

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

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SETTLEMENT AGREEMENT

THIS AGREEMENT is dated effective as of March 31, 2022 ("**Effective Date**").

BETWEEN:

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

(together, the "**Moushoom Plaintiffs**")

AND:

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

(together, the "**AFN Plaintiffs**")

AND:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

(together, the "**Trout Plaintiffs**")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

("Canada")

(collectively, "**Parties**")

WHEREAS:

- A. On March 4, 2019, the Moushoom Plaintiffs commenced a proposed class action in the Federal Court under Court File Number T-402-19 (the "**Moushoom Action**"), seeking compensation for discrimination dating back to April 1, 1991.
- B. On January 28, 2020, the AFN Action Plaintiffs also filed a proposed class action in the Federal Court under Court File Number T-141-20 (the "**AFN Action**") regarding similar allegations dating back to April 1, 1991.
- C. On July 7, 2021, the Honourable Justice St-Louis ordered that the Moushoom Action and the AFN Action be consolidated with certain modifications (the "**Consolidated Action**").
- D. The parties to the Consolidated Action engaged in mediation in accordance with the Federal Court Guidelines for Aboriginal Law Proceedings (dated April 2016) to resolve all or some of the outstanding issues in the Consolidated Action. The Honourable Leonard Mandamin acted as mediator from November 1, 2020 to November 10, 2021.

- E. On July 16, 2021, the Trout Plaintiffs filed a proposed class action in the Federal Court under Court File Number T-1120-21 (the “**Trout Action**”) regarding the Crown’s discriminatory provision of services and products between April 1, 1991 and December 11, 2007.
- F. On September 29, 2021, in reasons indexed at 2021 FC 969, Justice Favel of the Federal Court of Canada upheld the Canadian Human Rights Tribunal (the “**Tribunal**”) decision made in Tribunal File: T1340/7008 (the “**CHRT Proceeding**”) indexed at 2019 CHRT 39 (the “**Compensation Order**”) in which the Tribunal awarded compensation to Children and their caregiving parents or caregiving grandparents impacted by Canada’s systemic discrimination in the underfunding of child and family services on reserve and in the Yukon, and its narrow interpretation of Jordan’s Principle.
- G. On or about November 1, 2021, the parties entered into negotiations outside of the Federal Court mediation process.
- H. The parties, by agreement, appointed the Honourable Murray Sinclair to act as chair of the negotiations.
- I. The parties worked collaboratively to determine the class sizes of the Consolidated Action and the Trout Action.
- J. The parties separately engaged experts (“**Experts**”) to prepare a joint report on the estimated size of the Removed Child Class, as defined herein, on which the parties would rely for settlement discussions (the “**Joint Report**”).
- K. The Experts relied on data provided by Indigenous Services Canada (“**ISC**”) in preparing the Joint Report. ISC communicated to the experts and plaintiffs counsel that the data often came from third-party sources and was in some cases incomplete and inaccurate. The Joint Report referred to and took into account these factors.
- L. The Experts estimated that there were 106,200 Removed Child Class Members from 1991 to March 2019. The Experts advised that this class size must be adjusted to 115,000 to cover the period from March 2019 to March 2022 (the “**Estimated Removed Child Class Size**”). The Estimated Removed Child Class Size was determined based on the data received from ISC and modelling taking into account gaps in the data.
- M. Canada provided to the plaintiffs estimates of the Jordan’s Principle Class Size, which were between 58,385 and 69,728 for the period from December 12, 2007 to November 2, 2017 (the “**Jordan’s Principle Class Size Estimates**”). The Parties understand that the Jordan’s Principle Class Size Estimates were based on a single 2019-2020 quarter.
- N. Based on the Jordan’s Principle Class Size Estimates, the plaintiffs estimated the size of the Trout Class, as defined below, to be approximately 104,000.

- O. Based on the Parliamentary Budget Officer Report, *Compensation For The Delay and Denial of Services to First Nations Children*, dated February 23, 2021, there are 1.5 primary caregivers per First Nations child.
- P. On November 26, 2021, the Federal Court granted certification of the Consolidated Action on consent of the parties.
- Q. On February 11, 2022, the Federal Court granted certification of the Trout Action on consent of the parties.
- R. The Moushoom Plaintiffs, the AFN Plaintiffs and the Trout Plaintiffs (collectively, the “**Representative Plaintiffs**”) and Canada concluded an agreement in principle (“**AIP**”) on December 31, 2021 which set out the principal terms of their agreement to settle the Consolidated Action and the Trout Action (collectively, the “**Actions**”) and which forms the basis of this Agreement.
- S. On March 24, 2022, the Tribunal established March 31, 2022, as the end date for compensation to individuals included in the Removed Child Class and the Family of Removed Child Class.
- T. In drafting this Agreement, the Parties:
- i) Intend a fair, comprehensive and lasting settlement of all claims raised or capable of being raised in the consolidated action, the Trout action and the CHRT proceeding including that:
 - (a) Canada knowingly underfunded child and family services for First Nations Children living on Reserve and in the Yukon;
 - (b) Canada’s failure to comply with Jordan’s Principle, a legal requirement designed to safeguard First Nations Children’s existing substantive equality rights guaranteed in the *Canadian Charter of Rights and Freedoms* (“**Charter**”); and
 - (c) Canada’s failure to provide First Nations Children with essential services available to non-First Nations Children or which would have been required to ensure substantive equality under the *Charter*;
 - ii) Intend that the Claims Process be administered in an expeditious, cost-effective, user-friendly, culturally sensitive, and trauma-informed manner;
 - iii) Desire to:
 - (a) safeguard the best interests of the Class Members who are minors and Persons under Disability;
 - (b) minimize the administrative burden on Class Members; and

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

U. This settlement agreement is designed such that some Class Members, or subsets of Class Members, receive direct compensation, while some others indirectly benefit from the settlement agreement without receiving direct compensation.

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

ARTICLE 1 – INTERPRETATION

1.01 Definitions

In this Agreement, the following definitions apply:

“Abuse” means sexual abuse or serious physical abuse causing bodily injury, but does not include neglect nor emotional maltreatment.

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

“Actuary” means the actuary or firm of actuaries appointed by the Court on the recommendation of the Settlement Implementation Committee who is, or in the case of a firm of actuaries, at least one of the principals of which is, a Fellow of the Canadian Institute of Actuaries.

“Administrator” means the administrator appointed by the Court and its successors appointed from time to time pursuant to the provisions of Article 3.

“AFN” means the Assembly of First Nations.

“AFN Supports” has the meaning set out in Article 8.

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

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

“AIP” has the meaning set out in the Recitals.

“Approved Jordan’s Principle Class Member” means a Jordan’s Principle Class Member whose Claim has been accepted by the Administrator, or on appeal by the Third-Party Assessor.

“Approved Jordan’s Principle or Trout Family Class Member” means a Jordan’s Principle or Trout Family Class Member whose Claim has been accepted by the Administrator, or on appeal by the Third-Party Assessor.

“Approved Removed Child Class Member” means a Removed Child Class Member whose Claim has been accepted by the Administrator, or on appeal by the Third-Party Assessor.

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

“Approved Trout Child Class Member” means a Trout Child Class Member whose Claim has been accepted by the Administrator, or on appeal by the Third-Party Assessor.

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

“Auditors” means the auditors appointed by the Court and their successors appointed from time to time pursuant to the provisions of Article 15.

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

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

“Base Compensation” means the amount of compensation (excluding any applicable Enhancement Payment) approved by the Court as agreed to by the Plaintiffs, or the Settlement Implementation Committee based on advice from the Actuary, as part of the Claims Process, to be paid to an Approved Removed Child Class Member, an Approved Jordan’s Principle Class Member, an Approved Trout Child Class Member, an Approved Removed Child Family Class Member, or an Approved Jordan’s Principle or Trout Family Class Member. Such Base Compensation may be different for different Classes and may be made in more than one installment as the implementation of the Claims Process may require.

“Budget” means each of the Budgets set out in Article 6.

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

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

“Caregiving Grandparent” and **“Caregiving Grandparents”** means a biological or adoptive caregiving grandmother or caregiving grandfather who lived with and assumed and exercised parental responsibilities over a Removed Child Class Member at the time of removal of the Child, or a Jordan’s Principle Class Member or a Trout Child Class Member at the time of the Child’s Confirmed Need for an Essential Service. Relationships

of a foster parent or stepparent to a Child are excluded from giving rise to a Caregiving Grandparent relationship under this Agreement.

“Caregiving Parent” and **“Caregiving Parents”** means the caregiving mother or caregiving father, living with, and assuming and exercising parental responsibilities over a Removed Child Class Member at the time of removal of the Child, or a Jordan’s Principle Class Member or a Trout Child Class Member at the time of the Child’s Confirmed Need for an Essential Service. Caregiving Parent includes biological parents, adoptive parents and Stepparents. A foster parent is excluded as a Caregiving Parent under this Agreement.

“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 A and B.

“Child” or **“Children”** for the purposes of the Removed Child Class means a person who was, at the time of removal, under the Age of Majority of the person’s place of residence as set out in Schedule D, Provincial and Territorial Ages of Majority, and for the purposes of the Jordan’s Principle Class and Trout Child Class means a person under the provincial and territorial Age of Majority of the person’s place of residence as set out in Schedule D, Provincial and Territorial Ages of Majority at the time of the existence of the Confirmed Need for an Essential Service.

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

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

“Claims Deadline” means the date that is:

- (a) three (3) years following the delivery of the initial notice of approval of settlement for Class Members who have reached the Age of Majority by the date on which notice is delivered;
- (b) for class members under the Age of Majority, three (3) years after reaching the Age of Majority, so long as that date is at least three years from the date in (a); or
- (c) a reasonable extension of the Claims Deadline for individual Class Members approved on request by the Administrator on the grounds that the Claimant faced extenuating personal circumstances and was unable to submit a Claim as a result of physical or psychological illness or challenges, including homelessness, incarceration or addiction, or due to unforeseen community circumstances such as epidemics, community internet connectivity, pandemics, natural disasters,

community-based emergencies or service disruptions at a national, regional or community level.

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

“Claims Process” means the process, including a distribution protocol, to be further designed and detailed in accordance with this Agreement for the distribution of compensation under this Agreement to eligible Class Members. The Claims Process also includes, but is not limited to, the Incarcerated Class Members Process and such other processes as may be recommended by the Administrator and experts, agreed to by the Plaintiffs and approved by the Court, for the submission of Claims, determination of eligibility, assessment, verification, determination of possible enhancement, payment of compensation to Class Members, and the role of the Third-Party Assessor.

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

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

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

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

“Court” means the Federal Court of Canada.

“Cy-près Fund” has the meaning set out in Article 7, established to primarily benefit Class Members who may not receive direct compensation under this Agreement.

“Delay” means where a member of the Jordan’s Principle Class or Trout Child Class requested an Essential Service from Canada and they received a determination on their request beyond a timeline to be agreed to by the Parties and specified in the Claims Process.

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

“Eligible Deceased Class Member” has the meaning set out in Article 13.02.

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

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

“Enhancement Payment” means an amount, based on Enhancement Factors, that may be payable to an Approved Removed Child Class Member, an Approved Jordan’s Principle Class Member, or a Trout Child Class Member, in addition to a Base Payment.

“Essential Service” means a service 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 the Framework of Essential Services.

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

“Estate Executor” means the executor, administrator, trustee or liquidator of an Eligible Deceased Class Member’s estate.

“First Nations” means:

- (a) with respect to the Removed Child Class, Jordan’s Principle Class, Trout Child Class, and Stepparents: individuals who are registered pursuant to the Indian Act;
- (b) with respect to the Removed Child Class, Jordan’s Principle Class, and Trout Child Class: individuals who 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) with respect to the Removed Child Class: individuals who met Band membership requirements under sections 10-12 of the *Indian Act* by February 11, 2022 (the latter date of the Certification Orders) such as where their respective First Nation community assumed control of its own membership by establishing membership rules and the individuals were found to meet the requirements under those membership rules and were included on the Band List;
- (d) with respect to the Jordan’s Principle Class only: individuals who met Band membership requirements under sections 10-12 of the *Indian Act* pursuant to paragraph (c), above, AND who suffered a Delay, Denial, or Service Gap between January 26, 2016 and November 2, 2017;
- (e) with respect to the Jordan’s Principle Class only: individuals who were recognized as citizens or members of their respective First Nation by February 11, 2022 (the

latter date of the Certification Orders) as confirmed by First Nations Council Confirmation, whether under final agreement, self-government agreement, treaties or First Nations' customs, traditions and laws, AND who suffered a Delay, Denial, or Service Gap between January 26, 2016 and November 2, 2017.

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

“Framework of Essential Services” is an approach to Essential Services to be agreed to by the Plaintiffs for the purposes of the Claims Process, with assistance from experts, in order to assess those Essential Services that, if subject to Delay, Denial or a Service Gap, would have resulted in material impact on the Child.

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

“Implementation Date” means the later of:

- (a) the day following the last day on which a Class Member may appeal or seek leave to appeal the Settlement Approval Order; or
- (b) the date on which the last of any appeals of the Settlement Approval Order is finally determined.

“Incarcerated Class Members Process” means the process for notice and claims specific to Class Members incarcerated in federal penitentiaries, provincial prisons, and other penal and correctional institutions.

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

“Indian Act” means the *Indian Act*, R.S.C. 1985, c. 1-5.

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

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

“Jordan's Principle Class” or **“Jordan's Principle Class Member”** means First Nations individuals who, during the period between December 12, 2007 and November 2, 2017 (the **“Jordan's Principle Class Period”**), did not receive from Canada (whether by reason of a Denial or a Service Gap) an Essential Service relating to a Confirmed Need, or whose receipt of said Essential Service relating to a Confirmed Need was delayed by Canada, on grounds, including but not limited to, lack of funding or lack of jurisdiction, or

as a result of a Service Gap or jurisdictional dispute with another government or governmental department while they were under the Age of Majority.

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

“Jordan’s Principle” means a child-first substantive equality principle named after the late Jordan River Anderson that applies equally to all First Nations Children whether resident on or off reserve, including the Northwest Territories.

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

“Non-paid Kin or Community Home” means an informal placement that has been arranged within the family support network; the child welfare authority does not have temporary custody and the placement is not funded by ISC.

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

“Notice Plan” means the Notice Plan as recommended by the Administrator and agreed by the Parties, subject to the Court’s approval.

“Ongoing Fees” has the meaning set out in Article 16.03.

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

“Opt-Out Deadline” means the one hundred eightieth (180th) day following the publication of the notice of certification, after which Class Members may no longer Opt-Out of the Actions, except with leave from the Court.

“Ordinarily Resident on Reserve” means:

- (a) a First Nations individual who lives in a permanent dwelling located on a First Nations Reserve at least 50% of the time and who does not maintain a primary residence elsewhere;
- (b) a First Nations individual who is living off-Reserve while registered full-time in a post-secondary education or training program who is receiving federal, Band or Aboriginal organization education/training funding support and who:
 - a. would otherwise reside on-Reserve;
 - b. maintains a residence on-Reserve;

- c. is a member of a family that maintains a residence on-Reserve; or
 - d. returns to live on-Reserve with parents, guardians, caregivers or maintainers when not attending school or working at a temporary job.
- (c) a First Nations individual who is temporarily residing off-Reserve for the purpose of obtaining care that is not available on-Reserve and who, but for the care, would otherwise reside on-Reserve;
- (d) a First Nations individual who is temporarily residing off-Reserve for the primary purpose of accessing social services because there is no reasonably comparable service available on-Reserve and who, but for receiving said services, would otherwise reside on-Reserve;
- (e) a First Nations individual who at the time of removal met the definition of ordinarily resident on reserve for the purpose of receiving child welfare and family services funding pursuant to a funding agreement between Canada and the province/territory in which the individual resided (including, but not limited to, ordinarily resident on reserve individuals funded through the cost-shared model under the Canada-Ontario 1965 Indian Welfare Agreement).

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

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

“Parties” means the Plaintiffs and Canada;

“Person Under Disability” means:

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

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

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

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

“Recitals” means the recitals to this Agreement.

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

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

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

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

“Service Gap” means each of the Essential Services that are identified as a Service Gap in accordance with the Framework of Essential Services.

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

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

“Settlement Funds” means a total of \$20,000,000,000 (\$20 billion), which Canada will pay to settle the claims of the Class in accordance with this Agreement.

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

“Settlement Implementation Report” has the meaning set out in Article 12.03.

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

“Stepparent” means a person who is a First Nations spouse of the biological parent of a Removed Child Class Member, Jordan’s Principle Class Member, or Trout Child Class Member, and lived with that Child’s biological 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 as may be required to be submitted by a Removed Child Class Member in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;
- (b) for the Jordan’s Principle Class and Trout Child Class: such documentation as may be required to be submitted by a member of the Jordan’s Principle Class and Trout Child Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;
- (c) for the Removed Child Family Class: such documentation as may be required to be submitted by a member of the Removed Child Family Class in accordance with this Agreement to substantiate eligibility and compensation under the applicable Claims Form;
- (d) for the Jordan’s Principle Family Class: such documentation as may be required to be submitted by a member of the Jordan’s Principle Family Class in accordance with this Agreement to substantiate eligibility and compensation, if any, under the applicable Claims Form;
- (e) for the Trout Family Class: the documentation to be required to be submitted by a member of the Trout Family Class in accordance with this Agreement to substantiate eligibility and compensation, if any, under the applicable Claims Form; and

- (f) for Eligible Deceased Class Members: the documentation to be required to be submitted in accordance with this Agreement to substantiate eligibility and compensation, if any, under the applicable Claims Form.

“Time in Care” means the total amount of time that a Removed Child Class Member 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 but not limited to, lack of funding or lack of jurisdiction, or as a result of a Service Gap or jurisdictional dispute with another government or governmental department.

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

“Trust” means the trust established pursuant to Article 14.

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

“Trustee” means the trustee appointed by the Court pursuant to Article 14 for the purposes of this Agreement.

1.02 Headings

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

1.03 Extended Meanings

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

government ministry, department or position will include any predecessor or successor government ministry, department or position.

1.04 Interpretation

The Parties acknowledge that they have reviewed and participated in settling the terms of this Agreement and they agree that there will be no presumptive rule of construction to the effect that any ambiguity in this Agreement is to be resolved in favour of any particular Party.

1.05 Statutory References

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

1.06 Business Day

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

1.07 Currency

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

1.08 Compensation Inclusive

The amounts payable to Class Members under this Agreement are inclusive of any prejudgment or post-judgment interest.

1.09 Schedules

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

Schedule A: Consolidated Action Certification Order

Schedule B: Trout Action Certification Order

Schedule C: Framework for Supports for Claimants in Compensation Process

Schedule D: Provincial and Territorial Ages of Majority

Schedule E: Summary Chart of Jordan's Principle / Trout Approach

Schedule F: Examples Chart of Removed Child Family Class Approach

Schedule G: Investment Committee Guiding Principles

1.10 Benefit of the Agreement

This Agreement will inure to the benefit of and be binding upon the Parties, and for Canada and Class Members, upon their estates, heirs, Estate Executors, Estate Claimants, and Personal Representatives, subject to eligibility criteria herein.

1.11 Applicable Law

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

1.12 Counterparts

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

1.13 Official Languages

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

1.14 Ongoing Supervisory Role of the Court

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

ARTICLE 2 - EFFECTIVE DATE OF AGREEMENT

2.01 Date when Binding and Effective

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

2.02 Effective Upon Approval

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

2.03 Legal Fees Severable

Class Counsel's fees for prosecuting the Actions have been or will be negotiated separately from this Agreement and remain subject to approval by the Court. The Court's decision on Class Counsel's fees will have no effect on the implementation of this

Agreement. If the Court refuses to approve the fees of Class Counsel, the remainder of the provisions of this Agreement will remain in full force and effect and in no way will be affected, impaired or invalidated.

ARTICLE 3 – ADMINISTRATION

3.01 Designation of Administrator

Initially on the recommendation of the Plaintiffs based on advice received from experts, the Court will appoint an Administrator to administer the Claims Process with such powers, rights, duties and responsibilities as are set out in Article 3 and such other powers, rights, duties and responsibilities as are determined by the Settlement Implementation Committee and approved by the Court. Following the establishment of the Settlement Implementation Committee and on the recommendation of the Settlement Implementation Committee, the Court may replace the Administrator at any time.

3.02 Duties of the Administrator

- 1) The Administrator's duties and responsibilities include the following:
 - (a) in consultation with the Settlement Implementation Committee, developing, installing, and implementing systems, forms, information, guidelines and procedures for processing Claims and appeals of the decisions of the Administrator to the Third-Party Assessor in accordance with this Agreement and the Claims Process;
 - (b) in consultation with the Settlement Implementation Committee, developing, installing, and implementing systems and procedures for making payments of compensation in accordance with this Agreement and the Claims Process;
 - (c) receiving funds from the Trust and the Trustee to make payments to Class Members in accordance with this Agreement and the Claims Process;
 - (d) ensuring adequate staffing for the performance of its duties under this Agreement, and training and instructing personnel;
 - (e) ensuring, in consultation with the Settlement Implementation Committee, First Nations participation and the reflection of First Nations perspectives, appropriate cultural knowledge, use of proper experts, and a trauma-informed approach to the Class;
 - (f) keeping or causing to be kept accurate accounts of its activities and its administration and preparing annual audited financial statements, as well as reports, and records as are required by the Settlement Implementation Committee, the Auditors and the Court;
 - (g) reporting to the Settlement Implementation Committee on a monthly basis

respecting:

- i) Claims received and determined;
 - ii) Claims deemed ineligible and the reason(s) for that determination; and
 - iii) appeals from the Administrator's decisions and the outcomes of those appeals.
- (h) identifying and reporting to the Settlement Implementation Committee systemic issues in the implementation of the Agreement and the Claims Process as such issues arise and in any event no later than on a quarterly basis, and working with the Settlement Implementation Committee and any experts as may be required to find a resolution to such systemic issues—a systemic issue 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 C: Framework for Supports for Claimants in Compensation Process, including assistance with the filling out and submission of Claims Forms, assistance with obtaining Supporting Documentation, and assistance with appeals to the Third-Party Assessor pursuant to this Agreement, reviewing Claims Forms, Supporting Documentation, and First Nations Council Confirmations, and determining a Claimant's eligibility for compensation in the Class;
- (k) maintaining a database with all information necessary to permit the Settlement Implementation Committee and the Actuary to assess the financial sufficiency of the Trust Fund;
- (l) in appropriate circumstances, requiring further Supporting Documentation in relation to a claimed Confirmed Need from a different Professional. In case of doubt, the Administrator will consult with the Settlement Implementation Committee for direction;
- (m) communicating with Claimants in either English or French, as the Claimant elects, and if a Claimant expresses the desire to communicate in a language other than English or French, making best efforts to accommodate such Claimant;
- (n) annually report to the Court on the Administrator's above tasks;
- (o) determining requests for the extension of the Claims Deadline by individual Class Members facing extenuating personal circumstances, such as where a Claimant was unable as a result of physical or psychological illness or challenges, including homelessness, incarceration or addiction, or due to unforeseen

circumstances such as epidemics, community internet connectivity, pandemics, natural disasters, community based emergencies or service disruptions at a national, regional, or community level, to submit a Claim before the Claims Deadline, subject to further direction on such circumstances from the Settlement Implementation Committee; and

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

2) 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 Parties; and

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

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

3.03 Appointment of the Third-Party Assessor

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

3.04 Responsibility for Costs

1) Canada will pay:

(a) the reasonable costs of giving notice in accordance with the Notice Plans to be developed by the Parties, including Canada and the Settlement Implementation Committee, as approved and ordered by the Court;

- (b) the reasonable costs and disbursements of the Administrator, the Third-Party Assessor, the Trustee, the Auditor, and any experts, advisors or consultants retained by the Settlement Implementation Committee for the purpose of implementing this Agreement;
 - (c) the costs of the administration of the Trust;
 - (d) legal fees pursuant to Article 16;
 - (e) the costs of the supports for Class Members throughout the Claims Process as outlined in Schedule C: Framework for Supports for Claimants in Compensation Process; and
 - (f) the costs of the Dispute Resolution Process in accordance with Article 17.
- 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 14, the Trustee will establish investment trust account(s) at a Schedule 1 Canadian Bank for the purposes of paying compensation to eligible Class Members.
- 2) No later than thirty (30) Business Days following the Implementation Date, and in accordance with the terms of Article 1.01, Canada will make a contribution to the Trust of Settlement Funds in the amount of \$20 billion.

4.02 Distribution of the Trust Fund

The Trustee will periodically, on request based on approved Claims, pay the Administrator from the trust account(s) 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 Article 6 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 First Nation Child and Family Caring Society, as well as from experts and First Nations stakeholders as the Plaintiffs deem in the best interests of the Class Members. The Plaintiffs will finalize the distribution protocol within the Claims Process in accordance with this Agreement, and will submit same for approval of the Court at a hearing scheduled for December 20, 2022.
- 2) Notwithstanding Article 5.01(1), Canada will have standing to make submissions on the distribution protocol 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 to participants. The Administrator will identify and implement service standards for the Claims Process no later than 30 days after the Implementation Date.
- 4) The Administrator and the Third-Party Assessor will, in the absence of reasonable grounds to the contrary, presume that a Claimant is acting honestly and in good faith with respect to any Claim.
- 5) In considering a Claims Form, Supporting Documentation, or a First Nations Council Confirmation, the Administrator and the Third-Party Assessor will draw all reasonable inferences that can be drawn in favour of the Claimant.
- 6) The Administrator will make reasonable efforts to obtain verification of each Claim within six months of the receipt of the completed Claim, with all required elements. If the Administrator identifies systemic issues with its ability to verify Claims in accordance with the Claims Process within six months, the Administrator will refer the matter to the Settlement Implementation Committee to determine whether a different service standard should be applied to the Class.
- 7) In designing the Claims Process, the Administrator and the Plaintiffs will develop standards relating to the processing of Claims in compliance with Article 6.06 of this Agreement, insofar as it recognizes that Class Members' circumstances may require flexibility in the type of documentation necessary to support the Claims Forms due to challenges such as, but not limited to, the Child's age or developmental status at the time of the events, the disappearance of records over time, retirement or death of professionals involved in a Child's case, systemic barriers to accessing professionals, and therefore, for example, allows for Supporting Documentation that is contemporaneous or current.

- 8) The Claims Process regarding the determination of Claims from members of the Jordan's Principle Class and the Trout Child Class will include a review for the purpose of making a recommendation on eligibility and compensation to the Administrator by an individual with specific culturally appropriate health and social training on Jordan's Principle, Essential Services, Confirmed Needs, Professionals, and Supporting Documentation.

5.02 Eligibility Decisions and Enhanced Compensation Decisions

- 1) The Administrator will make the decision on eligibility and compensation.
- 2) The Administrator will review each Claims Form, Supporting Documentation, First Nations Council Confirmation, recommendation under Article 5.01(8), and such other information as the Administrator considers relevant to determine whether each Claimant is eligible for compensation.
- 3) A First Nations Council Confirmation is required for Jordan's Principle Class and Trout Child Class Claimants who solely meet the definition of First Nation as defined in Article 1 based on having been recognized as a member or citizen by their respective First Nations under agreement, treaties or First Nations' customs, traditions and laws by February 11, 2022 (the latter date of the Certification Orders).
- 4) Within six months of the receipt of a completed Claim with all required elements, the Administrator will provide written reasons to a Claimant in any case of:
 - (a) an Eligibility Decision;
 - (b) a decision that a member of the Removed Child Family Class is not entitled to receive compensation due to indication of Abuse;
 - (c) a decision that a Claimant is not entitled to an Enhancement Payment available to that Class; or
 - (d) a decision to refuse to extend the Claims Deadline with respect to a Class Member.
- 5) Only a Claimant approved by an Eligibility Decision may be entitled to compensation pursuant to Article 6.
- 6) A Claimant will have 30 days to commence an appeal to the Third-Party Assessor in accordance with the Claims Process after receiving:
 - (a) an Eligibility Decision that a Claimant is not a Class Member;
 - (b) a decision that a Claimant is not entitled to an Enhancement Payment as defined in the Claims Process;
 - (c) a refusal to extend the Claims Deadline with respect to an individual Class Member; or
 - (d) a dispute amongst Approved Removed Child Family Members receiving a pro rata share of a Base Compensation under Article 6.04.01.

- 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 one year before they reach the Age of Majority, provided that no compensation is paid to that Class Member until after the Age of Majority. A Class Member may only receive compensation under the terms of this Agreement after the Age of Majority, except in the case of an Exceptional Early Payment in accordance with Article 6.07.01. The Claims Process will include a means by which a Child may register with the Administrator at any time in order to receive updates on the implementation of this Agreement.
- 5) Enhancement Factors have been selected as appropriate proxies for harm, based on expert opinion, and are designed to enable proportionate compensation to the Removed Child Class, the Jordan's Principle Class, and the Trout Child Class.
- 6) Compensation under this Agreement will take the form of either direct payment to eligible Class Members who have claimed through the Claims Process and been approved by the Administrator or indirect benefit to the Class through the Cy-près Fund.
- 7) A Class Member who qualifies for compensation as a member of more than one class will receive the higher amount for which the Class Member qualifies amongst the applicable classes, and compensation under the classes will not be combined, with the following exception: a Class Member who qualifies as a member of the Removed Child Class and the Removed Child Family Class will be entitled to a combined amount of compensation as a member of both of those classes.

6.02 Governing Principles on Removed Children

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

6.03 Removed Child Class Compensation

- 1) Base Compensation payable to an Approved Removed Child Class Member will not be multiplied by the number of Spells in Care.
- 2) An Approved Removed Child Class Member will be entitled to receive Base Compensation of \$40,000.
- 3) An Approved Removed Child Class Member may be entitled to an Enhancement Payment based on the following Enhancement Factors (“**Removed Child Enhancement Factors**”):
 - (a) the age at which the Removed Child Class Member was removed for the first time;
 - (b) the 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 estimated a Budget of \$7.25 billion for the Removed Child Class.

6.04 Caregiving Parents or Caregiving Grandparents of Removed Child Class

- 1) Amongst the Removed Child Family Class, only the Caregiving Parents or Caregiving Grandparents may receive direct compensation if otherwise eligible under this Agreement. Brothers and sisters are not entitled to direct compensation but may benefit indirectly from this Agreement through the Cy-près Fund.
- 2) A foster parent is not entitled to compensation under this Agreement and is not entitled or permitted to claim compensation on behalf of a Child under this Agreement.
- 3) The Base Compensation of an Approved Removed Child Family Class Member will not be multiplied based on the number of removals or Spells in Care for a Child or the number of Children in care. No Approved Removed Child Family Class Member will receive more than one Base Compensation.
- 4) A Caregiving Parent or Caregiving Grandparent who has committed Abuse that has resulted in the Removed Child Class member's removal is not eligible for compensation in relation to that Removed Child. However, a Caregiving Parent or Caregiving Grandparent is not barred from receiving compensation if the Caregiving Parent or Caregiving Grandparent is otherwise eligible for compensation as a member of another class defined under this Agreement.
- 5) The Plaintiffs have estimated a Budget of \$5.75 billion for the Removed Child Family Class.
- 6) If a Child lived with a Caregiving Grandparent at the time of removal, such a Caregiving Grandparent may be eligible to seek compensation.
- 7) A maximum compensation amount of two Base Compensation payments per Child among Caregiving Parents and Caregiving Grandparents of a Child, regardless of number of Spells in Care or removals, may be distributed under this Agreement, if otherwise eligible, according to the following priority list:
 - (a) Category A: Caregiving Parents who are biological parents; then
 - (b) Category B: Caregiving Parents who are adoptive parents or Stepparents, if applicable; then
 - (c) Category C: Caregiving Grandparent(s).
- 8) The Parties have budgeted the Base Compensation for an Approved Removed Child Family Class Member to be \$40,000.
- 9) An Approved Removed Child Family Class Member may receive an increased Base Compensation in the event that more than one Child of the Approved Removed Child Family Class Member has been removed. Such Base Compensation is budgeted to be \$60,000.

