

**CANADIAN HUMAN RIGHTS TRIBUNAL**

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

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and  
ASSEMBLY OF FIRST NATIONS**

Complainants

- and -

**CANADIAN HUMAN RIGHTS COMMISSION**

Commission

- and -

**ATTORNEY GENERAL OF CANADA  
(Representing the Minister of Indigenous Services  
Canada)**

Respondent

- and -

**CHIEFS OF ONTARIO,  
AMNESTY INTERNATIONAL CANADA and  
NISHNAWBE ASKI NATION**

Interested Parties

**NOTICE OF MOTION FOR APPROVAL OF THE  
REVISED COMPENSATION FINAL SETTLEMENT AGREEMENT and  
CONSENT RELIEF OF THE ASSEMBLY OF FIRST NATIONS, FIRST NATIONS  
CHILD AND FAMILY CARING SOCIETY OF CANADA and ATTORNEY GENERAL  
OF CANADA**

**TAKE NOTICE THAT THE COMPLAINANTS AND RESPONDENT** make this motion in writing to the Canadian Human Rights Tribunal (the “**CHRT**”) located at 240 Sparks Street, 6th Floor West, Ottawa, Ontario, or the motion shall be heard on a date set by the CHRT.

**AND TAKE NOTICE THAT THIS CONSENT MOTION IS MADE** under Rule 3 of the Tribunal’s *Rules of Procedure (Proceedings Prior to July 11, 2021)* and is for orders under paragraph 53(2)(b) of the *Canadian Human Rights Act* (the “**CHRA**”) and under Rule 1(6) and

3(2)(d) and pursuant to the Tribunal's continuing jurisdiction in this matter. The proposed motion will be heard in person, subject to the Panel's direction for a hearing or further submissions.

**AND TAKE NOTICE THAT THIS CONSENT MOTION IS FOR** orders confirming that the revised First Nations Child and Family Services, Jordan's Principle and Trout Class Final Settlement Agreement (the "**Revised Agreement**"), made respecting Federal Court File Nos. T-402-19 (*Moushoom et al v Attorney General of Canada*), T-141-20 (*Assembly of First Nations et al v His Majesty the King*) and T-1120-21 (*Trout et al v Attorney General of Canada*) dated April 19, 2023, fully satisfies the Tribunal's Compensation Orders (2019 CHRT 39, 2020 CHRT 7, 2020 CHRT 15, 2021 CHRT 6, 2021 CHRT 7 and 2022 CHRT 41) in this proceeding. In particular, this consent motion is for the following relief:

1. a finding that the Revised Agreement fully addresses the derogations identified by the Tribunal by providing full compensation to all those entitled further to the Tribunal's Compensation Orders, including: First Nations children removed from their homes, families and communities; First Nations caregiving parents/grandparents who experienced multiple First Nations children removed from their homes, families, and communities; and, First Nations children eligible for compensation due to denials, unreasonable delays, and gaps in essential services due to Canada's discriminatory approach to Jordan's Principle.
2. an order clarifying 2021 CHRT 7 further to the Compensation Framework, providing that together caregiving parents and caregiving grandparents will be limited to \$80,000 in total compensation regardless of the number of sequential removals of the same child.
3. an order varying 2020 CHRT 7, providing that compensation of \$40,000 plus applicable interest shall be paid directly to the child(ren) of the deceased First Nations parent/caregiving grandparent on a pro rata basis where the estate of that deceased First Nations parent/caregiving grandparent would otherwise be entitled to compensation under 2020 CHRT 7. Where there are no surviving children, the compensation will flow to the estate of the deceased First Nations parent/caregiving grandparent;
4. an order clarifying 2019 CHRT 39, to confirm that First Nations parents (or caregiving First Nations grandparents) of Jordan's Principle survivors/victims must themselves have

experienced the highest level of impact (including pain, suffering or harm of the worst kind) in order to receive compensation (\$40,000 plus applicable interest) for their child's essential service denials, unreasonable delays and gaps.

