# Cross-Examination Questions for Cindy Blackstock regarding her affidavit affirmed on August 30th, 2022

Interpretation:

"**AFN**" means the Assembly of First Nations.

"**Caring Society**" means the First Nations Child and Family Caring Society of Canada.

"**FSA**" means the Final Settlement Agreement, dated June 30, 2022 found at Exhibit "F" to the Affidavit of Janice Ciavaglia, dated July 22, 2022

"**Moushoom Counsel**" means Class Counsel for Xavier Moushoom, Jeremy Meawasige (by his litigation guardian, Jonavon Joseph Meawasige), Jonavon Joseph Meawasige and bearing Federal CourtFile T-402-19.

"**Tribunal**" means the Canadian Human Rights Tribunal.

"**Your Affidavit**" means the Affidavit of Cindy Blackstock, affirmed on August 30th, 2022.

| **Question:** | **Dr. Cindy Blackstock's Answers:** |
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| 1. You state you have been the Executive Director of the Caring Society for 35 years. When was the Caring Society Incorporated? | Thank you for your questions. I kindly draw your attention to Paragraph 2 of my affidavit reads as follows "I have been the Caring Society's Executive Director since 2002 and have worked in the field of child and family services for over 35 years." (Emphasis added). The Caring Society was federally incorporated in approximately 2002. Please note our corporation records were lost while we moved offices (both locations in the red zone) during the National Emergency related to the Convoy in February of 2022. |
| 2. Can you confirm that the Caring Society's Board of Directors are: Judy Levi, Elsie Flette, Landon Pearson, Arlene Johnson, Koren Lightning-Eagle, Mary Teegee, Theresa Stevens, Kenn Richard, Raymond Shingoose? | As of the last annual general meeting these are the members of the board of directors although I believe you are referring to Koren Lightening-Earle instead of Koren Lightening-Eagle. |
| 3. Who are the members of the Caring Society? | Our members include Elders, students, First Nations, First Nations child and family service agencies, First Nations citizens, First Nations and child serving organizations, and public organizations and citizens. |

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| 4. At paragraph 6, of Your Affidavit, you state that the Caring Society had minimal involvement in the negotiations of the compensation settlement agreement. Were you and your legal counsel present at the negotiating table during the intensive compensation negotiations presided over by the Honourable Murray Sinclair in November 2021? | In response to this question, and to questions 5-7, I note the Caring Society's confidentiality obligations pursuant to a Confidentiality Agreement covering the process involving Justice Sinclair. I will limit my responses to confirming the facts already disclosed in this question and providing information to correct any possible misapprehensions.<br><br>The Caring Society's focus is on safeguarding and promoting the human rights of First Nations children, youth, and families. In keeping with this, we fully participated in the compensation proceedings before the CHRT and, along with AFN, successfully defended those orders in the Federal Court.<br><br>We are not a party to a class action arising from the CHRT compensation orders nor do we seek to launch a class action or become a class action plaintiff entitled to legal fees or any other form of payment as we want to focus on ending the discrimination towards First Nations children and preventing its recurrence.<br><br>Caring Society counsel and I were included in some limited aspects of the negotiation on compensation at these meetings. My counsel and I attended plenary sessions at which compensation was discussed but did not participate in every side-discussion within or between parties. I recall attending one meeting with Moushoom counsel, and one meeting at which Moushoom and AFN counsel were present, as well as Canada's counsel and Canada's client representatives. Our general approach was, and remains, providing constructive child centered and evidence-based appraisal and solutions.<br><br>I am aware that my counsel had some discussions with Moushoom counsel. To the best of my understanding, they did not have discussions on compensation with AFN counsel or with counsel for Canada. I am further aware that our counsel volunteered to attend an in person compensation negotiation meeting but was told their presence was not required.<br><br>I am aware that there were meetings held in November and December between the parties to the FSA which we did not participate in. We are not a signatory to the compensation AIP. |
| 5. Was it not the Caring Society who recommended and insisted that Mr. Sinclair be the facilitator of the intensive negotiations? | Minister Miller and, I believe, Minister Hajdu initially reached out to the Honourable Murray Sinclair to ask if he would be a part of the process. I learned of his possible involvement shortly before the intensive discussions began. I was asked for the Caring Society's views on his participation after Canada met with him. |

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| | As Mr. Sinclair chaired the Truth and Reconciliation Commission and is a respected Elder and former judge and senator, we welcomed his participation. We want the children to benefit from a range of exemplary expertise. |
| 6. Did you and your counsel meet on numerous dates with the Moushoom Counsel before, during and after the intensive negotiations between October, 2021 and December, 2021 for briefings on the status of negotiations for compensation? | I checked my calendar and can confirm that Zoom meetings did occur with Moushoom Counsel on November 5, 2021 between 5-6 PM, and December 8, 2021 between 3-3:30 PM.<br><br>In November and December of 2021, I attended numerous meetings on the long-term reform AIP with AFN and it is possible compensation came up at these meetings, although I have no specific recollection of a compensation focused meeting.<br><br>I am aware Caring Society counsel would, from time to time, have conversations with AFN and Moushoom class action counsel but I am not aware of the specific dates and times of those conversations. |
| 7. In relation to question 7 above, did you and/or your legal advisors not provide Moushoom Counsel with your views on numerous aspects of the proposed settlement on compensation prior to the conclusion of the Agreement-in- Principle for Compensation? | The Caring Society is always willing to help promote the best interests of First Nations children. In that vein I provided suggestion, provided our views to both AFN and Moushoom as, based on government statements, we believed at the time that the class action would improve on the CHRT orders.<br><br>I also suggested experts including Professors Trocmé to calculate the child in care numbers. I further alerted class counsel to the excellent reports that the Caring Society arranged to inform the Compensation Framework Agreement. These reports included, but were not limited to, those authored by First Nations youth in care and the taxonomy report. I have been honoured to work with Professors Trocmé and Fallon for over two decades. I recommended that Professor's Trocme and Fallon work with AFN/Moushoom so the child, youth, and adult victims would have the benefit of their substantial expertise.<br><br>I also understand that my counsel shared information and insight regarding the CHRT Compensation Framework with Moushoom counsel. My understanding is there were not similar discussions with AFN, as Mr. Wuttke (who negotiated the Compensation Framework for AFN) was participating in class action discussions. |
| 8. Was the Caring Society a party to the mediation on compensation before the Honourable Leonard Mandamin which occurred between December 2020 and September 2021? | I note the Caring Society's confidentiality obligations pursuant to the Mediation Agreement covering the process involving Justice Mandamin. I will limit my response to confirming the facts already disclosed in this question and providing information to correct any possible misapprehensions. |

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| | We attended some meetings on compensation, not as class action parties, but instead to promote the child and youth evidence-based approaches and safeguard any infringement of the CHRT orders, which were then subject to an ongoing Federal Court judicial review.<br><br>The mediation process with Justice Mandamin also addressed long-term reform, which is where we dedicated our energy and efforts. |
| 9. At Paragraph 7 of Your Affidavit, you state that no formal response was provided by the AFN, Canada, the Representative Plaintiffs, or class counsel to your letter of January 21st, 2022. Did Moushoom Counsel share drafts of the FSA with the you shortly after your letter? | As of today's date, I have not received a formal response to my letter dated January 21, 2022, from AFN, Canada, the Representative Plaintiffs, or class counsel.<br><br>To the best of my knowledge, the Caring Society did not receive a draft of the Final Settlement Agreement until April 17, 2022, nearly three months later. We received this draft from Dianne Corbiere, counsel for the AFN, and not from Moushoom. |
| 10. In relation to question 9, did Moushoom Counsel also speak and virtually meet with you and/or your legal counsel on April 21, 2022 to discuss the FSA and the negotiations? | I arrived back to Ottawa from an international trip on the morning of April 21, 2021 and attended two meetings on long term reform. There was a 90-minute discussion scheduled that day from 11:30-1 p.m. with Moushoom counsel where I discussed the Caring Society views and ideas on compensation.<br><br>Settlement privilege precludes me from sharing more about this meeting. |
| 11. Did you and your legal counsel meet with the AFN on April 25, 2022 to discuss the FSA and to provide your views on the agreement? | There was a two hour Zoom meeting between 9-11 a.m. that day with AFN class action counsel where I discussed Caring Society views and ideas on compensation.<br><br>Settlement privilege precludes me from saying more about this meeting. |
| 12. Did Moushoom Counsel write to the Caring Society on April 27, 2022 requesting that the Caring Society provide its questions and concerns with he draft FSA? | I did not receive a communication from Moushoom Counsel addressed to me to provide questions and feedback.<br><br>However, I am aware that such a request was made to my counsel, that I am pleased to attach. My counsel has confirmed with Moushoom counsel that they have no objection to this correspondence being provided. |

