Federal Court Cour fédérale

Date: 20240626

Docket: T-402-19
T-141-20
T-1120-21

Ottawa, Ontario, June 26, 2024

PRESENT: The Honourable Madam Justice Aylen

CLASS PROCEEDING

BETWEEN:

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

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

T-141-20

BETWEEN:

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

Plaintiffs

and

HIS MAJESTY THE KING
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

T-1120-21

BETWEEN:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

REASONS FOR ORDER

(Claims Approval Process – Removed Child Class and Removed Child Family Class)

[1] On June 19, 2024, the Court heard a motion brought by the Settlement Implementation Committee [SIC], on behalf of the Plaintiffs, for an order approving the proposed claims process for the Removed Child Class and the Removed Child Family Class, together with its associated draft claim forms [Claims Process]. The motion was brought on the consent of the Respondent and was, in part, opposed by the First Nations Child and Family Caring Society [Caring Society]. The Caring Society initially requested that the Court only approve the Claims Process if three additional orders were made imposing further obligations on the SIC. However, as detailed more fully below, the position of the Caring Society evolved as the hearing of the motion progressed,

with the Caring Society ultimately taking the position that it supported the approval of the Claims Process but sought directions from the Court as to whether the SIC should be compelled to submit additional items to the Court for approval.

[2] At the conclusion of the hearing of the motion, I advised the parties that I would be issuing an order approving the Claims Process, with reasons to follow, but that I would reserve on the issue of the relief sought by the Caring Society. My Order approving the Claims Process was issued on June 20, 2024, and I am now providing herein my reasons for doing so together with my determination on the relief sought by the Caring Society.

[3] By way of background, the Plaintiffs and the Defendant executed a Final Settlement Agreement in respect of the underlying class proceedings on April 19, 2023, which was amended by way of an Addendum dated October 10, 2023 [FSA], and approved by this Court on October 24, 2023, pursuant to Rule 334.29(1) of the *Federal Courts Rules*, SOR/98-106 [see *Moushoom c Canada (Procureur général)*, 2023 FC 1466]. My Reasons approving the settlement detail the nature of the class action proceeding and the key provisions of the FSA [see *Moushoom v Canada (Attorney General)*, 2023 FC 1533]. For the purpose of these Reasons, the capitalized terms set out herein shall have the same meanings as set out in the FSA.

[4] Due to the complexity of this proceeding, the FSA did not prescribe the manner in which the claims processes for the nine classes would be administered. Rather, the FSA left the determination of the claims processes for future development by the SIC and approval by the Court. The SIC has brought this motion seeking approval of the first of many claims processes.

The Claims Process before the Court on this motion relates to the Removed Child Class and the Removed Child Family Class, though it is the first of a number of processes for the Court's consideration, with other processes for these classes to follow.

I. Analysis

[5] The legal test to be applied in approving a claims process is analogous to the test applied by the Court when approving a class action settlement—namely, whether the claims process is "fair, reasonable and in the best interests of the class as a whole" [see *Wenham v Canada (Attorney General)*, 2020 FC 588 at para 96, aff'd 2020 FCA 186, leave to appeal ref'd 2021 CanLII 49683 (SCC) [*Wenham*]; *Brazeau v Canada (Attorney General)*, 2020 ONSC 7229 at para 73]. The test for approving claims processes is not perfection [see *Wenham*, *supra* at para 51; *McLean v Canada*, 2019 FC 1075 at para 76 [*McLean*]; *Merlo v Canada*, 2017 FC 533 at para 18].

[6] Like settlements, claims processes must be looked at as a whole. It is not open for this Court to rewrite the substantive terms of a claims process or assess the interests of the individual class members in isolation from the whole class [see *Tataskweyak Cree Nation v Canada (Attorney General)*, 2021 FC 1415 at para 62 [*Tataskweyak*]; *McLean*, *supra* at para 68]. Ultimately, when approving a claims process, this Court cannot modify or alter the claims process—it must approve it as is, or reject it [see *McLean v Canada (Attorney General)*, 2023 FC 1093 at para 37; *Tataskweyak Cree Nation*, *supra* at para 62].

