

1 DR. CINDY BLACKSTOCK, AFFIRMED:

2 EXAMINATION BY MR. TAYLOR, Q.C.:

3 1. Q. Dr. Blackstock, are you Cindy Blackstock?

4 A. Yes, I am.

5 2. Q. You swore an Affidavit on February 11th,
6 2010 in these proceedings, did you?

7 A. Yes, I did.

8 3. Q. I noticed that you took an Affirmation to
9 tell the truth on this Cross-Examination. Is there any
10 reason why you swore an Affidavit and now you're
11 affirming on the Cross-Examination?

12 A. I assume that's a process of the Tribunal.
13 Irregardless of the situation, my personal commitment
14 in both documents is to tell nothing but the truth.

15 4. Q. Well, I heard Madame Reporter, she asked
16 you if you wanted to swear or affirm and you chose to
17 affirm. People who swear are those who believe in God
18 and those who affirm are those who, for any reason,
19 have a reason not to want to swear on the Bible.

20 I assume that when you took your Affidavit you
21 swore on the Bible, you took it before a Commissioner
22 for taking Affidavits in Ontario, and now you're
23 affirming. Any reason why the difference?

24 A. You know, Mr. Taylor, I think it's not
25 quite true that the fact that I would affirm or swear

1 would have any reflection on my belief in God.

2 My understanding is that according to the law I
3 have an opportunity to choose whichever one I prefer
4 and today I chose to affirm and I chose to hold this
5 baby eagle feather, which is representative of the
6 sacred eagle and also children. You can tell it's a
7 baby eagle feather because of the spots on it and I
8 have some sacred tobacco that was just gifted to me
9 here.

10 5. Q. All right. You're committed to telling the
11 truth as best you know it, are you?

12 A. Yes, I am.

13 6. Q. Now, I don't know if it's strictly needed
14 but I'm going to show you a copy of your Affidavit of
15 February 11th and ask you if you can identify it.
16 That's a copy that doesn't have the exhibits. Do you
17 recognize that, you can turn to the back page, as your
18 Affidavit sworn February 11th?

19 A. I'm just taking a moment, Mr. Taylor, to
20 look at each of the pages. Yes, it appears to be the
21 Affidavit that I swore on February 11, 2010.

22 MR. TAYLOR: We'll mark that as Exhibit 1,
23 please.

24 **EXHIBIT NO. 1:** Affidavit of Dr. Cindy
25 Blackstock sworn February 11, 2010.

1 MR. CHAMP: Mr. Taylor, why are we marking that
2 as an Exhibit? It's Paul Champ on behalf of the
3 Complainant. The Affidavit is already part of the
4 Record. If there's some issue as to the authenticity
5 of the Affidavit?

6 MR. TAYLOR: No, there isn't. I don't know
7 that it's strictly necessary. It's really a point of
8 convenience. It's sometimes easier when you have a
9 Transcript and Exhibits to have them together rather
10 than trying to figure out months or a year later what's
11 where, so that's the main reason.

12 MR. CHAMP: Okay. I'll just note for the
13 Record that the Witness does have a full copy of her
14 Affidavit with her already, which is to say the
15 Affidavit sworn February 11, 2010 as well as all
16 Exhibits, she has that with her already.

17 MR. TAYLOR: All right.

18 BY MR. TAYLOR:

19 7. Q. You swear that you are the Executive
20 Director of the First Nations Child and Family Caring
21 Society of Canada, Dr. Blackstock, and I'm going to
22 generally refer to that as the Caring Society, which is
23 a name that's commonly used, I believe, is it?

24 A. Yes, it is.

25 8. Q. Am I correct that you became the Executive

1 Director in 2002?

2 A. 2002-2003, that's correct.

3 9. Q. And you've been the Executive Director
4 continuously since then?

5 A. That's correct.

6 10. Q. Do you have any position or affiliation
7 with the Assembly of First Nations?

8 A. We have a Protocol Agreement which enables
9 us to work on issues of like cause. However, we are
10 two independent organizations and we pursue matters in
11 the courses of our mission statements and our
12 objectives as organizations.

13 11. Q. When you say "we", do you mean the Caring
14 Society?

15 A. Yes.

16 12. Q. You personally, do you have any affiliation
17 or position with the Assembly of First Nations?

18 A. No.

19 13. Q. When I say "AFN", you understand that to
20 mean the Assembly of First Nations, do you?

21 A. Yes, I do, and I suspect that if you're
22 using it for another purpose and another acronym that
23 you'll clarify that for me.

24 14. Q. I understand you have a Bachelor of Arts in
25 Psychology?

1 A. I do, from the University of British
2 Columbia.

3 15. Q. And a Masters of Management from McGill, is
4 that right?

5 A. That's correct.

6 16. Q. The Masters of Management is a degree you
7 have pertaining to management in the voluntary sector
8 and non-governmental organizations, is that right?

9 A. The Masters of Management is a degree, my
10 specialization within it was with regard to voluntary
11 sector organizations.

12 17. Q. Now, you recently have obtained a PhD from
13 the University of Toronto?

14 A. Yes, last year.

15 18. Q. In what?

16 A. In social work.

17 19. Q. Prior to be being appointed the Executive
18 Director of the Caring Society, did you have any
19 affiliation with that organization?

20 A. With the University of Toronto?

21 20. Q. No, with the Caring Society?

22 A. Well, we were a grassroots organization and
23 I was one of the people who volunteered to create the
24 Caring Society back in 1998.

25 21. Q. So you're one of the founders, were you, of

1 the Caring Society, is that right?

2 A. That's correct.

3 22. Q. Was 1998 when you first started an
4 affiliation with the Caring Society?

5 A. Yes, what later became known as the Caring
6 Society. At that point, it wasn't an incorporated
7 organization.

8 23. Q. When did it get incorporated?

9 A. In 1999.

10 24. Q. Before you were the Executive Director of
11 the Caring Society, you were either the Executive
12 Director or other senior manager of a Caring Society in
13 British Columbia, were you?

14 A. It's called the Caring for First Nations
15 Children's Society.

16 25. Q. Were you the Executive Director or senior
17 manager?

18 A. I was the Executive Director.

19 26. Q. What years did you hold that position?

20 A. Approximately 1998 to 2002.

21 27. Q. You swear in paragraph 2 of your Affidavit
22 that you are a registered social worker. Where are you
23 currently registered as a social worker?

24 A. With the Ontario Association of Social
25 Workers. I was pleased to receive the leadership in

1 social work award from them in 2008.

2 28. Q. Are you licensed to deliver social work
3 services in Ontario?

4 A. Yes.

5 29. Q. At one time, you were a registered social
6 worker in British Columbia, weren't you?

7 A. No.

8 30. Q. Did you do social work in British Columbia?

9 A. Yes.

10 31. Q. What years did you do social work in B.C.?

11 A. From 1987 up to and including 1998.

12 32. Q. Was that your first social work?

13 A. Pardon?

14 33. Q. When you started in British Columbia in
15 1987, was that your first go at social work?

16 A. Before that, I was working in a group home,
17 et cetera, but in a formal basis, yes.

18 34. Q. Have you done social work in Ontario?

19 A. In my current position, I'm considered to
20 be a social worker, so yes.

21 35. Q. Do you do what I would call active social
22 work with clients?

23 A. No, I don't do line work at the moment, but
24 I'm registered to do it should I choose.

25 36. Q. Since when have you been a registered

1 social worker in Ontario?

2 MR. CHAMP: Mr. Taylor, before Ms Blackstock
3 answers that question, I just raise a general objection
4 as to relevance. What is the purpose of going through
5 Ms Blackstock's entire history? Is there some issue --
6 well, I'm curious, what does that have to do with the
7 evidence that she presents? *o*

8 MR. TAYLOR: Firstly, I'm almost done and
9 secondly, I don't think I'm going through her whole
10 history, but it's just that in these proceedings what
11 is child welfare and what is it that's being funded is
12 part of the issue, so I'm asking what she's done and
13 what her background and basis of knowing about social
14 work is.

15 MR. CHAMP: Okay, I didn't think there was any
16 issue with respect to her qualifications or that she's
17 testifying strictly as an expert witness, but it's ---

18 MR. TAYLOR: No, no, she's not qualified as an
19 expert.

20 BY MR. TAYLOR:

21 37. Q. When did you first get registered as a
22 social worker in Ontario?

23 A. I chose to register last year.

24 38. Q. And had not been before that?

25 A. No, I did not register prior to that.

1 39. Q. Is it fair to say that since 2002, you've
2 been engaged in a management role with the Caring
3 Society?

4 A. I wouldn't encapsule it as a management
5 role. I think we do significant work with First
6 Nations communities and with the First Nations agencies
7 working in those communities, so to conceptualize it
8 strictly within a management construct would not be
9 correct.

10 40. Q. Okay. Management and advisory, then?

11 A. I would say even further than advisory.
12 It's engagement, consultation, learning, and also the
13 dissemination of expert opinion whenever that's
14 required or requested by First Nations. We also are
15 involved in research, policy development and other
16 types of activities.

17 41. Q. Are you a recipient and have you ever been
18 a recipient of child welfare services on reserve?

19 MR. CHAMP: I object. What's the relevance of
20 that question, Mr. Taylor? *D*

21 MR. TAYLOR: Well, the relevance goes to
22 knowledge of what is being done on reserve which is the
23 question that is before this Tribunal both in the
24 proceedings and specifically in the Motion that this is
25 a Cross-Examination on Affidavit in aid of.

1 MR. CHAMP: Well, I don't know if we
2 necessarily have on the Record Ms Blackstock's age, but
3 if you're asking whether when she was a child whether
4 she was subject to child protection services, I think
5 it's already been established and agreed by the parties
6 what the scope of the complaint is and with modesty to
7 Ms Blackstock, I think that would be far beyond the
8 scope of the complaint at this time and I don't see the
9 relevance.

10 BY MR. TAYLOR:

11 42. Q. Well, let me first confirm and we don't
12 need to go to specifics but clearly, Dr. Blackstock,
13 you are an adult person and have been for some number
14 of years given that you've obtained a Bachelors, a
15 Masters, a Doctorate and you've worked in social work
16 and related fields for something in the order of 20-
17 plus years, correct?

18 A. That is correct, I am an adult.

19 43. Q. And have been in the business working and
20 obtaining university degrees for some 20-plus years?

21 A. That is correct.

22 44. Q. I'll ask you this, then. Is the Caring
23 Society a service provider of child welfare services on
24 reserve?

25 A. It depends on how you conceptualize child

1 welfare services.

2 45. Q. Okay, then I'll be specific as to the
3 question. I am using a service provider in the context
4 of an agency or an incorporated body or unincorporated
5 body who is authorized, certified and mandated by a
6 province to provide child welfare on reserve. Does the
7 Caring Society fit that category?

8 A. Given your limited definition of what a
9 service is, no, we do not meet that definition.

10 46. Q. Am I correct that the Caring Society does
11 not receive any funding from INAC under the Child
12 Family Services funding program?

13 A. That is correct. We don't receive any
14 funding from the Federal Government at all.

15 47. Q. To your knowledge, does the AFN provide any
16 child welfare services on reserve as a provincially
17 authorized, mandated and certified agency?

18 A. Well, I don't know the full scope of the
19 Assembly of First Nations Services, you would have to
20 ask the Assembly of First Nations. But to the best of
21 my knowledge, they don't provide direct services.

22 48. Q. Do you agree with me that in order to
23 provide child welfare services on reserve, the provider
24 has to be mandated and certified by the applicable
25 province or territory?

1 A. No, there are exceptions to that.

2 49. Q. Are you referring to the Spallumcheen Band
3 in British Columbia?

4 A. Well, there's the Spallumcheen Band and
5 there's also the Northwest Territories Act, Section 56
6 where the minister has direct authorization in child
7 and family services. Those are two exceptions.
8 There's also self-government agreements.

9 (OFF RECORD DISCUSSION)

10 BY MR. TAYLOR:

11 50. Q. Dr. Blackstock, you know that the
12 Spallumcheen Band and First Nation is in the Okanagan
13 area of British Columbia, do you?

14 A. It's in the Interior of British Columbia on
15 Spallumcheen territory.

16 51. Q. Do you agree with me that the Northwest
17 Territories and anything to do with child welfare there
18 is not part of this complaint?

19 A. No, I don't agree with you.

20 52. Q. Well, that's a new thought that we'll take
21 up another day with your lawyer. Do you say that the
22 child welfare in Nunavut is part or not part of this
23 complaint?

24 A. At this point, it would be part of the
25 complaint.

1 53. Q. All right. Now, coming back to provincial
2 mandating and authorization, apart from the
3 Spallumcheen example which we will deal with in due
4 course and the Northwest Territories and Nunavut and
5 where there are self-government agreements such as
6 Nisga'a in British Columbia, do you agree that child
7 welfare on reserve is delivered by entities who first
8 have to be provincially mandated and certified?

9 A. What I would say is that the Department of
10 Indian Affairs through it's funding program and funding
11 service requires First Nations Child and Family Service
12 Agencies to accept provincial delegation as a criteria
13 for the Department to then exercise any funding
14 responsibilities.

15 That is from the national program manual
16 written by your client, it's also reiterated in your
17 Program Directive PD 20-1, in the enhanced funding
18 arrangement, and in the 1965 Ontario Child Welfare
19 Agreement in terms of your fiscal policies.

20 54. Q. And perhaps more importantly, provincial
21 legislation requires it, too, doesn't it? That is,
22 provincial legislation requires that anyone in a
23 province who is going to deliver child welfare services
24 has to be provincially certified?

25 A. Well, there is the proviso -- I'm not a

1 lawyer, but the Indian Act could exercise some
2 authority on that matter that I understand ---

3 55. Q. Well, if you're not a lawyer, we don't need
4 to hear what you think of the Indian Act or
5 interpreting it.

6 MR. CHAMP: Well, then why are you asking her
7 the question, Mr. Taylor?

8 MR. TAYLOR: I'm asking a factual question,
9 whether as a matter of fact entities who deliver child
10 welfare services on reserve are provincially certified.

11 MR. CHAMP: That sounds like a legal question
12 to me. *O*

13 BY MR. TAYLOR:

14 56. Q. I'll ask that first, the factual question.
15 Are they provincially certified?

16 MR. CHAMP: Mr. Taylor, that is technically a
17 legal question. Are they certified pursuant to the
18 provincial legislation --- *O*

19 MR. TAYLOR: May I ask who is putting this
20 Witness forward? Mr. Poulin said he would be doing the
21 objections, I haven't heard a peep out of him. Mr.
22 Champ, you're putting forth a lot of objections. Who
23 is putting this Witness forward?

24 MR. POULIN: The Affidavit is being put forward
25 by the Commission. The problem in this particular case

1 is that the Witness in question is representing one of
2 the Complainants and so therefore as counsel for a
3 party, Mr. Champ has a right to an objection.