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| 13. In relation to paragraph 7 of Your Affidavit, did Mr. David Taylor, legal counsel to the Caring Society, provide a list of questions to Moushoom Counsel by email on April 28, 2022? | I can confirm that Mr. Taylor sent a list of questions by email to: 1) Representing the Assembly of First Nations: Stuart Wuttke, Dianne Corbiere, Geoff Cowper; 2) David Sterns, Robert Kugler, Joelle Walker, Mohsen Seddigh, and William Colish representing Xavier Moushooom et al.<br><br>I am pleased to attach this correspondence. My counsel has confirmed with Moushoom counsel that they have no objection to this correspondence being provided. |
| 14. In relation to question 13, did the list of questions Mr. Taylor pose reflect themes expressed in your January 21st, 2022 letter? | I can confirm that questions I would have posed through counsel would be consistent with the January 21, 2022, letter which was sent to class counsel to provide an honest and transparent view of the Caring Society's positions should class action counsel seek any remedies at the CHRT relating to their FSA discussions. |
| 15. Did Moushoom Counsel provide you or your legal counsel with a detailed 12-page response to Mr. Taylor's questions on May 13, 2022, along with three supplementary documents? | I did receive responses on May 13, 2022, via my counsel. I welcomed receiving the information but would not characterize all responses as detailed.<br><br>I am pleased to share the responses and attachments. My counsel has confirmed with Moushoom counsel that they have no objection to this correspondence being provided. |
| 16. In relation to question 15, will you agree to allow the AFN to file with the Tribunal the May 13, 2022 response of Moushoom Counsel? | Please see my responses to questions 13-15 |
| 17. At paragraph 15 of Your Affidavit, you assert that the original CHRT complaint was drafted by yourself. Is it not true that the AFN had a notable role in drafting the complaint? | I drafted the complaint, and it was reviewed by AFN before it was filed.<br><br>The complaint was co-signed by Guy Lonechild on behalf of Regional Chief Lawrence Joseph representing the Assembly of First Nations, and myself. |
| 18. At paragraph 19 of Your Affidavit, you assert that some First Nations leaders are not in support the FSA. Have you been lobbying First Nations chiefs to express your views on the FSA and seek support to defeat the compensation agreement? Approximately how many First Nations leaders have your spoken to? | Over the past months, I have been invited by First Nations rights holding Chiefs, their proxies, and regional organizations to present on a variety of matters, including compensation. These meetings are organized by First Nations governments or organizations and I often participate by Zoom. It is not my custom to take attendance of the number of First Nations Chiefs who attend such gatherings. The Caring Society has not organized a meeting to specifically inform leadership, although we have participated on First Nations technical zoom briefing panels where rights holding First Nations leaders and their representatives have attended as they are free to do. |

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| | I have shared my publicly available information and views with leadership on compensation but have not lobbied to "defeat the compensation agreement" |
| 19. Have you met with, called and/or spoken with Regional Chiefs who sit the on AFN's Executive Committee to discuss your views of the FSA? Which Regional Chiefs have you spoken to? | Yes. Before the first draft FSA was shared with the Caring Society in April 2022, it was agreed with the AFN and Moushoom counsel that Regional Chiefs might reach out to me for my views and that this would be acceptable, and that I would be free to reach out to Regional Chiefs after AFN Executive was briefed by their legal counsel. I had discussions prior to the draft Compensation FSA regarding both the long-term reform and compensation elements of the CHRT proceeding. I am precluded by my confidentiality obligations from saying more about these interactions.<br><br>Indeed, First Nations rights holding Chiefs, and their regional organizations including Regional Chiefs, have often called on me for my technical expertise over the many years I have worked in the area. It is my experience that First Nations Leadership care deeply for their children and they will often consider different points of view before exercising their free, prior, and informed consent or, in the case of Regional Chiefs, making decisions in consultation with Leadership in their regions.<br><br>I had communications that included compensation with Regional Chiefs Bernard, Adamak, Prosper and Teegee at various times since the FSA was signed. |
| 20. At paragraphs 20 and 21 of Your Affidavit you refer to resolutions by political organizations. Did you, a board member of the Caring Society, an employee of the Caring Society, or your legal counsel participate in the drafting of, or otherwise inform draft those resolutions? | I did not write the resolutions passed by First Nations rights holders, nor was I present when the resolutions were considered and passed.<br><br>As is common given my expertise in First Nations child and family services, I was asked to technically review the draft First Nations Summit resolutions. I did presentations for the First Nations Leadership Council, which includes the First Nations Summit, and for the FSIN. I have presented at First Nations Leadership meetings, including those with rights holding First Nations Chiefs in BC and Saskatchewan, where AFN Legal Counsel Stuart Wuttke, and (in the case of BC) Regional Chief Woodhouse, have also presented AFN's views on the long-term reform and compensation. I |

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| | welcomed Regional Chief Woodhouse and Mr. Wuttke's participation in these events as it is important that First Nations leaders hear different viewpoints on the matters that will affect First Nations children, youth and families.<br><br>To my knowledge, no Caring Society employees or legal counsel participated in drafting or informing the resolutions in question.<br><br>The Caring Society enjoys diverse representation from a number of child and family services sector leaders on its board of directors. Caring Society Board Member Mary Teegee is also Chair of the BC Indigenous Child and Family Services Directors Forum. To my knowledge, she participated in the First Nations Summit resolution in that capacity. She did not participate in that process in her capacity as a Caring Society Board Member. To my knowledge, no other Caring Society board members participated in either resolution-making process. |
| 21. In relation to question 20 above, did you, a board member of the Caring Society, an employee of the Caring Society, and/or your legal counsel lobby chiefs to pass the First Nations Summit and/or Federation of Sovereign Indigenous Nations resolutions? | As noted above, I was not present when either of the resolutions were considered and passed.<br><br>I fully respect First Nations leadership's ability to appraise information, consult their experts and make their own informed decisions on resolutions. I do not view providing information or the Caring Society's views or suggestions on how Leadership can have their voices heard as lobbying.<br><br>As noted above, I was not involved in drafting any resolutions. |
| 22. Did you, your board members, Caring Society employee(s), and/or legal counsel lobby other First Nations provincial and/or regional First Nations organizations to seek support to reject the compensation FSA? Which provincial or regional First Nations organizations have you been lobbying of speaking to or their officials? | The FSA was signed on June 30, 2022, and announced on July 4, 2022. I became aware of it around 3 p.m. EDT (12 p.m. PST) on July 4, 2022. I received a copy of the FSA on July 4, 2022, at 11:17 PM.<br><br>The Caring Society prepared a preliminary analysis sheet, as we do for all significant developments in the CHRT case, which was available to all delegates at our information booth at the AFN Chiefs in Assembly Meeting during the afternoon of July 6 and all day on July 7, 2022. A subsequent analysis of the compensation FSA was made available on July 21, 2022.<br><br>I have not lobbied to "reject" the FSA. However, when I have been asked for the Caring Society's analysis of the FSA, I have identified concerns regarding how it affects |

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| | CHRT entitlements and First Nations children, youth and families affected by those entitlements. I have also been asked how the class action affects Jordan River Anderson's family.<br><br>In any event, as the FSA was signed without a resolution from the Chiefs of Assembly there was no opportunity for anyone to lobby Chiefs to vote in favour or against a particular position. |
| 23. Did you and Mary Teegee, a Board of Director of the Caring Society, attend the AFN Annual General Assembly in July 2022 and seek support of and/or lobby chiefs to table a draft resolution to oppose the FSA? | I attended the AFN Annual General Assembly, as I often did in years prior to the COVID-19 pandemic.<br><br>Ms. Teegee also attended the Annual General Assembly; however, she attended in her capacity as the head of the BC Indigenous Child and Family Services Directors' Forum (see my response too Question 20 above).<br><br>No other Caring Society Board members, employees, or legal counsel attended the AFN Annual General Assembly.<br><br>The draft resolution in question did not oppose the Compensation FSA. It asked that the Compensation FSA be brought before the Chiefs-in-Assembly for approval and made other related directions and statements. |
| 24. Did you, a board member of the Caring Society, an employee of the Caring Society, or your legal counsel draft, participate in the drafting of, or otherwise inform the proposed AFN resolution referred to in Question 23? | Along with approximately 30 other First Nations technical experts, I contributed to the resolutions which were drafted on July 4, 2022, before the FSA was announced. On July 4, 2022, before the AFN Annual General Assembly started, approximately 30 other First Nations technical experts in child welfare met to discuss a variety of issues impacting First Nations children. |

## David Taylor

**From:** David Sterns <dsterns@sotos.ca>
**Sent:** April 27, 2022 2:29 PM
**To:** David Taylor; Sarah Clarke
**Cc:** Robert Kugler; Joelle Walker; Mohsen Seddigh
**Subject:** Comprehensive Agreement

Hi David and Sarah, can you please send us the list of concerns you raised with the settlement agreement? We would like to consider them and get back to you either in writing or in a meeting where we can lay out our thinking.

