Court File No. T-402-19

FEDERAL COURT

PROPOSED CLASS PROCEEDING

B E T W E E N:

XAVIER MOUSHOOM and JEREMY MEAWASIGE (BY HIS LITIGATION GUARDIAN, MAURINA BEADLE)

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

SECOND SUPPLEMENTARY MOTION RECORD
(Motion for Certification)

February 28, 2020

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Court File No. T-402-19

FEDERAL COURT

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Plaintiff

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TABLE OF CONTENTS

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And:

THE ATTORNEY GENERAL OF CANADA

Defendant

SUPPLEMENTARY AFFIDAVIT OF ERIN REIMER
(Sworn February 27, 2020)

I, Erin Reimer, of the City of Vancouver, Province of British Columbia, MAKE OATH AND SAY:

1. I am a lawyer with the law firm of Miller Titerle + Co., which, together with Sotos LLP and Kulger Kandestin LLP, are class counsel in this proposed class proceeding ("**Class Counsel**"). Accordingly, I have knowledge of the matters to which I depose in this affidavit. Where I make statements in this affidavit that are not within my personal knowledge, I indicate the source of the information and I believe such information to be true.

2. I swear this affidavit in support of the plaintiffs' motion for an order certifying the action as a class proceeding under section 334.12 of the *Federal Court Rules* SOR/98-106. This affidavit supplements my first affidavit in this proceeding, sworn on July 5, 2019.

3. The documents attached as Exhibits A-H to my Affidavit contain statements made by federal government officials about this proposed class action, and were accessed via the URLs referenced herein or in legal documents otherwise described herein.

4. On October 4, 2019, the Attorney General of Canada filed a Notice of Application for Judicial Review (the "**Application**") in Federal Court, applying to judicially review the Canadian Human Rights Tribunal's decision in file no. T1340/7008 dated September 6, 2019 and cited as 2019 CHRT 39 (the "**Tribunal Decision**"). Concurrent with the Application, the Attorney General filed a motion to stay the Tribunal Decision (the "**Motion**"). In its Written

Representations on the Motion, Canada states, amongst other things, that "[w]here, as here, there is a class action pending in this Court on behalf of an overlapping set of individuals, the Tribunal is not the proper forum to compensate unrepresented individuals not party to the complaint". Attached as **Exhibit A** is a true copy of Canada's Written Representations, filed on October 4, 2019.

5. On October 4, 2019, Seamus O'Regan, Minister of Natural Resources and former Minister of Indigenous Services, posted on Twitter stating, amongst other things, that "the CHRT ruling touches on issues of great importance to our government. We agree that 'what has been lost cannot be recovered'. We agree with many of the findings of the CHRT including the recognition of discrimination and mistreatment and the need for compensation." Attached as **Exhibit B** is a true copy of Minister O'Regan's statement, posted on October 4, 2019, and accessed online on February 25, 2020 from: "https://twitter.com/SeamusORegan/status/1180171749633208321.

6. On November 21, 2019, immediately following the newly re-elected federal government's first cabinet meeting, Indigenous Services Minister Marc Miller, Justice Minister David Lametti and Crown-Indigenous Relations Minister Carolyn Bennett made public statements to the media, including the APTN National News, about the Tribunal Decision and this proposed class action.

7. Specifically, Minister Bennett stated: "As you know, because the Tribunal only starts in 2006, [and] Sixties Scoop ended in 1991, there are a lot of people who would be unfortunately on the wrong side of that date and not dealt with in a fair way. … [I]n that period from [1991] on, I think that we want to do the right thing for children that were harmed and their families."

8. Minister Lametti stated: "We're looking to settle [the class action], as my colleagues have said, as we've said number of times publicly. We want a full and fair compensation for kids – we're talking about kids here – and their families, who have been hurt over a period of years. We want it to be comprehensive and fair, and sitting down and negotiating it is the best way to do it." Minister Lametti also stated: "We're trying to pay – we have accepted the fact that we have to compensate, we have accepted the fact that we have done wrong, but we have to do it in a way that respects everybody who was wronged, whether they be children or whether they be families, across a wider swath of time". He also stated that "[o]ur priority is a negotiated

settlement that is fair for all the kids and for their families. That's the only way to do it." Minister Lametti further stated: "We're going to move forward on the existing class action in good faith, and you'll see that in coming days." I accessed the Ministers' public statements, quoted herein, online on February 25, 2020 at: https://www.facebook.com/APTNNews/videos/1163613157172399/.

9. On November 25, 2019, Minister Lametti and Minister Miller issued a joint statement (the "**Joint Statement**") that the federal government would "work with plaintiff's counsel with the goal of moving forward with certification of the Xavier Moushoom and Jeremy Meawasige v. The Attorney General of Canada class action". Attached as **Exhibit C** is a true copy of the Joint Statement, accessed online on February 14, 2020 from: https://www.canada.ca/en/indigenous-services-canada/news/2019/11/joint-statement-by-the-minister-of-indigenous-services-and-the-minister-of-justice-and-attorney-general-of-canada-on-compensation-for-first-nations.html.

10. Attached as **Exhibit D** is a true copy of an article published by CBC News on November 25, 2019 regarding the Joint Statement, written by Jorge Barrera and entitled "Ottawa Plans to Settle First Nations Child Welfare Class-Action Lawsuit as it Battles Tribunal Order", accessed online on February 14, 2020 from: https://www.cbc.ca/news/indigenous/child-welfare-class-action-1.5372281.

11. On November 25, 2019, Minister Miller made public statements about the Tribunal Decision and this proposed class proceeding during an interview with CTV News, stating: "the issue here isn't whether the victims of discrimination, indigenous victims, younger children and families are not due compensation. It's a question of form and manner. We believe that there should be a just, fair and equitable compensation for these individuals." He also stated that "what we're dealing here with is the product of systemic discrimination that has occurred over decades" and that "these court cases are a product of government inaction and the costs are the costs of compensations to a group of people that are due compensation, but we need to take a close and careful look at how systemic discrimination gets compensated." Minister Miller concluded the interview by stating "we need to look at the tools that will allow us to move forward to compensate in that fair, effective fashion with the groups that are primarily affected and that's what we're prepared to do which is why we moved quickly today to certify the class

action." I accessed Minister Miller's interview with CTV News online on February 10, 2020 at: https://bc.ctvnews.ca/video?clipId=1838705.

12. On November 25, 2019, Minister Bennett posted on Twitter, stating: "The Government of Canada is committed to seeking a comprehensive settlement on compensation that will ensure long-term benefits for individuals and families and enable community healing." Attached as **Exhibit E** is a true copy of Minister Bennett's statement, posted on November 25, 2019, and accessed online on February 25, 2020 from: https://twitter.com/Carolyn_Bennett/status/1199004218209787905.

13. On December 3, 2019, Minister Miller made public statements at the Special Chiefs' Assembly (the "**Assembly**") in Ottawa, Ontario, saying "…Canada must continue to certify the Xavier Moushoom and Jeremy Meawasige class action." I accessed Minister Miller's speech made at the Assembly online on February 10, 2020 at https://www.cpac.ca/en/programs/public-record/episodes/66119221/, and this particular quote occurs at the 10:21 minute mark.

14. On December 3, 2019, CBC News published an article written by Jorge Barrera and titled "Talks to start soon on settling First Nations child welfare compensation, minister tells AFN", in which Minister Miller is reported as saying at the Assembly that the federal government will be moving forward with certification of this proposed class proceeding. Minister Miller is also reported as saying to reporters after his speech at the Assembly that the government sees this class action lawsuit as the vehicle to deal with the human rights tribunal compensation issue. Attached as **Exhibit F** is the CBC News article published on December 3, 2019, and accessed online on February 14, 2020 from: https://www.cbc.ca/news/indigenous/afn-child-welfare-compensation-1.5382654.

15. On December 9, 2019, Minister Bennet made the following statements during a debate in the House of Commons:

- "The approach of our government is to make sure that all children who were harmed by these terrible colonial polices will be compensated."
- "The class action now being certified on the 1991 post-sixties scoop up to the present day tends to be the way we sort these things out with respect to what the appropriate care is for the amount of time people were harmed and the degree of harm. It is very

important that families have a voice, that children have a voice and that there is some assessment of fair and equitable treatment and compensation."

- "…in the case of appropriate compensation, the appropriate place for that is with the class action, where there are representatives of the victims and the survivors who can determine what is fair. I do not think there is a way for fair and equitable compensation to be done without the voices of the people who were harmed."
- "…it is hugely important that we go forward, understanding we have to do the best possible thing for these children. The lawyers have agreed that we want to compensate and the Prime Minister wants to compensate, but we have to do it in a fair and equitable way that also covers the children from 1991 to this day."

Attached as **Exhibit G** is a true copy of relevant excerpts of the Official Report (Hansard) of the House of Commons Debates, 43rd Parl, 1st Sess, Vol 149, No 003 (9 Dec 2019), containing the statements of Minister Bennett that are quoted herein. I accessed the complete Official Report online on February 25, 2020 from: https://www.ourcommons.ca/Content/House/431/Debates/003/HAN003-E.PDF.

16. On December 11, 2019, Prime Minister Justin Trudeau made the following statements during a debate in the House of Commons and in response to a question about respecting the Tribunal Decision: "…we strongly agree that we must compensate indigenous children harmed by past government policies. We want to ensure that indigenous people harmed under the discriminatory child welfare system are compensated in a way that is both fair and timely. We want to work with all parties to address this issue. We have demonstrated our commitment to addressing the long-standing child and family service needs of first nations, Inuit and Métis children." Attached as **Exhibit H** is a true copy of relevant excerpts of the Official Report (Hansard) of the House of Commons Debates, 43rd Parl, 1st Sess, Vol 149, No 005 (11 Dec 2019), containing the comments of Prime Minister Trudeau that are quoted herein. I accessed the complete Official Report online on February 25, 2020 from: https://www.ourcommons.ca/Content/House/431/Debates/005/HAN005-E.PDF.

SWORN BEFORE ME at the City of Vancouver, in the Province of British Columbia on February 27, 2020

A Commissioner for taking Affidavits for British Columbia

ERIN REIMER

Braden Lauer
Barrister & Solicitor
Miller Titerle Law Corporation
300 – 638 Smithe Street
Vancouver, BC V6B 1E3

This is **Exhibit A** referred to in Affidavit of Erin Reimer sworn before me at Vancouver, BC, this 27th day of February, 2020.

A Commissioner for taking affidavits for British Columbia

Court File No. T-1621-19

FEDERAL COURT

BETWEEN:

ATTORNEY GENERAL OF CANADA

APPLICANT/MOVING PARTY

-and-

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA, ASSEMBLY OF FIRST NATIONS, CANADIAN HUMAN RIGHTS COMMISSION, CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL and NISHNAWBE ASKI NATION

RESPONDENTS/RESPONDING PARTIES

WRITTEN REPRESENTATIONS OF THE APPLICANT/MOVING PARTY ON MOTION TO STAY

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TABLE OF CONTENTS

PART I – OVERVIEW OF FACTS AND PROCEDURAL HISTORY

1. Canada is committed to compensating First Nations people for past discriminatory policies. Canada acknowledges the Canadian Human Rights Tribunal's earlier finding of systemic discrimination and does not oppose the general principle that compensation to First Nations individuals affected by a discriminatory funding model can be made in appropriate circumstances. The Tribunal's recent ruling awarding compensation to individuals in this claim, however, was inconsistent with the nature of the complaint, the evidence, binding jurisprudence and the *Canadian Human Rights Act*. Canada therefore seeks to have the Tribunal's ruling on compensation reviewed by this Court.

2. Concurrent with the application for judicial review, the Attorney General of Canada brings this motion for a stay of enforcement and execution of the Canadian Human Rights Tribunal's orders contained in 2019 CHRT 39 (the "Orders") for the duration of the judicial review proceedings.

3. Requiring Canada to comply with the Orders prior to the disposition of the judicial review would result in competing jurisdiction between the Canadian Human Rights Tribunal and the Federal Court, the possibility of conflicting judgments, the payment of potentially $5 to $6 billion dollars that may not be recoverable, and the outlay of significant human and financial resources, all to implement Orders that exceeded the Tribunal's authority.

