

<p><b>FEDERAL COURT CLASS PROCEEDING</b></p> <p>B E T W E E N:</p> <p><b>XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE</b></p> <p>Plaintiffs</p> <p>and</p> <p><b>THE ATTORNEY GENERAL OF CANADA</b></p> <p>Defendant</p>
<p><b>FEDERAL COURT CLASS PROCEEDING</b></p> <p>B E T W E E N:</p> <p><b>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</b></p> <p>Plaintiffs</p> <p>and</p> <p><b>THE ATTORNEY GENERAL OF CANADA</b></p> <p>Defendant</p>
<p><b>FEDERAL COURT CLASS PROCEEDING</b></p> <p>B E T W E E N:</p> <p><b>ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT</b></p> <p>Plaintiffs</p> <p>and</p> <p><b>THE ATTORNEY GENERAL OF CANADA</b></p> <p>Defendant</p>

June 15, 2022

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**FEDERAL COURT  
CLASS PROCEEDING**

B E T W E E N:

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

Plaintiffs

and

**THE ATTORNEY GENERAL OF CANADA**

Defendant

**FEDERAL COURT  
CLASS PROCEEDING**

B E T W E E N:

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

Plaintiffs

and

**THE ATTORNEY GENERAL OF CANADA**

Defendant

**FEDERAL COURT  
CLASS PROCEEDING**

B E T W E E N:

**ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT**

Plaintiffs

and

**THE ATTORNEY GENERAL OF CANADA**

Defendant



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

<p style="text-align: center;"><b>FEDERAL COURT PROPOSED CLASS PROCEEDING</b></p> <p><b>B E T W E E N:</b></p> <p><b>XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE</b></p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p style="text-align: center;"><b>THE ATTORNEY GENERAL OF CANADA</b></p> <p style="text-align: right;">Defendant</p>
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<p style="text-align: center;"><b>FEDERAL COURT CLASS PROCEEDING</b></p> <p><b>B E T W E E N:</b></p> <p><b>ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT</b></p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p style="text-align: center;"><b>THE ATTORNEY GENERAL OF CANADA</b></p> <p style="text-align: right;">Defendant</p>

**NOTICE OF MOTION  
(MOTION FOR NOTICE APPROVAL)**

**TAKE NOTICE THAT** the plaintiffs will make a motion to the Federal Court on Thursday, June 22, 2022, at 10am or as soon thereafter as the motion can be heard via video conference, at the courthouse, 161 Elgin Street, Ottawa, Ontario, K2P 2K1.

**THE MOTION IS FOR:**

**Notice approval**

1. An order approving the short form and long form notices of certification and settlement approval hearing substantially in the form attached hereto as Schedules “A” and “B”, respectively;

**Opt-out**

2. An order that the members of the class can opt out of the class proceedings by submitting a request to opt out substantially in the form attached hereto as Schedule “C”;
3. An order that individuals seeking to opt out of the class proceedings in Court File Numbers T-402-19 and T-141-20, or the class proceeding in Court File Number T-1120-21, must do so by either sending the opt-out form to the claims administrator, postmarked on or before the opt-out deadline, or by opting out online before the opt-out deadline using the opt-out coupon to be hosted on the website at <http://www.fnchildcompensation.ca/>;
4. An order that the election to opt out, whether in paper format or online, must be signed by the person or the person’s designee, and must include the following information:

- (a) The person's full name, age, current address, telephone number, and Indian Registry/Status Number (if available);
  - (b) A statement as approved to the effect that the person wishes to be excluded from the class action and understands that opting out of the class action means the individual will not receive payment under the class action; and
  - (c) The reason for wanting to opt out;
5. An Order requiring that any person exercising the opt-out right on behalf of a person under the applicable age of majority or otherwise lacking legal capacity shall seek approval of the Court, and that such opt-out is not valid without the Court's approval.
  6. Such further and other relief as counsel may request and this Honourable Court may deem just and appropriate.

**THE GROUNDS FOR THE MOTION ARE:**

1. The plaintiffs have reached a tentative settlement agreement with the defendant;
2. The settlement agreement will be subject to a motion seeking the approval of the Court at an upcoming hearing scheduled to start on September 19, 2022;
3. The plaintiffs have agreed upon the form and content of the notices of certification and settlement approval hearing and opt-out;
4. The proposed notices advise the class members of the applicable required information under the *Federal Court Rules*, amongst others:
  - (a) A description of the class proceeding and the relief sought, as well as the related Canadian Human Rights Tribunal proceeding;

- (b) The time and manner for a class member to opt out of the proceeding;
  - (c) The possible financial consequences of the proceeding to the class;
  - (d) Information on fees, which will be negotiated separately and not deducted from the settlement funds;
  - (e) A description of the binding nature of the settlement and certification on all class members who do not opt out of the proceeding; and
  - (f) Contact information to which class members may direct inquiries about the proceeding;
5. The proposed notices and opt-out period are adequate and appropriate for the class, and should be approved;
  6. Rules 334.21, 334.32, 334.33, 358, 359, 360, 362(1), 363, 364, and 367, of the *Federal Courts Rules*, SOR/98-106;
  7. *Federal Courts Act*, R.S.C., 1985, c. F-7; and
  8. Such further and other grounds as counsel may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Affidavit of Pouya Dabiran-Zohoory affirmed June 15, 2022; and
2. Such further and other evidence as counsel may advise and this Honourable Court may permit.

June 15, 2022

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## **SCHEDULE “A”**



## Short Form Notice of Certification and Settlement

### Federal Child Welfare and Jordan's Principle Class Action

The Federal Court of Canada has approved this notice.

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

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

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

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

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

#### What is the class action about?

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

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

#### Are you included in the class action?

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

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

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

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

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

### **What is the proposed settlement?**

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

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

Each person in Category 2 who:

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

OR

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

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

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

### **What are my options?**

1. **Stay in the class action:** If you wish to stay in the class and be eligible to submit a claim for payment under the settlement, you do not need to do anything at this time.

2. **Remove yourself from the class action (opt out):** If you do not want to participate in this class action, and you do not want to receive a payment under the settlement, you need to remove yourself by submitting an Opt-Out Form by this date: \_\_\_\_\_.

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

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

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

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

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

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

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

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

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

If you want to object, you must send your written comments or request to speak at the hearing by **September 6, 2022**.

### **Canadian Human Rights Tribunal decision**

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

The Tribunal will be asked to make a ruling that the \$20 billion settlement of the lawsuit satisfies its previous compensation [order against Canada \(2019 CHRT 39\)](#). If the Tribunal finds that the \$20 billion settlement satisfies its compensation order against Canada, then the \$20 billion settlement will replace the compensation order, and you will not be allowed to claim a payment

under the Tribunal's order. Also, if the Tribunal finds that the \$20 billion settlement of this lawsuit satisfies its compensation order, and if the Federal Court approves the settlement, then you will not be able to claim compensation under the Tribunal's compensation order even if you opt out of this lawsuit.

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

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

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

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

### **Who is representing the class?**

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

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

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

### **How will the lawyers be paid?**

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

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

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

### **Want more information about the class action or the settlement?**

More information about the case \_\_\_\_\_

**Need support or assistance?**

Support services are available \_\_\_\_\_

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

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

## **SCHEDULE “B”**

**Long Form Notice of Certification and Settlement**  
**Federal Child Welfare and Jordan's Principle Class Action**

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## INTRODUCTION

The Federal Court of Canada has approved this notice.

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

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

This notice also gives you a chance to remove yourself from the class action. **You should only remove yourself from the class action if you do not want to receive payment in this settlement.**

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

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

## THE CLASS ACTION

### WHAT IS A CLASS ACTION?

A class action is a lawsuit brought by one or more persons on behalf of a large group of people.

### WHAT IS THIS CLASS ACTION ABOUT?

This class action is about discrimination by the Canadian government against First Nations children in providing child welfare, health care, and other essential services.

The class action claims that from 1991 until 2022, Canada discriminated against First Nations

children living on reserves who were removed from their homes and placed in out-of-home care.

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

In the winter of 2022, the parties' intensive negotiations led to Canada committing **\$20 billion** to victims of discrimination to resolve the class action (the **Settlement**). The goal of the Settlement is to offer compensation to survivors and their families in recognition of the harms they've endured – while knowing that no amount of money can make up for their pain and suffering.

#### **WHO IS INCLUDED IN THE CLASS ACTION?**

Three (3) groups may receive compensation under the Settlement:

- |                   |   |
|-------------------|---|
| <b>Category 1</b> | First Nations children who were removed from their homes on reserve and placed in care at any time between April 1, 1991 and March 31, 2022.        |
| <b>Category 2</b> | First Nations children who faced a service gap or were denied or delayed access to an essential service between April 1, 1991 and November 2, 2017. |
| <b>Category 3</b> | Their caregiving parents or caregiving grand-parents.   |

#### **CATEGORY 1: REMOVED CHILDREN**

Under the Settlement, First Nations children on reserve or those who had at least one parent living on reserve, or lived in the Yukon, and who were placed in care between April 1, 1991 and March 31, 2022 may be able to receive money. To find out more about compensation under the Settlement, click [here](#).

You may qualify for payment if you:

- Are First Nations;
- Lived on reserve or had at least one parent living on reserve, or in the Yukon as a child (except in the Northwest Territories)
- Were placed into care as a child between April 1, 1991 and March 31, 2022; and
- Your placement was funded by Canada.

Covered	Not Covered
First Nations children	Non- First Nations children
Children living on reserve or had at least one parent living on reserve, or lived in the Yukon	Children living off-reserve, or in the Northwest Territories
Children who were placed into care between April 1, 1991 and March 31, 2022, including in: <ul style="list-style-type: none"> <li>• Foster Homes</li> <li>• Assessment Homes</li> <li>• Non-kin Foster Homes</li> <li>• Paid Kinship Homes</li> <li>• Group Homes</li> <li>• Residential Treatment Facilities</li> <li>• Others</li> </ul>	Children who were placed into care <i>prior</i> to April 1, 1991, or who were placed into: <ul style="list-style-type: none"> <li>• Non-paid Kin Homes</li> <li>• Non-paid Community Homes</li> </ul>
Funded by Canada	Funded by a province

Children who were removed from their homes prior to 1991 are the subject of other class actions such as the “Sixties’ Scoop” settlement. These are separate class actions, distinct from this one.

## WHAT DOES “FIRST NATIONS” MEAN UNDER THE SETTLEMENT WITH RESPECT TO REMOVED CHILDREN?

Under the Settlement, “First Nations” means Indigenous peoples who:

- (i) Are registered under the *Indian Act*;
- (ii) Were entitled to be registered under the *Indian Act* as of February 11, 2022; or
- (iii) Met band membership requirements as of at least February 11, 2022 (i.e., they were included on the Band List of their community)

## I AM FIRST NATIONS BUT WAS NOT LIVING ON RESERVE AT THE TIME THAT I WAS REMOVED FROM MY HOME. CAN I STILL RECEIVE COMPENSATION?

If one or both of your parents were ordinarily resident on a reserve when you were placed into care, you may be able to get compensation. But, if neither you nor your parents were living on reserve, you are not entitled to compensation unless Canada funded your removal under an agreement with a province or territory.

### Take this quiz to find out if you qualify in this category:

1. Are you First Nations?

☐ Yes ☐ No

2. Did you live on a reserve or had at least one parent living on reserve, or lived in the Yukon? (N.B. if you lived in the Northwest Territories, select “No”)

☐ Yes ☐ No

4. Were you placed in care at any time between April 1, 1991 and March 31, 2022?

☐ Yes ☐ No

If you answered “Yes” to all of these questions, you may qualify for payment. Contact the

Assembly of First Nations Helpline at **[contact]** to learn more.

## **CATEGORY 2: JORDAN’S PRINCIPLE / TROUT**

Under the Settlement, First Nations children who faced a service gap or were denied or delayed access to an essential service between 1991 and 2017 may be able to receive money. This group is commonly referred to as “Jordan’s Principle” class, in honour of Jordan River Anderson. (Although Jordan’s Principle did not exist until 2007, this category dates back to April 1, 1991 under the name of Trout.)

### **WHAT IS “JORDAN’S PRINCIPLE”?**

“Jordan’s Principle” is a legal rule that requires the government to treat First Nations children in the same manner as non-First Nations children, and not deprive them of important services that they need. The government must put the interests of the child first, before any jurisdictional or funding dispute.

This principle was named in honour of Jordan River Anderson, who did not receive the services he desperately needed because the governments were arguing about who should pay for Jordan’s needs. Jordan’s Principle is intended to ensure that what happened to Jordan does not happen to other First Nations children.

To find out more about compensation under the Settlement, click [here](#).

You may qualify for payment if:

- You are First Nations (whether you lived on or off reserve, including in the Yukon and Northwest Territories);
- You needed an essential service between April 1, 1991 and November 2, 2017; and
- You requested the service but were denied or delayed access to this service, or you did not

request the service but there was a service gap, because of a:

- a. lack of funding
- b. lack of jurisdiction
- c. jurisdictional dispute between Canada and the provincial / territorial government
- d. other reasons

Covered	Not Covered
First Nations children	Non-First Nations children
Children who were confirmed by a professional with relevant expertise to have needed an essential service	Children who needed a non-essential service
Were denied or delayed access to this service or faced a service gap	Were denied or delayed access to this service
Because of a: <ul style="list-style-type: none"> <li>• lack of funding</li> <li>• lack of jurisdiction</li> <li>• service gap</li> <li>• jurisdictional dispute</li> <li>• other</li> </ul>	For any reason
Between April 1, 1991 and November 2, 2017	Before April 1, 1991 or after November 2, 2017

#### **WHAT DOES “FIRST NATIONS” MEAN UNDER THE SETTLEMENT WITH RESPECT TO JORDAN’S PRINCIPLE CHILDREN?**

Under the Settlement, “First Nations” means Indigenous peoples across Canada (including the Yukon and Northwest Territories) who:

- (i) Are registered under the Indian Act;
- (ii) Were entitled to be registered under the Indian Act as of February 11, 2022; or
- (iii) Were recognized as citizens or band members of a First Nations community as of February 11, 2022, and faced a delay, denial or service gap with respect to an essential service between January 26, 2016 and November 2, 2017.

**Take this quiz to find out if you may qualify in this category:**

1. Are you First Nations?

☐ Yes ☐ No

2. Did a professional with relevant expertise confirm that you needed an essential service between April 1, 1991 and November 2, 2017? (For more information on the list of essential services, click [here](#))

☐ Yes ☐ No

3. Were you denied access to this service, or did you experience a delay in receiving this service?

☐ Yes ☐ No

4. Were you unable to obtain this service due to a service gap?

☐ Yes ☐ No

If you answered “Yes” to these questions, you may qualify for payment.

### **CATEGORY 3: FAMILIES**

The caregiving parents or the caregiving grandparents of children who were removed from their homes or denied access to an essential service may also be able to receive compensation. This includes the biological or adoptive parent(s), or grand-parent(s), of the child. Step-parents or foster

parents are not included.

Covered	Not Covered
Caregiving biological parent(s)	Step-parent(s)
Caregiving adoptive parent(s)	Foster parent(s)
Caregiving biological grand-parent(s)	
Caregiving adoptive grand-parent(s)	

Importantly, only those parent(s) or grand-parent(s) who were caring for the child at the time of removal are entitled to compensation – i.e., the *primary caregivers* – to a maximum of two (2) caregivers.

Siblings and other family members of the affected children will not receive direct compensation under this Settlement.

## THE SETTLEMENT

### OVERVIEW

Under the settlement Canada will pay committing **\$20 billion** to class members. In addition, Canada pledged an additional **\$20 billion** to fund long-term reform to eliminate systemic discrimination against First Nations children. However that pledge is not part of this settlement.

The Settlement must be approved by the courts. If it is approved by the courts, individuals falling within Category 1, Category 2, or Category 3 may be able to receive compensation.

*Is this case different from the Canadian Human Rights Tribunal compensation decision ordering Canada to pay \$40,000 to each affected individual?*



The Settlement of the class action partly overlaps with the Tribunal compensation decision. The Tribunal will be asked to confirm that this settlement satisfies its compensation order. If the Federal Court then approves the Settlement, this Settlement will cover all claims under both the Tribunal and the class action. You will only need to make one application for compensation.

### **HOW MUCH COMPENSATION CAN I GET?**

The amount of money you may receive will vary based on different factors. Each Category provides for an estimated minimum base payment. In addition, you may be able to receive additional payments, if certain factors are present.

#### **CATEGORY 1: REMOVED CHILDREN**

##### ***Minimum Payment***

Under the Settlement, individuals who were removed from their homes and placed into care as children, between April 1, 1991 and March 31, 2022, are each entitled to a minimum payment of **\$40,000**.

##### ***Additional Payments***

Some individuals will also be able to get more compensation, based on several factors. These include, for example:

- The age when you were first placed into care;
- The total amount of time spent in care;
- Whether you were removed from your home due to lack of access to an essential service;

- Whether you lived in a Northern or remote community;
- The number of times you were placed into care; and
- The number of out of home placements.

These factors are intended to acknowledge the harm suffered by each child, in light of their individual circumstances.

The availability and the amount of additional payments may vary depending on the number of applicants.

## **CATEGORY 2: JORDAN’S PRINCIPLE / TROUT**

### ***Minimum Payment***

The minimum amount available for members of Category 2 depends on *when* the essential service gap or the denial or delay of an essential service happened:

Between April 1, 1991 – December 11, 2007                      **up to \$20,000 or more**

Between December 12, 2007 – November 2, 2017                      **up to \$40,000 or more**

The actual amount each person can receive will depend on the severity of the impact on the child, the number of approved claimants, and the availability of funds.

### ***Additional Payments***

Individuals may also be able to get more money, in certain circumstances, if the denial or delay of an essential service had a severe impact on them. Any additional payments will depend on the severity of the impact, the number of approved claimants, and the availability of funds.

## **CATEGORY 3: FAMILIES**

The caregiving parents or the caregiving grandparents of children who were removed from their homes or denied access to an essential service may also be able to receive compensation. The amount of money a caregiver may be entitled to depends on the Category.

**Category 1: \$40,000 per child up to a maximum of \$60,000**  
**Caregivers of removed children**

**Category 2:** The amount is not determined at this time. It is expected that the caregiving **Caregivers of** parents or caregiving grandparents of the children who were most **Jordan's** significantly impacted will receive direct compensation. The amount each **Principle and** caregiver may receive will depend on the number of approved claimants.  
**Trout children**

Siblings and other family members of the affected children will not receive direct compensation under this Settlement.

To find out how you can get money, click [here](#).

### **WILL MY MONEY BE TAXED?**

Money received under the Settlement is not subject to federal income tax. In addition, Canada has agreed to work with provinces and territories to exempt these amounts from provincial taxes or other deductions.

### **ARE THERE ADDITIONAL SUPPORTS FOR CHILDREN & FAMILIES?**

In addition to the above, a **\$50 million** trust fund will be created to support First Nations children and families in different ways. This includes, for example:

- Grants to facilitate culture, community and healing-based services to class members and their children;

- Supports for children in care, or formerly in care, including funding for family and community reunification;
- Funding to facilitate access to cultural programs, activities and supports (ex. youth groups, ceremonies, languages, Elders and Knowledge Keepers, mentors, land-based activities, and culturally-based arts and recreation);
- Supports for children transitioning out of care (ex. safe and accessible housing, life skills and independent living, financial literacy, continuing education, health and wellness supports, etc.);
- Facilitating the creation of a scholarship for the Jordan's Principle Class and their children; and
- The creation of a national network for First Nations children in care.

## **APPROVAL OF SETTLEMENT**

### **WHEN WILL THE SETTLEMENT BE APPROVED?**

#### **FEDERAL COURT**

The Federal Court will hold a hearing to decide if the Settlement should be approved. This hearing will take place in Ottawa on **September 19 to 23, 2022**. Details of the hearing will be posted [here](#) as well as details on how to attend a virtual hearing if available.

It is possible that this date might change. Sign up [here](#) to receive notifications by email of any change to the time and place of the hearing.

#### **CANADIAN HUMAN RIGHTS TRIBUNAL**

The Settlement must also be reviewed by the Canadian Human Rights Tribunal. A hearing before the Tribunal is expected to take place before the hearing at the Federal Court.

At this hearing, the Tribunal will be asked to confirm if the Settlement satisfies its previous compensation order against Canada (the **Compensation Order**). If it does, the Settlement will replace the Compensation Order. This means that claimants will have to seek compensation through the Settlement rather than the Compensation Order.

### **CAN I COMMENT OR OBJECT TO THE SETTLEMENT?**

You do not have to attend the hearing to provide any comments on the Settlement, but you can if you want to.

If you want to provide comments or object to the Settlement, there are two (2) ways you can do so:

**In writing:** You can provide comments in writing to this address: [insert]. Your comments will be sent to the Federal Court before the hearing. To be included, all written comments must be received by September 6, 2022.

**In person:** You can ask to speak in court about the Settlement on September 19 to 23, 2022 in person or by videoconference.

You will also have an opportunity to comment on the fees for the lawyers who worked on the class action. For more information about the lawyers and their fees, click here.

### **WHAT HAPPENS AFTER THE SETTLEMENT IS APPROVED?**

Participation in the Settlement is voluntary. You can decide if you would like to participate and make a claim for payment. The following are your options:

#### **OPTION 1: STAY IN THE CLASS ACTION**

If you want to stay in the class and submit a claim for payment under the Settlement, you do not need to do anything at this time. Once the Settlement is approved by the court, you will be provided with information about how to make a claim.

#### **ARE THERE ANY NEGATIVE CONSEQUENCES OF STAYING IN THE CLASS ACTION?**

Staying in the class action will not impact any government supports that you may be receiving or may be entitled to receive in the future from any government.

By staying in the class action, you can submit a claim for compensation under the Settlement. But, you will not be able to sue Canada again, or make an application to the Canadian Human Rights Tribunal, regarding the same discriminatory conduct.

Nothing in the Settlement prevents you from taking legal action for any other harms not included in this class action, or starting a claim against a province, territory or agency.

#### **OPTION 2: REMOVE YOURSELF FROM THE CLASS ACTION**

If you do not want to participate in the class action, you can ask to be removed from the lawsuit. You can do so by filling out an Opt-Out Form online or mailing a copy to this address: [insert]. **If you remove yourself from the class action, you will NOT receive any compensation under this Settlement.**

You can also contact the Administrator of the Settlement by contacting [1-800-NUMBER].

The last day to remove yourself from the class action is: [date].

#### **IF I OPT-OUT OF THE SETTLEMENT, CAN I STILL GET MONEY FROM THE CANADIAN HUMAN RIGHTS TRIBUNAL COMPENSATION ORDER?**

No. If approved by the Canadian Human Rights Tribunal, the Settlement will replace the Compensation Order process altogether. This means that claimants can only request money through the Settlement. If you opt-out of the Settlement, you will not be able to claim compensation

for this discriminatory conduct.

## **CLASS ACTION TEAM**

### **WHO IS REPRESENTING THE CLASS?**

#### **YOUR REPRESENTATIVE PLAINTIFFS**

The Assembly of First Nations is a plaintiff. The class action was brought by the following individuals on behalf of affected First Nations across Canada:

- Xavier Moushoom
- Jeremy Meawasige
- Jonavon Joseph Meawasige
- Ashley Dawn Louise Bach
- Karen Osachoff
- Melissa Walterson
- Noah Buffalo-Jackson
- Carolyn Buffalo
- Dick Eugene Jackson
- Zacheus Joseph Trout

These are your representative plaintiffs. They act as representatives of the entire class.

#### **YOUR LEGAL TEAM**

The class is represented by five (5) law firms across Canada:

- Sotos LLP
- Kugler Kandestin LLP
- Miller Titerle + Co.

- Nahwegahbow Corbiere
- Fasken Martineau Dumoulin LLP

### **HOW WILL THE LAWYERS BE PAID?**

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

The lawyers will be paid by Canada, separate and apart from the Settlement. These fees will not be taken from the Settlement, or from any payments to be made to class members. The settlement funds (\$20 billion) have been set aside for the class *only*.

The amount to be paid to the lawyers will be negotiated separately between the lawyers and Canada, and will be subject to court approval. The amount will have no impact on your ability to get money under the Settlement.

More details on the legal fees that will be requested will be posted here after the negotiations have concluded.

### **CONTACT US**

#### **WANT MORE INFORMATION ABOUT THE CLASS ACTION OR THE SETTLEMENT?**

More information about the case \_\_\_\_\_

#### **NEED SUPPORT OR ASSISTANCE?**

Support services are available \_\_\_\_\_

You can contact the class action administrator for help at: [**contact**]

You can also contact the Assembly of First Nations Helpline at: [**contact**]



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

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

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You can contact the class action administrator for help at: **[contact]**

You can also contact the Assembly of First Nations Helpline at: **[contact]**

DRAFT

**SCHEDULE “C”**

## OPT-OUT FORM

TO: [CLASS ACTION ADMINISTRATOR]

[Address]

[Email]

[Fax]

[Phone number]

I do not want to participate in the class actions styled as *Xavier Moushoom et al v. The Attorney General of Canada* and *Zacheus Trout et al v. The Attorney General of Canada* regarding the claims of discrimination against First Nations children and families. I understand that by opting out, **I will NOT be eligible for the payment of any amounts** awarded or paid in the class actions, and those associated with the Canadian Human Rights Tribunal File No.: T1340/7008. If I want an opportunity to be compensated, I will have to make a separate individual claim and if I decide to pursue my own claim, and I want to engage a lawyer this will be at my own expense.

Please state your reason for opting out: \_\_\_\_\_

If you are sending this form on behalf of someone else, what is your full name and relationship to that person: Full Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Name of the Person Opting Out

\_\_\_\_\_  
Date of Birth of the Person Opting Out

\_\_\_\_\_  
Indian Registry/Status Number (if available)  
of the Person Opting Out

\_\_\_\_\_  
Address of the Person Opting Out

\_\_\_\_\_  
Reserve/Town/City, Province, Postal Code

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email

This notice must be delivered on or before [DATE] to be effective.

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

<p style="text-align: center;"><b>FEDERAL COURT CLASS PROCEEDING</b></p> <p><b>B E T W E E N:</b></p> <p style="text-align: center;"><b>XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE</b></p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p style="text-align: center;"><b>THE ATTORNEY GENERAL OF CANADA</b></p> <p style="text-align: right;">Defendant</p>
<p style="text-align: center;"><b>FEDERAL COURT CLASS PROCEEDING</b></p> <p><b>B E T W E E N:</b></p> <p style="text-align: center;"><b>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</b></p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p style="text-align: center;"><b>HER MAJESTY THE QUEEN AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA</b></p> <p style="text-align: right;">Defendant</p>
<p style="text-align: center;"><b>FEDERAL COURT CLASS PROCEEDING</b></p> <p><b>B E T W E E N:</b></p> <p style="text-align: center;"><b>ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT</b></p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p style="text-align: center;"><b>THE ATTORNEY GENERAL OF CANADA</b></p> <p style="text-align: right;">Defendant</p>

**AFFIDAVIT OF POUYA DABIRAN-ZOHOORY  
AFFIRMED JUNE 15, 2022**

I, Pouya Dabiran-Zohoory, the City of Toronto in the Province of Ontario,  
AFFIRM THAT:

1. I am a lawyer with Sotos LLP, co-counsel for the plaintiffs, and as such I have personal knowledge of the matters hereinafter deposed to, either personally or from having been advised by others, and where so stated I believe same to be true.
2. I affirm this affidavit in support of a motion for an order approving the short form and long form notice of certification and settlement approval hearing (collectively, the “**Notices**”), and prescribing the opt-out procedure.
3. Nothing in this affidavit is intended to waive, nor should it be understood or interpreted to be a waiver of solicitor-client privilege, litigation privilege, settlement privilege or any other privilege.

**A. History of the Class Actions**

4. On March 4, 2019, Xavier Moushoom commenced a proposed class action under Court File Number T-402-19 (“**Moushoom**”), seeking compensation for the class in this action dating back to 1991. On January 28, 2020, the Assembly of First Nations and other plaintiffs filed a similar proposed class action under Court File Number T-141-20 regarding the impugned conduct also dating back to 1991 (“**AFN**”).
5. Both groups of plaintiffs later combined efforts in the best interests of the class. The plaintiffs sought compensation for First Nations individuals who were victims of

the Crown's systemic discrimination while they were under the age of majority and for family members who suffered the break-up of their families and other harm when their children were removed from their homes and/or their equality rights were breached.

6. The plaintiffs negotiated with Canada and agreed that, subject to the separate prosecution of the claims of the class members now included in the *Trout* action (Court File No. T-1120-21), Canada would consent to the consolidated *Moushoom/AFN* claim being certified. The Court accepted the parties' agreement and the plaintiffs' submissions, and after reading supporting submissions from an amicus, ordered that the *Trout* action be severed from *Moushoom/AFN* and proceed as an independent action. The Court also ordered that the *Moushoom* action be consolidated with the *AFN* action.

7. The Court certified the *Moushoom/AFN* action on November 26, 2021. Attached as **Exhibit "A"** is a copy of the *Moushoom/AFN* certification order. With leave of the Court, the plaintiffs issued the *Trout Action*. The Court later certified the *Trout* claim on January 19, 2022. Attached as **Exhibit "B"** is a copy of the *Trout* certification order. In both certification decisions, the Court deferred the approval and delivery of the notice of certification to the class until a subsequent date.

8. After the certification of the consolidated action, and following many months of negotiation, the parties entered into an agreement in principle ("**AIP**") to settle both the consolidated action and the *Trout* action. The AIP was conditional on, among other things, a comprehensive settlement agreement to be negotiated, and the Court's approval.

9. The plaintiffs sought the deferral of the certification notice in order to avoid sending several separate notices to the class in short succession. When the Court certified the consolidated action, the parties were involved in intensive mediation and negotiations toward a global resolution. When the Court certified *Trout*, the AIP had been reached. Deferring the delivery of the notice of certification and combining it with the notice of the settlement approval hearing reduced the number of notices being sent to the class and the potential for confusion.

10. After the AIP was signed, the parties engaged in months of intensive negotiations with the assistance of experts and stakeholders to reach a comprehensive settlement agreement. They have now reached a Final Settlement Agreement, which will be the subject of a hearing before this Court at a settlement approval motion scheduled to start on September 19, 2022. The Final Settlement Agreement will supersede and replace the AIP.

11. The Final Settlement Agreement has not yet been signed by the parties. It has been sent to the Assembly of First Nations Executive Committee for their deliberation and decision. Given that a signed copy may not be available by the hearing of this motion, attached as **Exhibit “C”** is a copy of the draft Final Settlement Agreement. If there are any material amendments to the Final Settlement Agreement before the motion, or after the motion and before the notices are sent to the class, the plaintiffs will advise the court and seek further direction.

**B. Canadian Human Rights Tribunal Proceeding**

12. The certified actions interrelate with a proceeding before the Canadian Human Rights Tribunal, where the Assembly of First Nations is a co-complainant. In 2007, the Assembly of First Nations and the First Nations Child and Family Caring Society of Canada filed a complaint with the Canadian Human Rights Commission against Canada. On October 14, 2008, the Human Rights Commission referred the complaint to the Canadian Human Rights Tribunal (the “**Tribunal**”).

13. The Tribunal rendered its decision on the merits on January 26, 2016: *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, [2016 CHRT 2](#).

14. The Tribunal found that the complaint was substantiated and that the Federal Government discriminated against First Nations in the provision of child and family services and in its unduly narrow interpretation of Jordan’s Principle, contrary to section 5 of the *CHRA*.

15. The Tribunal retained jurisdiction to oversee compliance with its orders and the cessation of Canada’s discriminatory practices.

16. In a 2019 decision, [2019 CHRT 39](#), the Tribunal ordered compensation be paid to children whose equality rights were infringed since 2006 (for children removed from a reserve) and 2007 (for children with a Jordan’s Principle claim).

17. It is a condition of the Final Settlement that the Tribunal must rule that the settlement satisfies its compensation order. As such, the Final Settlement Agreement will supersede the Tribunal’s compensation order in 2019 CHRT 39. This fact is explained in both the short form and long form notices.



**C. Notices and Opt-Out Form/Coupon**

18. The proposed short form notice is attached hereto and marked **Exhibit “D”**.

19. The short form notice explains:

- the background of the case;
- who is in the class (The description in the short form notice is a simplified version of the class definition. A link is provided to the more detailed class definition in the long form notice.);
- a short description of the proposed settlement;
- each class member’s option on whether to stay in the action or opt out;
- how to comment on and, if desired, object to the proposed settlement;
- a description of the Tribunal’s ruling including the compensation order and the impact of the settlement on that order, if the Final Settlement Agreement is approved by the Tribunal and the Court;
- the consequences of staying in the case or opting out;
- a description of and contact information for class counsel;
- a description of the process for determining class counsel’s fee arrangement and the fact that such fees must be approved by the court and will not be taken out of the settlement funds, but rather paid by Canada over and above the settlement amount; and
- how to obtain assistance and more information about the case and the settlement.

20. The short form notice uses plain language which is thought to be suitable to the demographic of the class. It provides only the necessary information and does not use legalese or complicated sentence structures whenever possible.

21. The proposed long form notice is attached hereto and marked **Exhibit “E”**. The long form notice is largely written in a question-and-answer format to improve readability and comprehension. It attempts where possible to use plain language and only uses a more complex sentence structure where necessary to accurately convey details contained in the Final Settlement Agreement. It is broken down into intuitive questions such as: “How much money can I get?” and “Can I comment or object to the settlement?”, rather than using legal terms.

22. In summary, counsel have drafted these documents through a process that has included:

- Preference for simple and accessible language to the extent possible;
- Cultural appropriateness through First Nations input and consultation;
- Preference for completeness so that class members receive the information that they need regarding the various components of these actions and their relationship to the Tribunal proceeding; and
- Unity of the notice of certification and the notice of settlement approval hearing so as to prevent confusing class members through multiple separate notices.

23. We are taking steps to translate the Notices into French, as well as the following First Nations languages: Cree, Ojibwe, Dene, and Mi’kmaq.

**D. Opt-Out Process**

24. The proposed opt-out form to be filled in by class members wishing to opt out is attached hereto as **Exhibit “F”**. There will be a paper as well as an online option in order to facilitate access for all class members.

25. Class members wishing to opt out will be able to click the opt-out button, and be prompted with the language found on the opt-out form. Upon confirming that they wish to opt out, the class members will be alerted one final time that they are opting out of the class proceeding, and that as a result, they will not receive any settlement funds.

26. This extra precaution is necessary to prevent class members from mistakenly thinking that they must submit the opt-out form in order to receive compensation under the class action, when in fact the opposite is the case.

27. The plain language and dual warning approach to opting-out helps ensure wide access and understanding of the consequences of opting-out among the class members. Given the implications of the decision to opt out, and the tendency of class members to mistakenly choose this option when in fact they wish to receive compensation in the settlement, each individual who wishes to opt out is prompted to provide a reason for doing so in the opt-out form.

28. The opt-out period that the parties have agreed to is six months from notice of certification.

29. The six-month period (180 days) is one of the longest opt-out periods that class counsel were able to find amongst prior class actions. I have reviewed the settlement

agreements and approval decisions of similar class actions and believe that the opt-out periods in those class actions were as follows:

- 90 days for the Sixties Scoop class action;
- 150 days for the Indian Residential Schools class action;
- 120 days for the First Nations Drinking Water Settlement Agreement; and
- 90 days for the Indian Day Schools class action.

30. I am advised by my co-counsel in Quebec, Robert Kugler, and believe that six months is the maximum opt-out period provincially allowable in Quebec under Article 576 of the Quebec *Code of Civil Procedure*. The proposed long period allows for notice to reach class members, including class members both on and off reserve, and any incarcerated class members who do not typically have access to means of communication.

31. Class counsel considered other options; for example, one option was to wait until minors reach the age of majority, or six months after age of majority, to be able to opt out. However, the logistics involved in designing an opt-out procedure in a class of this size (in the tens or potentially hundreds of thousands of individuals) and its members, many of whom are minors reaching a certain age at different times, would cause complications that would bring about more disadvantage than benefit to the class.

32. An opt-out period that is open for up to 19 years would be unprecedented and create uncertainties in the claims administration process. It would significantly complicate the settlement and distribution of funds. It would be difficult to know the size of the class from an actual or actuarial perspective. I am advised by my colleague,

Mohsen Seddigh, and believe that class counsel researched the matter but could not find any precedent in Canada or the United States for such a long and uncertain opt-out period. Class action statutes in Canada do not set out special opt-out procedures or timelines for when a class member is a minor.

**E. Settlement Website**

33. The short form and long form notices and opt-out coupon will be hosted on a website at <http://www.fnchildcompensation.ca/>. The website is in development until the notice campaign goes live.

34. Once the Notices are approved, the website will go live in English and French.

**F. Next Step: Selection of Claims Administrator and Finalizing Notice Plan**

35. Class counsel are in the process of developing a request for proposal (“RFP”) for the selection of a claims administrator. The RFP is being finalized and will be sent out to potential claims administrators within the next week or two. We expect that the claims administrator will be selected by mid-July, 2022.

36. The short form notice will be distributed under a notice plan that will be developed in consultation with the claims administrator. The notice plan will involve a combination of online, social media and hard copy distribution. Counsel anticipate that the notice plan will be ready for approval by early to mid-August so that the notices can be distributed at least a month or longer before the September 19, 2022, settlement approval hearing date.

37. While the *Federal Court Rules* do not require service of these motion materials on the Office of the Children's Lawyer, we are sending a courtesy copy of the materials to the Office of the Children's Lawyer in Ontario. In addition, once approved, the Notice will be sent to the Office of Children's Lawyer and the Public Guardian and Trustee in Ontario as directed by s. 27.1 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6.

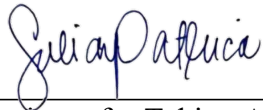
### **Opting out by Minors and Persons Without Legal Capacity**

38. The parties have recognized the possibility that some parents, guardians or other substitute decision-makers of minor class members and those lacking legal capacity may wish to exercise the opt-out right on their behalf.

39. Given the vulnerability of such minor class members and those lacking legal capacity, and considering that opting out such individuals would deprive them of substantial benefits available in the class action, the parties have concluded that the appropriate approach would be to place the opt-out right of such individuals who lack legal capacity under the Court's supervision.

40. The driving concern in this decision has been that the individuals that lack legal capacity face the risk of being opted out of the class action without the substitute decision-maker appreciating the implications of the decision or taking individual action to seek a remedy for the affected child or person without legal capacity. The proposed opt-out form therefore requires that the person specify if they are opting out on behalf of someone else in which case the claims administrator will be able to advise them of the requirement to obtain the Court's approval and direct them to the correct process.

**AFFIRMED** by Pouya Dabiran-Zohoory of the City of Toronto, in the Province of Ontario, on June 15, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)



\_\_\_\_\_  
Pouya Dabiran-Zohoory

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

This is Exhibit “A” referred to in the Affidavit of Pouya Dabiran-Zohoory affirmed before me at the City of Toronto, in the Province of Ontario on June 15, 2022, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, reading "Patricia Kim Julian Son". The signature is written in a cursive, flowing style.

---

*Commissioner for Taking Affidavits (or as may be)*

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



Federal Court



Cour fédérale

Date: 20211126

Docket: T-402-19

T-141-20

Citation: 2021 FC 1225

Ottawa, Ontario, November 26, 2021

**PRESENT:** The Honourable Madam Justice Aylen**CLASS PROCEEDING****BETWEEN:**

**XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian,  
JONAVON JOSEPH MEAWASIGE) AND JONAVON JOSEPH MEAWASIGE**

**Plaintiffs****and****THE ATTORNEY GENERAL OF CANADA****Defendant****BETWEEN:**

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

**Plaintiffs****and****HER MAJESTY THE QUEEN**

**AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA**

**Defendant**

**ORDER AND REASONS**

**UPON MOTION** by the Plaintiffs, on consent and determined in writing pursuant to Rule 369 of the *Federal Courts Rules*, for an order:

- (a) Granting the Plaintiffs an extension of time to make this certification motion past the deadline in Rule 334.15(2)(b);
- (b) Certifying this proceeding as a class proceeding and defining the class;
- (C) Stating the nature of the claims made on behalf of the class and the relief sought by the class;
- (d) Stipulating the common issues for trial;
- (e) Appointing the Plaintiffs specified below as representative plaintiffs;
- (f) Approving the litigation plan; and
- (g) Other relief;

**CONSIDERING** the motion materials filed by the Plaintiffs;

**CONSIDERING** that the Defendant has advised that the Defendant consents in whole to the motion as filed;

**CONSIDERING** that the Court is satisfied, in the circumstances of this proceeding, that an extension of time should be granted to bring this certification motion past the deadline prescribed in Rule 334.15(2)(b);

**CONSIDERING** that while the Defendant's consent reduces the necessity for a rigorous approach to the issue of whether this proceeding should be certified as a class action, it does not relieve the Court of the duty to ensure that the requirements of Rule 334.16 for certification are met [see *Varley v Canada (Attorney General)*, 2021 FC 589];

**CONSIDERING** that Rule 334.16(1) of the *Federal Courts Rules* provides:

Subject to subsection (3), a judge shall, by order, certify a proceeding as a class proceeding if

(a) the pleadings disclose a reasonable cause of action;

(b) there is an identifiable class of two or more persons;

(c) the claims of the class members raise common questions of law or fact, whether or not those common questions predominate over questions affecting only individual members;

(d) a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact; and

(e) there is a representative plaintiff or applicant who

(i) would fairly and adequately represent the interests of the class,

Sous réserve du paragraphe (3), le juge autorise une instance comme recours collectif si les conditions suivantes sont réunies :

a) les actes de procédure révèlent une cause d'action valable;

b) il existe un groupe identifiable formé d'au moins deux personnes;

c) les réclamations des membres du groupe soulèvent des points de droit ou de fait communs, que ceux-ci prédominent ou non sur ceux qui ne concernent qu'un membre;

d) le recours collectif est le meilleur moyen de régler, de façon juste et efficace, les points de droit ou de fait communs;

e) il existe un représentant demandeur qui :

(i) représenterait de façon équitable et adéquate les intérêts du groupe,

(ii) has prepared a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members as to how the proceeding is progressing,

(iii) does not have, on the common questions of law or fact, an interest that is in conflict with the interests of other class members, and

(iv) provides a summary of any agreements respecting fees and disbursements between the representative plaintiff or applicant and the solicitor of record.

(ii) a élaboré un plan qui propose une méthode efficace pour poursuivre l'instance au nom du groupe et tenir les membres du groupe informés de son déroulement,

(iii) n'a pas de conflit d'intérêts avec d'autres membres du groupe en ce qui concerne les points de droit ou de fait communs,

(iv) communique un sommaire des conventions relatives aux honoraires et débours qui sont intervenues entre lui et l'avocat inscrit au dossier.

**CONSIDERING** that, pursuant to Rule 334.16(2), all relevant matters shall be considered in a determination of whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact, including whether: (a) the questions of law or fact common to the class members predominate over any questions affecting only individual members; (b) a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate proceedings; (c) the class proceeding would involve claims that are or have been the subject of any other proceeding; (d) other means of resolving the claims are less practical or less efficient; and (e) the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means;

**CONSIDERING** that:

- (a) The conduct of the Crown at issue in this proposed class action proceeding, as set out in the Consolidated Statement of Claim, concerns two alleged forms of

discrimination against First Nations children: (i) the Crown's funding of child and family services for First Nations children and the incentive it has created to remove children from their homes; and (ii) the Crown's failure to comply with Jordan's Principles, a legal requirement that aims to prevent First Nations children from suffering gaps, delays, disruptions or denials in receiving necessary services and products contrary to their *Charter*-protected equality rights.

- (b) As summarized by the Plaintiffs in their written representations, at its core, the Consolidated Statement of Claim alleges that:
- (i) The Crown has knowingly underfunded child and family services for First Nations children living on Reserve and in the Yukon, and thereby prevented child welfare service agencies from providing adequate Prevention Services to First Nations children and families.
  - (ii) The Crown has underfunded Prevention Services to First Nations children and families living on Reserve and in the Yukon, while fully funding the costs of care for First Nations children who are removed from their homes and placed into out-of-home care, thereby creating a perverse incentive for First Nations child welfare service agencies to remove First Nations children living on Reserve and in the Yukon from their homes and place them in out-of-home care.
  - (iii) The removal of children from their homes caused severe and enduring trauma to those children and their families.

- (iv) Not only does Jordan's Principle embody the Class Members' equality rights, the Crown has also admitted that Jordan's Principle is a "legal requirement" and thus an actionable wrong. However, the Crown has disregarded its obligations under Jordan's Principle and thereby denied crucial services and products to tens of thousands of First Nations children, causing compensable harm.
  - (v) The Crown's conduct is discriminatory, directed at Class Members because they were First Nations, and breached section 15(1) of the *Charter*, the Crown's fiduciary duties to First Nations and the standard of care at common and civil law.
- (c) With respect to the first element of the certification analysis (namely, whether the pleading discloses a reasonable cause of action), the threshold is a low one. The question for the Court is whether it is plain and obvious that the causes of action are doomed to fail [see *Brake v Canada (Attorney General)*, 2019 FCA 274 at para 54]. Even without the Crown's consent, I am satisfied that the Plaintiffs have pleaded the necessary elements for each cause of action sufficient for purposes of this motion, such that the Consolidated Statement of Claim discloses a reasonable cause of action.
- (d) With respect to the second element of the certification analysis (namely, whether there is an identifiable class of two or more persons), the test to be applied is whether the Plaintiffs have defined the class by reference to objective criteria such that a person can be identified to be a class member without reference to the merits

of the action [see *Hollick v Toronto (City of)*, 2001 SCC 68 at para 17]. I am satisfied that the proposed class definitions for the Removed Child Class, Jordan's Class and Family Class (as set out below) contain objective criteria and that inclusion in each class can be determined without reference to the merits of the action.

- (e) With respect to the third element of the certification analysis (namely, whether the claims of the class members raise common questions of law or fact), as noted by the Federal Court of Appeal in *Wenham v Canada (Attorney General)*, 2018 FCA 199 at para 72, the task under this part of the certification determination is not to determine the common issues, but rather to assess whether the resolution of the issues is necessary to the resolution of each class member's claim. Specifically, the test is as follows:

The commonality question should be approached purposively. The underlying question is whether allowing the suit to proceed as a representative one will avoid duplication of fact-finding or legal analysis. Thus an issue will be "common" only where its resolution is necessary to the resolution of each class member's claim. It is not essential that the class members be identically situated vis-à-vis the opposing party. Nor is it necessary that common issues predominate over non-common issues or that the resolution of the common issues would be determinative of each class member's claim. However, the class members' claims must share a substantial common ingredient to justify a class action. Determining whether the common issues justify a class action may require the court to examine the significance of the common issues in relation to individual issues. In doing so, the court should remember that it may not always be possible for a representative party to plead the claims of each class member with the same particularity as would be required in an individual suit. (*Western Canadian Shopping Centres*, above at para 39; see also *Vivendi Canada Inc. v. Dell'Aniello*, 2014 SCC 1, [2014] 1 S.C.R. 3 at paras 41 and 44-46.)

Having reviewed the common issues (as set out below), I am satisfied that the issues share a material and substantial common ingredient to the resolution of each class

member's claim. Moreover, I agree with the Plaintiff that the commonality of these issues is analogous to the commonality of similar issues in institutional abuse claims which have been certified as class actions (such as the Indian Residential Schools and the Sixties Scoop class action litigation). Accordingly, I find that the common issue element is satisfied.

- (f) With respect to the fourth element of the certification analysis (namely, whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of fact and law), the preferability requirement has two concepts at its core: (i) whether the class proceeding would be a fair, efficient and manageable method of advancing the claim; and (ii) whether the class proceeding would be preferable to other reasonably available means of resolving the claims of class members. A determination of the preferability requirement requires an examination of the common issues in their context, taking into account the importance of the common issues in relation to the claim as a whole, and may be satisfied even where there are substantial individual issues [see *Brake, supra* at para 85; *Wenham, supra* at para 77 and *Hollick, supra* at paras 27-31]. The Court's consideration of this requirement must be conducted through the lens of the three principle goals of class actions, namely judicial economy, behaviour modification and access to justice [see *Brake, supra* at para 86, citing *AIC Limited v Fischer*, 2013 SCC 69 at para 22].
- (g) Having considered the above-referenced principles and the factors set out in Rule 334.16(2), I am satisfied a class proceeding is the preferable procedure for the just



and efficient resolution of the common questions of fact and law. Given the systemic nature of the claims, the potential for significant barriers to access to justice for individual claimants and the Plaintiffs' stated concerns regarding the other means available for resolving the claims of class members, I am satisfied that the proposed class action would be a fair, efficient and manageable method of advancing the claims of the class members.

- (h) With respect to the fifth element of the certification analysis (namely, whether there are appropriate proposed representatives), I am satisfied, having reviewed the affidavit evidence filed on the motion together with the detailed litigation plan, that the proposed representative plaintiffs (as set out below) meet the requirements of Rule 334.16(1)(e);

**CONSIDERING** that the Court is satisfied that all of the requirements for certification are met and that the requested relief should be granted;

**THIS COURT ORDERS that:**

1. The Plaintiffs are granted an extension of time, *nunc pro tunc*, to bring this certification motion past the deadline in Rule 334.15(2)(b) of the *Federal Courts Rules*.
2. For the purpose of this Order and in addition to definitions elsewhere in this Order, the following definitions apply and other terms in this Order have the same meaning as in the Consolidated Statement of Claim as filed on July 21, 2021:
  - (a) **“Class”** means the Removed Child Class, Jordan's Class and Family Class, collectively.

- (b) **“Class Counsel”** means Fasken Martineau Dumoulin LLP, Kugler Kandestin LLP, Miller Titerle + Co., Nahwegahbow Corbiere and Sotos LLP.
- (c) **“Class Members”** mean all persons who are members of the Class.
- (d) **“Class Period”** means:
  - (i) For the Removed Child Class members and their corresponding Family Class members, the period of time beginning on April 1, 1991 and ending on the date of this Order; and
  - (ii) For the Jordan’s Class members and their corresponding Family Class members, the period of time beginning on December 12, 2007 and ending on the date of this Order.
- (e) **“Family Class”** means all persons who are brother, sister, mother, father, grandmother or grandfather of a member of the Removed Child Class and/or Jordan’s Class.
- (f) **“First Nation”** and **“First Nations”** means Indigenous peoples in Canada, including the Yukon and the Northwest Territories, who are neither Inuit nor Métis, and includes:
  - (i) Individuals who have Indian status pursuant to the *Indian Act*, R.S.C., 1985, c.I-5 [*Indian Act*];

- (ii) Individuals who are entitled to be registered under section 6 of the *Indian Act* at the time of certification;
  - (iii) Individuals who met band membership requirements under sections 10-12 of the *Indian Act* and, in the case of the Removed Child Class members, have done so by the time of certification, such as where their respective First Nation community assumed control of its own membership by establishing membership rules and the individuals were found to meet the requirements under those membership rules and were included on the Band List; and
  - (iv) In the case of Jordan's Class members, individuals, other than those listed in sub-paragraphs (i)-(iii) above, recognized as citizens or members of their respective First Nations whether under agreement, treaties or First Nations' customs, traditions and laws.
- (g) **"Jordan's Class"** means all First Nations individuals who were under the applicable provincial/territorial age of majority and who during the Class Period were denied a service or product, or whose receipt of a service or product was delayed or disrupted, on grounds, including but not limited to, lack of funding or lack of jurisdiction, or as a result of a jurisdictional dispute with another government or governmental department.
- (h) **"Removed Child Class"** means all First Nations individuals who:
- (i) Were under the applicable provincial/territorial age of majority at any time during the Class Period; and

- (ii) Were taken into out-of-home care during the Class Period while they, or at least one of their parents, were ordinarily resident on a Reserve.
  - (i) **“Reserve”** means a tract of land, as defined under the *Indian Act*, the legal title to which is vested in the Crown and has been set apart for the use and benefit of an Indian band.
3. This proceeding is hereby certified as a class proceeding against the Defendant pursuant to Rule 334.16(1) of the *Federal Courts Rules*.
  4. The Class shall consist of the Removed Child Class, Jordan’s Class and Family Class, all as defined herein.
  5. The nature of the claims asserted on behalf of the Class against the Defendant is constitutional, negligence and breach of fiduciary duty owed by the Crown to the Class.
  6. The relief claimed by the Class includes damages, *Charter* damages, disgorgement, punitive damages and exemplary damages.
  7. The following persons are appointed as representative plaintiffs:
    - (a) For the Removed Child Class: Xavier Moushoom, Ashley Dawn Louise Bach and Karen Osachoff;
    - (b) For the Jordan’s Class: Jeremy Meawasige (by his litigation guardian, Jonavon Joseph Measwasige) and Noah Buffalo-Jackson (by his litigation guardian, Carolyn Buffalo); and

- (c) For the Family Class: Xavier Moushoom, Jonavon Joseph Meawasige, Melissa Walterson, Carolyn Buffalo and Dick Eugene Jackson (also known as Richard Jackson),

all of whom are deemed to constitute adequate representative plaintiffs of the Class.

8. Class Counsel are hereby appointed as counsel for the Class.

9. The proceeding is certified on the basis of the following common issues:

- (a) Did the Crown's conduct as alleged in the Consolidated Statement of Claim [Impugned Conduct] infringe the equality right of the Plaintiffs and Class Members under section 15(1) of the *Canadian Charter of Rights and Freedoms*? More specifically:

- (i) Did the Impugned Conduct create a distinction based on the Class Members' race, or national or ethnic origin?
- (ii) Was the distinction discriminatory?
- (iii) Did the Impugned Conduct reinforce and exacerbate the Class Members' historical disadvantages?
- (iv) If so, was the violation of section 15(1) of the *Charter* justified under section 1 of the *Charter*?
- (v) Are *Charter* damages an appropriate remedy?

- (b) Did the Crown owe the Plaintiffs and Class Members a common law duty of care?
  - (i) If so, did the Crown breach that duty of care?
- (c) Did the Crown breach its obligations under the *Civil Code of Québec*? More specifically:
  - (i) Did the Crown commit fault or engage its civil liability?
  - (ii) Did the Impugned Conduct result in losses to the Plaintiffs and Class Members and if so, do such losses constitute injury to each of the Class Members?
  - (iii) Are Class Members entitled to claim damages for the moral and material damages arising from the foregoing?
- (d) Did the Crown owe the Plaintiffs and Class Members a fiduciary duty?
  - (i) If so, did the Crown breach that duty?
- (e) Can the amount of damages payable by the Crown be determined partially under Rule 334.28(1) of the *Federal Courts Rules* on an aggregate basis?
  - (i) If so, in what amount?
- (f) Did the Crown obtain quantifiable monetary benefits from the Impugned Conduct during the Class Period?
  - (i) If so, should the Crown be required to disgorge those benefits?

(ii) If so, in what amount?

(g) Should punitive and/or aggravated damages be awarded against the Crown?

(i) If so, in what amount?

10. The Plaintiffs' Fresh as Amended Litigation Plan, as filed November 2, 2021 and attached hereto as Schedule "A", is hereby approved, subject to any modifications necessary as a result of this Order and subject to any further orders of this Court.
11. The form of notice of certification, the manner of giving notice and all other related matters shall be determined by separate order(s) of the Court.
12. The opt-out period shall be six months from the date on which notice of certification is published in the manner to be specified by further order of this Court.
13. The timetable for this proceeding through to trial shall also be determined by separate order(s) of the Court.
14. Pursuant to Rule 334.39(1) of the *Federal Courts Rules*, there shall be no costs payable by any party for this motion.

\_\_\_\_\_  
"Mandy Aylen"

Judge

## ANNEX A



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

**FEDERAL COURT  
PROPOSED CLASS PROCEEDING**

**B E T W E E N:**

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

Plaintiffs

and

**THE ATTORNEY GENERAL OF CANADA**

Defendant

**FEDERAL COURT  
PROPOSED CLASS PROCEEDING**

**B E T W E E N:**

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

Plaintiffs

and

**HER MAJESTY THE QUEEN  
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA**

Defendant

**FRESH AS AMENDED LITIGATION PLAN**

November 2, 2021

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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

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## **I. DEFINITIONS**

1. The definitions below will be used throughout this Litigation Plan. Any term defined in the Consolidated Statement of Claim that is also used in this Litigation Plan has the same meaning as that included in the Consolidated Statement of Claim or as otherwise defined by the Court.

