

The Distribution Protocol

The Caring Society is mindful that developing and implementing a distribution protocol for the Removed Child Class (and, eventually, the Kith Child Class) is challenging: child welfare legislation differs vastly across the country and has evolved significantly, even since 2006. There are multiple approaches to child removal in each jurisdiction (depending on the legislation) and First Nations Child and Family Services Agencies (the "Agencies") have received delegation at different times throughout the Class Period. Additionally, provinces and territories have operated within the FNCFS Program in different communities at different times. Moreover, children on-reserve in non-agency First Nations continue to be served directly by the provinces. The process for identifying all eligible Class Members will be difficult. Certainly, identification through the ISC Database will go a significant distance to compensating the majority of the Removed Child Class.

However, as has been discussed on many occasions with the Parties and with Deloitte, there are Removed Child Class Members (and there will be entitled Kith Child Class Members) who will not appear on the ISC Database and analysis of the data between 2006-2022 remains outstanding. The Caring Society's focus on records and engagement with the provinces, territories and Agencies aims to ensure that no child is left behind. On a practical level, we are hearing from many First Nations and Agencies that youth and family members are already asking for help in the identification and collection of their records. Moreover, it is unclear how Class Counsel will deal with the enhancement factors without accessing file data.

In raising concerns regarding the exclusion of "non-ISC Database children" from this phase of the Distribution Protocol, the Caring Society was calling for the inclusion of a mechanism for claimants who are not on the ISC Database, but nonetheless have access to records confirming their eligibility for compensation. This is in keeping with the Tribunal's order and the Revised FSA.

We acknowledge that the current draft of the Distribution Protocol makes reference to a process under development for these Class Members. The Caring Society is of the view that this process must be immediately developed and that the Distribution Protocol must have a specific date to return to the Court for approval of such a process.

The Scope of the Distribution Protocol for the Removed Child Class

Relatedly, the Caring Society does not agree that there was consensus or agreement regarding the delay in compensating Removed Children and their corresponding Caregivers who do not appear on the ISC Database. [REDACTED]

[REDACTED] To the extent that such a conclusion was reached at the January 12, 2024, meeting (which we were unable to attend due to the filing deadline for Caring Society affidavits on a Tribunal non-compliance motion falling on the same day), we are unaware of this. In any event, given that we provided our comments less than a week after this meeting, on January 18, 2024, we do not agree that we were making these comments and suggestions “after the fact”.

Instead, one of the issues we understood had been resolved and agreed to by the Parties was to proceed with the Distribution Protocol for the Removed Child Class without a complete ISC Database.

As set out in detail in the balance of this letter, the Caring Society has attempted on numerous occasions to engage with the Parties and Deloitte regarding records and collaborating with the Agencies in order to reasonably be prepared to compensate Removed Child Class Members whose names do not appear on the ISC Database through no fault of their own. Given that we have been raising these issues since at least the summer of 2023, it should be possible to now include some provision for Removed Child Class members who are not on the ISC Database but are able to locate and secure their eligibility-confirming documents at the present time.

Engagement with First Nations Child and Family Services Agencies

As you know, engagement with the Agencies will be critical for ensuring that Class Members have the information and documentation necessary to demonstrate eligibility where they are in the Kith Class or the Removed Children and, for reasons outside of their own control, are not identified on the ISC Database. This will quite likely also be of utmost importance for Removed Child Class who claim compensation related to enhancement factors.

Contrary to the timelines set out in your letter, since at least July 2023, we collectively discussed the need to engage with the Agencies and the Caring Society agreed to assist Class Counsel and Deloitte meet with a group of Agency Directors and with the National Advisory Committee (the “NAC”), once Class Counsel and Deloitte completed their preliminary work regarding the complexities facing the Agencies. The purpose of this proposed preliminary work was to respect Agency Directors’ limited capacity and to ensure that Class Counsel and/or Deloitte arrived at this meeting prepared to discuss the substantive issues, as opposed to having such a meeting become an education forum, with the preliminary work still needing to be done before a substantive meeting. The Caring Society’s view has been,

and remains, that background education work should be complete prior to engaging with Agencies. The Caring Society has been prepared to assist in this regard, and it is in that spirit that the working documents noted below were shared in September and October 2023.

We met with Deloitte on July 13, 2023, and set out the concerns noted above. They indicated they needed to seek confirmation from Canada regarding the scope of their retainer to engage in this work. In September 2023, we set out our suggestions in writing regarding the necessary pre-engagement work:

- a. Request from Canada and the provinces when each FNCFS Agency received its full delegation.
- b. Discussion with the provinces regarding the status of their records for those eligible before FNCFS Agencies was delegated.
- c. Preparation of a logic model regarding where the necessary records are likely held based on when the various agencies received delegation (i.e., within Agencies or in provincial records, based on the various time periods involved).
- d. Overview of the privacy requirements for each CFS statute and what is required as “consent” in order for disclosure of those records to be provided.
- e. Overview of the voluntary placement agreement provisions in each CFS statute (going back to 1991).
- f. Overview of the A7G recommendations and how those apply to the distribution protocol process.

As far as we are aware, this work has never been completed. On September 18, 2023, I shared a working document regarding the various types of voluntary placement agreements across the provinces and territories with Deloitte to kickstart some of this work (re point (e) above). To date, I have received no response.

Moreover, we have not received any further requests from Class Counsel or Deloitte regarding engagement with the Agencies. The Caring Society remains committed to assisting Class Counsel and Deloitte engage with the Agencies and the NAC once the preliminary work is completed. As the Caring Society has expressed on a number of occasions, Agency Directors simply do not have the capacity or resources to engage with Class Counsel and Deloitte if the above basic child welfare-related elements are not addressed beforehand.

Child Welfare Records

Child welfare records will be critical for supporting the Removed Child Class and the Removed Child Family Class where eligibility cannot be confirmed by the ISC Database (they will also be important later in the process, when it comes time to support the Kith Child Class and the Kith Family Class). Child welfare records will also be important for identifying Abuse for the purpose of determining eligibility for certain Caregiving Parents and Caregiving Grandparents. The Caring Society has consistently been raising this issue throughout our discussions and has been encouraging Class Counsel and Deloitte to get a handle on the various types of records that Class Members may present to support their Claims.

The Caring Society attended the Class Counsel meeting with some of the provinces on September 15, 2023, which did not result in any substantive progress in relation to records identification. I have specifically asked Class Counsel on a number of occasions when a further meeting with the provinces and territories will take place, but no response was received until your letter of February 2, 2024.

On October 10, 2023, the Caring Society shared a document to help guide records location for the Removed Child Class (and Kith Child Class). This document could have formed the basis for the logic model recommended in point (c), above. To date, we have received no feedback on same.

Supports for Class Members

Your letter of February 2, 2024, misunderstands the Caring Society's position on supports. The focus for the Caring Society is ensuring that Class Members have ready access to a wide range of culturally relevant and appropriate supports before, during and after the Claims Process opens. This is entirely consistent with the intent of the Revised FSA in providing "additional benefits" beyond compensation, which Justice Ayles described in her settlement approval reasons as "extensive fully-funded supports to help Class Members navigate the claims process and to address mental health, cultural, administrative, legal and financial needs [emphasis added]" (2023 FC 1533 at para 66).

The Caring Society's focus in making these comments is not, as you suggest, on "the fixing of unfortunate systemic issues". Rather, we are concerned that the current approach, which seems reliant on existing supports, will not be sufficient to help Class Members and risks deepening these same systemic issues. Indeed, First Nations mental health professionals have advised the Caring Society that they have no time to meet the additional demands flowing from various class actions as they are struggling to meet the existing needs of community members. The stark reality on the ground is that there is a dearth of mental health supports for First Nations youth and young adults. Moreover, it is not enough to only focus on mental wellness, cultural supports and financial literacy. We know from the IRS and 60's Scoop class actions that the entire community is affected when compensation begins to flow into communities as a result of systemic discrimination and additional demands are placed on an array of service providers such as domestic violence, youth centres, law enforcement, child and family services and health.

Indeed, the Caring Society has heard repeatedly from First Nations leadership, service providers and from youth that the supports currently proposed are insufficient and there has been inadequate communication and supports for communities to prepare. Class Counsel are undoubtedly aware of the serious situations in First Nations that have declared emergencies relating to the mental wellness and addictions such as the crisis in Pelican Narrows. It is entirely predictable that the roll out of compensation will have positive effects, but will also deepen the severity of existing community crises and place vulnerable persons at serious risk. It seems self-evident that the best interests of the Class are aligned with taking active and effective measures to avoid the worst possible outcomes. It is therefore vital that communities

have plans and resources available to deal with the consequences flowing from the roll out of compensation and, most pressing, have time to prepare.

The Caring Society has provided extensive comments on the Navigators Proposal and on the structure of supports. Comments were shared on September 6, 2023, and repeated requests for follow ups were made throughout the fall. Indeed, my client made a direct request to Class Counsel during a meeting in October 2023 regarding legal fees, which we understood would result in a follow-up. Five months after sending in these comments we are still waiting for class action counsel and/or Deloitte to convene a meeting to address our concerns and indicate which, if any, of our recommendations have been actioned. Despite my multiple emails to follow up on this issue, despite my attempts to schedule a meeting, and despite Deloitte stating, in November 2023, that a meeting would be arranged to discuss this critical issue, no meeting has been scheduled.

Caregiver Abuse

We are confused regarding your comments in the February 2, 2024, letter regarding the Caring Society's position on Abuse. "Abuse" is a defined term and is a central element to determining eligibility for certain Class Members under the Revised FSA (as it was in 2019 CHRT 39, 2021 CHRT 7 and the 2022 FSA). Youth in care have repeatedly told Dr. Blackstock that their trauma will be deepened if caregivers are "awarded" for the Abuse they committed. The process for identifying and confirming Abuse requires consultation with professionals in the area, including with Agencies to ensure that every effort is undertaken to prevent compensation flowing to parents who meet the definition of Abuse. Indeed, a youth from care directly communicated this type of concern to Mr. Wuttke in a recent meeting with the NAC. The Caring Society supports the Revised FSA's definition of "Abuse", as indicated in our submissions to the Tribunal and we need to collaborate on a process for ensuring safe and effective identification. Our comments and suggestions have attempted to ensure that child Class Members are not required to bring evidence of Abuse forward on their own, thus honouring a trauma-informed approach.

Process for Engagement Moving Forward

The Caring Society is of the view that the compensation process moving forward needs to include an avenue for First Nations youth and service providers to be meaningfully engaged to make the process better and safer.

We hope this exchange of letters marks a turning point in the relationship and leads to a more productive and respectful approach that includes surveying our availability before setting meeting dates, furnish meeting agendas and documents at least 5 business days before any meetings, provide motion materials in a timely manner, accurately portray our representations and provide meaningful responses to our feedback.

We look forward to your issue focused reply to this letter and to the Caring Society's substantive suggestions to date.

Yours truly,



Sarah Clarke

cc. David Taylor, Logan Stack and Thomas Conway - *Counsel for First Nation Child and Family Caring Society*

Dianne Corbiere, Geoff Cowper, Stuart Wuttke, Adam Williamson, and Nathan Surkan - *Counsel for Assembly of First Nations*

David Sterns and Robert Kugler - *Counsel for Xavier Moushoom et al.*

Paul Vickery, Chris Rupar and Sarah-Dawn Norris - *Counsel for the Attorney General of Canada*



EXHIBIT No. 8
 EXAMINATION OF J. Goff
 on April 12, 2024 Aff: www.sotosclassactions.com
Moushoom VS A.G.
 DATE May 21, 2024
 NETWORK COURT REPORTING

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File No: 26965

February 27, 2024

VIA EMAIL

Sarah Clarke
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Dear Ms. Clarke

**Re: Draft Claims Process: Removed Child Class & Removed Child Family Law
 Caring Society Comments and Concerns**

Thank you for your letter of February 15, 2024. The plaintiffs have conferred and provide this response as you requested.

We do not wish to engage with your various allegations of “disinformation”, “misinformation”, “mischaracterization”, etc. Our responsibilities are to the class, and we see no value in exchanging caustic letters with you.

We are mindful of the differing roles and responsibilities of the Caring Society and the plaintiffs.

As you are aware, the plaintiffs are under pressure from the class to move the matter forward to distribution.

