

1 ODETTE JOHNSTON, SWORN:

2 CROSS-EXAMINATION BY MR. CHAMP:

3 1. Q. So, good morning, Ms Johnston, my name is
4 Paul Champ, and I'm Counsel for the First Nations Child
5 and Family Caring Society. And we're here today
6 regarding a matter before the Canadian Human Rights
7 Tribunal, File No. T-1340/7008, and the Complaint is
8 brought by the Caring Society and the Assembly of First
9 Nations against the Attorney General of Canada, more
10 specifically the Department of Indian and Northern
11 Affairs with respect to equitable or discriminatory
12 funding of child prevention services on reserves across
13 Canada. Intervenors in this complaint are the Chiefs of
14 Ontario and Amnesty International Canada.

15 Ms Johnston, we're here today with respect to
16 your Affidavit that was sworn on December the 20th, 2009.

17 Are you familiar with your Affidavit, Ms Johnston?

18 A. Yes, I am.

19 2. Q. And do you have a copy with you?

20 A. Yes, I do.

21 3. Q. And do you have a glass of water, I just want
22 to make sure?

23 A. No, I don't.

24 MR. TARLTON: Perhaps again, just a very brief

1 introduction. Jonathan Tarlton, on behalf of the
2 responding Attorney General of Canada. Just for the
3 purposes of the Record, I provided Ms Johnston with a
4 copy of her sworn Affidavit, Mr. Champ, before she took
5 the stand this morning.

6 BY MR. CHAMP:

7 4. Q. And just to confirm, the other Parties to
8 this proceeding, being the Assembly of First Nations, the
9 Canadian Human Rights Commission, the Chiefs of Ontario,
10 and Amnesty International Canada are not present for this
11 Cross-Examination.

12 So, Ms Johnston, I am going to refer you to your
13 Affidavit, and I'm going to ask you some questions about
14 that this morning?

15 A. Okay.

16 5. Q. I'll start off with, I see that you're the
17 director of the Social Programme Reform Directorate in
18 the Department of Indian Affairs and Northern
19 Development. How long have you had that position?

20 A. I've been the director for about two years
21 now.

22 6. Q. And how long have you been employed by the
23 Federal Government?

24 A. Over 27 years.

1 7. Q. And what positions have you had during your
2 career with the Federal Government?

3 A. Prior to being the director, I was manager,
4 First Nation Child Family Services. Prior to that I was
5 acting deputy director general for the Aboriginal Justice
6 Directorate of Justice Canada. And then senior policy
7 advisor prior to that with Justice Directorate. And I
8 was with Justice Canada for six years.

9 And prior to that I worked for Health Canada in a
10 number of different positions and in different
11 positions/different levels, but I was senior programme
12 manager, programme manager, acting director from time to
13 time, throughout 10 years at Health Canada. And I worked
14 specifically on First Nations and Inuit health
15 programmes.

16 8. Q. So just to summarize, if I can, so you worked
17 approximately 10 years for Health Canada, approximately
18 six years for Justice, and approximately 10 years for
19 Department of Indian Affairs?

20 A. No. Just over three years for Indian
21 Affairs.

22 9. Q. Okay. So 10 years for Health Canada, three
23 years for Indian Affairs, and then Justice for the
24 balance?

1 A. Six, for six years.

2 10. Q. And then where does the other ---

3 A. The other. I worked for the Department of
4 Finance for I think two years in human resources and then
5 National Defence for five years.

6 11. Q. So in short, you're the classic successful
7 Ottawa bureaucrat shifting between departments all the
8 time?

9 A. Actually, I've stayed longer than most, I
10 think.

11 12. Q. That's true, I think you're right. Okay. So
12 you've been in the Department of Indian Affairs for three
13 years, two years as the director of the Social Programme
14 Reform Directorate, and then one year, I gather then, as
15 manager of the First Nations Child and Welfare Services
16 Programme?

17 A. Yes, I was manager of Child and Family
18 Services Programme for the first year when I was with
19 INAC.

20 13. Q. So the topic or issue that we're going to be
21 talking about today is child welfare services on
22 reserves. That's something that you've had close
23 involvement with over the past three years, is that fair
24 to say?

1 A. Yes, I've managed and directed that programme
2 over three years.

3 14. Q. And by matter of coincidence only, I'm not
4 sure if you're aware, this is the third anniversary today
5 of the filing of the human rights complaint that we're
6 dealing with today.

7 Do you recall precisely when you joined the
8 department?

9 A. In the end of November, 2006.

10 15. Q. Okay. And may I ask you, Ms Johnston, what's
11 your educational background?

12 A. I have a bachelor of arts degree from the
13 University of Toronto.

14 16. Q. And do you have any particular experience in
15 child welfare services?

16 A. Not in direct child welfare services, no.

17 17. Q. And you've never run a child welfare agency
18 or anything like that?

19 A. No, I have not.

20 18. Q. And would you be able to explain a little bit
21 what your duties and responsibilities are now in your
22 present position as director of the Social Programme
23 Directorate?

24 A. I'm responsible for directing the budgets and

1 programmes of First Nation Child Family Services, early
2 childhood development and family violence prevention
3 programme.

4 19. Q. And with respect to the First Nations Child
5 Welfare Agencies, what exactly is your role in terms of
6 directing the budgets?

7 A. I don't direct their budgets. What we do is
8 determine at the national level the funding allocations
9 that go out to our regional offices to disburse to First
10 Nations recipients.

11 20. Q. And I understand some of the different
12 funding formulas and programmes, and we'll talk about
13 those in a bit more detail later on. But just so I
14 understand, maybe, the relationship between INAC, head
15 office, and the regional offices, what is your role in
16 terms of determining allocation, like what is your role
17 in headquarters versus or relative to the role of the
18 regional offices with respect to the review or approval
19 of funding for First Nations agencies? Like are the
20 individual agency reviews conducted in Ottawa or in the
21 regional offices?

22 A. Oh, they're conducted in the regional
23 offices.

24 21. Q. Okay. And when the regional offices conduct

1 those reviews what guidance or assistance or direction do
2 they get from headquarters?

3 A. We have in the programme manual established a
4 programme of compliance review directive, and the regions
5 follow the compliance review directive that is there.

6 22. Q. The compliance review directive?

7 A. Yes.

8 23. Q. So there's the First Nations national
9 programme manual, and I think the most recent one is May
10 '05, roughly. Does that sound right?

11 A. Yes, it's in the process of being updated.

12 24. Q. Okay. And the compliance review directive,
13 what's that?

14 A. That just provides general guidelines for the
15 regions in how they're doing their review of finances in
16 relation to the particular agency or recipient.

17 25. Q. And with respect to the review of agencies
18 and their funding, is it strictly a review of whether the
19 money is being spent as promised by the First Nation
20 agencies?

21 A. The funding that flows out, flows according
22 to the transfer payment policy of Treasury Board, and the
23 agencies have to identify what they're going to be doing
24 with that money. We do have terms and conditions for our

1 programme, and we have to be sure that we're not going
2 outside of what is in our terms and conditions, and that
3 the money is being spent on what it was intended for.

4 26. Q. And those terms and conditions are contained
5 in what document, would that primarily be the programme
6 manual?

7 A. Not the latest one, no.

8 27. Q. In the present one that's operating, that
9 would have the terms and conditions in it?

10 A. The present one, no, it does not.

11 28. Q. Where are the terms and conditions found?

12 A. They are in our Treasury Board submission.

13 29. Q. Your Treasury Board?

14 A. Submission.

15 30. Q. And what is that?

16 A. In order to obtain funding authority, we have
17 to do a submission to Treasury Board to identify the
18 terms and conditions that apply to a particular
19 programme.

20 31. Q. And how are those terms and conditions
21 conveyed or communicated to the First Nations agencies?

22 A. At the moment it's verbal. We will, however,
23 in terms of the reporting requirements, identify
24 reporting requirements which go out in the national

1 reporting guide and those are referenced in the funding
2 agreements.

3 32. Q. So you say these terms and conditions are
4 communicated verbally. What are those terms and
5 conditions?

6 A. They are quite detailed.

7 33. Q. What are the types, I appreciate you won't
8 recall every one specifically?

9 A. Well, it identifies that we have the
10 different processes for funding of First Nations Child
11 and Family Services, including funding under directive
12 20-1, under the Enhanced Prevention Focussed Approach,
13 refers to the Ontario 65 welfare agreement, the Alberta
14 agreement. It identifies maximum payable under a
15 particular agreement.

16 34. Q. The maximum payable under a particular
17 arrangement?

18 A. Yes.

19 35. Q. And how is that determined, in accordance
20 with the funding formulas, or just in accordance with the
21 funds that are available?

22 A. It's probably a combination of both. You
23 take a look at what it is that your maximum amounts are,
24 or maximum amount of funding that you do have. But also

1 in discussions with our regions, when we renew our terms
2 and conditions, we try to update them based on what
3 things have come up over the five years. They are
4 usually for five years, these terms and conditions. And
5 there may be adjustments made at that point.

6 36. Q. Afterwards. If you look back and say well,
7 they had higher needs, so in future we'll change the
8 funds available?

9 A. It's not the funds available, it's the
10 maximum amounts payable under a particular agreement.
11 So, for example, if you were to, and I'm just making up a
12 fictitious agency here.

13 37. Q. That's fine?

14 A. But if you were to have an agency and you
15 determined that the maximum amounts that you have paid
16 out under a particular agreement were \$3 million, and you
17 know that you're increasing resources, you're going to
18 possibly up that requirement.

