

**First Nations Child and Family Services,  
Jordan's Principle, and Trout Class Settlement  
Agreement**

**(as revised on April 17, 2023)**

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## **SCHEDULES**

**Schedule A:** Order dated February 23, 2023 on Opt-Out Deadline

**Schedule B:** Order dated August 11, 2022 on Appointment of Administrator

**Schedule C:** Provincial and Territorial Ages of Majority

**Schedule D:** Certification Order dated November 26, 2021 in Court File Nos. T-402-19 and T-141-20 (2021 FC 1225)

**Schedule E:** Certification Order dated February 11, 2022 in Court File No. T-1120-21 (2022 FC 149)

**Schedule F:** Framework of Essential Services

**Schedule G:** Investment Committee Guiding Principles

**Schedule H:** Opt-Out Form

**Schedule I:** Framework for Supports for Claimants in Compensation Process

**Schedule J:** Summary Chart of Essential Service, Jordan's Principle, and Trout Approach

## SETTLEMENT AGREEMENT

**THIS AGREEMENT** is dated effective as of April 17, 2023 (“**Effective Date**”).

**BETWEEN:**

**XAVIER MOUSHOOM, JEREMY MEAWASIGE by his Litigation Guardian, Jonavon Joseph Meawasige, and JONAVON JOSEPH MEAWASIGE**

(together, the “**Moushoom Plaintiffs**”)

**AND:**

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

(together, the “**AFN Plaintiffs**”)

**AND:**

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

(together, the “**Trout Plaintiffs**”)

**AND:**

**HIS MAJESTY THE KING IN RIGHT OF CANADA**

(“**Canada**”)

(collectively, “**Parties**”)

**WHEREAS:**

- A. On March 4, 2019, the Moushoom Plaintiffs commenced a proposed class action in the Federal Court under Court File Number T-402-19 (the “**Moushoom Action**”), seeking compensation for discrimination dating back to April 1, 1991.
- B. On January 28, 2020, the AFN Plaintiffs also filed a proposed class action in the Federal Court under Court File Number T-141-20 (the “**AFN Action**”) regarding similar allegations dating back to April 1, 1991.
- C. On July 7, 2021, the Honourable Justice St-Louis ordered that the Moushoom Action and the AFN Action be consolidated with certain modifications (the “**Consolidated Action**”).

- D. The parties to the Consolidated Action engaged in mediation in accordance with the Federal Court Practice Guidelines for Aboriginal Law Proceedings (dated April 2016) to resolve all or some of the outstanding issues in the Consolidated Action. The Honourable Leonard Mandamin acted as mediator from November 1, 2020 to November 10, 2021.
- E. On July 16, 2021, the Trout Plaintiffs filed a proposed class action in the Federal Court under Court File Number T-1120-21 (the “**Trout Action**”) regarding the Crown’s discriminatory provision of essential services and products between April 1, 1991 and December 11, 2007.
- F. On September 29, 2021, in reasons indexed at 2021 FC 969, Justice Favel of the Federal Court of Canada upheld the Canadian Human Rights Tribunal (the “**Tribunal**”) decision made in Tribunal File: T1340/7008 (the “**CHRT Proceeding**”) and indexed at 2019 CHRT 39, 2020 CHRT 15, and 2021 CHRT 7 (collectively , the “**Compensation Orders**”) in which the Tribunal awarded compensation to Children and their caregiving parents or caregiving grandparents impacted by Canada’s systemic discrimination in the underfunding of child and family services on reserve and in the Yukon, and its narrow interpretation of Jordan’s Principle. Canada appealed to the Federal Court of Appeal from Justice Favel’s decision.
- G. On or about November 1, 2021, the Parties entered into negotiations outside of the Federal Court mediation process.
- H. The Parties, by agreement, appointed the Honourable Murray Sinclair to act as chair of the negotiations.
- I. The Parties worked collaboratively to determine the class sizes of the Consolidated Action and the Trout Action.
- J. The Parties separately engaged experts (“**Experts**”) to prepare a joint report on the estimated size of the Removed Child Class, as defined herein, on which the Parties would rely for settlement discussions (the “**Joint Report**”).
- K. The Experts relied on data provided by Indigenous Services Canada (“**ISC**”) in preparing the Joint Report. ISC communicated to the Experts and Class Counsel that the data often came from third-party sources and was in some cases incomplete and inaccurate. The Joint Report referred to and took into account these factors.
- L. The Experts estimated that there were 106,200 Removed Child Class Members from 1991 to March 2019. The Experts advised that this class size must be adjusted to 115,000 to cover the period from March 2019 to March 2022 (the “**Estimated Removed Child Class Size**”). The Estimated Removed Child Class Size was determined based on the data received from ISC and modelling and took into account gaps in the data.



- M. Canada provided to the Plaintiffs estimates of the Jordan's Principle Class Size, which were between 58,385 and 69,728 for the period from December 12, 2007 to November 2, 2017 (the "**Jordan's Principle Class Size Estimates**"). The Parties understand that the Jordan's Principle Class Size Estimates were based on a single 2019-2020 quarter and that extrapolating from that quarter therefore has limitations.
- N. Based on the Jordan's Principle Class Size Estimates, the Plaintiffs estimated the size of the Trout Class, as defined below, to be approximately 104,000.
- O. Based on the Parliamentary Budget Officer Report, *Compensation for the Delay and Denial of Services to First Nations Children*, dated February 23, 2021, there are an estimated 1.5 primary caregivers per First Nations Child.
- P. On November 26, 2021, the Federal Court granted certification of the Consolidated Action on consent of the parties.
- Q. On February 11, 2022, the Federal Court granted certification of the Trout Action on consent of the parties.
- R. The Moushoom Plaintiffs, the AFN Plaintiffs, and the Trout Plaintiffs (collectively, the "**Representative Plaintiffs**") and Canada concluded an agreement in principle ("**AIP**") on December 31, 2021, which set out the principal terms of their agreement to settle the Consolidated Action and the Trout Action (collectively, the "**Actions**").
- S. On March 24, 2022 (in 2022 CHRT 8), the Tribunal established March 31, 2022, as the end date for compensation to individuals included in the Removed Child Class and the Removed Child Family Class.
- T. The Parties engaged in several months of intensive negotiations and drafted a final settlement agreement dated June 30, 2022 ("**Previous FSA**").
- U. Pursuant to the Previous FSA, the Parties sought approval from the Court of Short-Form and Long-Form Notices of Certification and Settlement Approval Hearing, as well as the Opt-out Form. The Plaintiffs' motion was heard on June 22, 2022. On June 24, 2022, the Court granted the motion and approved the documents. The Court also heard submissions on the appropriate Opt-Out Deadline and determined that the Opt-Out Deadline would be six months from the date on which the notices are published.
- V. Pursuant to the Previous FSA, the Parties sought approval from the Court of their notice plan for the distribution of Notices of Certification and Settlement Approval Hearing. The Parties published the approved Short-Form and Long-Form Notices of Certification and Settlement Approval Hearing accordingly as of August 19, 2022. On February 10, 2023, the Parties sought on consent a six-month extension of the Opt-Out Deadline to August

23, 2023, bringing the total time to Opt-Out to approximately one year, which extension the Court granted by an order dated February 23, 2023 attached hereto as Schedule A.

- W. The Previous FSA was, amongst other things, conditional on the Tribunal confirming the satisfaction of the Compensation Orders.
- X. The Plaintiffs brought and briefed the settlement approval motion to the Court. Canada and the Assembly of First Nations (“**AFN**”) also brought a joint motion on July 22, 2022 to the Tribunal for an order confirming the satisfaction of the Compensation Orders. The First Nations Child and Family Caring Society of Canada (“**Caring Society**”) and the Canadian Human Rights Commission opposed the joint motion. The motion was heard on September 14-15, 2022.
- Y. On October 24, 2022, the Tribunal issued a letter decision dismissing the joint motion. On December 20, 2022, the Tribunal issued its full reasons in 2022 CHRT 41 (“**Joint Motion Decision**”) for denying the joint motion. The Tribunal found that the Previous FSA substantially satisfied the Compensation Orders, but stated and clarified that with respect to the individuals covered by the Compensation Orders: (a) certain removed children not in a placement that was funded by Canada should be eligible for compensation; (b) estates of deceased Caregiving Parents or Caregiving Grandparents should be eligible for compensation; (c) the Caregiving Parents or Caregiving Grandparents of certain Removed Child Class Members who had more than one child removed from them should receive multiplications of \$40,000 based on the number of removed children; and (d) Jordan’s Principle children eligible under the Compensation Orders should receive \$40,000. This Agreement intends to address the Joint Motion Decision.
- Z. The Parties and the Caring Society thereafter explored ways of addressing the Joint Motion Decision, such that the Tribunal can find the Agreement fully satisfies the Tribunal’s orders. The Parties and the Caring Society have now agreed to this updated Agreement, which addresses the issues raised in the Joint Motion Decision and is intended to be a full and final settlement of the Consolidated Action, Trout Action, and the Compensation Orders.
- AA. In entering into this Agreement, the Parties:
  - i) Intend a fair, comprehensive and lasting settlement of all claims raised or capable of being raised in the Consolidated Action, the Trout action and the CHRT Proceeding including that:
    - (a) Canada knowingly underfunded child and family services for First Nations Children living on Reserve and in the Yukon;
    - (b) Canada failed to comply with Jordan’s Principle, a human rights principle designed to safeguard First Nations Children’s existing substantive equality

rights guaranteed in the *Canadian Charter of Rights and Freedoms* (“**Charter**”);  
and

(c) Canada failed to provide First Nations Children with essential services available to non-First Nations Children or which would have been required to ensure substantive equality under the *Charter*;

ii) Intend that the Claims Process be administered in an expeditious, cost-effective, user-friendly, culturally sensitive, and trauma-informed manner;

iii) Desire to:

(a) safeguard the best interests of the Class Members who are minors and Persons under Disability;

(b) minimize the administrative burden on Class Members; and

(c) ensure culturally informed and trauma-informed mental health and cultural support services, as well as navigational assistance are available to Class Members.

BB. This settlement agreement is designed such that some Class Members, or subsets of Class Members, receive direct compensation, while some others may be eligible to indirectly benefit from the Agreement without receiving direct compensation.

**NOW THEREFORE** in consideration of the mutual agreements, covenants, and undertakings set out herein, the Parties agree as follows:

## **ARTICLE 1 – INTERPRETATION**

### **1.01 Definitions**

In this Agreement, the following definitions apply:

“**Abuse**” means sexual abuse (including sexual assault, sexual harassment, sexual exploitation, sex trafficking and child pornography) or serious physical abuse causing bodily injury, but does not include neglect or emotional maltreatment.

“**Actions**” has the meaning set out in the Recitals.

“**Actuary**” means the actuary or firm of actuaries appointed by the Court on the recommendation of the Settlement Implementation Committee who is, or in the case of a

firm of actuaries, at least one of the principals of which is, a Fellow of the Canadian Institute of Actuaries.

**“Administrator”** means Deloitte LLP, appointed by the Court by order dated August 11, 2022 attached hereto as Schedule B, and any successor(s) for Deloitte LLP appointed from time to time pursuant to this Agreement.

**“AFN Supports”** has the meaning set out in Article 9.

**“Age of Majority”** means the age at which a Class Member is legally considered an adult under the provincial or territorial law of the province or territory where the Class Member resides, attached hereto as Schedule C.

**“Agreement”** means this settlement agreement, including the Schedules attached hereto.

**“Approved Essential Service Class Member”** means a Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to the criteria set in this Agreement.

**“Approved Jordan’s Principle Class Member”** means a Jordan’s Principle Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to the criteria set in this Agreement.

**“Approved Jordan’s Principle Family Class Member”** means a Jordan’s Principle Family Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to the criteria set in this Agreement.

**“Approved Kith Child Class Member”** means a Kith Child Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to Article 7.

**“Approved Kith Family Class Member”** means a Kith Family Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to Article 7.

**“Approved Removed Child Class Member”** means a Removed Child Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to Article 6.

**“Approved Removed Child Family Class Member”** means the Caregiving Parent or Caregiving Grandparent of a Removed Child Class member, whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to Article 6.

**“Approved Trout Child Class Member”** means a Trout Child Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to the criteria set in this Agreement.

**“Approved Trout Family Class Member”** means a Trout Family Class Member whose Claim has been approved by the Administrator, or on appeal by the Third-Party Assessor, pursuant to the criteria set in this Agreement.

**“Assessment Home”** means a home designed for an initial short-term placement where the needs of a Child are being assessed in order to match them to a longer term placement.

**“Auditors”** means the auditors appointed by the Court and their successors appointed from time to time pursuant to the provisions of Article 16.

**“Band”** has the meaning set out in the *Indian Act*.

**“Band List”** has the meaning set out in sections 10-12 of the *Indian Act*.

**“Banking Facilities”** means an investment account or instrument at any single or syndicate of Schedule I Chartered Canadian Banks and their related treasury and custody entities, as approved by the Court.

**“Base Compensation”** means the amount of compensation (excluding any applicable Enhancement Payment and interest payment) approved by the Court as set out in this Agreement as part of the Claims Process, to be paid to an Approved Removed Child Class Member, an Approved Jordan’s Principle Class Member, an Approved Trout Child Class Member, an Approved Kith Child Class Member, an Approved Removed Child Family Class Member, an Approved Trout Family Class Member, an Approved Jordan’s Principle Family Class Member, or an Approved Kith Family Class Member. Such Base Compensation may be different for different Classes and may be made in more than one installment as the implementation of the Claims Process may require.

**“Budget”** means each of the budgets set out in Articles 6 and 7.

**“Business Day”** means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the province or territory in which the person who needs to take action pursuant to this Agreement is ordinarily resident or a holiday under the federal laws of Canada applicable in the said province or territory.

**“Canada”** has the meaning set out in the preamble.

**“Caregiving Grandparent”** and **“Caregiving Grandparents”** means a biological or adoptive caregiving grandmother or caregiving grandfather of the affected Child who lived with and assumed and exercised parental responsibilities over a Removed Child Class

Member at the time of the removal of the Child, or over a Kith Child Class Member at the time of the involvement of the Child Welfare Authority and the Child's Kith Placement, or over a Jordan's Principle Class Member or Trout Child Class Member at the time of the Delay, Denial or Service Gap with respect to the Child's Confirmed Need for an Essential Service. An adoption in this context means a verifiable provincial, territorial or custom adoption. Relationships of a foster parent or Stepparent to a Child are excluded from giving rise to a Caregiving Grandparent relationship under this Agreement.

**"Caregiving Parent"** and **"Caregiving Parents"** means the caregiving mother or caregiving father of the affected Child, living with, and assuming and exercising parental responsibilities over a Removed Child Class Member at the time of the removal of the Child, or over a Kith Child Class Member at the time of the involvement of the Child Welfare Authority and the Child's Kith Placement, or over a Jordan's Principle Class Member or Trout Child Class Member at the time of the Delay, Denial or Service Gap with respect to the Child's Confirmed Need for an Essential Service. Caregiving Parent includes the biological parents, adoptive parents or Stepparents for each applicable Class, except as where expressly provided for otherwise in this Agreement. A foster parent is excluded as a Caregiving Parent under this Agreement. An adoption in this context means a verifiable provincial, territorial or custom adoption.

**"Certification Orders"** mean collectively the order of the Court dated November 26, 2021, certifying the Consolidated Action as a class proceeding and the order of the Court dated February 11, 2022, certifying the Trout Action as a class proceeding, copies of which are attached hereto as Schedules D and E.

**"Child"** or **"Children"** means an individual under the Age of Majority of the individual's place of residence as set out in Schedule C, Provincial and Territorial Ages of Majority:

- (a) at the time of removal, for the purposes of the Removed Child Class;
- (b) at the time of the involvement of the Child Welfare Authority and the Kith Placement, for the purposes of Kith Child Class; and
- (c) at the time of the Delay, Denial or Service Gap with respect to the individual's Confirmed Need for an Essential Service, for the purposes of the Essential Service Class, the Jordan's Principle Class, and the Trout Child Class.

**"Child Welfare Authority"** for the purposes of the Kith Child Class means an administrative body that is mandated to prevent and respond to Child maltreatment pursuant to provincial/territorial child welfare legislation and *An Act Respecting First Nations, Inuit and Métis Children, Youth and Families*, S.C. 2019, c. 24.

**"Child Welfare Information"** for the purposes of the Kith Child Class includes documents, records, case notes, statistics, reports, third party records and any other form

of information produced and/or collected by a Child Welfare Authority in relation to services and supports provided to First Nations Children, youth, and families pursuant to provincial or territorial child and family services legislation.

**“Child Welfare Records Technician”** means one or more individuals with sufficient expertise in child welfare and administrative information retained by the Administrator on advice of the Settlement Implementation Committee for the purposes of the verification of a Claim under this Agreement through provincial authorities, agencies or other Child Welfare Authorities, including in matters such as the verification of the Claims made by Kith Child Class Members or Kith Family Class Members. Child Welfare Records Technicians may be existing employees of a Child Welfare Authority as well as independent technicians retained pursuant to this Agreement.

**“CHRT Interest Accrual Period”** means:

- (a) with respect to Approved Removed Child Class Members who were placed off-Reserve with non-Family as of and after January 1, 2006 and their corresponding Approved Removed Child Family Class Members: as of the last day of the calendar quarter of the removal until the Implementation Date;
- (b) with respect to Approved Kith Child Class Members and Approved Kith Family Class Members as of and after January 1, 2006: as of the last day of the calendar quarter of the placement with a Kith Caregiver until the Implementation Date; and
- (c) with respect to Approved Jordan’s Principle Class Members and Approved Jordan’s Principle Family Class Members: as of the last day of the calendar quarter of the Service Gap, Delay or Denial until the Implementation Date.

**“Claim”** means a claim for compensation made by or on behalf of a Class Member.

**“Claimant”** means a person who makes a Claim by completing and submitting a Claims Form to the Administrator, or on whose behalf a Claim is made by such Class Member’s Estate Executor, estate Claimant or Personal Representative.

**“Claims Deadline”** means the date that is:

- (a) three (3) years after the Claims Process Approval Date applicable to each class: for Class Members who have reached the Age of Majority or died before the Claims Process Approval Date applicable to those Class Members;
- (b) three (3) years after the date on which a Class Member reaches the Age of Majority: for Class Members who have not reached the Age of Majority by the time of the Claims Process Approval Date applicable to their class; or
- (c) three (3) years after the date of death: for Class Members who were under the Age of Majority and alive by the time of the Claims Process Approval Date

applicable to their class and who died or die prior to reaching the Age of Majority; or

- (d) an extension of the deadlines in (a)-(c) above by 12 months: for Class Members individually approved on request by the Administrator on the grounds that the Claimant faced extenuating personal circumstances and was unable to submit a Claim as a result of physical or psychological illness or challenges, including homelessness, incarceration or addiction, or due to unforeseen community circumstances such as epidemics, community internet connectivity, pandemics, natural disasters, community-based emergencies or service disruptions at a national, regional or community level.

**“Claims Form”** means a written declaration in respect of a Claim by a Class Member with Supporting Documentation or such other form as may be recommended by the Administrator and agreed to by the Settlement Implementation Committee.

**“Claims Process”** means the process, including a distribution protocol, to be further designed and detailed in accordance with this Agreement for the distribution of compensation under this Agreement to eligible Class Members. The Claims Process also includes the Incarcerated Class Members Process and such other processes as may be recommended by the Administrator and experts, agreed to by the Plaintiffs and approved by the Court, for the submission of Claims, determination of eligibility, assessment, verification, determination of possible enhancement, payment of compensation to Class Members, and the role of the Third-Party Assessor. The distribution protocol within the Claims Process may be created and submitted to the Court for approval in one package or in several parts relating to different classes as and when each of such parts becomes ready following the Implementation Date.

**“Claims Process Approval Date”** with respect to each class means the date on which the distribution protocol in the Claims Process for that class has been approved by the Court.

**“Class”** means Jordan’s Principle Class, Jordan’s Principle Family Class, Removed Child Class, Removed Child Family Class, Trout Child Class, Trout Family Class, Kith Child Class, Kith Family Class, and Essential Service Class, collectively. Reference to a “class” or “classes” with a lower case “c” is to any of the Jordan’s Principle Class, Jordan’s Principle Family Class, Removed Child Class, Removed Child Family Class, Trout Child Class, Trout Family Class, Kith Child Class, Kith Family Class, or Essential Service Class, as may apply within the context of such reference.

**“Class Counsel”** means Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Company, Nahwegahbow Corbiere, and Fasken LLP, collectively.



**“Class Member”** and **“Class Members”** means any one or more individual members of the Class.

**“Confirmed Need”** means the need of a member of the Jordan’s Principle Class, Trout Child Class or Essential Service Class as confirmed by Supporting Documentation as defined for Essential Service Class, Jordan’s Principle Class, and Trout Child Class.

**“Court”** means the Federal Court of Canada.

**“Cy-près Fund”** has the meaning set out in Article 8.

**“Delay”** means unreasonable delay and it is presumed that delay is unreasonable where a member of the Essential Service Class, Jordan’s Principle Class, or Trout Child Class requested an Essential Service from Canada but they did not receive a determination on their request within 12 hours for an urgent case, or 48 hours for other cases, provided that contextual factors, as specified in the Claims Process, do not suggest otherwise.

**“Denial”** means where a member of the Essential Service Class, Jordan’s Principle Class, or Trout Child Class requested an Essential Service from Canada and that request was either denied or the member of the Essential Service Class, Jordan’s Principle Class, or Trout Child Class did not receive a response as to acceptance or denial.

**“Eligible Deceased Class Member”** means:

- (a) a deceased Caregiving Parent or Caregiving Grandparent eligible to receive compensation as a Removed Child Family Class Member (of a Child placed off-Reserve with non-Family as of and after January 1, 2006), a Kith Family Class Member, or a Jordan’s Principle Family Class Member;
- (b) a deceased adult eligible to receive compensation as a Removed Child Class Member, a Kith Class Member, a Jordan’s Principle Class Member, an Essential Services Class Member, or a Trout Class Member; and
- (c) a deceased adult Claimant who submitted a Claim prior to death.

**“Eligibility Decision”** has the meaning set out in Article 5.02.

**“Enhancement Factor”** means any objective criterion agreed to by the Plaintiffs and approved by the Court that may be used by the Administrator to enhance the Base Compensation of some members of the Removed Child Class, Jordan’s Principle Class or Trout Child Class.

**“Enhancement Payment”** means an amount, based on Enhancement Factors, that may be payable to an Approved Removed Child Class Member, an Approved Jordan’s Principle Class Member, or an Approved Trout Child Class Member, in addition to a Base Payment. In determining eligibility for and the quantum of an Enhancement Payment, the

Settlement Implementation Committee may provide guidelines that take into account the amount of interest payment that an Approved Removed Child Class Member or an Approved Jordan's Principle Class Member has received on their Base Compensation, with a view to considering equity or parity amongst Class Members who may receive an interest payment and those Class Members who may not receive an interest payment under this Agreement.

**"Essential Service"** means a service, product or support that was required due to the Child's particular condition or circumstance, the failure to provide which would have resulted in material impact on the Child, as assessed in accordance with Schedule F, Framework of Essential Services.

**"Essential Service Class"** means a First Nations individual who did not receive from Canada (whether by reason of a Denial or a Service Gap) an Essential Service relating to a Confirmed Need, or whose receipt of said Essential Service relating to a Confirmed Need was delayed by Canada, on grounds, including but not limited to, lack of funding or lack of jurisdiction, as a result of a jurisdictional dispute with another government or federal governmental department(s) during the period between December 12, 2007 and November 2, 2017 (the **"Essential Service Class Period"**), while they were under the Age of Majority.

**"Estate Administrator"** includes an executor or administrator appointed or designated under federal, provincial or territorial legislation, as applicable under the circumstances.

**"Estate Executor"** means the executor, administrator, trustee or liquidator of an Eligible Deceased Class Member's estate.

**"Family"** includes a parent, stepparent, grandparent, adult sibling, aunt, uncle or adult first cousin of the Child.

**"First Nations"** in reference to individuals means:

- (a) with respect to all Class Members: individuals who are registered pursuant to the *Indian Act*;
- (b) with respect to all Class Members: individuals who were entitled to be registered under sections 6(1) or 6(2) of the *Indian Act*, as it read as of February 11, 2022 (the latter date of the Certification Orders);
- (c) additionally with respect to the Removed Child Class only: individuals who met Band membership requirements under sections 10-12 of the *Indian Act* by February 11, 2022 (the latter date of the Certification Orders) such as where their respective First Nation community assumed control of its own membership by establishing membership rules and the individuals were found to meet the

requirements under those membership rules and were included on the Band List prior to February 11, 2022;

(d) additionally with respect to the Jordan's Principle Class only: individuals who met Band membership requirements under sections 10-12 of the *Indian Act* pursuant to paragraph (c), above, AND who suffered a Delay, Denial, or Service Gap between January 26, 2016 and November 2, 2017;

(e) additionally with respect to the Jordan's Principle Class only: individuals who were recognized as citizens or members of their respective First Nation prior to February 11, 2022 (the latter date of the Certification Orders) as confirmed by First Nations Council Confirmation, whether under final agreement, self-government agreement, treaties or First Nations' customs, traditions and laws, AND who suffered a Delay, Denial, or Service Gap between January 26, 2016 and November 2, 2017.

**"First Nations Council Confirmation"** means a written confirmation, the form and contents of which will be agreed upon amongst the Plaintiffs subject to the Court's approval, from a First Nation designed for the purposes of the Claims Process to the effect that an individual is recognized as a citizen or member of their respective First Nation whether under treaty, agreement or First Nations' customs, traditions or laws.

**"Framework of Essential Services"** is the approach to Essential Services and Confirmed Need, enclosed as Schedule F, Framework of Essential Services, developed with the assistance of experts, and agreed to by the Plaintiffs for the purposes of the Claims Process. The Framework of Essential Services is subject to further piloting by qualified experts and necessary re-adjustments agreed to by the Plaintiffs, or the Settlement Implementation Committee after the Approval of this Agreement.

**"Group Home"** means a staff-operated home funded by ISC where several Children are living together. Some Group Homes are parent-operated, where a couple with professional youth care training operate a Group Home together.

