

**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

**SUPPLEMENTARY MOTION RECORD
OF THE DEFENDANT**
(Motion for Settlement Approval)

ATTORNEY GENERAL OF CANADA

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**FEDERAL COURT
CLASS PROCEEDING**

BETWEEN:

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**AFFIDAVIT OF VALERIE GIDEON
AFFIRMED ON OCTOBER 16, 2023**

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 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 most of career dedicated to First Nations and Inuit health and wellness.
2. As Associate Deputy Minister of ISC, I exercise an important supportive role in the implementation of reforms to the FNCFS Program and the improved delivery of Jordan's Principle. I am the senior client representative for Canada and have been deeply involved in the negotiations seeking a resolution to the outstanding compensation issues for children and families, as ordered in relation to the discrimination found by the Canadian Human Rights Tribunal, as well as the claims raised in these related class actions filed in the Federal Court of Canada. Specifically, these actions are: Court File Number T-402-19 (the "Moushoom" action), which was consolidated with Court File Number T-141-20 (the "Assembly of First Nations (AFN) action"); and, Court File Number T-1120-21 (the "Trout action") [collectively the "Class Actions"].
3. In my position as Associate Deputy Minister, and in my previous position as Senior Assistant Deputy Minister, I have also gained extensive knowledge of the findings and orders of the Tribunal in this matter as part of my responsibilities overseeing FNIHB. From the time of the Tribunal's compensation decision in 2019, I was involved in working with the AFN and the Caring Society on the development of the Compensation Framework

until the Tribunal approved it. In this context, I carried over this knowledge and experience in the negotiations of the proposed Final Settlement Agreement.

4. As one of Canada's chief negotiators, and because 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.
5. An Agreement in Principle was signed by Canada and Plaintiffs' counsel on December 31, 2021 (the "Agreement in Principle").
6. After the Agreement in Principle was signed, I participated actively in almost all of the meetings between Plaintiffs' counsel and Canada during the negotiation of the proposed Final Settlement Agreement, between January 2022 and June 2022. Plaintiffs' counsel and Canada executed a Final Settlement Agreement on June 30, 2022 (the "June 2022 Final Settlement Agreement", "FSA").
7. Following the execution of the June 2022 Final Settlement Agreement, the AFN and Canada brought a motion to the Tribunal to confirm that it fully satisfied the Tribunal's compensation orders, as was required by the FSA. (the "Joint Motion"). The First Nations Family and Child Caring Society and the Canadian Human Rights Commission opposed the motion.
8. The Tribunal dismissed the Joint Motion on October 24, 2022, with full reasons released on December 20, 2022. The Tribunal found that the Final Settlement Agreement substantially satisfied its compensation orders but identified specific derogations from the orders and clarifications with respect to individuals covered by its compensation orders (the "Joint Motion Decision").

9. Following its review of the December 20, 2022 decision, and beginning in February of 2023, Canada entered into focused and collaborative negotiations with Plaintiff's Counsel and the Caring Society, with the shared goal of working to address the derogations identified by the Tribunal in a revised settlement agreement.

10. During these negotiations, Canada agreed to add an additional \$3.34394 billion to the \$20 billion already committed to in the Agreement-in-Principle and June 2022 Final Settlement Agreement. This amount includes additional funds to ensure that:
 - a. Non-ISC funded or "kith" placements are compensated, including children and their caregivers;
 - b. Estates of the caregiving parents or grandparents of removed children are compensated;
 - c. Caregiving parents and grandparents are compensated for removal of multiple children;
 - d. Interest payments are made on compensation for removed children and compensation due to denial or delay of an essential service under Jordan's Principle;
 - e. Additional funds are directed to class members outside those contemplated by the Tribunal's orders, in particular with respect to estates of caregivers and removal of multiple children; and,
 - f. Additional funds, which will be deposited into a trust as part of the settlement agreement, are available to support high needs individuals eligible for compensation due to denial or delay of an essential service under Jordan Principle up until the age of twenty-six.