19 38. Q. Okay. So Ms Johnston, I'm going to start
20 asking some questions more specifically tied to your
21 Affidavit. I'll just start first just with paragraph one
22 of your Affidavit.

23 You indicate that the information you provide in
24 the Affidavit

1 "relates to personal knowledge of
2 the matters, except where such matters
3 are based on information and belief, in
4 which case I verily believe them to be
5 true".

6 As we go through I may, at times, ask you the
7 source of your information and belief, and where you got
8 your information.

9 So turning to paragraph three, the first sentence
10 says

11 "Child welfare is an area of Provincial
12 jurisdiction".

13 What is your source of information and belief for that
14 statement?

15 MR. TARLTON: Mr. Champ, I'm not quite certain,
16 given some of the comments and objections that were made
17 on Tuesday last, by both yourself and Mr. Poulin, why
18 we're engaging in discussion of the source of information
19 and belief, but it's a statement in the Affidavit of a
20 matter of fact pertaining to a legal issue, and, as I
21 recall, both you and Mr. Poulin, when we attempted to ask
22 questions regarding that, took the position it was a
23 legal issue and something that would need to be dealt
24 with further. So I'm just curious why your position has

1 changed today.

2 MR. CHAMP: Actually, I think my position is
3 consistent, Mr. Tarlton, because on the previous day when
4 you were cross-examining, when your colleague, Mr.
5 Taylor, was cross-examining Ms Blackstock, Mr. Taylor was
6 putting to Ms Blackstock some questions that we thought
7 were of a legal nature. And we made an objection.

8 Here Ms Johnston has in her Affidavit provided
9 statements of law, and, in fact, we do have some
10 objection to that, so I'm going to ask her some questions
11 on it, or alternatively, if you would like, we're more
12 than prepared to not ask her questions, provided we have
13 some of those parts struck.

14 So that statement "Child welfare is an area of
15 Provincial jurisdiction", I do think that's an issue of
16 law that she really doesn't need to address in her
17 Affidavit. No doubt we will be addressing that in our
18 legal arguments to the Tribunal, and I would suggest to
19 you that perhaps we just agree that that sentence be
20 struck.

21 MR. TARLTON: Well, I will take your request
22 under advisement and I won't agree to it at this point in
23 time. You can continue to ask your questions, but I'll
24 reserve my right to reiterate my objection as the course

1 of your questions progress. Proceed.

A

2 BY MR. CHAMP:

3 39. Q. So now, Ms Johnston, what's the source of
4 your information and belief on that statement?

5 A. That -- can you repeat the question?

6 40. Q. "Child welfare is an area of
7 Provincial jurisdiction"?

8 A. Yes.

9 41. Q. Why do you think that to be the case?

10 A. Because Provinces do set legislation and
11 standards around child welfare.

12 42. Q. And is that, to your knowledge, is that
13 because the Federal Government delegates to them that
14 responsibility, or the Federal Government does not assume
15 that responsibility?

16 MR. TARLTON: With the greatest of respect, that
17 is a legal question. And I reiterate my objection, and
18 ask you to focus on the matters pertaining with facts in
19 her Affidavit.

O

20 MR. CHAMP: But with great respect, Mr. Tarlton,
21 she has made that statement in her Affidavit.

22 "Child welfare is an area of Provincial
23 jurisdiction".

24 I'm just not sure what I'd like to do with that. If it's

1 a statement that you're not prepared to withdraw, then I
2 suggest that I'm allowed to examine it.

3 MR. TARLTON: Are you stating on the Record that
4 it is your position that child welfare is not a matter of
5 Provincial jurisdiction and Provincial responsibility?

6 MR. CHAMP: We are, yes, we are stating it's a
7 delegated responsibility that the Federal Government
8 could assume through the doctrine of paramountcy, yes,
9 that's our position.

10 MR. TARLTON: Well, that's a legal issue and that
11 can be argued at a later date when this Motion, or
12 another Motion, if you choose to bring it, with respect
13 to determining that issue is wrong. But ultimately
14 you're asking a question that requires a legal opinion,
15 and would be ultimately a matter for determination by the
16 ultimate decision maker, be it the Tribunal or a Court.
17 You have her answer. I object to any further lines of
18 questioning. Please proceed onto your next topics.

19 BY MR. CHAMP:

20 43. Q. Well, I won't concede that point, but I'll
21 continue for now and we'll see if we have to return to
22 the matter. The next sentence that you have there, Ms
23 Johnston,

24 "The Government of Canada, as a matter

1 of policy, has decided to fund the
2 delivery of child welfare for Indian
3 children and families ordinarily resident
4 on reserve".

5 And when you say as a matter of policy, what do you mean
6 by that?

7 A. That there isn't -- I think that all the
8 funding decisions in the Government generally you do from
9 a policy perspective unless there's legislation that
10 specifically applies and directs you.

11 44. Q. Are you saying that there's no obligation on
12 the Federal Government of Canada to provide funding for
13 child welfare services? Is that what you're saying?

14 MR. TARLTON: With respect, I don't believe that
15 was her answer, I think she referred to legislation did
16 not apply with respect to these decisions.

17 BY MR. CHAMP:

18 45. Q. And maybe I missed, I didn't hear her say
19 legislation, but I'm happy if that's -- I can understand
20 what your answer is. So just if you disagree with the
21 premise of one of my questions at any time, Ms Johnston,
22 feel free to correct me, that's perfectly fine, and maybe
23 in many cases I'm sure it's my own misunderstanding or
24 failing.

1 So right here just on that, as a matter of
2 policy, can you clarify for me what you mean by that,
3 whether it's purely discretionary if the Government can,
4 or you think there's some obligation, or what you meant
5 by that statement?

6 A. What I mean by that statement is we have to
7 get policy authority for programmes from our Cabinet and
8 so in order to fund this we have to have that authority,
9 and it's a policy authority.

10 46. Q. And to your understanding there's no
11 obligation on Canada to provide the funding?

12 A. Not to my knowledge.

13 47. Q. And in the next sentence you say
14 "As a result Indian Affairs is authorized
15 to provide funding to the Provincially
16 mandated providers of child welfare
17 services who provide these services to
18 Indian children ordinarily resident on
19 reserves in the Province".

20 Who are they authorized by, who is Indian Affairs
21 authorized by?

22 A. By Cabinet.

23 48. Q. And what is the instrument by which Cabinet
24 authorizes Indian Affairs to provide that funding?

1 A. We have to do submissions to Cabinet, and
2 then Cabinet has records of decisions on their policy
3 authorities.

4 49. Q. So there's, I forget what they call it, MCs
5 or Memorandum of Cabinet, those are the decisions coming
6 out saying that you can provide the funding?

7 A. Documents come out as a result of that, yes.

8 50. Q. And how frequently does the department have
9 to make those submissions to Cabinet?

10 A. Whenever you have a change in policy or,
11 generally speaking, your terms and conditions apply for
12 about a five year period at which time you have to go
13 back for renewal of the programme.

14 51. Q. And when you say
15 "Provincially mandated providers
16 shall offer services",
17 I take it that you're saying that child welfare agencies
18 providing services on reserves must follow Provincial
19 child welfare legislation?

20 A. They have to be delegated by the Province,
21 the particular Province.

22 52. Q. The agency has to have the delegated power of
23 a particular Province?

24 A. Whoever is delivering the child welfare has

1 to be delegated by the Province.

2 53. Q. Right. So it's the Provinces that regulate
3 how they provide the child services, what child services
4 they provide, it's the Provinces that regulate that
5 rather than INAC, correct?

6 A. Provinces delegate to the authorities or to
7 the agencies. We do have, however, some limitations with
8 respect to mandates of the particular departments and we
9 have to stay within our mandate and particular
10 authorities that are obtained. And we cannot cross over
11 into someone else's authority, for example, Health
12 Canada.

13 54. Q. Can you just elaborate on that, I'm not sure
14 if I understood your answer? So the Provinces authorize
15 or regulate the First Nations child welfare agencies with
16 respect to their provision of child welfare services?

17 A. Yes.

18 55. Q. And then what role does INAC have in that?

19 A. We can only fund what is within our
20 particular authority and mandate.

21 56. Q. Right. So if there's a particular Provincial
22 requirement that's outside INAC's mandate, then it might
23 not necessarily be funded?

24 A. That's correct.

1 57. Q. In paragraph four of your Affidavit you say
2 "Indian Affairs also provides funding
3 to the Yukon Government for the provision
4 of child welfare services to all Indian
5 children and families ordinarily resident
6 in the Yukon Territory".

7 Are there any reserves in the Yukon?

8 A. I don't know.

9 58. Q. Okay. And in paragraphs three and four you
10 don't make any reference to the Northwest Territories.
11 Is there any reason for that?

12 A. They're in six.

13 59. Q. Oh, you're right, sorry, you got me. And who
14 regulates child welfare services in the Northwest
15 Territories?

16 A. I don't know.

17 60. Q. Does the Minister of Indian Affairs have any
18 role in child welfare services in terms of authorizing,
19 you know, apprehensions or transfers of children or
20 anything like that, to your knowledge?

21 A. Not that I'm aware of.

22 61. Q. So you had indicated before that there may,
23 in some cases, be a particular service that might be
24 required by a Province that is not necessarily funded by

1 INAC. How are those kinds of situations reconciled?

2 A. The agencies will be asked to deal with
3 Health Canada, whether it be the First Nation, or the
4 non-insured health benefits, as an example.