**"Implementation Date"** of this Agreement means the later of:

(a) the day following the last day on which a Class Member may appeal or seek leave to appeal the Settlement Approval Order; or

(b) the date on which the last of any appeals of the Settlement Approval Order are finally determined.

**"Incarcerated Class Members Process"** means the process for communicating the Claims Process specifically to Class Members incarcerated in federal penitentiaries, provincial prisons, and other penal and correctional institutions or institutions where

individuals are held involuntarily due to matters such as a lack of criminal responsibility due to a mental disorder.

**“Income Tax Act”** means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp), as amended.

**“Indian Act”** means the *Indian Act*, R.S.C. 1985, c. I-5, as it read as of February 11, 2022 (the latter date of the Certification Orders).

**“Investment Committee”** means an advisory body constituted in accordance with this Agreement and Schedule G, Investment Committee Guiding Principles.

**“ISC”** has the meaning in the Recitals and includes any predecessor or successor department.

**“Jordan’s Principle”** is a child-first human rights principle grounded in substantive equality that protects and promotes the substantive equality rights of all First Nations Children whether resident on- or off-Reserve, including in the Northwest Territories and Yukon. Jordan’s Principle is named in honour of Jordan River Anderson of Norway House Cree Nation and his family.

**“Jordan’s Principle Class”** or **“Jordan’s Principle Class Member”** means an Essential Service Class Member who experienced the highest level of impact (including pain, suffering or harm of the worst kind) associated with the Delay, Denial, or Service Gap of an Essential Service that was the subject of a Confirmed Need. The Parties intend that the way that the highest level of impact is defined, and the associated threshold set for membership in the Jordan’s Principle Class, fully overlap with the First Nations children entitled to compensation under the Compensation Orders.

**“Jordan’s Principle Family Class”** means all persons who are the brother, sister, mother, father, grandmother or grandfather of a member of the Jordan’s Principle Class at the time of Delay, Denial or Service Gap. Amongst the Jordan’s Principle Family Class, only the Caregiving Parents or Caregiving Grandparents may receive direct compensation if otherwise eligible under this Agreement.

**“Jordan’s Principle Post-Majority Beneficiaries”** means the beneficiaries eligible for benefits from the Jordan’s Principle Post-Majority Fund.

**“Jordan’s Principle Post-Majority Fund”** means \$90,000,000 set aside from the Settlement Funds for the benefit of high-needs Approved Jordan’s Principle Class Members necessary to ensure their personal dignity and well-being.

**“Kith Caregiver”** means an adult who is not a member of the Child’s Family, does not live on-Reserve, and who cared for a Kith Child Class Member without receiving any funding in relation to the Child’s Kith Placement.

**“Kith Child Class”** or **“Kith Child Class Member”** means a First Nations Child placed with a Kith Caregiver in a Kith Placement during the Removed Child Class Period and who meets the conditions specified herein and in Article 7.

**“Kith Family Class”** or **“Kith Family Class Member”** includes only the Caregiving Parents or, in the absence of Caregiving Parents, the Caregiving Grandparents of an Approved Kith Child Class Member who was placed in a Kith Placement between January 1, 2006 and March 31, 2022 pursuant to the conditions specified herein and in Article 7.

**“Kith Placement”** means where a First Nations Child resides with a Kith Caregiver outside of the Child’s Family and off-Reserve, and a Child Welfare Authority was involved in the Child’s placement.

**“Kith Placement Agreement”** means an agreement between a Caregiving Parent or Caregiving Grandparent of a Kith Child Class Member and a Child Welfare Authority relating to a Kith Placement of that Kith Child Class Member.

**“Non-kin Foster Home”** means any family-based care funded by ISC.

**“Non-paid Kin or Community Home”** means an informal placement, other than a Kith Placement, that has been arranged within the family support network, and the Child Welfare Authority does not have temporary custody and the placement is not funded by ISC.

**“Northern or Remote Community”** means a community as agreed upon by the Plaintiffs and set out in the Claim Process.

**“Notice Plan”** means the notice plan to be approved by the Court for dissemination of notices to Class Members.

**“Ongoing Fees”** has the meaning set out in Article 17.03.

**“Opt-Out”** means: (a) the delivery by a Class Member to the Administrator of the Opt-Out Form with the intention of being removed from the Actions before the Opt-Out Deadline; or (b) after the Opt-Out Deadline, a Class Member obtaining leave of the Court to opt out of the Actions in accordance with this Agreement.

**“Opt-Out Deadline”** means August 23, 2023 or such other date as the Court may determine, after which Class Members may no longer Opt-Out of the Actions, except with leave of the Court.

**“Opt-Out Form”** means the opt-out form as approved by the Court and enclosed hereto as Schedule H, Opt-Out Form.

**“Ordinarily Resident on Reserve”** means:

- (a) a First Nations individual who lives in a permanent dwelling located on a First Nations Reserve at least 50% of the time and who does not maintain a primary residence elsewhere;
- (b) a First Nations individual who is living off-Reserve while registered full-time in a post-secondary education or training program who is receiving federal, Band or Aboriginal organization education/training funding support and who:
  - a. would otherwise reside on-Reserve;
  - b. maintains a residence on-Reserve;
  - c. is a member of a family that maintains a residence on-Reserve; or
  - d. returns to live on-Reserve with parents, guardians, caregivers or maintainers when not attending school or working at a temporary job.
- (c) a First Nations individual who is temporarily residing off-Reserve for the purpose of obtaining care that is not available on-Reserve and who, but for the care, would otherwise reside on-Reserve;
- (d) a First Nations individual who is temporarily residing off-Reserve for the primary purpose of accessing social services because there is no reasonably comparable service available on-Reserve and who, but for receiving said services, would otherwise reside on-Reserve;
- (e) a First Nations individual who at the time of removal or placement with a Kith Caregiver met the definition of ordinarily resident on reserve for the purpose of receiving child welfare and family services funding pursuant to a funding agreement between Canada and the province or territory in which the individual resided (including Ordinarily Resident on Reserve individuals funded through the cost-shared model under the Canada-Ontario 1965 Indian Welfare Agreement);
- (f) for the purposes of Class Members in the Yukon, “on-Reserve” in this Agreement is inclusive of areas within the “Community Boundary” as defined in the *Umbrella Final Agreement Between the Government of Canada, the Council for Yukon Indians and the Government of the Yukon* as of February 11, 2022 (the latter date of the Certification Orders), and “off-Reserve” in this Agreement is correspondingly inclusive of areas outside the “Community Boundary” as of February 11, 2022 (the latter date of the Certification Orders).

**“Out-of-home Placement”** means a distinct location where a Removed Child Class Member has been placed pursuant to a removal, such as an Assessment Home, Non-kin Foster Home, Paid Kinship Home, Group Home, a Residential Treatment Facility, or other

similar placement funded by ISC, except for the members of the Kith Child Class pursuant to Article 7.

**“Paid Kinship Home”** means a formal placement that has been arranged within the family support network and paid for by ISC, where the Child Welfare Authority has temporary or full custody.

**“Parties”** means the Plaintiffs and Canada;

**“Person Under Disability”** means:

- (a) a person under the Age of Majority under the legislation of their province or territory of residence; or
- (b) an individual who is unable to manage or make reasonable judgments or decisions in respect of their affairs by reason of mental incapacity including those for whom a Personal Representative has been appointed, or designated by operation of the law, pursuant to the applicable provincial, territorial or federal legislation.

**“Personal Representative”** means the person appointed, or designated by operation of the law, pursuant to the applicable provincial, territorial or federal legislation to manage or make reasonable judgments or decisions in respect of the affairs of a Person Under Disability who is an eligible Claimant and includes an administrator for property.

**“Plaintiffs”** means collectively the Moushoom Plaintiffs, the AFN Plaintiffs and the Trout Plaintiffs.

**“Professional”** means a professional with expertise relevant to a Child’s Confirmed Need(s), for example: a medical professional or other registered professionals available to a Class Member in their place of residence and community (particularly in a Northern or Remote Community where there may not have been, or be, access to specialists, but there may have been access to community health nurses, social support workers, and mental health workers), or an Elder or Knowledge Keeper who is recognized by the Child’s specific First Nations community.

**“Recitals”** means the recitals to this Agreement.

**“Removed Child Class”** or **“Removed Child Class Member”** means First Nations individuals who, at any time during the period between April 1, 1991 and March 31, 2022 (the **“Removed Child Class Period”**), while they were under the Age of Majority, were removed from their home by child welfare authorities or voluntarily placed into care, and whose placement was funded by ISC, such as an Assessment Home, a Non-kin Foster Home, a Paid Kinship Home, a Group Home, or a Residential Treatment Facility or another ISC-funded placement while they, or at least one of their Caregiving Parents or Caregiving Grandparents, were Ordinarily Resident on Reserve or were living in the

Yukon, but excluding children who lived in a Non-paid Kin or Community Home through an arrangement made with their caregivers and excluding individuals living in the Northwest Territories at the time of removal.

**“Removed Child Family Class”** means all persons who are the brother, sister, mother, father, grandmother or grandfather of a member of the Removed Child Class at the time of removal.

**“Reserve”** means a tract of land, as defined under the *Indian Act*, the legal title to which is vested in the Crown and has been set apart for the use and benefit of a Band.

**“Residential Treatment Facility”** means a treatment program for several Children living in the treatment facility with 24-hours-a-day trained staff, including locked or secure and unlocked residences, funded by ISC.

**“Service Gap”** means an Essential Service that is subject to a Confirmed Need, as determined in accordance with Schedule F, Framework of Essential Services, but was not available to an Essential Service, Jordan’s Principle or Trout Class Member.

**“Settlement Approval Hearing”** means a hearing of the Court to determine a motion to approve this Agreement.

**“Settlement Approval Order”** means the draft order submitted to the Court regarding the approval of this Agreement, the form and content of which will be agreed upon amongst the Parties, if and as approved by the Court.

**“Settlement Funds”** means a total of \$23,343,940,000 (\$23.34394 billion), which Canada will pay to settle the claims of the Class in accordance with this Agreement.

**“Settlement Implementation Committee”** or **“Settlement Implementation Committee and its Members”** means a committee established pursuant to Article 12.

**“Settlement Implementation Report”** has the meaning set out in Article 12.03(1)(m).

**“Spell in Care”** applies to the Removed Child Class and means a continuous period in care, which starts when a Child is taken into out-of-home care and ends when the Child is discharged from care, by returning home, moving into another arrangement in a Non-paid Kin or Community Home, being adopted, or living independently at the Age of Majority. ISC data considers a Spell in Care by the start and end dates of each continuous period of Out-of-home Placement.

**“Stepparent”** means a person, other than an adoptive parent, who is First Nations and a spouse of the biological Caregiving Parent of a Removed Child Class Member, Jordan’s Principle Class Member, or Trout Child Class Member, and lived with that Child’s biological Caregiving Parent and contributed to the support of the Child, for at least three



(3) years, prior to the removal of the Child, or the occurrence of the Delay, Denial or the Service Gap.

**“Supporting Documentation”** means:

- (a) for the Removed Child Class: such documentation required to be submitted by a Removed Child Class Member in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;
- (b) for the Essential Service Class, Jordan’s Principle Class, and Trout Child Class: such documentation required to be submitted by a member of the Essential Service Class, Jordan’s Principle Class, and Trout Child Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;
- (c) for the Removed Child Family Class: such documentation required to be submitted by a member of the Removed Child Family Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;
- (d) for the Jordan’s Principle Family Class: such documentation required to be submitted by a member of the Jordan’s Principle Family Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;
- (e) for the Trout Family Class: such documentation required to be submitted by a member of the Trout Family Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;
- (f) for the Kith Child Class: such documentation required to be submitted by a member of the Kith Child Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;
- (g) for the Kith Family Class: such documentation required to be submitted by a member of the Kith Family Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form; and
- (h) for Eligible Deceased Class Members: the documentation to be required to be submitted in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form.

**“Time in Care”** means the total amount of time that a Removed Child Class Member spent in care regardless of the number of Spells in Care.

**“Third-Party Assessor”** means the person or persons appointed by the Court to carry out the duties of the Third-Party Assessor as stated in this Agreement, to be particularized in the Claims Process, and their successors appointed from time to time, as approved by the Court.

**“Trout Child Class”** or **“Trout Child Class Member”** means First Nations individuals who, during the period between April 1, 1991 and December 11, 2007 (the **“Trout Child Class Period”**), while they were under the Age of Majority, did not receive from Canada (whether by reason of a Denial or a Service Gap) an Essential Service relating to a Confirmed Need, or whose receipt of said Essential Service was delayed by Canada, on grounds, including lack of funding or lack of jurisdiction, or as a result of a Service Gap or jurisdictional dispute with another government or governmental department.

**“Trout Family Class”** means all persons who are the brother, sister, mother, father, grandmother or grandfather of a member of the Trout Child Class at the time of Delay, Denial or Service Gap. Amongst the Trout Family Class, only the Caregiving Parents or Caregiving Grandparents may receive direct compensation if otherwise eligible under this Agreement.

**“Trust”** means the trust established pursuant to Article 15.

**“Trust Fund”** has the meaning set out in Article 4.

**“Trustee”** means the trustee appointed by the Court pursuant to Article 15 for the purposes of this Agreement. The Trustee may be constituted by deed of trust, a society, or non-profit corporation as directed by the Plaintiffs.

## **1.02 Headings**

The division of this Agreement into paragraphs and the use of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

## **1.03 Extended Meanings**

In this Agreement, words importing the singular number include the plural and vice versa, and words importing any gender or no gender include all genders. The term “including” means “including without limiting the generality of the foregoing”. Any reference to a government ministry, department or position will include any predecessor or successor government ministry, department or position.

## **1.04 Interpretation**

The Parties acknowledge that they have reviewed and participated in settling the terms of this Agreement and they agree that there will be no presumptive rule of construction to

the effect that any ambiguity in this Agreement is to be resolved in favour of any particular Party.

### **1.05 Statutory References**

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as enacted on the date of such reference and not as the statute may from time to time be amended, re-enacted, or replaced, and the same applies to any regulations made thereunder.

### **1.06 Business Day**

Where the time on or by which any action required to be taken hereunder expires or falls on a day that is not a Business Day, such action may be done on the next succeeding day that is a Business Day.

### **1.07 Currency**

All references to currency herein are to lawful money of Canada.

### **1.08 Compensation Inclusive**

The amounts payable to Class Members under this Agreement are inclusive of any prejudgment or post-judgment interest, except as otherwise specified in Article 6.15, Article 6.16, or under Article 7.

### **1.09 Schedules**

The following Schedules to this Agreement are incorporated into and form part of this Agreement:

**Schedule A:** Order dated February 23, 2023 on Opt-Out Deadline

**Schedule B:** Order dated August 11, 2022 on Appointment of Administrator

**Schedule C:** Provincial and Territorial Ages of Majority

**Schedule D:** Certification Order dated November 26, 2021 in Court File Nos. T-402-19 and T-141-20 (2021 FC 1225)

**Schedule E:** Certification Order dated February 11, 2022 in Court File No. T-1120-21 (2022 FC 149)

**Schedule F:** Framework of Essential Services

**Schedule G:** Investment Committee Guiding Principles

**Schedule H:** Opt-Out Form

**Schedule I:** Framework for Supports for Claimants in Compensation Process

**Schedule J:** Summary Chart of Essential Service, Jordan's Principle, and Trout Approach

### **1.10 Binding Agreement**

This Agreement is binding upon the Parties, and for Canada and Class Members, upon their estates, heirs, Estate Executors, estate Claimants, and Personal Representatives.

### **1.11 Applicable Law**

This Agreement will be governed by the laws of Canada, together with the laws of the province or territory where the Class Member is ordinarily resident, as applicable, save where otherwise specified in this Agreement.

### **1.12 Counterparts**

This Agreement may be executed electronically and in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same Agreement.

### **1.13 Official Languages**

As soon as practicable after the execution of this Agreement Class Counsel will arrange for the preparation of an authoritative French version. The French version will be of equal weight and force at law.

### **1.14 Ongoing Supervisory Role of the Court**

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

## **ARTICLE 2 - EFFECTIVE DATE OF AGREEMENT**

### **2.01 Date when Binding and Effective**

On the Implementation Date, this Agreement will become binding in accordance with Article 11 on all Class Members who have not Opted-Out by the Opt-Out Deadline.

## **2.02 Effective Upon Approval**

None of the provisions of this Agreement will become effective unless and until the Court approves this Agreement.

## **2.03 Legal Fees Severable**

Class Counsel's fees for prosecuting the Actions have been or will be negotiated separately from this Agreement and remain subject to approval by the Court. The Court's decision on Class Counsel's fees will have no effect on the implementation of this Agreement. If the Court refuses to approve the fees of Class Counsel, the remainder of the provisions of this Agreement will remain in full force and effect and in no way will be affected, impaired or invalidated.

## **ARTICLE 3 – ADMINISTRATION**

### **3.01 Designation of Administrator**

The Administrator administers the Claims Process with such powers, rights, duties and responsibilities as are set out in this Article and such other powers, rights, duties and responsibilities as are determined by the Settlement Implementation Committee and approved by the Court. Following the establishment of the Settlement Implementation Committee and on the recommendation of the Settlement Implementation Committee, the Court may replace the Administrator at any time.

### **3.02 Duties of the Administrator**

- 1) The Administrator's duties and responsibilities include the following:
  - (a) in consultation with the Settlement Implementation Committee, developing, installing, and implementing systems, forms, information, guidelines and procedures for processing Claims and appeals of the decisions of the Administrator to the Third-Party Assessor in accordance with this Agreement and the Claims Process;
  - (b) in consultation with the Settlement Implementation Committee, developing, installing, and implementing systems and procedures for making payments of compensation in accordance with this Agreement and the Claims Process;
  - (c) receiving funds from the Trust and the Trustee to make payments to Class Members in accordance with this Agreement and the Claims Process;
  - (d) ensuring adequate staffing for the performance of its duties under this Agreement, and training and instructing personnel;

- (e) ensuring, in consultation with the Settlement Implementation Committee, First Nations participation and the reflection of First Nations perspectives, appropriate cultural knowledge, use of proper experts, and a trauma-informed and child- and youth-focused approach to the Class;
- (f) keeping or causing to be kept accurate accounts of its activities and its administration and preparing annual audited financial statements, as well as reports, and records as are required by the Settlement Implementation Committee, the Auditors and the Court;
- (g) reporting to the Settlement Implementation Committee on a monthly basis respecting:
  - i) Claims received and Claims determined including associated timelines for determination;
  - ii) Claims deemed ineligible and the reason(s) for that determination; and
  - iii) appeals from the Administrator's decisions and the outcomes of those appeals.
- (h) identifying and reporting to the Settlement Implementation Committee systemic issues, including suspected or potential irregular or fraudulent Claims, in the implementation of the Agreement and the Claims Process as such issues arise and in any event no later than on a quarterly basis, and working with the Settlement Implementation Committee and any experts as may be required to find a resolution to such systemic issues—a systemic issue being an issue that affects more than one Class Member;
- (i) responding to inquiries from Claimants respecting Claims and Claims Forms;
- (j) providing navigational supports to Class Members in the Claims Process as outlined out in Schedule I, Framework for Supports for Claimants in Compensation Process, including: (i) assistance with the filling out and submission of Claims Forms; (ii) assistance with obtaining Supporting Documentation; (iii) assistance with appeals to the Third-Party Assessor pursuant to this Agreement; (iv) reviewing Claims Forms, Supporting Documentation, and First Nations Council Confirmations; and (v) determining a Claimant's eligibility for compensation in the Class;
- (k) maintaining a database with all information necessary to permit the Settlement Implementation Committee and the Actuary to assess the financial sufficiency of the Trust Fund;
- (l) in appropriate circumstances, requiring further Supporting Documentation in

relation to a claimed Confirmed Need from a different Professional. In case of doubt, the Administrator will consult with the Settlement Implementation Committee for direction;

(m) communicating with Claimants in either English or French, as the Claimant elects, and if a Claimant expresses the desire to communicate in a language other than English or French, making best efforts to accommodate such Claimant;

(n) verifying Claims in accordance with this Agreement;

(o) reporting annually to the Court on the Administrator's above tasks;

(p) determining requests for the extension of the Claims Deadline by individual Class Members facing extenuating personal circumstances, such as where a Claimant was unable as a result of physical or psychological illness or challenges, including homelessness, incarceration or addiction, or due to unforeseen circumstances such as epidemics, community internet connectivity, pandemics, natural disasters, community-based emergencies or service disruptions at a national, regional, or community level, to submit a Claim before the Claims Deadline, subject to further direction on such circumstances from the Settlement Implementation Committee; and

(q) such other duties and responsibilities as the Court or the Settlement Implementation Committee may from time to time direct.

2) In carrying out its duties and responsibilities outlined in this Agreement, the Administrator will:

(a) act in accordance with the principles governing the administration of Claims set out in this Article, in particular that the Claims Process intends to be cost-effective, user-friendly, culturally sensitive, trauma-informed, and non-traumatizing to Class Members;

(b) ensure quality assurance processes are documented and transparent;

(c) comply with the service standards established by the Plaintiffs; and

(d) perform other duties and responsibilities as the Court or the Settlement Implementation Committee may from time to time direct.

3) Except as otherwise provided in this Agreement and the Claims Process, the Administrator will request on a monthly basis such funds from the Trustee as may be necessary to pay approved Claims. The Trustee will provide such funds to the

Administrator, and the Administrator will pay such funds to the Class Members in accordance with this Agreement and the Claims Process.

### **3.03 Appointment of the Third-Party Assessor**

On the recommendation of the Parties until the approval of this Agreement, and of the Settlement Implementation Committee thereafter, the Court will appoint as necessary from time to time one or more Third-Party Assessors composed of experts, including First Nations experts, with demonstrated knowledge of, and experience in, First Nations child and family services and Jordan's Principle. On the recommendation of the Settlement Implementation Committee, the Court may replace a Third-Party Assessor at any time. The Third-Party Assessor will perform the duties of the Third-Party Assessor set out in this Agreement and the Claims Process.

### **3.04 Responsibility for Costs**

- 1) Canada will pay:
  - (a) the reasonable costs of giving notice in accordance with the Notice Plan to be developed by the Parties, including Canada and the Settlement Implementation Committee, as approved and ordered by the Court;
  - (b) the reasonable costs and disbursements of the Administrator, the Third-Party Assessor, the Trustee, the Auditors, the Actuary, Child Welfare Records Technicians, and any experts, advisors or consultants retained by the Settlement Implementation Committee for the purpose of implementing this Agreement;
  - (c) the costs of the administration of the Trust;
  - (d) legal fees pursuant to Article 17;
  - (e) the costs of the supports for Class Members throughout the Claims Process as outlined in Schedule I, Framework for Supports for Claimants in Compensation Process; and
  - (f) the costs of the Dispute Resolution Process in accordance with Article 18.
- 2) The Settlement Implementation Committee will provide a forecast of the costs and disbursements of the administration of this Agreement to Canada on an annual basis, on or before December 1 of each year regarding the year ahead, which forecast may be revised due to unforeseen circumstances. In such case, the Settlement Implementation Committee will advise Canada in writing. Canada may dispute the reasonableness of the forecast or any revision of it.
- 3) None of the costs payable by Canada pursuant to this Article will be deducted from the Settlement Funds.



## **ARTICLE 4 - TRUST FUND**

### **4.01 Establishment of the Trust Fund**

- 1) As soon as practicable after the appointment and settlement of the Trust in accordance with Article 15, the Trustee will establish investment trust account(s) at Banking Facilities for the purposes of receiving and investing the Settlement Funds and paying compensation to eligible Class Members.
- 2) The Trustee will collaborate with Canada to establish a transfer and drawdown schedule for payments to enable the orderly payment of the Settlement Funds. Canada will have no input or role in the selection of the Banking Facilities or the Trustee's selection of deposit or financial instruments.
- 3) On or after thirty (30) Business Days following the Implementation Date, and in accordance with Article 1.01, the Trustee on the recommendation of the Investment Committee may direct Canada to make payments to the Trust up to the total of the Settlement Funds.
- 4) By no later than 120 days following the Implementation Date, Canada will make payments to the Trust of Settlement Funds in the total amount of \$23,343,940,000 (\$23.34394 billion).

### **4.02 Distribution of the Trust Fund**

The Trustee will periodically, on request based on estimated approved Claims, pay the Administrator from the trust account(s) under Article 4.01 for the purpose of distributing the Trust Fund for the benefit of the Class Members in accordance with this Agreement, including by paying compensation in accordance with Articles 6 and 7 through the Claims Process.

## **ARTICLE 5 - CLAIMS PROCESS**

### **5.01 Principles Governing Claims Administration**

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

- 2) Notwithstanding Article 5.01(1), Canada will have standing to make submissions on the Claims Process at the hearing on the motion to approve same before the Court.
- 3) The Claims Process is intended to be expeditious, cost-effective, user-friendly, culturally sensitive, trauma-informed, and non-traumatizing, with any necessary accommodations for persons with disabilities or vulnerabilities. The Administrator will identify and implement service standards for the Claims Process no later than 180 days after the Claims Process Approval Date for any given class.
- 4) The Administrator and the Third-Party Assessor will, in the absence of reasonable grounds to the contrary, presume that a Claimant is acting honestly and in good faith with respect to any Claim.
- 5) In considering a Claims Form, Supporting Documentation, or a First Nations Council Confirmation, the Administrator and the Third-Party Assessor will draw all reasonable inferences that can be drawn in favour of the Claimant.
- 6) The Administrator will make reasonable efforts to obtain verification of each Claim within six (6) months of the receipt of the completed Claim, with all required elements. If the Administrator identifies systemic issues with its ability to verify some or all Claims in accordance with the Claims Process within six (6) months, the Administrator will refer the matter to the Settlement Implementation Committee to determine whether a different service standard should be applied to any of the classes.
- 7) In designing the Claims Process, the Administrator and the Plaintiffs will develop standards relating to the processing of Claims in compliance with this Agreement, insofar as this Agreement recognizes that Class Members' circumstances may require flexibility in the type of documentation necessary to support the Claims Forms due to challenges such as the Child's age or developmental status at the time of the events, the disappearance of records over time, the retirement or death of Professionals involved in a Child's case, and systemic barriers to accessing Professionals. In recognition of same, for example, Article 6.08(5) allows for Supporting Documentation that is contemporaneous or current where appropriate.
- 8) The Claims Process regarding the determination of Claims from members of the Kith Child Class will establish criteria and standards specific to the processing of such Claims, which take into account the Parties' intention and acknowledgement that specific standards, Supporting Documentation, eligibility, and Claims verification apply to the Kith Child Class as compared to the Removed Child Class to ensure the integrity of the Claims Process while also respecting the general principles set out in Article 5.01(7) and Article 7.01.

