

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA
AND ASSEMBLY OF FIRST NATIONS

COMPLAINANTS

- and -

CANADIAN HUMAN RIGHTS COMMISSION

COMMISSION

- and -

THE ATTORNEY GENERAL OF CANADA
(representing the Minister of Indian and Northern Affairs)

RESPONDENT

**STATEMENT OF PARTICULARS
OF THE RESPONDENT, THE ATTORNEY GENERAL OF CANADA**

[Rule 6(1)(a)(b) and (c), *Canadian Human Rights Tribunal Rules of Procedure*]

1. This Statement of Particulars is in response to: (a) the Complainants' Statement of Particulars, undated but received June 8, 2009; and (b) the Statement of Particulars of the Canadian Human Rights Commission ("Commission") dated June 1, 2009.
2. The Respondent states its proper name is The Attorney General of Canada (representing the Minister of Indian Affairs and Northern Development).
3. The Complainants' Statement of Particulars is replete with references to anticipated evidence and argument, and those references should be struck out. Specifically, some or all of paragraph 14 and footnotes 3, 6 to 13, and 18 should be struck out as improper pleading of particulars.

A. Introduction and Overview

4. The Respondent denies the allegations in the Complainants' and Commission's Statements of Particulars unless expressly admitted herein.

5. In specific response to paragraphs 3 and 14(v) of the Complainants' Statement of Particulars, the Respondent has consistently denied the Complainants' allegations before the Commission, and now before the Tribunal, including in submissions filed. Further, when the Complaint was before the Commission, much of the correspondence with the Commission attempted to obtain clarification of the Complaint. On May 6, 2008, the Respondent provided its preliminary legal arguments with respect to jurisdiction, and clearly stated in its cover letter that it would provide its substantive position on the Complaint should the Commission decide to accept jurisdiction over the matter. As the Commission referred the matter directly to the Tribunal thereafter without investigation, the Respondent was not provided the opportunity to submit its substantive position on the Complaint to the Commission.
6. The Minister of Indian Affairs and Northern Development is responsible for the management of the Department of Indian Affairs and Northern Development ("Indian Affairs") and programs administered or funded by that Department. The Department commonly refers to itself as Indian and Northern Affairs Canada ("INAC") in its communications.
7. One program funded by Indian Affairs is child and family services for Indians, also known as First Nations persons, ordinarily resident on reserve ("Child and Family Services on reserve") in the provinces. Funding is provided by Indian Affairs to First Nations Child and Family service delivery agencies, Indian Bands ("First Nations"), Tribal Councils, (collectively referred to as "First Nations Service Providers") and provincial governments to provide Child and Family Services on reserve that are: (a) in accordance with the legislation and standards applicable in each province; and (b) reasonably comparable to child and family services provided off reserve in similar circumstances, and within Indian Affairs' authorities. Indian Affairs also provides funding to the Government of Yukon so that government can provide child and family services to all First Nations persons ordinarily resident in the Yukon as outlined in paragraph 12 of this Statement of Particulars.
8. This funding is provided pursuant to appropriations by Parliament and authorities received from Cabinet and Treasury Board. One of the directives that applies to some funding of child and family services is Directive 20-1, Chapter 5 (the "Directive"¹) issued by Indian Affairs in or about 1990 and amended thereafter from time to time. The Directive applies in all provinces, except Ontario, Alberta, Saskatchewan, and Nova Scotia which are addressed in the following paragraphs. In addition, in some provinces funding is provided under both the Directive and other arrangements and agreements as elaborated upon in this Statement of Particulars. The Directive also applies in the Yukon. Funding is provided as a policy decision made by the federal government.

¹ The INAC First Nations Child and Family Services: National Program Manual as of May, 2005; The Directive is found at Appendix "A" within the Manual.

9. In Ontario, Child and Family Services on reserve are provided by non-profit organizations designated by the province as Children's Aid Societies or by provincially-delegated First Nations Service Providers (collectively referred to as "Ontario Service Providers"). Ontario Service Providers are funded by the Province to provide child and family services to all families and children ordinarily resident in Ontario. The provincial funding is pursuant to a provincial funding formula. Ontario Service Providers provide Child and Family Services on reserve and off reserve in accordance with provincial legislation and standards. Ontario Service Providers provide Child and Family Services on reserve that are reasonably comparable to the services provided to First Nations and non-First Nations families and children ordinarily resident off reserve in similar circumstances. Pursuant to the Memorandum of Agreement Respecting Welfare Programs for Indians of 1965 (1965 Welfare Agreement), Indian Affairs reimburses the province for the cost of child and family services according to a cost-sharing formula. Currently, Indian Affairs pays approximately 93% of the costs, which funding is at a level that permits the delivery of Child and Family Services on reserve in accordance with provincial legislation and standards. Ontario pays the difference to make up 100%, or approximately 7%, of the costs.