5 62. Q. And you'd agree with me, the Provinces are
6 not necessarily satisfied with this situation, is that
7 fair to say?

8 A. I couldn't say.

9 63. Q. So, Ms Johnston, I just handed your Counsel
10 and yourself a letter to the Honourable Chuck Strahl,
11 he's the Minister of Indian Affairs, and it's signed by
12 Mary Polak who is the British Columbia Minister of
13 Children and Family Development and George Abbott who is
14 the Minister of Aboriginal Relations and Reconciliation.

15 I'll give you just a couple of minutes maybe to read the
16 letter, and then I'll ask you some questions.

17 So you've reviewed the letter, Ms Johnston?

18 A. Yes, I have.

19 64. Q. So from what I understand, and I think the
20 thrust of this letter, and I'd ask if you agree with me,
21 is that British Columbia is not satisfied with the
22 present funding arrangement for child welfare services on
23 reserves in BC, is that fair to say?

24 MR. TARLTON: Well, perhaps you might first -- I

1 realize you've shown a copy of the letter to her this
2 morning. You might lay a foundation as to whether she's
3 seen it before, or what her knowledge or information and
4 belief about it is, outside of having the opportunity to
5 read it for approximately two minutes.

6 BY MR. CHAMP:

7 65. Q. All right. Are you familiar with this
8 letter, Ms Johnston?

9 A. I may have seen this.

10 66. Q. The issues addressed in this letter, that
11 would fall under your responsibility in the department, I
12 gather?

13 A. In conjunction with our regional offices.

14 67. Q. In conjunction with the regional offices.
15 And it has to do with the issue of the adequacy of
16 funding for child welfare services on reserves in BC, is
17 that fair to say?

18 In the third paragraph it states at the first
19 sentence

20 "We would, therefore, urge you to work
21 with your Federal Cabinet colleagues to
22 ensure equity in the funding of services
23 for First Nations children and families
24 throughout Canada. This is a fundamental

1 issue of equity, and there's no
2 justification for differential treatment
3 of children on reserve to those living
4 off reserve".

5 So that paragraph, among others, suggests to me that the
6 Government of British Columbia has some concerns for the
7 adequacy or equity of funding for child welfare services
8 on reserve, is that fair to say?

9 MR. TARLTON: Well, I'm going to stop you there
10 because my understanding was the Cross-Examination on
11 these Affidavits is in aid of a Motion to determine the
12 jurisdiction of the Commission. You've asked a question
13 where you specifically reference adequacy of the
14 services. And again, I'll take you back to Tuesday when
15 we were cross-examining Dr. Blackstock, and again, I
16 believe that Mr. Poulin objected and said that the issue
17 on this Motion is to deal with jurisdiction and not
18 adequacy.

19 So again, having taken the position earlier this
20 week that questions relating to the adequacy of resources
21 is outside the scope of this Motion, you're purporting to
22 ask that very question to Ms Johnston this morning. And
23 that, clearly from the tone of your question, is the
24 purpose for it. So it's not relevant in my submission

1 and I would ask you either to withdraw the question or
2 re-state it focussing on the issue that is before the
3 Tribunal on this Motion and these Affidavits filed in
4 support of it.

5 MR. CHAMP: Thank you for that, Mr. Tarlton.
6 Just to be clear, I did not ask her if the funding was
7 adequate or not, or if the funding was ---

8 MR. TARLTON: You did not, but you're referring
9 ---

10 MR. CHAMP: If you'd just allow me to complete my
11 statement, thank you, Mr. Tarlton.

12 MR. TARLTON: I'm sorry.

13 MR. CHAMP: Thank you. So, just for the Record,
14 the question that I asked was whether she was aware that
15 British Columbia, the Government of British Columbia, is
16 dissatisfied with the funding arrangement and does not
17 believe that, and has raised questions or concerns about
18 the equity of the funding. The purpose of our questions
19 -- well, first of all, your client's Affidavit does deal
20 with this issue in some detail throughout, which I'll
21 address as we get there, but the point that we intend to
22 make, both in the Motion, and, to some extent, I believe,
23 through our Cross-Examination, has to do with the issue
24 of whether the role of the Department of Indian Affairs

1 in the delivery of child welfare services on reserve is
2 strictly one of funding.

3 And it's our position that there is a greater
4 role of INAC that INAC is more closely involved in the
5 monitoring and supervision and delivery of services and
6 it's our understanding your client maintains that it's
7 strictly an issue of Provincial jurisdiction regulating
8 the delivery of those services.

9 We intend, through some Cross-Examination
10 including on this issue, we believe to demonstrate that
11 it's not strictly one of funding, that the department has
12 a greater role in the monitoring and delivery of services
13 which services are delivered or not, and whether that is
14 consistent or not with the Provincial Statutory
15 requirements. If that's of some assistance to you,
16 that's the object or direction where I'm going with my
17 questions so I may have questions that get into funding
18 and adequacy of funding, but I will not be asking your
19 client to say, you know, do you agree this is adequate or
20 not? We're not seeking to establish whether funding is
21 adequate or not, we are only seeking to get at the
22 function of the funding, and supervision, and monitoring,
23 as it relates to the delivery of services by First Nation
24 agencies on reserve.

1 MR. TARLTON: Thank you, I appreciate the
2 clarification, and, indeed, I'm hopeful that the
3 questions will be focussed on those issues. In reviewing
4 the letter I don't -- it will be ultimately, I suppose, a
5 matter for argument, but I don't see those particular
6 issues you intend to address the focus of the letter or
7 the paragraph you were just referring Ms Johnston to, but
8 again, I'll see how the questioning progresses and if I
9 need to, I'll make the further objection.

10 MR. CHAMP: Mr. Tarlton, I want to make another
11 point on the Record, just on that, in terms of going
12 forward which might be helpful for you, but at this stage
13 I'd prefer to make this point on the Record without the
14 presence of the witness. Would you have any objection to
15 us asking the witness just to leave for a moment so I can
16 make a couple more points on the Record?

17 MR. TARLTON: Okay, we'll go off the Record.

18 (OFF RECORD DISCUSSION)

19 MR. CHAMP: Mr. Tarlton, one of the points that
20 we will be making in our arguments is that the Provinces
21 who are required to, who are to regulate the delivery of
22 services, take the position that the services that they
23 believe are required to meet Statutory requirements
24 cannot be done based on the funding that's provided, and

1 that's one of the points that we wish to address with Ms
2 Johnston.

3 It's our view that if it's purely regulated by
4 the Province, then it will be the Province that decides
5 what services should be delivered or not delivered. We
6 don't think that's the case, and that's the point that we
7 wish to address. So that's where I'm going to be going
8 with my questions. I'm hopeful that we don't have, you
9 know, objections every other question, but obviously
10 these two issues sit side by side and I appreciate where
11 you're coming from, but I just want to make it clear
12 again on the Record that we intend to ask questions on
13 this topic or around this topic of the connection or
14 relationship between the Statutory requirements and what
15 the Federal Government provides.

16 MR. TARLTON: Oh, I appreciate your clarifying
17 it, and to the degree that you want to ask her questions
18 about funding and what the Federal Government funds, and
19 its programmes or policies, that's one thing, but if
20 you're going to get into having earlier on objected to Ms
21 Johnston's evidence regarding what I would respectively
22 submit is a completely innocuous statement regarding
23 areas of Provincial jurisdiction, I don't think then you
24 can come and say we reserve the right to question about

1 Provincial areas of jurisdiction and put to her the
2 comments or submissions of the Province.

3 I suppose if you would like to do that, you
4 should put a representative of the Province up to discuss
5 that matter. But my understanding of what we're here for
6 and what the Motion is, is to determine the jurisdiction
7 of the Commission, and if we're going to start and get
8 into ---

9 MR. CHAMP: The Tribunal.

10 MR. TARLTON: Sorry, the Tribunal. But if we're
11 going to get into a discussion about whether the Province
12 thinks funding is adequate in respect of this programme,
13 or this service, vis-a-vis the Federal Government, I
14 think we're into the merits and that's not what this
15 Motion is for, and that's not what this Affidavit is for.

16 So I will continue to object if I feel that we are
17 crossing into the merits, and I appreciate your attempt
18 to re-state this, and I will listen to your questions
19 carefully and try not to object unless I feel it is
20 appropriate. But I will continue to do so because I
21 think we are crossing into the merits.

22 MR. CHAMP: I would caution you, Mr. Tarlton,
23 that when the Cross-Examination of Ms Blackstock took
24 place the other day, we had very few objections,

1 primarily because we were in a completely novel process
2 now. The Tribunal, I'm thinking, you would be up to
3 speed on this now, has now embarked on something that is
4 not before the Cross-Examinations outside of the Tribunal
5 process.

6 I appreciate that both you and Mr. Taylor are
7 more familiar with the Court process, but I would urge
8 you again to recognize this is not a Court process, this
9 is a process under the Canadian Human Rights Act. There
10 are different rules of evidence, there are different
11 requirements, there are different types of evidence
12 that's admissible, and this process that we're in right
13 now I think is going to be quite difficult if you object
14 to every second question. But I'll leave it at that, and
15 we'll see where we get today.

16 MR. TARLTON: Very good.

17 MR. CHAMP: Thank you, Mr. Tarlton.

18 MR. TARLTON: Okay.

19 BY MR. CHAMP:

20 68. Q. Can you please go get your witness? Thank
21 you, Ms Johnston, Paul Champ again, on the Record. One
22 of the issues raised in this letter has to do with the
23 British Columbia First Nations Enhanced Prevention
24 Services Model and accountability framework. Can you

1 explain what that is?