- 9) The Claims Process regarding the determination of Claims from members of the Essential Service Class, the Jordan's Principle Class, and the Trout Child Class will include a review for the purpose of making a recommendation on eligibility and compensation to the Administrator by an individual with specific culturally appropriate health and social training on Jordan's Principle, Essential Services, Confirmed Needs, Professionals, and Supporting Documentation. The Eligibility Decision will be made by the Administrator having received a recommendation under this Article.
- 10) In order to distribute payment to Claimants as soon as reasonably possible following the Implementation Date, the distribution protocol in the Claims Process for each class may be designed, piloted where required, and submitted for approval to the Court before the distribution protocol for other classes is finalized and approved. For example, if the distribution protocol within the Claims Process for the Removed Child Class is finalized and approved by the Court, compensation may be distributed to the Removed Child Class in accordance with this Agreement in advance of the finalization and approval of the distribution protocol for other classes.

## **5.02 Eligibility Decisions and Enhanced Compensation Decisions**

- 1) The Administrator will make the decision on eligibility and compensation with respect to all classes ("**Eligibility Decision**").
- 2) The Administrator will review each Claims Form, Supporting Documentation, First Nations Council Confirmation, recommendation under Article 5.01(9), and such other information as the Administrator considers relevant to determine whether each Claimant is eligible for compensation.
- 3) A First Nations Council Confirmation is required for Claimants under the Jordan's Principle Class who solely meet the definition of "First Nations" as defined in Article 1.01 based on having been recognized as a member or citizen by their respective First Nations under agreement, treaties or First Nations' customs, traditions and laws on or before February 11, 2022 (the latter date of the Certification Orders).
- 4) Within six months of the receipt of a completed Claim with all required elements, including verification of the Claim by the Administrator, the Administrator will provide written reasons (including instructions on the appeal process) to a Claimant in any case of:
  - (a) an Eligibility Decision;
  - (b) a decision that a member of the Removed Child Family Class or the Kith Family Class is not entitled to receive compensation due to Abuse under Article 6.04(4) or Article 7.03(2);

- (c) a decision that a Claimant is not entitled to an Enhancement Payment available to that Class; or
  - (d) a decision to refuse to extend the Claims Deadline with respect to a Class Member.
- 5) Only a Claimant approved by an Eligibility Decision may be entitled to payment pursuant to Article 6 or Article 7.
- 6) A Claimant will have 60 days to commence an appeal to the Third-Party Assessor in accordance with the Claims Process upon receipt of:
- (a) an Eligibility Decision that a Claimant is not a Class Member;
  - (b) a decision that a Claimant is not entitled to an Enhancement Payment as defined in the Claims Process;
  - (c) a refusal to extend the Claims Deadline with respect to an individual Class Member; or
  - (d) a dispute amongst Removed Child Family Class Members under Article 6.05 or amongst Kith Family Class Members under Article 7.03.
- 7) The Third-Party Assessor's decision on an appeal pursuant to Article 5.02(6) will be final and not subject to judicial review, further appeal or any other remedy by legal action.
- 8) The Third-Party Assessor will comply with the procedure and timeline standards established in the Claims Process for an appeal from a decision of the Administrator.
- 9) There will be no right of appeal by a Class Member who belongs to a category, such as brothers and sisters, that is not entitled to receive direct payment under this Agreement.

## **ARTICLE 6 - COMPENSATION**

### **6.01 General Principles Governing Compensation**

- 1) The Plaintiffs will design a Claims Process with the goal of minimising the risk of causing trauma to Class Members.
- 2) No member of the Removed Child Class, Jordan's Principle Class, or Trout Child Class will be required to submit to an interview, examination or other form of *viva voce* evidence taking.
- 3) The Plaintiffs will agree to require fair and culturally appropriate Supporting Documentation in accordance with this Agreement tailored to each different class for the purposes of the Claims Process.

- 4) A Class Member may claim compensation starting two (2) years before they reach the Age of Majority, provided that no compensation is paid to that Class Member until after the Age of Majority. A Class Member may only receive compensation under the terms of this Agreement after the Age of Majority, except in the case of an Exceptional Early Payment in accordance with Article 6.10. The Claims Process will include a means by which a Child may register with the Administrator at any time in order to receive updates on the implementation of this Agreement.
- 5) Enhancement Factors have been selected as appropriate proxies for harm, based on expert opinion, and are designed to enable proportionate compensation to the Removed Child Class, the Jordan's Principle Class, and the Trout Child Class.
- 6) Compensation under this Agreement will take the form of either direct payment to eligible Class Members, or eligible estates of deceased Class Members, who have claimed through the Claims Process and been approved by the Administrator or indirect benefit to the Class through the Cy-près Fund.
- 7) A Class Member who qualifies for compensation as a member of more than one class under this Agreement will receive the higher amount for which the Class Member qualifies amongst the applicable classes, and compensation under the classes will not be combined.
- 8) The Kith Child Class and the Kith Family Class will be the subject of a separately designed compensation and verification process in the Claims Process in accordance with Article 7.

## **6.02 Governing Principles on Removed Children**

- 1) This Agreement seeks to adopt a trauma-informed and culturally sensitive approach to compensating the Removed Child Class and the Caregiving Parents or Caregiving Grandparents of the Removed Child Class.
- 2) To the extent possible and based on objective criteria, the Agreement seeks to bring proportionality to the compensation process such that members of the Removed Child Class who suffered the most harm may receive higher compensation in the Claims Process.
- 3) For the Removed Child Class, eligibility for compensation and Enhancement Factors will be based on objective criteria and data primarily from ISC and Supporting Documentation as the case may be.

## **6.03 Removed Child Class Compensation**

- 1) Base Compensation payable to an Approved Removed Child Class Member will not be multiplied by the number of Spells in Care.

- 2) An Approved Removed Child Class Member will be entitled to receive Base Compensation of \$40,000.
- 3) An Approved Removed Child Class Member may be entitled to an Enhancement Payment based on the following Enhancement Factors (“**Removed Child Enhancement Factors**”):
  - (a) the age at which the Removed Child Class Member was removed for the first time;
  - (b) the Time in Care;
  - (c) the age of a Removed Child Class Member at the time they exited the child welfare system;
  - (d) whether a Removed Child Class Member was removed to receive an Essential Service relating to a Confirmed Need;
  - (e) whether the Removed Child Class Member was removed from a Northern or Remote Community; and
  - (f) the number of Spells in Care for a Removed Child Class Member and/or, if possible, the number of Out-of-home Placements applicable to a Removed Child Class Member who spent more than one (1) year in care.
- 4) The Plaintiffs will design a system of weighting the Removed Child Enhancement Factors for the Removed Child Class based on the input of experts that will reflect the relative importance of each Enhancement Factor as a proxy for harm.
- 5) The Plaintiffs have determined a Budget of \$7.25 billion for the Removed Child Class, subject to Articles 6.11, 6.12, and 6.13.

#### **6.04 Caregiving Parents or Caregiving Grandparents of Removed Child Class**

- 1) Amongst the Removed Child Family Class, only the Caregiving Parents or Caregiving Grandparents may receive direct compensation if otherwise eligible under this Agreement. Brothers and sisters are not entitled to direct compensation but may benefit indirectly from this Agreement through the Cy-près Fund.
- 2) A foster parent is not entitled to compensation under this Agreement and is not entitled or permitted to claim compensation on behalf of a Child under this Agreement.
- 3) The Base Compensation of an Approved Removed Child Family Class Member will not be multiplied based on the number of removals or Spells in Care for a Child.
- 4) A Caregiving Parent or Caregiving Grandparent who has committed Abuse that has resulted in the Removed Child Class Member’s removal is not eligible for compensation in relation to that Child. However, a Caregiving Parent or Caregiving Grandparent is not

barred from receiving compensation as a member of the Removed Child Class, the Kith Child Class, the Essential Service Class, the Trout Child Class or the Jordan's Principle Class if the Caregiving Parent or Caregiving Grandparent is otherwise eligible for compensation as a Child member of one of those classes under this Agreement.

- 5) A maximum compensation amount of two Base Compensation payments per Child among Caregiving Parents or Caregiving Grandparents of a Child, regardless of number of Spells in Care or removals, may be distributed under this Agreement.
- 6) Where the Child was removed more than once from a Caregiving Parent or a Caregiving Grandparent, the Caregiving Parent or the Caregiving Grandparent from whom the Child was first removed will be eligible to receive compensation.
- 7) The first time that a Child is removed from either a Caregiving Parent or Caregiving Grandparent will determine who receives compensation: whoever the Child was removed from earlier will take eligibility priority to receive a Base Compensation. For example, if the Child was removed from two Caregiving Grandparents in 2008 and later removed from a Caregiving Parent in 2010, the two Caregiving Grandparents receive two Base Compensation payments and no other person receives compensation.
- 8) Where the Class Member's eligibility cannot be determined in accordance with Article 6.04(6) or Article 6.04(7), or where the Child was first removed from more than two Caregiving Parents or Caregiving Grandparents, eligibility will be determined according to the following priority list:
  - (a) Category A: Caregiving Parents who are not Stepparents; then
  - (b) Category B: Caregiving Grandparent(s); then
  - (c) Category C: Stepparents.
- 9) The Parties have budgeted the Base Compensation for an Approved Removed Child Family Class Member to be \$40,000.
- 10) The final quantum of Base Compensation to be paid to each Approved Removed Child Family Class Member will be determined by the Settlement Implementation Committee in consultation with the Actuary, having regard to the number of Approved Removed Child Family Class Members and the Budget for the Removed Child Family Class under this Article, and the requirement to pay Base Compensation of \$40,000 to Caregiving Parents and Caregiving Grandparents of Children in care as of or removed between January 1, 2006 and March 31, 2022 and placed off-Reserve with non-Family, subject to Court approval.
- 11) Payments to Approved Removed Child Family Class Members who may be entitled to receive compensation under this Article before the expiration of the Claims Deadline may

be made in installments in order to ensure sufficient funds exist to pay like amounts to like Claimants regardless of when they submitted their Claim.

12) The Plaintiffs have determined a Budget of \$5.75 billion for the Removed Child Family Class.

### **6.05 Sequencing and Priorities in Compensation for Removed Child Family Class Members**

- 1) The Administrator will not pay any Claims by a Caregiving Parent (Category A), Caregiving Grandparent (Category B) or Stepparent (Category C) until the expiration of the Claims Deadline, in order to determine:
  - (a) From whom the Child was removed first;
  - (b) Whether one, two, or no Caregiving Parent(s) (who are not Stepparents), or Caregiving Grandparent(s), who cared for the Child at the time of the first removal (Category A) are approved with respect to the same Child;
  - (c) whether more than two other Caregiving Grandparents (Category B) or Stepparents (Category C) have submitted a Claim with respect to the same Child; and
  - (d) the amount of compensation, if any, payable to each such Claimant in accordance with this Article.
- 2) Notwithstanding Article 6.05(1), the Claims Process may include provisions for exceptional circumstances to the following effect: The Administrator may approve a Claim by a putative Category A, Category B, or Category C Claimant before the expiration of the Claims Deadline in accordance with the timelines specified in Article 5.02(4), and if they are determined to be Approved Removed Child Family Class Members, the Administrator may pay their compensation in accordance with the timelines specified in Article 6.14, subject to all other applicable limitations under this Agreement only if the Claimant has submitted Claims Forms and Supporting Documentation substantiating that all other biological parent(s), adoptive parent(s), stepparent(s), biological and adoptive grandparent(s), if applicable, of the Child have expressly renounced their entitlement to make a Claim under this Agreement or if the Child was the subject of a single removal at birth and the Child was a ward of the state as a result of that removal until the Age of Majority.
- 3) In the event of Claims by more than two putative Caregiving Parents (Category A), the Administrator may require further information and proof from those Claimants, but without the direct involvement of the affected Child, to substantiate who, if any, amongst such



Claimants meet the definition of a Caregiving Parent entitled to compensation under this Agreement.

- 4) Where only one Caregiving Parent (Category A), who cared for the child at the time of the first removal has submitted a Claim that has been approved with respect to the Child, only one Caregiving Grandparent (Category B) who was living in the same household as the Caregiving Parent may be deemed to be eligible to receive the remaining Base Compensation payment under this Agreement, regarding that Child, and no other parent, grandparent, or stepparent of that Child will receive a Base Compensation under this Agreement. If such Caregiving Grandparent (Category B) is also eligible for compensation with respect to one or more other removed Children between January 1, 2006 and March 31, 2022 who were placed off-Reserve with non-Family, they will be entitled to a maximum of \$80,000 in compensation under this Agreement with respect to multiplications of the Base Compensation under Article 6.06.
- 5) In the event of Claims by multiple putative Caregiving Grandparents (Category B) beyond the available number of Base Compensation payment(s) with respect to the same Child, the Administrator may require further information and proof from those Claimants, but without the direct involvement of the affected Child, to substantiate who, if any, amongst such Claimants meet the definition of a Caregiving Grandparent entitled to compensation under this Agreement.
- 6) If only one Base Compensation remains with respect to a Child, and two Stepparents (Category C) have been approved by the Administrator, or on appeal to the Third-party Assessor, such Stepparents will share pro rata that one Base Compensation.
- 7) Any dispute amongst Caregiving Parents, Caregiving Grandparents or Stepparents will be subject to a summary adjudicative determination by the Third-Party Assessor in accordance with the Claims Process.

#### **6.06 Multiplication of Base Compensation for Certain Removed Child Family Class Members**

- 1) An Approved Removed Child Family Class Member who is a Caregiving Parent or a Caregiving Grandparent will receive multiple Base Compensation payments if and where more than one Child of the Caregiving Parent or the Caregiving Grandparent, as the case may be, has been removed from their Family, and placed off-Reserve with non-Family at any time during the Removed Child Class Period.
- 2) The multiplication of the Base Compensation will correspond to the number of such Children who were removed from the Caregiving Parent or the Caregiving Grandparent and placed off-Reserve with non-Family. For greater certainty, a Child who was placed on-Reserve does not entitle a Caregiving Parent or a Caregiving Grandparent to a

multiplication of the Base Compensation. For example, two Caregiving Parents who had two of their Children removed from their care and placed off-Reserve with non-Family will each be entitled to \$80,000 in compensation if otherwise eligible for compensation under this Agreement.

- 3) No other Removed Child Family Class Member may receive a multiplication of the Base Compensation regardless of the number of Children removed from such Removed Child Family Class Member and regardless of whether a Child was placed on-Reserve or off-Reserve.
- 4) Notwithstanding Article 6.06(1) and Article 6.06(2), an Approved Removed Child Family Class Member will be entitled to a maximum of two (2) Base Compensation payments, up to a maximum of \$80,000 of compensation regardless of the number of Children removed in the following cases:
  - (a) the Approved Removed Child Family Class Member had two or more Children removed and placed off-Reserve with non-Family between April 1, 1991 and December 31, 2005 (excluding those who remained in care as of January 1, 2006);
  - (b) all Approved Removed Child Family Class Members who are Stepparents who had two or more Children removed and placed off-Reserve with non-Family during the Removed Child Class Period; or
  - (c) all Approved Removed Child Family Class Members who are Category B Caregiving Grandparents during the Removed Child Class Period in cases where one Category A Caregiving Parent has been approved for compensation under this Agreement with respect to the affected Child.
- 5) The Settlement Implementation Committee may, on advice from the Actuary, reassess eligibility for multiplications of Base Compensation under this Article for Caregiving Parents or Caregiving Grandparents who are the subject of Article 6.06(4), including the potential reduction of two Base Compensation payments or, conversely, removal of the cap of two (2) Base Compensation payments set out in Article 6.06(4).
- 6) The Plaintiffs have determined a Budget of \$997 million for the multiplication of Base Compensation paid pursuant to this article.

#### **6.07 Governing Principles Regarding Essential Service, Jordan's Principle, and Trout Classes**

- 1) To the extent possible, this Agreement applies the same methodology to the Essential Service Class, Jordan's Principle Class, and Trout Child Class.
- 2) This Agreement intends to:

- (a) be trauma-informed regarding the Jordan's Principle Class, Essential Service Class, and the Trout Child Class;
  - (b) avoid subjective assessments of harm, individual trials, or other cumbersome methods of making Eligibility Decisions with respect to these classes; and
  - (c) use objective criteria to assess Class Members' needs and circumstances as a proxy for the impact experienced by such Class Members in a discriminatory system.
- 3) The Base Compensation of an Approved Jordan's Principle Class Member or an Approved Trout Child Class Member will not be multiplied based on the number of Essential Services that were the subject of the Child's Confirmed Need.

#### **6.08 Essential Service Class, Jordan's Principle Class, and Trout Child Class**

- 1) The Plaintiffs will design the portion of the Claims Process with respect to members of the Essential Service Class, Jordan's Principle Class, and the Trout Child Class in accordance with this Article. A summary of the approach in this Article as an interpretive aid is attached as Schedule J, Summary Chart of Essential Service, Jordan's Principle, and Trout Approach. In the case of a conflict, the Articles in this Agreement will govern.
- 2) Eligibility for compensation for members of the Essential Service Class, Jordan's Principle Class, and the Trout Child Class will be determined based on those Class Members' Confirmed Need for an Essential Service if:
- (a) a Class Member's Confirmed Need was not met because of a Denial of a requested Essential Service;
  - (b) a Class Member experienced a Delay in the receipt of a requested Essential Service for which they had a Confirmed Need; or
  - (c) a Class Member's Confirmed Need was not met because of a Service Gap even if the Essential Service was not requested.
- 3) The Framework of Essential Services, based on advice from experts, establishes a method to assess:
- (a) whether the Child had a Confirmed Need for an Essential Service;
  - (b) whether an Essential Service was subject to a Delay, Denial or Service Gap; and
  - (c) the impact of the Delay, Denial or Service Gap, as assessed by objective criteria (including related to the pain, suffering or harm) associated with the Delay, Denial or Service Gap.

- 4) A Claimant will be considered to have established a Confirmed Need if the Claimant has provided Supporting Documentation and has been approved by the Administrator.
- 5) Supporting Documentation will include verification of a recommendation by a Professional consistent with the following principles, where applicable:
  - (a) Permissible proof includes contemporaneous and/or current proof of assessment, referral or recommendation to account for the difficulties in retaining and obtaining historic records during the Trout Child Class Period and Essential Service Class Period.
  - (b) Permissible proof includes proof of assessment, referral or recommendation from a Professional within that Professional's expertise as may be available to the Class Member in their place of residence, including those in a Northern and Remote Community.
  - (c) In order to establish a Confirmed Need, the Professional must specify in all cases the Essential Service that the Claimant needed, and the reason for the need, and when the need can reasonably be expected to have existed.
  - (d) A Claimant may establish that they requested an Essential Service from Canada during the Trout Child Class Period or Essential Service Class Period by way of a statutory declaration. Proof of a request for an Essential Service is the only instance where a statutory declaration may be adduced as Supporting Documentation for the purposes of the Trout Child Class, Essential Service Class, Jordan's Principle Class, Jordan's Principle Family Class, and the Trout Family Class.
- 6) If the Administrator, or the Third-Party Assessor on appeal, determines that a Class Member has provided Supporting Documentation establishing a Confirmed Need for an Essential Service, the Administrator, or the Third-Party Assessor on appeal, will determine whether the Claimant faced a Denial, Delay or a Service Gap.
- 7) Where a Class Member has provided Supporting Documentation establishing a Confirmed Need for an Essential Service and where the Administrator has determined that the Class Member experienced a Denial, Delay or a Service Gap, that Class Member will be:
  - (a) an Approved Essential Service Class Member or an Approved Jordan's Principle Class Member, depending on the criteria specified in this Agreement, if the Claimant's Confirmed Need occurred within the Essential Service Class Period;
  - (b) an Approved Trout Child Class Member if the Claimant's Confirmed Need occurred within the Trout Child Class Period.

- 8) The Plaintiffs have determined a total Budget of \$3.0 billion dollars for the Essential Service Class (inclusive of the Jordan's Principle Class) and collectively, subject to Articles 6.11, 6.12, and 6.13 ("**Essential Service Budget**").
- 9) The Plaintiffs have determined a Budget of \$2.0 billion dollars for the Trout Child Class, subject to Articles 6.11, 6.12, and 6.13 ("**Trout Child Budget**").
- 10) A Claimant may be determined to be a Jordan's Principle Class Member if they have established a Confirmed Need for an Essential Service and have been determined to have experienced the highest level of impact (including pain, suffering or harm of the worst kind) in relation to a Delay, Denial or Service Gap, and including impact in relation to conditions and circumstances such as an illness, disability or impairment, based on objective criteria and expert advice pursuant to the method specified in Schedule F, Framework of Essential Services. In this regard:
  - (a) Such impact (including pain, suffering or harm) is to be assessed through culturally sensitive Claims Forms and instruments such as a questionnaire designed in consultation with experts. Subject to the Court's approval, the selection of which Claimants qualify under this category will be based on objective factors (which may include the severity of pain, suffering or harm) and the number of Claimants.
  - (b) The threshold of impact for qualification as a member of the Jordan's Principle Class is subject to the results of piloting of the method developed in accordance with Schedule F, Framework of Essential Services.
- 11) An Approved Jordan's Principle Class Member will be entitled to receive Base Compensation of \$40,000.
- 12) An Approved Essential Service Class Member other than a Jordan's Principle Class Member will receive up to but not more than \$40,000 in compensation based on a pro rata share of the Essential Service Budget after deducting the total estimated amount of compensation to be paid to all Approved Jordan's Principle Class Members.
- 13) An Approved Trout Child Class Member will receive a minimum of \$20,000 in compensation if they have established a Confirmed Need for an Essential Service and have been determined to have experienced the highest level of impact (including pain, suffering or harm of the worst kind) in relation to a Delay, Denial or Service Gap, including impact in relation to conditions and circumstances such as an illness, disability or impairment, based on objective criteria and expert advice pursuant to the method specified in Schedule F, Framework of Essential Services. In this regard:
  - (a) Such impact (including pain, suffering or harm) is to be assessed through culturally sensitive Claims Forms and instruments such as a designed in consultation with experts. Subject to the Court's approval, the selection of which Claimants qualify

under this category will be based on objective factors (which may include the severity of pain, suffering or harm) and the number of Claimants.

(b) The threshold of impact for qualification as a member of the Trout Child Class is subject to the results of piloting of the method developed in accordance with Schedule F, Framework of Essential Services.

14) An Approved Trout Child Class Member who has not established a Claim under Article 6.08(13) will receive up to but not more than \$20,000 in compensation having regard to the Trout Child Class Budget, based on a pro rata share of the Trout Child Budget after deducting the total amount of compensation to be paid to Approved Trout Child Class Members who have established a claim under Article 6.08(13).

15) In the event of a Trust Fund Surplus pursuant to Article 6.11 based on advice from the Actuary after approved Claims under Article 6.08(10) and Article 6.08(13) are paid or projected to be paid, Approved Jordan's Principle Class Members, and Approved Trout Child Class Members who have established a claim under Article 6.06(13) may be entitled to an Enhancement Payment.

#### **6.09 Caregiving Parents or Caregiving Grandparents of Jordan's Principle Class and Trout Child Class**

1) Only the Caregiving Parents or the Caregiving Grandparents of Approved Jordan's Principle Class Members may be entitled to compensation if it is determined by the Administrator, or on appeal by the Third-Party Assessor, that such Caregiving Parents or Caregiving Grandparents themselves experienced the highest level of impact (including pain, suffering or harm of the worst kind).

2) Such Approved Jordan's Principle Family Class Members will be entitled to receive Base Compensation of \$40,000.

3) Only the Caregiving Parents or Caregiving Grandparents of the Approved Trout Child Class Members who have established a Claim under Article 6.08(13) may be entitled to compensation if it is determined by the Administrator, or on appeal by the Third-Party Assessor, that such Caregiving Parents or Caregiving Grandparents themselves experienced the highest level of impact (including pain, suffering or harm of the worst kind). The Base Compensation of Approved Trout Family Class Members will be determined by the Settlement Implementation Committee with the assistance of the Actuary regarding the forecasted number of Claimants, based on objective factors (which may include the severity of pain, suffering or harm) and the number of Claimants.

4) The impact experienced by such Caregiving Parents or Caregiving Grandparents will be assessed through objective criteria and expert advice pursuant to a method to be developed and specified in parallel with Schedule F, Framework of Essential Services

regarding Children. Such impact (including pain, suffering or harm) may be assessed through culturally sensitive Claims Forms designed in consultation with experts. Subject to the Court's approval, the selection of which Claimants qualify under this category will be based on objective factors (which may include the severity of pain, suffering or harm) and the number of Claimants.

- 5) The selection of the objective factors and the threshold for qualification under this Article is subject to the results of piloting of the method of assessment developed in accordance with this Article.
- 6) The Base Compensation of an Approved Jordan's Principle Family Class Member or an Approved Trout Family Child Class Member will not be multiplied based on the number of Essential Services that were the subject of the Confirmed Need of the Approved Jordan's Principle Class Member or the Approved Trout Child Class Member whose Claim grounds the Caregiving Parent or Caregiving Grandparent's eligibility to seek compensation under this Article.
- 7) All other Jordan's Principle Family Class Members and Trout Family Class Members will not receive direct compensation under this Agreement, but are intended to benefit indirectly from the Cy-près Fund.
- 8) The Budget for the Jordan's Principle Family Class and the Trout Family Class collectively is the fixed amount of \$2.0 billion dollars ("**Jordan's Principle and Trout Family Budget**"). There will be no reallocation to these classes of any surpluses or revenues.

