

Federal Court



Cour fédérale

Date: 20241212

Docket: T-402-19

T-141-20

T-1120-21

Ottawa, Ontario, December 12, 2024

PRESENT: The Honourable Madam Justice Ayles

CLASS PROCEEDING

Docket: T-402-19

BETWEEN:

**XAVIER MOUSHOOM, JEREMY (BY HIS LITIGATION
GUARDIAN, JONAVON JOSEPH MEAWASIGE) AND
JONAVON JOSEPH MEAWASIGE**

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

Docket: T-141-20

AND BETWEEN:

**ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN
LOUISE BACH, KAREN OSACHOFF, MELISSA
WALTERSON, NOAH BUFFALO-JACKSON (BY HIS
LITIGATION GUARDIAN, CAROLYN BUFFALO),
CAROLYN BUFFALO AND DICK EUGENE JACKSON
ALSO KNOWN AS RICHARD JACKSON**

Plaintiffs

and

**HIS MAJESTY THE KING AS REPRESENTED BY THE
ATTORNEY GENERAL OF CANADA**

Defendant

Docket: T-1120-21

AND BETWEEN:

**ASSEMBLY OF FIRST NATIONS AND ZACHEUS
JOSEPH TROUT**

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER

(Approval of the Second Addendum to the Final Settlement Agreement)

UPON INFORMAL MOTION by the Settlement Implementation Committee, by letter dated December 6, 2024, for:

- a) An order approving the Second Addendum to the Final Settlement Agreement dated April 19, 2023, as previously amended by way of an Addendum dated October 10, 2023, and approved by the Court by Order dated October 24, 2023, as executed by the parties on November 26, 2024; and

- b) An order making certain readjustments to the first claims process, being for the Removed Child Class and the Removed Child Family Class, previously approved by the Court by Order dated June 20, 2024, with the Reasons for Order issued June 26, 2024 [First Claims Process];

CONSIDERING the affidavit of Geoffrey Cowper, K.C., sworn December 3, 2024, and the affidavit of Zoia Petrossian, sworn December 5, 2024;

AND CONSIDERING the written submissions of the Settlement Implementation Committee as set out in their letter dated December 6, 2024;

AND CONSIDERING that the Court has been advised that all parties consent to the relief sought;

AND CONSIDERING that the applicable legal principles on a motion to approve an addendum to a settlement agreement in a class action are the same as those applicable to the approval of the initial settlement agreement. As set out in my Reasons for Settlement Approval Order issued in this matter on November 20, 2023, those legal principles are as follows:

[53] Subsection 334.29(1) of the *Rules* provides that a class proceeding may be settled only with the approval of a judge. Once approved, the settlement binds every class or subclass member who has not opted out of or been excluded from the class proceeding.

[54] The legal test to be applied in approving a class action settlement is whether the settlement is “fair, reasonable and in the best interests of the class as a whole.” The test for settlement is not perfection [see *Wenham v Canada*, 2020 FC 588 at para 51, aff’d 2020 FCA 186, leave to appeal ref’d [2021] SCCA No 2; *McLean v Canada (Attorney General)*, 2019 FC 1075 at para 76; *Merlo v Canada*, 2017 FC 533 at para 18].

[55] In assessing whether a settlement meets this standard, this Court may take into account a number of factors, the weighing of

which will vary depending on the circumstances. The non-exhaustive list of factors to consider includes: (a) the terms and conditions of the settlement; (b) the likelihood of success/recovery; (c) the amount and nature of pre-trial activities, including investigation, assessment of evidence, production and discovery; (d) the arm's length bargaining and information regarding dynamics of negotiations; (e) the recommendation of class counsel; (f) the communications with class members; (g) any expression of support and objections; (h) the presence of good faith and absence of collusion; (i) the future expense and likely duration of litigation; and (j) any other relevant factor or circumstance [see *Tk'emlúps te Secwépmc First Nation v Canada*, 2023 FC 327 at para 49; *Wenham*, supra at para 50; *Tataskweyak Cree Nation v Canada (Attorney General)*, 2021 FC 1415 at para 64; *Lin v Airbnb, Inc.*, 2021 FC 1260 at para 22; *McLean v Canada (Attorney General)*, 2019 FC 1075 at para 66].

[56] Settlements must be looked at as a whole. It is not open for this Court to rewrite the substantive terms of a settlement or assess the interests of the individual class members in isolation from the whole class. Settlements involve some “give and take”—even where it is difficult for the injured parties to see why any concessions should be made [see *Tataskweyak Cree Nation*, supra at para 63; *McLean v Canada (Attorney General)*, 2019 FC 1075 at para 68].

[57] Ultimately, when approving a settlement, this Court cannot modify or alter the agreement of the parties—it must approve it as is, or reject it. Were it otherwise, the parties may be discouraged from settling the matter because their bargain might be upended by the Court [see *McLean v Canada (Attorney General)*, 2023 FC 1093 at para 37; *Tataskweyak Cree Nation*, supra at para 62].

[58] Settlements need not be perfect, as long as they fall in the “zone of reasonableness.” To reject a settlement, this Court must conclude that the settlement does not fall within the range of reasonable outcomes. The zone of reasonable outcomes reflects the fact that settlements rarely give all of the parties exactly what they want, and are instead the result of compromise [see *Tataskweyak Cree Nation*, supra at para 63; *McLean v Canada*, 2019 FC 1075 at para 76].

AND CONSIDERING that the evidence before the Court demonstrates that the parties have been engaged in significant and prolonged efforts to secure a customizable class-wide

structured settlement, or group investment option, internal to the administration of the Final Settlement Agreement [Investment Option] as a measure of protection for Class Members with vulnerabilities who will receive lump sum compensation. The parties' efforts to provide an Investment Option have thus far proven unsuccessful and have resulted in a delay of the launch of the First Claims Process;

AND CONSIDERING that the existence of an Investment Option is not required under the terms of the Final Settlement Agreement and the Court is satisfied that it is not in the best interests of the Class to delay the launch of the First Claims Process pending any further efforts towards securing an Investment Option;

AND CONSIDERING that, as a result of the efforts towards securing an Investment Option, the Launch Date of the First Claims Process (as defined therein) has been delayed by three months and that the proposed readjustments to the First Claims Process are intended to address the current absence of an Investment Option;

AND CONSIDERING that the Second Addendum addresses the following:

- (i) Section 1 clarifies that Class Members can independently and/or with the assistance from their bank select an investment option that meets the Class Member's needs and circumstances. This section leaves open the possibility that, at some point during the administration of the Final Settlement Agreement, an Investment Option may become possible at which point the Administrator will have the required flexibility to communicate same to the Class Members; and

- (ii) Section 2 accounts for the three-month delay to the Launch Date of the First Claims Process by extending the timeline to launch the First Claims Process from six months to nine months, and identifies a specific launch date of March 10, 2025;

AND CONSIDERING that the Court is satisfied that the relief sought should be granted;

THIS COURT ORDERS that:

1. The Second Addendum to the Final Settlement Agreement dated November 26, 2024, is fair and reasonable and in the best interests of Class Members, and is hereby approved.
2. Unless and until an Investment Option becomes available, all references in the First Claims Process to “Investment Option” (as defined therein) shall be inoperative in so far as customized class-wide structured settlement or group investment options internal to the administration of the Final Settlement Agreement are concerned.
3. There shall be no costs of this motion.

“Mandy Ayles”

Judge