- 10) If the Settlement Implementation Committee has allocated a Trust Fund Surplus to Approved Removed Child Family Class Members pursuant to Article 6.08(5), the Settlement Implementation Committee may determine that the maximum combined amount of base and additional compensation to be awarded to an Approved Removed Child Family Class Member who has had more than one Child removed may be greater than \$60,000.
- 11) The final quantum of Base Compensation to be paid to each Approved Removed Child Family Class Member will be determined by the Settlement Implementation Committee in consultation with the Actuary, having regard to the number of Approved Removed Child Family Class Members and the Budget for the Removed Child Family Class under this Article, subject to Court approval.
- 12) Payments to Approved Removed Child Family Class Members who may be entitled to receive compensation under this Article before the expiration of the Claims Deadline may be staggered into installments in order to ensure sufficient funds exist to pay like amounts to like Claimants regardless of when they submitted their Claim.

6.04.01 Priorities in Compensation for Removed Child Family Class Members

- 1) Where one or two Category A Caregiving Parents have submitted a Claim, the Administrator will determine their Claim in accordance with the timelines specified in Article 5.02(4), and if they are determined to be Approved Removed Child Family Class Members, the Administrator will pay their compensation in accordance with the timelines specified in Article 6.11, subject to all other applicable limitations under this Agreement.
- 2) The Administrator will not pay any Claims by adoptive or Stepparent Caregiving Parents (Category B) or Caregiving Grandparents (Category C) until after the expiration of the Claims Deadline in order to determine:
 - (a) whether more than two Caregiving Parents or Caregiving Grandparents have submitted a Claim with respect to the same Child; and
 - (b) the amount of compensation, if any, payable to each such Claimant in accordance with this Article.
- 3) Where two Category A Caregiving Parents have submitted Claims that have been approved (including if separated with joint custody of the Removed Child Class member), Category B adoptive or Stepparent Caregiving Parents and Category C Caregiving Grandparents of one Removed Child Class Member will not receive a Base Compensation under this Agreement.
- 4) In the following situations, the Category B adoptive or Stepparent Caregiving Parents and the Category C Caregiving Grandparents of one Removed Child Class Member will share pro rata the Base Compensation available:

- (a) Category C Caregiving Grandparents will share pro rata two times the Base Compensation where all the following conditions are met:
 - i) greater than two Category C Caregiving Grandparents are approved for compensation; and
 - ii) no Category A biological Caregiving Parent or Category B adoptive or Stepparent Caregiving Parent has been approved for compensation.
 - (b) Category C Caregiving Grandparents will share pro rata one Base Compensation where all the following conditions are met:
 - i) no Category A biological Caregiving Parent has been approved for compensation;
 - ii) Only one Category B adoptive or Stepparent Caregiving Parent has been approved for compensation; and
 - iii) greater than one Category C Caregiving Grandparents is approved for compensation.
 - (c) Category B adoptive or Stepparent Caregiving Parents or Category C Caregiving Grandparents will share pro rata one Base Compensation where all the following conditions are met:
 - i) only one Category A biological Caregiving Parent is approved for compensation; and
 - ii) greater than one Category B adoptive or Stepparent Caregiving Parent or greater than one Category C Caregiving Grandparent is approved for compensation.
 - (d) Category B adoptive or Stepparent Caregiving Parents will share pro rata two times the Base Compensation where all the following conditions are met:
 - i) no Category A biological Caregiving Parent is approved for compensation; and
 - ii) more than two Category B adoptive and Stepparent Caregiving Parents are approved for compensation.
- 5) The Claims Process may include provisions for exceptional circumstances to the following effect: The Administrator may determine a Claim by an adoptive or Stepparent Caregiving Parent (Category B) or a Caregiving Grandparent (Category C) before the expiration of the Claims Deadline in accordance with the timelines specified in Article 5.02(4), and if they are determined to be Approved Removed Child Family Class Members, the Administrator will pay their compensation in accordance with the timelines specified in Article 6.11, subject to all other applicable limitations under this Agreement only if the

Claimant has submitted Claims Forms and Supporting Documentation substantiating that all other biological parent(s), adoptive parent(s), Stepparent(s), if applicable, and grandparent(s) of the Child have become deceased or have expressly renounced their entitlement to make a Claim under this Agreement.

- 6) Any dispute amongst Caregiving Parents or Caregiving Grandparents will be subject to a summary adjudicative determination by the Third-Party Assessor in accordance with the Claims Process.
- 7) A summary of this Article as an interpretive aid is attached as Schedule F: Examples Chart of Removed Child Family Class Approach. In the case of a conflict, the Articles in this Agreement will govern.

6.05 Governing Principles Regarding Jordan's Principle and Trout Classes

- 1) To the extent possible, this Agreement applies the same methodology to the Jordan's Principle Class and Trout Child Class.
- 2) This Agreement intends to:
 - (a) be trauma-informed regarding the Jordan's Principle Class and the Trout Child Class;
 - (b) avoid subjective assessments of harm, individual trials, or other cumbersome methods of making Eligibility Decisions with respect to this class; and
 - (c) use objective criteria to assess Class Members' needs and circumstances as a proxy for the significant harm inflicted on such Class Members in a discriminatory system.
- 3) The Base Compensation of an Approved Jordan's Principle Class Member or an Approved Trout Child Class Member will not be multiplied based on the number of Essential Services that have been confirmed to have been needed by the Child.

6.06 Jordan's Principle and Trout

- 1) The Plaintiffs will design the portion of the Claims Process with respect to members of the Jordan's Principle Class, Jordan's Principle Family Class, the Trout Child Class, and the Trout Family Class in accordance with this Article. A summary of the approach in this Article as an interpretive aid is attached as Schedule E: Summary Chart of Jordan's Principle / Trout Approach. In the case of a conflict, the Articles in this Agreement will govern.
- 2) Eligibility for compensation for members of the Jordan's Principle Class and the Trout Child Class will be determined based on those Class Members' Confirmed Need for an Essential Service if:
 - (a) a Class Member's Confirmed Need was not met because of a Denial of a requested Essential Service;

- (b) a Class Member experienced a Delay in the receipt of a requested Essential Service for which they had a Confirmed Need; or
 - (c) a Class Member's Confirmed Need was not met because of a Service Gap even if the Essential Service was not requested.
- 3) The Framework of Essential Services will establish a method to assess two categories of Essential Services based on advice from experts relating to objective criteria:
 - (a) Essential Services relating to Children whose circumstances, based on an Essential Service that they are confirmed to have needed, are expected to have included significant impact ("**Significant Impact Essential Service**"); and
 - (b) Essential Services that are not expected to have necessarily related to significant impact ("**Other Essential Service**").
- 4) The Plaintiffs will follow the following timeline in collaborating to create the Framework of Essential Services:
 - (a) The Plaintiffs will confer with experts to review the Framework of Essential Services by June 15, 2022, or such other date as agreed to by the Parties.
 - (b) The Plaintiffs will prepare a final Framework of Essential Services by August 5, 2022.
 - (c) The Plaintiffs will have an expert report in support of the finalized Framework of Essential Services by August 19, 2022.
- 5) A Claimant will be considered to have established a Confirmed Need if the Claimant has provided Supporting Documentation and has been approved by the Administrator.
- 6) Supporting Documentation will include proof of a recommendation by a Professional consistent with the following principles:
 - (a) Permissible proof includes contemporaneous and/or current proof of assessment, referral or recommendation to account for the difficulties in retaining and obtaining historic records during the Trout Child Class Period and Jordan's Principle Class Period.
 - (b) Permissible proof includes proof of assessment, referral or recommendation from a Professional within that Professional's expertise as may be available to the Class Member in their place of residence, including those in a Northern and Remote Community.
 - (c) In order to establish a Confirmed Need, the proof from a Professional must specify in all cases the Essential Service that the Claimant needed, and the reason for the need, and when the need existed.

- (d) A Claimant may establish that they requested an Essential Service from Canada during the Trout Child Class Period or Jordan's Principle Class Period by way of a statutory declaration. Proof of a request for an Essential Service is the only instance where a statutory declaration may be adduced as Supporting Documentation for the purposes of the Trout Child Class, Jordan's Principle Class, Jordan's Principle Family Class, and the Trout Family Class.
- 7) If the Administrator, or the Third-Party Assessor on appeal, determines that a Class Member has provided Supporting Documentation establishing a Confirmed Need for an Essential Service, the Administrator, or the Third-Party Assessor on appeal, will determine whether the Claimant faced a Denial, Delay or a Service Gap.
- 8) Where a Class Member has provided Supporting Documentation establishing a Confirmed Need for an Essential Service and where the Administrator has determined that the Class Member experienced a Denial, Delay or a Service Gap, that Class Member will be:
- (a) an Approved Jordan's Principle Class Member if the Claimant's Confirmed Need occurred within the Jordan's Principle Class Period; or
 - (b) an Approved Trout Child Class Member if the Claimant's Confirmed Need occurred within the Trout Child Class Period.
- 9) The Plaintiffs have estimated a Budget of \$3.0 billion dollars for the Jordan's Principle Class, subject to Articles 6.08, 6.09 and 6.10 ("**Jordan's Principle Budget**").
- 10) The Plaintiffs have estimated a Budget of \$2.0 billion dollars for the Trout Child Class, subject to Articles 6.08, 6.09 and 6.10 ("**Trout Child Budget**").
- 11) An Approved Jordan's Principle Class Member will receive a minimum of \$40,000 in compensation if:
- (a) They have established a Confirmed Need for a Significant Impact Essential Service; or
 - (b) They have established a Confirmed Need for an Other Essential Service and have suffered higher levels of impact than other Jordan's Principle Claimants with a Confirmed Need for an Other Essential Service including, but not limited to, impact by reason of conditions and circumstances such as an illness, disability or impairment. Such impact is to be measured based on objective factors assessed through culturally sensitive Claims Forms and a questionnaire designed in consultation with experts. Subject to the Court's approval, the selection of which Claimants qualify under this category will be based on objective factors such as the severity of impact on the Child and the number of eligible Claimants.
- 12) An Approved Trout Child Class Member will receive a minimum of \$20,000 in compensation if:

- (a) They have established a Confirmed Need for a Significant Impact Essential Service; or
 - (b) They have established a Confirmed Need for an Other Essential Service and have suffered higher levels of impact than other Trout Child Claimants with a Confirmed Need for an Other Essential Service including, but not limited to, impact by reason of conditions and circumstances such as an illness, disability or impairment. Such impact is to be measured based on objective factors assessed through culturally sensitive Claims Forms and a questionnaire designed in consultation with experts. Subject to the Court's approval, the selection of which Claimants qualify under this category will be based on objective factors such as the severity of impact on the Child and the number of eligible Claimants.
- 13) An Approved Jordan's Principle Class Member who has shown a Confirmed Need for Other Essential Services and has not established a claim under Article 6.06(11)(b) will receive up to but not more than \$40,000 in compensation based on a pro rata share of the Jordan's Principle Budget after deducting the total estimated amount of compensation to be paid to Approved Jordan's Principle Class Members who have established a claim under Article 6.06(11).
- 14) An Approved Trout Child Class Member who has shown a Confirmed Need for Other Essential Services and has not established a claim under Article 6.06(12)(b) will receive up to but not more than \$20,000 in compensation having regard to the Trout Child Class Budget, based on a pro rata share of the Trout Child Budget after deducting the total amount of compensation to be paid to Approved Trout Child Class Members who have established a claim under Article 6.06(12).
- 15) In the event of a Trust Fund Surplus pursuant to Article 6.08 based on advice from the Actuary after approved Claims under Article 6.06(13) and Article 6.06(14) are paid, the Approved Jordan's Principle Class Members and Approved Trout Child Class Members who have established a claim under Article 6.06(11) and Article 6.06(12) may be entitled to an Enhancement Payment.
- 16) Only Caregiving Parents or Caregiving Grandparents of the Approved Jordan's Principle Class Members and Approved Trout Child Class Members who have established a Claim under Article 6.06(11), Article 6.06(12), Article 6.07(3) or Article 6.07(4) may be entitled to compensation (i.e. "Approved Jordan's Principle and Trout Family Class"). All other Caregiving Parents or Caregiving Grandparents of the Approved Jordan's Principle Class Members and Approved Trout Child Class Members will not receive direct compensation under this Agreement.
- 17) The Approved Jordan's Principle and Trout Family Class will receive a fixed amount of \$2.0 billion dollars in compensation under this Agreement ("**Jordan's Principle and**

Trout Family Budget”). There will be no reallocation to these classes of any surpluses or revenues.

6.07 Safety Clause for Exceptional Jordan’s Principle and Trout Cases

- 1) The non-inclusion of a service on the Framework of Essential Services may not be grounds for the exclusion of a Claimant from eligibility if the following circumstances are established in accordance with this Agreement:
 - (a) The Claimant has submitted Supporting Documentation identifying a service and establishing a Confirmed Need for that service during the Class Period;
 - (b) The service identified in Article 6.07(1)(a) does not qualify as an Essential Service according to the Framework of Essential Services;
 - (c) The Supporting Documentation satisfactorily establishes the reason(s) why the service identified in Article 6.07(1)(a) was essential to the Claimant as a Child; and
 - (d) The Claimant requested the service identified in Article 6.07(1)(a) from Canada but the request was subject to a denial or unreasonable delay taking into consideration the context and the Child’s needs.
- 2) Where a Claimant has met all the conditions in Article 6.07(1), that Claimant will be:
 - (a) an Approved Jordan’s Principle Class Member if the Claimant’s Confirmed Need occurred within the Jordan’s Principle Class Period; or
 - (b) an Approved Trout Child Class Member if the Claimant’s Confirmed Need occurred within the Trout Child Class Period.
- 3) An Approved Jordan’s Principle Class Member under this Article will receive a minimum of \$40,000 in compensation if they have established a Confirmed Need in accordance with Article 6.07(1), and have suffered higher levels of impact than Class Members in Article 6.06(13) including, but not limited to, impact by reason of conditions and circumstances such as an illness, disability or impairment. Such impact is to be measured based on objective factors assessed through culturally sensitive Claims Forms and a questionnaire designed in consultation with experts. Subject to the Court’s approval, the selection of which Claimants qualify under this category will be based on objective factors such as the severity of impact on the Child and the number of eligible Claimants.
- 4) An Approved Trout Child Class Member under this Article will receive a minimum of \$20,000 in compensation if they have established a Confirmed Need in accordance with Article 6.07(1), and have suffered higher levels of impact than Class Members in Article 6.06(14) including, but not limited to, impact by reason of conditions and circumstances such as an illness, disability or impairment. Such impact is to be measured based on objective factors assessed through culturally sensitive Claims Forms and a questionnaire designed in consultation with experts. Subject to the Court’s approval, the selection of

which Claimants qualify under this category will be based on objective factors such as the severity of impact on the Child and the number of eligible Claimants.

- 5) An Approved Jordan's Principle Class Member who has not met the conditions in Article 6.07(3), will receive up to but not more than \$40,000 in compensation based on a pro rata share of the Jordan's Principle Budget after deducting the total estimated amount of compensation to be paid to Approved Jordan's Principle Class Members who have established a claim under Article 6.06(11) and Article 6.07(3), collectively.
- 6) An Approved Trout Child Class Member who has not met the conditions in Article 6.07(4), will receive up to but not more than \$20,000 in compensation having regard to the Trout Child Class Budget, based on a pro rata share of the Trout Child Budget after deducting the total amount of compensation to be paid to Approved Trout Child Class Members who have established a claim under Article 6.06(12) and Article 6.07(4), collectively.

6.07.01 Exceptional Early Payment of Compensation Funds

- 1) Notwithstanding Article 6.01(4), the Administrator may exceptionally approve the payment of compensation prior to a Claimant having reached the Age of Majority in accordance with this Article.
- 2) An individual under the Age of Majority may be eligible to receive an amount of compensation to fund or reimburse the cost of a life-changing or end-of-life wish experience (the "**Exceptional Early Payment**"), if they provide Supporting Documentation establishing that:
 - (a) they meet the requirements, other than age, to be an Approved Removed Child Class Member or an Approved Jordan's Principle Class Member; and
 - (b) they are suffering from a terminal or non-curable life-threatening condition that has placed their life in jeopardy.
- 3) An individual who establishes eligibility for an Exceptional Early Payment in accordance with this Article must provide reasonable proof of a chosen life-changing or end-of-life wish experience and the approximate cost of that experience.
- 4) The Administrator will assess a Claimant's eligibility for an Exceptional Early Payment to fund or reimburse the cost in an amount up to, but no more than \$40,000.
- 5) The Administrator will determine the Claim for an Exceptional Early Payment in the best interests of the Child and on an expedited basis. The Administrator will require such documentation in good faith as is required to assess:
 - (a) the Claimant's eligibility;
 - (b) the Claimant's terminal or non-curable life-threatening condition;
 - (c) the validity of the Claimant's life-changing or end-of-life experience request;

(d) the age and circumstances of the Child and whether the Child needs any protection; and

(e) the approximate cost of the life-changing or end-of-life wish experience.

- 6) Where a Class Member has received an Exceptional Early Payment and later submits a Claim for compensation, the amounts paid as Exceptional Early Payment will be deducted from that Claimant's total entitlement, if any, to compensation under this Agreement.

6.08 Priorities in Distribution of Surplus

- 1) On the advice of the Actuary or a similar advisor, the Settlement Implementation Committee may determine at any time or from time to time that there are unallocated or surplus funds on the Settlement Funds in the Trust Fund (a "**Trust Fund Surplus**").
- 2) The Settlement Implementation Committee may propose that a 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 Removed Child Family Class Members.

6.09 Reallocation of Budgets

- 1) The Settlement Implementation Committee will adopt the budgets with respect to compensation allocated to different classes (each, a **"Budget"**) in accordance with the amounts listed in Article 6.03, 6.04, and 6.06.
- 2) The Settlement Implementation Committee will arrange for an actuarial review of the Trust Fund to be conducted at least once every three years and more frequently if the Settlement Implementation Committee considers it appropriate. The actuarial review will be conducted by the Actuary in accordance with accepted actuarial practice in Canada. The actuarial review will determine:
 - (a) the value of the assets available to meet all outstanding and future expected Claims;
 - (b) the present value of all outstanding and future expected Claims using where necessary such reasonable assumptions as determined by the Actuary to be appropriate;
 - (c) an actuarial buffer to provide a reasonable margin of protection due to adverse deviations from the assumptions utilised; and
 - (d) the actuarial surplus and/or the actuarial deficit of funds in a Budget.
- 3) If based on the Actuary's advice the total compensation to be paid to the number of approved Class Members within a class is, or is expected to be, below the Budget, the Settlement Implementation Committee may transfer some amount from that Budget to another Budget, which, on the Actuary's advice, has a higher than estimated total compensation to be paid to approved Class Members.
- 4) If more than one (1) Budget has a higher than estimated total compensation to be paid to the number of approved Class Members, the Settlement Implementation Committee may make such transfer of funds in accordance with the following order of priorities, subject to Court approval:
 - i) Approved Removed Child Class Members;
 - ii) Approved Jordan's Principle Class Members;
 - iii) Approved Trout Child Class Members;
 - iv) Approved Removed Child Family Class Members.

6.10 Income on Trust Fund

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 Removed Child Family Class Members.

6.11 Option to invest compensation funds

- 1) The Administrator will provide payment to Approved Removed Child Class Members and Approved Jordan's Principle Class Members within nine (9) months of the approval of the Class Member's Claim, but in all cases, only after taking the following steps:
 - (a) At least six months prior to issuing payment, the Administrator will contact the Approved Class Member to ask whether the Class Member wishes to maintain or direct a portion or all of the amount to which the Class Member is entitled to an investment vehicle.
 - (b) The form of notice to the Class Member will be determined by the Settlement Implementation Committee.
 - (c) If the Class Member indicates their desire that a certain amount be invested, the funds will be held or directed to a separate account for the benefit of the Class Member.
 - (d) Once the Class Member's investment account is established, the fees, costs and taxes payable on the investment capital or returns will be borne by the Class Member's individual investment, as applicable.

6.12 Adjustment for Time Value of Compensation Money

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

ARTICLE 7 – CY-PRÈS FUND

7.01 Governing Principles

- 1) The Plaintiffs will design a Cy-près Fund with the assistance of experts, subject to the Court's approval.

- 2) The Cy-près Fund's purpose is primarily to benefit Class Members who do not receive direct payment under this Agreement.
- 3) Upon formation or selection of an existing entity and after the Implementation Date, the Trustee will endow the Cy-près Fund with \$50 million from the Trust Fund.
- 4) The Cy-près Fund will be First Nations led.
- 5) The objective of the Cy-près Fund is to provide culturally sensitive and trauma-informed supports to the Class, including, but not limited to, the following:
 - (a) Establish a fund, foundation or other similar vehicle whose leadership may include First Nations youth and children in care, formerly in care, their allies and those who experienced a Delay, Denial or Service Gap under Jordan's Principle, to offer grant-based supports to facilitate access to culture-based, community-based and healing-based programs, services and activities to Class Members and the Children of First Nations parents who experienced a Delay, Denial or Service Gap under Jordan's Principle.
 - i) Such grant-based supports may include, but are not limited to funding the following:
 - (1) Family and community unification, reunification, connection and reconnection for youth in care and formerly in care:
 - i. facilitating First Nations youth in care and formerly in care to identify birth family and their First Nation, which may include accessing records or files, meeting family members or travelling to their First Nation;
 - ii. accessing holistic wellness supports for First Nations youth in care and formerly in care during the family and community reunification and reconnection process; and
 - iii. reducing the costs associated with travel and accommodations to visit community and family, including for First Nations youth in care and formerly in care, support person(s) or family members.
 - (2) Cultural access:
 - i. facilitating access to cultural programs, activities and supports, including, but not limited to: youth groups, ceremony, language, Elders and Knowledge Keepers, mentors, land-based activities, and culturally-based arts and recreation.
 - (3) Transition and Navigation supports:
 - i. Facilitating access for First Nations youth in care and formerly in care to transition supports for First Nations youth in care and formerly in care

who are either not eligible for post-majority care and services under the reformed First Nations Child and Family Services Program or that are not covered elsewhere, in their transition to adulthood, including, but not limited to: safe and accessible housing, life skills and independent living, financial literacy, planning and services, continuing education, health and wellness supports.

- ii. Facilitating access to navigational supports for Class Members and the children of First Nations parents who experienced a Delay, Denial or Service Gap under Jordan's Principle who are not eligible to receive post-majority services under Jordan's Principle or are not covered elsewhere.
- iii. Facilitating access to a scholarship for the Jordan's Principle Class and the children of First Nations parents who experienced a Delay, Denial or Service Gap in the provision of services under Jordan's Principle. The scholarship will be designed to acknowledge the adverse effects associated with the experience of a Delay, Denial or Service Gap under Jordan's Principle.

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

ARTICLE 8 – SUPPORTS TO CLASS IN CLAIMS PROCESS

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

ARTICLE 9 - EFFECT OF AGREEMENT

9.01 Releases

- 1) The Settlement Approval Order issued by the Court will declare that, except as otherwise agreed to in this Agreement and in consideration for Canada's obligations and liabilities under this Agreement, each Class Member or their Estate Executor, Estate Claimant, or Personal Representative on behalf of such Individual Class Member or their estate and each First Nation Class Member (hereinafter collectively the "**Releasors**") has fully, finally and forever released Canada and its servants, agents, officers and employees,

predecessors, successors, and assigns (hereinafter collectively the “**Releasees**”), from any and all actions, causes of action, claims, and demands of every nature or kind available, whether or not known or anticipated, which the 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.

9.02 Continuing Remedies

- 1) The Parties acknowledge and agree that, notwithstanding any provision of this Agreement, Class Members do not release, and specifically retain, their claims or causes of action for any breach by Canada of its ongoing obligations under this Agreement, including:
 - (a) failing to pay the Settlement Funds in their entirety;
 - (b) funding reasonable notice and other administration fees involved in carrying out this Agreement, including, but not limited to, information and notice to the Class

Members about certification, this Agreement, settlement approval, and the Claims Process, as well as third-party administration costs;

- (c) paying reasonable legal fees to Class Counsel, over and above the Settlement Funds;
- (d) communicating with provincial and territorial Deputy Ministers responsible for child and family services, health, and education, as well as other relevant Deputy Ministers regarding taxation, Children's Special Allowance, social assistance payments, post-majority care or other provincial/territorial benefits "claw backs" without affecting funding received through a Jordan's Principle request, whether pending or approved;
- (e) proposing a public apology by the Prime Minister;
- (f) working toward the intention of the Parties that the Settlement Funds, including any income earned on the Settlement Funds awaiting distribution, will be distributed to Class Members as compensation, as opposed to "income" subject to taxation; and
- (g) jointly seeking an order from the Tribunal declaring that the Order for compensation has been fully satisfied.

- 2) The Parties agree that, subject to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, the Parties will be entitled to seek relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement, without any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief allowed by law, this being in addition to damages and any other remedy to which the Parties may be entitled at law or in equity for any breach of this Agreement.

9.03 Canadian Income Tax and Social Benefits

- 1) Canada will make best efforts to ensure that any Class Member's entitlement to federal social benefits or social assistance benefits will not be negatively affected in any manner by the Class Member's receipt, directly or indirectly, of any payment in accordance with this Agreement, and that no such payment will be considered taxable income within the meaning of the *Income Tax Act*.
- 2) The Parties agree that the payments to Class Members, including payments of any income earned on the Settlement Funds, are in the nature of personal injury damages and are not taxable income and Canada will make best efforts to obtain a technical interpretation to the same effect from the Income Tax Rulings Directorate of the Canada Revenue Agency.
- 3) Upon approval of this Agreement by the Court, Canada will write to all provincial and territorial Deputy Ministers responsible for child and family services, health, and

education, as well as other relevant Deputy Ministers, to encourage them to collaborate in:

- (a) exempting Class Member claims payouts under this Agreement from taxation, including payments of any income earned on the Settlement Funds, the Children's Special Allowance, social assistance payments, post-majority care or other provincial/territorial benefits "claw backs"; and
 - (b) ensuring that receipt of any compensation under this Agreement will in no way affect funding received through a Jordan's Principle request, whether pending or approved.
- 4) Canada will not in any way consider receipt of compensation under this Agreement as a factor in deciding any pending, approved or future requests pursuant to Jordan's Principle or with respect to individual entitlements under ISC programs where ISC makes a decision with respect to an individual's eligibility for funding.

ARTICLE 10 - IMPLEMENTATION OF THIS AGREEMENT

10.01 Settlement Approval Order

- 1) This Agreement is conditional upon the Tribunal confirming the satisfaction of its Compensation Order and the Compensation Framework Order (2021 CHRT 7), 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 Order has been fully satisfied. The Parties will take all reasonable steps to support the application before the Tribunal, including filing such evidence and submissions as may be required.
- 3) The AFN agrees to act as the lead applicant before the Tribunal in seeking the above order, and to take all reasonable steps to publicly promote and defend the Agreement.
- 4) The Representative Plaintiffs, or any of them, in the Consolidated Action and the Trout Action may seek interested party status and/or standing to make representations before, and to answer questions posed by, the Tribunal in respect of the satisfaction of the Compensation Order and Canada consents to them obtaining such standing.
- 5) The Parties will consent to the issuance of the Settlement Approval Order.
- 6) The Parties will take all reasonable measures to cooperate in requesting that the Court issue the Settlement Approval Order and related orders on notice of certification, Settlement Approval Hearing, and any other orders required for the implementation of this Agreement.
- 7) The Parties will schedule the Settlement Approval Hearing as soon as practicable considering the requirements of the Notice Plan, the decision required from the Tribunal

and the Court's availability, noting that such hearing is currently scheduled for five days beginning on September 19, 2022.

- 8) The Parties will consider seeking orders from provincial superior courts to obtain relevant data from provinces and territories should that become necessary and agree to cooperatively approach the provinces and territories to encourage their compliance.
- 9) The Parties will take all reasonable measures to cooperate in seeking federal, provincial and territorial privacy legislation exemptions and consents as may be needed to implement the Agreement.

10.02 Notice Plan

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

ARTICLE 11 - OPTING OUT

11.01 Opting Out

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

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

11.02 Automatic Exclusion for Individual Claims

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

ARTICLE 12 - SETTLEMENT IMPLEMENTATION COMMITTEE

12.01 Composition of Settlement Implementation Committee

- 1) A Settlement Implementation Committee will be formed in accordance with this Article, subject to approval by the Court.
- 2) The Settlement Implementation Committee will consist of five (5) members as follows:
 - (a) Two First Nations members ("**Non-Counsel SIC Members**"); and
 - (b) Three Counsel members ("**Counsel SIC Members**").

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

Implementation Committee the necessary number of replacement Counsel SIC Members separately for each of their respective counsel as those positions become vacant from time to time in accordance with this Article for the purposes of seeking the Court's approval of the appointment of such members.

- 13) A member of the Settlement Implementation Committee may be removed prior to the expiry of their term with a special majority vote of four (4) members of the Settlement Implementation Committee. Such a removal is not effective unless and until approved by the Court.
- 14) The Court may substitute any member of the Settlement Implementation Committee in accordance with this Article in the best interests of the Class.
- 15) A meeting of the Settlement Implementation Committee may be held if at least four (4) members are present. In making decisions under this Agreement, the Settlement Implementation Committee will make reasonable efforts to reach consensus. If consensus is not possible, the Settlement Implementation Committee will decide by majority vote unless specified otherwise in this Agreement.
- 16) If any member of the Settlement Implementation Committee believes that the majority of the Settlement Implementation Committee has taken a decision that is not in the best interests of the Class, that Member may refer the decision to confidential mediation in accordance with the ADR Chambers Mediation Rules. If the members of the Settlement Implementation Committee cannot agree on a mediator, they may ask the Court to appoint one. The reasonable costs of the mediation will be a disbursement of the Settlement Implementation Committee payable in accordance with Article 3.04(1). If the matter cannot be resolved at mediation, the matter may be referred to the Court for determination.
- 17) For the first two (2) years following the Implementation Date of this Agreement, the Settlement Implementation Committee will meet monthly, either in-person or virtually, and thereafter, the Settlement Implementation Committee will meet quarterly, unless the Settlement Implementation Committee believes that more frequent meetings are required. Notwithstanding this 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 solely in the best interests of the Class, and not in the interests of any other party, stakeholder or entity.
- 19) In the event that either Sotos LLP or Kugler Kandestin LLP merges with another law firm, this Agreement will be binding on the successor firm.
- 20) If after the Implementation Date, Sotos LLP, Kugler Kandestin LLP or the AFN Executive Committee determine in their respective sole and unfettered discretion that they no longer

need or want to nominate members to the Settlement Implementation Committee in accordance with this Article, they will advise the Settlement Implementation Committee in writing. In that event, the Court will determine a prospective replacement for such members in the best interests of the Class on the recommendation of the Settlement Implementation Committee.

12.02 Settlement Implementation Committee Fees

- 1) Canada's liability for the fees of Counsel SIC Members and any other counsel to whom work is delegated will be negotiated by the Parties by way of the process identified in Article 16, Legal Fees.
- 2) Counsel SIC Members may delegate the legal work reasonably necessary for the fulfillment of the Settlement Implementation Committee's responsibilities under this Agreement among Class Counsel or retain other counsel as Counsel SIC Members consider necessary.
- 3) Canada will pay a total of \$750,000, separate and in addition to any other amounts in this Agreement to be paid at the direction of the AFN Executive Committee to fund an honorarium of \$200 per hour to each of the Non-Counsel SIC Members for reasonable participation in the work of the Settlement Implementation Committee, up to a maximum of \$1000 per day, subject to the Court's approval. The Settlement Implementation Committee may propose, and the Court may implement a change in the quantum of such honoraria from time to time.