We addressed many of the issues you raise in our previous letter dated February 2, 2024.

The following addresses your other points.

Kith classes

Both your comments on the draft claims process and your client’s comments on the Removed Child draft claims forms required references to the kith classes be included within this claims process and the Removed Child claims forms.

We take your response now to imply that you no longer insist on those comments.

The claims process

We refer to the extensive discussions at the various meetings over the past few months, which you attended without expressing many of the positions you now assert.

In sum:

- (a) Regarding your statement that the “Caring Society’s focus on records and engagement with the provinces, territories and Agencies aims to ensure that no child is left behind”:
- i. We look forward to the Caring Society scheduling the one-hour meeting with a sample of agencies that the Caring Society promised in February 2023 so that we can explore their views, if any.
 - ii. Even without such a meeting being convened, the Taxonomy report by Professors Fallon and Trocmé details the practical challenges and inherent shortcomings involved in the path of provincial and agency reports that you now insist upon. As you appear to acknowledge, agency and provincial records are not the solution that would solve the issue that you posit for everyone (if anyone at all).
- (b) Regarding your statement that “there are Removed Child Class Members (and there will be entitled Kith Child Class Members) who will not appear on the ISC Database”:

Contrary to your assertion, we do not have the complete ISC database at this time to be able to determine whether this is so, and if so, to what extent.

As we advised the Court in October, we intend to proceed with the distribution to the Removed Child Class and the related Family Class while we develop a protocol for the other class members. This is fully consistent with the FSA:

- The definition of “Claims Process” in the FSA states: “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.”
- Article 5.01 states: “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.”
- 5.01(10) states: “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.”

The terms of the FSA, which have been approved by the Court, as well as our instructions from the representative plaintiffs and the previous directions of the AFN Chiefs in Assembly prior to the Court approval of the FSA are what guide our approach.

- (c) Regarding your statement now and long after the fact that “the Caring Society was calling for the inclusion of a mechanism for claimants who are not on the ISC Database, but nonetheless have access to records confirming their eligibility for compensation”:

We do not know at this stage whether such a claimant exists.

We are turning to the process for the Removed Child Class Members (if any) who are not on the ISC database. This process is being considered as we finalize distribution to the over 100,000 Removed Child Class Members who are on the ISC database and who are entitled to prompt payment of their compensation. To the extent that there may be a data gap or if agency records prove to be of assistance, this will form part of our inquiries that we are currently engaging in with respect to the next phase of the distribution.

We will be sure to consider your ideas with respect to this group to the extent that those ideas are practical, constructive, and consistent with the goals of the FSA.

- (d) Regarding your statement that “it is unclear how Class Counsel will deal with the enhancement factors without accessing file data” and agency files being “of utmost importance for Removed Child Class who claim compensation related to enhancement factors”:

- i. This claims process does not address enhancement factors.
- ii. The Removed Child Enhancement Factors listed in article 6.03(3) were essentially designed to be responsive to the data available in the ISC database and not require agency records.
- iii. We fundamentally disagree with your view as to the need to consult agency records, which the Taxonomy report said are scattered, incomplete, and difficult to access, in order to deal with the Removed Child Enhancement Factors. Your views do not reflect the discussion about these factors during the negotiation of the FSA or the explicit goals and principles of the FSA as set out in article 5.01(3), which requires a claims process approach that is “expeditious, cost-



effective, user-friendly, culturally sensitive, trauma-informed, and non-traumatizing.”

The Scope of the Claims Process

Your comments on this point are inconsistent with the approach agreed to by the parties at the Montreal meeting on November 21, 2023. You and your client attended this meeting and did not voice these disagreements.

All parties were repeatedly reminded of this approach at each subsequent meeting.

We do not think it is constructive to engage in an argument with you months after the fact on a fundamental decision point that you had the full opportunity to engage in at the time and chose not to.

Regardless, as explained again above, we will be considering the scope of the claims process as part of the next phase of implementation, and will consider whether there are indeed any gaps in the ISC database. The decision of the plaintiffs is that this work cannot and will not be addressed at this phase.

Engagement with First Nations Child and Family Services Agencies

You have our views on this point in our letter of February 2, 2024.

Supports for Class Members

A focus working group from the Assembly of First Nations, the administrator, and class counsel has been working with Canada to develop the supports contemplated under Schedule I and Article 3.02(1)(g)(j) of the FSA.

They have received your comments and have acknowledged them and met with you together with everyone else. As stated in our previous letter, we are aware of the systemic issues. However, we are bound by the scope of supports agreed to in Schedule I and Article 3.02(1)(j) of the FSA, as approved by the Court.

If more supports are needed in future, a systemic issue as contemplated under the FSA may be raised with the Settlement Implementation Committee.



Caregiver Abuse

We understand the concerns of some Removed Child Class Members. We also need to counterbalance such concerns with:

- (a) the terms of the FSA, which limit "Abuse" to sexual or serious physical abuse;
- (b) the need not to impose a culturally inappropriate notion of abuse on First Nations parents who once lost their children to a system that applied an overbroad notion of abuse to them;
- (c) First Nations communities' directions that colonial notions of abuse should not be imposed on the parents unless in clear cases, and without inquiring from the affected child; and
- (d) procedural fairness to the affected parents.

Process for Engagement Moving Forward

As we said before, we are open to the Caring Society's involvement and encourage your constructive engagement during the time of discussion.

We will continue to invite you to plenary meetings and seek constructive input.

Yours truly,
SOTOS LLP

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

Mohsen Seddigh
MS/geMc

TAB 3

FEDERAL COURT CLASS PROCEEDING	
B E T W E E N:	
XAVIER MUSHOOM, JEREMY MEAWAISGE (by this litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE	Plaintiffs
and	
THE ATTORNEY GENERAL OF CANADA	Defendant
FEDERAL COURT CLASS PROCEEDING	
B E T W E E N:	
ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON by his Litigation Guardian, Carolyn Buffalo, CAROLYN BUFFALO, and DICK EUGENE JACKSON also known as RICHARD JACKSON	Plaintiffs
and	
THE ATTORNEY GENERAL OF CANADA	Defendant
FEDERAL COURT CLASS PROCEEDING	
B E T W E E N:	
ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT	Plaintiffs
and	
THE ATTORNEY GENERAL OF CANADA	Defendant

**RESPONDING MEMORANDUM OF FACT AND LAW
(CLAIMS PROCESS APPROVAL)**

May 31, 2024

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Contents

I. Overview	1
II. Facts	5
A. Brief History of the Tribunal’s Compensation Orders	5
B. Understanding the Difference Between ISC Funded Placements and the ISC Database	8
C. Concerns Regarding the Completeness of the ISC Data	13
D. Notice Plan and the Opt-Out	16
E. Caring Society Concerns Regarding the Claims Process During Development	17
1. Concerns Raised Regarding Exclusive Reliance on the ISC Database	17
2. Concerns Raised About Lack of Adequate, Culturally Sensitive and Available Supports	19
III. Issues	26
IV. Submissions	26
A. Legal Approach to the Claims Process	26
B. The Claims Process Must Provide a Pathway to Compensation for all Removed Child Class Members	26
1. Exclusive Reliance on the ISC Database is Not in Keeping with the Tribunal’s Orders or the FSA 27	
2. Expert Concerns with the Quality of the Data	31
C. Questions About a Trauma-Informed Survivor Focused Approach to Abuse	33
D. Claims Process is Incomplete Without Robust Supports	35
V. Orders Sought	37
SCHEDULE A – LIST OF AUTHORITIES	40

I. Overview

1. The first words in the Canadian Human Rights Tribunal’s (the “**Tribunal**”) landmark decision substantiating the discrimination underlying this class action are “this decision concerns children.”¹ The discrimination and harm experienced by the Removed Child Class and the Removed Child Family Class is the direct result of Canada’s wilful and reckless conduct in controlling and choosing to provide inequitable funding to child and family service providers mandated to protect and promote the best interests of First Nations children ordinarily resident on reserve. The trauma and victimization of First Nations children, youth and families stems from Canada’s systemic violations of their rights to substantive equality in the provision of child and family services within a system created by Canada to incentivize the removal of First Nations children from their homes and placement in alternative care.

2. The Final Settlement Agreement² (the “**FSA**”), along with the foundational decisions of the Tribunal, seek to offer some measure of remedy, in the form of compensation, to recognize the serious harm perpetrated against First Nations children and their families within the federal First Nations Child and Family Services Program (the “**FNCFS Program**”). The FSA sets out the entitlement criteria for compensation for the Removed Child Class and the Removed Child Family Class, focused on Class Members’ experiences, in a manner that respects their dignity and recognizes their lack of agency within the federal system. As noted by the Tribunal upon approving the FSA:

Compensation under the Revised Agreement is predicated on compensating those whose removal was a result of the discriminatory FNCFS Program, not who funded the removal. Thus, the Revised Agreement accounts for the harms these victims/survivors experienced as a result of the infringement of their human rights and dignity when they or their children were deprived of the opportunity for preventative services and least disruptive measures due to Canada’s

¹ [Final Settlement Agreement](#).

² *First Nations Child and Family Caring Society v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2016 CHRT 2](#) [“**Merits Decision**”]; *First Nations Child and Family Caring Society v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2019 CHRT 39](#) [“**2019 CHRT 39**”]; *First Nations Child and Family Caring Society v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2022 CHRT 41](#) [“**2022 CHRT 41**”]; and *First Nations Child and Family Caring Society v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2023 CHRT 44](#) [“**2023 CHRT 44**”].

discriminatory conduct.³

3. The Claims Process now before the Court goes some distance in setting out a process that aligns with the FSA's principles: ensuring that the Claims Process is administered in an expeditious, cost-effective, user-friendly, culturally sensitive, and trauma-informed manner, while minimizing the burdens on Class Members.⁴ The claims process also aligns with the requirements that no Removed Child Class Members will need to submit to an interview, examination, or other form of *viva voce* evidence taking. For First Nations children who can be identified on the Indigenous Services Canada ("ISC") database, the proposed Claims Process balances the need for clarity, simplicity and speed with the requirements under the FSA that minimize the risk of causing trauma to Class Members.

4. Notwithstanding the proposed Claims Process' strengths, further work and reporting to this Honourable Court is necessary to align the Claims Process with the FSA and the Tribunal's orders, both in spirit and pursuant to its clear requirements. The First Nations Child and Family Caring Society (the "**Caring Society**") is requesting that the Settlement Implementation Committee return back to this Honourable Court for approval of the following issues, as set out in below:

- a. a companion approach to identifying Removed Child Class Members who are not, or cannot be, identified on the ISC Database but who can otherwise demonstrate their eligibility under the FSA;
- b. a culturally sensitive, safe and trauma-informed approach to allow Removed Child Class Members to indicate that their removal was the result of Abuse, where the Removed Child Class Member freely chooses to make this disclosure; and
- c. a specific and concrete plan to ensure that the supports set out in the FSA will be available before the Launch Date, during the Claims Process and after the Claims Deadline in the best interests of the class.

5. With respect to determining eligibility for the Removed Child Class, the proposed Claims Process currently excludes Removed Child Class Members who are not identified on the ISC

³ [2023 CHRT 44](#) at [para 75](#).

⁴ [Final Settlement Agreement](#), art 5.01(3).

Database from receiving compensation. The proposed Claims Process provides no pathway to compensate Removed Child Class Members who are not identified on the ISC Database, but otherwise meet the requirements for compensation under the FSA. The Claims Process' silence on this point leaves otherwise eligible Removed Child Class Members who may not appear on the ISC Database with a high degree of uncertainty and no alternative pathway to overcome a shortcoming of government records keeping that is no fault of their own. Indeed, restricting compensation to only those for whom the discriminator kept records raises a question regarding whether wrongdoers could escape accountability through incomplete record keeping on their victims. It also risks repeating a derogation from the Tribunal's orders that was expressly rejected by the Tribunal in 2022, which has since ceded its jurisdiction on compensation to this Court.

6. Identification on the ISC Database introduces an additional eligibility requirement for the Removed Child Class. This raises questions about the fairness of the information shared in the Notice Plan and the ability of Remove Child Class Members to make an informed choice when deciding whether to opt-out of this proceeding, particularly in jurisdictions where record keeping was particularly poor. The information shared in the Notice Plan tied eligibility for compensation to the removal and placement – not to federal government records.