5. an order declaring that the claims process set out in the Revised Agreement and further measures to be developed by class counsel in consultation with experts and approved by the Federal Court satisfies the requirements under the compensation framework as ordered in 2019 CHRT 39 and 2021 CHRT 7. This order supersedes the Tribunal's order in 2021 CHRT 7;
6. an order that, conditional upon the Federal Court's approval of the Revised Agreement, the Tribunal's jurisdiction over its Compensation Orders will end on the day that all appeal periods in relation to the Federal Court's approval of the Revised Agreement expire or, alternatively, on the day that any appeal(s) from the Federal Court's decision on the approval motion for the Revised Agreement are finally dismissed;
7. an order that the parties will report to the Tribunal, within 15 days of each of the following: (1) the result of the Federal Court's decision on approval of the Revised Agreement; (2) the expiry of the appeal period relating to the Federal Court's decision on the Revised Agreement or of an appeal having been commenced; and
8. such further and other relief as this Tribunal may permit.

**AND TAKE NOTICE THAT THE GROUNDS FOR THE MOTION ARE:**

***Tribunal proceedings and Compensation Orders***

1. In February 2007, the Assembly of First Nations (the "AFN") and the First Nations Child and Family Caring Society of Canada (the "Caring Society") filed a human rights complaint pursuant to s. 5 of the CHRA. The complaint alleged that the Government of Canada was discriminating against First Nations children and families based on race and national and/or ethnic origin by underfunding the First Nations Child and Family Services Program ("FNCFS Program") on-reserve and in the Yukon, and by failing to fully implement Jordan's Principle resulting in inequitable outcomes contrary to s. 5 of the CHRA.
2. On January 26, 2016, (2016 CHRT 2) the Tribunal substantiated the complaint brought by the AFN and Caring Society, determining that the FNCFS Program discriminated against First

Nations children and families contrary to s. 5 of the *CHRA*. The Tribunal ordered Canada to (i) cease its discriminatory practices and reform the FNCFS Program and *1965 Agreement* to reflect the findings in this decision; (ii) cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of Jordan's Principle; and (iii) take measures to prevent the recurrence of the discrimination found by the Tribunal (the "**Merits Decision**"). The Tribunal deferred all questions relating to compensation to victims, which had been raised by the parties in their submissions prior to the Merits Decision, to a later stage in the proceedings.

3. Per the Tribunal's direction, further submissions were made and heard on compensation on April 25 to 26, 2019.
4. On September 6, 2019, the Tribunal rendered its decision on compensation (2019 CHRT 39), wherein it ordered Canada to compensate and pay interest to: (i) certain victims of discrimination under the FNCFS Program who were removed from their homes, families and communities; (ii) their parents or caregiving grandparents and, (iii) certain victims of Canada's discriminatory application of Jordan's Principle. Included in the decision were First Nations children on-reserve and in the Yukon who were unnecessarily removed from their homes and communities from 2006 onwards (later confirmed to include children in out-of-home placements on January 1, 2006), and First Nations children who were denied the essential services needed, or received the essential services after an unreasonable delay, because the Government of Canada failed to meet the legal requirements of Jordan's Principle (the "**Compensation Entitlement Order**").
5. The Tribunal did not order Canada to immediately pay compensation plus interest to the particular victims set out in the Compensation Entitlement Decision. Instead, it ordered Canada to consult with the Caring Society and the AFN to develop a compensation distribution framework to arrive at a final order for compensation.
6. On October 4, 2019, Canada applied for judicial review of the Compensation Entitlement Decision and sought a stay of the Tribunal's proceedings. After the Federal Court dismissed the stay motion on November 27, 2019, Canada agreed to work with the Caring Society and the AFN on the framework.

7. On February 21, 2020, the Caring Society, the AFN, and Canada submitted a first draft compensation framework to the Tribunal (the “**Compensation Framework**”). From February 2020 to December 2020, the Caring Society, the AFN and Canada worked to finalize the Compensation Framework. While many aspects of the compensation framework were the result of negotiation and consensus, certain issues were resolved through adjudication before the Tribunal.
8. The Tribunal ultimately addressed the issues raised before it by the parties and issued further orders clarifying various elements of its Compensation Entitlement Order, including: the age of majority, eligibility for those who remained in care as at Jan 1, 2006 and the eligibility for the estates of deceased victims (2020 CHRT 7); the definitions of “service gap”, “essential service” and “unreasonable delay” for the purpose of Jordan’s Principle compensation (2020 CHRT 15); the definition of a “First Nations child” in relation to eligibility under Jordan’s Principle (2020 CHRT 20); and that compensation owing to minor beneficiaries and those without legal capacity be held in trust (2021 CHRT 6).
9. On February 12, 2021, the Tribunal approved the final Compensation Framework as revised by the parties (2021 CHRT 7). While this Order substantively addressed aspects of the distribution process for compensation, the parties understood that a significant amount of future work would be required by the parties to address items which included, but were not limited to, how eligibility would be determined, the operation of the implementation process and the continued role of the Tribunal. This work remained subject to Canada’s judicial review of the Compensation Entitlement Order and the Tribunal’s orders regarding eligibility under Jordan’s Principle (2020 CHRT 20 and 2020 CHRT 36), as addressed in Federal Court File Nos. T-1621-19 and T-1559-20.
10. The judicial reviews were heard on June 14-18, 2021. On September 29, 2021, the Federal Court dismissed Canada’s applications in their entirety (2021 FC 969).
11. On October 29, 2021, Canada appealed the Federal Court’s order (2021 FC 969) upholding the Compensation Entitlement Decision to the Federal Court of Appeal (Federal Court of Appeal File No. A-290-21).