4. Staying the enforcement and execution of the Orders is the only way to avoid irreparable harm to Canada.

A. Procedural History and Facts

5. This matter originated in 2007 when a complaint was filed by two public interest organizations, the First Nations Child and Family Caring Society ("Caring Society") and the Assembly of First Nations ("AFN"), who claimed that Canada's funding for child and family services on reserve and in the Yukon was discriminatory against First

Nations children on reserve and in the Yukon.[1] There were no individual complainants. The complainants sought approximately $112 million in compensation, to be paid into a trust fund administered by the Caring Society.[2] The Chiefs of Ontario, the Nishnawbe Aski First Nation, the Canadian Human Rights Commission and Amnesty International later joined the litigation as parties (collectively, with AFN and the Caring Society, the "Respondents"). The Tribunal found the complaint was largely substantiated.[3] On January 26, 2016, the Tribunal released its decision on the merits of the complaint and found that Canada's funding model was discriminatory.[4] Canada did not dispute this decision and has worked assiduously to implement the Tribunal's orders, expending billions in the process.[5]

6. Since the initial findings in 2016, the Tribunal has retained jurisdiction over this matter[6] and issued several rulings, many of which contain multiple remedial orders.[7] There are four more rulings currently under reserve: (i) the definition of First Nations child for the purposes of eligibility under Jordan's Principle; (ii) eligible expenses for major capital funding; (iii) eligible claims for small agencies' expenditures; and (iv) whether Canada can impose a deadline for the submission of claims for reimbursement of First Nations Child and Family Services Band Representative Services' actual costs. All

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[1] Complaint filed at Tribunal, Affidavit of Deborah Mayo dated October 1, 2019 ("Mayo Affidavit"), Exhibit A, Applicant's record ("AR") Tab 2.
[2] Preliminary Disclosure Brief of the complainants, subparagraph 21(3), Mayo Affidavit, Exhibit C, AR Tab 2.
[3] *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2016 CHRT 2 at para 456, Applicant's Book of Authorities ("ABOA") Tab 16. Neutral citations will be used hereafter to refer to this ruling and subsequent rulings by the Tribunal on this complaint.
[4] *Ibid.*
[5] Affidavit of Sony Perron dated October 3, 2019 ("Perron Affidavit"), paras 11, 18-19, 21, AR Tab 3.
[6] 2016 CHRT 10 at paras 3, 22, and 37, ABOA Tab 17; 2016 CHRT 16 at para 161, ABOA Tab 18; 2017 CHRT 14 at para 132, ABOA Tab 19; 2018 CHRT 4 at para 367, ABOA Tab 20.
[7] *See e.g.* 2016 CHRT 10, at paras 11-37, ABOA Tab 17; 2016 CHRT 16 at paras 157-161, ABOA Tab 18; 2017 CHRT 14 at paras 133-135, ABOA Tab 19; 2018 CHRT 4 at paras 407-444, ABOA Tab 20.

four are related to disagreements between the parties about the scope of the Tribunal's earlier remedial orders.

7. On September 6, 2019, the Tribunal issued its ruling on the Respondents' request for compensation for individuals affected by the discrimination. This ruling (the "Compensation Ruling") contains the Orders that are the subject of this judicial review application. This motion seeks to stay the Tribunal's Orders pending disposition of the underlying judicial review.

B. The September 6, 2019 Compensation Ruling and Orders

8. The Compensation Ruling concluded that while systemic remedies are required to address systemic issues, individual compensation is also required.[8] Despite the fact that no individual had representation in these proceedings, the Tribunal determined it could nonetheless compensate victims and that the statutory requirements for compensation for pain and suffering and for willful and reckless discrimination were met.[9]

9. The Compensation Ruling further concluded the unnecessary removal of children from their homes, families and communities qualifies as a "worst case scenario" breach of the fundamental rights of the children and their caregiving parents and grandparents. No caregivers were represented before the Tribunal. It found that non-discriminatory funding for on-reserve child and family services would have allowed children to remain in their homes and awarded the maximum $40,000 in statutory compensation ($20,000 for pain and suffering and $20,000 for willful and reckless discrimination) to every child removed from their home, temporarily or long-term, and every caregiving parent or grandparent to that child, unless they abused the child or children.[10]

10. The Tribunal also found that while reconsideration (a process that Canada has already implemented) is necessary for persons whose claims had been rejected under Jordan's Principle, this remedy was not sufficient. Every child who was denied access to a

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[8] 2019 CHRT 39 ("*Compensation Ruling*") at paras 13, 14, ABOA Tab 21.
[9] *Compensation Ruling* at paras 112-115, 234, 242, and 245-248, ABOA Tab 21.
[10] *Ibid* at paras 234, 242, and 245-248.

service, experienced an unreasonable delay in accessing a service, or was taken into care to receive services due to Canada's discriminatory approach to Jordan's Principle was also granted the maximum compensation under the Act, along with the caregiving parents or grandparents.[11]

11. Finally, the Tribunal ordered Canada to engage in discussions with any interested Respondents about how the compensation process would work, and return to the Tribunal with "propositions" no later than December 10, 2019. As discussed below, propositions could include applications to increase the categories of those entitled to compensation. The Tribunal noted that it would consider such propositions and then determine "the appropriate process to locate victims/survivors and to distribute compensation". The Tribunal retained jurisdiction until this time, but noted it would "revisit" whether continued jurisdiction was necessary on the compensation issue.[12]

12. The Notice of Judicial Review (the "Notice") of the Tribunal's Compensation Ruling and the Orders alleges several errors, including that the Tribunal erred in:

    a. Ordering monetary compensation to First Nations children, their parents or grandparents under ss. 53(2)(e) and 53(3) of the *Canadian Human Rights Act* for the necessary or unnecessary removal of children in the child welfare system in light of the nature of the complaint before the Tribunal and the evidence presented;

    b. Ordering monetary compensation to First Nations children, their parents or grandparents under s. 53(3) of the *Canadian Human Rights Act* for the unnecessary removal of children to obtain essential services and/or for children who experienced gaps, delays and denials of services that would have been available under Jordan's Principle, in light of the nature of the complaint before the Tribunal and the evidence presented;

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[11] *Ibid* at paras 214, 250-251.
[12] *Ibid* at paras 269, 271 and 277.

c. Determining that discrimination is ongoing with respect to Canada's funding for child and family services on reserve and in the Yukon and;

d. Establishing a process for the payment of compensation that requires the retention of jurisdiction by the Tribunal and permits the establishment of new categories of persons who may receive compensation.

13. The Notice also alleges these errors "were made without jurisdiction or beyond the Tribunal's jurisdiction, denied procedural fairness to the Applicant, erroneously relied on factual material, erroneously interpreted provisions of the *Canadian Human Rights Act* or were otherwise unreasonable, and thus there are permissible grounds for review under s. 18.1 of the *Federal Courts Act*."[13]

PART II – QUESTION IN ISSUE

14. The only question before this Court is whether the Attorney General has satisfied the test for a stay of enforcement and execution of the Tribunal's Orders pending the disposition of the judicial review.

PART III – ARGUMENT

A. The test to stay an order under Rule 398

15. The Attorney General may seek a stay of enforcement and execution of the Tribunal's Order pending disposition of the judicial review under Rule 398 of the *Federal Court Rules*.[14] Stays are appropriate when necessary to save the parties from devoting time, expense, effort, and other scarce resources to complying with court orders that may ultimately be set aside on judicial review.

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[13] Notice of Judicial Review, at paras 1-5 ("JR Notice").

[14] *See e.g., Canada (Attorney General) v Thwaites,* 1993 CarswellNat 645, 68 FTR 193 at para 1 [*Thwaites*], ABOA Tab 3.

16. The granting of a motion to stay the enforcement of a judgment pending an application for judicial review requires that the moving party meet the three part test set out by the Supreme Court of Canada in *RJR-MacDonald*[15]:

    a. whether there is a serious question to be tried;

    b. whether the moving party would suffer irreparable harm if the stay was refused; and

    c. whether the balance of convenience lies in favour of the moving party.[16]

17. Where, as here, the moving party is a government authority, the public interest will be considered at both the second and third stage of the test.[17]

B. Canada's judicial review raises serious questions to be tried

18. The first step of the *RJR-MacDonald* test involves a preliminary assessment of the merits of the case to determine whether there is a serious question to be tried. This is a low threshold, and to meet it, the Attorney General need only show that the judicial review raises issues that are neither vexatious nor frivolous.[18] This threshold is easily met given the extensive errors in the decision under review.

19. The Compensation Ruling raises several serious issues for consideration by this Court. Two are particularly important.

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[15] *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, [1994] S.C.J. No. 17 [*RJR-MacDonald*], ABOA Tab 36.
[16] *Canada (Prime Minister) v Khadr*, 2010 FCA 199 at paras 4 [*Khadr*], ABOA Tab 8; *Canada (Citizenship and Immigration) v Ishaq*, 2015 FCA 212 at para 14 [*Ishaq*], ABOA 5, citing *RJR-MacDonald* at 334, ABOA Tab 36.
[17] *Canada v Canadian Council for Refugees*, 2008 FCA 40 at para 18 [*Canadian Council for Refugees*], ABOA Tab 11; *Sawridge Band v. R.*, 2004 FCA 16 at para 48, ABOA Tab 37.
[18] *Gateway City Church v. Minister of National Revenue*, 2013 FCA 126 at para 11 [*Gateway City Church*], ABOA Tab 22, citing RJR Macdonald at 337, ABOA Tab 36; *see also Canada (Attorney General) v. United States Steel Corp.*, 2010 FCA 200 at para 5, ABOA Tab 4.

20. First, individual compensation was not an appropriate remedy for this complaint. Second, even if this Court finds the Tribunal had the authority to order individual compensation, the compensation ordered was disproportionate as between individuals and in light of Canada's prior remedial actions.

1. The individual compensation ordered is not responsive to or permitted by the claim or the evidence before the Tribunal

a. The remedy is not responsive to the complaint

21. The Notice alleges in part that the Tribunal erred in ordering compensation to First Nations children and their caregivers under sub-sections 53(2)(e) and 53(3) in light of the nature of the complaint before the Tribunal and the evidence requested.[19] None of the recipients of the compensation ordered under section 53 of the *Canadian Human Rights Act* ("*CHRA*") were named nor are identifiable in the underlying complaint before the Tribunal or in the complainants' respective notices of particulars. The Tribunal itself acknowledged that the identification of who should take advantage of the Orders is complex and will require considerable work.[20] The Tribunal's Compensation Ruling awards compensation to an unknown number of unidentified individuals who were not party to the complaint.

22. In doing so, the Tribunal erred by awarding individual compensation in a complaint that the Respondents both framed and argued as one of systemic discrimination. It is a fundamental tenet that the remedy awarded must be responsive to the claim as drafted by the complainants.[21] The Tribunal's Orders providing compensation to unnamed First Nations children and their caregivers fails because individual compensation was not available as a remedy to this complaint; the remedy ordered is inconsistent with the Tribunal's prior recognition that this is a systemic claim; and the Tribunal improperly relied on expert evidence to ground its remedy.

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[19] JR Notice at paras 1-2.
[20] *Compensation Ruling* at para 208, ABOA Tab 21.
[21] *Hughes v. Elections Canada*, 2010 CHRT 4 at para 50, ABOA Tab 24, cited in *Grant v. Manitoba Telecom Services Inc.*, 2012 CHRT 10 at para 115, ABOA 23.

23. The Tribunal has consistently recognized that the underlying matter was a complaint of systemic discrimination[22] and the Supreme Court of Canada's jurisprudence in *Moore*[23] is unequivocal that the remedy must flow from the complaint. The Federal Court of Appeal has recognized that structural and systemic remedies are required in complaints of systemic discrimination, and has determined compensation for individuals is not an appropriate remedy in such complaints.[24] Specifically, in *CNR*, it found compensation is limited to individual victims which made it "impossible, or in any event inappropriate, to apply it in cases of group or systemic discrimination" where, as here "by the nature of things individual victims are not always readily identifiable".[25] The Tribunal itself has applied these decisions in other cases, declining compensation in claims where it would have been impractical to have thousands of victims testify, acknowledging it could not award compensation en masse.[26]

24. This Court's jurisprudence confirms non-complainants should not be awarded specific relief in human rights complaints. In *Menghani*,[27] this Court concluded the Tribunal could not award permanent residency to an individual who was not a complainant, even though it determined he would have received it but for the discriminatory practice identified. The Court's conclusion was based on two findings: first, that the remedy was barred by statute and second, that there is a general objection to award specific relief to non-complainants.[28]

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[22] *See e.g.* 2016 CHRT 10 at paras 18, 23, ABOA Tab 17; 2017 CHRT 14 at para 23, ABOA Tab 19, and 2018 CHRT 4 at paras 93, 165, ABOA Tab 20.
[23] *Moore v. British Columbia (Education),* 2012 SCC 61 at paras 64 and 68-70, ABOA Tab 30.
[24] *Re: C.N.R. and Canadian Human Rights Commission*, 1985 CanLII 3179 (FCA), 20 DLR (4th) 668 at para 10, ABOA Tab 2.
[25] *Ibid* (overturned on other grounds but this issue was not appealed).
[26] *Public Service Alliance of Canada v. Canada Post Corporation*, 2005 CHRT 39 at para. 991, ABOA Tab 33; see also *Public Service Alliance of Canada v. Canada (Treasury Board)*, 1998 CanLII 3995 (CHRT) at paras 496-498, ABOA Tab 34.
[27] *Canada (Secretary of State for External Affairs) v. Menghani*, [1994] 2 FC 102, [1993] FCJ No 1287 at para 61, ABOA Tab 9.
[28] *Ibid.*

25. In departing from *Moore, CNR* and *Menghani* by awarding compensation to individuals in response to a systemic discrimination complaint filed by public organizations, the Tribunal's Compensation Ruling effectively transformed the underlying complaint of systemic discrimination into a class action without the procedural safeguards for class actions in court, and without a representative plaintiff. Courts that are empowered to rule on class action proceedings – such as this Court – do so pursuant to legislative authority.[29] In the absence of such a provision in the *CHRA*, the Tribunal does not have the authority to address class complaints or to treat complaints that purport to be on behalf of unidentified individuals like a class claim. The Tribunal's Ruling effectively creates an additional forum for class plaintiffs to try their case first without having to follow the rules established in other forums and, potentially, without having to set off the compensation paid against subsequent orders of damages.