A. *The Claims Process is approved*

[7] In support of its request that the Court approve the Claims Process, the SIC has provided two affidavits from Dianne G. Corbiere, Class Counsel and counsel for the Assembly of First Nations [AFN]. Ms. Corbiere's evidence details: (a) the work that has been undertaken to develop the Claims Process over the last year; (b) the work that has gone into the preparation of the Indigenous Services Canada database [ISC Database]; (c) the piloting of the Claims Forms and financial literacy and options; (d) the engagement with First Nations on the Claims Process; and (d) the SIC's resolution endorsing the Claims Process.

[8] The SIC has also provided an affidavit from Joelle Gott, the engagement lead for Deloitte LLP in its role as Administrator of the FSA. Ms. Gott's evidence details the Administrator's work since the Court's approval of the FSA, with a focus on the efforts undertaken to develop the Claims Process and the steps taken by the Administrator to meet its obligations under the FSA.

[9] The Claims Process covers many topics including: (a) Claims Form completeness requirements; (b) adjudication on eligibility; (c) progressive disclosure; (d) the Administrator's communications with Claimants; (e) appeals to the Third-Party Assessor; (f) Claimants who are Class Members of more than one Class; (g) Claims periods and Claims Deadlines, together with Claims Deadline extensions; (h) Claims by representatives, including representatives claiming on behalf of minors, heirs, estates, Personal Representatives claiming on behalf of Living Persons Under Disability, representatives on behalf of deceased Removed Child Class Claimants, representatives of deceased approved Caregiving Parents and Caregiving Grandparents, public guardians and trustees and ISC estates; (i) assignment and garnishments of compensation; (j) non-

Class Counsel legal professionals; and (k) exceptional early payments of compensation funds to minors. While the Claims Process is detailed, it also recognizes that additional efforts remain ongoing and provides that the SIC will return to the Court to seek additional approvals in relation to other aspects of the claims process for the Removed Child Class and the Removed Child Family Class, such as in relation to the Incarcerated Class Members Process, caregiver Abuse and claims helpers.

[10] The evidence demonstrates that extensive efforts have been undertaken by the Administrator and the SIC over the last year to design and develop the Claims Process in a manner consistent with their respective obligations under the FSA. The SIC and the Administrator have consulted with a variety of stakeholders and experts including: (a) consultations and meetings with the Respondent and in particular, ISC; (b) consultations and meetings with the Caring Society; (c) regional consultations across Canada on the Claims Process with the AFN to present, answer questions and seek input on the proposed Claims Process and claims helper program; and (d) working with numerous experts to develop financial literacy information and investment vehicles for Claimants.

[11] The evidence demonstrates that, in addition to the SIC being First Nations-led, there has also been meaningful First Nations involvement at every stage of the development of the Claims Process. Counsel for the SIC has further advised that during these extensive consultations, not a single Class Member voiced opposition to the Claims Process.

[12] Having reviewed the Claims Process, I am satisfied that it meets the requirements of the FSA as a whole. Importantly, I find that it meets the requirements of Article 5.01(3) of the FSA in that, as designed, the Claims Process is expeditious, cost-effective, user-friendly, culturally sensitive, trauma-informed and non-traumatizing, with any necessary accommodations for persons with disabilities or vulnerabilities. Moreover, it meets the requirement of Article 6(2) of the FSA in that no member of the Removed Child Class will be required to submit to an interview, examination or other form of *viva voce* evidence taking.

[13] I am satisfied that the Claims Process is fair, reasonable and in the best interests of the Class as a whole. Accordingly, the Claims Process is approved.

B. *The directions sought by the Caring Society will not be issued*

[14] Before turning to the specific directions sought by the Caring Society, I want to begin by clarifying their standing on this motion and their role in the implementation of the FSA.