4 MR. TAYLOR: That's fine.

5 MR. POULIN: However, on the issue of your
6 question, if you wish to rephrase it there are ways of
7 rephrasing it. But the problem is that you're asking
8 her if the agencies according to provincial law need to
9 be certified and that is a legal question.

O

10 MR. TAYLOR: That is not the question I meant
11 to ask. Let me try it again.

12 MR. POULIN: Okay.

13 BY MR. TAYLOR:

14 57. Q. As a matter of fact, do you know it to be
15 so that entities who deliver child welfare on reserve
16 in Canada, apart from Spallumcheen and the self-
17 governing situations, that those entities are in fact
18 provincially certified?

19 A. What I would say is that for those
20 agencies, there is a process called delegated authority
21 also known as mandated authority and First Nations can
22 receive delegated authority and their social workers
23 are therefore entitled to provide services according to
24 the provincial statute. This is a requirement of INAC
25 for any funding provided under their child and family

1 services programs.

2 So for those agencies that are receiving funds
3 from them, because INAC requires it they have to follow
4 the provincial statute and any delegation requirements
5 outlined by the province or the territory of reference.

6 58. Q. All right. And since you seem to know
7 about requirements, the provinces require it too, do
8 they?

9 A. It would depend on the arrangement. I
10 mean, there we have Spallumcheen right in the middle of
11 British Columbia where your Minister of Indian Affairs
12 signed a Band bylaw giving them authority for child
13 welfare on reserve. They exercised that authority
14 according to the Minister of Indian Affairs and the
15 Province of British Columbia respects that.

16 59. Q. That's the only example of that kind you
17 can point to, isn't it?

18 A. Well there's the Tripartite Agreement in
19 Sechelt and I'm not sure of the specific mechanisms of
20 that, but that provides for the federal and provincial
21 delegated authority to fall to the First Nation to then
22 exercise it's law-making authorities.

23 60. Q. That's a sort of self-governing
24 arrangement, isn't it?

25 A. I'm not sure how to characterize it, I can

1 just say what I know it to be.

2 61. Q. Is it your understanding that there are no
3 Indian reserves in Nunavut?

4 A. It is my understanding.

5 62. Q. The same with Northwest Territories?

6 A. No, there are First Nations under the
7 Indian Act in Northwest Territories.

8 63. Q. Are there any reserves?

9 A. There are First Nations under the Indian
10 Act and I would assume there would be reserves tied to
11 them.

12 64. Q. But you don't know?

13 A. I don't know for sure.

14 65. Q. Now, the First Nation agencies who deliver
15 child welfare on reserve are entities controlled by
16 First Nation people, aren't they?

17 A. No, they're not. In many ways, they are
18 wearing a straitjacket of control exercised partly
19 through the funding regimes and funding service,
20 exercised by your client, the Department of Indian
21 Affairs and Northern Development, and then also the
22 provincial statutes and standards which your client
23 requires in order for them to exercise service.

24 So it's wrong to assume that a First Nation can
25 act in ways that truly represent their own law making

1 authority and their standards and their ways of being
2 able to operate it, which I understand First Nations
3 control over an agency to be.

4 66. Q. Let me rephrase the question, then. Am I
5 correct that the Directors of the agencies who deliver
6 child welfare on reserve are First Nations people?

7 A. Not in all cases.

8 67. Q. They are overwhelmingly First Nation,
9 aren't they?

10 A. I think in the majority of cases, that's
11 true. But being a First Nations people does not lead
12 to a First Nations control over an agency. Otherwise,
13 I'd be having control over the Tribunal room and I
14 don't think that you'd want to see that.

15 68. Q. Is the work of the Caring Society broader
16 than what's covered by Child Welfare under provincial
17 child protection legislation?

18 A. Well, I think when you consider that Child
19 Welfare under provincial legislation talks about the
20 safety and well-being as being a paramount
21 consideration and many of the statutes provide specific
22 projections for the rights of children, then we would
23 fall within that umbrella.

24 We also, of course, are bound by the United
25 Nations Convention on the Rights of the Child that we

1 take very seriously in all of our work and that's why
2 I'm so pleased today that we have students here from
3 Elizabeth Winwood School to exercise their rights to
4 participate according to the Convention. I personally
5 am very, very pleased to see that.

6 69. Q. Dr. Blackstock, could we focus on answering
7 my questions, please?

8 A. I thought I did answer your question. If
9 you'd like me to clarify it, I'd be happy to.

10 70. Q. I don't think your last part bore on my
11 question. You say you are a registered social worker
12 right now and you have been in the past in another
13 province -- sorry, you weren't but you've done social
14 work in another province. You're very familiar with
15 child protection legislation in the provinces, aren't
16 you?

17 A. I'm reasonably familiar with it, but again
18 I'm not a lawyer and my work is national. So if you
19 have a specific question, I'd be pleased to answer it
20 and if I don't know, I'll definitely let you know that
21 I'm not clear on it.

22 71. Q. All right. With what knowledge you have,
23 is it fair to say that the work of the Caring Society
24 is broader than what is covered by provincial child
25 protection legislation?

1 A. Well, if you take it in tandem with the
2 Convention on the Rights of the Child, I think that we
3 fall within the ambit of that and in fact many of the
4 statutes reference the United Nations Convention on the
5 Rights of the Child.

6 72. Q. You may not be getting my question. I'm
7 not disputing that you would fall within the ambit, I'm
8 interested in provincial child welfare legislation
9 right now, not international arrangements or treaties.
10 What I'm asking you is whether it is the case of the
11 work of the Caring Society is broader than what is in
12 provincial child protection legislation?

13 A. That's the piece that I'm not clear about,
14 Mr. Taylor. I've said that, you know, it may be
15 broader depending on how you interpret those provincial
16 statutes. But the provincial statutes are very clear
17 to say that they look at the safety and well-being of
18 the child and they also reference the importance of
19 families and the importance of indigenous communities.

20 We focus on all three of those as it's relevant to
21 children.

22 73. Q. In the work that the Caring Society does,
23 they take a holistic approach to children and family,
24 don't they?

25 A. Yes, we do.

1 74. Q. The child welfare is just one part of that
2 work, isn't it?

3 A. We view child welfare within the context of
4 that holistic overview. So for us, the welfare of a
5 child is not specifically tied to simply responding to
6 child maltreatment, it's ensuring that children and
7 young people have an opportunity to grow up proud of
8 who they are in the circle of healthy family and
9 community.

10 75. Q. Now, you have your Affidavit in front of
11 you, I understand?

12 A. Yes, I do. What would you like me to refer
13 to?

14 76. Q. Paragraph 5. You refer to "Aboriginal
15 children, youth and families in Canada". In referring
16 and using the word "Aboriginal", do you mean First
17 Nations?

18 A. No, there are times when we work more
19 broadly on Aboriginal issues. For example, we are a
20 very proud member of a coalition of approximately 13
21 organizations that include the Métis National Council
22 and the Inuit Tapiriit Kanatami called Many Hands One
23 Dream, which sets out principles for the improved
24 health of Aboriginal children in Canada.

25 77. Q. Is the mandate of the Caring Society under

1 its incorporating documents to provide advice and
2 research and advocacy on behalf of children?

3 A. I'd have to refer to our incorporating
4 documents, but I think they speak a lot to the issue of
5 public education, the issue of importance of education
6 We do a lot in using education in its broadest sense
7 in terms of providing information, sometimes developing
8 that information, providing policy advice. We do some
9 work in policy development, as you know, and we also
10 work in partnership with First Nations and provinces
11 and territories to develop child welfare systems that
12 are more responsive to the unique needs of Aboriginal
13 children.

14 78. Q. Do you know whether the Caring Society's
15 mandating documents refer to and specify "First Nation"
16 or "Aboriginal"?

17 A. I'd have to go back and check them.

18 79. Q. That's fine. You'll agree with me that in
19 terms of child welfare and people generally on reserve,
20 that they are going to be overwhelmingly First Nations
21 and not other Aboriginal people, would you?

22 A. Yes. Because of the structure of the
23 Indian Act, that's true.

24 80. Q. In paragraph 6, you say that amongst other
25 sources you receive funding from a university. I'm not

1 asking what amount, but I'm interested which
2 university?

3 A. University of Toronto.

4 81. Q. Now, the Caring Society and the AFN jointly
5 filed a complaint of course, which again it may not be
6 strictly necessary but for clarity I'm going to produce
7 and show to you a document which has a cover note to
8 Deputy Minister Michael Wernick of Indian Affairs.
9 Apart from the letter or beyond the letter, do you
10 recognize that document as the complaint filed by the
11 Caring Society and the AFN in either late 2006 or early
12 2007?

13 A. It was filed I believe on February 23rd,
14 2007. I'm just taking a close look. It appears to be
15 the document.

16 MR. TAYLOR: All right. May that be Exhibit 2,
17 please?

18 **EXHIBIT NO. 2:** Letter to Mr. Michael Wernick
19 from Richard Tardif, undated with attached
20 Human Rights Commission Complaint Form.

21 BY MR. TAYLOR:

22 82. Q. You are one of the signatories to the
23 complaint, I see?

24 A. Yes, that is my signature.

25 83. Q. Now, in paragraph 10 of your Affidavit, you

1 refer to the purpose of Indian Affairs First Nations
2 Child and Family Services Program and later on in
3 paragraphs 34 and 35 of your Affidavit, you refer to a
4 Fact Sheet on the program and then you attach that fax
5 sheet at Exhibit G.

6 A. Right. That was the Fact Sheet authored by
7 the Indian Affairs and Northern Development, let me
8 just refer to that. I'll just pull it up here, I've
9 found it. Yes, Fact Sheet, First Nations Child and
10 Family Services, Indian and Northern Affairs Canada, I
11 have it, Mr. Taylor.

12 84. Q. You'll see on that first page about halfway
13 down, there's two bullets. In the first bullet, it
14 says the First Nations Child and Family Services
15 program supports 105 First Nations Child and Family
16 Services agencies to deliver child and family services
17 to approximately 160,000 children and youth in
18 approximately 447 out of 573 First Nation communities?

19 A. Yes, that is what it says.

20 85. Q. This is a 2006 document as I understand it?

21 A. That's what the date of it is, put by the
22 Department.

23 86. Q. All right. Do you agree with me that the
24 bullet I read to you is an accurate statement of what
25 the Child and Family Services program is about?

1 A. Well, when you look at the Program
2 Directive 20-1, it actually says that the Indian
3 Affairs administrates the program and funds services on
4 reserve.

5 There are a number of documents, your own
6 program manual, your role is described in various ways
7 throughout the different manuals. So this is one way
8 in which your Department has chosen to express your
9 role, there are several others.

10 87. Q. So is what's in that first bullet accurate,
11 in your vie?

12 A. Well, I think that you later say in one of
13 your documents that there's actually 108 First Nations
14 Child and Family Services agencies now. I'm not sure
15 what the status was as of 2007, but that likely is
16 correct.

17 88. Q. I assume that three have been added because
18 I, like you, understand there's 108 now, but that's a
19 detail that I don't think is going to make no never-
20 mind here. With that, with what's in that first
21 bullet, is that accurate?

22 A. That's accurate as you would express it. I
23 would say I actually recognize -- I agree with the
24 Assembly of First Nations in saying there's 633 First
25 Nations, not just 573, but it's a minor detail.

1 89. Q. Okay. Let's keep this bullet in mind but
2 have also before you paragraph 10 of your Affidavit and
3 let's break down what you say there.

4 "The purpose of the program is to
5 provide culturally based child welfare
6 services to registered Indians on
7 reserve".

8 A. That is from the Department of Indian
9 Affairs program manual, that's the way that you've
10 chosen to express it.

11 90. Q. And you agree that's what the program is to
12 do?

13 A. I agree that that's the way that the Indian
14 Affairs Department describes its role.

15 91. Q. Well, it is an Indian Affairs program,
16 isn't it?

17 A. It's a service provided by the Indian
18 Affairs Department.

19 92. Q. It's funding provided by the Department of
20 Indian Affairs, isn't it?

21 A. It's administration of a service provided
22 by the Department of Indian Affairs. It goes beyond
23 funding. It's not just cutting a cheque, like an
24 income assistance where I would cut you a cheque, Mr.
25 Taylor, and you would have discretion on how to choose

1 it. It's highly regulated by the Department.

2 93. Q. You'll agree with me, will you, that Indian
3 Affairs provides funding?

4 A. That's one element of the service they
5 provide, yes.

6 94. Q. I know you want to say it's a service, but
7 you'll agree with me that Indian Affairs provides
8 funding, correct?

9 A. It does provide funding as part of its
10 service, that's correct, Mr. Taylor.

11 95. Q. And it provides funding to First Nation
12 agencies?

13 A. It funds either the First Nations agency
14 directly or the First Nations government or tribal
15 council, depending on the arrangement.

16 96. Q. All right. And the money is to be used by
17 the tribal government, the agency or other entity that
18 gets it to provide child welfare on reserve, correct?

19 A. In accordance with INAC authorities, and
20 that usually means provincial or territorial standards
21 of the regulations as per PD 20-1 and the enhanced
22 funding formula.

23 97. Q. Do you agree with me that the money going
24 from Indian Affairs to the agency is to be used by the
25 agency to provide child welfare on reserve?

1 A. Yes.

2 98. Q. And those agencies have staff who provide
3 those services?

4 A. Yes, that's correct.

5 99. Q. And the agency themselves, as we've
6 discussed or had questions and answers on, have in most
7 cases provincial certification or designation or
8 mandating, whatever word is used?

9 A. That depends. Sometimes the delegation
10 goes specifically to the social worker, so it depends
11 by statute of how the delegation is actually done.
12 Sometimes it's done to the agency, who then has the
13 power to delegate individual social workers and
14 sometimes it's done directly by the province and as
15 we've discussed, the Minister of Indian Affairs also
16 has the ability to authorize child welfare programs on
17 reserve and has done so.

18 100. Q. You're talking about Spallumcheen again?

19 A. The Spallumcheen and also the Northwest
20 Territories Act under Section 56.

21 101. Q. Now, will you agree with me that in return
22 for getting this money and delivering child welfare on
23 reserve, the service providers have to account back to
24 Indian Affairs for how they spent the money?

25 A. Well, that's only one of the many things

1 they have to report back to.

2 102. Q. Well, that's the only question I asked.

3 A. Well, that's not the entire answer, though,
4 and I think it's important to say that they report back
5 on programs, prevention services, as well as how the
6 money is being spent.

7 103. Q. In other words, they report back on what
8 they've done with the money?

9 A. They report back on a whole pile of things
10 that your client articulates in the program manual. I
11 think it's got to be about four or five pages of detail
12 that's required.

13 104. Q. Yes, and we can all read that but it all
14 comes down to reporting back to Indian Affairs to
15 account for the expenditure of the money that the
16 agency got from Indian Affairs?