12. Following this decision by the Federal Court, Canada indicated its desire to move forward with intensive negotiations to settle the outstanding compensation for First Nations children who had been discriminated against via the FNCFS Program, the delay/denial of services under Jordan's Principle, as well as the necessary reforms to the FNCFS Program. Canada's appeal was thereafter put into abeyance with the consent of the Parties.

***The Class Actions and Procedural History of the Revised Final Settlement Agreement***

13. On March 4, 2019, a class action was commenced in the Federal Court seeking compensation for First Nations children who suffered comparable discrimination related to a lack of prevention services leading to the placement of First Nations children in out-of-home care as well as the discriminatory application of Jordan's Principle, beginning on April 1, 1991 (Federal Court File No. T-402-19) ("**Moushoom Class Action**").

14. On January 28, 2020, a proposed class action was filed by the AFN and other representative plaintiffs seeking compensation for removed First Nations children and those who experienced discrimination under Jordan's Principle (Federal Court File No. T-141-20) ("**AFN Class Action**"). A separate class action involving Canada's discrimination in the provision of essential services, products and supports prior to December 2007 was commenced on July 16, 2021 by the AFN and the representative plaintiff Zacheus Trout (Federal Court File No. T-141-20) ("**Trout Class Action**").

15. The Moushoom Class Action and the AFN Class Action were consolidated on July 7, 2021 and certified on November 26, 2021 (2021 FC 1225). The Trout Class Action was certified on February 11, 2022 (together, the three class actions are referred to as the "**Federal Court Class Actions**").

16. On December 31, 2021, the parties to the to the Federal Court Class Actions concluded an Agreement-in-Principle ("**AIP**") addressing compensation. On June 30, 2022, a final settlement agreement was reached (the "**2022 FSA**") and in July 2022, the AFN and Canada brought a motion to the Tribunal seeking a declaration that the 2022 FSA was fair, reasonable, and satisfied the Compensation Entitlement Order and all related clarifying orders (the "**Joint Motion**"). In the alternative, AFN and Canada sought an order varying the Compensation

Entitlement Order, the Compensation Framework Order and other compensation orders, to conform to the 2022 FSA.

17. The Tribunal heard the Joint Motion in September 2022 and dismissed the Joint Motion by letter decision on October 25, 2022, with full reasons set out in 2022 CHRT 41. Applications for judicial review were commenced by Canada (Federal Court File No. T-2438-22) and the AFN (Federal Court File No. T-2438-22).
18. On December 7, 2022, the First Nations-in-Assembly unanimously adopted Resolution 28/2022 regarding compensation for the victims of Canada's discrimination. Resolution 28/2022 included the following critical direction:
  - Support compensation for victims covered by the 2022 FSA on compensation and those already legally entitled to \$40,000 plus interest under the Canadian Human Rights Tribunal (CHRT) compensation orders to ensure that all victims receive compensation for Canada's wilful and reckless discrimination.
  - Support the principles on which the FSA is built, including taking a trauma-informed approach, employing objective and non-invasive criteria, and ensuring a First Nations-driven and culturally informed approach to compensation individuals.
  - Continue to support the Representative Plaintiffs and all victims of Canada's discrimination by ensuring that compensation is paid out as quickly as possible to all those who can be immediately identified and to continue to work efficiently to compensate those who may need more time.
19. With the guidance set out by the Tribunal in 2022 CHRT 41 and the direction and support provided by First Nations leadership, the parties to the Federal Court Class Actions and the Caring Society engaged in negotiations resulting in the Revised Agreement. The Revised Agreement was approved by the First Nations-in-Assembly on April 4, 2023, and executed by the parties to the Federal Court Class Actions on April 19, 2023. As the Caring Society was not a party to the Federal Court Class Actions, the AFN, the Caring Society and Canada executed Minutes of Settlement in this proceeding on April 19, 2023.

