

**FEDERAL COURT
CLASS PROCEEDING**

BETWEEN:

XAVIER MUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONOVAN JOSEPH MEAWASIGE

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

BETWEEN:

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

Plaintiffs

and

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

Defendant

BETWEEN

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

MOTION RECORD OF THE DEFENDANT
(Motion to Approve the Settlement Agreement)

ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8
Fax: (613) 954-1920

**Per: Paul Vickery
Jonathan Tarlton
Sarah-Dawn Norris**

Email: Paul.Vickery@justice.gc.ca
jonathan.tarlton@justice.gc.ca
Sarah-Dawn.Norris@justice.gc.ca

Counsel for the Defendant,
The Attorney General of Canada

TO:

SOTOS LLP

180 Dundas Street West Suite 1200
Toronto ON M5G 1Z8
David Sterns / Mohsen Seddigh / Pouya Dabiran-
Zohoory
dsterns@sotosllp.com; mseddigh@sotosllp.com;
pdabiran-zohoory@sotos.ca
Tel: 416-977-0007
Fax: 416-977-0717

KUGLER KANDESTIN

1 Place Ville-Marie
Suite 1170, Montréal QC H3B 2A7
Robert Kugler / Pierre Boivin / William Colish
rkugler@kklex.com; pboivin@kklex.com;
wcolish@kklex.com
Tel: 514-878-2861
Fax: 514-875-8424

MILLER TITERLE + CO.

300 - 638 Smithe Street
Vancouver BC V6B 1E3
Joelle Walker / Erin Reimer
joelle@millertiterle.com; erin@millertiterle.com
Tel: 604-681-4112
Fax: 604-681-4113

Lawyers for the plaintiffs Xavier Moushoom,
Jeremy Meawasige (by his litigation guardian,
Jonavon Joseph Meawasige), Jonavon Joseph
Meawasige, Zacheus Joseph Trout

AND TO:

NAHWEGAHBOW, CORBIERE

5884 Rama Road, Suite 109
Rama, ON L3V 6H6
Dianne G. Corbiere
dgcorbiere@nncfirm.ca
Tel: 705.325.0520
Fax: 705.325.7204

FASKEN MARTINEAU DUMOULIN

55 Metcalfe St., Suite 1300
Ottawa, ON K1P 6L5
Peter N. Mantas / D. Geoffrey Cowper, Q.C./
Gabrielle Cyr
pmantas@fasken.com/gcowper@fasken.com
/gcyr@fasken.com
Tel: 613.236.3882
Fax: 613.230.6423

Lawyers for the plaintiffs Assembly of First
Nations, Ashley Dawn Louise Bach, Karen
Osachoff, Melissa Walterson, Noah Buffalo
Jackson by his Litigation Guardian, Carolyn
Buffalo, Carolyn Buffalo, and Dick Eugene
Jackson also known as Richard Jackson

AND TO:

Federal Court

90 Sparks Street
Ottawa, Ontario K1A 0H9

Tel: 613-992-4238
Fax: 613-947-2141

Table of Contents

Tab

1. Affidavit of Valerie Gideon

TAB 1

**FEDERAL COURT
CLASS PROCEEDING**

B E T W E E N:

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

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

B E T W E E N:

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

Plaintiffs

and

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

Defendant

B E T W E E N:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

**AFFIDAVIT OF VALERIE GIDEON
AFFIRMED ON SEPTEMBER 1, 2022**

I, **VALERIE GIDEON**, Associate Deputy Minister of Indigenous Services Canada, residing in the City of Gatineau, in the Province of Québec, AFFIRM THAT:

1. I am currently employed as the Associate Deputy Minister of Indigenous Services Canada ("ISC"). I have been in this position since 2020. Prior to this post, I was the Senior Assistant Deputy Minister of the First Nations and Inuit Health Branch ("FNIHB") at ISC. I am Mi'kmaq from the Gesgapegiag First Nation and have spent my entire career dedicated to First Nations and Inuit health and wellness.
2. As Associate Deputy Minister of ISC, I am the senior client representative for Canada, and have been deeply involved in the negotiations on compensation for children and families, as ordered in relation to the discrimination found by the Canadian Human Rights Tribunal ("the Tribunal") and as sought in related class actions filed in the Federal Court of Canada.
3. Following the Tribunal's compensation decision in 2019, I was involved in working with the AFN and the First Nations Child and Family Caring Society on the development of a Compensation Framework. The Framework was required by the Tribunal and was intended to provide detail as to how the Tribunal's compensation orders would be implemented. I carried over the knowledge and experience gained in development of that Framework to the negotiations of this Final Settlement Agreement.
4. As one of Canada's chief negotiators, and as a result of my position and experience, I have personal knowledge of the negotiations and of the matters addressed herein. If I reference information from third parties, I believe that information to be true.

A. Canada's Commitment to Compensation

5. Canada strongly supports the plaintiffs' motion for approval of this class action settlement and is of the view that the benefits it offers are fair, reasonable and in the best interests of the classes as a whole. At the outset of the negotiations, Canada committed to ensuring that a final agreement would provide a minimum of \$40,000 to the Removed Children. The final settlement agreement provides for this.
6. The Final Settlement Agreement commits \$20 billion for the payment of claims, representing what I understand to be the largest class action settlement in Canada's history. Canada's agreement to pay such an amount reflects the federal government's commitment to rectifying the discriminatory practices found by the Tribunal, redressing harm to First Nations children and families, and pursuing reconciliation.

B. Key Elements of the Final Settlement Agreement

7. *First Nations-Led:* It was of central importance to the plaintiffs and Canada that any settlement agreement be First Nations-led. The parties therefore agreed that the plaintiffs would have sole discretion over the structure of the settlement's administrative scheme, the allocation of the total compensation amount among the classes and the design and implementation of the Distribution Protocol which would determine the amount of each individual payment.
8. This approach was maintained throughout the negotiations. By way of example, the administrator who is charged with the day-to-day implementation of the settlement will report not only to the Federal Court but also to a settlement implementation committee consisting of five members. Of the three counsel on the committee, one will be appointed by the AFN's Executive Committee. The committee's two non-counsel members will be First Nations. A majority of the committee's members will therefore bring a First Nations perspective.
9. *Proportionality:* One of the central objectives of both the plaintiffs and Canada was to provide more compensation to those children who suffered greater harm. This focus led to compensation schemes for removed children, Jordan's Principle class members and Trout class members that provide for both a base payment and the possibility of enhanced payments to those children most affected by removal or by a denial, delay or gap in essential services.
10. *Avoiding re-traumatization:* The plaintiffs and Canada recognized that the claims process should avoid, to the greatest extent possible, any potential for re-traumatization of claimants. Such re-traumatization was one of the principal complaints raised in relation to prior First Nation children's settlements. Several provisions of the settlement seek to avoid re-traumatization.
11. As much as possible, Deloitte, the administrator, will use existing data to validate claims, minimizing the information required of claimants (information that may be traumatizing for a claimant to produce). Canada has agreed to produce a database from records maintained by it in order to facilitate this approach. Canada's efforts to produce that database are described below.
12. In addition, the claims process includes two provisions intended to minimize the potential for re-traumatization. Article 5.01(4) provides that the administrator and the third party assessor will, in the absence of grounds to the contrary, presume that a claimant is acting honestly and in good faith with respect to any claim. Article 5.01(5) provides that, in considering a claim, the administrator and third party assessor will draw all reasonable inferences that can be drawn in favour of the claimant.

13. *Health and Cultural Supports*: It was of particular importance to the plaintiffs and Canada that claimants have adequate support throughout the claims process to mitigate trauma that may arise during that process. Again, this is a lesson learned from prior settlements, which may not have provided the same level of supports.
14. Canada will fund, among other things, culturally safe assistance to help claimants submit claims, enhancements to the Hope for Wellness phone line tailored to the claimants under this settlement and mental health and cultural supports that meet the specific needs of children and youth. Details of the supports which Canada has agreed to fund are set out in Article 8 and Schedule C of the Final Settlement Agreement.