12.03 Settlement Implementation Committee Responsibilities

- 1) In addition to matters specified elsewhere in this Agreement, the Settlement Implementation Committee's responsibilities will include the following:
 - (a) monitoring the work of the Administrator and the Third-Party Assessor, and the Claims Process overall;
 - (b) receiving and considering reports from the Administrator, including on administrative costs;
 - (c) engaging experienced practitioners as needed who are familiar with family and child welfare documents and records in each province and territory to assist with the work of the Administrator and the Third-Party Assessor, where necessary to substantiate allegations of Abuse or conduct isolated audits of some Claims Forms where ISC data is insufficient or lacking;
 - (d) giving such process directions to the Administrator or the Third-Party Assessor as may be necessary in accordance with the mandate of the Settlement Implementation Committee and the provisions of this Agreement;

- (e) proposing for the Court's approval such protocols as may be necessary for the implementation of this Agreement, including any amendments to the Claims Process and distribution protocol as may be necessary;
 - (f) addressing any other matter referred to the Settlement Implementation Committee by the Court;
 - (g) receiving, through the Investment Committee, and seeking Court approval on advice from the Actuary and investment experts on the investment of the Trust Fund;
 - (h) recommending to the Court any change of the Administrator;
 - (i) setting Terms of Reference for the Investment Committee regarding investment objectives and strategy (the "**Investment Committee Terms of Reference**") in accordance with the principles set out in Schedule G: Investment Committee Guiding Principles;
 - (j) engaging experts as reasonably needed including, but not limited to, experts in First Nations data governance, trauma, community relations, health and social services, and actuaries to assist with the Claims Process;
 - (k) receiving annual reports from Canada on the health supports, trauma-informed mental supports, and Claims Process supports provided to Class Members;
 - (l) providing an annual Settlement Implementation Report to the Court, which includes updates on the implementation of the Agreement, actuarial reporting on the Trust Fund and distribution, annual audited financial reporting, any issues with the Trust, any systemic issues in implementation and proposed or approved resolution to such issues, etc.; and
 - (m) providing the AFN Executive Committee with a concurrent copy of the annual Settlement Implementation Report.
- 2) The Settlement Implementation Committee may retain experts and consultants as reasonably required for the implementation of this Agreement. The fees and disbursements of such experts and consultants will be a disbursement of the Settlement Implementation Committee payable by Canada in accordance with Article 3.04.
 - 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 - PAYMENTS FOR DECEASED INDIVIDUAL CLASS MEMBERS AND PERSONS UNDER DISABILITY

13.01 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 paid the compensation to which the Claimant would have been entitled under the Claims Process.

13.02 General Principles for Compensation if Deceased

Only the Estates of the deceased members of the Removed Child Class, Jordan’s Principle Class or Trout Child Class may be eligible for compensation under this Agreement (“**Eligible Deceased Class Member**” or “**Eligible Deceased Class Members**”). The Estates of the Removed Child Family Class, the Jordan’s Principle Family Class or the Trout Family Class are not eligible for compensation, unless a complete 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.

13.03 Compensation if Deceased: Grant of Authority or the Like

- 1) Where an Estate Executor or Estate Administrator of an Eligible Deceased Class Member has been appointed under the *Indian Act* or under the governing provincial or territorial legislation, the Estate Executor or Estate Administrator may submit a Claim for compensation in accordance with this Agreement.
- 2) In support of a Claim made pursuant to Article 13.01, the Estate Executor or Estate Administrator for an Eligible Deceased Class Member will submit to the Administrator, in each case in a form acceptable to the Administrator:
 - (a) A Claims Form (if a Claims Form was not submitted by such Eligible Deceased Class Member or their Personal Representative prior to their death);
 - (b) Evidence that such Eligible Deceased Class Member is deceased and the date on which such Eligible Deceased Class Member died;
 - (c) Evidence in the following form identifying such representative as having the legal authority to receive compensation on behalf of the estate of the Eligible Deceased Class Member:
 - i) If the claim to entitlement to receive compensation on behalf of a decedent estate is based on a will or other testamentary instrument or on intestacy, a copy of a grant of probate or a grant and letters testamentary or other document of like import, or a grant of letters of administration or other document of like import, issued by any court or authority in Canada; or
 - ii) If in Quebec, a notarial will, a probated holograph will, a probated or other document of like import made in the presence of witnesses in accordance with the *Civil Code of Quebec* and the *Indian Act*.

13.04 Compensation if Deceased: No Grant of Authority or the Like

- 1) For the purpose of this Article a “spouse” means a person who:
 - (a) is legally married;
 - (b) persons who are not married, but:
 - i) have a common law relationship for a period of not less than one year, the time prescribed in accordance with the *Indian Act*, at the time of death; or
 - ii) have a relationship of some permanence if they are the parents of a child.
- 2) If a Claims Form is submitted to the Administrator on behalf of an Eligible Deceased Class Member without proof of a will or the appointment of an Estate Executor or Estate Administrator, the Administrator may, upon receiving Supporting Documentation, treat the Eligible Deceased Class Member’s Claim in accordance with

the priority level of heirs under the *Indian Act* in respect of distribution of property on intestacy as follows:

- (a) The spouse of the Eligible Deceased Class Member at the time of death.
 - (b) Where the Eligible Deceased Class Member has no spouse, the Child or Children of the eligible Deceased Class Member. Any Child of the Eligible Deceased Class Member will be able to submit a Claim to the Administrator if so entitled pursuant to the priorities herein. 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 and no child/children, the Caregiving Parents or Caregiving Grandparents of the Eligible Deceased Class Member, as applicable. Any surviving Caregiving Parent or Caregiving Grandparent of the Eligible Deceased Class Member may advance a claim to the Administrator if so entitled pursuant to the priorities herein. The compensation will be divided pro rata between the Caregiving Parents or Caregiving Grandparents of the Eligible Deceased Class Member who are alive when the Claim is received by the Administrator.
 - (d) Where an Eligible Deceased Class Member leaves no spouse, child, or Caregiving Parent or Caregiving Grandparent, the sibling(s) of the Eligible Deceased Class Member. Any sibling of the Eligible Deceased Class Member may advance a Claim to the Administrator if so entitled pursuant to the priorities herein. The compensation will be distributed equally among the siblings of the Eligible Deceased Class Member who are alive when the claim is received by the Administrator.
- 3) Subject to sections 4(3) and 42 to 51 of the *Indian Act*, Canada, as represented by the Minister of Indigenous Services Canada, may administer or appoint administrators for the estates of Eligible Deceased Class Members who are under Canada's jurisdiction and who have or are entitled to receive direct compensation under this Agreement.
 - 4) Canada may consult with the Settlement Implementation Committee to utilize the existing ISC framework for the administration of the estates of Eligible Deceased Class Members consistent with the exercise of Ministerial discretion considering individual circumstances. Canada will conduct the administration process in a trauma-informed manner and with a view to ensuring that it is as expeditious, cost-effective, user-friendly, and culturally sensitive as possible. This may include:

- (a) where Canada is advised that an Estate Executor or Estate Administrator has not already been appointed on behalf of the estate of an Eligible Deceased Class Member, Canada may appoint an Estate Administrator as needed who will act in accordance with their fiduciary and statutory duties, which may include submitting a 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.
- 5) Subject to issues that may arise in individual cases, Canada may, but is not obligated to, exercise its discretion under the *Indian Act* to assume jurisdiction over the administration of the estates referred to above. Nothing in this Article should be taken to extend the jurisdiction under the *Indian Act* over the administration of estates.

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

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

ARTICLE 14 - TRUSTEE AND TRUST

14.01 Trust

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

14.02 Trustee

- 1) The Court will appoint the Trustee to act as the trustee of the Trust, with such powers, rights, duties, and responsibilities as the Court orders. Without limiting the generality of the foregoing, the duties and responsibilities of the Trustee will include:
 - (a) to hold the Trust Fund;
 - (b) to invest the Settlement Funds in accordance with the Statement of Investment Policies and Procedures as instructed by the Investment Committee, having regard to the best interests of Class Members and the ability of the Trust to meet its financial obligations, subject to the Court's ongoing supervision;
 - (c) upon instructions from the Administrator and approval of the Settlement Implementation Committee in accordance with the policies of the Settlement Implementation Committee, to provide such amounts from the Trust to the Administrator and any other person as described in Article 3.02, Article 4.02, Article 7.01, and Article 17(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.

14.03 Trustee Fees

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

14.04 Nature of the Trust

- 1) The Trust will be established for the following purposes:

- (a) to acquire the Settlement Funds payable by Canada;
- (b) to hold the Settlement Funds in the Trust;
- (c) to pay compensation in accordance with 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.

14.05 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.

14.06 Records

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

14.07 Quarterly Reporting

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

14.08 Annual Reporting

The Auditors will deliver to the Administrator, the Trustee, Canada, the Settlement Implementation Committee, the AFN Executive Committee and the Court, within sixty (60) days after the end of each anniversary of the date that the Trust was funded, which date will be the fiscal year-end for the Trust:

- (a) the audited financial statements of the Trust for the most recently completed fiscal year, together with the report of the Auditors thereon;

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

14.09 Method of Payment

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

14.10 Additions to Capital

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

14.11 Tax Elections

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

14.12 Canadian Income Tax

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

ARTICLE 15 – AUDITORS

15.01 Appointment of Auditors

On the recommendation of the Settlement Implementation Committee, the Court will appoint Auditors with such powers, rights, duties and responsibilities as the Court directs. On the recommendation of the Parties, or of their own motion, the Court may replace the

Auditors at any time. Without limiting the generality of the foregoing, the duties and responsibilities of the Auditors will include:

- (a) to audit the accounts for the Trust in accordance with generally accepted auditing standards on an annual basis;
- (b) to provide the reporting set out in Article 14.08;
- (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.

15.02 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 16 - LEGAL FEES

16.01 Class Counsel Fees

- 1) Canada will pay Class Counsel the amount approved by the Court, plus applicable taxes, in respect of their legal fees and disbursements for the prosecution of the Actions to the date of the Settlement Approval Hearing, together with advice to Class Members regarding the Agreement and Acceptance, over and above the Settlement Funds. Subject to Article 12.02(1), Canada will also pay the reasonable legal fees of Class Counsel for their work on or for the Settlement Implementation Committee and the Investment Committee. A disagreement between the Parties over legal fees will not prevent the Parties from signing this Agreement. Canada and Class Counsel will participate in mediation if they are unable to agree upon the legal fees, to be presided over by a mediator to be agreed upon by and between Canada and Class Counsel or, failing agreement, appointed by the Court. In the event that Canada and Class Counsel are not able to agree upon legal fees during mediation, fees will be subject to the approval of the Court, subject to appeal. Canada will have standing to make submissions to the Court regarding such fees.
- 2) No such amounts will be deducted from the Settlement Funds.
- 3) Class Counsel will not charge individual Class Members any amounts for legal services rendered in accordance with this Agreement. Such assistance to Class Members will not be considered to constitute or be cause for a conflict.

16.02 Ongoing Legal Services

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

16.03 Ongoing Fees

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

ARTICLE 17 - GENERAL DISPUTE RESOLUTION

- 1) Where a dispute arises regarding any right or obligation under this Agreement (“**Dispute**”), the parties to the Dispute will refer the Dispute to confidential mediation in accordance with the ADR Chambers Mediation Rules. If the parties to the Dispute cannot agree on a mediator, they may ask the Court to appoint one (the “**Dispute Resolution Process**”).
- 2) If the Dispute cannot be resolved through the Dispute Resolution Process, it can be referred to the Court for determination.
- 3) The costs of dispute resolution amongst members of the Settlement Implementation Committee, in accordance with the Dispute Resolution Process, or by referral to the Court, may be paid out of the 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 18 - TERMINATION AND OTHER CONDITIONS

18.01 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 9.01 – Releases
 - (b) Article 20 – Confidentiality
 - (c) Article 22 – Immunity

18.02 Amendments

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

18.03 Non-Reversion of Settlement Funds

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

18.04 No Assignment

- 1) No compensation payable under this Agreement to a Class Member can be assigned, charged, pledged, hypothecated and any such assignment, charge, pledge, or hypothecation is null and void except as expressly provided for in this Agreement.
- 2) No portion of the Settlement Funds or amounts accrued thereon that remain will be charged to a Claimant for completing Claims Forms or providing Supporting Documentation.
- 3) Any payment to which a Claimant is entitled will be made to such Claimant in accordance with the direction that such Claimant provides to the Administrator unless a court of competent jurisdiction has ordered otherwise.
- 4) Any payments in respect of a Deceased Class Member or a Person Under Disability will be made in accordance with Article 13.

- 5) In the absence of fraud, any amount paid pursuant to this Agreement is not refundable in the event that it is later determined that the Claimant was not entitled to receive or be paid all or part of the amount so paid, but the Claimant may be required to account for any amount that they were not entitled to receive against any future payments that they would otherwise be entitled to receive pursuant to this Agreement.

ARTICLE 19 – WARRANTIES AND REPRESENTATIONS ON SIZE OF THE CLASS

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

ARTICLE 20 – CONFIDENTIALITY

20.01 Confidentiality

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

20.02 Destruction of Class Member Information and Records

- 1) Subject to Article 20.02(2), two years after completing the payment of all compensation under this Agreement, the Administrator will destroy all Class Member information and documentation in its possession, unless a Class Member or their Estate Executor or Estate Claimant specifically requests the return of such information within the two-year period. Upon receipt of such request, the Administrator will forward the Class Member information as directed. Before destroying any information or documentation in accordance with this Article, the Administrator will prepare an anonymized statistical analysis of the Class in accordance with the Claims Process.
- 2) Prior to destruction of the records, the Administrator will create and provide to Canada a list showing the Approved Class Member's: (i) name (ii) Indian registration number, (iii) Band or First Nation affiliation, (iv) birthdate, (v) class membership, and (vi) amount and date of payment with respect to each compensation payment made. Notwithstanding anything else in this Agreement, this list must be retained by Canada in strict confidence

and can only be used in a legal proceeding or settlement where it is relevant to demonstrating that a claimant received a payment under this Agreement.

- 3) The destruction of records in the possession or control of Canada is subject to the application of any relevant provincial or federal legislation such as the *Privacy Act*, the *Access to Information Act*, the *Personal Information Protection and Electronic Documents Act* and the *Library and Archives of Canada Act*.

20.03 Confidentiality of Negotiations

Save as may otherwise be agreed between the Parties, the undertaking of confidentiality as to the discussions and all communications, whether written or oral, made in and surrounding the negotiations leading to the 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 21 – COOPERATION

21.01 Cooperation on Settlement Approval and Implementation

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

21.02 Public Announcements

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

ARTICLE 22 – IMMUNITY

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

any reason, except fraud relating to the Actions and to this Agreement, and this Agreement will be a complete defence.

ARTICLE 23 – PUBLIC APOLOGY

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

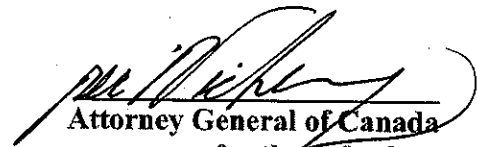
ARTICLE 24 – COMPLETE AGREEMENT

This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and cancels and supersedes any prior or other understandings and agreements between or among the Parties with respect thereto, including the AIP. There are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between or among the Parties with respect to the subject matter hereof other than as expressly set forth or referred to in this Agreement.

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

Signed at *Ottawa*, this *30th* day of June 2022.

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


**Attorney General of Canada
for the defendant**

**THE PLAINTIFFS, as represented by class counsel
BY:**

**Sotos LLP/ Kugler Kandestin LLP/Miller Titerle + Co
for the plaintiffs
Xavier Moushoom, Jeremy Meawasige (by his litigation guardian Jonavon Meawasige),
Jonavon Joseph Meawasige, and Zacheus Joseph Trout**

**Nahwegahbow, Corbiere/ Fasken LLP/ Stuart Wuttke
for the plaintiffs
Assembly of First Nations, Ashley Dawn 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**

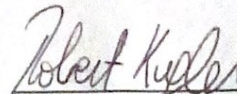
Date signed June 30, 2022

Signed at Montreal, this 30th day of June 2022.

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

Attorney General of Canada
for the defendant

**THE PLAINTIFFS, as represented by class counsel
BY:**



Sotos LLP/ Kugler Kandestin LLP/Miller Titerle + Co
for the plaintiffs

**Xavier Moushoom, Jeremy Meawasige (by his litigation guardian Jonavon Meawasige),
Jonavon Joseph Meawasige, and Zacheus Joseph Trout**

Nahwegahbow, Corbiere/ Fasken LLP/ Stuart Wuttke
for the plaintiffs

**Assembly of First Nations, Ashley Dawn 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**

Date signed June 30, 2022

Signed at Rama First Nation , this 30th day of June 2022.

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

**Attorney General of Canada
for the defendant**

**THE PLAINTIFFS, as represented by class counsel
BY:**

**Sotos LLP/ Kugler Kandestin LLP/Miller Titerle + Co
for the plaintiffs
Xavier Moushoom, Jeremy Meawasige (by his litigation guardian Jonavon Meawasige),
Jonavon Joseph Meawasige, and Zacheus Joseph Trout**



**Nahwegahbow, Corbiere/ Fasken LLP/ Stuart Wuttke
for the plaintiffs
Assembly of First Nations, Ashley Dawn 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**

Date signed June 30, 2022

Schedule A - Consolidated Action Certification Order

(provided in English and French)

Federal Court



Cour fédérale

Date: 20211126

Docket: T-402-19

T-141-20

Citation: 2021 FC 1225

Ottawa, Ontario, November 26, 2021

PRESENT: The Honourable Madam Justice Aylen

CLASS PROCEEDING

BETWEEN:

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

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

BETWEEN:

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

Plaintiffs

and

HER MAJESTY THE QUEEN

AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER AND REASONS

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

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

CONSIDERING the motion materials filed by the Plaintiffs;

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

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

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

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

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

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

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

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

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

(e) there is a representative plaintiff or applicant who

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

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

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

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

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

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

e) il existe un représentant demandeur qui :

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

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

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

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

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

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

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

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

CONSIDERING that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THIS COURT ORDERS that:

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

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

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

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

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

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

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

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

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

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

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

(ii) If so, in what amount?

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

(i) If so, in what amount?

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

"Mandy Aylen"

Judge

ANNEX A

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

**FEDERAL COURT
PROPOSED CLASS PROCEEDING**

B E T W E E N:

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

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

**FEDERAL COURT
PROPOSED CLASS PROCEEDING**

B E T W E E N:

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

Plaintiffs

and

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

Defendant

FRESH AS AMENDED LITIGATION PLAN

November 2, 2021

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Lawyers for the plaintiffs Assembly of First Nations, Ashley Dawn
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Jackson by his Litigation Guardian, Carolyn Buffalo, Carolyn
Buffalo, and Dick Eugene Jackson also known as Richard Jackson

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I. DEFINITIONS

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

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

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

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

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

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

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

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

CHRT means the Canadian Human Rights Tribunal;

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

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

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

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

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

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

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

Crown Class Member Information means information to be provided by the Crown, at the request of the plaintiffs and/or as ordered by the Court, to the **Class Action Administrator** and/or **Class Counsel** regarding the names and last known contact information of all individuals who meet the criteria of Class Members as set out in the Consolidated Statement of Claim or as otherwise defined by the Court, including: (a) a list of all known Class Members' names and last known addresses using the information in the Crown's possession or under its control¹ 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;

¹ 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.²

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.

² 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 undertakings and refusals 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:

- [INSERT CERTIFIED COMMON ISSUE]
- ...

Participation in the Class Action

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

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

Fees and Disbursements

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

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

Opt Out

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

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

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

Contact Information

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

By phone: [INSERT PHONE NUMBER]

By email: [INSERT EMAIL]

Toll-Free Hotline: [INSERT TELEPHONE]

By mail: [INSERT ADDRESS]

SCHEDULE “B”

OPT OUT FORM

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

ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]

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

Dated: _____

Signature

Full Name

Address

City, Province, Postal Code

Telephone

Email

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

SCHEDULE “C”

CLAIM FORM

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

ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]

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

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

☐ Removed Child Class

☐ Jordan's Class

☐ Family Class

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

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

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

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

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

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

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

My mailing address is:

Street name, Apartment #

City, Province

Postal Code

Telephone Number(s)

Email address

Signed: _____

Date: _____

SCHEDULE “D”

INDIVIDUAL DAMAGE ASSESSMENT FORM

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

ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]

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

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

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

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

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

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

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

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

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

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

Signed: _____

Date: _____

Cour fédérale



Federal Court

Date : 20211126

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

Référence : 2021 CF 1225

[TRADUCTION FRANÇAISE]

Ottawa (Ontario), le 26 novembre 2021

En présence de madame la juge Aylen

RECOURS COLLECTIF

ENTRE :

XAVIER MOUSHOOM, JEREMY MEAWASIGE (représenté par son tuteur à l'instance, JONAVON JOSEPH MEAWASIGE) ET JONAVON JOSEPH MEAWASIGE

demandeurs

et

LE PROCUREUR GÉNÉRAL DU CANADA

défendeur

ENTRE :

ASSEMBLÉE DES PREMIÈRES NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON (représenté par sa tutrice à l'instance, CAROLYN BUFFALO), CAROLYN BUFFALO ET DICK EUGENE JACKSON, également connu sous le nom de RICHARD JACKSON

demandeurs

et

**SA MAJESTÉ LA REINE
REPRÉSENTÉE PAR LE PROCUREUR GÉNÉRAL DU CANADA**

défenderesse

ORDONNANCE ET MOTIFS

VU LA REQUÊTE déposée par les demandeurs, sur consentement et à l'égard de laquelle la décision a été prise uniquement sur la base de prétentions écrites conformément à l'article 369 des *Règles des Cours fédérales*, en vue d'obtenir une ordonnance :

- a) accordant aux demandeurs une prorogation du délai pour qu'ils puissent déposer la présente requête en autorisation après le délai prévu à l'alinéa 334.15(2)b);
- b) autorisant la présente instance comme recours collectif et définissant le groupe;
- c) énonçant la nature des réclamations présentées au nom du groupe et les réparations demandées par le groupe;
- d) précisant les points de droit et de fait communs en litige;
- e) nommant les demandeurs indiqués ci-après à titre de représentants demandeurs;
- f) approuvant le plan de déroulement de l'instance;

g) accordant toute autre réparation;

VU les documents relatifs à la requête déposés par les demandeurs;

VU que la défenderesse donne son consentement à l'ensemble de la requête déposée;

VU que la Cour est convaincue que, dans les circonstances de l'espèce, une prorogation du délai doit être accordée pour que la présente requête en autorisation puisse être déposée après le délai prévu à l'alinéa 334.15(2)b);

VU que, même si le consentement de la défenderesse rend moins nécessaire une approche rigoureuse quant à la question de savoir si la présente instance devrait être autorisée comme recours collectif, il ne dispense toutefois pas la Cour de l'obligation de veiller au respect des exigences relatives à l'autorisation prescrites à l'article 334.16 [voir *Varley c Canada (Procureur général)*, 2021 CF 589];

VU que le paragraphe 334.16(1) des *Règles des Cours fédérales* prévoit ce qui suit :

Sous réserve du paragraphe (3), le juge autorise une instance comme recours collectif si les conditions suivantes sont réunies :	Subject to subsection (3), a judge shall, by order, certify a proceeding as a class proceeding if
a) les actes de procédure révèlent une cause d'action valable;	(a) the pleadings disclose a reasonable cause of action;
b) il existe un groupe identifiable formé d'au moins deux personnes;	(b) there is an identifiable class of two or more persons;
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;	(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) le recours collectif est le meilleur moyen de régler, de façon juste et efficace, les points de droit ou de fait communs; | (d) a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact; and |
| e) il existe un représentant demandeur qui : | (e) there is a representative plaintiff or applicant who |
| (i) représenterait de façon équitable et adéquate les intérêts du groupe, | (i) would fairly and adequately represent the interests of the class, |
| (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, | (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) 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, | (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) communique un sommaire des conventions relatives aux honoraires et débours qui sont intervenues entre lui et l'avocat inscrit au dossier. | (iv) provides a summary of any agreements respecting fees and disbursements between the representative plaintiff or applicant and the solicitor of record. |

VU que conformément au paragraphe 334.16(2), pour décider si le recours collectif est le meilleur moyen de régler les points de droit ou de fait communs de façon juste et efficace, tous les facteurs pertinents sont pris en compte, notamment les suivants : a) la prédominance des points de droit ou de fait communs sur ceux qui ne concernent que certains membres; b) la proportion de membres du groupe qui ont un intérêt légitime à poursuivre des instances séparées; c) le fait que le recours collectif porte ou non sur des réclamations qui ont fait ou qui font l'objet d'autres instances; d) l'aspect pratique ou l'efficacité moindres des autres moyens de régler les réclamations; et e) les difficultés accrues engendrées par la gestion du recours collectif par rapport à celles associées à la gestion d'autres mesures de redressement;

VU que :

- a) La conduite de la Couronne en cause dans le présent recours collectif envisagé, telle qu'elle est exposée dans la déclaration commune, porte sur deux formes de discrimination alléguées à l'égard d'enfants des Premières Nations : i) le financement par la Couronne des services à l'enfance et à la famille destinés aux enfants des Premières Nations et l'incitation ainsi créée à retirer les enfants de leur milieu familial; ii) le fait que la Couronne n'ait pas respecté le principe de Jordan, qui est une obligation juridique visant à éviter les lacunes, les retards, les interruptions ou les refus dans les services et les produits que doivent recevoir les enfants des Premières Nations, ce qui serait contraire à leurs droits à l'égalité garantis par la Charte.
- b) Comme les demandeurs l'ont résumé dans leurs observations écrites, la déclaration commune contient essentiellement les allégations suivantes :
 - i) La Couronne a sciemment sous-financé les services à l'enfance et à la famille destinés aux enfants des Premières Nations vivant sur une réserve et au Yukon, ce qui a empêché les organismes de services d'aide à l'enfance d'offrir des services de prévention adéquats aux enfants et aux familles des Premières Nations.
 - ii) La Couronne a sous-financé les services de prévention destinés aux enfants et aux familles des Premières Nations vivant sur une réserve et au Yukon, alors qu'elle finançait intégralement les coûts liés aux soins des enfants des

Premières Nations qui étaient retirés de leur milieu familial et placés dans des foyers d'accueil, ce qui a produit un effet pervers en incitant les organismes de services d'aide à l'enfance des Premières Nations à retirer les enfants des Premières Nations vivant sur une réserve et au Yukon de leur milieu familial et à les placer dans des foyers d'accueil.

- iii) Le retrait des enfants de leur milieu familial a causé à ces enfants et à leur famille de graves traumatismes persistants.
 - iv) Non seulement le principe de Jordan incarne les droits à l'égalité des membres du groupe, mais la Couronne a également reconnu que ce principe est une [TRADUCTION] « obligation juridique » et donc une faute donnant ouverture à un droit d'action. Cependant, la Couronne a manqué à ses obligations découlant du principe de Jordan et a ainsi privé de services et de produits essentiels des dizaines de milliers d'enfants des Premières Nations, ce qui leur a causé un préjudice indemnisable.
 - v) La conduite de la Couronne est discriminatoire, vise les membres du groupe, car ils sont membres des Premières Nations, et contrevient au paragraphe 15(1) de la Charte, aux obligations fiduciaires de la Couronne envers les Premières Nations et à la norme de diligence en common law et en droit civil.
- c) En ce qui a trait à la première condition de l'analyse concernant l'autorisation (à savoir si les actes de procédure révèlent une cause d'action valable), les exigences

minimales ne sont pas élevées. La Cour doit trancher la question de savoir s'il est manifeste et évident que les causes d'action sont vouées à l'échec [voir *Brake c Canada (Procureur général)*, 2019 CAF 274 au para 54]. Même sans le consentement de la Couronne, je suis persuadée que les demandeurs ont suffisamment plaidé les éléments nécessaires pour chaque cause d'action aux fins de la présente requête, de sorte que la déclaration commune révèle une cause d'action raisonnable.

- d) Pour ce qui est de la deuxième condition de l'analyse concernant l'autorisation (à savoir s'il existe un groupe identifiable formé d'au moins deux personnes), le critère à appliquer consiste à établir si les demandeurs ont défini le groupe en recourant à un critère objectif, c'est-à-dire que l'on peut décider si une personne est membre du groupe sans se référer au fond de l'action [voir *Hollick c Toronto (Ville)*, 2001 CSC 68 au para 17]. Je suis convaincue que les définitions proposées pour le groupe des enfants inutilement pris en charge, le groupe des enfants lésés par le non-respect du principe de Jordan et le groupe des familles touchées (énoncées ci-après) présentent des critères objectifs et que l'inclusion dans chaque groupe peut être déterminée sans se référer au fond de l'action.

- e) Quant à la troisième condition de l'analyse concernant l'autorisation (à savoir si les réclamations des membres du groupe soulèvent des points de droit ou de fait communs), comme l'a indiqué la Cour d'appel fédérale au paragraphe 72 de l'arrêt *Wenham c Canada (Procureur général)*, 2018 CAF 199, l'objectif de cette étape de la détermination de l'autorisation n'est pas de déterminer les points communs, mais

plutôt d'évaluer si la résolution des points est nécessaire pour régler les réclamations de chaque membre du groupe. Plus précisément, les exigences sont les suivantes :

Il faut aborder le sujet de la communauté en fonction de l'objet. La question sous-jacente est de savoir si le fait d'autoriser le recours collectif permettra d'éviter la répétition de l'appréciation des faits ou de l'analyse juridique. Une question ne sera donc « commune » que lorsque sa résolution est nécessaire pour le règlement des demandes de chaque membre du groupe. Il n'est pas essentiel que les membres du groupe soient dans une situation identique par rapport à la partie adverse. Il n'est pas nécessaire non plus que les questions communes prédominent sur les questions non communes ni que leur résolution règle les demandes de chaque membre du groupe. Les demandes des membres du groupe doivent toutefois partager un élément commun important afin de justifier le recours collectif. Pour décider si des questions communes motivent un recours collectif, le tribunal peut avoir à évaluer l'importance des questions communes par rapport aux questions individuelles. Dans ce cas, le tribunal doit se rappeler qu'il n'est pas toujours possible pour le représentant de plaider les demandes de chaque membre du groupe avec un degré de spécificité équivalant à ce qui est exigé dans une poursuite individuelle. (*Western Canadian Shopping Centres*, précité, au paragraphe 39; voir aussi *Vivendi Canada Inc. c. Dell'Aniello*, 2014 CSC 1, [2014] 1 R.C.S. 3, aux paragraphes 41 et 44 à 46.)

Après avoir examiné les points communs (énoncés ci-après), je suis convaincue que les points partagent un élément commun important au règlement des réclamations de chaque membre du groupe. De plus, je conviens avec les demandeurs que ces points communs s'apparentent aux points communs similaires soulevés dans les demandes fondées sur des cas d'abus institutionnel qui ont été autorisées comme recours collectifs (par exemple, les recours collectifs liés aux pensionnats autochtones et à la rafle des années soixante). Je conclus donc que la condition liée aux points communs est remplie.

- f) Pour ce qui est de la quatrième condition de l'analyse concernant l'autorisation (à savoir si le recours collectif est le meilleur moyen de régler, de façon juste et efficace, les points de droit ou de fait communs), le critère du meilleur moyen comporte deux concepts fondamentaux : i) la question de savoir si le recours collectif serait un moyen juste, efficace et pratique de faire progresser l'instance; ii) la question de savoir si le recours collectif serait préférable à tous les autres moyens raisonnables offerts pour régler les réclamations des membres du groupe. Pour statuer sur le critère du meilleur moyen, il faut examiner les points communs dans leur contexte, en tenant compte de l'importance de ceux-ci par rapport à l'instance dans son ensemble. Il peut être satisfait à ce critère même lorsqu'il y a d'importantes questions individuelles [voir *Brake*, précité, au para 85; *Wenham*, précité, au para 77, et *Hollick*, précité, aux para 27-31]. La Cour doit effectuer l'analyse de ce critère à la lumière des trois principaux objectifs du recours collectif : l'économie des ressources judiciaires, la modification des comportements et l'accès à la justice [voir *Brake*, précité, au para 86, citant *AIC Limitée c Fischer*, 2013 CSC 69 au para 22].
- g) Après avoir examiné les principes mentionnés précédemment et les facteurs prévus au paragraphe 334.16(2), je suis convaincue que le recours collectif est le meilleur moyen de régler les points de droit ou de fait communs de façon juste et efficace. Compte tenu de la nature systémique des réclamations, des obstacles majeurs à l'accès à la justice auxquels pourrait être confronté chacun des réclamants ainsi que des préoccupations exprimées par les demandeurs à l'égard des autres moyens qui existent pour régler les réclamations des membres du groupe, je suis persuadée que

le recours collectif envisagé est un moyen juste, efficace et pratique de faire progresser l'instance des membres du groupe.