26. As noted above, there is no provision in the *CHRA* that allows the Tribunal to adjudicate class actions. Where, as here, there is a class action pending in this Court on behalf of an overlapping set of individuals, the Tribunal is not the proper forum to compensate unrepresented individuals not party to the complaint.

27. Class action legislation is an important procedural mechanism to ensure claimants and defendants can adjudicate or settle their claims in a fair and orderly way. Class proceedings are designed to ensure that claimants have an opportunity to opt in or out, the court determines common issues, and the certification of these common issues is binding on subsequent steps in the litigation. In class actions, courts have rejected attempts by plaintiffs to transform proposed systemic claims into a proceeding focusing on the individual experience.[30]

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[29] *See e.g. Federal Court Rules*, SOR/98-106, Rule 334, ABOA Tab 44.

[30] For example, in *Anderson v. Canada (Attorney General)*, 2015 NLTD (G) 146 at paras 28-32 [*Anderson*], ABOA Tab 1, the Court found that the Plaintiffs had, by their own actions, caused the common issues trial to be limited to systemic failures. As a result, they could not change the scope of the issues during the common issues trial and lead evidence on individual experiences, having conducted themselves in a manner that precluded it.

28. This is, however, what the Tribunal has done in its Compensation Ruling. The evidence of all parties was focused on a systemic claim. The Tribunal improperly allowed the hearing to evolve from a claim of systemic discrimination, and effectively imposed a *defacto* un-certified class action settlement outside its statutory authority.

b. The Tribunal erred in determining there was an evidentiary foundation to order individual compensation

29. The evidence before the Tribunal was insufficient for it to award the requested statutory maximum under the special compensation provisions of the *CHRA*.

30. The Tribunal's award of compensation for First Nations children who were removed from their homes (and their caregivers), depends on the unproven premise that all these children were removed from their homes because of the government's funding practices. To accept this premise requires a finding that had there been adequate funding, no child would have been removed from his or her home. This assertion is unsupported by the evidence and overlooks the complexity of factors that may lead to a child being removed from their home. The Respondents themselves have acknowledged that removal from the home is a valid approach in some cases to ensure the well-being of a child.[31]

31. There was insufficient evidence before the Tribunal to demonstrate that any particular children were improperly removed from their home. There was also insufficient evidence from any recipients of child welfare services on reserve with respect to a service or program they did not receive, or the adverse outcomes that flowed from this. As acknowledged by at least one of the complainants, the Tribunal did not receive evidence about the precise nature and extent of the harm suffered by each individual child.[32]

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[31] Closing Submissions of the Canadian Human Rights Commission dated August 25, 2014, para 456, Mayo Affidavit, Exhibit M, AR Tab 2.

[32] Memorandum of fact and law of the complainant First Nations Child and Family Caring Society dated August 29, 2014, para 513, Mayo Affidavit, Exhibit N, AR Tab 2.

32. The absence of individual claimants, and related individual evidence, made it impossible for the Tribunal to assess compensation on an individualized basis. Further, by proceeding as it did, the Tribunal prevented the Attorney General from mounting an effective response to such a claim, as it could not test this evidence. Courts in class actions have said there is no principled basis to infer that the consequences suffered by a few claimants are representative of the many.[33] The Tribunal made unwarranted assumptions and assumed causality in areas where evidence was required in order to ground the findings of individual causation that it made.

33. In an effort to overcome this absence of evidence, the Tribunal took notice of the history of Indian Residential Schools and the historical disadvantages of First Nations on reserve communities and applied it as evidence of damage. The Court in *Anderson* rejected such an approach, saying "there is no authority holding that such judicial notice would apply …to an assessment of damages in a civil litigation context."[34]

34. Although representative claims are permitted and groups of individual claimants need not provide specific evidence of expenses or effects on each member of the group, this is not such a representative claim. The Respondents did not establish that they have the authority to speak on behalf of and represent the interests of the children at issue. Even if it were a representative claim, there must still be some evidence of the impacts the discriminatory practice had on individuals that can be extrapolated to the other members of the group on a principled and defensible basis.[35] This type of factual basis is lacking.

35. The Attorney General does not dispute that expert and other reports were admissible and capable of making out a claim of systemic discrimination. However, it was erroneous and procedurally unfair to use them as an evidentiary basis to award individual compensation.

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[33] *Anderson* at para 23, ABOA Tab 1.
[34] *Ibid* at para 24.
[35] *Canadian Human Rights Commission v. Canada (Attorney General)*, 2010 FC 1135 at para 73, ABOA Tab 13.

2. The Ordered Compensation is disproportionate

36. The Compensation Ruling awarded the maximum $40,000 in statutory compensation ($20,000 for pain and suffering and $20,000 for willful and reckless discrimination) to every child removed from their home, temporarily or long-term, and every caregiving parent or grandparent to that child, unless they abused that child.[36] Caregivers are entitled to compensation for each child removed and each child whose request for services was denied or unreasonably delayed as a result of Canada's narrow definition of Jordan's Principle. Awarding the same compensation to everyone – regardless of circumstances that led to that compensation – creates disproportionate awards amongst the individuals covered by the Orders. The Orders provide, for example, that a First Nations child on reserve who suffered domestic abuse, was necessarily removed, and spent two days in care would receive the same compensation as a First Nations child who was not at risk, was unnecessarily removed from their home and spent two years in care.

37. This error is compounded by the Tribunal's finding that the discrimination is ongoing. The scope of the Tribunal's compensation is disproportionate in light of Canada's compliance with the Tribunal's numerous previous remedial orders. Canada estimates the ordered compensation amounts to between $5 and $6 billion to satisfy the removals aspect of the Orders alone, assuming the ordered compensation was fully paid out by the end of 2020.[37]

38. The Tribunal does not address Canada's compliance with these orders, nor take account of the serious measures taken to address their findings, including the budgeting of more than two billion dollars since 2016 to implement the Tribunal's orders.[38] Nor did it put Canada on notice that it should address this issue.

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[36] *Compensation Ruling* at paras 234, 242, and 245-248, ABOA Tab 21. Caregivers who were abusive were not entitled to compensation.
[37] Perron Affidavit, para 39, AR Tab 3.
[38] *Ibid* at paras 21-22, 24.

39. As part of this investment in the program's budget, and as detailed in Canada's affidavits previously filed before the Tribunal,[39] Canada has made extensive efforts to identify and fill the gaps First Nations children face in accessing mental health services in collaboration with experts and the Parties.[40] Operational efficiencies for the evaluation and determination of requests have been made together with the Parties. Canada has also engaged in outreach and consultative work, funding First Nations for service coordination and case navigation, processing and tracking of cases, compliance reporting, publicity, and improving the appeals process to ensure compliance with Jordan's Principle.[41] As one example, from July 2016 until March 30, 2018, 99% of all Jordan's Principle requests were approved.[42] A compliance report for February 2019 shows that over 82% of urgent individual requests were determined within 12 hours, and approximately 75% of non-urgent individual requests were determined within 48 hours.[43]

40. Canada continues to provide services in compliance with its legal obligations. Over a recent five month period, between April 1, 2019, and August 31, 2019, approximately $309.66 million was expended or committed to Jordan's Principle and there were an estimated 136,003 products and services approved by Jordan's Principle. Of the total number of products and services approved during this 5 month period, 9,746 products and services were administered directly by ISC. The remaining 126,257 products and services were approved for administration by partner organizations and communities.[44]

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[39] Dr. Valerie Gideon filed two affidavits on May 24, 2018 regarding Canada's efforts to address the mental health and Jordan's Principle orders. *See* Affidavits of Valerie Gideon, May 24, 2018, Mayo Affidavit, Exhibits H and I, AR Tab 2; *See also*: Reply Affidavits of Paula Isaak and Valerie Gideon, Mayo Affidavit, Exhibits K and L, AR Tab 2.

[40] Affidavit of Valerie Gideon dated May 24, 2018 concerning mental health ("Gideon Mental Health Affidavit, May 2018"), paras 18-19, Mayo Affidavit, Exhibit H, AR Tab 2.

[41] Affidavit of Valerie Gideon dated May 24, 2018 concerning Jordan's Principle, Mayo Affidavit, Exhibit I, AR Tab 2.

[42] *Ibid* at para 42.

[43] Affidavit of Valerie Gideon dated April 15, 2019, para 48, Mayo Affidavit, Exhibit E, AR Tab 2.

[44] Perron Affidavit, para 26, AR Tab 3.

41. Canada also took action in response to the Tribunal's February 1, 2018 ruling by conducting cost analysis research, developing and implementing an alternative funding system, communicating with agencies, providing actual cost funding for band representatives in Ontario, assessing agency deficits, working on remoteness quotient research and the Ontario Special Study, stopping the practice of reallocating funds in the manner proscribed by the Tribunal's orders, and developing the consultation protocol.[45] Canada continues to provide reimbursement based on actual costs pursuant to the Tribunal's orders until another agreement is in place.[46]

42. The Tribunal's previous orders were all focused on the systemic nature of the claim, addressing how best to fix a discriminatory funding model. However, using that same information to award individual compensation to victims who are not complainants transforms the nature of the claim into something akin to a class action proceeding and is procedurally unfair.

43. The Compensation Ruling also does not take into account *An Act respecting First Nations, Inuit and Métis children, youth and families* (the "Act"), co-developed with Indigenous partners as part of Canada's response to the Tribunal's 2016 findings.[47] The Act affirms the inherent right of Indigenous Peoples to self-governance, which includes jurisdiction in relation to child and family services; establishes national principles such as the best interests of the child, cultural continuity, and substantive equality applicable to the provision of child and family services in relation to Indigenous children; and contributes to the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*.[48]

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[45] Affidavit of Paula Isaak dated May 24, 2018 concerning funding systems and Canada's funding of the actual cost of prevention and least disruptive measures, Mayo Affidavit, Exhibit J, AR Tab 2.
[46] *Ibid* at paras 9-10.
[47] Affidavit of Joanne Wilkinson dated April 16, 2019 ("Wilkinson Affidavit, April 2019"), para 53, Mayo Affidavit, Exhibit F, AR Tab 2.
[48] Perron Affidavit, para 29, AR Tab 3; Wilkinson Affidavit, April 2019, para 53, Mayo Affidavit, Exhibit F, AR Tab 2.

44. The Tribunal's failure to consider any of this evidence before determining that discrimination is on-going makes its decision unintelligible, unjustifiable and therefore unreasonable.

45. Beyond the inequities between individuals receiving compensation under this Ruling and the Tribunal's failure to consider Canada's remedial actions since 2016, the Tribunal's award is further disproportionate because the compensation related to child and family services has no specified end date, the amount ordered will continue to increase daily as services are provided, the categories of victims are not restricted to those named in the Compensation Ruling, and the Tribunal has retained jurisdiction on this matter.[49]

46. Whether the Tribunal exceeded the scope of authority established by their home statute and relied on an improper evidentiary foundation, and in doing so, went contrary to established jurisprudence, are serious issues that are neither vexatious nor frivolous. They are serious questions to be tried as they raise important legal and jurisdictional questions.[50] The first threshold of the test is easily satisfied.

C. Canada will suffer irreparable harm absent a stay

47. "Irreparable harm" is harm that cannot be quantified in monetary terms or which cannot be cured or remedied following the disposition of the order under review. [51] Where, as here, the party seeking the stay is a public body or authority, irreparable harm to the public interest if the stay is not granted must also be considered. The burden on Canada to demonstrate irreparable harm is less onerous than that on a private litigant.[52] As a

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[49] *Compensation Ruling* at paras 245, 270, and 277, ABOA Tab 21.
[50] *Khadr* at para 11, ABOA Tab 8.
[51] *Ibid* at para 15, citing *RJR-MacDonald* at 341, ABOA Tab 36; *I.L.W.U. v. Canada (Attorney General)*, 2008 FCA 3 at para 21, ABOA Tab 26.
[52] *D & B Co. of Canada Ltd. v. Canada (Director of Investigation & Research)*, 1994 CarswellNat 1844, [1994] F.C.J. No. 1504 at para 9, ABOA Tab 15; see also *Khadr* at para 22, ABOA Tab 8, citing *RJR-MacDonald* at 346, ABOA Tab 36.

general rule, the motion judge should not "attempt to ascertain whether actual harm would result" to a moving government party if the motion for a stay is dismissed.[53]

48. Canada will suffer irreparable harm if the Tribunal's Compensation Ruling is not stayed pending judicial review.

49. There are three main demonstrable categories of irreparable harm that will occur if the stay is not granted: (1) conflicting decisions as a result of the Tribunal's retained jurisdiction over the Compensation Ruling and the Federal Court's review of this ruling; (2) an unwarranted devotion of resources to setting up and implementing the compensation process; and (3) the unrecoverable loss of compensation paid out to certain individuals during the course of the judicial review. These harms, on their own and cumulatively, are demonstrably[54] "irreparable" as they are not compensable by money or Canada cannot be made whole if successful on judicial review.[55]

50. To deny the requested stay would effectively render the application for judicial review meaningless by forcing Canada to set up and to implement the compensation process, including the potential payment of billions of dollars it may be precluded from recovering, to comply with the Orders pending judicial review. If this Honourable Court were to find the judgment was incorrect in law or unreasonable, significant financial and human resources will be devoted to matters the Tribunal had no power to order as they were outside its statutory jurisdiction, incorrect in law, or unreasonable.