**Aggregate Damages Distribution Process** means the system directed by the Court for the **Class Action Administrator** to distribute aggregate damages to **Approved Class Members**;

**Approved Class Member(s)** means **Approved Removed Child Class Member(s)** and/or **Approved Jordan's Class Member(s)** and/or **Approved Family Class Members**;

**Approved Family Class Member(s)** means a Family Class Member who has been approved by the **Class Action Administrator** as meeting the criteria for being a Family Class Member, including the brother, sister, mother, father, grandmother or grandfather of an **Approved Removed Child Class Member** (regardless of whether the **Approved Removed Child Class Member** is alive) and whose approval as a Family Class Member has not been successfully challenged;

**Approved Jordan's Class Member(s)** means a Jordan's Class Member who has been approved by the **Class Action Administrator** as meeting the criteria for being a Jordan's Class Member and whose approval as a Jordan's Class Member has not been successfully challenged;

**Approved Removed Child Class Member(s)** means a Removed Child Class Member who has been approved by the **Class Action Administrator** as meeting the criteria for being a Removed Child Class Member and whose approval as a Removed Child Class Member has not been successfully challenged;

**Certification Notice** means the information set out in Schedule A to this Litigation Plan, as may be subsequently amended and as approved by the Court;

**CHRT Decision** means the decision of the **CHRT** in the **CHRT Proceeding** dated January 26, 2016, bearing citation 2016 CHRT 2;

**CHRT** means the Canadian Human Rights Tribunal;

**CHRT Proceeding** means the proceeding before the **CHRT** under file number T1340/7008;

**Claim Form** means the form set out in Schedule C to this Litigation Plan used by the Removed Child Class Members and/or the Jordan's Class Members and/or the Family Class Members to submit a claim, as may be subsequently amended and as approved by the Court;

**Class Action Administrator** means any settlement administrator or other appropriate firm appointed by the Court to assist in the administration of the class proceeding;

**Class Counsel** means the consortium of law firms acting as co-counsel in this class proceeding, with the firms of Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Company, Nahwegahbow, Corbiere and Faskens LLP as Solicitors of Record;

**Class Member(s)** means an individual who falls within the definition of the Removed Child Class and/or the Jordan's Class and/or the Family Class, as pleaded in the Consolidated Statement of Claim and as approved by the Court;

**Common Issues** means the issues listed in the Notice of Motion for Certification, or as found by the Court, as may be subsequently amended and as approved by the Court;

**Common Issues Notice** means the information set out in the notice regarding the **Common Issues** to be certified by the Court at Certification, as may be subsequently amended and as approved by the Court;

**Crown Class Member Information** means information to be provided by the Crown, at the request of the plaintiffs and/or as ordered by the Court, to the **Class Action Administrator** and/or **Class Counsel** regarding the names and last known contact information of all individuals who meet the criteria of Class Members as set out in the Consolidated Statement of Claim or as otherwise defined by the Court, including: (a) a list of all known Class Members' names and last known addresses using the information in the Crown's possession or under its control<sup>1</sup> as well as all individuals who received a product or service pursuant to Jordan's Principle following the CHRT Decision (estimated by the Crown in its representations to the CHRT to be individuals having received over 165,000 services under Jordan's Principle as of October 2018).

**Individual Damage Assessment Form** means the form set out in Schedule D to this Litigation Plan, as may be subsequently amended and as approved by the Court, to be used by **Approved Class Member(s)** to elect an individual assessment of their damages and commence an individual damage assessment under the **Individual Damage Assessment Process**;

**Individual Damage Assessment Process** means the procedure and system to be approved by the Court following the **Common Issues** trial to be used to assess and distribute damages to **Approved Class Member(s)** who have requested an individual damage assessment by submitting an **Individual Damage Assessment Form**;

**Notice Program** means the process, set out in the Litigation Plan, for communicating the **Certification Notice** and/or the **Common Issues Notice** to **Class Members**, as may be subsequently amended and as approved by the Court;

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<sup>1</sup> Where Class Members are known to be represented by counsel, only their name should be provided along with their counsel's name and address.



**Opt Out Form** means the form set out in Schedule B to this Litigation Plan used by Class Members to opt out of the class proceeding, as may be subsequently amended and as approved by the Court;

**Opt Out Period** means the deadline, proposed by the plaintiffs as six months from the date on which notice of certification to the Class is published in the manner to be specified by the Court or as otherwise determined by the Court, to opt out of the class proceeding;

**Opt Out Procedures** means the procedures, set out in the Litigation Plan, for Class Members to opt out of this class proceeding, as may be subsequently amended and as approved by the Court; and

**Special Opt Out Procedures** means the procedures, set out in the Litigation Plan, for Class Members who have already commenced a civil proceeding in Canada or who are known by the Crown to have already retained legal counsel to opt out of this class proceeding, as may be subsequently amended and as approved by the Court.

## II. OVERVIEW

2. The plaintiffs have commenced this action on behalf of First Nations individuals who allege that the Crown has engaged in the discriminatory underfunding of child and family services and breached the equality obligations underlying Jordan's Principle. The class action advances the rights of tens of thousands of First Nations children, former children and family members.

3. This Litigation Plan is advanced as a workable method of advancing the proceeding on behalf of the Class and of notifying Class Members as to how the class proceeding is progressing, pursuant to rule 334.16(1)(e)(ii) of the *Federal Court Rules*. The Litigation Plan is modelled on the class action relating to the Indian Residential Schools.<sup>2</sup>

4. This Litigation Plan sets out a detailed plan for the common stages of this litigation, and sets out, on a without prejudice basis, an early plan for how the individual stage of the action may progress. Given the early stage of the litigation, the plan is necessarily subject to substantial revisions as the case progresses.

5. The plaintiffs are mindful that the CHRT has awarded statutory compensation to a subset of the Class Members pursuant to the CHRA (*First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 39). If CHRT compensation is paid to any Class Members, the plaintiffs will seek a determination from the Court as to whether the Crown is entitled to a set-off or deduction of damages in this action for such amounts.

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<sup>2</sup> See *Baxter v Canada (Attorney General)*, 2006 CanLII 41673 (Ont Sup Ct), and subsequent orders of the Court. See also information available on the website of the Indian Residential Schools Adjudication Secretariat, online <<http://www.iap-pei.ca/home-eng.php>>.

### **III. PRE-CERTIFICATION PROCESS**

#### **A. The Parties**

##### ***i. The Plaintiffs***

6. The plaintiffs have proposed three classes:
  - (a) the Removed Child Class, represented by Xavier Moushoom, Ashley Dawn Louise Bach, and Karen Osachoff;
  - (b) the Family Class, represented by Xavier Moushoom, Jonavon Joseph Meawasige, Melissa Walterson, Carolyn Buffalo, and Dick Eugene Jackson also known as Richard Jackson; and
  - (c) the Jordan's Class, represented by Jeremy Meawasige, by his litigation guardian, Jonavon Joseph Meawasige; and Noah Buffalo-Jackson, by his litigation guardian, Carolyn Buffalo.

##### ***ii. The Defendant***

7. The defendant is the Crown.

#### **B. The Pleadings**

##### ***i. Consolidated Statement of Claim***

8. The plaintiffs have delivered a Consolidated Statement of Claim issued with leave of the Honourable Justice St-Louis dated July 7, 2021.

##### ***ii. Statement of Defence***

9. The Crown has not delivered a Statement of Defence.

##### ***iii. Third Party Claim***

10. The Crown has not issued any Third Party Claim.

#### **C. Pre-Certification Communication Strategy**

##### ***i. Responding to Inquiries from Putative Class Members***

11. Both before and since the commencement of this class proceeding, Class Counsel have received many communications from Class Members affected by this class proceeding.



12. With respect to each inquiry, the individual's name, address, email and telephone number is added to a confidential database. Class Members are asked to register on the websites of Class Counsel. Once registered, they receive regular updates on the progress of the class proceeding in French and English. Any individual Class Members who contact Class Counsel are responded to in their preferred language.

***ii. Pre-Certification Status Reports***

13. In addition to responding to individual inquiries, Class Counsel have created a webpage concerning the class proceeding in English and French (see: <https://sotosclassactions.com/cases/current-cases/first-nations-youth/>). The most current information on the status of the class proceeding is posted and is updated regularly in English and French.

14. Copies of the publicly filed court documents and court decisions are accessible from the webpage. In addition, phone numbers for Class Counsel in Quebec and Ontario as well as email contact information are provided.

15. Class Counsel send update reports to Class Members who have provided their contact information and have indicated an interest in being notified of further developments in the class proceeding.

***iii. Pre-certification outreach***

16. Class Counsel have presented the proposed class action to a council of First Nations social services delivery personnel for the Province of Québec and the region of Labrador, as well as the First Nations youth directors forum in British Columbia. Class Counsel are in the process of arranging similar presentations to affected communities in Québec and elsewhere in Canada.

#### **D. Settlement Conference**

##### ***i. Pre-Certification Settlement Conference***

17. The plaintiffs have participated in a pre-Certification mediation to determine whether any or all of the issues arising in the class proceeding can be resolved. Mediation is ongoing and may require that some of the targeted timelines in this Litigation Plan be amended on agreement of the parties or as otherwise ordered by the Court to allow negotiations to advance.

#### **E. Timetable**

### **IV. POST-CERTIFICATION PROCESS**

#### **A. Timetable**

##### ***i. Plaintiffs' Timetable for the Post-Certification Process***

18. The plaintiffs intend to proceed to trial on an expedited basis or a hybrid summary judgment/*viva voce* trial. It is anticipated that all of the documentary evidence produced by the Crown in the CHRT Proceeding will be relevant and producible in this class proceeding. Because of the extensive documentary production in the CHRT Proceeding, the plaintiffs expect few, if any, disputes as to documentary productions in this case relating to the time period covered by the CHRT Proceeding (*i.e.*, 2006-present). Furthermore, in light of the extensive testimony given at the CHRT Proceeding, it is anticipated that oral discovery can proceed quickly after certification and can be completed in a limited period of time. The plaintiffs have less clarity at this time regarding productions pertaining to the 1991-2006 period.

19. The plaintiffs propose that the following post-Certification process timetable, as explained in detail below:

Certification Notice to Class Members commences	at a date to be determined by the Court after certification
Exchange Affidavits of Documents within	90 days after Certification Notice to Class Members

Motions for Production of Documents, Multiple Examinations of Crown representatives or for Examinations of Non-Parties to be conducted within	120 days after Certification Notice to Class Members
Examinations for Discovery to be conducted within	150 days after Certification Notice to Class Members
Certification Notice to Class Members completed within	60 days from a date to be determined by the Court
Trial Management Conference re: Expert Evidence	180 days after Certification Notice to Class Members
Motions arising from Examinations for Discovery within	180 days after Certification Notice to Class Members
Undertakings answered within	200 days after Certification Notice to Class Members
Further Examinations, if necessary, within	240 days after Certification Notice to Class Members
Common Issues Pre-Trial to be conducted	290 days after Certification Notice to Class Members
Opt Out Period deadline	Six months after Notice of Certification to Class Members
Common Issues Trial or Hybrid Trial to be conducted within	330 days after Certification Notice to Class Members

## **B. Certification Notice, Notice Program and Opt Out Procedures**

### ***i. Certification Notice***

20. The Certification Notice and all other notices to Class Members provided by the plaintiffs will, once finalized and approved by the Court, be translated into French. The plaintiffs will explore whether it will be necessary to translate the Certification Notice and/or other notices into some First Nations languages, subject to Court approval.

21. The Certification Notice will, subject to further amendments, be in the form set out in Schedule A hereto.

*ii. Notice Program*

22. The plaintiffs propose to communicate the Certification Notice to Class Members through the following Notice Program.

23. The plaintiffs will provide Certification Notice to Class Members by arranging to have the Certification Notice (and its translated versions whenever possible) communicated/published in the following media starting on a date to be determined by the Court, as frequently as may be reasonable or as directed by the Court under rule 334.32 of the *Federal Courts Rules*. In particular, the plaintiffs propose the following means of providing Certification Notice:

- (a) A press release on the start date of notice of certification to the Class to be determined by order of the Court;
- (b) Direct communication with Class Members:
  - (i) by email or regular mail to the last known contact information of Class Members provided by the Crown (*i.e.*, Crown Class Member Information);
  - (ii) by email or regular mail to all Class Members who have provided their contact information to Class Counsel, including through the Class Proceeding's webpage;
  - (iii) by regular mail to the last known addresses of all Status Card holders in Canada born on or after April 1, 1991;
- (c) Distribution by the Assembly of First Nations to its membership of First Nations bands across Canada;

- (d) Email to First Nations children's aid societies across Canada;
- (e) Circulation through the following media:
  - (i) Aboriginal newspapers/publications such as First Nations Drum, The Windspeaker, Mi'kmaq Maliseet Nations News, APTN National News;
  - (ii) radio outlets, such as Aboriginal radio CFWE, CBC national and CBC regional;
  - (iii) television outlets, such as on The Aboriginal Peoples Television Network; and / or
  - (iv) social media outlets, such as Facebook and Instagram.

***iii. Opt Out Procedures***

- 24. The plaintiffs propose Opt Out Procedures for Class Members who do not wish to participate in the class proceeding.
- 25. The Certification Notice will include information about how to Opt Out of the class proceeding and will provide information about how to obtain and submit the appropriate Opt Out Forms to the Class Action Administrator and/or Class Counsel.
- 26. There will be one standard Opt Out Form for all Class Members.
- 27. Class Members will be required to file the Opt Out Form with the Class Action Administrator and/or Class Counsel within the Opt Out Period.



28. The Class Action Administrator or Class Counsel shall, within 30 days after the expiration of the Opt Out Period, deliver to the Court and the Parties an affidavit listing the names of all persons who have opted out of the Class Action.

*iv. Special Opt Out Procedures*

29. The plaintiffs propose Special Opt Out Procedures for Class Members who are either named party plaintiffs in a civil proceeding in Canada or who are known by the Crown to have retained legal counsel in respect of the subject matter of this action with the express purpose of starting a separate action against the Crown.

30. Ongoing civil actions by Class Members who do not opt out of the Class Action should be dealt with in a manner to be determined by this Court or by the Court in which such proceedings are brought.

**C. Identifying and Communicating with Class Members**

*i. Identifying Class Members*

31. As stated above, the plaintiffs intend to request the Crown Class Member Information.

*ii. Database of Class Members*

32. Class Counsel will maintain a confidential database of all Class Members who contact Class Counsel. The database will include each individual's name, address, telephone number, and/or email address where available.

*iii. Responding to Inquiries from Class Members*

33. Class Counsel and their staff respond to each inquiry by Class Members.

34. Class Counsel have a system in place to allow for responses to inquiries by Class Members in their language of choice whenever possible.

*iv. Post Certification Status Reports*

35. In addition to responding to individual inquiries, Class Counsel will continually update the webpage dedicated to this class action with information concerning the status of the class proceeding.

36. Class Counsel will send update reports to Class Members who have provided their contact information. These update reports will be sent as necessary or as directed by the Court.

**D. Documentary Production**

*i. Affidavit/List of Documents*

37. The plaintiffs will be required to deliver an Affidavit of Documents within 90 days after notice of certification is given to Class Members. The Crown will similarly be required to deliver a List of Documents within 90 days after notice of certification is given to Class Members.

38. The Parties are expected to serve Supplementary Affidavits (or Lists) of Documents as additional relevant documents are located.

*ii. Production of Documents*

39. All Parties are expected to provide, at their own expense, electronic copies of all Schedule "A" productions at the time of delivering their Affidavit of Documents. All productions are to be made in electronic format.

40. Documentary productions are to include, but not be limited to, all documents produced and exhibits tendered in the CHRT Proceedings.

*iii. Motions for Documentary Production*

41. Any motions for documentary production shall be made within 120 days after certification notice is given to Class Members.

***iv. Document Management***

42. The Parties will each manage their productions with a compatible document management system, or as directed by the Court. All documents are to be produced in OCR format.

43. All productions should be numbered and scanned electronically to enable quick access and efficient organization of documents.

**E. Examinations for Discovery**

44. Examinations for Discovery will take place within 150 days after certification notice is given to Class Members.

45. The plaintiffs expect to request the Crown's consent to examine more than one Crown representative. In the event that a dispute arises in this regard, the plaintiffs propose to bring a motion within 120 days after certification notice is given to Class Members.

46. The plaintiffs anticipate that the Examination for Discovery of a properly selected and informed officer of the Crown will take approximately 10 days, subject to refusals and undertakings.

47. The plaintiffs anticipate that the Examination for Discovery of the representative plaintiffs will take approximately one day, subject to refusals and undertakings.

**F. Interlocutory Matters**

***i. Motions for Refusals and Undertakings***

48. Specific dates for motions for refusals and undertakings that arise from the Examinations for Discovery will be requested upon Certification. Motions for refusals and undertakings will be heard within 180 days after certification notice is given to Class Members.



*ii. Undertakings*

49. Undertakings are to be answered within 200 days after certification notice is given to Class Members.

*iii. Re-attendances and Further Examinations for Discovery*

50. Any re-attendances or further Examinations for Discovery required as a result of answers to undertakings or as a result of the outcome of the motions for refusals and undertakings should be completed within 240 days after certification notice is given to Class Members.

**G. Expert Evidence**

*i. Identifying Experts and Issues*

51. A Trial Management Conference will take place following Examinations for Discovery at which guidelines for identifying experts and their proposed evidence at trial will be determined.

**H. Determination of the Common Issues**

*i. Pre-Trial of the Common Issues*

52. Upon Certification, the Court will be asked to assign a date for a Pre-Trial relating to the Common Issues trial.

53. The plaintiffs expect that a full day will be required for a Pre-Trial and will request that the Pre-Trial be held within 290 days after certification notice is given to Class Members and, in any event, at least 90 days before the date of the Common Issues trial.

*ii. Trial of the Common Issues*

54. Upon Certification, the Court will be asked to assign a date for the Common Issues trial.

55. The plaintiffs propose that the trial of the Common Issues be held 330 days after certification notice is given to Class Members.

56. The length of time required for the Common Issues trial will depend on many factors and will be determined at the Trial Management Conference.

## V. POST COMMON ISSUES DECISION PROCESS

### A. Timetable

#### i. *Plaintiffs' Timetable for the Post-Common Issues Decision Process*

57. The plaintiffs propose that the following timetable be imposed by the Court following the Court's judgment on the Common Issues:

Common Issues Notice provided	Within 90 days of Common Issues decision
Individual Issue Hearings, if any, begin	120 days after decision
Individual Damage Assessments, if any, begin	240 days after decision
Deadline to Submit Claim Forms (as of right)	Within 1 year of decision
Deadline to Submit Claim Forms (as of right in prescribed circumstances or with leave of the Court)	1 year after decision

### B. Common Issues Notice

#### i. *Notifying Class Members*

58. The Common Issues Notice will, subject to further amendments, be substantially in the form approved by the Court at the Common Issues trial. The Common Issues Notice may contain, amongst others, information on any aggregate damages awarded and any issues requiring individual determination, as approved by the Court.

59. The plaintiffs propose to circulate the Common Issues Notice within 90 days after the Common Issues judgment.

60. The Common Issues Notice will be circulated in the same manner as set out above dealing with the Certification Notice or as directed by the Court.

**C. Claim Forms**

***i. Use of Claim Forms***

61. The Court will be asked to approve under rule 334.37 the use of standardized Claim Forms by Class Members who may be entitled to a portion of the aggregate damage award or who may be entitled to have an individual assessment.

***ii. Obtaining and Filing Claim Forms***

62. The procedure for obtaining and filing Claim Forms will be set out in the Common Issues Notice.

63. The plaintiffs propose to use a single standard Claim Form, substantially in the form attached as Schedule C, for all three classes, subject to further amendments and as approved by the Court.

64. The plaintiffs propose that counselling be made available to Class Members in need of support and assistance when completing the Claim Forms. Where necessary, a process for appointing a guardian or trustee to assist the Class Members will be developed.

65. Before completing a Claim Form, Class Members will be able to review information about them in the possession of Canada relevant to their claim (the Crown Class Member Information). That information may include:

- (a) any records relating to the Class Member's voluntary or involuntary placement in out-of-home care during the Class Period;
- (b) any records relating to a need by the Class Member for a service or product;
- (c) any records relating to a request made by the Class Member for a service or product;
- (d) any records relating to the denial of a service or product to the Class Member;

- (e) any records relating to any service(s) or product(s) provided by the Crown to the Class Member; and/or
- (f) any records relating to the family status or family relationship between a Family Class Member and a Removed Child Class Member or a Jordan's Class Member.

66. Class Members will be required to file the appropriate Claim Form with the Class Action Administrator and/or Class Counsel within the deadlines set out below or as directed by the Court.

67. The Class Action Administrator will be responsible for receiving all Claim Forms.

***iii. Deadline for Filing Claim Forms***

68. Class Members will be advised of the deadline for filing Claim Forms in the Common Issues Notice.

69. The plaintiffs propose that Class Members be given one year, or such period as set out by the Court, after the Common Issues judgment to file Claim Forms as of right.

70. The plaintiffs propose that Class Members be entitled to file Claim Forms more than one year after the Court's judgment on the Common Issues in certain circumstances prescribed by the Court (*i.e.*, lack of awareness of entitlement, etc.) or with leave of the Court (*i.e.*, based on mental or physical health issues, etc.).

**D. Determining and Categorizing Class Membership**

***i. Approving Removed Child Class Members***

71. The Class Action Administrator will determine whether an individual submitting a Claim Form as a Removed Child Class Member properly qualifies as a Class Member.

72. In addition, the Class Action Administrator will determine and categorize the duration of the Removed Child Class Member's presence in out-of-home care. The Class Action Administrator will also determine the number of out-of-home care locations that the Removed

Child Class Member was placed in, as well as whether such locations were on or off Reserve and whether such locations were within the community of the Class Member.

73. The Class Action Administrator will make these determinations by referring to the information set out in the Claim Form as well as the Crown Class Member Information.

74. The Class Action Administrator will, where appropriate and necessary, request in writing further information from the individual filing the Removed Child Class Claim Form or the Crown to make these determinations.

*ii. Approving Jordan's Class Members*

75. The Class Action Administrator will determine whether an individual submitting a Claim Form as a Jordan's Class Member properly qualifies as a Class Member.

76. The Class Action Administrator will make these determinations following guidelines determined by the Court at the Common Issues trial in part by referring to the information set out in the Claim Form. Such guidelines may include: (a) whether the Class Member needed a service or product at any point during the Class Period; (b) whether the Class Member was denied that service or product; (c) whether the Class Member's receipt of a service or product was delayed or disrupted; (d) whether such denial, delay or disruption was based on lack of funding, lack of jurisdiction or a jurisdictional dispute between governments or government departments; and/or (e) whether such denial, disruption or delay happened while the Class Member was under the applicable provincial/territorial age of majority.

77. The Class Action Administrator will also make these determinations in part by referring to the Crown Class Member Information regarding the number of Class Members who have received a service or product under Jordan's Principle since the CHRT Decision.



78. The Class Action Administrator will, where appropriate and necessary, request in writing further information from the individual submitting the Jordan's Class Claim Form or the Crown to make these determinations.

***iii. Approving Family Class Members***

79. The Class Action Administrator will determine whether an individual submitting a Family Class Claim Form properly qualifies as a Family Class Member.

80. These determinations will be made by the Class Action Administrator by referring to Crown Class Member Information and the information set out in the Claim Form with respect to the relationship of the proposed Family Class Member with an Approved Removed Child Class Member.

81. The Class Action Administrator will, where appropriate and necessary, request in writing further information from the individual filing the Claim Form to make these determinations.

***iv. Deceased Class Members***

82. The estate of a deceased Class Member may submit a Claim Form if the deceased Class Member died on or after April 1, 1991.

83. If the deceased Class Member would otherwise have qualified as an Approved Class Member, the estate will be entitled to be compensated in accordance with the Aggregate Damages Distribution Process. The estate will not have the option to proceed under the Individual Damage Assessment Process except with leave of the Court.

***v. Notifying Class Members, Challenging and Recording Decisions***

84. Within 30 days of receipt of a Claim Form, the Class Action Administrator will notify the individual of its decision on whether the individual is an Approved Class Member. Individuals

who are not approved as Class Members will be provided with information on the procedures to follow to challenge the decision of the Class Action Administrator. The plaintiffs propose that these procedures include an opportunity to resubmit an amended Claim Form with supporting documentation capable of verifying that the individual is a Class Member.

85. All interested parties will be provided with the ability to appeal a decision by the Class Action Administrator to the Court or in a manner to be prescribed. Class Counsel may challenge the decision on behalf of affected individuals.

86. The Class Action Administrator will keep records of all Approved Class Members and their respective Claim Forms and will provide this information to Class Counsel, the Crown and other interested parties on a monthly basis. Class Counsel and/or other interested parties will have 30 days after receiving this information to challenge the Class Action Administrator's decision by advising the Class Action Administrator and the other affected parties in writing of the basis for their challenge. The responding party will be given 30 days thereafter to respond in writing to the challenge at which time the Class Action Administrator will reconsider its decision and advise all parties.

#### **E. Aggregate Damages Distribution Process**

##### ***i. Distribution of Aggregate Damages***

87. The Class Action Administrator will distribute the aggregate damages to all Approved Class Members in the manner directed by the Court.

88. The plaintiffs will propose that Approved Class Members be entitled to a proportion of the aggregate damages as determined by the Class Action Administrator based on factors to be approved by the Court, including but not limited to: (a) the duration of the Class Member's

presence in out-of-home care; (b) the number of out-of-home care locations where the Class Member was placed as a child; (c) the duration of deprivation from a service or product as a result of a delay, denial or disruption contrary to Jordan's Principle; and (d) the family relationship of the Family Class Member to a given Removed Child Class Member.

89. The Class Action Administrator, upon advising Approved Class Members of its decision on their membership as set out above, will within a reasonable period of time to be determined by the Court, advise the Approved Class Members of the proportion of aggregate damages owing to each Approved Class Member under the Aggregate Damages Distribution Process to be approved by the Court.

90. In addition, if applicable, the Class Action Administrator will provide Approved Class Members with a package of materials including: information on how to collect their aggregate damage awards, information on Class Members' ability to proceed through the Individual Damage Assessment Process, copies of the Individual Damage Assessment Form along with a guide on how to complete the form, and contact information for obtaining independent legal advice and counselling. Such information is to be provided in a culturally responsive and appropriate style, making full use of interactive media, including video tutorials.

***ii. Seeking an Individual Damage Assessment***

91. Approved Class Members, when notified of their entitlement to aggregate damages, may be given information on their right to have their compensation individually assessed under the Individual Damage Assessment Process set out below.



**F. Individual Damage Assessment Process**

***i. Individual Damage Assessment Forms***

92. When Approved Class Members are notified of their aggregate damage entitlement and information on their right to proceed under the Individual Damage Assessment Process, they will be provided with an Individual Damage Assessment Form as set out in Schedule D.

93. If applicable, the plaintiffs propose that a request for individual damages be made by sending an Individual Damage Assessment Form to the Class Action Administrator, and that only those individuals who wish to proceed through the Individual Damage Assessment Process be required to submit Individual Damage Assessment Forms.

***ii. Individual Damage Assessments***

94. The Court may be asked to approve the use of an Individual Damage Assessment Process after a judgment on the Common Issues or otherwise as directed by the Court.

95. The Individual Damage Assessment Process would be available to all Approved Class Members except those who are found by the Court not to be entitled to individual damages following the Common Issues trial.

***iii. Individual Issue Hearings***

96. The Court will be asked to provide directions, or to appoint persons to conduct references under rule 334.26 of the *Federal Courts Rules* or appoint a judge to conduct test cases involving selected Approved Class Members who are proceeding under the Individual Damage Assessment Process to assist with the matters that may or may not remain in issue after the determination of the Common Issues, such as:

- (a) Hearing rules for individual assessments;
- (b) A compensation matrix for individual damages;

- (c) Assistance in resolving disputes relating to the definitions of key terms such as “cultural and language loss”, “pain and suffering”, “physical abuse”, and “sexual abuse”; and
- (d) Other matters raised by the Court or the parties during the Common Issues litigation.

#### **G. Class Proceeding Funding and Fees**

##### ***i. Plaintiffs’ Legal Fees***

97. The plaintiffs’ fees are to be paid on a contingency basis, subject to the Court’s approval under rule 334.4 of the *Federal Courts Rules*.

98. The agreement between the representative plaintiffs and Class Counsel states that legal fees and disbursements to be paid to Class Counsel shall be on the following basis:

- (a) Aggregate damages recovery: 20% of the first two hundred million dollars (\$200,000,000) in recovery by settlement or judgment, plus 10% of any amounts recovered by settlement or judgment beyond the first two hundred million dollars; and
- (b) Individual damages recovery: 25% of settlement or judgment.

##### ***ii. Funding of Disbursements***

99. Funding of legal disbursements for the representative plaintiffs has been, and will continue to be, available through Class Counsel, unless the plaintiffs and Class Counsel subsequently deem it to be in the best interests of the Class to obtain third-party funding. Class Counsel will advise the Court of such third-party funding and seek approval thereof.

#### **H. Settlement Issues**

##### ***i. Settlement Offers and Negotiations***

100. The plaintiffs have been conducting settlement negotiations with the Crown with a view to achieving a fair and timely resolution.

*ii. Mediation and Other Non Binding Dispute Resolution Mechanisms*

101. The plaintiffs have been participating in mediation and negotiations in an effort to try to resolve the dispute or narrow the issues in dispute between the Parties.

**I. Review of the Litigation Plan**

*i. Flexibility of the Litigation Plan*

102. This Litigation Plan will be reconsidered on an ongoing basis and may be revised under the continued case management authority of the Court before or after the determination of the Common Issues or as the Court sees fit.

October 2021	<p>29, <b>SOTOS LLP</b> 180 Dundas Street West Suite 1200 Toronto ON M5G 1Z8</p> <p>David Sterns (LSO# 36274J) <a href="mailto:dsterns@sotosllp.com">dsterns@sotosllp.com</a> Mohsen Seddigh (LSO# 70744I) <a href="mailto:mseddigh@sotosllp.com">mseddigh@sotosllp.com</a> Jonathan Schachter (LSO# 63858C) <a href="mailto:jschachter@sotosllp.com">jschachter@sotosllp.com</a> Tel: 416-977-0007 Fax: 416-977-0717</p> <p>Lawyers for the Plaintiffs</p>	<p><b>KUGLER KANDESTIN</b> 1 Place Ville-Marie Suite 1170 Montréal QC H3B 2A7</p> <p>Robert Kugler <a href="mailto:rkugler@kklex.com">rkugler@kklex.com</a> Pierre Boivin <a href="mailto:pboivin@kklex.com">pboivin@kklex.com</a> William Colish <a href="mailto:wcolish@kklex.com">wcolish@kklex.com</a> Tel: 514-878-2861 Fax: 514-875-8424</p>	<p><b>MILLER TITERLE + CO.</b> 300 - 638 Smithe Street Vancouver BC V6B 1E3 Joelle Walker <a href="mailto:joelle@millertiterle.com">joelle@millertiterle.com</a> Tamara Napoleon <a href="mailto:tamara@millertiterle.com">tamara@millertiterle.com</a> Erin Reimer <a href="mailto:erin@millertiterle.com">erin@millertiterle.com</a> Tel: 604-681-4112 Fax: 604-681-4113</p>
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## **SCHEDULE “A”**

**FIRST NATIONS YOUTH CARE (THE MILLENNIUM SCOOP) CLASS ACTION**  
**PROPOSED NOTICE OF CERTIFICATION**

**THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ CAREFULLY.**

**The Nature of the Lawsuit**

In March 2019, Sotos LLP, Kugler Kandestin LLP and Miller Titerle + Co. (collectively "Class Counsel") commenced an action on behalf of First Nations plaintiffs in the Federal Court of Canada in Montreal, against the Attorney General of Canada (the "Crown").

The lawsuit claims that starting in 1991 the Crown instituted discriminatory funding policies across Canada that led to First Nations children being removed from their homes and communities and placed in out-of-home care. The lawsuit also claims that the Crown delayed, disrupted or denied the delivery of needed public services and products to First Nations youth contrary to Jordan's Principle.

The action was brought on behalf of a Class of:

(a) all First Nations youths who were taken into out-of-home care since April 1, 1991, while they or at least one of their parents were ordinarily resident on a Reserve;

(b) all First Nations youths who were denied a public service or product, or whose receipt of a public service or product was delayed or disrupted, on the grounds of lack of funding or lack of jurisdiction, or as a result of a jurisdictional dispute with another government or governmental department (contrary to Jordan's Principle);

(c) family members of the Class Members cited in (a) above.

By order dated [INSERT DATE], The Honourable Justice St-Louis certified the action as a class proceeding, appointing Xavier Moushoom and Jeremy Meawasige (by his

litigation guardian, Maurina Beadle) as representative plaintiffs for the class.

The Court found that the following issues affecting the Class will be tried at a Common Issues trial:

- [INSERT CERTIFIED COMMON ISSUE]
- ...

**Participation in the Class Action**

If you fall within the class definition, you are automatically included as a member of the Class, unless you choose to opt out of the Class Action, as explained below. All members of the Class will be bound by the judgment of the Court, or any settlement reached by the parties and approved by the Court.

At this juncture, the Court has not taken a position as to the likelihood of recovery for the representative plaintiffs or the Class, or with respect to the merits of the claims or defences asserted by the Crown.

**Fees and Disbursements**

You do not need to pay any legal fees out of your own pocket. A retainer agreement has been entered into between the representative plaintiffs and Class Counsel with respect to legal fees. The agreement provides that the law firms have been retained on a contingency fee basis, which means they will only be paid their fees in the event of a successful result in the litigation or a Court-approved settlement.

You will not be responsible for Defendant's legal costs if the class action is unsuccessful. Any fee paid to lawyers for the Class is subject to the Court's approval.



**Opt Out**

If you are a class member and wish to exclude yourself from this class proceeding ("opt out"), you must complete and return the "Class Member Opt Out" form by no later than [INSERT DATE]. The Opt Out form may be downloaded at: [INSERT WEBSITE ADDRESS].

Class members who choose to opt out within the above noted deadline will not recover any monies if the representative plaintiffs are successful in this action. If class members do not choose to opt out by the deadline, they will be bound by any judgment ultimately obtained

in this class action, whether favourable or not, or any settlement if approved by the Court.

**Contact Information**

If you have any questions or concerns about the matters in this Notice or the status of the class action, you may contact Class Counsel in a number of ways.

By phone: [INSERT PHONE NUMBER]

By email: [INSERT EMAIL]

Toll-Free Hotline: [INSERT TELEPHONE]

By mail: [INSERT ADDRESS]

## **SCHEDULE “B”**



**OPT OUT FORM**

**TO:**  
**[CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**  
[Address]  
[Email]  
[Fax]  
[Phone number]

**ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**

I do not want to participate in the class action styled as *Xavier Moushoom et al v. The Attorney General of Canada* regarding the claims of discrimination against First Nations children. I understand that by opting out, I will not be eligible for the payment of any amounts awarded or paid in the class action, and if I want an opportunity to be compensated, I will have to make an individual claim and decide whether to engage a lawyer at my own expense.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, Province, Postal Code

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email

This Notice must be delivered by regular mail, email or fax on or before \_\_\_\_\_, 201\_ to be effective.

## **SCHEDULE “C”**

# CLAIM FORM

**TO:**  
**[CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**  
**[Address]**  
**[Email]**  
**[Fax]**  
**[Phone number]**

**ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**

I, \_\_\_\_\_ (insert full name(s), including maiden name if applicable), have received Notice of the National Class Action styled as *Xavier Moushoom et al v. The Attorney General of Canada* regarding the claims of discrimination against First Nations children. My date of birth is \_\_\_\_\_ (insert day, month, year of birth).

I believe that I am a Class Member and I wish to submit a claim as a member of the following Class or Classes (mark the applicable item(s) with an X):

☐ Removed Child Class

☐ Jordan's Class

☐ Family Class

If you selected the Removed Child Class, please summarize below your placement(s) in out-of-home care since April 1, 1991:

Number of foster home(s)	Number of years of placement in foster home(s)	Was foster home(s) on-reserve or off-reserve?	Was foster home(s) within your own First Nations community?

If you selected the Jordan's Class, please summarize below the public services or products that you needed since April 1, 1991, and that were denied, delayed or disrupted:

Product(s) or service(s) needed	Was a request made for the	Was the service(s) or product(s) denied, delayed or disrupted?	The date(s) of need, request, and/or denial,

	service(s) or product(s)?		delay or disruption

If you selected the Family Class, please summarize below your relationship to the member(s) of the Removed Child Class:

Full name(s) and claim number of the Approved Removed Child Class Member in your family	Your relationship to the Class Member (only the brother, sister, mother, father, grandmother or grandfather of an Approved Removed Child Class Member)

My mailing address is:

\_\_\_\_\_  
Street name, Apartment #

\_\_\_\_\_  
City, Province

\_\_\_\_\_  
Postal Code

\_\_\_\_\_  
Telephone Number(s)

\_\_\_\_\_  
Email address

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

## **SCHEDULE “D”**

**INDIVIDUAL DAMAGE ASSESSMENT FORM**

**TO:**  
**[CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**  
**[Address]**  
**[Email]**  
**[Fax]**  
**[Phone number]**

**ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**

I, \_\_\_\_\_ [insert full name(s), including maiden name if applicable], have been notified that I am an Approved Removed Child Class Member or Approved Jordan's Class Member. My claim number is \_\_\_\_\_ [insert assigned claim number].

I have been provided with a package of information outlining and explaining my option to request an individual damage assessment in accordance with the Individual Damage Assessment Process.

I am also aware that I can obtain independent legal advice with respect to this request and can obtain assistance to complete this form at no charge to me by contacting [insert assigned contact #].

Below is information relating to my experience in out-of-home care and the impacts and harms that resulted from my experience:

*[The Individual Damage Assessment Form will be designed after a Court decision on the Common Issues. The goal of the Individual Damage Assessment Form though will be to obtain, amongst others, the following information from Approved Class Members:*

- *Information relating to the Class Member's age at apprehension, the foster households where the Class Member was placed, duration of out-of-home care;*
- *Information relating to any abuse on the Class Member, including each incident of a compensable harm/wrong, such as the dates, places, times of the incidents and information about the alleged perpetrator for each incident;*
- *Information relating to compensable impacts, including cultural and language impacts;*
- *A narrative relating to the experience of the individual while in care;*
- *The reason(s) for apprehension;*
- *Whether expert evidence will be provided to support a claim for certain consequential harms such as past and future income loss;*

- *Information on the treatment records including records of customary or traditional counsellors or healers they will be submitting to assist in proving either the abuse or the harm suffered or both;*
- *Authorizations for the Crown to obtain documents; and*
- *Such further and other information that is deemed necessary and appropriate.]*

Below is information relating to my experience with the denial/delay/disruption of the receipt of a public service or product and the impacts and harms that resulted from my experience:

*[The Individual Damage Assessment Form will be designed after a Court decision on the Common Issues. The goal of the Individual Damage Assessment Form though will be to obtain, amongst others, the following information from Approved Class Members:*

- *Any conditions or circumstances that required a public service or product;*
- *Reasons for denial of a public service or product;*
- *Department(s) of contact;*
- *Authorizations for the Crown to obtain documents; and*
- *Such further and other information that is deemed necessary and appropriate.]*

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

This is Exhibit “B” referred to in the Affidavit of Pouya Dabiran-Zohoori affirmed before me at the City of Toronto, in the Province of Ontario on June 15, 2022, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

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



Federal Court



Cour fédérale

Date: 20220211

Docket: T-1120-21

Citation: 2022 FC 149

Ottawa, Ontario, February 11, 2022

**PRESENT:** The Honourable Madam Justice Aylen**CLASS PROCEEDING****BETWEEN:****ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT****Plaintiffs****and****THE ATTORNEY GENERAL OF CANADA****Defendant****ORDER AND REASONS**

**UPON MOTION** by the Plaintiffs, on consent and determined in writing pursuant to Rule 369 of the *Federal Courts Rules*, for an order:

- (a) Granting the Plaintiffs an extension of time to make this certification motion past the deadline in Rule 334.15(2)(b);
- (b) Certifying this proceeding as a class proceeding and defining the class;

- (c) Stating the nature of the claims made on behalf of the class and the relief sought by the class;
- (d) Stipulating the common issues for trial;
- (e) Appointing the Plaintiff, Zacheus Joseph Trout, as representative plaintiff;
- (f) Approving the litigation plan; and
- (g) Other relief;

**CONSIDERING** the motion materials filed by the Plaintiffs;

**CONSIDERING** that the Defendant has advised that the Defendant consents in whole to the motion as filed;

**CONSIDERING** that the Court is satisfied, in the circumstances of this proceeding, that an extension of time should be granted to bring this certification motion past the deadline prescribed in Rule 334.15(2)(b);

**CONSIDERING** that while the Defendant's consent reduces the necessity for a rigorous approach to the issue of whether this proceeding should be certified as a class action, it does not relieve the Court of the duty to ensure that the requirements of Rule 334.16 for certification are met [see *Varley v Canada (Attorney General)*, 2021 FC 589];

**CONSIDERING** that Rule 334.16(1) of the *Federal Courts Rules* provides:

Subject to subsection (3), a judge shall, by order, certify a proceeding as a class proceeding if

(a) the pleadings disclose a reasonable cause of action;

(b) there is an identifiable class of two or more persons;

(c) the claims of the class members raise common questions of law or fact, whether or not those common questions predominate over questions affecting only individual members;

(d) a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact; and

(e) there is a representative plaintiff or applicant who

(i) would fairly and adequately represent the interests of the class,

(ii) has prepared a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members as to how the proceeding is progressing,

(iii) does not have, on the common questions of law or fact, an interest that is in conflict with the interests of other class members, and

(iv) provides a summary of any agreements respecting fees and disbursements between the representative plaintiff or applicant and the solicitor of record.

Sous réserve du paragraphe (3), le juge autorise une instance comme recours collectif si les conditions suivantes sont réunies :

a) les actes de procédure révèlent une cause d'action valable;

b) il existe un groupe identifiable formé d'au moins deux personnes;

c) les réclamations des membres du groupe soulèvent des points de droit ou de fait communs, que ceux-ci prédominent ou non sur ceux qui ne concernent qu'un membre;

d) le recours collectif est le meilleur moyen de régler, de façon juste et efficace, les points de droit ou de fait communs;

e) il existe un représentant demandeur qui :

(i) représenterait de façon équitable et adéquate les intérêts du groupe,

(ii) a élaboré un plan qui propose une méthode efficace pour poursuivre l'instance au nom du groupe et tenir les membres du groupe informés de son déroulement,

(iii) n'a pas de conflit d'intérêts avec d'autres membres du groupe en ce qui concerne les points de droit ou de fait communs,

(iv) communique un sommaire des conventions relatives aux honoraires et débours qui sont intervenues entre lui et l'avocat inscrit au dossier.

**CONSIDERING** that, pursuant to Rule 334.16(2), all relevant matters shall be considered in a determination of whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact, including whether: (a) the questions of law or fact common to the class members predominate over any questions affecting only individual members; (b) a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate proceedings; (c) the class proceeding would involve claims that are or have been the subject of any other proceeding; (d) other means of resolving the claims are less practical or less efficient; and (e) the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means;

**CONSIDERING that:**

- (a) The conduct of the Crown at issue in this proposed class action proceeding, as set out in the Statement of Claim, concerns discrimination against First Nations children in the provision of essential services and the Crown's failure to prevent First Nations children from suffering gaps, delays, disruptions or denials in receiving services and products contrary to their *Charter*-protected equality rights. The Plaintiffs allege that the Crown's conduct was discriminatory, directed at Class Members because they were First Nations, and breached section 15(1) of the *Charter*, the Crown's fiduciary duties to First Nations and the standard of care at common and civil law.
- (b) With respect to the first element of the certification analysis (namely, whether the pleading discloses a reasonable cause of action), the threshold is a low one. The question for the Court is whether it is plain and obvious that the causes of action are doomed to fail [see

*Brake v Canada (Attorney General)*, 2019 FCA 274 at para 54]. Even without the Crown's consent, I am satisfied that the Plaintiffs have pleaded the necessary elements for each cause of action sufficient for purposes of this motion, such that the Statement of Claim discloses a reasonable cause of action.

- (c) With respect to the second element of the certification analysis (namely, whether there is an identifiable class of two or more persons), the test to be applied is whether the Plaintiffs have defined the class by reference to objective criteria such that a person can be identified to be a class member without reference to the merits of the action [see *Hollick v Toronto (City of)*, 2001 SCC 68 at para 17]. I am satisfied that the proposed class definitions for the Child Class and Family Class (as set out below) contain objective criteria and that inclusion in each class can be determined without reference to the merits of the action.
- (d) With respect to the third element of the certification analysis (namely, whether the claims of the class members raise common questions of law or fact), as noted by the Federal Court of Appeal in *Wenham v Canada (Attorney General)*, 2018 FCA 199 at para 72, the task under this part of the certification determination is not to determine the common issues, but rather to assess whether the resolution of the issues is necessary to the resolution of each class member's claim. Specifically, the test is as follows:

The commonality question should be approached purposively. The underlying question is whether allowing the suit to proceed as a representative one will avoid duplication of fact-finding or legal analysis. Thus an issue will be "common" only where its resolution is necessary to the resolution of each class member's claim. It is not essential that the class members be identically situated vis-à-vis the opposing party. Nor is it necessary that common issues predominate over non-common issues or that the resolution of the common issues would be determinative of each class member's claim. However, the class members' claims must

share a substantial common ingredient to justify a class action. Determining whether the common issues justify a class action may require the court to examine the significance of the common issues in relation to individual issues. In doing so, the court should remember that it may not always be possible for a representative party to plead the claims of each class member with the same particularity as would be required in an individual suit. (*Western Canadian Shopping Centres*, above at para 39; see also *Vivendi Canada Inc. v. Dell'Aniello*, 2014 SCC 1, [2014] 1 S.C.R. 3 at paras 41 and 44-46.)

Having reviewed the common issues (as set out below), I am satisfied that the issues share a material and substantial common ingredient to the resolution of each class member's claim. Moreover, I agree with the Plaintiffs that the commonality of these issues is analogous to the commonality of similar issues in institutional abuse claims which have been certified as class actions (such as the Indian Residential Schools and the Sixties Scoop class action litigation), as well as those certified in the Moushoom class action (T-402-19/T-141-20). Accordingly, I find that the common issue element is satisfied.

- (e) With respect to the fourth element of the certification analysis (namely, whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of fact and law), the preferability requirement has two concepts at its core: (i) whether the class proceeding would be a fair, efficient and manageable method of advancing the claim; and (ii) whether the class proceeding would be preferable to other reasonably available means of resolving the claims of class members. A determination of the preferability requirement requires an examination of the common issues in their context, taking into account the importance of the common issues in relation to the claim as a whole, and may be satisfied even where there are substantial individual issues [see *Brake*, *supra* at para 85; *Wenham*, *supra* at para 77 and *Hollick*, *supra* at paras 27-31]. The

Court's consideration of this requirement must be conducted through the lens of the three principle goals of class actions, namely judicial economy, behaviour modification and access to justice [see *Brake, supra* at para 86, citing *AIC Limited v Fischer*, 2013 SCC 69 at para 22].

- (f) Having considered the above-referenced principles and the factors set out in Rule 334.16(2), I am satisfied a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of fact and law. Given the systemic nature of the claims, the potential for significant barriers to access to justice for individual claimants and the concerns regarding the other means available for resolving the claims of class members, I am satisfied that the proposed class action would be a fair, efficient and manageable method of advancing the claims of the class members.
- (g) With respect to the fifth element of the certification analysis (namely, whether there are appropriate proposed representatives), I am satisfied, having reviewed the affidavit evidence filed on the motion together with the detailed litigation plan, that the proposed representative plaintiff meets the requirements of Rule 334.16(1)(e);

**CONSIDERING** that the Court is satisfied that all of the requirements for certification are met and that the requested relief should be granted;

**THIS COURT ORDERS that:**

1. The Plaintiffs are granted an extension of time, *nunc pro tunc*, to bring this certification motion past the deadline in Rule 334.15(2)(b) of the *Federal Courts Rules*.

2. For the purpose of this Order and in addition to definitions elsewhere in this Order, the following definitions apply and other terms in this Order have the same meaning as in the Statement of Claim:

- (a) **“Child Class”** means all First Nations individuals who were under the applicable provincial/territorial age of majority and who, during the Class Period, did not receive (whether by reason of a denial or a gap) an essential public service or product relating to a confirmed need, or whose receipt of said service or product was delayed, on grounds, including but not limited to, lack of funding or lack of jurisdiction, or as a result of a service gap or jurisdictional dispute with another government or governmental department.
- (b) **“Class” means** the Child Class and Family Class, collectively.
- (c) **“Class Counsel”** means Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Co., Nahwegahbow Corbiere and Fasken Martineau Dumoulin LLP.
- (d) **“Class Members”** mean all persons who are members of the Class.
- (e) **“Class Period”** means the period of time beginning on April 1, 1991 and ending on December 11, 2007.
- (f) **“Family Class”** means all persons who are brother, sister, mother, father, grandmother or grandfather of a member of the Child Class.



(g) **“First Nation”** and **“First Nations”** means Indigenous peoples in Canada, including the Yukon and the Northwest Territories, who are neither Inuit nor Métis, and includes:

- i. Individuals who have Indian status pursuant to the *Indian Act*, R.S.C., 1985, c.I-5 [*Indian Act*];
- ii. Individuals who are entitled to be registered under section 6 of the *Indian Act* at the time of certification;
- iii. Individuals who met band membership requirements under sections 10-12 of the *Indian Act*, such as where their respective First Nation community assumed control of its own membership by establishing membership rules and the individuals were found to meet the requirements under those membership rules and were included on the Band List; and
- iv. Individuals, other than those listed in sub-paragraphs (i)-(iii) above, recognized as citizens or members of their respective First Nations whether under agreement, treaties or First Nations’ customs, traditions and laws by the date of trial or resolution otherwise of this action.

3. This proceeding is hereby certified as a class proceeding against the Defendant pursuant to Rule 334.16(1) of the *Federal Courts Rules*.
4. The Class shall consist of the Child Class and Family Class, all as defined herein.

5. The nature of the claims asserted on behalf of the Class against the Defendant is constitutional, negligence and breach of fiduciary duty owed by the Crown to the Class.
6. The relief claimed by the Class includes damages, *Charter* damages, disgorgement, punitive damages and exemplary damages.
7. Zacheus Joseph Trout is appointed as representative plaintiff and is deemed to constitute an adequate representative of the Class, complying with the requirements of Rule 334.16(1)(e).
8. Class Counsel are hereby appointed as counsel for the Class.
9. The proceeding is certified on the basis of the following common issues:
  - (a) Did the Crown's conduct as alleged in the Statement of Claim [Impugned Conduct] infringe the equality right of the Class under section 15(1) of the *Canadian Charter of Rights and Freedoms*? More specifically:
    - i. Did the Impugned Conduct create a distinction based on the Class' race, or national or ethnic origin?
    - ii. Was the distinction discriminatory?
    - iii. Did the Impugned Conduct reinforce and exacerbate the Class' historical disadvantages?

- iv. If so, was the violation of section 15(1) of the *Charter* justified under section 1 of the *Charter*?
  - v. Are *Charter* damages an appropriate remedy?
- (b) Was the Crown negligent towards the Class? More specifically:
- i. Did the Crown owe the Class a duty of care?
  - ii. If so, did the Crown breach that duty of care?
- (c) Did the Crown breach its obligations under the *Civil Code of Québec*? More specifically:
- i. Did the Crown commit fault or engage its civil liability?
  - ii. Did the Impugned Conduct result in losses to the Class and if so, do such losses constitute injury to each of the members of the Class?
  - iii. Are members of the Class entitled to claim damages for the moral and material damages arising from the foregoing?
- (d) Did the Crown owe the Class a fiduciary duty? If so, did the Crown breach that duty?
- (e) Can the amount of damages payable by the Crown be determined partially under Rule 334.28(1) of the *Federal Courts Rules* on an aggregate basis? If so, in what amount?

- (f) Did the Crown obtain quantifiable monetary benefits from the Impugned Conduct during the Class Period? If so, should the Crown be required to disgorge those benefits and if so, in what amount?
- (g) Should punitive and/or aggravated damages be awarded against the Crown? If so, in what amount?
10. The Litigation Plan attached hereto as Schedule “A” is hereby approved, subject to any modifications necessary as a result of this Order and subject to any further orders of this Court.
11. The form of notice of certification, the manner of giving notice and all other related matters shall be determined by separate order(s) of the Court.
12. Notice of certification shall be given at the same time as the notice of certification of the companion Moushoom class action (Court File Nos. T-402-19/T-141-20), which shall be determined by separate order of this Court.
13. The opt-out period shall be six months from the date on which notice of certification is published in the manner to be specified by further order of this Court.
14. Pursuant to Rule 334.39(1) of the *Federal Courts Rules*, there shall be no costs payable by any party for this motion.

---

“Mandy Aylen”  
Judge

**ANNEX A**

20

Court File No. T-1120-21

**FEDERAL COURT  
PROPOSED CLASS PROCEEDING**

**B E T W E E N:**

**ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT**

Plaintiffs

and

**THE ATTORNEY GENERAL OF CANADA**

Defendant

**LITIGATION PLAN**

September 24, 2021

**SOTOS LLP**

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## I. DEFINITIONS

1. The definitions below will be used throughout this Litigation Plan. Any term defined in the Statement of Claim that is also used in this Litigation Plan has the same meaning as that included in the Statement of Claim or as otherwise defined by the Court.

**Aggregate Damages Distribution Process** means the system directed by the Court for the **Class Action Administrator** to distribute aggregate damages to **Approved Class Members**;

**Approved Class Member(s)** means **Approved Child Class Member(s)** and/or **Approved Family Class Members**;

**Approved Family Class Member(s)** means a Family Class Member who has been approved by the **Class Action Administrator** as meeting the criteria for being a Family Class Member, including the brother, sister, mother, father, grandmother or grandfather of an Approved Child Class Member (regardless of whether the Approved Child Class Member is alive) and whose approval as a Family Class Member has not been successfully challenged;

**Approved Child Class Member(s)** means a Child Class Member who has been approved by the **Class Action Administrator** as meeting the criteria for being a Child Class Member and whose approval as a Child Class Member has not been successfully challenged;

**Certification Notice** means the information set out in Schedule A to this Litigation Plan, as may be subsequently amended and as approved by the Court;

**CHRT Proceeding** means the proceeding before the **CHRT** under file number T1340/7008;

**Claim Form** means the form set out in Schedule C to this Litigation Plan used by the Child Class Members and/or the Family Class Members to submit a claim, as may be subsequently amended and as approved by the Court;

**Class Action Administrator** means any settlement administrator or other appropriate firm appointed by the Court to assist in the administration of the class proceeding;

**Class Counsel** means the consortium of law firms acting as co-counsel in this class proceeding, with the firms of Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Company, Nahwegahbow Corbiere, and Fasken LLP as Solicitors of Record;

**Class Member(s)** means an individual who falls within the definition of the Child Class and/or the Family Class, as pleaded in the Statement of Claim and as approved by the Court;



**Common Issues** means the issues listed in the Notice of Motion for Certification, or as found by the Court, as may be subsequently amended and as approved by the Court;

**Common Issues Notice** means the information set out in the notice regarding the **Common Issues** to be certified by the Court at Certification, as may be subsequently amended and as approved by the Court;

**Crown Class Member Information** means information to be provided by the Crown, at the request of the plaintiffs and/or as ordered by the Court, to the **Class Action Administrator** and/or **Class Counsel** regarding the names and last known contact information of all individuals who meet the criteria of Class Members as set out in the Statement of Claim or as otherwise defined by the Court, including a list of all known Class Members' names and last known addresses using the information in the Crown's possession or under its control.<sup>1</sup>

**Individual Damage Assessment Form** means the form set out in Schedule D to this Litigation Plan, as may be subsequently amended and as approved by the Court, to be used by **Approved Class Member(s)** to elect an individual assessment of their damages and commence an individual damage assessment under the **Individual Damage Assessment Process**;

**Individual Damage Assessment Process** means the procedure and system to be approved by the Court following the **Common Issues** trial to be used to assess and distribute damages to **Approved Class Member(s)** who have requested an individual damage assessment by submitting an **Individual Damage Assessment Form**;

**Notice Program** means the process, set out in this Litigation Plan, for communicating the **Certification Notice** and/or the **Common Issues Notice** to **Class Members**, as may be subsequently amended and as approved by the Court;

**Opt Out Form** means the form set out in Schedule B to this Litigation Plan used by Class Members to opt out of the class proceeding, as may be subsequently amended and as approved by the Court;

**Opt Out Period** means the deadline, proposed by the plaintiffs as 180 days post Certification or as determined by the Court, to opt out of the class proceeding;

**Opt Out Procedures** means the procedures, set out in the Litigation Plan, for Class Members to opt out of this class proceeding, as may be subsequently amended and as approved by the Court; and

**Special Opt Out Procedures** means the procedures, set out in the Litigation Plan, for Class Members who have already commenced a civil proceeding in Canada or who are known

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<sup>1</sup> Where Class Members are known to be represented by counsel, only their name should be provided along with their counsel's name and address.



by the Crown to have already retained legal counsel to opt out of this class proceeding, as may be subsequently amended and as approved by the Court.

## II. OVERVIEW

2. The plaintiffs have commenced this action on behalf of First Nations individuals who allege that the Crown has breached their equality rights, depriving them of public services and products. The class action advances the rights of thousands of First Nations children and family members.

3. This Litigation Plan is advanced as a workable method of advancing the proceeding on behalf of the Class and of notifying Class Members as to how the class proceeding is progressing, pursuant to rule 334.16(1)(e)(ii) of the *Federal Court Rules*. The Litigation Plan is modelled on the class action relating to the Indian Residential Schools,<sup>2</sup> with numerous alterations made in order to streamline the procedure and to take into account lessons learned from that settlement.

4. This Litigation Plan sets out a detailed plan for the common stages of this litigation, and sets out, on a preliminary without prejudice basis, an early plan for how the individual stage of the action may progress. Given the early stage of the litigation, the plan is necessarily subject to substantial revisions as the case progresses.

## III. PRE-CERTIFICATION PROCESS

5. The plaintiffs are litigating this action in parallel with a closely interrelated consolidated class action (Court File Nos. T-402-19 / T-141-20) about First Nations child and family services

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<sup>2</sup> See *Baxter v Canada (Attorney General)*, 2006 CanLII 41673 (Ont Sup Ct), and subsequent orders of the Court. See also information available on the website of the Indian Residential Schools Adjudication Secretariat, online <<http://www.iap-pei.ca/home-eng.php>>.

and Jordan's Principle. Therefore, much of the work and processes are shared between the two actions.

**A. The Parties**

***i. The Plaintiffs***

6. The plaintiffs have proposed two classes:
  - (a) the Child Class; and
  - (b) the Family Class.
7. The proposed representative plaintiff is Zacheus Joseph Trout.