- h) En ce qui a trait à la cinquième condition de l'analyse concernant l'autorisation (à savoir s'il y a des représentants proposés adéquats), après avoir examiné la preuve par affidavit produite à l'appui de la requête ainsi que le plan de déroulement de l'instance détaillé, je considère que les représentants demandeurs proposés (indiqués ci-après) satisfont aux exigences énoncées à l'alinéa 334.16(1)e);

VU que la Cour est convaincue que toutes les conditions d'autorisation sont remplies et que les réparations demandées doivent être accordées;

LA COUR ORDONNE :

1. Les demandeurs ont droit à une prorogation du délai pour pouvoir déposer la présente requête en autorisation après le délai prévu à l'alinéa 334.15(2)b) des *Règles des Cours fédérales*.
2. Aux fins de la présente ordonnance et en plus des définitions figurant ailleurs dans la présente ordonnance, les définitions suivantes s'appliquent et d'autres termes utilisés dans la présente ordonnance ont le même sens que dans la déclaration commune déposée le 21 juillet 2021 :
 - a) « **avocats du groupe** » s'entend de Fasken Martineau Dumoulin LLP, Kugler Kandestin LLP, Miller Titerle + Co., Nahwegahbow Corbiere et Sotos LLP;

- b) « **groupe** » s'entend collectivement du groupe des enfants inutilement pris en charge, du groupe des enfants lésés par le non-respect du principe de Jordan et du groupe des familles touchées;
- c) « **groupe des enfants inutilement pris en charge** » s'entend de tous les membres des Premières Nations qui :
 - i) n'avaient pas atteint l'âge de la majorité de la province ou du territoire concerné à tout moment pendant la période visée par le recours collectif;
 - ii) ont été placés dans des foyers d'accueil pendant la période visée par le recours collectif alors qu'ils résidaient ordinairement sur une réserve ou qu'au moins un de leurs parents y résidait ordinairement;
- d) « **groupe des enfants lésés par le non-respect du principe de Jordan** » s'entend de tous les membres des Premières Nations qui n'avaient pas atteint l'âge de la majorité de la province ou du territoire concerné et qui, pendant la période visée par le recours collectif, ont été privés d'un service ou d'un produit ou dont le service ou le produit reçu a été retardé ou interrompu en raison notamment d'un manque de financement ou d'un défaut de compétence ou par suite d'un conflit de compétence avec un autre gouvernement ou ministère;
- e) « **groupe des familles touchées** » s'entend de toutes les personnes qui sont le frère, la sœur, la mère, le père, la grand-mère ou le grand-père d'un membre du groupe des enfants inutilement pris en charge et/ou du groupe des enfants lésés par le non-respect du principe de Jordan;

- f) « **membres du groupe** » s'entend de toutes les personnes qui sont membres du groupe;
- g) « **période visée par le recours collectif** » s'entend :
 - i) pour les membres du groupe des enfants inutilement pris en charge et les membres du groupe des familles touchées correspondants, de la période commençant le 1^{er} avril 1991 et se terminant à la date de la présente ordonnance;
 - ii) pour les membres du groupe des enfants lésés par le non-respect du principe de Jordan et les membres du groupe des familles touchées correspondants, de la période commençant le 12 décembre 2007 et se terminant à la date de la présente ordonnance;
- h) « **Première Nation** » et « **Premières Nations** » s'entendent des peuples autochtones du Canada, y compris au Yukon et dans les Territoires du Nord-Ouest, qui ne sont ni Inuits ni Métis et comprennent :
 - i) les personnes qui possèdent le statut d'Indien en vertu de la *Loi sur les Indiens*, LRC 1985, c I-5;
 - ii) les personnes qui ont droit à l'inscription en vertu de l'article 6 de la *Loi sur les Indiens* au moment de l'autorisation;
 - iii) les personnes qui ont satisfait aux critères d'appartenance à une bande prévus aux articles 10 à 12 de la *Loi sur les Indiens* et qui, dans le cas des

membres du groupe des enfants inutilement pris en charge, ont satisfait à ces exigences au moment de l'autorisation, par exemple lorsque leur communauté de Première Nation respective a décidé de l'appartenance à ses effectifs en fixant les règles et que les personnes ont été considérées comme ayant satisfait aux exigences prévues par ces règles d'appartenance et que leur nom a été consigné dans la liste de bande;

iv) dans le cas des membres du groupe des enfants lésés par le non-respect du principe de Jordan, les personnes, outre celles visées aux alinéas i) à iii) ci-dessus, qui sont reconnues comme citoyens ou membres de leur Première Nation respective en vertu d'ententes ou de traités, de coutumes, de traditions et de lois autochtones;

i) « **réserve** » s'entend d'une parcelle de terrain, au sens de la *Loi sur les Indiens*, dont la Couronne est propriétaire et qui a été mise de côté à l'usage et au profit d'une bande d'Indiens.

3. L'instance est donc autorisée comme recours collectif contre la défenderesse en vertu du paragraphe 334.16(1) des *Règles des Cours fédérales*.
4. Le groupe est composé du groupe des enfants inutilement pris en charge, du groupe des enfants lésés par le non-respect du principe de Jordan et du groupe des familles touchées, tous au sens défini dans la présente ordonnance.

5. Les réclamations présentées au nom du groupe à l'encontre de la défenderesse sont de nature constitutionnelle et ont trait à la négligence et au manquement à l'obligation fiduciaire de la Couronne envers le groupe.
6. La réparation demandée par le groupe comprend des dommages-intérêts, des dommages-intérêts fondés sur la Charte, la restitution, des dommages-intérêts punitifs et des dommages-intérêts exemplaires.
7. Les personnes suivantes sont nommées à titre de représentants demandeurs :
 - a) Pour le groupe des enfants inutilement pris en charge : Xavier Moushoom, Ashley Dawn Louise Bach et Karen Osachoff;
 - b) Pour le groupe des enfants lésés par le non-respect du principe de Jordan : Jeremy Meawasige (représenté par son tuteur à l'instance, Jonavon Joseph Measwasige) et Noah Buffalo-Jackson (représenté par sa tutrice à l'instance, Carolyn Buffalo);
 - c) Pour le groupe des familles touchées : Xavier Moushoom, Jonavon Joseph Meawasige, Melissa Walterson, Carolyn Buffalo et Dick Eugene Jackson (également connu sous le nom de Richard Jackson),

qui sont tous réputés constituer des représentants demandeurs adéquats du groupe.
8. Les avocats du groupe sont nommés avocats pour le groupe.
9. L'instance est autorisée sur la base des points communs suivants :

- a) La conduite de la Couronne telle qu'elle est alléguée dans la déclaration commune [la conduite reprochée] a-t-elle porté atteinte aux droits à l'égalité garantis aux demandeurs et aux membres du groupe par le paragraphe 15(1) de la *Charte canadienne des droits et libertés*? Plus précisément :
 - i) La conduite reprochée a-t-elle créé une distinction fondée sur la race ou l'origine nationale ou ethnique des membres du groupe?
 - ii) La distinction était-elle discriminatoire?
 - iii) La conduite reprochée a-t-elle renforcé ou accentué les désavantages historiques subis par les membres du groupe?
 - iv) Dans l'affirmative, la violation du paragraphe 15(1) de la Charte était-elle justifiée au regard de l'article premier de la Charte?
 - v) Les dommages-intérêts fondés sur la Charte constituent-ils une réparation appropriée?
- b) La Couronne avait-elle une obligation de diligence prévue par la common law envers les demandeurs et les membres du groupe?
 - i) Dans l'affirmative, la Couronne a-t-elle manqué à cette obligation de diligence?
- c) La Couronne a-t-elle manqué à ses obligations prévues au *Code civil du Québec*?
Plus précisément :

- i) La Couronne a-t-elle commis une faute ou engagé sa responsabilité civile?
 - ii) La conduite reprochée a-t-elle donné lieu à des pertes pour les demandeurs et les membres du groupe et, dans l'affirmative, ces pertes constituent-elles un préjudice pour chacun des membres du groupe?
 - iii) Les membres du groupe ont-ils le droit de demander des dommages-intérêts pour les dommages moraux et matériels découlant de ce qui précède?
- d) La Couronne avait-elle une obligation fiduciaire envers les demandeurs et les membres du groupe?
- i) Dans l'affirmative, la Couronne a-t-elle manqué à cette obligation?
- e) Le montant des dommages-intérêts payables par la Couronne peut-il être partiellement déterminé de façon globale en vertu du paragraphe 334.28(1) des *Règles des Cours fédérales*?
- i) Dans l'affirmative, quel devrait en être le montant?
- f) La Couronne a-t-elle tiré des avantages pécuniaires quantifiables de la conduite reprochée pendant la période visée par le recours collectif?
- i) Dans l'affirmative, la Couronne devrait-elle être tenue de restituer ces avantages?
 - ii) Dans l'affirmative, quel devrait en être le montant?

g) La Couronne devrait-elle être condamnée à verser des dommages-intérêts punitifs et/ou majorés?

i) Dans l'affirmative, quel devrait en être le montant?

10. Le nouveau plan de déroulement de l'instance modifié des demandeurs, déposé le 2 novembre 2021 et ci-joint à titre d'annexe A, est approuvé, sous réserve des modifications devant y être apportées par suite de la présente ordonnance et de toute autre ordonnance rendue par la Cour.
11. La forme de l'avis d'autorisation, les modalités de l'avis ainsi que toutes les autres questions connexes seront déterminées par la Cour dans une ou des ordonnances distinctes.
12. Le délai d'exclusion sera de six mois à compter de la date à laquelle l'avis d'autorisation est publié selon les modalités énoncées dans une autre ordonnance de la Cour.
13. Le calendrier procédural jusqu'au moment du procès sera également fixé par la Cour dans une ou des ordonnances distinctes.
14. Conformément au paragraphe 334.39(1) des *Règles des Cours fédérales*, aucuns dépens ne seront adjugés à l'une ou l'autre des parties pour la présente requête.

« Mandy Aylen »

Juge

ANNEXE A

TRADUCTION NON OFFICIELLE

Numéros de dossiers de Cour : T-402-19 / T-141-20

**COUR FÉDÉRALE
RECOURS COLLECTIF PROJETÉ**

ENTRE :

XAVIER MOUSHOOM, JEREMY MEAWASIGE (représenté par son tuteur à l'instance, Jonavon Joseph Meawasige) et JONAVON JOSEPH MEAWASIGE

Demandeurs

et

LE PROCUREUR GÉNÉRAL DU CANADA

Défendeur

**COUR FÉDÉRALE
RECOURS COLLECTIF PROPOSÉ**

ENTRE :

L'ASSEMBLÉE DES PREMIÈRES NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON (représenté par sa tutrice à l'instance, Carolyn Buffalo), CAROLYN BUFFALO et DICK EUGENE JACKSON (aussi connu sous le nom de RICHARD JACKSON)

Demandeurs

et

**SA MAJESTÉ LA REINE,
TELLE QUE REPRÉSENTÉE PAR LE PROCUREUR GÉNÉRAL DU CANADA**

Défenderesse

PLAN DE POURSUITE MODIFIÉ

Le deux (2) novembre
2021

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Buffalo), Carolyn Buffalo et Dick Eugene Jackson (aussi connu sous le nom de Richard Jackson)

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I. DÉFINITIONS

1. Les mots et expressions définis ci-dessous seront utilisés tout au long du présent Plan de Poursuite. Les mots et expressions définis à l'Acte introductif d'instance et qui se retrouvent également au présent Plan de Poursuite doivent, s'ils n'ont pas autrement été définis par la Cour, se voir attribuer le sens qui leur est donné à l'Acte introductif d'instance.

Administrateur du Recours Collectif (« *Class Action Administrator* ») : tout administrateur du règlement ou toute autre firme compétente désigné(e) par la Cour en vue d'assurer l'administration du recours collectif;

Avis de Certification (« *Certification Notice* ») : les informations se trouvant à l'Annexe A du présent Plan de Poursuite, telles qu'elles pourront ultérieurement être modifiées et telles qu'elles auront été approuvées par la Cour;

Avis de Détermination des Questions Communes (« *Common Issues Notices* ») : les informations figurant à l'avis portant sur les **Questions Communes** devant être certifié par la Cour à l'étape de la Certification, tel qu'il pourrait être ultérieurement modifié et tel qu'il aura été approuvé par la Cour;

Décision du TCDP (« *CHRT Decision* ») : décision rendue par le **TCDP** dans le cadre du Dossier du TCDP datée du 26 janvier 2016 (et portant la référence 2016 TCDP 2);

Dossier du TCDP (« *CHRT Proceeding* ») : dossier du **TCDP** portant le numéro T1340/7008;

Formulaire de Détermination de Compensation Individuelle (« *Individual Damage Assessment Form* ») : formulaire se trouvant à l'Annexe D du présent Plan de Poursuite (tel qu'il pourrait ultérieurement être modifié et tel qu'il aura été approuvé par la Cour) et devant être utilisé par les **Membres du Groupe Approuvés** en vue de permettre l'évaluation de leurs dommages et d'amorcer le **Processus de Détermination de Compensation Individuelle**;

Formulaire d'Exclusion (« *Opt out Form* ») : formulaire se trouvant à l'Annexe B du présent Plan de Poursuite et utilisé par les Membres du Groupe souhaitant s'exclure du recours collectif (tel qu'il pourrait ultérieurement être modifié et tel qu'il aura été approuvé par la Cour);

Formulaire de Réclamation (« *Claim Form* ») : formulaire se trouvant à l'Annexe C du présent Plan de Poursuite et utilisé par les Membres du Groupe des Enfants retirés de leurs foyers et/ou les Membres du Groupe Jordan et/ou les Membres du Groupe des Familles en vue de soumettre une réclamation (tel qu'il pourrait être ultérieurement amendé et tel qu'il aura été approuvé par la Cour);

Informations de la Couronne (« Crown Class Member Information »): informations devant être communiquées par la Couronne à l'**Administrateur du Recours Collectif** et/ou aux **Procureurs du Groupe**, à la demande des demandeurs et/ou suivant une ordonnance de la Cour), au sujet des noms et des coordonnées les plus récentes de toutes les personnes répondant à la définition de Membres du Groupe (telle qu'elle figure à l'Acte introductif d'instance ou telle qu'elle aura autrement été déterminée par la Cour), y compris : (a) une liste des noms et coordonnées de tous les Membres du Groupe connus (provenant des informations que la Couronne a en sa possession ou sous son contrôle¹), de même qu'une liste de toutes les personnes ayant reçu un produit ou un service en vertu du Principe de Jordan tel qu'il a été appliqué dans le cadre de la **Décision du TCDP** (la Couronne, lors de ses représentations au TCDP, estimait que plus de 165,000 services avaient ainsi été rendus en date d'octobre 2018);

Membre Approuvé du Groupe des Enfants retirés de leurs foyers (« Approved Removed Child Class Member(s) »): tout Membre du Groupe des Enfants retirés de leurs foyers ayant été approuvé par l'**Administrateur du Recours Collectif** puisqu'il rencontre les critères pour être un Membre du Groupe des Enfants retirés de leurs foyers, pour autant qu'une telle approbation n'ait pas été contestée avec succès;

Membre Approuvé du Groupe des Familles (« Approved Family Class Member(s) »): tout Membre du Groupe des Familles ayant été approuvé par l'**Administrateur du Recours Collectif** puisqu'il rencontre les critères pour être un Membre Approuvé du Groupe des Familles incluant le frère, la sœur, le père, la grand-mère ou le grand-père d'un **Membre Approuvé du Groupe des Enfants retirés de leurs foyers** – que ce dernier soit toujours vivant ou non – pour autant qu'une telle approbation n'ait pas été contestée avec succès;

Membre Approuvé du Groupe Jordan (« Approved Jordan's Class Member(s) »): tout Membre du Groupe Jordan ayant été approuvé par l'**Administrateur du Recours Collectif** puisqu'il rencontre les critères pour être un Membre Approuvé du Groupe Jordan, pour autant qu'une telle approbation n'ait pas été contestée avec succès;

Membre du Groupe (« Class Member(s) »): toute personne répondant à la définition d'un Membre du Groupe des Enfants retirés de leurs foyers et/ou d'un Membre du Groupe des Familles et/ou d'un Membre du Groupe Jordan, tel qu'allégué à l'Acte introductif d'instance et approuvé par la Cour;

Membre du Groupe Approuvé (« Approved Class Member(s) »): tout **Membre Approuvé du Groupe des Enfants retirés de leurs foyers** et/ou **Membre Approuvé du Groupe des Familles** et/ou **Membre Approuvé du Groupe Jordan**;

Période d'Exclusion (« Opt Out Period »): la date limite pour s'exclure du recours collectif, que les demandeurs proposent de fixer à six (6) mois suivant la date à laquelle l'avis de certification à l'intention du Groupe est publié selon la procédure à être déterminée par la

¹ Lorsqu'un Membre du Groupe est représenté par un procureur, seuls son nom et le nom et l'adresse de son procureur devraient être communiqués.

Cour, ou la date limite pour s'exclure du recours collectif telle qu'autrement déterminée par la Cour;

Procédures d'Exclusions (« Opt Out Procedures »): les procédures, telles que définies au Plan de Poursuite, permettant à des **Membres du Groupe** de s'exclure du présent recours collectif, telle qu'elles pourraient être ultérieurement modifiées et telles qu'elles auront été approuvées par la Cour;

Procédures d'Exclusions Particulières (« Special Opt Out Procedures »): les procédures, telles que définies au Plan de Poursuite, applicables aux **Membres du Groupe** ayant déjà entrepris des recours civils au Canada ou ayant déjà, à la connaissance de la Couronne, retenu les services d'un procureur en vue de s'exclure du présent recours collectif, telles qu'elles pourront ultérieurement être modifiées et telles qu'elles auront été approuvées par la Cour;

Processus de Détermination de Compensation Individuelle (« Individual Damage Assessment Process »): la procédure et la méthodologie devant être approuvées par la Cour à l'issue de l'audition portant sur les **Questions Communes**, et qui seront utilisées pour quantifier et distribuer les dommages aux **Membres du Groupe Approuvés** ayant demandé une détermination de compensation individuelle en soumettant un **Formulaire de Détermination de Compensation Individuelle**;

Processus de Distribution des Dommages (« Aggregate Damages Distribution Process »): système établi par la Cour en vertu duquel l'**Administrateur du Recours Collectif** doit distribuer l'ensemble des dommages aux **Membres du Groupe Approuvés**.

Procureurs du Groupe (« Class Counsel »): le regroupement de cabinets juridiques agissant en tant que procureurs au dossier dans le cadre du présent recours collectif, c'est-à-dire Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Company, Nahwegahbow Corbiere, et Fasken LLP.

Méthode de Notification (« Notice Program »): la procédure, telle que définie au Plan de Poursuite, pour la communication de l'**Avis de Certification** et/ou l'**Avis de Détermination des Questions Communes** aux **Membres du Groupe**, tel qu'elle pourrait être ultérieurement modifiée et telle qu'elle aura été approuvée par la Cour;

Questions Communes (« Common Issues »): les questions énumérées à l'Avis de Demande de Certification (ou à quel qu'autre document exigé ou émis par la Cour), telles qu'elles pourraient être ultérieurement modifiées et telles qu'approuvées par la Cour;

TCDP (« CHRT »): le Tribunal Canadien des Droits de la Personne.

II. SOMMAIRE

2. Les demandeurs ont introduit la présente action en justice au nom de membres de Premières Nations qui allèguent que la Couronne a, de manière discriminatoire, sous-financé certains services destinés aux familles et aux enfants et, par voie de conséquence, a contrevenu à l'obligation d'égalité qui sous-tend le Principe de Jordan. De fait, le présent recours collectif vise l'avancement des droits fondamentaux de dizaines de milliers de familles, d'enfants et d'anciens enfants des Première Nations.

3. Le présent Plan de Poursuite (qui s'inspire en grande partie de l'action collective portant sur les pensionnats indiens²) se veut un échéancier régissant l'évolution des procédures et mettant de l'avant certaines méthodes de communication avec les Membres du Groupe conformément aux dispositions du sous-paragraphe 334.16(1)(e)(ii) des *Règles des cours fédérales*.

4. Le présent Plan de Poursuite définit en détail les principales étapes des procédures à venir et établit d'entrée de jeu, quoique sous toutes réserves, de quelle manière ces étapes se dérouleront. Étant donné que le dossier en est à ses débuts, il est entendu que le Plan fera l'objet de révisions substantielles au fur et à mesure que le dossier progressera.

5. Les demandeurs sont conscients que le TCDP a déjà octroyé une indemnisation statutaire à une portion des Membres du Groupe conformément aux dispositions de la Loi canadienne sur les droits de la personne (*First Nations Child & Family Caring Society of Canada et als. c. Procureur Général du Canada (représentant le Ministre des Affaires Autochtones et du Nord*

² Voir *Baxter c. Canada (Procureur Général)*, 2006 CanLII 41673 (Cour supérieure de l'Ontario), de même que les ordonnances rendues subséquemment par la Cour. Veuillez consulter également les informations disponibles sur le site web du Secrétariat d'Adjudication des Pensionnats Indiens (SAPI) : www.iap-pef.ca/home-eng.php.

Canada), 2019 CHRT 39). S'il s'avère qu'une indemnité est payée par le TCDP à quelque Membre du Groupe, les demandeurs demanderont à la Cour de déterminer si la Couronne a droit à une déduction ou autre forme de réduction correspondant au montant déjà reçu.

III. PROCÉDURES PRÉ-CERTIFICATION

A. Les Parties

i. Les demandeurs

6. Les demandeurs ont suggéré que le Groupe soit divisé en trois (3) sous-groupes :
 - (a) le **Groupe des Enfants retirés de leurs foyers**, représenté par Xavier Moushoom, Ashley Dawn Louise Bach et Karen Osachoff;
 - (b) le **Groupe des Familles**, représenté par Xavier Moushoom, Jonavon Joseph Meawasige, Melissa Walterson, Carolyn Buffalo et Dick Eugene Jackson (aussi connu sous le nom de Richard Jackson); et
 - (c) le **Groupe Jordan**, représenté par Jeremy Meawasige (lui-même représenté par son tuteur à l'instance, Jonavon Joseph Meawasige) et Noah Buffalo-Jackson (lui-même représenté par sa tutrice à l'instance, Carolyn Buffalo).

ii. La défenderesse

7. La Couronne est la défenderesse en la présente instance.

B. Les prétentions

i. L'acte introductif d'instance

8. Les demandeurs ont produit un Acte introductif d'instance conformément au jugement rendu par l'Honorable juge St-Louis le 7 juillet 2021.

ii. Énoncé des moyens de défense

9. La Couronne n'a produit aucun Énoncé des moyens de défense.

iii. Réclamation d'un tiers

10. La Couronne n'a produit aucune Réclamation d'un tiers

C. Stratégie de communication préalable à la certification

i. Demandes formulées par des membres potentiels du groupe

11. Les Procureurs du Groupe ont, tant avant que depuis l'introduction du présent recours collectif, reçu diverses communications de la part de Membres du Groupe concernés par les procédures.

12. Le nom, l'adresse, le numéro de téléphone et l'adresse courriel de chaque Membre Potentiel du Groupe ayant contacté les Procureurs du Groupe ont été ajoutés à une base de données confidentielle. De fait, chaque Membre du Groupe est invité à s'enregistrer sur l'un ou l'autre des sites web des Procureurs du Groupe. Une fois enregistrés, les Membres du Groupe reçoivent, sur une base régulière et tant en français qu'en anglais, des mises à jour au sujet de l'évolution du recours collectif. Tout Membre du Groupe qui contacte les Procureurs du Groupe se voit répondre dans la langue qu'il préfère.

ii. Rapports d'Évolution Préalables à la Certification

13. En plus de répondre aux demandes individuelles qui leur sont adressées, les Procureurs du Groupe ont mis sur pied une page web, accessible tant en anglais qu'en français, portant spécifiquement sur le présent recours collectif : <https://sotosclassactions.com/cases/current-cases/first-nations-youth/>. Toutes les informations relatives à l'état du dossier sont postées et mises à jour régulièrement, tant en français qu'en anglais.

14. Des copies des documents de Cour produit publiquement et de toutes les décisions rendues par la Cour sont disponibles sur le site web. Les numéros de téléphone et les adresses courriel des Procureurs du Groupe se trouvant au Québec et en Ontario sont également affichés.

15. Les Procureurs du Groupe transmettent des rapports d'évolution aux Membres du Groupe ayant fourni leurs coordonnées et manifesté leur désir d'être tenus informés des développements survenant dans le cadre du recours collectif.

iii. Démarches de sensibilisation préalables à la certification

16. Les Procureurs du Groupe ont soumis les grandes lignes du recours collectif envisagé au personnel d'un centre de services sociaux d'un Conseil des Premières Nations siégeant au Québec et au Labrador, ainsi qu'à une assemblée des Directeurs de la Jeunesse de Premières Nations de la Colombie-Britannique. Les Procureurs du Groupe organisent présentement d'autres présentations similaires auprès de communautés concernées du Québec et d'autres provinces et territoires.

D. Conférence de Règlement

i. Conférence de Règlement Préalable à la Certification

17. Les demandeurs ont participé à un processus de médiation préalable à la Certification en vue de déterminer si une ou plusieurs des questions soulevées dans le cadre du recours collectif pouvaient être résolues. Le processus de médiation demeure pendant, ce qui pourrait faire en sorte que certaines des échéances indiquées au présent Plan de Poursuite doivent être modifiées d'un commun accord entre les Parties ou conformément à d'éventuelles ordonnances de la Cour, afin de permettre aux négociations d'avancer.

E. Échéancier

IV. PROCÉDURES POST-CERTIFICATION

A. Échéancier

i. Échéancier soumis par les demandeurs pour les démarches postérieures à la certification

18. Les demandeurs entendent tenir le procès soit selon une formule accélérée, soit en fonction d'une combinaison hybride de jugement sommaire et de la tenue d'un procès *viva voce*. Il est prévu

que toute la preuve documentaire soumise par la Couronne dans le cadre du Dossier du TCDP sera pertinente et recevable dans le cadre du présent recours collectif. Puisque la preuve documentaire produite dans le cadre du Dossier du TCDP est volumineuse, les demandeurs prévoient très peu – ou pas – d’objections à la production d’une telle preuve dans le présent recours collectif quant à la période couverte par le Dossier du TCDP (c’est-à-dire de 2006 à aujourd’hui). Par ailleurs, à la lumière des nombreux témoignages rendus dans le Dossier du TCDP, il est prévu qu’une fois la certification accordée, les interrogatoires préalables oraux procéderont rapidement et seront complétés à l’intérieur de délais relativement courts. À l’heure actuelle, les demandeurs ne peuvent se prononcer avec la même certitude eu égard à la preuve documentaire couvrant les années 1991 à 2006.

19. Les demandeurs suggèrent que l’échéancier “post-Certification” ci-dessous soit retenu:

Début du processus de notification de la Certification aux Membres du Groupe	Date à être fixée par la Cour une fois la Certification obtenue
Échange des déclarations assermentées	Dans les 90 jours suivant la Notification de la Certification aux Membres du Groupe
Requêtes portant sur la production de documents, les interrogatoires des nombreux représentants de la Couronne, ou les interrogatoires de tiers	Dans les 120 jours suivant la Notification de la Certification aux Membres du Groupe
Interrogatoires préalables	Dans les 150 jours suivant la Notification de la Certification aux Membres du Groupe
Fin du processus de notification de la Certification aux Membres du Groupe	Dans les 60 jours de la date fixée par la Cour
Conférence de gestion de l’instance portant sur la présentation de la preuve d’experts	180 jours après la Notification de la

	Certification aux Membres du Groupe
Requêtes présentées à la suite de la tenue des interrogatoires préalables	Dans les 180 jours suivant la Notification de la Certification aux Membres du Groupe
Transmission des engagements	Dans les 200 jours suivant la Notification de la Certification aux Membres du Groupe
Tenue d'interrogatoires additionnels, si nécessaire	Dans les 240 jours suivant la Notification de la Certification aux Membres du Groupe
Tenue de l'audition préliminaire portant sur les Questions Communes	290 jours après la Notification de la Certification aux Membres du Groupe
Expiration du délai d'exclusion	Six (6) mois après la Notification de la Certification aux Membres du Groupe
Audition portant sur les Questions Communes ou procès hybride	330 jours après la Notification de la Certification aux Membres du Groupe

B. Avis de Certification, Méthode de Notification et Procédures d'Exclusions

i. Avis de Certification

20. L'Avis de Certification et tous les autres avis devant être transmis par les demandeurs aux Membres du Groupe seront traduits en français une fois finalisés et approuvés par la Cour. Les demandeurs verront, toujours sous réserve de l'approbation de la Cour, s'il est nécessaire de traduire l'Avis de Certification et/ou quelque autre avis dans un ou plusieurs langage(s) des Premières Nations.

21. Sous réserve de modifications subséquentes, l'Avis de Certification sera émis en la forme présentée à l'Annexe A du présent Plan de Poursuite.

ii. Méthode de Notification

22. Les demandeurs prévoient transmettre l'Avis de Certification conformément à la Méthode de Notification définie ci-dessous.

23. Les demandeurs communiqueront et/ou publieront l'Avis de Certification (de même que toute version traduite de celui-ci aussitôt que disponible) dans les médias suivants à compter de la date fixée par la Cour, et ce aussi fréquemment qu'il s'avèrera raisonnable de le faire selon les ordonnances rendues par la Cour en vertu de l'article 334.32 des *Règles des Cours Fédérales*. Les demandeurs prévoient, à cette fin, retenir les Méthodes de Notification suivantes :

- (a) Un communiqué de presse adressé aux Membres du Groupe, dûment approuvé par la Cour et publié le premier jour de la période de notification;
- (b) Communications directes avec les Membres du Groupe :
 - (i) transmises par courrier ordinaire ou électronique aux coordonnées les plus récentes des Membres du Groupe fournies par la Couronne (i.e. Informations de la Couronne);
 - (ii) transmises par courrier ordinaire ou électronique à tous les Membres du Groupe ayant fourni leurs coordonnées aux Procureurs du Groupe (notamment par l'entremise de la page web portant sur le recours collectif);
 - (iii) transmises par courrier ordinaire à tous les détenteurs d'une Carte de Statut émise au Canada nés le ou après le 1^{er} avril 1991;

- (c) Informations distribuées par l'Assemblée des Premières Nations à l'échelle de toutes les bandes membres des Premières Nations situées au Canada;
- (d) Informations transmises par courrier électronique aux sociétés d'aide aux enfants de Premières Nations situées au Canada;
- (e) Informations circulées au moyen des médias suivants:
 - (i) Journaux et autres périodiques indiens tels que *First Nations Drum*, *The Windspeaker*, *Mi'kmaq Maliseet Nations News* et *APTN National News*;
 - (ii) Chaînes de radio telles que CFWE et CBC (de portée régionale et nationale);
 - (iii) Chaînes de télévision telles que *The Aboriginal Peoples Television Network*; et/ou
 - (iv) Réseaux sociaux en ligne tels que *Facebook* et *Instagram*.

iii. Procédures d'Exclusions

24. Les demandeurs suggèrent que les Procédures d'Exclusions définies ci-dessous s'appliquent aux Membres du Groupe qui ne souhaitent pas être liés par le recours collectif.
25. L'Avis de Certification indiquera aux Membres du Groupe de quelle manière il leur est possible de s'exclure du recours collectif en produisant un Formulaire d'Exclusion auprès de l'Administrateur du Recours Collectif et/ou des Procureurs du Groupe.
26. Un seul Formulaire d'Exclusion standard s'appliquera à tous les Membres du Groupe.