2 A. That is a document that was created through a
3 tripartite process with the First Nation agencies, INAC
4 and the Province outlining how they intended to implement
5 prevention in that particular Province for First Nations
6 on reserve.

7 69. Q. And what is its relationship to Directive 20-
8 1?

9 A. It outlines the plans on a go forward basis,
10 if additional funds are found to support First Nations
11 and moving forward.

12 70. Q. Ms Johnston, may I ask you just to speak up a
13 little bit, even I'm having a hard time hearing and maybe
14 the people in the back just at the other desks may also
15 have a hard time hearing you.

16 Just on that, it's my understanding that this
17 advanced prevention services model, that this is a
18 different kind of formula, it's what's meant to replace
19 Directive 20-1 for the delivery of child welfare services
20 in BC, is that fair to say?

21 A. For those First Nation agencies who wish to
22 opt into that approach, yes, it will replace Directive
23 20-1.

24 71. Q. But as I understand this letter, even those

1 who might wish to opt into that approach, they can't
2 right now because the Department of Indian Affairs is
3 saying that they're not prepared to fund it, is that fair
4 to say? Is that the fact, regardless of this letter?

5 MR. TARLTON: I'm sorry, just to help me out with
6 your question, where in the paragraph, or the letter does
7 it say that, what you just said about ---

8 MR. CHAMP: In the second last paragraph on page
9 one it says

10 "In early September 2008 the British
11 Columbia First Nations Enhanced
12 Prevention Services Model and
13 Accountability Framework was submitted
14 to your department. Regrettably since
15 then we have been advised that no funding
16 is available for the foreseeable future
17 for British Columbia's First Nations
18 children, youth and families".

19 It's our understanding that the reason why this model is
20 not being implemented is because there's not funding
21 available for it.

22 MR. TARLTON: Well, then, perhaps you should put
23 your understanding to Ms Johnston and ask her if that's
24 her knowledge or information or belief.

1 MR. CHAMP: Is there an objection, Mr. Tarlton?

2 MR. TARLTON: Well, no ---

3 MR. CHAMP: I'm just trying to understand.

4 MR. TARLTON: --- I'm just trying to clarify
5 because the question, as I originally heard it ---

6 MR. CHAMP: Right.

7 MR. TARLTON: --- is different from the wording
8 in the paragraph, and if you're asking her to comment on
9 that same paragraph.

10 MR. CHAMP: Well, I wasn't initially, that wasn't
11 my question, and I think I've been quite fair to the
12 witness in saying that if she believes the premise of one
13 of my questions is inaccurate or wrong, that she should
14 ask me about it. And I did start that question saying
15 regardless of this letter, and started asking questions
16 more generally about the Directive 20-1 and the proposed
17 Enhanced Prevention Services Model for British Columbia.

18 So that's what I'm asking about, Mr. Tarlton.

19 Mr. Tarlton, I'd say this will be a very long
20 day, and I'm not sure if you intend to be here on Monday
21 for further Cross-Examination, but I think it would be a
22 bit more expeditious if we could reduce the number of
23 objections.

24 MR. TARLTON: Well, I will attempt to do that,

1 Mr. Champ, but I reserve the right if I think the
2 question is being worded improperly, if you're asking the
3 witness to speculate, or if you're not laying the proper
4 evidenciary foundation to raise an objection. I would
5 ask you to re-phrase it, which is what I'm asking you to
6 do.

7 MR. CHAMP: Okay. Well, sir, wording my
8 questions improperly, what legal basis do you mean my
9 questions are worded improperly?

10 MR. TARLTON: Well, I think you're ---

11 MR. CHAMP: I think that as the Counsel
12 conducting Cross-Examination, I have the right to phrase
13 the questions the way I wish. If you have a proper
14 objection on the basis of relevance, I don't know, calls
15 for an opinion on a legal question, those are fair and
16 valid objections: I've got no problems with that. But
17 just saying that you don't like the way I phrase my
18 questions, I'm not sure if I understand the legal basis
19 for that. Can you enlighten me?

20 MR. TARLTON: Well, I think to be fair to the
21 witness, you should put the question -- if you're asking
22 her questions about what the Government of British
23 Columbia is representing to the Minister of Indian
24 Affairs in the letter, it would be helpful, and you're

1 referring to a specific paragraph, use the language in
2 the paragraph as the basis of your question. That way I
3 can follow it, and likewise, Ms Johnston can understand
4 it better. But the question, as I heard you originally
5 ask, had nothing to do with the language in that
6 paragraph, and I'm just ---

7 BY MR. CHAMP:

8 72. Q. Well, thank you for your advice and
9 assistance on how I should conduct my Cross-Examinations,
10 Mr. Tarlton. When I require further assistance, I'll
11 ask.

12 So Ms Johnston, going back to the point that I
13 was asking you about, so right now Directive 20-1 is the
14 funding model that applies to First Nations agencies
15 delivering child welfare services in British Columbia,
16 correct?

17 A. Yes, it is.

18 73. Q. Okay. And the proposed Enhanced Prevention
19 Services Model is not being implemented in British
20 Columbia for child welfare services, correct?

21 A. Yes.

22 74. Q. Why is that the case?

23 A. They have asked for additional resources and
24 we are not able to provide it at this time.

1 75. Q. So the Enhanced Prevention Services Model,
2 which was negotiated through a tripartite process, would
3 result in more funds and that's not available right now,
4 is that right?

5 A. That's correct.

6 MR. CHAMP: Mr. Tarlton, may we enter this as an
7 exhibit to this Cross-Examination?

8 MR. TARLTON: You could properly enter it for
9 identification. I think Ms Johnston said she may have
10 seen it, but certainly it can be, perhaps, entered and
11 perhaps subject to some further confirmation, I mean
12 formally, I just ---

13 MR. CHAMP: That's fine.

14 MR. TARLTON: But certainly.

15 MR. CHAMP: That's fine. It's a letter to the
16 Minister of the British Columbia Cabinet to Minister of
17 the Federal Cabinet, and I'm sure you can have an
18 opportunity to confirm the authenticity of it.

19 MR. TARLTON: Sure, thank you.

20 EXHIBIT NO. 1: Letter from the Province of
21 British Columbia to The Honourable Chuck Strahl,
22 Minister of Indian Affairs and Northern
23 Development.

24 MR. CHAMP: Mr. Tarlton, just to confirm, we'll

1 number these exhibits to the Cross-Examination of Ms
2 Johnston just from one upwards, is that fair?

3 MR. TARLTON: If you'd like to do that, that's
4 fine.

5 BY MR. CHAMP:

6 76. Q. Okay, thank you. So Ms Johnston, just on the
7 Northwest Territories, you would approve budgets and so
8 forth?

9 A. No.

10 77. Q. No. For the Northwest Territories, you don't
11 have any role in that?

12 A. No.

13 78. Q. And why is that?

14 A. Because the funding flows through the
15 Department of Finance through the Territorial financing
16 agreements.

17 79. Q. So First Nations agencies in the Northwest
18 Territories -- okay, sorry. So INAC has no role in that
19 whatsoever?

20 A. No.

21 80. Q. Does Finance consult with INAC or with your
22 directorate in terms of establishing or determining what
23 would be an adequate or proper level of funding with the
24 Northwest Territories?

1 A. They don't consult with us, that's all I
2 know.

3 81. Q. Okay. At paragraph seven of your Affidavit
4 you say that

5 "In 1990 Indian Affairs received
6 authority to create a national
7 funding programme for child welfare
8 services called the First Nations
9 Child and Family Services Programme".

10 I gather, Ms Johnston, over the past couple of years
11 you've become familiar with the history of the programme
12 since it was established in 1990?

13 A. With some of it.

14 82. Q. Some of it. Like, for example, the National
15 Joint Policy Review conducted in 2000, you're familiar
16 with that?

17 A. Parts of it.

18 83. Q. Parts of it. And can you tell us what you
19 know about in terms of why that review was conducted?

20 A. Exactly, I don't know.

21 84. Q. Okay. And the Wen-de reports, are you
22 familiar with those documents?

23 A. Familiar, but not in depth knowledge.

24 85. Q. And do you know what the purpose of those

1 reports, or why they were created?

2 A. All I know is that they flowed from the
3 National Policy Review.

4 86. Q. Okay. In paragraph seven, the next sentence,
5 you say

6 "Where it applies, the FNCFS funding
7 programme includes funding formula
8 Directive 21, chapter five, and
9 commencing in 2007 the newer Enhanced
10 Prevention Focussed Approach, both of
11 which define how Federal Government
12 funding is to be provided to Provincially
13 mandated providers of child welfare
14 services for the delivery of child
15 welfare services on reserve".

16 So just going back to the questions I was asking before
17 with respect to BC, the Enhanced Prevention Focussed
18 Approach, that's the model that was developed for BC,
19 that tripartite process?

20 A. That's correct.

21 87. Q. And so there's some Provinces that do have
22 the benefit of that Enhanced Prevention Focussed
23 Approach, correct?

24 A. That's correct.

1 88. Q. And which Provinces are those?

2 A. We began with Alberta in 2007. Then in 2008
3 it was Nova Scotia and Saskatchewan. In 2009, Quebec and
4 PEI.

5 89. Q. Okay. And you're aware that the Auditor
6 General of Canada had reviewed both of these funding
7 models, Directive 21 and the Enhanced Funding Model, in
8 her review of your programme in 2008?