[15] The Caring Society is not a party to this class proceeding and they do not represent the interests of the Representative Plaintiffs or any Class Member. The Caring Society has also not been granted intervener status in this proceeding by the Court. To the contrary, the Caring Society was expressly denied intervener status on the motion to approve the FSA. In her Order dated September 23, 2022, Case Management Judge Molgat stated:

> [19] Considering the first criteria set out in *Sport Maska*, the Caring Society is a non-profit organization—it is not a member of the class of individuals who suffered as a result of Canada's discrimination on whose behalf these proceedings were brought. Nor does the Caring Society act for class members. Yet it is essentially seeking to make submissions on behalf of the class (or a

> sub-set of them) whose interests are already represented by Class Counsel and the Representative Plaintiffs.
>
> [20] The Court agrees with the reasoning of Justice Phelan in *McLean v Canada (Attorney General)* and finds that the Caring Society does not have a "direct interest" and that it may, at best, be "indirectly affected" by the outcome of the Settlement Approval Motion such that the first criteria of *Sport Maska* is not met (see *McLean v Canada (Attorney General)*, 2019 FC 515 at para 3).

[16] Instead, the Caring Society's standing to make submissions on this motion is grounded in Article 22.05(1) of the FSA, which provides:

> The Caring Society will have standing to make submissions on any applications brought for Court approval by the Settlement Implementation Committee or the Parties pertaining to the administration and implementation of this Agreement after the Settlement Approval hearing, including approval of the Claims Process and distribution protocol to the extent that issues impact the rights of the following classes:
>
> (a) Removed Child Class Members placed off-Reserve as of and after January 1, 2006, and Removed Child Family Class Members in relation to Children placed off-Reserve as of and after January 1, 2006, including deceased members of these classes;
>
> (b) Kith Child Class Members and Kith Family Class Members, including deceased members of these classes; and
>
> (c) Jordan's Principle Class Members and Jordan's Principle Family Class Members, including deceased members of these classes.

[17] As such, the Caring Society has a contractual right to make submissions on any applications brought by the parties, or the SIC, for approval before this Court pertaining to specific issues, as they impact specific classes, related to the administration and the implementation of the FSA.

[18] To be clear, Article 22.05(1) does not empower the Caring Society to bring its own motions before this Court. Rather, their contractual rights are limited to participating in specific motions

brought by the parties, or the SIC. Accordingly, there is no basis in the FSA for the Caring Society to be seeking orders from this Court.

[19] In their written representations, the Caring Society's support for approving the Claims Process was conditional on this Court issuing the following three orders:

A. An order that the SIC 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, by September 1, 2024.

B. An order that the SIC 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, by September 1, 2024.

C. An order that the SIC submit a detailed description of the supports set out in Schedule 1 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 that 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, by September 1, 2024.

[20] However, after the SIC raised objections in their written representations in reply as to the Caring Society's standing to seek orders from the Court, and following similar concerns raised by the Court at the commencement of the hearing, the Caring Society's position changed. The Caring Society stated that it was no longer seeking orders, but rather was asking for directions or guidance from the Court, which directions were conditional on their support for the approval of the Claims Process. However, by the end of the hearing, when pushed to clarify their position, the Caring Society stated that they did not want to delay the approval of the Claims Process and were simply looking for guidance or direction from the Court on the issues that they had raised.

[21] The Caring Society asserted that it was open to the Court to issue any directions it deems appropriate pursuant to the powers vested by Article 1.14 of the FSA, which provides:

> Notwithstanding any other provision of this Agreement, the Court will maintain exclusive jurisdiction to supervise the implementation of this Agreement in accordance with its terms, including the adoption of protocols and statements of procedure, and the Parties attorn to the jurisdiction of the Court for that purpose. The Court may give any directions or make any orders that are necessary for the purposes of this Article.

[22] I agree with the Caring Society that the Court retains an ongoing supervisory jurisdiction over the implementation of the FSA which includes the ability to issue directions. However, I find that it is not open to the Caring Society to independently apply to the Court for directions regarding the implementation of the FSA. Nonetheless, I will go on to consider the three directions requested by the Caring Society in the context of this motion.