17 A. Well, the Program Directive and INAC's own
18 documents talk about the objectives of the program are
19 to provide culturally based and comparable child
20 welfare services. That goes beyond fiscal requirements
21 and speaks to how the actual service is delivered and
22 the degree to which those criteria are being met.

23 So you're asking about things, like your staff
24 can go in and are looking at children in care files as
25 a part of their process. That goes well beyond a

1 financial statement or looking at a balance of
2 accounts, that's looking into the private lives of
3 children.

4 105. Q. I'm going to show you for a moment the
5 Affidavit of Elsie Flett that has also been sworn and
6 filed in these proceedings. Have you seen that
7 Affidavit before?

8 A. I'm going to just take one moment, if I
9 might, and just take a look at it.

10 (OFF RECORD DISCUSSION)

11 BY MR. TAYLOR:

12 106. Q. Go ahead?

13 A. I haven't read it in detail, this final
14 version.

15 107. Q. Well, I'm not going to take you through the
16 whole Affidavit so don't be concerned about that, if
17 you are. But you can see that this is an Affidavit
18 sworn by Elsie Flett sworn on February 11th, do you?

19 A. I'm just looking for her signature. It
20 appears to be true, yes. I have no reason to doubt
21 you, Mr. Taylor.

22 108. Q. You know Elsie Flett, do you?

23 A. Yes, I do.

24 109. Q. And you know the agency that she is the
25 Chief Executive Officer of?

1 A. Yes, the Southern First Nations Authority,
2 Manitoba.

3 110. Q. Apparently their full name is Southern
4 First Nations Network of Care, Child, and Family
5 Services Authority, but they shorten it to Southern
6 Authority. You're familiar with that organization?

7 A. I am.

8 111. Q. In paragraph 8, which is what I want to
9 take you to ---

10 A. Paragraph 8 of Ms Flett's Affidavit?

11 112. Q. Yes. There's two sentences in that
12 paragraph. The first sentence is something that we've
13 already covered, I think. It says, "INAC's stated
14 objective in Directive 20-1 is to ensure culturally
15 appropriate child and welfare services on reserves that
16 are comparable to those received by others in similar
17 circumstances". We haven't actually covered that last
18 clause, I suppose, but that's not the sentence I'm
19 interested in at the moment.

20 Before I go to the next sentence, Directive
21 20-1 is something referred to in your Affidavit as well
22 and something you're well familiar with, correct?

23 A. Well, I am familiar with it. It is
24 actually called Chapter 5, Directive 20-1 and it is an
25 INAC policy on how you exercise your funding service

1 for some agencies in the country.

2 113. Q. Right. Now, the second sentence in that
3 paragraph is what I want to go to right now and you
4 have spoken to this some.

5 "Directive 20-1 also requires First
6 Nations agencies to comply with
7 provincial child welfare statutes and
8 standards".

9 Do you accept that as an accurate statement?

10 A. I accept that Directive 20-1 ties it to
11 that. What I don't accept is that the Department
12 provides funding under Directive 20-1 in adequate and
13 structured ways that allow that to happen.

14 So for example, your client just received a
15 letter from the Province of British Columbia which is a
16 delegating authority where the Directive applies. That
17 letter was signed by the Government of British Columbia
18 dated November 17th where they expressed that funding
19 provided under the Directive by the Department does not
20 enable agencies to meet their mandate of
21 responsibilities.

22 The Minister of Indian Affairs, your client,
23 responded on January 17th, 2010 to that letter and he
24 said that he does not have time to meet with the
25 province to discuss this.

1 There's also, of course, on page 107 of your
2 national program manual, the Department is very clear
3 in saying that the governance of their program is by
4 Treasury Board authority, not by the provincial
5 authority.

6 So there's no real link here, it just seems
7 like at the end of the day from the Department's point
8 of view, its policies serve whatever the provincial
9 views are about statute and following legislation and
10 standards.

11 114. Q. Let me see if I can get a clear answer to a
12 short question. Do you accept that what is said in the
13 second sentence of paragraph 8 of Flett's Affidavit
14 that I read to you earlier is an accurate statement?

15 A. It's an accurate statement, but not the
16 capacity to do so and that's known to the Department.

17 115. Q. So you say?

18 A. Well, not only do I say but this Fact Sheet
19 authorized by the Department of Indian Affairs, the
20 same one that you were referring to, Mr. Taylor, says
21 here,

22 "A fundamental change in funding
23 approach of First Nations child and
24 family service agencies to child
25 welfare is required in order to reverse

1 the growth rate of children coming into
2 care and in order for agencies to meet
3 their mandated responsibilities".

4 116. Q. That's a dated document, isn't it?

5 A. Well, you know, what's so interesting about
6 this is it is dated 2006 but the Directive has been in
7 place since 2000 and unchanged since 2004, and it
8 applies in British Columbia, Manitoba where Ms Flett is
9 located, as well as in New Brunswick.

10 So unless there's been an infusement of funds
11 that I don't know about under the Directive since
12 October 2006, then the status quo would apply.

13 117. Q. Well, you know that there has been
14 increases in funding in a number of ways over the
15 years, don't you?

16 A. Yes, there has been, but not specifically
17 to the Directive, which is what I think you're talking
18 about now.

19 118. Q. I understand that in 1996 the amount of
20 money that INAC funded that year for child welfare on
21 reserve was about \$193 million. Do you have knowledge
22 in that area?

23 A. Not the specific amounts, but I'll accept
24 what you're saying is true.

25 119. Q. I also understand that for the year that

1 we're in right now, that is the fiscal year that is
2 going to end in a little over a month, that
3 approximately \$523 million was provided by Indian
4 Affairs to First Nation agencies for child welfare on
5 reserve. Do you have knowledge whether that number
6 sounds right or is right?

7 A. Well, I think your client would know
8 whether or not that was right or not, but it sounds
9 ballpark right. I'm not going to protest it isn't, I
10 have no evidence that it isn't.

11 120. Q. Well, you keep abreast of these things,
12 don't you?

13 A. I try to, but getting actual detailed
14 figures from your Department, as the Auditor General
15 and Standing Committee on Public Accounts has noted is
16 sometimes quite difficult so I do my best.

17 121. Q. Well, there's a lot on websites and you've
18 found a lot on websites, haven't you?

19 A. I have.

20 122. Q. And since this Fact Sheet was prepared, you
21 know that the enhanced prevention approach has been put
22 in place in five provinces, don't you?

23 A. Well, I do know that it has been put in
24 place. I'm curious about Prince Edward Island, though,
25 because there are no First Nations agencies there. I

1 know that your client says that it was implemented
2 there, but I thought the enhanced prevention approach
3 only could apply to agencies. So I'm not clear how it
4 was done there, but I know that there's a press release
5 on that.

6 123. Q. The point, though, Dr. Blackstock is that
7 since this Fact Sheet, there's been significant changes
8 to the Child and Family Services Program and it's
9 called enhanced prevention, it involves increased
10 money, and it's been rolled out in five provinces so
11 far, hasn't it?

12 A. There are five provinces for which it is
13 not rolled out and the province which you were talking
14 about with Ms Flett's Affidavit is one of them.

15 There is an enhanced funding formula which was
16 developed by the Department and provided in these
17 different regions. It does provide some additional
18 funds, but there's also some caps and restructuring of
19 the Directive, so it's unclear whether it actually is a
20 net gain or a net loss for many agencies.

21 The Auditor General of course has already
22 looked at this in greater detail than I have and in
23 Section 4.6.4 of her report, she already has found the
24 enhanced funding model to be inequitable.

25 124. Q. Well, we can all talk glass half full,

1 glass half empty, I suppose. The converse of five
2 provinces that enhanced prevention hasn't yet been put
3 in is that it has been put in place in five other
4 provinces, correct?

5 A. That is correct, but from my point of view,
6 Mr. Taylor, this is about children. I see all those
7 children as being equally valuable and I can't
8 understand why a country as wealthy as this one who's
9 just spent \$6 billion on hosting the Olympic Games has
10 not found it within its budget to make sure that every
11 child in every region receives the type of culturally
12 based safety and care that's provided to other
13 children.

14 125. Q. Well, let's stick to child welfare on
15 reserve, if we may. Since this Fact Sheet which is
16 Exhibit G to your Affidavit was put out in 2006, I
17 understand that the annual funding for child welfare on
18 reserve has increased by over \$100 million a year. Is
19 that your understanding?

20 A. That sounds about right.

21 MR. CHAMP: Mr. Taylor, sorry, I just want to
22 understand where the questions are going. I don't
23 necessarily have any concerns, I'm just trying to
24 understand how the levels of funding are relevant to
25 the issue in the Motion to Dismiss. I thought the

1 Motion to Dismiss is more about how we characterize the
2 role of funding and whether it is a service and all
3 that's tied to that.

4 MR. TAYLOR: I agree with you, Mr. Champ, and
5 if Dr. Blackstock's Affidavit hadn't wandered into what
6 I think are not areas of relevance on the Motion that
7 this is an Affidavit for, we wouldn't have to go over
8 some of this, but the Affidavit speaks quite a bit as
9 Dr. Blackstock has here today about the adequacy of
10 funding.

11 I agree with you that the issue is whether
12 what's done is funding or something else, but I'm
13 asking these questions because of some of the things in
14 the Affidavit.

15 MR. CHAMP: Just on that, I guess what we would
16 say is that the adequacy of funding as set out in the
17 Affidavit to the extent it has an impact on how the
18 services and what services can be delivered on First
19 Nations reserves as a function of control. I think
20 that's the sort of point of it. All I'm saying is
21 we're not going to be raising in any way -- I'll just
22 leave it at that. That's our concern, I'm not sure how
23 far you're going to go on those questions.

24 (OFF RECORD DISCUSSION)

25 BY MR. TAYLOR:

1 126. Q. In instances, Dr. Blackstock, where a
2 province or a territory, being the Yukon, provide child
3 welfare on reserve, they use provincially certified
4 workers to do that, don't they?

5 A. Are you talking about employees of
6 provincial child welfare agencies or Children's Aid
7 Societies off reserve?

8 127. Q. No, I'm talking about on reserve. Let me
9 back up a bit, then. Do you understand like I do that
10 there are some instances in Canada where, for any
11 number of reasons, there isn't a First Nation agency to
12 do the child welfare on reserve so the province or the
13 territory steps in?

14 A. Yes.

15 128. Q. And in those instances, is it your
16 understanding that provincially certified workers are
17 used to provide those child welfare services that the
18 province or territory is handling or doing?

19 A. That's my understanding.

20 129. Q. And in Ontario, it would be employees of a
21 Children's Aid Society who would be doing the child
22 welfare on reserve where there is no First Nation
23 agency to do it, right?

24 A. I assume that's correct. I'm not an expert
25 in kind of the specifics on Ontario and child welfare

1 delivery, but I assume that's correct.

2 130. Q. Okay. Do you know it to be the case that
3 there is an Agreement in place with each of these 108
4 agencies and the Federal Government for the provision
5 of money for the agency to then provide the child
6 welfare services on reserve?

7 A. Well, there is that requirement set out in
8 your program manual. There is also, though, the
9 Auditor General's finding that some of these Agreements
10 with the provinces have not been signed. I personally
11 have not verified whether there's Agreements with all
12 108 agencies so I can't speak to that specifically.

13 131. Q. Okay. Do you agree with me that the terms
14 that govern the funding would be Agreements in place
15 where they exist?

16 A. Well, according to your program manual,
17 there's a whole layer. So you have the Cabinet
18 authority and then it goes down to the Treasury Board
19 authority and then the program authority and then it
20 goes into the Agreement. So there's all kinds of
21 levels of authorities and different criteria that the
22 Department exercises in the provision of funding.

23 132. Q. That is then put out in the Agreement with
24 the agency as the final document.

25 A. Well, not necessary, because according to

1 that page 107, when it comes to the Department, they
2 are obliged by those overwhelming authorities. So, you
3 know, the Agreement is one portion but there is also
4 these other levels.

5 133. Q. All right. Do you agree with me then that
6 the money that's put out is on terms in accordance with
7 the authority that you've spoken of and the terms of
8 the Agreement in question?

9 A. Well, again, I haven't analyzed each one of
10 these Agreements. I would hope that that would be the
11 case, but I don't know it specifically on each
12 Agreement.

13 134. Q. You refer to Jordan's Principle in your
14 Affidavit and you do so at paragraph 12.

15 A. So are we done with Elsie Flett's Affidavit
16 for the moment?

17 135. Q. Yes, I can take it back and relieve you of
18 that paper.

19 A. Thank you very much. I'm sorry, we're at
20 Section 12 of my Affidavit then, Mr. Taylor?

21 136. Q. Yes. Now, you speak of Jordan's Principle
22 there.

23 A. Yes, a man named Jordan River Anderson.

24 137. Q. It's running through to about paragraph 19.

25 A. Yes, that's correct.

1 138. Q. And I think what I'm about to say is what
2 you're saying in those various paragraphs but reducing
3 it to its basics, do you agree with me that Jordan's
4 Principle is the name for a procedure to be implemented
5 in cases where there is a jurisdictional dispute
6 between the federal and provincial governments as to
7 which government should pay for the immediate needs of
8 a First Nation child who lives on a reserve ordinarily
9 and has multiple disabilities requiring multiple
10 service providers?

11 A. No.

12 139. Q. You agree with me part way, don't you?
13 That is, do you agree with me that Jordan's Principle
14 is the name for a process to be implemented where there
15 is a jurisdictional dispute between the Federal and
16 Provincial Governments as to who pays?

17 A. I agree that it's -- just about, Mr.
18 Taylor, we're just about there. As set out in Article
19 12 of my Affidavit, Jordan's Principle is a child first
20 principle dedicated to resolving jurisdictional
21 disputes -- and here's the key word "within" and
22 between provincial, territorial and the federal
23 government.

24 140. Q. Yes, I think that's what I said.

25 A. You left out the word "within". So this

1 could be, for example, INAC and Health Canada, so
2 that's within the same Government.

3 141. Q. Oh, I see, right. In other words, provide
4 the service and figure out who pays later?

5 A. Yes. It's in line with the Convention on
6 the Rights of the Child that the child's needs come as
7 the first priority and whatever views governments have
8 about fiduciary responsibilities are a second concern.

9 142. Q. Now, as you say in your paragraph 12,
10 Jordan's Principle applies in a range of circumstances
11 including disputes that may arise in the context of
12 education, health, child care, child welfare,
13 recreation, cultural language services, is that right?

14 A. Yes.

15 143. Q. I'm not sure about that last one, cultural
16 language services. Have you ever seen Jordan's
17 Principle arise in that context?

18 A. Not at this point. But Jordan's Principle
19 applies to all government services so these are listed
20 as examples, not as an exclusive or exhaustive list.