9 A. Yes.

10 90. Q. And the Auditor General had concerns with
11 respect to both models, correct? If you're not sure,
12 that's fine?

13 A. Yes, I am not sure.

14 91. Q. Okay. Do you know what types of
15 recommendations the Auditor General made with respect to
16 those models and the delivery of child prevention
17 services on reserves generally?

18 A. I can't recall off the top what exactly those
19 recommendations were.

20 92. Q. And I appreciate that report was released in
21 '08, so you'd only been a year in at that point at the
22 department. But are you aware of any steps that INAC or
23 your programme is taking to address any of the concerns
24 raised by the Auditor General's report? Like does it

1 ever come up with new policies or recommendations, or, I
2 don't know, things that you are working on or planning
3 where the driver is, you know, people refer to the
4 Auditor General's report?

5 A. Specifically, no. I mean any direction we're
6 taking will take that into consideration, but it's not
7 necessarily the driver for change.

8 93. Q. So there are some things that you're doing
9 where that is taken into consideration?

10 A. Yes.

11 94. Q. Can you give me examples?

12 A. I'm trying to remember. I think she asked
13 that we have a better grasp of the results that are being
14 achieved as a result of the funding that is being
15 provided. And we're working on developing an information
16 management system to assist in that regard.

17 95. Q. I'll move to the next paragraph, paragraph
18 eight.

19 "Indian Affairs does not deliver child
20 welfare services on or off reserve in
21 Canada".

22 So, Ms Johnston, can you just tell me what role does
23 Indian Affairs play in the delivery of child welfare
24 reserves?

1 A. We provide funding for recipients to deliver
2 child welfare services.

3 96. Q. Your programme or your department also
4 ensures that the child welfare services agencies meet
5 Provincial standards and requirements?

6 A. Part of our terms and conditions is that
7 whoever is delivering has to be doing it in accordance
8 with Provincial legislation and standards.

9 97. Q. Who determines if they are meeting Provincial
10 standards and requirements?

11 A. The Provinces are responsible for delegating
12 to the agencies, so.

13 98. Q. Yes, they delegate the authority or power to
14 deliver child welfare services to the agencies, but who
15 determines, is it the Federal Government or the
16 Provincial Government that determines if those agencies
17 are meeting the Provincial standards or requirements?

18 A. It's up to the Provinces to determine that.

19 99. Q. And so, given that meeting those standards
20 and requirements are a condition of funding, how does
21 INAC determine if those agencies are, in fact, meeting
22 those Provincial standards and requirements? Because
23 that's your role, right, isn't that your -- that's
24 getting right to the heart of your job, is that right?

1 A. Not mine specifically, but with our regions
2 who deal with the funding agreements for the recipients,
3 part of it is to ensure that you have the proper
4 delegation instrument from the Province.

5 100. Q. And that's it, though, doesn't it go further,
6 like once the agency has the delegation, obviously,
7 they've got the delegation, but in terms of their ongoing
8 operations and delivery of actual services, who
9 determines if they are meeting the Provincial
10 requirements and standards? Or is that all, pardon me,
11 before I ask, sorry, I'll withdraw the question.

12 So are you saying that provided a First Nation
13 agency can say we've got the delegation from the
14 Province, that's all that's required to meet the
15 standards and requirements of INAC?

16 A. Well, I mean when we're reviewing funding of
17 bills, we are responsible for ensuring due diligence of
18 the recipients, and when we are reviewing bills,
19 particularly for children in care, part of that will be,
20 in particular jurisdictions, that a facility has to be
21 licensed in order for that to be covered.

22 101. Q. So, for example, a particular file, whether
23 it has a license or not, you would look at that, and if
24 the agency funded a foster home that didn't have a

1 license immediately when they place the child, your
2 department wouldn't fund that, is that right?

3 A. We would question it, go back to the
4 recipient and ask, and also get in touch with the
5 Province to ask what the status of that particular
6 recipient is, and what's happening.

7 102. Q. But if the Province, then, approved the
8 placement, because sometimes Provinces, they'll do
9 retroactive licensing and so forth. If the Province
10 approves it, would INAC question something like that?

11 A. If, I mean it's going to depend on what
12 exists in that particular jurisdiction, and there are
13 differing situations. There may be circumstances where
14 the standards say it has to be in process, in which case
15 we would accept that.

16 103. Q. So the standards would have to be in the
17 process?

18 A. No, no, no, what I'm saying is that the
19 licensing for the standards says it has to be there or in
20 process.

21 104. Q. Do you know in what way the Province reviews
22 the child welfare services delivered by the First Nations
23 agencies?

24 A. I don't know the particular process, no.

1 105. Q. But you suggested there that there might be
2 examples where INAC would liaise with the Province over a
3 particular issue?

4 A. Yes.

5 106. Q. And are there other examples like that that
6 you can provide?

7 A. If, in the process of doing a particular
8 review, the recipient didn't have any information to be
9 able to substantiate the documentation, then we would
10 call the region or the Province in to ask them to check
11 on what is happening in this particular area.

12 107. Q. The documentation didn't appear, what kind of
13 documentation? It's my understanding sometimes with the
14 monitoring or review, your department will actually go
15 right in and look at specific children's files, is that
16 your understanding?

17 A. What we ask for is to ensure proper due
18 diligence and accountability for the funds, we need to
19 ensure that it is for the child on reserve status, so we
20 will ask for information that verifies that.

21 108. Q. And that's it, that's all you, it's a child
22 who has status and is on reserve?

23 A. Living on reserve.

24 109. Q. And is in care, and that's the only things

1 that you look for?

2 A. Well, I mean we will need to know if they are
3 referred to a particular facility, that, in fact, they've
4 gone to a particular facility, not for the purpose of
5 verifying the facility, but that, in fact, this is a
6 justified payment.

7 110. Q. Just to justify payment, and that's the only
8 issue. Ms. Johnston, I'm turning to paragraph nine of
9 your Affidavit, where you speak about the level of
10 funding from the programme. You state that

11 "The funding provided under the Indian
12 Affairs funding programme has grown from
13 \$193 million in '96/'97, to approximately
14 \$523 million in 2008/2009".

15 Do you know why, what's the main driver behind that
16 increase?

17 A. I think there's a number of factors around
18 that. One is the numbers of agencies have increased
19 substantially. The numbers of children in care have
20 increased, as has the population.

21 111. Q. So the number of new children -- pardon me,
22 the number of children in care has increased. That's a
23 big reason why it's increased?

24 A. It's one of the reasons.

1 112. Q. What's the main reason, what's the biggest
2 reason?

3 A. I couldn't tell you what the biggest reason
4 was.

5 113. Q. And what's your source of information and
6 belief for that statement in paragraph nine?

7 A. I believe these are the figures reported in
8 our ---

9 MR. TARLTON: Sorry, I didn't catch that.

10 MR. CHAMP: I just asked her where she ---

11 MR. TARLTON: No, no, your question, it was her
12 answer I missed.

13 THE WITNESS: Yes. I think these are the figures
14 we include in our departmental performance reports to
15 Parliament.

16 BY MR. CHAMP:

17 114. Q. Would there be one report that includes both
18 of those, or ---

19 A. No.

20 115. Q. --- do you have to go back and get the older
21 report?

22 A. You'd have to go back.

23 116. Q. And did you do that, go back and get the
24 older report for '96/'97, or did someone do that for you?

1 A. I didn't. I would have staff that would have
2 done that.

3 117. Q. And did you direct one of your staff to do
4 that?

5 A. This particular statement is one that's
6 appeared in previous documents, it just gets updated as
7 the time goes on.

8 118. Q. And I'm just trying, when you put this up,
9 when you put your Affidavit together, I'm just -- what
10 document did you draw it from specifically this time
11 around?

12 A. I worked with my staff on this Affidavit, so
13 a lot of the factual information, specific information
14 when it comes to numbers, comes from my staff.

15 119. Q. Okay. And the increases in funding, under
16 Directive 20-1 anyway, there's the operations and
17 maintenance funding. Would you say that this increase is
18 primarily under operations or primarily under
19 maintenance?

20 A. I couldn't say per se.

21 120. Q. And can you just remind me, what's the
22 difference between operations and maintenance funding,
23 under Directive 20-1?

24 A. Operations is for salaries, rent, legal

1 costs, some prevention for agency use. Maintenance is
2 for the costs for children in care.

3 121. Q. And how are those amounts under each of those
4 categories determined for agencies? How does Directive
5 20-1 work?

6 A. Well, Directive 20-1 determines a specific
7 amount for operations. There are different factors that
8 come into play. Like the size of the population served,
9 community served. I can't recall all of the factors, but
10 remoteness comes into it. With respect to maintenance,
11 maintenance is the reimbursement of actual expenditures.

12 122. Q. So if I understand it correctly, say you've
13 got two Bands, Band A and Band B, they've each got 2,000
14 members. And let's say they've got the same number of
15 children, they're in a same sort of relatively equal,
16 remote location. Those two Bands would get the same
17 amount of operations funding?

18 A. Oh, I couldn't tell you exactly.

19 123. Q. Okay. Well, assuming all factors are the
20 same, Band A and Band B would receive the same
21 maintenance, or pardon me, the same ---

22 MR. TARLTON: Operations.

23 BY MR. CHAMP:

24 124. Q. Operations funding?