[23] Briefly, before doing so, it is important to comment on the interactions between the Caring Society and the parties/the SIC in the administration of the FSA as it is apparent to the Court that

there is significant animosity between them which has resulted in a breakdown in communications. This animosity appears to be driven by a misapprehension of the role of the Caring Society in the administration of the FSA.

[24] Article 5.01(1) provides that:

> The design and implementation of the distribution protocol within the Claims Process will be within the sole discretion of the Plaintiffs, subject to the approval of the Court. The Plaintiffs will establish the Claims Process and may seek input from the Caring Society, as well as from experts and First Nations stakeholders as the Plaintiffs deem in the best interests of the Class Members. The Plaintiffs will finalize the distribution protocol within the Claims Process in accordance with this Agreement, and will submit same for approval of the Court.
>
> [Emphasis added.]

[25] The SIC, on behalf of the Plaintiffs, has sole discretion over the design and implementation of the Claims Process (subject to the Court's approval). The SIC may, but is not obligated to, seek input from the Caring Society over any aspect of the design and implementation of the Claims Process. The evidence before the Court is that the Caring Society has thus far been invited to participate in numerous meetings related to the Claims Process and has provided other written submissions.

[26] It must be stressed, however, that what the SIC chooses to do with the submissions received from the Caring Society is up to the SIC. There is no obligation on the part of the SIC to implement any suggestions made by the Caring Society. Rather, the obligation of the SIC is to design and implement a Claims Process that complies with the FSA. It is also not open to the Caring Society to demand reports or evidence from the SIC. While the Caring Society may be frustrated by the

lack of responsiveness from the SIC to certain submissions or inquiries, the manner in which the Caring Society has provided their submissions may, in large measure, be responsible for the reception that their submissions have received, as it is not open to the Caring Society to dictate to the SIC what must be done by the SIC or how the SIC should do it.

[27] It is evident to the Court that many of the concerns raised by the Caring Society, which resulted in the filing of extensive evidence on this motion and the cross-examination of two affiants, could have been addressed (and likely resolved) by better cooperation between the parties/SIC and the Caring Society. It is in none of the Class Members' best interests for the animosity between the Caring Society and the parties/SIC to continue, as the Caring Society undoubtedly has valuable insight to offer to the SIC to assist them with the design and implementation of the various claims processes. The Court expects that the dealings between the Caring Society and the parties/SIC will improve going forward.

(a) Direction regarding a companion claims process

[28] As stated above, the Caring Society seeks a direction that the SIC submit a companion claims process for identifying and approving Removed Child Class Members who have not been identified in the ISC Database, but are otherwise eligible for compensation under the FSA, by September 1, 2024.

[29] After extensive questioning at the hearing, it became evident that the Caring Society's underlying concern is based on the fact that the SIC has not expressly confirmed to the Caring Society that a further claims process will be developed and submitted to the Court to ensure that

an eligible Removed Child Class Member whose name does not appear in the ISC Database will be eligible for compensation. While the Caring Society filed extensive evidence regarding the completeness of the ISC Database, it is not their position that the ISC Database should not be used to approve the claims of the Removed Child Class Members; rather, the Caring Society is concerned that there is a possibility that an eligible Removed Child Class Member may not appear on the ISC Database and thus, not receive compensation. At this point, this concern is speculative, as the ISC Database remains under construction and no Claimant has yet to have their name run through the ISC Database. However, this issue is on the SIC's radar.

[30] By way of context, Article 5.01(10) of the FSA empowers the SIC to develop claims processes for the various classes in phases. The development of the claims process for some classes is more difficult, whereas for others, such as the Removed Child Class, it is more straightforward. By coming to the Court seeking approval of these processes in stages, the Administrator has an ability to ensure that settlement funds begin to flow as soon as possible to some Class Members while the claims process for others remains under development.

[31] In the case of the Removed Child Class, Article 6.02(3) of the FSA provides that eligibility for compensation (and Enhancement Factors) "will be based on objective criteria and data primarily from ISC and Supporting Documentation as the case may be." Accordingly, the FSA, as approved by the Court, does not limit Removed Child Class eligibility to only those Claimants who appear in the ISC Database.