#### **6.10 Exceptional Early Payment of Compensation Funds**

- 1) Notwithstanding Article 6.01(4), the Administrator may exceptionally approve the payment of compensation to a Claimant who has not reached the Age of Majority in accordance with this Article.
- 2) An individual under the Age of Majority may be eligible to receive an amount of compensation to fund or reimburse the cost of a life-changing or end-of-life wish experience or needs (the "**Exceptional Early Payment**"), if they provide Supporting Documentation establishing that:
  - (a) they meet the requirements, other than age, to be an Approved Removed Child Class Member or an Approved Jordan's Principle Class Member; and
  - (b) they are suffering from a terminal or severe degenerative life-threatening condition that has placed their life in jeopardy.
- 3) An individual who establishes eligibility for an Exceptional Early Payment in accordance with this Article must provide reasonable proof of a chosen life-changing or end-of-life wish experience and the approximate cost of that experience.

- 4) The Administrator will assess a Claimant's eligibility for an Exceptional Early Payment to fund or reimburse the cost in an amount up to, but no more than \$40,000.
- 5) The Administrator will determine the Claim for an Exceptional Early Payment in the best interests of the Child and on an expedited basis commensurate with the Child's circumstances. The Administrator will require such documentation in good faith as is required to assess:
  - (a) the Claimant's eligibility;
  - (b) the Claimant's terminal or severe degenerative life-threatening condition;
  - (c) the validity of the Claimant's life-changing or end-of-life experience request;
  - (d) the age and circumstances of the Child and whether the Child needs any protection; and
  - (e) the approximate cost of the life-changing or end-of-life wish experience.
- 6) Where a Class Member has received an Exceptional Early Payment and later submits a Claim for compensation, the amounts paid as Exceptional Early Payment will be deducted from that Claimant's total entitlement, if any, to compensation under this Agreement.

#### **6.11 Priorities in Distribution of Surplus**

- 1) On the advice of the Actuary or a similar advisor, the Settlement Implementation Committee may determine at any time or from time to time that there are unallocated or surplus funds on the Settlement Funds in the Trust Fund (a "**Trust Fund Surplus**").
- 2) The Settlement Implementation Committee may propose that a Trust Fund Surplus be designated and that there be a distribution of any Trust Fund Surplus for the benefit of the Class Members in accordance with this Article and the Claims Process, subject to the approval of the Court.
- 3) The Settlement Implementation Committee, having proposed that a surplus be designated and that there be a distribution of such Trust Fund Surplus, will bring motions before the Court for approval of the designation of a surplus and the proposed distribution of any Trust Fund Surplus. The designation and any allocation of a Trust Fund Surplus will be effective on the later of:
  - (a) the day following the last day on which an appeal or a motion seeking leave to appeal of either of the approval orders in respect of such designation and allocation may be brought under the *Federal Courts Rules*, SOR /98-106; and
  - (b) the date on which the last of any appeals of either of the approval orders in respect of such designation and allocation is finally determined.



- 4) In no event will any amount from the Trust Fund, including any Trust Fund Surplus, revert to Canada, and Canada will not be an eligible recipient of any Trust Fund Surplus.
- 5) In allocating the Trust Fund Surplus, the Settlement Implementation Committee will have due regard to the order of priorities set out below:
  - i) Approved Removed Child Class Members;
  - ii) Approved Jordan's Principle Class Members;
  - iii) Approved Trout Child Class Members;
  - iv) Approved Essential Service Class Members;
  - v) Approved Removed Child Family Class Members.

### **6.12 Reallocation of Budgets**

- 1) The Settlement Implementation Committee will adopt the Budgets with respect to compensation allocated to different classes in accordance with the amounts listed in Article 6 and Article 7.
- 2) The Settlement Implementation Committee will arrange for an actuarial review of the Trust Fund to be conducted at least once every three (3) years and more frequently if the Settlement Implementation Committee considers it appropriate. The actuarial review will be conducted by the Actuary in accordance with accepted actuarial practice in Canada. The actuarial review will determine:
  - (a) the value of the assets available to meet all outstanding and future expected Claims;
  - (b) the present value of all outstanding and future expected Claims using where necessary such reasonable assumptions as determined by the Actuary to be appropriate;
  - (c) an actuarial buffer to provide a reasonable margin of protection due to adverse deviations from the assumptions utilized; and
  - (d) the actuarial surplus and/or the actuarial deficit of funds in a Budget.
- 3) If based on the Actuary's advice the total compensation to be paid to the number of approved Class Members within a class is, or is expected to be, below the Budget, the Settlement Implementation Committee may transfer some amount from that Budget to another Budget.
- 4) If more than one (1) Budget has a higher than estimated total compensation to be paid to the number of approved Class Members, the Settlement Implementation Committee may

make such transfer of funds in accordance with the following order of priorities, subject to Court approval:

- i) Approved Removed Child Class Members;
- ii) Approved Jordan's Principle Class Members;
- iii) Approved Trout Child Class Members;
- iv) Approved Essential Service Class Members;
- v) Approved Removed Child Family Class Members.

### **6.13 Income on Trust Fund**

Subject to Article 6.15 and Article 6.16, the Settlement Implementation Committee may allocate income earned by the Trust Fund to any class, in its discretion, in accordance with the following order of priorities, favouring those classes where higher than estimated total compensation to be paid to the approved Class Members exists:

- i) Approved Removed Child Class Members;
- ii) Approved Jordan's Principle Class Members;
- iii) Approved Trout Child Class Members;
- iv) Approved Essential Service Class Members;
- v) Approved Removed Child Family Class Members.

### **6.14 Option to Invest Compensation Funds**

The Administrator will provide payment to Class Members who have been approved for compensation within nine (9) months of the approval of the Class Member's Claim, but in all cases, only after taking the following steps:

- (a) At least six (6) months prior to issuing payment, the Administrator will contact the Approved Class Member to ask whether the Class Member wishes to direct a portion or all of the amount to which the Class Member is entitled to an investment vehicle.
- (b) The form of notice to the Class Member will be determined by the Settlement Implementation Committee.
- (c) If the Class Member indicates their desire that a certain amount be invested, the funds will be held or directed to an account or investment instrument to which the trustee is directed to send the payment by the Claimant.

- (d) Once the Class Member's investment account is established, the fees, costs and taxes payable on the investment capital or returns will be borne by the Class Member's individual investment, as applicable.

### **6.15 Interest Payments to Certain Child Class Members**

- 1) To facilitate the adjustment of compensation for the time value of money, the Settlement Implementation Committee, upon the advice of the Investment Committee and the Actuary will create an interest reserve fund, intended to ensure payment of 1.75 per cent annualized simple interest upon the Base Compensation amount payable in respect of the CHRT Interest Accrual Period ("**Interest Reserve Fund**").
- 2) The following Class Members are entitled to receive interest pursuant to this Article:
  - (a) Approved Removed Child Class Members who were placed off-Reserve with non-Family during the CHRT Interest Accrual Period;
  - (b) Approved Kith Child Class Members; and
  - (c) Approved Jordan's Principle Class Members.
- 3) The entitlement of an Approved Removed Child Class Member, an Approved Kith Child Class Member, or an Approved Jordan's Principle Class Member to receive interest from the Interest Reserve Fund will commence on the 1<sup>st</sup> day of the yearly quarter following their removal or following the date on which the Child faced a Delay, Denial or Service Gap with respect to an Essential Service that was the subject of a Confirmed Need for the Child and runs for the balance of the CHRT Interest Accrual Period.
- 4) The Interest Reserve Fund will have an initial Budget of \$1 billion.
- 5) The Actuary will calculate expected returns on the Settlement Funds from time to time and will recommend to the Settlement Implementation Committee additions to or transfers from the Interest Reserve Fund.

### **6.16 Income generated above the Interest Reserve Fund**

- 1) The Settlement Implementation Committee may allocate any income earned on the Settlement Funds above the amount guaranteed by the Interest Reserve Fund, upon the advice of the Investment Committee and the Actuary, in accordance with Article 6.13 and Article 6.16.
- 2) The allocation of income generated above the Interest Reserve Fund will be distributed in accordance with the following priorities:
  - (a) The endowment of the sum of \$50 million to the Cy-près Fund pursuant to Article 8.02(1); then

- (b) Approved Removed Child Family Class Members of Children placed off-Reserve with non-Family, Approved Kith Family Class Members, and Approved Jordan's Principle Family Class Members during the CHRT Interest Accrual Period, up to 1.75 per cent simple annualized interest from the date of the accrual of interest during the CHRT Interest Accrual Period; then
  - (c) Approved Removed Child Class Members other than those listed in Article 6.15(2)(a); then
  - (d) Approved Jordan's Principle Class Members; then
  - (e) Approved Trout Child Class Members; then
  - (f) Approved Essential Service Class Members; then
  - (g) Other Approved Removed Child Family Class Members; then
  - (h) Approved Trout Family Class Members.
- 3) For clarity, the discretion granted to the Settlement Implementation Committee in this Article is in addition to, and does not derogate from, the discretion afforded to the Settlement Implementation Committee under Article 6.13.

### **6.17 Adjustment for Time Value of Compensation Money**

The compensation payable to an Approved Removed Child Class Member or an Approved Jordan's Principle Class Member who has not reached the Age of Majority by delivery of the notice of approval of settlement may be adjusted having regard to the period of time that passes before the Class Member reaches the Age of Majority. The Settlement Implementation Committee, upon the advice of the Investment Committee and the Actuary, will determine a consistent method for calculating the adjustment subject to the Court's approval.

## **ARTICLE 7 – KITH CHILD CLASS AND KITH FAMILY CLASS**

### **7.01 Governing Principles**

- 1) The Plaintiffs will design a Claims Process with the goal of minimising the risk of causing trauma to Class Members.
- 2) No member of the Kith Child Class will be required to submit to an interview, examination or other form of *viva voce* evidence taking.

- 3) The Plaintiffs will agree to require fair and culturally appropriate Supporting Documentation in accordance with this Agreement tailored to the specific circumstances of the Kith Child Class and Kith Family Class for the purposes of the Claims Process.
- 4) A Kith Child Class Member may claim compensation starting two years before they reach the Age of Majority, provided that no compensation is paid to that Class Member until after the Age of Majority.
- 5) Compensation under this Agreement will take the form of either direct payment to eligible Class Members, or eligible estates of deceased Class Members, who have claimed through the Claims Process and been approved by the Administrator or indirect benefit to the Class through the Cy-près Fund.
- 6) A Class Member who qualifies for compensation as a member of more than one class under this Agreement will receive the higher amount for which the Class Member qualifies amongst the applicable classes, and compensation under the classes will not be combined.
- 7) The Kith Child Class and the Kith Family Class will be the subject of a separately designed compensation and verification process in the Claims Process in accordance with Article 7.
- 8) The following principles will apply to the development of the Claims Process relating to the Kith Child Class:
  - (a) The records related to the Kith Child Class, Kith Placements, Kith Caregivers, and Kith Agreements differ as between Child Welfare Authorities, provinces and regions, and such records are of a nature that necessitates unique evidentiary requirements in order to verify Claims and safeguard the integrity of the Claims Process. As such, the payment of compensation to the Kith Child Class will take place under a stream within the Claims Process that is independent of the other classes, in particular the Removed Child Class, to be developed pursuant to this Article.
  - (b) The Parties and the Administrator will develop the Claims Process dedicated to the Kith Child Class with the participation of the Caring Society, and they will collectively take into account the views of and guidance from youth in care and youth formerly in care, as well as Child Welfare Authorities, to the extent that such views are applicable and in the best interests of the Class.
  - (c) If required with respect to a Claim, verification should take place through the examination of personal records relating to the specific Child within the Child Welfare Information through the engagement of Child Welfare Authorities and/or Child Welfare Records Technicians.

(d) To the extent that some Claimants may be Children or individuals with varying accessibility needs at the time of submitting their Claims pursuant to this Article, the wellbeing and best interests of the Child will be a paramount consideration in the design of the Claims Process relating to such Kith Child Class Members.

## **7.02 Compensation to Kith Child Class**

- 1) An Approved Kith Child Class Member will be entitled to receive Base Compensation of \$40,000.
- 2) No Enhancement Payment applies to the Kith Child Class.
- 3) The Administrator will approve a Claimant as a Kith Child Class Member only if the Claimant has substantiated, or the Administrator has been able to otherwise verify, all of the following elements:
  - (a) the First Nations Child was Ordinarily Resident on Reserve immediately before the Kith Placement;
  - (b) the Child was placed with a Kith Caregiver during the Removed Child Class Period;
  - (c) the Kith Caregiver lived off-Reserve, meaning the Kith Placement was off-Reserve; and
  - (d) the Kith Placement occurred during a Child Welfare Authority involvement.
- 4) The Supporting Documentation for the Kith Child Class may incorporate the following examples, but only if such Supporting Documentation establishes all the required elements in Article 7.02(3):
  - (a) a Kith Placement Agreement, establishing the required elements in Article 7.02(3), and other Supporting Documentation as may be required in the Claims Process;
  - (b) statutory declarations from the Child Welfare Authority involved in the Claimant's Kith Placement, establishing the required elements in Article 7.02(3), and other Supporting Documentation as may be required in the Claims Process; or
  - (c) other child-specific evidence establishing the required elements in Article 7.02(3), such as the individual to whom child-specific tax benefits were paid during the period in question, school records, passport application information, contact information from a doctor's file, records related to treaty payments, which options will be further defined and developed as part of the Claims Process.

- 5) The Budget for the Kith Child Class is the fixed amount of \$600 million in compensation under this Agreement. There will be no reallocation to this class of any surpluses or revenues.

### **7.03 Kith Family Class**

- 1) The Caregiving Parent(s) or, in the absence of Caregiving Parents, the Caregiving Grandparent(s) of an Approved Kith Child Class Member who was in a Kith Placement as of January 1, 2006 or between January 1, 2006 and March 31, 2022 may receive compensation under this Agreement.
- 2) A Kith Family Class Member who has Abused an eligible Child is not eligible for compensation in relation to that Child.
- 3) The Parties have budgeted the Base Compensation for an Approved Kith Family Class Member to be \$40,000.
- 4) No Enhancement Payment applies to the Kith Family Class.
- 5) The Base Compensation of a Kith Family Class Member will not be multiplied based on the number of Kith Placements for a Child.
- 6) For the purposes of this Article and the Kith Family Class, a Stepparent is not considered a Caregiving Parent or a Caregiving Grandparent and is accordingly not eligible for compensation under this Article.
- 7) A maximum compensation amount of two Base Compensation payments per Child among Caregiving Parents or Caregiving Grandparents of a Child, regardless of number of Kith Placements, may be distributed under this Agreement, if otherwise eligible.
- 8) Where there was more than one Kith Placement regarding a Child, the Caregiving Parent or the Caregiving Grandparent in the earlier Kith Placement will take priority in receiving compensation. If the temporal order of such Kith Placements cannot be determined or is not determinative, the following priorities apply:
  - (a) Category A: Caregiving Parents; then
  - (b) Category B: Caregiving Grandparents.
- 9) The Administrator may only approve a Caregiving Parent or Caregiving Grandparent in relation to an already Approved Kith Child Class Member.
- 10) In the event of multiple Claims by more than two putative Caregiving Parents or Caregiving Grandparents, the Administrator may require further information and proof from those Claimants, but without the direct involvement of the affected Child, to

substantiate who, if any, amongst such Claimants met the definition of a Caregiving Parent or Caregiving Grandparent under this Agreement.

- 11) The final quantum of Base Compensation to be paid to each Approved Kith Family Class Member will be determined by the Settlement Implementation Committee in consultation with the Actuary, having regard to the number of Approved Kith Family Class Members and the Budget for the Kith Family Class under this Article, subject to Court approval.
- 12) Payments to Approved Kith Family Class Members who may be entitled to receive compensation under this Article before the expiration of the Claims Deadline may be made in installments in order to ensure sufficient funds exist to pay like amounts to like Claimants regardless of when they submitted their Claim.

#### **7.04 Multiplication of Base Compensation for Certain Kith Family Class Members**

- 1) An Approved Kith Family Class Member may receive multiple Base Compensation payments if and where the following conditions are met:
  - (a) more than one Child of the Caregiving Parent or the Caregiving Grandparent, as the case may be, has been approved by the Administrator, or the Third-Party Assessor on appeal, as Approved Kith Child Class Members in a Kith Placement between January 1, 2006 and March 31, 2022;
  - (b) the multiplication of the Base Compensation will correspond to the number of such Approved Kith Child Class Members who have been approved for compensation; and
  - (c) the Approved Kith Family Class Member has established that they are a Caregiving Parent or Caregiving Grandparent to each of the such Approved Kith Child Class Member through Supporting Documentation.
- 2) The Budget for the Kith Family Class is the fixed amount of \$702 million in compensation under this Agreement. There will be no reallocation to this class of any surpluses or revenues.

### **ARTICLE 8 – CY-PRÈS FUND**

#### **8.01 Governing Principles**

- 1) The Plaintiffs will design a Cy-près Fund with the assistance of experts, subject to the Court's approval.
- 2) The Cy-près Fund's purposes are to benefit:
  - a) Class Members who do not receive direct payment under this Agreement; and



- b) Approved Jordan's Principle Class Members who require post-majority services.
- 3) The Cy-près Fund will be First Nations led.
- 4) There will be an annual report of the operation, including distribution, of the Cy-près Fund, which will be made publicly available. A copy of the annual report will also be provided to the Settlement Implementation Committee.

### **8.02 Support to Benefit Class Members Who Do Not Receive Direct Compensation**

- 1) Within one year after the Court's approval of the Cy-près Fund pursuant to Article 8.01(1) (the "**General Fund**"), the Trustee will endow the trust entity administering the General Fund with \$50,000,000 from the Trust Fund, to be paid from the income generated on the Settlement Funds pursuant to Article 6.16(2)(a).
- 2) The objective of the General Fund is to provide culturally sensitive and trauma-informed supports to the Class, including the following:
  - (a) Establish a fund, foundation or other similar vehicle whose leadership may include First Nations youth and children in care, formerly in care, their allies and those who experienced a Delay, Denial or Service Gap under Jordan's Principle, to offer grant-based supports to facilitate access to culture-based, community-based and healing-based programs, services and activities to Class Members and the Children of First Nations parents who experienced a Delay, Denial or Service Gap under Jordan's Principle.
    - i) Such grant-based supports may include funding the following:
      - (1) Family and community unification, reunification, connection and reconnection for youth in care and formerly in care:
        - i. facilitating First Nations youth in care and formerly in care to identify birth family and their First Nation, which may include accessing records or files, meeting family members or travelling to their First Nation;
        - ii. accessing holistic wellness supports for First Nations youth in care and formerly in care during the family and community reunification and reconnection process; and
        - iii. reducing the costs associated with travel and accommodations to visit community and family, including for First Nations youth in care and formerly in care, support person(s) or family members.
      - (2) Cultural access:

- i. facilitating access to cultural programs, activities and supports, including: youth groups, ceremony, language, Elders and Knowledge Keepers, mentors, land-based activities, and culturally-based arts and recreation.

(3) Transition and Navigation supports:

- i. Facilitating access for First Nations youth in care and formerly in care to transition supports for First Nations youth in care and formerly in care who are either not eligible for post-majority care and services under the reformed First Nations Child and Family Services Program or that are not covered elsewhere, in their transition to adulthood, including: safe and accessible housing, life skills and independent living, financial literacy, planning and services, continuing education, health and wellness supports.
- ii. Facilitating access to navigational supports for Class Members and the children of First Nations parents who experienced a Delay, Denial or Service Gap under Jordan's Principle who are not eligible to receive post-majority services under Jordan's Principle or are not covered elsewhere.
- iii. Facilitating access to a scholarship for the Jordan's Principle Class and the children of First Nations parents who experienced a Delay, Denial or Service Gap in the provision of services under Jordan's Principle. The scholarship will be designed to acknowledge the adverse effects associated with the experience of a Delay, Denial or Service Gap under Jordan's Principle.

(b) A National First Nations Youth In/From Care Network may also be established through the grants, or through the formation of a fund, foundation or similar organization, which may include funding an existing national network and existing regional networks. The networks would share best practices and updates, provide advocacy, discuss and make recommendations on policy. The structure, scope and membership of the networks is to be determined by First Nations Youth In/From Care.

### **8.03 Post-Majority Supports for Jordan's Principle**

- 1) On the sixtieth (60<sup>th</sup>) day following the Court's approval of the Cy-près Fund, the Trustee will transfer \$90,000,000 from the Settlement Funds to the trust entity administering the Jordan's Principle Post-Majority Fund. The Jordan's Principle trust entity will administer the funds in accordance with this Article.

- 2) The Caring Society, with input from the Plaintiffs, will select the Jordan's Principle trust entity. Such entity will act in the best interests of the Jordan's Principle Post-Majority Fund Beneficiaries and in a manner that promotes public confidence.
- 3) The purpose of the Jordan's Principle Post-Majority Fund is to provide some additional supports to high needs Approved Jordan's Principle Class Members between the Age of Majority and such Class Members' 26<sup>th</sup> birthday necessary to ensure their personal dignity and well-being.
- 4) In cooperation with the Jordan's Principle trust entity, the Caring Society will have the following responsibilities in relation to the Jordan's Principle Post-Majority Fund:
  - (a) designing the trust agreement reflecting the purpose of the Jordan's Principle Post-Majority Fund and the terms and conditions of same;
  - (b) determining the eligibility criteria and process for accessing benefits under the Jordan's Principle Post-Majority Fund; and
  - (c) receiving and reviewing an accounting from the Jordan's Principle trust entity on a quarterly basis.
- 5) Jordan's Principle Post-Majority Beneficiaries may access benefits under the Jordan's Principle Post-Majority Fund by making a request to the trust entity. If an Approved Jordan's Principle Class Member who is approaching or is past the Age of Majority contacts ISC through mechanisms for accessing Jordan's Principle, ISC will refer the Class Member to the trust entity. ISC will collaborate with the Caring Society and the Plaintiffs regarding public information that can be provided by ISC regarding the Jordan's Principle Post-Majority Fund.
- 6) Any income generated on the Jordan's Principle Post-Majority Fund which is not distributed to the Jordan's Principle Post-Majority Beneficiaries in any year will be accumulated in the Jordan's Principle Post-Majority Fund.

#### **ARTICLE 9 – SUPPORTS TO CLASS IN CLAIMS PROCESS**

- 1) The Parties will agree to culturally sensitive health, information, and other supports to be provided to Class Members in the Claims Process, as well as funding for health care professionals to deliver support to Class Members who suffer or may suffer trauma for the duration of the Claims Process, consistent with Schedule I, Framework for Supports for Claimants in Compensation Process, and the responsibilities of the Administrator in providing navigational and other supports under Article 3.02.

- 2) Canada will provide funding to the AFN in the amount of \$2,550,000 to provide supports to First Nations Claimants for a five (5) year term beginning April 1, 2024, and ending March 31, 2029. This process will include administering a help desk with AFN line liaisons and providing culturally safe assistance to Claimants in completing relevant Claims Forms if not covered by the supports available to Class Members by the Administrator (the “**AFN Supports**”). By April 2028, the AFN may approach the Settlement Implementation Committee for an extension of the funding for the AFN Supports. Subject to the Settlement Implementation Committee’s approval to an extension of the AFN Supports, Canada will provide further block funding to the AFN to continue the AFN Supports for a period agreeable to the AFN, the Settlement Implementation Committee, and Canada.
- 3) Canada will fund the enhancement of the Hope for Wellness Line to include training to their call operators and counsellors on the Actions and promote this service to Class Members as soon as possible and prior to the approval of the Settlement. The Parties will recommend that the Court will appoint a third-party Indigenous organization funded by Canada, to provide a culturally safe, youth-specific support line that would provide counselling services for youth and young adult class members and to refer to post-majority care services when appropriate.
- 4) Without limitation to the foregoing, Canada will pay for mental health, and cultural supports, navigators to promote communications and provide referrals to health services, help desk with AFN line liaisons, reasonable costs incurred by First Nations service providers in providing access to records to support Claimant eligibility from provinces, territories, and agencies, Child Welfare Records Technicians, and professional services (taxonomy and actuarial services), and reasonable fees relating to a structured settlement (if applicable) to be agreed. Canada will fund mental health and cultural supports based on evolving needs of the Class, with over half of the Class Members being adults expected to access compensation in the first five years, and transitioning to a focus on young adults in the remaining years of implementation of the Agreement, building on the existing suite of First Nations mental wellness services. Canada will work with the Parties to also adapt supports to include innovative, First Nations-led mental health and wellness initiatives.
- 5) The costs of supports pursuant to this Article are payable by Canada and will not be deducted from the Settlement Funds.
- 6) Canada will provide annual reports to the Settlement Implementation Committee on the health supports, trauma-informed mental supports set out in Schedule I, Framework for Supports for Claimants in Compensation Process.

## ARTICLE 10 - EFFECT OF AGREEMENT

### 10.01 Releases

- 1) The Settlement Approval Order issued by the Court will declare that, except as otherwise agreed to in this Agreement and in consideration for Canada's obligations and liabilities under this Agreement, each Class Member or their Estate Executor, estate Claimant, or Personal Representative on behalf of such Individual Class Member or their estate (hereinafter collectively the "**Releasers**") has fully, finally and forever released Canada and its servants, agents, officers and employees, predecessors, successors, and assigns (hereinafter collectively the "**Releasees**"), from any and all actions, causes of action, claims, and demands of every nature or kind available, whether or not known or anticipated, which the Releasers had, now have or may in the future have against the Releasees in respect of the claims asserted or capable of being asserted in the Actions, including any claim with regard to the costs referred to under Article 12.02(3).
- 2) It is understood that Class Members retain their rights to make claims against third parties for the physical, sexual or emotional abuse they suffered, restricted to whatever liability such third party may have severally, not including any liability that the third party may have jointly or otherwise with Canada, such that the third party will have no basis to seek contribution, indemnity or relief over by way of equitable subrogation, declaratory relief or otherwise against Canada for the physical, sexual or emotional abuse they suffered. No compensation paid to a Class Member under this settlement will be imputed to payment for injuries suffered as a result of physical, sexual abuse or emotional abuse.
- 3) For greater certainty, each Releaser is deemed to agree that, if they make any claim or demand or take any action or proceeding against another person, persons or entity in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over, whether by statute, common law, or Quebec civil law, in relation to allegations and matters set out in the Actions, including for physical, sexual or emotional abuse they suffered while in care, the Releaser will expressly limit their claim so as to exclude any portion of Canada's responsibility, and in the event Canada is found to have any such liability, the Releasers will indemnify Canada to the full extent of any such liability including any liability as to costs.
- 4) Upon a final determination of a Claim made under and in accordance with the Claims Process, the Releasers are also deemed to fully and finally release the Parties, counsel for the Parties, Class Counsel, counsel for Canada, the Settlement Implementation Committee and its Members, the Administrator, and the Third-Party Assessor with respect to any claims that have arisen, arise or could arise out of the implementation of the Claims Process, including any claims relating to the calculation of compensation, the sufficiency of the compensation received, and the allocation and distribution of a Trust Fund Surplus.