11. Ultimately, Canada and the plaintiffs in the Class Actions entered into a Revised Final Settlement Agreement, signed April 19, 2023 (the “Revised Final Settlement Agreement”).
12. The Caring Society participated in the negotiations leading up to the signing of the revised agreement. While it did not sign the final settlement agreement, it agreed to sign separate minutes of settlement that contemplate the implementation of the agreement, which is annexed to the minutes (the “Minutes of Settlement”). These minutes confirm the shared opinion that the Revised FSA fully satisfies the Tribunal orders related to compensation and the compensation framework. I have reviewed the proposed Revised Final Settlement Agreement and Minutes of Settlement, signed by Caring Society, Canada and AFN on April 19, 2023, and I am familiar with their terms.
13. The Tribunal, in a letter decision dated July 26, 2023, found that the Revised Agreement fully satisfied its compensation orders, and that the Tribunal will end its jurisdiction on compensation on the Court’s approval of the Agreement and the expiry of applicable appeal periods or the resolution of any appeals. Further, on September 26, 2023, the Tribunal released its full reasons confirming the same findings and orders.
14. Recognizing that the Revised Settlement Agreement and Minutes of Settlement provide the Caring Society with an ongoing role in the implementation and administration of the settlement agreement over approximately 20 years, Canada has agreed to pay \$5 Million to the Caring Society to facilitate their involvement on a non-profit basis.
15. The Revised Final Settlement Agreement and Minutes of Settlement, which represent what I understand to be the largest settlement in Canada’s history, commits Canada to pay \$23.34394 billion to settle the compensation claims

raised or capable of being raised in both the Class Actions and the Tribunal proceedings.

16. Canada has as well agreed to pay significant additional amounts to fund supports for claimants as part of the proposed settlement agreement, as well as administrative costs. This additional funding for supports would bolster the existing network of health and cultural supports or be provided through organizations already serving children, youth and families. This includes, for example:

- a. Additional funding to support child and family focused health and cultural support workers, hired by existing First Nations agencies and organizations;
- b. Funds to bolster and leverage the current trauma-informed health and cultural support network (including resolution health support workers and cultural support providers) through the Indian Residential Schools Resolution Health Support Program (IRS RHSP) and supports for Missing and Murdered Indigenous Women and Girls and the Indian Day Schools settlement. Funds will also be provided for the development and provision of specialized training related to child welfare and associated traumas to all trauma-informed health and cultural support workers;
- c. Additional funding to ensure all class members have access to mental health counselling by providing coverage for those without eligibility for the Non-Insured Health Benefits (NIHB) Program;
- d. Support for a new confidential, 24/7 accessible, help/crisis line dedicated to providing culturally sensitive, trauma-informed emotional support for children, youth and families included in the settlement agreement; and
- e. Funding to provide interim surge capacity for navigation services in First Nations communities (on and off-reserve) and friendship centres to refer individuals to appropriate supports and communicate and

disseminate information, as these organizations deem necessary. This would allow these organizations to bridge any gap until navigators are properly recruited and staffed by the Claims Administrator.

17. The unprecedented level of funding provided by the settlement reflects the Government's recognition of the extent of past harms suffered by First Nations children and their families, and its commitment to redressing past discriminatory practices.
18. From my perspective, the negotiations required to reach a Final Settlement Agreement were complex, extensive and challenging. Each party was able to fully develop and voice their positions, including Canada, and there was vigorous debate. Many issues were raised and canvassed, at times with input provided by outside experts. Ultimately, these issues were resolved to the satisfaction of the Plaintiffs, the Caring Society and Canada through their continuing dialogue.
19. The Government of Canada is committed to advancing reconciliation and renewing, on a nation-to-nation basis, the relationship with Indigenous people. Canada recognizes the leadership role assumed by the AFN and the Caring Society in ensuring that the interests and concerns of First Nations and the individual claimants are served by the proposed revised settlement agreement and Minutes of Settlement.
20. In negotiating the Agreement in Principle in 2021, Canada acknowledged that it was central for any settlement to be First Nations designed, led and controlled. The final settlement agreement and now the revised final settlement agreement and Minutes of Settlement continue to recognize this important concept.
21. In addition, extensive work is underway to compile data related to children taken into care so that it can be made available to the settlement

administrator. This data will assist the administrator in validating claims and, in turn, minimize the administrative burden on claimants and also avoid re-traumatization. We are also exploring what Jordan's Principle data may be of assistance.