As we discussed last week, we are not planning to sign the agreement until we have gotten further on issues like Jordan's Principle and we've had a chance to consider your issues as well.

Regards,
David

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## David Taylor

**From:** David Taylor
**Sent:** April 28, 2022 12:00 PM
**To:** 'swuttke@afn.ca'; Dianne Corbiere; Geoff Cowper; David Sterns; 'Robert Kugler'; 'joelle@millertiterle.com'
**Cc:** Mohsen Seddigh; William Colish; sarah@childandfamilylaw.ca; Jasmine Kaur
**Subject:** Compensation FSA
**Attachments:** Compensation Final Letter Janaury 2022.pdf

Stuart, Dianne, Geoff, David, Rob, and Joelle:

I am following up on David Sterns' email of yesterday asking the Caring Society to set out its questions and concerns with the draft compensation final settlement agreement. We are continuing to review the draft and may have further questions/concerns arising from that review. I have attached Cindy's letter from January, which sets out the themes from which most of these concerns flow. At this time the Caring Society is not taking a position on the current draft of the compensation final settlement agreement and requires more information.

As outlined on April 21 with the Moushoom team and on April 25 with the AFN team, the areas requiring further information fall under the following headings:

- **Jordan's Principle:**
  - The current draft wording appears to re-insert a requirement for a request
  - There are not sufficient guarantees that all the children with Jordan's Principle claims who would have been eligible under the CHRT orders (as defined in the compensation framework) would be eligible for a minimum of $40,000
  - Service eligibility limited to a specific list of essential services, without room for consideration of impact(s) on the child
  - Definition of "service gap" limited to apply in some circumstances only
  - No clarity regarding how unreasonable delay is determined

- **Jordan's Principle class:**
  - Class proposal includes some children who are not eligible per the CHRT
  - What principles guide the downward adjustments for parents who would receive $40K under the CHRT orders, other than the pragmatics of compensating people within a fixed amount?

- **FNCFS Program class:**
  - Victims only eligible for compensation if they were in "federally-funded" placements which departs from the compensation framework
  - What weight will be given to the "enhancement factors"?
  - What evidence supports selection of "removal from remote community" as an enhancement factor, as opposed to distance of placement from home community?
  - Unclear what the principles are that guide downward adjustments for eligible parents (limiting compensation to $60,000 where more than one child was removed) other than the pragmatics of compensating people within fixed funding parameters

- **General:**
  - No provision for structured payments or other similar vehicle
  - Lack of clarity around services available to First Nations and agencies to provide support to beneficiaries
  - Provisions regarding ineligibility for compensation of parents who abused their children

- Timeframe for opting out (particularly for child recipients)
- Sufficiency of service navigation (as often, this ends in 'navigation to nowhere')
- Exclusion of all parent estates from compensation
- Insufficient detail around the PM's apology (youth in care provided conditions to be satisfied before making an apology (i.e., not doing it again))
- Questions re: the implications of the release provision for First Nations and Agencies

- **Various Questions:**
  - Is $40K the floor for all children eligible per the CHRT process?
  - What principles guide the downward adjustment for parents eligible for $40K per the CHRT process?
  - How will the Settlement Implementation Committee operate?
  - What conflict of interest provisions will be in place for the Settlement Implementation Committee and the Investment Committee?
  - How will capital be preserved for children who have not yet reached the age of majority?
  - What provision will be made for children in special circumstances, such as those who have palliative conditions and have not yet reached the age of majority?
  - How to balance between earning interest in the trust to have cost-of-living adjustment for payments to victims many years from now, and the risk required to generate that interest?
  - What is the legal basis for differentiating between adoptive and biological parents?
  - What is Donna Conna's experience base in supporting children and those with mental health challenges and navigating services relevant for youth in/from care?
  - In what position does the settlement agreement's release provision leave Agencies?

Looking forward to getting some more information about Jordan's Principle tomorrow.

Best,

**David Taylor**
Partner

613.691.0368
View Bio

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conwaylitigation.ca

January 21, 2022

Dear Regional Chief Woodhouse, Dr. Gideon and Xavier Moushoom, Zach Trout and Jonavan Meawasige (care of Mr. Sterns):

Re: Compensation Final Settlement Agreement and 2019 CHRT 39 and 2021 CHRT 7

I write to wish you all good health and every happiness in 2022. We recognize the important contributions you have each made to ensure justice for the victims of Canada's discriminatory conduct and look forward to continuing to work with you towards this goal. As you all know, compensation for victims of Canada's ongoing discrimination was originally ordered by the Canadian Human Rights Tribunal in 2019 for the infringement of dignity pursuant to the *Canadian Human Rights Act.* Class Actions have been filed separately, largely based on the same facts determined by the Canadian Human Rights Tribunal. Canada has been negotiating separately with class counsel to resolve these class actions and to simultaneously satisfy the Canadian Human Rights Tribunal compensation orders (to which the Caring Society is a co-complainant with AFN). In December 2021, we know that an Agreement in Principle for compensation was signed by Canada and class action counsel to which the Caring Society is not a party. This complicated combination of human rights and class action legal proceedings means that as a co-complainant to the Tribunal proceedings, the Caring Society will have an opportunity to make submissions should class action counsel (and the parties they represent) seek any alteration of the existing compensation orders. Consistent with our commitment to transparency and to working in collaboration with other parties, we are pleased to provide you with our views on the important elements of the orders that ought to be preserved.

We also welcome the news that First Nations leadership and experts will have an opportunity to express their views on the compensation Agreement in Principle and we look forward to hearing their reflections.

As you know, the *Framework for the Payment of Compensation under 2019 CHRT 39*, negotiated between the Caring Society, the AFN and Canada and approved by the Tribunal in 2021 CHRT 7 sets out a process for the distribution of compensation awarded by the Canadian Human Rights Tribunal in 2019 CHRT 39. The Caring Society is open to discussing with you and class action counsel any evidence informed changes to the Compensation Framework that improve upon the orders and safeguard recipients' well-being. Nonetheless, the Compensation Framework includes many important legal

requirements that the Caring Society views as essential to protecting the human rights of First Nations children and families including the following:

1. **The CHRT Orders will not be rescinded:** The CHRT's compensation orders are important precedents that have been upheld as reasonable by the Federal Court. The Caring Society will not support amendments to the Tribunal's orders that changing or setting aside the reasons that compensation was awarded, as that is relief that could only be obtained following a successful appeal to the Federal Court of Appeal (which will not proceed). As is addressed below, however, the Caring Society remains open to considering and supporting amendments, if required, to the Tribunal's orders to address the amount of compensation for adult victims where Canada and class counsel can demonstrate that an amount lower than $40,000 is just compensation for the infringement of the adult victim's dignity, bearing in mind the wilful and reckless nature of Canada's discrimination.

2. **Avoid re-traumatization of children in quantifying compensation amounts:** The Tribunal has directed that child victims must not be interviewed for the purposes of compensation (see 2019 CHRT 39 at paras. 188 and 189). This fundamental principle is captured in the Compensation Framework, as ordered by the Tribunal (see 2021 CHRT 7). In practical terms, this means that upward adjustments to the $40,000 to which eligible children are entitled ought to be determined based on reliable aggregate child in care data. The Caring Society recognizes that the number of data metrics available is limited owing to Canada's failure to establish a national child welfare data system as recommended by the Truth and Reconciliation Commission. However, we strongly hold the view that the harms arising to children from undue interference relating to interviews or unnecessary child in care file reviews overshadows any possible financial benefit. We recognize that other Parties to the CHRT also agreed that interviewing children for this purpose was not appropriate.

3. **Compensation amounts:** All child victims (including deceased children and those who are now adults but were children at the time of the discrimination) will receive a minimum payment of $40,000 per 2019 CHRT 39 and 2021 CHRT 7. As discussed during negotiations in November and December 2021, any adult victims (i.e., parents and caregiving grandparents) eligible to receive $40,000 in compensation per 2019 CHRT 39 and 2021 CHRT 7 shall not have their entitlement unduly infringed save and except in circumstances where class action counsel and Canada can demonstrate that lower amounts are just compensation for the infringement of dignity and wilful and reckless discrimination found by the Tribunal.