51. In addition, compliance with the Orders while they are subject to judicial review places Canada and the First Nations claimants in a situation of uncertainty, requiring them to begin negotiations on the expectation that compensation would be awarded, only to have that expectation frustrated should Canada succeed on its judicial review. Canada should not begin a compensation process it seeks to set aside, and engaging in

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[53] *RJR-MacDonald* at 346, ABOA Tab 36.
[54] *Gateway City Church* at para 18, ABOA Tab 22.
[55] *RJR-MacDonald* at 348, ABOA Tab 36.

negotiations given the lack of stability will harm Canada's relationship with the First Nations.[56]

1. The potential for conflict due to simultaneous proceedings before the Tribunal and the Federal Court

52. The Tribunal's Compensation Ruling included an Order requiring Canada to enter into discussions with the two original complainants and return to the Tribunal for further orders:

> [269] [...] Therefore, Canada shall enter into discussions with the AFN and the Caring Society on this issue [the compensation process]. The Commission and the interested parties should be consulted in this process however, they are not ordered to participate if they decide not to. The Panel is not making a final determination on the process here rather, it will allow parties to discuss possible options and return to the Tribunal with propositions if any, no later than **December 10, 2019**. The Panel will then consider those propositions and make a determination on the appropriate process to locate victims/survivors and to distribute compensation. [underlined emphasis added]

53. The Tribunal also noted that it welcomed suggestions to change the wording and the content of the Orders in the Compensation Ruling, including the addition of new categories of victims:

> [270] As part of the compensation process consultation, the Panel welcomes any comment/suggestion and request for clarification from any party in regards to moving forward with the compensation process and/or the wording and/or content of the orders. For example, if categories of victims/survivors should be further detailed and new categories added.

54. Thus, unless the Order is stayed, Canada is required to return to the Tribunal in just 67 days[57] so the Tribunal can issue additional orders stemming from the Compensation Ruling. The Tribunal has indicated it is willing to change the Orders under judicial

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[56] Perron Affidavit, paras 42-45, AR Tab 3.
[57] As of October 4, 2019.

review, including expanding the scope of the order to include further categories of victims.

55. The process for the compensation order is not the only matter currently under reserve by the Tribunal. There are four other matters also under reserve, including the definition of "First Nations child" for the purpose of eligibility under Jordan's Principle.[58] This further ruling on the definition of First Nations child will necessarily impact the Orders in the Compensation Ruling, with respect to compensation awarded pursuant to the Tribunal's Compensation Ruling regarding "gaps, delays and denials of services that would have been available under Jordan's Principle".[59] This makes the current Tribunal Orders incomplete and therefore difficult to comply with as the definition of who receives compensation is currently under reserve by the Tribunal.[60]

56. This means that absent a stay – and before the disposition of the judicial review – the Tribunal will have issued additional orders affecting the Compensation Ruling. The Tribunal has invited proposals for changes to the Orders under review, with a view to expanding their already large scope. This will create instability in the grounds for review, potentially result in additional judicial reviews on litigation over the same Orders, and potentially result in conflicting judgments once the Federal Court issues its decision in judicial review. There is a non-speculative risk of findings being made in respect of one or more of these decisions that could be inconsistent or difficult to reconcile.[61] As just one possibility, if the Tribunal imposes a detailed compensation process in December that Canada must follow, and the Federal Court subsequently finds the Tribunal erred in awarding compensation to non-complainants, such findings are irreconcilable.

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[58] Perron Affidavit, para 46, AR Tab 3.
[59] *See e.g. Compensation Ruling* at subheading preceding para 50 and paras 250-257, ABOA Tab 21.
[60] Perron Affidavit, para 46, AR Tab 3.
[61] *Rakuten Kobo Inc. v Canada (Commissioner of Competition)*, 2017 FC 382 at para 36 [*Rakuten Kobo*], ABOA Tab 35.

57. This would cause irreparable harm to Canada. The Federal Court has found irreparable harm where there is a substantial possibility of conflicting decisions in two forums with respect to common issues and where, like here, there is the potential for duplicative litigation.[62]

58. For clarity, the Attorney General does not seek to stay the proceedings before the Tribunal pursuant to Rule 373. As noted above, one of the decisions under reserve by the Tribunal is necessary to determine the scope of the Compensation Ruling. The Attorney General seeks only to the stay the Orders in the Compensation Ruling, which under the terms of that Ruling, effectively stays further changes to these Orders.[63] This is not only the just result, it is also the least expensive and most expeditious use of resources to determine the issue on its merits.[64]

2. The improper devotion of resources

59. The Tribunal's Orders must be stayed in their entirety because requiring Canada to begin consultation and implementation of the compensation process will cause irreparable harm to Canada if it succeeds in the underlying judicial review.

60. The Federal Court of Appeal Court has found that that irreparable harm may accrue to a public authority required to devote resources to "to commence a process" the public authority had "no power to undertake".[65] In *Lazareva*, this Court had ordered the Minister of Citizenship and Immigration to assess an application for permanent residency or stay the individual's removal from Canada. The Minister appealed this decision and argued that the Federal Court had no jurisdiction to make this order. The

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[62] *Poitras v Sawridge Band*, [1999] FCJ No 375, 1999 CarswellNat 536 at para 5, ABOA Tab 32; *Stoney Band v Band Council of the Stoney Band*, [1996] FCJ No 948, 118 F.T.R. 118 at para 16, ABOA Tab 38; *see also Tessma v Canada (Minister of Citizenship and Immigration)*, [2003] FCJ No 600, 2003 FCT 427 at paras 16-17, and 22, ABOA Tab 39.
[63] See the unnumbered paragraph at the bottom of page 81 of the *Compensation Ruling*, ABOA Tab 21, noting that the orders requiring compensation be awarded will only find application once the Tribunal rules on the compensation process.
[64] *Rakuten Kobo* at para 33, ABOA Tab 35, referring to *Federal Courts Rules*, Rule 3.
[65] *Canada (Minister of Citizenship & Immigration) v. Lazareva*, 2005 FCA 39 at para 10 [*Lazareva*], ABOA Tab 6.

Federal Court of Appeal, in granting the stay, found that irreparable harm would occur if the Minster was required to comply with the court's order noting:

> 10 Moreover, I am persuaded that, if the appeal were successful, the Minister would have suffered irreparable harm if she had been required to devote the resources necessary to process the respondent's application for landing, and to commence a process that she had no power to undertake.[66]

61. While not an exact parallel, a similar irreparable harm would occur here if Indigenous Services Canada were required to devote the resources necessary to comply with the Compensation Ruling, and this Court later determines the Tribunal erred in ordering such compensation or compensation process.

62. Administrative inconvenience is not irreparable harm.[67] The resources required to implement the Tribunal's Orders are significant and beyond administrative inconvenience. The Child and Family Services ("CFS") program has approximately 49 employees implementing the Tribunal's prior orders,[68] and will continue to provide essential services to First Nations children on reserve and in the Yukon.[69] However, the consultation, set up and implementation of the Compensation Ruling is estimated to require an additional 50-100 employees and would require a significant increase in CFS' program budget, exclusive of any compensation awarded.[70] Dedicating resources now may result in them being wasted if the Tribunal's orders are amended or set aside. Further, in light of the election, Canada will not be able to receive instructions from Cabinet to pursue meaningful discussions with the Respondents or commit to any proposed compensation process before the Tribunal's deadline of December 10, 2019.[71]

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[66] *Ibid.*
[67] *Canada (Superintendent of Bankruptcy) v. MacLeod*, 2010 FCA 84 at paras 20-21, ABOA Tab 10.
[68] Perron Affidavit, para 40, AR Tab 3.
[69] *Ibid* at para 50.
[70] *Ibid* at para 41.
[71] *Ibid* at para 7.

63. The Applicant has put forward specific, particular information that the Attorney General respectfully submits is sufficient for the Court to find that irreparable harm will occur.[72]

3. Canada is precluded from recovering money paid out to First Nations children and their caregivers on reserve

64. The Compensation Ruling requires Canada to pay compensation to every First Nations child and their caregivers covered by the Orders. For a couple with two children affected by the Orders, the order could be interpreted to mean that this family would receive a possible payment of $240,000.[73] Canada's rough estimates to date place the potential compensation required by the Compensation Ruling at approximately $5 - $6 billion dollars for removals alone assuming the ordered compensation is fully awarded by the end of 2020. Since the Tribunal has found discrimination is on-going, the amount owed by Canada will continue to increase daily unless the Orders are stayed.

65. Currently, the Orders require payment to First Nations children on-reserve for necessary and unnecessary removals, and payment to First Nations children on and off-reserve for "gaps, delays and denials of services that would have been available under Jordan's Principle".[74]

66. To be in compliance with the Orders without a stay, Canada is required to make certain of the payments to individuals on reserve. If those individuals deposit their awards into bank accounts on reserve, or retain the money on reserve in some other way, Canada is precluded from recovering this money under subsection 89(1) of the Indian Act. Subsection 89(1) states:

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[72] *Gateway City Church* at para 18, ABOA Tab 22.
[73] $40,000 for each child, and each parent receives $40,000 per child affected. Therefore, Child 1 would receive $40,000, Child 2 would receive $40,000, Parent 1 would receive $80,000 and Parent 2 would receive $80,000, for a total of $240,000.
[74] *See e.g. Compensation Ruling* at subheading proceeding para 250 and paras 250-257, ABOA Tab 21.

89(1) Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or a band.	**89 (1)** Sous réserve des autres dispositions de la présente loi, les biens d'un Indien ou d'une bande situés sur une réserve ne peuvent pas faire l'objet d'un privilège, d'un nantissement, d'une hypothèque, d'une opposition, d'une réquisition, d'une saisie ou d'une exécution en faveur ou à la demande d'une personne autre qu'un Indien ou une bande.

67. The jurisprudence is consistent in its interpretation that this subsection protects property situated on reserve, including bank accounts, from seizure by the Crown.[75] Thus, even if successful on the judicial review, Canada will be precluded from taking any steps to recover any amounts paid to individuals who are status Indians and who keep the awards on reserve.[76] This represents a loss of potentially billions of dollars of public funds if the Orders are not stayed.

68. Canada is similarly precluded from recovering this money from the complainants. The awards are paid to individuals, not parties represented by counsel. Opposing counsel cannot therefore assist in recovering any amounts paid to these individuals. Given the high quantum, the Respondents cannot provide an undertaking that Canada will be indemnified for any payments awarded during the pendency of the judicial review, which would normally be required to address this concern.[77]

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[75] See e.g. *McDiarmid Lumber Ltd. v. God's Lake First Nation*, 2006 SCC 58, ABOA Tab 29; *Joyes v. Louis Bull Tribe #439*, 2009 ABCA 49, ABOA Tab 28.

[76] *See e.g. Young v. Wolf Lake Band*, 164 FTR 123, 1999 CanLII 7563 (FC), ABOA Tab 42; *Tobique Indian Band v. Canada*, 2010 FC 67 at para 60, ABOA Tab 40; and *Canadian Imperial Bank v. E&S Liquidators Ltd.*, [1995] 1 CNLR 23, 1994 CanLII 2050 (BC SC), ABOA Tab 14.

[77] *Canada v. Gilbert*, 2007 FCA 254 at paras 3-4 [*Gilbert*], ABOA Tab 12, holding that an undertaking for the amount at issue provided an answer to the question of irreparable harm.

69. Courts have declined to issue stays where the money was recoverable.[78] Courts have also found that the public interest militates in favour of collecting debts owed to the Crown.[79] By statute, Canada will not be able to recover any funds paid that are kept as property on reserve, nor recover this money from the complainants, the harm to Canada and the public interest is irreparable if Canada complies with the Orders in full before the disposition of the judicial review.

70. The only way for Canada to avoid this harm is if it deliberately does not comply with the Orders, which is simply not an option. This Court has acknowledged that as a "practical matter", complainants cannot enforce payment from the Crown of a judgment.[80] This places Canada in an impossible position between two harms to the public interest during the judicial review process: it must comply with the Orders and disburse taxpayer dollars it may not be able to recover or be in non-compliance with the Orders to protect these funds. No matter the path taken, there is significant harm to the public interest.

D. <u>The balance of convenience lies in Canada's favour</u>

71. The balance of convenience inquiry involves a comparative assessment to determine which party to the motion would suffer the greatest harm or inconvenience if the stay is granted or refused. [81] Given the evidence of irreparable harm submitted by Canada, the Attorney General submits that the balance of convenience inquiry weighs heavily in favour of granting the stay.

72. While delays in obtaining compensation will not be welcomed by the claimants, they will not suffer irreparable harm if the Tribunal's Orders are stayed pending judicial review. They are also not parties to this motion. If the judicial review is dismissed, that

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[78] *Thwaites* at 5, ABOA Tab 3.
[79] *Gilbert* at para 6, ABOA Tab 12.
[80] *Hughes v Transport Canada*, 2019 FC 53 at paras 54, 59, ABOA Tab 25.
[81] *Khadr* at para 23, ABOA Tab 8, citing *Toth v Canada (Minister of Citizenship and Immigration)* (1988), 86 NR 302 (FCA), ABOA Tab 41, and *Canada (Minister of Citizenship and Immigration) v Fox*, 2009 FCA 346 at para 19, ABOA Tab 7.

judgment will be legally enforceable and binding on Canada unless a further appeal is sought to the Federal Court of Appeal, and the Federal Court of Appeal grants a stay.