1 A. I don't know the formula in that level of
2 detail to be able to say.

3 125. Q. Okay. So Band A and Band B each with 2,000
4 members, and Band A has 200 children in care, and Band B
5 only has 10 children in care, Band A would get more money
6 under maintenance, right?

7 A. Well, maintenance is driven by the numbers of
8 children in care, yes.

9 126. Q. So 200 children in care?

10 A. It's based on the actual expenditures for
11 those children in care.

12 127. Q. Right, so ---

13 A. You could potentially have less children in
14 care, but higher costs.

15 128. Q. Less children in care?

16 A. Because it depends on the type of care that's
17 being provided.

18 129. Q. Right. I hear you, okay. And it depends on
19 the relative costs for that particular location, that you
20 might have higher costs?

21 A. Yes.

22 130. Q. Putting a child in care?

23 A. Yes.

24 131. Q. And the Directive 20-1, or the funding

1 models, they're that specific or particular that, you
2 know, if going rates for foster homes are higher in this
3 area versus that area it has that sort of particularity?

4 A. Yes, I mean maintenance are reimbursed based
5 on actuals. Part of the costs are for the rates set by
6 the Provinces, so there are differing rates from Province
7 to Province. But generally institutional care is higher,
8 the homes are higher than foster care, but the rates will
9 differ from Province to Province.

10 132. Q. So going to that example again, if Band A has
11 200 children in care and Band B has got the 10 children
12 in care, does the department increase the funding for
13 prevention services for Band A?

14 A. Under Directive 20-1 the operation formula is
15 as it is. I don't know the specifics of how the
16 prevention is determined, but there is a portion for
17 prevention.

18 133. Q. But the formula is fixed such that even
19 though there might be increased need for prevention,
20 there's no increased funding, is that fair to say?

21 A. I don't know the specifics to be able to make
22 that ---

23 134. Q. Okay. So getting back to your job as the
24 director of social programme reform directorate, you

1 review -- tell me what you review again?

2 A. I direct staff and budgets, and we determine
3 national allocations and tools for regions on the various
4 programmes that I have.

5 135. Q. It's my understanding that you sign off on
6 the annual sort of reports for each First Nations agency
7 that's directly funded by INAC, is that right?

8 A. No, I don't.

9 136. Q. Okay. And who does that?

10 A. I don't know specifically. It's handled with
11 the regions. And I don't know, in each region it may be
12 different as to who has the financial authority on those.

13 137. Q. And when you say that your directorate made a
14 budget allocation, based on what, do you look at the
15 directives or the programmes, or is it just based on
16 what's coming down from Treasury Board, that's how you
17 determine the budget allocations?

18 A. I think what is looked at is what occurred in
19 the past year, whether there is any additional resources
20 that come into play. Again, I have finance, more finance
21 types who work on those particular formulas for me.

22 138. Q. And how does Directive 20-1, how does it play
23 into your sort of daily work? I'm just trying to
24 understand on what occasion would you have to actually

1 deal with Directive 20-1?

2 A. I would have to deal with it more from a
3 national policy perspective. And if we were to make big
4 changes to that, we would have to look at our terms and
5 conditions, see whether there's any changes required
6 there, whether it would have to go back to Cabinet, or to
7 Treasury Board to request approval.

8 139. Q. To make more Treasury Board submissions?

9 A. Yes.

10 140. Q. And you're responsible to play a role in
11 preparing those Treasury Board submissions?

12 A. Yes.

13 141. Q. And those Treasury Board submissions have
14 terms and conditions contained in them?

15 A. They may have, not always.

16 142. Q. And who would actually draft the Treasury
17 Board submissions, or determine what should be there in
18 terms of terms and conditions and an increase or
19 whatever?

20 A. Usually you have to have a Memorandum to
21 Cabinet prior to that, and that will dictate where you go
22 in terms of your Treasury Board submission.

23 143. Q. So the MC would come first before your
24 Treasury Board submission?

1 A. Usually, yes.

2 MR. TARLTON: Excuse me, Mr. Champ, would it be
3 an appropriate time to take the morning break?

4 MR. CHAMP: I think it would be a perfect time,
5 that's fine.

6 MR. TARLTON: Very good, thank you.

7 (SHORT RECESS)

8 BY MR. CHAMP:

9 144. Q. So back on the Record after the morning
10 break. Again, for the Cross-Examination of the Affidavit
11 of Ms Odette Johnston dated or sworn December 23rd, 2009.

12 Ms Johnston, I want to ask you a couple of
13 questions on -- I already asked you a few questions
14 before, but I'd just like to ask you again about the
15 Auditor General's report. Did you play any role to
16 responding to the Auditor General's report?

17 A. Yes, I did. I worked with my staff and
18 senior management on drafting the response to the report.

19 145. Q. So you worked with the staff, and what role
20 did you play specifically?

21 A. I would have reviewed documents, provided
22 recommendations, and ensured completion of the response.

23 146. Q. I'm sorry, Ms Johnston, can you speak up?

24 A. Ensured completion of the response. I don't

1 have a loud voice.

2 147. Q. I know, I appreciate that. It's too bad we
3 didn't have public here today because then we could have
4 turned on these mikes and we all could have heard that.
5 So you reviewed documents, and sorry, what was the last
6 part?

7 A. Ensured completion of the response.

8 148. Q. So the time line, made sure the deliverable
9 was made?

10 A. Yes.

11 149. Q. So you were on peoples backs to make sure
12 they got their sections done in time?

13 A. Yes.

14 150. Q. Okay. But in terms of content, you didn't
15 necessarily play any role in content, is that so?

16 A. Well, I think all throughout the department,
17 through various levels, senior management and myself,
18 would have reviewed responses and provided
19 recommendations.

20 151. Q. And why did the department feel that they had
21 to respond to the report?

22 A. I think it's a requirement to respond to
23 reports.

24 152. Q. And did any other bodies, any other

1 Parliamentary bodies, look at that report?

2 A. Public Accounts Committee.

3 153. Q. The Parliamentary Standing Committee on
4 Public Accounts?

5 A. Yes.

6 154. Q. And what was their process, what did they do,
7 do you know?

8 A. They requested that the department appear
9 before it. And following that appearance, made
10 recommendations.

11 155. Q. They directed the department to come up with
12 an action plan?

13 A. I don't recall that specific wording.

14 156. Q. What did they recommend?

15 A. They had a number of recommendations and
16 asked us to respond to them. And we drafted responses
17 which had to be approved by Cabinet and filed our
18 response.

19 157. Q. And what were the nature of their
20 recommendations that you had to respond to? What were
21 the kind of recommendations or concerns that they had?

22 A. One of the recommendations had to do with
23 defining culturally appropriate, what was culturally
24 appropriate principles. Determining full costs of the

1 programme.

2 158. Q. Sorry, what's that?

3 A. Determining full costs of the programme. To
4 look at Directive 20-1. To do comparative analysis.

5 159. Q. Comparative analysis of what, comparing what?

6 A. Of CHFSHs on the reserve with similar
7 agencies off reserve.

8 160. Q. And has the department started doing that?

9 A. We're in the process of responding on that.

10 161. Q. In the process of responding to that specific
11 recommendation?

12 A. To the Parliamentary Committee. We were
13 asked to provide an update and are in the process of
14 doing that.

15 162. Q. So how is the department going to act on
16 those recommendations, other than responding to the
17 committee, but I mean the actual substantive
18 recommendations? Are there any that the department is
19 going to act on?

20 A. Well, we did already respond to Public
21 Accounts Committee in writing on some of the
22 recommendations that have already been implemented. And
23 we're in the process of reviewing some of the
24 recommendations.

1 163. Q. So no decision yet, no other recommendations
2 have been acted on yet?

3 A. A couple of them have, and they were reported
4 back to the Public Accounts Committee.

5 164. Q. And do you know which ones those were, which
6 recommendations were acted upon?

7 A. The one on culturally appropriate principles,
8 and an update on where we were at with the Auditor
9 General recommendations.

10 165. Q. There's another standing committee who has
11 also been concerned or interested in the Auditor
12 General's report?

13 A. Yes, the Standing Committee on Aboriginal
14 Affairs.

15 166. Q. And what interest has that committee
16 expressed, what have they done?

17 A. They asked to meet with senior officials of
18 the department to speak to what was happening by the
19 department, and that meeting occurred, I think it was in
20 October.

21 167. Q. October 2009?

22 A. Yes.

23 168. Q. And was it a meeting or one of the Standing
24 Committee Hearings?

1 A. I don't really know the terminology for
2 whether those are Hearings, or, but we did appear before
3 that Standing Committee.

4 169. Q. When you say we, did you appear?

5 A. Yes, I did.

6 170. Q. And what did you speak about?

7 A. I responded to some questions that were
8 raised. My Assistant Deputy Minister and my Director
9 General also appeared, so we responded to various
10 questions. I don't recall exactly which ones.

11 171. Q. I'll refer you back to your Affidavit, Ms
12 Johnston. Paragraph 12. This is where, in these few
13 paragraphs, you're describing the Directive 20-1 funding
14 formula, and model, and in paragraph 12 you describe the
15 operations category?

16 A. Yes.

17 172. Q. In the last sentence there you say
18 "The amount of funding provided to a
19 recipient for operations is formula
20 driven, based on an amount per First
21 Nations child on reserve under the age
22 of 19, plus an amount for Band, plus an
23 amount based on remoteness where
24 applicable".