4. **Compensation to estates of deceased victims and funds held in trust:** The Tribunal has ordered that the estates of deceased victims are entitled to compensation (see 2020 CHRT 7) and that compensation owing to minor

beneficiaries and those without legal capacity shall be held in trust (see 2021 CHRT 6). These legal requirements have been incorporated into the Compensation Framework and similarly ought to be adopted in the distribution of the class action settlement funds.

5. **Two-year timeline for claims:** The Tribunal has ordered that the initial timeline for claims will be 2 years, as set out in section 7.2 of the Compensation Framework (see 2021 CHRT 7 at para. 25). This time frame ensures that all eligible beneficiaries have the necessary time to be notified, receive support and services (as necessary), and include all relevant information in their claim application.

6. **No assignment of claims:** The Tribunal has ordered that compensation payments cannot be assigned to another individual, as set out in section 11.1 of the Compensation Framework (see 2021 CHRT 7 at para. 29). For further clarity, we view this provision as also applying to organizations. It is designed to ensure that predators do not and cannot take advantage of vulnerable beneficiaries.

7. **Culturally based safeguards and supports:** The culturally based safeguards ordered by the Tribunal (see 2021 CHRT 7 at para. 36) and set out in sections 2.3, 5.2 and 6 of the Compensation Framework must be in place and take account of the views of First Nations youth in care and formerly in care as documented in *Justice, Equity and Culture: The First Ever YICC Gathering of First Nations Youth in Care Advisors* (2019) and *Children Back, Land Back: A follow-up report of First Nations Youth in Care Advisors* (2021). These safeguards include, but are not limited to:

    a. Effective access to justice measures must be available to those considering "opting out" of the class action and/or CHRT compensation, per Sections 2.7 and 3.3 of the Compensation Framework.

    b. Providing the option of a structured payment for young adults and others who are in vulnerable circumstances to safeguard against exploitation and the furtherance of harms.

    c. Cultural, mental health and financial literacy supports before, during and after the compensation period as contemplated under the Compensation Framework and as recommended by First Nations Youth in Care Advisors and generally accepted by the Tribunal in 2020 CHRT 7 at para. 33.

    d. As contemplated in the Compensation Framework, ensuring that First Nations and First Nations service providers have the resources needed to support children, youth, and adult victims to access compensation.

e. As set out in the Compensation Framework, ensuring that the process overall takes full account of the fact that many of the victims are still children and young people. This means tailoring all aspects of the compensation to their unique developmental, cultural, and contextual realities.

In addition to these elements related specifically to the orders of the Tribunal, it is essential that Canada not make compensation conditional on long-term reform. The Tribunal orders, as upheld by the Federal Court, make no such connection and the compensation and long-term reform agreements-in-principle set much different timelines for achieving Final Settlement Agreements. Canada must fully comply with existing orders to compensate children, end its ongoing discrimination, and prevent its recurrence. In addition, the Caring Society again calls on Canada to take positive measures to ensure reliable national child welfare data collection per the TRC Call to Action.

We note, with concern, that whilst Canada pressed hard for the Parties to consent to the Tribunal ending its jurisdiction, Canada itself has not withdrawn its appeal before the Federal Court of Appeal on compensation. This perpetuation of litigation when it is in Canada's own interests' approach must end.

In conclusion, I hope you find understanding our positions useful during this important negotiation process and encourage you to contact us should you require any further information regarding our positions or should you wish to propose evidence informed improvements to the Compensation Framework.

Respectfully,

Cindy Blackstock, PhD

## David Taylor

**From:** Joelle Walker <joelle@millertiterle.com>
**Sent:** May 13, 2022 3:52 PM
**To:** cblackst@fncaringsociety.com; David Taylor; sarah@childandfamilylaw.ca
**Cc:** Wen Yu; Geoff Cowper; Nathan Surkan; David Sterns; William Colish; Robert Kugler; Mohsen Seddigh
**Subject:** Compensation FSA- Response to Caring Society Comments
**Attachments:** Response to Caring Society (May 13-22) (00932948xC0163).PDF; Schedule- Outline of Supports (00931992xC0163).PDF; Schedule- Investment Committee Guiding Principles (00931991xC0163).PDF; Moushoom Draft Memorandum re Removed Child Enhancement Factors (00933053xC0163).PDF

**Importance:** High

Cindy, Sarah + David,

Attached please find a response to the questions/comments posed by the Caring Society in David's email of April 28th. This response is from Moushoom counsel, upon which the AFN has commented and provided feedback. While this does not represent the AFN's views on each issue, it represents the parties' general consensus on the questions raised by the Caring Society.

I have also attached the following documents referred to in our response:

- FSA Schedule- Outline of Supports
- FSA Schedule- Investment Committee Guidelines
- Moushoom Draft Memorandum re Removed Child Enhancement Factors

Please let us know if you would like to meet to discuss further. We are available to do so Monday- we understand that this is a short turn-around; however, we are meeting with Canada on Tuesday and want to ensure we have had an opportunity to consider the Caring Society's concerns and comments prior to that meeting.

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| Caring Society Concerns | Response |
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| **Jordan's Principle** | |
| + The current draft wording appears to re-insert a requirement for a request | + The request requirement only applies to denials and delays, but not to gaps. The current draft distinguishes between them as follows:<br><br>"Eligibility for compensation for members of the Jordan's Principle Class and the Trout Child Class will be determined based on those Class Members' Confirmed Need for an Essential Service if:<br><br>(a) a Class Member's Confirmed Need was not met because of a Denial of a requested Essential Service;<br><br>(b) a Class Member experienced a Delay in the receipt of a requested Essential Service for which they had a Confirmed Need; or<br><br>(c) a Class Member's Confirmed Need was not met because of a Service Gap even if the Essential Service was not requested."<br><br>+ This approach was intended to be consistent with the CHRT decision on point (2020 CHRT 15 at para 139) and the Caring Society's position before the CHRT: "Unlike service gaps, denials and delays presume that requests have been made. Denials and delays have as their point of reference the request that was made for a service or product. In the case of a denial, a specific "ask" was refused." (Caring Society submissions of April 30, 2020 at para 24)<br><br>+ In sum, a request is required for delayed and denied services. A request is not required for a service gap. |
| + There are not sufficient guarantees that all the children with Jordan's Principle claims who would have been eligible under the CHRT orders (as defined in the compensation | + The goal in the Final Settlement Agreement (FSA) is to capture everyone who would have been entitled under the CHRT's decisions. |

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| | framework) would be eligible for a minimum of $40,000 | + The work of determining the criteria and distribution process in the CHRT Compensation Framework was not finished. The implementation and distribution guide envisioned under s. 2.5 of the compensation framework is not agreed on. As such, it is not entirely clear who would be eligible under the CHRT orders (as defined in the Compensation Framework). One can only speculate who in practice would have been eligible under the CHRT orders until and unless the criteria are determined.<br>+ The goal in the draft FSA is to ensure that those children who suffered discriminatory impact are compensated consistent with the CHRT's reasoning that the compensation process should be objective and efficient (2020 CHRT 15 at para 117) and the definition of essential services must be reasonable (2020 CHRT 15 at para 148). |
| + | Service eligibility limited to a specific list of essential services, without room for consideration of impact(s) on the child | + Focusing exclusively on criteria such as harm and individual impact would require individual trials for tens or hundreds of thousands of class members. Given the estimated literacy levels of the class, such trials could not realistically be done on a written basis only. Personal testimony is intrusive, traumatizing, logistically difficult and unacceptable in this context. We seek to stay true in this respect to the Caring Society's admonition in the paragraph 2 of the letter of January 21, 2022.<br>+ The goal of the approach in the draft FSA is to remain as consistent as possible with CHRT orders and to use objective criteria that enable the determination of inclusion in the class.<br>+ The issue raised in this question is however an important and valid consideration in creating an eligibility process, which is not clearly accounted for in the current draft FSA. The AFN has also raised this concern on a number of occasions. Therefore, after hearing your comments at our meeting of April 29th, we have drafted language to be introduced in the FSA to create a safety valve provision: if a specific service is not on the list of essential services (which list is indispensable in order to create an objective and predictable process), the human reviewer has discretion to consider a service confirmed by a professional that is not on the list but whose absence would particularly prejudice the specific |