21 144. Q. All right. We don't need to be concerned
22 about that last clause here, anyhow. Do you agree with
23 me that Jordan's Principle, where it arises, is often
24 arising in medical situations?

25 A. We've seen it arise in medical situations,

1 in child welfare as well as in education situations, as
2 well.

3 145. Q. Jordan's actual situation was a medical
4 situation, wasn't it?

5 A. It was also child welfare. He was brought
6 into child welfare care shortly after birth, not
7 because of concerns of maltreatment but simply because
8 that was the only way to pay for his services.

9 146. Q. And it was the case that Jordan was going
10 to have to be unfortunately in some sort of care
11 facility given his medical situation, right, the
12 question was which and where?

13 A. I don't think it was absolutely clear that
14 he needed to be in a medical facility. In fact, there
15 was of course a family home for Jordan to go into
16 shortly after he turned two years of age and if it were
17 not for the jurisdictional dispute between Manitoba and
18 Canada then he would have gone to that family home
19 instead of dying in a hospital never having spent a day
20 in a family home.

21 147. Q. Well, you don't know that to be so for
22 sure, do you?

23 A. Well, we do know that he would have gone
24 home at the age of two. Doctors were ready to
25 discharge him. They were happy with the discharge plan

1 as it was mapped out. The physicians always scope that
2 out. They did not want to discharge this child into a
3 situation where his medical and social and cultural
4 needs would not be taken care of. They were very
5 pleased with the discharge plan. There wasn't a
6 question of ---

7 148. Q. The discharge plan involved going to some
8 sort of a ---

9 A. To a family home.

10 149. Q. It was an institutional foster situation,
11 wasn't it?

12 A. It was a family home.

13 150. Q. Other than his parents?

14 A. Other than his parents, yes.

15 151. Q. All right. Now, in December of 2007, the
16 House of Commons passed a non-binding Resolution about
17 Jordan's Principle, didn't they?

18 A. They passed it unanimously, Motion 296.

19 152. Q. Yes, and the text of the proposed Motion is
20 in paragraph 19 of your Affidavit. You're aware that
21 since December of '07 when that non-binding Motion was
22 passed that Government agencies and departments have
23 worked to implement Jordan's Principle in a way that
24 gets the services to the child, sorting out disputes
25 later, right?

1 A. What's very sad to me is that the
2 Government of Canada has chosen to pursue an angle of
3 narrowing this child's legacy from being one of
4 equality that the family had wished it to be to only
5 applying to children with complex medical needs.

6 I understand that the Government of Canada has
7 been working with the provinces at the exclusion of the
8 Anderson family and many First Nations who wanted to be
9 a part of it to implement it in that very narrow
10 context and I very much hope that the Government of
11 Canada embraces the full notion of equality across all
12 Government services and truly honour Jordan's legacy
13 over the longer term.

14 153. Q. Now in paragraph 20 of your Affidavit, you
15 refer to what you assert as control over the funding
16 that is put to agencies for child welfare on reserve.
17 I'm going to have some more questions for you later on
18 this after lunch but I want to ask a few right now.

19 You refer in (1) of your paragraph 20 to
20 policies and specifically refer to a policy to do with
21 outcomes. Are you in agreement that the Indian Affairs
22 policies are aimed at better outcomes for children in
23 the expenditure of money by First Nation agencies in
24 providing child welfare on reserve?

25 A. Well, the policy that I'm referring to here

1 is child welfare outcomes. Child welfare outcomes cut
2 across much more than just fiscal issues, we're not
3 even looking at finances there.

4 The typical child welfare outcome, you would
5 have to have a measure of the safety and well-being of
6 the child and then also the culturally appropriateness
7 that you gather.

8 So there would need to be a definable measure
9 and then standards upon measurable criteria in order to
10 get there. That's what a child welfare outcome is
11 that's being pursued by the Department.

12 154. Q. But as far as it goes you agree with me, do
13 you, that the policies are aimed at better outcomes,
14 which is the same thing that you want?

15 A. Well, I think that improved child welfare
16 outcomes would be a positive thing. It depends on how
17 the Department develops these and how they implement
18 them. I think child welfare outcomes are a very good
19 thing, but they are an area of expert development,
20 there's lots of expertise required to do it.

21 I can only hope that the Department is
22 accessing that expertise because developing outcomes
23 without proper expertise, without knowledge of the
24 area, can be very detrimental to children.

25 I can develop an outcome that may meet my

1 particular standards but actually may not achieve in
2 the end the safety and well-being of children or the
3 cultural appropriateness of services.

4 155. Q. Let me ask you this, if I may. Do you
5 agree with me that it is important in getting good
6 outcomes to pay attention and be smart as to how you
7 spend money?

8 A. I think it's more important the statutes
9 are right on this and so is the UN Convention on the
10 Rights of the Child, that the standard is what's
11 happening to the child.

12 You know, it's kind of like the healthcare
13 system, Mr. Taylor. You could measure the healthcare
14 system by how many dollars we spend, but I prefer to
15 measure it by the health of Canadians. What is the
16 degree of health that the individuals within this
17 country are able to percept by?

18 And that's also the way that I measure child
19 welfare. The provincial child welfare statutes do not
20 say, "We goal to spend \$5 billion on child welfare and
21 if we do, that's acceptable".

22 They use as their standard the safety and well-
23 being of the child and the best interests of the child
24 and that's how I measure it and in fact, that's also
25 how some of your client's documents refer to it, too,

1 in terms of best interests and I'm pleased to see that
2 when it occurs.

3 156. Q. But I want to come back to my question and
4 have you answer it. Do you agree with me that it's
5 important how you spend money?

6 A. I think it's important as long as your end
7 goal is on the safety and well-being of the child. You
8 know, when you have resources, you need to invest them
9 in a way that makes maximum impacts for children and
10 that's critical but it's also important that money does
11 not drive the equation when it comes to the safety and
12 well-being of children.

13 Children are not guaranteed in this country
14 safety and well-being from maltreatment to a dollar
15 value and thank heaven for that.

16 157. Q. Your reference in your (3) to business
17 plans has to do with this, does it?

18 A. The business plans are a template developed
19 by the Department of Indian Affairs.

20 158. Q. I haven't asked the question yet.

21 A. You asked me if it had to do with this and
22 I responded, I'm sorry.

23 159. Q. All right. Well, let me see if I can
24 rephrase it. Am I correct that the business plans are
25 aimed at having the agencies show that they have a

1 sound business and management footing to them and to
2 the work that they do in delivering child welfare on
3 reserve?

4 A. Well, the business plans, I mean I've seen
5 the draft template through the Access to Information
6 documents I have on them and they seem to cover the
7 watershed in terms of what happens and then INAC
8 approves them, so I haven't seen the final template for
9 the business plan but if there was one, you know, then
10 I'd be happy to kind of take a look at it.

11 But the ones I've seen deal with a whole broad
12 variety of things from agency management to child
13 welfare outcomes -- for example, you have to put in
14 stuff like even the numbers of children in care
15 projected for years going forward, that kind of stuff.

16 160. Q. Is it your understanding that that is to
17 show and establish that there is a sound business
18 footing to the business that they're in, which is the
19 delivery of child welfare on reserve and doing that
20 right and getting the good outcomes for children with
21 the money that is put to them?

22 A. Well, I would hope that would be correct.
23 I'd have to see, you know, how they're used and what
24 the end goal of them are from the department's
25 perspective but certainly, you know, I would hope that

1 that would be the case.

2 161. Q. The items that you list here, in particular
3 3, 4, 5, and 6 as what you say is control are really
4 getting at having the agencies account for the money
5 that is passed to them for the delivery of child
6 welfare and to show back to Indian Affairs that the
7 money was spent in the way it was supposed to be spent,
8 that is for child welfare and in a good way for child
9 welfare. That is what it's about, isn't it?

10 A. Well, it leaves me with a puzzle if that's
11 what it's about because I don't understand then why we
12 have these letters from B.C. saying that agencies
13 aren't meeting mandated responsibilities, we have this
14 Fact Sheet from your own client saying that agencies
15 aren't able to meet mandated responsibilities. We have
16 Access to Information documents where people are
17 calling the funding situation "dire".

18 If the whole object by your client is to do the
19 right thing for children, then the Auditor General's
20 report should have concluded that you are providing
21 equitable and comparable and culturally based funding
22 and she did not conclude that.

23 162. Q. The real point that the Caring Society
24 wants to make is that you don't agree with the amount
25 of funding or the criteria for the funding?

1 A. We don't agree that the structure of the
2 funding service provided by the Department or the
3 amounts of the funding service provided by the
4 Department allow for the optimal outcomes for First
5 Nations children and that, of course, is something your
6 client agrees with too and the Auditor General has
7 found and we do not feel that adequate measures have
8 been taken by your client in order to address the
9 situation for the kids. That's what our concern is.

10 163. Q. But you agree, though, and this is what
11 you've been repeatedly speaking to that what it's about
12 is funding?

13 A. It's about your program service. So for
14 example, Mr. Taylor, on page 107 of your program manual
15 it makes clear that it is INAC's funding authority that
16 governs it's kind of program service and yet it
17 requires First Nations to follow the statute.

18 And yet when the provinces are writing to your
19 client saying the agencies can meet the statute, your
20 client is writing to say they don't have time to meet
21 with them in the near future. I'm not sure how all
22 that adds up to the best interests of children.

23 164. Q. With that and your views on it, it's about
24 funding. That's what the issue to you is, isn't it?

25 A. No, it's about the whole program and the

1 way that it's delivered. So there are policies and
2 procedures and all of that which goes into the INAC
3 funding service that are the substance of this
4 complaint. Funding of course is one element.

5 MR. POULIN: As you mentioned earlier, I hadn't
6 objected so far. At this point, I have no problem with
7 most of your questions, contrary to Mr. Champ who had
8 some issues. At this point in time I believe that it's
9 slowly going into a Discovery process which I believe
10 is outside of the scope of the Affidavit.

11 So I just want to warn you in advance that if
12 it keeps going in that direction, that in all
13 likelihood I'm going to be raising a lot more
14 objections.

15 At this point in time, I believe that you're
16 slowly going out of the Affidavit, both the one filed
17 by Madam Johnston and the one filed by Madam Blackstock
18 and of course the scope of the Motion so I object to
19 this line of questioning.

O

20 MR. TAYLOR: All right, thank you for that.

21 BY MR. TAYLOR:

22 165. Q. Dr. Blackstock, let me ask you this.

23 Firstly, you'll agree with me, will you, that none of
24 the agencies who deliver the child welfare on reserve
25 are part of this complaint, are they?

1 A. Do you mean that they signed the complaint?

2 Then the answer to that is "no".

3 166. Q. The complaint is put in by complainants and
4 I'm asking if any of the agencies are part of it and
5 you'll agree with me they're not, right?

6 A. Well, I think it requires a fuller answer
7 than that. The Assembly of First Nations, which are
8 the Chiefs in Assembly, unanimously voted for a
9 resolution to file this complaint in 2006, I believe
10 the December 12th AGA. I believe the specific
11 Resolution Number is 53/2006.

12 The First Nations are required by your client
13 to give authority to the agency in order for it to
14 operate. So the First Nations leadership voted
15 unanimously for this complaint to be filed and that's
16 why the Assembly of First Nations had the authority to
17 co-sign this complaint.

18 We are not a representative organization per
19 se, but First Nations child welfare agencies have been
20 extremely supportive of this filing of the complaint
21 and have not registered any concerns with us that they
22 prefer not to be a part of this complaint.

23 167. Q. I think we're probably belabouring the
24 obvious, but I'm just trying to get an answer to my
25 question. Do you agree with me that none of the

1 agencies are part of this complaint?

2 A. I'm trying to be specific in my answer to
3 you, Mr. Taylor. The First Nations agencies did not
4 sign the specific complaint as corporations. However,
5 the First Nations governments that have to be a part of
6 these agencies passed a unanimous resolution in
7 Assembly 53/2006 giving authority for this complaint.

8 168. Q. Let me ask you this. Are you aware of any
9 human rights complaints advanced by any First Nations
10 agencies who deliver child welfare on reserve?

11 MR. CHAMP: Mr. Taylor, Paul Champ for the
12 Caring Society. I'd just like to know what the
13 relevance of these questions are? *O*

14 I know I've heard recently in the media from
15 Minister Strahl that the reason why the Government is
16 pursuing this Motion to Dismiss is because they don't
17 believe organizations like the Caring Society or the
18 AFN should have standing to bring these kinds of
19 complaints, but I would just like to know on the Record
20 is that the position of the Respondent in this legal
21 proceeding?

22 If that's the case, then I'll withdraw my
23 objection, but I'm just wondering what the relevance of
24 these questions are. Are you challenging the standing
25 of these parties to bring this complaint?

1 MR. TAYLOR: The standing is not an issue in
2 this Motion, no. I'm just trying to get clarity
3 whether any of these First Nation agencies who deliver
4 the service have brought any humans rights complaints
5 that you're aware of?

6 MR. CHAMP: And my question is what is the
7 relevance?

8 MR. TAYLOR: All right, I'll move on.

9 MR. CHAMP: Thank you.

10 BY MR. TAYLOR:

11 169. Q. Now, I do want to ask you some more
12 questions arising from Ms Flett's Affidavit so I'm
13 going to give that copy back to you. Here's the
14 Affidavit and you can see that there's some tabs on it.

15 A. Thank you.

16 170. Q. I want you to have regard to Exhibit A,
17 which is a funding agreement between the Government of
18 Canada and the Southern Agency that we spoke of
19 earlier.

20 Exhibit A is quite hard to read. I thought I
21 had another cleaner copy for you. Can you read Exhibit
22 A as you have it in that copy?

23 A. Yes, I can read it.

24 171. Q. All right. Well, you have better eyesight
25 than me, perhaps. Now, you've already said that you're

1 familiar with the Southeast Agency?

2 A. I was talking about the Southern authority,
3 but I'm also familiar with the Southeast Agency which
4 is a different entity.

5 172. Q. Right, this is an Agreement with one of the
6 ten agencies that the Southern Agency is an oversight
7 body for, is that right?

8 A. That's right.

9 173. Q. And both the Southern Agency and the
10 Southeast Services Organization that is the subject of
11 Exhibit A are mandated by the Province of Manitoba to
12 deliver child welfare on reserve, aren't they?

13 A. Yes.

14 174. Q. Do you recognize this Agreement as a
15 typical agreement for funding between the Federal
16 Government and a First Nations agency who delivers
17 child welfare on reserve?

18 A. As I spoke of earlier, I haven't had an
19 opportunity to go through all 108 Agreements so I'm
20 really not in a position to say whether it's typical or
21 not.

22 175. Q. Okay. Have you seen this kind of agreement
23 before?