***ii. The Defendant***

8. The defendant is the Crown.

**B. The Pleadings**

***i. Statement of Claim***

9. The plaintiffs have delivered a Statement of Claim.

***ii. Statement of Defence***

10. The Crown has not delivered a Statement of Defence.

***iii. Third Party Claim***

11. The Crown has not issued any Third Party Claim.

**C. Preliminary Motions**

12. The plaintiffs propose that any preliminary motions be dealt with at the Motion for Certification or as directed by the Court.

**D. Pre-Certification Communication Strategy**

***i. Responding to Inquiries from Putative Class Members***

13. Both before and since the commencement of this class proceeding, Class Counsel have received many communications from Class Members affected by this class proceeding.

14. With respect to each inquiry, the individual's name, address, email and telephone number are added to a confidential database. Class Members are asked to register on the websites of Class Counsel. Once registered, they receive updates on the progress of the class proceeding in French and English. Any individual Class Members who contact Class Counsel are responded to in their preferred language.

***ii. Pre-Certification Status Reports***

15. In addition to responding to individual inquiries, Class Counsel have created a webpage concerning the class proceeding in English and French (see: <https://sotosclassactions.com/cases/current-cases/first-nations-youth/>). The most current information on the status of the class proceeding is posted and is updated regularly in English and French.

16. Copies of the publicly filed court documents and court decisions are accessible from the webpage. In addition, phone numbers for Class Counsel in Quebec and Ontario as well as email contact information are provided.

17. Class Counsel sends update reports to Class Members who have provided their contact information and have indicated an interest in being notified of further developments in the class proceeding.

**iii. Pre-certification outreach**

18. Class Counsel have presented the proposed class action to a council of First Nations social services delivery personnel for the Province of Québec and the region of Labrador, as well as the First Nations youth directors forum in British Columbia. Class Counsel are in the process of arranging similar presentations to affected communities in Québec and elsewhere in Canada.

**E. Settlement Conference**

**i. Pre-Certification Settlement Conference**

19. The plaintiffs will participate in a pre-Certification Settlement Conference to determine whether any or all of the issues arising in the class proceeding can be resolved.

20. The plaintiffs propose that a pre-Certification Settlement Conference be conducted at least one month after the Motion for Certification and responding materials, if any, have been filed with the Court.

**F. Timetable**

**i. Plaintiffs' Proposed Timetable for the Pre-Certification Process**

21. The plaintiffs propose that the pre-Certification process timetable set out below be imposed by Court Order at an early case conference.

	<b>Deadline</b>
Plaintiffs' Certification Motion Record	Date of Serving and Filing the Notice of Motion for Certification and Motion Record ("DOF")
Respondent's Motion Record, if any	Within 90 days from DOF
Plaintiffs' Reply Motion Record, if any	Within 120 days from DOF

Cross-examinations, if any, to be completed	Within 150 days from DOF
Undertakings answered	Within 180 days from DOF
Motions arising from cross-examinations, if any, heard	Within 210 days from DOF
Further cross-examinations, if necessary, completed by	Within 230 days from DOF
Plaintiffs' Memorandum of Fact and Law	Within 250 days from DOF
Respondent's Memorandum of Fact and Law	Within 280 days from DOF
Plaintiffs' Reply, if any	Within 300 days from DOF
Motion for Certification and all other Motions commencing	Within 310 days from DOF

#### IV. POST-CERTIFICATION PROCESS

##### A. Timetable

##### i. *Plaintiffs' Timetable for the Post-Certification Process*

22. The plaintiffs intend to proceed to trial on an expedited basis or a hybrid summary judgment/*viva voce* trial.

23. The plaintiffs propose that the following post-Certification process timetable, as explained in detail below, be imposed by the Court upon Certification:

Certification Notice to Class Members commences	Upon Certification
Exchange Affidavits of Documents within	70 days from certification
Motions for Production of Documents, Multiple Examinations of Crown representatives or for Examinations of Non-Parties to be conducted within	110 days from certification



Examinations for Discovery to be conducted within	140 days from certification
Certification Notice to Class Members completed within	90 days from certification
Trial Management Conference re: Expert Evidence	170 days from certification
Motions arising from Examinations for Discovery within	190 days from certification
Undertakings answered within	160 days from certification
Further Examinations, if necessary, within	210 days from certification
Common Issues Pre-Trial to be conducted	250 days from certification
Opt Out Period deadline	180 days from certification
Common Issues Trial or Hybrid Trial to be conducted within	300 days from certification

#### **B. Certification Notice, Notice Program and Opt Out Procedures**

##### ***i. Certification Notice***

24. The Certification Notice and all other notices to Class Members provided by the plaintiffs will, once finalized and approved by the Court, be translated into French. The plaintiffs will explore whether it will be necessary to translate the Certification Notice and/or other notices into some First Nations languages, subject to Court approval.

25. The Certification Notice will, subject to further amendments, be in the form set out in Schedule A hereto.

##### ***ii. Notice Program***

26. The plaintiffs propose to communicate the Certification Notice to Class Members through the following Notice Program.

27. The plaintiffs will provide Certification Notice to Class Members by arranging to have the Certification Notice (and its translated versions whenever possible) communicated/published in the following media within 90 days of Certification, as frequently as may be reasonable or as directed by the Court under rule 334.32 of the *Federal Courts Rules*. In particular, the plaintiffs propose the following means of providing Certification Notice:

- (a) A press release within 15 days of the Certification order being issued;
- (b) Direct communication with Class Members:
  - (i) by email or regular mail to the last known contact information of Class Members provided by the Crown (*i.e.*, Crown Class Member Information);
  - (ii) by email or regular mail to all Class Members who have provided their contact information to Class Counsel, including through the Class Proceeding's webpage;
- (c) Distribution to the Assembly of First Nations for circulation to its membership of First Nations bands across Canada;
- (d) Email to First Nations children's aid societies across Canada;
- (e) Circulation through the following media:
  - (i) Aboriginal newspapers/publications such as First Nations Drum, The Windspeaker, Mi'kmaq Maliseet Nations News, APTN National News; and
  - (ii) social media outlets, such as Facebook and Instagram.

***iii. Opt Out Procedures***

28. The plaintiffs propose Opt Out Procedures for Class Members who do not wish to participate in the class proceeding.

29. The Certification Notice will include information about how to Opt Out of the class proceeding and will provide information about how to obtain and submit the appropriate Opt Out Forms to the Class Action Administrator and/or Class Counsel.

30. There will be one standard Opt Out Form for all Class Members.

31. Class Members will be required to file the Opt Out Form with the Class Action Administrator and/or Class Counsel within the Opt Out Period, proposed by the plaintiffs as 180 days post Certification or as directed by the Court.

32. The Class Action Administrator or Class Counsel shall, within 30 days after the expiration of the Opt Out Period, deliver to the Court and the Parties an affidavit listing the names of all persons who have opted out of the Class Action.

***iv. Special Opt Out Procedures***

33. The plaintiffs propose Special Opt Out Procedures for Class Members who are either named party plaintiffs in a civil proceeding in Canada or who are known by the Crown to have retained legal counsel in respect of the subject matter of this action with the express purpose of starting a separate action against the Crown.

**C. Identifying and Communicating with Class Members**

***i. Identifying Class Members***

34. As stated above, the plaintiffs intend to request the Crown Class Member Information.



*ii. Database of Class Members*

35. Class Counsel will maintain a confidential database of all Class Members who contact Class Counsel. The database will include each individual's name, address, telephone number, and email address where available.

*iii. Responding to Inquiries from Class Members*

36. Class Counsel and their staff will respond to each inquiry by Class Members.

37. Class Counsel will have a system in place to allow for responses to inquiries by Class Members in their language of choice whenever possible.

*iv. Post Certification Status Reports*

38. In addition to responding to individual inquiries, Class Counsel will continually update the webpage dedicated to this class action with information concerning the status of the class proceeding.

39. Class Counsel will send update reports to Class Members who have provided their contact information. These update reports will be sent as necessary or as directed by the Court.

**D. Documentary Production**

*i. Affidavit/List of Documents*

40. The plaintiffs will be required to deliver an Affidavit of Documents within 70 days after Certification. The Crown will similarly be required to deliver a List of Documents within 70 days after Certification.

41. The Parties are expected to serve Supplementary Affidavits (or Lists) of Documents as additional relevant documents are located.

*ii. Production of Documents*

42. All Parties are expected to provide, at their own expense, electronic copies of all Schedule “A” productions at the time of delivering their Affidavit of Documents. All productions are to be made in electronic format.

*iii. Motions for Documentary Production*

43. Any motions for documentary production shall be made within 110 days of Certification.

*iv. Document Management*

44. The Parties will each manage their productions with a compatible document management system, or as directed by the Court. All documents are to be produced in OCR format.

45. All productions should be numbered and scanned electronically to enable quick access and efficient organization of documents.

**E. Examinations for Discovery**

46. Examinations for Discovery will take place within 140 days of Certification.

47. The plaintiffs expect to request the Crown’s consent to examine more than one Crown representative. In the event that a dispute arises in this regard, the plaintiffs propose to bring a motion within 110 days after Certification.

48. The plaintiffs anticipate that the Examination for Discovery of properly selected and informed officers of the Crown will take approximately 10 days, subject to refusals and undertakings.

49. The plaintiffs anticipate that the Examination for Discovery of the representative plaintiffs will take approximately one day, subject to refusals and undertakings.

**F. Interlocutory Matters**

***i. Undertakings***

50. Undertakings are to be answered within 160 days of Certification.

***ii. Motions for Refusals and Undertakings***

51. Specific dates for motions for undertakings and refusals that arise from the Examinations for Discovery will be requested upon Certification. Motions for refusals and undertakings will be heard within 190 days of Certification.

***iii. Re-attendances and Further Examinations for Discovery***

52. Any re-attendances or further Examinations for Discovery required as a result of answers to undertakings or as a result of the outcome of the motions for refusals and undertakings should be completed within 210 days of Certification.

**G. Expert Evidence**

***i. Identifying Experts and Issues***

53. A Trial Management Conference will take place following Examinations for Discovery at which guidelines for identifying experts and their proposed evidence at trial will be determined.

**H. Determination of the Common Issues**

***i. Pre-Trial of the Common Issues***

54. Upon Certification, the Court will be asked to assign a date for a Pre-Trial Conference relating to the Common Issues trial.

55. The plaintiffs expect that a full day will be required for a Pre-Trial Conference and will request that the Pre-Trial be held 250 days after Certification and, in any event, at least 90 days before the date of the Common Issues trial.

*ii. Trial of the Common Issues*

56. Upon Certification, the Court will be asked to assign a date for the Common Issues trial.
57. The plaintiffs propose that the trial of the Common Issues be held 300 days after Certification.
58. The length of time required for the Common Issues trial will depend on many factors and will be determined at the Trial Management Conference.

**V. POST COMMON ISSUES DECISION PROCESS**

**A. Timetable**

*i. Plaintiffs' Timetable for the Post-Common Issues Decision Process*

59. The plaintiffs propose that the following timetable be imposed by the Court following the Court's judgment on the Common Issues:

Common Issues Notice provided	Within 90 days of Common Issues decision
Individual Issue Hearings, if any, begin	120 days after decision
Individual Damage Assessments, if any, begin	240 days after decision
Deadline to Submit Claim Forms (as of right)	Within 1 year of decision
Deadline to Submit Claim Forms (as of right in prescribed circumstances or with leave of the Court)	1 year after decision

**B. Common Issues Notice**

*i. Notifying Class Members*

60. The Common Issues Notice will, subject to further amendments, be substantially in the form approved by the Court at the Common Issues trial. The Common Issues Notice may contain, amongst others, information on any aggregate damages awarded and any issues requiring individual determination, as approved by the Court.

61. The plaintiffs propose to circulate the Common Issues Notice within 90 days after the Common Issues judgment.

62. The Common Issues Notice will be circulated in the same manner as set out above dealing with the Certification Notice or as directed by the Court.

**C. Claim Forms**

***i. Use of Claim Forms***

63. The Court will be asked to approve under rule 334.37 the use of standardized Claim Forms by Class Members who may be entitled to a portion of the aggregate damage award or who may be entitled to have an individual assessment.

***ii. Obtaining and Filing Claim Forms***

64. The procedure for obtaining and filing Claim Forms will be set out in the Common Issues Notice.

65. The plaintiffs propose to use a single standard Claim Form, substantially in the form attached as Schedule C, for all three classes, subject to further amendments and as approved by the Court.

66. The plaintiffs propose that counselling be made available to Class Members in need of support and assistance when completing the Claim Forms. Where necessary, a process for appointing a guardian or trustee to assist the Class Members will be developed.

67. Before completing a Claim Form, Class Members will be able to review information about them in the possession of Canada relevant to their claim (the Crown Class Member Information). That information may include:



- (a) any records relating to the Class Member's voluntary or involuntary placement in out-of-home care during the Class Period;
- (b) any records relating to a need by the Class Member for a service or product;
- (c) any records relating to a request made by the Class Member for a service or product;
- (d) any records relating to the denial of a service or product to the Class Member;
- (e) any records relating to any service(s) or product(s) provided by the Crown to the Class Member; and/or
- (f) any records relating to the family status or family relationship between a Family Class Member and a Child Class Member.

68. Class Members will be required to file the appropriate Claim Form with the Class Action Administrator and/or Class Counsel within the deadlines set out below or as directed by the Court.

69. The Class Action Administrator will be responsible for receiving all Claim Forms.

***iii. Deadline for Filing Claim Forms***

70. Class Members will be advised of the deadline for filing Claim Forms in the Common Issues Notice.

71. The plaintiffs propose that Class Members be given one year, or such period as set out by the Court, after the Common Issues judgment to file Claim Forms as of right.

72. The plaintiffs propose that Class Members be entitled to file Claim Forms more than one year after the Court's judgment on the Common Issues in certain circumstances prescribed by the Court (*i.e.*, lack of awareness of entitlement, etc.) or with leave of the Court (*i.e.*, based on mental or physical health issues, etc.).

**D. Determining and Categorizing Class Membership**

***i. Approving Child Class Members***

73. The Class Action Administrator will determine whether an individual submitting a Claim Form as a Child Class Member properly qualifies as a Class Member.

74. The Class Action Administrator will make these determinations following guidelines determined by the Court at the Common Issues trial in part by referring to the information set out in the Claim Form. Such guidelines may include: (a) whether the Class Member needed a service or product at any point during the Class Period; (b) whether the Class Member was denied that service or product; (c) whether the Class Member's receipt of a service or product was delayed or disrupted; (d) whether such denial, disruption or delay was based on lack of funding, lack of jurisdiction or a jurisdictional dispute between governments or government departments; and/or (e) whether such denial, disruption or delay happened while the Class Member was under the applicable provincial/territorial age of majority.

75. The Class Action Administrator will also make these determinations in part by referring to the Crown Class Member Information regarding the number of Class Members who have received a service or product under Jordan's Principle under orders made in the CHRT Proceeding.

76. The Class Action Administrator will, where appropriate and necessary, request in writing further information from the individual submitting the Child Class Claim Form or the Crown to make these determinations.

***ii. Approving Family Class Members***

77. The Class Action Administrator will determine whether an individual submitting a Family Class Claim Form properly qualifies as a Family Class Member.

78. These determinations will be made by the Class Action Administrator by referring to Crown Class Member Information and the information set out in the Claim Form with respect to the relationship of the proposed Family Class Member with an Approved Child Class Member.

79. The Class Action Administrator will, where appropriate and necessary, request in writing further information from the individual filing the Claim Form to make these determinations.

***iii. Deceased Class Members***

80. The estate of a deceased Class Member may submit a Claim Form if the deceased Class Member died on or after April 1, 1991.

81. If the deceased Class Member would otherwise have qualified as an Approved Class Member, the estate will be entitled to be compensated in accordance with the Aggregate Damages Distribution Process. The estate will not have the option to proceed under the Individual Damage Assessment Process except with leave of the Court.

***iv. Notifying Class Members, Challenging and Recording Decisions***

82. Within 30 days of receipt of a Claim Form, the Class Action Administrator will notify the individual of its decision on whether the individual is an Approved Class Member. Individuals who are not approved as Class Members will be provided with information on the procedures to follow to challenge the decision of the Class Action Administrator. The plaintiffs propose that these procedures include an opportunity to resubmit an amended Claim Form with supporting documentation capable of verifying that the individual is a Class Member.

83. All interested parties will be provided with the ability to appeal a decision by the Class Action Administrator to the Court or in a manner to be prescribed. Class Counsel may challenge the decision on behalf of affected individuals.



84. The Class Action Administrator will keep records of all Approved Class Members and their respective Claim Forms and will provide this information to Class Counsel, the Crown and other interested parties on a monthly basis. Class Counsel and/or other interested parties will have 30 days after receiving this information to challenge the Class Action Administrator's decision by advising the Class Action Administrator and the other affected parties in writing of the basis for their challenge. The responding party will be given 30 days thereafter to respond in writing to the challenge at which time the Class Action Administrator will reconsider its decision and advise all parties.

**E. Aggregate Damages Distribution Process**

***i. Distribution of Aggregate Damages***

85. The Class Action Administrator will distribute the aggregate damages to all Approved Class Members in the manner directed by the Court.

86. The plaintiffs will propose that Approved Class Members be entitled to a proportion of the aggregate damages as determined by the Class Action Administrator based on factors to be approved by the Court, including but not limited to: (a) the duration of deprivation from a service or product as a result of a delay, denial or disruption; (b) the importance of the service or product to the child; and (c) the family relationship of the Family Class Member to a given Child Class Member.

87. The Class Action Administrator, upon advising Approved Class Members of its decision on their membership as set out above, will within a reasonable period of time to be determined by the Court, advise the Approved Class Members of the proportion of aggregate damages owing to each Approved Class Member under the Aggregate Damages Distribution Process to be approved by the Court.

88. In addition, if applicable, the Class Action Administrator will provide Approved Class Members with a package of materials including: information on how to collect their aggregate damage awards, information on Class Members' ability to proceed through the Individual Damage Assessment Process, copies of the Individual Damage Assessment Form along with a guide on how to complete the form, and contact information for obtaining independent legal advice and counselling. Such information is to be provided in a culturally responsive and appropriate style, making full use of interactive media, including video tutorials.

*ii. Seeking an Individual Damage Assessment*

89. Approved Class Members, when notified of their entitlement to aggregate damages, may be given information on their right to have their compensation individually assessed under the Individual Damage Assessment Process set out below.

**F. Individual Damage Assessment Process**

*i. Individual Damage Assessment Forms*

90. When Approved Class Members are notified of their aggregate damage entitlement and information on their right to proceed under the Individual Damage Assessment Process, they will be provided with an Individual Damage Assessment Form as set out in Schedule D.

91. If applicable, the plaintiffs propose that a request for individual damages be made by sending an Individual Damage Assessment Form to the Class Action Administrator, and that only those individuals who wish to proceed through the Individual Damage Assessment Process be required to submit Individual Damage Assessment Forms.

*ii. Individual Damage Assessments*

92. The Court may be asked to approve the use of an Individual Damage Assessment Process after a judgment on the Common Issues or otherwise as directed by the Court.

93. The Individual Damage Assessment Process would be available to all Approved Class Members except those who are found by the Court not to be entitled to individual damages following the Common Issues trial.

**iii. Individual Issue Hearings**

94. The Court will be asked to provide directions, or to appoint persons to conduct references under rule 334.26 of the *Federal Courts Rules* or appoint a judge to conduct test cases involving selected Approved Class Members who are proceeding under the Individual Damage Assessment Process to assist with the matters that may or may not remain in issue after the determination of the Common Issues, such as:

- (a) Hearing rules for individual assessments;
- (b) A compensation matrix for individual damages;
- (c) Assistance in resolving disputes relating to the definitions of key terms such as “essential service”, “delay”, and “jurisdictional dispute”; and
- (d) Other matters raised by the Court or the parties during the Common Issues litigation.

**G. Fees**

**i. Plaintiffs’ Legal Fees**

95. The plaintiffs’ fees are to be paid on a contingency basis, subject to the Court’s approval under rule 334.4 of the *Federal Courts Rules*.

96. The agreement between the representative plaintiffs and Class Counsel states that legal fees and disbursements to be paid to Class Counsel shall be on the following basis:

- (a) Aggregate damages recovery: 20% of the first two hundred million dollars (\$200,000,000) in recovery by settlement or judgment, plus 10% of any amounts recovered by settlement or judgment beyond the first two hundred million dollars; and

(b) Individual damages recovery: 25% of settlement or judgment.

***ii. Funding of Disbursements***

97. Funding of legal disbursements for the representative plaintiffs has been, and will continue to be, made through Class Counsel, unless the plaintiffs and Class Counsel subsequently deem it to be in the best interests of the Class to obtain third-party funding, in which case Class Counsel will advise the Court of such third-party funding and seek approval thereof.

**H. Settlement Issues**

***i. Settlement Offers and Negotiations***

98. The plaintiffs will conduct settlement negotiations with the Crown from time to time with a view to achieving a fair and timely resolution.

***ii. Mediation and Other Non Binding Dispute Resolution Mechanisms***

99. The plaintiffs will participate in mediation or other non-binding dispute resolution mechanisms, if and when appropriate, in an effort to try to resolve the dispute or narrow the issues in dispute between the Parties.

**I. Review of the Litigation Plan**

***i. Flexibility of the Litigation Plan***

100. This Litigation Plan will be reconsidered on an ongoing basis and may be revised under the continued case management authority of the Court before or after the determination of the Common Issues or as the Court sees fit.

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## **SCHEDULE “A”**



***PROPOSED NOTICE OF CERTIFICATION***

**THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ CAREFULLY.**

**The Nature of the Lawsuit**

As of March 2019, Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Co., Nahwegahbow Corbiere, and Fasken LLP (collectively “Class Counsel”) have prosecuted an action on behalf of First Nations plaintiffs in the Federal Court of Canada in Montreal, against the Attorney General of Canada (the “Crown”).

The lawsuit claims that between April 1, 1991 and December 11, 2007 the Crown instituted discriminatory policies across Canada, delaying, disrupting or denying the delivery of needed public services and products to First Nations youth.

The action was brought on behalf of a Class of:

(a) all First Nations youths who were denied a public service or product, or whose receipt of a public service or product was delayed or disrupted, on the grounds of lack of funding or lack of jurisdiction, or as a result of a jurisdictional dispute with another government or governmental department between April 1, 1991 and December 11, 2007;

(b) family members of the Class Members cited in (a) above.

By order dated [INSERT DATE], The Honourable Justice [INSERT NAME] certified the action as a class proceeding, appointing Zacheus Joseph Trout as representative plaintiffs for the class.

The Court found that the following issues affecting the Class will be tried at a Common Issues trial:

- [INSERT CERTIFIED COMMON ISSUE]
- ...

**Participation in the Class Action**

If you fall within the class definition, you are automatically included as a member of the Class, unless you choose to opt out of the Class Action, as explained below. All members of the Class will be bound by the judgment of the Court, or any settlement reached by the parties and approved by the Court.

At this juncture, the Court has not taken a position as to the likelihood of recovery for the representative plaintiffs or the Class, or with respect to the merits of the claims or defences asserted by the Crown.

**Fees and Disbursements**

You do not need to pay any legal fees out of your own pocket. A retainer agreement has been entered into between the representative plaintiffs and Class Counsel with respect to legal fees. The agreement provides that the law firms have been retained on a contingency fee basis, which means they will only be paid their fees in the event of a successful result in the litigation or a Court-approved settlement.

You will not be responsible for Defendant’s legal costs if the class action is unsuccessful. Any fee paid to lawyers for the Class is subject to the Court’s approval.

**Opt Out**

If you are a class member and wish to exclude yourself from this class proceeding (“opt out”), you must complete and return the “Class Member Opt Out” form by no later than [INSERT DATE]. The Opt Out form may be downloaded at: [INSERT WEBSITE ADDRESS].

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Class members who choose to opt out within the above noted deadline will not recover any monies if the representative plaintiffs are successful in this action. If class members do not choose to opt out by the deadline, they will be bound by any judgment ultimately obtained in this class action, whether favourable or not, or any settlement if approved by the Court.

**Contact Information**

If you have any questions or concerns about the matters in this Notice or the status of the class

action, you may contact Class Counsel in a number of ways.

By phone: **[INSERT PHONE NUMBER]**

By email: **[INSERT EMAIL]**

Toll-Free Hotline: **[INSERT TELEPHONE]**

By mail: **[INSERT ADDRESS]**



## **SCHEDULE “B”**

**OPT OUT FORM**

**TO:**  
**[CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**  
[Address]  
[Email]  
[Fax]  
[Phone number]

**ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**

I do not want to participate in the class action entitled *Zacheus Joseph Trout et al v. The Attorney General of Canada* regarding the claims of discrimination against First Nations children. I understand that by opting out, I will not be eligible for the payment of any amounts awarded or paid in the class action, and if I want an opportunity to be compensated, I will have to make an individual claim and decide whether to engage a lawyer at my own expense.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, Province, Postal Code

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email

This Notice must be delivered by regular mail or email on or before \_\_\_\_\_, 202\_ to be effective.

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## **SCHEDULE “C”**

# CLAIM FORM

**TO:**  
**[CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**  
**[Address]**  
**[Email]**  
**[Fax]**  
**[Phone number]**

**ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**

I, \_\_\_\_\_ (insert full name(s), including maiden name if applicable), have received Notice of the National Class Action entitled *Zacheus Joseph Trout et al v. The Attorney General of Canada* regarding the claims of discrimination against First Nations children. My date of birth is \_\_\_\_\_ (insert day, month, year of birth).

I believe that I am a Class Member and I wish to submit a claim as a member of the following Class or Classes (mark the applicable item(s) with an X):

☐ Child Class

☐ Family Class

If you selected the Child Class, please summarize below the public services or products that you needed between April 1, 1991 and December 11, 2007, and that were denied, delayed or disrupted:

Product(s) or service(s) needed	Was a request made for the service(s) or product(s)?	Was the service(s) or product(s) denied, delayed or disrupted?	The date(s) of need, request, and/or denial, delay or disruption

If you selected the Family Class, please summarize below your relationship to the member(s) of the Child Class:

Full name(s) and claim number of the Approved Child Class Member in your family	Your relationship to the Class Member (only the brother, sister, mother, father, grandmother or grandfather of an Approved Child Class Member)


My mailing address is:

Street name, Apartment #

City, Province

Postal Code

Telephone Number(s)

Email address

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

## **SCHEDULE “D”**

**INDIVIDUAL DAMAGE ASSESSMENT FORM**

**TO:**  
**[CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**  
**[Address]**  
**[Email]**  
**[Fax]**  
**[Phone number]**

**ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**

I, \_\_\_\_\_ [insert full name(s), including maiden name if applicable], have been notified that I am an Approved Child Class Member. My claim number is \_\_\_\_\_ [insert assigned claim number].

I have been provided with a package of information outlining and explaining my option to request an individual damage assessment in accordance with the Individual Damage Assessment Process.

I am also aware that I can obtain independent legal advice with respect to this request and can obtain assistance to complete this form at no charge to me by contacting [insert assigned contact #].

Below is information relating to my experience with the denial/delay/disruption of the receipt of a public service or product and the impacts and harms that resulted from my experience:

*[The Individual Damage Assessment Form will be designed after a Court decision on the Common Issues. The goal of the Individual Damage Assessment Form though will be to obtain, amongst others, the following information from Approved Class Members:*

- *Any conditions or circumstances that required a public service or product;*
- *Reasons for denial of a public service or product;*
- *Department(s) of contact;*
- *Authorizations for the Crown to obtain documents; and*
- *Such further and other information that is deemed necessary and appropriate.]*

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

This is Exhibit "C" referred to in the Affidavit of Pouya Dabiran-Zohoori affirmed before me at the City of Toronto, in the Province of Ontario on June 15, 2022, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, reading "Julia Patricia", written in a cursive style.

---

*Commissioner for Taking Affidavits (or as may be)*

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



**First Nations Child and Family Services,  
Jordan's Principle, Trout Class Settlement  
Agreement**

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## SETTLEMENT AGREEMENT

**THIS AGREEMENT** is dated effective as of March 31, 2022 (“**Effective Date**”).

**BETWEEN:**

**XAVIER MOUSHOOM, JEREMY MEAWASIGE by his Litigation Guardian, Jonavon Joseph Meawasige, and JONAVON JOSEPH MEAWASIGE**

(together, the “**Moushoom Plaintiffs**”)

**AND:**

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

(together, the “**AFN Plaintiffs**”)

**AND:**

**ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT**

(together, the “**Trout Plaintiffs**”)

**AND:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

(“**Canada**”)

(collectively, “**Parties**”)

**WHEREAS:**

- A. On March 4, 2019, the Moushoom Plaintiffs commenced a proposed class action in the Federal Court under Court File Number T-402-19 (the “**Moushoom Action**”), seeking compensation for discrimination dating back to April 1, 1991.
- B. On January 28, 2020, the AFN Action Plaintiffs also filed a proposed class action in the Federal Court under Court File Number T-141-20 (the “**AFN Action**”) regarding similar allegations dating back to April 1, 1991.
- C. On July 7, 2021, the Honourable Justice St-Louis ordered that the Moushoom Action and the AFN Action be consolidated with certain modifications (the “**Consolidated Action**”).
- D. The parties to the Consolidated Action engaged in mediation in accordance with the Federal Court Guidelines for Aboriginal Law Proceedings (dated April 2016) to resolve all

or some of the outstanding issues in the Consolidated Action. The Honourable Leonard Mandamin acted as mediator from November 1, 2020 to November 10, 2021.

- E. On July 16, 2021, the Trout Plaintiffs filed a proposed class action in the Federal Court under Court File Number T-1120-21 (the “**Trout Action**”) regarding the Crown’s discriminatory provision of services and products between April 1, 1991 and December 11, 2007.
- F. On September 29, 2021, in reasons indexed at 2021 FC 969, Justice Favel of the Federal Court of Canada upheld the Canadian Human Rights Tribunal (the “**Tribunal**”) decision made in Tribunal File: T1340/7008 (the “**CHRT Proceeding**”) indexed at 2019 CHRT 39 (the “**Compensation Order**”) in which the Tribunal awarded compensation to Children and their caregiving parents or caregiving grandparents impacted by Canada’s systemic discrimination in the underfunding of child and family services on reserve and in the Yukon, and its narrow interpretation of Jordan’s Principle.
- G. On or about November 1, 2021, the parties entered into negotiations outside of the Federal Court mediation process.
- H. The parties, by agreement, appointed The Honourable Murray Sinclair to act as chair of the negotiations.
- I. The parties worked collaboratively to determine the class sizes of the Consolidated Action and the Trout Action.
- J. The parties separately engaged experts (“**Experts**”) to prepare a joint report on the estimated size of the Removed Child Class, as defined herein, on which the parties would rely for settlement discussions (the “**Joint Report**”).
- K. The Experts relied on data provided by Indigenous Services Canada (“**ISC**”) in preparing the Joint Report. ISC communicated to the experts and plaintiffs counsel that the data often came from third-party sources and was in some cases incomplete and inaccurate. The Joint Report referred to and took into account these factors.
- L. The Experts estimated that there were 106,200 Removed Child Class Members from 1991 to March 2019. The Experts advised that this class size must be adjusted to 115,000 to cover the period from March 2019 to March 2022 (the “**Estimated Removed Child Class Size**”). The Estimated Removed Child Class Size was determined based on the data received from ISC and modelling taking into account gaps in the data.
- M. Canada provided to the plaintiffs estimates of the Jordan’s Principle Class Size, which were between 58,385 and 69,728 for the period from December 12, 2007 to November 2, 2017 (the “**Jordan’s Principle Class Size Estimates**”). The Parties understand that the Jordan’s Principle Class Size Estimates were based on a single 2019-2020 quarter.
- N. Based on the Jordan’s Principle Class Size Estimates, the plaintiffs estimated the size of the Trout Class, as defined below, to be approximately 104,000.



- O. Based on the Parliamentary Budget Officer Report, *Compensation For The Delay and Denial of Services to First Nations Children*, dated February 23, 2021, there are 1.5 primary caregivers per First Nations child.
- P. On November 26, 2021, the Federal Court granted certification of the Consolidated Action on consent of the parties.
- Q. On February 11, 2022, the Federal Court granted certification of the Trout Action on consent of the parties.
- R. The Moushoom Plaintiffs, the AFN Plaintiffs and the Trout Plaintiffs (collectively, the “**Representative Plaintiffs**”) and Canada concluded an agreement in principle (“**AIP**”) on December 31, 2021 which set out the principal terms of their agreement to settle the Consolidated Action and the Trout Action (collectively, the “**Actions**”) and which forms the basis of this Agreement.
- S. On March 24, 2022, the Tribunal established March 31, 2022, as the end date for compensation to individuals included in the Removed Child Class and the Family of Removed Child Class.
- T. In drafting this Agreement, the Parties:
  - i) Intend a fair, comprehensive and lasting settlement of all claims raised or capable of being raised in the consolidated action, the Trout action and the CHRT proceeding including that:
    - (a) Canada knowingly underfunded child and family services for First Nations Children living on Reserve and in the Yukon;
    - (b) Canada’s failure to comply with Jordan’s Principle, a legal requirement designed to safeguard First Nations Children’s existing substantive equality rights guaranteed in the *Canadian Charter of Rights and Freedoms* (“**Charter**”); and
    - (c) Canada’s failure to provide First Nations Children with essential services available to non-First Nations Children or which would have been required to ensure substantive equality under the *Charter*;
  - ii) Intend that the Claims Process be administered in an expeditious, cost-effective, user-friendly, culturally sensitive, and trauma-informed manner;
  - iii) Desire to:
    - (a) safeguard the best interests of the Class Members who are minors and Persons under a Disability;
    - (b) minimize the administrative burden on Class Members; and

- (c) ensure culturally informed and trauma-informed mental health and cultural support services, as well as navigational assistance are available to Class Members.

U. This Settlement Agreement is designed such that some Class Members, or subsets of Class Members, receive direct compensation, while some others indirectly benefit from the Settlement Agreement without receiving direct compensation.

**NOW THEREFORE** in consideration of the mutual agreements, covenants, and undertakings set out herein, the Parties agree as follows:

## **ARTICLE 1 – INTERPRETATION**

### **1.01 Definitions**

In this Agreement, the following definitions apply:

**“Abuse”** means sexual abuse or serious physical abuse causing bodily injury, but does not include neglect nor emotional maltreatment.

**“Actions”** has the meaning set out in the Recitals.

**“Actuary”** means the actuary or firm of actuaries appointed by the Court on the recommendation of the Settlement Implementation Committee who is, or in the case of a firm of actuaries, at least one of the principals of which is, a Fellow of the Canadian Institute of Actuaries.

**“Administrator”** means the administrator appointed by the Court and its successors appointed from time to time pursuant to the provisions of Article [●].

**“AFN”** means the Assembly of First Nations.

**“AFN Supports”** has the meaning set out in Article [●].

**“Age of Majority”** means the age at which a Class Member is legally considered an adult under the provincial or territorial law of the province or territory where the Class Member resides, attached hereto as Schedule D.

**“Agreement in Principle”** or **“AIP”** means the Agreement in Principle dated December 31, 2021.

**“Agreement”** means this Settlement Agreement, including the Schedules attached hereto.

**“Approved Jordan’s Principle Class Member”** means a Jordan’s Principle Class Member whose Claim has been accepted by the Administrator, or on appeal by the Third-Party Assessor.

**“Approved Jordan’s Principle or Trout Family Class Member”** means a Jordan’s Principle or Trout Family Class Member whose Claim has been accepted by the Administrator, or on appeal by the Third-Party Assessor.

**“Approved Removed Child Class Member”** means a Removed Child Class Member whose Claim has been accepted by the Administrator, or on appeal by the Third-Party Assessor.

**“Approved Removed Child Family Class Member”** means the Caregiving Parent or Caregiving Grandparent of a Removed Child Class member, whose Claim has been accepted by the Administrator, or on appeal by the Third-Party Assessor.

**“Approved Trout Child Class Member”** means a Trout Child Class Member whose Claim has been accepted by the Administrator, or on appeal by the Third-Party Assessor.

**“Assessment Home”** means a home designed for an initial short-term placement where the needs of a Child are being assessed in order to match them to a longer term placement.

**“Auditors”** means the auditors appointed by the Court and their successors appointed from time to time pursuant to the provisions of Article [●].

**“Band List”** has the meaning set out in sections 10-12 of the *Indian Act*.

**“Band”** has the meaning set out in the *Indian Act*.

**“Base Compensation”** means the amount of compensation (excluding any applicable Enhancement Payment) approved by the Court as agreed to by the Plaintiffs, or the Settlement Implementation Committee based on advice from the Actuary, as part of the Claims Process, to be paid to an Approved Removed Child Class Member, an Approved Jordan’s Principle Class Member, an Approved Trout Child Class Member, an Approved Removed Child Family Class Member, or an Approved Jordan’s Principle or Trout Family Class Member. Such Base Compensation may be different for different Classes and may be made in more than one installment as the implementation of the Claims Process may require.

**“Budget”** has the meaning set out in Article [●].

**“Business Day”** means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the province or territory in which the person who needs to take action pursuant to this Agreement is ordinarily resident or a holiday under the federal laws of Canada applicable in the said province or territory.

**“Canada”** has the meaning set out in the preamble.

**“Caregiving Grandparent”** and **“Caregiving Grandparents”** means a biological or adoptive caregiving grandmother or caregiving grandfather who lived with and assumed and exercised parental responsibilities over a Removed Child Class Member at the time

of removal of the Child, or a Jordan's Principle Class Member or a Trout Child Class Member at the time of the Child's Confirmed Need for an Essential Service. Relationships of a foster parent or stepparent to a Child are excluded from giving rise to a Caregiving Grandparent relationship under this Agreement.

**"Caregiving Parent"** and **"Caregiving Parents"** means the caregiving mother or caregiving father, living with, and assuming and exercising parental responsibilities over a Removed Child Class Member at the time of removal of the Child, or a Jordan's Principle Class Member or a Trout Child Class Member at the time of the Child's Confirmed Need for an Essential Service. Caregiving Parent includes both biological and adoptive parents. A foster parent or stepparent is excluded as a Caregiving Parent under this Agreement.

**"Certification Orders"** mean collectively the order of the Federal Court dated November 26, 2021, certifying the Consolidated Action as a class proceeding and the order of the Federal Court dated February 11, 2022, certifying the Trout Action as a class proceeding, copies of which are attached at Schedules A and B.

**"Child"** or **"Children"** for the purposes of the Removed Child Class means a person who was, at the time of removal, under the Age of Majority of the person's place of residence as set out in Schedule D, Provincial and Territorial Ages of Majority, and for the purposes of the Jordan's Principle Class and Trout Child Class means a person under the provincial and territorial Age of Majority of the person's place of residence as set out in Schedule D, Provincial and Territorial Ages of Majority at the time of the existence of the Confirmed Need for an Essential Service.

**"Claim"** means a claim for compensation made by or on behalf of a Class Member.

**"Claimant"** means a person who makes a Claim by completing and submitting a Claims Form to the Administrator, or on whose behalf a Claim is made by such Class Member's Estate Executive, Estate Claimant or Personal Representative.

**"Claims Deadline"** means the date that is:

- (a) three (3) years following the delivery of the initial notice of approval of settlement for Class Members who have reached the Age of Majority by the date on which notice is delivered;
- (b) for class members under the Age of Majority, three (3) years after reaching the Age of Majority, so long as that date is at least three years from the date in (a); or
- (c) a reasonable extension of the Claims Deadline for individual Class Members approved on request by the Administrator on the grounds that the Claimant faced extenuating personal circumstances and was unable to submit a Claim as a result of physical or psychological illness or challenges, including homelessness, incarceration or addiction, or due to unforeseen community circumstances such as epidemics, community internet connectivity, pandemics, natural disasters,

community-based emergencies or service disruptions at a national, regional or community level.

**“Claims Form”** means a written declaration in respect of a Claim by a Class Member with Supporting Documentation or such other form as may be recommended by the Administrator and agreed to by the Settlement Implementation Committee.

**“Claims Process”** means the process, including a distribution protocol, to be further designed and detailed in accordance with this Agreement for the distribution of compensation under this Agreement to eligible Class Members. The Claims Process also includes, but is not limited to, the Incarcerated Class Members Process and such other processes as may be recommended by the Administrator and experts, agreed to by the Plaintiffs and approved by the Court, for the submission of Claims, determination of eligibility, assessment, verification, determination of possible enhancement, payment of compensation to Class Members, and the role of the Third-Party Assessor.

**“Class”** means Jordan’s Principle Class, Jordan’s Principle Family Class, Removed Child Class, Removed Child Family Class, Trout Child Class, and Trout Family Class, collectively. Reference to a “class” or “classes” with a lower case “c” is to any of the Jordan’s Principle Class, Jordan’s Principle Family Class, Removed Child Class, Removed Child Family Class, Trout Child Class, or Trout Family Class as may apply within the context of such reference.

**“Class Counsel”** means Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Company, Nahwegahbow Corbiere, and Fasken LLP, collectively.

**“Class Member”** and **“Class Members”** means any one or more individual members of the Class.

**“Confirmed Need”** means the need of a member of the Jordan’s Principle Class or Trout Child Class as confirmed by Supporting Documentation as defined for Jordan’s Principle Class or Trout Child Class.

**“Court”** means the Federal Court of Canada.

**“Cy-près Fund”** has the meaning set out in Article [●], established to primarily benefit Class Members who may not receive direct compensation under this Agreement.

**“Delay”** means where a member of the Jordan’s Principle Class or Trout Child Class requested an Essential Service from Canada and they received a determination on their request beyond a timeline to be agreed to by the Parties and specified in the Claims Process.

**“Denial”** means where a member of the Jordan’s Principle Class or Trout Child Class requested an Essential Service from Canada and that request was either denied or the member of the Jordan’s Principle Class or Trout Child Class did not receive a response as to acceptance or denial.

**“Eligible Deceased Class Member”** has the meaning set out in Article 13.02.

**“Eligibility Decision”** has the meaning set out in Article 5.02.

**“Enhancement Factor”** means any objective criterion agreed to by the Plaintiffs and approved by the Court that may be used by the Administrator to enhance the Base Compensation of some members of the Removed Child Class, Jordan’s Principle Class or Trout Child Class.

**“Enhancement Payment”** means an amount, based on Enhancement Factors, that may be payable to an Approved Removed Child Class Member, an Approved Jordan’s Principle Class Member, or a Trout Child Class Member, in addition to a Base Payment.

**“Essential Service”** means the list of services identified in List of Essential Services.

**“Estate Administrator”** includes an executor or administrator appointed or designated under federal, provincial or territorial legislation, as applicable under the circumstances.

**“Estate Executor”** means the executor, administrator, trustee or liquidator of an Eligible Deceased Class Member’s estate.

**“First Nations”** means:

- (a) with respect to the Removed Child Class, Jordan’s Principle Class, and Trout Child Class: individuals who are registered pursuant to the *Indian Act*;
- (b) with respect to the Removed Child Class, Jordan’s Principle Class, and Trout Child Class: individuals who are entitled to be registered under sections 6(1) or 6(2) of the *Indian Act*, as it read as of February 11, 2022 (the latter date of the Certification Orders);
- (c) with respect to the Removed Child Class: individuals who met Band membership requirements under sections 10-12 of the *Indian Act* by February 11, 2022 (the latter date of the Certification Orders) such as where their respective First Nation community assumed control of its own membership by establishing membership rules and the individuals were found to meet the requirements under those membership rules and were included on the Band List;
- (d) with respect to the Jordan’s Principle Class only: individuals who met Band membership requirements under sections 10-12 of the *Indian Act* pursuant to paragraph (c), above, AND who suffered a Delay, Denial, or Service Gap between January 26, 2016 and November 2, 2017;
- (e) with respect to the Jordan’s Principle Class only: individuals who were recognized as citizens or members of their respective First Nation by February 11, 2022 (the latter date of the Certification Orders) as confirmed by First Nations Council

Confirmation, whether under final agreement, self-government agreement, treaties or First Nations' customs, traditions and laws, AND who suffered a Delay, Denial, or Service Gap between January 26, 2016 and November 2, 2017.

**"First Nations Council Confirmation"** means a written confirmation, the form and contents of which will be agreed upon amongst the Plaintiffs subject to the Court's approval, from a First Nation designed for the purposes of the Claims Process to the effect that an individual is recognized as a citizen or member of their respective First Nation whether under treaty, agreement or First Nations' customs, traditions or laws.

**"Fund"** has the meaning set out in Article [●].

**"Group Home"** means a staff operated home funded by ISC where several Children are living together. Some Group Homes are parent-operated, where a couple with professional youth care training operate a Group Home together.

**"Implementation Date"** means the later of:

- (a) the day following the last day on which a Class Member may appeal or seek leave to appeal the Settlement Approval Order; or
- (b) the date on which the last of any appeals of the Settlement Approval Order is finally determined.

**"Incarcerated Class Members Process"** means the process for notice and claims specific to Class Members incarcerated in federal penitentiaries, provincial prisons, and other penal and correctional institutions.

**"Income Tax Act"** means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp).

**"Indian Act"** means the *Indian Act*, R.S.C. 1985, c. 1-5.

**"Investment Committee"** means an advisory body constituted in accordance with this Agreement and Schedule G, Investment Committee Guiding Principles.

**"ISC"** has the meaning in the Recitals and includes any predecessor or successor department.

**"Jordan's Principle Class"** means all First Nations individuals who, during the period between December 12, 2007 and November 2, 2017 (the **"Jordan's Principle Class Period"**), did not receive from Canada (whether by reason of a Denial or a Service Gap) an Essential Service relating to a Confirmed Need, or whose receipt of said Essential Service relating to a Confirmed Need was delayed by Canada, on grounds, including but not limited to, lack of funding or lack of jurisdiction, or as a result of a Service Gap or jurisdictional dispute with another government or governmental department while they were under the Age of Majority.

**“Jordan’s Principle Family Class”** means all persons who are the brother, sister, mother, father, grandmother or grandfather of a member of the Jordan’s Principle Class at the time of Delay, Denial or Service Gap. Amongst the Jordan’s Principle Family Class, only the Caregiving Parents or Caregiving Grandparents may receive direct compensation if otherwise eligible under this Agreement.

**“Jordan’s Principle”** means a child-first substantive equality principle named after the late Jordan River Anderson that applies equally to all First Nations Children whether resident on or off reserve, including the Northwest Territories.

**“List of Essential Services”** is a list of Essential Services to be agreed to by the Plaintiffs for the purposes of the Claims Process, with assistance from experts, consisting of the Essential Services that, if subject to Delay, Denial or a Service Gap, would have resulted in material impact on the Child.

**“Non-kin Foster Home”** means any family-based care funded by ISC.

**“Non-paid Kin or Community Home”** means an informal placement that has been arranged within the family support network; the child welfare authority does not have temporary custody and the placement is not funded by ISC.

**“Northern or Remote Community”** means a community as agreed upon by the Plaintiffs and set out in the Claim Process.

**“Notice Plan”** means the Notice Plan as recommended by the Administrator and agreed by the Parties, subject to the Court’s approval.

**“Ongoing Fees”** has the meaning set out in Article 16.03.

**“Opt-Out”** means (a) the delivery by a Class Member to the Administrator of an opt-out form or a written request to be removed from the Actions before the Opt-Out Deadline; or (b) after the Opt-Out Deadline, a Class Member obtaining leave of the Court to opt-out of the Actions in accordance with this Agreement.

**“Opt-Out Deadline”** means the one hundred eightieth (180th) day following the publication of the notice of certification, after which Class Members may no longer Opt-Out of the Actions, except with leave from the Court.

**“Ordinarily Resident on Reserve”** means:

- a) a First Nations individual who lives in a permanent dwelling located on a First Nations Reserve at least 50% of the time and who does not maintain a primary residence elsewhere;
- b) a First Nations individual who is living off-Reserve while registered full-time in a post-secondary education or training program who is receiving federal, Band or Aboriginal organization education/training funding support and who:
  - a. would otherwise reside on-Reserve;



- b. maintains a residence on-Reserve;
  - c. is a member of a family that maintains a residence on-Reserve; or
  - d. returns to live on-Reserve with parents, guardians, caregivers or maintainers when not attending school or working at a temporary job.
- c) a First Nations individual who is temporarily residing off-Reserve for the purpose of obtaining care that is not available on-Reserve and who, but for the care, would otherwise reside on-Reserve;
  - d) a First Nations individual who is temporarily residing off-Reserve for the primary purpose of accessing social services because there is no reasonably comparable service available on-Reserve and who, but for receiving said services, would otherwise reside on-Reserve;
  - e) a First Nations individual who at the time of removal met the definition of ordinarily resident on reserve for the purpose of receiving child welfare and family services funding pursuant to a funding agreement between Canada and the province/territory in which the individual resided (including, but not limited to, ordinarily resident on reserve individuals funded through the cost-shared model under the Canada-Ontario 1965 Indian Welfare Agreement).

**“Out-of-home Placement”** means a distinct location where a Removed Child Class Member has been placed pursuant to a removal, such as an Assessment Home, Non-kin Foster-home, Paid Kinship-home, Group Home, a Residential Treatment Facility, or other similar placement funded by ISC.

**“Paid Kinship Home”** means a formal placement that has been arranged within the family support network and paid for by ISC, where the child welfare authority has temporary or full custody.

**“Parties”** means the Plaintiffs and Canada;

**“Person Under Disability”** means:

- (a) a person under the Age of Majority under the legislation of their province or territory of residence; or
- (b) an individual who is unable to manage or make reasonable judgments or decisions in respect of their affairs by reason of mental incapacity including those for whom a Personal Representative has been appointed, or designated by operation of the law, pursuant to the applicable provincial, territorial or federal legislation.

**“Personal Representative”** means the Person appointed, or designated by operation of the law, pursuant to the applicable provincial, territorial or federal legislation to manage or make reasonable judgments or decisions in respect of the affairs of a Person Under Disability who is an eligible claimant and includes an administrator for property.

**“Plaintiffs”** means collectively the Moushoom Plaintiffs, the AFN Plaintiffs and the Trout Plaintiffs.

**“Professional”** means a professional with expertise relevant to a Child’s Confirmed Need(s), for example: a medical professional or other registered professionals available to a Class Member in their place of residence and community (particularly in a Northern or Remote Community where there may not have been, or be, access to specialists, but there may have been access to community health nurses, social support workers, and mental health workers), or an Elder or Knowledge Keeper who is recognized by the Child’s specific First Nations community.

**“Recitals”** means the recitals to this Agreement.

**“Removed Child Class”** means all First Nations individuals who, at any time during the period between April 1, 1991 and March 31, 2022 (the **“Removed Child Class Period”**), while they were under the Age of Majority, were removed from their home by child welfare authorities or voluntarily placed into care, and whose placement was funded by ISC, such as an Assessment Home, a Non-kin Foster Home, a Paid Kinship Home, a Group Home, or a Residential Treatment Facility or another ISC-funded placement while they, or at least one of their Caregiving Parents or Caregiving Grandparents, were Ordinarily Resident on a Reserve or were living in the Yukon, but excluding children who lived in a Non-paid Kin or Community Home through an arrangement made with their caregivers and excluding individuals living in the Northwest Territories at the time of removal.

**“Removed Child Family Class”** means all persons who are the brother, sister, mother, father, grandmother or grandfather of a member of the Removed Child Class at the time of removal.

**“Reserve”** means a tract of land, as defined under the *Indian Act*, the legal title to which is vested in the Crown and has been set apart for the use and benefit of a First Nation band.

**“Residential Treatment Facility”** means a treatment program for several Children living in the treatment facility with 24 hours a day trained staff, including locked or secure and unlocked residences, funded by ISC.

**“Service Gap”** means each of the Essential Services that may be identified as a Service Gap on the List of Essential Services.

**“Settlement Approval Hearing”** means a hearing of the Court to determine a motion to approve this Agreement.

**“Settlement Approval Order”** means the draft order submitted to the Court regarding the approval of this Agreement, the form and content of which will be agreed upon amongst the Parties.

**“Settlement Funds”** means a total of \$20,000,000,000 (\$20 billion), which Canada will pay to settle the claims of the Class in accordance with this Agreement.

**“Settlement Implementation Committee”** or **“Settlement Implementation Committee and its Members”** means a committee established pursuant to Article [●].

**“Settlement Implementation Report”** has the meaning set out in Article [●].

**“Spell in Care”** means a continuous period in care, which starts when a Child is taken into out-of-home care and ends when the Child is discharged from care, by returning home, moving into another arrangement in a Non-paid Kin or Community Home, being adopted, or living independently at the Age of Majority. ISC data considers a Spell in Care by the start and end dates of each continuous period of Out-of-home Placement.

**“Supporting Documentation”** means:

- (a) for the Removed Child Class: such documentation as may be required to be submitted by a Removed Child Class Member in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;
- (b) for the Jordan’s Principle Class and Trout Child Class: such documentation as may be required to be submitted by a member of the Jordan’s Principle Class and Trout Child Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;
- (c) for the Removed Child Family Class: such documentation as may be required to be submitted by a member of the Removed Child Family Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;
- (d) for the Jordan’s Principle Family Class: such documentation as may be required to be submitted by a member of the Jordan’s Principle Family Class in accordance with this Agreement to substantiate eligibility and compensation, if any, under the applicable Claims Form;
- (e) for the Trout Family Class: the documentation to be required to be submitted by a member of the Trout Family Class in accordance with this Agreement to substantiate eligibility and compensation, if any, under the applicable Claims Form; and
- (f) for Eligible Deceased Class Members: the documentation to be required to be submitted in accordance with this Agreement to substantiate eligibility and compensation, if any, under the applicable Claims Form.

**“Time in Care”** means the total amount of time that a Removed Child Class Member was placed into care regardless of the number of Spells in Care.

**“Third-Party Assessor”** means the person or persons appointed by the Court to carry out the duties of the Third-Party Assessor as stated in this Agreement, to be particularized in the Claims Process and their successors appointed from time to time, as approved by the Court.

**“Trout Child Class”** means all First Nations individuals who, during the period between April 1, 1991 and December 11, 2007 (the **“Trout Child Class Period”**), while they were under the Age of Majority, did not receive from Canada (whether by reason of a Denial or a Service Gap) an Essential Service relating to a Confirmed Need, or whose receipt of said Essential Service was delayed by Canada, on grounds, including but not limited to, lack of funding or lack of jurisdiction, or as a result of a Service Gap or jurisdictional dispute with another government or governmental department.

**“Trout Family Class”** means all persons who are the brother, sister, mother, father, grandmother or grandfather of a member of the Trout Child Class at the time of Delay, Denial or Service Gap. Amongst the Trout Family Class, only the Caregiving Parents or Caregiving Grandparents may receive direct compensation if otherwise eligible under this Agreement.

**“Trustee”** means the trustee appointed by the Court for the purposes of this Agreement.

## **1.02 Headings**

The division of this Agreement into paragraphs and the use of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

## **1.03 Extended Meanings**

In this Agreement, words importing the singular number include the plural and vice versa, and words importing any gender or no gender include all genders. The term “including” means “including without limiting the generality of the foregoing”. Any reference to a government ministry, department or position will include any predecessor or successor government ministry, department or position.

## **1.04 Interpretation**

The Parties acknowledge that they have reviewed and participated in settling the terms of this Agreement and they agree that there will be no presumptive rule of construction to the effect that any ambiguity in this Agreement is to be resolved in favour of any particular Party.

## **1.05 Statutory References**

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute

as enacted on the date of such reference and not as the statute may from time to time be amended, re-enacted, or replaced, and the same applies to any regulations made thereunder.

### **1.06 Business Day**

Where the time on or by which any action required to be taken hereunder expires or falls on a day that is not a Business Day, such action may be done on the next succeeding day that is a Business Day.

### **1.07 Currency**

All references to currency herein are to lawful money of Canada.

### **1.08 Compensation Inclusive**

The amounts payable to Class Members under this Agreement are inclusive of any prejudgment or post-judgment interest.

### **1.09 Schedules**

The following Schedules to this Agreement are incorporated into and form part of this Agreement:

Schedule A: Consolidated Action Certification Order

Schedule B: Trout Action Certification Order

Schedule C: Framework for Supports for Claimants in Compensation Process

Schedule D: Provincial and Territorial Ages of Majority

Schedule E: Summary Chart of Jordan's Principle / Trout Approach

Schedule F: Examples Chart of Removed Child Family Class Approach

Schedule G: Investment Committee Guiding Principles

### **1.10 Benefit of the Agreement**

This Agreement will inure to the benefit of and be binding upon the Parties, and for Canada and Class Members, upon their estates, heirs, Estate Executors, Estate Claimants, and Personal Representatives, subject to eligibility criteria herein.

### **1.11 Applicable Law**

This Agreement will be governed by the laws of Canada, together with the laws of the province or territory where the Class Member is ordinarily resident, as applicable, save where otherwise specified in this Agreement.

### **1.12 Counterparts**

This Agreement may be executed electronically and in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same Agreement.

### **1.13 Official Languages**

As soon as practicable after the execution of this Agreement Class Counsel will arrange for the preparation of an authoritative French version. The French version will be of equal weight and force at law.

### **1.14 Ongoing Supervisory Role of the Court**

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

## **ARTICLE 2 - EFFECTIVE DATE OF AGREEMENT**

### **2.01 Date when Binding and Effective**

On the Implementation Date, this Agreement will become binding on all Class Members who have not Opted-Out in accordance with Article [●].

### **2.02 Effective Upon Approval**

None of the provisions of this Agreement will become effective unless and until the Court approves this Agreement.

### **2.03 Legal Fees Severable**

Class Counsel's fees for prosecuting the Actions have been or will be negotiated separately from this Agreement and remain subject to approval by the Court. The Court's decision on Class Counsel's fees will have no effect on the implementation of this Agreement. If the Court refuses to approve the fees of Class Counsel, the remainder of the provisions of this Agreement will remain in full force and effect and in no way will be affected, impaired or invalidated.