10. In Alberta, Saskatchewan and Nova Scotia, Child and Family Services on reserve are provided by the provincial government or provincially-delegated First Nations Service Providers (collectively referred to as "Alberta/Saskatchewan/Nova Scotia Service Providers") in accordance with provincial legislation and standards. Alberta/Saskatchewan/Nova Scotia Service Providers provide Child and Family Services on reserve that are reasonably comparable to the services provided to First Nations and non-First Nations families and children ordinarily resident off reserve in similar circumstances. Indian Affairs funds Alberta/Saskatchewan/Nova Scotia Service Providers pursuant to the Directive, the Enhanced Prevention-Focused Approach (as elaborated upon below), and other arrangements and agreements that may be in place as elaborated upon in this Statement of Particulars. This funding is at a level that permits the delivery of Child and Family Services on reserve in accordance with provincial legislation and standards. In the case of First Nation Service Providers who have opted into the Enhanced Prevention-Focused Approach, funding arrangements are entered into between Indian Affairs and the First Nations Service Providers. The funding is provided to First Nations Service Providers in accordance with Business Plans prepared by the First Nations Service Providers, and which Business Plans become annexes to the Funding Arrangements. The Business Plans are supported by the province and are in accordance with Indian Affairs' financial accountability requirements.

11. In all other provinces, Child and Family Services on reserve are provided by the provincial government or provincially-delegated First Nations Service Providers (collectively referred to as "Other Provinces' Service Providers") in accordance with provincial legislation and standards. These Other Provinces' Service Providers provide Child and Family Services on reserve that are reasonably comparable to the services provided to First Nations and non-First Nations families and children

ordinarily resident off reserve in similar circumstances. Indian Affairs funds these Other Provinces' Service Providers pursuant to the Directive or other arrangement or agreement that may be in place as elaborated upon in this Statement of Particulars. The funding is at a level which permits the delivery of Child and Family Services on reserve in accordance with provincial legislation and standards. In the case of First Nations Service Providers, funding arrangements are entered into between Indian Affairs and the First Nations Service Providers that set out the funding levels for each year.

12. In the Yukon, very few First Nations people ordinarily reside on reserve. Indian Affairs provides funding under the Directive to the Government of Yukon so it can provide child and family services to all First Nations persons ordinarily resident in the Yukon. The Government of Yukon provides such services without making any distinction or differentiation between people or groups of people. The Government of Yukon provides child and family services in accordance with territorial legislation and standards. Indian Affairs' funding under the Directive permits the Government of Yukon to deliver child and family services to all First Nations families and children ordinarily resident in the Yukon in accordance with sound child and family service delivery principles and, in doing so, to take into account cultural considerations for First Nation people, the remoteness of some locations, and other particular circumstances of First Nations communities, families and individuals. The funding permits the Yukon Government to deliver child and family services to First Nations families and children ordinarily resident in the Yukon that are reasonably comparable to child and family services provided to all other persons ordinarily resident in the Yukon in similar circumstances.
13. Child and family services in the Northwest Territories and Nunavut are provided by or through those territorial governments with their own funding. Canada makes annual unallocated transfer payments to the governments of the Northwest Territories and Nunavut which make up a portion of their annual budgets, and those governments decide how and where to spend funds.
14. Outside of the Northwest Territories and Nunavut, there are 108 First Nations Service Providers in Canada, serving approximately 447 of 576 First Nations Bands.
15. Funding levels are determined in accordance with sound child and family service delivery principles and take into account cultural considerations for First Nations people, remote locations in some parts of Canada, and other particular circumstances of First Nations communities, families and individuals. Indian Affairs' funding permits First Nations Service Providers and provinces to deliver Child and Family Services on reserve that are reasonably comparable to child and family services provided to First Nations and non-First Nations families and children ordinarily resident off reserve in similar circumstances.