24 A. I've seen different agreements, but I
25 haven't -- you know, I'd need a moment to kind of take

1 a better look at this to see whether I've seen this
2 particular one before. But they tend to be boilerplate
3 agreements that the Department has.

4 176. Q. You can take that over the noon break and
5 look at it more if you wish to decide whether you've
6 seen it before, so I'll leave that and come back to it
7 later maybe as to whether you've seen it before.

8 But with that, let's look at this particular
9 Agreement which is identified in Ms Flett's Affidavit
10 put forward by one of the parties who are complainants
11 in this complaint as an Agreement for funding that is
12 in place.

13 This particular Agreement is for the 2007/08
14 year, as I understand it and you'll see that on the
15 second page of the document that is signed March 19 of
16 '07.

17 (OFF RECORD DISCUSSION)

18 MR. TAYLOR: Now, we'll eventually, unless any
19 of the lawyers have a concern with it, for clarity mark
20 this as an exhibit so that it's clear what we're
21 talking about in this Cross-Examination but I'll have
22 to do that after lunch when I find a copy to mark.

23 BY MR. TAYLOR:

24 177. Q. I want to draw your attention firstly to
25 the first three Whereas clauses. You can look at all

1 of them, there's four of them.

2 A. There's four, okay. I just saw the a), b),
3 and c), the sub-components in the last one.

4 178. Q. Right. We don't need to read them out loud
5 because the document speaks for itself. At least we
6 don't need to go read it in full, but is it a fair
7 characterization to say that the Whereas clauses refer
8 to this agency being provincially mandated and that the
9 Minister, which would be the Minister of Indian
10 Affairs, is providing funding to assist the agency in
11 delivering child welfare?

12 A. I need a moment to kind of take a look at
13 these and read them over. "For whom the Minister has
14 accepted responsibility and further to provide funding
15 to the agency", that seems to be in line with what it
16 says in the program manual.

17 179. Q. Although I first focused you on the first
18 three Whereas clauses, turning to the fourth Whereas,
19 that's a Whereas clause that has the agency recognizing
20 its own responsibility for sound administration and
21 management and accountability for these funds, is that
22 a fair characterization?

23 A. Well, it's a summary of what those Whereas
24 clauses say.

25 180. Q. And you'll see for this particular year

1 '07/08, for this particular agency in Clause 2.1 Indian
2 Affairs is going to provide almost \$17 million to the
3 agency so that it can provide the programs specified in
4 this Agreement or this arrangement.

5 If you turn to Part B of the document, Part B
6 is listed on the top right of one of the pages, it
7 appears to be page 6 which is in the lower right corner
8 although the numbers are a little hard to read. It's
9 got General Terms and Conditions Part B at the top, do
10 you see that?

11 A. Yes, I've found it.

12 181. Q. It says in Clause 1 that "the agencies
13 shall deliver the programs as set out in Part E and
14 abide by the program services and activities delivery
15 requirements and reporting requirements as Part E and
16 maintain a system of accountability", correct?

17 A. "In accordance with the framework set out
18 in Part C, Accountability Framework".

19 182. Q. Yes. Is it your understanding that those
20 are standard requirements of an agency who is
21 delivering child welfare services on reserve using
22 Federal money?

23 A. The program manual sets out a whole pile of
24 criteria for those agencies, some of which are
25 reflected in this Agreement, some are not. The

1 agencies are subject to both of those according to the
2 program manual authored by your client.

3 183. Q. Then there's particulars, if you look at it
4 now or later, you'll see as you go through Part B as to
5 the payment of money to the agency by Indian Affairs
6 and the reporting that the agency in turn will do. If
7 you go along, you can see that there's a Part C which
8 has Accountability?

9 A. I'm sorry, Mr. Taylor, I'm still on Part B.

10 184. Q. Okay. Take a few moments to look at if it
11 you like.

12 A. What page is it, the Part C.

13 185. Q. Part C is on page 12, the lower right
14 corner. It's called Accountability Framework. I'm
15 just referring you to it.

16 A. Okay, I've found Part C.

17 186. Q. And then you come to Part E, which is what
18 I do want to ask some questions about.

19 A. So nothing on Part C?

20 187. Q. No.

21 A. You just want to go on to Part E?

22 188. Q. Yes. And with that, maybe what we best do
23 at the moment is break for lunch given the hour and to
24 allow you to look at this in some more depth, if you
25 wish, over the lunch hour. In Part E, I want to ask

1 you a few things about what's there and in particular
2 Clause 1, 2, and 4, so I'll leave that with you and
3 then we can come back after lunch, if that's okay?

4 A. That's fine. Thank you very much, Mr.
5 Taylor.

6 189. Q. Now before we go, Dr. Blackstock, this is a
7 Cross-Examination on your Affidavit so I would ask that
8 you not speak with anyone about your evidence or this
9 case or the complaint until after you're finished
10 giving evidence later.

11 In other words, talk about the weather, talk
12 about the Olympics over lunch, but don't talk about
13 this case or your evidence. Is that agreeable?

14 MR. CHAMP: Mr. Taylor, I think that's a bit
15 broader than the duty on a Witness to not speak about
16 their evidence in a proceeding.

O

17 BY MR. TAYLOR:

18 190. Q. Well, I'll let Mr. Champ speak further with
19 you, but you're agreeable to not speak about your
20 evidence, are you?

21 A. Yes, of course. I want to ensure the
22 integrity of these proceedings, I'll do whatever is
23 required.

24 (LUNCHEON ADJOURNMENT)

25 191. Q. We'll resume with some questions, Dr.

1 Blackstock. Before the lunch break, I was asking you
2 some things about what is Exhibit A to Ms Flett's
3 Affidavit, which is an Agreement between Canada and the
4 Southeast Child and Family Services Inc.. It's
5 Exhibit A, as I say, to Ms Flett's Affidavit.

6 I've now put before you another copy which
7 doesn't have the Exhibit A date stamp but it is the
8 same thing and it's just easier to read because of the
9 reproduction means.

10 MR. CHAMP: Mr. Taylor, do you have a few
11 copies of that? It looks like you have a better copy
12 than any of us.

13 MR. TAYLOR: Yes.

14 BY MR. TAYLOR:

15 192. Q. I'd asked you some questions about it. I
16 want to go to Part E, if I may, and that is on page 16
17 of the document in the lower right corner or if you
18 want to use the upper right corner fax numbering
19 systems, it's called 17.

20 Reviewing with you some of the provisions and
21 before I do that, did you take the opportunity to look
22 this over during the lunch break as you indicated you
23 might?

24 A. Yes, I did.

25 193. Q. Has that refreshed your memory whether

1 you've ever seen it before?

2 A. Honestly, I have not looked in detail at
3 all of these Agreements and I'm not clear on which
4 parts are negotiable or which parts are considered
5 boilerplates by Canada, so I can't see that I've seen
6 this Agreement.

7 194. Q. Okay. In reviewing it, though, over the
8 lunch hour, does it read and look to you as a fairly
9 typical agreement that you see for funding from Indian
10 Affairs to an agency who delivers child welfare?

11 A. Again, I can't say whether it's typical or
12 not having not reviewed all the Agreements. But what I
13 can say is that there are a number of things in the
14 Agreement that look like parts of the boilerplate
15 agreement that are consistent with the program manual.

16 195. Q. Okay. Now, you'll see at Part E on page 16
17 under the heading General, you'll see that in 1.1 that
18 effective a certain date in 2004, the agency is funded
19 under the Indian Affairs child welfare funding formula.

20 And in 1.2, the agency shall use the funds
21 provided by Indian Affairs under the arrangement in
22 accordance with its authority under the applicable
23 provincial statutes.

24 And then in Clause 2.2, you'll see that it
25 deals with maintenance. Now, you know that maintenance

1 is the in care aspect of child welfare, is that right?

2 A. That's right.

3 196. Q. And that is when a child has been
4 apprehended from the family home by reason of some
5 safety reason, they go to what's called "in care" and
6 that in turn generates maintenance dollars?

7 A. It's not just an apprehension, just as a
8 clarification, Mr. Taylor. It can be by voluntary care
9 agreement or special needs agreements. They take on
10 different terminology in different jurisdictions but
11 the effect is that the child is placed out of their
12 home.

13 197. Q. Yes, thank you for that, you're quite right
14 that it can be apprehension but it can also be a
15 voluntary removal situation. And then in 2.1, you'll
16 see that the Minister agrees to provide funding for
17 maintenance to the agency and then in the following
18 parts of 2.2, the agency shall keep accounting records
19 and submit reports.

20 Then in Clause 4 and specifically, 4.1, you'll
21 see that funding for operations provided by Indian
22 Affairs to the agency is calculated pursuant to certain
23 formula for the relevant period of time and that the
24 agency and Indian Affairs will determine what reports
25 are provided.

1 Now, if you take those Clauses together with
2 the rest of this Agreement, do you agree that they show
3 firstly that Indian Affairs provides funding to this
4 agency?

5 A. That's part of what they do, but they also
6 have a number of notes here about different things that
7 they do. And I'm not sure what this National Indian
8 Child Welfare formula is. Is that Program Directive
9 20-1 or is that the enhanced funding formula or is it
10 something else? Because I've never heard it phrased as
11 that.

12 And then there's also a different phraseology
13 used here in the operations, "First Nations Child and
14 Family Services Funding Formula", so that's two
15 different funding formulas.

16 198. Q. I think the evidence that we'll have here
17 today will be your own as best as you know things, so
18 we'll go with what you know. But back to my question,
19 you've partially answered it but I'm going to ask it
20 again. Do you agree with me that what this Agreement
21 including Part E shows is that Indian Affairs provides
22 funding to this agency?

23 A. Yes, under certain terms and conditions,
24 not all of which I understand.

25 199. Q. Okay. Will you also agree that the agency

1 is to use those monies to provide child welfare on
2 reserve?

3 A. "Shall deliver in accordance with the CFSA
4 Act". I mean, basically what I can do for you, Mr.
5 Taylor, is read what is already here.

6 200. Q. Well, I don't want you to do that and if
7 you don't know, you can say you don't know.

8 A. All right. I would assume that that's the
9 case, but I don't know for sure. Without knowing more
10 detail about what these terms are in the Agreement, I
11 can't say for sure, but Ms Flett will be able to, I'm
12 sure.

13 201. Q. Are you in your evidence now saying that
14 you really don't have a firm grasp of how this all
15 operates?

16 A. No, I'm not saying that. You had pointed
17 me to one Agreement which has terms that are not used
18 even in your own program manual and you've asked me to
19 draw conclusions on the basis of one Agreement in
20 somebody else's Affidavit. I'm doing my best to
21 respond to the questions in as frank a manner as I can,
22 but I think it would be best to direct things to Mrs.
23 Flett.

24 202. Q. Well, will you agree with me on this, and
25 by the way you can be assured that various questions

1 will be put to Ms Flett, as you may already know. But
2 will you agree with me that whatever this agency is
3 being funded to do and is supposed to do. that in
4 return for getting the money they have to report back
5 to Indian Affairs what they do with the money?

6 A. Yes, and that's in the program manual so
7 you have to submit reports on protection, on
8 prevention, financial reports. There's the audit and
9 review where you look at child in care files and foster
10 family files and all of that is spelled out in the
11 program manual and this Agreement is subject to the
12 program manual.

13 203. Q. All right. Will you agree with me further
14 that what the Clauses in Part E that I've pointing you
15 to show is that the agency in reporting back to Indian
16 Affairs must show what they do with the money and
17 provide information and reports that show that they
18 have a sound business plan and systems in place to
19 wisely and appropriately and properly spend the money
20 that's being given to them?

21 A. I don't see the word "business plan"
22 anywhere in here. Maybe you can direct me to it?

23 204. Q. I don't know that those words are used
24 particularly, but if you look at Clauses 2.2, 2.3, 2.4,
25 2.5, 2.6 ---

1 A. There is no 2.6 in my document, I'm sorry,
2 Mr. Taylor. There's only 2.51 and then it goes to 3.
3 Maybe it's part of the photocopying?

4 205. Q. You're in Part C. It's Part E.

5 A. Okay.

6 206. Q. So Part E, page 16 of the document. If you
7 look at 2.2 and following on that page through to and
8 including 2.6, you'll see that there's a number of
9 reporting requirements put on the agency to do with
10 maintenance. Do you see that?

11 A. Yes.

12 207. Q. Will you agree with me than going further
13 than just having to report what they do with the money,
14 these are showing that the agency has to report on
15 things that show that its spending the money wisely and
16 properly?

17 A. Well, it sets out a bunch of reporting
18 requirements but it also mentions here under 2.8,

19 "Shall provide to the ministers
20 submissions, resubmissions, and
21 supplementary reports on children in
22 care"

23 and I'm not sure what the Minister does with all of
24 those reports but that to me is really all spelled out
25 in the funding manual and that speaks to the service

1 provided by the Government. But yes, there are a
2 series of requirements that are noted in this Agreement
3 for the agencies.

4 208. Q. All right, we're done with that, I'll take
5 that off your hands. You still have your Affidavit
6 before you, do you?

7 A. Yes, I do. I'll turn to that.

8 209. Q. In paragraph 10, dropping back there for a
9 moment, I notice that in your Affidavit at paragraph 10
10 on page 3, in the second line you refer to the purpose
11 of the Child and Family Services Program to "provide
12 culturally based child welfare services". Is it
13 correct that the INAC documents and the program is
14 aimed at providing for "culturally appropriate child
15 welfare services", not "based" but "appropriate"?

16 A. Well, I would hope that they mean the same
17 thing.

18 210. Q. You're using the word synonymously, are
19 you?

20 A. I'm using the word synonymously.

21 211. Q. Okay. Do you agree with me that it is the
22 case that in terms of accurately describing what the
23 Indian Affairs program is aimed at doing or its
24 purpose, that the words "in similar circumstances"
25 should be added after "territorial governments" at the

1 bottom of the page?

2 Do you see there, it says, "that are comparable
3 to the child welfare services funded off reserve by
4 provincial and territorial governments"?

5 A. Right.

6 212. Q. The words "in similar circumstances" should
7 be added to accurately describe what the program is
8 about, shouldn't they?

9 A. Well, it varies within the INAC documents.

10 I mean, sometimes it says "in similar circumstances"
11 and other times it doesn't, it just mentions
12 comparability.

13 213. Q. Okay. You would expect that child welfare
14 in a rural area is going to have some different aspects
15 to it than child welfare in an urban setting simply by
16 reason of urban centres having more and greater access
17 to things that are not found in rural areas?

18 A. I think it's important to really understand
19 the goal of the child welfare statute which ensures the
20 safety and well-being of the child within their
21 cultural context, regardless of where they live. There
22 is no provision within any provincial statute for a
23 lesser level of service or a different level of service
24 or safety for children in rural and remote areas than
25 in urban areas of the country.

1 214. Q. Like with anything, though, health for
2 example, you're going to have more services in an urban
3 area than a rural area, aren't you?