C. Status of Database Development

15. Canada holds data related to children in care taken into placements funded by the First Nations Child and Family Services Program. That data is of varying quality, especially for the years prior to 2013-14 (the year in which ISC implemented the First Nation Child and Family Services Information Management System, a national data system). It exists in different formats, with some of it handwritten.
16. ISC has undertaken to collect, digitize and extract relevant data in its possession into a database. It will provide the database to the plaintiffs and Deloitte to assist in identifying eligible claimants under the Removed Child Class. Data on such proxies for harm as the total time spent in care will help to reduce the amount of information that a claimant must submit to determine their level of compensation (though the data on those proxies is incomplete).
17. To date, ISC has:
 - a. Extracted the data from the First Nations Child and Family Services Information Management System as well as from four decommissioned regional databases for entry into the database.
 - b. Collected electronic documents from ISC's regional offices and reviewed the documents for relevance.
 - c. Collected paper documents from ISC's regional offices as well as Iron Mountain regional storage facilities and scanned those documents. Regional offices have nearly completed reviewing the scanned documents.
 - d. Begun to receive scanned paper documents from Library and Archives Canada (which, in general, holds older documents than those held by ISC's regional offices).
 - e. Reviewed electronic documents held in the Grants and Contributions Information Management System. ISC has begun to extract data from these documents.
18. ISC has agreed to:
 - a. Complete receipt of scanned paper documents from Library and Archives Canada.

- b. Complete relevance review of scanned paper documents.
- c. Where possible, use automated tools to extract data from electronic and scanned paper documents and add that data to the database.
- d. Where ISC cannot make efficient use of automated tools (for example, for handwritten documents or documents in rarely-used templates), manually enter data into the database.
- e. Apply quality control methods to the entered data (to, for example, flag that children with slightly different names but the same Indian Register number might be the same person).

D. Taxes and Benefits


- 19. It was also important to the plaintiffs and Canada that the amounts paid to claimants would not be subject to taxation or clawbacks of social benefits. At Article 9.03(3) of the Final Settlement Agreement, Canada undertook to write to all provincial and territorial Deputy Ministers responsible for child and family services, health and education to encourage them to collaborate in exempting class members' payments under the settlement from taxation and from any clawbacks of provincial or territorial benefits.
- 20. As has occurred in previous agreements, Canada has agreed to make best efforts to obtain a technical interpretation from the Canada Revenue Agency that payments to class members, including income earned on settlement funds, are in the nature of damages and not taxable. Canada is also making best efforts to exempt any income earned by the Trust, set out in Article 14 of the Final Settlement Agreement, from federal taxation.

E. Other Features of the Final Settlement Agreement

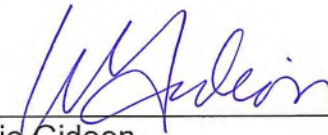
- 21. *Protection for Minors:* Unlike in prior First Nation children's settlements, such as those for Indian residential schools, day schools and the Sixties Scoop, a significant percentage of the class members in this settlement are still under the age of majority and, in many cases, are still in care. In order to ensure that their interests are properly protected, the Final Settlement Agreement provides for sufficient monies to be held in trust to permit payment of anticipated claims once class members reach the age of majority. Minor class members may make a claim starting one year before they reach the age of majority and will have three years from that point to file a claim. Actuaries appointed by the Settlement Implementation Committee will provide opinions as to the amounts required to ensure that sufficient funds will remain to pay out all such claims and the Court will be asked to review the opinions on a regular basis to ensure that minor class members' interests are adequately protected.

22. *Cy-près Fund*: Not all class members will receive direct compensation under the terms of the Final Settlement Agreement. The Agreement, however, also provides for a cy-près fund in the amount of \$50 million which is intended primarily to benefit class members who do not receive direct payment. The fund will be First Nations-led and will provide culturally sensitive and trauma-informed support, including grant-based supports, cultural access and transition and navigation supports. In my view, this fund is a significant addition to the other benefits offered under the Final Settlement Agreement.
23. I make this affidavit in support of the motion to approve this Final Settlement Agreement and for no other or improper purpose.

AFFIRMED BEFORE ME in the City
of Ottawa, in the Province of
Ontario, this 1st day of September,
2022.



Commissioner for Taking Affidavits
(or as may be)



Valerie Gideon