1 And you would agree with me, there's no part of that
2 formula that relates to level of need of a particular
3 band, aside from those factors?

4 A. I couldn't say that.

5 173. Q. Because you don't know one way or the other,
6 or because you say yes, we do take into account the level
7 of need?

8 A. Could you repeat the question again?

9 174. Q. I was just asking whether the level of need
10 plays any role in the operations budget. So with the
11 maintenance budget it's tied specifically to the number
12 of children in care, but with operations, as I understand
13 it, it's not necessarily tied to how many children might
14 require preventative services, is that fair to say?

15 A. I don't know the format in that level of
16 detail, but I mean it does take into account an amount
17 per First Nation child on the reserve under the age of
18 19.

19 175. Q. Right, so the number of children who live on
20 the reserve, but if no children have any preventative
21 needs in Band A, they would get the same amount as Band B
22 where all the children are in a desperate state and
23 require prevention services, those two Bands would get
24 the same amount of money? Or the level of need in that

1 respect would make no difference to how much money they'd
2 get, correct? If you don't know, that's fine?

3 A. As I said, I don't know the formula in that
4 level of detail to be able to make that assessment.

5 176. Q. So you don't know?

6 A. No.

7 177. Q. Okay. At paragraph 15 you list all of the
8 Provinces that are still under Directive 20-1. You've
9 got Newfoundland, New Brunswick, Manitoba, and British
10 Columbia, as well as the Yukon.

11 Now we spoke a bit about British Columbia, I
12 believe, before, and we agreed that there's been an
13 agreement worked out to move British Columbia from
14 Directive 20-1 to the Enhanced Prevention Focussed
15 Approach, but that's not occurring right now until
16 there's more funding, correct?

17 A. To move to additional funding with
18 prevention, no.

19 178. Q. To move under the other funding model. And
20 it's my understanding that's the same case with Manitoba,
21 there's been an agreement made with Manitoba to move them
22 under the Enhanced Prevention Focussed Approach.
23 However, it's not being implemented right now because
24 there's not sufficient funding, correct?

1 A. When we have the discussions with the First
2 Nations and the Province we indicate that it is dependent
3 upon funding being approved by Cabinet.

4 179. Q. So that's a yes with Manitoba?

5 A. Yes.

6 180. Q. That there has been an agreement, but you
7 can't move them under the other formula until there's
8 more funding?

9 A. Yes.

10 181. Q. And just, while we're on this, there is also
11 agreements or tripartite agreements, with each Province,
12 I understand, with respect to 20-1, there would be an
13 agreement with the Province saying here's how we're going
14 to fund under Directive 20-1 for these particular First
15 Nation agencies?

16 A. That I don't know. And it will depend on
17 jurisdiction to jurisdiction. There may be tripartite
18 agreements in place that talk about the roles and
19 responsibilities of the various parties, but I don't know
20 specifically what is in place in the particular
21 jurisdictions.

22 182. Q. How about New Brunswick specifically, it's my
23 understanding that with New Brunswick there was a
24 tripartite agreement under 20-1 that was in negotiation

1 for awhile. Do you know anything about that, about the
2 current status of the tripartite agreement with New
3 Brunswick?

4 A. I don't know the specifics of that tripartite
5 agreement and whether it specifically had to do with 20-
6 1, or whether it was regarding First Nation Child Family
7 Services at large.

8 183. Q. Are you aware that the New Brunswick child
9 advocate just recently issued a report on that issue,
10 that New Brunswick has refused to sign the most recent
11 tripartite agreement?

12 A. I wasn't aware of that.

13 184. Q. You don't know about that. Would those kinds
14 of documents generally come to your attention?

15 A. Not necessarily.

16 185. Q. Okay. I think just in terms of as we're
17 going through I think I'm getting a better understanding
18 of your role with the department. It seems you're more
19 Treasury Board and Cabinet focussed up rather than down
20 to the Provinces and the First Nation agencies that are
21 delivering the services, is that fair to say?

22 A. No, not necessarily. When we discuss the new
23 approach in the various Provinces, it's my staff that
24 work with the regions and the First Nations in trying to

1 develop that approach.

2 186. Q. So, for example, the -- oh, sorry?

3 A. No, go ahead.

4 187. Q. So, for example, with the BC Enhanced
5 Prevention Services agreement would anyone in your office
6 have played a role in the negotiation of that agreement?

7 A. Yes. Yes, they would have.

8 188. Q. And who would that be? I don't need to know
9 the specific person necessarily, but what position, who
10 would do -- would you do that?

11 A. I participate in some of those discussions.
12 Usually it's at the beginning or close to finalizing
13 agreement on things. But I have staff, usually one to
14 two, that participate in that discussion, and from both a
15 policy and a financial perspective.

16 189. Q. And how many staff report to you?

17 A. Oh, that's a moving target right now.

18 190. Q. March 31 is coming up fast?

19 A. Yes. I think ---

20 191. Q. Well, just give me a ballpark?

21 A. About 13.

22 192. Q. About 13?

23 A. But that's not just for First Nation Child
24 Family Services.

1 193. Q. Oh, okay, so just for First Nations Child and
2 Family Services, how many staff do you have?

3 A. Probably about eight.

4 194. Q. And who would take the lead, then, on these
5 agreements with the Provinces, one of your staff?

6 A. Yes.

7 195. Q. So one of your staff would be going out to
8 wherever, Manitoba, or New Brunswick, or BC, to assist in
9 negotiating those agreements?

10 A. Yes.

11 196. Q. And then they would report back to you how it
12 went?

13 A. Yes.

14 197. Q. And right now you're just -- I mean I
15 appreciate it's 10 Provinces, but right now you're not
16 aware of what the status is with New Brunswick?

17 A. In terms of the tripartite discussions, that
18 agreement, that's separate from the enhanced prevention
19 per se.

20 198. Q. Okay. And so just to sort of summarize what
21 we were talking about a bit here, is that some Provinces
22 are under the prevention focussed approach, some are
23 under Directive 20-1, and then some Provinces that are
24 under Directive 20-1 are negotiating or have negotiated

1 with the Federal Government to move under the Enhanced
2 Prevention Focussed Approach?

3 A. That's correct.

4 199. Q. And ---

5 A. Also, we have, on top of that, the Ontario 65
6 Welfare Agreement which is separate from this.

7 200. Q. Yes, exactly, that's precisely where I was
8 going to go. But Ontario is under a completely different
9 arrangement?

10 A. Yes.

11 201. Q. It's the 1965 one?

12 A. Yes.

13 202. Q. And is there anything happening with that
14 arrangement, is there any changes happening to that
15 arrangement, or any negotiations?

16 A. We have not been involved in any discussions
17 on that at this point.

18 203. Q. And why are the Provinces moving from,
19 Provinces and First Nation agencies, moving from
20 Directive 20-1 to the Enhanced Prevention Focussed
21 Approach? Like that's the general goal, is it, is that
22 the objective to get them all from 20-1 to under the
23 prevention approach, is that right?

24 A. Yes.

1 204. Q. Because it's believed the Enhanced Prevention
2 Focussed Approach is a better model?

3 A. I mean our interest is to assist the agencies
4 in providing improved services for First Nations children
5 on reserves.

6 205. Q. And it's believed the Enhanced Prevention
7 Focussed Approach is a better model for meeting that goal
8 than 20-1?

9 A. I mean it does provide some increased
10 resources to the agencies.

11 206. Q. Okay. So that's a yes?

12 A. Yes.

13 207. Q. And if these kinds of discussions or reviews
14 are going on with respect to Provinces still under 20-1,
15 I'm wondering what kind of review or evaluation is going
16 on with respect to the Ontario agreement, is there any?

17 A. Not at the moment. I mean we work
18 jurisdiction by jurisdiction to try and reach agreement
19 on an Enhanced Prevention Focussed Approach, and the
20 region may have engaged in discussions with First
21 Nations, but we have not been involved to this point.

22 208. Q. And do you know what was the impetus for the
23 policy to develop the Enhanced Prevention Focussed
24 Approach?

1 A. The Alberta Government approached our
2 Minister and said we have a good model working here, we
3 think you should try it on a reserve and that was the
4 impetus.

5 209. Q. And the national joint policy review, did
6 that play any role in it at all?

7 A. I couldn't say.

8 210. Q. Is Ontario seeking some kind of enhanced
9 funding model, do you know? Maybe not necessarily that
10 one, but any kind of enhancement to their current
11 agreement?

12 A. I don't know.

13 211. Q. Going back to New Brunswick just for a
14 moment, you had indicated you weren't aware of any
15 concerns from New Brunswick?

16 A. Concerns about what?

17 212. Q. That the Province of New Brunswick is so
18 concerned that Directive 20-1 is out of step with current
19 social work practice, that it believes it would be
20 negligent to sign the current tripartite agreement
21 applied by INAC?

22 A. I'm not aware of that being phrased.

23 213. Q. Maybe not phrased that way, but the nature of
24 their concern with the tripartite agreement being in some

1 way inconsistent with social work practice?

2 A. I'm not familiar with that, no.

3 214. Q. Okay. You just spoke a moment ago about how
4 the Enhanced Prevention Focussed Approach was developed
5 with Alberta. In paragraph 16 you refer to that to some
6 extent, it appears. You refer to consultations. Can you
7 tell us what consultations mean, or basically, who came
8 up with the ultimate decision as to what the enhanced
9 funding approach would be?

