

Cross Examination Questions for Dr. Valerie Gideon,
pursuant to her affidavit of July 6, 2022 on behalf of the
First Nations Child and Family Caring Society

Interpretation:

“**AFN**” means the Assembly of First Nations

“**Caring Society**” means the First Nations Child and Family Caring Society

“**Compensation Entitlement Order**” means *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2019 CHRT 39

“**Compensation Framework Order**” means *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2021 CHRT 7

“**Consolidated Class Action**” has the same meaning as set out in paragraph 14 of the Affidavit of Janice Ciavaglia, dated July 22, 2022

“**Estates Order**” means *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2020 CHRT 7

“**FNCFS Program**” means the First Nations Child and Family Services Program

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

“**ISC**” means Indigenous Services Canada

“**Tribunal**” means the Canadian Human Rights Tribunal

“**Your Affidavit**” means the Affidavit of Dr. Valerie Gideon, dated July 6, 2022

Questions:

1. Have you reviewed the affidavit of Janice Ciavaglia, dated July 22, 2022?
2. If so, do you agree with her evidence? If not, please indicate any disagreements or inaccuracies in her evidence.
3. As you state at paragraph 8 of Your Affidavit, the FSA commits \$20 billion for the payment of claims under both the class actions and the Tribunal’s compensation orders. What studies or calculations, if any, did Canada do to determine whether this amount would be sufficient to provide compensation to the victims of Canada’s discrimination as ordered by the Tribunal in this proceeding?
4. At paragraph 9 of Your Affidavit, you state “many issues were raised and canvassed, at time with input provided by outside experts”. What experts are you

referring to? Please indicate which party retained which expert and for what purpose?

5. At paragraph 10 of Your Affidavit, you state that you have reviewed the FSA and that you are familiar with its terms. Based on your review, please confirm whether the FSA guarantees that all eligible victims under the Compensation Entitlement Order and the Compensation Framework Order will receive the \$40,000 as ordered by the Tribunal?
6. If the FSA does not, please specify which victims identified by the Tribunal may not receive the guaranteed \$40,000 as ordered by the Tribunal and upheld by the Federal Court.
7. How much of the \$20 billion will go to the victims currently entitled to compensation under the Tribunal's Compensation Entitlement Order and Compensation Framework Order and how much is going to others?
8. What is your understanding as to how many victims currently eligible under the Tribunal's Compensation Entitlement Order and Compensation Framework Order will be excluded under the FSA from receiving the full \$40,000 ordered by the Tribunal?
9. At paragraph 248 of Affidavit of Janice Ciavaglia, Ms. Ciavaglia states "the AFN recognizes that the settlement is not an implementation of the Compensation Decision, but rather a complex negotiated resolution built upon the Compensation Decision's foundations". Do you agree that some eligible victims will not receive what has already been ordered by the Tribunal and upheld by the Federal Court?
10. What is Canada's message, in the spirit of reconciliation noted in paragraph 11 of Your Affidavit, to the victims eligible under the Compensation Entitlement Order and the Compensation Framework Order ordered by the Tribunal and confirmed by the Federal Court, who will not be eligible for the \$40,000 under the FSA?
11. Will Canada's messaging be different for children who are currently in out of home care but are not in ISC funded placements and therefore not eligible for compensation under the FSA?
12. At paragraph 11 of Your Affidavit, you state that "Canada recognizes the leadership role assumed by the AFN in ensuring that the interests and concerns of First Nations and the individual claimants are served by the proposed settlement agreement". What, if anything, did Canada do to specifically consult with First Nations rights holders regarding the FSA and the specific derivatizations from the Tribunal's Compensation Entitlement Order and the Compensation Framework Order?

13. Were unique considerations undertaken by Canada in relation to First Nations not served by the AFN or First Nations that have since voiced opposition to the AFN's position, including FSIN?
14. Is Canada prepared to pay those victims who will not receive the full \$40,000 under the FSA but would otherwise receive compensation under the Tribunal's Compensation Entitlement Order and the Compensation Framework Order any compensation for their suffering, as recognized by the Tribunal? If so, how much? If not, why not? If so, when will this compensation be paid?
15. At paragraph 12 of Your Affidavit, you state that "Canada's approach to the final settlement agreement was that the settlement would be designed by the Plaintiffs, rather than by Canada." What role, if any, will Canada take on in explaining the differences between the Tribunal's Compensation Entitlement Order and the Compensation Framework Order and the FSA to potential beneficiaries?
16. At paragraph 14 of Your Affidavit, you state that "Canada recognizes the importance to First Nations, and to Canada's objective of reconciliation, of a comprehensive and lasting settlement that provides compensation to those most affected by the discrimination found by the Tribunal". Do you agree that the FSA excludes removed children who are not in ISC funded placements?
17. What evidence can you point to that demonstrates that a child will suffer less harm if they are in a non-ISC funded placement?
18. Is it not the case that a child removed from their home, family and community has suffered as a result of Canada's discrimination found by the Tribunal, regardless of how their placement was financially supported?
19. How can you explain Canada's comfort with excluding these children?
20. Will all children defined under 4.2.5 and 4.2.5.1 of the Compensation Framework be eligible for compensation under the FSA? If not, please explain the differences in detail.
21. Will First Nations children with a meaningful connection to the First Nations community (as set out in 4.2.5.1 of the Compensation Framework) be eligible for compensation under the FSA? If not, please explain the differences in detail.
22. Does the FSA guarantee a minimum amount of compensation for eligible Jordan's Principle victims currently protected by the Compensation Entitlement Order and the Compensation Framework Order? If so, what is the guaranteed base payment for those victims?
23. What is the estimated number of eligible Jordan's Principle victims who may receive less than the ordered \$40,000 ordered by the Tribunal and upheld by the Federal Court?

24. What measures, if any, has Canada taken to consult with victims regarding the deviations in the FSA from the Compensation Entitlement Order and the Compensation Framework Order?
25. What supports and services will Canada offer to social workers who manage children in care files to assist in their decision-making regarding the opt-out?
26. Do you have any concerns regarding the short opt-out period, specifically in relation to children currently in care? If not, why not?
27. Can you describe the measures Canada has taken to ensure monies held in trust for children are safeguarded?
28. Article 13.02 of the Final Settlement Agreement states that “The Estates of the Removed Child Family Class, the Jordan’s Principle Family Class or the Trout Family Class are not eligible for compensation, unless a complete Claim was submitted by the member of the Removed Child Family Class, the Jordan’s Principle Family Class or the Trout Family Class prior to death.” Please confirm that all parents or caregiving grandparents who have died after suffering discriminatory practices outlined by the Tribunal will not be given \$40,000, as per the Tribunal’s orders?
29. Please confirm whether this also means that the estates of all parents or caregiving grandparents who died after the Tribunal made the Compensation Entitlement Order will also not receive compensation under the FSA?
30. Have you reviewed Dr. Blackstock’s letter dated January 21, 2022?
31. Are you aware that she received no formal written response from Canada?
32. Does Canada plan to respond to Dr. Blackstock’s letter?
33. The Notice of Motion seeks, among other things, “variation of the Tribunal’s Compensation Decision, Compensation Framework, and other compensation related orders, to conform to the proposed Final Settlement Agreement”. What specific variations is Canada requesting?
34. How do those variations line up with the principles set out by the Tribunal in the Compensation Entitlement Order and the Compensation Framework Order?
35. How do those variations take into consideration the best interests of the child?