27. Tout Membre du Groupe désirant s'exclure du recours collectif devra obligatoirement soumettre un Formulaire d'Exclusion à l'Administrateur du Recours Collectif et/ou aux Procureurs du Groupe à l'intérieur de la Période d'Exclusion.

28. L'Administrateur du Recours Collectif ou les Procureurs du Groupe devront, dans les trente (30) jours suivant l'expiration de la Période d'Exclusion, produire de la Cour et des Parties une déclaration assermentée contenant la liste de toutes les personnes ayant choisi de s'exclure du recours collectif.

iv. Procédures d'Exclusions Particulières

29. Les demandeurs suggèrent que les Procédures d'Exclusions Particulières définies ci-dessous s'appliquent à tous les Membres du Groupe désignés comme une partie demanderesse à quelque action civile introduite au Canada ou ayant déjà (à la connaissance de la Couronne) retenu les services d'un procureur en vue d'introduire à l'encontre de la Couronne une action civile distincte fondées sur les faits et les circonstances faisant l'objet du recours collectif.

30. Toute action civile introduite par un Membre du Groupe n'ayant pas eu recours aux procédures d'exclusions devra être gérée de la manière établie par la Cour ou par le tribunal saisi d'une telle action civile.

C. Identification des (et communication avec les) Membres du Groupe

i. Identification des Membres du Groupe

31. Tel qu'indiqué plus haut, les demandeurs entendent exiger les informations que la Couronne détient au sujet des Membres du Groupe.

ii. Base de données relative aux Membres du Groupe

32. Les Procureurs du Groupe maintiendront à jour une base de données confidentielle au sujet de tous les Membres du Groupe qui les auront contactés. Une telle base de données contiendra, s'ils sont disponibles, le nom, l'adresse, le numéro de téléphone et/ou l'adresse courriel de chaque individu concerné.

iii. Réponses aux demandes formulées par les Membres du Groupe

33. Les Procureurs du Groupe, et le personnel de leur cabinet, répondront à toutes les demandes soumises par des Membres du Groupe.

34. Les Procureurs du Groupe ont mis en place une structure leur permettant de répondre aux demandes soumises par les Membres du Groupe dans la langue de leur choix, dans la mesure du possible.

iv. Rapports d'évolution postérieurs au Processus de Certification

35. En plus de répondre aux demandes soumises par les Membres du Groupe, les Procureurs du Groupe mettront régulièrement à jour la page web dédiée au recours collectif en y indiquant le stade d'avancement des procédures.

36. Les Procureurs du Groupe transmettront des rapports d'évolution à tous les Membres du Groupe ayant communiqué leurs coordonnées, et ce aussi souvent que nécessaire ou selon les ordonnances de la Cour.

D. Production des documents

i. Affidavits et listes de documents

37. Les demandeurs devront produire un Affidavit de Documents dans les quatre-vingt-dix (90) jours de la publication de l'Avis de Certification adressé aux Membres du Groupe. La

Couronne, pour sa part, devra produire une Liste de Documents dans les quatre-vingt-dix (90) jours de la publication de l'Avis de Certification adressé aux Membres du Groupe.

38. Il est à prévoir que les Parties produiront des Affidavits (ou des Listes) de Documents additionnels au fur et à mesure que de nouveaux documents seront identifiés.

ii. Production de documents

39. Chacune des Parties devra à ses frais, au moment de transmettre ses Affidavits de Documents, fournir des copies électroniques de tous les documents produits en vertu de l'Annexe A (qui devront eux-mêmes être soumis sous forme électronique).

40. Les documents produits dans le cadre du présent recours collectif devront comprendre (notamment et sans s'y limiter) les actes de procédure et les pièces versés au Dossier du TCDP.

iii. Requêtes portant sur la production de documents

41. Toute requête portant sur la production de documents devra être présentée au cours des cent-vingt (120) jours suivant la publication de l'Avis de Certification adressé aux Membres du Groupe.

iv. Gestion des documents

42. Chaque Partie assurera la gestion des documents qu'elle produit au moyen d'un système de gestion compatible ou en conformité avec les directives émises par la Cour. Tous les documents devront être produits en format « reconnaissance optique de caractères » (ROC).

43. Chaque production de documents devrait être numérotée et numérisée en vue de permettre le repérage et la classification rapide de la documentation.

E. Interrogatoires préalables

44. Tous les Interrogatoires Préalables devront se tenir dans les cent cinquante (150) jours suivant la publication de l'Avis de Certification adressée aux Membres du Groupe.

45. Les demandeurs prévoient demander à la Couronne de consentir à l'interrogatoire de plus d'un représentant. Dans l'éventualité où un désaccord survenait à ce sujet, les demandeurs suggèrent de présenter une requête dans les cent vingt (120) jours de la publication de l'Avis de Certification adressée aux Membres du Groupe.

46. Les demandeurs prévoient que, sous réserve des objections et des engagements, l'Interrogatoire Préalable d'un officier de la Couronne adéquatement sélectionné et informé requerra plus ou moins dix (10) jours.

47. Les demandeurs prévoient que sous réserve des objections et des engagements, l'Interrogatoire Préalable des représentants du Groupe requerra plus ou moins une (1) journée.

F. Considérations interlocutoires

i. Requêtes portant sur des objections ou des engagements

48. Les dates d'audition des requêtes portant sur les Objections ou les Engagements soulevés au cours d'Interrogatoires Préalables seront demandées une fois la Certification obtenue. De telles requêtes devront être présentées dans les cent-quatre-vingts (180) jours suivant la publication de l'Avis de Certification adressé aux Membres du Groupe.

ii. Engagements

49. Tous les engagements souscrits devront être communiqués dans les deux cents (200) jours suivant la publication de l'Avis de Certification adressé aux Membres du Groupe.

iii. Nouvelles comparutions et interrogatoires préalables additionnel

50. Les nouvelles comparutions ou Interrogatoires Préalables additionnels requis à la suite de la communication des réponses aux engagements ou en raison de jugements rendus sur les requêtes portant sur des objections et/ou des engagements devront avoir lieu au cours des deux cent quarante (240) jours suivant la publication de l'Avis de Certification adressée au Membres du Groupe.

G. Preuve d'experts

i. Désignation des experts et identification des questions à l'étude

51. Une fois les Interrogatoires Préalables dûment complétés, une Conférence de Gestion de l'Instance devra être tenue au sujet des experts devant participer au procès et à la preuve qu'ils seront appelés à y présenter.

H. Détermination des Questions Communes

i. Audition préliminaire portant sur les Questions Communes

52. Une fois la Certification accordée, il sera demandé à la Cour de fixer la date de l'Audition Préliminaire portant sur les Question Communes.

53. Les demandeurs prévoient qu'une (1) journée complète d'audition sera requise dans le cadre de l'Audition Préliminaire. Ils suggéreront que l'Audition Préliminaire ait lieu dans les deux cent quatre-vingt-dix (290) jours suivant la publication de l'Avis de Certification adressé aux Membres du Groupe, ou au moins quatre-vingt-dix (90) jours avant la tenue de l'audition portant sur les Questions Communes.

ii. Audition portant sur les Questions Communes

54. Une fois la Certification obtenue, il sera demandé à la Cour de fixer la date de l'audition portant sur les Questions Communes.

55. Les demandeurs suggèrent que l'audition portant sur les Questions Communes ait lieu trois cent trente (330) jours après la publication de l'Avis de Certification adressé aux Membres du Groupe.

56. Parce qu'elle variera en fonction d'une multitude de facteurs, la durée de l'audition portant sur les Questions Communes sera déterminée au cours de la Conférence de Gestion d'Instance.

V. PROCÉDURES POSTÉRIEURES À LA DÉTERMINATION DES QUESTIONS COMMUNES

A. Échéancier

i. Échéancier des demandeurs

57. Les demandeurs suggèrent à la Cour d'ordonner que l'échéancier ci-dessous s'appliquera suite au jugement portant sur les Questions Communes :

Emission de l'Avis de Détermination des Questions Communes	Dans les 90 jours de la décision portant sur les Questions Communes
Début des auditions portant sur les Questions Individuelles, le cas échéant	Débute 120 jours après que la décision ait été rendue
Début du Processus de détermination de compensations individuelles	Débute 240 jours après que la décision ait été rendue
Expiration (de plein droit) du délai de production des Formulaires de Réclamation	Un (1) an après que la décision ait été rendue
Expiration (de plein droit en certaines circonstances ou en vertu d'une permission de la Cour) du délai de production des Formulaires de Réclamation	Un (1) an après que la décision ait été rendue

B. Avis de détermination des Questions Communes

i. Notification aux Membres du Groupe

58. Sous réserve de modifications subséquentes, l'Avis de Détermination des Questions Communes sera substantiellement dans la forme approuvée par la Cour lors de l'audition portant sur les Questions Communes. Il pourra contenir, entre autres choses et sous réserve de

l'approbation de la Cour, certaines informations au sujet de dommages accordés et de circonstances justifiant la détermination de compensations individuelles.

59. Les demandeurs soumettent que l'Avis de Détermination des Questions Communes devrait circuler dans les quatre-vingt-dix (90) jours suivant le jugement portant sur les Questions Communes.

60. L'Avis de Détermination des Questions Communes sera mis en circulation de la même manière que l'Avis de Certification, ou de la façon déterminée par la Cour.

C. Formulaires de réclamation

i. Utilisation des formulaires de réclamation

61. Il sera demandé à la Cour d'approuver (conformément aux dispositions de l'article 334.37 des *Règles des Cours Fédérales*) l'utilisation d'un Formulaire de Réclamation standardisé par tout Membre du Groupe susceptible d'avoir droit à une portion des dommages octroyés ou à quelque forme de compensation individuelle.

ii. Obtention et production d'un formulaire de réclamation

62. La procédure d'obtention et de production d'un Formulaire de Réclamation sera décrite en détail à l'Avis de Détermination des Questions Communes.

63. Sous réserve de modifications subséquentes et de l'approbation de la Cour, les demandeurs suggèrent qu'un seul et même Formulaire de Réclamation standardisé (respectant le gabarit se trouvant à l'Annexe C) s'applique aux trois (3) sous-groupes du Groupe.

64. Les demandeurs suggèrent également que les Membres du Groupe ayant besoin d'aide ou de soutien au moment de compléter un Formulaire de Réclamation puissent bénéficier de conseils

adéquats. Si nécessaire, un processus visant à désigner un tuteur ou un fiduciaire chargé d'apporter de l'aide ou du soutien aux Membres du Groupe sera mis sur pied.

65. Avant de compléter un Formulaire de Réclamation, le Membre du Groupe pourra passer en revue les renseignements détenus par Canada pertinents à sa réclamation (autrement dit, les Informations de la Couronne), qui pourront inclure :

- (a) tous les dossiers en lien avec le placement volontaire ou forcé du Membre du Groupe au sein d'un environnement hors-foyer au cours de la Période du Recours Collectif;
- (b) tous les dossiers indiquant que le Membre du Groupe a eu besoin d'un produit ou d'un service;
- (c) tous les dossiers confirmant que le Membre du Groupe a requis un produit ou un service;
- (d) tous les dossiers relatifs au fait que le produit ou le service public demandé par le Membre du Groupe lui a été refusé;
- (e) tous les dossiers relatifs aux produits et/ou aux services que la Couronne a effectivement fournis au Membre du Groupe; et/ou
- (f) tous les dossiers faisant état d'une quelconque relation familiale entre un Membre du Groupe des Familles et un Membre du Groupe des Enfants retirés de leurs foyers ou un Membre du Groupe Jordan.

66. Tous les Membres du Groupe devront produire le Formulaire de Réclamation prescrit auprès de l'Administrateur du Recours Collectif et/ou des Procureurs du Groupe à l'intérieur des délais indiqués ci-dessous, ou tels que déterminés par la Cour.

67. Il sera de la responsabilité de l'Administrateur du Recours Collectif de recueillir tous les Formulaires de Réclamation.

iii. Délai de Production des Formulaires de Réclamation

68. Les Membres du Groupe seront informés du délai de production des Formulaires de Réclamation par le biais de l'Avis de Détermination des Questions Communes.

69. Les demandeurs soumettent que les Membres du Groupe devraient bénéficier d'un délai d'un an à compter jugement portant sur les Questions Communes afin de déposer un Formulaire de Réclamation de plein droit, ou selon le délai déterminé par la Cour.

70. Les demandeurs soumettent également que les Membres du Groupe devraient, en certaines circonstances particulières définies par la Cour (par exemple : le fait qu'ils n'étaient pas au courant de leurs droits) ou avec la permission de la Cour (par exemple : en raison de l'état de santé physique ou mentale), avoir le droit de produire un Formulaire de Réclamation plus d'un an après le jugement sur les Questions Communes.

D. Détermination et classification des Membres du Groupe

i. Approbation des Membres du Groupe des Enfants retirés de leurs foyers

71. Il reviendra à l'Administrateur du Recours Collectif de déterminer si la personne qui soumet un Formulaire de Réclamation en tant que Membre du Groupe des Enfants retirés de leurs foyers se qualifie effectivement comme Membre du Groupe.

72. L'Administrateur du Recours Collectif déterminera et classifera également la durée que le Membre du Groupe des Enfants retirés de leurs foyers a passé au sein d'un emplacement hors-foyer. L'Administrateur du Recours Collectif déterminera aussi le nombre d'emplacements hors-foyer au sein desquels le Membre du Groupe des Enfants retirés de leurs foyers a été placé, et il déterminera aussi si de tels emplacements étaient, d'une part, situés à l'intérieur ou à l'extérieur de sa Réserve, et d'autre part, situés à l'intérieur ou à l'extérieur de la communauté habituelle du Membre du Groupe.

73. L'Administrateur du Recours Collectif procédera aux déterminations dont il est question au paragraphe 72 sur les renseignements figurant au Formulaire de Réclamation et sur les Informations qu'aura fournies la Couronne au sujet du Membre du Groupe.

74. L'Administrateur du Recours Collectif devra, lorsque cela s'avérera nécessaire et adéquat, requérir par écrit que la Couronne et/ou le Membre du Groupe des Enfants retirés de leurs foyers ayant soumis un Formulaire de Réclamation lui communique(nt) davantage d'informations.

ii. Approbation des Membres du Groupe Jordan

75. Il reviendra à l'Administrateur du Recours Collectif de déterminer si la personne qui soumet un Formulaire de Réclamation en tant que Membre du Groupe Jordan se qualifie effectivement comme Membre du Groupe.

76. L'Administrateur du Recours Collectif fondera la détermination dont il est question au paragraphe 75 sur les informations figurant au Formulaire de Réclamation et sur les directives émises par la Cour lors de l'Audition portant sur les Questions Communes. De telles directives pourront, entre autres choses, répondre aux questions suivantes: (a) si le Membre du Groupe a eu besoin d'un produit ou d'un service à quelque moment que ce soit de la Période du Recours Collectif; (b) si le Membre du Groupe s'est vu refuser le produit ou service en question; (c) si la livraison du produit ou service requis s'est vue retardée ou perturbée; (d) si un(e) tel(le) refus, retard ou perturbation était attribuable à un manque de fonds, à une absence de juridiction ou à un conflit de compétence entre paliers ou départements gouvernementaux; et/ou (e) si un(e) tel(le) refus, retard ou perturbation est survenu(e) après que le Membre du Groupe eût atteint l'âge de la majorité applicable au sein de la province ou du territoire pertinent.

77. L'Administrateur du Recours Collectif procédera également à ces déterminations en fonction des Informations de la Couronne relatives au nombre de Membres du Groupe ayant reçu un produit ou un service en vertu du Principe Jordan (depuis le prononcé de la Décision du TCDP).

78. L'Administrateur du Recours Collectif devra, lorsque cela s'avérera nécessaire et adéquat, requérir par écrit que la Couronne et/ou le Membre du Groupe Jordan ayant soumis un Formulaire de Réclamation lui communique(nt) davantage d'informations.

iii. Approbation des Membres du Groupe des Familles

79. Il reviendra à l'Administrateur du Recours Collectif de déterminer si la personne qui soumet un Formulaire de Réclamation en tant que Membre du Groupe des Familles se qualifie effectivement comme Membre du Groupe des Familles.

80. L'Administrateur du Recours Collectif procédera à la détermination dont il est question au paragraphe 79 sur les renseignements figurant au Formulaire de Réclamation et sur les Informations qu'aura fournies la Couronne au sujet de la relation existant entre le potentiel Membre du Groupe des Familles et un Membre Approuvé du Groupe des Enfants retirés de leurs foyers.

81. L'Administrateur du Recours Collectif devra, lorsque cela s'avérera nécessaire et adéquat, requérir par écrit que le Membre du Groupe Jordan ayant soumis un Formulaire de Réclamation lui communique davantage d'informations.

iv. Membres du Groupe décédés

82. La succession de tout Membre du Groupe décédé le ou après le 1er avril 1991 peut soumettre un Formulaire de Réclamation dans le cadre du présent recours collectif.

83. S'il appert que le Membre du Groupe Décédé se serait qualifié en tant que Membre du Groupe Approuvé, sa succession aura le droit d'être indemnisée conformément au Processus de Distribution des Dommages. À moins qu'elle n'y soit explicitement autorisée par la Cour, aucune succession ne pourra être indemnisée en vertu du Processus d'Évaluation de Compensations Individuelles.

v. Notification des Membres du Groupe / Enregistrement et Contestation des Décisions

84. Dans les trente (30) jours de la réception d'un Formulaire de Réclamation, l'Administrateur du Recours Collectif devra aviser le requérant de sa décision de le reconnaître ou de le rejeter en tant que Membre du Groupe Approuvé. Les personnes dont le statut de Membre du Groupe n'aura pas été reconnu se verront expliquer de quelle manière elles peuvent contester la décision rendue par l'Administrateur du Recours Collectif. Les demandeurs suggèrent que la procédure de contestation inclut la possibilité de soumettre un Formulaire de Réclamation modifié, accompagné de pièces justificatives permettant de démontrer que le requérant est bel et bien un Membre du Groupe.

85. Toutes les parties intéressées auront l'opportunité d'en appeler de toute décision rendue par l'Administrateur du Recours Collectif devant la Cour, ou selon une façon à être déterminée. Les Procureurs du Groupe pourront interjeter appel d'une décision pour et au nom des personnes concernées.

86. L'Administrateur du Recours Collectif conservera tous les dossiers des Membres du Groupe Approuvés ainsi que les Formulaires de Réclamation qu'ils auront soumis, et il communiquera une fois par mois ces informations aux Procureurs du Groupe, à la Couronne et à toute autre partie intéressée. Les Procureurs du Groupe et/ou toute partie intéressée pourront, dans

les trente (30) jours de la réception des informations, contester la décision rendue par l'Administrateur du Recours Collectif en transmettant à ce dernier (et à toute autre partie concernée) un exposé de leurs motifs de contestation. La partie répondante aura alors trente (30) jours pour répliquer par écrit à la demande de contestation, à l'expiration desquels l'Administrateur du Recours Collectif devra reconsidérer la décision qu'il a prise et assurer un suivi auprès de toutes les parties.

E. Processus de distribution des dommages

i. Distribution des dommages

87. L'Administrateur distribuera de la manière déterminée par la Cour les dommages obtenus au bénéfice de tous les Membres du Groupe Approuvés.

88. Les demandeurs proposeront que les Membres du Groupe Approuvés aient droit à une certaine proportion des dommages déterminée par l'Administrateur du Recours Collectif en fonction de critères à être approuvés par la Cour, lesquels comprennent, sans s'y limiter : (a) le temps qu'un Membre du Groupe a passé au sein d'un emplacement hors-foyer; (b) le nombre d'emplacements hors-foyer au sein desquels le Membre du Groupe des Enfants retirés de leurs foyers a été placé alors qu'il était enfant; (c) la période de temps au cours de laquelle le Membre du Groupe a été privé d'un produit ou d'un service en raison d'un refus, d'un délai ou d'une perturbation (le tout en contravention du Principe de Jordan); et (d) la relation familiale existant entre un Membre du Groupe des Familles et un Membre du Groupe des Enfants retirés de leurs foyers .

89. Une fois qu'il les aura informés de la décision qu'il a prise au sujet de leur appartenance à un groupe ou à un autre, l'Administrateur du Recours Collectif devra, à l'intérieur d'un délai raisonnable que la Cour aura fixé, aviser les Membres du Groupe Approuvés de la proportion de

dommages à laquelle chacun a droit en vertu du Processus de Distribution des Dommages approuvé par la Cour.

90. L'Administrateur du Recours Collectifs devra également, le cas échéant, transmettre à chaque Membre du Groupe Approuvé une série de documents comprenant : de l'information quant à la façon de percevoir les dommages auquel il a droit; de l'information quant à l'opportunité pour le Membre du Groupe de recourir au Processus d'Évaluation de Compensations Individuelles; des copies du Formulaire d'Évaluation de Compensation Individuelle accompagnées d'un guide indiquant comment compléter le Formulaire en question; et les coordonnées de ressources susceptibles de fournir des conseils juridiques indépendants. De telles informations seront communiquées selon une forme et un style appropriés à la culture des interlocuteurs, au moyen de médiums interactifs tels que des capsules vidéo d'apprentissage.

ii. Évaluation individuelle des dommages

91. Une fois informés de leur droit au paiement de dommages, les Membres du Groupe Approuvés pourraient être avisés de l'opportunité de bénéficier d'une compensation individuelle établie conformément au Processus d'Évaluation de Compensations Individuelles, tel que défini ci-après.

F. Processus d'Évaluation de Compensations Individuelles

i. Formulaire d'Évaluation de Compensation Individuelle

92. Lorsqu'un Membre du Groupe Approuvé est informé de son droit de percevoir des dommages et de recourir au Processus d'Évaluation de Compensations Individuelles, il recevra un exemplaire du Formulaire d'Évaluation de Compensation Individuelle se trouvant à l'Annexe D.

93. Les demandeurs suggèrent qu'une demande de dommages individuels soit valablement formée par l'envoi d'un Formulaire d'Évaluation de Compensation Individuelle à l'attention de

l'Administrateur du Recours Collectif, étant entendu et convenu que seules les personnes désirant recourir au Processus d'Évaluation de Compensations Individuelles seront tenues de produire un Formulaire d'Évaluation de Compensation Individuelle.

ii. Évaluation des Compensations Individuelles

94. Il pourrait être demandé à la Cour d'approuver la structure d'un Processus d'Évaluation de Compensations Individuelles une fois rendu le jugement portant sur les Questions Communes, ou au moment autrement déterminé par la Cour.

95. Un tel Processus d'Évaluation de Compensations Individuelles serait mis à la disposition de tous les Membres du Groupe Approuvés, à l'exception de ceux qui, de l'avis de la Cour à l'issue de l'audition portant sur les Questions Communes, n'ont pas droit à une Compensation Individuelle.

iii. Auditions portant sur les Points Individuels

96. Il sera demandé à la Cour d'émettre des directives, ou de désigner certaines personnes devant lui faire rapport en vertu de l'article 334.26 des *Règles des Cours Fédérales*, ou encore de nommer un juge chargé de réaliser un échantillonnage de test impliquant des Membres du Groupe Approuvés sélectionnés et qui ont choisi de recourir au Processus d'Évaluation de Compensations Individuelles, et cela en vue d'éclaircir les points qui pourraient demeurer pertinents à la suite de la détermination des Questions Communes – par exemple :

- (a) Règles d'audition régissant les évaluations individuelles;
- (b) Grille de compensations individuelles;
- (c) Résolution de différends portant sur la définition de concepts essentiels tels que "perte de la culture et du langage", "peine et souffrance", "maltraitance physique" et "exploitation sexuelle"; et

- (d) Toute autre question soulevée par la Cour ou une partie au cours des débats entourant la détermination des Questions Communes.

G. Coût et financement des procédures

i. Frais juridiques des demandeurs

97. Les frais juridiques encourus par les demandeurs seront payés suivant une formule à pourcentage, sujet à l'approbation de la Cour conformément à l'article 334.4 des *Règles des Cours Fédérales*.

98. L'entente intervenue entre les Représentants du Groupe et les Procureurs du Groupe stipule que les honoraires et déboursés payables à ces derniers seront établis de la manière suivante :

(a) Recouvrement collectifs: vingt pour cent (20%) des premiers deux cent millions de dollars (\$200,000,000) recueillis par voie de règlement ou en vertu d'un jugement, plus dix pour cent (10%) de tout montant recueilli en excédent de la somme de deux cent millions de dollars (\$200,000,000) par voie de règlement ou en vertu d'un jugement;
ET

(b) Recouvrement individuels: vingt-cinq pour cent (25%) des montants recueillis par voie de règlements ou en vertu d'un jugement.

ii. Financement des dépenses et débours

99. Tous les dépenses et débours de nature juridique encourus par les Représentants du Groupe ont été (et continueront à être) financés par les Procureurs du Groupe – à moins que les Représentants du Groupe et les Procureurs du Groupe n'en viennent éventuellement à la conclusion qu'il est dans le meilleur intérêt du Groupe d'obtenir du financement auprès de

tierces parties. En pareil cas, les Procureurs du Groupe aviseraient la Cour de la situation et requerraient son approbation.

H. Règlement

i. Négociations et offres de règlement

100. Les demandeurs ont entretenu des négociations avec la Couronne en vue de parvenir à un règlement équitable du litige, dans un délai raisonnable.

ii. Médiation et autres modes de résolution de conflits volontaires

101. Les demandeurs ont participé à des séances de médiation et d'autres négociations en vue de résoudre le litige ou de circonscrire les questions en litige.

I. Réévaluation du Plan de Poursuite

i. Flexibilité du Plan de Poursuite

102. Le présent Plan de Poursuite sera réévalué sur une base régulière et pourrait faire l'objet de modifications, avant ou après la détermination des Questions Communes, en fonction de gestion de l'instance continue assurée par la Cour, ou de toute autre manière que la Cour estime appropriée.

29 2021	octobre	SOTOS LLP 180 rue Dundas Ouest Suite 1200 Toronto, ON M5G 1Z8 David Sterns (LSO# 36274J) dsterns@sotosllp.com Mohsen Seddigh (LSO# 70744I) mseddigh@sotosllp.com Jonathan Schachter (LSO# 63858C) jschachter@sotosllp.com Tél: 416-977-0007 Téléc: 416-977-0717	KUGLER KANDESTIN 1 Place Ville-Marie Suite 1170 Montréal, QC H3B 2A7 Robert Kugler rkugler@kklex.com Pierre Boivin pboivin@kklex.com William Colish wcolish@kklex.com Tél.: 514-878-2861 Téléc.: 514-875-8424	MILLER TITERLE + CO. 638 Smithe Street Suite 300 Vancouver, BC V6B 1E3 Joelle Walker joelle@millertiterle.com Tamara Napoleon tamara@millertiterle.com Erin Reimer erin@millertiterle.com Tél.: 604-681-4112 Téléc.: 604-681-4113
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Avocats et procureurs des demandeurs Xavier Moushoom, Jeremy Meawasige (représenté par son tuteur à l'instance, Jonavon Joseph Meawasige) et Jonavon Joseph Meawasige

NAHWEGAHBOW, CORBIERE 5884 Rama Road, Suite 109 Rama, ON L3V 6H6 Dianne G. Corbiere dgc corbiere@nncfirm.ca Tél.: 705.325.0520 Téléc: 705.325.7204	FASKEN MARTINEAU DUMOULIN 55 rue Metcalfe Suite 1300 Ottawa, ON K1P 6L5 Peter N. Mantas pmantas@fasken.com Tél: 613.236.3882 Téléc: 613.230.6423
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Avocats et procureurs des demandeurs Assemblée des Premières Nations, Ashley Dawn Louise Bach, Karen Osachoff, Melissa Walteson, Noah Buffalo-Jackson (représenté par sa tutrice à l'instance, Carolyn Buffalo), Carolyn Buffalo et Dick Eugene Jackson (aussi connu sous le nom de Richard Jackson)

ANNEXE “A”

**RECOURS COLLECTIF PORTANT SUR LES SERVICES DE PROTECTION DE LA
JEUNESSE (LA RAFLE DU MILLÉNIUM) OFFERTS AUX PREMIÈRES NATIONS
(« FIRST NATIONS YOUTH CARE / MILLENNIUM SCOOP »)**

AVIS DE CERTIFICATION SUGGÉRÉ

**VEUILLEZ LIRE LE PRÉSENT AVIS AVEC ATTENTION PUISQU'IL POURRAIT
AVOIR UN IMPACT SUBSTANTIEL SUR L'EXERCICE DE VOS DROITS**

Nature de la Poursuite

En mars 2019, Sotos LLP, Kugler Kandestin LLP et Miller Titerle + Co. (collectivement, les "Procureurs du Groupe") ont introduit (devant la Cour Fédérale du Canada siégeant dans le district judiciaire de Montréal) un recours collectif à l'encontre du Procureur Général du Canada (la "Couronne") pour et au nom de demandeurs membres des Premières Nations.

Le recours collectif allègue qu'à compter de 1991, la Couronne a mis en place, à l'échelle du territoire canadien, des politiques de financement discriminatoires ayant eu pour conséquence que plusieurs enfants de Premières Nations ont été retirés de leur foyer et de leur communauté en vue d'être confiés à divers organismes. Le recours collectif allègue également que la Couronne a refusé ou indûment tardé à fournir certains produits et services publics aux jeunes membres de Premières Nations qui en avaient besoin, le tout en contravention du Principe de Jordan.

Le recours collectif a été intenté au bénéfice des membres du Groupe suivant :

(a) tous les jeunes membres de Premières Nations ayant été retirés de leur foyer depuis le 1^{er} avril 1991, alors qu'ils vivaient habituellement sur une réserve ou qu'au moins un (1) de leurs parents résidait habituellement sur une Réserve;

(b) tous les jeunes membres des Premières Nations qui se sont vu refuser un produit ou un service public ou à l'égard desquels la livraison

d'un produit ou service public s'est vue retardée ou perturbée en raison d'un manque de fonds, d'une absence de juridiction ou d'un conflit de compétence entre paliers ou départements gouvernementaux, le tout en contravention du Principe de Jordan;

(c) les membres de la famille immédiate d'un membre du sous-groupe défini au paragraphe (a) ci-dessus.

Par ordonnance rendue le [INSCRIRE LA DATE], l'honorable juge _____ a certifié l'action intentée à titre de recours collectif et a désigné Xavier Moushoom et Jeremy Meawasige (représenté par sa tutrice à l'instance, Maurina Beadle) à titre de représentants du Groupe.

La Cour a également décidé que les questions suivantes, qui s'appliquent à l'ensemble du Groupe, seront débattues lors d'une audition portant sur les Questions Communes :

- [INSCRIRE LES QUESTIONS COMMUNES RECONNUES PAR LE TRIBUNAL]
- ...

Participation au recours collectif

Si vous correspondez à la définition du Groupe, vous êtes automatiquement considéré(e) comme un Membre du Groupe, à moins de vous exclure du recours collectif de la manière décrite ci-dessous. Tous les Membres du Groupe seront liés par le jugement rendu par la

Cour, ou tout règlement conclu par les Parties et subséquemment approuvé par la Cour.

À ce stade des procédures, la Cour ne s'est pas prononcée sur les chances de recouvrement des demandeurs ou du Groupe, ni sur le mérite des allégations des demandeurs et/ou des moyens de défense invoqués par la Couronne.

Honoraires, Déboursés et Autres Frais

Vous n'aurez jamais à payer quelque honoraire, déboursé ou autre frais. Lorsqu'il question des honoraires et déboursés judiciaires à prévoir, les Représentants du Groupe et les Procureurs du Groupe ont convenu d'un mandat de représentation prévoyant que les cabinets juridiques concernés seront rémunérés suivant une formule à pourcentage – ce qui signifie en pratique qu'ils ne seront payés qu'en cas de jugement favorable ou d'un règlement hors Cour approuvé.

Vous ne serez d'aucune manière tenu(e) responsable des frais de justice de la partie défenderesse en cas d'échec du recours collectif. Tous les honoraires professionnels payés aux Procureurs du Groupe sont assujettis à l'approbation de la Cour.