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| | | | child. The goal is to create flexibility for exceptional scenarios such as for example a child needing a backpack for their lifesaving portable breathing device or a child who needed a fence for safety being eligible for compensation without directly including items such as backpacks and fences on the list of essential services for everyone.<br>+ Another consideration in this respect is our plan to conduct focus group studies on a significant sample size to assess the workability of the claims process and account for any changes that need to be made to ensure the process and the safety valve provision work as expected. |
| | + Definition of “service gap” limited to apply in some circumstances only | | + See answer to the previous question about flexibility and objectivity in the process to ensure that all eligible class members are included.<br>+ While a “service gap” is generally conceived in the FSA as a service that was not available through any channel (including other programs such as NIHB and MS&E) during the class period, the FSA creates sufficient flexibility to also account for accessibility issues such as remoteness and similar disadvantages in the supporting documentation requirement.<br>+ The CHRT noted that that a service should have been recommended by a professional with the relevant expertise to determine that the service is essential to meet the child’s needs (2020 CHRT 15 at para 117). |
| | + No clarity regarding how unreasonable delay is determined | | + This has not been discussed amongst the plaintiffs yet but our expectation is that it will be consistent with the 48 hour / 12 hour standards set in s. 4.2.4 of the Compensation Framework. |
| **Jordan’s Principle class** | | | |
| | + Class proposal includes some children who are not eligible per the CHRT | | + This group has always been included in the class definitions in the statements of claim and in the certification orders issued by the Federal Court.<br>+ This group includes many First Nations individuals entitled to be registered under the *Indian Act* who had been denied status due |

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| | to unconstitutionally discriminatory provisions in the *Act*. We have no hesitation regarding their inclusion in eligibility. |
| + What principles guide the downward adjustments for parents who would receive $40K under the CHRT orders, other than the pragmatics of compensating people within a fixed amount? | + It is not clear at this time that there will be downward adjustments from the CHRT ordered amounts for this group. Downward adjustments will happen if the number of approved parent class members exceeds a certain number. In that scenario, this group would be compromised due to litigation risk, and the pragmatics of ensuring that a settlement is achievable and the removed children and the children denied essential services receive fair compensation. |
| **FNCFS Program class** | |
| + Victims only eligible for compensation if they were in “federally-funded” placements which departs from the compensation framework | + The provision of funding by ISC is the appropriate mechanism to identify the broad group of individuals who have been harmed by Canada’s discriminatory funding, which is the foundation of the class action. Furthermore, this enables accessing data from ISC to confirm eligibility.<br>+ In addition, we understand that the CHRT only compensated children removed from their homes, families and communities. In 2019 CHRT 39 at para 245, the CHRT limits eligibility to "First Nations children living on reserve and in the Yukon Territory who, as a result of poverty, lack of housing or deemed appropriate housing, neglect and substance abuse were unnecessarily apprehended and placed in care outside of their homes, families and communities". Our definition is broader than the CHRT’s.<br>+ The FSA expands eligibility for compensation, including by not requiring removal away from communities, as well as by broadening the definition of “ordinarily resident on-reserve”. This enables children who are in a gray area under the 1965 Ontario Agreement and the similar Alberta agreement to be included in the class, and not excluded.<br>+ The underlying principle is not to leave children behind. We do not believe that the draft FSA excludes individuals eligible for compensation under the CHRT as the discriminatory nature of federal funding and the primacy given the child removals were at the heart of Tribunal findings. |

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| | | + There is a separate class action (*Walters*), which essentially covers individuals affected by Canada's discrimination, but who are not included in the Moushoom class action.<br>+ However, we will further discuss the Caring Society's comment in this regard and consider whether this needs to be revisited. |
| | + What weight will be given to the "enhancement factors"? | + We are unable to know the amount of additional compensation that individuals meeting enhancement criteria will receive, as this will depend upon the number of claimants and the number of individuals eligible for enhancements. However, Moushoom counsel (with input from experts) have weighted the enhancement factors on an aggregate basis for consideration. Attached please find a memorandum Moushoom counsel prepared setting out this weighting. The weighting was carefully considered; however, it is not a scientific calculation. The weighting of the specific factors is still under consideration by the parties |
| | + What evidence supports selection of "removal from remote community" as an enhancement factor, as opposed to distance of placement from home community? | + Canada has advised that ISC does not have data associated with distance of placement.<br>+ We understand that children removed from Northern and Remote communities (to non-Northern and Remote communities) generally face a placement at a great distance from home. As ISC has data about Northern and Remote communities, we accepted to use this as an enhancement factor. We are attempting to balance the objectives of having optimal enhancement factors with the availability of data and accessibility of the claims process.<br>+ You will note from the Moushoom counsel memorandum that this enhancement factor is not significantly weighted. We recognize that, as an enhancement factor, remoteness or distance will be far from perfect. We nevertheless believe that it is a fair and appropriate factor under the circumstances. That being said, we will further discuss whether to tweak this enhancement factor and let you know if we are able to come up with a better solution. |
| | + Unclear what the principles are that guide downward adjustments for eligible parents (limiting compensation to $60,000 where more than one child was removed) other than | + No amount of compensation is sufficient to properly account for the removal of one's child(ren). The settlement entails the payment of a fixed sum, however, so we must make difficult decisions to ensure that as many people as possible receive *fair* |

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| | the pragmatics of compensating people within fixed funding parameters | | compensation. As a corollary, we have also provided that a parent is entitled to compensation for the removal of a child, even if the child was not removed from their *community*, which is significant expansion to the CHRT orders. That being said, we continue to discuss this issue, and the current language may change. |
| **General** | | | |
| | + No provision for structured payments or other similar vehicle | + | Nobody wants the payment of compensation to lead to greater problems. |
| | | + | We will be offering an array of supports, as provided for in the FSA. |
| | | + | The current draft of the FSA permits an individual claimant to make an informed decision regarding investing all, or a portion of, their settlement funds. The FSA places an obligation upon the administrator to reach out *in advance* of making payment, to obtain the views of the individual on where to direct the settlement funds. The choice architecture is yet to be determined and will be created to allow individuals to make informed choices and elect to set their funds into investment vehicles by filling out simple responses to the Administrator. |
| | | + | NARC is holding a symposium on this issue on June 1st to allow experts to further discuss this issue. |
| | + Lack of clarity around services available to First Nations and agencies to provide support to beneficiaries | + | A working group comprised of representatives with relevant expertise from Canada, the AFN and subject matter experts as needed was created to consider and recommend supports and those are outlined in a schedule to the FSA, a copy of which is attached. |
| | | + | Various services, including trauma, health and mental wellbeing services, support in submitting applications and appealing refusals by the Administrator are available to Claimants throughout the Claims Process and funded by Canada for the life of the FSA. |
| | + Provisions regarding ineligibility for compensation of parents who abused their children | + | The draft FSA renders ineligible parents or grandparents who abused a removed child at 6.04 (9). The mechanism for |

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| | substantiating allegations of abuse is to be addressed in the Distribution Protocol.<br><br>+ As discussed, this is a challenging issue. We do not wish to have a child undergo a "trial" to determine whether there was abuse. However, we certainly wish to take measures not to compensate parents who abused their children. We will further discuss this to try to come up with the best solution under the circumstances. |
| + Timeframe for opting out (particularly for child recipients) | + Firstly, it is essential to distinguish between an opt-out period and a claims period. **The fact that the opt-out period is 6 months does *not* mean that class members have 6 months to claim**. On the contrary, class members will have 3 years from age of majority to claim compensation. There is also flexibility to account of personal and community emergencies as well as internet accessibility issues to extend the deadline. For minors, their remaining time in care, if any, will be considered for purposes of enhancement factors. The settlement benefits minors in that regard.<br><br>+ The opt-out period is 6 months from the time of notice of certification. This is a long opt-out period based on precedents in class actions. In Quebec, the Code of Civil Procedure—which is not directly applicable in this case but nevertheless offers some guidance—prohibits an opt-out period longer than 6 months. The rationale is that the legislator wishes for individuals to benefit from class actions, as opposed to opting out of them in order to institute an individual action.<br><br>Normally, certification takes place in advance of any settlement. As such, the opt-out period takes place before there is any settlement, and before there is any knowledge of whether a settlement will ever be concluded. The class member must make a decision whether to be bound by the uncertain result to be obtained in the future in the class action or to institute an individual action and hope to get a better result.<br><br>+ The class members in this case are in a better situation than they would normally be in, as they now know that there has been a settlement. They will also know what the settlement benefits are, |

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| | | not only through the notice, from the judgment approving the settlement (if it is approved), but also from the fact that class members will have opportunities to have their questions answered.<br>+ We acknowledge that it may be a difficult decision to decide whether to opt out; however, we do not believe that this decision becomes easier over time. Furthermore, we are confident that the settlement is excellent, such that class members should want to be bound by it; if we did not believe this, we would not have entered into the settlement agreement or seek approval thereof from the Court.<br>+ As a matter of overall practicality, a longer opt-out period might be detrimental to the class because it delays the actuaries' ability to forecast sufficiency of funds.<br>+ We have researched this issue extensively and believe the court will uphold the 6-month opt-out period, even in this case which involves minors. |
| + | Sufficiency of service navigation (as often, this ends in 'navigation to nowhere') | + This concern was noted as part of "lessons learned" and, as indicated above, a specific working group has been assigned to work navigation and supports to arrive at what is outlined in the schedule to the FSA. These include mental wellbeing and health supports throughout the claim period; trauma support; support in submitting applications and appealing refusals by the administrator. Specific questions can be directed to this working group (AFN/Valerie Gideon). |
| + | Exclusion of all parent estates from compensation | + This was another difficult decision that we made for purposes of ensuring that there are sufficient funds available to compensate the individuals in the class who are alive and suffering.<br>+ Although estates of deceased parents will not be paid in their capacity as the estate, in practice we believe that the beneficiaries of the estates will be paid; this is because the children of the deceased parent must have been a Removed Child or a Jordan's Principle (or Trout) class member, such that the child(ren) will be eligible for compensation. As a result, even though estates of deceased parents will not be compensated, we do not foresee it |