## 10.02 Continuing Remedies

- 1) The Parties acknowledge and agree that, notwithstanding any provision of this Agreement, Class Members do not release, and specifically retain, their claims or causes of action for any breach by Canada of its ongoing obligations under this Agreement, including:
  - (a) failing to pay the Settlement Funds in their entirety;
  - (b) funding reasonable notice and other administration fees involved in carrying out this Agreement, including information and notice to the Class Members about certification, this Agreement, settlement approval, and the Claims Process, as well as third-party administration costs;
  - (c) paying reasonable legal fees to Class Counsel, over and above the Settlement Funds;
  - (d) communicating with provincial and territorial Deputy Ministers responsible for child and family services, health, and education, as well as other relevant Deputy Ministers regarding taxation, Children's Special Allowance, social assistance payments, post-majority care or other provincial/territorial benefits "claw backs" without affecting funding received through a Jordan's Principle request, whether pending or approved;
  - (e) proposing a public apology by the Prime Minister;
  - (f) working toward the intention of the Parties that the Settlement Funds, including any income earned on the Settlement Funds awaiting distribution, will be distributed to Class Members as compensation, as opposed to "income" subject to taxation; and
  - (g) jointly seeking an order from the Tribunal declaring that the Compensation Orders are fully satisfied.
- 2) The Parties agree that, subject to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, the Parties will be entitled to seek relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement, without any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief allowed by law, this being in addition to damages and any other remedy to which the Parties may be entitled at law or in equity for any breach of this Agreement.

### **10.03 Canadian Income Tax and Social Benefits**

- 1) Canada will make best efforts to ensure that any Class Member's entitlement to federal social benefits or social assistance benefits will not be negatively affected in any manner by the Class Member's receipt, directly or indirectly, of any payment in accordance with this Agreement, and that no such payment will be considered taxable income within the meaning of the *Income Tax Act*.
- 2) The Parties agree that the payments to Class Members, including payments of any income earned on the Settlement Funds, are in the nature of personal injury damages and are not taxable income and Canada will make best efforts to obtain a technical interpretation to the same effect from the Income Tax Rulings Directorate of the Canada Revenue Agency.
- 3) Upon approval of this Agreement by the Court, Canada will write to all provincial and territorial Deputy Ministers responsible for child and family services, health, and education, as well as other relevant Deputy Ministers, to encourage them to collaborate in:
  - (a) exempting Class Member claims payouts under this Agreement from taxation, including payments of any income earned on the Settlement Funds, the Children's Special Allowance, social assistance payments, post-majority care or other provincial/territorial benefits "claw backs";
  - (b) ensuring that receipt of any compensation under this Agreement will in no way affect funding received through a Jordan's Principle request, whether pending or approved; and
  - (c) encouraging them to support Class Members during the term of the Agreement.
- 4) Canada will not in any way consider receipt of compensation under this Agreement as a factor in deciding any pending, approved or future requests pursuant to Jordan's Principle or with respect to individual entitlements under ISC programs where ISC makes a decision with respect to an individual's eligibility for funding.

## **ARTICLE 11 - IMPLEMENTATION OF THIS AGREEMENT**

### **11.01 Settlement Approval Order**

- 1) This Agreement is conditional upon the Tribunal confirming the full satisfaction of the Compensation Orders, as well as the approval by the Court of this Agreement.
- 2) Prior to seeking the Settlement Approval Order from the Court, the AFN and Canada will jointly seek an order from the Tribunal declaring that the Compensation Orders have been

fully satisfied. The Parties will take all reasonable steps to support the application before the Tribunal, including filing such evidence and submissions as may be required.

- 3) The AFN agrees to act as a lead applicant before the Tribunal in seeking the above order, and to take all reasonable steps to publicly promote and defend the Agreement.
- 4) The Representative Plaintiffs, or any of them, in the Consolidated Action and the Trout Action may seek interested party status and/or standing to make representations before, and to answer questions posed by, the Tribunal in respect of the satisfaction of the Compensation Orders, and Canada and the AFN consent to them obtaining such standing in a hearing.
- 5) The Parties will consent to the issuance of the Settlement Approval Order.
- 6) The Parties will take all reasonable measures to cooperate in requesting that the Court issue the Settlement Approval Order and related orders on notice of certification, Settlement Approval Hearing, and any other orders required for the implementation of this Agreement.
- 7) The Parties will schedule the Settlement Approval Hearing as soon as practicable considering the requirements of the Notice Plan, the decision required from the Tribunal and the Court's availability.
- 8) The Parties will consider seeking orders from provincial superior courts to obtain relevant data from provinces and territories should that become necessary and agree to cooperatively approach the provinces and territories to encourage their compliance.
- 9) The Parties will take all reasonable measures to cooperate in seeking federal, provincial and territorial privacy legislation exemptions and consents as may be needed to implement the Agreement.

## **11.02 Notice Plan**

The Parties will seek approval from the Court of the Notice Plan as the means by which Class Members will be provided with notice pertaining to the Opt-Out Period and settlement approval.

## **ARTICLE 12 - SETTLEMENT IMPLEMENTATION COMMITTEE**

### **12.01 Composition of Settlement Implementation Committee**

- 1) A Settlement Implementation Committee will be formed in accordance with this Article, subject to approval by the Court.
- 2) The Settlement Implementation Committee will consist of five (5) members as follows:



(a) two First Nations members (“**Non-Counsel SIC Members**”); and

(b) three Counsel members (“**Counsel SIC Members**”).

- 3) All Non-Counsel SIC Members and all Counsel SIC Members are subject to the Court’s order appointing them as such.
- 4) No person will serve for more than two (2) five-year terms, consecutive or cumulative, as one of the Non-Counsel SIC Members and/or of the Counsel SIC Members.
- 5) The terms of the five members of the Settlement Implementation Committee will be staggered such that the end of their terms does not occur all at the same time. For that purpose, the first term of one (1) of the Non-Counsel SIC Members and one (1) of the Counsel SIC Members will not exceed three (3) years, which terms may be renewed for a subsequent term of five (5) years. The first term of the balance of the members of the Settlement Implementation Committee will be for five years.
- 6) The two Non-Counsel SIC Members will be First Nations individuals only, as defined in Article 1.01.
- 7) The two Non-Counsel SIC Members will be selected through a solicitation for applications conducted by the AFN Executive Committee.
- 8) For the first round of nominations prior to the establishment of the Settlement Implementation Committee, the AFN Executive Committee will recommend to the Court for approval two Non-Counsel SIC Members selected in accordance with this Article, one for an initial term of three years and one for an initial term of five years.
- 9) After the establishment of the Settlement Implementation Committee, the AFN Executive Committee will recommend to the Settlement Implementation Committee any necessary replacement Non-Counsel SIC Members as those positions become vacant from time to time under this Article for the purposes of seeking the Court’s approval of the appointment of such members.
- 10) The three Counsel SIC Members will consist of one (1) lawyer appointed by Sotos LLP, one (1) lawyer appointed by Kugler Kandestin LLP, and one (1) lawyer appointed by the AFN Executive Committee.
- 11) For the first round of nominations prior to the establishment of the Settlement Implementation Committee, Sotos LLP, Kugler Kandestin LLP, and the AFN Executive Committee will each recommend one lawyer to the Court for approval in accordance with this Article. One of these three lawyers will be nominated for an initial term of three years and the other two for an initial term of five years in accordance with this Article. If Sotos LLP, Kugler Kandestin LLP, and the AFN Executive Committee cannot agree on which lawyer will be recommended to the Court for an initial term of three years, they will ask

the Court to select any one of the three recommended lawyers for a term of three years in the Court's full discretion.

- 12) After the establishment of the Settlement Implementation Committee, Sotos LLP, Kugler Kandestin LLP, and the AFN Executive Committee will recommend to the Settlement Implementation Committee the necessary number of replacement Counsel SIC Members separately for each of their respective counsel as those positions become vacant from time to time in accordance with this Article for the purposes of seeking the Court's approval of the appointment of such members.
- 13) A member of the Settlement Implementation Committee may be removed prior to the expiry of their term with a special majority vote of four (4) members of the Settlement Implementation Committee. Such a removal is not effective unless and until approved by the Court.
- 14) The Court may substitute any member of the Settlement Implementation Committee in accordance with this Article in the best interests of the Class.
- 15) A meeting of the Settlement Implementation Committee may be held if at least four (4) members are present. In making decisions under this Agreement, the Settlement Implementation Committee will make reasonable efforts to reach consensus. If consensus is not possible, the Settlement Implementation Committee will decide by majority vote unless specified otherwise in this Agreement.
- 16) If any member of the Settlement Implementation Committee believes that the majority of the Settlement Implementation Committee has taken a decision that is not in the best interests of the Class, that Member may refer the decision to confidential mediation in accordance with the ADR Chambers Mediation Rules. If the members of the Settlement Implementation Committee cannot agree on a mediator, they may ask the Court to appoint one. The reasonable costs of the mediation will be a disbursement of the Settlement Implementation Committee payable in accordance with Article 3.04. If the matter cannot be resolved at mediation, the matter may be referred to the Court for determination.
- 17) For the first two (2) years following the Claims Process Approval Date, the Settlement Implementation Committee will meet monthly, either in-person or virtually, and thereafter, the Settlement Implementation Committee will meet quarterly, unless the Settlement Implementation Committee believes that more frequent meetings are required. Notwithstanding this Article, the Settlement Implementation Committee may deal with administrative and urgent issues, if and when necessary.

- 18) The Settlement Implementation Committee, all Non-Counsel SIC Members, and all Counsel SIC Members will at all times act in their personal capacity and solely in the best interests of the Class, and not in the interests of any other party, stakeholder or entity.
- 19) In the event that either Sotos LLP or Kugler Kandestin LLP merges with another law firm, this Agreement will be binding on the successor firm.
- 20) If after the Claims Process Approval Date, Sotos LLP, Kugler Kandestin LLP or the AFN Executive Committee determine in their respective sole and unfettered discretion that they no longer need or want to nominate members to the Settlement Implementation Committee in accordance with this Article, they will advise the Settlement Implementation Committee in writing. In that event, the Court will determine a prospective replacement for such members in the best interests of the Class on the recommendation of the Settlement Implementation Committee.

### **12.02 Settlement Implementation Committee Fees**

- 1) Canada's liability for the fees of Counsel SIC Members and any other counsel to whom work is delegated will be negotiated by the Parties by way of the process identified in Article 17, Legal Fees.
- 2) Counsel SIC Members may delegate the legal work reasonably necessary for the fulfillment of the Settlement Implementation Committee's responsibilities under this Agreement among Class Counsel or retain other counsel as Counsel SIC Members consider necessary.
- 3) Canada will pay a total of \$750,000, separate and in addition to any other amounts in this Agreement to be paid at the direction of the AFN Executive Committee to fund an honorarium of \$200 per hour to each of the Non-Counsel SIC Members for reasonable participation in the work of the Settlement Implementation Committee, up to a maximum of \$1000 per day, subject to the Court's approval. The Settlement Implementation Committee may propose, and the Court may implement a change in the quantum of such honoraria from time to time.

### **12.03 Settlement Implementation Committee Responsibilities**

- 1) In addition to matters specified elsewhere in this Agreement, the Settlement Implementation Committee's responsibilities will include the following:
  - (a) monitoring the work of the Administrator and the Third-Party Assessor, and the Claims Process overall;
  - (b) receiving and considering reports from the Administrator, including on administrative costs;

- (c) engaging experienced practitioners as needed who are familiar with family and child welfare documents and records in each province and territory to assist with the work of the Administrator and the Third-Party Assessor, where necessary to substantiate allegations of Abuse, verify certain Claims where necessary, or conduct isolated audits of some Claims Forms where ISC data is insufficient or lacking;
- (d) giving such process directions to the Administrator or the Third-Party Assessor as may be necessary in accordance with the mandate of the Settlement Implementation Committee and the provisions of this Agreement;
- (e) proposing for the Court's approval such protocols as may be necessary for the implementation of this Agreement, including any amendments to the Claims Process and distribution protocol as may be necessary;
- (f) addressing any other matter referred to the Settlement Implementation Committee by the Court;
- (g) receiving, through the Investment Committee, and seeking Court approval on advice from the Actuary and investment experts on the investment of the Trust Fund;
- (h) receiving a copy of the annual report of the Cy-près Fund and, if considered appropriate, communicating with the trustees of the Cy-près Fund;
- (i) recommending to the Court any change of the Administrator;
- (j) setting Terms of Reference for the Investment Committee regarding investment objectives and strategy (the "**Investment Committee Terms of Reference**") in accordance with the principles set out in Schedule G, Investment Committee Guiding Principles;
- (k) engaging experts as reasonably needed including experts in First Nations data governance, trauma, community relations, health and social services, and the Actuary to assist with the Claims Process;
- (l) receiving annual reports from Canada on the health supports, trauma-informed mental supports, and Claims Process supports provided to Class Members;
- (m) providing an annual Settlement Implementation Report to the Court, which includes updates on the implementation of the Agreement, actuarial reporting on the Trust Fund and distribution, annual audited financial reporting, any issues with the Trust, any systemic issues in implementation and proposed or approved resolution to such issues, etc.; and

- (n) providing the AFN Executive Committee with a concurrent copy of the annual Settlement Implementation Report, and ensuring that said report is posted on a public website.
- 2) The Settlement Implementation Committee may retain experts and consultants as reasonably required for the implementation of this Agreement. The fees and disbursements of such experts and consultants will be a disbursement of the Settlement Implementation Committee payable by Canada in accordance with Article 3.04.
  - 3) The Settlement Implementation Committee may bring or respond to whatever motions or institute whatever proceedings it considers necessary to advance its responsibilities under this Agreement and the interests of Class Members.

#### **12.04 Investment Committee**

- 1) The Investment Committee will adhere to the Investment Committee Terms of Reference as set by the Settlement Implementation Committee.
- 2) The Investment Committee will be constituted of up to two (2) members that are not investment professionals but have relevant board experience regarding the management of funds and one (1) independent investment professional (the “**Investment Professional Member**”).
- 3) The Investment Committee members will be nominated by the Settlement Implementation Committee to five (5) year renewable terms, subject to approval by the Court.
- 4) The reasonable fees of the Investment Committee, including the Investment Professional Member, will be payable by Canada to a maximum of four quarterly meetings per annum and will be subject to Court approval. The reasonable fees of any investment consultant retained by the Investment Committee will be payable by Canada, subject to Court Approval. Canada will not be responsible for the payment of fees for investment managers retained by the Investment Committee.
- 5) The Investment Committee will meet quarterly, or more frequently as required, during the first five (5) years following its establishment. In subsequent years, the Investment Committee will meet at least once annually, or more frequently if required and approved by the Settlement Implementation Committee. The Investment Committee will periodically, and no less than annually, review the viability of the investment strategy of the Trust Fund and submit such a review to the Settlement Implementation Committee.

## **ARTICLE 13 - OPTING OUT**

### **13.01 Opting Out**

A Class Member may Opt-Out of the Actions by:

- (a) delivery to the Administrator of the Opt-Out Form; or
- (b) after the Opt-Out Deadline, by individually obtaining leave of the Court to Opt-Out of the Actions if the Claimant was unable, as a result of physical or psychological illness or challenges, including homelessness or addiction, or other significant obstacles as found by the Court, to take steps to Opt-Out within the Opt-Out Deadline.

### **13.02 Automatic Exclusion for Individual Claims**

A Class Member will be excluded from the Actions if the Class Member does not, before the expiry of the Opt-Out Deadline, discontinue a proceeding brought by the Class Member against Canada to the extent that the separate proceeding raises the common questions set out in the Certification Orders.

## **ARTICLE 14 - PAYMENTS FOR DECEASED INDIVIDUAL CLASS MEMBERS AND PERSONS UNDER DISABILITY**

### **14.01 Persons Under Disability**

If a Claimant who submitted a Claim to the Administrator within the Claims Deadline is or becomes a Person Under Disability prior to their receipt of compensation, the Personal Representative of the Claimant will be eligible to receive compensation on behalf of the Claimant for the sole benefit of the Claimant.

### **14.02 Approach to Compensation for Deceased Children**

- 1) The estate's representative of a deceased Removed Child Class Member placed off-Reserve as of and after January 1, 2006, a deceased Kith Child Class Member, and a deceased Jordan's Principle Class Member, will be entitled to claim Base Compensation of \$40,000 and interest and may be eligible to receive any applicable Enhancement Payments in accordance with this Agreement on behalf of the estate of the deceased Claimant.
- 2) The estate's representative of a deceased Removed Child Class Member (other than those in 14.02(1)), a deceased Essential Service Class Member, or a deceased Trout Child Class Member may be eligible for direct compensation and may be eligible to

receive any applicable Enhancement Payments in accordance with this Agreement on behalf of the estate of the deceased Claimant.

#### **14.03 Approach to Compensation for Deceased Caregiving Parents and Caregiving Grandparents**

- 1) A Claim may be made on behalf of a deceased Caregiving Parent or Caregiving Grandparent in relation to the following classes: Removed Child Family Class Members (of a Child placed off-Reserve with non-Family as of and after January 1, 2006), Kith Family Class Members, or Jordan's Principle Family Class Members.
- 2) Where a Claim is approved for a deceased Caregiving Parent or Caregiving Grandparent referred to in Article 14.03(1), Base Compensation of \$40,000 and interest will be paid directly to the living Child or Children of the deceased Caregiving Parent or living grandchild or grandchildren of the deceased Caregiving Grandparent on a pro rata basis.
- 3) The estates of the Removed Child Family Class, other than those in Article 14.03(1) and the Trout Family Class under Article 6.09(3), are not eligible for compensation, unless a complete Claim was submitted by such a Class Member prior to death. Where a Claim was submitted by the deceased Claimant prior to death, compensation will be paid directly to the estate pursuant to Article 14.04 where a grant of authority has been made or in accordance with Article 14.05 where no grant of authority has been made.

#### **14.04 Compensation if Deceased: Grant of Authority or the Like**

- 1) This Article does not apply to the deceased Class Members identified in Article 14.03(1) and (2).
- 2) Where an Estate Executor or Estate Administrator of an Eligible Deceased Class Member has been appointed under the *Indian Act* or under the governing provincial or territorial legislation, the Estate Executor or Estate Administrator may submit a Claim for compensation in accordance with this Agreement.
- 3) A Claim made by an Eligible Deceased Class Member must include the following:
  - (a) applicable Claims Form(s);
  - (b) evidence that such Eligible Deceased Class Member is deceased and the date on which such Eligible Deceased Class Member died;
  - (c) evidence in the following form identifying such representative as having the legal authority to receive compensation on behalf of the estate of the Eligible Deceased Class Member:
    - i) if the claim to entitlement to receive compensation on behalf of an estate is based on a will or other testamentary instrument or on intestacy, a copy of a

- grant of probate or a grant and letters testamentary or other document of like import, or a grant of letters of administration or other document of like import, issued by any court or authority in Canada; or
- ii) if in Quebec, a notarial will, a probated holograph will, a probated or other document of like import made in the presence of witnesses in accordance with the *Civil Code of Quebec* and the *Indian Act*.

#### **14.05 Compensation if Deceased: No Grant of Authority or the Like**

- 1) This Article does not apply to deceased Class Members identified under Article 14.03(1) and (2).
- 2) For the purpose of this Article, “spouse” means either of two persons who:
  - (a) are legally married; or
  - (b) are not married, but:
    - i) have a common law relationship for a period of not less than one year, the time prescribed in accordance with the *Indian Act*, at the time of death; or
    - ii) have a relationship of some permanence if they are the parents of a child.
- 3) Except in the case of an estate of an Eligible Deceased Class Member where an eligible recipient is identified and otherwise eligible in accordance with Article 14.04, if a Claim is submitted to the Administrator on behalf of an Eligible Deceased Class Member without proof of a will or the appointment of an Estate Executor or Estate Administrator, the Administrator may, upon receiving Supporting Documentation, treat the Eligible Deceased Class Member’s Claim in accordance with the priority level of heirs under the *Indian Act* in respect of distribution of property on intestacy as follows:
  - (a) The spouse of the Eligible Deceased Class Member at the time of death.
  - (b) Where the Eligible Deceased Class Member has no spouse, the child or children of the eligible Deceased Class Member. The compensation will be divided pro rata amongst all the children of the Eligible Deceased Class Member who are living at the time when the Claim is received by the Administrator.
  - (c) Where the Eligible Deceased Class Member has no spouse or child, the grandchildren of the Eligible Deceased Class Member. The compensation will be divided pro rata amongst all the grandchildren of the Eligible Deceased Class Member who are living at the time when the Claim is received by the Administrator.
  - (d) Where the Eligible Deceased Class Member has no spouse, child or grandchild, the parents of the Eligible Deceased Class Member. The compensation will be



divided pro rata between the parents of the Eligible Deceased Class Member who are alive when the Claim is received by the Administrator.

(e) Where an Eligible Deceased Class Member leaves no spouse, child, grandchild or parent, the sibling(s) of the Eligible Deceased Class Member. The compensation will be distributed equally among the siblings of the Eligible Deceased Class Member who are alive when the claim is received by the Administrator.

(f) Where the Eligible Deceased Class Member has no spouse, child, grandchild, parents or sibling(s), the grandparents of the Eligible Deceased Class Member. The compensation will be divided pro rata between the grandparents of the Eligible Deceased Class Member who are alive when the Claim is received by the Administrator.

4) Subject to sections 4(3) and 42 to 51 of the *Indian Act*, Canada, as represented by the Minister of Indigenous Services, may administer or appoint administrators for the estates of Eligible Deceased Class Members who are under Canada's jurisdiction and who have or are entitled to receive direct compensation under this Agreement.

5) Canada may consult with the Settlement Implementation Committee to utilize the existing ISC framework for the administration of the estates of Eligible Deceased Class Members consistent with the exercise of Ministerial discretion considering individual circumstances. Canada will conduct the administration process in a trauma-informed manner and with a view to ensuring that it is as expeditious, cost-effective, user-friendly, and culturally sensitive as possible. This may include:

(a) where Canada is advised that an Estate Executor or Estate Administrator has not already been appointed on behalf of the estate of an Eligible Deceased Class Member, Canada may appoint an Estate Administrator as needed who will act in accordance with their fiduciary and statutory duties, which may include submitting a Claim on behalf of such Class Member; and

(b) where Canada administers an estate of an Eligible Deceased Class Member, there will be no cost recovery against the estate for doing so and, except in exceptional circumstances, Canada will seek to minimize or eliminate any related third-party costs.

6) Subject to issues that may arise in individual cases, Canada may, but is not obligated to, exercise its discretion under the *Indian Act* to assume jurisdiction over the administration of the estates referred to above. Nothing in this Article should be taken to extend the jurisdiction under the *Indian Act* over the administration of estates.

- 7) A Caregiving Parent or Caregiving Grandparent who is excluded from compensation under Article 6.04(4) or Article 7.03(2) due to Abuse will not receive compensation from the estate of the deceased Child.

#### **14.06 Release by the Estates of Eligible Deceased Class Members**

Payments made in accordance with this Article will constitute a release by the estate of any Eligible Deceased Class Member, including on behalf of any beneficiaries of the estate of any Eligible Deceased Class Member who would otherwise be eligible to receive benefits.

#### **14.07 Canada, Administrator, Class Counsel, Third-Party Assessor, Settlement Implementation Committee, and Investment Committee Held Harmless**

Canada and its counsel, the Administrator, Class Counsel, AFN in-house counsel, the Third-Party Assessor, the Settlement Implementation Committee and its members, and the Investment Committee will be held harmless from any and all claims, counterclaims, suits, actions, causes of action, demands, damages, penalties, injuries, setoffs, judgments, debts, costs, expenses (including legal fees and expenses) or other liabilities of every character whatsoever by reason of or resulting from a payment or non-payment to or on behalf of an Eligible Deceased Class Member or a Person Under Disability, or to an Estate Executor, estate, or Personal Representative pursuant to this Agreement, and this Agreement will be a complete defence.

### **ARTICLE 15 - TRUSTEE AND TRUST**

#### **15.01 Trust**

- 1) Subject to advice received by third-party professionals, the Parties agree to the following provisions.
- 2) No later than thirty (30) days following the appointment by the Court of the Trustee, Canada will settle a single trust (the “**Trust**”) with ten dollars (\$10), to be held by the Trustee in accordance with the terms of this Agreement.
- 3) The Plaintiffs will submit the initial investment strategy created with help from experts to the Court for approval together with this Agreement.

#### **15.02 Trustee**

The Court will appoint the Trustee to act as the trustee of the Trust, with such powers, rights, duties, and responsibilities as the Court orders. Without limiting the generality of the foregoing, the duties and responsibilities of the Trustee will include:

- (a) to hold the Trust Fund;
- (b) to invest the Settlement Funds in accordance with the Statement of Investment Policies and Procedures as instructed by the Investment Committee, having regard to the best interests of Class Members and the ability of the Trust to meet its financial obligations, subject to the Court's ongoing supervision;
- (c) upon instructions from the Administrator and approval of the Settlement Implementation Committee in accordance with the policies of the Settlement Implementation Committee, to provide such amounts from the Trust to the Administrator and any other person as described in Article 3.02, Article 4.02, Article 8, and Article 18(3), as required from time to time in order to give effect to any provision of this Agreement, including the payment of compensation to Approved Class Members in the Claims Process;
- (d) to engage, upon consultation with and approval of the Settlement Implementation Committee, the services of professionals to assist in fulfilling the Trustee's duties;
- (e) to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- (f) to keep such books, records and accounts as are necessary or appropriate to document the assets held in the Trust, and each transaction of the Trust;
- (g) to take all reasonable steps and actions required under the *Income Tax Act* as set out in the Agreement;
- (h) to report to the Administrator, Canada and the Settlement Implementation Committee on a quarterly basis the assets held in the Trust at the end of each such quarter, or on an interim basis if so requested; and
- (i) to do such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry on the activities of the Trust or to carry out the provisions of this Agreement.