73. If no such appeal is brought, Canada is bound to implement and execute the Tribunal's order. A stay pending judicial review would not affect the availability of the relief ordered by the Tribunal in the judgment on judicial review.

74. The Respondents therefore will not be prejudiced if the implementation of the Orders are delayed. The recipients of the compensation awards will similarly be compensated for the delay. The Tribunal's Orders – if upheld on judicial review – include the interest applicable to the awarded amount.[82] In addition, there is no evidence that Canada will not comply with the Tribunal's orders. Rather, the evidence filed in this record demonstrates Canada has complied with the Tribunal's orders to date and will continue to do so.[83] This means that First Nations children will continue to receive the services they need.

75. In contrast, the irreparable harm that would accrue to Canada if it complies with the Orders in the absence of the stay includes the potential for conflicting judgments, the devotion of resources to commence and implement a process that may be set aside, and the potential loss of billions of dollars overwhelmingly exceeds any harm to the Respondents if the stay is granted. The hardship caused to Canada and the public interest significantly outweighs any harm caused by a delay in implementing the Tribunal's Orders on compensation.[84] Finally, as noted above, the Respondents cannot provide an undertaking of several billion dollars, nor would Canada ask that they do so. The balance of convenience weighs in favour of Canada.[85]

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[82] *Compensation Ruling* at paras 275, 276, ABOA Tab 21.
[83] Perron Affidavit, paras 9-31, 47, AR Tab 3. *See also* Wilkinson Affidavit, April 2019, para 62, Mayo Affidavit, Exhibit F, AR Tab 2; Gideon Mental Health Affidavit, May 2018, para 19, Mayo Affidavit, Exhibit H, AR Tab 2.
[84] *Lazareva* at para 10, ABOA Tab 6.
[85] *Musqueam Indian Band v. Canada*, 2008 FCA 214 at paras 66-67 [*Musqueam Indian Band*], ABOA Tab 31.

PART IV – ORDER SOUGHT

76. The Attorney General respectfully requests this Court issue an order:

a. staying the execution and enforcement of the Compensation Order for the duration of the judicial review proceedings before this Honourable Court;

b. granting the Applicant the costs of this motion if opposed.

DATED AT OTTAWA, ONTARIO, this 4th day of October, 2019.

ATTORNEY GENERAL OF CANADA

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TABLE OF AUTHORITIES

Stoney Band v Band Council of the Stoney Band, [1996] FCJ No 948	16
Tessma v Canada (Minister of Citizenship and Immigration), [2003] FCJ No 600	16, 17 and 24
Tobique Indian Band v. Canada, 2010 FC 67	60
Toth v Canada (Minister of Citizenship and Immigration) (1988), 86 NR 302 (FCA)	
Young v. Wolf Lake Band, 1999 CanLII 7563 (FC)	
Statutes and Regulations	
Canadian Human Rights Act,	53
Federal Court Rules, SOR/98-106	Rule 3, 334, 373, 398
Indian Act, (R.S.C., 1985, c. I-5)	89(1)

Seamus O'Regan ✓
@SeamusORegan

The CHRT ruling touches on issues of great importance to our government. We agree that "what has been lost cannot be recovered".

We agree with many of the findings of the CHRT including the recognition of discrimination and mistreatment and the need for compensation.

10:24 AM · Oct 4, 2019 · Twitter for iPhone

33 Retweets **49** Likes

Seamus O'Regan ✓ @SeamusORegan · Oct 4, 2019
Replying to @SeamusORegan
Furthermore, we agree that compensation should be part of the healing process for those who have experienced significant wrongs – that's exactly why our Government moved forward on resolving similar issues including the Sixties Scoop and Day School settlements.
3 16 27

Seamus O'Regan ✓ @SeamusORegan · Oct 4, 2019
The recent CHRT ruling is significant and raises important questions and considerations. In order to give us both clarity on the ruling and time to have these conversations with our partners, which are not possible during an election, we are seeking a judicial review and stay.
10 22 38

Seamus O'Regan ✓ @SeamusORegan · Oct 4, 2019
We believe that collaboration, rather than litigation, is the best way to right historical wrongs and advance reconciliation with Indigenous peoples, and the Government has committed to engaging in discussions around compensation for the benefit of those individuals impacted.
25 15 23

Seamus O'Regan ✓ @SeamusORegan · Oct 4, 2019
And, if re-elected, we will continue the conversation on compensation in a fair and equitable way that focuses on bringing healing and recognition of the harms suffered for First Nation children.
46 8 29

Mummer's Tale @hunclelew · Oct 4, 2019
Replying to @SeamusORegan
The time for conversation is before the ruling. Complying comes after the ruling. See how easy that was.
6 18

Lindsey @YLbJo · Oct 4, 2019
Replying to @SeamusORegan
Get bent! Better still, get defeated by an NDP or Green candidate.
1 7

This is **Exhibit B** referred to in Affidavit of Erin Reimer sworn before me at Vancouver, BC, this 27th day of February 2020.

A Commissioner for taking affidavits for British Columbia

Government of Canada / Gouvernement du Canada

Home > Indigenous Services Canada

Joint Statement by the Minister of Indigenous Services and the Minister of Justice and Attorney General of Canada on compensation for First Nations children

From: Indigenous Services Canada

Statement

OTTAWA, ONTARIO (November 25, 2019) – The Minister of Indigenous Services, the Honourable Marc Miller, and the Minister of Justice and Attorney General of Canada, the Honourable David Lametti, issued the following statement today on compensation for First Nations children:

"As the new Minister of Indigenous Services and newly re-appointed Minister of Justice and Attorney General of Canada, we want to clearly state that Canada agrees it must fairly and equitably compensate First Nations children who have been negatively impacted by child and family policies. What we must do is seek an approach that will provide a fair and equitable resolution.

The Government of Canada is committed to seeking a comprehensive settlement on compensation that will ensure long-term benefits for individuals and families and enable community healing.

To that end, we will work with plaintiff's counsel with the goal of moving

forward with certification of the Xavier Moushoom and Jeremy Meawasige v. The Attorney General of Canada class action. This case seeks compensation for First Nations children who suffered as a result of underfunding of child and family services, and as a result of awaiting services under Jordan's Principle. The class action model is designed to give individuals the chance to have their interests represented, to address the interests of all impacted individuals and to allow parties to arrive at an appropriate resolution of past harms.

Through the CHRT, the Government of Canada, the First Nations Caring Society, and the Assembly of First Nations have achieved progress. It is now time to include all the parties and affected individuals in the discussions to obtain a global settlement that is fair and comprehensive. We also believe the Canadian Human Rights Tribunal (CHRT) compensation decision does not properly address all issues around appropriate compensation. For instance, it only includes individuals impacted from 2006 onwards, while the proposed Moushoom class action goes back to 1991.

As such, Canada intends to pursue a judicial review of this CHRT ruling.

As a government, we have demonstrated our commitment to addressing long-standing child and family services needs of First Nations children and to working with partners on these matters. Canada continues to fully implement all other orders from the CHRT. We have reformed our funding approaches in First Nations child and family services; we introduced, passed and will implement a law to change how Indigenous child and family services are operated across the country and have fulfilled over 478,000 requests for necessary products, services and supports under Jordan's Principle. This work is ongoing as we develop and implement funding programs that will ensure the needs and best interests of First Nations children are met.

Our goal is to resolve as many important issues, like compensation, through discussions and collaboration with partners. Progress has been made on that basis and we will personally engage on this extremely important issue to ensure this continues.

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Date modified:
2019-11-25

CBC

This is **Exhibit D** referred to in Affidavit of Erin Reimer sworn before me at Vancouver, BC, this 27th day of February 2020.

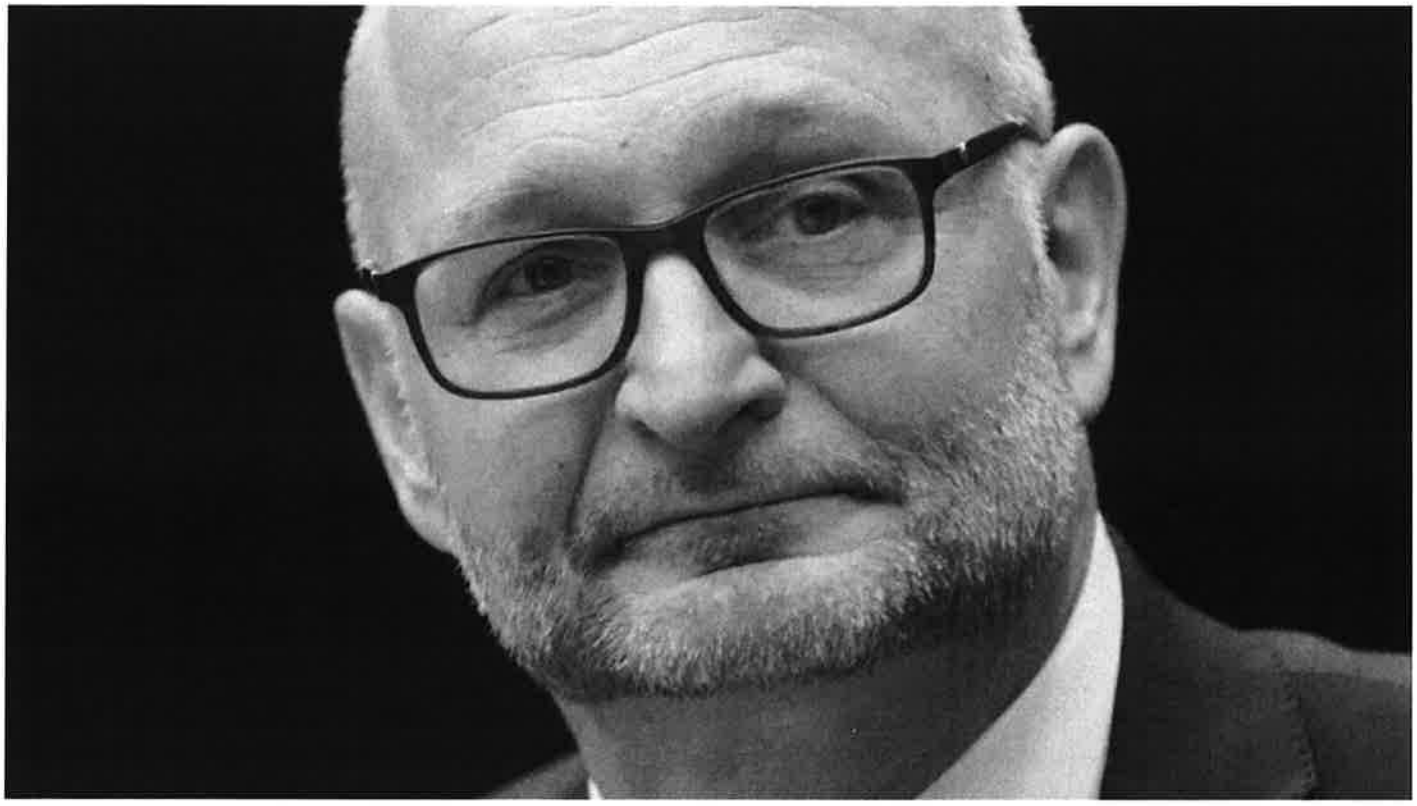
A Commissioner for taking affidavits for British Columbia

Indigenous

Ottawa plans to settle First Nations child welfare class-action lawsuit as it battles tribunal order

Federal ministers announce move to settle as courtroom arguments begin over tribunal compensation order

Jorge Barrera · CBC News · Posted: Nov 25, 2019 12:59 PM ET | Last Updated: November 25, 2019



Justice Minister David Lametti announced Monday the government would work with the plaintiffs of a class action over failures in the First Nations on-reserve child welfare system. (Adrian Wyld/The Canadian Press)

The Trudeau government announced Monday it's planning to settle a class-action lawsuit filed on behalf of First Nations children affected by the on-reserve child welfare system, while its lawyers launched arguments in a courtroom aimed at torpedoing a human rights tribunal order that it pay compensation to many of the same affected children.

Justice Minister David Lametti and Indigenous Services Minister Marc Miller issued a joint statement that the government would work with plaintiffs' counsel with the goal of moving

forward with certification of a class action filed in March. It seeks $6 billion in compensation for First Nations children impacted by the on-reserve child welfare system and who were denied health services.

"The Government of Canada is committed to seeking a comprehensive settlement on compensation that will ensure long-term benefits for individuals and families and enable community healing," the statement said.

"The class action model is designed to give individuals the chance to have their interests represented, to address the interests of all impacted individuals and to allow parties to arrive at an appropriate resolution of past harms."

- **Ottawa in court this week over First Nations child-welfare compensation order**
- **Ottawa in talks to settle First Nations child welfare class action lawsuit**

Under Jordan's Principle, the needs of a First Nations child requiring a government service take precedence over jurisdictional issues over who should pay for it.

David Sterns, a partner with Toronto-based Sotos LLP, one of three law firms bringing forward the lawsuit, said he was notified Monday morning of the federal government's intention to proceed with certification.

The three law firms brought the action on behalf of Xavier Mushroom and Jeremy Meawasige — the representative plaintiffs in the case.

"This is a positive development. Agreement to certification means we have the forum to pursue a global resolution that will be subject to court approval," said Sterns.

"We view it as a positive. So far, these are just words. They need to match their words with action."