22. Canada recognizes the importance to First Nations, and to Canada's objective of reconciliation, of a comprehensive and lasting settlement that provides compensation to those affected by the discrimination found by the Tribunal. I believe that this settlement succeeds in achieving this purpose.

23. Canada fully supports the Revised Final Settlement Agreement as resolving the Class Actions and asks that this Court approve it as being fair, reasonable and in the best interest of the Classes.

AFFIRMED BEFORE ME in the City)
of Gatineau, in the Province of)
Quebec, this 16th day of October, 2023.)
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)
)



Commissioner for Taking Affidavits



Valerie Gideon



TAB 2

**FEDERAL COURT
CLASS PROCEEDING**

BETWEEN:

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

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MEMORANDUM OF ARGUMENT OF THE ATTORNEY GENERAL OF CANADA

OVERVIEW

1. A negotiated settlement, as was noted by Justice Favel of the Federal Court, is “the preferred outcome for both Indigenous people and Canada.”¹ Canada welcomes and fully supports this motion for approval of the revised settlement agreement reached in this matter on April 19, 2023.
2. Building on the achievements of the original settlement agreement signed June 30, 2022 (the “June FSA”), which was recognized by the Canadian Human Rights Tribunal (the CHRT or Tribunal) as “outstanding in many ways,”² and giving careful consideration to the Tribunal’s concerns regarding that agreement, the complainants in the CHRT proceeding, plaintiffs in these related class actions, and Canada came together to collaboratively craft a revised settlement agreement which would resolve those concerns while furthering the intent of the original agreement.
3. The revised Final Settlement Agreement, signed April 19, 2023 (the “Revised FSA”), is the culmination of and efforts by the plaintiffs in these class actions (the “Class Action Plaintiffs”), the complainants before the Tribunal, including the Assembly of First Nations (the “AFN”) and the First Nations Child and Family Caring Society (the “Caring Society”), together with Canada, to come to a negotiated agreement.
4. Following their receipt of written submissions on behalf of all the above participants, The Tribunal, in a letter decision dated July 26, 2023, found that the

¹ *Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada*, [2021 FC 969](#) at para [300](#).

² *First Nations Child & Family Caring Society et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs)*, [2022 CHRT 41](#) (“2022 CHRT 41”) at para [1](#).

Revised Agreement fully satisfied its compensation orders, and that the Tribunal will end its jurisdiction on compensation on the Court's approval of the Agreement and the expiry of applicable appeal periods or the resolution of any appeals. The ongoing supervisory role in the implementation of an approved settlement agreement is therefore within the Federal Court's jurisdiction. Further on September 26, 2023, the Tribunal released its full reasons confirming the same findings and orders.³

PART I - FACTS

5. After signing an Agreement in Principle with respect to compensation on December 31, 2021 (the "Agreement in Principle"), Canada and counsel for the Class Action Plaintiffs negotiated the June FSA. Canada and the AFN then brought the June FSA to the CHRT seeking an order that it fully satisfied the Tribunal's Compensation Orders.⁴ The Caring Society and the Canadian Human Rights Commission opposed the motion.
6. The Tribunal, while finding that the agreement substantially satisfied its compensation order, refused the motion, and provided clarification regarding individuals covered by its orders. It noted four specific derogations as the reason for its denial of that portion of the motion⁵:
 - a. Certain removed children who were in a placement not funded by Canada were eligible for compensation and were not included in the agreement ("Non-ISC Funded Placements").
 - b. Estates of deceased Caregiving Parents or Grandparents should be eligible for compensation ("Caregiver Estates").

³ *First Nations Child & Family Caring Society et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs)*, 2023 CHRT 44

⁴ Affidavit of Valerie Gideon, affirmed October 16, 2023 (Valerie Gideon Affidavit) at para 6.

⁵ [2022 CHRT 41](#) at para [282](#).