### **15.03 Trustee Fees**

Canada will pay the reasonable fees, disbursements, and other costs of the Trustee relating to the management of the Trust Fund.

### **15.04 Nature of the Trust**

The Trust will be established for the following purposes:

- (a) to acquire the Settlement Funds payable by Canada;
- (b) to hold the Settlement Funds in the Trust;

- (c) to pay compensation in accordance with this Agreement;
- (d) to invest cash in investments in the best interests of Class Members, as provided in this Agreement; and
- (e) to do such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry out the provisions of this Agreement.

### **15.05 Legal Entitlements**

The legal ownership of the assets of the Trust, including the Trust Fund, and the right to conduct the activities of the Trust, including the activities with respect to the Trust Fund, will be, subject to the specific limitations and other terms contained herein, vested exclusively in the Trustee, and the Class Members or any other beneficiaries of the Trust have no right to compel or call for any partition, division or distribution of any of the assets of the Trust or a rendering of accounts. No Class Member or any other beneficiary of the Trust will have or is deemed to have any right of ownership in any of the assets of the Trust.

### **15.06 Records**

The Trustee will keep such books, records, and accounts as are necessary or appropriate to document the assets of the Trust and each transaction of the Trust. Without limiting the generality of the foregoing, the Trustee will keep at its principal office records of all transactions of the Trust and a list of the assets held in trust, including each Fund, and a record of each Fund's account balance from time to time.

### **15.07 Quarterly Reporting**

The Trustee will deliver to the Administrator, Canada, and the Settlement Implementation Committee, within thirty (30) days after the end of each calendar quarter, a quarterly report setting forth the assets held as at the end of such quarter in the Trust and each Fund (including the term, interest rate or yield and maturity date thereof) and a record of the Trust's account balance during such quarter.

### **15.08 Annual Reporting**

- 1) The Auditors will deliver to the Administrator, the Trustee, Canada, the Settlement Implementation Committee, the AFN Executive Committee and the Court, within sixty (60) days after the end of each calendar year (the calendar year-end being the fiscal year-end for the Trust):
  - (a) the audited financial statements of the Trust for the most recently completed fiscal year, together with the report of the Auditors thereon;

(b) a report setting forth a summary of the assets held in trust as at the end of the fiscal year for each Fund and the disbursements made by the Trust during the preceding fiscal year; and

(c) the audited financial statements of the Administrator.

- 2) The Administrator will ensure that the documents in Article 15.08(1)(a)-(c) are posted on a public website.

### **15.09 Method of Payment**

The Trustee will have sole discretion to determine whether any amount paid or payable out of the Trust is paid or payable out of the income of the Trust or the capital of the Trust.

### **15.10 Additions to Capital**

Any income of the Trust not paid out in a fiscal year will at the end of such fiscal year be added to the capital of the Trust.

### **15.11 Tax Elections**

For each taxation year of the Trust, the Trustee will file any available elections and designations under the *Income Tax Act* and equivalent provisions of the *Income Tax Act* of any province or territory and take any other reasonable steps such that the Trust and no other person is liable to taxation on the income of the Trust, including the filing of an election under the *Income Tax Act* and equivalent provisions of the *Income Tax Act* of any province or territory for each taxation year of the Trust and the amount to be specified under such election will be the maximum allowable under the *Income Tax Act* or the *Income Tax Act* of any province or territory, as the case may be.

### **15.12 Canadian Income Tax**

- 1) Canada will make best efforts to exempt any income earned by the Trust from federal taxation, and Canada will take into account the measures that it took in similar circumstances for the class action settlements addressed in section 81 (1) (g.3) of the *Income Tax Act*.
- 2) The Parties agree that the payments to Class Members, including payments of any income earned on the Settlement Funds, are in the nature of personal injury damages and are not taxable income and Canada will make best efforts to obtain a technical interpretation to the same effect from the Income Tax Rulings Directorate of the Canada Revenue Agency.

## **ARTICLE 16 – AUDITORS**

### **16.01 Appointment of Auditors**

On the recommendation of the Settlement Implementation Committee, the Court will appoint Auditors with such powers, rights, duties and responsibilities as the Court directs. On the recommendation of the Parties, or of their own motion, the Court may replace the Auditors at any time. Without limiting the generality of the foregoing, the duties and responsibilities of the Auditors will include:

- (a) to audit the accounts for the Trust in accordance with generally accepted auditing standards on an annual basis;
- (b) to provide the reporting set out in Article 15.08;
- (c) to audit the financial statements of the Administrator in relation to the administration of this Agreement; and
- (d) to file the financial statements of the Trust together with the Auditors' report thereon with the Court and deliver a copy thereof to Canada, the Settlement Implementation Committee, the Administrator, and the Trustee within sixty (60) days after the end of each financial year of the Trust.

### **16.02 Payment of Auditors**

Canada will pay the reasonable fees, disbursements, and other costs of the Auditors in accordance with Article 3.04, as approved by the Court.

## **ARTICLE 17 - LEGAL FEES**

### **17.01 Class Counsel Fees**

- 1) Canada will pay Class Counsel the amount approved by the Court, plus applicable taxes, in respect of their legal fees and disbursements for the prosecution of the Actions to the date of the Settlement Approval Hearing, together with advice to Class Members regarding the Agreement and Acceptance, over and above the Settlement Funds. Subject to Article 12.02(1), Canada will also pay the reasonable legal fees of Class Counsel for their work on or for the Settlement Implementation Committee and the Investment Committee. A disagreement between the Parties over legal fees will not prevent the Parties from signing this Agreement. Canada and Class Counsel will participate in mediation if they are unable to agree upon the legal fees, to be presided over by a mediator to be agreed upon by and between Canada and Class Counsel or, failing agreement, appointed by the Court. In the event that Canada and Class Counsel are not able to agree upon legal fees during mediation, fees will be subject to the approval of the

Court, subject to appeal. Canada will have standing to make submissions to the Court regarding such fees.

- 2) No such amounts will be deducted from the Settlement Funds.
- 3) Class Counsel will not charge individual Class Members any amounts for legal services rendered in accordance with this Agreement. Such assistance to Class Members will not be considered to constitute or be cause for a conflict.

### **17.02 Ongoing Legal Services**

- 1) Following the Implementation Date, responsibility for representing the interests of the Class as a whole (as distinct from assisting a particular Class Member or Class Members, as reasonably requested) will pass from Class Counsel to the Settlement Implementation Committee, and Class Counsel will have no further obligations in that regard.
- 2) In addition to the legal services provided to the Settlement Implementation Committee in Article 12, Counsel SIC Members may also respond to legal inquiries from Class Members about this Agreement that are beyond the training and/or competence of the navigational support services provided by the Administrator. Legal fees for such services are subject to Article 12.02(1).

### **17.03 Ongoing Fees**

- 1) The Settlement Implementation Committee will maintain appropriate records of payment, fees and disbursements for Ongoing Legal Services.
- 2) The Settlement Implementation Committee may submit the bills relating to Counsel SIC Members to Canada for payment on a monthly basis, subject to Article 12.02(1).
- 3) The Settlement Implementation Committee will seek approval of its accounts from the Court on an annual basis.

## **ARTICLE 18 - GENERAL DISPUTE RESOLUTION**

- 1) Where a dispute arises regarding any right or obligation under this Agreement (“**Dispute**”), the parties to the Dispute will refer the Dispute to confidential mediation in accordance with the ADR Chambers Mediation Rules. If the parties to the Dispute cannot agree on a mediator, they may ask the Court to appoint one (the “**Dispute Resolution Process**”).
- 2) If the Dispute cannot be resolved through the Dispute Resolution Process, it can be referred to the Court for determination.

- 3) The costs of dispute resolution amongst members of the Settlement Implementation Committee, in accordance with the Dispute Resolution Process, or by referral to the Court, may be paid out of the Trust Fund in circumstances where deemed appropriate by the mediator or the Court.
- 4) Where Canada is a party to a matter referred to the Dispute Resolution Process, the mediator will have the discretion to award costs of the mediation against any party.
- 5) For greater certainty, this Article will not apply to disputes regarding Claimants in the Claims Process, including eligibility for membership in the Class, extension of the Claims Deadline for an individual Class Member or compensation due to any Class Member.

## **ARTICLE 19 - TERMINATION AND OTHER CONDITIONS**

### **19.01 Termination of Agreement**

- 1) Except as set forth in Article 18.01(2), this Agreement will continue in full force and effect until all obligations under this Agreement are fulfilled and the Court orders that the Agreement has terminated.
- 2) Notwithstanding any other provision in the Agreement, the following provisions will survive the termination of this Agreement:
  - (a) Article 10.01 – Releases
  - (b) Article 21 – Confidentiality
  - (c) Article 23 – Immunity

### **19.02 Amendments**

Except as expressly provided in this Agreement, no amendment may be made to this Agreement unless agreed to by the Parties in writing, and if the Court has issued the Settlement Approval Order, then any amendment will only be effective once approved by the Court. A material amendment to the Schedules hereto will require the Court's approval.

### **19.03 Non-Reversion of Settlement Funds**

No amount or earned interest that remains after the distribution of the Settlement Funds will revert to Canada. Such amounts will instead be further distributed in accordance with the distribution protocol designed and approved for the Claims Process.



#### **19.04 No Assignment**

- 1) No compensation payable, in whole or in part, under this Agreement to a Class Member can be assigned, charged, pledged, hypothecated and any such assignment, charge, pledge, or hypothecation is null and void except as expressly provided for in this Agreement.
- 2) Unless the Court orders otherwise pursuant to a protocol to be approved, no person may collect a fee or disbursement from a Claimant for completing Claims Forms or providing Supporting Documentation.
- 3) Except for directions made pursuant to Article 6.14, any payment to which a Claimant is entitled will solely be made to the Claimant, and not in accordance with any directions to the contrary, unless the Court has ordered otherwise.
- 4) Any payments in respect of a Deceased Class Member or a Person Under Disability will be made in accordance with Article 14.
- 5) In the absence of fraud, any amount paid pursuant to this Agreement is not refundable in the event that it is later determined that the Claimant was not entitled to receive or be paid all or part of the amount so paid, but the Claimant may be required to account for any amount that they were not entitled to receive against any future payments that they would otherwise be entitled to receive pursuant to this Agreement.

#### **ARTICLE 20 – WARRANTIES AND REPRESENTATIONS ON SIZE OF THE CLASS**

- 1) The Parties acknowledge that, in preparing the Joint Report, the Experts relied on data from ISC to determine the Estimated Removed Child Class Size. Both the Plaintiffs and Canada were aware that parts of this data came from third parties, was incomplete and, in some cases, inaccurate. The Parties, including Canada, took account of the nature of this data in entering into this Agreement.
- 2) Canada warrants and represents that it provided to the Experts all of the data in Canada's possession relating to the Estimated Removed Child Class Size. However, Canada does not represent or warrant the accuracy of the data it provided nor the accuracy of the Joint Report of the Experts.

## **ARTICLE 21 – CONFIDENTIALITY**

### **21.01 Confidentiality**

Any information provided, created, or obtained in the course of implementing this Agreement will be kept confidential and will not be used for any purpose other than this Agreement unless otherwise agreed by the Parties.

### **21.02 Destruction of Class Member Information and Records**

- 1) Subject to Article 21.02(2), two (2) years after completing the payment of all compensation under this Agreement, the Administrator will destroy all Class Member information and documentation in its possession, unless a Class Member or their Estate Executor or estate Claimant specifically requests the return of such information within the two-year period. Upon receipt of such request, the Administrator will forward the Class Member information as directed. Before destroying any information or documentation in accordance with this Article, the Administrator will prepare an anonymized statistical analysis of the Class in accordance with the Claims Process.
- 2) Prior to the destruction of the records, the Administrator will create and provide to Canada a list showing the Approved Class Member's: (i) name, (ii) Indian registration number, (iii) Band or First Nation affiliation, (iv) birthdate, (v) class membership, and (vi) amount and date of payment with respect to each compensation payment made. Notwithstanding anything else in this Agreement, this list must be retained by Canada in strict confidence and can only be used in a legal proceeding or settlement where it is relevant to demonstrating that a Claimant received a payment under this Agreement.
- 3) The destruction of records in the possession or control of Canada is subject to the application of any relevant provincial or federal legislation such as the *Privacy Act*, the *Access to Information Act*, the *Personal Information Protection and Electronic Documents Act* and the *Library and Archives of Canada Act*.

### **21.03 Confidentiality of Negotiations**

Save as may otherwise be agreed between the Parties, the undertaking of confidentiality as to the discussions and all communications, whether written or oral, made in and surrounding the negotiations leading to the AIP and this Agreement continues in force. The Parties expressly agree that the AIP and the materials and discussions related to it are inadmissible as evidence to determine the meaning and scope of this Agreement, which supersedes the AIP.

## **ARTICLE 22 – COOPERATION**

### **22.01 Cooperation on Settlement Approval and Implementation**

Upon execution of this Agreement, the Representative Plaintiffs in the Actions, the AFN, Class Counsel, and Canada will make best efforts to obtain approval of this Agreement by the Court and to support and facilitate participation of Class Members in all aspects of this Agreement. If this Agreement is not approved by the Court, the Parties will negotiate in good faith to attempt to cure any defects identified by the Court but will not be obligated to agree to any material amendment to the Agreement executed by the Parties.

### **22.02 Public Announcements**

Upon the issuance of the Settlement Approval Order, the Parties will release a joint public statement announcing the settlement in a form to be agreed by the Parties and, at a mutually agreed time, will make public announcements in support of this Agreement. The Parties will continue to speak publicly in favour of the Agreement as reasonably requested by any Party.

### **22.03 Termination of Judicial Review Application and Appeal**

- 1) Within five (5) business days of the Implementation Date, Canada and the AFN will file a Notice of Discontinuance with the Federal Court in relation to their respective judicial review applications of 2022 CHRT 41 on a without costs basis.
- 2) Within five (5) business days of the Implementation Date, Canada will file a Notice of Discontinuance with the Federal Court of Appeal for Court File No. A-290-21 on a without costs basis.

### **22.04 Training and Education**

The Parties will ensure that the Administrator, members of the Settlement Implementation Committee, members of the Investment Committee, the Trustee, the Third-Party Assessor, and any other individuals responsible to act in the best interests of the Class Members receive First Nations specific cultural competency training and training regarding the history of colonialism including residential schools and this proceeding with a particular focus on the egregious impacts of systemic discrimination on children, youth, families and Nations. Training will also be provided on the CHRT Proceeding.

### **22.05 Involvement of the Caring Society**

- 1) The Caring Society will have standing to make submissions on any applications brought for Court approval by the Settlement Implementation Committee or the Parties pertaining to the administration and implementation of this Agreement after the Settlement Approval

hearing, including approval of the Claims Process and distribution protocol to the extent that issues impact the rights of the following classes:

- (a) Removed Child Class Members placed off-Reserve as of and after January 1, 2006, and Removed Child Family Class Members in relation to Children placed off-Reserve as of and after January 1, 2006, including deceased members of these classes;
  - (b) Kith Child Class Members and Kith Family Class Members, including deceased members of these classes; and
  - (c) Jordan's Principle Class Members and Jordan's Principle Family Class Members, including deceased members of these classes.
- 2) The Caring Society is entitled to notice and receipt of all applications brought in relation to matters in Article 22.05(1) in advance of any hearing before the Court in keeping with the timeline requirements under the *Federal Courts Rules*.

#### **ARTICLE 23 – IMMUNITY**

Canada and its counsel, Class Counsel, AFN and its in-house counsel, the Administrator, the Settlement Implementation Committee and its Members and counsel, the Investment Committee, and the Third-Party Assessor will be released from, be immune to, and be held harmless from any and all claims, counterclaims, suits, actions, causes of action, demands, damages, penalties, injuries, setoffs, judgments, debts, costs, expenses (including legal fees and expenses) or other liabilities of every character whatsoever by any reason, except fraud relating to the Actions and to this Agreement, and this Agreement will be a complete defence.

#### **ARTICLE 24 – PUBLIC APOLOGY**

Upon execution of this Agreement, Canada will propose to the Office of the Prime Minister that the Prime Minister make a public apology for the discriminatory conduct underlying the Class Members' claims and the past and ongoing harm it has caused.

#### **ARTICLE 25 – COMPLETE AGREEMENT**

- 1) This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and cancels and supersedes any prior or other understandings and agreements between or among the Parties with respect thereto, including the AIP. There

are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between or among the Parties with respect to the subject matter hereof other than as expressly set forth or referred to in this Agreement.

- 2) The Parties acknowledge that the Caring Society has entered into separate minutes of settlement with the AFN and Canada regarding the Compensation Orders.

*[The remainder of this page is left intentionally blank. Signature pages follow.]*

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

**CANADA, as represented by the Attorney General of Canada**

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

**BY:**

\_\_\_\_\_  
(Authorized signatory)  
Attorney General of Canada  
for the defendant in Moushoom Action, AFN Action and Trout Action  
Print Name: \_\_\_\_\_  
Position: \_\_\_\_\_

\_\_\_\_\_  
(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: \_\_\_\_\_

# SCHEDULES

**Schedule A: Order dated  
February 23, 2023 on Opt-  
Out Deadline**



Federal Court



Cour fédérale

**Date: 20230223**

**Docket: T-402-19**

**T-141-20**

**T-1120-21**

**Ottawa, Ontario, February 23, 2023**

**PRESENT: The Honourable Madam Justice Aylen**

**Docket: T-402-19**

**BETWEEN:**

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

**Plaintiffs**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Defendant**

**Docket: T-141-20**

**AND BETWEEN:**

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

**Plaintiffs**

**and**

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

**Defendant**

**Docket: T-1120-21**

**AND BETWEEN:**

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

**Plaintiffs**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Defendant**

**ORDER**

**UPON INFORMAL MOTION** made by the Plaintiffs, in writing, for an order extending the deadline previously set by this Court for opting out of these actions for a further one hundred and eighty days (180) days;

**CONSIDERING** that the Defendant consents to the relief sought;

**THIS COURT ORDERS that:**

1. The period of time in which class members may opt-out of these actions is extended to August 23, 2023.
2. Class Counsel and the Administrator shall post this Order on the websites dedicated to these actions.
3. There shall be no costs of this motion.

**"Mandy Aylen"**

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Judge

**Schedule B: Order dated  
August 11, 2022 on  
Appointment of  
Administrator**

Federal Court



Cour fédérale

**Date: 20220811**

**Docket: T-402-19**

**T-141-20**

**T-1120-21**

**Ottawa, Ontario, August 11, 2022**

**PRESENT: The Honourable Madam Justice Aylen**

**CLASS PROCEEDING**

**BETWEEN:**

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

**Plaintiffs**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Defendant**

**T-141-20**

**BETWEEN:**

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

**Plaintiffs**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**T-1120-21**

**BETWEEN:**

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

**Plaintiffs**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Defendant**

**ORDER**

**UPON MOTION** by the Plaintiffs, heard at a special sitting of the Court on August 8, 2022, for:

- (a) An order approving the proposed notice plan for the distribution of the Notices of Certification and Settlement Approval Hearing, substantially in the form appended as Schedule “A” to the Notice of Motion [Notice Plan];
- (b) An order that Canada pay the reasonable costs of giving notice in accordance with the Notice Plan;

- (c) An order appointing Deloitte LLP as the administrator for notice, opt-out and the claims implementation in the proposed settlement in these class proceedings;
- (d) An order that Canada pay the reasonable costs and disbursements of the administrator in accordance with the terms of the proposed settlement agreement, including subject to Canada's right to dispute the reasonableness of such costs and disbursements; and
- (e) Such further and other relief as this Honourable Court may deem just and appropriate;

**CONSIDERING** the Plaintiffs' motion record and the submissions of counsel for the parties at the hearing of the motion;

**AND CONSIDERING** that the Defendant consents to the relief sought;

**AND CONSIDERING** that the Court is satisfied that the Notice Plan meets the requirements of Rules 334.32 and 334.34 and shall constitute good and sufficient service upon class members of the certification of these proceedings and of the Settlement Approval Hearing;

**AND CONSIDERING** that the provision of notice to class members of any approval of the Settlement Agreement will be the subject of a future notice plan to be submitted to the Court for approval;

**AND CONSIDERING** that the Court is satisfied that the balance of the relief sought should be granted;

**THIS COURT ORDERS that:**

1. The Notices of Certification and Settlement Approval Hearing shall be delivered in the manner set out in the Notice Plan attached hereto as Schedule “A” commencing immediately upon the issuance of this Order and continuing until the commencement of the Settlement Approval Hearing.
2. The Defendant shall pay the reasonable costs of giving notice in accordance with the Notice Plan, including the costs of translation of the notices.
3. In the event that the proposed settlement agreement is approved, the notice plan for the distribution of the notice of approval of the proposed settlement shall be the subject of a future order of this Court.
4. Deloitte LLP is hereby appointed as the Administrator in the proposed settlement of these class proceedings.
5. The Defendant shall pay the reasonable costs and disbursements of the Administrator in accordance with the terms of the proposed settlement agreement, including subject to the Defendant’s right to dispute the reasonableness of such costs and disbursements.
6. The Administrator shall, within ninety days of the date of this Order, provide the parties with a detailed estimate of the anticipated costs in an illustrative budget based on expected claims/services for the administration during the first year of the administration including the anticipated costs of case setup, monthly

overhead, claim intake, claim processing, support centre and distribution and communication/noticing.

7. There shall be no costs of this motion.

"Mandy Aylen"

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Judge



## SCHEDULE “A”

### NOTICE PLAN

#### (Certification and Settlement Approval Hearing)

#### First Nations Child and Family Services, Jordan’s Principle and Trout Essential Services

### I. BACKGROUND

#### A. Parties

The parties to this matter are as follows:

- (a) Xavier Moushoom, Jeremy Meawasige by his litigation guardian, Jonavon Joseph Meawasige, and Jonavon Joseph Meawasige (together, the “**Moushoom Plaintiffs**”);
- (b) Assembly of First Nations (“**AFN**”), Ashley Dawn Louise Bach, Karen Osachoff, Melissa Walterson, Noah Buffalo-Jackson by his litigation guardian, Carolyn Buffalo, Carolyn Buffalo, and Dick Eugene Jackson also known as Richard Jackson (together, the “**AFN Plaintiffs**”);
- (c) AFN and Zacheus Joseph Trout (together, the “**Trout Plaintiffs**”), and;
- (d) Her Majesty the Queen in Right of Canada (“**Canada**”) (collectively, “**Parties**”).

#### B. Background of the litigation

The Moushoom Plaintiffs commenced a Federal Court class action against Canada over the discriminatory provision of child and family services and essential services to First Nations dating back to April 1, 1991. The AFN Plaintiffs subsequently commenced a similar action in the Federal Court. The Moushoom Plaintiffs and AFN Plaintiffs later agreed to advance the matter jointly and cooperatively in the best interests of the class.

The Federal Court ordered the consolidation of the claims in July 2021 (“**Consolidated Action**”). The Federal Court also ordered the separate prosecution of the claims relating to delays, denials or gaps in the provision of essential services between 1991 and 2007, and therefore the Trout Plaintiffs commenced an action in July 2021 (“**Trout Action**”, and together with the Consolidated Action, “**Actions**”).

The Federal Court certified the Consolidated Action on November 26, 2021, and the Trout Action on February 11, 2022.

### **C. The Class**

The Actions and the Final Settlement Agreement affect several groups of people (*i.e.*, the class) as follows: The Removed Child Class, The Removed Child Family Class, The Jordan’s Principle Class, The Jordan’s Principle Family Class, The Trout Child Class, and The Trout Family Class. These classes were defined in the certification orders.

## **II. FACTORS AFFECTING NOTICE DISSEMINATION**

This plan is designed to notify the class members of certification and the settlement approval hearing in a trauma-informed and culturally sensitive manner, and to provide them with the opportunity to see, read, or hear the notice of certification and settlement approval hearing, understand their rights, and respond if they choose to.

The following factors inform the dissemination method needed to achieve an appropriate notice effort: class size, location of class members, the literacy and education level of class members, and the languages spoken by class members.

### **A. Targeted Groups**

#### **i. First Nations Composition of the Class**

The Actions solely concern First Nations people amongst the Indigenous population (not Inuit or Métis).<sup>1</sup> Given the publicity that has surrounded these class proceedings and the overlapping proceedings before the Canadian Human Rights Tribunal, many class members are expected to be aware of the proceedings.

## ii. Class Size

The class is primarily a subset of the First Nations population in Canada. The 2016 Census<sup>2</sup> shows that 977,235 individuals identified as being First Nations.<sup>3</sup> The more recent 2021 Census relating to First Nations people is expected to be released on September 21, 2022.<sup>4</sup> Relevant information that becomes available in the 2021 Census will form part of any ongoing notice dissemination at that time, and for the next phase of notice in this proposed settlement further particularized below.

The Parties retained experts to estimate the size of the Removed Child Class. They estimated the size of the Removed Child Class to be 115,000 based on historical data on First Nations children whose out of home care was funded by Indigenous Services Canada between April 1991 and March 2022. The number of Removed Child Family Class members is unknown. The Office of the Parliamentary Budget Officer has estimated that on average there may be 1.5 parents or grandparents per First Nations child.<sup>5</sup>

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<sup>1</sup> With the exception of non-common law caregiving parents and caregiving grandparents, where a First Nations condition does not exist in the class definition and those class members may be from the general population or non-First Nations Indigenous persons.

<sup>2</sup> Statistics Canada. 2018. *Canada [Country]* (table). *Aboriginal Population Profile*. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. <http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/index.cfm?Lang=E> (accessed July 24, 2022).