Sterns said any settlement would eventually involve the parties to the human rights tribunal case, which include the First Nations Child and Family Caring Society and the Assembly of First Nations.

Indigenous Services Minister Marc Miller said the Trudeau government has a solid track record dealing with historical wrongs inflicted on Indigenous children by Ottawa's historic policies through class-action settlements. Miller pointed to recent settlements around the Sixties Scoop and Indian day schools.

We have shown good faith in engaging with families, with victims, in ensuring this compensation is properly and fairly addressed," said Miller.

"We are committed to compensation; we do not deny the discrimination."

Watch Marc Miller on Power and Politics:

Minister of Indigenous Services Marc Miller on why his government is challenging a human rights tribunal order that the federal government compensate First Nations children affected by the on-reserve welfare system. 8:26

Fighting tribunal order

The two ministers issued the statement about the class-action suit as federal government lawyer Robert Frater told Federal Court Justice Paul Favel the Sept. 6 Canadian Human Rights Tribunal order — that Ottawa provide $40,000 in compensation to each First Nations child impacted by the child-welfare system or denied health services — was an overreach.

The compensation order, which also includes payments of at least $20,000 to some parents and grandparents, followed a 2016 ruling that found Ottawa discriminated against First Nations children by underfunding child-welfare services and by not following Jordan's Principle.

Frater was arguing for a motion seeking a stay — a pause — of the tribunal compensation order until the Federal Court decided on a judicial review filed in October by Ottawa.

"The errors of this [tribunal compensation] judgment run wide and deep," said Frater, in his arguments.

"Canada is committed to remedying the injustices of the past, but it has to be done in a fair and equitable way."

Frater argued that the case before the tribunal, originally filed in 2007, was about systemic discrimination, which required a systemic fix that the federal government had already begun. He also said the compensation order wandered outside of the tribunal's legislative parameters into the purview of class-action law.

He said the compensation order was fundamentally unfair because it treated all cases the same, regardless of individual circumstance.

"There ought to be some sort of recognition of individual experience," Frater said.

Ignoring the continuing tragedy

Barb McIsaac, a lawyer for the First Nations Child and Family Caring Society, told the court that while the government says it favours compensation, its actions haven't matched its words.

"My friend has stated over and over again, as have various politicians, that Canada wants to compensate the children, but it hasn't done anything yet."

The Caring Society, which was the lead on the human rights complaint, argued that the court should put a freeze on the judicial review until the tribunal decides on the process to distribute the compensation.

The tribunal set Dec. 10 as the deadline for all parties to submit proposals on the mechanism for distributing the compensation.

"The court can only fully understand and rule on the reasonableness of the compensation once all aspects of the compensation decisions have been determined by the tribunal," McIsaac said.

"The arguments of the attorney general are not in the best interest of the children, but rather in this argument that we have to have perfection. If we wait for perfection, we'll be here again and again and again, and we'll never have a solution."

Cindy Blackstock, left, leads the First Nations Child and Family Caring Society, and Perry Bellegarde is the national chief for the Assembly of First Nations. The Caring Society and the AFN launched a human rights complaint over on-reserve child welfare services in 2007. (Sean Kilpatrick/The Canadian Press)

Cindy Blackstock, who heads the Caring Society, said the government is ignoring the continuing tragedy inflicted on First Nations children by the systemic discrimination exposed by the human rights tribunal.

"So this waiting around might make sense for them bureaucratically or even politically," Blackstock said.

"But for these children, they will never get their childhoods back, and in some cases they'll never get their lives back, and in some cases they'll never get their families back, and that is what Canada isn't paying attention to."

NDP MP Charlie Angus, who attended the Monday hearing, said the Trudeau government needs to drop its challenge of the tribunal's compensation order.

"The damage that this system has done is incalculable and yet the Government of Canada is here with all their lawyers, with all their power, to fight yet once again a basic finding that they've been discriminating against children," Angus said.

Class action move 'political obfuscation'

Julian Falconer, the lawyer acting on behalf of Nishnawbe Aski Nation, which intervened in the case, said the government's argument that the tribunal ruling covers too few people rings hollow.

"There is a simple answer to that — accept the order and then compensate others," said Falconer, who was acting on behalf of an organization that represents 49 northern Ontario First Nations — some of the poorest in the country.

"There is nothing stopping Canada from adding to the compensation."

Blackstock said the move by the federal government to announce it was proceeding with the class-action lawsuit rang "of political obfuscation and putting this downstream." Blackstock said the class action actually leaves people out because it doesn't include the parents or grandparents of apprehended children in its statement of claim.

"It doesn't deal with the pain and suffering that their families went through," said Blackstock.

"It's the same old story where they're saying they'll talk about things. There's no commitment to change children's lives."

The hearing continues Tuesday.

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"The Government of Canada is committed to seeking a comprehensive settlement on compensation that will ensure long-term benefits for individuals and families and enable community healing."

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8:37 AM · Nov 25, 2019 · Twitter Web App

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This is **Exhibit E** referred to in Affidavit of Erin Reimer sworn before me at Vancouver, BC, this 27th day of February 2020.

A Commissioner for taking affidavits for British Columbia

Privileged Pete @autumnsdad03ho1 · Nov 25, 2019
Replying to @Carolyn_Bennett @MarcMillerVM and @DavidLametti
I'll fix your statement for you:
"The government of Canada has money for pipelines but not for Indigenous children. A settlement for Indigenous children will not aid us in making inroads in Sask or AB. We would rather dole out corporate welfare."
Easier to tell the truth.

8 19

Kyle Mellish @Kyle_Mellish · Nov 25, 2019
Replying to @Carolyn_Bennett @MarcMillerVM and @DavidLametti
When you chose to become a politician, did you plan to fight against an equitable future for oppressed children or is this just a stepping stone for you?

13

Peter Bromley: Clearlight Evolution-Applied wisdom · Nov 25, 2019
Replying to @Carolyn_Bennett @MarcMillerVM and @DavidLametti
I am confused, Dr. Bennett. The actions and words seem to vary-wildly.

Why?

7

dats"overwatch"cal @calwhitejr · Nov 25, 2019
Replying to @Carolyn_Bennett @MarcMillerVM and @DavidLametti
The Government of Canada has been "Seeking" a settlement for 13 years now

8

Lorinda Campbell @megawedgy · Nov 25, 2019
Replying to @Carolyn_Bennett @MarcMillerVM and @DavidLametti
The govt of Canada should be committed that's for sure.

1 2

#ThirdRowWampumCanadian Sister @Rhian... · Nov 25, 2019
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Indigenous

Talks to start soon on settling First Nations child welfare compensation, minister tells AFN

Marc Miller says he is appointing a point person to co-ordinate with First Nations parties

Jorge Barrera · CBC News · Posted: Dec 03, 2019 2:44 PM ET | Last Updated: December 3, 2019

Indigenous Services Minister Marc Miller speaks at the AFN Special Chiefs Assembly in Ottawa on Tuesday. He told the assembly that Ottawa is moving forward to settle compensation for First Nations children and families harmed by the on-reserve child welfare system. (Adrian Wyld/Canadian Press)

Indigenous Services Minister Marc Miller said Tuesday the government is laying the groundwork for talks on a compensation settlement package for First Nation children and their families harmed by the on-reserve child welfare system.

Miller, speaking to the Assembly of First Nations' December special assembly on Tuesday, told chiefs he would be naming a point person to co-ordinate with interested parties on the First Nations side to start discussions aimed at reaching a settlement on child welfare.

"We are committed to working constructively, quickly with the parties to reach a comprehensive settlement that will benefit First Nations, children and families," said Miller.

Miller said the government would be moving forward with certification of a $6 billion lawsuit filed in March on behalf of First Nations children harmed by the on-reserve child welfare system who were denied health services.

"We share the same goal — a comprehensive, fair and equitable resolution."

- **First Nations need billions in funding to take over child welfare services, says AFN regional chief**
- **Federal Court denies Ottawa's attempt to pause First Nations child welfare compensation order**

Miller directly addressed the criticism coming from First Nations leaders over the federal government's decision to challenge the Canadian Human Rights Tribunal order for compensation. That order directed Ottawa to give First Nations individuals apprehended through the child welfare system on reserves and in Yukon $40,000 each in compensation.

"It's a difficult, emotional and painful topic, particularly because we are dealing with children," said Miller.

"I want to reiterate — we never questioned whether they are due compensation. They are. There is no question."

Indigenous Services minister says the government has started to lay the groundwork for compensating First Nations children harmed by the on-reserve child welfare system. 2:02

Speaking to reporters following his speech, Miller said that the government wanted to settle the compensation issue outside of the human rights tribunal framework and saw the class action lawsuit as the vehicle to deal with it.

Still, the federal government is proceeding with a judicial review before the Federal Court aimed at quashing the tribunal compensation order. Ottawa suffered a setback last Friday when the court denied a request from the federal government to put a hold on the tribunal order. A hearing date for the judicial review has not yet been set.

The ruling effectively forced Ottawa to start talks with the AFN and the Caring Society — which filed the initial human rights complaint in 2007 — to develop a mechanism for distributing compensation under the tribunal order. The federal government initially refused to engage in discussions.

Miller said officials would begin talks with the AFN and the Caring Society on developing the compensation mechanism by Jan. 29, 2020 — a new deadline which replaces the initial Dec. 10 due date set by the tribunal.

Miller said those talks will happen simultaneously with discussions between the three legal teams behind the class action lawsuit, with the aim of eventually bringing all sides together around one table.

"We will be sitting down with parties and seeing where there is a meeting of minds and move forward on a compensation package, a compensation model that is fair and equitable," said Miller.

AFN National Chief Perry Bellegarde said he doesn't favour one avenue or another, as long as the outcome is in the best interests of children and families.

"I would recommend we get down to the table as soon as possible with [Indigenous Services Canada] and the Caring Society and the AFN, and get our teams working together and let's come up with a plan," said Bellegarde.

Cindy Blackstock, who heads the Caring Society, said it's possible to strike a settlement deal and still comply with the tribunal compensation order.

She said the tribunal could agree to a consent order — submitted by all parties — that would allow for the type of comprehensive settlement package Ottawa claims it wants. For that to happen, the proposal would have to be consistent with the tribunal's compensation ruling, she said.

"That is something we would be open to if they would be willing to facilitate these payments as soon as possible for all the recipients who were awarded ... compensation," said Blackstock.

Blackstock said this was pitched to Ottawa two years ago, but the federal government turned it down.

"The opportunity is right now. They can pay the full $40,000 to these victims and then work out something else later," she said.

"We are not willing to waive children's rights away."

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HOUSE OF COMMONS
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This is **Exhibit G** referred to in Affidavit of Erin Reimer sworn before me at Vancouver, BC, this 27th day of February 2020.

A Commissioner for taking affidavits for British Columbia

43rd PARLIAMENT, 1st SESSION

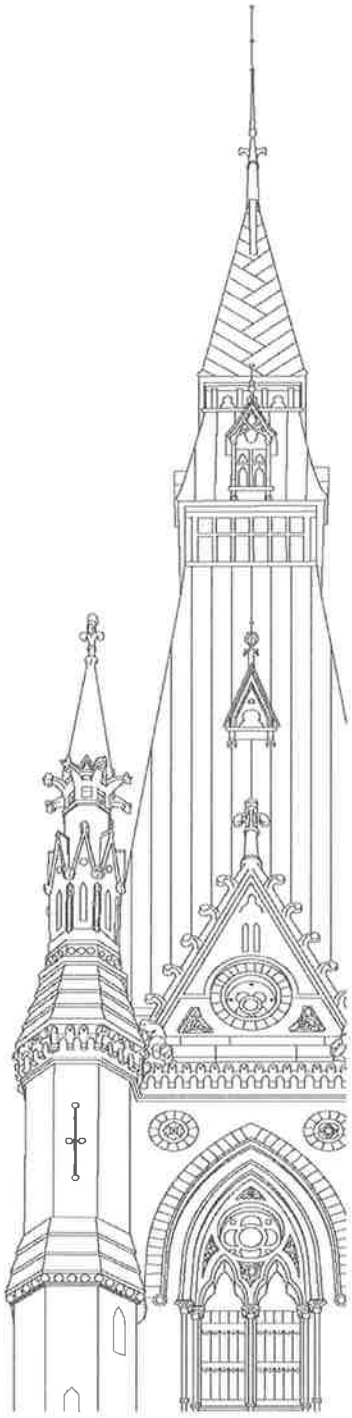
House of Commons Debates

Official Report

(Hansard)

VOLUME 149 NUMBER 003

Monday, December 9, 2019



Speaker: The Honourable Anthony Rota

I would like to hear the government confirm that our dairy farmers will in fact receive compensation for the breaches in supply management, as the Liberals have often announced. I cannot find the exact line where it is indicated in the supplementary estimates. I would like someone to show me where to find the amount announced or the vote under which it is listed.

Lastly, I would also like to be assured that egg and poultry producers will also be compensated, and I would like an idea as to when that will happen.

• (1905)

Hon. Jean-Yves Duclos: Mr. Chair, the good news is that payments to farmers are already under way. Some farmers have already received theirs.

Recognizing their essential work is crucial, not only in macroeconomic terms, but also at the local level. Many of our rural communities need farmers to continue to survive and thrive. The good news is that these investments for our farmers are under way.

Mr. Gabriel Ste-Marie: Mr. Chair, I misunderstood. I thought my time had expired.