***The Tribunal's Decision in 2022 CHRT 41 on the Joint Motion***

20. The Tribunal found that the 2022 FSA substantially satisfied the Compensation Entitlement Order. However, the Tribunal identified three (3) key areas where the 2022 FSA departed from the compensation orders, disentitled or reduced entitlements for certain victims already entitled to compensation. These derogations included the following:

- (a) children removed from their homes, families and communities and placed in non-ISC funded placements were improperly excluded from receiving compensation (2022 CHRT 41 at paras. 283-331);
- (b) the estates of deceased caregiving parents and grandparents were excluded from receiving compensation, which was not in keeping with 2020 CHRT 7 (2022 CHRT 41 at paras. 332-350);
- (c) certain caregiving parents and grandparents would receive less compensation either in circumstances of multiple removals or if there was an unexpected number of claimants which required a reduction in compensation to the class to ensure that all caregiving parent and grandparent victims received compensation (2022 CHRT 41 at paras. 351-360).

21. The Tribunal also raised concerns regarding eligibility under Jordan's Principle and the uncertainties introduced in the 2022 FSA regarding the class action approach, with questions around the meaning of "significant impact" and the definition of "essential service". The Tribunal determined that uncertainty existed with respect to whether the implementation of Jordan's Principle under the 2022 FSA would result in the victims identified by the Tribunal receiving \$40,000.

22. The Tribunal also expressed concern about the opt-out regime in the 2022 FSA (2022 CHRT 41 at paras. 385-390).

23. In keeping with its human rights approach, the Tribunal made clear that it remains open and flexible to variation and clarification to its orders, particularly when such changes improve the lives of the victims in this case.



24. The Tribunal urged the parties to this proceeding and the parties to the Federal Court Class Actions to work together to allocate funds to cover all victims entitled to compensation and to uphold the human rights regime in a manner that respects and acknowledges the pain and suffering of all victims identified by the Tribunal.

***The Revised Agreement Now Satisfies the Tribunal's Compensation Orders***

25. The Revised Agreement presented to the Tribunal on this motion heeds the Tribunal's guidance and the direction from the First Nations-in-Assembly: the derogations have been remedied; the uncertainties in relation to eligibility under Jordan's Principle have been addressed; the approach to compensation in relation to the estates of parents/caregiving grandparents has been varied to ensure a better outcome for children impacted by Canada's discrimination; and compensation to parents and caregiving grandparents under Jordan's Principle has been aligned with the spirit and intent of the Tribunal's finding in this case.

26. The Revised Agreement also sets out a number of new features that will increase the amount of compensation available to victims, improve supports for high needs youth and young adults and potentially expedite the payment of compensation to certain class members:

(a) Interest: the Compensation Entitlement Order directed victims to receive interest pursuant to subsection 53(4) of the *CHRA* at the Bank of Canada rate in keeping with the approach in *Grant v. Manitoba Telecom Services Inc.*, 2012 CHRT 20. The 2022 FSA did not contemplate the payment of interest to the victims identified by the Tribunal. That has been addressed in the Revised Agreement and now all victims identified by the Tribunal will receive interest in addition to their base compensation of \$40,000;

(b) The Jordan's Principle Post-Majority Fund: the 2022 FSA included important supports for class members as well as access to the \$50 million Cy-Près Fund for claimants who do not receive direct compensation. The Revised Agreement now includes an additional \$90 million to provide additional supports to high needs members of the approved Jordan's Principle class between the age of

majority and the class member's 26<sup>th</sup> birthday to ensure their personal dignity and well-being; and

(c) Training: the Revised Agreement provides 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 are to act in the best interests of the Class Members and receive First Nations specific cultural competency training and training regarding the history of colonialism including residential schools 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.

(d) Phased Distribution: the Revised Agreement contemplates the potential for phased distribution of compensation. Once the compensation process and distribution protocol are finalized with respect to one or more classes, the administrator and the Settlement Implementation Committee (“SIC”) will be in a position to seek court approval for the roll-out of the compensation process. This accounts for the fact that some classes will likely require additional efforts to develop an appropriate distribution protocol (Jordan’s Principle piloting, information gathering on the Kith Class to account for the varied types of removals etc.).