7. This lack of pathway for these children not identified on the ISC Databased is particularly concerning given what is known about the child welfare records within the FNCFS program. The expert evidence commissioned by the Parties and relied upon throughout this proceeding makes clear that the federal records for the in-care costs for First Nations children ordinarily resident on reserve, who were removed from their homes under the FNCFS Program, are incomplete. Indeed, this incompleteness of records is reflected in the definition of the Removed Child Class, which purposefully does not require identification on the ISC Database.

8. SIC affiants confirm that the database is incomplete at this time but would not respond to questions regarding what years are currently included and what is left to do. If an alternative process is not introduced after the ISC Database is complete (i.e. sometime after 2025⁵) some

⁵ Cross-Examination of Dianne Corbiere, May 15, 2024 (“**Corbiere XEX**”), Q. 56, Tab 1, Supplemental Responding Motion Record of the First Nations Child and Family Caring Society of Canada (“**Supplemental RMR**”), p. 25.

Removed Child Class Members will be unjustly denied compensation.

9. The Claims Process also defers the identification process of Abuse in relation to Caregiving Parents and Caregiving Grandparents to a later date. In the result, Removed Child Class Members who make a Claim under the current Claims Process will have no access to a safe process for sharing their stories if they choose. The lack of a safe process or mechanism for survivors to share their experience, pursuant to their views and wishes, risks either silencing survivors while failing to hold those who committed Abuse accountable or exposing those who do come forward to confusion and further trauma.

10. Finally, the Claims Process is not currently aligned with the required supports necessary to ensure the safety and well-being of Class Members – particularly those who have recently aged out of care. The supports set out in Schedule I to the FSA are not ready; Claims Helpers have not been hired or trained; and it remains very unclear what, if any, on the ground supports will be available before the Launch Date.

11. Despite these concerns, the Caring Society supports the approval of the Claims Process subject to further approvals of this Court and requests the following:

- a. An order that the Settlement Implementation Committee submit a companion Claims Process for identifying and approving Removed Child Class Members who have not been identified on the ISC Database, but are otherwise eligible for compensation under the FSA;
- b. An order that the Settlement Implementation Committee submit a safe, evidence-based and expert/clinically informed approach for Removed Child Class Members to identify Abuse in connection with their removal if they choose, including a safe and expert/clinically informed approach that may include the sharing of this information with the Administrator on behalf of the Removed Child Class Member by a trusted support person; and
- c. An order that the Settlement Implementation Committee submit a detailed description of the supports set out in Schedule I of the FSA, the status of the hiring and training of Claims Helpers, and the status of the Caring Society's suggestions

regarding increasing surge capacity and measures to ensure existing services such as mental health, addictions, domestic violence, cultural and child welfare services have the capacity to support Class Members before the Launch Date, throughout the Claims Process and after the Claims Process.

II. Facts

A. Brief History of the Tribunal's Compensation Orders

12. It has been more than seventeen years since the *Canadian Human Rights Act* complaint was filed on February 27, 2007, and more than eight years since the Tribunal's historic 2016 judgment on the merits (the "**Mertis Decision**"). The Tribunal's substantiation of discrimination regarding the FNCFS Program and Canada's discriminatory definition and approach to Jordan's Principle expressly acknowledged the "suffering" of First Nations children impacted by Canada's discriminatory conduct, compounded by the legacy of residential schools and the Sixties Scoop.⁶ The Tribunal found that Canada engaged in this discriminatory conduct knowingly, knew about the harms being caused, and failed to implement evidence-based solutions that it had participated in creating.⁷ This wilful disregard by Canada was later held by the Tribunal to be the "worst-case scenario under our *Act*."⁸

13. On September 6, 2019, the Tribunal ordered Canada to provide the maximum amount of compensation available under the *Canadian Human Rights Act* to victims who experienced the "worst case scenario" of discrimination under the FNCFS Program or due to Canada's discriminatory definition and approach to Jordan's Principle ("**Compensation Entitlement Order**").⁹ The Tribunal found that Canada's discrimination caused "trauma and harm to the highest degree causing pain and suffering"¹⁰ and that Canada's conduct was "devoid of caution with little to no regard to the consequences of its behavior towards First Nations children and their families".¹¹

⁶ [Merits Decision](#), at paras [218](#), [404](#), [412](#), [458](#) and [467](#).

⁷ [Merits Decision](#), at paras [150-185](#), [270-275](#), [362-372](#), [385-386](#), [389](#), [458](#), [461](#) and [481](#).

⁸ [2019 CHRT 39](#), at para [234](#).

⁹ [2019 CHRT 39](#).

¹⁰ [2019 CHRT 39](#) at para [193](#).

¹¹ [2019 CHRT 39](#) at para [231](#).

14. The Compensation Entitlement Order required Canada, the Caring Society and the AFN to develop a compensation distribution framework to arrive at a final order for compensation. Throughout 2020, the parties worked to refine a compensation framework, seeking direction from the Tribunal on a number of issues, including: (1) the age at which victims could access compensation (2020 CHRT 7); (2) whether children in care as of January 1, 2006, but removed from their homes, families and communities prior to that date, were eligible for compensation (2020 CHRT 7); (3) eligibility of deceased claimants for compensation (2020 CHRT 7); (4) the definition of “essential service”, “unreasonable delay” and “service gap” for the purpose of Jordan’s Principle compensation (2020 CHRT 15); (5) applicability of the Compensation Entitlement Order to removed children off-reserve (2020 CHRT 15); (6) eligibility of caregivers for compensation who are not parents or caregiving grandparents (2020 CHRT 15); and (7) whether funds for minor victims and victims lacking legal capacity would be held in trust (2021 CHRT 6).

15. The Tribunal approved the framework for the payment of compensation (the **Compensation Framework**) on February 12, 2021.¹² The Compensation Framework¹³ set the broad guidelines for compensation, which the parties were to further detail in an Implementation Guide, with the possibility of returning to the Tribunal to resolve further disputes if necessary.

16. Work on the Implementation Guide was not started, as Article 7.1 of the Compensation Framework was subject to an Implementation Date, to be set within 15 days of all judicial reviews or appeals being resolved. In October 2019, Canada filed an Application for Judicial Review followed by an amended Notice of Application for Judicial Review on March 5, 2021. Canada’s judicial review was heard in June 2021 and dismissed on September 29, 2021.¹⁴ Canada appealed the Federal Court’s order dismissing its judicial review to the Federal Court of Appeal (Federal Court of Appeal File No. A-290-21), which was put into abeyance and ultimately withdrawn in

¹² *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2021 CHRT 7](#) [“**2021 CHRT 7**”].

¹³ Compensation Framework, Exhibit “D” to the Affidavit of Jasmine Kaur, April 29, 2024 (“**Kaur Affidavit**”), Tab 3D, Responding Motion Record of the Caring Society (“**Responding MR**”), pp. 494-709.

¹⁴ *Canada (Attorney General) v First Nations Child and Family Caring Society of Canada*, [2021 FC 969](#), [“**2021 FC 969**”].

January 2024.

17. On December 31, 2021, the AFN, Canada and the representative plaintiffs in this proceeding concluded an agreement in principle (the “AIP”) and on June 30, 2022, a final settlement agreement was reached (the “2022 FSA”). In July 2022, the AFN and Canada brought a motion to the Tribunal seeking a declaration that the 2022 FSA was fair, reasonable, and satisfied the Compensation Entitlement Order and all related clarifying orders. In the alternative, AFN and Canada sought an order varying the Compensation Entitlement Order, the Compensation Framework Order and other compensation orders, to conform to the 2022 FSA (the “**Joint Motion**”).

18. The Tribunal dismissed the Joint Motion by letter decision on October 25, 2022, with full reasons set out in 2022 CHRT 41. The Tribunal recognized that the 2022 FSA substantially satisfied its compensation orders but found that “once entitlements are recognized under the *CHRA* they cannot be removed”.¹⁵ The Tribunal determined that the compromises made in the 2022 FSA did not align with a human rights approach given the adverse derogations from the Tribunal’s compensation orders that would have disentitled in whole or in part some victims from the human rights compensation they had already been awarded while introducing uncertainty for others. On this particular point, the Tribunal stated:

The Tribunal cannot overstate the importance of securing victims/survivors’ rights across Canada. [...] Human rights are fundamental rights that are not intended to be bargaining chips that parties can negotiate away. Similar to how human rights legislation establishes minimum standards parties cannot contract out of, the Tribunal’s compensation orders generate binding compensation obligations on Canada. Canada cannot contract out of these obligations through an alternative proceeding.¹⁶

19. In November 2022, applications for judicial review were commenced by Canada (Federal Court File No. T-2438-22) and the AFN (Federal Court File No. T-2438-22). These applications for judicial review were in abeyance as of December 22, 2022 and eventually withdrawn in January 2024.

¹⁵ [2022 CHRT 41](#) at [para 504](#).

¹⁶ [2022 CHRT 41](#) at [para 502](#).

20. Following the release of 2022 CHRT 41, the Plaintiffs, Canada and the Caring Society explored ways of amending the 2022 FSA in order to fully satisfy the Tribunal’s compensation orders, resulting in the FSA. The FSA was approved by the First Nations-in-Assembly on April 4, 2023 and it was executed by the Parties on April 19, 2023.¹⁷ The Tribunal approved the FSA by a July 26, 2023 ruling from the bench (with reasons to follow), followed by approval of this Court on October 24, 2023.¹⁸ In its full written decision, the Tribunal noted as follows:

This is a good day for human rights, First Nations children and families in Canada and a significant step towards reconciliation. The Panel congratulates the parties and all people involved in reaching this milestone and more importantly, the Panel recognizes the First Nations children and families who were harmed as a result of Canada’s discriminatory practices and whose lives are paving the way for justice. This is the largest settlement of its kind in Canadian history. Sadly, this tends from the magnitude of harms that were inflicted upon First Nations children, families, communities and nations. Canada ought to bear this in mind as an important reminder so as never to repeat history. The cycle of harm it must be broken.¹⁹

21. Importantly the FSA is meant to reflect the Tribunal’s approach and states that the Agreement is intended to be a fair, comprehensive and lasting settlement of all claims raised or capable of being raised in the Tribunal proceedings, including in relation to Canada’s underfunding of child and family services for First Nations Children living on Reserve and in the Yukon.²⁰

B. Understanding the Difference Between ISC Funded Placements and the ISC Database

22. First Nations children ordinarily resident on reserve and living in the Yukon receive child and family services funded by the federal government.²¹ The federal government provides funding to child and family service providers across the country, who then deliver child welfare services to First Nations children and families resident on reserve and in the Yukon. In dismissing Canada’s application for judicial review of the Compensation Entitlement Order, this Court explained as follows:

¹⁷ [2023 CHRT 44](#) at [para 49](#).

¹⁸ *Moushoom v Canada (Attorney General)*, [2023 FC 1533](#) [“*Moushoom*”].

¹⁹ [2023 CHRT 44](#) at [para 1](#).

²⁰ [Final Settlement Agreement](#), preamble at AA.

²¹ *Canada (Human Rights Commission) v Canada (Attorney General)*, [2012 FC 445](#), at [para 1](#) [“**2021 FC 445**”].

In Canada, each province and territory has its own legislation that governs the delivery of services to children and families in need. However, First Nations children living on reserve and in the Yukon receive child and family services from the federal government through the FNCFS Program. This is because the federal government has “legislative authority” over “Indians, and Lands reserved for the Indians” under subsection 91(24) of the *Constitution Act, 1867*, 30 & 31 Vict., c. 3 (U.K.) (as am. by *Canada Act 1982*, 1982, c. 11 (U.K.), Schedule to the *Constitution Act, 1982*, Item 1) [R.S.C., 1985, Appendix II, No. 5]. The separation of powers is the driving force behind the types of jurisdictional disputes discussed in this decision.²²

23. At the time of the Tribunal’s Merits Decision²³, the federal government funded child and family services on reserve and in the Yukon in various ways: (i) funding to First Nations Child and Family Services Agencies (“**FNCFS Agencies**”) that operated under various governance models; (ii) through bilateral funding agreements with certain provinces and territories, including Alberta, British Columbia and the Yukon; and (iii) in Ontario, under the 1965 *Memorandum of Agreement Respecting Welfare Programs for Indians* (“**1965 Agreement**”).²⁴

24. FNCFS Agencies received their funding for on-reserve operations from the federal government pursuant to either Directive 20-1, which provided funding for operations and in-care costs (sometimes called maintenance funding), and beginning in 2007 (for FNCFS Agencies in certain provinces) under the Enhanced Prevention Focused Approach (“**EPFA**”), which included a third funding stream, additional to operations and in-care costs, namely “prevention services”.²⁵ By 2016, when the Tribunal released the Merits Decision, FNCFS Agencies in New Brunswick, British Columbia, Newfoundland and Labrador, and the Yukon received funding pursuant to Directive 20-1, while FNCFS Agencies in Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, and Prince Edward Island were funded under EPFA.²⁶ Ontario continued to be funded pursuant to the 1965 Agreement.