<sup>3</sup> Statistics Canada. 2018. *Canada [Country]* (table). *Aboriginal Population Profile*. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. <http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/index.cfm?Lang=E> (accessed July 24, 2022).

<sup>4</sup> See Statistics Canada: <https://www12.statcan.gc.ca/census-recensement/2021/ref/prodserv/release-diffusion-eng.cfm>.

<sup>5</sup> Compensation for the delay and denial of services to First Nations children, February 23, 2021, page 7: <[https://publications.gc.ca/collections/collection\\_2021/dpb-pbo/YN5-219-2021-eng.pdf](https://publications.gc.ca/collections/collection_2021/dpb-pbo/YN5-219-2021-eng.pdf)>.

The information on the size of the Jordan's Principle Class and the Trout Child Class is far less precise because reliable data does not exist. One method of arriving at a rough estimate has been to extrapolate the number of individual service requests accepted under the current Jordan's Principle service delivery program to the past. An extrapolation of this form with a pre-COVID quarter of individual requests since Canada has been found to be compliant with Jordan's Principle yields an estimated Jordan's Principle Class size of between 58,385 and 69,728—with a conservatively high median class size estimate of 65,000 class members. On the same basis as above, the Trout Child Class can be roughly estimated at 104,000 for the period of 1991-2007, by the simple multiplication of the median Jordan's Principle Class size estimate by the longer time period of 1991-2007. The number of Jordan's Principle Family Class and Trout Family Class members is unknown.

### **iii. Place of Residence**

Class members are located throughout Canada, on and off First Nations reserves, within First Nations communities including northern and remote communities, and within the non-Indigenous population. Those residing outside of a First Nation community are in rural and urban areas. A percentage of the class members are incarcerated or currently reside outside of Canada.

The 2016 census data reported that 334,385 First Nations people were living on reserves.<sup>6</sup> This compares to 642,845-First Nations people living outside reserves.<sup>7</sup>

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<sup>6</sup> Statistics Canada. 2018. *Canada [Country]* (table). Aboriginal Population Profile. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. <http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/index.cfm?Lang=E> (accessed July 24, 2022).

<sup>7</sup> Statistics Canada. 2018. *Canada [Country]* (table). *Aboriginal Population Profile*. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. <http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/index.cfm?Lang=E> (accessed July 24, 2022).

Ontario, British Columbia and Alberta are home to the largest First Nations populations in Canada, although most of the First Nations population in Canada is generally concentrated in the prairie provinces and the West Coast. The following chart shows the First Nations population in Canada, by province/territory:<sup>8</sup>

<b>Location</b>	<b>First Nations</b>
Canada	977,235
Ontario	236,680
Quebec	92,655
British Columbia	172,520
Alberta	136,585
Manitoba	130,505
Saskatchewan	114,570
Nova Scotia	25,830
New Brunswick	17,575
Newfoundland and Labrador	28,375
Prince Edward Island	1,875
Northwest Territories	13,185
Nunavut	190
Yukon	6,690

The population reporting of First Nations identity is prevalent both in urban centres and northern and remote communities. Metropolitan areas, such as Toronto, Winnipeg, Edmonton and Vancouver contain large populations of First Nations who live outside reserves: The following chart shows the number of First Nations residents of some metropolitan areas:<sup>9</sup>

<b>Metropolitan Area</b>	<b>Population of First Nations</b>
Toronto	27,805
Ottawa-Gatineau	17,790

<sup>8</sup> Statistics Canada. 2018. Canada [Country] (table). Aboriginal Population Profile. 2016 Census. Statistics Canada. Ottawa. Released Date modified October 2, 2020.

<http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/index.cfm?Lang=E> (accessed July 24, 2022).

<sup>9</sup> Statistics Canada. 2018. *Canada [Ontario]* (table). Aboriginal Population Profile. 2016 Census. Statistics Canada. Ottawa. Released Date modified October 2, 2020. <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/hltfst/abo-aut/Table.cfm?Lang=Eng&T=103&S=102&O=D&RPP=25> (please note to toggle between provinces at the link in order to find the related data for the cities) (accessed July 26, 2022).

Sudbury	7,395
Thunder Bay	11,340
Hamilton	9,695
London	8,725
St. Catherines - Niagara	6, 815
Winnipeg	38,700
Edmonton	33,885
Calgary	17,955
Vancouver	35,765
Victoria	9,935
Prince George	7,050
Kelowna	5,235
Kamloops	6,340
Montreal	16,130
Quebec City	6,230
Saskatoon	15,775
Regina	13,150
Prince Albert	9,045
Halifax	7,955

#### **iv. Anticipated Age of Class Members**

Communications will be attentive to different experiences amongst class members to ensure awareness and understanding of all class members. The class members targeted for notice are mostly expected to be youths and young adults.

The experts retained by the Parties estimated that about 44,000 of the Removed Child Class were under the age of majority as of March 2022. Insofar as the Family of Removed Child Class members is concerned: parents and grandparents are expected to be almost exclusively adults. Siblings are expected to include both minors and adults. As such, the class is mostly young but includes several generations of First Nations: children, youth, parents, and grandparents.

The Jordan's Principle Class is likewise expected to include minors for a number of years given that the end date of that class affecting children is November 2, 2017. The Trout Child Class, which ended in 2007, is expected to consist almost entirely of adults. The age range of the

Jordan's Principle Family Class and the Trout Family Class is expected to be similar to the Removed Child Family Class.

In general terms, the 2016 Census showed a national trend toward a younger First Nations population. The following figure shows a breakdown of the age distribution. The age composition of the First Nations population in Canada is generally as follows:<sup>10</sup>

Age	First Nation Population
Total	977,230
0 to 24 years	456,530
25 to 34 years	136,920
35 to 44 years	116,625
45 to 54 years	117,945
55 to 64 years	87,135
65 years and over	62,075
65 to 74 years	43,610
75 years and over	18,460

#### v. Literacy and Education Level

Literacy and education levels are expected to vary widely amongst the class members. While a significant number of class members did not complete a high school diploma, some have received higher university education. This is further exacerbated by the wide age range of class members, which often interrelates with education levels.

Amongst the general population of First Nations people of 20 years or older, 196,305 individuals had not obtained a high school or equivalent level of education. Conversely, 603,305 individuals

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<sup>10</sup> Statistics Canada, 2016 Census of Population, Statistics Canada Catalogue no. 98-400-X2016156. Ottawa. Released Date modified: June 19, 2019. (accessed July 24, 2022). [https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/details/page.cfm?Lang=E&Geo1=PR&Code1=01&Data=Count&SearchText=Canada&SearchType=Begins&B1=All&C1=All&SEX\\_ID=1&AGE\\_ID=1&RESGEO\\_ID=1](https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/details/page.cfm?Lang=E&Geo1=PR&Code1=01&Data=Count&SearchText=Canada&SearchType=Begins&B1=All&C1=All&SEX_ID=1&AGE_ID=1&RESGEO_ID=1)

had obtained that level of education. In percentage terms, this represents 32% and 68% of the First Nations population, respectively.<sup>11</sup>

#### **vi. Languages**

The majority of First Nations people (826,295 individuals) have identified English or French as their mother tongue, while approximately 166,120 individuals have identified a First Nations language as their mother tongue.<sup>12</sup> These numbers represent approximately 83% of the First Nations population and 17% of the population, respectively. Those First Nations who identified an Indigenous language as a mother tongue were more likely to reside on reserve, at 74%.<sup>13</sup>

The Federal Court has ordered that the long-form notice, short-form notice and the opt-out form in this case be translated into four First Nations languages: Cree, Dene, Mi'kmaq, and Ojibway. These four languages were spoken as the mother tongue of the largest number of First Nations. Cree has the largest number of speakers, at 89,550, with Ojibway, Dene, and Mi'kmaq, following at 34,835, 9,950, and 7,010, respectively.<sup>14</sup>

### **III. NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING**

#### **A. The two phases of notice in the settlement, and the focus of this notice plan**

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<sup>11</sup> Statistics Canada. 2018. Canada [Country] (table). Aboriginal Population Profile. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. (accessed July 26, 2022); Statistics Canada. 2018. Canada [Country] (table). Aboriginal Population Profile. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. (accessed July 26, 2022).

<sup>12</sup> Statistics Canada. 2018. Canada [Country] (table). Aboriginal Population Profile. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. (accessed July 26, 2022); Statistics Canada. 2018. Canada [Country] (table). Aboriginal Population Profile. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. (accessed July 26, 2022).

<sup>13</sup> Statistics Canada. 2018. Canada [Country] (table). Aboriginal Population Profile. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. (accessed July 26, 2022).

<sup>14</sup> Statistics Canada. 2018. Canada [Country] (table). Aboriginal Population Profile. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. (accessed July 26, 2022); Statistics Canada. 2018. Canada [Country] (table). Aboriginal Population Profile. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. Released July 18, 2018. (accessed July 26, 2022).



The Parties anticipate that notice will be given to the class members in two phases. **This plan only deals with the first phase of notice distribution**, further described below, while the distribution of notice regarding the process to claim compensation will be subject to a further plan specific to that purpose and subject to judicial approval at a future date. The two phases of notice are as follows:

- (a) **Phase I**: This phase, which is the subject of this notice plan, disseminates the notices already approved by the Court. The approved notices adopt a trauma-informed, culturally and age-appropriate method of communication. They announce that the Actions have been certified pursuant to the Federal Court's certification orders. The notices advise class members of their legal rights as a result of certification, including the binding nature of the Actions on all class members who do not opt out of the settlement. Further, the notices advise of the procedures and deadlines whereby those who wish to opt-out of the settlement may do so. This phase also describes the proposed Final Settlement Agreement, the dates and location for the settlement approval hearing, where and how to access information about the settlement, as well as providing information on how to object, if desired. The Parties expect many class members to already be aware of the Actions and the proposed settlement, and for class members to have significant interest in the settlement approval hearing.
  
- (b) **Phase II**: This phase will be the subject of a further notice plan and includes a more extensive notice plan that is in effect for a longer period. Notice in the second phase announces the approval of the settlement by the Federal Court

and outlines the settlement and its benefits. It also provides information on how to access the claims process. Given that there are multiple distinct classes, this phase will provide instructions and direct class members to dedicated support to assist in clarifying eligibility, filling out claim forms, and obtaining supporting documentation. The Phase II notice plan will be presented to the Court at a later date.

## **B. Phase I Notice Plan**

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

In its order certifying the Consolidated Action on November 26, 2021, the Court stated: “The form of notice of certification, the manner of giving notice and all other related matters shall be determined by separate order(s) of the Court.” The Federal Court’s certification order in the Trout Action dated February 11, 2022 was to the same effect.

The Federal Court approved the short-form and long-form notice of certification and settlement approval hearing on June 24, 2022. This included a short-form notice, a long-form notice, and an opt-out form. The Federal Court’s June 24, 2022 order and its schedules is enclosed as **Schedule “A”** to this notice plan.

In this phase of notice, class members are advised that the Federal Court has certified the Actions. The dissemination of this notice triggers the opt-out period and the opt-out right of the class members. The short-form notice and the long-form notice approved by the Federal Court provide accessible information to class members about their options, the implications of opting out of the Actions, and how they can opt out should they choose to.

Any class member who wishes to be excluded from the Actions needs to complete the opt-out form approved by the Federal Court on June 24, 2022 and submit the completed opt-out form to the administrator before the expiry of the six-month deadline from the date on which notice is disseminated to the class pursuant to this notice plan.

Class members who have already commenced a proceeding that raises the common questions of law or fact set out in the certification orders are excluded from the Actions and cannot benefit from the Final Settlement Agreement if those class members do not discontinue such individual proceedings before the opt-out deadline. Class members who do not opt out of the Actions will be bound by the results achieved in the Actions, including the terms of the Final Settlement Agreement if approved by the Federal Court.<sup>15</sup>

**ii. Notice of Settlement Approval Hearing**

The notices advise of the date that the court has set for the settlement approval hearing and provide specific information about the hearing in order to allow class members to attend in person, participate, or to file objections to the settlement in advance. In this case, class members will have virtual attendance options in order to maximize opportunity for class members across the country to participate in the settlement approval process.

Class members who wish to object to the settlement must send their written objections to the administrator so that the comments can be compiled and sent to the Federal Court in advance of the hearing. The Federal Court can only approve or deny the Final Settlement Agreement and cannot change the terms of the Final Settlement Agreement.

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<sup>15</sup> Rule 344.21 of the *Federal Courts Rules*, SOR/98-106.

#### **IV. NOTICE PLAN DELIVERY**

The approved short-form and long-form notices direct class members to the extensive mental health and wellness supports that the Parties have negotiated as part of the Final Settlement Agreement. Those supports are summarized in “Schedule C: Framework for Supports for Claimants in Compensation Process” to the Final Settlement Agreement, which is enclosed hereto as **Schedule “B”**.

Given the vulnerability of many class members, notice must take into account that concepts such as opt-out may not be easily understandable to some class members and a real risk exists that such class members think they need to opt out in order to receive compensation under the Final Settlement Agreement. Therefore, the approved notices seek to explain the implications of opting out and the approval of the Final Settlement Agreement clearly and in plain language.

The distribution of notice in this phase is expected to start immediately upon approval by the Federal Court of this notice plan and the appointment of the proposed administrator, both of which are necessary in order to disseminate notice to the class.

The proposed method of disseminating Phase I notice includes four approaches described below. These approaches will enable Phase I notice to reach class members for the purposes of certification and settlement approval.

The notice plan for Phase II will be developed and submitted to the Court for approval at a later date.

##### **A. Direct Communication with Class Members**

During the course of this litigation, class counsel have maintained a website dedicated to this case where class members can obtain information, learn how to contact class counsel and register for updates. This website is: <https://www.sotosclassactions.com/cases/first-nations-youth/>. The

AFN has also created a website where class members can obtain information and register for updates: <http://www.fnchildcompensation.ca/>.

Through these websites, thousands of interested class members and organizations assisting class members have signed up for updates. The information provided includes name, email address, phone number (optional) and mailing address (optional). Further, when class members contact class counsel by phone and do not have an email, their information and mailing address is recorded and entered into the database.

This information enables direct communication with such class members by email or regular mail, where no email exists. This direct communication will include the short-form and long-form notice of certification and settlement approval under this notice plan.

Further, class counsel and the AFN have travelled and established communication channels with First Nations child and family service providers and First Nations leadership across Canada. Class counsel have presented on the Actions before First Nations child and family stakeholders in British Columbia and Quebec and attended related gatherings in Saskatchewan. The AFN consulted with First Nations leadership to provide updates of the status on the negotiations, the structure of the settlement, and the substance of the Final Settlement Agreement at approximately 50 such briefings across the country. Further meetings and presentations are planned and invitations to provide information sessions across communities are always welcomed.

#### **B. Dissemination by the Assembly of First Nations**

The AFN is a national advocacy organization that works to advance the collective aspirations of First Nations individuals and communities across Canada on matters of national or international nature and concern. The AFN hosts two Assemblies a year where mandates and directives for the

organization are established through resolutions directed and supported by elected Chiefs or proxies from member First Nations across Canada.

The AFN is guided by an Executive Committee consisting of an elected National Chief and Regional Chiefs from each province and territory. Representatives from five national councils (Knowledge Keepers, Youth, Veterans, 2SLGBTQQA+ and Women) support and guide the decisions of the Executive Committee.

The AFN is thus connected to 634 First Nation communities in the country and will circulate the short-form notice and long-form notice to class members through those communications channels.

### **C. Dissemination through Social Media**

Given that the targeted population is generally younger, the notices will be disseminated through targeted advertising on social media, including Facebook and Instagram. These media enable the selection of criteria that ensure that the notices are brought to the attention of individuals and organizations with an interest in the subject matter of this litigation through an efficient, relevant, and trauma-informed process.

Given that internet accessibility will vary across the regions and provinces, the use of social media will complement, where possible, the other dissemination approaches specified in this notice plan.

### **D. Circulation Through Indigenous Media**

Notice will also be published in the following Indigenous newspapers/publications upon approval and may be repeated in some or all of these media during the opt-out period, which is six months from the date of dissemination of notice: First Nations Drum, The Windspeaker, Mi'kmaq Maliseet Nations News, APTN National News.

## V. CONCLUSION

The notice plan for the Actions recognizes the scope and breadth of the class members, particularly in terms of age of the target, individual experiences, geographic distribution, language representation and familiarity with traditional and social media means of communication.

The notice plan seeks a proportionate, multi-faceted, culturally appropriate, relevant and trauma-informed approach to notice dissemination, backed by extensive mental health and wellbeing supports available to class members.

As ordered by the Federal Court, the notice plan is intended to commence at least one month prior to the settlement approval hearing date set by the court. As approved by the Federal Court, the notices provide sufficient information on certification and the Final Settlement Agreement in plain language so that class members understand how the Final Settlement Agreement may affect them. The approved notices also specify the terms upon which judicial approval is being sought, providing critical information on the settlement approval hearing itself in terms of logistics and class members' right to participate or file an objection to the proposed settlement.

# **Schedule C: Provincial and Territorial Ages of Majority**



<b>Province / Territory</b>	<b>Age of Majority</b>	<b>Governing Statute / Provision</b>
Alberta	18 years old	<p>“Every person attains the age of majority and ceases to be a minor on attaining the age of 18 years”</p> <p>Source: <i>Age of Majority Act</i>, RSA 2000, c A-6, s 1</p>
British Columbia	19 years old	<p>“From April 15, 1970, (a) a person reaches the age of majority on becoming age 19 instead of age 21, and (b) a person who on that date has reached age 19 but not 21 is deemed to have reached majority on that date”</p> <p>Source: <i>Age of Majority Act</i>, RSBC 1996, c 7, s 1(1)</p>
Manitoba	18 years old	<p>“Every person attains the age of majority, and ceases to be a minor, on attaining the age of 18 years”</p> <p>Source: <i>The Age of Majority Act</i>, CCSM 1988, c A-7, s 1</p>
New Brunswick	19 years old	<p>“A person attains the age of majority and ceases to be a minor on attaining the age of 19 years”</p> <p>Source: <i>Age of Majority Act</i>, RSNB 2011, c 103, s 1(1)</p>
Newfoundland And Labrador	19 years old	<p>“Every person who attains the age of 19 years (a) attains the age of majority; and (b) ceases to be a minor person”</p> <p>Source: <i>Age Of Majority Act</i>, SNL 1995, c A-4.2, s 2</p>
Northwest Territories	19 years old	<p>“Every person attains the age of majority, and majority ceases to be a minor, on attaining the age of 19 years”</p> <p>Source: <i>Age of Majority Act</i>, RSNWT 1988, c A-2, s 2</p>

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

**Schedule D: Certification  
Order dated November 26,  
2021 in Court File Nos. T-  
402-19 and T-141-20 (2021  
FC 1225)**

Federal Court



Cour fédérale

**Date: 20211126**

**Docket: T-402-19  
T-141-20**

**Citation: 2021 FC 1225**

**Ottawa, Ontario, November 26, 2021**

**PRESENT: The Honourable Madam Justice Aylen**

**CLASS PROCEEDING**

**BETWEEN:**

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

**Plaintiffs**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Defendant**

**BETWEEN:**

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

**Plaintiffs**

**and**

**HER MAJESTY THE QUEEN**

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

**Defendant**

**ORDER AND REASONS**

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

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

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

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

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

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

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

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

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

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

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

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

(e) there is a representative plaintiff or applicant who

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

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

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

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

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

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

e) il existe un représentant demandeur qui :

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

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

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

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

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

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

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

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

**CONSIDERING** that:

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

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

(b) As summarized by the Plaintiffs in their written representations, at its core, the Consolidated Statement of Claim alleges that:

(i) The Crown has knowingly underfunded child and family services for First Nations children living on Reserve and in the Yukon, and thereby prevented child welfare service agencies from providing adequate Prevention Services to First Nations children and families.

(ii) The Crown has underfunded Prevention Services to First Nations children and families living on Reserve and in the Yukon, while fully funding the costs of care for First Nations children who are removed from their homes and placed into out-of-home care, thereby creating a perverse incentive for First Nations child welfare service agencies to remove First Nations children living on Reserve and in the Yukon from their homes and place them in out-of-home care.

(iii) The removal of children from their homes caused severe and enduring trauma to those children and their families.



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

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

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

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

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

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

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

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

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

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

**THIS COURT ORDERS that:**

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

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

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

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

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

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

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

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

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

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



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

(ii) If so, in what amount?

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

(i) If so, in what amount?

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

\_\_\_\_\_  
"Mandy Ayles"

Judge

**ANNEX A**

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

**FEDERAL COURT  
PROPOSED CLASS PROCEEDING**

**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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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,

	<b>service(s) or product(s)?</b>		<b>delay or disruption</b>

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

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

My mailing address is:

\_\_\_\_\_

**Street name, Apartment #**

\_\_\_\_\_

**City, Province**

\_\_\_\_\_

**Postal Code**

\_\_\_\_\_

**Telephone Number(s)**

\_\_\_\_\_

**Email address**

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

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

## **SCHEDULE "D"**



**INDIVIDUAL DAMAGE ASSESSMENT FORM**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Schedule E: Certification  
Order dated February 11,  
2022 in Court File No. T-  
1120-21 (2022 FC 149)**

Federal Court



Cour fédérale

**Date: 20220211**

**Docket: T-1120-21**

**Citation: 2022 FC 149**

**Ottawa, Ontario, February 11, 2022**

**PRESENT: The Honourable Madam Justice Ayles**

**CLASS PROCEEDING**

**BETWEEN:**

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

**Plaintiffs**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Defendant**

**ORDER AND REASONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) there is a representative plaintiff or applicant who

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

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

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

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

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

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

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

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

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

e) il existe un représentant demandeur qui :

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

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

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

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

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

**CONSIDERING that:**

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

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

(c) With respect to the second element of the certification analysis (namely, whether there is an identifiable class of two or more persons), the test to be applied is whether the Plaintiffs have defined the class by reference to objective criteria such that a person can be identified to be a class member without reference to the merits of the action [see *Hollick v Toronto (City of)*, 2001 SCC 68 at para 17]. I am satisfied that the proposed class definitions for the Child Class and Family Class (as set out below) contain objective criteria and that inclusion in each class can be determined without reference to the merits of the action.

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

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



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

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

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

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

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

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

**THIS COURT ORDERS that:**

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

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

(a) **“Child Class”** means all First Nations individuals who were under the applicable provincial/territorial age of majority and who, during the Class Period, did not receive (whether by reason of a denial or a gap) an essential public service or product relating to a confirmed need, or whose receipt of said service or product was delayed, on grounds, including but not limited to, lack of funding or lack of jurisdiction, or as a result of a service gap or jurisdictional dispute with another government or governmental department.

(b) **“Class”** means the Child Class and Family Class, collectively.

(c) **“Class Counsel”** means Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Co., Nahwegahbow Corbiere and Fasken Martineau Dumoulin LLP.

(d) **“Class Members”** mean all persons who are members of the Class.

(e) **“Class Period”** means the period of time beginning on April 1, 1991 and ending on December 11, 2007.

(f) **“Family Class”** means all persons who are brother, sister, mother, father, grandmother or grandfather of a member of the Child Class.

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

- i. Individuals who have Indian status pursuant to the *Indian Act*, R.S.C., 1985, c.I-5 [*Indian Act*];
  - ii. Individuals who are entitled to be registered under section 6 of the *Indian Act* at the time of certification;
  - iii. Individuals who met band membership requirements under sections 10-12 of the *Indian Act*, such as where their respective First Nation community assumed control of its own membership by establishing membership rules and the individuals were found to meet the requirements under those membership rules and were included on the Band List; and
  - iv. Individuals, other than those listed in sub-paragraphs (i)-(iii) above, recognized as citizens or members of their respective First Nations whether under agreement, treaties or First Nations’ customs, traditions and laws by the date of trial or resolution otherwise of this action.
3. This proceeding is hereby certified as a class proceeding against the Defendant pursuant to Rule 334.16(1) of the *Federal Courts Rules*.
  4. The Class shall consist of the Child Class and Family Class, all as defined herein.

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

iv. If so, was the violation of section 15(1) of the *Charter* justified under section 1 of the *Charter*?

v. Are *Charter* damages an appropriate remedy?

(b) Was the Crown negligent towards the Class? More specifically:

i. Did the Crown owe the Class a duty of care?

ii. If so, did the Crown breach that duty of care?

(c) Did the Crown breach its obligations under the *Civil Code of Québec*? More specifically:

i. Did the Crown commit fault or engage its civil liability?

ii. Did the Impugned Conduct result in losses to the Class and if so, do such losses constitute injury to each of the members of the Class?

iii. Are members of the Class entitled to claim damages for the moral and material damages arising from the foregoing?

(d) Did the Crown owe the Class a fiduciary duty? If so, did the Crown breach that duty?

(e) Can the amount of damages payable by the Crown be determined partially under Rule 334.28(1) of the *Federal Courts Rules* on an aggregate basis? If so, in what amount?

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

“Mandy Aylen”  
\_\_\_\_\_  
Judge

**ANNEX A**

20

Court File No. T-1120-21

**FEDERAL COURT  
PROPOSED CLASS PROCEEDING**

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

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

Plaintiffs

and

**THE ATTORNEY GENERAL OF CANADA**

Defendant

**LITIGATION PLAN**

September 24, 2021

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## I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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



**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].

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

**Contact Information**

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

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

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

By email: **[INSERT EMAIL]**

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

By mail: **[INSERT ADDRESS]**

## **SCHEDULE "B"**

**OPT OUT FORM**

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

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

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

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

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Address

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

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email

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

## **SCHEDULE "C"**

**CLAIM FORM**

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

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

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

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

Child Class

Family Class

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

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

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

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


My mailing address is:

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

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

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

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

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

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

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



## **SCHEDULE "D"**

**INDIVIDUAL DAMAGE ASSESSMENT FORM**

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

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

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

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

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

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

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

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

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

# **Schedule F: Framework of Essential Services**

# First Nations Child and Family Services and Jordan's Principle Class Action

## Framework of Essential Services

### Who can claim compensation for not receiving an essential service from Canada or receiving it after delay?

A claim for compensation can be made if:

1. An essential service was needed by the claimant; and
2. The claimant or someone on behalf of the claimant asked Canada for an essential service that was denied or delayed in being provided. Or, the claimant needed the essential service, but it was not available or accessible to them (there was a gap in services), even if they did not ask for the service.