Exclusion

Si vous souhaitez, en tant que Membre du Groupe, vous exclure du recours collectif, vous devez compléter et acheminer un « Formulaire

d'Exclusion » au plus tard le [INSCRIRE LA DATE-LIMITE]. Il vous est possible de télécharger le Formulaire d'Exclusion à partir du site web [INSCRIRE L'ADRESSE DU SITE WEB].

Les Membres du Groupe ayant choisi de s'exclure du recours collectif à l'intérieur du délai stipulé ci-dessus ne recevront aucune des sommes qui pourraient être obtenues par les demandeurs dans ce recours collectif. Tous les Membres du Groupe qui n'auront pas demandé à être exclus du recours collectif avant l'expiration du délai seront liés par tout jugement rendu à l'issue des procédures (qu'il soit ou non favorable aux demandeurs), de même que par tout règlement intervenu et subséquemment approuvé par la Cour.

Coordonnées

Si vous avez quelque question ou préoccupation au sujet du contenu du présent Avis ou de l'évolution du recours collectif, il vous est possible de contacter les Procureurs du Groupe de différentes manières :

Téléphone: [NUMÉRO DE TÉLÉPHONE]

Courriel: [ADRESSE COURRIEL]

Ligne d'information sans frais: [NUMÉRO]

Courrier ordinaire: [ADRESSE POSTALE]

ANNEXE “B”

FORMULAIRE D'EXCLUSION

À L'ATTENTION DE:

[ADMINISTRATEUR DU RECOURS COLLECTIF À ÊTRE DÉSIGNÉ]

[Adresse postale]

[Adresse courriel]

[Numéro de téléphone]

[Numéro de télécopieur]

ATTN: [ADMINISTRATEUR DU RECOURS COLLECTIF À ÊTRE DÉSIGNÉ]

Je ne souhaite pas participer au recours collectif connu sous le nom de *Xavier Moushoom et als c. Procureur Général du Canada* et portant sur certains actes de discrimination commis à l'encontre d'enfants de Premières Nations. Je comprends qu'une fois exclu(e), je ne pourrai d'aucune manière participer à la distribution des sommes octroyées ou payées dans le cadre du recours collectif, et que si je souhaite obtenir compensation, je devrai introduire une action civile distincte et décider si j'engage un avocat pour me représenter à mes propres frais.

Date: _____

Signature

Nom complet

Numéro civique, numéro d'appt.

Ville, province, code postal

Numéro de téléphone

Adresse courriel

Le présent avis doit être transmis par voie de courrier ordinaire, de télécopieur ou de courriel au plus tard le _____ 2021 pour être considéré valide.

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ANNEXE “C”

FORMULAIRE DE RÉCLAMATION

À L'ATTENTION DE:

[ADMINISTRATEUR DU RECOURS COLLECTIF À ÊTRE DÉSIGNÉ]

[Adresse postale]

[Adresse courriel]

[Numéro de téléphone]

[Numéro de télécopieur]

ATTN: [ADMINISTRATEUR DU RECOURS COLLECTIF À ÊTRE DÉSIGNÉ]

Je, soussigné(e), _____ (inscrivez votre nom complet, incluant votre nom de jeune fille le cas échéant), confirme avoir reçu l'Avis du Recours Collectif National connu sous le nom de *Xavier Moushoom et als c. Procureur Général du Canada* et portant sur certains actes de discrimination commis à l'encontre d'enfants de Premières Nations. Ma date de naissance est le _____ (Inscrire le jour, le mois et l'année)

J'estime être un Membre du Groupe et souhaite, en cette qualité, soumettre une réclamation en tant que membre du(des) sous-groupe(s) ci-dessous. (Veuillez cocher d'un X la ou les cases appropriée(s))

☐ Groupe des Enfants retirés de leurs foyers

☐ Groupe Jordan

☐ Groupe des Familles

Si vous estimez appartenir au Groupe des Enfants retirés de leurs foyers, veuillez résumer ci-dessous l'historique de vos emplacements hors-foyer à compter du 1^{er} avril 1991 :

Nombre de foyers d'accueil	Nombre d'années de placement au sein des foyers d'accueil	Les foyers d'accueil se trouvaient-ils à l'intérieur de la Réserve?	Les foyers d'accueil se trouvaient-ils à l'intérieur de votre communauté des Premières Nations?

Si vous estimez appartenir au Groupe Jordan, veuillez résumer ci-dessous les produits et/ou services publics dont vous aviez besoin à compter du 1^{er} avril 1991 mais qui vous ont été refusés ou ont été livrés tardivement ou de manière inadéquate.

Produits et/ou services dont vous aviez besoin	Avez-vous fait la demande de tels produits et/ou services?	Les produits et/ou services en question ont-ils été refusés ou livrés tardivement ou de manière inadéquate?	Date(s) du besoin, de la demande et du refus, du retard ou de la perturbation

Si vous estimez appartenir au Groupe des Familles, veuillez décrire ci-dessous la relation existant entre vous et un ou plusieurs Membres du Groupe des Enfants retirés de leurs foyers :

Nom complet et numéro de réclamation de chaque Membre Approuvé du Groupe des Enfants retirés de leurs foyers faisant partie de votre famille	Relation existant entre vous et cette personne (i.e. la mère, le frère, la soeur, le grand-père ou la grand-mère d'un Membre Approuvé du Groupe des Enfants retirés de leurs foyers)

Mon adresse postale est la suivante:

Numéro civique, numéro d'appt.

Ville, province

Code postal

Numéro(s) de téléphone

Adresse courriel

Signature: _____ Date: _____

ANNEXE “D”

FORMULAIRE D'ÉVALUATION DE COMPENSATION INDIVIDUELLE

À L'ATTENTION DE:

[ADMINISTRATEUR DU RECOURS COLLECTIF À ÊTRE DÉSIGNÉ]

[Adresse postale]

[Adresse courriel]

[Numéro de téléphone]

[Numéro de télécopieur]

ATTN: [ADMINISTRATEUR DU RECOURS COLLECTIF À ÊTRE DÉSIGNÉ]

Je, soussigné(e), _____ (inscrivez votre nom complet, incluant votre nom de jeune fille le cas échéant) confirme avoir été informé(e) du fait que je suis un Membre Approuvé du Groupe des Enfants retirés de leurs foyers ou un Membre Approuvé du Groupe Jordan. Mon numéro de réclamation est _____ [inscrivez le numéro de réclamation qui vous a été attribué]

Je confirme également qu'on m'a bien expliqué dans quelle mesure et de quelle manière je peux exiger une évaluation de compensation individuelle conformément aux paramètres du Processus d'Évaluation de Compensations Individuelles.

Je reconnais et conviens que j'ai l'opportunité d'obtenir des conseils juridiques indépendants au sujet du processus et qu'il m'est possible d'obtenir de l'assistance gratuite en vue de compléter le présent formulaire en contactant [inscrivez les coordonnées du point de contact].

Je résume ci-dessous l'expérience que j'ai vécue au sein d'emplacements hors-foyer de même que les conséquences d'une telle expérience.

[La forme du Formulaire d'Évaluation de Compensation Individuelle sera établie une fois qu'un jugement aura été rendu à propos des Questions Communes, étant entendu que l'objectif du document sera de recueillir les informations suivantes auprès de Membres du Groupe Approuvés]:

- *Âge du Membre du Groupe au moment de sa prise en charge, foyers d'accueil au sein desquels le Membre du Groupe a été placé, et durée des placements hors-foyer;*
- *Abus dont le Membre du Groupe a été victime (i.e. toute information relative à des événements ayant entraîné un préjudice indemnisable, telle que la date, l'emplacement, l'heure et l'infracteur responsable);*
- *Conséquences indemnissables (y compris tout impact sur la culture ou la langue);*
- *Un exposé narratif de l'expérience vécue par la personne placée au sein d'un environnement hors-foyer;*
- *Les raisons de la prise en charge;*

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- *Si oui ou non une preuve d'experts sera fournie au soutien d'une réclamation fondée sur un préjudice conséquentiel (tel qu'une perte de revenus passée et future);*
- *Archives relatives aux soins (incluant les dossiers constitués par des conseillers ou des guérisseurs traditionnels ou coutumiers) qui seront soumises au soutien d'une preuve d'abus et/ou de préjudice;*
- *Autorisations permettant à la Couronne d'obtenir certains documents; et*
- *Toutes autres informations jugées nécessaires ou utiles.]*

Je résume ci-dessous l'expérience que j'ai vécue lorsque les produits et/ou services publics dont j'avais besoins m'ont été refusés ou ont été livrés tardivement ou de manière inadéquate, de même que les conséquences d'une telle expérience.

[La forme du Formulaire d'Évaluation de Compensation Individuelle sera établie une fois qu'un jugement aura été rendu à propos des Questions Communes, étant entendu que l'objectif du document sera de recueillir les informations suivantes auprès de Membres du Groupe Approuvés]:

- *Faits, situations et circonstances ayant justifié la demande d'un produit ou d'un service public;*
- *Raisons expliquant le refus de livraison du produit ou service;*
- *Département(s) de contact;*
- *Autorisations permettant à la Couronne d'obtenir certains documents; et*
- *Toutes autres informations jugées nécessaires ou utiles.]*

Signature: _____ Date: _____

Schedule B - Trout Action Certification Order

(provided in English and French)

Federal Court



Cour fédérale

Date: 20220211

Docket: T-1120-21

Citation: 2022 FC 149

Ottawa, Ontario, February 11, 2022

PRESENT: The Honourable Madam Justice Aylen

CLASS PROCEEDING

BETWEEN:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER AND REASONS

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

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

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

CONSIDERING the motion materials filed by the Plaintiffs;

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

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

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

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

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

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

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

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

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

(e) there is a representative plaintiff or applicant who

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

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

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

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

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

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

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

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

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

e) il existe un représentant demandeur qui :

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

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

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

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

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

CONSIDERING that:

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

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

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

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

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

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

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

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

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

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

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

THIS COURT ORDERS that:

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

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

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

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

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

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

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

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

v. Are *Charter* damages an appropriate remedy?

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

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

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

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

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

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

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

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

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

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

“Mandy Aylen”
Judge

ANNEX A

20

Court File No. T-1120-21

FEDERAL COURT PROPOSED CLASS PROCEEDING

B E T W E E N:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

LITIGATION PLAN

September 24, 2021

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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.¹

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

¹ 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,² 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

² 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.

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

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

IV. POST-CERTIFICATION PROCESS

A. Timetable

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

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

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

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

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

B. Certification Notice, Notice Program and Opt Out Procedures

i. Certification Notice

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

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

ii. Notice Program

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

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

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

iii. Opt Out Procedures

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

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

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

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

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

iv. Special Opt Out Procedures

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

C. Identifying and Communicating with Class Members

i. Identifying Class Members

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

ii. Database of Class Members

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

iii. Responding to Inquiries from Class Members

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

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

iv. Post Certification Status Reports

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

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

D. Documentary Production

i. Affidavit/List of Documents

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

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

ii. Production of Documents

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

iii. Motions for Documentary Production

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

iv. Document Management

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

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

E. Examinations for Discovery

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

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

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

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

F. Interlocutory Matters

i. Undertakings

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

ii. Motions for Refusals and Undertakings

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

iii. Re-attendances and Further Examinations for Discovery

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

G. Expert Evidence

i. Identifying Experts and Issues

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

H. Determination of the Common Issues

i. Pre-Trial of the Common Issues

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

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

ii. Trial of the Common Issues

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

V. POST COMMON ISSUES DECISION PROCESS

A. Timetable

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

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

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

B. Common Issues Notice

i. Notifying Class Members

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

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

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

C. Claim Forms

i. Use of Claim Forms

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

ii. Obtaining and Filing Claim Forms

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

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

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

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

- (a) any records relating to the Class Member's voluntary or involuntary placement in out-of-home care during the Class Period;
 - (b) any records relating to a need by the Class Member for a service or product;
 - (c) any records relating to a request made by the Class Member for a service or product;
 - (d) any records relating to the denial of a service or product to the Class Member;
 - (e) any records relating to any service(s) or product(s) provided by the Crown to the Class Member; and/or
 - (f) any records relating to the family status or family relationship between a Family Class Member and a Child Class Member.
68. Class Members will be required to file the appropriate Claim Form with the Class Action Administrator and/or Class Counsel within the deadlines set out below or as directed by the Court.
69. The Class Action Administrator will be responsible for receiving all Claim Forms.

iii. Deadline for Filing Claim Forms

70. Class Members will be advised of the deadline for filing Claim Forms in the Common Issues Notice.
71. The plaintiffs propose that Class Members be given one year, or such period as set out by the Court, after the Common Issues judgment to file Claim Forms as of right.
72. The plaintiffs propose that Class Members be entitled to file Claim Forms more than one year after the Court's judgment on the Common Issues in certain circumstances prescribed by the Court (*i.e.*, lack of awareness of entitlement, etc.) or with leave of the Court (*i.e.*, based on mental or physical health issues, etc.).

D. Determining and Categorizing Class Membership

i. Approving Child Class Members

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

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

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

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

ii. Approving Family Class Members

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

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

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

iii. Deceased Class Members

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

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

iv. Notifying Class Members, Challenging and Recording Decisions

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

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

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

E. Aggregate Damages Distribution Process

i. Distribution of Aggregate Damages

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

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

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

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

ii. Seeking an Individual Damage Assessment

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

F. Individual Damage Assessment Process

i. Individual Damage Assessment Forms

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

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

ii. Individual Damage Assessments

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

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

iii. Individual Issue Hearings

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

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

G. Fees

i. Plaintiffs’ Legal Fees

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

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

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

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

ii. Funding of Disbursements

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

H. Settlement Issues

i. Settlement Offers and Negotiations

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

ii. Mediation and Other Non Binding Dispute Resolution Mechanisms

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

I. Review of the Litigation Plan

i. Flexibility of the Litigation Plan

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

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Lawyers for the plaintiff, Assembly of First Nations

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:

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

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

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

My mailing address is:

Street name, Apartment #

City, Province

Postal Code

Telephone Number(s)

Email address

Signed: _____

Date: _____

SCHEDULE “D”

INDIVIDUAL DAMAGE ASSESSMENT FORM

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

ATTN: [CLASS ACTION ADMINISTRATOR TO BE APPOINTED]

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

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

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

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

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

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

Signed: _____ Date: _____

Cour fédérale



Federal Court

Dossier : 20220211

Dossier : T-1120-21

Référence : 2022 CF 149

[TRADUCTION FRANÇAISE]

Ottawa (Ontario), le 11 février 2022

En présence de madame la juge Aylen

RECOURS COLLECTIF

ENTRE :

ASSEMBLÉE DES PREMIÈRES NATIONS et ZACHEUS JOSEPH TROUT

demandeurs

et

LE PROCUREUR GÉNÉRAL DU CANADA

défendeur

ORDONNANCE ET MOTIFS

VU LA REQUÊTE déposée par les demandeurs, sur consentement et tranchée sur la base de prétentions écrites conformément à l'article 369 des *Règles des Cours fédérales*, en vue d'obtenir une ordonnance :

- a) accordant aux demandeurs une prorogation du délai pour qu'ils puissent déposer la présente requête en autorisation après le délai prévu à l'alinéa 334.15(2)b);

- b) autorisant la présente instance comme recours collectif et définissant le groupe;
- c) énonçant la nature des réclamations présentées au nom du groupe et les réparations demandées par le groupe;
- d) précisant les points de droit et de fait communs en litige;
- e) nommant le demandeur, Zacheus Joseph Trout, à titre de représentant demandeur;
- f) approuvant le plan de déroulement de l'instance;
- g) accordant toute autre réparation;

VU les documents relatifs à la requête déposés par les demandeurs;

VU que le défendeur donne son consentement à l'ensemble de la requête déposée;

VU que la Cour est convaincue que, dans les circonstances de l'espèce, une prorogation du délai doit être accordée pour que la présente requête en autorisation puisse être déposée après le délai prévu à l'alinéa 334.15(2)b);

VU que, même si le consentement du défendeur rend moins nécessaire l'adoption d'une démarche rigoureuse pour trancher la question de savoir si la présente instance devrait être autorisée comme recours collectif, il ne dispense toutefois pas la Cour de l'obligation de veiller au respect des exigences relatives à l'autorisation prescrites à l'article 334.16 [voir *Varley c Canada (Procureur général)*, 2021 CF 589];

VU que le paragraphe 334.16(1) des *Règles des Cours fédérales* prévoit ce qui suit :

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.

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.

VU que conformément au paragraphe 334.16(2), pour décider si le recours collectif est le meilleur moyen de régler les points de droit ou de fait communs de façon juste et efficace, tous les facteurs pertinents sont pris en compte, notamment les suivants : a) la prédominance des points de droit ou de fait communs sur ceux qui ne concernent que certains membres; b) la proportion de membres du groupe qui ont un intérêt légitime à poursuivre des instances séparées; c) le fait que le recours collectif porte ou non sur des réclamations qui ont fait ou qui font l'objet d'autres instances; d) l'aspect pratique ou l'efficacité moindres des autres moyens de régler les réclamations, et e) les difficultés accrues engendrées par la gestion du recours collectif par rapport à celles associées à la gestion d'autres mesures de redressement;

VU que :

- a) La conduite de la Couronne en cause dans le présent recours collectif envisagé, telle qu'elle est exposée dans la déclaration commune, concerne la discrimination dont ont été victimes les enfants des Premières Nations dans la prestation de services essentiels et du fait que la Couronne a échoué à faire en sorte que les enfants des Premières Nations ne souffrent pas de lacunes, de retards, d'interruptions ou de refus dans les services et les produits, et ce, de façon contraire à leurs droits à l'égalité garantis par la Charte. Les demandeurs allèguent que la conduite de la Couronne était discriminatoire, visait les membres du groupe, car ils étaient membres des Premières Nations, et contrevenait au paragraphe 15(1) de la Charte, aux obligations fiduciaires de la Couronne envers les Premières Nations et à la norme de diligence en common law et en droit civil.
- b) En ce qui a trait à la première condition de l'analyse concernant l'autorisation (à savoir si les actes de procédure révèlent une cause d'action valable), les exigences minimales ne

sont pas élevées. La Cour doit trancher la question de savoir s'il est manifeste et évident que les causes d'action sont vouées à l'échec [voir *Brake c Canada (Procureur général)*, 2019 CAF 274 au para 54]. Même sans le consentement de la Couronne, je suis persuadée que les demandeurs ont suffisamment plaidé les éléments nécessaires pour chaque cause d'action aux fins de la présente requête, de sorte que la déclaration commune révèle une cause d'action raisonnable.

- c) Pour ce qui est de la deuxième condition de l'analyse concernant l'autorisation (à savoir s'il existe un groupe identifiable formé d'au moins deux personnes), le critère à appliquer consiste à établir si les demandeurs ont défini le groupe en recourant à un critère objectif, c'est-à-dire que l'on peut décider si une personne est membre du groupe sans se référer au fond de l'action [voir *Hollick c Toronto (Ville)*, 2001 CSC 68 au para 17]. Je suis convaincue que les définitions proposées pour le groupe des enfants et le groupe des familles (énoncées ci-après) présentent des critères objectifs et que l'inclusion dans chaque groupe peut être déterminée sans se référer au fond de l'action.
- d) Quant à la troisième condition de l'analyse concernant l'autorisation (à savoir si les réclamations des membres du groupe soulèvent des points de droit ou de fait communs), comme l'a indiqué la Cour d'appel fédérale au paragraphe 72 de l'arrêt *Wenham c Canada (Procureur général)*, 2018 CAF 199, l'objectif de cette étape de la détermination de l'autorisation n'est pas de déterminer les points communs, mais plutôt d'évaluer si la résolution des points est nécessaire pour régler les réclamations de chaque membre du groupe. Plus précisément, les exigences sont les suivantes :

Il faut aborder le sujet de la communauté en fonction de l'objet. La question sous-jacente est de savoir si le fait d'autoriser le recours collectif permettra d'éviter la répétition de l'appréciation des faits ou de l'analyse juridique. Une question ne sera donc « commune » que lorsque sa résolution est nécessaire pour le règlement des demandes de chaque membre du groupe. Il n'est pas essentiel que les membres du groupe soient dans une situation identique par rapport à la partie adverse. Il n'est pas nécessaire non plus que les questions communes prédominent sur les questions non communes ni que leur résolution règle les demandes de chaque membre du groupe. Les demandes des membres du groupe doivent toutefois partager un élément commun important afin de justifier le recours collectif. Pour décider si des questions communes motivent un recours collectif, le tribunal peut avoir à évaluer l'importance des questions communes par rapport aux questions individuelles. Dans ce cas, le tribunal doit se rappeler qu'il n'est pas toujours possible pour le représentant de plaider les demandes de chaque membre du groupe avec un degré de spécificité équivalant à ce qui est exigé dans une poursuite individuelle (*Western Canadian Shopping Centres*, précité, au paragraphe 39; voir aussi *Vivendi Canada Inc. c. Dell'Aniello*, 2014 CSC 1, [2014] 1 R.C.S. 3, aux paragraphes 41 et 44 à 46.)

Après avoir examiné les points communs (énoncés ci-après), je suis convaincue que les points partagent un élément commun important au règlement des réclamations de chaque membre du groupe. De plus, je conviens avec les demandeurs que ces points communs s'apparentent aux points communs similaires soulevés dans les demandes fondées sur des cas d'abus institutionnel qui ont été autorisées comme recours collectifs (par exemple, les recours collectifs liés aux pensionnats autochtones et à la rafle des années soixante), tout comme celles qui ont été autorisées dans le recours collectif de Moushoom (T-402-19/T-141-20). Je conclus donc que la condition liée aux points communs est remplie.

- e) Pour ce qui est de la quatrième condition de l'analyse concernant l'autorisation (à savoir si le recours collectif est le meilleur moyen de régler, de façon juste et efficace, les points de droit ou de fait communs), le critère du meilleur moyen comporte deux concepts

fondamentaux : i) la question de savoir si le recours collectif serait un moyen juste, efficace et pratique de faire progresser l'instance; ii) la question de savoir si le recours collectif serait préférable à tous les autres moyens raisonnables offerts pour régler les réclamations des membres du groupe. Pour statuer sur le critère du meilleur moyen, il faut examiner les points communs dans leur contexte, en tenant compte de l'importance de ceux-ci par rapport à l'instance dans son ensemble. Il peut être satisfait à ce critère même lorsqu'il y a d'importantes questions individuelles [voir *Brake*, précité, au para 85; *Wendham*, précité, au para 77, et *Hollick*, précité, aux para 27-31]. La Cour doit effectuer l'analyse de ce critère à la lumière des trois principaux objectifs du recours collectif : l'économie des ressources judiciaires, la modification des comportements et l'accès à la justice [voir *Brake*, précité, au para 86, citant *AIC Limitée c Fischer*, 2013 CSC 69 au para 22].

- f) Après avoir examiné les principes mentionnés précédemment et les facteurs prévus au paragraphe 334.16(2), je suis convaincue que le recours collectif est le meilleur moyen de régler les points de droit ou de fait communs de façon juste et efficace. Compte tenu de la nature systémique des réclamations, des obstacles majeurs à l'accès à la justice auxquels pourrait être confronté chacun des réclamants ainsi que des préoccupations exprimées par les demandeurs à l'égard des autres moyens qui existent pour régler les réclamations des membres du groupe, je suis persuadée que le recours collectif envisagé est un moyen juste, efficace et pratique de faire progresser l'instance des membres du groupe.
- g) En ce qui a trait à la cinquième condition de l'analyse concernant l'autorisation (à savoir s'il y a des représentants proposés adéquats), après avoir examiné la preuve par affidavit produite à l'appui de la requête ainsi que le plan de déroulement de l'instance détaillé, je

considère que le représentant demandeur proposé satisfait aux exigences énoncées à l'alinéa 334.16(1)e);

VU que la Cour est convaincue que toutes les conditions d'autorisation sont remplies et que les réparations demandées doivent être accordées;

LA COUR ORDONNE :

1. Les demandeurs ont droit à une prorogation du délai pour pouvoir déposer la présente requête en autorisation après le délai prévu à l'alinéa 334.15(2)b) des *Règles des Cours fédérales*.
2. Aux fins de la présente ordonnance et en plus des définitions figurant ailleurs dans la présente ordonnance, les définitions suivantes s'appliquent et d'autres termes utilisés dans la présente ordonnance ont le même sens que dans la déclaration commune :
 - a) « **Avocats du groupe** » s'entend de Fasken Martineau Dumoulin LLP, Kugler Kandestin LLP, Miller Titerle + Co., Nahwegahbow Corbiere et Sotos LLP;
 - b) « **groupe** » s'entend collectivement du groupe des enfants et du groupe des familles;
 - c) « **groupe des enfants** » s'entend de tous les membres des Premières Nations qui n'avaient pas atteint l'âge de la majorité de la province ou du territoire concerné et qui, durant la période visée par le recours collectif, ont été privés (que ce soit à cause d'un refus ou d'une lacune) d'un service ou d'un produit public essentiel relié à un besoin confirmé ou pour qui le service ou le produit a été retardé en

raison notamment d'un manque de financement ou d'un défaut de compétence ou par la suite d'une lacune de service ou d'un conflit de compétence avec un autre gouvernement ou ministère;

- d) « **groupe des familles** » s'entend de toutes les personnes qui sont le frère, la sœur, la mère, le père, la grand-mère ou le grand-père d'un membre du groupe des enfants;
- e) « **membres du groupe** » s'entend de toutes les personnes qui sont membres du groupe;
- f) « **période visée par le recours collectif** » s'entend de la période commençant le 1^{er} avril 1991 et se terminant le 11 décembre 2007;
- g) « **Première Nation** » et « **Premières Nations** » s'entendent des peuples autochtones du Canada, y compris au Yukon et dans les Territoires du Nord-Ouest, qui ne sont ni Inuits ni Métis et comprennent :
 - i. les personnes qui possèdent le statut d'Indien en vertu de la *Loi sur les Indiens*, LRC 1985, c I-5;
 - ii. les personnes qui ont droit à l'inscription en vertu de l'article 6 de la *Loi sur les Indiens* au moment de l'autorisation;
 - iii. les personnes qui ont satisfait aux critères d'appartenance à une bande prévus aux articles 10 à 12 de la *Loi sur les Indiens*, de sorte que leur communauté de Première Nation respective a décidé de l'appartenance à

ses effectifs en fixant les règles et que les personnes ont été considérées comme ayant satisfait aux exigences prévues par ces règles d'appartenance et que leur nom a été consigné dans la liste de bande;

iv. les personnes, outre celles visées aux alinéas i) à iii) ci-dessus, qui sont reconnues comme citoyens ou membres de leur Première Nation respective en vertu d'ententes ou de traités, de coutumes, de traditions et de lois autochtones à la date du procès ou du règlement du présent litige.

3. L'instance est donc autorisée comme recours collectif contre la défenderesse en vertu du paragraphe 334.16(1) des *Règles des Cours fédérales*.
4. Le groupe est composé du groupe des enfants et du groupe des familles, tous au sens défini dans la présente ordonnance.
5. Les réclamations présentées au nom du groupe à l'encontre de la défenderesse sont de nature constitutionnelle et ont trait à la négligence et au manquement à l'obligation fiduciaire de la Couronne envers le groupe.
6. La réparation demandée par le groupe comprend des dommages-intérêts, des dommages-intérêts fondés sur la Charte, la restitution, des dommages-intérêts punitifs et des dommages-intérêts exemplaires.
7. Zacheus Joseph Trout est nommé comme représentant demandeur et est réputé constitué un représentant demandeur adéquat du groupe, conformément avec les exigences de l'alinéa 334.16(1)e).

8. Les avocats du groupe sont par les présentes nommés avocats pour le groupe.

9. L'instance est autorisée sur la base des points communs suivants :

a) La conduite de la Couronne telle qu'elle est alléguée dans la déclaration commune [la conduite reprochée] a-t-elle porté atteinte aux droits à l'égalité garantis aux membres du groupe par le paragraphe 15(1) de la *Charte canadienne des droits et libertés*? Plus précisément :

i. La conduite reprochée a-t-elle créé une distinction fondée sur la race ou l'origine nationale ou ethnique des membres du groupe?

ii. La distinction était-elle discriminatoire?

iii. La conduite reprochée a-t-elle renforcé ou accentué les désavantages historiques subis par les membres du groupe?

iv. Dans l'affirmative, la violation du paragraphe 15(1) de la Charte était-elle justifiée au regard de l'article premier de la Charte?

v. Les dommages-intérêts fondés sur la Charte constituent-ils une réparation appropriée?

b) La Couronne a-t-elle été négligente les membres du groupe? Plus précisément :

i. La Couronne avait-elle une obligation de diligence envers les membres du groupe?

- ii. Dans l'affirmative, la Couronne a-t-elle manqué à cette obligation de diligence?
- c) La Couronne a-t-elle manqué à ses obligations prévues au *Code civil du Québec*?
Plus précisément :
 - i. La Couronne a-t-elle commis une faute ou engagé sa responsabilité civile?
 - ii. La conduite reprochée a-t-elle donné lieu à des pertes pour les membres du groupe et, dans l'affirmative, ces pertes constituent-elles un préjudice pour chacun des membres du groupe?
 - iii. Les membres du groupe ont-ils le droit de demander des dommages-intérêts pour les dommages moraux et matériels découlant de ce qui précède?
- d) La Couronne avait-elle une obligation fiduciaire envers les membres du groupe?
Dans l'affirmative, la Couronne a-t-elle manqué à cette obligation?
- e) Le montant des dommages-intérêts payables par la Couronne peut-il être partiellement déterminé de façon globale en vertu du paragraphe 334.28(1) des *Règles des Cours fédérales*? Dans l'affirmative, quel devrait en être le montant?
- f) La Couronne a-t-elle tiré des avantages pécuniaires quantifiables de la conduite reprochée pendant la période visée par le recours collectif? Dans l'affirmative, la Couronne devait-elle être tenue de restituer ces avantages, et, le cas échéant, quel devrait en être le montant?

- g) La Couronne devrait-elle être condamnée à verser des dommages-intérêts punitifs et/ou majotés? Dans l'affirmative, quel devrait en être le montant?
10. Le plan de déroulement de l'instance joint à l'annexe « A » est par les présentes approuvé, sous réserve des modifications devant y être apportées par suite de la présente ordonnance et de toute autre ordonnance rendue par la Cour.
11. La forme de l'avis d'autorisation, les modalités de l'avis ainsi que toutes les autres questions connexes seront déterminées par la Cour dans une ou des ordonnances distinctes.
12. L'avis d'autorisation sera communiqué au même moment que l'avis d'autorisation du recours collectif complémentaire Moushoom (dossiers de la Cour T-402-19/T-141-20) dont les modalités seront déterminées par une ordonnance distincte de la Cour.
13. Le délai d'exclusion sera de six mois à compter de la date à laquelle l'avis d'autorisation est publié selon les modalités énoncées dans une autre ordonnance de la Cour.
14. Conformément au paragraphe 334.39(1) des *Règles des Cours fédérales*, aucuns dépens ne seront adjugés à l'une ou l'autre des parties pour la présente requête.

« Mandy Aylen »

Juge

Traduction certifiée conforme

M. Deslippes

ANNEXE A

TRADUCTION NON OFFICIELLE

Numéro de dossier de Cour : T-1120-21

COUR FÉDÉRALE RECOURS COLLECTIF PROJETÉ	
ENTRE :	
L'ASSEMBLÉE DES PREMIÈRES NATIONS et ZACHEUS JOSEPH TROUT	Demandeurs
et	
LE PROCUREUR GÉNÉRAL DU CANADA	Défendeur

PLAN DE POURSUITE PROPOSÉ

Le vingt quatre (24) septembre 2021

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I. DÉFINITIONS

1. Les mots et expressions définis ci-dessous seront utilisés tout au long du présent Plan de Poursuite. Les mots et expressions définis à l'Acte introductif d'instance et qui se retrouvent également au présent Plan de Poursuite doivent, s'ils n'ont pas autrement été définis par la Cour, se voir attribuer le sens qui leur est donné à l'Acte introductif d'instance.