25. Outside of Ontario, while operation budgets, and later certain prevention services under

²² [2021 FC 969](#) at para 9.

²³ [Merits Decision](#).

²⁴ [Merits Decision](#) at para 121.

²⁵ [Merits Decision](#) at paras 125 and 137.

²⁶ [Merits Decision](#) at paras 124 and 136.

EPFA were fixed and controlled by the federal government, FNCFS Agencies were required to submit monthly invoices to the federal government for expenses related to children in care, to be reimbursed on the basis of the actual cost of maintaining a child in care.²⁷ The federal government provided fixed budgets for all service delivery costs (including salaries, very limited prevention services, intake and investigation, family supports, least disruptive measures, legal fees, building repairs, etc.) but would pay 100% of the cost associated with placing and maintaining a child in care. However, to the extent a FNCFS Agency experienced a deficit, the agency was expected to absorb it.²⁸

26. In Alberta and British Columbia, the federal government reimbursed the provincial governments for the delivery of child and family services to certain First Nations children ordinarily resident on reserve where there was no FNCFS Agency. At the time of the Merits Decision, in Alberta, six (6) First Nations were served by the province, as funded by the federal government, and in British Columbia, seventy-two (72) First Nations received direct service from the province, as funded by the federal government.²⁹

27. In the Yukon, all First Nations children and families ordinarily resident in the territory were served by the Yukon pursuant to the *Yukon Funding Agreement*, which provides for the federal funding of child and family services under Directive 20-1.³⁰

28. Similarly to the funding provided to FNCFS Agencies, the provinces of Alberta and British Columbia, along with the Yukon, were reimbursed for the in-care costs associated with placing and maintaining a First Nations child ordinarily resident on reserve in care, while operations budgets were controlled and adjusted by the federal government.³¹

29. Finally, in Ontario, First Nations children ordinarily resident on reserve receive child and family services as set out in the 1965 Agreement. The 1965 Agreement is a cost-sharing agreement pursuant to which Ontario provides or pays for eligible services up front and invoices Canada for

²⁷ [Merits Decision](#) at paras 126-147.

²⁸ [Merits Decision](#) at para 122.

²⁹ [Merits Decision](#) at para 249.

³⁰ [Merits Decision](#), at para 247.

³¹ [Merits Decision](#) at paras 250-253.

a share of the costs of those services pursuant to a cost-sharing formula.³² Protection services in Ontario for on-reserve First Nations children are provided by provincial child welfare agencies and FNCFS Agencies.³³ At the time of the Merits Decision, there were seven (7) fully mandated FNCFS Agencies in Ontario. Provincial child welfare agencies and FNCFS Agencies were funded directly by Ontario, which then sought reimbursement from the federal government in relation to child welfare services provided to First Nations children ordinarily resident on reserve.

30. In the result, due to Canada's funding structures and its failure to adequately fund a range of child welfare services, including prevention and least disruptive measures, child and family service providers could not provide mandated and culturally relevant supports to First Nations children ordinarily resident on reserve. Conversely, child and family service providers were fully funded by Canada to separate First Nations children from their families and maintain them in care:

As indicated above, the provinces' legislation and standards dictate that all alternatives measures should be explored before bringing a child into care, which is consistent with sound social work practice as described earlier. However, by covering maintenance expenses at cost and providing insufficient fixed budgets for prevention, AANDC's funding formulas provide an incentive to remove children from their homes as a first resort rather than as a last resort. For some FNCFS Agencies, especially those under Directive 20-1, their level of funding makes it difficult if not impossible to provide prevention and least disruptive measures. Even under the EPFA, where separate funding is provided for prevention, the formula does not provide adjustments for increasing costs over time for such things as salaries, benefits, capital expenditures, cost of living, and travel. This makes it difficult for FNCFS Agencies to attract and retain staff and, generally, to keep up with provincial requirements. Where the assumptions built into the applicable funding formulas in terms of children in care, families in need and population levels are not reflective of the actual needs of the First Nation community, there is even less of a possibility for FNCFS Agencies to keep pace with provincial operational requirements that may include, along with the items just mentioned, costs for legal or band representation, insurance premiums, and changes to provincial/territorial service standards.

[...]

The adverse impacts outlined throughout the preceding pages are a result of AANDC's control over the provision of child and family services on First Nations reserves and in the Yukon by the application of the funding formulas under the FNCFS Program and *1965 Agreement*. Those formulas are structured in such a way that they promote negative outcomes for First Nations children and families, namely

³² [Merits Decision](#) at [para 219](#).

³³ [Merits Decision](#) at [para 222](#).

the incentive to take children into care. The result is many First Nations children and families are denied the opportunity to remain together or be reunited in a timely manner.³⁴

31. The definition of Removed Child Class under the FSA reflects the discrimination flowing from the structure and level of the federal funding of child welfare services for First Nations children ordinarily resident on reserve, focusing on the experience of the child and their particular placement under the FNCFS Program:

“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.³⁵ [Emphasis added]

32. Conversely, the ISC Database is but one form of evidence demonstrating that a First Nations child ordinarily resident on reserve was removed under the FNCFS Program and placed in care:

“ISC Database” means a confidential database of records that identify certain details of removal for certain individuals who may be Removed Child Class Members, where the removal and placement was funded by ISC. Canada will provide the ISC Database to the Administrator to be used exclusively and relied upon by the Administrator for the purpose of administering the Claims Process. The Administrator may not provide any data or records included in the ISC Database to any party.³⁶

33. Indeed, the ISC Database relies solely on the records submitted to the federal government by FNCFS Agencies, the provinces and territories, and pursuant to the 1965 Agreement.³⁷ As set

³⁴ [Merits Decision](#) at paras 344 and 349. See also [2021 FC 969](#) at para 24.

³⁵ [Final Settlement Agreement](#), art 1.01.

³⁶ Claims Process, Appendix B, Defined Terms, Tab 1, Motion Record of the SIC (“MR”), p 49.

³⁷ Affidavit of Diane Corbiere, April 15, 2024 (“**Corbiere Affidavit**”), Tab 2, Plaintiff MR, para 25.

out below, while the ISC Database is an important tool for identifying Removed Child Class Members, there are concerns with the completeness of those records.

C. Concerns Regarding the Completeness of the ISC Data

34. On January 18, 2021, Dr. Nico Trocmé, and Peter Gorham submitted a report titled *Report on the Estimated Class Size –First Nations Children in Care 1991 to 2019* (the “**Trocmé and Gorham Report**”).³⁸ For the purposes of estimating the size of the class, For this proceeding, it was assumed that all First Nations children that ordinarily live on reserve and who were taken into care during the time periods of the data are included in the data.³⁹ Trocmé and Gorham were provided with aggregate data from ISC, as well as three sets of data files regarding individual children in care (the Ontario data, the BC data and the Canada data).⁴⁰

35. In the report, Trocmé and Gorham noted that they were “advised by ISC that the status of the child in care is entered into the system by the childcare worker assigned to the child and is not verified. Consequently, the status is believed to be susceptible to errors.”⁴¹ They also raised a number of issues and anomalies in the data, including unexplained spikes in the total number of children in care that returned to prior levels the following year⁴² and inconsistencies in the child-level data.⁴³ They noted that most of the issues that they had raised remained outstanding by the time the report was submitted.⁴⁴

36. On cross-examination, Ms. Corbiere did not know whether the current data available to the Administrator had been compared to the aggregate data provided to Trocmé and Gorham.⁴⁵

37. In 2021, Dr. Trocmé and Dr. Fallon were asked by ISC to undertake a review of available data to operationalize the compensation classes in the Tribunal’s orders and “the potential

³⁸ *Report on the Estimated Class Size –First Nations Children in Care 1991 to 2019*, Exhibit C to the Affidavit of Nico Trocmé, April 29, 2024 (“**Trocmé Affidavit**”), Tab 2C, Responding MR, p. 408 (“**Trocmé & Gorham Report**”).

³⁹ Trocmé & Gorham Report, para 64(b), Tab 2C, Responding MR, p. 424.

⁴⁰ Trocmé & Gorham Report, paras 19-22, Tab 2C, Responding MR, p. 414.

⁴¹ Trocmé & Gorham Report, para 17, Tab 2C, Responding MR, p. 413.

⁴² Trocmé & Gorham Report, paras 43-49, Tab 2C, Responding MR, p. 414.

⁴³ Trocmé & Gorham Report, paras 54, 57, 59-61, 66-68, Tab 2C, Responding MR, pp. 422-25.

⁴⁴ Trocmé & Gorham Report, para 94, Exhibit C to Trocmé Affidavit, Responding MR, p 433.

⁴⁵ Corbiere XEX, Qs. 68-70, Supplemental RMR, pp. 30-31.

availability of data that, if available and of high quality, could assist with the process of assessing claim eligibility under the CHRT child welfare and Jordan’s Principle compensation categories” (“**Trocmé-Fallon Report**”).⁴⁶

38. Particular issues were raised in the Trocmé-Fallon Report with the pre-2013-2014 data, including that the Atlantic Region did not include the child’s date of birth in the sample forms they were provided, that certain regions did not include the child’s Indian Registration Number in some years, and that some forms did not include the parent or guardian name.⁴⁷ They asked for more information on the completeness and accuracy of the pre-2013-2014 data, but ISC did not provide them with these details before the report was completed.⁴⁸ Additionally, they were informed of multiple limits related to the information collected prior to 2013-2024, including that “legacy systems had been decommissioned and the data they stored may be difficult to retrieve”, that “[o]lder records or closed files would be subjected to Treasury Board and Departmental policies regarding physical records retention, and therefore may have been disposed of in accordance with those policies.”⁴⁹

39. The Trocmé-Fallon Report noted:

Respondents were concerned that if the government relies solely on written documentation to support compensation, this could leave a substantial portion of eligible people claimants out of the process. Gaps related to pertinent information not consistently collected by agencies, and data that are not reliably completed in information systems could lead to anger on the part of claimants, which may be directed towards agency personnel impacting community relations. There were some concerns expressed regarding inequitable receipt of compensation due to bias in availability of data. When gaps in data availability or accessibility is unevenly distributed across the eligibility period – with older data generally being less available, the requirement for claimants to provide documentation may create inequities in access to compensation. In many cases, this differential impact of

⁴⁶ Affidavit of Barabara Fallon, April 29, 2024 (“**Fallon Affidavit**”), at para 12, Responding MR, p 3 | *Review of Data and Process Considerations for Compensation Under 2019 CHRT 39* (“**Trocmé-Fallon Report**”), Exhibit A to the Corbiere Affidavit, Plaintiff MR, p. 176. This report is also cited by the Plaintiffs at Exhibit J in the affidavit of William Colish, affirmed September 6, 2022, Tab 9, 2022 Motion Record of the Plaintiffs, p. 673.

⁴⁷ Trocmé-Fallon Report, Exhibit A to Corbiere Affidavit, Tab 2A, Plaintiff MR, p. 180.

⁴⁸ Trocmé-Fallon Report, Exhibit A to Corbiere Affidavit, Tab 2A Plaintiff MR, p. 180.

⁴⁹ Trocmé-Fallon Report, citing a document provided by First Nations Child and Family Services staff at ISC, Exhibit A to Corbiere Affidavit, Tab 2A, Plaintiff MR, p. 181.

data gaps reflects discriminatory funding that limited the ways in which a child's needs or welfare involvement were documented. Respondents were clear that if equities in data availability translate to a lack of compensation for children who are eligible based on their experiences, it would itself be a manifestation of the discrimination the CHRT and class actions are aiming to redress.⁵⁰

40. They concluded that while administrative data can expedite proof of eligibility, “documentation almost certainly does not exist for all eligible children, especially those who were involved in child welfare in earlier years ” [emphasis added].⁵¹

41. The concerns identified in the Trocmé and Gorham Report and in the Trocmé-Fallon Report regarding the incompleteness of the data remain unaddressed and no evidence has been proffered on this motion to suggest otherwise. In his evidence, Dr. Trocmé states as follows:

[...] The ISC data rely on requests for reimbursement for children ordinarily resident on reserve who were placed in out-of-home care.