If the officials could tell me which line of the document indicates where the money came from or what mechanism was used to get the funds to compensate the farmers, that would be much appreciated.

My last question has to do with immigration. The budget for the Immigration and Refugee Board has nearly doubled over the past two years, but wait times are not going down.

What is behind this inefficiency?

Hon. Marc Garneau: Mr. Chair, the budgets have indeed increased, and we are able to more quickly process claims filed by immigrants and asylum seekers.

Our goal is to be able to process 50,000 cases a year at the Immigration and Refugee Board. That requires a lot of resources. We are putting them in place to ensure that we can act more quickly, since the number of asylum seekers and immigrants keeps increasing in Canada.

[*English*]

Mr. Charlie Angus (Timmins—James Bay, NDP): Mr. Chair, it is always a great honour to rise in this place. I am very honoured to have the opportunity to talk with my friend, the Minister of Crown-Indigenous Relations. I will keep my remarks fairly short so we can make the most of this.

The Prime Minister said his most important relationship is with first nations people. When I talk to first nations families, they tell me their most important relationship is with their children. Tonight we are talking about the policies of the government that have systemically discriminated without caution, and been found to be reckless discrimination against children who have died.

These have consequences. I think of Azraya Ackabee-Kokopenace, from Grassy Narrows; Amy Owen, Chantell Fox, Jolynn Winter, Jenera Roundsky and Kanina Sue Turtle from Wapekeka; Tammy Keeash, who was found in a brutal condition in the McIntyre River; and Courtney Scott from Fort Albany First Nation, who died a horrific death.

When I read the latest ruling against the government, they said no amount of compensation could ever recover what these children have lost. This case of racial discrimination is one of the worst and it warrants maximum awards.

I have named a few of the children that I am aware of and whose families I have spoken to. APTN says that while the government was fighting the Human Rights Tribunal, 103 children died in care in Ontario.

Could the minister tell us how many children died in care across this country while her government fought the Human Rights Tribunal?

Hon. Carolyn Bennett (Minister of Crown-Indigenous Relations, Lib.): Mr. Chair, I thank the member for his ongoing advocacy.

Any child who dies in care is one child too many. This has been a national tragedy and is a key part of missing and murdered indigenous women and girls. It is a key part of how failed government policies for generations have resulted in this terrible tragedy.

Our government has decided, with the families, to do everything we can to not separate families and not have children in care. Bill C-92 will mean that communities will have the resources necessary to keep those families together, to get that child to the healthy auntie or healthy grandparents and to bring their children home.

The children in care who are in unsafe circumstances in the cities of this country are leading to this tragedy. I also want to assure the member that we have to compensate the people who were harmed by this failed policy.

• (1910)

Mr. Charlie Angus: Mr. Chair, the question is this: How many children died while the government fought the Human Rights Tribunal?

Hon. Carolyn Bennett: Mr. Chair, the member opposite knows very well that the numbers we have on so many issues, including missing and murdered indigenous women and girls, are not good numbers. Whatever number he would give me, it is probably way higher, and it has to stop.

Mr. Charlie Angus: Mr. Chair, I appreciate that from the minister, but the legal brief of the federal government says the opposite. It says in paragraph 31 in the latest filing that "There was insufficient evidence before the Tribunal to demonstrate that any particular children were improperly removed from their home."

Does the minister agree with her government's lawyers?

Hon. Carolyn Bennett: Mr. Chair, we know from the apprehension of children, whether it is through all of the class actions that we have settled on the sixties scoop and on all of these things, that children are safest when they are with their family or extended family or in their communities. I do believe that we need to find alternate ways to keep these children safe.

Mr. Charlie Angus: Mr. Chair, the minister's government has gone to Federal Court to quash a ruling that has found the government guilty of discrimination, and the government said that no evidence was produced that there was harm to children. Is that the government's position, yes or no?

Hon. Carolyn Bennett: Mr. Chair, I think we all know that children apprehended from their families do not do well. Children aging out of care do not do well. We need to keep these families together, which has been the focus as opposed to the money going to lawyers to apprehend children, agencies and non-indigenous foster families. We need these children supported at home in their communities.

Mr. Charlie Angus: Mr. Chair, how much money has the government spent on its lawyers to fight the Human Rights Tribunal?

Hon. Carolyn Bennett: Mr. Chair, I think the most important number would be that from $600 million that used to go to children and families, it is now $1.6 billion going to children. We have no intention of fighting children in court. We want to get to the table and get them what they deserve.

Mr. Charlie Angus: Mr. Chair, I believe the minister in the House has to tell the truth. Therefore, either she is not telling the truth or her lawyers in Federal Court are not, because the lawyers in Federal Court have taken the position that the Liberal government is going to quash a finding of systemic discrimination, because they said that there is no evidence with regard to adverse outcomes that flowed from being denied services.

The minister has told us again and again that she knows that services denied to children have hurt them, but her lawyers are saying the opposite. Who is not telling the truth here?

Hon. Carolyn Bennett: Mr. Chair, the approach of our government is to make sure that all children who were harmed by these terrible colonial policies will be compensated.

However, we have also learned from the Indian residential schools and the sixties scoop that the children who had greater harm or who were in care longer want to be able to tell their stories, and like the class action on 1991 forward, we want to get to the table and get them what they deserve.

Mr. Charlie Angus: Mr. Chair, I want to let the people know that what the minister's lawyers are saying is completely opposite to what she is telling the House. She is obliged to tell the truth in the House. The lawyers are saying that these children, who are represented by the AFN, Nishnawbe Aski Nation and First Nations Child & Family Caring Society, do not warrant compensation because they have not been tested by the government to the "precise nature and extent of harm suffered by each individual".

What is the minister going to do, put four-year-old children before her lawyers like the government did to the St. Anne's Residential School survivors? How is the government going to test these children for the precise harms so it does not have to pay?

Hon. Carolyn Bennett: Mr. Chair, I think the member opposite understands that the class action now being certified on the 1991 post-sixties scoop up to the present day tends to be the way we sort these things out with respect to what the appropriate care is for the amount of time people were harmed and the degree of the harm. It is very important that families have a voice, that children have a voice and that there is some assessment of fair and equitable treatment and compensation.

• (1915)

Mr. Charlie Angus: Mr. Chair, I am quite shocked because her lawyers are in court saying that there is no evidence any children were improperly taken. How can she stand and misrepresent her lawyers? Then the lawyers said that there was no reason for compensation. They have said that in the hearings.

Now the government wants to quash a legal finding that the tribunal spent 12 years adjudicating, and the minister's lawyers say there was no evidence to prove what was found, which they said was reckless and willful discrimination. How can minister tell us that it is better to have that ruling thrown out so the government can fight children in court and make each of them testify? That is what the government wants to do. How can she justify that?

Hon. Carolyn Bennett: Mr. Chair, with respect to the CHRT and the good work of Dr. Blackstock, I believe many good things have come out of this. With Jordan's principle, thousands of cases are settled all the time, when zero cases had been settled in the past. This is very important.

However, in the case of appropriate compensation, the appropriate place for that is with the class action, where there are representatives of the victims and the survivors who can determine what is fair. I do not think there is a way for fair and equitable compensation to be done without the voices of the people who were harmed.

Mr. Charlie Angus: Mr. Chair, I am really glad she raised Jordan's principle, which brings us back maybe four non-compliance orders ago. For the minister's lawyers to say that there is no proof that any child was harmed is a falsehood, because the ruling on Jordan's principle was about the deaths of Jolynn Winter and Chantel Fox. Her government decided that it was not going to bother to fund those children and at the Human Rights Tribunal was forced to implement Jordan's principle. Every single time the minister's government said that it was in compliance and children died because of that.

The government says good things have been done, but let us now throw out the Human Rights Tribunal ruling. How can the minister claim that the government went along with Jordan's principle when the filings show that it fought it every step of the way and children died?

Hon. Carolyn Bennett: Mr. Chair, the member opposite knows that we worked very hard to put in place Jordan's principle. At the beginning, the motion that we passed in the House was only for children on reserve with multiple disabilities and where there was a squabble between the federal and the provincial government. We are now getting the kind of care that the kids need on and off reserve, particularly when there is only one disability such as a mental health or addiction problem, but also there does not have to be a squabble. We have moved way beyond what was passed in the House and children are better for it and—

The Chair: Order, please. The hon. member for Timmins—James Bay.

Mr. Charlie Angus: Mr. Chair, I agree with the minister that children are certainly better for it. However, children are better for it because Cindy Blackstock, the AFN and Nishnawbe Aski Nation fought the government at the Human Rights Tribunal, while it was refusing and children died. It has met Jordan's principle because it has been forced to meet it.

I want to refer to the latest human rights ruling, which says that there is sufficient evidence that Canada was aware of the discriminatory practices of its child welfare program and that it did this devoid of caution and without regard for the consequences on children and their families. That is the finding after 12 years, and the government spent $3 million trying to block them every step of the way.

How can we say to crush that ruling, throw that finding out, fight it out in court and trust that the government actually cares about children? The minister's lawyers say that children have not been harmed and to prove that they have, those individual children of four and five years old should be brought in and tested. The tribunal found that the government acted with devoid of caution over the lives of children. That is the finding of the Human Rights Tribunal. Is the Human Rights Tribunal lying or is it the government, which has misled the people of Canada on this?

• (1920)

Hon. Carolyn Bennett: Mr. Chair, I think the hon. member knows that our government has a very good track record on settling the childhood litigation, such as Anderson, the sixties scoop, day schools. We are doing what is right.

With the compliance orders, as I explained to the member, from what was Jordan's principle and on multiple disabilities, only on-reserve where there is a squabble, we have gone way beyond what that original vote in the House of Commons was, for which I voted.

Therefore, it is hugely important that we go forward, understanding we have to do the best possible thing for these children. The lawyers have agreed that we want to compensate and the Prime Minister wants to compensate, but we have to do it in a fair and equitable way that also covers the children from 1991 to this day.

Mr. Charlie Angus: The Liberals want to quash the ruling, Mr. Chair. That is what the government is in Federal Court to say. If we look at the Human Rights Tribunal ruling, there is point after point about how to make compensation work, and the government says that it will not compensate; it will litigate. That is the government's position.

I am astounded that the minister is in here telling us that the government cares about the children when the finding says there is willful and reckless discrimination against children who died. The children who died had to be named. When it said there was no evidence unless we brought individual children's names forward, individual children's names were brought forward. That was the policy. Those children died, and children are continuing to die. They will continue to die as long as the government refuses to do the basic funding.

The minister tells us the discrimination has ended. That is not what the Human Rights Tribunal found and that is not what any first nation family in the country will believe.

Hon. Carolyn Bennett: Mr. Chair, the first nations, Inuit and Métis across the country are very grateful for Bill C-92. With respect to asserting jurisdiction, we have to allow that the people can assert the jurisdiction to look after its own families with the adequate funding to do that. We know that in terms of how we determine fair and equitable funding, our government did not think we would be able to get that done throughout an election and by this week. Therefore, it is really important. The January 29 date is coming up, but I am hearing from families. They want this to be fair and they feel there has to be a negotiation at a table to actually determine what is fair.

[*Translation*]

Hon. Marc Garneau (Minister of Transport, Lib.): Mr. Chair, I am pleased to rise in committee of the whole to discuss the supplementary estimates (A). I will speak to the spending connected to my files.

[*English*]

Canadians need a transportation system that allows them to safely and efficiently reach their destinations and receive goods for their daily lives. Businesses and customers expect a transportation system they can trust to deliver resources and products to market and for the jobs on which they depend.

[*Translation*]

The transport file includes other significant challenges, such as air and ocean pollution, public safety and security, and economic opportunities for all Canadians. In all, transport activities account for around 10% of Canada's GDP. The federal transport file includes Transport Canada and various Crown corporations, agencies and administrative tribunals, all of which do important work to serve Canadians. These important federal organizations strive to keep making Canada's transportation network safer, greener, more secure and more efficient.

HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

This is **Exhibit H** referred to in Affidavit of Erin Reimer sworn before me at Vancouver, BC, this 27th day of February 2020.

A Commissioner for taking affidavits for British Columbia

43rd PARLIAMENT, 1st SESSION

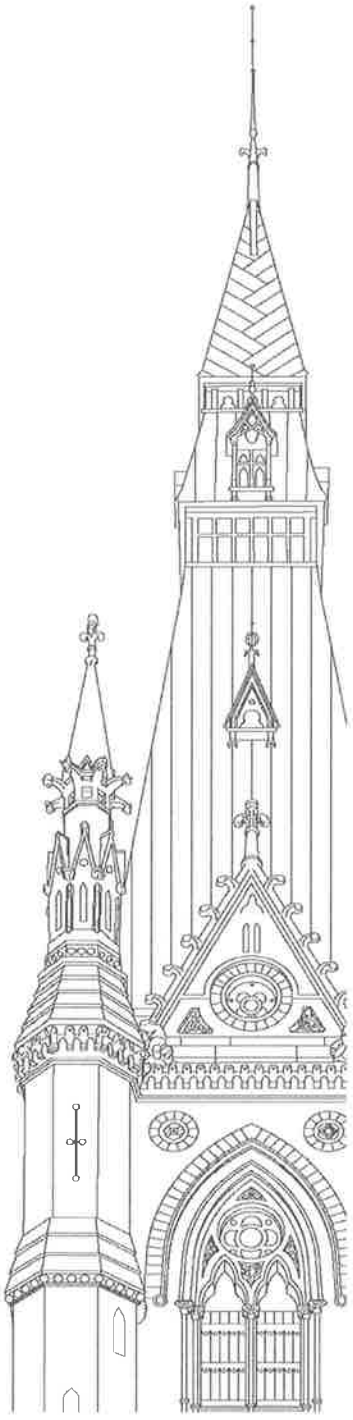
House of Commons Debates

Official Report

(Hansard)

VOLUME 149 NUMBER 005

Wednesday, December 11, 2019



Speaker: The Honourable Anthony Rota

Some hon. members: Oh, oh!