## **ARTICLE 3 – ADMINISTRATION**

### **3.01 Designation of Administrator**

Initially on the recommendation of the Plaintiffs based on advice received from experts, the Court will appoint an Administrator to administer the Claims Process with such powers, rights, duties and responsibilities as are set out in Article [●] and such other powers, rights, duties and responsibilities as are determined by the Settlement

Implementation Committee and approved by the Court. Following the establishment of the Settlement Implementation Committee and on the recommendation of the Settlement Implementation Committee, the Court may replace the Administrator at any time.

### **3.02 Duties of the Administrator**

- 1) The Administrator's duties and responsibilities include the following:
  - a) in consultation with the Settlement Implementation Committee, developing, installing, and implementing systems, forms, information, guidelines and procedures for processing Claims and appeals of the decisions of the Administrator to the Third-Party Assessor in accordance with this Agreement and the Claims Process;
  - b) in consultation with the Settlement Implementation Committee, developing, installing, and implementing systems and procedures for making payments of compensation in accordance with this Agreement and the Claims Process;
  - c) receiving funds from the Trust and the Trustee to make payments to Class Members in accordance with this Agreement and the Claims Process;
  - d) ensuring adequate staffing for the performance of its duties under this Agreement, and training and instructing personnel;
  - e) ensuring, in consultation with the Settlement Implementation Committee, First Nations participation and the reflection of First Nations perspectives, appropriate cultural knowledge, use of proper experts, and a trauma-informed approach to the Class;
  - f) keeping or causing to be kept accurate accounts of its activities and its administration and preparing annual audited financial statements, as well as reports, and records as are required by the Settlement Implementation Committee, the Auditors and the Court;
  - g) reporting to the Settlement Implementation Committee on a monthly basis respecting:
    - i) Claims received and determined;
    - ii) Claims deemed ineligible and the reason(s) for that determination; and
    - iii) appeals from the Administrator's decisions and the outcomes of those appeals.
  - h) identifying and reporting to the Settlement Implementation Committee systemic issues in the implementation of the Agreement and the Claims Process as such issues arise and in any event no later than on a quarterly basis, and working with the Settlement Implementation Committee and any experts as may be required to find a resolution to such systemic issues; a systemic issue is one that affects

more than one Class Member;

- i) responding to inquiries from Claimants respecting Claims and Claims Forms;
  - j) providing navigational supports to Class Members in the Claims Process as outlined out in Schedule C: Framework for Supports for Claimants in Compensation Process, including assistance with the filling out and submission of Claims Forms, assistance with obtaining Supporting Documentation, and assistance with appeals to the Third-Party Assessor pursuant to this Agreement, reviewing Claims Forms, Supporting Documentation, and First Nations Council Confirmations, and determining a Claimant's eligibility for compensation in the Class;
  - k) maintaining a database with all information necessary to permit the Settlement Implementation Committee and the Actuary to assess the financial sufficiency of the Trust Fund;
  - l) in appropriate circumstances, requiring further Supporting Documentation in relation to a claimed Confirmed Need from a different Professional. In case of doubt, the Administrator will consult with the Settlement Implementation Committee for direction;
  - m) communicating with Claimants in either English or French, as the Claimant elects, and if a Claimant expresses the desire to communicate in a language other than English or French, making best efforts to accommodate such Claimant;
  - n) annually report to the Court on the Administrator's above tasks;
  - o) determining requests for the extension of the Claims Deadline by individual Class Members facing extenuating personal circumstances, such as where a Claimant was unable as a result of physical or psychological illness or challenges, including homelessness, incarceration or addiction, or due to unforeseen circumstances such as epidemics, community internet connectivity, pandemics, natural disasters, community based emergencies or service disruptions at a national, regional, or community level, to submit a Claim before the Claims Deadline, subject to further direction on such circumstances from the Settlement Implementation Committee; and
  - p) such other duties and responsibilities as the Court or the Settlement Implementation Committee may from time to time direct.
- 2) The Administrator will in carrying out its duties and responsibilities outlined in Article [●]:
- (a) act in accordance with the principles governing the administration of Claims set out in this Article, in particular that the Claims Process intends to be cost-



effective, user-friendly, culturally sensitive, trauma-informed, and non-traumatizing to Class Members;

- (b) ensure quality assurance processes are documented and transparent;
- (c) comply with the service standards established by the Parties; and
- (d) perform other duties and responsibilities as the Court or the Settlement Implementation Committee may from time to time direct.

- 3) Except as otherwise provided in this Agreement and the Claims Process, the Administrator will request on a monthly basis such funds from the Trustee as may be necessary to pay approved Claims. The Trustee will provide such funds to the Administrator, and the Administrator will pay such funds to the Class Members in accordance with this Agreement and the Claims Process.

### **3.03 Appointment of the Third-Party Assessor**

On the recommendation of the Parties until the approval of this Agreement and of the Settlement Implementation Committee thereafter, the Court will appoint as necessary from time to time one or more Third-Party Assessors composed of experts, including First Nations experts, with demonstrated knowledge of, and experience in, First Nations child and family services and Jordan's Principle. On the recommendation of the Settlement Implementation Committee, the Court may replace a Third-Party Assessor at any time. The Third-Party Assessor will perform the duties of the Third-Party Assessor set out in this Agreement and the Claims Process.

### **3.04 Responsibility for Costs**

- 1) Canada will pay:
  - a) the reasonable costs of giving notice in accordance with the Notice Plans to be developed by the Parties, including Canada and the Settlement Implementation Committee, as approved and ordered by the Court;
  - b) the reasonable costs and disbursements of the Administrator, the Third-Party Assessor, the Trustee, the Auditor, and any experts, advisors or consultants retained by the Settlement Implementation Committee for the purpose of implementing this Agreement;
  - c) the costs of the administration of the Trust;
  - d) legal fees pursuant to Article [●];
  - e) the costs of the supports for Class Members throughout the Claims Process as outlined in Schedule C: Framework for Supports for Claimants in Compensation Process; and
  - f) the costs of the Dispute Resolution Process in accordance with Article [●].

- 2) The Settlement Implementation Committee will provide a forecast of the costs and disbursements of the administration of this Agreement to Canada on an annual basis, on or before December 1 of each year regarding the year ahead, which forecast may be revised due to unforeseen circumstances. In such case, the Settlement Implementation Committee will advise Canada in writing and Canada may dispute the reasonableness of the forecast.
- 3) None of the costs payable by Canada pursuant to this Article will be deducted from the Settlement Funds.

#### **ARTICLE 4 - TRUST FUND**

##### **4.01 Establishment of the Trust Fund**

- 1) As soon as practicable after the appointment and settlement of the Trust in accordance with Article [●], the Trustee will establish investment trust account(s) (collectively, the “**Trust Account(s)**”) at a Schedule 1 Canadian Bank for the purposes of paying compensation to eligible Class Members.
- 2) No later than thirty (30) business days following the Implementation Date, and in accordance with the terms of Article [●], Canada will make a contribution to the Trust in the amount of \$20 billion.

##### **4.02 Distribution of the Trust Fund**

The Trustee will periodically, on request based on approved Claims, pay the Administrator from the Trust Account(s) for the purpose of distributing the Trust Fund for the benefit of the Class Members in accordance with this Agreement, including by paying compensation in accordance with Article [●] and the Claims Process.

#### **ARTICLE 5 - CLAIMS PROCESS**

##### **5.01 Principles Governing Claims Administration**

- 1) The design and implementation of the distribution protocol within the Claims Process will be within the sole discretion of the Plaintiffs, subject to the approval of the Court. The Plaintiffs will establish the Claims Process and may seek input from the First Nation Child and Family 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 at a hearing scheduled for December 20, 2022.
- 2) Notwithstanding Article [●], Canada will have standing to make submissions on the distribution protocol at the hearing on the motion to approve same before the Federal Court.

- 3) The Claims Process is intended to be expeditious, cost-effective, user-friendly, culturally sensitive, trauma-informed, and non-traumatizing to participants. The Administrator will identify and implement service standards for the Claims Process no later than 30 days after the Implementation Date.
- 4) The Administrator and the Third-Party Assessor will, in the absence of reasonable grounds to the contrary, presume that a Claimant is acting honestly and in good faith with respect to any Claim.
- 5) In considering a Claims Form, Supporting Documentation, or a First Nations Council Confirmation, the Administrator and the Third-Party Assessor will draw all reasonable inferences that can be drawn in favour of the Claimant.
- 6) The Administrator will make reasonable efforts to obtain verification of each Claim within six months of the receipt of the completed Claim, with all required elements. If the Administrator identifies systemic issues with its ability to verify Claims in accordance with the Claims Process within six months, the Administrator will refer the matter to the Settlement Implementation Committee to determine whether a different service standard should be applied to the Class.
- 7) In designing the Claims Process, the Administrator and the Plaintiffs will develop standards relating to the processing of Claims in compliance with Article 6.06 of this Agreement, insofar as it recognizes that Class Members' circumstances may require flexibility in the type of documentation necessary to support the Claims Forms due to challenges such as, but not limited to, the Child's age or developmental status at the time of the events, the disappearance of records over time, retirement or death of professionals involved in a Child's case, systemic barriers to accessing professionals, and therefore, for example, allows for Supporting Documentation that is contemporaneous or current.
- 8) The Claims Process regarding the determination of Claims from members of the Jordan's Principle Class and the Trout Child Class will include a review for the purpose of making a recommendation on eligibility and compensation to the Administrator by an individual with specific culturally appropriate health and social training on Jordan's Principle, Essential Services, Confirmed Needs, Professionals, and Supporting Documentation.

## **5.02 Eligibility Decisions and Enhanced Compensation Decisions**

- 1) The Administrator will make the decision on eligibility and compensation.
- 2) The Administrator will review each Claims Form, Supporting Documentation, First Nations Council Confirmation, recommendation under Article 5.01(8), and such other information as the Administrator considers relevant to determine whether each Claimant is eligible for compensation.

- 3) A First Nations Council Confirmation is required for Jordan's Principle Class and Trout Child Class Claimants who solely meet the definition of First Nation as defined in Article 1 based on having been recognized as a member or citizen by their respective First Nations under agreement, treaties or First Nations' customs, traditions and laws by February 11, 2022 (the latter date of the Certification Orders).
- 4) Within six months of the receipt of a completed Claim with all required elements, the Administrator will provide written reasons to a Claimant in any case of:
  - a) an Eligibility Decision;
  - b) a decision that a member of the Removed Child Family Class is not entitled to receive compensation due to indication of Abuse;
  - c) a decision that a Claimant is not entitled to an enhancement payment available to that Class; or
  - d) a decision to refuse to extend the Claims Deadline with respect to a Class Member.
- 5) Only a Claimant approved by an Eligibility Decision may be entitled to compensation pursuant to Article [●].
- 6) A Claimant will have 30 days to commence an appeal to the Third-Party Assessor in accordance with the Claims Process after receiving:
  - a) an Eligibility Decision that a Claimant is not a Class Member;
  - b) a decision that a Claimant is not entitled to an enhancement payment as defined in the Claims Process;
  - c) a refusal to extend the Claims Deadline with respect to an individual Class Member; or
  - d) a dispute amongst Approved Removed Child Family Members receiving a pro rata share of a Base Compensation under Article 6.04(?).
- 7) The Third-Party Assessor's decision on an appeal pursuant to Article [●] will be final and not subject to judicial review, further appeal or any other remedy by legal action.
- 8) The Third-Party Assessor will comply with the procedure and timeline standards established in the Claims Process for an appeal from a decision of the Administrator.
- 9) There will be no right of appeal by a Class Member who belongs to a category, such as brothers and sisters, that is not entitled to receive direct payment under this Agreement.

## **ARTICLE 6 - COMPENSATION**

### **6.01 General Principles Governing Compensation**

- 1) The Plaintiffs will design a Claims Process with the goal of minimising the risk of causing trauma to Class Members.

- 2) No member of the Removed Child Class, Jordan's Principle Class or Trout Child Class will be required to submit to an interview, examination or other form of *viva voce* evidence taking.
- 3) The Plaintiffs will agree to require fair and culturally appropriate Supporting Documentation in accordance with this Agreement tailored to each different class for the purposes of the Claims Process.
- 4) A Class Member may claim compensation starting one year before they reach the Age of Majority, provided that no compensation is paid to that Class Member until after the Age of Majority. A Class Member may only receive compensation under the terms of this Agreement after the Age of Majority, except in the case of an Exceptional Early Payment in accordance with Article 6.07.01. The Claims Process will include a means by which a Child may register with the Administrator at any time in order to receive updates on the implementation of this Agreement.
- 5) Enhancement Factors have been selected as appropriate proxies for harm, based on expert opinion, and are designed to enable proportionate compensation to the Removed Child Class, the Jordan's Principle Class, and the Trout Child Class.
- 6) Compensation under this Agreement will take the form of either direct payment to eligible Class Members who have claimed through the Claims Process and been approved by the Administrator or indirect benefit to the Class through the Cy-près Fund.
- 7) A Class Member who qualifies for compensation as a member of more than one class will receive the higher amount for which the Class Member qualifies amongst the applicable classes, and compensation under the classes will not be combined, with the following exception: a Class Member who qualifies as a member of the Removed Child Class and the Removed Child Family Class will be entitled to a combined amount of compensation as a member of both of those classes.

## **6.02 Governing Principles on Removed Children**

- 1) This Agreement seeks to adopt a trauma-informed and culturally sensitive approach to compensating the Removed Child Class and the Caregiving Parents or Caregiving Grandparents of the Removed Child Class.
- 2) To the extent possible and based on objective criteria, the Agreement seeks to bring proportionality to the compensation process such that members of the Removed Child Class who suffered the most harm may receive higher compensation in the Claims Process.
- 3) For the Removed Child Class, eligibility for compensation and Enhancement Factors will be based on objective criteria and data primarily from ISC and Supporting Documentation as the case may be.

### 6.03 Removed Child Class Compensation

- 1) Base Compensation payable to an Approved Removed Child Class Member will not be multiplied by the number of Spells in Care.
- 2) An Approved Removed Child Class Member will be entitled to receive Base Compensation of \$40,000.
- 3) An Approved Removed Child Class Member may be entitled to an Enhancement Payment based on the following Enhancement Factors ("**Removed Child Enhancement Factors**"):
  - a) the age at which the Removed Child Class Member was removed for the first time;
  - b) the total number of years that a Removed Child Class Member spent in care;
  - c) the age of a Removed Child Class Member at the time they exited the child welfare system;
  - d) whether a Removed Child Class Member was removed to receive an Essential Service relating to a Confirmed Need;
  - e) whether the Removed Child Class Member was removed from a Northern or Remote Community; and
  - f) the number of Spells in Care for a Removed Child Class Member and/or, if possible, the number of Out-of-home Placements applicable to a Removed Child Class Member who spent more than one (1) year in care.
- 4) The Plaintiffs will design a system of weighting the Removed Child Enhancement Factors for the Removed Child Class based on the input of experts that will reflect the relative importance of each Enhancement Factor as a proxy for harm.
- 5) The Plaintiffs have estimated a budget of \$7.25 billion for the Removed Child Class.

### 6.04 Caregiving Parents or Caregiving Grandparents of Removed Child Class

- 1) Amongst the Removed Child Family Class, only the Caregiving Parents or Caregiving Grandparents may receive direct compensation if otherwise eligible under this Agreement. Brothers and sisters are not entitled to direct compensation but may benefit indirectly from this Agreement through the Cy-près Fund.
- 2) A foster parent or stepparent is not entitled to compensation under this Agreement and is not entitled or permitted to claim compensation on behalf of a Child under this Agreement.
- 3) The Base Compensation of an Approved Removed Child Family Class Member will not be multiplied based on the number of removals or Spells in Care for a Child or the number of Children in care. No Approved Removed Child Family Class Member will receive more than one Base Compensation.

- 4) A Caregiving Parent or Caregiving Grandparent who has committed Abuse that has resulted in the Removed Child Class member's removal is not eligible for compensation in relation to that Removed Child. However, a Caregiving Parent or Caregiving Grandparent is not barred from receiving compensation if the Caregiving Parent or Caregiving Grandparent is otherwise eligible for compensation as a member of another class defined under this Agreement.
- 5) The Plaintiffs have estimated a budget of \$5.75 billion for the Removed Child Family Class.
- 6) If a Child lived with a Caregiving Grandparent at the time of removal, such a Caregiving Grandparent may be eligible to seek compensation.
- 7) A maximum compensation amount of two Base Compensation payments per Child among Caregiving Parents and Caregiving Grandparents of a Child, regardless of number of Spells in Care or removals, may be distributed under this Agreement, if otherwise eligible, according to the following priority list:
  - (a) Category A: Caregiving Parents who are biological parents; then
  - (b) Category B: Caregiving Parents who are adoptive parents, if applicable; then
  - (c) Category C: Caregiving Grandparent(s).
- 8) The Parties have budgeted the Base Compensation for an Approved Removed Child Family Class Member to be \$40,000.
- 9) An Approved Removed Child Family Class Member may receive an increased Base Compensation in the event that more than one Child of the Approved Removed Child Family Class Member has been removed. Such Base Compensation is budgeted to be \$60,000.
- 10) If the Settlement Implementation Committee has allocated a Trust Fund Surplus to Approved Removed Child Family Class Members pursuant to Article 6.08(5), the Settlement Implementation Committee may determine that the maximum combined amount of base and additional compensation to be awarded to an Approved Removed Child Family Class Member who has had more than one Child removed may be greater than \$60,000.
- 11) The final quantum of Base Compensation to be paid to each Approved Removed Child Family Class Member will be determined by the Settlement Implementation Committee in consultation with the Actuary, having regard to the number of Approved Removed Child Family Class Members and the budget for the Removed Child Family Class under this Article, subject to Court approval.
- 12) Payments to Approved Removed Child Family Class Members who may be entitled to receive compensation under this Article before the end of the Claims Period may be

staggered into installments in order to ensure sufficient funds exist to pay like amounts to like Claimants regardless of when they submitted their Claim during the Claims Period.

#### **6.04.01 Priorities in Compensation for Removed Child Family Class Members**

- 1) Where one or two Category A Caregiving Parents have submitted a Claim, the Administrator will determine their Claim in accordance with the timelines specified in Article 5.02(4), and if they are determined to be Approved Removed Child Family Class Members, the Administrator will pay their compensation in accordance with the timelines specified in Article 6.11, subject to all other applicable limitations under this Agreement.
- 2) The Administrator will not pay any Claims by adoptive Caregiving Parents (Category B) or Caregiving Grandparents (Category C) until after the expiration of the Claims Deadline in order to determine:
  - a) whether more than two Caregiving Parents or Caregiving Grandparents have submitted a Claim with respect to the same Child; and
  - b) the amount of compensation, if any, payable to each such Claimant in accordance with this Article.
- 3) In the following situations, the Category B adoptive Caregiving Parents and the Category C Caregiving Grandparents of one Removed Child Class Member will share pro rata the Base Compensation available (A summary of this Article as an interpretive aid is attached as Schedule F: Examples Chart of Removed Child Family Class Approach. In the case of a conflict, the Articles in this Agreement will govern.):
  - a) Category C Caregiving Grandparents will share pro rata two times the Base Compensation where all the following conditions are met:
    - i) greater than two Category C Caregiving Grandparents are approved for compensation; and
    - ii) no Category A biological Caregiving Parent or Category B adoptive Caregiving Parent has been approved for compensation.
  - b) Category C Caregiving Grandparents will share pro rata one Base Compensation where all the following conditions are met:
    - i) no Category A biological Caregiving Parent has been approved for compensation;
    - ii) Only one Category B adoptive Caregiving Parent has been approved for compensation; and
    - iii) greater than one Category C Caregiving Grandparents is approved for compensation.



- c) Category B adoptive Caregiving Parents or Category C Caregiving Grandparents will share pro rata one Base Compensation where all the following conditions are met:
  - i) only one Category A biological Caregiving Parent is approved for compensation; and
  - ii) greater than one Category B adoptive Caregiving Parent or greater than one Category C Caregiving Grandparent is approved for compensation.
- 4) The Claims Process may include provisions for exceptional circumstances to the following effect: The Administrator may determine a Claim by an adoptive Caregiving Parent (Category B) or a Caregiving Grandparent (Category C) before the expiration of the Claims Deadline in accordance with the timelines specified in Article 5.02(4), and if they are determined to be Approved Removed Child Family Class Members, the Administrator will pay their compensation in accordance with the timelines specified in Article 6.11, subject to all other applicable limitations under this Agreement only if the Claimant has submitted Claims Forms and Supporting Documentation substantiating that all other biological parent(s), adoptive parent(s), if applicable, and grandparent(s) of the Child have become deceased or have expressly renounced their entitlement to make a Claim under this Agreement.
- 5) Any dispute amongst Caregiving Parents or Caregiving Grandparents will be subject to a summary adjudicative determination by the Third-Party Assessor in accordance with the Claims Process.

#### **6.05 Governing Principles Regarding Jordan's Principle and Trout Classes**

- 1) To the extent possible, this Agreement applies the same methodology to the Jordan's Principle Class and Trout Child Class.
- 2) This Agreement intends to:
  - (a) be trauma informed regarding the Jordan's Principle Class and the Trout Child Class;
  - (b) avoid subjective assessments of harm, individual trials, or other cumbersome methods of making Eligibility Decisions with respect to this class; and
  - (c) use objective criteria to assess Class Members' needs and circumstances as a proxy for the significant harm inflicted on such Class Members in a discriminatory system.
- 3) The Base Compensation of an Approved Jordan's Principle Class Member or an Approved Trout Child Class Member will not be multiplied based on the number of Essential Services that have been confirmed to have been needed by the Child.

## 6.06 Jordan's Principle and Trout

- 1) The Plaintiffs will design the portion of the Claims Process with respect to members of the Jordan's Principle Class, Jordan's Principle Family Class, the Trout Child Class, and the Trout Family Class in accordance with this Article. A summary of the approach in this Article as an interpretive aid is attached as Schedule E: Summary Chart of Jordan's Principle / Trout Approach. In the case of a conflict, the Articles in this Agreement will govern.
- 2) 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:
  - (a) a Class Member's Confirmed Need was not met because of a Denial of a requested Essential Service;
  - (b) a Class Member experienced a Delay in the receipt of a requested Essential Service for which they had a Confirmed Need; or
  - (c) a Class Member's Confirmed Need was not met because of a Service Gap even if the Essential Service was not requested.
- 3) The List of Essential Services may consist of two categories of Essential Services based on advice from experts relating to objective criteria:
  - (a) Essential Services relating to Children whose circumstances, based on an Essential Service that they are confirmed to have needed, are expected to have included significant impact ("**Significant Impact Essential Service**"); and
  - (b) Essential Services that are not expected to have necessarily related to significant impact ("**Other Essential Service**").
- 4) The Plaintiffs will follow the following timeline in collaborating to create the List of Essential Services:
  - (a) The Plaintiffs will confer with experts to review the List of Essential Services by June 15, 2022, or such other date as agreed to by the Parties.
  - (b) The Plaintiffs will prepare a final List of Essential Services by August 5, 2022.
  - (c) The Plaintiffs will have an expert report in support of the finalized List of Essential Services by August 19, 2022.
- 5) A Claimant will be considered to have established a Confirmed Need if the Claimant has provided Supporting Documentation and has been approved by the Administrator.
- 6) Supporting Documentation will include proof of a recommendation by a Professional consistent with the following principles:

- (a) Permissible proof includes contemporaneous and/or current proof of assessment, referral or recommendation to account for the difficulties in retaining and obtaining historic records during the Trout Child Class Period and Jordan's Principle Class Period.
  - (b) Permissible proof includes proof of assessment, referral or recommendation from a Professional within that Professional's expertise as may be available to the Class Member in their place of residence, including those in a Northern and Remote Community.
  - (c) In order to establish a Confirmed Need, the proof from a Professional must specify in all cases the Essential Service that the Claimant needed, and the reason for the need, and when the need existed.
  - (d) A Claimant may establish that they requested an Essential Service from Canada during the Trout Child Class Period or Jordan's Principle Class Period by way of a statutory declaration. Proof of a request for an Essential Service is the only instance where a statutory declaration may be adduced as Supporting Documentation for the purposes of the Trout Child Class, Jordan's Principle Class, Jordan's Principle Family Class, and the Trout Family Class.
- 7) If the Administrator, or the Third-Party Assessor on appeal, determines that a Class Member has provided Supporting Documentation establishing a Confirmed Need for an Essential Service, the Administrator, or the Third-Party Assessor on appeal, will determine whether the Claimant faced a Denial, Delay or a Service Gap.
  - 8) Where a Class Member has provided Supporting Documentation establishing a Confirmed Need for an Essential Service and where the Administrator has determined that the Class Member experienced a Denial, Delay or a Service Gap, that Class Member will be:
    - (a) an Approved Jordan's Principle Class Member if the Claimant's Confirmed Need occurred within the Jordan's Principle Class Period; or
    - (b) an Approved Trout Child Class Member if the Claimant's Confirmed Need occurred within the Trout Child Class Period.
  - 9) The Plaintiffs have estimated a budget of \$3.0 billion dollars for the Jordan's Principle Class, subject to Articles 6.08, 6.09 and 6.10 ("**Jordan's Principle Budget**").
  - 10) The Plaintiffs have estimated a budget of \$2.0 billion dollars for the Trout Child Class, subject to Articles 6.08, 6.09 and 6.10 ("**Trout Child Budget**").
  - 11) An Approved Jordan's Principle Class Member will receive a minimum of \$40,000 in compensation if:

- (a) They have established a Confirmed Need for a Significant Impact Essential Service; or
- (b) They have established a Confirmed Need for an Other Essential Service and have suffered higher levels of impact than other Jordan's Principle Claimants with a Confirmed Need for an Other Essential Service including, but not limited to, impact by reason of conditions and circumstances such as an illness, disability or impairment. Such impact is to be measured based on objective factors assessed through culturally sensitive Claims Forms and a questionnaire designed in consultation with experts. Subject to the Court's approval, the selection of which Claimants qualify under this category will be based on objective factors such as the severity of impact on the Child and the number of eligible Claimants.

12) An Approved Trout Child Class Member will receive a minimum of \$20,000 in compensation if:

- (a) They have established a Confirmed Need for a Significant Impact Essential Service; or
- (b) They have established a Confirmed Need for an Other Essential Service and have suffered higher levels of impact than other Trout Child Claimants with a Confirmed Need for an Other Essential Service including, but not limited to, impact by reason of conditions and circumstances such as an illness, disability or impairment. Such impact is to be measured based on objective factors assessed through culturally sensitive Claims Forms and a questionnaire designed in consultation with experts. Subject to the Court's approval, the selection of which Claimants qualify under this category will be based on objective factors such as the severity of impact on the Child and the number of eligible Claimants.

13) An Approved Jordan's Principle Class Member who has shown a Confirmed Need for Other Essential Services and has not established a claim under paragraph 11(b) will receive up to but not more than \$40,000 in compensation based on a pro rata share of the Jordan's Principle Budget after deducting the total estimated amount of compensation to be paid to Approved Jordan's Principle Class Members who have established a claim under paragraph 11.

14) An Approved Trout Child Class Member who has shown a Confirmed Need for Other Essential Services and has not established a claim under paragraph 12(b) will receive up to but not more than \$20,000 in compensation having regard to the Trout Child Class Budget, based on a pro rata share of the Trout Child Budget after deducting the total amount of compensation to be paid to Approved Trout Child Class Members who have established a claim under paragraph 12.

15) In the event of a Trust Fund Surplus pursuant to Article 6.08 based on advice from the Actuary after approved Claims under paragraphs 13 and 14 are paid the Approved

Jordan's Principle Class Members and Approved Trout Child Class Members who have established a claim under paragraphs 11 and 12 may be entitled to an Enhancement Payment.

- 16) Only Caregiving Parents or Caregiving Grandparents of the Approved Jordan's Principle Class Members and Approved Trout Child Class Members who have established a Claim under paragraphs 11 and 12, or Article 6.07(3) and Article 6.07(4) may be entitled to compensation (i.e. "Approved Jordan's Principle and Trout Family Class"). All other Caregiving Parents or Caregiving Grandparents of the Approved Jordan's Principle Class Members and Approved Trout Child Class Members will not receive direct compensation under this Agreement.
- 17) The Approved Jordan's Principle and Trout Family Class will receive a fixed amount of \$2.0 billion dollars in compensation under this Agreement ("**Jordan's Principle and Trout Family Budget**"). There will be no reallocation to these classes of any surpluses or revenues.

#### **6.07 Safety Clause for Exceptional Jordan's Principle and Trout Cases**

- 1) The non-inclusion of a service on the List of Essential Services may not be grounds for the exclusion of a Claimant from eligibility if the following circumstances are established in accordance with this Agreement:
  - a) The Claimant has submitted Supporting Documentation identifying a service and establishing a Confirmed Need for that service during the Class Period;
  - b) The service identified in paragraph (a) above is not included in the List of Essential Services;
  - c) The Supporting Documentation satisfactorily establishes the reason(s) why the service identified in paragraph (a) above was essential to the Claimant as a Child; and
  - d) The Claimant requested the service identified in paragraph (a) above from a department of the Federal Government of Canada but the request was subject to a denial or unreasonable delay taking into consideration the context and the Child's needs.
- 2) Where a Claimant has met all the conditions in paragraph 1, above, that Claimant will be:
  - (a) an Approved Jordan's Principle Class Member if the Claimant's Confirmed Need occurred within the Jordan's Principle Class Period; or
  - (b) an Approved Trout Child Class Member if the Claimant's Confirmed Need occurred within the Trout Child Class Period.
- 3) An Approved Jordan's Principle Class Member under this Article will receive a minimum of \$40,000 in compensation if they have established a Confirmed Need in accordance

with paragraph 1, above, and have suffered higher levels of impact than Class Members in Article 6.06(13) including, but not limited to, impact by reason of conditions and circumstances such as an illness, disability or impairment. Such impact is to be measured based on objective factors assessed through culturally sensitive Claims Forms and a questionnaire designed in consultation with experts. Subject to the Court's approval, the selection of which Claimants qualify under this category will be based on objective factors such as the severity of impact on the Child and the number of eligible Claimants.

- 4) An Approved Trout Child Class Member under this Article will receive a minimum of \$20,000 in compensation if they have established a Confirmed Need in accordance with paragraph 1, above, and have suffered higher levels of impact than Class Members in Article 6.06(14) including, but not limited to, impact by reason of conditions and circumstances such as an illness, disability or impairment. Such impact is to be measured based on objective factors assessed through culturally sensitive Claims Forms and a questionnaire designed in consultation with experts. Subject to the Court's approval, the selection of which Claimants qualify under this category will be based on objective factors such as the severity of impact on the Child and the number of eligible Claimants.
- 5) An Approved Jordan's Principle Class Member who has not met the conditions in paragraph 3, above, will receive up to but not more than \$40,000 in compensation based on a pro rata share of the Jordan's Principle Budget after deducting the total estimated amount of compensation to be paid to Approved Jordan's Principle Class Members who have established a claim under Article 6.06(11) and paragraph 3, above, collectively.
- 6) An Approved Trout Child Class Member who has not met the conditions in paragraph 4, above, will receive up to but not more than \$20,000 in compensation having regard to the Trout Child Class Budget, based on a pro rata share of the Trout Child Budget after deducting the total amount of compensation to be paid to Approved Trout Child Class Members who have established a claim under Article 6.06(12) and paragraph 4, above, collectively.

#### **6.07.01 Exceptional Early Payment of Compensation Funds**

- 1) Notwithstanding Article 6.01(4), the Administrator may exceptionally approve the payment of compensation prior to a Claimant having reached the Age of Majority in accordance with this Article.
- 2) An individual under the Age of Majority may be eligible to receive an amount of compensation to fund or reimburse the cost of a life-changing or end-of-life wish experience (the "**Exceptional Early Payment**"), if they provide Supporting Documentation establishing that:
  - a) they meet the requirements, other than age, to be an Approved Removed Child Class Member or an Approved Jordan's Principle Class Member; and

- b) they are suffering from a terminal or non-curable life-threatening condition that has placed their life in jeopardy.
- 3) An individual who establishes eligibility for an Exceptional Early Payment in accordance with this Article must provide reasonable proof of a chosen life-changing or end-of-life wish experience and the approximate cost of that experience.
- 4) The Administrator will assess a Claimant's eligibility for an Exceptional Early Payment to fund or reimburse the cost in an amount up to, but no more than \$40,000.
- 5) The Administrator will consider the Claim for an Exceptional Early Payment in the best interests of the Child and on an expedited basis. The Administrator will require such documentation in good faith as is required to assess:
  - a) the Claimant's eligibility;
  - b) the Claimant's terminal or non-curable life-threatening condition;
  - c) the validity of the Claimant's life-changing or end-of-life experience request;
  - d) the age and circumstances of the Child and whether the Child needs any protection; and
  - e) the approximate cost of the life-changing or end-of-life wish experience.
- 6) Where a Class Member has received an Exceptional Early Payment and later submits a Claim for compensation, the amounts paid as Exceptional Early Payment will be deducted from that Claimant's total entitlement, if any, to compensation under this Agreement.

#### **6.08 Priorities in Distribution of Surplus**

- 1) On the advice of the Actuary or a similar advisor, the Settlement Implementation Committee may determine at any time or from time to time that there are unallocated or surplus funds on the Settlement Funds in the Trust Fund (a "**Trust Fund Surplus**").
- 2) The Settlement Implementation Committee may propose that a surplus be designated and that there be a distribution of any Trust Fund Surplus for the benefit of the Class Members in accordance with this Article and the Claims Process, subject to the approval of the Court.
- 3) The Settlement Implementation Committee, having proposed that a surplus be designated and that there be a distribution of such Trust Fund Surplus, will bring motions before the Court for approval of the designation of a surplus and the proposed distribution of any Trust Fund Surplus. The designation and any allocation of a Trust Fund Surplus will be effective on the later of:
  - a) the day following the last day on which an appeal or a motion seeking leave to appeal of either of the approval orders in respect of such designation and allocation may be brought under the *Federal Courts Rules*, SOR /98-106; and

- b) the date on which the last of any appeals of either of the approval orders in respect of such designation and allocation is finally determined.
- 4) In no event will any amount from the Trust Fund, including any Trust Fund Surplus, revert to Canada, and Canada will not be an eligible recipient of any Trust Fund Surplus.
- 5) In allocating the Trust Fund Surplus, the Settlement Implementation Committee will have due regard to the order of priorities set out below:
  - i) Approved Removed Child Class Members;
  - ii) Approved Jordan's Principle Class Members;
  - iii) Approved Trout Child Class Members;
  - iv) Approved Removed Child Family Class Members.

### 6.09 Reallocation of Budgets

- 1) The Settlement Implementation Committee will adopt the budgets with respect to compensation allocated to different classes (each, a **"Budget"**) in accordance with the amounts listed in Article 6.03, 6.04, and 6.06.
- 2) The Settlement Implementation Committee will arrange for an actuarial review of the Trust Fund to be conducted at least once every three years and more frequently if the Settlement Implementation Committee considers it appropriate. The actuarial review will be conducted by the Actuary in accordance with accepted actuarial practice in Canada. The actuarial review will determine:
  - a) the value of the assets available to meet all outstanding and future expected Claims;
  - b) the present value of all outstanding and future expected Claims using where necessary such reasonable assumptions as determined by the Actuary to be appropriate;
  - c) an actuarial buffer to provide a reasonable margin of protection due to adverse deviations from the assumptions utilised; and
  - d) the actuarial surplus and/or the actuarial deficit of funds in a Budget.
- 3) If based on the Actuary's advice the total compensation to be paid to the number of approved Class Members within a class is, or is expected to be, below the Budget, the Settlement Implementation Committee may transfer some amount from that Budget to another Budget, which, on the Actuary's advice, has a higher than estimated total compensation to be paid to approved Class Members.



- 4) If more than one (1) Budget has a higher than estimated total compensation to be paid to the number of approved Class Members, the Settlement Implementation Committee may make such transfer of funds in accordance with the following order of priorities, subject to Court approval:
- i) Approved Removed Child Class Members;
  - ii) Approved Jordan's Principle Class Members;
  - iii) Approved Trout Child Class Members;
  - iv) Approved Removed Child Family Class Members.

#### **6.10 Income on Fund**

The Settlement Implementation Committee may allocate income earned by the Fund to any class, in its discretion, in accordance with the following order of priorities, favouring those classes where higher than estimated total compensation to be paid to the approved Class Members exists:

- i) Approved Removed Child Class Members;
- ii) Approved Jordan's Principle Class Members;
- iii) Approved Trout Child Class Members;
- iv) Approved Removed Child Family Class Members.

#### **6.11 Option to invest compensation funds**

- 1) The Administrator will provide payment to Approved Removed Child Class Members and Approved Jordan's Principle Class Members within nine (9) months of the approval of the Class Member's Claim, but in all cases, only after taking the following steps:
  - a) At least six months prior to issuing payment, the Administrator will contact the Approved Class Member to ask whether the Class Member wishes to maintain or direct a portion or all of the amount to which the Class Member is entitled to an investment vehicle.
  - b) The form of notice to the Class Member will be determined by the Settlement Implementation Committee.
  - c) If the Class Member indicates their desire that a certain amount be invested, the funds will be held or directed to a separate account for the benefit of the Class Member.

- d) Once the Class Member's investment account is established, the fees, costs and taxes payable on the investment capital or returns will be borne by the Class Member's individual investment, as applicable.

## **6.12 Adjustment for Time Value of Compensation Money**

The compensation payable to an Approved Removed Child Class Member or an Approved Jordan's Principle Class Member who has not reached Age of Majority by delivery of the notice of approval of settlement may be adjusted having regard to the period of time that passes before the Class Member reaches the Age of Majority. The Settlement Implementation Committee, upon the advice of the Investment Committee and the Actuary will determine a consistent method for calculating the adjustment subject to the Court's approval.

## **ARTICLE 7 – CY-PRES FUND**

### **7.01 Governing Principles**

- 1) The Plaintiffs will design a Cy-près Fund with the assistance of experts, subject to the Court's approval.
- 2) The Cy-près Fund's purpose is primarily to benefit Class Members who do not receive direct payment under this Agreement.
- 3) Upon formation or selection of an existing entity and after the Implementation Date, the Trustee will endow the Cy-près Fund with \$50 million from the Settlement Funds.
- 4) The Cy-près Fund will be First Nations led.
- 5) The objective of the Cy-près Fund is to provide culturally sensitive and trauma-informed supports to the Class, including, but not limited to, the following:
  - a) Establish a fund, foundation or other similar vehicle whose leadership may include First Nations youth and children in care, formerly in care, their allies and those who experienced a Delay, Denial or Service Gap under Jordan's Principle, to offer grant-based supports to facilitate access to culture-based, community-based and healing-based programs, services and activities to Class Members and the Children of First Nations parents who experienced a Delay, Denial or Service Gap under Jordan's Principle.
  - i) Such grant-based supports may include, but are not limited to funding the following:
    - (1) Family and community unification, reunification, connection and reconnection for youth in care and formerly in care:

- i. facilitating First Nations youth in care and formerly in care to identify birth family and their First Nation, which may include accessing records or files, meeting family members or travelling to their First Nation;
- ii. accessing holistic wellness supports for First Nations youth in care and formerly in care during the family and community reunification and reconnection process; and
- iii. reducing the costs associated with travel and accommodations to visit community and family, including for First Nations youth in care and formerly in care, support person(s) or family members.

(2) Cultural access:

- i. facilitating access to cultural programs, activities and supports, including, but not limited to: youth groups, ceremony, language, Elders and Knowledge Keepers, mentors, land-based activities, and culturally-based arts and recreation.

(3) Transition and Navigation supports:

- i. Facilitating access for First Nations youth in care and formerly in care to transition supports for First Nations youth in care and formerly in care who are either not eligible for post-majority care and services under the reformed First Nations Child and Family Services Program or that are not covered elsewhere, in their transition to adulthood, including, but not limited to: safe and accessible housing, life skills and independent living, financial literacy, planning and services, continuing education, health and wellness supports.
- ii. Facilitating access to navigational supports for Class Members and the children of First Nations parents who experienced a Delay, Denial or Service Gap under Jordan's Principle who are not eligible to receive post-majority services under Jordan's Principle or are not covered elsewhere.
- iii. Facilitating access to a scholarship for the Jordan's Principle Class and the children of First Nations parents who experienced a Delay, Denial or Service Gap in the provision of services under Jordan's Principle. The scholarship will be designed to acknowledge the adverse effects associated with the experience of a Delay, Denial or Service Gap under Jordan's Principle.

- b) A National First Nations Youth In/From Care Network may also be established through the grants, or through the formation of a fund, foundation or similar

organization, which may include a national network and regional networks. The networks would share best practices and updates, provide advocacy, discuss and make recommendations on policy. The structure, scope and membership of the networks is to be determined by First Nations Youth In/From Care.

#### **ARTICLE 8 – SUPPORTS TO CLASS IN CLAIMS PROCESS**

- 1) The Parties will agree to culturally sensitive health, information, and other supports to be provided to Class Members in the Claims Process, as well as funding for health care professionals to deliver support to Class Members who suffer or may suffer trauma for the duration of the Claims Process, consistent with Schedule C: Framework for Supports for Claimants in Compensation Process, and the responsibilities of the Administrator in providing navigational and other supports under Article [●].
- 2) Canada will provide funding to the AFN in the amount of \$2,550,000 to provide supports to First Nations claimants for a five (5) year term beginning April 1, 2024, and ending March 31, 2029. This Process will include administering a help desk with AFN line liaisons and providing culturally safe assistance to Claimants in completing relevant Claims Forms if not covered by the supports available to Class Members by the Administrator (the “**AFN Supports**”). By April 2028, the AFN may approach the Settlement Implementation Committee for an extension of the funding for the AFN Supports. Subject to the Settlement Implementation Committee’s approval to an extension of the AFN Supports, Canada will provide further block funding to the AFN to continue the AFN Supports for a period agreeable to the AFN, the Settlement Implementation Committee, and Canada.
- 3) Canada will fund the enhancement of the Hope for Wellness Line to include training to their call operators and counsellors on the Actions and promote this service to Class Members as soon as possible and prior to the approval of the Settlement. The Parties will recommend that the Federal Court will appoint a third-party Indigenous organization funded by Canada, to provide a culturally-safe, youth-specific support line that would provide counselling services for youth and young adult class members and to refer to post-majority care services when appropriate.
- 4) Without limitation to the foregoing, Canada will pay for mental health, and cultural supports, navigators to promote communications and provide referrals to health services, help desk with AFN line liaisons, reasonable costs incurred by First Nations service providers in providing access to records to support Claimant eligibility from provinces, territories, and agencies, and professional services (taxonomy and actuarial services), and reasonable fees relating to a structured settlement (if applicable) to be agreed. Canada will fund mental health and cultural supports based on evolving needs of the class, with over half of the class population being adults expected to access compensation in the first five years, and transitioning to a focus on young adults in the

remaining years of implementation of the settlement building on the existing suite of First Nations mental wellness services. Canada will work with the parties to also adapt supports to include innovative, First Nations-led mental health and wellness initiatives.

- 5) The costs of supports pursuant to this Article are payable by Canada and will not be deducted from the Settlement Funds.
- 6) Canada will provide annual reports to the Settlement Implementation Committee on the health supports, trauma-informed mental supports set out in Schedule C: Framework for Supports for Claimants in Compensation Process.

## **ARTICLE 9 - EFFECT OF AGREEMENT**

### **9.01 Releases**

- 1) The Settlement Approval Order issued by the Court will declare that, except as otherwise agreed to in this Agreement and in consideration for Canada's obligations and liabilities under this Agreement, each Class Member or their Estate Executor, Estate Claimant, or Personal Representative on behalf of such Individual Class Member or their estate and each First Nation Class Member (hereinafter collectively the "**Releasors**") has fully, finally and forever released Canada and its servants, agents, officers and employees, predecessors, successors, and assigns (hereinafter collectively the "**Releasees**"), from any and all actions, causes of action, claims, and demands of every nature or kind available, whether or not known or anticipated, which the Releasors had, now have or may in the future have against the Releasees in respect of the claims asserted or capable of being asserted in the Actions, including any claim with regard to the costs referred to under Article 12.02(3).
- 2) It is understood that Class Members retain their rights to make claims against third parties for the physical, sexual or emotional abuse they suffered, restricted to whatever liability such third party may have severally, not including any liability that the third party may have jointly or otherwise with Canada, such that the third party will have no basis to seek contribution, indemnity or relief over by way of equitable subrogation, declaratory relief or otherwise against Canada for the physical, sexual or emotional abuse they suffered. No compensation paid to a Class Member under this settlement will be imputed to payment for injuries suffered as a result of physical, sexual abuse or emotional abuse.
- 3) For greater certainty, each Releasor is deemed to agree that, if they make any claim or demand or take any action or proceeding against another person, persons or entity in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over, whether by statute, common law, or Quebec civil law, in relation to allegations and matters set out in the Actions, including for physical, sexual or emotional abuse they suffered while in care, the Releasor will expressly limit their claim so as to exclude any portion of Canada's responsibility, and in the event Canada is found

to have any such liability, the releasors will indemnify Canada to the full extent of any such liability including any liability as to costs.

- 4) Upon a final determination of a Claim made under and in accordance with the Claims Process, the Releasers are also deemed to fully and finally release the Parties, counsel for the Parties, Class Counsel, counsel for Canada, the Settlement Implementation Committee and its Members, the Administrator, and the Third-Party Assessor with respect to any claims that have arisen, arise or could arise out of the application of the Claims Process, including any claims relating to the calculation of compensation, the sufficiency of the compensation received, and the allocation and distribution of the Trust Fund Surplus.

## **9.02 Continuing Remedies**

- 1) The Parties acknowledge and agree that, notwithstanding any provision of this Agreement, Class Members do not release, and specifically retain, their claims or causes of action for any breach by Canada of its ongoing obligations under this Agreement, including:
  - (a) failing to pay the Settlement Funds in their entirety;
  - (b) funding reasonable notice and other administration fees involved in carrying out this Agreement, including, but not limited to, information and notice to the Class Members about certification, this Agreement, settlement approval, and the Claims Process, as well as third-party administration costs;
  - (c) paying reasonable legal fees to Class Counsel, over and above the Settlement Funds;
  - (d) communicating with provincial and territorial Deputy Ministers responsible for child and family services, health, and education, as well as other relevant Deputy Ministers regarding taxation, Children's Special Allowance, social assistance payments, post-majority care or other provincial/territorial benefits "claw backs" without affecting funding received through a Jordan's Principle request, whether pending or approved;
  - (e) proposing a public apology by the Prime Minister;
  - (f) working toward the intention of the Parties that the Settlement Funds, including any income earned on the Settlement Funds awaiting distribution, will be distributed to Class Members as compensation, as opposed to "income" subject to taxation; and
  - (g) jointly seeking an order from the Tribunal declaring that the Order for compensation has been fully satisfied.

- 2) The Parties agree that, subject to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, the Parties will be entitled to seek relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement, without any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief allowed by law, this being in addition to damages and any other remedy to which the Parties may be entitled at law or in equity for any breach of this Agreement.

### **9.03 Canadian Income Tax and Social Benefits**

- 1) Canada will make best efforts to ensure that any Class Member's entitlement to federal social benefits or social assistance benefits will not be negatively affected in any manner by the Class Member's receipt, directly or indirectly, of any payment in accordance with this Agreement, and that no such payment will be considered taxable income within the meaning of the *Income Tax Act*.
- 2) The Parties agree that the payments to Class Members, including payments of any income earned on the Settlement Funds, are in the nature of personal injury damages and are not taxable income and Canada will make best efforts to obtain a technical interpretation to the same effect from the Income Tax Rulings Directorate of the Canada Revenue Agency.
- 3) Upon approval of this Agreement by the Federal Court, Canada will write to all provincial and territorial Deputy Ministers responsible for child and family services, health, and education, as well as other relevant Deputy Ministers, to encourage them to collaborate in:
  - (a) exempting Class Member claims payouts under this Agreement from taxation, including payments of any income earned on the Settlement Funds, the Children's Special Allowance, social assistance payments, post-majority care or other provincial/territorial benefits "claw backs"; and
  - (b) ensuring that receipt of any compensation under this Agreement will in no way affect funding received through a Jordan's Principle request, whether pending or approved.
- 4) Canada will not in any way consider receipt of compensation under this Agreement as a factor in deciding any pending, approved or future requests pursuant to Jordan's Principle or with respect to individual entitlements under ISC programs where ISC makes a decision with respect to an individual's eligibility for funding.

## **ARTICLE 10 - IMPLEMENTATION OF THIS AGREEMENT**

### **10.01 Settlement Approval Order**

- 1) This Agreement is conditional upon the Tribunal confirming the satisfaction of its Compensation Order and the Compensation Framework Order, as well as the approval by the Federal Court of this Agreement.
- 2) Prior to seeking the Settlement Approval Order from the Court, the AFN and Canada will jointly seek an order from the Tribunal declaring that the Compensation Order has been fully satisfied. The Parties will take all reasonable steps to support the application before the Tribunal, including filing such evidence and submissions as may be required.
- 3) The AFN agrees to act as the lead applicant before the Tribunal in seeking the above order, and to take all reasonable steps to publicly promote and defend the Agreement.
- 4) The Representative Plaintiffs, or any of them, in the Consolidated Action and the Trout Action may seek interested party status and/or standing to make representations before, and to answer questions posed by, the Tribunal in respect of the satisfaction of the Compensation Order and Canada consents to them obtaining such standing.
- 5) The Parties will consent to the issuance of the Settlement Approval Order.
- 6) The Parties will take all reasonable measures to cooperate in requesting that the Court issue the Settlement Approval Order and related orders on notice of certification, settlement approval hearing, and any other orders required for the implementation of this Agreement.
- 7) The Parties will schedule the Settlement Approval Hearing as soon as practicable considering the requirements of the Notice Plan, the decision required from the Tribunal and the Court's availability, noting that such hearing is currently scheduled for five days beginning on September 19, 2022.
- 8) The Parties will consider seeking orders from provincial superior courts to obtain relevant data from provinces and territories should that become necessary and agree to cooperatively approach the provinces and territories to encourage their compliance.
- 9) The Parties will take all reasonable measures to cooperate in seeking federal, provincial and territorial privacy legislation exemptions and consents as may be needed to implement the Agreement.

### **10.02 Notice Plan**

The Parties will seek approval from the Court of the Notice Plan as the means by which Class Members will be provided with notice of settlement and settlement approval, and of the Opt-Out Period, as applicable.



## **ARTICLE 11 - OPTING OUT**

### **11.01 Opting Out**

A Class Member may Opt-Out of the Actions by:

- (a) delivery to the Administrator of an Opt-Out form or a written request to be removed from the Actions before the Opt-Out Deadline; or
- (b) after the Opt-Out Deadline, by obtaining leave of the Court to Opt-Out of the Actions if the Claimant was unable, as a result of physical or psychological illness or challenges, including homelessness or addiction, or other significant obstacles as found by the Court, to take steps to Opt-Out within the Opt-Out Deadline.

### **11.02 Automatic Exclusion for Individual Claims**

A Class Member will be excluded from the Actions if the Class Member does not, before the expiry of the Opt-Out Deadline, discontinue a proceeding brought by the Class Member against Canada to the extent that the separate proceeding raises the common questions set out in the Certification Orders.

## **ARTICLE 12 - SETTLEMENT IMPLEMENTATION COMMITTEE**

### **12.01 Composition of Settlement Implementation Committee**

- 1) A Settlement Implementation Committee will be formed in accordance with this Article, subject to approval by the Court.
- 2) The Settlement Implementation Committee will consist of five (5) members as follows:
  - a) Two First Nations members ("**Non-Counsel SIC Members**"); and
  - b) Three Counsel members ("**Counsel SIC Members**").
- 3) All Non-Counsel SIC Members and all Counsel SIC Members are subject to the Court's order appointing them as such.
- 4) No person will serve for more than two (2) five-year terms, consecutive or cumulative, as one of the Non-Counsel SIC Members and/or of the Counsel SIC Members.
- 5) The terms of the five members of the Settlement Implementation Committee will be staggered such that the end of their terms does not occur all at the same time. For that purpose, the first term of one (1) Non-Counsel SIC Members and one (1) Counsel SIC Members will not exceed three (3) years, which terms may be renewed for a subsequent term of five (5) years. The first term of the balance of the members of the Settlement Implementation Committee will be for five years.
- 6) The two Non-Counsel SIC Members will be First Nations individuals only, as defined in Article 1.

- 7) The two Non-Counsel SIC Members will be selected through a solicitation for applications conducted by the AFN Executive Committee.
- 8) For the first round of nominations prior to the establishment of the Settlement Implementation Committee, the AFN Executive Committee will recommend to the Court for approval two Non-Counsel SIC Members selected in accordance with this Article, one for an initial term of three years and one for an initial term of five years.
- 9) After the establishment of the Settlement Implementation Committee, the AFN Executive Committee will recommend to the Settlement Implementation Committee any necessary replacement Non-Counsel SIC Members as those positions become vacant from time to time under this Article for the purposes of seeking the Court's approval of the appointment of such members.
- 10) The three Counsel SIC Members will consist of one (1) lawyer appointed by Sotos LLP, one (1) lawyer appointed by Kugler Kandestin LLP, and one (1) lawyer appointed by the AFN Executive Committee.
- 11) For the first round of nominations prior to the establishment of the Settlement Implementation Committee, Sotos LLP, Kugler Kandestin LLP, and the AFN Executive Committee will each recommend one lawyer to the Court for approval in accordance with this Article. One of these three lawyers will be nominated for an initial term of three years and the other two for an initial term of five years in accordance with this Article. If Sotos LLP, Kugler Kandestin LLP, and the AFN Executive Committee cannot agree on which lawyer will be recommended to the Court for an initial term of three years, they will ask the Court to select any one of the three recommended lawyers for a term of three years in the Court's full discretion.
- 12) After the establishment of the Settlement Implementation Committee, Sotos LLP, Kugler Kandestin LLP, and the AFN Executive Committee will recommend to the Settlement Implementation Committee the necessary number of replacement Counsel SIC Members separately for each of their respective counsel as those positions become vacant from time to time in accordance with this Article for the purposes of seeking the Court's approval of the appointment of such members.
- 13) A member of the Settlement Implementation Committee may be removed prior to the expiry of their term with a special majority vote of four (4) members of the Settlement Implementation Committee. Such a removal is not effective unless and until approved by the Court.
- 14) The Court may substitute any member of the Settlement Implementation Committee in accordance with this Article in the best interests of the Class.
- 15) A meeting of the Settlement Implementation Committee may be held if at least four (4) members are present. In making decisions under this Agreement, the Settlement

Implementation Committee will make reasonable efforts to reach consensus. If consensus is not possible, the Settlement Implementation Committee will decide by majority vote unless specified otherwise in this Agreement.

- 16) If any member of the Settlement Implementation Committee believes that the majority of the Settlement Implementation Committee has taken a decision that is not in the best interests of the Class, that Member may refer the decision to confidential mediation in accordance with the ADR Chambers Mediation Rules. If the members of the Settlement Implementation Committee cannot agree on a mediator, they may ask the Court to appoint one. The reasonable costs of the mediation will be a disbursement of the Settlement Implementation Committee payable in accordance with Article [●]. If the matter cannot be resolved at mediation, the matter may be referred to the Court for determination.
- 17) For the first two (2) years following the Implementation Date of this Agreement, the Settlement Implementation Committee will meet monthly, either in-person or virtually, and thereafter, the Settlement Implementation Committee will meet quarterly, unless the Settlement Implementation Committee believes that more frequent meetings are required. Notwithstanding this paragraph, the Settlement Implementation Committee may deal with administrative and urgent issues, if and when necessary.
- 18) The Settlement Implementation Committee, all Non-Counsel SIC Members, and all Counsel SIC Members will at all times act solely in the best interests of the Class, and not in the interests of any other party, stakeholder or entity.
- 19) In the event that either Sotos LLP or Kugler Kandestin LLP merges with another law firm, this Agreement will be binding on the successor firm.
- 20) If after the Implementation Date, Sotos LLP, Kugler Kandestin LLP or the AFN Executive Committee determine in their respective sole and unfettered discretion that they no longer need or want to nominate members to the Settlement Implementation Committee in accordance with this Article, they will advise the Settlement Implementation Committee in writing. In that event, the Court will determine a prospective replacement for such members in the best interests of the Class on the recommendation of the Settlement Implementation Committee.

## **12.02 Settlement Implementation Committee Fees**

- 1) Canada's liability for the fees of Counsel SIC Members and any other counsel to whom work is delegated will be negotiated by the Parties by way of the process identified in Article [●], Legal Fees.
- 2) Counsel SIC Members may delegate the legal work reasonably necessary for the fulfillment of the Settlement Implementation Committee's responsibilities under this

Agreement among Class Counsel or retain other counsel as Counsel SIC Members consider necessary.

- 3) Canada will pay a total of \$750,000, separate and in addition to any other amounts in this Agreement to be paid at the direction of the AFN Executive Committee to fund an honorarium of \$200 per hour to each of the Non-Counsel SIC Members for reasonable participation in the work of the Settlement Implementation Committee, up to a maximum of \$1000 per day, subject to the Court's approval. The Settlement Implementation Committee may propose, and the Court may implement a change in the quantum of such honoraria from time to time.