27. The Revised Agreement provides for the Caring Society’s involvement and participation following the end of the Tribunal’s jurisdiction: the Caring Society will have standing to make submissions to the Federal Court regarding the administration and implementation of the Revised 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 victims identified by the Tribunal. This addition is reflective of the role the Caring Society would have had under the Compensation Framework Order.

28. The parties to the Federal Court Class Actions also addressed the Tribunal’s comments regarding the opt-out: the opt-out deadline has already been extended to August 23, 2023, and,

in the Minutes of Settlement, the AFN and Canada have agreed to seek a further extension to October 6, 2023, subject to Federal Court approval.

29. The Revised Agreement resolves Canada's appeal to the Federal Court of Appeal, filed on October 29, 2021 (Federal Court of Appeal File No. A-290-21), Canada's application for judicial review filed before the Federal Court on November 23, 2022 (Federal Court File No. T-2438-22) and the AFN's application for judicial review filed before the Federal Court on November 23, 2022 (Federal Court File No. T-2448-22). Canada and the AFN shall file Notices of Discontinuance in these respective proceedings pursuant to the timeframes set out in the Revised Agreement.

#### The Derogations Regarding Kith Placements and Multiple Removals Have Been Remedied

30. The Revised Agreement now includes compensation for First Nations children removed from their homes, families and communities and placed in alternative non-ISC funded placements and compensation for their parents/caregiving grandparents. These placements are referred to as "Kith Placements" in the Revised Agreement. Children placed in Kith Placements, as well as their parents/caregiving grandparents, are entitled to \$40,000 plus applicable interest.
31. Compensation in relation to Kith Placements will require a specific approach given that data relevant to Kith Placements is often collected in a different manner than those in ISC-funded placements. The process for determining eligibility will be structured with guidance from records management experts, youth in care and youth formerly in care, and input from the Caring Society. The Revised Agreement fully satisfies the Compensation Entitlement Order in relation to these victims.
32. The Revised Agreement now provides compensation in relation to multiple removals as set out in the Compensation Entitlement Order. A First Nations parent/caregiving grandparent will receive multiple base compensation payments of \$40,000 plus applicable interest if and where more than one child has been removed from their family and placed off-Reserve with a non-family member. The multiplication of the base compensation payment will correspond to the number of children who were removed from the First Nations parent/caregiving grandparent and placed off-reserve. A minor clarification to the Compensation Framework is required in

the following scenario: where a caregiving parent has claimed compensation for the removal of a child, and the child is subsequently removed from the care of a caregiving grandparent, the Revised Agreement limits the multiplication of compensation to \$80,000. The parties are of the view that the Revised Agreement now fully satisfies this derogation.

#### The Uncertainties Regarding Jordan's Principle Have Been Addressed

33. The 2022 FSA did not include final criteria for determining eligibility for Jordan's Principle compensation. The parameters for determining eligibility for Jordan's Principle compensation in the Revised Agreement now more clearly reflect the Tribunal's approach pursuant to Jordan's Principle. The approach for determining eligibility for Jordan's Principle in keeping with this approach is to be subject to robust piloting before implementation.
34. The definition of Jordan's Principle Class Member has been revised and now states: "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."
35. This approach ensures that those who suffered a worst-case scenario of discrimination in relation to Jordan's Principle receive \$40,000 plus interest. This is directly in keeping with the guidance of the Tribunal in the Compensation Entitlement Order and the Eligibility Decision.
36. The definition also reflects the intention of full compliance with the Tribunal's orders. The need to determine eligibility in line with the principles of substantive equality and the very definition of Jordan's Principle will be a key consideration to the development, piloting and implementation of the approach to compensation. The intent is for this class to overlap fully and completely with the First Nations children entitled to compensation through the Tribunal's Compensation Orders.
37. Finally, the definition of "Delay" has been amended to reflect the 12-hour and 48-hour timeframes ordered by the Tribunal in the Compensation Framework Order. While the 2022

FSA had left the definition of “Delay” as something to be determined in the future, the Revised Agreement is now directly in line with the Tribunal’s orders.