While one would generally expect that agencies would be diligent in ensuring that they were being reimbursed, it is possible that in some instances the request for reimbursement was not made and therefore the child would not be included in the ISC data. This could occur if the agency was not aware but a child was First Nations in ordinarily resident on reserve or if for some reason the agency did not complete their request for reimbursement. Failing to claim for ISC reimbursement could in particular be an issue in Ontario given that the reimbursement mechanism is indirect. Ontario child welfare agencies are block funded by the provincial government, and the Ontario government then requests reimbursement from ISC.

[...]

[...] it is noteworthy that several key informants interviewed for a 2022 report that I completed with Professor Fallon raised concerns about the possibility that the ISC data may be missing children and out of home paid placements that had not been specifically billed to or reimbursed by ISC.⁵²

42. In her evidence, Dr. Fallon notes similar unresolved concerns regarding the quality and completeness of the data:

I can not attest to whether the ISC identified gaps in the database prior to 2013 have been remedied since the completion of our report. If the gaps in the data have not been remedied, then it is reasonable to conclude that some children are

⁵⁰ Trocmé-Fallon Report, Exhibit A to Corbiere Affidavit, Tab 2A Plaintiff MR, pp. 308-309.

⁵¹ Trocmé-Fallon Report, Exhibit A to Corbiere Affidavit, Tab 2A Plaintiff MR, p. 197.

⁵² Dr. Trocmé Expert Report, April 29, 2024, Exhibit F to Trocmé Affidavit, Tab 2F, Responding MR, pp. 463-465.

missing from the ISC database. Again, we did **not** assess for the whether the IMS [the Information Management System] contained all children that were eligible for the Removed Child Compensation Class [...] Throughout the report, we recommend that given the gaps in the data, the onus be placed on the government to rely on alternative or multiple methods to identify Removed Child Class Members.⁵³

43. While the Settlement Implementation Committee's evidence on this motion identifies 149,638 unique individuals contained in the ISC Database as for May 9, 2024, counsel refused to provide information as to the years attributed to the number of individuals identified to date.⁵⁴

D. Notice Plan and the Opt-Out

44. On June 24, 2022, the Phase I Notice Plan was approved by the Court.⁵⁵ The Notice Plan applies to all classes covered by the FSA, including the Removed Child Class and Removed Child Family Class.

45. In the Short Form Notice of Certification and Settlement, approved as part of the Phase I Notice Plan on June 24, 2022, the Removed Child Class and Removed Child Family Class are defined as:

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.

The parents, grandparents or siblings of one of the individuals above.⁵⁶

46. The Long Form Notice of Certification and Settlement, also approved on June 24, 2022, further outlined qualifications for payment as a Removed Child Class Member as:

- a. Are First Nations;
- b. Lived on reserve or had at least one parent living on reserve, or in the Yukon as a child (except in the Northwest Territories);

⁵³ Dr. Fallon Expert Report, April 29, 2024, Exhibit F to Fallon Affidavit, Tab 1F, Responding MR, pp. 306 and 309.

⁵⁴ Corbiere XEX, Qs. 49-50, Supplemental RMR, pp. 23-24.

⁵⁵ Phase I Notice Plan, Appendix A to June 24, 2022 Order of Justice Aylan.

⁵⁶ Short Form Notice of Certification and Settlement, Schedule A to June 24, 2022 Order of Justice Aylan.

- c. Were placed into care as a child between April 1, 1991 and March 31, 2022; and
- d. Being in a placement was funded by Canada.⁵⁷

47. In the Notice of Settlement Approval, approved November 3, 2023, with the Phase II Notice Plan, eligibility for the Removed Child Class was defined as:

- i. First Nations children, who were under the age of majority between April 1, 1991, and March 31, 2022, were living on a reserve and were removed from their homes by child welfare authorities or voluntarily placed into care;
- ii. The placement was funded by Indigenous Services Canada (ISC).
- iii. At least one caregiver (parents or grandparents) were resident on reserve or living in the Yukon.⁵⁸

E. Caring Society Concerns Regarding the Claims Process During Development

1. Concerns Raised Regarding Exclusive Reliance on the ISC Database

48. As set out in the motion material provided by the Settlement Implementation Committee, the Caring Society participated in the development of the Claims Process. Throughout the summer and fall of 2023 and into the winter of 2024, the Caring Society attempted to engage with the Administrator and the Parties regarding two critical issues relevant to the current Claims Process: (a) records (applicable to both the Removed Child Class and the Kith Class, the claims process for which remains to be developed) and (b) supports for Class Members to safeguard against the adverse effects that can flow from individual compensation paid to vulnerable persons- particularly those with mental health and addictions challenges.

49. As set out in the affidavits of Dianne Corbiere and Joelle Gott, the initial discussions in the fall of 2023 centred around whether the Claims Process should include both the Removed Child Class and the Kith Child Class.⁵⁹ The Caring Society provided feedback and information regarding child welfare records and the most effective way to engage FNCFS Agencies and the provinces to

⁵⁷ Long Form Notice of Certification and Settlement, Schedule B to June 24, 2022 Order of Justice Aylan.

⁵⁸ Notice of Settlement Approval, Schedule B to the November 3, 2023 Order of Justice Aylan.

⁵⁹ Corbiere Affidavit, para 24, Tab 2, Plaintiff MR, p. 101 | Affidavit of Joelle Gott affirmed April 12, 2024 (“**Gott Affidavit**”), para 14, Tab 3, Plaintiff MR, pp. 1125-1127

better understand the nuances between regions and between agencies.⁶⁰ Indeed, on September 29, 2023, the Caring Society's Executive Director, Dr. Cindy Blackstock, prepared a summary⁶¹ for the Administrator on the issue of records and records locations, noting as follows:

- Provincial courts will have records for children who were found in need of protection, removed, and/or placed under a supervision order and/or adopted and for which a presentation of subsequent hearing was required;
- Resources files held by child and family services providers may be a source for identification of customary care, foster, group and institutional care; and
- Given the expanse of time in the Class Period, and the serious deficits Directive 20-1 had for First Nations Agency records keeping/management, many of the files will be in paper form particularly for the group 1991-2005. Records management was also influenced by the type of funding arrangement Canada applied in the region with Directive 20-1 providing the least support, EPFA a marginal improvement and the 65 Agreement was better.

50. Dr. Blackstock suggested that the Administrator and the Parties engage with the provinces and FNCFS Agencies and ask a series of questions to assist in developing a strategy to locate records. Some of the questions included: (i) views about the integrity (reliability and validity) of ISC records of children in care; (ii) how did reports to ISC regarding children in care and kith children change between 1991-2022; (iii) what were the agency reporting requirements for children in care and kith children to ISC; and (iv) what policy existed to record the First Nations identity of a child and their parents. On cross-examination, Joelle Gott (co-lead overseeing the role of the Administrator) did not know whether any of work in relation to Dr. Blackstock's suggestions had been undertaken.⁶²

51. Ultimately a decision was made to bifurcate the Removed Child Class from the Kith Child Class – a decision to which the Caring Society does not object.

52. On January 18, 2024, following a detailed review of the draft Claims Process, the Caring Society made clear that it had serious concerns about on exclusive reliance on the ISC Database,

⁶⁰ Email from Caring Society dated September 11, 2023, Exhibit 1 to the cross-examination of Joelle Gott, May 21, 2024 (“**Gott XEX**”), Tab 2, Supplemental RMR, p. 125.

⁶¹ Email from Cindy Blackstock dated October 3, 2023 with attachment, Exhibit 3 to the Gott XEX, Tab 2C, Supplemental RMR, p. 129.

⁶² Gott XEX, Qs 33-40, Tab 2, Supplemental RMR, pp. 74-76

noting it was “strongly of the view that this is not an item that should be left to a later date. This is not in keeping with the representations collectively made to the Tribunal and is not in keeping with the terms of the FSA”.⁶³ Further, on February 15, 2024, the Caring Society responded to the Plaintiffs’ letter of February 2, 2024 (which did not substantively or productively address the concerns raised by the Caring Society), stating as follows:

[...] the Caring Society has attempted on numerous occasions to engage with the Parties and Deloitte regarding records and collaborating with the Agencies in order to reasonably be prepared to compensate Removed Child Class Members whose names do not appear on the ISC Database through no fault of their own. Given that we have been raising these issues since at least the summer of 2023, it should be possible to now include some provision for Removed Child Class Members who are not on the ISC Database but are able to locate and secure their eligibility-confirming documents at the present time.⁶⁴

53. The Plaintiffs’ response on February 27, 2024,⁶⁵ as well as those set out in their written submissions on this motion, do not substantively address the Caring Society’s concern: where there are no records for certain Removed Child Class Members, completion of the ISC Database will not lead to any material change in these class members’ circumstances. Indeed, beyond ISC’s and the Administrator’s database-building process, there is no mechanism for cross referencing the data within the system and the Administrator is not assessing the completeness of the ISC Database against FNCFS Agency or provincial records.⁶⁶ The concerns regarding the data’s completeness remain unaddressed.

2. Concerns Raised About Lack of Adequate, Culturally Sensitive and Available Supports

54. In addition to the concerns raised by tying Removed Child Class Members’ eligibility to the ISC Database, the Caring Society has consistently and persistently raised concerns regarding the readiness of relevant supports for Class Members, particularly for young people, vulnerable adults and First Nations communities in crisis. The FSA makes clear that supports for Class

⁶³ Email from Caring Society dated January 18, 2024, Exhibit 5 to the Gott XEX, p 138.

⁶⁴ Email from Caring Society dated February 15, 2024, with attachment, Exhibit 7 to the Gott XEX, Supplemental RMR, p. 140.

⁶⁵ Letter from Mohsen Seddigh dated February 27, 2024, Exhibit 8 to the Gott XEX, Tab 2Hm Supplemental RMR, p. 157.

⁶⁶ Corbiere XEX, Qs 67 and 71, Tab 1, Supplemental RMR, pp. 29 and 31

Members must be responsive to their needs and be available as part of the Claims Process:

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 3.02.⁶⁷

55. This Court, in approving the FSA, noted that the FSA “ contains a number of safeguards to ensure that compensation is paid in a manner that minimizes re-traumatization (such as by avoiding the need for an interview or examination of Class Members in order for them to advance a claim) and includes free supports to the Class Members throughout the claims process that are both culturally sensitive and trauma-informed.”⁶⁸

56. Since at least the fall of 2023, Dr. Blackstock⁶⁹, has been advancing suggestions to the Administrator to strengthen the approach to the supports under the FSA. In particular, on September 6, 2023, Dr. Blackstock wrote to Ms. Gott and other members of her team on the following points:

- Advocate for surge capacity funding for First Nations service providers to respond to higher needs relating to the compensation (i.e.: addictions, mental health, domestic violence, law enforcement, youth centres, child and family etc.) - this is absolutely vital as the current constellation of supports will be inadequate to meet the needs of recipients.
- Ensure service providers who you anticipate referring people to are aware of any documents referring to them and consent to such referrals;
- Consult with experts (including trusted youth organizations) to flush out how to communicate and effective working methods with youth and young adults taking into full account the A7G reports relevant to compensation an accountability
- Ensure navigation supports are available prior during and after the claims period;

⁶⁷ [Final Settlement Agreement](#)., art 9(1).

⁶⁸ *Moushoom* at [para 61\(d\)](#).

⁶⁹ Executive Director of the Caring Society who has nearly 40 years of experience working with First Nations children, is a Professor of Social Work at McGill University and the 2023 recipient of the World Children’s Prize.