[32] Article 4 of the Claims Process sets out how the Administrator will determine whether a Removed Child Class Claimant is eligible for compensation. As of the launch date of the Claims Process, all potential Removed Child Class Members may submit their applications. Those identified in the ISC Database will receive an eligibility decision. Those who are plainly not eligible (such as an individual claiming as a Removed Child Class Member verified to have been born in 1950) will receive a denial. Other Claimants who are not identified in the ISC Database but who are not plainly ineligible will receive an inconclusive eligibility letter from the Administrator. For those whose eligibility is inconclusive, the Administrator will continue to run the Claimant's name through the ISC Database against new additions thereto until such time as the construction of the ISC Database is complete (estimated to be the end of 2025). If a Claimant is later found in the ISC Database, they will receive an eligibility letter.

[33] Article 4.7(B) of the Claims Process addresses the situation of a Claimant who has received an inconclusive eligibility letter and is never found in the ISC Database. Article 4.7(B) provides:

> 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.

[34] By virtue of Article 4.7(B) of the Claims Process, I find that the SIC has committed to the Court that they will return with a further claims process to address claims made by eligible Removed Child Class Members whose names do not appear in the ISC Database. Whether or not there will be any such Claimants is a matter yet to be determined. However, in order for the SIC to comply with the FSA and, in particular, Article 6.02(3) thereof, there will have to be a process

implemented for an eligible Removed Child Class Member to receive compensation even if they do not appear in the ISC Database.

[35] In that regard, I would note that at the time that I approved the FSA, Class Counsel advised the Court that a further claims process would be developed to ensure that eligible Removed Child Class Members who were not in the ISC Database would receive compensation. Paragraph 109 of the affidavit of Robert Kugler, sworn October 16, 2023, stated:

> For those claimants whose claims cannot be verified through the ISC Database, the plaintiffs and the Administrator are working on a process intended to be as simple as possible to enable the claimant to substantiate their eligibility for compensation. This process will recognize that class members' circumstances may require flexibility in the type of documentation necessary to support their claims, and the timelines for doing so, as guided by the principles in the FSA. This involves communication with the provinces and agencies which are underway.

[36] As such, I am not satisfied that the Caring Society's requested direction is necessary, as the SIC is already obligated to return to the Court to submit a claims process for any eligible Removed Child Class Members not found in the ISC Database. With respect to the timing of this further claims process, I see no basis to require the SIC to return to the Court with such a process by September 1, 2024, or any other date in the near future. As noted above, the SIC is vested with the sole discretion to design the claims processes which are to be undertaken in stages. As such, it is in the SIC's discretion to determine when it is appropriate to return to the Court. Furthermore, no point is served in designing such a process prior to the conclusion of the construction of the ISC Database or the determination that there are, in fact, Claimants that require a further claims process and, if so, what identifiable characteristics such Claimants might have so as to guide the further claims process.

(b) Direction regarding Abuse

[37] As detailed above, the Caring Society requests that the Court direct the SIC to 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" by September 1, 2024.

[38] By way of context, the FSA provides for direct compensation of Caregiving Parents or Caregiving Grandparents of a Removed Child Class Member under the Removed Child Family Class. However, Article 6.04(4) of the FSA provides that a Caregiving Parent or Caregiving Grandparent who has committed Abuse that has resulted in the Removed Child Class Member's removal is not eligible for compensation in relation to that Child. The FSA defines "Abuse" as "sexual abuse (including sexual assault, sexual harassment, sexual exploitation, sex trafficking and child pornography) or serious physical abuse causing bodily injury, but does not include neglect or emotional maltreatment."

[39] Section 5.12 of the Claims Process addresses the issue of Abuse by a Caregiving Parent or Caregiving Grandparent. Subsection D provides that "[a] process is under development to address instances where a Claimant committed Abuse that resulted in the Associated Removed Child's removal." The Claims Process does not require a Removed Child Class Claimant to identify any abuser or to provide any particulars of any Abuse.