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| | being likely a parent passes away and no member of that parent's family gets any compensation. |
| + Insufficient detail around the PM's apology (youth in care provided conditions to be satisfied before making an apology (i.e., not doing it again) | + Canada has advised that we are not able to bind and will not bind the PM. All we can provide in the FSA is a recommendation. From that point, it is entirely up to the PM whether, and how, to apologize. |
| + Questions re: the implications of the release provision for First Nations and Agencies | + See comment on scope of release below. |
| **Various Questions** | |
| + Is $40K the floor for all children eligible per the CHRT process? | + This is absolutely the plan. We have prioritized compensating children in the FSA. As with any class action, we do not have final numbers of claimants and there is insufficient data available to make this determination prior to receiving claims. The FSA provides for compensation that is consistent with the CHRT orders.<br>+ For Removed Children, we have budgeted $7.25 billion. We have an expert report estimating the class size at approximately 115,000. Even if this estimate ends up being low, we have budgeted more than enough to ensure that Removed Children receive $40,000 as a minimum, as well as additional compensation based on objective enhancement factors.<br>+ With respect to Jordan's Principle, the data is not as readily available or reliable. Canada has provided data suggesting that we should expect approximately 65,000 Jordan's Principle individuals. We have budgeted $3 billion for Jordan's Principle, which is sufficient to pay 75,000 individuals $40,000.<br>+ It is essential that we implement a process that captures the individuals entitled to Jordan's Principle compensation in an objective manner, yet in a way that does not lead to a massive excess of claimants compared to what we have been advised to expect. If the number of Jordan's Principle claimants greatly exceeds what we have been advised to assume, then that presents a serious risk to the sufficiency of funds. It is for this reason that we |

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| | are working to establish a protocol that properly identifies the eligible Jordan's Principle claimants. |
| + What principles guide the downward adjustment for parents eligible for $40K per the CHRT process? | + Certain parents will still be eligible for compensation, and others may benefit indirectly from the Cy-Près Fund that will be established.<br>+ No settlement would have been possible if we had not agreed to compromise the claims of family members of Jordan's Principle and Trout children. This was a difficult decision, but one that we felt was in the best interests of the class, and primarily the children in the class, to ensure that they receive fair and proper compensation without further undue delay. |
| + How will the Settlement Implementation Committee operate? | + There are numerous provisions in the FSA setting out the responsibilities of the Settlement Implementation Committee.<br>+ In essence, the Committee is responsible for overseeing implementation of the settlement agreement in the most effective and fair manner. The Committee will have the ability to address problems and challenges that arise and will be able to go to Court to obtain approval of necessary adjustments to the FSA.<br>+ Most importantly, the Court will have significant oversight on the decisions recommended by the Committee. |
| + What conflict of interest provisions will be in place for the Settlement Implementation Committee and the Investment Committee? | + Every member of the Committee is responsible to act in the best interests of the Class only and, as discussed above, the Court will have continuous oversight on the Committee's work. Furthermore, to the extent that a dissenting member of the Committee considers that a decision is improper, that member will have the right to seek dispute resolution and ultimately challenge the matter in Court. This ensures transparency and removes the potential to oppress dissenting opinions.<br>+ We have inserted many safeguards to minimize the risk of a conflict of interest; however, if you have specific suggestions that you would like us to add, please let us know and they will be considered. |
| + How will capital be preserved for children who have not yet reached the age of majority? | + We will be putting in place an Investment Ccomprised of financial experts. We are also working with actuaries whose responsibility |

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| | will be to guide the Settlement Implementation Committee so that the best decisions will be made to preserve the capital and allow for growth over the lifetime of the FSA.<br>+ The best we can do in any class action is ensure that we are engaging the correct type of experts and rely upon them to act in a professional manner, using their best judgment. That is what we have done in this case.<br>+ We are attaching language we have prepared to guide the Investment Committee which will be a schedule to the FSA. |
| + What provision will be made for children in special circumstances, such as those who have palliative conditions and have not yet reached the age of majority? | + We are considering this further but currently this is not included in the FSA.<br>+ The Class is comprised of many tens of thousands of children. We believe that it would be inappropriate to require or allow children to make claims for compensation. We have accordingly provided that the claims period begins upon attaining the age of majority. .<br>+ Children in palliative care should be eligible to make a Jordan's Principle claim to the government, as the settlement does not allow Canada to refuse Jordan's Principle claims. As far as compensation goes, however, it will await the child reaching the age of majority.<br>+ Estates of deceased children may claim compensation under the FSA. |
| + How to balance between earning interest in the trust to have cost-of-living adjustment for payments to victims many years from now, and the risk required to generate that interest? | + This will be discussed with experts and the Investment Committee but for now, the FSA provides for flexibility in order to ensure that there is the ability to adjust to market conditions and make the best possible decisions at the appropriate time. As indicated above, we are including the Investment Committee Guiding Principles which are a schedule to the FSA with this response. |
| + What is the legal basis for differentiating between adoptive and biological parents? | + There is no legal basis for this distinction, however, under the CHRT Compensation order, we understand that only biological parents were eligible for compensation. Respectfully, we do not consider that this is appropriate. We accordingly provided in the FSA that adoptive parents may also be eligible for compensation. |

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| | + The distinction made in the FSA is for practical reasons; the objective is to avoid a "trial" between a biological and adoptive parent, to be decided by a non-judge administrator who will have no right to hear from the children themselves. We must anticipate the possibility of a dispute between caregiving biological and adoptive parents. Unlike an ordinary case, we do not wish to have any child implicated in this dispute. Therefore, in order to be consistent with the CHRT, we decided that in the event of a conflict, biological parents would take precedence over adoptive parents.<br>+ This is also consistent with the CHRT's admonitions about the need for a culturally safe and appropriate process and against implicating the child in the decision between different parents (2020 CHRT 15 at paras 32-48).<br>+ In practice, as parents are entitled to compensation only if they were the primary caregivers at the time of removal or at the time of the confirmed need for an essential service, we are hopeful that there will not be many conflicts needing to be resolved about who the primary caregiver(s) was (were) at that time. |
| + What is Donna Conna's experience base in supporting children and those with mental health challenges and navigating services relevant for youth in/from care? | + Donna Conna currently provides the Hope for Wellness helpline and Canada has agreed to fund additional enhancements for this service. |
| + In what position does the settlement agreement's release provision leave agencies? | + The agencies are not released from liability as the class action does not name any agency as a defendant, and no agency has any monetary obligation under the Settlement. We accordingly cannot agree on behalf of the Class to simply release claims that any Class Member may have against an agency or any other third party. There is a material risk that the Federal Court would not approve such a broad release. |