### **12.03 Settlement Implementation Committee Responsibilities**

- 1) In addition to matters specified elsewhere in this Agreement, the Settlement Implementation Committee's responsibilities will include the following:
  - (a) monitoring the work of the Administrator and the Third-Party Assessor, and the Claims Process overall;
  - (b) receiving and considering reports from the Administrator, including on administrative costs;
  - (c) engaging experienced practitioners as needed who are familiar with family and child welfare documents and records in each province and territory to assist with the work of the Administrator and the Third-Party Assessor, where necessary to substantiate allegations of Abuse or conduct isolated audits of some Claims Forms where ISC data is insufficient or lacking;
  - (d) giving such process directions to the Administrator or the Third-Party Assessor as may be necessary in accordance with the mandate of the Settlement Implementation Committee and the provisions of this Agreement;
  - (e) proposing for the Court's approval such protocols as may be necessary for the implementation of this Agreement, including any amendments to the Claims Process and distribution protocol as may be necessary;
  - (f) addressing any other matter referred to the Settlement Implementation Committee by the Court;
  - (g) receiving, through the Investment Committee, and seeking Court approval on advice from the Actuary and investment experts on the investment of the Trust Funds;
  - (h) recommending to the Court any change of the Administrator;
  - (i) setting Terms of Reference for the Investment Committee regarding investment objectives and strategy (the "**Investment Committee Terms of Reference**") in

accordance with the principles set out in Schedule G: Investment Committee Guiding Principles;

- (j) engaging experts as reasonably needed including, but not limited to, experts in First Nations data governance, trauma, community relations, health and social services, and actuaries to assist with the Claims Process;
  - (k) receiving annual reports from Canada on the health supports, trauma-informed mental supports, and Claims Process supports provided to Class Members;
  - (l) providing an annual Settlement Implementation Report to the Court, which includes updates on the implementation of the Agreement, actuarial reporting on the Trust Fund and distribution, annual audited financial reporting, any issues with the Trust, any systemic issues in implementation and proposed or approved resolution to such issues, etc.; and
  - (m) providing the AFN Executive Committee with a concurrent copy of the annual Settlement Implementation Report.
- 2) The Settlement Implementation Committee may retain experts and consultants as reasonably required for the implementation of this Agreement. The fees and disbursements of such experts and consultants will be a disbursement of the Settlement Implementation Committee payable by Canada in accordance with Article [●].
  - 3) The Settlement Implementation Committee may bring or respond to whatever motions or institute whatever proceedings it considers necessary to advance its responsibilities under this Agreement and the interests of Class Members.

#### **12.04 Investment Committee**

- 1) The Investment Committee will adhere to the Investment Committee Terms of Reference as set by the Settlement Implementation Committee.
- 2) The Investment Committee will be constituted of up to two (2) members that are not investment professionals but have relevant board experience regarding the management of funds and one (1) independent investment professional (the “**Investment Professional Member**”).
- 3) The Investment Committee members will be nominated by the Settlement Implementation Committee to five (5) year renewable terms, subject to approval by the Court.
- 4) The reasonable fees of the Investment Committee, including the Investment Professional Member, will be payable by Canada to a maximum of four quarterly meetings per annum and will be subject to Court approval. The reasonable fees of any investment consultant retained by the Investment Committee will be payable by Canada, subject to Court Approval. Canada will not be responsible for the payment of fees for investment managers retained by the Investment Committee.

- 5) The Investment Committee will meet quarterly, or more frequently as required, during the first five (5) years following its establishment. In subsequent years, the Investment Committee will meet at least once annually, or more frequently if required and approved by the Settlement Implementation Committee. The Investment Committee will periodically, and no less than annually, review the viability of the investment strategy of the Fund and submit such a review to the Settlement Implementation Committee.

## **ARTICLE 13 - PAYMENTS FOR DECEASED INDIVIDUAL CLASS MEMBERS AND PERSONS UNDER DISABILITY**

### **13.01 Persons Under Disability**

If a Claimant who submitted an Application to the Administrator within the Claims Deadline is or becomes a Person Under Disability prior to their receipt of compensation, the Personal Representative of the Claimant will be paid the compensation to which the Claimant would have been entitled under the Claims Process.

### **13.02 General Principles for Compensation if Deceased**

Only the Estates of the deceased members of the Removed Child Class, Jordan's Principle Class or Trout Child Class may be eligible for compensation under this Agreement ("**Eligible Deceased Class Member**" or "**Eligible Deceased Class Members**"). The Estates of the Removed Child Family Class, the Jordan's Principle Family Class or the Trout Family Class are not eligible for compensation, unless a complete application for compensation was submitted by the member of the Removed Child Family Class, the Jordan's Principle Family Class or the Trout Family Class prior to death.

### **13.03 Compensation if Deceased: Grant of Authority or the Like**

- 1) Where an Estate Executor or Estate Administrator of an Eligible Deceased Class Member has been appointed under the *Indian Act* or under the governing provincial or territorial legislation, the Estate Executor or Estate Administrator may submit a Claim for compensation in accordance with this Agreement.
- 2) In support of a Claim made pursuant to section 13.01(1), the Estate Executor or Estate Administrator for an Eligible Deceased Class Member will submit to the Administrator, in each case in a form acceptable to the Administrator:
  - a) A Claims Form (if a Claims Form was not submitted by such Eligible Deceased Class Member or their Personal Representative prior to their death);
  - b) Evidence that such Eligible Deceased Class Member is deceased and the date on which such Eligible Deceased Class Member died;

- c) Evidence in the following form identifying such representative as having the legal authority to receive compensation on behalf of the estate of the Eligible Deceased Class Member:
  - i) If the claim to entitlement to receive compensation on behalf of a decedent estate is based on a will or other testamentary instrument or on intestacy, a copy of a grant of probate or a grant and letters testamentary or other document of like import, or a grant of letters of administration or other document of like import, issued by any court or authority in Canada; or
  - ii) If in Quebec, a notarial will, a probated holograph will, a probated or other document of like import will made in the presence of witnesses in accordance with the *Civil Code of Quebec* and the *Indian Act*.

#### **13.04 Compensation if Deceased: No Grant of Authority or the Like**

- 1) For the purpose of this Article a “spouse” means a person who:
  - a) is legally married;
  - b) persons who are not married but:
    - i) have a common law relationship for a period of not less than one year, the time prescribed in accordance with the *Indian Act*, at the time of death; or
    - ii) have a relationship of some permanence if they are the parents of a child.
- 2) If a Claims Form is submitted to the Administrator on behalf of an Eligible Deceased Class Member without proof of a will or the appointment of an Estate Executor or Estate Administrator, the Administrator may, upon receiving Supporting Documentation, treat the Eligible Deceased Class Member’s Claim in accordance with the priority level of heirs under the *Indian Act* in respect of distribution of property on intestacy as follows:
  - a) The spouse of the Eligible Deceased Class Member at the time of death.
  - b) Where the Eligible Deceased Class Member has no spouse, the child/children of the eligible Deceased Class Member. Any child of the Eligible Deceased Class Member will be able to advance a claim to the Administrator if so entitled pursuant to the priorities herein. The compensation will be divided equally amongst all the children of the Eligible Deceased Class Member who are living at the time that the Application is received by the Administrator.
  - c) Where the Eligible Deceased Class Member has no spouse and no child/children, the Caregiving Parents or Caregiving Grandparents of the Eligible Deceased Class Member, as applicable. Any surviving Caregiving Parent or Caregiving Grandparent of the Eligible Deceased Class Member may advance a claim to the

Administrator if so entitled pursuant to the priorities herein. The compensation will be divided equally between the Caregiving Parents or Caregiving Grandparents of the Eligible Deceased Class Member who are living at the time the Claim is received by the Administrator.

- d) Where an Eligible Deceased Class Member leaves no spouse, child, or Caregiving Parent or Caregiving Grandparent, the siblings of the Eligible Deceased Class Member. Any sibling of the Eligible Deceased Class Member may advance a claim to the Administrator if so entitled pursuant to the priorities herein. The compensation will be distributed equally among the siblings of the Eligible Deceased Class Member who are living at the time the claim is received by the Administrator.
- 3) Subject to sections 4(3) and 42 to 51 of the *Indian Act*, Canada, as represented by the Minister of Indigenous Services Canada, may administer or appoint administrators for the estates of Eligible Deceased Class Members who are under Canada's jurisdiction and who have or are entitled to receive direct compensation under this Agreement.
  - 4) Canada may consult with the Settlement Implementation Committee to utilize the existing ISC framework for the administration of the estates of Eligible Deceased Class Members consistent with the exercise of Ministerial discretion considering individual circumstances. Canada will conduct the administration process in a trauma informed manner and with a view to ensuring that it is as expeditious, cost-effective, user-friendly, and culturally sensitive as possible. This may include:
    - a) where Canada is advised that an Estate Executor or Estate Administrator has not already been appointed on behalf of the estate of an Eligible Deceased Class Member, Canada may appoint an Estate Administrator as needed who will act in accordance with their fiduciary and statutory duties, which may include submitting a Claims Form on behalf of such Class Member; and
    - b) where Canada administers an estate of an Eligible Deceased Class Member, there will be no cost recovery against the estate for doing so and, except in exceptional circumstances, Canada will seek to minimize or eliminate any related third-party costs.
  - 5) Subject to issues that may arise in individual cases, Canada may, but is not obligated to, exercise its discretion under the *Indian Act* to assume jurisdiction over the administration of the estates referred to above. Nothing in this Article should be taken to extend the jurisdiction over the administration of estates under the *Indian Act*.



### **13.05 Canada, Administrator, Class Counsel, Third-Party Assessor, Settlement Implementation Committee, and Investment Committee Held Harmless**

Canada and its counsel, the Administrator, Class Counsel, AFN in-house counsel, the Third-Party Assessor, the Settlement Implementation Committee and its members, and the Investment Committee will be held harmless from any and all claims, counterclaims, suits, actions, causes of action, demands, damages, penalties, injuries, setoffs, judgments, debts, costs, expenses (including legal fees and expenses) or other liabilities of every character whatsoever by reason of or resulting from a payment or non-payment to or on behalf of a Eligible Deceased Class Member or a Person Under Disability, or to an Estate Executor, estate, or Personal Representative pursuant to this Agreement, and this Agreement will be a complete defence.

## **ARTICLE 14 - TRUSTEE AND TRUST**

### **14.01 Trust**

- 1) Subject to advice received by third-party professionals, the Parties agree to the following provisions.
- 2) No later than thirty (30) days following the appointment by the Court of the Trustee, Canada will settle a single trust (the “**Trust**”) with ten dollars (\$10), to be held by the Trustee in accordance with the terms of this Agreement.
- 3) The Plaintiffs will submit the initial investment strategy created with help from experts to the Court for approval together with this Agreement.

### **14.02 Trustee**

- 1) The Court will appoint the Trustee to act as the trustee of the Trust, with such powers, rights, duties, and responsibilities as the Court orders. Without limiting the generality of the foregoing, the duties and responsibilities of the Trustee will include:
  - (a) to hold the Trust Fund;
  - (b) to invest the Settlement Funds in accordance with the Statement of Investment Policies and Procedures as instructed by the Investment Committee, having regard to the best interests of Class Members and the ability of the Trust to meet its financial obligations, subject to the Court’s ongoing supervision;
  - (c) upon instructions from the Administrator and approval of the Settlement Implementation Committee in accordance with the policies of the Settlement Implementation Committee, to provide such amounts from the Trust to the Administrator and any other person described in Article [●] and Article [●], as required from time to time in order to give effect to any provision of this Agreement, including the payment of compensation to Approved Class Members in the Claims Process;

- (d) to engage, upon consultation with and approval of the Settlement Implementation Committee, the services of professionals to assist in fulfilling the Trustee's duties;
- (e) to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- (f) to keep such books, records and accounts as are necessary or appropriate to document the assets held in the Trust, and each transaction of the Trust;
- (g) to take all reasonable steps and actions required under the *Income Tax Act* as set out in the Agreement;
- (h) to report to the Administrator, Canada and the Settlement Implementation Committee on a quarterly basis the assets held in the Trust at the end of each such quarter, or on an interim basis if so requested; and
- (i) to do such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry on the activities of the Trust or to carry out the provisions of this Agreement.

#### **14.03 Trustee Fees**

Canada will pay the reasonable fees, disbursements, and other costs of the Trustee relating to the management of the Trust Funds.

#### **14.04 Nature of the Trust**

- 1) The Trust will be established for the following purposes:
  - (a) to acquire the Settlement Funds payable by Canada;
  - (b) to hold the Settlement Funds in the Trust;
  - (c) to pay compensation in accordance with Article [●];
  - (d) to invest cash in investments in the best interests of Class Members, as provided in this Agreement; and
  - (e) to do such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry out the provisions of this Agreement.

#### **14.05 Legal Entitlements**

The legal ownership of the assets of the Trust, including the Fund, and the right to conduct the activities of the Trust, including the activities with respect to the Fund, will be, subject to the specific limitations and other terms contained herein, vested exclusively in the Trustee, and the Class Members or any other beneficiaries of the Trust have no right to compel or call for any partition, division or distribution of any of the assets of the Trust or

a rendering of accounts. No Class Member or any other beneficiary of the Trust will have or is deemed to have any right of ownership in any of the assets of the Trust.

#### **14.06 Records**

The Trustee will keep such books, records, and accounts as are necessary or appropriate to document the assets of the Trust and each transaction of the Trust. Without limiting the generality of the foregoing, the Trustee will keep at its principal office records of all transactions of the Trust and a list of the assets held in trust, including each Fund, and a record of each Fund's account balance from time to time.

#### **14.07 Quarterly Reporting**

The Trustee will deliver to the Administrator, Canada, and the Settlement Implementation Committee, within thirty (30) days after the end of each calendar quarter, a quarterly report setting forth the assets held as at the end of such quarter in the Trust and each Fund (including the term, interest rate or yield and maturity date thereof) and a record of the Trust's account balance during such quarter.

#### **14.08 Annual Reporting**

The Auditors will deliver to the Administrator, the Trustee, Canada, the Settlement Implementation Committee, the AFN Executive Committee and the Court, within sixty (60) days after the end of each anniversary of the date that the Trust was funded, which date will be the fiscal year-end for the Trust:

- (a) the audited financial statements of the Trust for the most recently completed fiscal year, together with the report of the Auditors thereon;
- (b) a report setting forth a summary of the assets held in trust as at the end of the fiscal year for each Fund and the disbursements made by the Trust during the preceding fiscal year; and
- (c) the audited financial statements of the Administrator.

#### **14.09 Method of Payment**

The Trustee will have sole discretion to determine whether any amount paid or payable out of the Trust is paid or payable out of the income of the Trust or the capital of the Trust.

#### **14.10 Additions to Capital**

Any income of the Trust not paid out in a fiscal year will at the end of such fiscal year be added to the capital of the Trust.

#### **14.11 Tax Elections**

For each taxation year of the Trust, the Trustee will file any available elections and designations under the Income Tax Act and equivalent provisions of the *Income Tax Act* of any province or territory and take any other reasonable steps such that the Trust and

no other person is liable to taxation on the income of the Trust, including the filing of an election under the *Income Tax Act* and equivalent provisions of the *Income Tax Act* of any province or territory for each taxation year of the Trust and the amount to be specified under such election will be the maximum allowable under the *Income Tax Act* or the *Income Tax Act* of any province or territory, as the case may be.

#### **14.12 Canadian Income Tax**

- 1) Canada will make best efforts to exempt any income earned by the Trust from federal taxation, and Canada will take into account the measures that it took in similar circumstances for the class action settlements addressed in section 81 (1) (g.3) of the *Income Tax Act*.
- 2) The Parties agree that the payments to Class Members, including payments of any income earned on the Settlement Funds, are in the nature of personal injury damages and are not taxable income and Canada will make best efforts to obtain a technical interpretation to the same effect from the Income Tax Rulings Directorate of the Canada Revenue Agency.

### **ARTICLE 15 – AUDITORS**

#### **15.01 Appointment of Auditors**

On the recommendation of the Settlement Implementation Committee, the Court will appoint Auditors with such powers, rights, duties and responsibilities as the Court directs. On the recommendation of the Parties, or of their own motion, the Court may replace the Auditors at any time. Without limiting the generality of the foregoing, the duties and responsibilities of the Auditors will include:

- (a) to audit the accounts for the Trust in accordance with generally accepted auditing standards on an annual basis;
- (b) to provide the reporting set out in Article [●];
- (c) to audit the financial statements of the Administrator in relation to the administration of this Settlement ; and
- (d) to file the financial statements of the Trust together with the Auditors' report thereon with the Court and deliver a copy thereof to Canada, the Settlement Implementation Committee, the Administrator, and the Trustee within sixty (60) days after the end of each financial year of the Trust.

#### **15.02 Payment of Auditors**

Canada will pay the reasonable fees, disbursements, and other costs of the Auditors in accordance with Article [●], as approved by the Court.

## **ARTICLE 16 - LEGAL FEES**

### **16.01 Class Counsel Fees**

- 1) Canada will pay Class Counsel the amount approved by the Court, plus applicable taxes, in respect of their legal fees and disbursements for the prosecution of the Actions to the date of the Settlement Approval Hearing, together with advice to Class Members regarding the Agreement and Acceptance, over and above the Settlement Funds. Subject to Article 12.02(1), Canada will also pay the reasonable legal fees of Class Counsel for their work on or for the Settlement Implementation Committee and the Investment Committee. A disagreement between the Parties over legal fees will not prevent the Parties from signing this Agreement. Canada and Class Counsel will participate in mediation if they are unable to agree upon the legal fees, to be presided over by a mediator to be agreed upon by and between Canada and Class Counsel or, failing agreement, appointed by the Court. In the event that Canada and Class Counsel are not able to agree upon legal fees during mediation, fees will be subject to the approval of the Court, subject to appeal. Canada will have standing to make submissions to the Court regarding such fees.
- 2) No such amounts will be deducted from the Settlement Funds.
- 3) Class Counsel will not charge individual Class Members any amounts for legal services rendered in accordance with this Agreement. Such assistance to Class Members will not be considered to constitute or be cause for a conflict.

### **16.02 Ongoing Legal Services**

- 1) Following the Implementation Date, responsibility for representing the interests of the Class as a whole (as distinct from assisting a particular Class Member or Class Members, as reasonably requested) will pass from Class Counsel to the Settlement Implementation Committee, and Class Counsel will have no further obligations in that regard.
- 2) In addition to the legal services provided to the Settlement Implementation Committee in Article 12, Counsel SIC Members may also respond to legal inquiries from Class Members about this Agreement that are beyond the training and/or competence of the navigational support services provided by the Administrator. Legal fees for such services are subject to Article 12.02(1).

### **16.03 Ongoing Fees**

- 1) The Settlement Implementation Committee will maintain appropriate records of payment, fees and disbursements for Ongoing Legal Services.
- 2) The Settlement Implementation Committee may submit the bills relating to Counsel SIC Members to Canada for payment on a monthly basis, subject to Article 12.02(1).

- 3) The Settlement Implementation Committee will seek approval of its accounts from the Court on an annual basis.

### **ARTICLE 17 - GENERAL DISPUTE RESOLUTION**

- 1) Where a dispute arises regarding any right or obligation under this Agreement (“**Dispute**”), the parties to the Dispute will refer the Dispute to confidential mediation in accordance with the ADR Chambers Mediation Rules. If the parties to the Dispute cannot agree on a mediator, they may ask the Court to appoint one (the “**Dispute Resolution Process**”).
- 2) If the Dispute cannot be resolved through the Dispute Resolution Process it can be referred to the Court for determination.
- 3) The costs of dispute resolution amongst members of the Settlement Implementation Committee, in accordance with the Dispute Resolution Process, or by referral to the Court, may be paid out of the Fund in circumstances where deemed appropriate by the mediator or the Court.
- 4) Where Canada is a party to a matter referred to the Dispute Resolution Process, the mediator will have the discretion to award costs of the mediation against any party.
- 5) For greater certainty, this Article will not apply to disputes regarding Claimants in the Claims Process, including eligibility for membership in the Class, extension of the Claims Deadline for an individual Class Member or compensation due to any Class Member.

### **ARTICLE 18 - TERMINATION AND OTHER CONDITIONS**

#### **18.01 Termination of Agreement**

- 1) Except as set forth in Article [●], this Agreement will continue in full force and effect until all obligations under this Agreement are fulfilled and the Court orders that the Agreement has terminated.
- 2) Notwithstanding any other provision in the Agreement, the following provisions will survive the termination of this Agreement:
  - (a) Article 9.01 – Releases
  - (b) Article 20 – Confidentiality
  - (c) Article 22 – Immunity

#### **18.02 Amendments**

Except as expressly provided in this Agreement, no amendment may be made to this Agreement unless agreed to by the Parties in writing, and if the Court has issued the Settlement Approval Order, then any amendment will only be effective once approved by the Court. A material amendment to the Schedules hereto will require the Court’s approval.

### **18.03 Non-Reversion of Settlement Funds**

No amount or earned interest that remains after the distribution of the Settlement Funds will revert to Canada. Such amounts will instead be further distributed in accordance with the

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distribution protocol designed and approved for the Claims Process.

#### **18.04 No Assignment**

- 1) No compensation payable under this Agreement to a Class Member can be assigned, charged, pledged, hypothecated and any such assignment, charge, pledge, or hypothecation is null and void except as expressly provided for in this Agreement.
- 2) No portion of the Settlement Funds or amounts accrued thereon that remain will be charged to a Claimant for completing Claims Forms or providing supporting documentation.
- 3) Any payment to which a Claimant is entitled will be made to such Claimant in accordance with the direction that such Claimant provides to the Administrator unless a court of competent jurisdiction has ordered otherwise.
- 4) Any payments in respect of a Deceased Class Member or a Person Under Disability will be made in accordance with Article [●].
- 5) In the absence of fraud, any amount paid pursuant to this Agreement is not refundable in the event that it is later determined that the Claimant was not entitled to receive or be paid all or part of the amount so paid, but the Claimant may be required to account for any amount that they were not entitled to receive against any future payments that they would otherwise be entitled to receive pursuant to this Agreement.

#### **ARTICLE 19 – WARRANTIES AND REPRESENTATIONS ON SIZE OF THE CLASS**

- 1) The Parties acknowledge that, in preparing the Joint Report, the Experts relied on data from ISC to determine the Estimated Removed Child Class Size. Both the Plaintiffs and Canada were aware that parts of this data came from third parties, was incomplete and, in some cases, inaccurate. The Parties, including Canada, took account of the nature of this data in entering into this Agreement.
- 2) Canada warrants and represents that it provided to the Experts all of the data in Canada's possession relating to the Estimated Removed Child Class Size; however, Canada does not represent or warrant the accuracy of the data it provided nor the accuracy of the Joint Report of the Experts.

#### **ARTICLE 20 – CONFIDENTIALITY**

##### **20.01 Confidentiality**

Any information provided, created or obtained in the course of implementing this Agreement will be kept confidential and will not be used for any purpose other than this Agreement unless otherwise agreed by the Parties.

## **20.02 Destruction of Class Member Information and Records**

- 1) Subject to Article 20.02(2), two years after completing the payment of all compensation under this Agreement, the Administrator will destroy all Class Member information and documentation in its possession, unless a Class Member or their Estate Executor or Estate Claimant specifically requests the return of such information within the two-year period. Upon receipt of such request, the Administrator will forward the Class Member information as directed. Before destroying any information or documentation in accordance with this Article, the Administrator will prepare an anonymized statistical analysis of the Class in accordance with the Claims Process.
- 2) Prior to destruction of the records, the Administrator will create and provide to Canada a list showing the Approved Class Member's: (i) name (ii) Indian registration number, (iii) band or First Nation affiliation, (iv) birthdate, (v) class membership, and (vi) amount and date of payment with respect to each compensation payment made. Notwithstanding anything else in this Agreement, this list must be retained by Canada in strict confidence and can only be used in a legal proceeding or settlement where it is relevant to demonstrating that a claimant received a payment under this Settlement Agreement.
- 3) The destruction of records in the possession or control of Canada is subject to the application of any relevant provincial or federal legislation such as the *Privacy Act*, the *Access to Information Act*, the *Personal Information Protection and Electronic Documents Act* and the *Library and Archives of Canada Act*.

## **20.03 Confidentiality of Negotiations**

Save as may otherwise be agreed between the Parties, the undertaking of confidentiality as to the discussions and all communications, whether written or oral, made in and surrounding the negotiations leading to the Agreement in Principle and this Agreement continues in force. The Parties expressly agree that the AIP and the materials and discussions related to it are inadmissible as evidence to determine the meaning and scope of this Agreement, which supersedes the AIP.

## **ARTICLE 21 – COOPERATION**

### **21.01 Cooperation on Settlement Approval and Implementation**

Upon execution of this Agreement, the Representative Plaintiffs in the Actions, the AFN, Class Counsel, and Canada will make best efforts to obtain approval of this Agreement by the Court and to support and facilitate participation of Class Members in all aspects of this Agreement. If this Agreement is not approved by the Court, the Parties will negotiate in good faith to attempt to cure any defects identified by the Court but will not be obligated to agree to any material amendment to the Agreement executed by the Parties.

## **21.02 Public Announcements**

Upon the issuance of the Settlement Approval Order, the Parties will release a joint public statement announcing the settlement in a form to be agreed by the Parties and, at a mutually agreed time, will make public announcements in support of this Agreement. The Parties will continue to speak publicly in favour of the Agreement as reasonably requested by any Party.

### **ARTICLE 22 – IMMUNITY**

Canada and its counsel, Class Counsel, AFN and its in-house counsel, the Administrator, the Settlement Implementation Committee and its members and counsel, the Investment Committee, and the Third-Party Assessor will be released from, be immune to, and be held harmless from any and all claims, counterclaims, suits, actions, causes of action, demands, damages, penalties, injuries, setoffs, judgments, debts, costs, expenses (including legal fees and expenses) or other liabilities of every character whatsoever by any reason, except fraud relating to the Actions and to this Agreement, and this Agreement will be a complete defence.

### **ARTICLE 23 – PUBLIC APOLOGY**

Upon execution of this Agreement, Canada will propose to the Office of the Prime Minister that the Prime Minister make a public apology for the discriminatory conduct underlying the Class Members' claims and the past and ongoing harm it has caused.

### **ARTICLE 24 – COMPLETE AGREEMENT**

This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and cancels and supersedes any prior or other understandings and agreements between or among the Parties with respect thereto, including the AIP. There are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between or among the Parties with respect to the subject matter hereof other than as expressly set forth or referred to in this Agreement.

*[The remainder of this page is left intentionally blank. Signature pages follow.]*

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

**CANADA, as represented by the  
Attorney General of Canada**

\_\_\_\_\_  
(Authorized signatory)

Attorney General of Canada

for the defendants in Moushoom  
Action, AFN Action and Trout Action

Print  
Name:

Position: \_\_\_\_\_  
\_\_\_\_\_

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

**BY:**

\_\_\_\_\_  
(Authorized signatory)

Sotos LLP/Kugler Kandestin LLP/Miller  
Titerle + Co.

for the plaintiffs

Print Name:

Position: \_\_\_\_\_  
\_\_\_\_\_

**THE PLAINTIFFS in AFN Action, as  
represented by class counsel**

**BY:**

\_\_\_\_\_  
(Authorized signatory)

Nahwegahbow, Corbiere/Fasken  
LLP/Stuart Wuttke

for the plaintiffs

Print  
Name:

Position: \_\_\_\_\_  
\_\_\_\_\_

Federal Court



Cour fédérale

Date: 20211126

Docket: T-402-19

T-141-20

Citation: 2021 FC 1225

Ottawa, Ontario, November 26, 2021

**PRESENT:** The Honourable Madam Justice Aylen

**CLASS PROCEEDING**

**BETWEEN:**

**XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian,  
JONAVON JOSEPH MEAWASIGE) AND JONAVON JOSEPH MEAWASIGE**

**Plaintiffs**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Defendant**

**BETWEEN:**

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

**Plaintiffs**

**and**

**HER MAJESTY THE QUEEN**

**AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA**

**Defendant**

**ORDER AND REASONS**

**UPON MOTION** by the Plaintiffs, on consent and determined in writing pursuant to Rule 369 of the *Federal Courts Rules*, for an order:

- (a) Granting the Plaintiffs an extension of time to make this certification motion past the deadline in Rule 334.15(2)(b);
- (b) Certifying this proceeding as a class proceeding and defining the class;
- (C) Stating the nature of the claims made on behalf of the class and the relief sought by the class;
- (d) Stipulating the common issues for trial;
- (e) Appointing the Plaintiffs specified below as representative plaintiffs;
- (f) Approving the litigation plan; and
- (g) Other relief;

**CONSIDERING** the motion materials filed by the Plaintiffs;

**CONSIDERING** that the Defendant has advised that the Defendant consents in whole to the motion as filed;

**CONSIDERING** that the Court is satisfied, in the circumstances of this proceeding, that an extension of time should be granted to bring this certification motion past the deadline prescribed in Rule 334.15(2)(b);

**CONSIDERING** that while the Defendant's consent reduces the necessity for a rigorous approach to the issue of whether this proceeding should be certified as a class action, it does not relieve the Court of the duty to ensure that the requirements of Rule 334.16 for certification are met [see *Varley v Canada (Attorney General)*, 2021 FC 589];

**CONSIDERING** that Rule 334.16(1) of the *Federal Courts Rules* provides:

Subject to subsection (3), a judge shall, by order, certify a proceeding as a class proceeding if

(a) the pleadings disclose a reasonable cause of action;

(b) there is an identifiable class of two or more persons;

(c) the claims of the class members raise common questions of law or fact, whether or not those common questions predominate over questions affecting only individual members;

(d) a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact; and

(e) there is a representative plaintiff or applicant who

(i) would fairly and adequately represent the interests of the class,

Sous réserve du paragraphe (3), le juge autorise une instance comme recours collectif si les conditions suivantes sont réunies :

a) les actes de procédure révèlent une cause d'action valable;

b) il existe un groupe identifiable formé d'au moins deux personnes;

c) les réclamations des membres du groupe soulèvent des points de droit ou de fait communs, que ceux-ci prédominent ou non sur ceux qui ne concernent qu'un membre;

d) le recours collectif est le meilleur moyen de régler, de façon juste et efficace, les points de droit ou de fait communs;

e) il existe un représentant demandeur qui :

(i) représenterait de façon équitable et adéquate les intérêts du groupe,

(ii) has prepared a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members as to how the proceeding is progressing,

(iii) does not have, on the common questions of law or fact, an interest that is in conflict with the interests of other class members, and

(iv) provides a summary of any agreements respecting fees and disbursements between the representative plaintiff or applicant and the solicitor of record.

(ii) a élaboré un plan qui propose une méthode efficace pour poursuivre l'instance au nom du groupe et tenir les membres du groupe informés de son déroulement,

(iii) n'a pas de conflit d'intérêts avec d'autres membres du groupe en ce qui concerne les points de droit ou de fait communs,

(iv) communique un sommaire des conventions relatives aux honoraires et débours qui sont intervenues entre lui et l'avocat inscrit au dossier.

**CONSIDERING** that, pursuant to Rule 334.16(2), all relevant matters shall be considered in a determination of whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact, including whether: (a) the questions of law or fact common to the class members predominate over any questions affecting only individual members; (b) a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate proceedings; (c) the class proceeding would involve claims that are or have been the subject of any other proceeding; (d) other means of resolving the claims are less practical or less efficient; and (e) the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means;

**CONSIDERING** that:

- (a) The conduct of the Crown at issue in this proposed class action proceeding, as set out in the Consolidated Statement of Claim, concerns two alleged forms of



discrimination against First Nations children: (i) the Crown's funding of child and family services for First Nations children and the incentive it has created to remove children from their homes; and (ii) the Crown's failure to comply with Jordan's Principles, a legal requirement that aims to prevent First Nations children from suffering gaps, delays, disruptions or denials in receiving necessary services and products contrary to their *Charter*-protected equality rights.

- (b) As summarized by the Plaintiffs in their written representations, at its core, the Consolidated Statement of Claim alleges that:
- (i) The Crown has knowingly underfunded child and family services for First Nations children living on Reserve and in the Yukon, and thereby prevented child welfare service agencies from providing adequate Prevention Services to First Nations children and families.
  - (ii) The Crown has underfunded Prevention Services to First Nations children and families living on Reserve and in the Yukon, while fully funding the costs of care for First Nations children who are removed from their homes and placed into out-of-home care, thereby creating a perverse incentive for First Nations child welfare service agencies to remove First Nations children living on Reserve and in the Yukon from their homes and place them in out-of-home care.
  - (iii) The removal of children from their homes caused severe and enduring trauma to those children and their families.

- (iv) Not only does Jordan's Principle embody the Class Members' equality rights, the Crown has also admitted that Jordan's Principle is a "legal requirement" and thus an actionable wrong. However, the Crown has disregarded its obligations under Jordan's Principle and thereby denied crucial services and products to tens of thousands of First Nations children, causing compensable harm.
  - (v) The Crown's conduct is discriminatory, directed at Class Members because they were First Nations, and breached section 15(1) of the *Charter*, the Crown's fiduciary duties to First Nations and the standard of care at common and civil law.
- (c) With respect to the first element of the certification analysis (namely, whether the pleading discloses a reasonable cause of action), the threshold is a low one. The question for the Court is whether it is plain and obvious that the causes of action are doomed to fail [see *Brake v Canada (Attorney General)*, 2019 FCA 274 at para 54]. Even without the Crown's consent, I am satisfied that the Plaintiffs have pleaded the necessary elements for each cause of action sufficient for purposes of this motion, such that the Consolidated Statement of Claim discloses a reasonable cause of action.
- (d) With respect to the second element of the certification analysis (namely, whether there is an identifiable class of two or more persons), the test to be applied is whether the Plaintiffs have defined the class by reference to objective criteria such that a person can be identified to be a class member without reference to the merits

of the action [see *Hollick v Toronto (City of)*, 2001 SCC 68 at para 17]. I am satisfied that the proposed class definitions for the Removed Child Class, Jordan's Class and Family Class (as set out below) contain objective criteria and that inclusion in each class can be determined without reference to the merits of the action.

- (e) With respect to the third element of the certification analysis (namely, whether the claims of the class members raise common questions of law or fact), as noted by the Federal Court of Appeal in *Wenham v Canada (Attorney General)*, 2018 FCA 199 at para 72, the task under this part of the certification determination is not to determine the common issues, but rather to assess whether the resolution of the issues is necessary to the resolution of each class member's claim. Specifically, the test is as follows:

The commonality question should be approached purposively. The underlying question is whether allowing the suit to proceed as a representative one will avoid duplication of fact-finding or legal analysis. Thus an issue will be "common" only where its resolution is necessary to the resolution of each class member's claim. It is not essential that the class members be identically situated vis-à-vis the opposing party. Nor is it necessary that common issues predominate over non-common issues or that the resolution of the common issues would be determinative of each class member's claim. However, the class members' claims must share a substantial common ingredient to justify a class action. Determining whether the common issues justify a class action may require the court to examine the significance of the common issues in relation to individual issues. In doing so, the court should remember that it may not always be possible for a representative party to plead the claims of each class member with the same particularity as would be required in an individual suit. (*Western Canadian Shopping Centres*, above at para 39; see also *Vivendi Canada Inc. v. Dell'Aniello*, 2014 SCC 1, [2014] 1 S.C.R. 3 at paras 41 and 44-46.)

Having reviewed the common issues (as set out below), I am satisfied that the issues share a material and substantial common ingredient to the resolution of each class

member's claim. Moreover, I agree with the Plaintiff that the commonality of these issues is analogous to the commonality of similar issues in institutional abuse claims which have been certified as class actions (such as the Indian Residential Schools and the Sixties Scoop class action litigation). Accordingly, I find that the common issue element is satisfied.

- (f) With respect to the fourth element of the certification analysis (namely, whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of fact and law), the preferability requirement has two concepts at its core: (i) whether the class proceeding would be a fair, efficient and manageable method of advancing the claim; and (ii) whether the class proceeding would be preferable to other reasonably available means of resolving the claims of class members. A determination of the preferability requirement requires an examination of the common issues in their context, taking into account the importance of the common issues in relation to the claim as a whole, and may be satisfied even where there are substantial individual issues [see *Brake, supra* at para 85; *Wenham, supra* at para 77 and *Hollick, supra* at paras 27-31]. The Court's consideration of this requirement must be conducted through the lens of the three principle goals of class actions, namely judicial economy, behaviour modification and access to justice [see *Brake, supra* at para 86, citing *AIC Limited v Fischer*, 2013 SCC 69 at para 22].
- (g) Having considered the above-referenced principles and the factors set out in Rule 334.16(2), I am satisfied a class proceeding is the preferable procedure for the just

and efficient resolution of the common questions of fact and law. Given the systemic nature of the claims, the potential for significant barriers to access to justice for individual claimants and the Plaintiffs' stated concerns regarding the other means available for resolving the claims of class members, I am satisfied that the proposed class action would be a fair, efficient and manageable method of advancing the claims of the class members.

- (h) With respect to the fifth element of the certification analysis (namely, whether there are appropriate proposed representatives), I am satisfied, having reviewed the affidavit evidence filed on the motion together with the detailed litigation plan, that the proposed representative plaintiffs (as set out below) meet the requirements of Rule 334.16(1)(e);

**CONSIDERING** that the Court is satisfied that all of the requirements for certification are met and that the requested relief should be granted;

**THIS COURT ORDERS that:**

1. The Plaintiffs are granted an extension of time, *nunc pro tunc*, to bring this certification motion past the deadline in Rule 334.15(2)(b) of the *Federal Courts Rules*.
2. For the purpose of this Order and in addition to definitions elsewhere in this Order, the following definitions apply and other terms in this Order have the same meaning as in the Consolidated Statement of Claim as filed on July 21, 2021:
  - (a) **“Class”** means the Removed Child Class, Jordan's Class and Family Class, collectively.

- (b) **“Class Counsel”** means Fasken Martineau Dumoulin LLP, Kugler Kandestin LLP, Miller Titerle + Co., Nahwegahbow Corbiere and Sotos LLP.
- (c) **“Class Members”** mean all persons who are members of the Class.
- (d) **“Class Period”** means:
  - (i) For the Removed Child Class members and their corresponding Family Class members, the period of time beginning on April 1, 1991 and ending on the date of this Order; and
  - (ii) For the Jordan’s Class members and their corresponding Family Class members, the period of time beginning on December 12, 2007 and ending on the date of this Order.
- (e) **“Family Class”** means all persons who are brother, sister, mother, father, grandmother or grandfather of a member of the Removed Child Class and/or Jordan’s Class.
- (f) **“First Nation”** and **“First Nations”** means Indigenous peoples in Canada, including the Yukon and the Northwest Territories, who are neither Inuit nor Métis, and includes:
  - (i) Individuals who have Indian status pursuant to the *Indian Act*, R.S.C., 1985, c.I-5 [*Indian Act*];

- (ii) Individuals who are entitled to be registered under section 6 of the *Indian Act* at the time of certification;
  - (iii) Individuals who met band membership requirements under sections 10-12 of the *Indian Act* and, in the case of the Removed Child Class members, have done so by the time of certification, such as where their respective First Nation community assumed control of its own membership by establishing membership rules and the individuals were found to meet the requirements under those membership rules and were included on the Band List; and
  - (iv) In the case of Jordan's Class members, individuals, other than those listed in sub-paragraphs (i)-(iii) above, recognized as citizens or members of their respective First Nations whether under agreement, treaties or First Nations' customs, traditions and laws.
- (g) **"Jordan's Class"** means all First Nations individuals who were under the applicable provincial/territorial age of majority and who during the Class Period were denied a service or product, or whose receipt of a service or product was delayed or disrupted, on grounds, including but not limited to, lack of funding or lack of jurisdiction, or as a result of a jurisdictional dispute with another government or governmental department.
- (h) **"Removed Child Class"** means all First Nations individuals who:
- (i) Were under the applicable provincial/territorial age of majority at any time during the Class Period; and

- (ii) Were taken into out-of-home care during the Class Period while they, or at least one of their parents, were ordinarily resident on a Reserve.
  - (i) **“Reserve”** means a tract of land, as defined under the *Indian Act*, the legal title to which is vested in the Crown and has been set apart for the use and benefit of an Indian band.
3. This proceeding is hereby certified as a class proceeding against the Defendant pursuant to Rule 334.16(1) of the *Federal Courts Rules*.
  4. The Class shall consist of the Removed Child Class, Jordan’s Class and Family Class, all as defined herein.
  5. The nature of the claims asserted on behalf of the Class against the Defendant is constitutional, negligence and breach of fiduciary duty owed by the Crown to the Class.
  6. The relief claimed by the Class includes damages, *Charter* damages, disgorgement, punitive damages and exemplary damages.
  7. The following persons are appointed as representative plaintiffs:
    - (a) For the Removed Child Class: Xavier Moushoom, Ashley Dawn Louise Bach and Karen Osachoff;
    - (b) For the Jordan’s Class: Jeremy Meawasige (by his litigation guardian, Jonavon Joseph Measwasige) and Noah Buffalo-Jackson (by his litigation guardian, Carolyn Buffalo); and



- (c) For the Family Class: Xavier Moushoom, Jonavon Joseph Meawasige, Melissa Walterson, Carolyn Buffalo and Dick Eugene Jackson (also known as Richard Jackson),

all of whom are deemed to constitute adequate representative plaintiffs of the Class.

8. Class Counsel are hereby appointed as counsel for the Class.

9. The proceeding is certified on the basis of the following common issues:

- (a) Did the Crown's conduct as alleged in the Consolidated Statement of Claim [Impugned Conduct] infringe the equality right of the Plaintiffs and Class Members under section 15(1) of the *Canadian Charter of Rights and Freedoms*? More specifically:

- (i) Did the Impugned Conduct create a distinction based on the Class Members' race, or national or ethnic origin?
- (ii) Was the distinction discriminatory?
- (iii) Did the Impugned Conduct reinforce and exacerbate the Class Members' historical disadvantages?
- (iv) If so, was the violation of section 15(1) of the *Charter* justified under section 1 of the *Charter*?
- (v) Are *Charter* damages an appropriate remedy?

- (b) Did the Crown owe the Plaintiffs and Class Members a common law duty of care?
  - (i) If so, did the Crown breach that duty of care?
- (c) Did the Crown breach its obligations under the *Civil Code of Québec*? More specifically:
  - (i) Did the Crown commit fault or engage its civil liability?
  - (ii) Did the Impugned Conduct result in losses to the Plaintiffs and Class Members and if so, do such losses constitute injury to each of the Class Members?
  - (iii) Are Class Members entitled to claim damages for the moral and material damages arising from the foregoing?
- (d) Did the Crown owe the Plaintiffs and Class Members a fiduciary duty?
  - (i) If so, did the Crown breach that duty?
- (e) Can the amount of damages payable by the Crown be determined partially under Rule 334.28(1) of the *Federal Courts Rules* on an aggregate basis?
  - (i) If so, in what amount?
- (f) Did the Crown obtain quantifiable monetary benefits from the Impugned Conduct during the Class Period?
  - (i) If so, should the Crown be required to disgorge those benefits?

(ii) If so, in what amount?

(g) Should punitive and/or aggravated damages be awarded against the Crown?

(i) If so, in what amount?

10. The Plaintiffs' Fresh as Amended Litigation Plan, as filed November 2, 2021 and attached hereto as Schedule "A", is hereby approved, subject to any modifications necessary as a result of this Order and subject to any further orders of this Court.
11. The form of notice of certification, the manner of giving notice and all other related matters shall be determined by separate order(s) of the Court.
12. The opt-out period shall be six months from the date on which notice of certification is published in the manner to be specified by further order of this Court.
13. The timetable for this proceeding through to trial shall also be determined by separate order(s) of the Court.
14. Pursuant to Rule 334.39(1) of the *Federal Courts Rules*, there shall be no costs payable by any party for this motion.

\_\_\_\_\_  
"Mandy Aylen"

Judge

## ANNEX A

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

**FEDERAL COURT  
PROPOSED CLASS PROCEEDING**

**B E T W E E N:**

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

Plaintiffs

and

**THE ATTORNEY GENERAL OF CANADA**

Defendant

**FEDERAL COURT  
PROPOSED CLASS PROCEEDING**

**B E T W E E N:**

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

Plaintiffs

and

**HER MAJESTY THE QUEEN  
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA**

Defendant

**FRESH AS AMENDED LITIGATION PLAN**

November 2, 2021

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Jackson by his Litigation Guardian, Carolyn Buffalo, Carolyn  
Buffalo, and Dick Eugene Jackson also known as Richard Jackson

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## **I. DEFINITIONS**

1. The definitions below will be used throughout this Litigation Plan. Any term defined in the Consolidated Statement of Claim that is also used in this Litigation Plan has the same meaning as that included in the Consolidated Statement of Claim or as otherwise defined by the Court.

**Aggregate Damages Distribution Process** means the system directed by the Court for the **Class Action Administrator** to distribute aggregate damages to **Approved Class Members**;

**Approved Class Member(s)** means **Approved Removed Child Class Member(s)** and/or **Approved Jordan's Class Member(s)** and/or **Approved Family Class Members**;

**Approved Family Class Member(s)** means a Family Class Member who has been approved by the **Class Action Administrator** as meeting the criteria for being a Family Class Member, including the brother, sister, mother, father, grandmother or grandfather of an **Approved Removed Child Class Member** (regardless of whether the **Approved Removed Child Class Member** is alive) and whose approval as a Family Class Member has not been successfully challenged;

**Approved Jordan's Class Member(s)** means a Jordan's Class Member who has been approved by the **Class Action Administrator** as meeting the criteria for being a Jordan's Class Member and whose approval as a Jordan's Class Member has not been successfully challenged;

**Approved Removed Child Class Member(s)** means a Removed Child Class Member who has been approved by the **Class Action Administrator** as meeting the criteria for being a Removed Child Class Member and whose approval as a Removed Child Class Member has not been successfully challenged;

**Certification Notice** means the information set out in Schedule A to this Litigation Plan, as may be subsequently amended and as approved by the Court;

**CHRT Decision** means the decision of the **CHRT** in the **CHRT Proceeding** dated January 26, 2016, bearing citation 2016 CHRT 2;

**CHRT** means the Canadian Human Rights Tribunal;

**CHRT Proceeding** means the proceeding before the **CHRT** under file number T1340/7008;

**Claim Form** means the form set out in Schedule C to this Litigation Plan used by the Removed Child Class Members and/or the Jordan's Class Members and/or the Family Class Members to submit a claim, as may be subsequently amended and as approved by the Court;



**Class Action Administrator** means any settlement administrator or other appropriate firm appointed by the Court to assist in the administration of the class proceeding;

**Class Counsel** means the consortium of law firms acting as co-counsel in this class proceeding, with the firms of Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Company, Nahwegahbow, Corbiere and Faskens LLP as Solicitors of Record;

**Class Member(s)** means an individual who falls within the definition of the Removed Child Class and/or the Jordan's Class and/or the Family Class, as pleaded in the Consolidated Statement of Claim and as approved by the Court;

**Common Issues** means the issues listed in the Notice of Motion for Certification, or as found by the Court, as may be subsequently amended and as approved by the Court;

**Common Issues Notice** means the information set out in the notice regarding the **Common Issues** to be certified by the Court at Certification, as may be subsequently amended and as approved by the Court;

**Crown Class Member Information** means information to be provided by the Crown, at the request of the plaintiffs and/or as ordered by the Court, to the **Class Action Administrator** and/or **Class Counsel** regarding the names and last known contact information of all individuals who meet the criteria of Class Members as set out in the Consolidated Statement of Claim or as otherwise defined by the Court, including: (a) a list of all known Class Members' names and last known addresses using the information in the Crown's possession or under its control<sup>1</sup> as well as all individuals who received a product or service pursuant to Jordan's Principle following the CHRT Decision (estimated by the Crown in its representations to the CHRT to be individuals having received over 165,000 services under Jordan's Principle as of October 2018).

**Individual Damage Assessment Form** means the form set out in Schedule D to this Litigation Plan, as may be subsequently amended and as approved by the Court, to be used by **Approved Class Member(s)** to elect an individual assessment of their damages and commence an individual damage assessment under the **Individual Damage Assessment Process**;

**Individual Damage Assessment Process** means the procedure and system to be approved by the Court following the **Common Issues** trial to be used to assess and distribute damages to **Approved Class Member(s)** who have requested an individual damage assessment by submitting an **Individual Damage Assessment Form**;

**Notice Program** means the process, set out in the Litigation Plan, for communicating the **Certification Notice** and/or the **Common Issues Notice** to **Class Members**, as may be subsequently amended and as approved by the Court;

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<sup>1</sup> Where Class Members are known to be represented by counsel, only their name should be provided along with their counsel's name and address.

**Opt Out Form** means the form set out in Schedule B to this Litigation Plan used by Class Members to opt out of the class proceeding, as may be subsequently amended and as approved by the Court;

**Opt Out Period** means the deadline, proposed by the plaintiffs as six months from the date on which notice of certification to the Class is published in the manner to be specified by the Court or as otherwise determined by the Court, to opt out of the class proceeding;

**Opt Out Procedures** means the procedures, set out in the Litigation Plan, for Class Members to opt out of this class proceeding, as may be subsequently amended and as approved by the Court; and

**Special Opt Out Procedures** means the procedures, set out in the Litigation Plan, for Class Members who have already commenced a civil proceeding in Canada or who are known by the Crown to have already retained legal counsel to opt out of this class proceeding, as may be subsequently amended and as approved by the Court.

## II. OVERVIEW

2. The plaintiffs have commenced this action on behalf of First Nations individuals who allege that the Crown has engaged in the discriminatory underfunding of child and family services and breached the equality obligations underlying Jordan's Principle. The class action advances the rights of tens of thousands of First Nations children, former children and family members.

3. This Litigation Plan is advanced as a workable method of advancing the proceeding on behalf of the Class and of notifying Class Members as to how the class proceeding is progressing, pursuant to rule 334.16(1)(e)(ii) of the *Federal Court Rules*. The Litigation Plan is modelled on the class action relating to the Indian Residential Schools.<sup>2</sup>

4. This Litigation Plan sets out a detailed plan for the common stages of this litigation, and sets out, on a without prejudice basis, an early plan for how the individual stage of the action may progress. Given the early stage of the litigation, the plan is necessarily subject to substantial revisions as the case progresses.

5. The plaintiffs are mindful that the CHRT has awarded statutory compensation to a subset of the Class Members pursuant to the CHRA (*First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 39). If CHRT compensation is paid to any Class Members, the plaintiffs will seek a determination from the Court as to whether the Crown is entitled to a set-off or deduction of damages in this action for such amounts.

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<sup>2</sup> See *Baxter v Canada (Attorney General)*, 2006 CanLII 41673 (Ont Sup Ct), and subsequent orders of the Court. See also information available on the website of the Indian Residential Schools Adjudication Secretariat, online <<http://www.iap-pei.ca/home-eng.php>>.

### **III. PRE-CERTIFICATION PROCESS**

#### **A. The Parties**

##### ***i. The Plaintiffs***

6. The plaintiffs have proposed three classes:
  - (a) the Removed Child Class, represented by Xavier Moushoom, Ashley Dawn Louise Bach, and Karen Osachoff;
  - (b) the Family Class, represented by Xavier Moushoom, Jonavon Joseph Meawasige, Melissa Walterson, Carolyn Buffalo, and Dick Eugene Jackson also known as Richard Jackson; and
  - (c) the Jordan's Class, represented by Jeremy Meawasige, by his litigation guardian, Jonavon Joseph Meawasige; and Noah Buffalo-Jackson, by his litigation guardian, Carolyn Buffalo.

##### ***ii. The Defendant***

7. The defendant is the Crown.

#### **B. The Pleadings**

##### ***i. Consolidated Statement of Claim***

8. The plaintiffs have delivered a Consolidated Statement of Claim issued with leave of the Honourable Justice St-Louis dated July 7, 2021.

##### ***ii. Statement of Defence***

9. The Crown has not delivered a Statement of Defence.

##### ***iii. Third Party Claim***

10. The Crown has not issued any Third Party Claim.

#### **C. Pre-Certification Communication Strategy**

##### ***i. Responding to Inquiries from Putative Class Members***

11. Both before and since the commencement of this class proceeding, Class Counsel have received many communications from Class Members affected by this class proceeding.

12. With respect to each inquiry, the individual's name, address, email and telephone number is added to a confidential database. Class Members are asked to register on the websites of Class Counsel. Once registered, they receive regular updates on the progress of the class proceeding in French and English. Any individual Class Members who contact Class Counsel are responded to in their preferred language.

***ii. Pre-Certification Status Reports***

13. In addition to responding to individual inquiries, Class Counsel have created a webpage concerning the class proceeding in English and French (see: <https://sotosclassactions.com/cases/current-cases/first-nations-youth/>). The most current information on the status of the class proceeding is posted and is updated regularly in English and French.

14. Copies of the publicly filed court documents and court decisions are accessible from the webpage. In addition, phone numbers for Class Counsel in Quebec and Ontario as well as email contact information are provided.

15. Class Counsel send update reports to Class Members who have provided their contact information and have indicated an interest in being notified of further developments in the class proceeding.

***iii. Pre-certification outreach***

16. Class Counsel have presented the proposed class action to a council of First Nations social services delivery personnel for the Province of Québec and the region of Labrador, as well as the First Nations youth directors forum in British Columbia. Class Counsel are in the process of arranging similar presentations to affected communities in Québec and elsewhere in Canada.



#### **D. Settlement Conference**

##### ***i. Pre-Certification Settlement Conference***

17. The plaintiffs have participated in a pre-Certification mediation to determine whether any or all of the issues arising in the class proceeding can be resolved. Mediation is ongoing and may require that some of the targeted timelines in this Litigation Plan be amended on agreement of the parties or as otherwise ordered by the Court to allow negotiations to advance.

#### **E. Timetable**

### **IV. POST-CERTIFICATION PROCESS**

#### **A. Timetable**

##### ***i. Plaintiffs' Timetable for the Post-Certification Process***

18. The plaintiffs intend to proceed to trial on an expedited basis or a hybrid summary judgment/*viva voce* trial. It is anticipated that all of the documentary evidence produced by the Crown in the CHRT Proceeding will be relevant and producible in this class proceeding. Because of the extensive documentary production in the CHRT Proceeding, the plaintiffs expect few, if any, disputes as to documentary productions in this case relating to the time period covered by the CHRT Proceeding (*i.e.*, 2006-present). Furthermore, in light of the extensive testimony given at the CHRT Proceeding, it is anticipated that oral discovery can proceed quickly after certification and can be completed in a limited period of time. The plaintiffs have less clarity at this time regarding productions pertaining to the 1991-2006 period.

19. The plaintiffs propose that the following post-Certification process timetable, as explained in detail below:

Certification Notice to Class Members commences	at a date to be determined by the Court after certification
Exchange Affidavits of Documents within	90 days after Certification Notice to Class Members

Motions for Production of Documents, Multiple Examinations of Crown representatives or for Examinations of Non-Parties to be conducted within	120 days after Certification Notice to Class Members
Examinations for Discovery to be conducted within	150 days after Certification Notice to Class Members
Certification Notice to Class Members completed within	60 days from a date to be determined by the Court
Trial Management Conference re: Expert Evidence	180 days after Certification Notice to Class Members
Motions arising from Examinations for Discovery within	180 days after Certification Notice to Class Members
Undertakings answered within	200 days after Certification Notice to Class Members
Further Examinations, if necessary, within	240 days after Certification Notice to Class Members
Common Issues Pre-Trial to be conducted	290 days after Certification Notice to Class Members
Opt Out Period deadline	Six months after Notice of Certification to Class Members
Common Issues Trial or Hybrid Trial to be conducted within	330 days after Certification Notice to Class Members

## **B. Certification Notice, Notice Program and Opt Out Procedures**

### ***i. Certification Notice***

20. The Certification Notice and all other notices to Class Members provided by the plaintiffs will, once finalized and approved by the Court, be translated into French. The plaintiffs will explore whether it will be necessary to translate the Certification Notice and/or other notices into some First Nations languages, subject to Court approval.

21. The Certification Notice will, subject to further amendments, be in the form set out in Schedule A hereto.

*ii. Notice Program*

22. The plaintiffs propose to communicate the Certification Notice to Class Members through the following Notice Program.

23. The plaintiffs will provide Certification Notice to Class Members by arranging to have the Certification Notice (and its translated versions whenever possible) communicated/published in the following media starting on a date to be determined by the Court, as frequently as may be reasonable or as directed by the Court under rule 334.32 of the *Federal Courts Rules*. In particular, the plaintiffs propose the following means of providing Certification Notice:

- (a) A press release on the start date of notice of certification to the Class to be determined by order of the Court;
- (b) Direct communication with Class Members:
  - (i) by email or regular mail to the last known contact information of Class Members provided by the Crown (*i.e.*, Crown Class Member Information);
  - (ii) by email or regular mail to all Class Members who have provided their contact information to Class Counsel, including through the Class Proceeding's webpage;
  - (iii) by regular mail to the last known addresses of all Status Card holders in Canada born on or after April 1, 1991;
- (c) Distribution by the Assembly of First Nations to its membership of First Nations bands across Canada;



- (d) Email to First Nations children's aid societies across Canada;
- (e) Circulation through the following media:
  - (i) Aboriginal newspapers/publications such as First Nations Drum, The Windspeaker, Mi'kmaq Maliseet Nations News, APTN National News;
  - (ii) radio outlets, such as Aboriginal radio CFWE, CBC national and CBC regional;
  - (iii) television outlets, such as on The Aboriginal Peoples Television Network;  
and / or
  - (iv) social media outlets, such as Facebook and Instagram.

***iii. Opt Out Procedures***

- 24. The plaintiffs propose Opt Out Procedures for Class Members who do not wish to participate in the class proceeding.
- 25. The Certification Notice will include information about how to Opt Out of the class proceeding and will provide information about how to obtain and submit the appropriate Opt Out Forms to the Class Action Administrator and/or Class Counsel.
- 26. There will be one standard Opt Out Form for all Class Members.
- 27. Class Members will be required to file the Opt Out Form with the Class Action Administrator and/or Class Counsel within the Opt Out Period.

28. The Class Action Administrator or Class Counsel shall, within 30 days after the expiration of the Opt Out Period, deliver to the Court and the Parties an affidavit listing the names of all persons who have opted out of the Class Action.