4 A. But I think in child welfare and in other
5 areas, for example, there needs to be accessibility
6 provided in order to access any services that aren't
7 available in your region.

8 The standard is safety and well-being of the
9 child, that's the paramount consideration of all child
10 welfare statutes. Now, how that's realized in
11 different environments, that may vary but the standard
12 to which you have to achieve, that doesn't vary.

13 215. Q. All right. Jordan's Principle, I just want
14 to drop back to that for a moment. That's something
15 that applies both on and off reserve, doesn't it?

16 A. It applies mostly on reserve because that's
17 where you find the jurisdictional disputes occurring
18 between Canada and the provinces. So the vast majority
19 of cases, in fact I think all of the cases that we've
20 found have been on reserve.

21 216. Q. I'm informed that jurisdictional disputes
22 both within governments and between governments occurs
23 off reserve often as they can on reserve.

24 A. They do, but the particular concern with
25 Jordan's Principle is that First Nations and Inuit

1 children are often denied services available to other
2 Canadians above and beyond the red tape mess that's off
3 reserve simply because of who they are and there's a
4 buck passing between Canada and the various provinces
5 and territories and sometimes within departments that
6 lead to these children either being denied services,
7 delayed services, or having to access services on
8 different terms than other children.

9 217. Q. Just one point coming out of this. Neither
10 Inuit nor Métis have reserves, do they?

11 A. No, but Inuit are covered under of course
12 First Nations and Inuit Health Branch.

13 218. Q. Coming back to Jordan's Principle, though,
14 I think you are but to be sure and clear, do you agree
15 with me that Jordan's Principle applies on and off
16 reserve?

17 A. Jordan's Principle says that jurisdictional
18 disputes between and within governments should never
19 bar a child from access to services that are available
20 to other kids.

21 That's the paramount consideration of Jordan's
22 Principle. It's about saying because if you're a
23 certain race or place of residency and there's
24 jurisdictional disputes invoked in that, that should
25 never lead to the denial of services. Had it been in

1 place when Jordan was alive, he would have gone home
2 and at least spent a couple of years in a family home.

3 219. Q. Is your answer to my question "yes"?

4 A. You have to rephrase your question.

5 220. Q. Do you agree with me that Jordan's
6 Principle applies both on and off reserve?

7 A. It applies with regard to jurisdictional
8 disputes most often on reserve but there may be
9 instances would it apply off.

10 221. Q. So it's not an on reserve specific issue?

11 A. It is by far much more compelling on
12 reserve because of the jurisdictional issues with
13 regard to INAC and Health Canada.

14 222. Q. Are you aware of instances where people
15 will raise as an issue what they call Jordan's
16 Principle but it really comes down to a matter of the
17 person or entity simply choosing to bill Indian Affairs
18 as opposed to billing another appropriate entity who
19 would pay if they were billed?

20 A. No.

21 223. Q. In paragraph 20(4) of your Affidavit, you
22 refer to INAC's discretion to retroactively reimburse
23 child care costs. Now, do you have knowledge of the
24 particulars of how the billings and payments work?

25 A. I have some knowledge of how that works.

1 The agency has to send a monthly reconciliation with
2 all the children in care, the dates of care and type of
3 placement to INAC officials and they've already
4 expended all these items.

5 Then the INAC official at the regional level
6 decides whether or not they're going to pay these
7 various items, and that is clearly spelled out on page
8 107 of your program manual.

9 224. Q. So you're aware, are you, that the billings
10 and reimbursements are done on a monthly basis?

11 A. Yes.

12 225. Q. So there's a 30 day lag between service and
13 incurring expense and billing and payment, you're aware
14 of that?

15 A. Yes.

16 226. Q. Are you also aware of floats that are
17 provided up front, money floats?

18 A. No.

19 227. Q. You just don't know one way or the other?

20 A. No, I don't. What I think it is important
21 to note is that INAC officials have the right to
22 decline child and care costs.

23 And many of these INAC officials at the
24 regional level are not social workers and so they will
25 disallow costs that were allowable under good child

1 welfare care simply because they're invoking that
2 section which says that the Federal Government really
3 has to go by its own regulatory Cabinet and Treasury
4 Board submissions, thus overriding provincial
5 legislation and standards.

6 228. Q. Well, on that, will you agree with me that
7 the purpose and objective of the program is for funding
8 to be provided for the agency to deliver child welfare
9 in accordance with the provincial legislation?

10 A. We went through that this morning.

11 229. Q. I know.

12 A. There are some agencies that are
13 provincially delegated and INAC requires, as part of
14 your funding arrangement, for agencies to be
15 provincially delegated.

16 . The purpose of the program, as articulated by
17 the Auditor General of Canada and agreed to by your
18 client is to provide a service that results in the
19 culturally appropriate or culturally based and
20 comparable services for child and family services in
21 line with the statute and that's why I can't understand
22 why somebody who doesn't have a social work credential
23 would overrule the views of a social worker without any
24 appeal mechanism to decide that at a regional level
25 when it comes to the costs of a child in care.

1 230. Q. Well, what's mandated under provincial
2 legislation has to be done in order for the agency or
3 the social worker to retain their license, doesn't it?

4 A. Well, they're not really necessarily
5 licensed, they're letters of delegation, but you have
6 to act within the delegated authority in order to
7 exercise the powers.

8 231. Q. And if you don't or you don't do things you
9 should do, then the province will come and either
10 reprimand or remove the delegation, correct?

11 A. Yes. You know, we have here -- just one
12 moment, please, Mr. Taylor, I just want to refresh my
13 memory here. Here we are. So I'm looking at Exhibit
14 Tab H, Speaking Points Domestic Affairs Committee, this
15 is dated 2004. I'm going to start at the bottom of the
16 first page, last bullet.

17 "The lack of in home family support
18 services for children at risk and
19 inequitable access to services have
20 been identified by First Nations Child
21 and Family Service agencies and INAC as
22 important contributing factors to the
23 over-representation of Aboriginal
24 children in the Canadian child welfare
25 system".

1 The second bullet,
2 "First Nations Child and Family
3 Services are threatening to withdraw
4 from service delivery because they
5 cannot deliver provincially mandated
6 services within their current budgets".

7 The following bullet,
8 "Provincial governments have written to
9 Ministers of INAC and Intergovernmental
10 Affairs indicating that INAC is not
11 providing sufficient funding to permit
12 First Nations agencies to meet their
13 standards or statutory obligations
14 under provincial legislation.
15 Provinces may refuse to renew the
16 mandate of First Nations Child and
17 Family Service agencies or entertain
18 requests for approval of new agencies
19 due to the inadequacy of agency budgets
20 and should provinces assume
21 responsibility for delivery of child
22 and family services on reserve, the
23 Federal Government will likely end up
24 paying more than it does currently".

25 Now, those are your client's documents and I think what

1 we're hearing here is that your client's funding
2 service puts agencies in an untenable position.

3 On one hand, you require people to follow the
4 statute and they're happy to do that but you're funding
5 arrangements and your funding service creates a
6 straitjacket that stops them from doing it.

7 Now, the critical question for me would be how
8 do you respond when that happens, when you're notified
9 of it, not just by First Nations but here by the very
10 Government that are operating the child welfare
11 systems.

12 Well, your client's response has been to do
13 nothing, as we know from the Auditor General's report
14 who consistently said that for years the Department was
15 aware of the shortcomings in the formula and the
16 Standing Committee on Public Accounts in 2009
17 reiterated the concern and it went as far as saying
18 that INAC needs to better put at the centre of its
19 interest the best interests of children.

20 So that's what I go to. This is the untenable
21 situation that First Nations find themselves in every
22 day, as we're sitting here right now, which is why it's
23 so important to resolve this case.

24 232. Q. You speak in the present tense. This
25 document is over five years old, correct?

1 A. It is, but unfortunately as we know from
2 the Standing Committee on Public Accounts in 2009, the
3 funding formula that was in practice there now applies
4 in five of the provinces that we discussed this
5 morning.

6 The Standing Committee expressed concern, very
7 deep concern, that this enhanced funding formula, as
8 flawed as it is, is only being rolled out in five
9 provinces and the formula that was in existence at the
10 time of these speaking notes is still being applied to
11 children.

12 It doesn't appear to have any significant
13 improvements because the Auditor General noted that in
14 her 2008 review and a Standing Committee found that
15 just last May.

16 233. Q. Just on the question of the enhanced
17 prevention, you well know that the intent is to roll
18 out the enhanced prevention nationally, don't you?

19 A. I do, but it hasn't been done.

20 234. Q. Well, you know that there's been more child
21 welfare on reserve in more provinces brought on stream
22 with the enhanced prevention each year since 2007,
23 correct?

24 A. That's true, but it still leaves children
25 across this country in some of the bigger provinces

1 like B.C., Manitoba, and New Brunswick, those kids are
2 getting nothing. They're still under this funding
3 formula. This is a situation they're facing every day.

4 If your goal as a Government, your client's
5 goal, is to provide just a little bit of equality for
6 First Nations kids and a little bit of safety, then I
7 think you've achieved your goal.

8 But my goal is higher than that, I think these
9 kids all deserve culturally based equity and it
10 shouldn't matter if you're a First Nations child in
11 B.C. or in Alberta, because the roll out of your
12 funding formula has nothing to do with the needs of
13 these kids.

14 235. Q. You know, don't you, Dr. Blackstock, that
15 in order to roll out the enhanced prevention in a given
16 province, there has to be a number of things done and a
17 number of actors involved and it involves working with
18 the First Nation agencies in a given province and the
19 provincial authorities in a given province along with
20 the Federal INAC people to put in place and have
21 requisite authorities obtain for enhanced prevention in
22 a given province, correct?

23 A. That's quite true and in fact, that's why I
24 think the British Columbia letter of November 17th to
25 the Minister is of such interest because it's exactly

1 that that they're questioning.

2 They had noted, they had spent a full year with
3 departmental staff, agreeing on this whole thing only
4 to have the Department back out of the Agreement and
5 say, "We can't put you on enhanced funding" and then
6 the Minister's response to that is, "I don't have time
7 to meet".

8 The public statement made by Minister MacIntosh
9 in Manitoba was that the Minister of Indian Affairs,
10 the Government of Canada, was turning its back on First
11 Nations kids in that region for not having followed
12 through with the implementation of the approach.

13 236. Q. Well, we'll all have to see what comes, I
14 suppose, in that area. Coming back to my question
15 which was this, it had to do with the province having
16 the ability and probably a great interest if not a duty
17 to revoke designation of an agency or a worker who
18 failed to do what they have to do under the Act. That
19 is so, isn't it?

20 A. Well, I think the question there needs to
21 be contextualized. Is it that I as a worker with the
22 proper resources have been negligent in my duties or is
23 that the Government of Canada has been negligent in the
24 amount and structure of the funding service it provides
25 that doesn't allow me to do anything different? And

1 when I try to correct that with that governing body,
2 that it does nothing to change the fact.

3 237. Q. We're not talking about the law of
4 negligence, Dr. Blackstock, we're talking about
5 designations and revocation.

6 A. Well, for the revocation of duties, there
7 needs to be some conscious process in place so that the
8 social worker could have made a different choice. And
9 what I'm suggesting is that according to your own
10 documents here, that there is no other choice. There's
11 a box created where social workers are unable to fulfil
12 their mandated responsibilities.

13 238. Q. I know you want to make that suggestion but
14 let me ask my question, if I may. Are you in agreement
15 that a province has the ability and -- I'll just leave
16 it at ability, that a province can revoke a designation
17 if what should be done under the provincial legislation
18 isn't done?

19 A. Yes, they can.

20 239. Q. And there haven't been very many, if any,
21 revocations of designation for First Nation agencies on
22 reserve, have there?

23 A. No, there haven't, but I think it's because
24 you've had a lot of letters from the province, though,
25 saying, "Hey, fix this because this is not in the best

1 interests of children" and I think many provinces as
2 are Canadians are very much hoping that your Government
3 does the right things for these abused and neglected
4 kids.

5 I think the provinces in not pulling the
6 delegation are acknowledging that this is not an agency
7 responsibility, that the responsibility lies with your
8 client and that's why they're knocking at his door.

9 240. Q. Well, I think we can all be quite assured
10 that the relevant authorities are looking out for and
11 ensuring the safety of children and that if there were
12 failures to do what had to be done under provincial
13 legislation steps would be taken, wouldn't they?

14 A. Well, I think they already have by the
15 Standing Committee on Public Accounts and the Auditor
16 General of Canada.

17 241. Q. Well, this is all meetings and
18 recommendations, but as you've said there haven't been
19 revocations of designations, have there?

20 A. I don't know that to be true.

21 242. Q. You're not aware of any, are you?

22 A. I'm not aware of any.

23 243. Q. Now, you were a few moments ago referring
24 to Exhibit H so you'll have your Affidavit in front of
25 you. I want to backtrack to Exhibit G for a moment,

1 the exhibit before that.

2 A. The Fact Sheet?

3 244. Q. Yes. You referred to this yourself
4 earlier. On the second page, just below the halfway
5 mark, there is a section, "Changes in the Landscape"
6 that says "Provinces and territories --" just before I
7 go into it, this is a 2006 document, isn't it? It's on
8 the third page.

9 A. Yes.

10 245. Q. "Provinces and territories have
11 introduced new policy approaches to
12 child welfare in a broader continuum of
13 services and programs that First
14 Nations Child and Family Services must
15 deliver in order to retain their
16 provincial mandates as service
17 providers."

18 And then it goes on to say that the Federal approach at
19 that time has not let First Nation service agencies
20 keep pace with provincial/territorial policy changes
21 and they're unable to deliver the full continuum of
22 services offered by the provinces.

23 Now, are you aware that after this document
24 that there were changes made that allow the service
25 agencies that are funded by the Federal Government to

1 provide that broader range or broader continuum of
2 services and programs?

3 A. In what regions are you speaking about, Mr.
4 Taylor?

5 246. Q. Any region.

6 A. Well, there's the enhanced funding
7 approached and there was the 8.24 percent cost of
8 living increase that partially caught up with the 21
9 percent losses between 1999 and 2005.

10 247. Q. Well, for example, in 2006 provinces were
11 allowing kinship in care which the Federal Government
12 was not at that time authorizing, correct?

13 A. In some regions.

14 248. Q. And kinship is cheaper than full foster
15 care, right?

16 A. It depends on the region.

17 249. Q. But generally speaking?

18 A. Generally speaking, yes.

19 250. Q. And after this document, kinship care is
20 something that the Federal Government has started to
21 allow, as do provinces, is that right?

22 A. That's part of the maintenance but that
23 doesn't provide with the prevention or least disruptive
24 measures programs and it also doesn't keep pace. I
25 mean, what I think is important to say is that in 2008

1 the Auditor General looked at all of your funding
2 regimes and found them to be inequitable.