**SCHEDULE [●]**

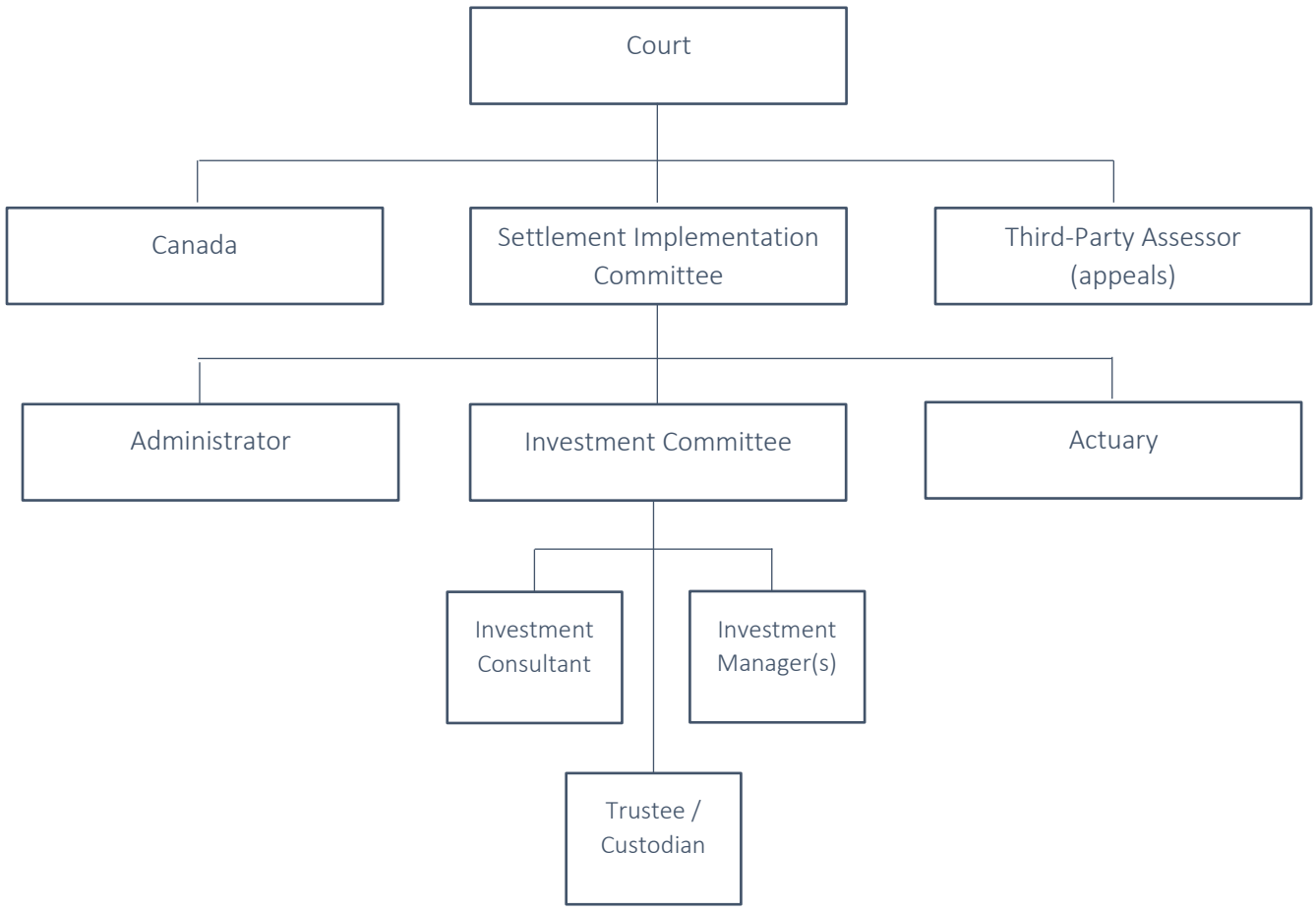
**Investment Committee Guiding Principles**

This Schedule sets out the principles that shall inform the drafting of the Investment Committee Terms of Reference by the Settlement Implementation Committee, as set out in the Final Settlement Agreement.

**Basic Governance Structure relating to Investment Committee:**

1. **In order to facilitate the effective management of the Settlement Funds, the Investment Committee should be constituted in a manner that is directly overseen by the Settlement Implementation Committee.** The Investment Committee should be permitted to make decisions within the scope of the Terms of Reference with independence, but is accountable to the Settlement Implementation Committee and, ultimately, the Court. The Investment Committee must be able to communicate with both the Administrator and the Actuary, whether independent of, or through the Settlement Implementation Committee.

2. **The Settlement Implementation Committee should be responsible for oversight of the entire process, including resolving any issues that may arise from time to time.** Where necessary, the Settlement Implementation Committee is the body responsible for seeking guidance from the Court, on behalf of the Class, the Administrator, the Actuary or the Investment Committee.



3. **The Investment Committee should be guided by a statement of investment goals established by the Settlement Implementation Committee.** These goals should not be prescriptive of methods, but rather establish desired outcomes, with the implementation to achieve these outcomes assigned to the Investment Committee.

4. **The Investment Committee should be empowered, through its Terms of Reference to take the following actions:**

    a. Establish, review and maintain a Statement of Investment Policies and Procedures, consistent with the investment goals established by the Settlement Implementation Committee;

    b. Review investment goals and recommending changes to the investment goals to the Settlement Implementation Committee;

    c. On advice from the Investment Consultant and the Actuary, review the asset mix of the Trust to ensure it is consistent with the Trust's return objectives and risk tolerances. As required, modify the asset allocation to ensure the Trust remains prudently invested and diversified to achieve its long-term objectives.

    d. Identify and recommend to the Settlement Implementation Committee an Investment Consultant and corporate trustee for the Fund and for an expenses fund, in the case that implementation expenses are pre-paid by Canada.

    e. Determine the number of investment managers to use from time to time. Select and appoint investment manager(s), set the mandate for each investment manager, terminate investment manager(s) and/or rebalance the funds among the investment manager(s), all based on the advice of the Investment Consultant.

    f. Periodically (bi-annually, annually, semi-annually, or quarterly) review the performance of the Investment Consultant, custodian and corporate trustee and report the results of the review to the Settlement Implementation Committee.

    g. Engage the Investment Consultant to provide advice as considered appropriate from time to time.

    h. Receive, review and approval of reports from the Investment Consultant, investment manager(s) and corporate trustee for the Fund.

    i. Direct the Investment Consultant and/or investment manager(s) to implement any decisions of the Investment Committee.

j. Delegate to the investment manager(s) such decisions regarding the investment of the Fund consistent with the Statement of Investment Policies and Procedures.

k. Monitor compliance of the Trust's investment and investment procedures with the Statement of Investment Policies and Principles.

l. With assistance from the Investment Consultant, monitor the investment performance of the Fund as a whole. Monitor and review all aspects of the performance and services of the Investment Manager(s) including style, risk profile and investment strategies.

m. Monitor risks to the Fund with respect to the overall compensation plan.

    i. With assistance from the Investment Consultant, conduct an annual risk review of the Fund in conjunction with the review by the Settlement Implementation Committee and at such other times as the Investment Committee considers prudent.
    ii. Implement such risk mitigation strategies as considered prudent and report results to the Settlement Implementation Committee.

n. Provide assistance to the Auditor as required.

o. Make recommendations to the Settlement Implementation Committee regarding any Court Approved Protocols and policies that affect the investments of the Fund, including adoption, amendment and termination.

p. Receive periodic reports from the Actuary regarding expected future compensation payments (amount and timing) and based on advice from the Investment Consultant, determine whether any changes to the Statement of Investment Policies and Procedures is necessary or if any changes to the mandates given to the investment manager(s) is necessary.

q. Take direction from and being responsive to the Settlement Implementation Committee on a timely basis.

## Health and Cultural Supports for Class Members

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. 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/emphasize the best practices and innovation demonstrated through the IRS RHSP.

These components are based on the following considerations:

- Ensuring services are aligned with the First Nations Mental Wellness Continuum Framework (FNMWCF) which is widely endorsed and developed with First Nations partners, to guide culture as foundation and holistic navigation supports
- Supporting the largest class action client cohort to date and unique given the focus on children and youth and/or adverse childhood experiences
- Recognizing of the generational nature of this compensation, as supports will be available throughout a child's lifetime, and there will be differing timelines on compensation as it becomes available as class members upon reaching the age of majority.
- Adult class members would be appropriately served by the existing network of health and cultural supports with enhancements to capacity.
- Children and youth would be better served through specialized trauma-informed services, provided through existing First Nations organizations that are already serving children, youth, and families.
- Lessons learned from MMWIG are that client utilization ramped up more quickly than in the first years of the IRSHSP. This is likely due to increased awareness and availability of services.
- The need for a specific line with chat/text function and case management supports for members on a confidential basis to easily navigate access to trauma-informed services supported by culturally relevant assessments and comprehensive case management.
- The role of case management is to prevent class members having to repeat their stories and possibly, re-traumatization.
- Collaboration with Correctional Services of Canada (CSC), provincial and territorial correctional services and youth detention centers is needed to ensure services are provided to class members that are in custody. There could be potential to transfer funds to CSC/YDC to hire health and cultural supports providers.
- Collaboration with a variety educational providers (community based, federal, and provincial and territorial) is need to ensure that services are provided or referred in a way that is highly accessible to school-aged children, and leverages existing expertise in existing youth programs and mental wellness teams that work closely with schools.