- Ensure there is clinical capacity and clinical supervision of “navigators” [now referred to as claims helpers] particularly in the areas of mental health, addiction, domestic violence and working with young people - this should be available 24/7.
- Proactively identify groups of First Nations claimants that may require more tailored supports based on existing data. For example, how are the needs of persons who are neurodiverse, have FASD, have a disability or are members of the LGBTQAI2S+ communities being accommodated?
- Identify high risk First Nations that are currently experiencing crisis with mental health and addictions and or climate emergency and proactively reach out to provide supports in advance of compensation and develop strategies for mitigating serious crisis and critical incidents that happened during or after compensation. For example, what response will happen if a First Nation asks for a pause in the compensation roll out due to suicide or overdose crisis? Consider a national crisis response team to address significant issues that may arise in relation to expected increase in drug use.
- Ensure the communication plan includes informing groups like alternate caregivers, teachers, or health workers who use may reach out to for assistance.⁷⁰

57. Throughout the fall 2023 and into early 2024, the Caring Society attempted to garner feedback from the Administrator and the Parties regarding its recommendations on supports and attempted (on multiple occasions) to meet with the Administrator and the Parties to discuss same. Unfortunately, no substantive feedback has been provided and no meeting to specifically address supports has taken place.⁷¹

58. In its February 15, 2024, letter to the Plaintiffs’ counsel, the Caring Society underlined its concerns that a lack of readiness, availability and capacity regarding supports could have detrimental impacts on Class Members:

Your letter of February 2, 2024 misunderstands the Caring Society's position on supports. The focus for the Caring Society is ensuring that Class Members have ready access to a wide range of culturally relevant and appropriate supports before, during and after the Claims Process opens. This is entirely consistent with the intent of the Revised FSA in providing “additional benefits” beyond

⁷⁰ Email from Caring Society dated September 6, 2023, with attachment, Exhibit 2 to the Gott XEX, Tab 2B, Supplemental RMR, p. 127.

⁷¹ Gott XEX, Qs 64-67, Tab 2, Supplemental RMR, pp. 83-84 | Email from Cindy Blackstock dated November 1, 2023, Exhibit 4 to the Gott XEX, Tab 2D, Supplemental RMR, p. 137 | Email from Caring Society dated February 15, 2024, with attachment, Exhibit 7 to the Gott XEX, Tab 2G, Supplemental RMR, p. 147.

compensation, which Justice Alyen described in her settlement approval reasons as “extensive fully-funded supports to help Class Members navigate the claims process and to address mental health, cultural, administrative, legal and financial needs [emphasis added]” (2023 FC 1533 at para 66.)

The Caring Society's focus in making these comments is not, as you suggest, on “the fixing of unfortunate systemic issues”. Rather, we are concerned that the current approach, which seems reliant on existing supports, will not be sufficient to help Class Members and risks deepening these same systemic issues. Indeed, First Nations mental health professionals have advised the Caring Society that they have no time to meet the additional demands flowing from various class actions as they are struggling to meet the existing needs of community members. The stark reality on the ground is that there is a dearth of mental health supports for First Nations youth and young adults. Moreover, it is not enough to only focus on mental wellness, cultural supports and financial literacy. We know from the IRS and 60’s Scoop class actions that the entire community is affected when compensation begins to flow into communities as a result of systemic discrimination and additional demands are placed on an array of service providers such as domestic violence, youth centres, law enforcement, child and family services and health.⁷²

59. The Plaintiffs advised the Caring Society that they have received our comments and are bound by the scope of supports agreed to in Schedule I of the FSA.⁷³ The Caring Society is not convinced that the recommendations it has provided to improve supports is beyond the scope of Schedule 1 of the FSA. Indeed, the Caring Society is of the view that its suggestions are essential to meeting the best interests of the class, particularly for vulnerable Class Members.

60. The Caring Society is unaware of the status of the supports as set out in Schedule I of the FSA or whether any of the Caring Society’s suggestions regarding ascertaining the availability and readiness of existing service providers has been undertaken. As noted by Ms. Corbiere during cross-examination, “supports are being worked on”⁷⁴ and are only being offered to claimants if they call.⁷⁵ In answer to the Caring Society’s question about whether there is a component for surge capacity for service coordination, Ms. Corbiere answered as follows:

⁷² Email from Caring Society dated February 15, 2024, with attachment, Exhibit 7 to the Gott XEX, Tab 2G, Supplemental RMR, p. 147.

⁷³ Letter from Mohsen Seddigh dated February 27, 2024, Exhibit 8 to the Gott XEX, Tab 2H Supplemental RMR, p. 157.

⁷⁴ Corbiere XEX, Q. 76, Tab 1, Supplemental RMR, p. 33

⁷⁵ Corbiere XEX, Q. 76, Tab 1, Supplemental RMR, p. 34

I am not prepared and I didn't prepare in my affidavit to turn my mind to the details of supports because it's premature, it's still a work in progress. We will be coming to the table with a support plan, communication materials, and all of your questions can be answered then and that is not happening today. It will be able to happen very soon through because what we're hearing is, as you said, people want, you know, clarity and more supports and they want them to be clear and rolled about before the claims process begins and we're now looking at a claims process that might not begin for six months, so we have a lot of work to do to get ready to deliver on these supports.⁷⁶

61. Ms Corbiere also testified that an Assembly of First Nations Compensation Wellness Task Team had been replaced by a subgroup of the Settlement Implementation Committee.⁷⁷ Ms. Corbiere was not aware of the recommendations or budgets for supports produced by the Assembly of First Nations Compensation Wellness Task Team.⁷⁸

62. The Caring Society is of the view that the details of the supports are not premature at this important juncture, especially given that the Class, by definition, includes children and young adults who are in care or are from care and are predisposed to higher risks.

F. The Current Claims Process Exclusive Reliance on the ISC Database to Determine Eligibility

63. The proposed Claims Process, at this juncture, relies exclusively on the ISC Database to determine eligibility for the Removed Child Class. If a Claimant is located on the ISC Database and ISC Database allows the Administrator to determine that the Claimant meets the requirement as an Approved Removed Child Class Member, the Administrator will approve the Claim and issue an Approval of Eligibility Letter.⁷⁹

64. If a Claimant is located on the ISC Database and the ISC Database allows the Administrator to determine that they do not meet the requirements as an Approved Removed Child Class Member, the Administrator will issue a Denial of Eligibility Letter.⁸⁰

⁷⁶ Corbiere XEX, Q. 98, Tab 1, Supplemental RMR, p. 43

⁷⁷ Corbiere XEX, Qs 88-89, Tab 1, Supplemental RMR, pp. 39-40

⁷⁸ Corbiere XEX, Qs 92-95, Tab 1, Supplemental RMR, pp. 41-42

⁷⁹ Claims Process, Schedule A to the Notice of Motion, dated April 15, 2024 (“**Claims Process**”), Tab 1, Plaintiff MR, ss 4.4, 4.5 and 4.8.

⁸⁰ Claims Process, Tab 1, Plaintiff MR, ss. 4.5 and 4.6.

65. If a Claimant is not located on the ISC Database, the Administrator will issue an Inconclusive Eligibility Letter and, as set out in the Claims Process,

inform the Claimant that their Claim is on hold while the Administrator waits update to the ISC Database from Canada. The Administrator will periodically perform new searches of the updated ISC Database. If the Removed Child Class Claimant is later identified on the ISC Database such that the Administrator can issue an Eligibility Decision, the Claimant will receive such Eligibility Decision from the Administrator. The continued review of the ISC Database will take place until Canada confirms that the Administrator has received the complete ISC Database and no further updates are to be provided to the Administrator.

A process is under development for Claimants who will have received an Inconclusive Eligibility Letter. This process will provide direction on next steps for Claimants who, by the time it is finalized, are still awaiting an Eligibility Decision.⁸¹

66. On cross examination, all questions regarding how and whether a Removed Child Class Member not identified on the ISC Database could be approved for compensation under the Claims Process were refused.⁸² Indeed, during the cross examination of Ms. Gott representing the Administrator, who was supported by her own counsel, Plaintiffs' counsel interjected on a number of occasions and "cautioned" the witness from answering questions in relation to her role as the Administrator under the Claims Process.⁸³

G. Removal of a Removed Child Class Member Due to Abuse

67. One of the central pillars of the Tribunal's 2019 CHRT 39 compensation decision (the "**Tribunal Compensation Decision**") was an order that caregivers who had abused children who were removed should not be compensated: "parents or grandparents who sexually, physical or psychologically abused their children are entitled to no compensation under this process".⁸⁴

68. The Compensation Framework set out a process to identify beneficiaries if they appeared on the "Compensation List", which was to be made up information collected from ISC, FNCFS

⁸¹ Claims Process, Tab 1, Plaintiff MR, s. 4.7.

⁸² Corbiere XEX, Q. 41, Tab 1 Supplemental RMR, p. 20, q. 41; Gott XEX, Qs 83-94, Tab 2 Supplemental RMR, pp. 93-105.

⁸³ Gott XEX, Qs 83, Tab 2, Supplemental RMR, pp.93 and 97.

⁸⁴ [2019 CHRT 39](#) at [para 256](#).

Agencies, First Nations, provincial/territorial government ministries and agencies, and the professionals and service providers with whom ISC has a relationship.⁸⁵ Similarly, parents or grandparents who abused their children would be identified on an “Exclusion List”, which was to be developed as part of the compensation process, based on the judgment of the social worker at the time of the removal as recorded in the file.⁸⁶

69. The FSA also excludes compensation for Caregiving Parents and Caregiving Grandparents who committed Abuse⁸⁷ resulting in the Removed Child Class Member’s removal.⁸⁸

70. However, the proposed Claims Process does not include a process or mechanism for a Removed Child Class Member to indicate that they suffered Abuse perpetrated by their Caregiving Parent or Caregiving Grandparent. Certainly, the FSA does not allow for (nor should it) the Removed Child Class Member to submit to an interview, examination or other form of *viva voce* evidence taking⁸⁹, but neither the Claims Process nor the Remove Child Claim Form provides any opportunity for the child to indicate to the Administrator that they suffered Abuse.⁹⁰ Given the Settlement Implementation Committee’s position that agency records will not be accessed as a part of the Claims Process⁹¹, there are questions regarding how Caregiving Parents and Caregiving Grandparents who Abused their children will be identified during the time that Removed Child Class Members are making claims.

⁸⁵ Compensation Framework, section 8.3, Exhibit “D” to Kaur Affidavit, Tab 3, Responding MR, p. 513.

⁸⁶ Compensation Framework, section 8.4, Exhibit “D” to Kaur Affidavit, Tab 3, Responding MR, p. 513.

⁸⁷ “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 harm,” [Final Settlement Agreement](#), art 1.01.

⁸⁸ [Final Settlement Agreement](#), art 6.04(4); See also [Moushoom](#), at [para 37](#).

⁸⁹ [Final Settlement Agreement](#), art 6.01(2).

⁹⁰ Claims Process, Tab 1, Plaintiff MR, art 5.12(d) | Removed Child Claim Form, Appendix to Claims Process, Tab 1 Plaintiff MR, page 68 | Gott XEX, Qs 98 and 103, Tab 2, Supplemental RMR, pp. 108-110

⁹¹ Corbiere XEX, Q 71, Tab 1, Supplemental RMR, p. 31.

III. Issues

71. The Caring Society submits that the following issue must be determined on this motion:
- a. Whether the Claims Process can be approved as fair, reasonable and in the best interests of the class, subject to the reporting orders requested by the Caring Society.

IV. Submissions

A. Legal Approach to the Claims Process

72. The Caring Society agrees with the legal principles governing a claims process approval as set out in the written submissions of the Settlement Implementation Committee. The test for approving a Claims Process is analogous to the test that the court applies when deciding whether to approve a settlement. That is to say, that a claims process should only be approved if it is fair, reasonable and in the best interests of the class.⁹² The court's authority to approve a claims process is grounded in its jurisdiction to approve settlements and the court may, therefore, direct any means of distribution that it considers appropriate.⁹³

73. To approve a claims process, the court will need to examine its overall fairness and reasonableness, and whether it is in the best interests of the class, having regard to the claims and defenses in the litigation and any objections raised to the settlement.⁹⁴ An objective and rational assessment of the pros and cons of the settlement is required for this analysis.⁹⁵

B. The Claims Process Must Provide a Pathway to Compensation for all Removed Child Class Members

74. There are two principal concerns with the Claims Process' current approach of exclusively relying on the ISC Database to determine eligibility for the Removed Child Class: (a) exclusive

⁹² *Brazeau v. Canada (Attorney General)*, 2020 ONSC 7229 (CanLII) [*Brazeau*] at [paras 73-74](#); *Class Proceedings Act, 1992*, sections [26](#) and [27.1](#); *Eidoo v. Infineon Technologies AG*, 2015 ONSC 5493.