3 In 2009, those recommendations were reviewed by
4 the Standing Committee on Public Accounts where the
5 Auditor General testified and your staff, no First
6 Nations testified before that Committee, and their
7 findings again were that all your funding formulas are
8 inequitable. That, I think, speaks volumes.

9 251. Q. You agree with me, do you, that both
10 preventative and in care services are important
11 components of a child welfare system?

12 A. They are some of the components of a proper
13 child welfare system, absolutely. And also, just in
14 terms of social work lingo, prevention doesn't mean
15 just simply universal kinds of programs where we try to
16 prevent child maltreatment.

17 Those are very important but in a child welfare
18 context, we're talking about primary, secondary and
19 tertiary protection services which are often required
20 by statute called Least Disruptive Measures which means
21 where a child has been identified at risk, how do you
22 introduce services that mitigate that risk hopefully to
23 keep that child at home and if they are removed, for
24 them to return as soon as possible.

25 252. Q. It's a fine balance between the prevention

1 side and the in care side, isn't it?

2 A. I'm not sure if it is a fine balance. What
3 do you mean? I just need a bit more clarification so I
4 can answer properly.

5 253. Q. Well, you want to have both as components
6 of a child welfare system and you preferably want
7 things addressed before children have to go in care,
8 but you want to ensure that there is a point before you
9 going into care where a line is drawn and it's decided
10 this child needs to go in care?

11 A. Yes. I mean, most of the provincial
12 statutes require that you exhaust all other options
13 before considering removal and that's part of the
14 report to core process on the initial removal, that you
15 have exhausted those other opportunities because there
16 is recognition, the United Nations Convention on the
17 Rights of the Child, child welfare statutes, that the
18 best environment for children is in their family home
19 whenever possible.

20 254. Q. One of the documents attached to your
21 Affidavit that I think we haven't yet spoken of is
22 Exhibit J. This is referred to in paragraphs 56 and 57
23 of your Affidavit and then attached is J. This is
24 something called "Qs and As". Do you know what Qs and
25 As are?

1 A. I would say that it's Questions and
2 Answers, but this was authored by your client who would
3 probably know better.

4 255. Q. I think you're right, they're Questions and
5 Answers, generally for briefing purposes. And you in
6 your Affidavit use this document again to say that
7 should a First Nations Child and Family Service agency
8 be operating in a region and was forced to closed, INAC
9 would have to pay the province up to twice as much to
10 deliver the same service.

11 First, do you agree with me that this document
12 Exhibit J is a dated document and while there's no date
13 on it, it must be before March of 2006?

14 A. Well, we have no idea because sadly,
15 unfortunately it seems to be a pattern in the Federal
16 Government where there's no dates or authors of
17 documents.

18 But again, I think it's important to understand
19 that even as of that date the Directive is still
20 applied in a variety of provinces in this country,
21 unchanged. And then we have the enhanced funding
22 formula already ruled to be inequitable.

23 But nonetheless, if we look at this example of
24 Alberta, it's under A-12, which is what I think you're
25 referring to, and it says,

1 "If First Nations Child and Family
2 Service agencies were to withdraw
3 service delivery as a result of the in
4 adequate funding, consequences could be
5 severe. Pursuant to an 18-month long
6 review involving the Province of
7 Alberta, INAC, and one Alberta-based
8 First Nations Child and Family Service
9 agency, it was determined that expenses
10 would likely double if the province
11 were to assume responsibility for that
12 service. In addition to escalating
13 child welfare costs for INAC,
14 culturally appropriate services would
15 be compromised. This would be contrary
16 to the United Nations Convention on the
17 Rights of the Child which guarantees
18 specific rights for children, including
19 the right to non-discrimination and
20 preservation for families and
21 indigenous culture."

22 256. Q. All right. Could you take a moment and
23 read to yourself Questions 3 and 4? You don't need to
24 read the answers, just read Questions 3 and 4. You can
25 read the answers if you want, but look at the

1 Questions.

2 A. So "Why should an interim funding strategy
3 be accepted when a comprehensive plan will be developed
4 by March 31st, 2006", "Circumstances are dire.
5 Inadequate resources may force individual agencies to
6 close down if ---"

7 257. Q. Well, you don't need to read it all out.

8 A. Did you have a specific question that you
9 want to ask me?

10 258. Q. Well, look at Question 4 before I ask.
11 Have you read Question 4?

12 A. I'm just moving to it now. Yes. "What
13 other issues need to be resolved prior to Authorities
14 renewal? "In March 2006, to clarify funding
15 requirements." I would imagine that's Treasury Board
16 and Cabinet Authorities.

17 259. Q. Now given the tense used in those two
18 questions, you can tell this document is dated before
19 March 31, 2006, right?

20 A. Well, it would appear to be that but again,
21 it's not dated.

22 260. Q. Well, if it was after 2006, it wouldn't say
23 "Prior to Authorities renewal in March 2006" and it
24 wouldn't say "--- will be developed by March 31st,
25 2006", it would say, "had been developed" or "had not

1 been developed".

2 A. Well, I agree with you that it appears to
3 be, but I can't say that it is because I have no date
4 on the document. Circumstances are still dire for all
5 of these kids in B.C., Manitoba, and New Brunswick.

6 261. Q. If it's correct that the document is before
7 March of 2006, this would be before kinship in care
8 authority was put in the Federal system, it was in the
9 provincial system. And kinship being lower cost than
10 foster care, that would be part of how you would have
11 to move to a higher level if the provinces took on
12 different things, wouldn't it, a higher level of cost?

13 A. No, I don't get the logic. If you're
14 providing the same kind of service then the cost should
15 be equivalent but clearly here the Department is saying
16 its costs are going to be twice as much.

17 Twice as much? I guess I would want to see the
18 data from your client about how much that was driven by
19 kinship care placements. Kinship care placements do
20 not make up the majority of placements and without
21 seeing the data, but I cannot imagine that would
22 account for doubling in the expenses of child and
23 families.

24 There must be other factors at play here where
25 the Government of Alberta just views it as necessary to

1 get a higher level of compensation in order to meet
2 it's basic needs.

3 262. Q. Okay. I want to take you to your
4 paragraphs 58 following, 58 through 62, where you refer
5 to and give some evidence in your Affidavit on
6 reporting and compliance.

7 Now, this is your Affidavit, so you're familiar
8 with what it says there. Do you agree that what this
9 shows is that the accountability and reporting required
10 of First Nation agencies is as to financial matters and
11 showing that they've got a sound business footing on
12 which they proceeding?

13 263. Q. That's part of it, but there's also this
14 report on protection service and prevention services.

15 And in your manual, you have a whole list of other
16 things that you need to report on, including if you
17 notice here expenses of child in care files.

18 That is a requirement of your review procedures
19 and we talked about that this morning, that that
20 actually would be in many cases a contravention of the
21 provincial statute that doesn't allow non-delegated
22 child welfare personnel from going into child welfare
23 files.

24 And yet, according to your own program manual,
25 if you don't allow these on site reviews of child in

1 care files and foster care files then you go into a
2 process I think that's called remediation where the
3 Department puts you in this -- well, I guess somewhat a
4 disciplinary process for it.

5 264. Q. Well, you don't have any knowledge as to
6 the mechanics of how the relevant officials and
7 authorities work to respect the law and at the same
8 time achieve a reasonable level of information, do you?

9 A. Well, I heard the reports of First Nations
10 agencies who have been very concerned ---

11 265. Q. You yourself don't have knowledge, do you?

12 A. I personally have not been for a review,
13 but Mrs. Flett will be able to speak to that.

14 266. Q. And in terms of reporting on prevention and
15 protection services, that's exactly what these agencies
16 are supposed to be doing. That's their job, so you'd
17 expect them to report on it, wouldn't you, and what
18 they've done with the money?

19 A. Yes, but I think that the important piece
20 is what is the Indian Affairs Department doing with
21 that information? How are they assessing it? What are
22 you doing with all of this information that you're
23 collecting? What are the credentials of the people
24 reviewing the information? How are you using it to
25 guide your service? Those are the important pieces.

1 267. Q. Well, that's not today's issue.

2 A. Well, I think it is an issue. You're
3 talking about what the agencies do and that's part of
4 the question, but it's also what do you do with the
5 information once you receive it.

6 268. Q. It's an important point, but it's not
7 today's issue. By the way, are you aware that there
8 are periodic meetings between Indian Affairs and First
9 Nations service agencies and provinces in the relevant
10 region on an ongoing basis over funding and the
11 delivery by those agencies of child welfare on reserve?

12 A. Yes.

13 269. Q. And those are meetings between the Federal
14 Government and the agencies and province and sometimes
15 they are bilateral meetings, right?

16 A. Yes.

17 270. Q. And that doesn't include your organization
18 because you're not one of the service providers?

19 A. No, those meetings don't include us. But
20 as I've said, you know, even when your Government was
21 apprised by the Government of B.C. that there was not
22 enough funding and not structured in proper ways and it
23 was a statutory breach, the Department said they'd have
24 to meet with him not in the near future.

25 271. Q. In your Affidavit again at paragraph 66 you

1 refer to Exhibit K, which is another INAC document that
2 you pulled up.

3 A. Oh, yes, this is the Powerpoint
4 presentation.

5 272. Q. Yes. That's a 2007 document, right?

6 A. We can take a look at the date there. Yes,
7 that's when it's dated, July 25-26, 2007.

8 273. Q. On page 3 of that document, there is a
9 reference to the Wen:de Report. You're very familiar
10 with that report, aren't you?

11 A. Yes, I am.

12 274. Q. You'll see there in the second bullet that
13 it says, "The recommendations in Wen:de were not tied
14 to provincial comparability". That's correct, that
15 statement, isn't it?

16 A. What was important to know in the Wen:de
17 Report is that the formula was structured in such a way
18 that it could accommodate as a regular course of action
19 changes in the provincial statute and adjust
20 accordingly.

21 When it was altered in the enhanced funding
22 formula, basically INAC took a very short list of the
23 recommendations outside of the nest of the big formula
24 that was developed against our recommendations and that
25 made it almost untenable to meet the provincial

1 legislation.

2 275. Q. Is what I said correct?

3 A. It was structured in a way that could
4 account for it, but it wasn't specifically tied to each
5 statute. But there were provisions to adjust the
6 formula if there was a change in provincial
7 legislation, a whole section called "Exceptional
8 Circumstances".

9 276. Q. It's correct, isn't it, that the
10 recommendations in Wen:de were not tied to provincial
11 comparability?

12 A. They weren't tied to the provincial
13 legislation, but they were our very best effort based
14 on the data we could get to approximate provincial
15 comparability.

16 277. Q. On page 4, there's a reference under
17 "Quantum Setting" to "working out the quantum by all
18 three parties".

19 A. "These are discussions, not negotiations".

20 278. Q. Is it your understanding that's a reference
21 to the three parties I referred to earlier, that is the
22 meetings of Federal, Provincial, and First Nation
23 agencies?

24 A. Well, that would be my assumption from this
25 document. It says,

1 "--- working out the quantum by all
2 three parties. These are discussions,
3 not negotiations. INAC does not have a
4 specific negotiating mandate. The
5 Minister, Cabinet and Treasury Board
6 must support the outcome of discussions
7 and staff cannot make commitments on
8 their behalf. Three-party discussions
9 are essential for transparency and
10 hopefully will lead to a greater
11 understanding and acceptance of the new
12 structure".

13 279. Q. Now we come to Spallumcheen again and it's
14 paragraph 74 of your Affidavit. My understanding which
15 I put to you, Dr. Blackstock, is that Spallumcheen is
16 in fact funding according to the provisions of 20-1.
17 The only difference between it and other First Nation
18 agencies in British Columbia is that Spallumcheen is
19 funded under Directive 20-1 with an Agreement with the
20 province rather than in lieu of delegation. Do you
21 have knowledge of that?

22 A. The Spallumcheen First Nation operates
23 under a Band bylaw program. At the time when I was
24 working in British Columbia, Spallumcheen had less than
25 250 children on reserve, therefore they would have not

1 qualified under funding had the directive applied
2 literally as an agency.

3 The province agrees to respect the authority of
4 the Band bylaw as signed by the Minister of Indian
5 Affairs for the service delivery on reserve according
6 to the Band bylaw.

7 Off reserve, the Province of British Columbia
8 has authority through the -- I don't know what they
9 call it now, the Child and Family Community Services
10 Act.

11 280. Q. Are you saying you don't have knowledge
12 whether there is an Agreement with the province and the
13 Band or are you saying you disagree with me?

14 A. I'm saying that I am in agreement with you
15 in terms of the province provides services off reserve
16 and the First Nation, according to the Band bylaw
17 signed by the Minister of Indian Affairs, provides the
18 service on reserve, and the province respects that.

19 281. Q. And the service provided by the Band on
20 reserve is pursuant to in part of the Provincial and
21 First Nation Agreement, right?

22 A. It is pursuant to the Band bylaw signed by
23 the Minister of Indian Affairs.

24 282. Q. The service is done under an Agreement,
25 though?

1 A. Well, the Minister signs the Band bylaw and
2 the authority for child welfare draws down from the
3 bylaw under the Indian Act. The province has agreed to
4 provide services off reserve and it respects the
5 Minister's authority on reserve.

6 283. Q. Well, let's take it a step at a time. Will
7 you agree with me that the bylaw can't give and doesn't
8 give any provincial authority to the Band?

9 A. Yes, it gives Federal authority to the
10 Band.

11 284. Q. Exactly. Will you agree with me that the
12 Band provides the services it does on reserve under
13 provincial authority?

14 A. No, it provides it under the authority of
15 the Indian Act.

16 285. Q. Is that because you don't know of an
17 Agreement between the Band and the province for on
18 reserve services or you're telling me that there isn't
19 one?

20 MR. CHAMP: Mr. Taylor, just to object, do you
21 have a copy of this Agreement? Because it sounds like
22 over the last number of questions, you're seeking to
23 put in quite a bit of evidence yourself and I'm just
24 wondering if you have that information to put to the
25 Witness.

1 MR. TAYLOR: No, I can't provide that Agreement
2 at this time, I'm afraid. I'm just saying that I
3 understand and I'm informed that there is one.

4 BY MR. TAYLOR:

5 286. Q. But I'll leave it there, you say that you
6 don't agree that there is one, so that's your evidence.

7 A. No, I didn't say that.

8 MR. CHAMP: She didn't say that.

9 THE WITNESS: There was the objection before I
10 responded to the question.

11 BY MR. TAYLOR:

12 287. Q. All right. Well, do you know one way or
13 the other?

14 A. I thought we were moving on, but do you
15 want me to respond?

16 288. Q. Do you know one way or the other whether
17 there is an Agreement between the province and the Band
18 as to on reserve?