## Health and Cultural Supports for Class Members

***Guiding Principles for building options:***

| PRINCIPLES | DESCRIPTION |
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| **Child & Youth Competent Service and Focus** | 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 will need to be accounted for. |
| **Client-Centred Care, within holistic family and community circle/context** | Services and supports build on individual, family and community strengths, considers the wholistic needs of the person, [family and community] (e.g., physical, spiritual, mental, cultural, emotional and social) and are offered in a range of settings (Honouring Our Strengths, p.41). Services are accessible regardless of status eligibility and place of residence. Services consider neuro-diversity, especially in the case of children and youth. |
| **Trauma-Informed, and informed by Child Development** | 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 to addressing trauma 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 (TPF's A Cultural Safety Toolkit for Mental Health and Addiction Workers In-Service with First Nations People). |
| **Provision of Coordinated & Comprehensive Continuum of Services (i.e. awareness of other programs & services)** | Active planned support for individuals and families to find services in the right element of care, transition from one element to another, and connect with a broad range of services and supports to meet their needs. A comprehensive continuum of essential services includes: Health Promotion, Prevention, Community Development, and 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** | Ensures 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 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) |

## Health and Cultural Supports for Class Members

| PRINCIPLES | DESCRIPTION |
|---|---|
| **Culturally-Informed and Sustainable Workforce - long-term development of First Nations service providers** | Education, training and professional development are essential building blocks to a qualified and sustainable workforce of First Nations service providers through long-term approaches, whereby ensuring service continuity. Building and refining the skills of the workforce can be realized by ensuring workers are aware of what exists through both informal and formal learning opportunities, supervision, as well as, sharing knowledge within and outside the community. (FNMWCF, p. 48) |
| **Community-Based Multi-Disciplinary Teams (i.e. Mental Wellness Teams)** | Grounded in culture and community development, multi-disciplinary teams are developed and driven by communities, through community engagement and partnerships. It supports an integrated approach to service delivery (multi-jurisdictional, multi-sectoral) to build a network of services for First Nations people living on and off reserve (FNMWCF, p.52, Honouring Our Strengths, p. 79) [emphasis added] – 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, are flexible, responsive, accessible and adaptable to multiple contexts to meet the needs of First Nations peoples, family, and community across the lifespan (FNMWCF, p.45). There will need to be special consideration for remote communities. |

***Component 1: Service coordination approach for available supports to claimants.***

| Elements | FNMWCF Alignment |
|---|---|
| • Interdisciplinary care teams for class members to support coordinated, seamless access to services and supports, wherever possible.<br>• Service coordinator – housed in FN organizations across the country. [needs to be determined if funded directly by Administrator or by ISC]<br>• Service coordinators exercise case management role and pulls assigned team leads for administrative, financial literacy and health and cultural supports (including professional oversight/supervision when necessary) depending on the class member's needs. Service coordinators would not be delivering the services themselves but acting like the central point of contact for class members.<br>• Care Teams are based on partnerships between various local/regional organizations (e.g. FN financial institutions, IRSHSP provider, peer support networks etc.) that would be funded to provide these services under sub-contracts.<br>• The Final Settlement Agreement would indicate what the base standard for Care Team services must include and the description of Service Coordination functions. These would be reflected in either Administrator funding contracts or ISC funding agreements with FN organizations.<br>• Wherever possible, services are available in local/regional FN language.<br>• Community contact person to be identified as an extension of the sub-regional Care Team.<br>• A national/regional networks of Service Coordinators would be brought together for feedback and this would be shared with the Settlement Implementation Committee. These networks would also offer peer support, training, evaluation. | • Effective and innovative way to increase access to and enhance the consistency of services; outreach, assessment, treatment, counselling, case management, referral, and aftercare;<br>• Culture as foundation;<br>• Developed and driven by communities;<br>• Based on community needs and strengths;<br>• Effective model for developing relationships that support service delivery collaborations both with provinces and territories and between community, cultural, and clinical service providers. |

## Health and Cultural Supports for Class Members

***Component 2: Child and family focused health and cultural supports providers employed by First Nations-led service organizations. This is to provide trauma-informed emotional support and cultural support while they navigate the settlement process.***

| Elements | FNMWCF Alignment |
|---|---|
| • Indigenous organizations receive contribution funding from ISC provided with the flexibility to determine employment conditions, skills and experience of worker.<br>• Some of the organizations would be part of the existing network of IRSHSP, MMIWG, day schools and other service providers, while others could be new providers particularly to increase access for children and youth.<br>• Providing First Nations organization with support to ramp up capacity in child and youth service delivery.<br>• Ratio of client to child/youth health support worker will assist with determining funding/capacity levels. | • Enhanced flexible funding;<br>• Community development, ownership and capacity building;<br>• Self-determination;<br>• Culture as foundation;<br>• First Nations play key role in hiring of personnel to ensure personnel is recognized by their community; and,<br>• Communities can ensure service provision are culturally safe and appropriate. |

***Component 3: Access to mental health counselling to all class members, regardless of residence and NIHB eligibility.***

| Elements | FNMWCF Alignment |
|---|---|
| • Mental health counselling for individuals, families and communities is provided by regulated health professionals (i.e. psychologists, social workers, culture-based practitioners/ceremonialists) who are:<br>  ○ in good standing with their respective regulatory body;<br>  ○ enrolled with ISC.<br>• Counselling would be provided in health professionals, culture-based practitioners/ceremonialists private practice and are primarily paid by ISC on a fee-for-service basis. Counsellors can travel into communities and be reimbursed on a per diem basis.<br>• Virtual mental health counselling will be eligible, depending on regulatory college specifications. | • Enhanced flexible funding; community development, ownership and capacity building;<br>• Self-determination;<br>• To increase access to services to class members and their families as defined by First Nations partners. |

## Health and Cultural Supports for Class Members

***Component 4: Support enhancement to the Hope for Wellness Help line OR dedicated line.***

| Elements | FNMWCF Alignment |
|---|---|
| • Dedicated support team for class action members.<br>• Training on the class, the course of the CHRT complaint and other related legal, policy and social documentation.<br>• Referral to information line relating to the application process.<br>• Include a case management function.<br>• Access to specialized child and youth expertise, including trauma-informed, child development perspective.<br>• Access in First Nations languages.<br>• Referrals to dedicated care teams through the Service Coordinators (component 1).<br>• Anonymized data that seeks to understands utilization by class members. | • Quality care system and competent service delivery.<br>• Increase access to necessary services. |

The enhancement factors for a member of the Removed Child Class will be based on the ISC Data and information provided by an Approved Removed Child Class Member. These factors are: (1) time in care, (2) age at the time of removal, (3) number of placement spells (alternatively, number of out-of-home care placements[1]), (4) whether a child aged out of care, (5) whether a child was from a remote or northern community, and (6) whether the child was removed and placed into out-of-home care in order to receive essential services not available where the child resided.

**Selection of the enhancement factors**. These factors were selected for two reasons: 1) they have been identified by experts as relevant proxies for harm that a child has suffered as a result of being placed into care; and 2) they are derived primarily from the ISC Data and, as a result, minimise the potential trauma caused to class members in submitting claims and avoid imposing on them a heavy burden to prove their harm.

**Number of Class Members eligible for enhancement**. Because the number of Approved Removed Child Class Members eligible for an enhanced payment will remain unknown until the ISC Data is received and claims forms are submitted, it is not possible to assign fixed increases for the enhancement factors. For example, it is not possible to say that a child placed in care for 15 years will receive an increase of 50% to the base payment of $40,000 because it is unknown how many Approved Removed Child Class Members will be eligible for that increase and whether the Settlement Funds will be sufficient to pay all claims.

**Enhancement Payments Fund**. What can be determined is how much of the Settlement Funds will be set aside for enhancement payments to Approved Removed Child Class Members (the "**Enhancement Payments Fund**"). Furthermore, the relative weight of the enhancement factors within the Enhancement Payments Fund can be assigned. Put differently, a certain percentage of the Enhancement Payments Fund will be used to compensate a given factor.[2]

**Time-in-care**. Twenty percent (20%) of the Enhancement Payments Fund will be used to pay time-in-care enhancement payments (the "**Time-in-Care Enhancement Fund**"). Time-in-care is defined by the total duration of an Approved Removed Child Class Member's time in an assessment home, non-kin foster-home, paid kinship-home, group home, or a residential treatment facility, regardless of the number of spells. Within the Time-in-Care Enhancement Fund, the enhancement payments will be allotted according to the following categories or levels: 1 up to 3 years in care will benefit from the first enhancement level; 3 up to 6 years in care will benefit from the second enhancement level, which shall be double the first enhancement level; more than 6 years in care will benefit from the third enhancement level, which shall be triple the first enhancement level.

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[1] An out-of-home placement includes placement in an assessment home, non-kin foster-home, paid kinship-home, group home, or a residential treatment facility. For example, within one placement spell, a child may have been placed in multiple non-kin foster-homes, as was the case for the representative plaintiff, Xavier Moushoom. Each one of those placements in a non-kin foster-home counts as one out-of-home placement.

[2] The weighting of these enhancement factors have not been finalized and are subject to revision per the discussions amongst the parties.