- c. Caregiving Parents or Grandparents of certain removed children who had more than one child removed should receive multiplications of \$40,000 in compensation (“Multiplications”); and,
 - d. Jordan’s Principle children eligible under the CHRT’s Compensation Orders should receive \$40,000.
7. The Tribunal commended Canada and the AFN for the steps forward and the collaborative work on the June FSA. It noted that First Nations controlled the distribution of funds, in recognition of the importance of First Nations making decisions that concern them, as well as the promise of compensation more than what is permitted under the *Canadian Human Rights Act* for many individuals.⁶
8. In February 2023, following the release of the Tribunal’s full decision on December 20, 2022, Canada entered into focused and collaborative negotiations with counsel for the Class Action Plaintiffs, (including the AFN), and the Caring Society, in order to address the derogations identified by the Tribunal.⁷ During these negotiations, Canada agreed to commit another \$3.34394 billion, in addition to the \$20 billion already committed to in the Agreement-in-Principle and June 2022 Final Settlement Agreement.⁸ These funds were to address the specific derogations identified by the Tribunal, as well as interest payments, and to help achieve parity for the class action claimants (by directing funds to class members not covered by the Tribunal’s decision) . Additional supports for high needs Jordan’s Principle claimants were also negotiated.⁹
9. In addition to the \$23.34394 billion to settle the compensation claims, Canada will also pay for administration costs over the anticipated twenty-one years of the settlement’s implementation and has agreed to fund significant supports for claimants as part of the Revised FSA.¹⁰

⁶ [2022 CHRT 41](#) at para 1.

⁷ Valerie Gideon Affidavit at para 9.

⁸ Valerie Gideon Affidavit at para 10.

⁹ Valerie Gideon Affidavit at paras 9 – 10.

¹⁰ Valerie Gideon Affidavit at para 16.

10. The class action parties, including AFN and Canada, signed the Revised FSA on April 19, 2023.¹¹ The same day, Canada, the AFN and the Caring Society signed Minutes of Settlement in which they confirmed the shared opinion that the Revised FSA now fully satisfies the Tribunal orders related to compensation and the compensation framework.¹²

PART II - ISSUES

11. Should the Court approve the Revised FSA as being fair, reasonable and in the best interest of the Classes?

PART III – ARGUMENT

A. THE LAW

12. Pursuant to the *Federal Court Rules*, class action settlements require court approval.¹³ As was noted in *Logan v The King*, the legal principles applicable to the approval of a class proceeding settlement are well established. The central question is whether the proposed settlement is “fair, reasonable, and in the best interests of the class as a whole”.¹⁴

13. In considering whether to approve a settlement agreement, the Court considers only whether the proposed settlement is reasonable, not whether it is perfect. The

¹¹ Valerie Gideon Affidavit at para 11

¹² Valerie Gideon Affidavit at para 12; Minutes of Settlement.

¹³ [Federal Court Rules SOR/98-106](#), Rule [334.29 \(1\)](#).

¹⁴ *Logan v The King* 2023 FC 590; *Tk'emlúps te Secwépemc First Nation v Canada*, [2023 FC 327](#) at para [47](#); *Hudson v Canada*, [2022 FC 694](#) at para [186](#); *Lin v Airbnb, Inc.*, [2021 FC 1260](#) at para [21](#); *McLean v Canada*, [2019 FC 1075](#) at para [65](#); *Condon v Canada*, [2018 FC 522](#) at para [17](#).

Court also does not have the power to modify or alter the settlement; it can only approve it or reject it.¹⁵

14. The Supreme Court of Canada has emphasized the ongoing supervisory role that courts play in the implementation of class action settlements; although the terms of an agreement are determinative, a court is not free to approve a settlement which ousts its jurisdiction.¹⁶ This supervisory jurisdiction ensures that a settlement is implemented as contemplated.¹⁷

15. As noted in *Condon*, the requirement of reasonableness of a settlement agreement means that the agreement only need fall “within a zone or range of reasonableness”¹⁸.

B. SUBMISSIONS

16. The Revised FSA, which was negotiated between Canada and the Class action plaintiffs as well as the complainants to the CHRT proceeding, provides a solution to the complex question of how best to compensate the tens of thousands of First Nations children and families affected by the discriminatory under-funding and narrow interpretation of Jordan’s Principle found to have occurred by the Tribunal. It has been built collaboratively with the parties in consultation with their stakeholders, while taking into account the outstanding concerns of the Tribunal. The agreement was endorsed at a Special Chiefs Assembly of the AFN shortly prior to its being signed.