16. Further, and in answer to paragraph 14(vi) of the Complainants' Statement of Particulars, the Respondent states that the funding structure or practices under the Directive, 1965 Welfare Agreement, Enhanced Prevention-Focused Approach, or any other arrangement or agreement that may be in place is not the cause of, and is not a contributor to, a high or growing number of First Nations children ordinarily resident on reserve in Canada or living anywhere in the Yukon being placed into protective care. Further, the funding is at a level that permits First Nations Service Providers to meet their statutory responsibilities.
17. Indian Affairs provides funding for Child and Family Services on reserve or anywhere in the Yukon and does not provide a service within the meaning of sections 3 and 5 of the *Canadian Human Rights Act*. Indian Affairs does not deny a service, or deny access to a service, on the ground of race, national or ethnic origin, or any other ground listed in section 3(1) of the *Canadian Human Rights Act*. Further, Indian Affairs does not differentiate adversely or discriminate in relation to any individual on the ground of race, national or ethnic origin, or any other ground listed in section 3(1) of the *Canadian Human Rights Act*. Sections 3 and 5 of the *Canadian Human Rights Act* are not engaged.
18. Indian Affairs provides funding only for on reserve child and family services and does not provide funding for off-reserve services, which are provided by provincial governments. The exception is in the Yukon where Indian Affairs provides funding for child and family services for all First Nations persons ordinarily resident in the Yukon.
19. Indian Affairs does not differentiate adversely or engage in discriminatory practices in the funding of child and family services, whether looked at internally as to the funding of Child and Family Services on reserve, or when Child and Family Services on reserve provided under the funding are compared to child and family services funded by provincial or territorial governments off reserve.

B. Material Facts

i) Response to Particular Paragraphs in the Complainants' Statement of Particulars

20. In answer to paragraph 6 of the Complainants' Statement of Particulars, Indian Affairs admits only that the Complainant the First Nations Child and Family Caring Society of Canada ("FNCFCS") is an incorporated non-profit organization.
21. In answer to paragraph 7 of the Complainants' Statement of Particulars, Indian Affairs admits only that the Complainant the Assembly of First Nations ("AFN") is a national political representative body of First Nations governments.
22. The Respondent requires further particulars in relation to the following aspects of the Complainants' claim:

- a) In response to paragraph 3 and the reference to “compared to that received by all others”; paragraph 9 and the reference “comparable to those received by all other children and families”; paragraph 11 and the reference “comparable benefits that are available, and received, by all others”, the Respondent states that the Complaint 2006/1060 filed with the Canadian Human Rights Commission on February 23, 2007 specifically stated that the comparison was to be between “First Nations children and families resident on reserve... compared to non-Aboriginal children.” The Respondent seeks clarification and particulars as to who, specifically, the Complainants are identifying as the comparator group in this Complaint, including by the use of the words “all others”, “all other children and families” and “by all others”.
- b) In response to paragraphs 9 and 10 in the Complainants’ Statement of Particulars, and elsewhere in their Statement of Particulars, concerning the Complainants’ reference to “culturally based” child and family services, the words “culturally based” do not appear in the Complaint 2006/1060 filed with the Canadian Human Rights Commission on February 23, 2007 or the *Canadian Human Rights Act*. The purpose of these words in the Statement of Particulars and their meaning is unclear, and they do not disclose a ground of complaint or basis for relief under the Act or otherwise. Indian Affairs provides funding so culturally appropriate child and family services can be provided by First Nations Service Providers, provinces, and the Yukon. The Respondent requires further particulars about what the Complainants mean by “culturally based” and the grounds or basis on which the words support the Complaint and relief sought.
- c) In response to paragraph 9 of the Complainant’s Statement of Particulars and the reference to “First Nations Child and Family Services Program”, the Respondent requires clarification and particulars as to whether the Complaint relates only to funding provided by Indian Affairs under the Directive, or if the Complaint relates to all funding provided by Indian Affairs under the Directive, the 1965 Welfare Agreement, the Enhanced Prevention-Focused Approach, or any other arrangement or agreement that may be in place, or some combination of these various funding arrangements.
- d) The Respondent requires clarification and particulars as to the temporal scope of the Complaint, as the Complainants have not identified a temporal scope, other than to make a request in paragraph 21(3)(a) for compensation dating back to 1989 for unnamed First Nations persons.
- e) The Respondent understands that the Complainants take issue with the level of funding provided to First Nations Service Providers, provinces and the Yukon for the provision of child and family services, but requires

clarification and particulars as to whether the Complaint pertains to all funding (including Maintenance, which is reimbursed at actual costs), funding for Operations as a whole, funding of prevention services, or some combination of all three.