***iv. Special Opt Out Procedures***

29. The plaintiffs propose Special Opt Out Procedures for Class Members who are either named party plaintiffs in a civil proceeding in Canada or who are known by the Crown to have retained legal counsel in respect of the subject matter of this action with the express purpose of starting a separate action against the Crown.

30. Ongoing civil actions by Class Members who do not opt out of the Class Action should be dealt with in a manner to be determined by this Court or by the Court in which such proceedings are brought.

**C. Identifying and Communicating with Class Members**

***i. Identifying Class Members***

31. As stated above, the plaintiffs intend to request the Crown Class Member Information.

***ii. Database of Class Members***

32. Class Counsel will maintain a confidential database of all Class Members who contact Class Counsel. The database will include each individual's name, address, telephone number, and/or email address where available.

***iii. Responding to Inquiries from Class Members***

33. Class Counsel and their staff respond to each inquiry by Class Members.

34. Class Counsel have a system in place to allow for responses to inquiries by Class Members in their language of choice whenever possible.

*iv. Post Certification Status Reports*

35. In addition to responding to individual inquiries, Class Counsel will continually update the webpage dedicated to this class action with information concerning the status of the class proceeding.

36. Class Counsel will send update reports to Class Members who have provided their contact information. These update reports will be sent as necessary or as directed by the Court.

**D. Documentary Production**

*i. Affidavit/List of Documents*

37. The plaintiffs will be required to deliver an Affidavit of Documents within 90 days after notice of certification is given to Class Members. The Crown will similarly be required to deliver a List of Documents within 90 days after notice of certification is given to Class Members.

38. The Parties are expected to serve Supplementary Affidavits (or Lists) of Documents as additional relevant documents are located.

*ii. Production of Documents*

39. All Parties are expected to provide, at their own expense, electronic copies of all Schedule "A" productions at the time of delivering their Affidavit of Documents. All productions are to be made in electronic format.

40. Documentary productions are to include, but not be limited to, all documents produced and exhibits tendered in the CHRT Proceedings.

*iii. Motions for Documentary Production*

41. Any motions for documentary production shall be made within 120 days after certification notice is given to Class Members.

***iv. Document Management***

42. The Parties will each manage their productions with a compatible document management system, or as directed by the Court. All documents are to be produced in OCR format.

43. All productions should be numbered and scanned electronically to enable quick access and efficient organization of documents.

**E. Examinations for Discovery**

44. Examinations for Discovery will take place within 150 days after certification notice is given to Class Members.

45. The plaintiffs expect to request the Crown's consent to examine more than one Crown representative. In the event that a dispute arises in this regard, the plaintiffs propose to bring a motion within 120 days after certification notice is given to Class Members.

46. The plaintiffs anticipate that the Examination for Discovery of a properly selected and informed officer of the Crown will take approximately 10 days, subject to refusals and undertakings.

47. The plaintiffs anticipate that the Examination for Discovery of the representative plaintiffs will take approximately one day, subject to refusals and undertakings.

**F. Interlocutory Matters**

***i. Motions for Refusals and Undertakings***

48. Specific dates for motions for refusals and undertakings that arise from the Examinations for Discovery will be requested upon Certification. Motions for refusals and undertakings will be heard within 180 days after certification notice is given to Class Members.

*ii. Undertakings*

49. Undertakings are to be answered within 200 days after certification notice is given to Class Members.

*iii. Re-attendances and Further Examinations for Discovery*

50. Any re-attendances or further Examinations for Discovery required as a result of answers to undertakings or as a result of the outcome of the motions for refusals and undertakings should be completed within 240 days after certification notice is given to Class Members.

**G. Expert Evidence**

*i. Identifying Experts and Issues*

51. A Trial Management Conference will take place following Examinations for Discovery at which guidelines for identifying experts and their proposed evidence at trial will be determined.

**H. Determination of the Common Issues**

*i. Pre-Trial of the Common Issues*

52. Upon Certification, the Court will be asked to assign a date for a Pre-Trial relating to the Common Issues trial.

53. The plaintiffs expect that a full day will be required for a Pre-Trial and will request that the Pre-Trial be held within 290 days after certification notice is given to Class Members and, in any event, at least 90 days before the date of the Common Issues trial.

*ii. Trial of the Common Issues*

54. Upon Certification, the Court will be asked to assign a date for the Common Issues trial.

55. The plaintiffs propose that the trial of the Common Issues be held 330 days after certification notice is given to Class Members.

56. The length of time required for the Common Issues trial will depend on many factors and will be determined at the Trial Management Conference.

## V. POST COMMON ISSUES DECISION PROCESS

### A. Timetable

#### i. Plaintiffs' Timetable for the Post-Common Issues Decision Process

57. The plaintiffs propose that the following timetable be imposed by the Court following the Court's judgment on the Common Issues:

Common Issues Notice provided	Within 90 days of Common Issues decision
Individual Issue Hearings, if any, begin	120 days after decision
Individual Damage Assessments, if any, begin	240 days after decision
Deadline to Submit Claim Forms (as of right)	Within 1 year of decision
Deadline to Submit Claim Forms (as of right in prescribed circumstances or with leave of the Court)	1 year after decision

### B. Common Issues Notice

#### i. Notifying Class Members

58. The Common Issues Notice will, subject to further amendments, be substantially in the form approved by the Court at the Common Issues trial. The Common Issues Notice may contain, amongst others, information on any aggregate damages awarded and any issues requiring individual determination, as approved by the Court.

59. The plaintiffs propose to circulate the Common Issues Notice within 90 days after the Common Issues judgment.

60. The Common Issues Notice will be circulated in the same manner as set out above dealing with the Certification Notice or as directed by the Court.



**C. Claim Forms**

***i. Use of Claim Forms***

61. The Court will be asked to approve under rule 334.37 the use of standardized Claim Forms by Class Members who may be entitled to a portion of the aggregate damage award or who may be entitled to have an individual assessment.

***ii. Obtaining and Filing Claim Forms***

62. The procedure for obtaining and filing Claim Forms will be set out in the Common Issues Notice.

63. The plaintiffs propose to use a single standard Claim Form, substantially in the form attached as Schedule C, for all three classes, subject to further amendments and as approved by the Court.

64. The plaintiffs propose that counselling be made available to Class Members in need of support and assistance when completing the Claim Forms. Where necessary, a process for appointing a guardian or trustee to assist the Class Members will be developed.

65. Before completing a Claim Form, Class Members will be able to review information about them in the possession of Canada relevant to their claim (the Crown Class Member Information). That information may include:

- (a) any records relating to the Class Member's voluntary or involuntary placement in out-of-home care during the Class Period;
- (b) any records relating to a need by the Class Member for a service or product;
- (c) any records relating to a request made by the Class Member for a service or product;
- (d) any records relating to the denial of a service or product to the Class Member;

- (e) any records relating to any service(s) or product(s) provided by the Crown to the Class Member; and/or
- (f) any records relating to the family status or family relationship between a Family Class Member and a Removed Child Class Member or a Jordan's Class Member.

66. Class Members will be required to file the appropriate Claim Form with the Class Action Administrator and/or Class Counsel within the deadlines set out below or as directed by the Court.

67. The Class Action Administrator will be responsible for receiving all Claim Forms.

***iii. Deadline for Filing Claim Forms***

68. Class Members will be advised of the deadline for filing Claim Forms in the Common Issues Notice.

69. The plaintiffs propose that Class Members be given one year, or such period as set out by the Court, after the Common Issues judgment to file Claim Forms as of right.

70. The plaintiffs propose that Class Members be entitled to file Claim Forms more than one year after the Court's judgment on the Common Issues in certain circumstances prescribed by the Court (*i.e.*, lack of awareness of entitlement, etc.) or with leave of the Court (*i.e.*, based on mental or physical health issues, etc.).

**D. Determining and Categorizing Class Membership**

***i. Approving Removed Child Class Members***

71. The Class Action Administrator will determine whether an individual submitting a Claim Form as a Removed Child Class Member properly qualifies as a Class Member.

72. In addition, the Class Action Administrator will determine and categorize the duration of the Removed Child Class Member's presence in out-of-home care. The Class Action Administrator will also determine the number of out-of-home care locations that the Removed



Child Class Member was placed in, as well as whether such locations were on or off Reserve and whether such locations were within the community of the Class Member.

73. The Class Action Administrator will make these determinations by referring to the information set out in the Claim Form as well as the Crown Class Member Information.

74. The Class Action Administrator will, where appropriate and necessary, request in writing further information from the individual filing the Removed Child Class Claim Form or the Crown to make these determinations.

*ii. Approving Jordan's Class Members*

75. The Class Action Administrator will determine whether an individual submitting a Claim Form as a Jordan's Class Member properly qualifies as a Class Member.

76. The Class Action Administrator will make these determinations following guidelines determined by the Court at the Common Issues trial in part by referring to the information set out in the Claim Form. Such guidelines may include: (a) whether the Class Member needed a service or product at any point during the Class Period; (b) whether the Class Member was denied that service or product; (c) whether the Class Member's receipt of a service or product was delayed or disrupted; (d) whether such denial, delay or disruption was based on lack of funding, lack of jurisdiction or a jurisdictional dispute between governments or government departments; and/or (e) whether such denial, disruption or delay happened while the Class Member was under the applicable provincial/territorial age of majority.

77. The Class Action Administrator will also make these determinations in part by referring to the Crown Class Member Information regarding the number of Class Members who have received a service or product under Jordan's Principle since the CHRT Decision.

78. The Class Action Administrator will, where appropriate and necessary, request in writing further information from the individual submitting the Jordan's Class Claim Form or the Crown to make these determinations.

***iii. Approving Family Class Members***

79. The Class Action Administrator will determine whether an individual submitting a Family Class Claim Form properly qualifies as a Family Class Member.

80. These determinations will be made by the Class Action Administrator by referring to Crown Class Member Information and the information set out in the Claim Form with respect to the relationship of the proposed Family Class Member with an Approved Removed Child Class Member.

81. The Class Action Administrator will, where appropriate and necessary, request in writing further information from the individual filing the Claim Form to make these determinations.

***iv. Deceased Class Members***

82. The estate of a deceased Class Member may submit a Claim Form if the deceased Class Member died on or after April 1, 1991.

83. If the deceased Class Member would otherwise have qualified as an Approved Class Member, the estate will be entitled to be compensated in accordance with the Aggregate Damages Distribution Process. The estate will not have the option to proceed under the Individual Damage Assessment Process except with leave of the Court.

***v. Notifying Class Members, Challenging and Recording Decisions***

84. Within 30 days of receipt of a Claim Form, the Class Action Administrator will notify the individual of its decision on whether the individual is an Approved Class Member. Individuals

who are not approved as Class Members will be provided with information on the procedures to follow to challenge the decision of the Class Action Administrator. The plaintiffs propose that these procedures include an opportunity to resubmit an amended Claim Form with supporting documentation capable of verifying that the individual is a Class Member.

85. All interested parties will be provided with the ability to appeal a decision by the Class Action Administrator to the Court or in a manner to be prescribed. Class Counsel may challenge the decision on behalf of affected individuals.

86. The Class Action Administrator will keep records of all Approved Class Members and their respective Claim Forms and will provide this information to Class Counsel, the Crown and other interested parties on a monthly basis. Class Counsel and/or other interested parties will have 30 days after receiving this information to challenge the Class Action Administrator's decision by advising the Class Action Administrator and the other affected parties in writing of the basis for their challenge. The responding party will be given 30 days thereafter to respond in writing to the challenge at which time the Class Action Administrator will reconsider its decision and advise all parties.

#### **E. Aggregate Damages Distribution Process**

##### ***i. Distribution of Aggregate Damages***

87. The Class Action Administrator will distribute the aggregate damages to all Approved Class Members in the manner directed by the Court.

88. The plaintiffs will propose that Approved Class Members be entitled to a proportion of the aggregate damages as determined by the Class Action Administrator based on factors to be approved by the Court, including but not limited to: (a) the duration of the Class Member's

presence in out-of-home care; (b) the number of out-of-home care locations where the Class Member was placed as a child; (c) the duration of deprivation from a service or product as a result of a delay, denial or disruption contrary to Jordan's Principle; and (d) the family relationship of the Family Class Member to a given Removed Child Class Member.

89. The Class Action Administrator, upon advising Approved Class Members of its decision on their membership as set out above, will within a reasonable period of time to be determined by the Court, advise the Approved Class Members of the proportion of aggregate damages owing to each Approved Class Member under the Aggregate Damages Distribution Process to be approved by the Court.

90. In addition, if applicable, the Class Action Administrator will provide Approved Class Members with a package of materials including: information on how to collect their aggregate damage awards, information on Class Members' ability to proceed through the Individual Damage Assessment Process, copies of the Individual Damage Assessment Form along with a guide on how to complete the form, and contact information for obtaining independent legal advice and counselling. Such information is to be provided in a culturally responsive and appropriate style, making full use of interactive media, including video tutorials.

***ii. Seeking an Individual Damage Assessment***

91. Approved Class Members, when notified of their entitlement to aggregate damages, may be given information on their right to have their compensation individually assessed under the Individual Damage Assessment Process set out below.

**F. Individual Damage Assessment Process**

***i. Individual Damage Assessment Forms***

92. When Approved Class Members are notified of their aggregate damage entitlement and information on their right to proceed under the Individual Damage Assessment Process, they will be provided with an Individual Damage Assessment Form as set out in Schedule D.

93. If applicable, the plaintiffs propose that a request for individual damages be made by sending an Individual Damage Assessment Form to the Class Action Administrator, and that only those individuals who wish to proceed through the Individual Damage Assessment Process be required to submit Individual Damage Assessment Forms.

***ii. Individual Damage Assessments***

94. The Court may be asked to approve the use of an Individual Damage Assessment Process after a judgment on the Common Issues or otherwise as directed by the Court.

95. The Individual Damage Assessment Process would be available to all Approved Class Members except those who are found by the Court not to be entitled to individual damages following the Common Issues trial.

***iii. Individual Issue Hearings***

96. The Court will be asked to provide directions, or to appoint persons to conduct references under rule 334.26 of the *Federal Courts Rules* or appoint a judge to conduct test cases involving selected Approved Class Members who are proceeding under the Individual Damage Assessment Process to assist with the matters that may or may not remain in issue after the determination of the Common Issues, such as:

- (a) Hearing rules for individual assessments;
- (b) A compensation matrix for individual damages;



- (c) Assistance in resolving disputes relating to the definitions of key terms such as “cultural and language loss”, “pain and suffering”, “physical abuse”, and “sexual abuse”; and
- (d) Other matters raised by the Court or the parties during the Common Issues litigation.

#### **G. Class Proceeding Funding and Fees**

##### ***i. Plaintiffs’ Legal Fees***

97. The plaintiffs’ fees are to be paid on a contingency basis, subject to the Court’s approval under rule 334.4 of the *Federal Courts Rules*.

98. The agreement between the representative plaintiffs and Class Counsel states that legal fees and disbursements to be paid to Class Counsel shall be on the following basis:

- (a) Aggregate damages recovery: 20% of the first two hundred million dollars (\$200,000,000) in recovery by settlement or judgment, plus 10% of any amounts recovered by settlement or judgment beyond the first two hundred million dollars; and
- (b) Individual damages recovery: 25% of settlement or judgment.

##### ***ii. Funding of Disbursements***

99. Funding of legal disbursements for the representative plaintiffs has been, and will continue to be, available through Class Counsel, unless the plaintiffs and Class Counsel subsequently deem it to be in the best interests of the Class to obtain third-party funding. Class Counsel will advise the Court of such third-party funding and seek approval thereof.

#### **H. Settlement Issues**

##### ***i. Settlement Offers and Negotiations***

100. The plaintiffs have been conducting settlement negotiations with the Crown with a view to achieving a fair and timely resolution.

*ii. Mediation and Other Non Binding Dispute Resolution Mechanisms*

101. The plaintiffs have been participating in mediation and negotiations in an effort to try to resolve the dispute or narrow the issues in dispute between the Parties.

**I. Review of the Litigation Plan**

*i. Flexibility of the Litigation Plan*

102. This Litigation Plan will be reconsidered on an ongoing basis and may be revised under the continued case management authority of the Court before or after the determination of the Common Issues or as the Court sees fit.

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## **SCHEDULE “A”**

**FIRST NATIONS YOUTH CARE (THE MILLENNIUM SCOOP) CLASS ACTION**  
**PROPOSED NOTICE OF CERTIFICATION**

**THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ CAREFULLY.**

**The Nature of the Lawsuit**

In March 2019, Sotos LLP, Kugler Kandestin LLP and Miller Titerle + Co. (collectively "Class Counsel") commenced an action on behalf of First Nations plaintiffs in the Federal Court of Canada in Montreal, against the Attorney General of Canada (the "Crown").

The lawsuit claims that starting in 1991 the Crown instituted discriminatory funding policies across Canada that led to First Nations children being removed from their homes and communities and placed in out-of-home care. The lawsuit also claims that the Crown delayed, disrupted or denied the delivery of needed public services and products to First Nations youth contrary to Jordan's Principle.

The action was brought on behalf of a Class of:

(a) all First Nations youths who were taken into out-of-home care since April 1, 1991, while they or at least one of their parents were ordinarily resident on a Reserve;

(b) all First Nations youths who were denied a public service or product, or whose receipt of a public service or product was delayed or disrupted, on the grounds of lack of funding or lack of jurisdiction, or as a result of a jurisdictional dispute with another government or governmental department (contrary to Jordan's Principle);

(c) family members of the Class Members cited in (a) above.

By order dated [INSERT DATE], The Honourable Justice St-Louis certified the action as a class proceeding, appointing Xavier Moushoom and Jeremy Meawasige (by his

litigation guardian, Maurina Beadle) as representative plaintiffs for the class.

The Court found that the following issues affecting the Class will be tried at a Common Issues trial:

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

**Participation in the Class Action**

If you fall within the class definition, you are automatically included as a member of the Class, unless you choose to opt out of the Class Action, as explained below. All members of the Class will be bound by the judgment of the Court, or any settlement reached by the parties and approved by the Court.

At this juncture, the Court has not taken a position as to the likelihood of recovery for the representative plaintiffs or the Class, or with respect to the merits of the claims or defences asserted by the Crown.

**Fees and Disbursements**

You do not need to pay any legal fees out of your own pocket. A retainer agreement has been entered into between the representative plaintiffs and Class Counsel with respect to legal fees. The agreement provides that the law firms have been retained on a contingency fee basis, which means they will only be paid their fees in the event of a successful result in the litigation or a Court-approved settlement.

You will not be responsible for Defendant's legal costs if the class action is unsuccessful. Any fee paid to lawyers for the Class is subject to the Court's approval.

**Opt Out**

If you are a class member and wish to exclude yourself from this class proceeding ("opt out"), you must complete and return the "Class Member Opt Out" form by no later than [INSERT DATE]. The Opt Out form may be downloaded at: [INSERT WEBSITE ADDRESS].

Class members who choose to opt out within the above noted deadline will not recover any monies if the representative plaintiffs are successful in this action. If class members do not choose to opt out by the deadline, they will be bound by any judgment ultimately obtained

in this class action, whether favourable or not, or any settlement if approved by the Court.

**Contact Information**

If you have any questions or concerns about the matters in this Notice or the status of the class action, you may contact Class Counsel in a number of ways.

By phone: [INSERT PHONE NUMBER]

By email: [INSERT EMAIL]

Toll-Free Hotline: [INSERT TELEPHONE]

By mail: [INSERT ADDRESS]

## **SCHEDULE “B”**

**OPT OUT FORM**

**TO:**  
**[CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**  
[Address]  
[Email]  
[Fax]  
[Phone number]

**ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**

I do not want to participate in the class action styled as *Xavier Moushoom et al v. The Attorney General of Canada* regarding the claims of discrimination against First Nations children. I understand that by opting out, I will not be eligible for the payment of any amounts awarded or paid in the class action, and if I want an opportunity to be compensated, I will have to make an individual claim and decide whether to engage a lawyer at my own expense.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, Province, Postal Code

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email

This Notice must be delivered by regular mail, email or fax on or before \_\_\_\_\_, 201\_ to be effective.

## **SCHEDULE “C”**

# CLAIM FORM

**TO:**  
**[CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**  
**[Address]**  
**[Email]**  
**[Fax]**  
**[Phone number]**

**ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**

I, \_\_\_\_\_ (insert full name(s), including maiden name if applicable), have received Notice of the National Class Action styled as *Xavier Moushoom et al v. The Attorney General of Canada* regarding the claims of discrimination against First Nations children. My date of birth is \_\_\_\_\_ (insert day, month, year of birth).

I believe that I am a Class Member and I wish to submit a claim as a member of the following Class or Classes (mark the applicable item(s) with an X):

☐ Removed Child Class

☐ Jordan's Class

☐ Family Class

If you selected the Removed Child Class, please summarize below your placement(s) in out-of-home care since April 1, 1991:

Number of foster home(s)	Number of years of placement in foster home(s)	Was foster home(s) on-reserve or off-reserve?	Was foster home(s) within your own First Nations community?

If you selected the Jordan's Class, please summarize below the public services or products that you needed since April 1, 1991, and that were denied, delayed or disrupted:

Product(s) or service(s) needed	Was a request made for the	Was the service(s) or product(s) denied, delayed or disrupted?	The date(s) of need, request, and/or denial,

	service(s) or product(s)?		delay or disruption

If you selected the Family Class, please summarize below your relationship to the member(s) of the Removed Child Class:

Full name(s) and claim number of the Approved Removed Child Class Member in your family	Your relationship to the Class Member (only the brother, sister, mother, father, grandmother or grandfather of an Approved Removed Child Class Member)

My mailing address is:

\_\_\_\_\_  
Street name, Apartment #

\_\_\_\_\_  
City, Province

\_\_\_\_\_  
Postal Code

\_\_\_\_\_  
Telephone Number(s)

\_\_\_\_\_  
Email address

Signed: \_\_\_\_\_

Date: \_\_\_\_\_



## **SCHEDULE “D”**

**INDIVIDUAL DAMAGE ASSESSMENT FORM**

**TO:**  
**[CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**  
**[Address]**  
**[Email]**  
**[Fax]**  
**[Phone number]**

**ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**

I, \_\_\_\_\_ [insert full name(s), including maiden name if applicable], have been notified that I am an Approved Removed Child Class Member or Approved Jordan's Class Member. My claim number is \_\_\_\_\_ [insert assigned claim number].

I have been provided with a package of information outlining and explaining my option to request an individual damage assessment in accordance with the Individual Damage Assessment Process.

I am also aware that I can obtain independent legal advice with respect to this request and can obtain assistance to complete this form at no charge to me by contacting [insert assigned contact #].

Below is information relating to my experience in out-of-home care and the impacts and harms that resulted from my experience:

*[The Individual Damage Assessment Form will be designed after a Court decision on the Common Issues. The goal of the Individual Damage Assessment Form though will be to obtain, amongst others, the following information from Approved Class Members:*

- *Information relating to the Class Member's age at apprehension, the foster households where the Class Member was placed, duration of out-of-home care;*
- *Information relating to any abuse on the Class Member, including each incident of a compensable harm/wrong, such as the dates, places, times of the incidents and information about the alleged perpetrator for each incident;*
- *Information relating to compensable impacts, including cultural and language impacts;*
- *A narrative relating to the experience of the individual while in care;*
- *The reason(s) for apprehension;*
- *Whether expert evidence will be provided to support a claim for certain consequential harms such as past and future income loss;*

- *Information on the treatment records including records of customary or traditional counsellors or healers they will be submitting to assist in proving either the abuse or the harm suffered or both;*
- *Authorizations for the Crown to obtain documents; and*
- *Such further and other information that is deemed necessary and appropriate.]*

Below is information relating to my experience with the denial/delay/disruption of the receipt of a public service or product and the impacts and harms that resulted from my experience:

*[The Individual Damage Assessment Form will be designed after a Court decision on the Common Issues. The goal of the Individual Damage Assessment Form though will be to obtain, amongst others, the following information from Approved Class Members:*

- *Any conditions or circumstances that required a public service or product;*
- *Reasons for denial of a public service or product;*
- *Department(s) of contact;*
- *Authorizations for the Crown to obtain documents; and*
- *Such further and other information that is deemed necessary and appropriate.]*

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Federal Court



Cour fédérale

Date: 20220211

Docket: T-1120-21

Citation: 2022 FC 149

Ottawa, Ontario, February 11, 2022

**PRESENT:** The Honourable Madam Justice Aylen

**CLASS PROCEEDING**

**BETWEEN:**

**ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT**

**Plaintiffs**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Defendant**

**ORDER AND REASONS**

**UPON MOTION** by the Plaintiffs, on consent and determined in writing pursuant to Rule 369 of the *Federal Courts Rules*, for an order:

- (a) Granting the Plaintiffs an extension of time to make this certification motion past the deadline in Rule 334.15(2)(b);
- (b) Certifying this proceeding as a class proceeding and defining the class;

- (c) Stating the nature of the claims made on behalf of the class and the relief sought by the class;
- (d) Stipulating the common issues for trial;
- (e) Appointing the Plaintiff, Zacheus Joseph Trout, as representative plaintiff;
- (f) Approving the litigation plan; and
- (g) Other relief;

**CONSIDERING** the motion materials filed by the Plaintiffs;

**CONSIDERING** that the Defendant has advised that the Defendant consents in whole to the motion as filed;

**CONSIDERING** that the Court is satisfied, in the circumstances of this proceeding, that an extension of time should be granted to bring this certification motion past the deadline prescribed in Rule 334.15(2)(b);

**CONSIDERING** that while the Defendant's consent reduces the necessity for a rigorous approach to the issue of whether this proceeding should be certified as a class action, it does not relieve the Court of the duty to ensure that the requirements of Rule 334.16 for certification are met [see *Varley v Canada (Attorney General)*, 2021 FC 589];

**CONSIDERING** that Rule 334.16(1) of the *Federal Courts Rules* provides:

Subject to subsection (3), a judge shall, by order, certify a proceeding as a class proceeding if

(a) the pleadings disclose a reasonable cause of action;

(b) there is an identifiable class of two or more persons;

(c) the claims of the class members raise common questions of law or fact, whether or not those common questions predominate over questions affecting only individual members;

(d) a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact; and

(e) there is a representative plaintiff or applicant who

(i) would fairly and adequately represent the interests of the class,

(ii) has prepared a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members as to how the proceeding is progressing,

(iii) does not have, on the common questions of law or fact, an interest that is in conflict with the interests of other class members, and

(iv) provides a summary of any agreements respecting fees and disbursements between the representative plaintiff or applicant and the solicitor of record.

Sous réserve du paragraphe (3), le juge autorise une instance comme recours collectif si les conditions suivantes sont réunies :

a) les actes de procédure révèlent une cause d'action valable;

b) il existe un groupe identifiable formé d'au moins deux personnes;

c) les réclamations des membres du groupe soulèvent des points de droit ou de fait communs, que ceux-ci prédominent ou non sur ceux qui ne concernent qu'un membre;

d) le recours collectif est le meilleur moyen de régler, de façon juste et efficace, les points de droit ou de fait communs;

e) il existe un représentant demandeur qui :

(i) représenterait de façon équitable et adéquate les intérêts du groupe,

(ii) a élaboré un plan qui propose une méthode efficace pour poursuivre l'instance au nom du groupe et tenir les membres du groupe informés de son déroulement,

(iii) n'a pas de conflit d'intérêts avec d'autres membres du groupe en ce qui concerne les points de droit ou de fait communs,

(iv) communique un sommaire des conventions relatives aux honoraires et débours qui sont intervenues entre lui et l'avocat inscrit au dossier.

**CONSIDERING** that, pursuant to Rule 334.16(2), all relevant matters shall be considered in a determination of whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact, including whether: (a) the questions of law or fact common to the class members predominate over any questions affecting only individual members; (b) a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate proceedings; (c) the class proceeding would involve claims that are or have been the subject of any other proceeding; (d) other means of resolving the claims are less practical or less efficient; and (e) the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means;

**CONSIDERING that:**

- (a) The conduct of the Crown at issue in this proposed class action proceeding, as set out in the Statement of Claim, concerns discrimination against First Nations children in the provision of essential services and the Crown's failure to prevent First Nations children from suffering gaps, delays, disruptions or denials in receiving services and products contrary to their *Charter*-protected equality rights. The Plaintiffs allege that the Crown's conduct was discriminatory, directed at Class Members because they were First Nations, and breached section 15(1) of the *Charter*, the Crown's fiduciary duties to First Nations and the standard of care at common and civil law.
- (b) With respect to the first element of the certification analysis (namely, whether the pleading discloses a reasonable cause of action), the threshold is a low one. The question for the Court is whether it is plain and obvious that the causes of action are doomed to fail [see

*Brake v Canada (Attorney General)*, 2019 FCA 274 at para 54]. Even without the Crown's consent, I am satisfied that the Plaintiffs have pleaded the necessary elements for each cause of action sufficient for purposes of this motion, such that the Statement of Claim discloses a reasonable cause of action.

- (c) With respect to the second element of the certification analysis (namely, whether there is an identifiable class of two or more persons), the test to be applied is whether the Plaintiffs have defined the class by reference to objective criteria such that a person can be identified to be a class member without reference to the merits of the action [see *Hollick v Toronto (City of)*, 2001 SCC 68 at para 17]. I am satisfied that the proposed class definitions for the Child Class and Family Class (as set out below) contain objective criteria and that inclusion in each class can be determined without reference to the merits of the action.
- (d) With respect to the third element of the certification analysis (namely, whether the claims of the class members raise common questions of law or fact), as noted by the Federal Court of Appeal in *Wenham v Canada (Attorney General)*, 2018 FCA 199 at para 72, the task under this part of the certification determination is not to determine the common issues, but rather to assess whether the resolution of the issues is necessary to the resolution of each class member's claim. Specifically, the test is as follows:

The commonality question should be approached purposively. The underlying question is whether allowing the suit to proceed as a representative one will avoid duplication of fact-finding or legal analysis. Thus an issue will be "common" only where its resolution is necessary to the resolution of each class member's claim. It is not essential that the class members be identically situated vis-à-vis the opposing party. Nor is it necessary that common issues predominate over non-common issues or that the resolution of the common issues would be determinative of each class member's claim. However, the class members' claims must



share a substantial common ingredient to justify a class action. Determining whether the common issues justify a class action may require the court to examine the significant of the common issues in relation to individual issues. In doing so, the court should remember that it may not always be possible for a representative party to plead the claims of each class member with the same particularity as would be required in an individual suit. (*Western Canadian Shopping Centres*, above at para 39; see also *Vivendi Canada Inc. v. Dell'Aniello*, 2014 SCC 1, [2014] 1 S.C.R. 3 at paras 41 and 44-46.)

Having reviewed the common issues (as set out below), I am satisfied that the issues share a material and substantial common ingredient to the resolution of each class member's claim. Moreover, I agree with the Plaintiffs that the commonality of these issues is analogous to the commonality of similar issues in institutional abuse claims which have been certified as class actions (such as the Indian Residential Schools and the Sixties Scoop class action litigation), as well as those certified in the Moushoom class action (T-402-19/T-141-20). Accordingly, I find that the common issue element is satisfied.

- (e) With respect to the fourth element of the certification analysis (namely, whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of fact and law), the preferability requirement has two concepts at its core: (i) whether the class proceeding would be a fair, efficient and manageable method of advancing the claim; and (ii) whether the class proceeding would be preferable to other reasonably available means of resolving the claims of class members. A determination of the preferability requirement requires an examination of the common issues in their context, taking into account the importance of the common issues in relation to the claim as a whole, and may be satisfied even where there are substantial individual issues [see *Brake*, *supra* at para 85; *Wenham*, *supra* at para 77 and *Hollick*, *supra* at paras 27-31]. The

Court's consideration of this requirement must be conducted through the lens of the three principle goals of class actions, namely judicial economy, behaviour modification and access to justice [see *Brake, supra* at para 86, citing *AIC Limited v Fischer*, 2013 SCC 69 at para 22].

- (f) Having considered the above-referenced principles and the factors set out in Rule 334.16(2), I am satisfied a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of fact and law. Given the systemic nature of the claims, the potential for significant barriers to access to justice for individual claimants and the concerns regarding the other means available for resolving the claims of class members, I am satisfied that the proposed class action would be a fair, efficient and manageable method of advancing the claims of the class members.
- (g) With respect to the fifth element of the certification analysis (namely, whether there are appropriate proposed representatives), I am satisfied, having reviewed the affidavit evidence filed on the motion together with the detailed litigation plan, that the proposed representative plaintiff meets the requirements of Rule 334.16(1)(e);

**CONSIDERING** that the Court is satisfied that all of the requirements for certification are met and that the requested relief should be granted;

**THIS COURT ORDERS that:**

1. The Plaintiffs are granted an extension of time, *nunc pro tunc*, to bring this certification motion past the deadline in Rule 334.15(2)(b) of the *Federal Courts Rules*.

2. For the purpose of this Order and in addition to definitions elsewhere in this Order, the following definitions apply and other terms in this Order have the same meaning as in the Statement of Claim:

- (a) **“Child Class”** means all First Nations individuals who were under the applicable provincial/territorial age of majority and who, during the Class Period, did not receive (whether by reason of a denial or a gap) an essential public service or product relating to a confirmed need, or whose receipt of said service or product was delayed, on grounds, including but not limited to, lack of funding or lack of jurisdiction, or as a result of a service gap or jurisdictional dispute with another government or governmental department.
- (b) **“Class” means** the Child Class and Family Class, collectively.
- (c) **“Class Counsel”** means Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Co., Nahwegahbow Corbiere and Fasken Martineau Dumoulin LLP.
- (d) **“Class Members”** mean all persons who are members of the Class.
- (e) **“Class Period”** means the period of time beginning on April 1, 1991 and ending on December 11, 2007.
- (f) **“Family Class”** means all persons who are brother, sister, mother, father, grandmother or grandfather of a member of the Child Class.

(g) **“First Nation”** and **“First Nations”** means Indigenous peoples in Canada, including the Yukon and the Northwest Territories, who are neither Inuit nor Métis, and includes:

- i. Individuals who have Indian status pursuant to the *Indian Act*, R.S.C., 1985, c.I-5 [*Indian Act*];
- ii. Individuals who are entitled to be registered under section 6 of the *Indian Act* at the time of certification;
- iii. Individuals who met band membership requirements under sections 10-12 of the *Indian Act*, such as where their respective First Nation community assumed control of its own membership by establishing membership rules and the individuals were found to meet the requirements under those membership rules and were included on the Band List; and
- iv. Individuals, other than those listed in sub-paragraphs (i)-(iii) above, recognized as citizens or members of their respective First Nations whether under agreement, treaties or First Nations’ customs, traditions and laws by the date of trial or resolution otherwise of this action.

3. This proceeding is hereby certified as a class proceeding against the Defendant pursuant to Rule 334.16(1) of the *Federal Courts Rules*.
4. The Class shall consist of the Child Class and Family Class, all as defined herein.

5. The nature of the claims asserted on behalf of the Class against the Defendant is constitutional, negligence and breach of fiduciary duty owed by the Crown to the Class.
6. The relief claimed by the Class includes damages, *Charter* damages, disgorgement, punitive damages and exemplary damages.
7. Zacheus Joseph Trout is appointed as representative plaintiff and is deemed to constitute an adequate representative of the Class, complying with the requirements of Rule 334.16(1)(e).
8. Class Counsel are hereby appointed as counsel for the Class.
9. The proceeding is certified on the basis of the following common issues:
  - (a) Did the Crown's conduct as alleged in the Statement of Claim [Impugned Conduct] infringe the equality right of the Class under section 15(1) of the *Canadian Charter of Rights and Freedoms*? More specifically:
    - i. Did the Impugned Conduct create a distinction based on the Class' race, or national or ethnic origin?
    - ii. Was the distinction discriminatory?
    - iii. Did the Impugned Conduct reinforce and exacerbate the Class' historical disadvantages?

- iv. If so, was the violation of section 15(1) of the *Charter* justified under section 1 of the *Charter*?
  - v. Are *Charter* damages an appropriate remedy?
- (b) Was the Crown negligent towards the Class? More specifically:
- i. Did the Crown owe the Class a duty of care?
  - ii. If so, did the Crown breach that duty of care?
- (c) Did the Crown breach its obligations under the *Civil Code of Québec*? More specifically:
- i. Did the Crown commit fault or engage its civil liability?
  - ii. Did the Impugned Conduct result in losses to the Class and if so, do such losses constitute injury to each of the members of the Class?
  - iii. Are members of the Class entitled to claim damages for the moral and material damages arising from the foregoing?
- (d) Did the Crown owe the Class a fiduciary duty? If so, did the Crown breach that duty?
- (e) Can the amount of damages payable by the Crown be determined partially under Rule 334.28(1) of the *Federal Courts Rules* on an aggregate basis? If so, in what amount?

- (f) Did the Crown obtain quantifiable monetary benefits from the Impugned Conduct during the Class Period? If so, should the Crown be required to disgorge those benefits and if so, in what amount?
- (g) Should punitive and/or aggravated damages be awarded against the Crown? If so, in what amount?
10. The Litigation Plan attached hereto as Schedule “A” is hereby approved, subject to any modifications necessary as a result of this Order and subject to any further orders of this Court.
11. The form of notice of certification, the manner of giving notice and all other related matters shall be determined by separate order(s) of the Court.
12. Notice of certification shall be given at the same time as the notice of certification of the companion Moushoom class action (Court File Nos. T-402-19/T-141-20), which shall be determined by separate order of this Court.
13. The opt-out period shall be six months from the date on which notice of certification is published in the manner to be specified by further order of this Court.
14. Pursuant to Rule 334.39(1) of the *Federal Courts Rules*, there shall be no costs payable by any party for this motion.

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“Mandy Aylen”  
Judge

## ANNEX A

20

Court File No. T-1120-21

### FEDERAL COURT PROPOSED CLASS PROCEEDING

B E T W E E N:

**ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT**

Plaintiffs

and

**THE ATTORNEY GENERAL OF CANADA**

Defendant

### LITIGATION PLAN

September 24, 2021

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## I. DEFINITIONS

1. The definitions below will be used throughout this Litigation Plan. Any term defined in the Statement of Claim that is also used in this Litigation Plan has the same meaning as that included in the Statement of Claim or as otherwise defined by the Court.

**Aggregate Damages Distribution Process** means the system directed by the Court for the **Class Action Administrator** to distribute aggregate damages to **Approved Class Members**;

**Approved Class Member(s)** means **Approved Child Class Member(s)** and/or **Approved Family Class Members**;

**Approved Family Class Member(s)** means a Family Class Member who has been approved by the **Class Action Administrator** as meeting the criteria for being a Family Class Member, including the brother, sister, mother, father, grandmother or grandfather of an Approved Child Class Member (regardless of whether the Approved Child Class Member is alive) and whose approval as a Family Class Member has not been successfully challenged;

**Approved Child Class Member(s)** means a Child Class Member who has been approved by the **Class Action Administrator** as meeting the criteria for being a Child Class Member and whose approval as a Child Class Member has not been successfully challenged;

**Certification Notice** means the information set out in Schedule A to this Litigation Plan, as may be subsequently amended and as approved by the Court;

**CHRT Proceeding** means the proceeding before the **CHRT** under file number T1340/7008;

**Claim Form** means the form set out in Schedule C to this Litigation Plan used by the Child Class Members and/or the Family Class Members to submit a claim, as may be subsequently amended and as approved by the Court;

**Class Action Administrator** means any settlement administrator or other appropriate firm appointed by the Court to assist in the administration of the class proceeding;

**Class Counsel** means the consortium of law firms acting as co-counsel in this class proceeding, with the firms of Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Company, Nahwegahbow Corbiere, and Fasken LLP as Solicitors of Record;

**Class Member(s)** means an individual who falls within the definition of the Child Class and/or the Family Class, as pleaded in the Statement of Claim and as approved by the Court;

**Common Issues** means the issues listed in the Notice of Motion for Certification, or as found by the Court, as may be subsequently amended and as approved by the Court;

**Common Issues Notice** means the information set out in the notice regarding the **Common Issues** to be certified by the Court at Certification, as may be subsequently amended and as approved by the Court;

**Crown Class Member Information** means information to be provided by the Crown, at the request of the plaintiffs and/or as ordered by the Court, to the **Class Action Administrator** and/or **Class Counsel** regarding the names and last known contact information of all individuals who meet the criteria of Class Members as set out in the Statement of Claim or as otherwise defined by the Court, including a list of all known Class Members' names and last known addresses using the information in the Crown's possession or under its control.<sup>1</sup>

**Individual Damage Assessment Form** means the form set out in Schedule D to this Litigation Plan, as may be subsequently amended and as approved by the Court, to be used by **Approved Class Member(s)** to elect an individual assessment of their damages and commence an individual damage assessment under the **Individual Damage Assessment Process**;

**Individual Damage Assessment Process** means the procedure and system to be approved by the Court following the **Common Issues** trial to be used to assess and distribute damages to **Approved Class Member(s)** who have requested an individual damage assessment by submitting an **Individual Damage Assessment Form**;

**Notice Program** means the process, set out in this Litigation Plan, for communicating the **Certification Notice** and/or the **Common Issues Notice** to **Class Members**, as may be subsequently amended and as approved by the Court;

**Opt Out Form** means the form set out in Schedule B to this Litigation Plan used by Class Members to opt out of the class proceeding, as may be subsequently amended and as approved by the Court;

**Opt Out Period** means the deadline, proposed by the plaintiffs as 180 days post Certification or as determined by the Court, to opt out of the class proceeding;

**Opt Out Procedures** means the procedures, set out in the Litigation Plan, for Class Members to opt out of this class proceeding, as may be subsequently amended and as approved by the Court; and

**Special Opt Out Procedures** means the procedures, set out in the Litigation Plan, for Class Members who have already commenced a civil proceeding in Canada or who are known

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<sup>1</sup> Where Class Members are known to be represented by counsel, only their name should be provided along with their counsel's name and address.



by the Crown to have already retained legal counsel to opt out of this class proceeding, as may be subsequently amended and as approved by the Court.

## II. OVERVIEW

2. The plaintiffs have commenced this action on behalf of First Nations individuals who allege that the Crown has breached their equality rights, depriving them of public services and products. The class action advances the rights of thousands of First Nations children and family members.

3. This Litigation Plan is advanced as a workable method of advancing the proceeding on behalf of the Class and of notifying Class Members as to how the class proceeding is progressing, pursuant to rule 334.16(1)(e)(ii) of the *Federal Court Rules*. The Litigation Plan is modelled on the class action relating to the Indian Residential Schools,<sup>2</sup> with numerous alterations made in order to streamline the procedure and to take into account lessons learned from that settlement.

4. This Litigation Plan sets out a detailed plan for the common stages of this litigation, and sets out, on a preliminary without prejudice basis, an early plan for how the individual stage of the action may progress. Given the early stage of the litigation, the plan is necessarily subject to substantial revisions as the case progresses.

## III. PRE-CERTIFICATION PROCESS

5. The plaintiffs are litigating this action in parallel with a closely interrelated consolidated class action (Court File Nos. T-402-19 / T-141-20) about First Nations child and family services

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<sup>2</sup> See *Baxter v Canada (Attorney General)*, 2006 CanLII 41673 (Ont Sup Ct), and subsequent orders of the Court. See also information available on the website of the Indian Residential Schools Adjudication Secretariat, online <<http://www.iap-pei.ca/home-eng.php>>.

and Jordan's Principle. Therefore, much of the work and processes are shared between the two actions.

**A. The Parties**

***i. The Plaintiffs***

6. The plaintiffs have proposed two classes:
  - (a) the Child Class; and
  - (b) the Family Class.
7. The proposed representative plaintiff is Zacheus Joseph Trout.

***ii. The Defendant***

8. The defendant is the Crown.

**B. The Pleadings**

***i. Statement of Claim***

9. The plaintiffs have delivered a Statement of Claim.

***ii. Statement of Defence***

10. The Crown has not delivered a Statement of Defence.

***iii. Third Party Claim***

11. The Crown has not issued any Third Party Claim.

**C. Preliminary Motions**

12. The plaintiffs propose that any preliminary motions be dealt with at the Motion for Certification or as directed by the Court.

**D. Pre-Certification Communication Strategy**

***i. Responding to Inquiries from Putative Class Members***

13. Both before and since the commencement of this class proceeding, Class Counsel have received many communications from Class Members affected by this class proceeding.

14. With respect to each inquiry, the individual's name, address, email and telephone number are added to a confidential database. Class Members are asked to register on the websites of Class Counsel. Once registered, they receive updates on the progress of the class proceeding in French and English. Any individual Class Members who contact Class Counsel are responded to in their preferred language.

***ii. Pre-Certification Status Reports***

15. In addition to responding to individual inquiries, Class Counsel have created a webpage concerning the class proceeding in English and French (see: <https://sotosclassactions.com/cases/current-cases/first-nations-youth/>). The most current information on the status of the class proceeding is posted and is updated regularly in English and French.

16. Copies of the publicly filed court documents and court decisions are accessible from the webpage. In addition, phone numbers for Class Counsel in Quebec and Ontario as well as email contact information are provided.

17. Class Counsel sends update reports to Class Members who have provided their contact information and have indicated an interest in being notified of further developments in the class proceeding.

**iii. Pre-certification outreach**

18. Class Counsel have presented the proposed class action to a council of First Nations social services delivery personnel for the Province of Québec and the region of Labrador, as well as the First Nations youth directors forum in British Columbia. Class Counsel are in the process of arranging similar presentations to affected communities in Québec and elsewhere in Canada.

**E. Settlement Conference**

**i. Pre-Certification Settlement Conference**

19. The plaintiffs will participate in a pre-Certification Settlement Conference to determine whether any or all of the issues arising in the class proceeding can be resolved.

20. The plaintiffs propose that a pre-Certification Settlement Conference be conducted at least one month after the Motion for Certification and responding materials, if any, have been filed with the Court.

**F. Timetable**

**i. Plaintiffs' Proposed Timetable for the Pre-Certification Process**

21. The plaintiffs propose that the pre-Certification process timetable set out below be imposed by Court Order at an early case conference.

	<b>Deadline</b>
Plaintiffs' Certification Motion Record	Date of Serving and Filing the Notice of Motion for Certification and Motion Record ("DOF")
Respondent's Motion Record, if any	Within 90 days from DOF
Plaintiffs' Reply Motion Record, if any	Within 120 days from DOF

Cross-examinations, if any, to be completed	Within 150 days from DOF
Undertakings answered	Within 180 days from DOF
Motions arising from cross-examinations, if any, heard	Within 210 days from DOF
Further cross-examinations, if necessary, completed by	Within 230 days from DOF
Plaintiffs' Memorandum of Fact and Law	Within 250 days from DOF
Respondent's Memorandum of Fact and Law	Within 280 days from DOF
Plaintiffs' Reply, if any	Within 300 days from DOF
Motion for Certification and all other Motions commencing	Within 310 days from DOF

#### IV. POST-CERTIFICATION PROCESS

##### A. Timetable

##### i. *Plaintiffs' Timetable for the Post-Certification Process*

22. The plaintiffs intend to proceed to trial on an expedited basis or a hybrid summary judgment/*viva voce* trial.

23. The plaintiffs propose that the following post-Certification process timetable, as explained in detail below, be imposed by the Court upon Certification:

Certification Notice to Class Members commences	Upon Certification
Exchange Affidavits of Documents within	70 days from certification
Motions for Production of Documents, Multiple Examinations of Crown representatives or for Examinations of Non-Parties to be conducted within	110 days from certification



Examinations for Discovery to be conducted within	140 days from certification
Certification Notice to Class Members completed within	90 days from certification
Trial Management Conference re: Expert Evidence	170 days from certification
Motions arising from Examinations for Discovery within	190 days from certification
Undertakings answered within	160 days from certification
Further Examinations, if necessary, within	210 days from certification
Common Issues Pre-Trial to be conducted	250 days from certification
Opt Out Period deadline	180 days from certification
Common Issues Trial or Hybrid Trial to be conducted within	300 days from certification

#### **B. Certification Notice, Notice Program and Opt Out Procedures**

##### ***i. Certification Notice***

24. The Certification Notice and all other notices to Class Members provided by the plaintiffs will, once finalized and approved by the Court, be translated into French. The plaintiffs will explore whether it will be necessary to translate the Certification Notice and/or other notices into some First Nations languages, subject to Court approval.

25. The Certification Notice will, subject to further amendments, be in the form set out in Schedule A hereto.

##### ***ii. Notice Program***

26. The plaintiffs propose to communicate the Certification Notice to Class Members through the following Notice Program.

27. The plaintiffs will provide Certification Notice to Class Members by arranging to have the Certification Notice (and its translated versions whenever possible) communicated/published in the following media within 90 days of Certification, as frequently as may be reasonable or as directed by the Court under rule 334.32 of the *Federal Courts Rules*. In particular, the plaintiffs propose the following means of providing Certification Notice:

- (a) A press release within 15 days of the Certification order being issued;
- (b) Direct communication with Class Members:
  - (i) by email or regular mail to the last known contact information of Class Members provided by the Crown (*i.e.*, Crown Class Member Information);
  - (ii) by email or regular mail to all Class Members who have provided their contact information to Class Counsel, including through the Class Proceeding's webpage;
- (c) Distribution to the Assembly of First Nations for circulation to its membership of First Nations bands across Canada;
- (d) Email to First Nations children's aid societies across Canada;
- (e) Circulation through the following media:
  - (i) Aboriginal newspapers/publications such as First Nations Drum, The Windspeaker, Mi'kmaq Maliseet Nations News, APTN National News; and
  - (ii) social media outlets, such as Facebook and Instagram.

***iii. Opt Out Procedures***

28. The plaintiffs propose Opt Out Procedures for Class Members who do not wish to participate in the class proceeding.

29. The Certification Notice will include information about how to Opt Out of the class proceeding and will provide information about how to obtain and submit the appropriate Opt Out Forms to the Class Action Administrator and/or Class Counsel.

30. There will be one standard Opt Out Form for all Class Members.

31. Class Members will be required to file the Opt Out Form with the Class Action Administrator and/or Class Counsel within the Opt Out Period, proposed by the plaintiffs as 180 days post Certification or as directed by the Court.

32. The Class Action Administrator or Class Counsel shall, within 30 days after the expiration of the Opt Out Period, deliver to the Court and the Parties an affidavit listing the names of all persons who have opted out of the Class Action.

***iv. Special Opt Out Procedures***

33. The plaintiffs propose Special Opt Out Procedures for Class Members who are either named party plaintiffs in a civil proceeding in Canada or who are known by the Crown to have retained legal counsel in respect of the subject matter of this action with the express purpose of starting a separate action against the Crown.

**C. Identifying and Communicating with Class Members**

***i. Identifying Class Members***

34. As stated above, the plaintiffs intend to request the Crown Class Member Information.

*ii. Database of Class Members*

35. Class Counsel will maintain a confidential database of all Class Members who contact Class Counsel. The database will include each individual's name, address, telephone number, and email address where available.

*iii. Responding to Inquiries from Class Members*

36. Class Counsel and their staff will respond to each inquiry by Class Members.

37. Class Counsel will have a system in place to allow for responses to inquiries by Class Members in their language of choice whenever possible.

*iv. Post Certification Status Reports*

38. In addition to responding to individual inquiries, Class Counsel will continually update the webpage dedicated to this class action with information concerning the status of the class proceeding.

39. Class Counsel will send update reports to Class Members who have provided their contact information. These update reports will be sent as necessary or as directed by the Court.

**D. Documentary Production**

*i. Affidavit/List of Documents*

40. The plaintiffs will be required to deliver an Affidavit of Documents within 70 days after Certification. The Crown will similarly be required to deliver a List of Documents within 70 days after Certification.

41. The Parties are expected to serve Supplementary Affidavits (or Lists) of Documents as additional relevant documents are located.

*ii. Production of Documents*

42. All Parties are expected to provide, at their own expense, electronic copies of all Schedule “A” productions at the time of delivering their Affidavit of Documents. All productions are to be made in electronic format.

*iii. Motions for Documentary Production*

43. Any motions for documentary production shall be made within 110 days of Certification.

*iv. Document Management*

44. The Parties will each manage their productions with a compatible document management system, or as directed by the Court. All documents are to be produced in OCR format.

45. All productions should be numbered and scanned electronically to enable quick access and efficient organization of documents.

**E. Examinations for Discovery**

46. Examinations for Discovery will take place within 140 days of Certification.

47. The plaintiffs expect to request the Crown’s consent to examine more than one Crown representative. In the event that a dispute arises in this regard, the plaintiffs propose to bring a motion within 110 days after Certification.

48. The plaintiffs anticipate that the Examination for Discovery of properly selected and informed officers of the Crown will take approximately 10 days, subject to refusals and undertakings.

49. The plaintiffs anticipate that the Examination for Discovery of the representative plaintiffs will take approximately one day, subject to refusals and undertakings.



**F. Interlocutory Matters**

***i. Undertakings***

50. Undertakings are to be answered within 160 days of Certification.

***ii. Motions for Refusals and Undertakings***

51. Specific dates for motions for undertakings and refusals that arise from the Examinations for Discovery will be requested upon Certification. Motions for refusals and undertakings will be heard within 190 days of Certification.

***iii. Re-attendances and Further Examinations for Discovery***

52. Any re-attendances or further Examinations for Discovery required as a result of answers to undertakings or as a result of the outcome of the motions for refusals and undertakings should be completed within 210 days of Certification.

**G. Expert Evidence**

***i. Identifying Experts and Issues***

53. A Trial Management Conference will take place following Examinations for Discovery at which guidelines for identifying experts and their proposed evidence at trial will be determined.

**H. Determination of the Common Issues**

***i. Pre-Trial of the Common Issues***

54. Upon Certification, the Court will be asked to assign a date for a Pre-Trial Conference relating to the Common Issues trial.

55. The plaintiffs expect that a full day will be required for a Pre-Trial Conference and will request that the Pre-Trial be held 250 days after Certification and, in any event, at least 90 days before the date of the Common Issues trial.

*ii. Trial of the Common Issues*

56. Upon Certification, the Court will be asked to assign a date for the Common Issues trial.
57. The plaintiffs propose that the trial of the Common Issues be held 300 days after Certification.
58. The length of time required for the Common Issues trial will depend on many factors and will be determined at the Trial Management Conference.

**V. POST COMMON ISSUES DECISION PROCESS**

**A. Timetable**

*i. Plaintiffs' Timetable for the Post-Common Issues Decision Process*

59. The plaintiffs propose that the following timetable be imposed by the Court following the Court's judgment on the Common Issues:

Common Issues Notice provided	Within 90 days of Common Issues decision
Individual Issue Hearings, if any, begin	120 days after decision
Individual Damage Assessments, if any, begin	240 days after decision
Deadline to Submit Claim Forms (as of right)	Within 1 year of decision
Deadline to Submit Claim Forms (as of right in prescribed circumstances or with leave of the Court)	1 year after decision

**B. Common Issues Notice**

*i. Notifying Class Members*

60. The Common Issues Notice will, subject to further amendments, be substantially in the form approved by the Court at the Common Issues trial. The Common Issues Notice may contain, amongst others, information on any aggregate damages awarded and any issues requiring individual determination, as approved by the Court.

61. The plaintiffs propose to circulate the Common Issues Notice within 90 days after the Common Issues judgment.

62. The Common Issues Notice will be circulated in the same manner as set out above dealing with the Certification Notice or as directed by the Court.

**C. Claim Forms**

***i. Use of Claim Forms***

63. The Court will be asked to approve under rule 334.37 the use of standardized Claim Forms by Class Members who may be entitled to a portion of the aggregate damage award or who may be entitled to have an individual assessment.

***ii. Obtaining and Filing Claim Forms***

64. The procedure for obtaining and filing Claim Forms will be set out in the Common Issues Notice.

65. The plaintiffs propose to use a single standard Claim Form, substantially in the form attached as Schedule C, for all three classes, subject to further amendments and as approved by the Court.

66. The plaintiffs propose that counselling be made available to Class Members in need of support and assistance when completing the Claim Forms. Where necessary, a process for appointing a guardian or trustee to assist the Class Members will be developed.

67. Before completing a Claim Form, Class Members will be able to review information about them in the possession of Canada relevant to their claim (the Crown Class Member Information). That information may include:



- (a) any records relating to the Class Member's voluntary or involuntary placement in out-of-home care during the Class Period;
- (b) any records relating to a need by the Class Member for a service or product;
- (c) any records relating to a request made by the Class Member for a service or product;
- (d) any records relating to the denial of a service or product to the Class Member;
- (e) any records relating to any service(s) or product(s) provided by the Crown to the Class Member; and/or
- (f) any records relating to the family status or family relationship between a Family Class Member and a Child Class Member.

68. Class Members will be required to file the appropriate Claim Form with the Class Action Administrator and/or Class Counsel within the deadlines set out below or as directed by the Court.

69. The Class Action Administrator will be responsible for receiving all Claim Forms.

***iii. Deadline for Filing Claim Forms***

70. Class Members will be advised of the deadline for filing Claim Forms in the Common Issues Notice.

71. The plaintiffs propose that Class Members be given one year, or such period as set out by the Court, after the Common Issues judgment to file Claim Forms as of right.

72. The plaintiffs propose that Class Members be entitled to file Claim Forms more than one year after the Court's judgment on the Common Issues in certain circumstances prescribed by the Court (*i.e.*, lack of awareness of entitlement, etc.) or with leave of the Court (*i.e.*, based on mental or physical health issues, etc.).

**D. Determining and Categorizing Class Membership**

***i. Approving Child Class Members***

73. The Class Action Administrator will determine whether an individual submitting a Claim Form as a Child Class Member properly qualifies as a Class Member.