⁹³ *Brazeau* at [para 75](#); *Class Proceedings Act, 1992*, SO 1992, c 6, [section 26 \(1\)](#); *Code of Civil Procedure, CQLR c C-25.01*, [section 596](#).

⁹⁴ *Francis v. Ontario*, [2023 ONSC 5355](#) [*Francis*] at para 36.

⁹⁵ *Francis*.

reliance on the ISC Database is not in keeping with the FSA or the Tribunal's orders (and could set a precedent in which wrongdoers save money by keeping poor records of their harms); and (b) the quality and completeness of the data used to build the ISC Database is uncertain, potentially disempowering eligible Removed Child Class Members. Given these important issues, the Caring Society is asking the Court to order that the Settlement Implementation Committee submit to the Court for approval, an alternative pathway for those Removed Child Class Members who cannot be identified on the ISC Database but are nonetheless eligible for compensation. For clarity, the Caring Society is not suggesting that the Court reject the Claims Process, but rather that the Court exercise its jurisdiction to ensure public confidence in the Claims Process by taking reasonable measures to ensure all eligible Removed Child Class Members receive compensation.

1. Exclusive Reliance on the ISC Database is Not in Keeping with the Tribunal's Orders or the FSA

75. The Tribunal reasonably concluded from the evidence that Canada was “devoid of caution with little to no regard to the consequences of its behavior towards First Nations children and their families”.⁹⁶ It also found that Canada had continuously focused on “financial considerations rather than on the best interest of First Nations children and respecting their human rights.”⁹⁷ It is not the fault of the victims in this case that Canada's wilful and reckless conduct adversely impacted so many First Nations children, youth and families across the country. No victim should have to forfeit their legal right to human rights compensation to shield Canada from further liability or to compromise their entitlement after their right to compensation has already been challenged and upheld.

76. As set out above, First Nations children ordinarily resident on reserve received child and family services funded by the federal government. If a First Nations children was removed by a child welfare authority while ordinarily resident on reserve and placed in care, that child's placement was presumptively funded by federal government.⁹⁸

77. On the issue of removed children, the Tribunal did not make compensation for children in and from care dependent on ISC's records. Instead, as the Tribunal made clear, the harm arose

⁹⁶ [2019 CHRT 39](#) at [para 230](#).

⁹⁷ [2019 CHRT 39](#) at [para 231](#).

⁹⁸ [Merits Decision](#) at paras [5](#), [35](#), [52](#), [59](#), [73-76](#), [78](#), [83-85](#)

from a child being removed from their family:

[...] the evidence is sufficient to make a finding that each child who was unnecessarily removed from their home, family and community has suffered. Any child who was removed and later reunited with their family has suffered during the time of separation.⁹⁹

78. The operable harm thus flows from the child's experience of being separated from their family and moving to another living situation during a child welfare intervention. The issue of whether ISC received or maintained a record on that child's particular child welfare placement is immaterial to the child's experience of harm.

79. In fact, there was no evidence adduced at the compensation hearing before the Tribunal or this Honourable Court suggesting that ISC record keeping was material to the harm experienced by Removed Child Class Members. Instead, the evidence focused on the well documented harms flowing from Canada's discriminatory funding and policy approaches that incentivized the separation of First Nations children from their families as services providers could not offer substantively equal, culturally appropriate prevention services and least disruptive measures.¹⁰⁰

80. One of the fundamental derogations identified by the Tribunal in refusing to approve the 2022 FSA was the exclusion of removed children who were not in ISC-funded placements. On that point, the Tribunal noted as follows:

The FSA adds another requirement in order to award compensation to First Nations children. The Tribunal decisions provide compensation for children removed from their homes, families and communities as a result of the FNCFS Program's systemic discrimination. The FSA narrows it to removed children who were also placed in ISC-funded care. In light of the evidence presented throughout this case, the Tribunal ordered the maximum compensation available under the *CHRA* for the great harms caused by the removal of First Nations children rather than the number of years in care or the other harms that occurred in care. The Tribunal explained that a removed child or caregiving parent or grandparent had other recourses in addition to this maximum compensation that they could pursue to obtain higher amounts of compensation for the additional harms they suffered. The FSA and class actions focus on these additional harms and the Tribunal agrees this is an appropriate focus for the FSA and the class actions. However, the requirement of removal and placement in care in an ISC-funded location cannot be considered a proper

⁹⁹ [2019 CHRT 39](#) at para 148.

¹⁰⁰ [2019 CHRT 39](#).

interpretation of the Tribunal's findings and orders. The Panel disagrees with the AFN and Canada's interpretation of the Tribunal's orders on this point. The Caring Society properly characterized the Tribunal's findings and orders in that regard. [Emphasis added]¹⁰¹

81. The Caring Society is concerned that if the current Claims Process is approved absent clear eligibility mechanisms that go beyond a Removed Child Class Member being identified on the ISC Database, the Claims Process risks disentiing children in care from the compensation they have already been awarded (which may deepen the trauma and injustice) and narrow the eligibility requirements set out in the Tribunal's Compensation Entitlement Order.

82. Moreover, without a clear pathway to determine eligibility outside of the ISC Database, the Claims Process will be in direct conflict with the FSA as the FSA does not include a clear statement that eligibility for the Removed Child class is determined strictly on ISC records.

83. The Tribunal's Compensation Entitlement Order and the subsequent FSA approved by this Court is grounded in the child's experience of Canada's discriminatory conduct - not on whether Canada and child and family service providers did their paperwork properly. The definition of Removed Child Class does not include the requirement that the Claimant be identified on the ISC Database. Moreover, the FSA recognizes that eligibility will be based on "objective criteria and data primarily from ISC **and Supporting Documentation as the case may be**"¹⁰² while also making clear that the Claims Process must account for the incompleteness of records:

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 development 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.¹⁰³

84. Under the FSA, Canada is responsible for paying the reasonable costs for Child Welfare

¹⁰¹ [2022 CHRT 41](#), at [para 283](#).

¹⁰² [Final Settlement Agreement](#), art 6.02(3) [emphasis added].

¹⁰³ [Final Settlement Agreement](#), art 5.01(7) [emphasis added].

Records Technicians who, pursuant to the definition under the FSA, are individuals who can be “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 matter such as the verification of Claims made by Kith Child Class Members or Kith Family Class Members.”¹⁰⁴

85. Moreover, the definition of “Supporting Documentation” for the Removed Child Class did not require identification on the ISC Database to determine eligibility, with good reason.¹⁰⁵ As set out above, Canada’s discrimination was embedded in multiple funding approaches that drove different service delivery providers and models over time. Thus, the parties to the FSA, and the corresponding Minutes of Settlement with the Caring Society, intended the Claims Process to be agile and flexible, taking account of the multiple approaches to determining eligibility. This is the basis on which the FSA was approved.

86. As set out by Dr. Blackstock in her October 3, 2023, communication to the Administrator and Class Counsel, certain records for Removed Children are shaped by legislative, regulatory and practice requirements and are held by multiple sources (i.e.: courts, provinces/territories, and delegated First Nations child and family service providers). Moreover, changes in record keeping technology means that records for Removed Children will be kept in multiple media formats.¹⁰⁶

87. There may be other forms of records, outside of the child welfare accounting records, that may assist the Administrator in the determining of eligibility. For example, under Ontario’s *Child, Youth and Family Services Act*, the Court is required to make statutory findings “as soon as practical” regarding the following:

- (a) the child’s name and age;
- (b) whether the child is a First Nations, Inuk or Métis child and, if so, the child’s bands and First Nations, Inuit or Métis communities; and

¹⁰⁴ [Final Settlement Agreement](#), art 1.01 and 3.04(1)(b).

¹⁰⁵ [Final Settlement Agreement](#), art 1.01.

¹⁰⁶ Email from Cindy Blackstock dated October 3, 2023, with attachment, Exhibit 3 to the Gott XEX, Tab 2C, Supplemental RMR, p. 129.

(c) where the child was brought to a place of safety before the hearing, the location of the place from which the child was removed.¹⁰⁷

88. Furthermore, the Short Form Notice the Long Form Notice and the Notice of Settlement Approval did not restrict eligibility under the Removed Child Class to individuals being identified on the ISC Database thus raising important questions about the sufficiency of the Opt-out Notice to Class Members.

89. Finally, we return to the purpose of tort compensation which is to restore persons to the position they would have been in but for the loss or adverse effects of the cause of action- in this case being removed from their families unnecessarily. This intention is seriously undermined if wrongdoers can be shielded from accountability for their harmful conduct by not keeping records or by keeping poor records. The nature and level of the compensable harm properly lies with the experience of the victim -not in the pen of the wrongdoer.

2. Expert Concerns with the Quality of the Data

90. There have been and continue to be concerns with the quality and completeness of the records used to build the ISC Database – concerns from subject matter experts in the area of child welfare and who have been involved in this case since at least 2021. The evidence of Drs. Fallon and Trocmé is far from “speculative” and instead is objective, independent and relevant to an issue to be decided in these proceedings. Their expertise is needed to assist the court in rendering its decision.¹⁰⁸ Their evidence was tendered for no improper purpose, nor was it biased or misleading. Indeed, the evidence from Dr. Fallon and Dr. Trocmé satisfies the test in *R. v. Mohan*.¹⁰⁹

91. The court is entitled to rely on this evidence in order to determine whether the Claims Process is fair, reasonable and in the best interest of the class. There is no basis for disentitling some claimants because the number of unique individuals identified on the ISC Database exceeds the estimates provided in the Trocmé and Gorham Report (and beyond those in the Peter Gorham updated estimates¹¹⁰). This does not lead to an automatic determination that all Removed Child

¹⁰⁷ *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1, s 90(2).

¹⁰⁸ *R v Mohan*, [1994] 2 SCR 9 [Mohan]

¹⁰⁹ *R. v. Mohan*, [1994] 2 SCR 9 [Mohan].

¹¹⁰ Trocmé Affidavit, at paras 10-11, Tab 2, Responding MR, p. 314-315 | Trocmé & Gorham

Class Members are on the ISC Database. Instead, the number likely reveals a far wider catchment of children impacted by Canada's discrimination and poor record keeping.

92. The Caring Society submits that the expert concerns with the quality and completeness of the ISC Database do not lead to the floodgates argument raised by the Settlement Implementation Committee in its written submission.¹¹¹ Whether a proper accounting record was submitted to the federal government by a FNCFS Agency or the province did not impact the experience of a Removed Child Class Member. Moreover, raising concerns regarding the completeness of the data in no way suggests the erasure of the requirement that the First Nations child be ordinarily resident on reserve.

93. In its written submissions, the Settlement Implementation Committee attempts to distract from the definition of Removed Child Class Member under the FSA by implying that *Stonechild v. Canada* and *A. B. et al*, among other class proceedings, will cover First Nations children placed in care.¹¹² The Settlement Implementation Committee relies on the following class definition from *Stonechild* at paragraph 104 of its submissions:

All First Nations (Status and Non-Status Indians) Inuit and Métis persons who were removed from their homes in Canada between January 1, 1992 and December 31, 2019 and placed in the care of individuals who were not members of the Indigenous group, community or people to which they belong, **excluding on-reserve class members in the Federal Court action styled as *Moushoom and Meawasige (by his litigation guardian, Beadle) v The Attorney General of Canada with court file number T-402-19* (the "Primary Class" or "Primary Class Members")**.¹¹³

94. Reliance on the above definition is misplaced in this discussion. The above definition provides no guarantee that individuals who are not identified on the ISC Database will be captured in these other proceedings. Rather, the above definition excludes on-reserve class members who are expected to be covered by these proceedings, without any qualification regarding the state of

Report, Exhibit C to the Trocmé Affidavit, Tab 2C, Responding MR, p. 408 | February 7, 2022 Letter from Peter Gorham to Robert Kugler, Exhibit D to the Trocmé Affidavit, Tab 2D, Responding MR, p 457.

¹¹¹ Plaintiff's Memorandum of Fact and Law, paras 100-106.

¹¹² Plaintiff's Memorandum of Fact and Law, para 101 and 104.

