

Cross Examination Questions for Janice Ciavaglia,  
pursuant to her affidavit of September 28, 2022,  
posed on behalf of the First Nations Child and Family Caring Society of Canada

Interpretation:

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

“**Certification Order**” means the November 26, 2021 Order of Justice Ayles of the Federal Court, granting certification in *Moushoom et al v Canada (Attorney General)* T-402-19 and *Assembly of First Nations et al v His Majesty the King* T141-20 and reported at 2021 FC 1225

“**FN-CIS**” means the First Nations/Canadian Incidence Study of Reported Child Abuse and Neglect

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

“**Jordan’s Principle claimant**” refers to individuals making claims as members of the Jordan’s Principle class under the *Moushoom* class action

“**ISC**” means Indigenous Services Canada

“**Moushoom** class action” means the consolidated Federal Court proceedings in *Moushoom et al v Canada (Attorney General)* T-402-19 and *Assembly of First Nations et al v His Majesty the King* T-141-20

“**Report**” means the report titled *Review of Data and Process Considerations for Compensation Under 2019 CHRT 39: Report prepared for Indigenous Services Canada*, prepared by Dr. Barbara Fallon and Dr. Nico Trocmé and attached as Exhibit J to the July 22, 2022 affidavit of Janice Ciavaglia and as Exhibit A to the July 22, 2022 affidavit of Janice Ciavaglia

“**Trout claimant**” refers to individuals making claims to compensation as members of the class under the *Trout* class action

“**Trout class action**” refers to the Federal Court proceedings in *Assembly of First Nations et al v Canada (Attorney General)* T-1120-21

1. You state at paragraph 5 of your affidavit that non-ISC funded non-kin placements were not included for the purpose of compensation or for the purposes of the release issued to Canada. Why is the definition of “Removed Child Class” in the Certification Order broader than this, covering “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”?
2. You say at paragraph 6(b) of your affidavit that the lack of provincial/territorial/agency records led to uncertainty regarding the number of individuals who could be entitled to compensation.

Did you or the AFN consider how the 2019 FN-CIS data or other data sources could close these gaps?

3. In paragraph (6)(e) you state that “[m]any of the children placed into alternative non-kin arrangements may still be entitled to benefits under the FSA...”. What evidence and data are you relying upon to support this comment?
4. Paragraph 6 of your affidavit generally raises difficulties related to the availability of records and data regarding non-ISC funded non-kin arrangements. Would you agree that Jordan’s Principle and Trout claimant who are eligible for compensation pursuant to the FSA will face similar difficulties related to records and data?
5. The Report attached to your September 28, 2022, affidavit as Exhibit “A” is dated January 31, 2022, while the Report attached to your July 22, 2022, affidavit as Exhibit “J” is dated February 2022. Can you explain the discrepancy in dates?
6. Paragraphs 11-14 of your affidavit deal with uncertainty regarding the number of individuals who were placed in non-ISC funded non-kinship placements. Do you agree that this is only a practical concern because the FSA places a cap of \$20 Billion on the amount that Canada should pay for compensation?
7. Paragraphs 16 and 17 raise difficulties in proving a claimant’s circumstances due to inconsistent approaches to record keeping in various jurisdictions. Paragraphs 21-22 note the difficulty of obtaining provincial/territorial records. Do you agree that Jordan’s Principle claimants will face similar obstacles in establishing they made a request for an essential service and are permitted to sign a statutory declaration to enable a claim for compensation?
8. Further to the question above, on what evidentiary basis do you conclude at paragraph 24 that a statutory declaration is insufficient for children in non-ISC funded placements?
9. In paragraph 27 you state that “[u]ltimately, First Nations leadership accepted that the FSA was in the best interests of their citizens and represented a fair compensation package.” How does your statement account for the resolution from the rights holders voting at the First Nations Summit who passed Resolution # 0622.23 on June 16, 2022 directing that:
  - a) The Assembly of First Nations (AFN) and Canada are not authorized to seek a reduction in the compensation amounts for eligible victims who are members of First Nations in British Columbia or modify the compensation framework agreement or the compensation entitlement order as set out in 2019 CHRT 39 and 2021 CHRT 7 without the free, prior and informed consent of First Nations in British Columbia;
  - b) The AFN and Canada are not authorized to make representations to the Tribunal or any other body implying the consent of First Nations in British Columbia without our free,

prior and informed consent on the Final Agreement and any motions, or any relief made to the Canadian Human Rights Tribunal or Federal Court

10. Again, in reference to paragraph 27, how do you account for the resolutions passed by the Federation of Saskatchewan Indigenous Nations raising serious concerns about the compensation FSA?
11. Are you aware that Regional Chief Woodhouse, AFN Legal Counsel Stuart Wuttke and Diane Corbiere presented on the FSA at the BC Assembly of First Nations Annual General Meeting meetings on or about September 22, 2022, for approximately 90 minutes?
12. Are you aware of any resolutions passed by the Chiefs in Assembly at the BC Assembly of First Nations Annual General Meeting regarding the FSA or regarding the long-term reform Agreement in Principle or negotiation of the long-term reform Final Settlement Agreement?