74. The Class Action Administrator will make these determinations following guidelines determined by the Court at the Common Issues trial in part by referring to the information set out in the Claim Form. Such guidelines may include: (a) whether the Class Member needed a service or product at any point during the Class Period; (b) whether the Class Member was denied that service or product; (c) whether the Class Member's receipt of a service or product was delayed or disrupted; (d) whether such denial, disruption or delay was based on lack of funding, lack of jurisdiction or a jurisdictional dispute between governments or government departments; and/or (e) whether such denial, disruption or delay happened while the Class Member was under the applicable provincial/territorial age of majority.

75. The Class Action Administrator will also make these determinations in part by referring to the Crown Class Member Information regarding the number of Class Members who have received a service or product under Jordan's Principle under orders made in the CHRT Proceeding.

76. The Class Action Administrator will, where appropriate and necessary, request in writing further information from the individual submitting the Child Class Claim Form or the Crown to make these determinations.

***ii. Approving Family Class Members***

77. The Class Action Administrator will determine whether an individual submitting a Family Class Claim Form properly qualifies as a Family Class Member.

78. These determinations will be made by the Class Action Administrator by referring to Crown Class Member Information and the information set out in the Claim Form with respect to the relationship of the proposed Family Class Member with an Approved Child Class Member.

79. The Class Action Administrator will, where appropriate and necessary, request in writing further information from the individual filing the Claim Form to make these determinations.

***iii. Deceased Class Members***

80. The estate of a deceased Class Member may submit a Claim Form if the deceased Class Member died on or after April 1, 1991.

81. If the deceased Class Member would otherwise have qualified as an Approved Class Member, the estate will be entitled to be compensated in accordance with the Aggregate Damages Distribution Process. The estate will not have the option to proceed under the Individual Damage Assessment Process except with leave of the Court.

***iv. Notifying Class Members, Challenging and Recording Decisions***

82. Within 30 days of receipt of a Claim Form, the Class Action Administrator will notify the individual of its decision on whether the individual is an Approved Class Member. Individuals who are not approved as Class Members will be provided with information on the procedures to follow to challenge the decision of the Class Action Administrator. The plaintiffs propose that these procedures include an opportunity to resubmit an amended Claim Form with supporting documentation capable of verifying that the individual is a Class Member.

83. All interested parties will be provided with the ability to appeal a decision by the Class Action Administrator to the Court or in a manner to be prescribed. Class Counsel may challenge the decision on behalf of affected individuals.

84. The Class Action Administrator will keep records of all Approved Class Members and their respective Claim Forms and will provide this information to Class Counsel, the Crown and other interested parties on a monthly basis. Class Counsel and/or other interested parties will have 30 days after receiving this information to challenge the Class Action Administrator's decision by advising the Class Action Administrator and the other affected parties in writing of the basis for their challenge. The responding party will be given 30 days thereafter to respond in writing to the challenge at which time the Class Action Administrator will reconsider its decision and advise all parties.

**E. Aggregate Damages Distribution Process**

***i. Distribution of Aggregate Damages***

85. The Class Action Administrator will distribute the aggregate damages to all Approved Class Members in the manner directed by the Court.

86. The plaintiffs will propose that Approved Class Members be entitled to a proportion of the aggregate damages as determined by the Class Action Administrator based on factors to be approved by the Court, including but not limited to: (a) the duration of deprivation from a service or product as a result of a delay, denial or disruption; (b) the importance of the service or product to the child; and (c) the family relationship of the Family Class Member to a given Child Class Member.

87. The Class Action Administrator, upon advising Approved Class Members of its decision on their membership as set out above, will within a reasonable period of time to be determined by the Court, advise the Approved Class Members of the proportion of aggregate damages owing to each Approved Class Member under the Aggregate Damages Distribution Process to be approved by the Court.



88. In addition, if applicable, the Class Action Administrator will provide Approved Class Members with a package of materials including: information on how to collect their aggregate damage awards, information on Class Members' ability to proceed through the Individual Damage Assessment Process, copies of the Individual Damage Assessment Form along with a guide on how to complete the form, and contact information for obtaining independent legal advice and counselling. Such information is to be provided in a culturally responsive and appropriate style, making full use of interactive media, including video tutorials.

*ii. Seeking an Individual Damage Assessment*

89. Approved Class Members, when notified of their entitlement to aggregate damages, may be given information on their right to have their compensation individually assessed under the Individual Damage Assessment Process set out below.

**F. Individual Damage Assessment Process**

*i. Individual Damage Assessment Forms*

90. When Approved Class Members are notified of their aggregate damage entitlement and information on their right to proceed under the Individual Damage Assessment Process, they will be provided with an Individual Damage Assessment Form as set out in Schedule D.

91. If applicable, the plaintiffs propose that a request for individual damages be made by sending an Individual Damage Assessment Form to the Class Action Administrator, and that only those individuals who wish to proceed through the Individual Damage Assessment Process be required to submit Individual Damage Assessment Forms.

*ii. Individual Damage Assessments*

92. The Court may be asked to approve the use of an Individual Damage Assessment Process after a judgment on the Common Issues or otherwise as directed by the Court.

93. The Individual Damage Assessment Process would be available to all Approved Class Members except those who are found by the Court not to be entitled to individual damages following the Common Issues trial.

**iii. Individual Issue Hearings**

94. The Court will be asked to provide directions, or to appoint persons to conduct references under rule 334.26 of the *Federal Courts Rules* or appoint a judge to conduct test cases involving selected Approved Class Members who are proceeding under the Individual Damage Assessment Process to assist with the matters that may or may not remain in issue after the determination of the Common Issues, such as:

- (a) Hearing rules for individual assessments;
- (b) A compensation matrix for individual damages;
- (c) Assistance in resolving disputes relating to the definitions of key terms such as “essential service”, “delay”, and “jurisdictional dispute”; and
- (d) Other matters raised by the Court or the parties during the Common Issues litigation.

**G. Fees**

**i. Plaintiffs’ Legal Fees**

95. The plaintiffs’ fees are to be paid on a contingency basis, subject to the Court’s approval under rule 334.4 of the *Federal Courts Rules*.

96. The agreement between the representative plaintiffs and Class Counsel states that legal fees and disbursements to be paid to Class Counsel shall be on the following basis:

- (a) Aggregate damages recovery: 20% of the first two hundred million dollars (\$200,000,000) in recovery by settlement or judgment, plus 10% of any amounts recovered by settlement or judgment beyond the first two hundred million dollars; and

(b) Individual damages recovery: 25% of settlement or judgment.

***ii. Funding of Disbursements***

97. Funding of legal disbursements for the representative plaintiffs has been, and will continue to be, made through Class Counsel, unless the plaintiffs and Class Counsel subsequently deem it to be in the best interests of the Class to obtain third-party funding, in which case Class Counsel will advise the Court of such third-party funding and seek approval thereof.

**H. Settlement Issues**

***i. Settlement Offers and Negotiations***

98. The plaintiffs will conduct settlement negotiations with the Crown from time to time with a view to achieving a fair and timely resolution.

***ii. Mediation and Other Non Binding Dispute Resolution Mechanisms***

99. The plaintiffs will participate in mediation or other non-binding dispute resolution mechanisms, if and when appropriate, in an effort to try to resolve the dispute or narrow the issues in dispute between the Parties.

**I. Review of the Litigation Plan**

***i. Flexibility of the Litigation Plan***

100. This Litigation Plan will be reconsidered on an ongoing basis and may be revised under the continued case management authority of the Court before or after the determination of the Common Issues or as the Court sees fit.

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**Lawyers for the plaintiff, Assembly of First Nations**



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## **SCHEDULE “A”**

***PROPOSED NOTICE OF CERTIFICATION***

**THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ CAREFULLY.**

**The Nature of the Lawsuit**

As of March 2019, Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Co., Nahwegahbow Corbiere, and Fasken LLP (collectively “Class Counsel”) have prosecuted an action on behalf of First Nations plaintiffs in the Federal Court of Canada in Montreal, against the Attorney General of Canada (the “Crown”).

The lawsuit claims that between April 1, 1991 and December 11, 2007 the Crown instituted discriminatory policies across Canada, delaying, disrupting or denying the delivery of needed public services and products to First Nations youth.

The action was brought on behalf of a Class of:

(a) all First Nations youths who were denied a public service or product, or whose receipt of a public service or product was delayed or disrupted, on the grounds of lack of funding or lack of jurisdiction, or as a result of a jurisdictional dispute with another government or governmental department between April 1, 1991 and December 11, 2007;

(b) family members of the Class Members cited in (a) above.

By order dated [INSERT DATE], The Honourable Justice [INSERT NAME] certified the action as a class proceeding, appointing Zacheus Joseph Trout as representative plaintiffs for the class.

The Court found that the following issues affecting the Class will be tried at a Common Issues trial:

- [INSERT CERTIFIED COMMON ISSUE]
- ...

**Participation in the Class Action**

If you fall within the class definition, you are automatically included as a member of the Class, unless you choose to opt out of the Class Action, as explained below. All members of the Class will be bound by the judgment of the Court, or any settlement reached by the parties and approved by the Court.

At this juncture, the Court has not taken a position as to the likelihood of recovery for the representative plaintiffs or the Class, or with respect to the merits of the claims or defences asserted by the Crown.

**Fees and Disbursements**

You do not need to pay any legal fees out of your own pocket. A retainer agreement has been entered into between the representative plaintiffs and Class Counsel with respect to legal fees. The agreement provides that the law firms have been retained on a contingency fee basis, which means they will only be paid their fees in the event of a successful result in the litigation or a Court-approved settlement.

You will not be responsible for Defendant’s legal costs if the class action is unsuccessful. Any fee paid to lawyers for the Class is subject to the Court’s approval.

**Opt Out**

If you are a class member and wish to exclude yourself from this class proceeding (“opt out”), you must complete and return the “Class Member Opt Out” form by no later than [INSERT DATE]. The Opt Out form may be downloaded at: [INSERT WEBSITE ADDRESS].

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Class members who choose to opt out within the above noted deadline will not recover any monies if the representative plaintiffs are successful in this action. If class members do not choose to opt out by the deadline, they will be bound by any judgment ultimately obtained in this class action, whether favourable or not, or any settlement if approved by the Court.

**Contact Information**

If you have any questions or concerns about the matters in this Notice or the status of the class

action, you may contact Class Counsel in a number of ways.

By phone: **[INSERT PHONE NUMBER]**

By email: **[INSERT EMAIL]**

Toll-Free Hotline: **[INSERT TELEPHONE]**

By mail: **[INSERT ADDRESS]**

## **SCHEDULE “B”**

**OPT OUT FORM**

**TO:**  
**[CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**  
[Address]  
[Email]  
[Fax]  
[Phone number]

**ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**

I do not want to participate in the class action entitled *Zacheus Joseph Trout et al v. The Attorney General of Canada* regarding the claims of discrimination against First Nations children. I understand that by opting out, I will not be eligible for the payment of any amounts awarded or paid in the class action, and if I want an opportunity to be compensated, I will have to make an individual claim and decide whether to engage a lawyer at my own expense.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, Province, Postal Code

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email

This Notice must be delivered by regular mail or email on or before \_\_\_\_\_, 202\_ to be effective.

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## **SCHEDULE “C”**

# CLAIM FORM

**TO:**  
**[CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**  
**[Address]**  
**[Email]**  
**[Fax]**  
**[Phone number]**

**ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**

I, \_\_\_\_\_ (insert full name(s), including maiden name if applicable), have received Notice of the National Class Action entitled *Zacheus Joseph Trout et al v. The Attorney General of Canada* regarding the claims of discrimination against First Nations children. My date of birth is \_\_\_\_\_ (insert day, month, year of birth).

I believe that I am a Class Member and I wish to submit a claim as a member of the following Class or Classes (mark the applicable item(s) with an X):

☐ Child Class

☐ Family Class

If you selected the Child Class, please summarize below the public services or products that you needed between April 1, 1991 and December 11, 2007, and that were denied, delayed or disrupted:

Product(s) or service(s) needed	Was a request made for the service(s) or product(s)?	Was the service(s) or product(s) denied, delayed or disrupted?	The date(s) of need, request, and/or denial, delay or disruption

If you selected the Family Class, please summarize below your relationship to the member(s) of the Child Class:

Full name(s) and claim number of the Approved Child Class Member in your family	Your relationship to the Class Member (only the brother, sister, mother, father, grandmother or grandfather of an Approved Child Class Member)


My mailing address is:

Street name, Apartment #

City, Province

Postal Code

Telephone Number(s)

Email address

Signed: \_\_\_\_\_

Date: \_\_\_\_\_



## **SCHEDULE “D”**

**INDIVIDUAL DAMAGE ASSESSMENT FORM**

**TO:**  
**[CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**  
**[Address]**  
**[Email]**  
**[Fax]**  
**[Phone number]**

**ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]**

I, \_\_\_\_\_ [insert full name(s), including maiden name if applicable], have been notified that I am an Approved Child Class Member. My claim number is \_\_\_\_\_ [insert assigned claim number].

I have been provided with a package of information outlining and explaining my option to request an individual damage assessment in accordance with the Individual Damage Assessment Process.

I am also aware that I can obtain independent legal advice with respect to this request and can obtain assistance to complete this form at no charge to me by contacting [insert assigned contact #].

Below is information relating to my experience with the denial/delay/disruption of the receipt of a public service or product and the impacts and harms that resulted from my experience:

*[The Individual Damage Assessment Form will be designed after a Court decision on the Common Issues. The goal of the Individual Damage Assessment Form though will be to obtain, amongst others, the following information from Approved Class Members:*

- *Any conditions or circumstances that required a public service or product;*
- *Reasons for denial of a public service or product;*
- *Department(s) of contact;*
- *Authorizations for the Crown to obtain documents; and*
- *Such further and other information that is deemed necessary and appropriate.]*

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Province / Territory	Age of Majority	Governing Statute / Provision
Alberta	18 years old	<p>“Every person attains the age of majority and ceases to be a minor on attaining the age of 18 years”</p> <p>Source: <i>Age of Majority Act</i>, RSA 2000, c A-6, s 1</p>
British Columbia	19 years old	<p>“From April 15, 1970, (a) a person reaches the age of majority on becoming age 19 instead of age 21, and (b) a person who on that date has reached age 19 but not 21 is deemed to have reached majority on that date”</p> <p>Source: <i>Age of Majority Act</i>, RSBC 1996, c 7, s 1(1)</p>
Manitoba	18 years old	<p>“Every person attains the age of majority, and ceases to be a minor, on attaining the age of 18 years”</p> <p>Source: <i>The Age of Majority Act</i>, CCSM 1988, c A-7, s 1</p>
New Brunswick	19 years old	<p>“A person attains the age of majority and ceases to be a minor on attaining the age of 19 years”</p> <p>Source: <i>Age of Majority Act</i>, RSNB 2011, c 103, s 1(1)</p>
Newfoundland And Labrador	19 years old	<p>“Every person who attains the age of 19 years (a) attains the age of majority; and (b) ceases to be a minor person”</p> <p>Source: <i>Age Of Majority Act</i>, SNL 1995, c A-4.2, s 2</p>
Northwest Territories	19 years old	<p>“Every person attains the age of majority, and majority ceases to be a minor, on attaining the age of 19 years”</p> <p>Source: <i>Age of Majority Act</i>, RSNWT 1988, c A-2, s 2</p>

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

CLASS	CRITERIA	AMOUNT
Jordan's Principle Class (2007-2017)	Significant Impact Essential Service Gap/Delay/Denial  <b>OR</b>  Highest Level of Impact on the Questionnaire <sup>1</sup>  <b>OR</b>  Service Gap/Denial/Delay not included on List of Essential Service but satisfies requirements of Article 6.07 AND Claimant Demonstrates Highest Level of Impact on the Questionnaire <sup>1</sup>	Minimum \$40,000
	Other Essential Service Gap/Delay/Denial  <b>OR</b>  Service Gap/Denial/Delay not included on List of Essential Service but satisfies requirements of Article 6.07 BUT Claimant Does not Demonstrate Highest Level of Impact on the Questionnaire <sup>1</sup>	Up to \$40,000 maximum <sup>2</sup>
Trout Class (1991-2007)	Significant Impact Essential Service Gap/Delay/Denial  <b>OR</b>  Highest Level of Impact on the Questionnaire <sup>1</sup>  <b>OR</b>  Service Gap/Denial/Delay not included on List of Essential Service but satisfies requirements of Article 6.07 AND Claimant Demonstrates Highest Level of Impact on the Questionnaire <sup>1</sup>	Minimum \$20,000
	Other Essential Service Gap/Delay/Denial  <b>OR</b>  Service Gap/Denial/Delay not included on List of Essential Service but satisfies requirements of Article 6.07 BUT Claimant Does not Demonstrate Highest Level of Impact on the Questionnaire <sup>1</sup>	Up to \$20,000 maximum <sup>3</sup>

<sup>1</sup> To be determined based on a review of Supporting Documentation and Questionnaire responses.

<sup>2</sup> Amount will depend on number of claimants sharing within Jordan's Principle Class budget of \$3 billion.

<sup>3</sup> Amount will depend on number of claimants sharing within Trout Class budget of \$2 billion.

## Examples Chart of Removed Child Family Class Approach

This table sets out examples of various scenarios if multiple Caregiving Parents or Caregiving Grandparents apply for, and are approved for compensation with respect to a single (1) Removed Child.

# of Approved Category A: Caregiving Parents (biological)	# of Approved Category B: Caregiving Parents (adoptive)	# of Approved Category C: Caregiving Grandparent(s)	Disposition
2	2	4	<ul style="list-style-type: none"> <li>Category A parents receive one (1) Base Compensation each.</li> <li>Other categories receive no compensation.</li> </ul>
1	2	4	<ul style="list-style-type: none"> <li>Category A parent receives one (1) Base Compensation.</li> <li>Category B parents <b>share</b> the one (1) remaining Base Compensation <b>pro rata</b>.</li> <li>Category C grandparents receive no compensation.</li> </ul>
1	1	4	<ul style="list-style-type: none"> <li>Category A parent receives one (1) Base Compensation.</li> <li>Category B parent receives one (1) Base Compensation.</li> <li>Category C grandparents receive no compensation.</li> </ul>
0	2	4	<ul style="list-style-type: none"> <li>Category B parents receive one (1) Base Compensation each.</li> <li>Category C grandparents receive no compensation.</li> </ul>
0	1	1	<ul style="list-style-type: none"> <li>Category B parent receives one (1) Base Compensation.</li> <li>Category C grandparent receives one (1) Base Compensation.</li> </ul>
0	1	2 or more	<ul style="list-style-type: none"> <li>Category B parent receives one (1) Base Compensation.</li> <li>Category C grandparents <b>share</b> one (1) Base Compensation <b>pro rata</b>.</li> </ul>

0	0	1 or 2	<ul style="list-style-type: none"> <li>Category C grandparent receives one (1) Base Compensation each.</li> </ul>
0	0	3 or more	<ul style="list-style-type: none"> <li>Category C grandparents <b>share</b> two (2) Base Compensations <b>pro rata</b>.</li> </ul>

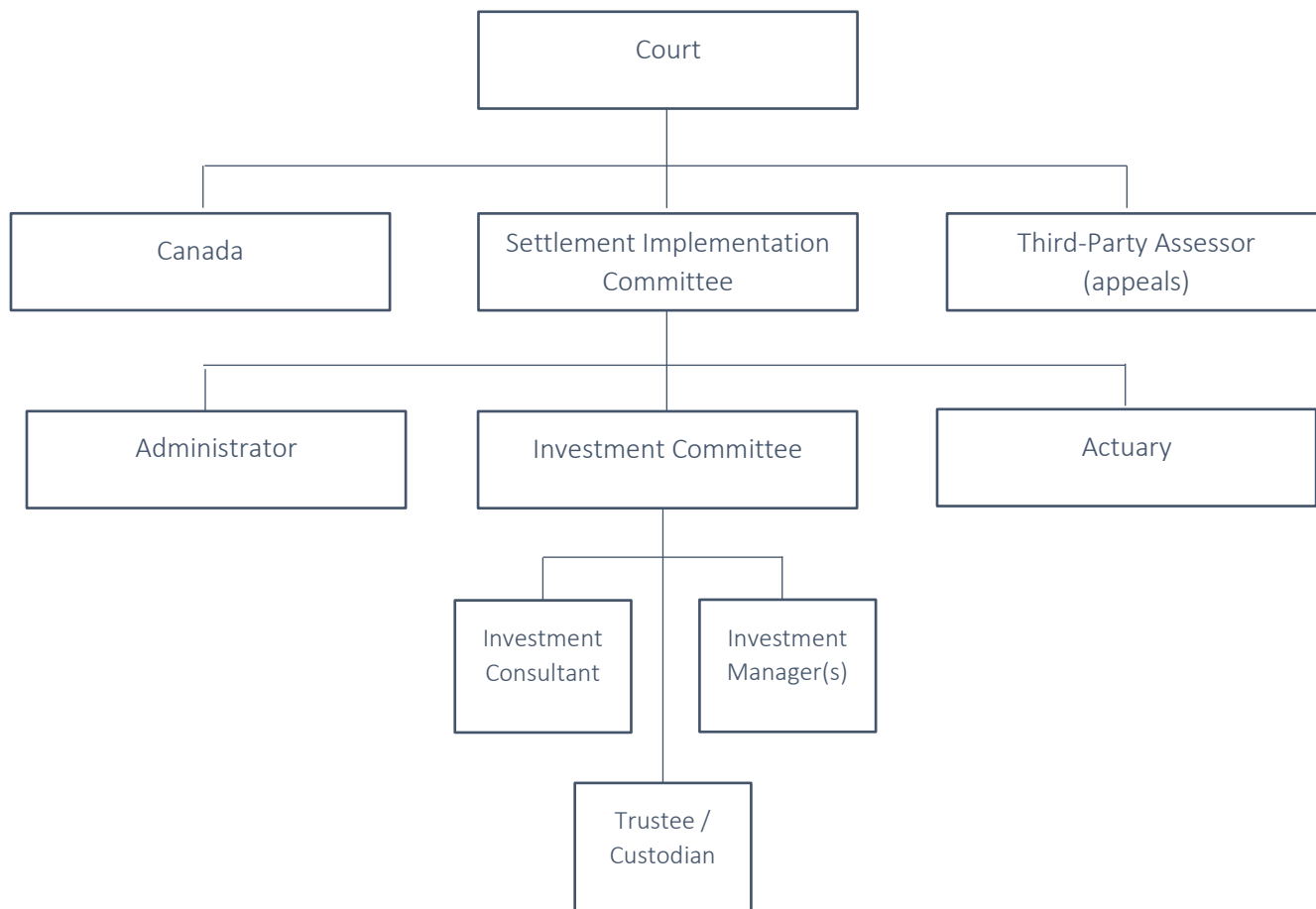
## SCHEDULE "G"

### Investment Committee Guiding Principles

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

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

1. **In order to facilitate the effective management of the Settlement Funds, the Investment Committee should be constituted in a manner that is directly overseen by the Settlement Implementation Committee.** The Investment Committee should be permitted to make decisions within the scope of the Terms of Reference with independence, but is accountable to the Settlement Implementation Committee and, ultimately, the Court. The Investment Committee must be able to communicate with both the Administrator and the Actuary, whether independent of, or through the Settlement Implementation Committee.
2. **The Settlement Implementation Committee should be responsible for oversight of the entire process, including resolving any issues that may arise from time to time.** Where necessary, the Settlement Implementation Committee is the body responsible for seeking guidance from the Court, on behalf of the Class, the Administrator, the Actuary or the Investment Committee.





3. **The Investment Committee should be guided by a statement of investment goals established by the Settlement Implementation Committee.** These goals should not be prescriptive of methods, but rather establish desired outcomes, with the implementation to achieve these outcomes assigned to the Investment Committee.
4. **The Investment Committee should be empowered, through its Terms of Reference to take the following actions:**
  - a. Establish, review and maintain a Statement of Investment Policies and Procedures, consistent with the investment goals established by the Settlement Implementation Committee;
  - b. Review investment goals and recommending changes to the investment goals to the Settlement Implementation Committee;
  - c. On advice from the Investment Consultant and the Actuary, review the asset mix of the Trust to ensure it is consistent with the Trust's return objectives and risk tolerances. As required, modify the asset allocation to ensure the Trust remains prudently invested and diversified to achieve its long-term objectives.
  - d. Identify and recommend to the Settlement Implementation Committee an Investment Consultant and corporate trustee for the Fund and for an expenses fund, in the case that implementation expenses are pre-paid by Canada.
  - e. Determine the number of investment managers to use from time to time. Select and appoint investment manager(s), set the mandate for each investment manager, terminate investment manager(s) and/or rebalance the funds among the investment manager(s), all based on the advice of the Investment Consultant.
  - f. Periodically (bi-annually, annually, semi-annually, or quarterly) review the performance of the Investment Consultant, custodian and corporate trustee and report the results of the review to the Settlement Implementation Committee.
  - g. Engage the Investment Consultant to provide advice as considered appropriate from time to time.
  - h. Receive, review and approval of reports from the Investment Consultant, investment manager(s) and corporate trustee for the Fund.
  - i. Direct the Investment Consultant and/or investment manager(s) to implement any decisions of the Investment Committee.

- j. Delegate to the investment manager(s) such decisions regarding the investment of the Fund consistent with the Statement of Investment Policies and Procedures.
- k. Monitor compliance of the Trust's investment and investment procedures with the Statement of Investment Policies and Principles.
- l. With assistance from the Investment Consultant, monitor the investment performance of the Fund as a whole. Monitor and review all aspects of the performance and services of the Investment Manager(s) including style, risk profile and investment strategies.
- m. Monitor risks to the Fund with respect to the overall compensation plan.
  - i. With assistance from the Investment Consultant, conduct an annual risk review of the Fund in conjunction with the review by the Settlement Implementation Committee and at such other times as the Investment Committee considers prudent.
  - ii. Implement such risk mitigation strategies as considered prudent and report results to the Settlement Implementation Committee.
- n. Provide assistance to the Auditor as required.
- o. Make recommendations to the Settlement Implementation Committee regarding any Court Approved Protocols and policies that affect the investments of the Fund, including adoption, amendment and termination.
- p. Receive periodic reports from the Actuary regarding expected future compensation payments (amount and timing) and based on advice from the Investment Consultant, determine whether any changes to the Statement of Investment Policies and Procedures is necessary or if any changes to the mandates given to the investment manager(s) is necessary.
- q. Take direction from and being responsive to the Settlement Implementation Committee on a timely basis.

This is Exhibit “D” referred to in the Affidavit of Pouya Dabiran-Zohoori affirmed before me at the City of Toronto, in the Province of Ontario on June 15, 2022, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, reading "Julian Patricia". The signature is written in a cursive, flowing style.

---

*Commissioner for Taking Affidavits (or as may be)*

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

## Short Form Notice of Certification and Settlement

### Federal Child Welfare and Jordan's Principle Class Action

The Federal Court of Canada has approved this notice.

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

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

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

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

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

#### What is the class action about?

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

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

#### Are you included in the class action?

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

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

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

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

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

### **What is the proposed settlement?**

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

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

Each person in Category 2 who:

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

OR

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

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

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

### **What are my options?**

1. **Stay in the class action:** If you wish to stay in the class and be eligible to submit a claim for payment under the settlement, you do not need to do anything at this time.

2. **Remove yourself from the class action (opt out):** If you do not want to participate in this class action, and you do not want to receive a payment under the settlement, you need to remove yourself by submitting an Opt-Out Form by this date: \_\_\_\_\_.

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

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

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

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

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

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

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

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

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

If you want to object, you must send your written comments or request to speak at the hearing by **September 6, 2022**.

### **Canadian Human Rights Tribunal decision**

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

The Tribunal will be asked to make a ruling that the \$20 billion settlement of the lawsuit satisfies its previous compensation [order against Canada \(2019 CHRT 39\)](#). If the Tribunal finds that the \$20 billion settlement satisfies its compensation order against Canada, then the \$20 billion settlement will replace the compensation order, and you will not be allowed to claim a payment

under the Tribunal's order. Also, if the Tribunal finds that the \$20 billion settlement of this lawsuit satisfies its compensation order, and if the Federal Court approves the settlement, then you will not be able to claim compensation under the Tribunal's compensation order even if you opt out of this lawsuit.

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

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

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

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

### **Who is representing the class?**

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

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

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

### **How will the lawyers be paid?**

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

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

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

### **Want more information about the class action or the settlement?**

More information about the case \_\_\_\_\_

**Need support or assistance?**

Support services are available \_\_\_\_\_

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

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



This is Exhibit “E” referred to in the Affidavit of Pouya Dabiran-Zohoori affirmed before me at the City of Toronto, in the Province of Ontario on June 15, 2022, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, reading "Julia Patricia", is centered on the page.

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*Commissioner for Taking Affidavits (or as may be)*

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

**Long Form Notice of Certification and Settlement**  
**Federal Child Welfare and Jordan's Principle Class Action**

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## INTRODUCTION

The Federal Court of Canada has approved this notice.

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

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

This notice also gives you a chance to remove yourself from the class action. **You should only remove yourself from the class action if you do not want to receive payment in this settlement.**

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

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

## THE CLASS ACTION

### WHAT IS A CLASS ACTION?

A class action is a lawsuit brought by one or more persons on behalf of a large group of people.

### WHAT IS THIS CLASS ACTION ABOUT?

This class action is about discrimination by the Canadian government against First Nations children in providing child welfare, health care, and other essential services.

The class action claims that from 1991 until 2022, Canada discriminated against First Nations

children living on reserves who were removed from their homes and placed in out-of-home care.

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

In the winter of 2022, the parties' intensive negotiations led to Canada committing **\$20 billion** to victims of discrimination to resolve the class action (the **Settlement**). The goal of the Settlement is to offer compensation to survivors and their families in recognition of the harms they've endured – while knowing that no amount of money can make up for their pain and suffering.

#### **WHO IS INCLUDED IN THE CLASS ACTION?**

Three (3) groups may receive compensation under the Settlement:

- |                   |   |
|-------------------|---|
| <b>Category 1</b> | First Nations children who were removed from their homes on reserve and placed in care at any time between April 1, 1991 and March 31, 2022.        |
| <b>Category 2</b> | First Nations children who faced a service gap or were denied or delayed access to an essential service between April 1, 1991 and November 2, 2017. |
| <b>Category 3</b> | Their caregiving parents or caregiving grand-parents.   |

#### **CATEGORY 1: REMOVED CHILDREN**

Under the Settlement, First Nations children on reserve or those who had at least one parent living on reserve, or lived in the Yukon, and who were placed in care between April 1, 1991 and March 31, 2022 may be able to receive money. To find out more about compensation under the Settlement, click [here](#).

You may qualify for payment if you:

- Are First Nations;
- Lived on reserve or had at least one parent living on reserve, or in the Yukon as a child (except in the Northwest Territories)
- Were placed into care as a child between April 1, 1991 and March 31, 2022; and
- Your placement was funded by Canada.

Covered	Not Covered
First Nations children	Non- First Nations children
Children living on reserve or had at least one parent living on reserve, or lived in the Yukon	Children living off-reserve, or in the Northwest Territories
Children who were placed into care between April 1, 1991 and March 31, 2022, including in: <ul style="list-style-type: none"> <li>• Foster Homes</li> <li>• Assessment Homes</li> <li>• Non-kin Foster Homes</li> <li>• Paid Kinship Homes</li> <li>• Group Homes</li> <li>• Residential Treatment Facilities</li> <li>• Others</li> </ul>	Children who were placed into care <i>prior</i> to April 1, 1991, or who were placed into: <ul style="list-style-type: none"> <li>• Non-paid Kin Homes</li> <li>• Non-paid Community Homes</li> </ul>
Funded by Canada	Funded by a province

Children who were removed from their homes prior to 1991 are the subject of other class actions such as the “Sixties’ Scoop” settlement. These are separate class actions, distinct from this one.

## WHAT DOES “FIRST NATIONS” MEAN UNDER THE SETTLEMENT WITH RESPECT TO REMOVED CHILDREN?

Under the Settlement, “First Nations” means Indigenous peoples who:

- (i) Are registered under the *Indian Act*;
- (ii) Were entitled to be registered under the *Indian Act* as of February 11, 2022; or
- (iii) Met band membership requirements as of at least February 11, 2022 (i.e., they were included on the Band List of their community)

## I AM FIRST NATIONS BUT WAS NOT LIVING ON RESERVE AT THE TIME THAT I WAS REMOVED FROM MY HOME. CAN I STILL RECEIVE COMPENSATION?

If one or both of your parents were ordinarily resident on a reserve when you were placed into care, you may be able to get compensation. But, if neither you nor your parents were living on reserve, you are not entitled to compensation unless Canada funded your removal under an agreement with a province or territory.

### Take this quiz to find out if you qualify in this category:

1. Are you First Nations?

☐ Yes ☐ No

2. Did you live on a reserve or had at least one parent living on reserve, or lived in the Yukon? (N.B. if you lived in the Northwest Territories, select “No”)

☐ Yes ☐ No

4. Were you placed in care at any time between April 1, 1991 and March 31, 2022?

☐ Yes ☐ No

If you answered “Yes” to all of these questions, you may qualify for payment. Contact the

Assembly of First Nations Helpline at **[contact]** to learn more.

## **CATEGORY 2: JORDAN’S PRINCIPLE / TROUT**

Under the Settlement, First Nations children who faced a service gap or were denied or delayed access to an essential service between 1991 and 2017 may be able to receive money. This group is commonly referred to as “Jordan’s Principle” class, in honour of Jordan River Anderson. (Although Jordan’s Principle did not exist until 2007, this category dates back to April 1, 1991 under the name of Trout.)

### **WHAT IS “JORDAN’S PRINCIPLE”?**

“Jordan’s Principle” is a legal rule that requires the government to treat First Nations children in the same manner as non-First Nations children, and not deprive them of important services that they need. The government must put the interests of the child first, before any jurisdictional or funding dispute.

This principle was named in honour of Jordan River Anderson, who did not receive the services he desperately needed because the governments were arguing about who should pay for Jordan’s needs. Jordan’s Principle is intended to ensure that what happened to Jordan does not happen to other First Nations children.

To find out more about compensation under the Settlement, click [here](#).

You may qualify for payment if:

- You are First Nations (whether you lived on or off reserve, including in the Yukon and Northwest Territories);
- You needed an essential service between April 1, 1991 and November 2, 2017; and
- You requested the service but were denied or delayed access to this service, or you did not



request the service but there was a service gap, because of a:

- a. lack of funding
- b. lack of jurisdiction
- c. jurisdictional dispute between Canada and the provincial / territorial government
- d. other reasons

Covered	Not Covered
First Nations children	Non-First Nations children
Children who were confirmed by a professional with relevant expertise to have needed an essential service	Children who needed a non-essential service
Were denied or delayed access to this service or faced a service gap	Were denied or delayed access to this service
Because of a: <ul style="list-style-type: none"> <li>• lack of funding</li> <li>• lack of jurisdiction</li> <li>• service gap</li> <li>• jurisdictional dispute</li> <li>• other</li> </ul>	For any reason
Between April 1, 1991 and November 2, 2017	Before April 1, 1991 or after November 2, 2017

#### **WHAT DOES “FIRST NATIONS” MEAN UNDER THE SETTLEMENT WITH RESPECT TO JORDAN’S PRINCIPLE CHILDREN?**

Under the Settlement, “First Nations” means Indigenous peoples across Canada (including the Yukon and Northwest Territories) who:

- (i) Are registered under the Indian Act;
- (ii) Were entitled to be registered under the Indian Act as of February 11, 2022; or
- (iii) Were recognized as citizens or band members of a First Nations community as of February 11, 2022, and faced a delay, denial or service gap with respect to an essential service between January 26, 2016 and November 2, 2017.

**Take this quiz to find out if you may qualify in this category:**

1. Are you First Nations?

☐ Yes ☐ No

2. Did a professional with relevant expertise confirm that you needed an essential service between April 1, 1991 and November 2, 2017? (For more information on the list of essential services, click [here](#))

☐ Yes ☐ No

3. Were you denied access to this service, or did you experience a delay in receiving this service?

☐ Yes ☐ No

4. Were you unable to obtain this service due to a service gap?

☐ Yes ☐ No

If you answered “Yes” to these questions, you may qualify for payment.

### **CATEGORY 3: FAMILIES**

The caregiving parents or the caregiving grandparents of children who were removed from their homes or denied access to an essential service may also be able to receive compensation. This includes the biological or adoptive parent(s), or grand-parent(s), of the child. Step-parents or foster

parents are not included.

Covered	Not Covered
Caregiving biological parent(s)	Step-parent(s)
Caregiving adoptive parent(s)	Foster parent(s)
Caregiving biological grand-parent(s)	
Caregiving adoptive grand-parent(s)	

Importantly, only those parent(s) or grand-parent(s) who were caring for the child at the time of removal are entitled to compensation – i.e., the *primary caregivers* – to a maximum of two (2) caregivers.

Siblings and other family members of the affected children will not receive direct compensation under this Settlement.

## THE SETTLEMENT

### OVERVIEW

Under the settlement Canada will pay committing **\$20 billion** to class members. In addition, Canada pledged an additional **\$20 billion** to fund long-term reform to eliminate systemic discrimination against First Nations children. However that pledge is not part of this settlement.

The Settlement must be approved by the courts. If it is approved by the courts, individuals falling within Category 1, Category 2, or Category 3 may be able to receive compensation.

*Is this case different from the Canadian Human Rights Tribunal compensation decision ordering Canada to pay \$40,000 to each affected individual?*

The Settlement of the class action partly overlaps with the Tribunal compensation decision. The Tribunal will be asked to confirm that this settlement satisfies its compensation order. If the Federal Court then approves the Settlement, this Settlement will cover all claims under both the Tribunal and the class action. You will only need to make one application for compensation.

### **HOW MUCH COMPENSATION CAN I GET?**

The amount of money you may receive will vary based on different factors. Each Category provides for an estimated minimum base payment. In addition, you may be able to receive additional payments, if certain factors are present.

#### **CATEGORY 1: REMOVED CHILDREN**

##### ***Minimum Payment***

Under the Settlement, individuals who were removed from their homes and placed into care as children, between April 1, 1991 and March 31, 2022, are each entitled to a minimum payment of **\$40,000**.

##### ***Additional Payments***

Some individuals will also be able to get more compensation, based on several factors. These include, for example:

- The age when you were first placed into care;
- The total amount of time spent in care;
- Whether you were removed from your home due to lack of access to an essential service;

- Whether you lived in a Northern or remote community;
- The number of times you were placed into care; and
- The number of out of home placements.

These factors are intended to acknowledge the harm suffered by each child, in light of their individual circumstances.

The availability and the amount of additional payments may vary depending on the number of applicants.

## **CATEGORY 2: JORDAN’S PRINCIPLE / TROUT**

### ***Minimum Payment***

The minimum amount available for members of Category 2 depends on *when* the essential service gap or the denial or delay of an essential service happened:

Between April 1, 1991 – December 11, 2007                      **up to \$20,000 or more**

Between December 12, 2007 – November 2, 2017                      **up to \$40,000 or more**

The actual amount each person can receive will depend on the severity of the impact on the child, the number of approved claimants, and the availability of funds.

### ***Additional Payments***

Individuals may also be able to get more money, in certain circumstances, if the denial or delay of an essential service had a severe impact on them. Any additional payments will depend on the severity of the impact, the number of approved claimants, and the availability of funds.

## **CATEGORY 3: FAMILIES**

The caregiving parents or the caregiving grandparents of children who were removed from their homes or denied access to an essential service may also be able to receive compensation. The amount of money a caregiver may be entitled to depends on the Category.

**Category 1: \$40,000 per child up to a maximum of \$60,000**  
**Caregivers of removed children**

**Category 2:** The amount is not determined at this time. It is expected that the caregiving **Caregivers of** parents or caregiving grandparents of the children who were most **Jordan's** significantly impacted will receive direct compensation. The amount each **Principle and** caregiver may receive will depend on the number of approved claimants.  
**Trout children**

Siblings and other family members of the affected children will not receive direct compensation under this Settlement.

To find out how you can get money, click [here](#).

### **WILL MY MONEY BE TAXED?**

Money received under the Settlement is not subject to federal income tax. In addition, Canada has agreed to work with provinces and territories to exempt these amounts from provincial taxes or other deductions.

### **ARE THERE ADDITIONAL SUPPORTS FOR CHILDREN & FAMILIES?**

In addition to the above, a **\$50 million** trust fund will be created to support First Nations children and families in different ways. This includes, for example:

- Grants to facilitate culture, community and healing-based services to class members and their children;

- Supports for children in care, or formerly in care, including funding for family and community reunification;
- Funding to facilitate access to cultural programs, activities and supports (ex. youth groups, ceremonies, languages, Elders and Knowledge Keepers, mentors, land-based activities, and culturally-based arts and recreation);
- Supports for children transitioning out of care (ex. safe and accessible housing, life skills and independent living, financial literacy, continuing education, health and wellness supports, etc.);
- Facilitating the creation of a scholarship for the Jordan's Principle Class and their children; and
- The creation of a national network for First Nations children in care.

## **APPROVAL OF SETTLEMENT**

### **WHEN WILL THE SETTLEMENT BE APPROVED?**

#### **FEDERAL COURT**

The Federal Court will hold a hearing to decide if the Settlement should be approved. This hearing will take place in Ottawa on **September 19 to 23, 2022**. Details of the hearing will be posted [here](#) as well as details on how to attend a virtual hearing if available.

It is possible that this date might change. Sign up [here](#) to receive notifications by email of any change to the time and place of the hearing.

#### **CANADIAN HUMAN RIGHTS TRIBUNAL**

The Settlement must also be reviewed by the Canadian Human Rights Tribunal. A hearing before the Tribunal is expected to take place before the hearing at the Federal Court.

At this hearing, the Tribunal will be asked to confirm if the Settlement satisfies its previous compensation order against Canada (the **Compensation Order**). If it does, the Settlement will replace the Compensation Order. This means that claimants will have to seek compensation through the Settlement rather than the Compensation Order.

### **CAN I COMMENT OR OBJECT TO THE SETTLEMENT?**

You do not have to attend the hearing to provide any comments on the Settlement, but you can if you want to.

If you want to provide comments or object to the Settlement, there are two (2) ways you can do so:

**In writing:** You can provide comments in writing to this address: [insert]. Your comments will be sent to the Federal Court before the hearing. To be included, all written comments must be received by September 6, 2022.

**In person:** You can ask to speak in court about the Settlement on September 19 to 23, 2022 in person or by videoconference.

You will also have an opportunity to comment on the fees for the lawyers who worked on the class action. For more information about the lawyers and their fees, click here.

### **WHAT HAPPENS AFTER THE SETTLEMENT IS APPROVED?**

Participation in the Settlement is voluntary. You can decide if you would like to participate and make a claim for payment. The following are your options:

#### **OPTION 1: STAY IN THE CLASS ACTION**



If you want to stay in the class and submit a claim for payment under the Settlement, you do not need to do anything at this time. Once the Settlement is approved by the court, you will be provided with information about how to make a claim.

#### **ARE THERE ANY NEGATIVE CONSEQUENCES OF STAYING IN THE CLASS ACTION?**

Staying in the class action will not impact any government supports that you may be receiving or may be entitled to receive in the future from any government.

By staying in the class action, you can submit a claim for compensation under the Settlement. But, you will not be able to sue Canada again, or make an application to the Canadian Human Rights Tribunal, regarding the same discriminatory conduct.

Nothing in the Settlement prevents you from taking legal action for any other harms not included in this class action, or starting a claim against a province, territory or agency.

#### **OPTION 2: REMOVE YOURSELF FROM THE CLASS ACTION**

If you do not want to participate in the class action, you can ask to be removed from the lawsuit. You can do so by filling out an Opt-Out Form online or mailing a copy to this address: [insert]. **If you remove yourself from the class action, you will NOT receive any compensation under this Settlement.**

You can also contact the Administrator of the Settlement by contacting [1-800-NUMBER].

The last day to remove yourself from the class action is: [date].

#### **IF I OPT-OUT OF THE SETTLEMENT, CAN I STILL GET MONEY FROM THE CANADIAN HUMAN RIGHTS TRIBUNAL COMPENSATION ORDER?**

No. If approved by the Canadian Human Rights Tribunal, the Settlement will replace the Compensation Order process altogether. This means that claimants can only request money through the Settlement. If you opt-out of the Settlement, you will not be able to claim compensation

for this discriminatory conduct.

## **CLASS ACTION TEAM**

### **WHO IS REPRESENTING THE CLASS?**

#### **YOUR REPRESENTATIVE PLAINTIFFS**

The Assembly of First Nations is a plaintiff. The class action was brought by the following individuals on behalf of affected First Nations across Canada:

- Xavier Moushoom
- Jeremy Meawasige
- Jonavon Joseph Meawasige
- Ashley Dawn Louise Bach
- Karen Osachoff
- Melissa Walterson
- Noah Buffalo-Jackson
- Carolyn Buffalo
- Dick Eugene Jackson
- Zacheus Joseph Trout

These are your representative plaintiffs. They act as representatives of the entire class.

#### **YOUR LEGAL TEAM**

The class is represented by five (5) law firms across Canada:

- Sotos LLP
- Kugler Kandestin LLP
- Miller Titerle + Co.

- Nahwegahbow Corbiere
- Fasken Martineau Dumoulin LLP

### **HOW WILL THE LAWYERS BE PAID?**

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

The lawyers will be paid by Canada, separate and apart from the Settlement. These fees will not be taken from the Settlement, or from any payments to be made to class members. The settlement funds (\$20 billion) have been set aside for the class *only*.

The amount to be paid to the lawyers will be negotiated separately between the lawyers and Canada, and will be subject to court approval. The amount will have no impact on your ability to get money under the Settlement.

More details on the legal fees that will be requested will be posted here after the negotiations have concluded.

### **CONTACT US**

#### **WANT MORE INFORMATION ABOUT THE CLASS ACTION OR THE SETTLEMENT?**

More information about the case \_\_\_\_\_

#### **NEED SUPPORT OR ASSISTANCE?**

Support services are available \_\_\_\_\_

You can contact the class action administrator for help at: [**contact**]

You can also contact the Assembly of First Nations Helpline at: [**contact**]

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

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

---

You can contact the class action administrator for help at: **[contact]**

You can also contact the Assembly of First Nations Helpline at: **[contact]**

DRAFT

This is Exhibit "F" referred to in the Affidavit of Pouya Dabiran-Zohoori affirmed before me at the City of Toronto, in the Province of Ontario on June 15, 2022, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, reading "Patricia Kim Julian Son". The signature is written in a cursive, flowing style.

---

*Commissioner for Taking Affidavits (or as may be)*

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

## OPT-OUT FORM

TO: [CLASS ACTION ADMINISTRATOR]

[Address]

[Email]

[Fax]

[Phone number]

I do not want to participate in the class actions styled as *Xavier Moushoom et al v. The Attorney General of Canada* and *Zacheus Trout et al v. The Attorney General of Canada* regarding the claims of discrimination against First Nations children and families. I understand that by opting out, **I will NOT be eligible for the payment of any amounts** awarded or paid in the class actions, and those associated with the Canadian Human Rights Tribunal File No.: T1340/7008. If I want an opportunity to be compensated, I will have to make a separate individual claim and if I decide to pursue my own claim, and I want to engage a lawyer this will be at my own expense.

Please state your reason for opting out: \_\_\_\_\_

If you are sending this form on behalf of someone else, what is your full name and relationship to that person: Full Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Name of the Person Opting Out

\_\_\_\_\_  
Date of Birth of the Person Opting Out

\_\_\_\_\_  
Indian Registry/Status Number (if available)  
of the Person Opting Out

\_\_\_\_\_  
Address of the Person Opting Out

\_\_\_\_\_  
Reserve/Town/City, Province, Postal Code

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email

This notice must be delivered on or before [DATE] to be effective.

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

<p style="text-align: center;"><b>FEDERAL COURT CLASS PROCEEDING</b></p> <p><b>B E T W E E N:</b></p> <p><b>XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE</b></p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p style="text-align: center;"><b>THE ATTORNEY GENERAL OF CANADA</b></p> <p style="text-align: right;">Defendant</p>
<p style="text-align: center;"><b>FEDERAL COURT CLASS PROCEEDING</b></p> <p><b>B E T W E E N:</b></p> <p><b>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</b></p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p style="text-align: center;"><b>THE ATTORNEY GENERAL OF CANADA</b></p> <p style="text-align: right;">Defendant</p>
<p style="text-align: center;"><b>FEDERAL COURT CLASS PROCEEDING</b></p> <p><b>B E T W E E N:</b></p> <p><b>ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT</b></p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p style="text-align: center;"><b>THE ATTORNEY GENERAL OF CANADA</b></p> <p style="text-align: right;">Defendant</p>

**WRITTEN REPRESENTATIONS  
(MOTION FOR NOTICE APPROVAL)**

June 15, 2022

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**WRITTEN REPRESENTATIONS  
(MOTION FOR NOTICE APPROVAL)**

**I. OVERVIEW**

1. The plaintiffs move for the approval of notices to the class in these certified class actions and the opt-out procedure and timelines.<sup>1</sup>
2. The Court certified these proceedings on November 26, 2021 and January 19, 2022. The Court ordered that notice of certification be approved and distributed at a later time pursuant to a subsequent order of the Court.
3. The plaintiffs have now tentatively reached a global settlement with Canada. The proposed notices advise class members of the certification of the actions, the class members' right to opt out, the proposed settlement, and the settlement approval hearing scheduled to be heard on September 19, 2022. Canada consents to the proposed draft order on this motion.
4. The plaintiffs intend to seek approval of the notice plan later in the summer once a claims administrator has been selected and presented to the Court for approval. The details of the notice plan should properly be determined with input from the administrator who will be carrying out that notice plan.
5. The proposed notices of certification and settlement approval hearing, as well as the proposed opt-out form provide the class with fair, adequate, accurate, and culturally sensitive notice of matters affecting their rights. They should be approved.

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<sup>1</sup> Pursuant to Rule 334.32 and 334.34 of the *Federal Court Rules*, SOR/98-106.

6. The agreed upon opt-out period of six months is appropriate for this case regardless of the presence of a large number of minors in the class. Other alternatives would not be practical and would risk causing the class more harm than good: such as a rolling opt-out period dependent on class members reaching the age of majority (up to 19 years from now) or appointing litigation guardians for possibly tens of thousands of class members. The proposed opt-out procedure and time period should be approved.

## II. STATEMENT OF FACTS

7. The plaintiffs seek an order approving the short form and long form notice of certification and settlement approval hearing, and prescribing the opt-out procedure.

### A. History of the Class Action

8. On March 4, 2019, Xavier Moushoom commenced a proposed class action under Court File Number T-402-19 (“*Moushoom*”), seeking compensation for the class in this action dating back to 1991.<sup>2</sup> On January 28, 2020, the Assembly of First Nations and other plaintiffs filed a similar proposed class action under Court File Number T-141-20 regarding the impugned conduct also dating back to 1991 (“*AFN*”).<sup>3</sup>

9. Both groups of plaintiffs later combined efforts in the best interests of the class. The plaintiffs sought compensation for First Nations individuals who were victims of the Crown’s systemic discrimination while they were under the age of majority and for

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<sup>2</sup> Affidavit of Pouya Dabiran-Zohoory, affirmed June 15, 2022 (“*Dabiran-Zohoory Affidavit*”), at para 4.

<sup>3</sup> Dabiran-Zohoory Affidavit at para 4.

family members who suffered the break-up of their families and other harm when their children were removed from their homes and/or their equality rights were breached.<sup>4</sup>

10. The plaintiffs negotiated with Canada and agreed that, subject to the separate prosecution of the claims of the class members now included in *Trout et al v. Canada* (Court File No. T-1120-21), Canada would consent to the consolidated *Moushoom/AFN* claim being certified.<sup>5</sup> The Court accepted the parties' agreement and the plaintiffs' submissions, and after reading supporting submissions from an amicus, ordered that the *Trout* action be severed from *Moushoom/AFN* and proceed as an independent action.<sup>6</sup> The Court also ordered that the *Moushoom* action be consolidated with the *AFN* action.<sup>7</sup>

11. The Court certified the *Moushoom/AFN* action on November 26, 2021.<sup>8</sup> With leave of the Court, the plaintiffs issued the *Trout Action*. The Court later certified the *Trout* claim on January 19, 2022.<sup>9</sup> In both certification decisions, the Court deferred the approval and delivery of the notice of certification to the class until a subsequent date.<sup>10</sup>

12. After the certification of the consolidated action, and following many months of negotiation, the parties entered into an agreement in principle (“AIP”) to settle both the consolidated action and the *Trout* action. The AIP was conditional on, among other

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<sup>4</sup> Dabiran-Zohoory Affidavit at para 5.

<sup>5</sup> Dabiran-Zohoory Affidavit at para 6.

<sup>6</sup> Dabiran-Zohoory Affidavit at para 6. Order of Madam Justice St. Louis dated July 7, 2021.

<sup>7</sup> Dabiran-Zohoory Affidavit at para 6. Order of Madam Justice St. Louis dated July 7, 2021.

<sup>8</sup> Dabiran-Zohoory Affidavit, Exhibit “A”.

<sup>9</sup> Dabiran-Zohoory Affidavit, Exhibit “B”.

<sup>10</sup> Dabiran-Zohoory Affidavit, Exhibits “A” and “B”.

things, a comprehensive settlement agreement to be negotiated, and the Court's approval.<sup>11</sup>

13. The plaintiffs sought the deferral of the certification notice in order to avoid sending several separate notices to the class in short succession.<sup>12</sup> When the Court certified the consolidated action, the parties were involved in intensive mediation and negotiations toward a global resolution. When the Court certified *Trout*, the AIP had been reached. Deferring the delivery of the notice of certification and combining it with the notice of the settlement approval hearing reduced the number of notices being sent to the class and the potential for confusion.<sup>13</sup>

14. After the AIP was signed, the parties engaged in months of intensive negotiations with the assistance of experts and stakeholders to reach a comprehensive settlement agreement.<sup>14</sup> They have now tentatively reached a Final Settlement Agreement, which will be the subject of a hearing before this Court at a settlement approval motion scheduled to start on September 19, 2022. The Final Settlement Agreement will supersede and replace the AIP.<sup>15</sup>

15. The Final Settlement Agreement has not yet been signed by the parties. It has been sent to the Assembly of First Nations Executive Committee for their deliberation and decision. If there are any material amendments to the Final Settlement Agreement

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<sup>11</sup> Dabiran-Zohoory Affidavit at para 8.

<sup>12</sup> Dabiran-Zohoory Affidavit at para 9.

<sup>13</sup> Dabiran-Zohoory Affidavit at para 9.

<sup>14</sup> Dabiran-Zohoory Affidavit at para 10. Dabiran-Zohoory Affidavit, Exhibit "C", draft Final Settlement Agreement.

<sup>15</sup> Dabiran-Zohoory Affidavit at para 10.

before the motion, or after the motion and before the notices are sent to the class, the plaintiffs will advise the Court and seek further direction.<sup>16</sup>

## **B. Canadian Human Rights Tribunal Proceeding**

16. The certified actions interrelate with a proceeding before the Canadian Human Rights Tribunal, where the Assembly of First Nations is a co-complainant. In 2007, the Assembly of First Nations and the First Nations Child and Family Caring Society of Canada filed a complaint with the Canadian Human Rights Commission against Canada. On October 14, 2008, the Human Rights Commission referred the complaint to the Canadian Human Rights Tribunal (the “**Tribunal**”).<sup>17</sup>

17. The Tribunal rendered its decision on the merits on January 26, 2016.<sup>18</sup> The Tribunal found that the complaint was substantiated and that the Federal Government discriminated against First Nations in the provision of child and family services and in its unduly narrow interpretation of Jordan’s Principle, contrary to section 5 of the *CHRA*.<sup>19</sup> The Tribunal retained jurisdiction to oversee compliance with its orders and the cessation of Canada’s discriminatory practices.<sup>20</sup>

18. In a 2019 decision, the Tribunal ordered compensation be paid to children whose equality rights were infringed since 2006 (for children removed from a reserve) and 2007 (for children with a Jordan’s Principle claim).<sup>21</sup>

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<sup>16</sup> Dabiran-Zohoory Affidavit at para 11.

<sup>17</sup> Dabiran-Zohoory Affidavit at para 12.

<sup>18</sup> *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, [2016 CHRT 2](#).

<sup>19</sup> Dabiran-Zohoory Affidavit at para 14.

<sup>20</sup> Dabiran-Zohoory Affidavit at para 15.

<sup>21</sup> [2019 CHRT 39](#).

19. It is a condition of the Final Settlement that the Tribunal must rule that the settlement satisfies its compensation order.<sup>22</sup> As such, the Final Settlement Agreement will supersede the Tribunal's compensation order. This fact is explained in both the proposed short form and long form notices.<sup>23</sup>

### **C. Proposed Notices and Opt-Out Form**

20. The short form notice explains:

- (a) the background of the case;
- (b) who is in the class (The description in the short form notice is a simplified version of the class definition. A link is provided to the more detailed class definition in the long form notice.);
- (c) a short description of the proposed settlement;
- (d) each class member's option on whether to stay in the action or opt out;
- (e) how to comment on and, if desired, object to the proposed settlement;
- (f) a description of the Tribunal's ruling including the compensation order and the impact of the settlement on that order, if the Final Settlement Agreement is approved by the Tribunal and the Court;
- (g) the consequences of staying in the case or opting out;
- (h) a description of and contact information for class counsel;

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<sup>22</sup> Dabiran-Zohoory Affidavit, Exhibit "C", draft Final Settlement Agreement, Article 10.01(1).

<sup>23</sup> Dabiran-Zohoory Affidavit at para 17.