¹¹³ *Stonechild v. Canada*, [2022 FC 913](#) [*Stonechild*] at para 2.

records regarding their time in care. Contrary to the suggestion made by the Settlement Implementation Committee, the *Stonechild* definition does not have the subsequent effect of ensuring children who are not included in the ISC Database in this case, but who are otherwise eligible, will be covered by those other proceedings.

95. In fact, *Stonechild* relates to a different set of facts and respective compensation scheme altogether, where the focus is on the placement of children in the care of individuals who were not members of the Indigenous group (an additional requirement that is not part of the eligibility criteria in the FSA in this case), and *not* placements that were the result of the discriminatory funding schemes under the FNCFS Program.

96. The Caring Society submits that the Settlement Implementation Committee is inaccurately and incorrectly conflating “ISC-funded placement” with identification on the ISC Database. They are not one in the same. While the Court can certainly infer that First Nations children ordinarily resident on reserve removed and placed in care who appear on the ISC Database were in an ISC-funded placement, there is no basis to infer that a removed First Nation’s child’s absence from the ISC Database proves that their placement was not funded by ISC.

C. Questions About a Trauma-Informed Survivor Focused Approach to Abuse

97. The Caring Society recognizes the sensitivity and difficulty of addressing and identifying Abuse in this case and submits that due diligence must be undertaken to develop a safe process to identify Caregiving Parents or Caregiving Grandparents who are not entitled to compensation due to Abuse of a Removed Child. Such a process ought to be available to Removed Child Class Members at the time they are making a Claim in order to preserve their agency to bring forward concerns of Abuse they may have experienced, if they so choose. The Claims Form should, at the very least, leave the decision in the hands of the Removed Child Class Member. The Claims Form should also include statements about the provisions for Abuse in the FSA and an option for Removed Child Class Members to be kept informed about the process.

98. In the Compensation Entitlement Decision, the Tribunal commented as follows:

The use of the “words unnecessarily removed” account for a distinction between two categories of children: those who did not need to be removed from the home and those who did. If the children are abused sexually, physically or psychologically

those children have suffered at the hands of their parents/caregivers and needed to be removed from their homes. However, the children should have been placed in kinship care with a family member or within a trustworthy family within the community. Those First Nations children suffered egregious and compound harm as a result of the discrimination by being removed from their extended families and communities when they should have been comforted by safe persons that they knew. This is a good example of violation of substantive equality.

The Panel believes that in those situations only the children should be compensated and not the abusers. The Panel understands that some of the abusers have themselves been abused in residential or boarding schools or otherwise and that these unacceptable crimes of abuse are condemnable. The suffering of First Nations Peoples was recognized by the Panel in the *Decision*. However, not all abused children became abusers even without the benefit of therapy or other services. The Panel believes it is important for the children victims/survivors of abuse to feel vindicated and not witness financial compensation paid to their abusers regardless of the abusers' intent and history.¹¹⁴

99. Moreover, reports from youth in care and former youth in care have made clear that there must be clear parameters to ensuring that the experiences of survivors are prioritized, and perpetrators held accountable.¹¹⁵

100. The Abuse captured by the FSA is connected to experiences of child abuse. The difficulty and trauma associated with sharing this information cannot and should not be overstated. By way of example, in a recent criminal decision of the Provincial Court of Manitoba, Judge C.A. Devine summarized the jurisprudence examining the challenges with disclosures of sexual abuse for children:

It is well-settled law that there can be significant delays in disclosure by children who have been sexually abused (see *R v L(DO)*, 1993 CanLII 46 (SCC), [1993] 4 SCR 419 at paras 29 and 77; *R v PS*, 2019 ONCA 637 at para 21; *R v WEB*, 2012 MBCA 23 at para 20). As Justice L'Heureux-Dubé stated in *L(DO)*, the reasons for this are several, but it is often out of fear of reprisal or of what the consequences will be, the power imbalance between the child and the abuser, especially when the abuser is a trusted and beloved family member, such as a father or stepfather (at para 75):

[C]hildren, for a number of reasons, are often apt to delay disclosure. As McLachlin J. wrote in *R. v. W. (R.)*, *supra*, at p. 136:

¹¹⁴ [2019 CHRT 39](#) at paras 149-150.

¹¹⁵ *Children Back, Land Back: Follow-Up Report of First Nations Youth in Care Advisors*, Exhibit E to the Kaur Affidavit, Tab 3E, Responding MR, pp. 742-743.

. . . victims of abuse often in fact do not disclose it, and if they do, it may not be until a substantial length of time has passed.

Studies abundantly confirm this fact as part of the child abuse syndrome. (See, among others, R. C. Summit, "The Child Sexual Abuse Accommodation Syndrome" (1983), 7 *Child Abuse & Neglect* 177, at pp. 181-88; and G. Renaud, "Judicial Notice of Delayed Reporting of Sexual Abuse: A Reply to Mr. Rauf" (1993), 20 C.R. (4th) 383.)¹¹⁶

101. Balanced against the challenges of disclosure is the right of children to be heard under the United Nations Convention on the Right of the Child.¹¹⁷ Article 12 provides as follows:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

102. The Removed Child Class includes children, young adults and adults who should benefit from being heard and should be able to share their voices as survivors of child abuse, should they so choose. While compensation paid to Caregiving Parents and Caregiving Grandparents will likely not commence for at least four (4) years¹¹⁸, those who are seeking to make a Claim now should have access to a safe and trauma-informed process to disclose if they so choose.

D. Claims Process is Incomplete Without Robust Supports

103. The FSA text makes a substantial commitment to provide supports to Class Members during the Claims Process. However, more work is required before the supports set out in Schedule I to the FSA are ready, available and accessible to Class Members.¹¹⁹

¹¹⁶ *R v WS*, 2023 MBPC 36 at para 38.

¹¹⁷ [United Nations Convention on the Rights of the Child](#), art 12.

¹¹⁸ Gott Affidavit, at para 14(m)(ii), Tab 3, Plaintiff MR, p 1131 | Gott XEX, Q 99, Tab 2, Supplemental RMR, pp 108-109

¹¹⁹ Corbiere XEX, Q76, Tab 1, Supplemental RMR, pp. 33-34

104. The Trocmé-Fallon Report make clear that supports for receiving compensation is vital:

- Respondents have expressed the need to ensure that vulnerable and isolated individuals will receive compensation, and that they will receive adequate support after receiving compensation;
- **Mental health supports.** A toll free helpline is a start but may not be sufficient to support the mental health needs of many individuals and communities affected by the compensation process - especially if it is understaffed. Indigenous healing supports, in addition to in-person mental health resources and counseling, are crucial; and
- **Administrative supports.** Hiring an adequate number of trained staff to assist claimants in a community-centric manner is essential to an effective implementation of a compensation regime. A well-staffed, culturally-and trauma-informed team of attendants would improve compensation processes. In addition, having support staff working directly with communities, such as community liaisons, can render compensation schemes more efficient and help tailor implementation to community needs.¹²⁰

105. The Trocmé-Fallon Report also notes that there are ways to protect against re-traumatization, including making available trauma informed, culturally sensitive support services **before, during and after** for participants and their families and communities.¹²¹

106. Importantly, many of these recommendations echo those in the November 2019 Youth in Care Report: *Justice, Equity and Culture: the First-Ever YICC Gathering of First Nations Youth Advisors* (the “**YICC Report**”). The YICC Report makes recommendation regarding supports, including the following:

- (i) The Youth Advisors strongly expressed the need for mental health supports to be put in place **before, during and after** applying for compensation and settlements.
- (ii) There must be safety around compensation.
 - a. Healing circles, sweat lodge ceremonies, support for counseling or therapy etc.
- (iii) There must be mental health supports and navigational assistance to help youth apply for compensation.
 - a. Talking to lawyers and government employees can be very triggering for

¹²⁰ Trocmé-Fallon Report, Exhibit A to Corbiere Affidavit, Tab 2A, Plaintiff MR, pp. 136-137.

¹²¹ Trocmé-Fallon Report, Exhibit A to Corbiere Affidavit, Tab 2A, Plaintiff MR, p. 138.

First Nations youth; Therefore, having support to apply and fill out forms is essential.

- b. Getting access to files and birth certificates, for example can be very challenging and trigger stressful emotions.
 - c. Along with navigational support, youth also need mental health supports to help with the experiences and challenges.
- (iv) There must be continued support after compensation.
- a. For example, at least one year of counseling or therapy must be covered. Indigenous services Canada's Non-Insured Health Benefits coverage is limited and some First Nations youth do not have government recognized status or access to their status cards.¹²²

107. The moving parties' witnesses acknowledged the existence of the YICC report but had not read it and could not advise in what measure its recommendations had been taken into account or would be implemented.¹²³ The Caring Society is of the view that any plan proposed to the Court for approval on supports ought to consider and reflect the recommendations from the YICC report.

108. At this juncture, the evidence clearly suggests that the critical supports necessary for Removed Child Class Members and Removed Child Family Class Members are not ready. Therefore, in order to support an open, transparent and accountable roll of out supports, the Caring Society requests an order that the Settlement Implementation Committee submit a specific and concrete plan to provide the supports set out in the FSA for approval by this Court within 60 days of the Order in this proceeding and prior to the Launch Date.

V. Orders Sought

109. The Caring Society respectfully requests that this Honourable Court approve the Claims Process subject to the approval of additional elements to the Claims Process, in line with the following:

- a. An order that the Settlement Implementation Committee submit a companion

¹²²November 22, 2019 Youth in Care Canada Report: *Justice, Equity and Culture: the First-Ever YICC Gathering of First Nations Youth Advisors*, Exhibit C to Kaur Affidavit, Tab 3C, Responding MR, p. 478.

¹²³ Corbiere XEX, Q. 79, Tab 1, Supplemental RMR, p. 35 | Gott XEX, Q. 116, Tab 2, Supplemental RMR, p 112, q 116.

Claims Process for identifying and approving Removed Child Class Members who have not been identified on the ISC Database, but are otherwise eligible for compensation under the FSA on or before September 1, 2024;

- b. An order that the Settlement Implementation Committee submit a safe, evidence-based and expert/clinically informed approach for Removed Child Class Members to identify Abuse in connection with their removal if they choose, including a safe and expert/clinically informed approach that may include the sharing of this information with the Administrator on behalf of the Removed Child Class Member by a trusted support person on or before September 1, 2024;
- c. An order that the Settlement Implementation Committee submit a detailed description of the supports set out in Schedule I of the FSA, the status of the hiring and training of Claims Helpers, and the status of the Caring Society's suggestions regarding increasing surge capacity and measures to ensure existing services such as mental health, addictions, domestic violence, cultural and child welfare services have the capacity to support Class Members before the Launch Date, throughout the Claims Process and after the Claims Process on or before September 1, 2024; and
- d. Such further and other relief as counsel may request and this Honourable Court may deem just and appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of May, 2024.



Sarah Clarke / David Taylor

May 31, 2024

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SCHEDULE A – LIST OF AUTHORITIES

STATUTES	
1.	<i>Canadian Human Rights Act</i> , RSC 1985, c H-6
2.	<i>Child, Youth and Family Services Act, 2017</i> , SO 2017 c 14
3.	<i>Class Proceedings Act, 1992</i> , SO 1992, c 6
4.	<i>Code of Civil Procedure</i> , CQLR c C-25.01
CASES	
5.	<i>Brazeau v. Canada (Attorney General)</i> , 2020 ONSC 7229
6.	<i>Canada (Human Rights Commission) v. Canada (Attorney General)</i> , 2012 FC 445
7.	<i>Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada</i> , 2021 FC 969
8.	<i>Eidoo v. Infineon Technologies AG</i> , 2015 ONSC 5493
9.	<i>First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)</i> , 2016 CHRT 2
10.	<i>First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs Canada)</i> , 2019 CHRT 39
11.	<i>First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs Canada)</i> , 2021 CHRT 7
12.	<i>First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs Canada)</i> , 2022 CHRT 41
13.	<i>First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs Canada)</i> , 2023 CHRT 44
14.	<i>Francis v. Ontario</i> , 2023 ONSC 5355
15.	<i>Mushroom v. Canada (Attorney General)</i> , 2023 FC 1533
16.	<i>R v. Mohan</i> , [1994] 2 SCR 9
17.	<i>R v. WS</i> , 2023 MBPC 36

18.	<i>Stonechild v. Canada</i> , 2022 FC 913
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