23. In further answer to paragraph 14 of the Complainants' Statement of Particulars (beyond what is pleaded in paragraphs 3 and 16 herein), the Respondent repeats that paragraph 14 should be struck out as pleading evidence and/or argument and, alternatively, if it is not struck out the evidence does not support the assertions made by the Claimants which will be shown at the hearing of this matter.

ii) Particulars of Indian Affairs Funding Child and Family Services

24. The funding provided under the Directive is to all First Nations Service Providers, the Yukon, and all provinces, except Ontario, Alberta, Saskatchewan and Nova Scotia. It has two components:
- a) First, the service provider receives an annual fixed amount of funding for "Operations", which includes administration (e.g. staff salaries). Funding for prevention services is included in the Operations component. The quantum of funds provided for Operations is formula-driven, based on an amount per Indian child on reserve under the age of 19 years (ages 0 to 18 years inclusive), plus an amount per band, plus a fixed amount per Agency based upon the size of the agency, plus adjustments for the agency, band, and number of children amounts based upon remoteness.
 - b) Second, the service provider receives funding for "Maintenance", which reimburses actual costs of maintaining children in out-of-home placements (foster home, group home, or institution). The "Maintenance" portion of the funding is not fixed. Reimbursement is made in accordance with applicable terms and rates.
25. There is an alternative funding approach available under the Directive in which Maintenance funding is fixed, freeing up any surplus money to be moved to Operations. Prior to the introduction of the Enhanced Prevention-Focused Approach, seven First Nations Service Providers had elected to operate using this alternative funding model. With the introduction of the Enhanced Prevention-Focused Approach, only one First Nations Service Provider continues to operate under this alternative funding model.
26. The funding provided under the Directive is as follows:
- a) In Newfoundland and Labrador, the provincial government provides all child and family services directly to three First Nations in the province. Indian Affairs has one funding arrangement with Newfoundland and Labrador for services

they provide to the Innu First Nations. In addition, Indian Affairs has a bilateral funding agreement with the Miawpukek First Nation.

- b) In New Brunswick, Indian Affairs provides funding for child and family services to 11 First Nations Service Providers for 14 First Nations' on reserve communities. The First Nations Service Providers deliver all Child and Family Services on reserve for these 14 First Nations. Indian Affairs provides funding to the province for the provision of child and family services for one particular First Nation; the province in turn flows the funding to a Band-run child and family services program.
 - c) In Prince Edward Island, the province delivers protection related Child and Family Services on reserve, and a First Nations Service Provider provides the prevention component of child and family service on reserve. Indian Affairs provides funding under the Directive.
 - d) In Quebec, First Nations Service Providers deliver Child and Family Services on reserve to 19 of 27 First Nations communities. In the other 8 First Nations communities, Indian Affairs reimburses the Province of Quebec for its delivery of Child and Family Services on reserve.
 - e) In Manitoba, Indian Affairs funds First Nations Service Providers to provide Child and Family Services on reserve. Indian Affairs has no child and family services agreement with the province of Manitoba as the First Nations Service Providers deliver all Child and Family Services on reserve.
 - f) In British Columbia, Indian Affairs reimburses the province for its delivery of Child and Family Services on reserve pursuant to the terms of a Memorandum of Understanding. Maintenance rates are calculated based upon a provincial average daily per diem for care type, plus an administrative charge based upon provincial overhead costs, divided by total annual care days. With respect to First Nations Service Providers delivering Child and Family Services on reserve in British Columbia, Indian Affairs provides funding under the Directive. In practice, First Nations Service Providers in British Columbia receive funding based on the Directive for Operations, but are funded for maintenance according to a blended average provincial rate.
 - g) In the Yukon, Indian Affairs funds the Yukon Government to deliver child and family services to all First Nations persons ordinarily resident in the Yukon.
27. In Ontario, the province funds all Ontario Service Providers using a provincial funding formula. Indian Affairs reimburses the provincial government directly for the provision of Child and Family Services on reserve in accordance with the 1965 Welfare Agreement. Under the 1965 Welfare Agreement, Indian Affairs reimburses Ontario for a formula-based share of provincial costs for child welfare services to status Indian children ordinarily resident on reserve. For protection

services, the provincial Ministry of Children and Youth Services ("MCYS") funds the Ontario Service Providers based on the provincial funding framework. For prevention services, MCYS funds the Ontario Service Providers based on provincially established funding levels for Child and Family Intervention, Community Support Services and First Nation Initiatives. For both protection and prevention services, Indian Affairs currently reimburses the province approximately 93% of eligible expenditures in accordance with the formula contained in the 1965 Welfare Agreement, as amended from time to time.