### What is an “essential service”?

A service is considered essential if the claimant's condition or circumstances required it and the delay in receiving it, or not receiving it at all, caused material impact on the child.

Examples of types and categories of essential services are attached as an appendix to this Framework.

If the claimant needed a service that is not on the list of examples, it may still be considered an essential service under the settlement if not receiving the service had a material impact on the child.

### What timeframe is covered?

Claimants are covered by this settlement if they needed the essential service as a child at any time from April 1, 1991 to November 2, 2017.

### How to make a claim?

1. If the claimant requested a service from Canada that was delayed or denied, they may provide a copy of the letter, email or other document submitted to Canada requesting the service. If they do not have a copy, they may provide a statutory declaration confirming that they requested the service.
2. If the claimant did not request a service from Canada but required an essential service that was not available or accessible, they need to provide confirmation from a professional saying what essential service they needed, why it was essential and when they needed it, either through historical documentation or contemporary confirmation by a professional.

Confirmation can be in two forms depending on the answer to the following question:

## **Does the claimant have any kind of historical document stating that an essential service was needed?**

If the answer is **YES**, please follow **Procedure A**.

If the answer is **NO**, please follow **Procedure B**.

### **Procedure A (to be completed if claimant has historical documentation confirming that an essential service(s) was/were needed)**

1. Complete the Claim Form (when available).
2. Provide copies of the historical documentation confirming that an essential service(s) was/were needed.
3. If the historical documentation lacks specifics on the confirmed need for the identified essential service, a professional may complete the Professional Confirmation of Essential Services Form.
4. Complete the questionnaire (when available).

### **Procedure B (to be completed if the claimant has NO historical documentation stating that an essential service(s) was needed.**

1. Complete the Claim Form (when available).
2. A professional completes the Professional Confirmation of Essential Services Form (when available).
3. Complete the questionnaire (when available).

## **What is historical documentation?**

Historical documentation refers to old documents such as a health record or an assessment conducted by a health, social care professional, educator, or other professional or individual with expertise and knowledge of the need for this essential service and/or support.

## **Is there help in claiming compensation?**

Yes. Once the claim form and other supporting documents are available, they will be released online at [www.fnchildcompensation.ca](http://www.fnchildcompensation.ca). Support in completing these forms will be available through the Administrator.

## Appendix – Examples of Essential Services

1. Some services provided by, or under the guidance and direction of, health, social care, and educational professionals who specialize in:
  - a) Recommending services and supports with activities of daily living and safety in the home, school and community (e.g., occupational therapists, *adapted feeding devices*)
  - b) Helping individuals with expressive and receptive language skills (e.g., speech and language pathologists, *augmentative and alternative communication*)
  - c) Helping individuals with movement of their hands, arms, and legs (e.g., physiotherapists, *mobility devices*)
  - d) Giving and interpreting hearing tests and recommending assistive devices related to hearing (e.g., assessment of hearing by audiologists, *hearing devices*)
  - e) Testing vision and recommending corrective eyewear (e.g., optometrists, *advising on eyewear*)
  - f) Teaching children with learning needs (e.g., special needs education teachers; supported child development consultants)
  - g) Promoting infant, early childhood or adolescent development<sup>1</sup> (e.g., infant development consultants, child and youth workers, or early childhood educators).
  - h) Conducting psychoeducational assessments, and provision of counselling (e.g., psychologists, social workers)
  - i) Addressing delayed or problematic behaviours (e.g., early childhood educators, behavioural specialists, child and youth workers, social workers,)
  - j) Recommending a specialized diet or nutritional intake (e.g., nutritionist, dietitian)
2. Equipment, products, processes, methods and technologies that are recommended in a cognitive assessment or individualized education plan.
3. Medical equipment, such as:
  - a) Equipment, products and technology used by people to assist with daily activities (e.g., environmental aids, including lifts and transfer aids and professional installation thereof)

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<sup>1</sup> Development refers to physical, social, cognitive, and mental health development

- b) Products and technology for personal indoor and outdoor mobility and transportation (e.g., mobility aids that include standing and positioning aids and wheelchairs)
  - c) Hospital bed
  - d) Medical equipment related to diagnosed illnesses (e.g., percussion vests, oxygen, insulin pumps, feeding tubes)
  - e) Prostheses and orthotics
  - f) Specialized communication equipment (e.g., equipment, products, and technologies that allow people to send and receive information that would otherwise be done verbally)
4. Medical transportation related to access to essential services, supports or products where the lack of transportation prevented access to the recommended service (e.g., people in remote/isolated, semi-isolated communities)
  5. Specialized dietary requirements
  6. Treatment for mental health and/or substance misuse, including inpatient treatment
  7. Oral health (excluding orthodontics), such as:
    - a. Oral surgery services, including general
    - b. Restorative services, including cavities and crowns
    - c. Endodontic services, including root canals
    - d. Dental treatment required to restore damage resulting from unmet dental needs
  8. Respite care
  9. Surgeries

# **Schedule G: Investment Committee Guiding Principles**



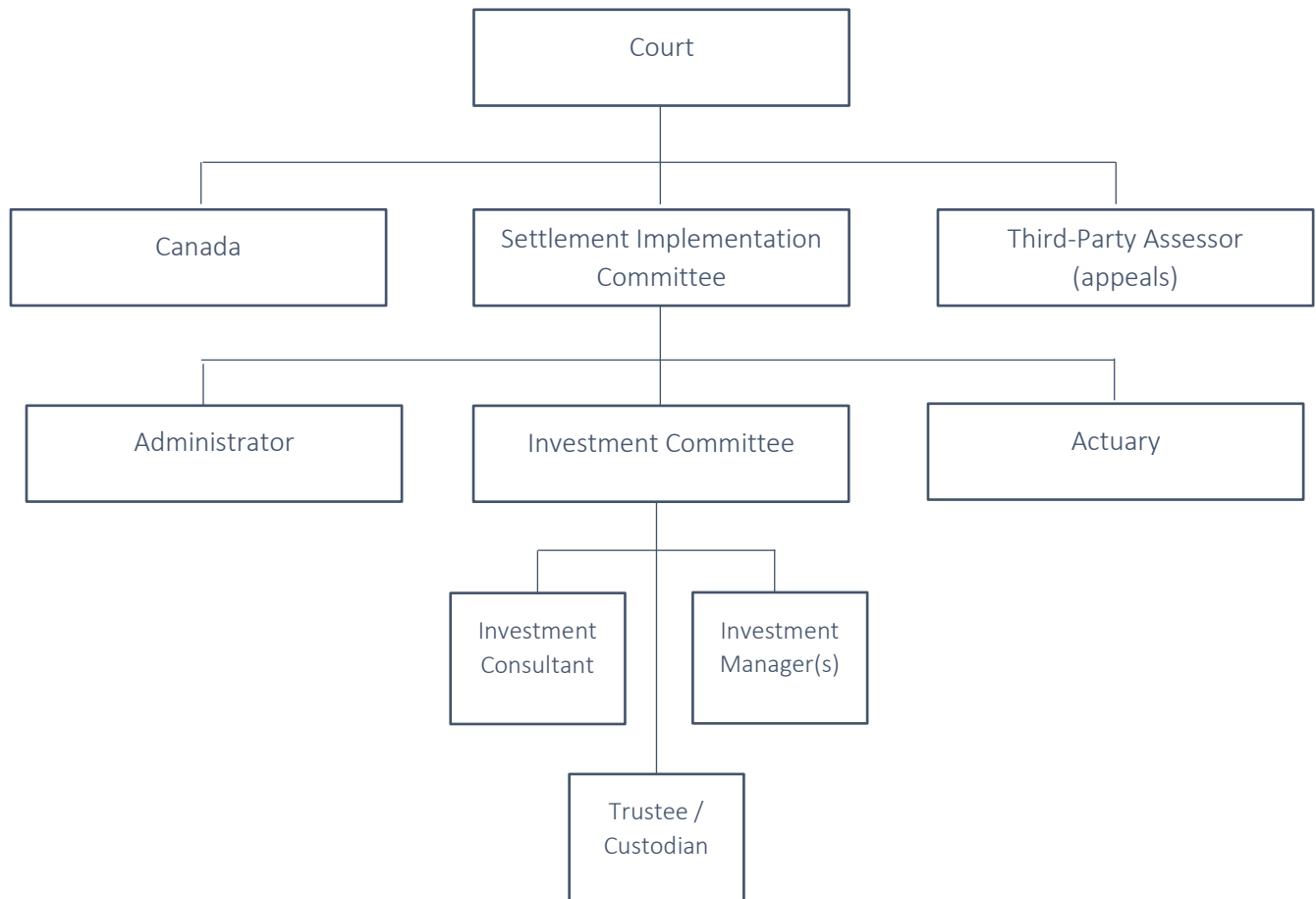
## SCHEDULE "G"

### Investment Committee Guiding Principles

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

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

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



3. **The Investment Committee should be guided by a statement of investment goals established by the Settlement Implementation Committee.** These goals should not be prescriptive of methods, but rather establish desired outcomes, with the implementation to achieve these outcomes assigned to the Investment Committee.
4. **The Investment Committee should be empowered, through its Terms of Reference to take the following actions:**
  - a. Establish, review and maintain a Statement of Investment Policies and Procedures, consistent with the investment goals established by the Settlement Implementation Committee;
  - b. Review investment goals and recommending changes to the investment goals to the Settlement Implementation Committee;
  - c. On advice from the Investment Consultant and the Actuary, review the asset mix of the Trust to ensure it is consistent with the Trust's return objectives and risk tolerances. As required, modify the asset allocation to ensure the Trust remains prudently invested and diversified to achieve its long-term objectives.
  - d. Identify and recommend to the Settlement Implementation Committee an Investment Consultant and corporate trustee for the Fund and for an expenses fund, in the case that implementation expenses are pre-paid by Canada.
  - e. Determine the number of investment managers to use from time to time. Select and appoint investment manager(s), set the mandate for each investment manager, terminate investment manager(s) and/or rebalance the funds among the investment manager(s), all based on the advice of the Investment Consultant.
  - f. Periodically (bi-annually, annually, semi-annually, or quarterly) review the performance of the Investment Consultant, custodian and corporate trustee and report the results of the review to the Settlement Implementation Committee.
  - g. Engage the Investment Consultant to provide advice as considered appropriate from time to time.
  - h. Receive, review and approval of reports from the Investment Consultant, investment manager(s) and corporate trustee for the Fund.
  - i. Direct the Investment Consultant and/or investment manager(s) to implement any decisions of the Investment Committee.

- j. Delegate to the investment manager(s) such decisions regarding the investment of the Fund consistent with the Statement of Investment Policies and Procedures.
- k. Monitor compliance of the Trust's investment and investment procedures with the Statement of Investment Policies and Principles.
- l. With assistance from the Investment Consultant, monitor the investment performance of the Fund as a whole. Monitor and review all aspects of the performance and services of the Investment Manager(s) including style, risk profile and investment strategies.
- m. Monitor risks to the Fund with respect to the overall compensation plan.
  - i. With assistance from the Investment Consultant, conduct an annual risk review of the Fund in conjunction with the review by the Settlement Implementation Committee and at such other times as the Investment Committee considers prudent.
  - ii. Implement such risk mitigation strategies as considered prudent and report results to the Settlement Implementation Committee.
- n. Provide assistance to the Auditor as required.
- o. Make recommendations to the Settlement Implementation Committee regarding any Court Approved Protocols and policies that affect the investments of the Fund, including adoption, amendment and termination.
- p. Receive periodic reports from the Actuary regarding expected future compensation payments (amount and timing) and based on advice from the Investment Consultant, determine whether any changes to the Statement of Investment Policies and Procedures is necessary or if any changes to the mandates given to the investment manager(s) is necessary.
- q. Take direction from and being responsive to the Settlement Implementation Committee on a timely basis.

# **Schedule H: Opt-Out Form**

**First Nations Child and Family Services and Jordan's Principle Class Action**

**OPT-OUT FORM**

**TO: Deloitte LLP, Claims Administrator**  
**Mail: PO Box 7030, Toronto, ON, M5C 2K7**  
**Email: fnchildclaims@deloitte.ca**  
**Fax: 416-815-2723**  
**Phone: 1-833-852-0755**

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email

This notice must be delivered on or before **August 23, 2023** to be effective.

# **Schedule I: Framework for Supports for Claimants in Compensation Process**

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

The parties to the compensation settlement negotiations regarding First Nations Child and Family Services (FNCFS) and Jordan's Principle recognize the need to provide trauma-informed, culturally safe, and accessible health and cultural supports to class members as they navigate the compensation process, as well as supports they may require following the claims process and over the course of their lives. Given that First Nations partners have emphasized the cultural appropriateness of the [Indian Residential Schools Resolution Health Support Program](#) (IRS-RHSP), the presented components are services that mirror the IRS-RHSP with special consideration for the needs of children, youth and families. The approach would seek to build from and emphasize the best practices and innovation demonstrated through the IRS-RHSP and support the First Nations mental wellness continuum and continuity of services for class members. Funding provided to First Nations service providers under the IRS-RHSP does not exclude other community members from accessing cultural and emotional supports. This approach would continue in the current claims process. Fee for service mental health counselling is available to class members regardless of their eligibility for Non-Insured Health Benefits.

Components for the approach are based on the following considerations:

- Ensuring services are aligned with the [First Nations Mental Wellness Continuum Framework](#) (FNMWCF), which is widely endorsed and developed with First Nations partners, to guide culture as foundation and holistic navigation supports.
- Supporting the largest class action client cohort to date, and unique given the focus on children and youth and/or adverse childhood experiences.
- Recognizing the generational nature of this compensation, mental health and cultural supports will need to be available over the duration of the claims process and flexible to accommodate differing timelines on compensation and support needs as class members reach the age of majority. The approach outlined in this annex builds on the existing network of service providers to enable access to a continuity of services, including First Nations community-based programs, mental wellness teams, Non-Insured Health Benefits counselling and other services.
- Supporting, including funding, regional First Nations partners and First Nations governments to implement supports in the claims process.
- Mental health and cultural supports provided by service providers under contribution agreement will be accessible to all impacted community members.
- Adult class members will be appropriately served by the existing network of health and cultural supports with enhancements to capacity.
- Children and youth will be better served by specialized trauma-informed services, provided through existing First Nations organizations that are already serving children, youth, and families.
- Lessons learned from the Missing and Murdered Indigenous Women and Girls (MMIWG) Inquiry are that client utilization ramped up more quickly than in the first years of the IRS-RHSP. This is likely due to increased awareness and availability of services.
- There is a need for a specific line with chat/text function and case management supports for class members on a confidential basis to easily navigate access to trauma-informed services supported by culturally relevant assessments and comprehensive case management.
- The role of case management is to prevent class members having to repeat their stories and minimize re-traumatization.
- Collaboration with Correctional Services of Canada (CSC), provincial and territorial correctional services and youth detention centers (YDC) is needed to ensure services are provided to class members that are in custody.
- Collaboration with a variety of educational providers (community based, federal, and provincial and territorial) is needed to ensure that services are provided/referred in a way that is accessible to school-aged children, including leveraging expertise in existing youth programs and mental wellness teams that work closely with schools.

**Guiding principles for building options:**

PRINCIPLES	DESCRIPTION
<p><b>Child &amp; youth focus, competent service</b></p>	<p>Healthy child [and youth] development is a key social determinant of health and is linked to improved health outcomes in First Nations families and communities. Successful services for Indigenous children and youth include programs that: are holistic, community-driven and owned; build capacity and leadership; emphasize strengths and resilience; address underlying health determinants; focus on protective factors; incorporate Indigenous values, knowledge and cultural practices; and meaningfully engage children, youth, families and the community (FNMWCF, p. 16 &amp; <a href="#">Considerations for Indigenous child and youth population mental health promotion in Canada</a>). Creating safe and welcoming environments where First Nations children, youth and families are assured their needs will be addressed in a timely manner is essential. Child development expertise, neuro-diverse services and other considerations must be accounted for.</p>
<p><b>Client-centred care within holistic family and community circle/context</b></p>	<p>Services and supports build on individual, family and community strengths, considers the wholistic needs of the person, [family and community] (e.g., physical, spiritual, mental, cultural, emotional and social) and are offered in a range of settings (Honouring Our Strengths, p. 41). Services are accessible regardless of status eligibility and place of residence. Services consider neuro-diversity, especially in the case of children and youth.</p>
<p><b>Trauma-informed, Child development-informed</b></p>	<p>Trauma-informed care involves understanding, recognizing, and responding to the effects of all types of trauma experienced as individuals at different development stages of life and understands trauma beyond individual impact to be long-lasting, transcending generations of whole families and communities. A trauma-informed care approach emphasizes physical, psychological and emotional safety for both consumers and providers, and helps survivors (individuals, families, and communities) rebuild a sense of control and empowerment. Trauma-informed services recognize that the core of any service is genuine, authentic and compassionate relationships. With trauma-informed care, communities, service providers or frontline workers are equipped with a better understanding of the needs and vulnerabilities of First Nations clients affected by trauma (FNMWCF: Implementation Guide, p. 81).</p>
<p><b>Provision of culturally safe assessments</b></p>	<p>Assessment frameworks, tests, and processes must be developed from an Indigenous perspective, including culturally appropriate content (Thunderbird Partnership Foundation's <i>A Cultural Safety Toolkit for Mental Health and Addiction Workers In-Service with First Nations People</i>).</p>
<p><b>Provision of coordinated &amp; comprehensive continuum of services (i.e. awareness of other programs &amp; services)</b></p>	<p>Active planned support for individuals and families to find services in the right element of care transition from one element to another and connect with a broad range of services and supports to meet their needs. A comprehensive continuum of essential services includes: Health Promotion, Prevention, Community Development, Education, Early Identification and Intervention, Crisis Response, Coordination of Care and Care Planning, Withdrawal Management, Trauma-informed Treatment, Support and Aftercare (Honouring Our Strengths, p.3 &amp; FNMWCF, p. 45). The Continuum of Services will aim to prevent class members needing to repeat their stories.</p>
<p><b>Enhanced care coordination &amp; planning</b></p>	<p>Ensure timely connection, increased access, and cultural relevancy [and safety] across services and supports. It is intended to maximize the benefits achieved through effective planning, use, and follow-up of available services. It includes collaborative and consistent communication, as well as planning and monitoring among various care options specific to individual's holistic needs. It relies upon a range of individuals to provide ongoing support to facilitate access to care (Honouring Our Strengths, p. 60 &amp; FNMWCF, p. 17).</p>
<p><b>Culturally competent workforce through ongoing self-reflection</b></p>	<p>Awareness of one's own worldviews and attitudes towards cultural differences, including both knowledge of and openness to the cultural realities and environments of the individuals served. A process of ongoing self-reflection and organizational growth for service providers and the system as a whole to respond effectively to First Nations people (Honouring Our Strengths, p. 8).</p>



PRINCIPLES	DESCRIPTION
<b>Culturally-informed and sustainable workforce: long-term development of First Nations service providers</b>	Education, training and professional development are essential building blocks to a qualified and sustainable workforce of First Nations service providers through long-term approaches, whereby ensuring service continuity. Building and refining the skills of the workforce can be realized by ensuring workers are aware of what exists through both informal and formal learning opportunities, supervision, as well as sharing knowledge within and outside the community (FNMWCF, p. 48).
<b>Community-based multi-disciplinary teams (i.e. Mental Wellness Teams)</b>	Grounded in culture and community development, multi-disciplinary teams are developed and driven by communities, through community engagement and partnerships. It supports an integrated approach to service delivery (multi-jurisdictional, multi-sectoral) to build a network of services for First Nations people living on and off reserve (FNMWCF, p. 52, Honouring Our Strengths, p. 79). This approach could link with, or build within, navigation supports for class members to assess their eligibility and access the claims process.
<b>Community-based programming</b>	Comprehensive, culturally relevant, and culturally safe community-based services and supports are developed in response to community needs. Community-based programs considers all levels of knowledge, expertise and leadership from the community (FNMWCF, p. 44).
<b>Flexible service delivery</b>	Services are developed to embrace diversity and are flexible, responsive, accessible and adaptable to multiple contexts to meet the needs of First Nations peoples, family, and community across the lifespan (FNMWCF, p. 45). There will need to be special consideration for remote communities.

**Component 1: Service Coordination and Care Teams approach for supports to claimants**

Elements	FNMWCF Alignment
<ul style="list-style-type: none"> <li>• Interdisciplinary Care Teams for class members to support coordinated, seamless access to services and supports, wherever possible.</li> <li>• Service Coordinators housed in First Nations organizations across the country to exercise case management role and pull assigned team leads for administrative, financial literacy and health and cultural supports (including professional oversight/supervision when necessary) depending on the class member’s needs. Service Coordinators would not be delivering the services themselves but acting as the central point of contact for class members.</li> <li>• Care Teams are based on partnerships between various local/regional organizations (e.g., First Nations financial institutions, IRS-RHSP providers, peer support networks, etc.).</li> <li>• The Final Settlement Agreement would indicate what the base standard for Care Team services must include and the description of Service Coordination functions.</li> <li>• Wherever possible, services are available in local/regional First Nations languages.</li> <li>• Community contact person to be identified as an extension of the sub-regional Care Team.</li> <li>• A national/regional network of Service Coordinators would be brought together for feedback and this would be shared with the Settlement Implementation Committee. These networks would also offer peer support, training, evaluation.</li> </ul>	<ul style="list-style-type: none"> <li>• Effective and innovative way to increase access to and enhance the consistency of services; outreach, assessment, treatment, counselling, case management, referral, and aftercare.</li> <li>• Culture as foundation.</li> <li>• Developed and driven by communities.</li> <li>• Based on community needs and strengths.</li> <li>• Effective model for developing relationships that support service delivery collaborations both with provinces and territories and between community, cultural, and clinical service providers.</li> </ul>

**Component 2: Bolstering existing network of health and cultural supports**

Elements	FNMWCF Alignment
<ul style="list-style-type: none"> <li>Leveraging and expanding the existing network of health and cultural supports housed within First Nations and Indigenous organizations, with an emphasis on child and family-focused supports, to provide trauma-informed care while class members navigate the settlement process. Some of the organizations would be part of the existing network of IRS-RHSP, MMIWG, day schools and other service providers, while others could be new providers, particularly to increase access for children and youth.</li> </ul>	<ul style="list-style-type: none"> <li>Enhanced flexible funding.</li> <li>Community development, ownership and capacity building.</li> <li>Self-determination.</li> <li>Culture as foundation.</li> <li>First Nations play key role in hiring of personnel to ensure personnel is recognized by their community.</li> <li>Communities can ensure service provision are culturally safe and appropriate.</li> </ul>

**Component 3: Access to mental health counselling to all class members**

Elements	FNMWCF Alignment
<ul style="list-style-type: none"> <li>Mental health counselling for individuals, families and communities is provided by regulated health professionals (i.e. psychologists, social workers, culture-based practitioners/ceremonialists) who are in good standing with their respective regulatory body and are enrolled with ISC. Access to counselling is not dependent on residence or Non-Insured Health Benefits eligibility.</li> <li>Counselling would be provided in health professionals, culture-based practitioners/ceremonialists private practice and are primarily paid by ISC on a fee-for-service basis. Counsellors can travel into communities and be reimbursed on a per diem basis.</li> <li>Virtual mental health counselling will be eligible, depending on regulatory college specifications.</li> </ul>	<ul style="list-style-type: none"> <li>Enhanced flexible funding.</li> <li>Community development, ownership and capacity building.</li> <li>Self-determination.</li> <li>To increase access to services to class members and their families as defined by First Nations partners.</li> </ul>

**Component 4: Support enhancement to the Hope for Wellness Help Line or dedicated line**

Elements	FNMWCF Alignment
<ul style="list-style-type: none"> <li>Dedicated support team for class action members that is accessible in First Nations languages, including: <ul style="list-style-type: none"> <li>Access to specialized child and youth expertise, including trauma-informed, child development perspective.</li> <li>Case management function.</li> <li>Referrals to dedicated Care Teams through Service Coordinators (component 1).</li> <li>Referral to information line relating to the application process.</li> </ul> </li> <li>Phone line employees will receive training on the class actions, the course of the CHRT complaint and other related legal, policy and social documentation.</li> </ul>	<ul style="list-style-type: none"> <li>Quality care system and competent service delivery.</li> <li>Increase access to necessary services.</li> </ul>

**Schedule J: Summary Chart  
of Essential Service, Jordan's  
Principle, and Trout  
Approach**

# Summary Chart of Essential Service, Jordan's Principle, and Trout Approach

CLASS	CRITERIA	COMPENSATION
<p><b>Jordan's Principle Class Members</b></p> <p><b>Essential Service Class (2007-2017)</b></p>	<ul style="list-style-type: none"> <li>Approved Essential Service Class Members who are determined to have experienced the highest level of impact (including pain, suffering or harm of the worst kind) in relation to a Delay, Denial or Service Gap pursuant to Schedule F, Framework of Essential Services, subject to piloting.</li> <li>The Parties' intention is that the way that the highest level of impact is defined, and the associated threshold set for membership in the Jordan's Principle Class, fully overlap with the First Nations children entitled to compensation under the Compensation Orders.</li> </ul>	<p>Minimum \$40,000*</p>
<p><b>Other Essential Service Class Members</b></p>	<ul style="list-style-type: none"> <li>All Other Approved Essential Service Class Members who do not meet the Jordan's Principle Class threshold of impact described above pursuant to Schedule F, Framework of Essential Services.</li> </ul>	<p>Up to but not more than \$40,000</p>

\* Plus applicable interest on \$40,000.

**Trout  
Child  
Class**

**(1991-  
2007)**

- Approved Trout Child Class Members who are determined to have experienced the highest level of impact (including pain, suffering or harm of the worst kind) in relation to a Delay, Denial or Service Gap pursuant to Schedule F, Framework of Essential Services, subject to piloting.

Minimum \$20,000

- All Other Approved Trout Child Class Members who do not meet the threshold of impact described above pursuant to Schedule F, Framework of Essential Services.

Up to but not more than \$20,000