17. This agreement provides much broader compensation than that available under the CHRT Compensation Orders – both in terms of the scope of individuals who may receive compensation and, potentially, greater compensation for some class members. While the CHRT orders dealt only with the period from 2006 forward,

¹⁵ *Tk’emlúps* at para 48; *Merlo v Canada*, [2017 FC 533](#) at paras [17-18](#)).

¹⁶ *J.W. v. Canada (Attorney General)*, [2019 SCC 20](#) at para [120](#);

¹⁷ *McLean v. Canada*, [2019 FC 1075](#) at para [71-72](#)

¹⁸ *Condon v. Canada*, [2018 FC 522](#) at para [18](#)

this settlement covers the entire period raised in the Class Actions, beginning March 1, 1991, and extending in the case of removed children and the Kith class¹⁹ to March 31, 2022. The essential services and Trout classes cover the period from 1991 to 2017, the point at which the Tribunal found that the narrow interpretation of Jordan's Principle had ceased.

18. Canada has also committed to fund administration of the agreement over its approximately twenty-one-year implementation, and to provide a variety of supports to claimants as they navigate the process. This commitment bolsters existing health and cultural support networks, already familiar to claimants, as well as supports that are available through organizations that already serve children and youth.²⁰ In addition, the agreement now includes funds, which will be included in a trust not controlled by Canada, to support certain high needs Jordan's Principle claimants.²¹

19. Work is continuing to compile data from Canada's records which Canada will make available to the claims administrator to assist in validating claims, minimizing the administrative burden on claimants and mitigating the potential re-traumatization of claimants.²²

20. Crucially, while Canada's commitment to support claimants and facilitate the administrator's work is significant, the Revised FSA continues to reflect the central principle that the settlement be First-Nations led and controlled.

¹⁹ Under the Revised FSA, Kith class members are individuals who placed in a Kith Placement. This means they were placed with a Kith caregiver (an individual residing off reserve who was not a member of the child's family and did not receive funding for the placement), and a Child Welfare Authority was involved in the child's placement. See Revised FSA, s. 1.01 (definitions) and Article 7 (Kith Child Class and Kith Family Class).

²⁰ Valerie Gideon Affidavit at para 16.

²¹ Valerie Gideon Affidavit at para 16; Minutes of Settlement at para 7.

²² Valerie Gideon Affidavit at para 21.

21. The Revised FSA is the product of extensive negotiations, which have the potential of better meeting the needs of First Nations children, their families and their communities – true reconciliation is rarely, if ever, achieved in courtrooms.²³

PART IV - ORDER SOUGHT

22. The Attorney General of Canada respectfully requests that the Court approve the revised final settlement agreement as fair, reasonable and in the best interest of the classes.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED AT the City of Ottawa, in the Province of Ontario, this 16th day of October 2023.



Paul Vickery
Christopher Rugar
Sarah-Dawn Norris
Jonathan Tarlton

Counsel for the Respondent,
Attorney General of Canada

²³ *R. v. Desautel*, [2021 SCC 17](#) at para. [87](#).

PART V - LIST OF AUTHORITIES

Jurisprudence

1. *Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada*, [2021 FC 969](#)
2. *Condon v Canada*, [2018 FC 522](#)
3. *First Nations Child & Family Caring Society et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs)*, [2022 CHRT 41](#)
4. *Hudson v Canada*, [2022 FC 694](#)
5. *J.W. v. Canada (Attorney General)*, [2019 SCC 20](#)
6. *Lin v Airbnb, Inc.*, [2021 FC 1260](#)
7. *Logan v The King* 2023 FC 590
8. *McLean v Canada*, [2019 FC 1075](#)
9. *Merlo v Canada*, [2017 FC 533](#)
10. *R. v. Desautel*, [2021 SCC 17](#)
11. *Tk'emlúps te Secwépemc First Nation v Canada*, [2023 FC 327](#)
12. *First Nations Child & Family Caring Society et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs)*, 2023 CHRT 44