[40] The evidence before the Court from the Administrator is that they engaged in consultation with the Parties and the Caring Society on the issue of Abuse. Specifically, Ms. Gott's affidavit, sworn April 12, 2024, states at paragraph 14(m):

> (i) We collaborated with the plaintiffs to research and consult regarding the process to confirm that a child's removal was not due to Abuse (as defined under the FSA) by the Claimant caregiver, including the options of self-declaration by Family Class Member (in Claims Form), voluntary report by Removed Child, Child Welfare Agency confirmation or records, with consideration given to a trauma-informed approach.
>
> (ii) The work on the Abuse portion of the Claims Process is ongoing. Given that the Claims of Caregiving Parents or Caregiving Grandparents will not be processed before approximately four years following the launch of the Claims Process, after the expiration of the Claims Deadline (Article 6.05 1) [*sic*] of FSA), we continue to work with the plaintiffs to develop a trauma-informed approach to Abuse determination – one of the most sensitive and potentially traumatizing implementation points in the Settlement Agreement.

[41] When questioned at the hearing as to why the requested direction is required, the Caring Society asserted that the SIC had not provided the Court with any evidence to establish that the SIC's approach—which does not include an opportunity for Removed Child Class Members to voluntarily disclose Abuse—was trauma-informed based on consultations with experts. Moreover, the Caring Society asserted that it was possible that victims of Abuse could be more traumatized by waiting to address the issue of Abuse until later in the process, when the Removed Child Family Class Member determinations are made. While the Caring Society's written representations included a specific request that the Claims Form for the Removed Child Class Members be amended to include an opportunity for voluntary disclosure of Abuse, the Caring Society abandoned this request at the hearing.

[42] I see no basis to interfere with the SIC's work in determining how best to address the issue of Abuse, which remains ongoing and which will ultimately result in a further claims process that will be put before the Court for approval. I am satisfied that the work being undertaken by the Administrator, in consultation with the SIC, the parties and the Caring Society, is consistent with the Administrator's obligations under the FSA and properly recognizes the sensitive and traumatic nature of this issue. While the Caring Society is critical of the absence of expert evidence before this Court on this issue, the same criticism could be levied at the Caring Society, who advocates for the Court to impose a particular approach without themselves providing any evidence that their approach is, in fact, trauma-informed and the better approach to take.

[43] Again, as noted above, it is not the role of the Caring Society to dictate to the SIC and the Administrator how issues are to be addressed. The Caring Society has been given the opportunity to provide their submissions on this issue, which they have done, and it is up to the SIC to determine how to proceed (subject to Court approval). That said, I would note that the evidence before the Court is that, despite their participation in various consultations related to the issue of Abuse, the Caring Society did not raise with the SIC/Administrator the suggestion that the Claims Forms should be amended to permit the voluntary disclosure of Abuse by Removed Child Class Members. It should go without saying that it is not helpful to the development of the Claims Processes, for feedback to be provided for the first time only once the Claims Process is before the Court for approval.

[44] Accordingly, the direction requested by the Caring Society will not be granted.

(c) Direction regarding supports

[45] As detailed above, the Caring Society requests that the Court direct the SIC to submit a detailed description of the supports set out in Schedule 1 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 that 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, by September 1, 2024.

[46] There is a dispute between the Caring Society and the SIC as to whether what the Caring Society seeks is an expansion, and thus a renegotiation, of the supports agreed to in the FSA. The Caring Society denies that it is seeking to change the landscape of the supports required under the FSA. Rather, they stressed at the hearing that their concern is with respect to the timing of the availability of the supports. The Caring Society asserts that the supports prescribed by the FSA must be available to Class Members before, during and after the Claims Process and, despite the Caring Society's engagement with the SIC on the issue of supports, the Caring Society asserts that it has not received clear and cogent evidence that the robust supports prescribed by the FSA will be available to Class Members in a timely manner. The Caring Society states that the direction they seek will provide a level of comfort by requiring the SIC to assure stakeholders that the required supports will be in place, given that no such assurances have been provided by the SIC to the Caring Society.