Administrateur du Recours Collectif (« *Class Action Administrator* ») : tout administrateur du règlement ou toute autre firme compétente désigné(e) par la Cour en vue d'assurer l'administration du recours collectif;

Avis de Certification (« *Certification Notice* ») : les informations se trouvant à l'Annexe A du présent Plan de Poursuite, telles qu'elles pourront ultérieurement être modifiées et telles qu'elles auront été approuvées par la Cour;

Avis de Détermination des Questions Communes (« *Common Issues Notices* ») : les informations figurant à l'avis portant sur les **Questions Communes** devant être certifié par la Cour à l'étape de la Certification, tel qu'il pourrait être ultérieurement modifié et tel qu'il aura été approuvé par la Cour;

Dossier du TCDP (« *CHRT Proceeding* ») : dossier du TCDP portant le numéro T1340/7008;

Formulaire de Détermination de Compensation Individuelle (« *Individual Damage Assessment Form* ») : formulaire se trouvant à l'Annexe D du présent Plan de Poursuite (tel qu'il pourrait ultérieurement être modifié et tel qu'il aura été approuvé par la Cour) et devant être utilisé par les **Membres du Groupe Approuvés** en vue de permettre l'évaluation de leurs dommages et d'amorcer le **Processus de Détermination de Compensation Individuelle**;

Formulaire d'Exclusion (« *Opt out Form* ») : formulaire se trouvant à l'Annexe B du présent Plan de Poursuite et utilisé par les Membres du Groupe souhaitant s'exclure du recours collectif (tel qu'il pourrait ultérieurement être modifié et tel qu'il aura été approuvé par la Cour);

Formulaire de Réclamation (« *Claim Form* ») : formulaire se trouvant à l'Annexe C du présent Plan de Poursuite et utilisé par les Membres du Groupe des Enfants et/ou les Membres du Groupe des Familles en vue de soumettre une réclamation (tel qu'il pourrait être ultérieurement amendé et tel qu'il aura été approuvé par la Cour);

Informations de la Couronne (« *Crown Class Member Information* ») : informations devant être communiquées par la Couronne à l'Administrateur du Recours Collectif et/ou aux **Procureurs du Groupe**, à la demande des demandeurs et/ou suivant une ordonnance de la Cour), , au sujet des noms et des coordonnées les plus récentes de toutes les personnes

répondant à la définition de Membres du Groupe (telle qu'elle figure à l'Acte introductif d'instance ou telle qu'elle aura autrement été déterminée par la Cour), y compris une liste des noms et coordonnées de tous les Membres du Groupe connus (provenant des informations que la Couronne a en sa possession ou sous son contrôle);

Membre Approuvé du Groupe des Familles (« *Approved Family Class Member(s)* »): tout Membre du Groupe des Familles ayant été approuvé par l'**Administrateur du Recours Collectif** puisqu'il rencontre les critères pour être un Membre Approuvé du Groupe des Familles incluant le frère, la sœur, le père, la grand-mère ou le grand-père d'un **Membre Approuvé du Groupe des Enfants** – que ce dernier soit toujours vivant ou non – pour autant qu'une telle approbation n'ait pas été contestée avec succès;

Membre Approuvé du Groupe des Enfants (« *Approved Child Class Member(s)* »): tout Membre du Groupe des Enfants ayant été approuvé par l'**Administrateur du Recours Collectif** puisqu'il rencontre les critères pour être un Membre Approuvé du Groupe des Enfants, pour autant qu'une telle approbation n'ait pas été contestée avec succès;

Membre du Groupe (« *Class Member(s)* »): toute personne répondant à la définition d'un Membre du Groupe des Enfants ou d'un Membre du Groupe des Familles, tel qu'allégué à l'Acte introductif d'instance et approuvé par la Cour;

Membre du Groupe Approuvé (« *Approved Class Member(s)* »): tout **Membre Approuvé du Groupe des Enfants** et/ou **Membre Approuvé du Groupe des Familles**;

Période d'Exclusion (« *Opt Out Period* »): la date limite pour s'exclure du recours collectif, que les demandeurs proposent de fixer à six (6) mois suivant la date à laquelle l'avis de certification à l'intention du Groupe est publié selon la procédure à être déterminée par la Cour, ou la date limite pour s'exclure du recours collectif telle qu'autrement déterminée par la Cour;

Procédures d'Exclusions (« *Opt Out Procedures* »): les procédures, telles que définies au Plan de Poursuite, permettant à des **Membres du Groupe** de s'exclure du présent recours collectif, telle qu'elles pourraient être ultérieurement modifiées et telles qu'elles auront été approuvées par la Cour;

Procédures d'Exclusions Particulières (« *Special Opt Out Procedures* »): les procédures, telles que définies au Plan de Poursuite, applicables aux **Membres du Groupe** ayant déjà entrepris des recours civils au Canada ou ayant déjà, à la connaissance de la Couronne, retenu les services d'un procureur en vue de s'exclure du présent recours collectif, telles qu'elles pourront ultérieurement être modifiées et telles qu'elles auront été approuvées par la Cour;

Processus de Détermination de Compensation Individuelle (« *Individual Damage Assessment Process* »): la procédure et la méthodologie devant être approuvées par la Cour à l'issue de l'audition portant sur les **Questions Communes**, et qui seront utilisées pour quantifier et distribuer les dommages aux **Membres du Groupe Approuvés** ayant demandé une détermination de compensation individuelle en soumettant un **Formulaire de Détermination de Compensation Individuelle**;

Processus de Distribution des Dommages (« *Aggregate Damages Distribution Process* »): système établi par la Cour en vertu duquel l'**Administrateur du Recours Collectif** doit distribuer l'ensemble des dommages aux **Membres du Groupe Approuvés**.

Procureurs du Groupe (« *Class Counsel* »): le regroupement de cabinets juridiques agissant en tant que procureurs au dossier dans le cadre du présent recours collectif, c'est-à-dire Sotos LLP, Kugler Kandestin LLP, Miller Titerle + Company, Nahwegahbow Corbiere, et Fasken LLP.

Méthode de Notification (« *Notice Program* »): la procédure, telle que définie au présent Plan de Poursuite, pour la communication de l'**Avis de Certification** et/ou l'**Avis de Détermination des Questions Communes** aux **Membres du Groupe**, tel qu'elle pourrait être ultérieurement modifiée et telle qu'elle aura été approuvée par la Cour;

Questions Communes (« *Common Issues* ») : les questions énumérées à l'Avis de Demande de Certification (ou à quel qu'autre document exigé ou émis par la Cour), telles qu'elles pourraient être ultérieurement modifiées et telles qu'approuvées par la Cour.

II. SOMMAIRE

2. Les demandeurs ont introduit la présente action en justice au nom de membres de Premières Nations qui allèguent que la Couronne a contrevenu à l'obligation d'égalité, les privant ainsi de produits et services d'utilités publiques. De fait, le présent recours collectif vise l'avancement des droits fondamentaux de milliers d'enfants et des membres de famille des Premières.

3. Le présent Plan de Poursuite se veut un échéancier régissant l'évolution des procédures et mettant de l'avant certaines méthodes de communication avec les Membres du Groupe conformément aux dispositions du sous-paragraphe 334.16(1)(e)(ii) des *Règles des cours fédérales*. Le présent Plan de Poursuite s'inspire en grande partie de l'action collective portant sur les pensionnats indiens¹, avec de nombreuses modifications afin de rendre la procédure plus efficace et de tenir compte des leçons acquises suite au règlement de ce dossier.

4. Le présent Plan de Poursuite définit en détail les principales étapes des procédures à venir et établit d'entrée de jeu, quoique sous toutes réserves et de façon préliminaire, de quelle manière ces étapes se dérouleront. Étant donné que le dossier en est à ses débuts, il est entendu que le Plan fera l'objet de révisions substantielles au fur et à mesure que le dossier progressera.

III. PROCÉDURES PRÉ-CERTIFICATION

5. Les demandeurs poursuivent cette action parallèlement au dossier de l'action collective consolidée liée (numéros de dossier de cour : T-402-19/T-141-20), qui concerne les services à

¹ Voir *Baxter c. Canada (Procureur Général)*, 2006 CanLII 41673 (Cour supérieure de l'Ontario), de même que les ordonnances rendues subséquemment par la Cour. Voir également le site web du *Secrétariat d'Adjudication des Pensionnats Indiens* (SAPI) : www.iap-pe.ca/home-eng.php.

l'enfant et à la famille des Premières Nations et le Principe de Jordan. Par conséquent, une grande partie du travail et des procédures sont communs à ces deux dossiers.

A. Les Parties

i. Les demandeurs

6. Les demandeurs ont suggéré que le Groupe soit divisé en deux (2) sous-groupes :
 - (a) le Groupe des Enfants; et
 - (b) le Groupe des Familles.
7. Le demandeur représentant est Zacheus Joseph Trout.

ii. La défenderesse

8. La Couronne est la défenderesse en la présente instance.

B. Les prétentions

i. L'acte introductif d'instance

9. Les demandeurs ont produit un Acte introductif d'instance.

ii. Énoncé des moyens de défense

10. La Couronne n'a produit aucun Énoncé des moyens de défense.

iii. Réclamation d'un tiers

11. La Couronne n'a produit aucune Réclamation d'un tiers

C. Requêtes préliminaires

12. Les demandeurs proposent que toute requête préliminaire soit traitée lors de la demande de certification ou tel qu'ordonnée par la Cour.

D. Stratégie de communication préalable à la certification

i. Demandes formulées par des membres potentiels du groupe

13. Les Procureurs du Groupe ont, tant avant que depuis l'introduction du présent recours collectif, reçu diverses communications de la part de Membres du Groupe concernés par les procédures.

14. Le nom, l'adresse, le numéro de téléphone et l'adresse courriel de chaque Membre Potentiel du Groupe ayant contacté les Procureurs du Groupe ont été ajoutés à une base de données confidentielle. De fait, chaque Membre du Groupe est invité à s'enregistrer sur l'un ou l'autre des sites web des Procureurs du Groupe. Une fois enregistrés, les Membres du Groupe reçoivent, sur une base régulière et tant en français qu'en anglais, des mises à jour au sujet de l'évolution du recours collectif. Tout Membre du Groupe qui contacte les Procureurs du Groupe se voit répondre dans la langue qu'il préfère.

ii. Rapports d'Évolution Préalables à la Certification

15. En plus de répondre aux demandes individuelles qui leur sont adressées, les Procureurs du Groupe ont mis sur pied une page web, accessible tant en anglais qu'en français, portant spécifiquement sur le présent recours collectif : <https://sotosclassactions.com/cases/current-cases/first-nations-youth/>. Toutes les informations relatives à l'état du dossier sont postées et mises à jour régulièrement, tant en français qu'en anglais.

16. Des copies des documents de Cour produit publiquement et de toutes les décisions rendues par la Cour sont disponibles sur le site web. Les numéros de téléphone et les adresses courriel des Procureurs du Groupe se trouvant au Québec et en Ontario sont également affichés.

17. Les Procureurs du Groupe transmettent des rapports d'évolution aux Membres du Groupe ayant fourni leurs coordonnées et manifesté leur désir d'être tenus informés des développements survenant dans le cadre du recours collectif.

iii. Démarches de sensibilisation préalables à la certification

18. Les Procureurs du Groupe ont soumis les grandes lignes du recours collectif envisagé au personnel d'un centre de services sociaux d'un Conseil des Premières Nations siégeant au Québec et au Labrador, ainsi qu'à une assemblée des Directeurs de la Jeunesse de Premières Nations de la Colombie-Britannique. Les Procureurs du Groupe organisent présentement d'autres présentations similaires auprès de communautés concernées du Québec et d'autres provinces et territoires.

E. Conférence de Règlement

i. Conférence de Règlement Préalable à la Certification

19. Les demandeurs participeront à un processus de médiation préalable à la Certification en vue de déterminer si une ou plusieurs des questions soulevées dans le cadre du recours collectif pouvaient être résolues.

20. Les demandeurs proposent que la médiation préalable à la Certification se tienne un mois après le dépôt de la demande de certification et des documents à son appui, le cas échéant.

F. Échéancier

21. Les demandeurs proposent que l'échéancier pré-certification ci-dessous soit ordonné par la Cour lors d'une conférence de gestion.

	Délai
Dossier de demande de certification des demandeurs	Date de la signification et du dépôt de l'avis de la demande de certification et du dossier

	de demande de certification (« DSD »)
Dossier de l'intimé, le cas échéant	Dans les 90 jours suivant la DSD
Dossier de réplique des demandeurs, le cas échéant	Dans les 120 jours suivant la DSD
Contre-interrogatoires, le cas échéant	Dans les 150 jours suivant la DSD
Transmission des engagements	Dans les 180 jours suivant la DSD
Requêtes présentées à la suite de la tenue des interrogatoires préalables	Dans les 120 jours suivant la DSD
Tenue d'interrogatoires additionnels, si nécessaire	Dans les 230 jours suivant la DSD
Mémoire de fait et de droit des demandeurs	Dans les 250 jours suivant la DSD
Mémoire de fait et de droit de l'intimé	Dans les 280 jours suivant la DSD
Mémoire en réplique, le cas échéant	Dans les 300 jours suivant la DSD
Demande de certification et toute autre requête	Dans les 310 jours suivant la DSD

IV. PROCÉDURE POST-CERTIFICATION

A. Échéancier

i. Échéancier soumis par les demandeurs pour les démarches postérieures à la certification

22. Les demandeurs entendent tenir le procès soit selon une formule accélérée, soit en fonction d'une combinaison hybride de jugement sommaire et d'audition de vive voix.

23. Les demandeurs suggèrent que l'échéancier "post-Certification" ci-dessous soit retenu:

Début du processus de notification de la Certification aux Membres du Groupe	Date à être fixée par la Cour une fois la Certification obtenue
Échange des déclarations assermentées	Dans les 70 jours suivant la Notification de la Certification aux Membres du Groupe
Requêtes portant sur la production de documents, les interrogatoires des nombreux représentants de la Couronne, ou les interrogatoires de tiers	Dans les 110 jours suivant la notification de la Certification aux Membres du Groupe
Interrogatoires préalables	Dans les 140 jours suivant la notification de la Certification aux Membres du Groupe
Fin du processus de notification de la Certification aux Membres du Groupe	Dans les 90 jours de la date fixée par la Cour
Conférence de gestion de l'instance portant sur la présentation de la preuve d'experts	170 jours après la notification de la Certification aux Membres du Groupe
Requêtes présentées à la suite de la tenue des interrogatoires préalables	Dans les 190 jours suivant la notification de la Certification aux Membres du Groupe
Transmission des engagements	Dans les 160 jours suivant la notification de la Certification aux Membres du Groupe

Tenue d'interrogatoires additionnels, si nécessaire	Dans les 210 jours suivant la notification de la Certification aux Membres du Groupe
Tenue de l'audition préliminaire portant sur les Questions Communes	250 jours après la notification de la Certification aux Membres du Groupe
Expiration du délai d'exclusion	180 jours après la notification de la Certification aux Membres du Groupe
Audition portant sur les Questions Communes ou procès hybride	300 jours après la notification de la Certification aux Membres du Groupe

B. Avis de Certification, Méthode de Notification et Procédures d'Exclusions

i. Avis de Certification

24. L'Avis de Certification et tous les autres avis devant être transmis par les demandeurs aux Membres du Groupe seront traduits en français une fois finalisés et approuvés par la Cour. Les demandeurs verront, toujours sous réserve de l'approbation de la Cour, s'il est nécessaire de traduire l'Avis de Certification et/ou quelque autre avis dans un ou plusieurs langage(s) des Premières Nations.

25. Sous réserve de modifications subséquentes, l'Avis de Certification sera émis en la forme présentée à l'Annexe A du présent Plan de Poursuite.

ii. Méthode de Notification

26. Les demandeurs prévoient transmettre l'Avis de Certification conformément à la Méthode de Notification définie ci-dessous.

27. Les demandeurs communiqueront et/ou publieront l'Avis de Certification (de même que toute version traduite de celui-ci aussitôt que disponible) dans les médias suivants à compter de la date fixée par la Cour, et ce aussi fréquemment qu'il s'avèrera raisonnable de le faire selon les

ordonnances rendues par la Cour en vertu de l'article 334.32 des *Règles des Cours Fédérales*. Les demandeurs prévoient, à cette fin, retenir les Méthodes de Notification suivantes :

- (a) Un communiqué de presse adressé aux Membres du Groupe, dûment approuvé par la Cour et publié le premier jour de la période de notification;
- (b) Communications directes avec les Membres du Groupe :
 - (i) transmises par courrier ordinaire ou électronique aux coordonnées les plus récentes des Membres du Groupe fournies par la Couronne (i.e. Informations de la Couronne);
 - (ii) transmises par courrier ordinaire ou électronique à tous les Membres du Groupe ayant fourni leurs coordonnées aux Procureurs du Groupe (notamment par l'entremise de la page web portant sur le recours collectif);
- (c) Informations distribuées par l'Assemblée des Premières Nations à l'échelle de toutes les bandes membres des Premières Nations situées au Canada;
- (d) Informations transmises par courrier électronique aux sociétés d'aide aux enfants de Premières Nations situées au Canada;
- (e) Informations circulées au moyen des médias suivants:
 - (i) Journaux et autres périodiques indiens tels que *First Nations Drum*, *The Windspeaker*, *Mi'kmaq Maliseet Nations News* et *APTN National News*;
 - (ii) Chaînes de télévision telles que *The Aboriginal Peoples Television Network*; et/ou

(iii) Réseaux sociaux en ligne tels que *Facebook* et *Instagram*.

iii. Procédures d'Exclusions

28. Les demandeurs suggèrent que les Procédures d'Exclusions définies ci-dessous s'appliquent aux Membres du Groupe qui ne souhaitent pas être liés par le recours collectif.

29. L'Avis de Certification indiquera aux Membres du Groupe de quelle manière il leur est possible de s'exclure du recours collectif en produisant un Formulaire d'Exclusion auprès de l'Administrateur du Recours Collectif et/ou des Procureurs du Groupe.

30. Un seul Formulaire d'Exclusion standard s'appliquera à tous les Membres du Groupe.

31. Tout Membre du Groupe désirant s'exclure du recours collectif devra obligatoirement soumettre un Formulaire d'Exclusion à l'Administrateur du Recours Collectif et/ou aux Procureurs du Groupe à l'intérieur de la Période d'Exclusion.

32. L'Administrateur du Recours Collectif ou les Procureurs du Groupe devront, dans les trente (30) jours suivant l'expiration de la Période d'Exclusion, produire de la Cour et des Parties une déclaration assermentée contenant la liste de toutes les personnes ayant choisi de s'exclure du recours collectif.

iv. Procédures d'Exclusions Particulières

33. Les demandeurs suggèrent que les Procédures d'Exclusions Particulières définies ci-dessous s'appliquent à tous les Membres du Groupe désignés comme une partie demanderesse à quelque action civile introduite au Canada ou ayant déjà (à la connaissance de la Couronne) retenu les services d'un procureur en vue d'introduire à l'encontre de la Couronne une action civile distincte fondées sur les faits et les circonstances faisant l'objet du recours collectif.

C. Identification des (et communication avec les) Membres du Groupe

i. Identification des Membres du Groupe

34. Tel qu'indiqué plus haut, les demandeurs entendent exiger les informations que la Couronne détient au sujet des Membres du Groupe.

ii. Base de données relative aux Membres du Groupe

35. Les Procureurs du Groupe maintiendront à jour une base de données confidentielle au sujet de tous les Membres du Groupe qui les auront contactés. Une telle base de données contiendra, s'ils sont disponibles, le nom, l'adresse, le numéro de téléphone et/ou l'adresse courriel de chaque individu concerné.

iii. Réponses aux demandes formulées par les Membres du Groupe

36. Les Procureurs du Groupe, et le personnel de leur cabinet, répondront à toutes les demandes soumises par des Membres du Groupe.

37. Les Procureurs du Groupe ont mis en place une structure leur permettant de répondre demandes soumises par les Membres du Groupe dans la langue de leur choix, dans la mesure du possible.

iv. Rapports d'évolution postérieurs au Processus de Certification

38. En plus de répondre aux demandes soumises par les Membres du Groupe, les Procureurs du Groupe mettront régulièrement à jour la page web dédiée au recours collectif en y indiquant le stade d'avancement des procédures.

39. Les Procureurs du Groupe transmettront des rapports d'évolution à tous les Membres du Groupe ayant communiqué leurs coordonnées, et ce aussi souvent que nécessaire ou selon les ordonnances de la Cour.

D. Production des documents***i. Affidavits et listes de documents***

40. Les demandeurs devront produire un Affidavit de Documents dans les soixante-dix (70) jours de la publication de l'Avis de Certification adressé aux Membres du Groupe. La Couronne, pour sa part, devra produire une Liste de Documents dans les soixante-dix (70) jours de la publication de l'Avis de Certification adressé aux Membres du Groupe.

41. Il est à prévoir que les Parties produiront des Affidavits (ou des Listes) de Documents additionnels au fur et à mesure que de nouveaux documents seront identifiés.

ii. Production de documents

42. Chacune des Parties devra à ses frais, au moment de transmettre ses Affidavits de Documents, fournir des copies électroniques de tous les documents produits en vertu de l'Annexe A (qui devront eux-mêmes être soumis sous forme électronique).

iii. Requêtes portant sur la production de documents

43. Toute requête portant sur la production de documents devra être présentée au cours des cent-dix (110) jours suivant la publication de l'Avis de Certification adressé aux Membres du Groupe.

iv. Gestion des documents

44. Chaque Partie assurera la gestion des documents qu'elle produit au moyen d'un système de gestion compatible ou en conformité avec les directives émises par la Cour. Tous les documents devront être produits en format « reconnaissance optique de caractères » (ROC).

45. Chaque production de documents devrait être numérotée et numérisée en vue de permettre le repérage et la classification rapide de la documentation.

E. Interrogatoires préalables

46. Tous les Interrogatoires Préalables devront se tenir dans les cent quarante (140) jours suivant la publication de l'Avis de Certification adressée aux Membres du Groupe.

47. Les demandeurs prévoient demander à la Couronne de consentir à l'interrogatoire de plus d'un représentant. Dans l'éventualité où un désaccord survenait à ce sujet, les demandeurs suggèrent de présenter une requête dans les cent dix (110) jours de la publication de l'Avis de Certification adressée aux Membres du Groupe.

48. Les demandeurs prévoient que, sous réserve des objections et des engagements, l'Interrogatoire Préalable d'un officier de la Couronne adéquatement sélectionné et informé requerra plus ou moins dix (10) jours.

49. Les demandeurs prévoient que sous réserve des objections et des engagements, l'Interrogatoire Préalable des représentants du Groupe requerra plus ou moins une (1) journée.

F. Moyens préliminaires***i. Engagements***

50. Tous les engagements souscrits devront être communiqués dans les cent soixante (160) jours suivant la publication de l'Avis de Certification adressé aux Membres du Groupe.

ii. Requêtes portant sur des objections ou des engagements

51. Les dates d'audition des requêtes portant sur les Objections ou les Engagements soulevés au cours d'Interrogatoires Préalables seront demandées une fois la Certification obtenue. De telles requêtes devront être présentées dans les cent-quatre-vingts-dix (190) jours suivant la publication de l'Avis de Certification adressé aux Membres du Groupe.

iii. Nouvelles comparutions et interrogatoires préalables additionnel

52. Les nouvelles comparutions ou Interrogatoires Préalables additionnels requis à la suite de la communication des réponses aux engagements ou en raison de jugements rendus sur les requêtes portant sur des objections et/ou des engagements devront avoir lieu au cours des cent cinquante (150) jours suivant la publication de l'Avis de Certification adressée au Membres du Groupe.

G. Preuve d'experts

i. Désignation des experts et identification des questions à l'étude

53. Une fois les Interrogatoires Préalables dûment complétés, une Conférence de Gestion de l'Instance devra être tenue au sujet des experts devant participer au procès et à la preuve qu'ils seront appelés à y présenter.

H. Détermination des Questions Communes

i. Audition préliminaire portant sur les Questions Communes

54. Une fois la Certification accordée, il sera demandé à la Cour de fixer la date de l'Audition Préliminaire portant sur les Question Communes.

55. Les demandeurs prévoient qu'une (1) journée complète d'audition sera requise dans le cadre de l'Audition Préliminaire. Ils suggéreront que l'Audition Préliminaire ait lieu dans les deux cents cinquante (250) jours suivant la publication de l'Avis de Certification adressé aux Membres du Groupe, ou au moins quatre-vingt-dix (90) jours avant la tenue de l'audition portant sur les Questions Communes.

ii. Audition portant sur les Questions Communes

56. Une fois la Certification obtenue, il sera demandé à la Cour de fixer la date de l'audition portant sur les Questions Communes.

57. Les demandeurs suggèrent que l'audition portant sur les Questions Communes ait lieu trois cent (300) jours après la publication de l'Avis de Certification adressé aux Membres du Groupe.

58. Parce qu'elle variera en fonction d'une multitude de facteurs, la durée de l'audition portant sur les Questions Communes sera déterminée au cours de la Conférence de Gestion d'Instance.

V. PROCÉDURES POSTÉRIEURES À LA DÉTERMINATION DES QUESTIONS COMMUNES

A. Échéancier

i. Échéancier des demandeurs

59. Les demandeurs suggèrent à la Cour d'ordonner que l'échéancier ci-dessous s'appliquera suite au jugement portant sur les Questions Communes :

Émission de l'Avis de Détermination des Questions Communes	Dans les 90 jours de la décision portant sur les Questions Communes
Début des auditions portant sur les Questions Individuelles, le cas échéant	Débute 120 jours après que la décision ait été rendue
Début du Processus de détermination de compensations individuelles	Débute 240 jours après que la décision ait été rendue
Expiration (de plein droit) du délai de production des Formulaires de Réclamation	Un (1) an après que la décision ait été rendue
Expiration (de plein droit en certaines circonstances ou en vertu d'une permission de la Cour) du délai de production des Formulaires de Réclamation	Un (1) an après que la décision ait été rendue

B. Avis de détermination des Questions Communes

i. Notification aux Membres du Groupe

60. Sous réserve de modifications subséquentes, l'Avis de Détermination des Questions Communes sera substantiellement dans la forme approuvée par la Cour lors de l'audition portant sur les Questions Communes. Il pourra contenir, entre autres choses et sous réserve de

l'approbation de la Cour, certaines informations au sujet de dommages accordés et de circonstances justifiant la détermination de compensations individuelles.

61. Les demandeurs soumettent que l'Avis de Détermination des Questions Communes devrait circuler dans les quatre-vingt-dix (90) jours suivant le jugement portant sur les Questions Communes.

62. L'Avis de Détermination des Questions Communes sera mis en circulation de la même manière que l'Avis de Certification, ou de la façon déterminée par la Cour.

C. Formulaires de réclamation

i. Utilisation des formulaires de réclamation

63. Il sera demandé à la Cour d'approuver (conformément aux dispositions de l'article 334.37 des *Règles des Cours Fédérales*) l'utilisation d'un Formulaire de Réclamation standardisé par tout Membre du Groupe susceptible d'avoir droit à une portion des dommages octroyés ou à quelque forme de compensation individuelle.

ii. Obtention et production d'un formulaire de réclamation

64. La procédure d'obtention et de production d'un Formulaire de Réclamation sera décrite en détail à l'Avis de Détermination des Questions Communes.

65. Sous réserve de modifications subséquentes et de l'approbation de la Cour, les demandeurs suggèrent qu'un seul et même Formulaire de Réclamation standardisé (respectant le gabarit se trouvant à l'Annexe C) s'applique aux trois (3) sous-groupes du Groupe.

66. Les demandeurs suggèrent également que les Membres du Groupe ayant besoin d'aide ou de soutien au moment de compléter un Formulaire de Réclamation puissent bénéficier de conseils

adéquats. Si nécessaire, un processus visant à désigner un tuteur ou un fiduciaire chargé d'apporter de l'aide ou du soutien aux Membres du Groupe sera mis sur pied.

67. Avant de compléter un Formulaire de Réclamation, le Membre du Groupe pourra passer en revue les renseignements détenus par Canada pertinents à sa réclamation (autrement dit, les Informations de la Couronne), qui pourront inclure :

- (a) tous les dossiers en lien avec le placement volontaire ou forcé du Membre du Groupe au sein d'un environnement hors-foyer au cours de la Période du Recours Collectif;
- (b) tous les dossiers indiquant que le Membre du Groupe a eu besoin d'un produit ou d'un service;
- (c) tous les dossiers confirmant que le Membre du Groupe a requis un produit ou un service;
- (d) tous les dossiers relatif au fait que le produit ou le service public demandé par le Membre du Groupe lui a été refusé;
- (e) tous les dossiers relatifs aux produits et/ou aux services que la Couronne a effectivement fournis au Membre du Groupe; et/ou
- (f) tous les dossiers faisant état d'une quelconque relation familiale entre un Membre du Groupe des Familles et un Membre du Groupe des Enfants.

68. Tous les Membres du Groupe devront produire le Formulaire de Réclamation prescrit auprès de l'Administrateur du Recours Collectif et/ou des Procureurs du Groupe à l'intérieur des délais indiqués ci-dessous, ou tels que déterminés par la Cour.

69. Il sera de la responsabilité de l'Administrateur du Recours Collectif de recueillir tous les Formulaires de Réclamation.

iii. Délai de Production des Formulaires de Réclamation

70. Les Membres du Groupe seront informés du délai de production des Formulaires de Réclamation par le biais de l'Avis de Détermination des Questions Communes.

71. Les demandeurs soumettent que les Membres du Groupe devraient bénéficier d'un délai d'un an à compter jugement portant sur les Questions Communes afin de déposer un Formulaire de Réclamation de plein droit, ou selon le délai déterminé par la Cour.

72. Les demandeurs soumettent également que les Membres du Groupe devraient, en certaines circonstances particulières définies par la Cour (par exemple : le fait qu'ils n'étaient pas au courant de leurs droits) ou avec la permission de la Cour (par exemple : en raison de l'état de santé physique ou mentale), avoir le droit de produire un Formulaire de Réclamation plus d'un an après le jugement sur les Questions Communes.

D. Détermination et classification des Membres du Groupe

i. Approbation des Membres du Groupe des Enfants

73. Il reviendra à l'Administrateur du Recours Collectif de déterminer si la personne qui soumet un Formulaire de Réclamation en tant que Membre du Groupe des Enfants se qualifie effectivement comme Membre du Groupe.

74. L'Administrateur du Recours Collectif fondera la détermination dont il est question au paragraphe 75 sur les informations figurant au Formulaire de Réclamation et sur les directives émises par la Cour lors de l'Audition portant sur les Questions Communes. De telles directives pourront, entre autres choses, répondre aux questions suivantes: (a) si le Membre du Groupe a eu besoin d'un produit ou d'un service à quelque moment que ce soit de la Période du Recours Collectif; (b) si le Membre du Groupe s'est vu refuser le produit ou service en question; (c) si la livraison du produit ou service requis s'est vue retardée ou perturbée; (d) si un(e) tel(le) refus,

retard ou perturbation était attribuable à un manque de fonds, à une absence de juridiction ou à un conflit de compétence entre paliers ou départements gouvernementaux; et/ou (e) si un(e) tel(le) refus, retard ou perturbation est survenu(e) après que le Membre du Groupe eût atteint l'âge de la majorité applicable au sein de la province ou du territoire pertinent.

75. L'Administrateur du Recours Collectif procédera également à ces déterminations en fonction des Informations de la Couronne relatives au nombre de Membres du Groupe ayant reçu un produit ou un service en vertu du Principe Jordan (depuis le prononcé de la Décision du TCDP).

76. L'Administrateur du Recours Collectif devra, lorsque cela s'avèrera nécessaire et adéquat, requérir par écrit que la Couronne et/ou le Membre du Groupe des Enfants ayant soumis un Formulaire de Réclamation lui communique(nt) davantage d'informations.

ii. Approbation des Membres du Groupe des Familles

77. Il reviendra à l'Administrateur du Recours Collectif de déterminer si la personne qui soumet un Formulaire de Réclamation en tant que Membre du Groupe des Familles se qualifie effectivement comme Membre du Groupe des Familles.