28. In Alberta, the province has provided for many years, and continues to provide, child and family services to all children ordinarily resident on seven reserves. Indian Affairs reimburses Alberta based on funding formulas set out in the 1991 Arrangement for Funding and Administration of Social Services concerning various social services, including child and family services. The seven First Nations had, and continue to have, access to prevention services, referred to as the Alberta Response Model.
29. Also in Alberta, prior to April 2007, funding for Child and Family Services on reserve was provided under the Directive to First Nations Service Providers. Since April 2007, under what is known as the Enhanced Prevention-Focused Approach (also known as the Targeted First Nations Child and Family Services Funding Approach in Alberta) separate and additional funding for prevention measures has been provided by Indian Affairs to the First Nations Service Providers. The quantum of funds provided to a First Nations Service Provider now involves three streams: operations, maintenance, and prevention/least disruptive measures. To receive funding under the Enhanced Prevention-Focused Approach, the First Nations Service Provider must commit to a multi-year Business Plan with strategies and performance measures set by the First Nations Service Providers themselves. The Business Plan must be supported by the province and be in accordance with Indian Affairs' financial accountability requirements
30. In Saskatchewan, prior to April 2008, funding of Child and Family Services on reserve was under the Directive. Indian Affairs entered into separate funding arrangements with First Nations Service Providers, which in turn delivered Child and Family Services on reserve. One First Nations community did not have a First Nations Service Provider and therefore received child and family services directly from the Province of Saskatchewan.
31. In Nova Scotia, prior to April 2008, Indian Affairs funded one First Nations Service Provider (Mi'kmaq Child and Family Services of Nova Scotia), which delivered child and family services to all provincial residents ordinarily resident on reserve. Indian Affairs provided funding under a bilateral funding agreement between Indian Affairs and the First Nations Service Provider, but was also a party to a tripartite child and family service funding arrangement with Nova Scotia and the First Nations Service Provider which sets out roles and responsibilities.

32. From and after April 2008, in Saskatchewan and Nova Scotia, funding is in accordance with the Enhanced Prevention-Focused Approach (as described above in relation to Alberta).
33. Self-governing First Nations that have included child and family services in their Self-Government Agreements are not eligible for federal funding under the Directive, the Enhanced Prevention-Focused Approach, or other similar arrangements or agreement. Their funding is provided under and in accordance with their respective Self-Government Agreement.
34. Some First Nations Service Providers in Canada carry annual budget surpluses from federal funding.
35. All funding provided under the Directive, 1965 Welfare Agreement, Enhanced Prevention-Focused Approach, or other arrangement or agreement that may be in place is for the purpose of allowing First Nations Service Providers, provincial governments, and the Government of Yukon to provide Child and Family Services on reserve (or anywhere in the Yukon) that are reasonably comparable to child and family services provided to First Nations and non-First Nations families and children ordinarily resident off reserve in similar circumstances.
36. Indian Affairs does not provide any services. It provides funding only so that others may provide services.
37. In addition to funding provided through Indian Affairs, other federal government departments provide funding for programs and benefits for families and children on reserve, including Health Canada and the Canada Revenue Agency.

iii) Response to Complainants' Statement of Particulars concerning Jordan's Principle

38. In response to paragraph 13 of the Complainants' Statement of Particulars wherein reference is made to Jordan's Principle, Jordan's Principle is a 'child first' approach, which engages various health and social services and not solely child and family services. The Government of Canada response to the House of Commons Private Members Motion on Jordan's Principle provides that where a First Nations child who is ordinarily resident on reserve has multiple disabilities requiring intervention by multiple service providers, and at the same time where there is a dispute over whether the federal or provincial government or a federally funded or provincial agency should fund or provide those services or needs, the agency of first contact will provide immediate services and the provincial and federal governments will resolve funding issues as between them later.
39. There is no adverse differentiation or discrimination in the provision of funding for child and family services in accordance with Jordan's Principle. It is plainly an

arrangement to ensure that immediate needs are attended to without delay that otherwise could be caused by funding issues as between governments.

40. Further, there is no contravention of Jordan's Principle by the Government of Canada. Implementation of Jordan's Principle does not rest with one level of government, but necessarily requires cooperation amongst all levels of government.