[47] The Claims Process currently before the Court for approval does not prescribe supports for Claimants. Rather, the requirement to provide supports to Claimants is addressed in the FSA. As such, the Caring Society's requested direction does not have a direct nexus to the issue of whether the Claims Process should be approved. Rather, the Caring Society is raising a concern with the SIC's compliance with the FSA, which is not an issue properly before the Court on this motion.

[48] As set out in Article 3.02(1)(j) of the FSA, one of the duties of the Administrator is to provide:

> […] navigational supports to Class Members in the Claims Process as outlined out in Schedule I, Framework for Supports for Claimants in Compensation Process, including: (i) assistance with the filling out and submission of Claims Forms; (ii) assistance with obtaining Supporting Documentation; (iii) assistance with appeals to the Third-Party Assessor pursuant to this Agreement; (iv) reviewing Claims Forms, Supporting Documentation, and First Nations Council Confirmations; and (v) determining a Claimant's eligibility for compensation in the Class;

[49] Article 9 of the FSA identifies certain supports that will provided to Class Members in the Claims Process. Specifically, Article 9(1) states that:

> 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.

[50] Contrary to the assertion of the Caring Society, Article 9 does not impose an obligation on the parties to have the required supports in place prior to the roll out of the Claims Process. Notwithstanding, there are certain supports that have already been implemented, such as the Hope

for Wellness Help Line. As such, there is no issue at this stage of the settlement implementation of any non-compliance with the obligation to provide supports as prescribed by the FSA.

[51] The evidence before the Court is that the Administrator and the SIC are working towards ensuring that all of the required supports are in place in time for the roll out of the Claims Process. While the Caring Society wants assurances that this will be done, and that the support providers will have the necessary training and capacity, there is no obligation on the SIC/Administrator to provide the Caring Society with those assurances. Moreover, there is also no obligation on the part of the SIC/Administrator to report to the Court at this time or to obtain the Court's approval of their planned supports. If there are any issues with the roll out of the required supports, the SIC confirmed at the hearing that they will advise the Court. In any event, the Court will be receiving a status report from the SIC in late October of 2024 as part of the SIC's annual reporting obligation as prescribed by Article 12.03(1)(l) and (m) of the FSA.

[52] As such, I am not satisfied that the requested direction related to supports is necessary or appropriate.

II. Conclusion

[53] For all of these reasons, I am satisfied that the Claims Process is fair, reasonable and in the best interests of the Class as a whole, and that the directions sought by the Caring Society should not be issued.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-402-19
STYLE OF CAUSE:	XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE v THE ATTORNEY GENERAL OF CANADA
DOCKET:	T-141-20
STYLE OF CAUSE:	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 v THE ATTORNEY GENERAL OF CANADA
DOCKET:	T-1120-21
STYLE OF CAUSE:	ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JUNE 19, 2024
ORDER AND REASONS:	AYLEN J.
DATED:	JUNE 26, 2024

APPEARANCES:

David Sterns Mohsen Seddigh	FOR THE PLAINTIFFS Xavier Moushoom, Jeremy Meawasige (by his litigation guardian, Jonavon Joseph Meawasige), Jonavon Joseph Meawasige, and Zacheus Joseph Trout

Stuart Wuttke	FOR THE PLAINTIFFS 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
Paul Vickery Sarah-Dawn Norris	FOR THE DEFENDANT
Sarah Clarke David P. Taylor	FOR THE FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA

SOLICITORS OF RECORD:

SOTOS LLP Toronto, ON	FOR THE PLAINTIFFS Xavier Moushoom, Jeremy Meawasige (by his litigation guardian, Jonavon Joseph Meawasige), Jonavon Joseph Meawasige, and Zacheus Joseph Trout
FASKEN MARTINEAU DUMOULIN Ottawa, ON	FOR THE PLAINTIFFS 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
Attorney General of Canada Ottawa, ON	FOR THE DEFENDANT
CLARKE CHILD & FAMILY LAW Toronto, ON	FOR THE FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA
CONWAY BAXTER WILSON LLP/S.R.L. Ottawa, ON	