19 A. No.

20 289. Q. Okay. Just in terms of its location, you
21 are from British Columbia originally, right?

22 A. I am.

23 290. Q. And more specifically the Hazelton area?

24 A. Yes.

25 291. Q. That's north central British Columbia?

1 A. Yes.

2 292. Q. I suggested earlier that Spallumcheen was
3 in the Okanagan and you said that you think it's in the
4 Interior. Firstly, the Okanagan is in the Interior,
5 isn't it?

6 A. Well, it's on the other side. I mean, I
7 look at it not being specifically within the Okanagan,
8 but I mean that's a geographical wording.

9 293. Q. Where is it?

10 A. Spallumcheen First Nation?

11 294. Q. Yes?

12 A. I think it's inland from the Fraser Canyon
13 towards the Interior. Chief Wayne Christian was the
14 person who is responsible for bringing much of the Band
15 bylaw work to that First Nation.

16 295. Q. I'm going to drop back for a few moments to
17 paragraph 68 of your Affidavit. You say there that the
18 enhanced approach provides additional funds in the
19 first two years but reduces the amount in years 3, 4,
20 and 5.

21 First, let me see if we can clarify this. Is
22 it your understanding that under the enhanced
23 approach, budgets are put in place each year and the
24 agency is supposed to live within the budget?

25 A. Well, I've not seen the specific

1 requirements of the enhanced funding regime but I would
2 suspect that's the case.

3 296. Q. You don't know, then?

4 A. I don't know.

5 297. Q. Okay. Well how do you know that the funds
6 are reduced?

7 A. Because fortunately in your client's Access
8 to Information documents, there's a series of draft
9 Treasury Board authorities. They are in draft, but it
10 shows the reductions over those years and having spoken
11 to the First Nations agencies in Albert, they confirmed
12 that those reductions are in place.

13 298. Q. So your information comes from a
14 combination of looking at draft documents and talking
15 to other people?

16 A. That's right.

17 299. Q. Through all of this, have you also come to
18 learn whether the need for in care money has gone down
19 as the enhanced prevention side has gone up?

20 A. What the information I have suggests is
21 that the numbers of children overall in Alberta, and
22 I'm talking about non-Aboriginal children as well, have
23 reduced since they've invoked their new approach.

24 But for First Nations children, there has not
25 been a substantial reduction. In fact, today in

1 Alberta, there are more First Nations children in child
2 welfare care than there are non-Aboriginal children,
3 even though First Nations children represent under 10
4 percent of the population, and that is three years
5 after the approach -- yes, 2007, so this is now 2010.

6 300. Q. Let's stick to the on reserve. Do you have
7 knowledge whether the money demand on the in care side
8 has gone down in Alberta on reserve since the enhanced
9 prevention has come into play?

10 A. My information is that it has not gone
11 down.

12 301. Q. And your information is hearsay, is it,
13 secondhand?

14 A. From reports, yes. I don't run an agency
15 in Alberta.

16 302. Q. Well, you don't run an agency anywhere, do
17 you?

18 A. Not currently.

19 303. Q. Well, and you haven't since some time
20 before you became the Director of the Caring Society?

21 A. That's right.

22 304. Q. Now, you're aware of a provision that even
23 if there were a demand for increased funds that there
24 is an Extraordinary Circumstances clause in the
25 Agreements between the agencies and the Federal

1 Government?

2 A. Yes, and some of them had to invoke those
3 because with the cap on maintenance, their expenditures
4 have exceeded the cap. And so the reports to me are
5 that they've had to go to Exceptional Circumstances to
6 cover child and care costs which to me are not
7 exceptional circumstances, they are a matter of doing
8 business in terms of children and care.

9 I'm not sure if that's what your client
10 intended when they developed Exceptional Circumstances
11 to cover the child and care costs, which are an
12 ordinary part of doing work. I would have thought an
13 exception circumstance would have been something other
14 than that, but apparently not.

15 305. Q. Let's go to paragraph 77 and 78 of your
16 Affidavit where you're speaking to some things that
17 Odette Johnston says in her Affidavit?

18 A. Okay.

19 306. Q. Now, you know Odette Johnston to be the
20 Director of the Indian Affairs Child and Family
21 Services Program here in Ottawa, do you?

22 A. Yes, that's correct.

23 307. Q. You refer in both paragraphs 77 and 78(b)
24 to the Children's Special Allowance. Now, am I correct
25 that that is a fund or a credit, I guess, -- what is

1 it, you tell me?

2 A. Well, my understanding is it's a Canada
3 Revenue service. It's a funding that goes to a parent
4 or a caregiver or a child to meet some of their basic
5 needs.

6 308. Q. Right, and it's a certain amount every
7 month?

8 A. It's a certain amount every month. It's
9 not an INAC benefit, it's a CRA benefit.

10 309. Q. Yes, quite so, but it's something that the
11 Canada Revenue Agency has in place through legislation
12 or other appropriate legislative instrument, right?

13 A. Yes.

14 310. Q. And it's an amount of money, as you said a
15 moment ago, that follows the child, if you like. It
16 goes to the parent when the child is with the parent
17 and it goes to whoever the child is with if the child
18 is taken out of the parent's care?

19 A. Yes, that's my understanding of the CRA
20 rules.

21 311. Q. Now I notice, and I assume you're careful
22 in your Affidavit when you're saying these words, you
23 speak about "the proposed claw back" in 77 and "will be
24 reducing" in 78(b). Now, are you aware and/or have
25 knowledge of whether the Children's Special Allowance

1 remains in place as it always has or as it long has?

2 A. What I'm aware of is that your client has
3 sent letters to First Nations agencies saying that they
4 will be clawing back funds as of the first of the
5 fiscal year.

6 Now, despite having received those letters, my
7 understanding is that your client has not put that in
8 place as of yet.

9 There's also a reference of course in the
10 Auditor General's Report to those same kinds of debates
11 currently happening in the Department.

12 What I was pointing out here is that if people
13 were to read Ms Johnston's Affidavit and supposed that
14 the CRA is considered always an additional benefit to
15 what's provided by INAC, then that may not in fact be
16 the case because it looks like INAC looks at this as a
17 cost-saving point of view for itself where it can
18 provide monies with one hand and then claw them back
19 with another and it's questionable whether there is a
20 net gain or a net loss for agencies.

21 312. Q. Well, I think you said this but to be
22 clear, is it your information that there is no claw
23 back going on?

24 A. It is my information they've been notified
25 of a claw back, but as far as I'm aware, it has not yet

1 been implemented.

2 313. Q. Are you aware of representations Indian
3 Affairs is making and steps it is taking to try and
4 ensure that there is no claw back?

5 A. I've heard of that and I hope that they
6 succeed in doing that. But at this point, I can only
7 base my judgements on the correspondence that your
8 Department has sent out to the First Nations agencies,
9 which is a claw back is possible. I hope it doesn't
10 happen.

11 314. Q. All right. So you'll agree with me there's
12 no claw back now?

13 A. That's correct.

14 315. Q. And hasn't been?

15 A. Not to my knowledge.

16 316. Q. You refer in paragraph 78 to the list of
17 items that Ms Johnston has put in paragraph 22 of her
18 Affidavit which, as you point out, are in a number of
19 cases other Departments providing money, not Indian
20 Affairs.

21 A. That's right.

22 317. Q. With that, I suspect you don't have Ms
23 Johnston's Affidavit before you, do you?

24 A. No, I don't, actually. That would be very
25 useful, thank you, Mr. Taylor.

1 (SHORT RECESS)

2 BY MR. TAYLOR:

3 318. Q. Dr. Blackstock, in your paragraph 78(a),
4 you refer to Ms Johnston's paragraph 22 and you now
5 have Ms Johnston's Affidavit with paragraph 22 in front
6 of you, don't you?

7 A. Yes, I do.

8 319. Q. Now, you're quite right in what you say
9 that a number of these things on the list are
10 Departments other than Indian Affairs and that's
11 pointed out in Ms Johnston's Affidavit. They are
12 Federal programs by other Federal Departments and
13 Agencies, some of which are Indian Affairs but many of
14 which are other Departments.

15 When you look at the list, do you agree that
16 you see in that list some of the things that provinces
17 put into the spectrum of services and programs that
18 they provide through their social service ministries
19 that exist?

20 A. Well, some of these things wouldn't be
21 social service ministries. I would say the provincial
22 governments have programs that fall into some of these
23 categories. The comparability of these programs to
24 provincial systems, I really can't comment because we
25 don't have the full description of the list.

1 320. Q. Okay. But such things as Fetal Alcohol
2 Syndrome Disorder, mental child health, native alcohol
3 and drug abuse, suicide prevention, those are all kinds
4 of things that you see in provincial spheres, too,
5 aren't they?

6 A. They're often there in the provincial
7 governments, that's for sure, these and other programs.

8 321. Q. And violence prevention and so fourth?

9 A. Yes, but it's important to know that
10 according to the Auditor General in 4.40 that, you
11 know, some of these programs such as family violence
12 prevention, the Auditor General found is only available
13 in half of the First Nations. So some of these
14 programs are not universally available to every
15 community, so I think that that's an important aspect
16 to point out.

17 322. Q. Before the break, you were speaking in one
18 of your answers to Indian Affairs disallowing certain
19 items on bills that might be submitted to them. You
20 recall that, do you?

21 A. Yes, I do.

22 323. Q. Are you aware that in situations where that
23 arises that the First Nation agency can and does often
24 send in more representations and/or more information in
25 order to convince Indian Affairs otherwise and that

1 sometimes succeeds and achieves the allowance of the
2 item?

3 A. Sure, but in all cases INAC is the final
4 arbiter.

5 MR. TAYLOR: Thank you, Dr. Blackstock, those
6 are my questions of you.

7 MR. POULIN: I'm not going to have any
8 questions to ask to Dr. Blackstock.

9 MR. CHAMP: I'll just take one minute.

10 (OFF RECORD DISCUSSION)

11 RE-EXAMINATION BY MR. CHAMP:

12 324. Q. I just have a couple of questions in re-
13 direct. Mr. Taylor had asked you about bilateral and
14 trilateral meetings between First Nation child
15 protection agencies, the Federal Government, and
16 Provincial Governments regarding funding and he asked
17 you whether you attended those types of meetings and
18 you indicated "no".

19 Do you have any role at all in those types of
20 meetings in terms of providing advice or consultation
21 to the First Nation agencies?

22 A. Well, I am asked from time to time to
23 participate in those meetings. The First Nations
24 Agencies in British Columbia, for example, asked me to
25 participate in those meetings and they were told by the

1 INAC official that the INAC officials would not meet
2 with me in the room.

3 And then in December of 2009, the Chiefs of
4 Ontario were going to meet with Mr. McArthur at INAC
5 Headquarters and asked that I would attend as technical
6 assistant and that is my job, to provide technical
7 assistance to First Nations Chiefs or agencies when
8 requested.

9 I attended at INAC Headquarters and I was
10 swiped through by the INAC staff and Mr. McArthur told
11 me that he would not meet with the Chiefs of Ontario if
12 I was in the same room.

13 325. Q. And then there's the question of a separate
14 point. In our Affidavit, Mr. Taylor asked you a few
15 questions about paragraph 68.

16 A. Just one moment, I'll just refer to that.

17 326. Q. Mr. Taylor asked you a number of questions
18 about that paragraph and also about whether enhanced
19 prevention costs have gone down in Alberta and so
20 forth. He asked you a number of questions about that
21 and a couple of times asked you what the source of your
22 information was. Can you just confirm what or who was
23 the source of your information on that?

24 A. The source for the information on the
25 reductions in child and family services preventing

1 funding was INAC itself. It is the draft Treasury
2 Board authority for Alberta and Ontario.

3 And in terms of the child in care numbers, that
4 is from the Alberta Annual Report and from First
5 Nations Child Welfare agencies.

6 327. Q. And when you say First Nations Child
7 Welfare agencies, that's reports or how do you get that
8 information from them?

9 A. From meeting with the First Nations Child
10 Welfare agencies in Alberta. We've had several
11 occasions to meet over the course between 2007 when
12 this model was being implemented and since, both
13 individual agency visits and also meeting with the
14 First Nations Child Welfare agencies as a collective.

15 328. Q. When was the most recent time you met with
16 them?

17 A. Oh, I've got to think when did I see them
18 last? I met with agency representatives in Alberta
19 just last month.

20 MR. CHAMP: Thank you, those are all the
21 questions I have.

22 (OFF RECORD DISCUSSION)

23 MR. TAYLOR: Counsel have discussed and are
24 agreed that the document that is a better copy of
25 Exhibit A to Ms Flett's Affidavit be marked as

1 Exhibit 3. In turn, that copy has a fax header on it.
2 Counsel are agreed that when we get a copy that
3 doesn't have a fax header, we'll substitute the non-fax
4 header better copy for the one we're putting in right
5 now as Exhibit 3. Agreed?

6 MR. POULIN: We agree.

7 MR. CHAMP: Sure.

8 EXHIBIT NO. 3: Exhibit A to the Affidavit of
9 Ms E. Flett dated February 11, 2010 entitled
10 Comprehensive Funding Arrangement Articles of
11 Agreement.

12 MR. TAYLOR: Thank you.

13 WHEREUPON THE CROSS-EXAMINATION ADJOURNED at
14 the hour of 3:30 in the forenoon.

15 * * * * *

16
17
18 I HEREBY CERTIFY THAT the foregoing is a true
19 and accurate transcription from the Record made by
20 sound recording apparatus, to the best of my skill and
21 ability.

22
23 Nancy Keirstead, Court Monitor

Examination No. 10-0158 File No. T1340/7008

THE CANADIAN HUMAN RIGHTS ACT
R.S.C., 1985, c. H-6 (as amended)

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

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

- and -

CANADIAN HUMAN RIGHTS COMMISSION
Commission

- and -

ATTORNEY GENERAL OF CANADA (REPRESENTING THE
MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT)
Respondent

- and -

CHIEFS OF ONTARIO & AMNESTY INTERNATIONAL
Interested Parties

CROSS-EXAMINATION OF DR. CINDY BLACKSTOCK ON AN AFFIDAVIT
SWORN February 11, 2010 pursuant to an appointment made on
consent of the parties to be reported by Cornell•Catana
Reporting Services on February 23, 2010 commencing at the
hour of 11:00 in the forenoon.

APPEARANCES:

Paul Champ for the Complainants
Anne Levesque

Daniel Poulin for the Commission
Samar Musallam

Mitchell R. Taylor, Q.C. for the Respondent
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<u>EXHIBIT NO. 3:</u> Exhibit A to the Affidavit of Ms E. Flett dated February 11, 2010 entitled Comprehensive Funding Arrangement Articles of Agreement.....	115

DATE TRANSCRIPT ORDERED: FEBRUARY 23, 2010

DATE TRANSCRIPT COMPLETED: FEBRUARY 24, 2010