78. L'Administrateur du Recours Collectif procédera à la détermination dont il est question au paragraphe 79 sur les renseignements figurant au Formulaire de Réclamation et sur les Informations qu'aura fournies la Couronne au sujet de la relation existant entre le potentiel Membre du Groupe des Familles et un Membre Approuvé du Groupe des Enfants.

79. L'Administrateur du Recours Collectif devra, lorsque cela s'avèrera nécessaire et adéquat, requérir par écrit que le Membre du Groupe Jordan ayant soumis un Formulaire de Réclamation lui communique davantage d'informations.

iii. Membres du Groupe décédés

80. La succession de tout Membre du Groupe décédé le ou après le 1er avril 1991 peut soumettre un Formulaire de Réclamation dans le cadre du présent recours collectif.

81. S'il appert que le Membre du Groupe Décédé se serait qualifié en tant que Membre du Groupe Approuvé, sa succession aura le droit d'être indemnisée conformément au Processus de Distribution des Dommages. À moins qu'elle n'y soit explicitement autorisée par la Cour, aucune succession ne pourra être indemnisée en vertu du Processus d'Évaluation de Compensations Individuelles.

iv. Notification des Membres du Groupe / Enregistrement et Contestation des Décisions

82. Dans les trente (30) jours de la réception d'un Formulaire de Réclamation, l'Administrateur du Recours Collectif devra aviser le requérant de sa décision de le reconnaître ou de le rejeter en tant que Membre du Groupe Approuvé. Les personnes dont le statut de Membre du Groupe n'aura pas été reconnu se verront expliquer de quelle manière elles peuvent contester la décision rendue par l'Administrateur du Recours Collectif. Les demandeurs suggèrent que la procédure de contestation inclut la possibilité de soumettre un Formulaire de Réclamation modifié, accompagné de pièces justificatives permettant de démontrer que le requérant est bel et bien un Membre du Groupe.

83. Toutes les parties intéressées auront l'opportunité d'en appeler de toute décision rendue par l'Administrateur du Recours Collectif devant la Cour, ou selon une façon à être déterminée. Les Procureurs du Groupe pourront interjeter appel d'une décision pour et au nom des personnes concernées.

84. L'Administrateur du Recours Collectif conservera tous les dossiers des Membres du Groupe Approuvés ainsi que les Formulaires de Réclamation qu'ils auront soumis, et il communiquera une fois par mois ces informations aux Procureurs du Groupe, à la Couronne et à toute autre partie intéressée. Les Procureurs du Groupe et/ou toute partie intéressée pourront, dans les trente (30) jours de la réception des informations, contester la décision rendue par l'Administrateur du Recours Collectif en transmettant à ce dernier (et à toute autre partie concernée) un exposé de leurs motifs de contestation. La partie répondante aura alors trente (30) jours pour répliquer par écrit à la demande de contestation, à l'expiration desquels l'Administrateur du Recours Collectif devra reconsidérer la décision qu'il a prise et assurer un suivi auprès de toutes les parties.

E. Processus de distribution des dommages

i. Distribution des dommages

85. L'Administrateur distribuera de la manière déterminée par la Cour les dommages obtenus au bénéfice de tous les Membres du Groupe Approuvés.

86. Les demandeurs proposeront que les Membres du Groupe Approuvés aient droit à une certaine proportion des dommages déterminée par l'Administrateur du Recours Collectif en fonction de critères à être approuvés par la Cour, lesquels comprennent, sans s'y limiter : (a) le temps qu'un Membre du Groupe a été privé d'un produit ou d'un service en raison d'un refus, d'un délai ou d'une perturbation (le tout en contravention du Principe de Jordan); (b) l'importance, pour l'enfant, du produit ou du service, et (c) la relation familiale existant entre un Membre du Groupe des Familles et un Membre du Groupe des Enfants.

87. Une fois qu'il les aura informés de la décision qu'il a prise au sujet de leur appartenance à un groupe ou à un autre, l'Administrateur du Recours Collectif devra, à l'intérieur d'un délai

raisonnable que la Cour aura fixé, aviser les Membres du Groupe Approuvés de la proportion de dommages à laquelle chacun a droit en vertu du Processus de Distribution des Dommages approuvé par la Cour.

88. L'Administrateur du Recours Collectifs devra également, le cas échéant, transmettre à chaque Membre du Groupe Approuvé une série de documents comprenant : de l'information quant à la façon de percevoir les dommages auquel il a droit; de l'information quant à l'opportunité pour le Membre du Groupe de recourir au Processus d'Évaluation de Compensations Individuelles; des copies du Formulaire d'Évaluation de Compensation Individuelle accompagnées d'un guide indiquant comment compléter le Formulaire en question; et les coordonnées de ressources susceptibles de fournir des conseils juridiques indépendants. De telles informations seront communiquées selon une forme et un style appropriés à la culture des interlocuteurs, au moyen de médiums interactifs tels que des capsules vidéo d'apprentissage.

ii. Évaluation individuelle des dommages

89. Une fois informés de leur droit au paiement de dommages, les Membres du Groupe Approuvés pourraient être avisés de l'opportunité de bénéficier d'une compensation individuelle établie conformément au Processus d'Évaluation de Compensations Individuelles, tel que défini ci-après.

F. Processus d'Évaluation de Compensations Individuelles

i. Formulaire d'Évaluation de Compensation Individuelle

90. Lorsqu'un Membre du Groupe Approuvé est informé de son droit de percevoir des dommages et de recourir au Processus d'Évaluation de Compensations Individuelles, il recevra un exemplaire du Formulaire d'Évaluation de Compensation Individuelle se trouvant à l'Annexe D.

91. Les demandeurs suggèrent qu'une demande de dommages individuels soit valablement formée par l'envoi d'un Formulaire d'Évaluation de Compensation Individuelle à l'attention de l'Administrateur du Recours Collectif, étant entendu et convenu que seules les personnes désirant recourir au Processus d'Évaluation de Compensations Individuelles seront tenues de produire un Formulaire d'Évaluation de Compensation Individuelle.

ii. Évaluation des Compensations Individuelles

92. Il pourrait être demandé à la Cour d'approuver la structure d'un Processus d'Évaluation de Compensations Individuelles une fois rendu le jugement portant sur les Questions Communes, ou au moment autrement déterminé par la Cour.

93. Un tel Processus d'Évaluation de Compensations Individuelles serait mis à la disposition de tous les Membres du Groupe Approuvés, à l'exception de ceux qui, de l'avis de la Cour à l'issue de l'audition portant sur les Questions Communes, n'ont pas droit à une Compensation Individuelle.

iii. Auditions portant sur les Points Individuels

94. Il sera demandé à la Cour d'émettre des directives, ou de désigner certaines personnes devant lui faire rapport en vertu de l'article 334.26 des *Règles des Cours Fédérales*, ou encore de nommer un juge chargé de réaliser un échantillonnage de test impliquant des Membres du Groupe Approuvés sélectionnés et qui ont choisi de recourir au Processus d'Évaluation de Compensations Individuelles, et cela en vue d'éclaircir les points qui pourraient demeurer pertinents à la suite de la détermination des Questions Communes – par exemple :

- (a) Règles d'audition régissant les évaluations individuelles;
- (b) Grille de compensations individuelles;

- (c) Résolution de différends portant sur la définition de concepts essentiels tels que « service essentiel », « retard » et « conflit de juridiction » et
- (d) Toute autre question soulevée par la Cour ou une partie au cours des débats entourant la détermination des Questions Communes.

G. Coût et financement des procédures

i. Frais juridiques des demandeurs

95. Les frais juridiques encourus par les demandeurs seront payés suivant une formule à pourcentage, sujet à l'approbation de la Cour conformément à l'article 334.4 des *Règles des Cours Fédérales*.

96. L'entente intervenue entre les Représentants du Groupe et les Procureurs du Groupe stipule que les honoraires et déboursés payables à ces derniers seront établis de la manière suivante :

- (a) Recouvrement collectif: vingt pour cent (20%) des premiers deux cent millions de dollars (\$200,000,000) recueillis par voie de règlement ou en vertu d'un jugement, plus dix pour cent (10%) de tout montant recueilli en excédent de la somme de deux cent millions de dollars (\$200,000,000) par voie de règlement ou en vertu d'un jugement;
ET
- (b) Recouvrement individuel: vingt-cinq pour cent (25%) des montants recueillis par voie de règlements ou en vertu d'un jugement.

ii. Financement des dépenses et débours

97. Tous les dépenses et débours de nature juridique encourus par les Représentants du Groupe ont été (et continueront à être) financés par les Procureurs du Groupe – à moins que les Représentants du Groupe et les Procureurs du Groupe n'en viennent éventuellement à la conclusion qu'il est dans le meilleur intérêt du Groupe d'obtenir du financement auprès de

tierces parties. En pareil cas, les Procureurs du Groupe aviseraient la Cour de la situation et requerraient son approbation.

H. Règlement

i. Négociations et offres de règlement

98. Les demandeurs ont entretenu des négociations avec la Couronne en vue de parvenir à un règlement équitable du litige, dans un délai raisonnable.

ii. Médiation et autres modes de résolution de conflits volontaires

99. Les demandeurs ont participé à des séances de médiation et d'autres négociations en vue de résoudre le litige ou de circonscrire les questions en litige.

I. Réévaluation du Plan de Poursuite

i. Flexibilité du Plan de Poursuite

100. Le présent Plan de Poursuite sera réévalué sur une base régulière et pourrait faire l'objet de modifications, avant ou après la détermination des Questions Communes, en fonction de gestion de l'instance continue assurée par la Cour, ou de toute autre manière que la Cour estime appropriée.

Le vingt quatre (24) septembre 2021	SOTOS LLP 180 rue Dundas Ouest Suite 1200 Toronto, ON M5G 1Z8 David Sterns (LSO# 36274J) dsterns@sotosllp.com Mohsen Seddigh (LSO# 70744I) mseddigh@sotosllp.com Jonathan Schachter (LSO# 63858C) jschachter@sotosllp.com Tél: 416-977-0007 Téléc.: 416-977-0717	KUGLER KANDESTIN 1 Place Ville-Marie Suite 1170 Montréal, QC H3B 2A7 Robert Kugler rkugler@kklex.com Pierre Boivin pboivin@kklex.com William Colish wcolish@kklex.com Tél.: 514-878-2861 Téléc.: 514-875-8424	MILLER TITERLE + CO. 638 Smithe Street Suite 300 Vancouver, BC V6B 1E3 Joelle Walker joelle@millertiterle.com Tamara Napoleon tamara@millertiterle.com Erin Reimer erin@millertiterle.com Tél.: 604-681-4112 Téléc.: 604-681-4113
	Avocats et procureurs du demandeur Zacheus Joseph Trout		
	NAHWEGAHBOW, CORBIERE 5884 Rama Road, Suite 109 Rama, ON L3V 6H6 Dianne G. Corbiere dgcorbiere@nncfirm.ca Tél.: 705.325.0520 Téléc: 705.325.7204	FASKEN MARTINEAU DUMOULIN 55 rue Metcalfe Suite 1300 Ottawa, ON K1P 6L5 Peter N. Mantas pmantas@fasken.com Tél: 613.236.3882 Téléc: 613.230.6423	
	Avocats et procureurs de la demanderesse Assemblée des Premières Nations		

ANNEXE “A”

AVIS DE CERTIFICATION SUGGÉRÉ

VEUILLEZ LIRE LE PRÉSENT AVIS AVEC ATTENTION PUISQU'IL POURRAIT AVOIR UN IMPACT SUBSTANTIEL SUR L'EXERCICE DE VOS DROITS

Nature de la Poursuite

En mars 2019, Sotos LLP, Kugler Kandestin LLP, et Miller Titerle + Co. (collectivement, les “Procureurs du Groupe”) ont introduit (devant la Cour Fédérale du Canada siégeant dans le district judiciaire de Montréal, un recours collectif à l’encontre du Procureur Général du Canada (la “Couronne”) pour et au nom de demandeurs membres des Premières Nations.

Le recours collectif allège qu’entre le 1^{er} avril 1991 et le 11 décembre 2007, la Couronne a mis en place, à l’échelle du territoire canadien, des politiques de financement discriminatoires ayant eu pour conséquence que plusieurs enfants de Premières Nations se sont vus refusés ou ont reçu tardivement certains produits et services publics.

Le recours collectif a été intenté au bénéfice des membres du Groupe suivant :

(a) tous les jeunes membres des Premières Nations qui se sont vu refuser un produit ou un service public ou à l’égard desquels la livraison d’un produit ou service public s’est vue retardée ou perturbée en raison d’un manque de fonds, d’une absence de juridiction ou d’un conflit de compétence entre paliers ou départements gouvernementaux, entre le 1^{er} avril 1991 et le 11 décembre 2007;

(b) les membres de la famille immédiate d’un membre du sous-groupe défini au paragraphe (a) ci-dessus.

Par ordonnance rendue le [INSCRIRE LA DATE], l’honorable juge [INSCRIRE LE NOM] a certifié l’action intentée à titre de recours collectif et a désigné Zacheus Joseph Trout à titre de représentant du Groupe.

La Cour a également décidé que les questions suivantes, qui s’appliquent à l’ensemble du Groupe, seront débattues lors d’une audition portant sur les Questions Communes :

- [INSCRIRE LES QUESTIONS COMMUNES RECONNUES PAR LE TRIBUNAL]
- ...

Participation au recours collectif

Si vous correspondez à la définition du Groupe, vous êtes automatiquement considéré(e) comme un Membre du Groupe, à moins de vous exclure du recours collectif de la manière décrite ci-dessous. Tous les Membres du Groupe seront liés par le jugement rendu par la Cour, ou tout règlement conclu par les Parties et subséquemment approuvé par la Cour.

À ce stade des procédures, la Cour ne s’est pas prononcée sur les chances de recouvrement des demandeurs ou du Groupe, ni sur le mérite des allégations des demandeurs et/ou des moyens de défense invoqués par la Couronne.

Honoraires, Déboursés et Autres Frais

Vous n’aurez jamais à payer quelque honoraire, déboursé ou autre frais. Lorsqu’il question des honoraires et déboursés judiciaires à prévoir, les Représentants du Groupe et les Procureurs du Groupe ont convenu d’un mandat de représentation prévoyant que les cabinets juridiques concernés seront rémunérés suivant une formule à pourcentage – ce qui signifie en pratique qu’ils ne seront payés qu’en cas de jugement favorable ou d’un règlement hors Cour approuvé.

Vous ne serez d'aucune manière tenu(e) responsable des frais de justice de la partie défenderesse en cas d'échec du recours collectif. Tous les honoraires professionnels payés aux Procureurs du Groupe sont assujettis à l'approbation de la Cour.

Exclusion

Si vous souhaitez, en tant que Membre du Groupe, vous exclure du recours collectif, vous devez compléter et acheminer un « Formulaire d'Exclusion » au plus tard le **[INSCRIRE LA DATE-LIMITE]**. Il vous est possible de télécharger le Formulaire d'Exclusion à partir du site web **[INSCRIRE L'ADRESSE DU SITE WEB]**.

Les Membres du Groupe ayant choisi de s'exclure du recours collectif à l'intérieur du délai stipulé ci-dessus ne recevront aucune des sommes qui pourraient être obtenues par les demandeurs dans ce recours collectif. Tous les

Membres du Groupe qui n'auront pas demandé à être exclus du recours collectif avant l'expiration du délai seront liés par tout jugement rendu à l'issue des procédures (qu'il soit ou non favorable aux demandeurs), de même que par tout règlement intervenu et subséquemment approuvé par la Cour.

Coordonnées

Si vous avez quelque question ou préoccupation au sujet du contenu du présent Avis ou de l'évolution du recours collectif, il vous est possible de contacter les Procureurs du Groupe de différentes manières :

Téléphone: **[NUMÉRO DE TÉLÉPHONE]**

Courriel: **[ADRESSE COURRIEL]**

Ligne d'information sans frais: **[NUMÉRO]**

Courrier ordinaire: **[ADRESSE POSTALE]**

ANNEXE “B”

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FORMULAIRE D'EXCLUSION

À L'ATTENTION DE:

[ADMINISTRATEUR DU RECOURS COLLECTIF À ÊTRE DÉSIGNÉ]

[Adresse postale]

[Adresse courriel]

[Numéro de téléphone]

[Numéro de télécopieur]

ATTN: [ADMINISTRATEUR DU RECOURS COLLECTIF À ÊTRE DÉSIGNÉ]

Je ne souhaite pas participer au recours collectif connu sous le nom de *Zacheus Joseph Trout et als c. Procureur Général du Canada* et portant sur certains actes de discrimination commis à l'encontre d'enfants de Premières Nations. Je comprends qu'une fois exclu(e), je ne pourrai d'aucune manière participer à la distribution des sommes octroyées ou payées dans le cadre du recours collectif, et que si je souhaite obtenir compensation, je devrai introduire une action civile distincte et décider si j'engage un avocat pour me représenter à mes propres frais.

Date: _____

Signature

Nom complet

Numéro civique, numéro d'appt.

Ville, province, code postal

Numéro de téléphone

Adresse courriel

Le présent avis doit être transmis par voie de courrier ordinaire ou de courriel au plus tard le _____ 2022 pour être considéré valide.

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ANNEXE “C”

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FORMULAIRE DE RÉCLAMATION

À L'ATTENTION DE:

[ADMINISTRATEUR DU RECOURS COLLECTIF À ÊTRE DÉSIGNÉ]

[Adresse postale]

[Adresse courriel]

[Numéro de téléphone]

[Numéro de télécopieur]

ATTN: [ADMINISTRATEUR DU RECOURS COLLECTIF À ÊTRE DÉSIGNÉ]

Je, soussigné(e), _____ (inscrivez votre nom complet, incluant votre nom de jeune fille le cas échéant), confirme avoir reçu l'Avis du Recours Collectif National connu sous le nom de *Zacheus Joseph Trout et als c. Procureur Général du Canada* et portant sur certains actes de discrimination commis à l'encontre d'enfants de Premières Nations. Ma date de naissance est le _____ (Inscrire le jour, le mois et l'année)

J'estime être un Membre du Groupe et souhaite, en cette qualité, soumettre une réclamation en tant que membre du(des) sous-groupe(s) ci-dessous. (Veuillez cocher d'un X la ou les cases appropriée(s))

☐ Groupe des Enfants

☐ Groupe des Familles

Si vous estimez appartenir au Groupe des Enfants, veuillez résumer ci-dessous les produits et/ou services publics dont vous aviez besoin entre le 1^{er} avril 1991 et le 11 décembre 2007 mais qui vous ont été refusés ou ont été livrés tardivement ou de manière inadéquate.

Produits et/ou services dont vous aviez besoin	Avez-vous fait la demande de tels produits et/ou services?	Les produits et/ou services en question ont-ils été refusés ou livrés tardivement ou de manière inadéquate?	Date(s) du besoin, de la demande et du refus, du retard ou de la perturbation

Si vous estimez appartenir au Groupe des Familles, veuillez décrire ci-dessous la relation existant entre vous et un ou plusieurs Membres du Groupe des Enfants:

Nom complet et numéro de réclamation de chaque Membre Approuvé du Groupe des Enfants faisant partie de votre famille	Relation existant entre vous et cette personne (i.e. la mère, le frère, la soeur, le grand-père ou la grand-mère d'un Membre Approuvé du Groupe des Enfants)

Mon adresse postale est la suivante:

Numéro civique, numéro d'appt.

Ville, province

Code postal

Numéro(s) de téléphone

Adresse courriel

Signature: _____ Date: _____

ANNEXE “D”

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FORMULAIRE D'ÉVALUATION DE COMPENSATION INDIVIDUELLE

À L'ATTENTION DE:

[ADMINISTRATEUR DU RECOURS COLLECTIF À ÊTRE DÉSIGNÉ]

[Adresse postale]

[Adresse courriel]

[Numéro de téléphone]

[Numéro de télécopieur]

ATTN: [ADMINISTRATEUR DU RECOURS COLLECTIF À ÊTRE DÉSIGNÉ]

Je, soussigné(e), _____ (inscrivez votre nom complet, incluant votre nom de jeune fille le cas échéant) confirme avoir été informé(e) du fait que je suis un Membre Approuvé du Groupe des Enfants. Mon numéro de réclamation est _____ [inscrivez le numéro de réclamation qui vous a été attribué]

Je confirme également qu'on m'a bien expliqué dans quelle mesure et de quelle manière je peux exiger une évaluation de compensation individuelle conformément aux paramètres du Processus d'Évaluation de Compensations Individuelles.

Je reconnais et conviens que j'ai l'opportunité d'obtenir des conseils juridiques indépendants au sujet du processus et qu'il m'est possible d'obtenir de l'assistance gratuite en vue de compléter le présent formulaire en contactant [inscrire les coordonnées du point de contact].

Je résume ci-dessous l'expérience que j'ai vécue lorsque les produits et/ou services publics dont j'avais besoins m'ont été refusés ou ont été livrés tardivement ou de manière inadéquate, de même que les conséquences d'une telle expérience.

[La forme du Formulaire d'Évaluation de Compensation Individuelle sera établie une fois qu'un jugement aura été rendu à propos des Questions Communes, étant entendu que l'objectif du document sera de recueillir les informations suivantes auprès de Membres du Groupe Approuvés]:

- *Faits, situations et circonstances ayant justifié la demande d'un produit ou d'un service public;*
- *Raisons expliquant le refus de livraison du produit ou service;*
- *Département(s) de contact;*
- *Autorisations permettant à la Couronne d'obtenir certains documents; et*
- *Toutes autres informations jugées nécessaires ou utiles.]*

Signature: _____ Date: _____

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Schedule C - 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
Child & youth focus, competent service	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 & Considerations for Indigenous child and youth population mental health promotion in Canada). 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.
Client-centred care within holistic family and community circle/context	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.
Trauma-informed, Child development-informed	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).
Provision of culturally safe assessments	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>).
Provision of coordinated & comprehensive continuum of services (i.e. awareness of other programs & services)	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 & FNMWCF, p. 45). The Continuum of Services will aim to prevent class members needing to repeat their stories.
Enhanced care coordination & planning	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 & FNMWCF, p. 17).
Culturally competent workforce through ongoing self-reflection	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).

PRINCIPLES	DESCRIPTION
Culturally-informed and sustainable workforce: long-term development of First Nations service providers	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).
Community-based multi-disciplinary teams (i.e. Mental Wellness Teams)	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.
Community-based programming	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).
Flexible service delivery	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"> • Interdisciplinary Care Teams for class members to support coordinated, seamless access to services and supports, wherever possible. • 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. • Care Teams are based on partnerships between various local/regional organizations (e.g., First Nations financial institutions, IRS-RHSP providers, peer support networks, etc.). • The Final Settlement Agreement would indicate what the base standard for Care Team services must include and the description of Service Coordination functions. • Wherever possible, services are available in local/regional First Nations languages. • Community contact person to be identified as an extension of the sub-regional Care Team. • 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. 	<ul style="list-style-type: none"> • Effective and innovative way to increase access to and enhance the consistency of services; outreach, assessment, treatment, counselling, case management, referral, and aftercare. • Culture as foundation. • Developed and driven by communities. • Based on community needs and strengths. • Effective model for developing relationships that support service delivery collaborations both with provinces and territories and between community, cultural, and clinical service providers.

Component 2: Bolstering existing network of health and cultural supports

Elements	FNMWCF Alignment
<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • Enhanced flexible funding. • Community development, ownership and capacity building. • Self-determination. • Culture as foundation. • First Nations play key role in hiring of personnel to ensure personnel is recognized by their community. • Communities can ensure service provision are culturally safe and appropriate.

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

Elements	FNMWCF Alignment
<ul style="list-style-type: none"> • 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. • 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. • Virtual mental health counselling will be eligible, depending on regulatory college specifications. 	<ul style="list-style-type: none"> • Enhanced flexible funding. • Community development, ownership and capacity building. • Self-determination. • To increase access to services to class members and their families as defined by First Nations partners.

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

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

Schedule D - Provincial and Territorial Ages of Majority

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

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

Schedule E - Summary Chart of Jordan's Principle / Trout Approach

CLASS	CRITERIA	AMOUNT
Jordan's Principle Class (2007-2017)	Significant Impact Essential Service Gap/Delay/Denial OR Highest Level of Impact on the Questionnaire ¹ OR Service Gap/Denial/Delay not included on List of Essential Service but satisfies requirements of Article 6.07 AND Claimant Demonstrates Highest Level of Impact on the Questionnaire ¹	Minimum \$40,000
	Other Essential Service Gap/Delay/Denial OR Service Gap/Denial/Delay not included on List of Essential Service but satisfies requirements of Article 6.07 BUT Claimant Does not Demonstrate Highest Level of Impact on the Questionnaire ¹	Up to \$40,000 maximum ²
Trout Class (1991-2007)	Significant Impact Essential Service Gap/Delay/Denial OR Highest Level of Impact on the Questionnaire ¹ OR Service Gap/Denial/Delay not included on List of Essential Service but satisfies requirements of Article 6.07 AND Claimant Demonstrates Highest Level of Impact on the Questionnaire ¹	Minimum \$20,000
	Other Essential Service Gap/Delay/Denial OR Service Gap/Denial/Delay not included on List of Essential Service but satisfies requirements of Article 6.07 BUT Claimant Does not Demonstrate Highest Level of Impact on the Questionnaire ¹	Up to \$20,000 maximum ³

¹ To be determined based on a review of Supporting Documentation and Questionnaire responses.

² Amount will depend on number of claimants sharing within Jordan's Principle Class budget of \$3 billion.

³ Amount will depend on number of claimants sharing within Trout Class budget of \$2 billion.

Schedule F - Examples Chart of Removed Child Family Class Approach

Examples Chart of Removed Child Family Class Approach

This table sets out examples of various scenarios where multiple Caregiving Parents or Caregiving Grandparents apply for, and are approved for compensation with respect to one (1) Removed Child.

# of Approved Category A: Caregiving Parents (biological)	# of Approved Category B: Caregiving Parents (adoptive or Stepparent)	# of Approved Category C: Caregiving Grandparent(s)	Disposition
2	2	4	<ul style="list-style-type: none"> Category A parents receive one (1) Base Compensation each. Other categories receive no compensation.
1	2	4	<ul style="list-style-type: none"> Category A parent receives one (1) Base Compensation. Category B parents share the one (1) remaining Base Compensation pro rata. Category C grandparents receive no compensation.
1	1	4	<ul style="list-style-type: none"> Category A parent receives one (1) Base Compensation. Category B parent receives one (1) Base Compensation. Category C grandparents receive no compensation.
0	2	4	<ul style="list-style-type: none"> Category B parents receive one (1) Base Compensation each. Category C grandparents receive no compensation.
0	3	4	<ul style="list-style-type: none"> Category B parents share two (2) Base Compensations pro rata. Category C grandparents receive no compensation.
0	1	1	<ul style="list-style-type: none"> Category B parent receives one (1) Base Compensation. Category C grandparent receives one (1) Base Compensation.

0	1	2 or more	<ul style="list-style-type: none"> • Category B parent receives one (1) Base Compensation. • Category C grandparents share one (1) Base Compensation pro rata.
0	0	1 or 2	<ul style="list-style-type: none"> • Category C grandparent receives one (1) Base Compensation each.
0	0	3 or more	<ul style="list-style-type: none"> • Category C grandparents share two (2) Base Compensations pro rata.

Schedule G - Investment Committee Guiding Principles

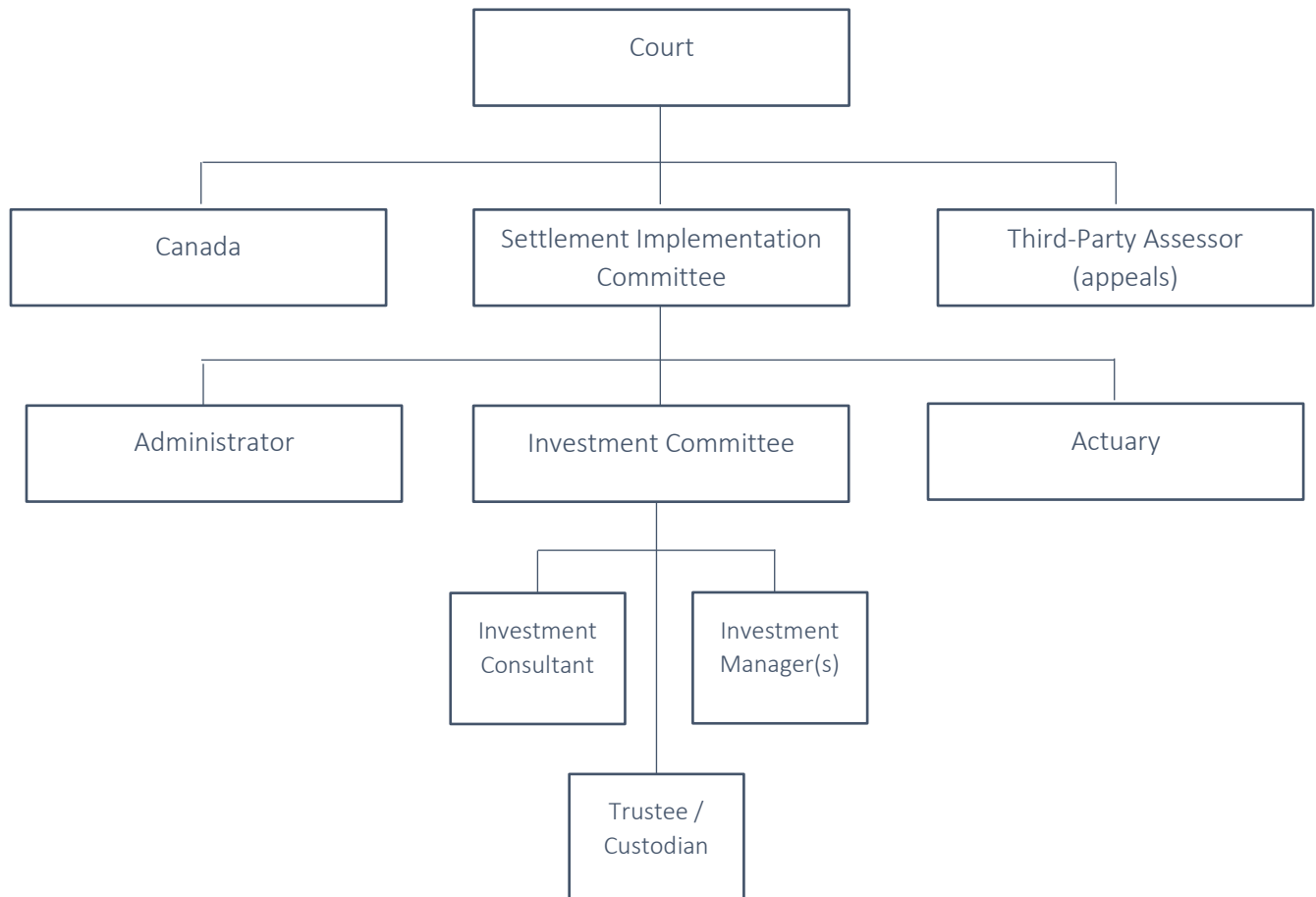
SCHEDULE [●]

Investment Committee Guiding Principles

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

Basic Governance Structure relating to Investment Committee:

1. **In order to facilitate the effective management of the Settlement Funds, the Investment Committee should be constituted in a manner that is directly overseen by the Settlement Implementation Committee.** The Investment Committee should be permitted to make decisions within the scope of the Terms of Reference with independence, but is accountable to the Settlement Implementation Committee and, ultimately, the Court. The Investment Committee must be able to communicate with both the Administrator and the Actuary, whether independent of, or through the Settlement Implementation Committee.
2. **The Settlement Implementation Committee should be responsible for oversight of the entire process, including resolving any issues that may arise from time to time.** Where necessary, the Settlement Implementation Committee is the body responsible for seeking guidance from the Court, on behalf of the Class, the Administrator, the Actuary or the Investment Committee.



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

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