#### Estates of Caregiving Parents and Grandparents

38. The AFN, the Caring Society and Canada seek a variation of 2020 CHRT 7.
39. The Revised Agreement includes the estates of deceased First Nations caregiving parents and grandparents and specifically provides for \$40,000 in relation to those victims who have passed away while waiting for compensation to be resolved. This fully aligns with the Tribunal’s orders.
40. However, the Revised Agreement sets out a mechanism to pay compensation owing to the estates of First Nations parents/caregiving grandparents directly to the child(ren) of the deceased. Instead of the \$40,000 flowing into the estates of the deceased First Nations parent/caregiving grandparent, the compensation will be paid directly to the children – a variation that puts children at the centre of this process. If there are no surviving children, the compensation will flow to the estate of the deceased First Nations parent/caregiving grandparent.
41. This variation achieves multiple benefits: (i) it acknowledges the compounded harm and suffering experienced by a child victim who has lost a parent/caregiving grandparent by providing additional compensation; (ii) it avoids the complex and lengthy procedural requirements related to estates; (iii) it ensures that the full benefit of the compensation for which the estate is eligible is directed to the surviving children of that First Nations parent/caregiving grandparent; and (iv) ensures that the compensation funds will not be subject to potential estate administration taxes.
42. This variation reflects the spirit and intent of the Merits Decision, the Compensation Entitlement Order and the Tribunal’s general approach to putting children first.

#### Need for Clarification regarding Parents/Caregiving Grandparents under Jordan’s Principle

43. The AFN, the Caring Society and Canada seek a clarification of the Compensation Entitlement Order in relation to parents/caregiving grandparents under Jordan’s Principle.

44. In the case of a removed child, both the First Nations child and First Nations parent/caregiving grandparent are directly impacted by the lack of equitable FNCFS services available to the family. When a child is removed from a parent/caregiving grandparent, both experience direct discrimination, pain and suffering of the worst kind.
45. Conversely, where a child experienced discrimination as a result of Canada's failure to fully implement Jordan's Principle, the First Nations parent/caregiving grandparent may not have a derivative experience of harm that equates to their child's experience. The parties are of the view that the Tribunal intended to compensate adults who were directly impacted at the highest level by Canada's discriminatory conduct.
46. In order to capture the true intention of the Tribunal, the Revised Agreement provides that parents/caregiving grandparents of a child eligible for compensation pursuant to Jordan's Principle will receive compensation if they experienced the highest level of impact, including pain, suffering, or harm of the worst kind. The Revised Agreement contemplates different measures of impact to parents and the child who experienced a Jordan's Principle delay, denial or service gap.
47. This approach is consistent with the Tribunal's overall approach in its Compensation Orders, which target the worst-case scenarios of discrimination in this case. Removals, by their very nature affect a parent's individual dignity in a fundamental way. Denials, service gaps, and the impact of unreasonable delays with respect to essential services are not necessarily interchangeable as between parents and children. To be sure, many First Nations parents (or caregiving grandparents) of a Jordan's Principle child have experienced worst-case scenarios resulting from discrimination against their children, such as: the death or removal of a child, and a family's forced relocation off-reserve. Therefore, the Revised Agreement contemplates differential criteria for assessing impacts to parents as opposed to those experienced by the impacted child.
48. The impact that Caregiving Parents or Caregiving Grandparents have experienced will be assessed through objective criteria and expert advice, as developed through Schedule F: Framework of Essential Services and through piloting. These criteria will be subject to the Federal Court's approval, wherein the Caring Society will have standing.

***Reliance***

21. The Parties further rely on:

- (a) subsection 91(24) of the *Constitution Act, 1867*;
- (b) Section 53(2) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6;
- (c) Rules 1(6), 3(1), and Rule 3(2) of this Tribunal's *Rules of Procedure (Proceedings prior to July 11, 2021)*;
- (d) the Tribunal's implied jurisdiction to control its own processes; and
- (e) such further and other grounds as counsel may advise and this Tribunal may permit.

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

- (a) The affidavit of Craig Gideon, dated June 30, 2023;
- (b) The affidavit of Cindy Blackstock, PhD, dated June 30, 2023;
- (c) The affidavit of Valerie Gideon, PhD, dated June 30, 2023;
- (d) The affidavit of Lucyna M. Lach, dated June 20, 2023; and
- (e) Such further and other materials as counsel may advise and this Tribunal may permit.

Dated: **June 30, 2023.**



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