C. Position on Legal Issues

41. The Complainants are not entitled to receive child and family services, and never have been, as neither of them is a First Nations person ordinarily resident on reserve (they are corporate entities). Further, neither Complainant is a First Nations Service Provider and are not eligible to receive funding from Indian Affairs for child and family services. The Complainants therefore do not have standing to pursue a complaint alleging discrimination under the *Canadian Human Rights Act* as neither Complainant is a victim within the meaning of the *Act*.
42. Funding is the provision of money to others. Indian Affairs does this in the context of Child and Family Services on reserve in all Provinces and for all First Nations persons ordinarily resident in the Yukon.
43. Providing a service means to take action in relation to and provide work or advice to others. Indian Affairs does not do this in the context of child and family services.
44. Indian Affairs provides funding for the provision of child and family services. It does not decide or control which services are provided or how those services are to be provided. The details of providing child and family services are determined by the entity providing the services, acting in accordance with the applicable provincial or territorial legislation.
45. In *Watkin v. Canada*, 2008 FCA 170 the Federal Court of Appeal stated at paragraphs 28 and 33:

[28] That said, not all government actions are services. Before relief can be provided for discrimination in the provision of 'services', the particular actions complained of must be shown to be 'services'.

and

[33]...regard must be had to the particular actions which are said to give rise to the alleged discrimination in order to determine if they are services..., and the fact that the actions are undertaken by a public body for the public good cannot transform what is ostensibly not a service into one. Unless they are 'services', government actions do not come within the ambit of section 5.

46. Indian Affairs provides funding for two groups of people only, that is, First Nations families and children ordinarily resident on reserve in the provinces and for all First Nations persons ordinarily resident in the Yukon. Indian Affairs does not make a distinction or draw an adverse differentiation within these groups beyond establishing funding province by province and for the Yukon. Funding province by province and for the Yukon is to ensure that funding enables service providers to provide Child and Family Services on reserve and in the Yukon that are reasonably comparable to provincially funded services off reserve and meet provincial and territorial standards. The only differentiation or distinction between groups made by Indian Affairs is based on geography (province/territory of residence), which does not constitute a prohibited ground under the *Canadian Human Rights Act*.
47. In seeking to make a human rights comparison between funding levels on and off-reserve, the Complainants' analysis fails for lack of a comparator group. The comparison is sought to be made by looking at acts performed by more than one entity: the federal government, which provides funding for child and family service providers on reserve and in the Yukon, and the various provincial governments, which provide off reserve funding. This proposed comparison of actions taken by more than one actor is inappropriate. The comparison must be between the way a single actor treats two or more different groups, rather than a comparison between the way one actor treats one group, and a separate actor treats another group.
48. Moreover, the comparison with off reserve child and family services funding is not valid because Indian Affairs does not control the quality, nature, and funding structure of child and family services provided by the provinces.
49. The Complainants have not made out allegations that support a case of adverse differentiation or discrimination on any basis, let alone a basis within the governing statute, and the Complaint should be summarily dismissed or, alternatively, dismissed following a hearing.
50. With respect to the relief sought in paragraphs 21(2), 21(3) (insofar as the relief requested in 21(3) seeks the establishment of a trust fund to provide compensation to certain unnamed First Nations persons for pain and suffering, and for expenses for certain services) and 21(5) of the Complainants' Statement of Particulars, the requested relief is beyond the jurisdiction of the Tribunal.
51. Further to the relief sought in paragraph 21(4) of the Complainants' Statement of Particulars, assuming the requested relief is within the Tribunal's jurisdiction to order, which is denied, there is no basis to award full recovery of the Complainants' legal expenses.
52. No compensation should be awarded under s. 53(2)(e) of *Canadian Human Rights Act* as neither Complainant meets the definition of "victim" within the meaning of the section. In the alternative, any compensation awarded under s. 53(2)(e) should

be limited to a maximum of \$40,000 (calculated as follows: the maximum amount available, \$20,000, multiplied by the number of Complainants, two, equals \$40,000).

53. Further, any findings as to this Complaint should be only as to acts or omissions which occurred no more than one year prior to the date of receipt of the Complaint by the Commission in February 2007, pursuant to section 41(1)(e) of the *Canadian Human Rights Act*.

D. Relief Requested

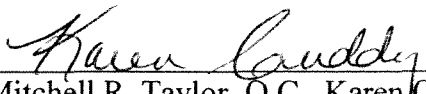
54. The Complaint be dismissed including as to the allegations pertaining to:

- a) child and family services, and
- b) Jordan's Principle.

55. Costs to the Respondent.

56. Such further and other relief as may seem just.

Dated at the City of Ottawa, in the Province of Ontario, this 22nd day of July 2009.


for Mitchell R. Taylor, Q.C., Karen Cuddy, Erin Smith
Counsel for the Respondent,
The Attorney General of Canada