- (i) a description of the process for determining class counsel’s fee arrangement and the fact that such fees must be approved by the court and will not be taken out of the settlement funds, but rather paid by Canada over and above the settlement amount; and
- (j) how to obtain assistance and more information about the case and the settlement.<sup>24</sup>

21. The short form notice uses plain language which is thought to be suitable to the demographic of the class. It provides only the necessary information and avoids legalese or complicated sentence structures whenever possible.<sup>25</sup>

22. The long form notice is largely written in a question-and-answer format to improve readability and comprehension.<sup>26</sup> It attempts where possible to use plain language and only uses a more complex sentence structure where necessary to accurately convey details contained in the Final Settlement Agreement. It is broken down into intuitive questions such as: “How much money can I get?” and “Can I comment or object to the settlement?”, rather than using legal terms.<sup>27</sup>

23. Counsel are translating the notices into French, as well as the following First Nations languages: Cree, Ojibwe, Dene, and Mi’kmaq.<sup>28</sup>

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<sup>24</sup> Dabiran-Zohoory Affidavit at para 19.

<sup>25</sup> Dabiran-Zohoory Affidavit at para 20. See also Exhibit “D”.

<sup>26</sup> Dabiran-Zohoory Affidavit at para 21. See also Exhibit “E”.

<sup>27</sup> Dabiran-Zohoory Affidavit at para 21.

<sup>28</sup> Dabiran-Zohoory Affidavit at para 23.

#### **D. Opt-Out Period and Process**

24. The proposed opt-out form will be both paper-based and online in order to facilitate access for all class members.<sup>29</sup>

25. Class members wishing to opt out will be able to click the opt-out button, and be prompted with the language found on the opt-out form.<sup>30</sup> After confirming that they wish to opt out, the class members will be alerted one final time that they are opting out of the class proceeding, and that as a result, they will not receive any settlement funds.<sup>31</sup>

26. This additional precaution is necessary to prevent class members from mistakenly thinking that they must submit the opt-out form in order to receive compensation under the class action settlement, when in fact the opposite is the case.<sup>32</sup>

27. Given the implications of the decision to opt out, and the tendency of class members to mistakenly choose this option when in fact they wish to receive compensation in the settlement, each individual who wishes to opt out is prompted to provide a reason for doing so in the opt-out form.<sup>33</sup>

28. The opt-out period that the parties have agreed to is six months from notice of certification.

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<sup>29</sup> Dabiran-Zohoory Affidavit at para 24.

<sup>30</sup> Dabiran-Zohoory Affidavit, Exhibit “G”.

<sup>31</sup> Dabiran-Zohoory Affidavit at para 25.

<sup>32</sup> Dabiran-Zohoory Affidavit at para 26.

<sup>33</sup> Dabiran-Zohoory Affidavit at para 27. See also Exhibit “F”.

29. The six-month period (180 days) is one of the longest opt-out periods amongst prior class actions. For example, the opt-out periods in other Indigenous class actions were as follows:

- (a) 90 days for the Sixties Scoop class action;
- (b) 150 days for the Indian Residential Schools class action;
- (c) 120 days for the First Nations Drinking Water Settlement Agreement; and
- (d) 90 days for the Indian Day Schools class action.<sup>34</sup>

30. Although not binding on this Court, six months is the maximum opt-out period provincially allowable in Quebec under Article 576 of the Quebec *Code of Civil Procedure*.<sup>35</sup>

31. Class counsel have considered options other than six months from the publication of notice. For example, consideration was given to waiting until minors reach the age of majority, or six months after age of majority, to be able to opt out or not.<sup>36</sup> However, the logistics involved in designing an opt-out procedure in a class in which there are thousands of minors reaching majority age at different times, would

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<sup>34</sup> Dabiran-Zohoory Affidavit at para 29.

<sup>35</sup> Article 576 states:

... The judgment also determines the time limit for opting out of the class. The opting-out period cannot be shorter than 30 days or longer than six months after the date of the notice to class members. The time limit for opting out is a strict time limit, although a class member, with leave of the court, may opt out after its expiry on proving that it was impossible in fact for the class member to act sooner.

<sup>36</sup> Dabiran-Zohoory Affidavit at para 32.

cause complications that would bring about more disadvantage than benefit to the class.<sup>37</sup>

32. An opt-out period that is open for up to 19 years would be unprecedented and create uncertainties in the claims administration process. It would significantly complicate the settlement and distribution of funds. It would be difficult to know the size of the class from an actual or actuarial perspective.<sup>38</sup>

33. Class counsel could not find any precedent in Canada or the United States for such a long opt-out period. Class action statutes in Canada do not set out special opt-out procedures or timelines for when a class member is a minor.<sup>39</sup>

#### **E. Settlement Website**

34. The notices and opt-out form, if approved by the Court, will be hosted on a website in English at [www.fnyouthsettlement.ca](http://www.fnyouthsettlement.ca) and in French at [www.reglementjeunespn.ca](http://www.reglementjeunespn.ca). The website is in development until the notice campaign goes live at the next stage of the notice campaign.<sup>40</sup>

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<sup>37</sup> Dabiran-Zohoory Affidavit at para 32.

<sup>38</sup> Dabiran-Zohoory Affidavit at para 33.

<sup>39</sup> Dabiran-Zohoory Affidavit at para 33.

<sup>40</sup> Dabiran-Zohoory Affidavit at para 34. See also Exhibit “H”.

## **F. Next Stage: Selection of Claims Administrator and Finalizing the Notice Plan**

35. Class counsel are in the process of developing a request for proposal (“**RFP**”) for the selection of a claims administrator. The RFP is being finalized and counsel expect that the claims administrator will be selected by mid-July, 2022.<sup>41</sup>

36. The short form notice will be distributed under a notice plan that will be developed in consultation with the claims administrator. The notice plan will involve a combination of online, social media and hard copy distribution. Counsel anticipate that the notice plan will be ready for the Court’s consideration for approval by early to mid-August, 2022 so that notice can be distributed at least a month or longer before the September 19, 2022, settlement approval hearing date.<sup>42</sup>

37. While the *Federal Court Rules* do not require service of the motion materials on the Office of the Children’s Lawyer, counsel are serving a courtesy copy of the materials on the Office of the Children’s Lawyer in Ontario.<sup>43</sup> In addition, once approved, the Notice will be sent to the Office of Children’s Lawyer and the Public Guardian and Trustee in Ontario as directed by s. 27.1 of the *Class Proceedings Act*.<sup>44</sup>

## **III. ISSUES**

38. The sole issues on this motion are whether the notices of certification and settlement approval hearing, and the opt-out form should be approved.

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<sup>41</sup> Dabiran-Zohoory Affidavit at para 36.

<sup>42</sup> Dabiran-Zohoory Affidavit at para 37.

<sup>43</sup> Dabiran-Zohoory Affidavit at para 38.

<sup>44</sup> 1992, S.O. 1992, c. 6. Dabiran-Zohoory Affidavit at para 38.

39. As submitted earlier, the notice plan will be submitted at a subsequent motion where the plaintiffs will also be seeking the approval of the proposed claims administrator.<sup>45</sup>

#### **IV. SUBMISSIONS**

##### **A. The Proposed Notices Should be Approved**

40. The following documents are before the Court for approval:

- (a) Short-Form Notice of Certification and Settlement Approval Hearing;
- (b) Long-Form Notice of Certification and Settlement Approval Hearing;
- and
- (c) Opt-Out Form.<sup>46</sup>

41. Rule 334.32(1) governs notices of certification:

Notice that a proceeding has been certified as a class proceeding shall be given by the representative plaintiff or applicant to the class members.

42. Rule 334.32(5) prescribes the content of notice of certification as follows:

The notice shall

- (a) describe the proceeding, including the names and addresses of the representative plaintiff or applicant,<sup>47</sup> and the relief sought;
- (b) state the time and manner for a class member to opt out of the proceeding;

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<sup>45</sup> Dabiran-Zohoory Affidavit at para 37.

<sup>46</sup> See Dabiran-Zohoory Affidavit, Exhibits D, E, and F.

<sup>47</sup> Private information of the representative plaintiffs, such as their addresses, has not been included in the notices due to privacy concerns.

- (c) describe the possible financial consequences of the proceeding to the class and subclass members;
- (d) summarize any agreements respecting fees and disbursements
- (i) between the representative plaintiff or applicant and that representative's solicitor, and
- (ii) if the recipient of the notice is a member of a subclass, between the representative plaintiff or applicant for that subclass and that representative's solicitor;
- (e) in the case of an action, describe any counterclaim being asserted by or against the class or any subclass, including the relief sought in the counterclaim;
- (f) state that the judgment on the common questions of law or fact for the class or subclass, whether favourable or not, will bind all of the class members or subclass members who do not opt out of the proceeding;
- (g) describe the right, if any, of the class or subclass members to participate in the proceeding; and
- (h) give an address to which class members may direct inquiries about the proceeding.

43. Notices of certification and settlement approval hearing are combined in this case pursuant to the Court's certification orders, which deferred notice of certification.<sup>48</sup> Rule 334.34 states with respect to notice of settlement:

Notice that an offer to settle has been made or that a settlement has been approved under rule 334.29 shall be given by the representative plaintiff or applicant to the class or subclass members in accordance with the directions of a judge in respect of the content of and means of giving the notice.

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<sup>48</sup> Dabiran-Zohoory Affidavit, Exhibits "A" and "B".

44. As summarized above, the proposed notices provide the applicable content prescribed by rule 334.32(5). This content includes:

- (a) A description of the class proceeding and the relief sought, as well as the related Tribunal proceeding;
- (b) The time and manner for a class member to opt out of the proceeding;
- (c) The possible financial consequences of the proceeding to the class;
- (d) Information on fees, which will be negotiated separately and not deducted from the settlement funds;
- (e) A description of the binding nature of the settlement and certification on all class members who do not opt out of the proceeding; and
- (f) Contact information to which class members may direct inquiries about the proceeding will be filled in before the notices are distributed.<sup>49</sup>

45. The plaintiffs have drafted these documents through a process that has included:

- a) Preference for simple and accessible language to the extent possible;
- b) Cultural appropriateness through First Nations input and consultation;
- c) Preference for completeness so that class members receive the information that they need regarding the various components of these actions and the companion Tribunal proceeding; and

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<sup>49</sup> See proposed notice, Dabiran-Zohoory Affidavit, Exhibits D and E.



- d) Unity of notice of certification and notice of settlement approval hearing (in both the consolidated action and *Trout*) so as to prevent confusing class members by multiple separate notices.<sup>50</sup>

46. In summary, the short-form and long-form notice are fairly and accurately drafted. They include all pertinent information regarding the class proceeding, the settlement, the settlement approval hearing, and class members' rights to object to the settlement or to opt out. The opt-out procedure carefully balances the rights of all class members by providing sufficient information, while enabling the efficient distribution of settlement funds.

## **B. Opt-Out Procedure and Opt-Out Deadline**

47. The opt-out period that the parties have agreed to is six months from the date on which notice is published. This opt-out period is appropriate given the complexity, scale, and scope of the settled proceedings.

48. The six-month period is a long period compared to prior class actions, including in the Indigenous context,<sup>51</sup> and it is the maximum opt-out period that provincial legislation allows in Quebec, regardless of whether the class includes minors.<sup>52</sup>

49. The proposed opt-out period allows for notice to reach class members, including class members both on and off reserve, and any incarcerated class members who do not typically have access to means of communication.<sup>53</sup>

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<sup>50</sup> Dabiran-Zohoory Affidavit at para 22.

<sup>51</sup> Dabiran-Zohoory Affidavit at para 29.

<sup>52</sup> Article 576, *Civil Code of Procedure*.

<sup>53</sup> Dabiran-Zohoory Affidavit at para 31.

### C. Minors in the class and the opt-out period

50. The class includes a considerable number of adults, but also a large group who are minors under the age of majority in their place of residence. Given the large number of minors in the class, class counsel considered the possibility of extending the opt-out period until six months after each class member is or becomes an adult.<sup>54</sup>

51. Class counsel rejected this option for several reasons.<sup>55</sup> This case is not unique in including class members who may be minors or under legal disability. Many certified class proceedings in Canada include class members who are minors. Class action statutes in Canada do not set out special opt-out procedures or timelines for when a class member is a minor. The courts have likewise generally not distinguished between classes that include children and classes that include only adults in relation to opting out.

52. The *Federal Court Rules* are silent on the issue of minor class members opting out. Rule 334.21(1) governs opt-outs and is almost identical to opt-out rules in the common law provincial class action statutes. Rule 334.21(1) states:

A class member involved in a class proceeding may opt out of the proceeding within the time and in the manner specified in the order certifying the proceeding as a class proceeding.

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<sup>54</sup> Dabiran-Zohoory Affidavit at para 32.

<sup>55</sup> Dabiran-Zohoory Affidavit at paras 32-33.

53. In Quebec, delaying opt-out until after the age of majority would conflict with Article 576 of the *Code of Civil Procedure*, which provides a maximum opt-out deadline of six months, without distinguishing between adults and minors.

54. In *T.L. v. British Columbia (Children and Family Development)*,<sup>56</sup> (“*T.L.*”) the class included both children and adults who had been harmed in foster care by the wrongful conduct of a social worker at the BC Ministry of Child and Family Development. The representative plaintiffs were children. The BC Public Guardian and Trustee acted as their litigation guardian. However, the BC Public Guardian and Trustee did not act as all class members’ litigation guardian. The Court approved a settlement with an opt-out period of 24 months for all class members, including the class members who were and would still be minors when deciding to opt-out.

**D. An Order Requiring All Class Members Without Capacity To Have Litigation Guardians With Respect to Opting Out Would Not Be Workable**

55. The *Federal Courts Rules* do not require that class members of a minority age be represented or consult a litigation guardian, or a statutorily appointed lawyer such as the Children’s Lawyer, to exercise their right to opt-out of a class proceeding.

56. Class members are not “litigants” in the strict sense of the term, and are thus not required to have litigation decisions made at the direction of a guardian. The only substantive decision for class members to make is whether to opt out. While that decision has consequences, it does not rise to the complexity, number, and significance

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<sup>56</sup> *T.L. v British Columbia (Children and Family Development)* 2020 BCSC 1728 at paras 13-22 [*T. L.*].

of traditional litigation rights.<sup>57</sup> Commentary on the state of the law in this respect states:

If the representative plaintiff's role is to represent and defend the interests of the class, and a litigation guardian's role is to make decisions that are in the best interest of the child, then it is redundant to require every minor class member to have a litigation guardian. If children are a part of the class, this should already be in the mind of the representative plaintiff as they make decisions on behalf of the class. While the decision to opt out is an individual one, it is not self-evident that a litigation guardian is needed to make the decision or to effect the opt out. After all, opting out is usually as straightforward as sending an email or form. Opting out entails none of the traditional litigation rights that are exercised by ordinary litigants such as instructing counsel or directing the litigation; indeed, class members are not parties to the litigation, and have none of the rights of ordinary litigants, as the B.C. and Ontario Courts of Appeal recently affirmed in the Visa Merchant class actions.<sup>58</sup>

57. In *Bancroft-Snell v. Visa Canada Corporation*, the Ontario Court of Appeal distinguished the rights of appeal of class members from representative plaintiffs, and defined the limited scope of class members' appeal rights based on former caselaw and s. 30(5) of Ontario's *Class Proceedings Act 1992*.<sup>59</sup> The Court of Appeal emphasized that class members do not play an active role in the litigation, and at most have a *sui generis* status, as they do not possess the same degree of autonomy as parties to the litigation, and do not enjoy the rights of nor bear the responsibilities of parties.<sup>60</sup>

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<sup>57</sup> *Bancroft-Snell v. Visa Canada Corporation*, 2019 ONCA 822 at para 3 [*Bancroft*]; *Coburn and Watson's Metropolitan Home*, 2019 BCCA 308 at paras 16 [*Coburn*].

<sup>58</sup> See: <<https://classactionclinic.com/2019/12/03/not-quite-childs-play-unpacking-the-lack-of-clarity-in-class-actions-involving-minors/>>.

<sup>59</sup> *Bancroft* *supra* note 17 at para 16.

<sup>60</sup> *Bancroft* *supra* note 17 at paras 1-4.

58. In *Coburn and Watson's Metropolitan Home*, the British Columbia Court of Appeal determined that a class member could not appeal under the *Class Proceedings Act*,<sup>61</sup> because they are not a party in relation to the settlement or its approval by a court.<sup>62</sup> The court emphasized that the BC CPA draws important distinctions between the representative plaintiff and class members, such as the fact that the representative plaintiff, on certification of the proceeding by court order, is the party with authority to conduct and control the litigation on behalf of the class.<sup>63</sup>

59. Further, the rights of class members are protected by the overall supervisory jurisdiction of the court. Class members who do not opt out lose their “litigation autonomy”, but they instead benefit from the procedures of a class proceeding. This trade-off in turn creates a balance between fairness and efficiency, with class members gaining benefits such as access to justice, cost savings, and the ability to avoid duplicative proceedings.<sup>64</sup>

60. In this case, requiring litigation guardians to exercise the opt-out right for each minor in the class would impose an enormous burden on tens of thousands of individuals who would be saddled with a responsibility that they are ill-equipped to carry out. There are as many as 70,000 minors in the class, possibly more. Requiring each of them to retain a litigation guardian would create a situation bordering on chaos.

61. Each minor would have to retain a litigation guardian or, in the case of infants, the Court would have to appoint their parents as litigation guardians without knowing

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<sup>61</sup> R.S.B.C. 1996, c. 50 (“BC CPA”)

<sup>62</sup> *Coburn supra* note 17 at para 14.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

any circumstances relating to the child or the parents. A recent case in Quebec refused to authorize a class action which consisted of a large number of minors in part because of the opt-out burden proposed to be imposed on their parents. In *Environnement Jeunesse c. Procureur général du Canada*,<sup>65</sup> a case involving climate change litigation brought by youth in Quebec aged 35 and under, the Court was concerned with the fact that the authorization of the class would *impose upon the parents* of the class members the obligation to opt out on their behalf:

[133] En effet, le Tribunal estime que d’agir de la façon suggérée par Jeunesse n’est pas dans le meilleur intérêt des mineurs québécois. Certes, leur présence augmente de façon importante le montant réclamé en dommages-intérêts punitifs et l’effet dissuasif qui pourrait être créé, mais le Tribunal est d’avis que ce n’est pas le rôle à attribuer à tous les mineurs québécois.”

62. Similarly, imposing this enormous responsibility on statutory bodies such as the Public Guardian and Trustee or the Office of the Children’s Lawyer is equally problematic. These public bodies are not remotely equipped to properly advise tens of thousands of children of their individual rights to opt out.

63. Regardless of who might be appointed by the court to act as a litigation guardian, each guardian would have to review and understand a complex settlement and weigh that settlement against the remote and theoretical possibility that opting out is in the best interest of their minor. There would be no quality control and limited ability of the Court or class counsel to second-guess the decision.

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<sup>65</sup> *Environnement Jeunesse c. Procureur général du Canada*, 2019 QCCS 2885 [*Environnement Jeunesse*].

64. This settlement is the product of years of litigation and negotiation by skilled and experienced lawyers who have achieved the largest settlement in Canadian history. Class members stand to receive significant compensation in this settlement, without being required to retain lawyers, commence a separate legal action, prove their individual circumstances in Court and overcome a host of legal obstacles in the way of compensation.

65. There are few lawyers, let alone lay persons, who would have the wherewithal to identify the rarest of cases where opting out of this settlement would be in the best interest of a minor. Imposing a duty on tens of thousands of individuals would be extremely burdensome and potentially traumatizing to those ordered to carry out this function against their will.

66. The concerns of imposing an opt-out deadline on minors are further reduced by two factors in this class action. This proposed settlement must be reviewed and approved both by the Canadian Human Rights Tribunal and by this Honourable Court before it comes into effect. The Court's singular responsibility in approving the settlement is to ensure that it is fair and reasonable to the class, including those minors who are ill-equipped to make decisions for themselves.

67. While imposing a six month opt-out deadline on a minor, including infants, may result in some minors not having a practical right to opt out, weighing this against the significant harm that would be created by the possible alternatives leads to a clear conclusion that those alternatives are impractical and likely to result in a worse outcome for the minors. Any class members without legal capacity who already have a guardian can exercise their opt out right, if in their best interest, through their existing

guardian with the approval of the Court, as further submitted below. The Court should not impose a positive obligation across the board on a class of this size, or their parents, or statutory bodies under provincial jurisdiction to decide whether or not to opt out.

68. Class action commentary in the United States supports the same approach. The concern in the US has been whether funds will remain in place to compensate class members who by virtue of being children cannot be paid until they become adults rather than opt out during childhood. The US Manual for Complex Litigation suggests that reserving settlement funds to pay such claims when asserted later can address the concern.<sup>66</sup> The proposed settlement in this case fully addresses that concern by holding the settlement funds in an income generating trust fund until the class members reach the age of majority. The six-month opt-out period should not be confused with the Claims Deadline for a minor to make a claim for compensation under the settlement. The Claims Deadline under the Final Settlement Agreement will be three years after the class member reaches the age of majority (see Definition of Claims Deadline in Final Settlement Agreement). The Claims Deadline is exceptionally long given the importance of ensuring that minors have sufficient time after reaching the age of majority to make a claim.

69. In Ontario, Section 27.1(11) of Ontario's recent amendments to the *Class Proceedings Act, 1992*, envisions a narrow role for the Children's Lawyer:

If there is a reasonable possibility that the class or subclass includes minors, the court may direct that:

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<sup>66</sup> Manual for Complex Litigation at 449, online: <https://public.resource.org/scribd/8763868.pdf>; see also *Abdulrahim v. Air France*, 2011 ONSC 398 at para 33.



- (a) the notice of motion and other materials filed on the motion be served on the Children’s Lawyer; and
- (b) the Children’s Lawyer make any recommendations it may have in connection with the proposed settlement in writing to the court.

70. In this case, although Ontario’s *Class Proceedings Act* does not apply, class counsel have delivered a courtesy copy of the materials for this motion on the Children’s Lawyer and will send the notices to the Children’s Lawyer and the Public Guardian and Trustee in Ontario once approved.<sup>67</sup>

#### **E. Opting out by Minors and Persons Without Legal Capacity**

71. By providing for an “opt-out” jurisdiction (as opposed to an “opt-in” jurisdiction),<sup>68</sup> the *Federal Court Rules* express the intention for all individuals who meet the definition of the class to benefit from the class action, unless they take positive steps to exclude themselves.

72. As submitted above, under the circumstances, it would not be practical or in the best interests of the class to require litigation guardians or parental decisions for all class members who are minors or lack legal capacity. However, the parties nevertheless recognize the possibility that certain parents, guardians or other substitute decision-makers of minor class members and those lacking legal capacity may wish to exercise the opt-out right on their behalf.<sup>69</sup>

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<sup>67</sup> Dabiran-Zohoory Affidavit at para 37.

<sup>68</sup> [Rule 334.21\(1\)](#).

<sup>69</sup> Dabiran-Zohoory Affidavit at para 38.

73. Given the vulnerability of such minor class members and those lacking legal capacity, and considering that opting out such individuals would deprive them of substantial benefits available in the class action, the plaintiffs submit that the appropriate approach would be to subject the opt-out right to the Court's supervision.<sup>70</sup> This Court has the ultimate say on the best interests of minor class members and those lacking legal capacity insofar as this class action is concerned. Without the Court's supervision, minors and those lacking legal capacity face the risk of being opted out of the class action without the substitute decision-maker appreciating the implications of the decision or taking individual action to seek a remedy for the affected child or person without legal capacity.<sup>71</sup> Therefore, the proposed opt-out form requires that the person specify if they are opting out on behalf of someone else in which case the claims administrator will be able to advise them of the requirement to obtain the Court's approval and direct them to the correct process.<sup>72</sup>

## V. THE ORDER SOUGHT

74. The plaintiffs respectfully request an order approving the proposed notices and opt-out form.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 15th day of June, 2022.




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<sup>70</sup> Dabiran-Zohoory Affidavit at para 39.

<sup>71</sup> Dabiran-Zohoory Affidavit at para 40.

<sup>72</sup> Dabiran-Zohoory Affidavit at para 40.

June 15, 2022

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## SCHEDULE A - LIST OF AUTHORITIES

CASES	
1.	<a href="#"><i>Abdulrahim v. Air France</i>, 2011 ONSC 398</a>
2.	<a href="#"><i>Bancroft-Snell v. Visa Canada Corporation</i>, 2019 ONCA 822</a>
3.	<a href="#"><i>Coburn and Watson’s Metropolitan Home</i>, 2019 BCCA 308</a>
4.	<a href="#"><i>First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)</i>, 2016 CHRT 2</a>
5.	<a href="#"><i>First Nations Child &amp; Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i>, 2019 CHRT 39</a>
6.	<a href="#"><i>Environnement Jeunesse c. Procureur général du Canada</i>, 2019 QCCS 2885</a>
7.	<a href="#"><i>T.L. v British Columbia (Children and Family Development)</i> 2020 BCSC 1728</a>
SECONDARY SOURCES	
8.	Lawrence, Alexandra, Not Quite Child’s Play: Unpacking The Lack Of Clarity In Class Actions Involving Minors, online: <a href="https://classactionclinic.com/2019/12/03/not-quite-childs-play-unpacking-the-lack-of-clarity-in-class-actions-involving-minors/">https://classactionclinic.com/2019/12/03/not-quite-childs-play-unpacking-the-lack-of-clarity-in-class-actions-involving-minors/</a>
9.	Manual for Complex Litigation at 449, online: < <a href="https://public.resource.org/scribd/8763868.pdf">https://public.resource.org/scribd/8763868.pdf</a> >
STATUTES and REGULATIONS	
10.	Article 576, <a href="#"><i>Civil Code of Procedure</i></a>
11.	<a href="#"><i>Class Proceedings Act</i>, 1992, S.O. 1992, c. 6</a>
12.	<a href="#"><i>Federal Court Rules</i>, SOR/98-106</a>

## APPENDIX A – LEGISLATIONS

### ***Federal Court Rules, SOR/98-106, Rule 334.32***

English

#### **Article I. Notices**

##### **Marginal note:Who gives notice**

- **334.32 (1)** Notice that a proceeding has been certified as a class proceeding shall be given by the representative plaintiff or applicant to the class members.
- **Marginal note:Dispensation**

**(2)** A judge may dispense with the giving of notice after considering the factors set out in subsection (3).
- **Marginal note:Factors**

**(3)** A judge shall order when and by what means notice is to be given after considering the following factors:

  - **(a)** the cost of giving notice;
  - **(b)** the nature of the relief sought;
  - **(c)** the size of the individual claims of the class members;
  - **(d)** the number of class members;
  - **(e)** the presence of subclasses;
  - **(f)** the likelihood that some or all of the class members will opt out of the class proceeding; and
  - **(g)** the places of residence of class members.
- **Marginal note:How given**

**(4)** The order may provide that notice be given by

- **(a)** personal delivery;
- **(b)** mail;
- **(c)** posting, publishing, advertising or the distribution of leaflets;
- **(d)** individually notifying a sample group within the class; or
- **(e)** any other appropriate means or combination of appropriate means.

- **Marginal note:Content of notice**

**(5)** The notice shall

- **(a)** describe the proceeding, including the names and addresses of the representative plaintiff or applicant, and the relief sought;
- **(b)** state the time and manner for a class member to opt out of the proceeding;
- **(c)** describe the possible financial consequences of the proceeding to the class and subclass members;
- **(d)** summarize any agreements respecting fees and disbursements
  - **(i)** between the representative plaintiff or applicant and that representative's solicitor, and
  - **(ii)** if the recipient of the notice is a member of a subclass, between the representative plaintiff or applicant for that subclass and that representative's solicitor;
- **(e)** in the case of an action, describe any counterclaim being asserted by or against the class or any subclass, including the relief sought in the counterclaim;
- **(f)** state that the judgment on the common questions of law or fact for the class or subclass, whether favourable or not, will bind all of

the class members or subclass members who do not opt out of the proceeding;

- **(g)** describe the right, if any, of the class or subclass members to participate in the proceeding; and
- **(h)** give an address to which class members may direct inquiries about the proceeding.

- **Marginal note: Request for contributions**

**(6)** With leave of the judge, the notice may include a solicitation of contributions from the class or subclass members to assist in paying the fees and disbursements of the solicitor of record.



***Federal Court Rules, SOR/98-106, Rule 334.32***

French

**Article I. Avis**

**Note marginale :Auteur de l'avis**

- **334.32 (1)** Lorsqu'une instance est autorisée comme recours collectif, le représentant demandeur en avise les membres du groupe.
- **Note marginale :Dispense**

**(2)** Le juge peut, en tenant compte des facteurs énumérés au paragraphe (3), dispenser le représentant demandeur de l'obligation d'aviser les membres du groupe.
- **Note marginale :Facteurs**

**(3)** Le juge rend une ordonnance prévoyant les modalités de temps et de communication de l'avis en tenant compte des facteurs suivants :

  - **a)** les coûts liés à la communication de l'avis;
  - **b)** la nature des réparations demandées;
  - **c)** l'importance des réclamations individuelles des membres du groupe;
  - **d)** le nombre de membres du groupe;
  - **e)** l'existence de sous-groupes;
  - **f)** la possibilité que des membres du groupe demandent à être exclus du recours;
  - **g)** le lieu de résidence des membres.
- **Note marginale :Mode de communication**

**(4)** L'ordonnance peut prévoir que l'avis est communiqué selon l'un ou l'autre des modes suivants :

- **a)** par remise en personne;
- **b)** par la poste;
- **c)** par voie d’affichage ou de publication, par annonce publicitaire ou par prospectus;
- **d)** sous forme d’avis personnel donné à un échantillon représentatif du groupe;
- **e)** par tout autre mode approprié ou par une combinaison de tels modes.

- **Note marginale :Contenu de l’avis**

**(5)** L’avis comporte les éléments suivants :

- **a)** un sommaire de l’instance, notamment une mention des nom et adresse du représentant demandeur et des réparations demandées;
- **b)** des instructions quant à la façon dont les membres du groupe peuvent s’exclure du recours collectif et la date limite pour le faire;
- **c)** un énoncé des conséquences financières possibles de l’instance pour les membres du groupe et du sous-groupe;
- **d)** un sommaire des conventions relatives aux honoraires et débours qui sont intervenues entre :
  - **(i)** le représentant demandeur et l’avocat inscrit au dossier,
  - **(ii)** le représentant demandeur du sous-groupe et l’avocat inscrit au dossier, dans le cas où le destinataire de l’avis est membre d’un sous-groupe;
- **e)** s’agissant d’une action, un sommaire des demandes reconventionnelles présentées par ou contre le groupe ou le sous-groupe, y compris les réparations qui y sont demandées;

- **f)** une mention portant que le jugement rendu sur les points de droit ou de fait communs liera tous les membres du groupe ou du sous-groupe non exclus du recours collectif, qu'il soit favorable ou défavorable;
  - **g)** un énoncé du droit éventuel de chaque membre du groupe ou du sous-groupe de participer à l'instance;
  - **h)** l'adresse où les membres du groupe peuvent envoyer toute question relative à l'instance.
- **Note marginale :Demande de contribution**

**(6)** Avec l'autorisation du juge, l'avis peut comprendre une demande de contribution adressée aux membres du groupe ou du sous-groupe en vue du paiement des honoraires et débours de l'avocat inscrit au dossier.

***Federal Court Rules, SOR/98-106, Rule 334.34***

English

**Notice of settlement**

**334.34** Notice that an offer to settle has been made or that a settlement has been approved under rule 334.29 shall be given by the representative plaintiff or applicant to the class or subclass members in accordance with the directions of a judge in respect of the content of and means of giving the notice.

French

**Règlement**

**334.34** Lorsqu'une offre en vue d'un règlement est présentée ou qu'un règlement est approuvé aux termes de la règle 334.29, le représentant demandeur du groupe ou du sous-groupe en donne avis aux membres concernés conformément aux directives d'un juge quant au contenu de l'avis et à son mode de communication.

## Article 576 of Quebec *Code of Civil Procedure*

English

**576.** The judgment authorizing a class action describes the class whose members will be bound by the class action judgment, appoints the representative plaintiff and identifies the main issues to be dealt with collectively and the conclusions sought in relation to those issues. It describes any subclasses created and determines the district in which the class action is to be instituted.

The judgment orders the publication of a notice to class members; it may also order the representative plaintiff or a party to make information on the class action available to the class members, including by setting up a website.

The judgment also determines the time limit for opting out of the class. The opting-out period cannot be shorter than 30 days or longer than six months after the date of the notice to class members. The time limit for opting out is a strict time limit, although a class member, with leave of the court, may opt out after its expiry on proving that it was impossible in fact for the class member to act sooner.

French

**576.** Le jugement d'autorisation décrit le groupe dont les membres seront liés par le jugement et désigne le représentant; il identifie les principales questions qui seront traitées collectivement et les conclusions recherchées qui s'y rattachent. Le cas échéant, il décrit les sous-groupes constitués et détermine le district dans lequel l'action sera introduite.

Il ordonne la publication d'un avis aux membres; il peut aussi ordonner au représentant ou à une partie de rendre accessible aux membres de l'information sur l'action notamment par l'ouverture d'un site Internet.

Le jugement détermine également la date après laquelle un membre ne pourra plus s'exclure du groupe. Le délai d'exclusion ne peut être fixé à moins de 30 jours ni à plus de six mois après la date de l'avis aux membres. Ce délai est de rigueur;

néanmoins, un membre peut, avec la permission du tribunal, s'exclure après ce délai s'il démontre qu'il a été, en fait, dans l'impossibilité d'agir plus tôt.

***Class Proceedings Act, 1992, S.O. 1992, c. 6, s. 27.1***

English

**Settlement**

**27.1 (1)** A proceeding under this Act may be settled only with the approval of the court. 2020, c. 11, Sched. 4, s. 25.

French

**Transaction**

**27.1 (1)** Les instances visées par la présente loi ne peuvent faire l'objet d'une transaction qu'avec l'approbation du tribunal. 2020, chap. 11, annexe 4,

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

**FEDERAL COURT  
PROPOSED CLASS PROCEEDING**

B E T W E E N:

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

Plaintiffs

and

**THE ATTORNEY GENERAL OF CANADA**

Defendant

**FEDERAL COURT  
PROPOSED CLASS PROCEEDING**

B E T W E E N:

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

Plaintiffs

and

**HER MAJESTY THE QUEEN  
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA**

Defendant

**FEDERAL COURT  
CLASS PROCEEDING**

B E T W E E N:

**ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT**

Plaintiffs

and

**THE ATTORNEY GENERAL OF CANADA**

Defendant

## ORDER

**THIS MOTION** made by the plaintiffs for an order approving the short-form and long-form notices of certification and settlement approval hearing, and the opt-out form was heard this day at the Federal Court, at 161 Elgin Street, Ottawa, Ontario, K2P 2K1.

**ON READING** the materials filed, and on reading the submissions of counsel for the plaintiffs and counsel for the defendant;

**AND ON BEING ADVISED** that the defendant consents to this order;

1. **THIS COURT ORDERS** that the short-form notice of certification and settlement approval hearing, the long-form notice of certification and settlement approval hearing, and the opt-out form substantially in the forms attached respectively hereto as Schedules “A”, “B”, and “C” are hereby approved.
2. **THIS COURT ORDERS** that individuals seeking to opt out of the class proceedings in Court File Numbers T-402-19 and T-141-20, or the class proceeding in Court File Number T-1120-21, shall do so by either sending the opt-out form to the claims administrator, postmarked on or before the opt-out deadline, or by opting out online using the opt-out coupon on to be hosted on the website at <http://www.fnchildcompensation.ca/>.
3. **THIS COURT ORDERS** that where the postmark is not visible or legible, the request to opt out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by the claims administrator.



4. **THIS COURT ORDERS** that the election to opt out, whether in paper format or online, must be signed by the person or the person's designee, and must include the following information as prescribed in Schedule "C" to this order:

- (a) The person's full name, current address, telephone number, and Indian Registry/Status Number (if available);
- (b) The approved statement to the effect that the person wishes to be excluded from the class action and understands that opting out of the class action means the individual will not receive payment under the class action; and
- (c) The reason for wanting to opt out.

5. **THIS COURT ORDERS** that any class member who opts out of the proceeding shall have no further right to participate in the proceeding or to share in the distribution of any funds received as a result of a judgment or settlement in the proceeding.

6. **THIS COURT ORDERS** that, within thirty (30) days of the opt-out deadline, the claims administrator shall provide to class counsel and the defendant a report containing the names of each person who has validly and timely opted out of the proceeding and a summary of the information delivered by such persons pursuant to paragraph 4 above.

7. **THIS COURT ORDERS** that any person exercising the opt-out right on behalf of a person under the applicable age of majority or otherwise lacking legal capacity shall seek approval of this Court, and that such opt-out is not valid without the Court's approval.

8. **THIS COURT ORDERS** that the notice plan and the appointment of the claims administrator shall be the subject of further order of this Court.

---

The Honourable Madam Justice Aylen

**SCHEDULE “A”**

## Short Form Notice of Certification and Settlement

### Federal Child Welfare and Jordan's Principle Class Action

The Federal Court of Canada has approved this notice.

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

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

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

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

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

#### What is the class action about?

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

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

#### Are you included in the class action?

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

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

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

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

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

### **What is the proposed settlement?**

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

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

Each person in Category 2 who:

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

OR

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

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

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

### **What are my options?**

1. **Stay in the class action:** If you wish to stay in the class and be eligible to submit a claim for payment under the settlement, you do not need to do anything at this time.

2. **Remove yourself from the class action (opt out):** If you do not want to participate in this class action, and you do not want to receive a payment under the settlement, you need to remove yourself by submitting an Opt-Out Form by this date: \_\_\_\_\_.

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

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

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

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

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

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

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

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

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

If you want to object, you must send your written comments or request to speak at the hearing by **September 6, 2022**.

### **Canadian Human Rights Tribunal decision**

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

The Tribunal will be asked to make a ruling that the \$20 billion settlement of the lawsuit satisfies its previous compensation [order against Canada \(2019 CHRT 39\)](#). If the Tribunal finds that the \$20 billion settlement satisfies its compensation order against Canada, then the \$20 billion settlement will replace the compensation order, and you will not be allowed to claim a payment

under the Tribunal's order. Also, if the Tribunal finds that the \$20 billion settlement of this lawsuit satisfies its compensation order, and if the Federal Court approves the settlement, then you will not be able to claim compensation under the Tribunal's compensation order even if you opt out of this lawsuit.

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

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

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

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

### **Who is representing the class?**

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

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

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

### **How will the lawyers be paid?**

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

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

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

### **Want more information about the class action or the settlement?**

More information about the case \_\_\_\_\_

**Need support or assistance?**

Support services are available \_\_\_\_\_

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

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



**SCHEDULE “B”**

**Long Form Notice of Certification and Settlement**  
**Federal Child Welfare and Jordan's Principle Class Action**

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## INTRODUCTION

The Federal Court of Canada has approved this notice.

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

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

This notice also gives you a chance to remove yourself from the class action. **You should only remove yourself from the class action if you do not want to receive payment in this settlement.**

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

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

## THE CLASS ACTION

### WHAT IS A CLASS ACTION?

A class action is a lawsuit brought by one or more persons on behalf of a large group of people.

### WHAT IS THIS CLASS ACTION ABOUT?

This class action is about discrimination by the Canadian government against First Nations children in providing child welfare, health care, and other essential services.

The class action claims that from 1991 until 2022, Canada discriminated against First Nations

children living on reserves who were removed from their homes and placed in out-of-home care.

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

In the winter of 2022, the parties' intensive negotiations led to Canada committing **\$20 billion** to victims of discrimination to resolve the class action (the **Settlement**). The goal of the Settlement is to offer compensation to survivors and their families in recognition of the harms they've endured – while knowing that no amount of money can make up for their pain and suffering.

#### **WHO IS INCLUDED IN THE CLASS ACTION?**

Three (3) groups may receive compensation under the Settlement:

- |                   |   |
|-------------------|---|
| <b>Category 1</b> | First Nations children who were removed from their homes on reserve and placed in care at any time between April 1, 1991 and March 31, 2022.        |
| <b>Category 2</b> | First Nations children who faced a service gap or were denied or delayed access to an essential service between April 1, 1991 and November 2, 2017. |
| <b>Category 3</b> | Their caregiving parents or caregiving grand-parents.   |

#### **CATEGORY 1: REMOVED CHILDREN**

Under the Settlement, First Nations children on reserve or those who had at least one parent living on reserve, or lived in the Yukon, and who were placed in care between April 1, 1991 and March 31, 2022 may be able to receive money. To find out more about compensation under the Settlement, click [here](#).

You may qualify for payment if you:

- Are First Nations;
- Lived on reserve or had at least one parent living on reserve, or in the Yukon as a child (except in the Northwest Territories)
- Were placed into care as a child between April 1, 1991 and March 31, 2022; and
- Your placement was funded by Canada.

Covered	Not Covered
First Nations children	Non- First Nations children
Children living on reserve or had at least one parent living on reserve, or lived in the Yukon	Children living off-reserve, or in the Northwest Territories
Children who were placed into care between April 1, 1991 and March 31, 2022, including in: <ul style="list-style-type: none"> <li>• Foster Homes</li> <li>• Assessment Homes</li> <li>• Non-kin Foster Homes</li> <li>• Paid Kinship Homes</li> <li>• Group Homes</li> <li>• Residential Treatment Facilities</li> <li>• Others</li> </ul>	Children who were placed into care <i>prior</i> to April 1, 1991, or who were placed into: <ul style="list-style-type: none"> <li>• Non-paid Kin Homes</li> <li>• Non-paid Community Homes</li> </ul>
Funded by Canada	Funded by a province

Children who were removed from their homes prior to 1991 are the subject of other class actions such as the “Sixties’ Scoop” settlement. These are separate class actions, distinct from this one.

## WHAT DOES “FIRST NATIONS” MEAN UNDER THE SETTLEMENT WITH RESPECT TO REMOVED CHILDREN?

Under the Settlement, “First Nations” means Indigenous peoples who:

- (i) Are registered under the *Indian Act*;
- (ii) Were entitled to be registered under the *Indian Act* as of February 11, 2022; or
- (iii) Met band membership requirements as of at least February 11, 2022 (i.e., they were included on the Band List of their community)

## I AM FIRST NATIONS BUT WAS NOT LIVING ON RESERVE AT THE TIME THAT I WAS REMOVED FROM MY HOME. CAN I STILL RECEIVE COMPENSATION?

If one or both of your parents were ordinarily resident on a reserve when you were placed into care, you may be able to get compensation. But, if neither you nor your parents were living on reserve, you are not entitled to compensation unless Canada funded your removal under an agreement with a province or territory.

### Take this quiz to find out if you qualify in this category:

1. Are you First Nations?

☐ Yes ☐ No

2. Did you live on a reserve or had at least one parent living on reserve, or lived in the Yukon? (N.B. if you lived in the Northwest Territories, select “No”)

☐ Yes ☐ No

4. Were you placed in care at any time between April 1, 1991 and March 31, 2022?

☐ Yes ☐ No

If you answered “Yes” to all of these questions, you may qualify for payment. Contact the

Assembly of First Nations Helpline at **[contact]** to learn more.

## **CATEGORY 2: JORDAN’S PRINCIPLE / TROUT**

Under the Settlement, First Nations children who faced a service gap or were denied or delayed access to an essential service between 1991 and 2017 may be able to receive money. This group is commonly referred to as “Jordan’s Principle” class, in honour of Jordan River Anderson. (Although Jordan’s Principle did not exist until 2007, this category dates back to April 1, 1991 under the name of Trout.)

### **WHAT IS “JORDAN’S PRINCIPLE”?**

“Jordan’s Principle” is a legal rule that requires the government to treat First Nations children in the same manner as non-First Nations children, and not deprive them of important services that they need. The government must put the interests of the child first, before any jurisdictional or funding dispute.

This principle was named in honour of Jordan River Anderson, who did not receive the services he desperately needed because the governments were arguing about who should pay for Jordan’s needs. Jordan’s Principle is intended to ensure that what happened to Jordan does not happen to other First Nations children.

To find out more about compensation under the Settlement, click [here](#).

You may qualify for payment if:

- You are First Nations (whether you lived on or off reserve, including in the Yukon and Northwest Territories);
- You needed an essential service between April 1, 1991 and November 2, 2017; and
- You requested the service but were denied or delayed access to this service, or you did not



request the service but there was a service gap, because of a:

- a. lack of funding
- b. lack of jurisdiction
- c. jurisdictional dispute between Canada and the provincial / territorial government
- d. other reasons

Covered	Not Covered
First Nations children	Non-First Nations children
Children who were confirmed by a professional with relevant expertise to have needed an essential service	Children who needed a non-essential service
Were denied or delayed access to this service or faced a service gap	Were denied or delayed access to this service
Because of a: <ul style="list-style-type: none"> <li>• lack of funding</li> <li>• lack of jurisdiction</li> <li>• service gap</li> <li>• jurisdictional dispute</li> <li>• other</li> </ul>	For any reason
Between April 1, 1991 and November 2, 2017	Before April 1, 1991 or after November 2, 2017

#### **WHAT DOES “FIRST NATIONS” MEAN UNDER THE SETTLEMENT WITH RESPECT TO JORDAN’S PRINCIPLE CHILDREN?**

Under the Settlement, “First Nations” means Indigenous peoples across Canada (including the Yukon and Northwest Territories) who:

- (i) Are registered under the Indian Act;
- (ii) Were entitled to be registered under the Indian Act as of February 11, 2022; or
- (iii) Were recognized as citizens or band members of a First Nations community as of February 11, 2022, and faced a delay, denial or service gap with respect to an essential service between January 26, 2016 and November 2, 2017.

**Take this quiz to find out if you may qualify in this category:**

1. Are you First Nations?

☐ Yes ☐ No

2. Did a professional with relevant expertise confirm that you needed an essential service between April 1, 1991 and November 2, 2017? (For more information on the list of essential services, click [here](#))

☐ Yes ☐ No

3. Were you denied access to this service, or did you experience a delay in receiving this service?

☐ Yes ☐ No

4. Were you unable to obtain this service due to a service gap?

☐ Yes ☐ No

If you answered “Yes” to these questions, you may qualify for payment.

### **CATEGORY 3: FAMILIES**

The caregiving parents or the caregiving grandparents of children who were removed from their homes or denied access to an essential service may also be able to receive compensation. This includes the biological or adoptive parent(s), or grand-parent(s), of the child. Step-parents or foster

parents are not included.

Covered	Not Covered
Caregiving biological parent(s)	Step-parent(s)
Caregiving adoptive parent(s)	Foster parent(s)
Caregiving biological grand-parent(s)	
Caregiving adoptive grand-parent(s)	

Importantly, only those parent(s) or grand-parent(s) who were caring for the child at the time of removal are entitled to compensation – i.e., the *primary caregivers* – to a maximum of two (2) caregivers.

Siblings and other family members of the affected children will not receive direct compensation under this Settlement.

## THE SETTLEMENT

### OVERVIEW

Under the settlement Canada will pay committing **\$20 billion** to class members. In addition, Canada pledged an additional **\$20 billion** to fund long-term reform to eliminate systemic discrimination against First Nations children. However that pledge is not part of this settlement.

The Settlement must be approved by the courts. If it is approved by the courts, individuals falling within Category 1, Category 2, or Category 3 may be able to receive compensation.

*Is this case different from the Canadian Human Rights Tribunal compensation decision ordering Canada to pay \$40,000 to each affected individual?*

The Settlement of the class action partly overlaps with the Tribunal compensation decision. The Tribunal will be asked to confirm that this settlement satisfies its compensation order. If the Federal Court then approves the Settlement, this Settlement will cover all claims under both the Tribunal and the class action. You will only need to make one application for compensation.

### **HOW MUCH COMPENSATION CAN I GET?**

The amount of money you may receive will vary based on different factors. Each Category provides for an estimated minimum base payment. In addition, you may be able to receive additional payments, if certain factors are present.

#### **CATEGORY 1: REMOVED CHILDREN**

##### ***Minimum Payment***

Under the Settlement, individuals who were removed from their homes and placed into care as children, between April 1, 1991 and March 31, 2022, are each entitled to a minimum payment of **\$40,000**.

##### ***Additional Payments***

Some individuals will also be able to get more compensation, based on several factors. These include, for example:

- The age when you were first placed into care;
- The total amount of time spent in care;
- Whether you were removed from your home due to lack of access to an essential service;

- Whether you lived in a Northern or remote community;
- The number of times you were placed into care; and
- The number of out of home placements.

These factors are intended to acknowledge the harm suffered by each child, in light of their individual circumstances.

The availability and the amount of additional payments may vary depending on the number of applicants.

## **CATEGORY 2: JORDAN’S PRINCIPLE / TROUT**

### ***Minimum Payment***

The minimum amount available for members of Category 2 depends on *when* the essential service gap or the denial or delay of an essential service happened:

Between April 1, 1991 – December 11, 2007                      **up to \$20,000 or more**

Between December 12, 2007 – November 2, 2017                      **up to \$40,000 or more**

The actual amount each person can receive will depend on the severity of the impact on the child, the number of approved claimants, and the availability of funds.

### ***Additional Payments***

Individuals may also be able to get more money, in certain circumstances, if the denial or delay of an essential service had a severe impact on them. Any additional payments will depend on the severity of the impact, the number of approved claimants, and the availability of funds.

## **CATEGORY 3: FAMILIES**

The caregiving parents or the caregiving grandparents of children who were removed from their homes or denied access to an essential service may also be able to receive compensation. The amount of money a caregiver may be entitled to depends on the Category.

**Category 1: \$40,000 per child up to a maximum of \$60,000**  
**Caregivers of removed children**

**Category 2:** The amount is not determined at this time. It is expected that the caregiving **Caregivers of** parents or caregiving grandparents of the children who were most **Jordan's** significantly impacted will receive direct compensation. The amount each **Principle and** caregiver may receive will depend on the number of approved claimants.  
**Trout children**

Siblings and other family members of the affected children will not receive direct compensation under this Settlement.

To find out how you can get money, click [here](#).

### **WILL MY MONEY BE TAXED?**

Money received under the Settlement is not subject to federal income tax. In addition, Canada has agreed to work with provinces and territories to exempt these amounts from provincial taxes or other deductions.

### **ARE THERE ADDITIONAL SUPPORTS FOR CHILDREN & FAMILIES?**

In addition to the above, a **\$50 million** trust fund will be created to support First Nations children and families in different ways. This includes, for example:

- Grants to facilitate culture, community and healing-based services to class members and their children;

- Supports for children in care, or formerly in care, including funding for family and community reunification;
- Funding to facilitate access to cultural programs, activities and supports (ex. youth groups, ceremonies, languages, Elders and Knowledge Keepers, mentors, land-based activities, and culturally-based arts and recreation);
- Supports for children transitioning out of care (ex. safe and accessible housing, life skills and independent living, financial literacy, continuing education, health and wellness supports, etc.);
- Facilitating the creation of a scholarship for the Jordan's Principle Class and their children; and
- The creation of a national network for First Nations children in care.

## **APPROVAL OF SETTLEMENT**

### **WHEN WILL THE SETTLEMENT BE APPROVED?**

#### **FEDERAL COURT**

The Federal Court will hold a hearing to decide if the Settlement should be approved. This hearing will take place in Ottawa on **September 19 to 23, 2022**. Details of the hearing will be posted [here](#) as well as details on how to attend a virtual hearing if available.

It is possible that this date might change. Sign up [here](#) to receive notifications by email of any change to the time and place of the hearing.

#### **CANADIAN HUMAN RIGHTS TRIBUNAL**

The Settlement must also be reviewed by the Canadian Human Rights Tribunal. A hearing before the Tribunal is expected to take place before the hearing at the Federal Court.

At this hearing, the Tribunal will be asked to confirm if the Settlement satisfies its previous compensation order against Canada (the **Compensation Order**). If it does, the Settlement will replace the Compensation Order. This means that claimants will have to seek compensation through the Settlement rather than the Compensation Order.

### **CAN I COMMENT OR OBJECT TO THE SETTLEMENT?**

You do not have to attend the hearing to provide any comments on the Settlement, but you can if you want to.

If you want to provide comments or object to the Settlement, there are two (2) ways you can do so:

**In writing:** You can provide comments in writing to this address: [insert]. Your comments will be sent to the Federal Court before the hearing. To be included, all written comments must be received by September 6, 2022.

**In person:** You can ask to speak in court about the Settlement on September 19 to 23, 2022 in person or by videoconference.

You will also have an opportunity to comment on the fees for the lawyers who worked on the class action. For more information about the lawyers and their fees, click here.

### **WHAT HAPPENS AFTER THE SETTLEMENT IS APPROVED?**

Participation in the Settlement is voluntary. You can decide if you would like to participate and make a claim for payment. The following are your options:

#### **OPTION 1: STAY IN THE CLASS ACTION**



If you want to stay in the class and submit a claim for payment under the Settlement, you do not need to do anything at this time. Once the Settlement is approved by the court, you will be provided with information about how to make a claim.

#### **ARE THERE ANY NEGATIVE CONSEQUENCES OF STAYING IN THE CLASS ACTION?**

Staying in the class action will not impact any government supports that you may be receiving or may be entitled to receive in the future from any government.

By staying in the class action, you can submit a claim for compensation under the Settlement. But, you will not be able to sue Canada again, or make an application to the Canadian Human Rights Tribunal, regarding the same discriminatory conduct.

Nothing in the Settlement prevents you from taking legal action for any other harms not included in this class action, or starting a claim against a province, territory or agency.

#### **OPTION 2: REMOVE YOURSELF FROM THE CLASS ACTION**

If you do not want to participate in the class action, you can ask to be removed from the lawsuit. You can do so by filling out an Opt-Out Form online or mailing a copy to this address: [insert]. **If you remove yourself from the class action, you will NOT receive any compensation under this Settlement.**

You can also contact the Administrator of the Settlement by contacting [1-800-NUMBER].

The last day to remove yourself from the class action is: [date].

#### **IF I OPT-OUT OF THE SETTLEMENT, CAN I STILL GET MONEY FROM THE CANADIAN HUMAN RIGHTS TRIBUNAL COMPENSATION ORDER?**

No. If approved by the Canadian Human Rights Tribunal, the Settlement will replace the Compensation Order process altogether. This means that claimants can only request money through the Settlement. If you opt-out of the Settlement, you will not be able to claim compensation

for this discriminatory conduct.

## **CLASS ACTION TEAM**

### **WHO IS REPRESENTING THE CLASS?**

#### **YOUR REPRESENTATIVE PLAINTIFFS**

The Assembly of First Nations is a plaintiff. The class action was brought by the following individuals on behalf of affected First Nations across Canada:

- Xavier Moushoom
- Jeremy Meawasige
- Jonavon Joseph Meawasige
- Ashley Dawn Louise Bach
- Karen Osachoff
- Melissa Walterson
- Noah Buffalo-Jackson
- Carolyn Buffalo
- Dick Eugene Jackson
- Zacheus Joseph Trout

These are your representative plaintiffs. They act as representatives of the entire class.

#### **YOUR LEGAL TEAM**

The class is represented by five (5) law firms across Canada:

- Sotos LLP
- Kugler Kandestin LLP
- Miller Titerle + Co.

- Nahwegahbow Corbiere
- Fasken Martineau Dumoulin LLP

### **HOW WILL THE LAWYERS BE PAID?**

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

The lawyers will be paid by Canada, separate and apart from the Settlement. These fees will not be taken from the Settlement, or from any payments to be made to class members. The settlement funds (\$20 billion) have been set aside for the class *only*.

The amount to be paid to the lawyers will be negotiated separately between the lawyers and Canada, and will be subject to court approval. The amount will have no impact on your ability to get money under the Settlement.

More details on the legal fees that will be requested will be posted here after the negotiations have concluded.

### **CONTACT US**

#### **WANT MORE INFORMATION ABOUT THE CLASS ACTION OR THE SETTLEMENT?**

More information about the case \_\_\_\_\_

#### **NEED SUPPORT OR ASSISTANCE?**

Support services are available \_\_\_\_\_

You can contact the class action administrator for help at: [**contact**]

You can also contact the Assembly of First Nations Helpline at: [**contact**]

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

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

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You can contact the class action administrator for help at: **[contact]**

You can also contact the Assembly of First Nations Helpline at: **[contact]**

DRAFT

**SCHEDULE “C”**

## OPT-OUT FORM

TO: [CLASS ACTION ADMINISTRATOR]

[Address]

[Email]

[Fax]

[Phone number]

I do not want to participate in the class actions styled as *Xavier Moushoom et al v. The Attorney General of Canada* and *Zacheus Trout et al v. The Attorney General of Canada* regarding the claims of discrimination against First Nations children and families. I understand that by opting out, **I will NOT be eligible for the payment of any amounts** awarded or paid in the class actions, and those associated with the Canadian Human Rights Tribunal File No.: T1340/7008. If I want an opportunity to be compensated, I will have to make a separate individual claim and if I decide to pursue my own claim, and I want to engage a lawyer this will be at my own expense.

Please state your reason for opting out: \_\_\_\_\_

If you are sending this form on behalf of someone else, what is your full name and relationship to that person: Full Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Name of the Person Opting Out

\_\_\_\_\_  
Date of Birth of the Person Opting Out

\_\_\_\_\_  
Indian Registry/Status Number (if available)  
of the Person Opting Out

\_\_\_\_\_  
Address of the Person Opting Out

\_\_\_\_\_  
Reserve/Town/City, Province, Postal Code

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email

This notice must be delivered on or before [DATE] to be effective.

FEDERAL COURT  
CLASS ACTION PROCEEDING

B E T W E E N

<b>XAVIER MOUSHOOM et al</b>  Plaintiffs  and  <b>THE ATTORNEY GENERAL OF CANADA</b>  Defendant	<b>ASSEMBLY OF FIRST NATIONS et al</b>  Plaintiffs  and  <b>THE ATTORNEY GENERAL OF CANADA</b>  Defendant	<b>ASSEMBLY OF FIRST NATIONS et al</b>  Plaintiffs  and  <b>THE ATTORNEY GENERAL OF CANADA</b>  Defendant
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**MOTION RECORD (MOTION FOR NOTICE APPROVAL)**

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