The Speaker: Order. The hon. Prime Minister can continue, please.

Right Hon. Justin Trudeau: We recognize that natural gas is an important element as we move forward to a lower-carbon economy. That is why we are pleased to be investing in LNG projects and partnering to see more LNG projects right across the country. We understand this is an important step toward that net zero we are going to hit in 2050.

● (1450)

Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC): Mr. Speaker, the largest private sector investment in Canadian history is now at risk due to the actions of the Liberal government. Now the disparaging comments by the environment minister toward liquefied natural gas have put the future in doubt, as we now see Chevron pulling out of the project in Kitimat.

We need a Canadian government that stands up for Canadian jobs. Changes are required to Bill C-69 to ensure that pipelines and facilities can be built.

Does the Prime Minister agree with his senior B.C. minister that belittling Canadian energy is the right thing to do?

Right Hon. Justin Trudeau (Prime Minister, Lib.): Mr. Speaker, Canada is well positioned to become a major player in the global energy industry. We have proposed projects both in the west and in the east and have strong measures in place to attract investment while also reducing emissions.

Thousands of jobs have been created with the single-largest private sector investment in Canadian history—

Some hon. members: Oh, oh!

The Speaker: I have to interrupt the right hon. Prime Minister for a moment. I am trying to hear the answer and I am having a hard time. I want to make sure everyone can hear.

The right hon. Prime Minister.

Right Hon. Justin Trudeau: Mr. Speaker, we will continue to take action to ensure that Canada is on track to become the world's cleanest producer of LNG and reach global markets.

* * *

INDIGENOUS AFFAIRS

Ms. Leah Gazan (Winnipeg Centre, NDP): Mr. Speaker, between the 1950s and 1980s an estimated 20,000 indigenous children were stolen from their families and communities during the sixties scoop. There are reports of sexual, physical, emotional, cultural and spiritual abuse at the hands of adoptive families. A settlement was awarded, but the application process is riddled with issues and some survivors still have not been informed about what they are owed. Victims deserve justice.

Without stalling payment for those who have applied, will the Prime Minister extend the application date, yes or no?

Right Hon. Justin Trudeau (Prime Minister, Lib.): Mr. Speaker, the sixties scoop represents a dark and painful chapter in our history. The court-approved settlement agreement process has begun to compensate survivors. The settlement includes a $50-million foundation for healing, commemoration, education, language and culture.

We know there are other claims left unresolved, so we are working to address harm suffered by other indigenous children as a result of the sixties scoop.

Mr. Charlie Angus (Timmins—James Bay, NDP): Mr. Speaker, for seven months the body of 16-year-old Devon Freeman hung on a tree 35 metres from the group home where he disappeared and nobody found him. What a sad symbol that is for this nation.

First nation families are losing their children all the time to what the Human Rights Tribunal has ruled the wilful and reckless discrimination in systemic underfunding by this government.

I ask the Prime Minister to stop with the honey-dripped words and call off the lawyers. Will he commit to meet with Cindy Blackstock to ensure that the Human Rights Tribunal ruling is respected so that no more children die on his watch or our watch?

Right Hon. Justin Trudeau (Prime Minister, Lib.): Mr. Speaker, we strongly agree that we must compensate indigenous children harmed by past government policies.

We want to ensure that indigenous people harmed under the discriminatory child welfare system are compensated in a way that is both fair and timely. We want to work with all parties to address this issue. We have demonstrated our commitment to addressing the long-standing child and family service needs of first nations, Inuit and Métis children.

* * *

INTERNATIONAL TRADE

Mr. Adam van Koeverden (Milton, Lib.): Mr. Speaker, as this is the first time that I rise in the House, I would like to take this occasion to congratulate you on both of your elections and thank my neighbours in Milton for the opportunity to serve in this room.

Canadians understand the importance of having privileged access to our neighbouring markets. Two million Canadian jobs depend on our trading relationship with our largest partner, the United States.

Could the Prime Minister update the House on how the most recent changes to the new NAFTA will benefit and help Canadian workers and families, like my neighbours in Milton?

Court File No. T-402-19

FEDERAL COURT

PROPOSED CLASS PROCEEDING

B E T W E E N:

XAVIER MOUSHOOM and JEREMY MEAWASIGE (BY HIS LITIGATION GUARDIAN, MAURINA BEADLE)

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF JONATHAN SCHACHTER
(Sworn February 27, 2020)

I, Jonathan Schachter, of the City of Toronto, in the Province of Ontario, SWEAR THAT:

1. I am an associate lawyer at Sotos LLP. I am counsel on this file and have worked on the preparation of the plaintiffs' Litigation Plan. As such I have knowledge of the matters that I depose to in this affidavit.

2. Attached as **Exhibit A** is a copy of the Litigation Plan dated July 9, 2019, which Class Counsel have developed to advance the within proceeding, previously produced and attached as Exhibit C to the Affidavit of Maurina Beadle, sworn July 9, 2019.

3. I make this affidavit in support of a motion for an Order that this lawsuit be certified as a class proceeding and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on February 27, 2020

Commissioner for Taking Affidavits
(or as the case may be)

Mohsen Seddigh

Jonathan Schachter

This is Exhibit A to the Affidavit of Jonathan Schachter sworn before me this 27th day of February, 2020.

A Commissioner, etc.

Court File No. T-402-19

FEDERAL COURT

PROPOSED CLASS PROCEEDING

B E T W E E N:

XAVIER MOUSHOOM and JEREMY MEAWASIGE (by his litigation guardian, Maurina Beadle)

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

LITIGATION PLAN

July 9, 2019

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Lawyers for the Plaintiffs

Table of Contents

I. DEFINITIONS

1. The definitions below will be used throughout this Litigation Plan. Any term defined in the Amended Statement of Claim that is also used in this Litigation Plan has the same meaning as that included in the Amended 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 On-Reserve Class Member(s)** and/or **Approved Jordan's Principle 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 On-Reserve Class Member (regardless of whether the Approved On-Reserve Class Member is alive) and whose approval as a Family Class Member has not been successfully challenged;

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

Approved On-Reserve Class Member(s) means an On-Reserve Class Member who has been approved by the **Class Action Administrator** as meeting the criteria for being an On-Reserve Class Member and whose approval as an On-Reserve 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 On-Reserve Class Members and/or the Jordan's Principle 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 and Miller Titerle + Company as Solicitors of Record;

Class Member(s) means an individual who falls within the definition of the On-Reserve Class and/or the Jordan's Principle Class and/or the Family Class, as pleaded in the Amended 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 Amended Statement of Claim or as otherwise defined by the Court, including: (a) a list of all known Class Members' names and last known addresses using the information in the Crown's possession or under its control[1] as well as all individuals who received a product or service pursuant to Jordan's Principle following the CHRT Decision (estimated by the Crown in its representations to the CHRT to be individuals having received over 165,000 services under Jordan's Principle as of October 2018).

Individual Damage Assessment Form means the form set out in Schedule D to this Litigation Plan, as may be subsequently amended and as approved by the Court, to be used by **Approved Class Member(s)** to elect an individual assessment of their damages and commence an individual damage assessment under the **Individual Damage Assessment Process**;

Individual Damage Assessment Process means the procedure and system to be approved by the Court following the **Common Issues** trial to be used to assess and distribute damages to **Approved Class Member(s)** who have requested an individual damage assessment by submitting an **Individual Damage Assessment Form**;

Notice Program means the process, set out in the Litigation Plan, for communicating the **Certification Notice** and/or the **Common Issues Notice** to **Class Members**, as may be subsequently amended and as approved by the Court;

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[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 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 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

[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>.

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 currently has under reserve a decision in which statutory compensation is sought on behalf of a subset of the Class Members pursuant to section 53 of the CHRA. If the CHRT awards such statutory compensation to any Class Members through the CHRT Proceeding, 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.

III. PRE-CERTIFICATION PROCESS

A. The Parties

i. The Plaintiffs

6. The plaintiffs have proposed three classes:

(a) the On-Reserve Class, represented by Xavier Moushoom;

(b) the Family Class, represented by Xavier Moushoom; and

(c) the Jordan's Principle Class, represented by Jeremy Meawasige (by his litigation guardian, Maurina Beadle).

ii. The Defendant

7. The defendant is the Crown.

B. The Pleadings

i. Statement of Claim

8. The plaintiffs have delivered an Amended Statement of Claim.

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. Preliminary Motions

11. 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

12. Both before and since the commencement of this class proceeding, Class Counsel have received many communications from Class Members affected by this class proceeding.

13. 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

14. 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.

15. 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.

16. 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

17. 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

18. 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.

19. 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

20. 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

21. 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. 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.

22. 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	30 days
Motions for Production of Documents, Multiple Examinations of Crown representatives or for Examinations of Non-Parties to be conducted within	60 days
Examinations for Discovery to be conducted within	90 days
Certification Notice to Class Members completed within	90 days
Trial Management Conference re: Expert Evidence	100 days
Motions arising from Examinations for Discovery within	120 days
Undertakings answered within	135 days
Further Examinations, if necessary, within	150 days
Common Issues Pre-Trial to be conducted	150 days
Opt Out Period deadline	180 days
Common Issues Trial or Hybrid Trial to be conducted within	240 days

B. Certification Notice, Notice Program and Opt Out Procedures

i. Certification Notice

23. 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.

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

ii. Notice Program

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

26. 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;

(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 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;

(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

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

28. 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.

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

30. 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 60 days post Certification or as directed by the Court.

31. 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

32. 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.

33. 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

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 30 days after Certification. The Crown will similarly be required to deliver a List of Documents within 30 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.

43. 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

44. Any motions for documentary production shall be made within 60 days of Certification.

iv. Document Management

45. 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.

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

E. Examinations for Discovery

47. Examinations for Discovery will take place within 90 days after Certification.

48. 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 60 days after Certification.

49. 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.

50. 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

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 120 days of Certification.

ii. Undertakings

52. Undertakings are to be answered within 35 days of Certification.

iii. Re-attendances and Further Examinations for Discovery

53. 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 150 days of Certification.

G. Expert Evidence

i. Identifying Experts and Issues

54. 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

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

56. The plaintiffs expect that a full day will be required for a Pre-Trial and will request that the Pre-Trial be held 150 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

57. Upon Certification, the Court will be asked to assign a date for the Common Issues trial.

58. The plaintiffs propose that the trial of the Common Issues be held 240 days after Certification.

59. 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

60. 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

61. 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.

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

63. 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

64. 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

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

66. 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.

67. 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.

68. 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 an On-Reserve Class Member or a Jordan's Principle Class Member.

69. 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.

70. The Class Action Administrator will be responsible for receiving all Claim Forms.

iii. Deadline for Filing Claim Forms

71. Class Members will be advised of the deadline for filing Claim Forms in the Common Issues Notice.

72. 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.

73. 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 On-Reserve Class Members

74. The Class Action Administrator will determine whether an individual submitting a Claim Form as an On-Reserve Class Member properly qualifies as a Class Member.

75. In addition, the Class Action Administrator will determine and categorize the duration of the On-Reserve 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 On-Reserve 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.

76. 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.

77. The Class Action Administrator will, where appropriate and necessary, request in writing further information from the individual filing the On-Reserve Class Claim Form or the Crown to make these determinations.

ii. Approving Jordan's Principle Class Members

78. The Class Action Administrator will determine whether an individual submitting a Claim Form as a Jordan's Principle Class Member properly qualifies as a Class Member.

79. 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.

80. 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.

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

iii. Approving Family Class Members

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

83. 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 On-Reserve Class Member.

84. 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

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

86. 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

87. 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.

88. 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.

89. 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

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

91. 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 On-Reserve Class Member.

92. 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.

93. 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

94. 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

95. 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.

96. 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

97. 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.

98. 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

99. 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

100. 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*.

101. 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

102. 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 if required.

H. Settlement Issues

i. Settlement Offers and Negotiations

103. 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

104. 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

105. 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.

July 9, 2019

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Lawyers for the Plaintiffs

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 <u>not</u> 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):

[_] On-Reserve Class

[_] Jordan's Principle Class

[_] Family Class

If you selected the On-Reserve 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 Principle 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 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 On-Reserve Class:

Full name(s) and claim number of the Approved On-Reserve Class Member in your family	**Your relationship to the Class Member (only the brother, sister, mother, father, grandmother or grandfather of an Approved On-Reserve 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 On-Reserve Class Member or Approved Jordan's Principle 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: _____

Court File No. T-402-19

FEDERAL COURT
PROPOSED CLASS ACTION PROCEEDING

B E T W E E N

XAVIER MOUSHOOM and
JEREMY MEAWASIGE
(by his litigation guardian, Maurina Beadle)

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

SECOND SUPPLEMENTARY MOTION RECORD
(Motion for Certification)

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