10 A. Who came up with the ultimate decision?

11 215. Q. Well, who came up with the approach? Are you
12 saying that Alberta had an approach and they came to INAC
13 and said look, this is what we want, will you accept it
14 or adopt it? Was it developed by them?

15 A. No, I mean they came to us and said we have
16 this type of approach, would you consider implementing
17 something similar on reserves. And then the discussions
18 were had with INAC, both regionally and with my staff,
19 and then the First Nations agencies, and the Province to
20 sift through what we could potentially do within our
21 particular authority.

22 216. Q. In paragraph 17 you start talking about the
23 Enhanced Prevention Focussed Approach in a bit more
24 detail, and you speak about a multi-year business plan

1 that must set out strategies and performance measures.

2 And in your last sentence there you say

3 "The business plan must be supported

4 by the Province and be in accordance

5 with the Indian Affairs financial

6 accountability requirements".

7 What does INAC do if the Province does not support the
8 business plan?

9 A. It hasn't happened so far.

10 217. Q. Well, what -- sorry?

11 A. If there was such a concern raised there
12 would be discussion amongst the three parties.

13 218. Q. Okay. Well, what happens if a Province
14 approves a plan and it's not in line with INAC financial
15 accountability requirements?

16 A. I mean we would have to take a look at the
17 particular plan, and if there was something to do with
18 non-insured health benefits, for example, identified in
19 that plan, then we would have to say sorry, we can't do
20 that because that's not within our ability.

21 219. Q. And you say in here with respect to
22 performance measures are in the business plans, how are
23 those performance measures developed, are they set by the
24 First Nations service providers themselves?

1 A. Yes, they are.

2 220. Q. And does that mean that INAC has no
3 expectations with respect to those performance measures?

4 A. Well, I mean what is done first is the
5 framework documents which outline the overall approach
6 within that particular Province, and the business plans
7 flow from there. We want to see that there are targets
8 set, but it's up to the agency to determine what their
9 plan is going to be, so if they want to target that
10 they're going to reduce their children in care by one
11 percent, that's their target that they're setting.

12 221. Q. This business plan, there's a template from
13 your department, correct?

14 A. Yes.

15 222. Q. And so the First Nation agencies try to sort
16 of fit their different requirements or performance
17 measures and so forth, their strategies, within that
18 template, correct?

19 A. That's correct.

20 223. Q. And who is the last official to sign off on
21 one of those business plans for a First Nation agency?

22 A. Oh, it will depend on the situation. We, at
23 headquarters, will review up to four business plans to
24 make sure that they are following the template, and that

1 the various items identified are there to ensure due
2 diligence. Then it's within the region to put this into
3 funding agreements.

4 MR. CHAMP: Excuse me.

5 MR. TARLTON: Do you want to go off the Record
6 for a second?

7 MR. CHAMP: Yes, if we could just go off the
8 Record.

9 MR. TARLTON: Yes, sure.

10 (OFF RECORD DISCUSSION)

11 BY MR. CHAMP:

12 224. Q. In paragraph 18 in the last sentence you
13 speak about other jurisdictions, or other Provinces, with
14 whom or with which Indian Affairs is initiating
15 discussions to negotiate about moving their funding under
16 the Enhanced Prevention Focussed Approach, correct?

17 A. Yes.

18 225. Q. And we spoke a little bit about BC and
19 Manitoba as two Provinces that have basically kind of
20 gotten to the end of that process, but it will take a
21 little while for implementation when the funding comes
22 through, correct?

23 A. Yes.

24 226. Q. Pardon me?

1 A. Yes.

2 227. Q. Okay. And on this Enhanced Prevention
3 Focussed Approach, do you recall what the Auditor General
4 of Canada had to say about it?

5 A. She may have questioned why we were using the
6 six percent to children in care figure. However, overall
7 she said we were on the right track.

8 MR. CHAMP: Okay. Ms Johnston, I'm just going to
9 give you a portion of the Affidavit of Cindy Blackstock.
10 Volume II of II. And you have the Auditor General's
11 report, I just want to pass it to you.

12 MR. TARLTON: Which exhibit number is it?

13 MR. CHAMP: Exhibit F.

14 MR. TARLTON: F.

15 BY MR. CHAMP:

16 228. Q. So I see in paragraph 4.63 here, and again,
17 just to be clear, we're referring to Exhibit G of the
18 Affidavit of Cindy Blackstock submitted on this Motion,
19 and Exhibit G is the Auditor General's report of 2008.
20 At 4.63 I think we see a little bit of what you were just
21 saying where the Auditor General speaks about the new
22 funding formula and acknowledging that it has led to some
23 increases and this should lead to better services for
24 First Nations children. Is that what you were speaking

1 about?

2 A. Yes.

3 229. Q. In general. And then we see at 4.64 the
4 Auditor General states

5 "However, we also found that the new
6 formula does not address the inequities
7 we have noted under the current formula.

8 It still assumes that a fixed percentage
9 of First Nations children and families
10 and all of the First Nations served by an
11 agency need child welfare services.

12 Consequently in our view the new formula
13 will not address differing needs among
14 First Nations. Pressures on INAC to fund
15 exceptions will likely continue to exist
16 in the new formula".

17 So just based on that, you agree with me the Auditor
18 General is not satisfied with the new formula?

19 MR. TARLTON: I suppose you're asking her to give
20 an opinion on a document which it speaks for itself.

21 MR. CHAMP: All right.

22 MR. TARLTON: And I don't see how it's dealing
23 with the issue of jurisdiction. You seem to be getting
24 back into the merits of the Hearing, so.

1 MR. CHAMP: Well, first, Mr. Tarlton, I agree
2 with you, it does speak for itself. There's no question
3 it speaks for itself. How it relates to jurisdiction is
4 that the First Nations agencies have no control
5 whatsoever on the funding that they're required to
6 provide specific services. That all independent bodies
7 who look at the issue believe that they cannot provide
8 services based on the funding that's provided and given
9 that there's only one party responsible who has control
10 over that, being INAC, it's our view that that has a role
11 in how the First Nations agencies can provide services,
12 or what services they provide.

13 MR. TARLTON: And that is a position I look
14 forward to hearing and responding to when we argue the
15 Motion in due course on its merits. But I'm just, I'm
16 trying to determine the -- your question was directed to
17 asking Ms Johnston whether or not she agreed with what
18 the Auditor General wrote in the paragraph following 4.63
19 and 4.64, and we both agree it speaks for itself.

20 I don't see the relevance or how that adds to the
21 position that you're going to make, but if you're going
22 to ask her a question specifically about control, then
23 please go ahead.

24 BY MR. CHAMP:

1 230. Q. Well, thanks for that, I'll ask my questions
2 on the topics I choose. Ms Johnston, what steps has INAC
3 taken to respond to that concern raised by the Auditor
4 General?

5 A. We have discussions as we're going forward
6 with various jurisdictions with the agencies and there is
7 a definite balancing act where you have agencies who have
8 less than six percent who are going to get increased
9 resources, who don't want to be penalized because they
10 have less children in care. So it's a balance that we
11 try to work with the agencies on.

12 I will say as well that in terms of what the
13 early results are from Alberta, that there are less
14 children in care. There has not been a requirement to
15 come back to headquarters to say that we don't have
16 enough money to support the agencies out there.

17 231. Q. There's been no reports back from Alberta
18 saying that you do not have sufficient funds to support
19 the agencies out there, that's your statement?

20 A. Yes.

21 232. Q. Well, I can guarantee you some of the Chiefs
22 in Alberta don't share that view. One service provided
23 by First Nations children is kinship and care. You
24 understand that concept, kinship and care?

1 A. Kinship care.

2 233. Q. Yes?

3 A. Yes.

4 234. Q. And you're aware that INAC did not provide
5 kinship and care funding until 2005 or there was a period
6 of time when INAC did not provide kinship and care
7 funding?

8 A. I know that when the authorities were renewed
9 in 2007 kinship care was added as something that was
10 eligible under our terms and conditions.

11 235. Q. Because prior at some point it was not
12 approved under your terms and conditions, correct?

13 A. And I should just add, it's kinship care
14 where it is under the particular Provincial legislation.

15 236. Q. Yes, and, in fact, previously was it not the
16 case that in some Provinces which approved kinship and
17 care, or there are some Provinces who, for quite some
18 time, approved kinship and care, but INAC would not
19 approve funding for it?

20 A. That I don't know specifically.

21 237. Q. So you can't explain why that is, why a
22 Province would approve kinship and care as a service, but
23 INAC would not fund it?

24 A. All I know is what happened from 2007 on.

1 238. Q. Indeed. So going back to your Affidavit,
2 paragraph 21. You list there five Provinces with
3 increased funding under the Enhanced Prevention Focussed
4 Approach. And you state

5 "Under the Enhanced Prevention Focussed
6 Approach Indian Affairs is committed to
7 provide the following increased funding
8 over and above the amount previously
9 provided under 20-1. Funding is spread
10 over a five year period".

11 So we see here there's approximately \$275 million in
12 increased funding over five years?

13 A. That's correct.

14 239. Q. And from that I gather that I can also infer
15 that the other five Provinces that are not listed here,
16 they have not received that same relative increase in
17 funding?

18 A. Not under the Enhanced Prevention Focussed
19 Approach, no.

20 240. Q. But not under any programme, they're still
21 under Directive 20-1, and got no increases, right?

22 A. There was increases for operation in 2005.

23 241. Q. Sorry what year, sorry?

24 A. 2005, 8.24 percent for operations.

1 242. Q. And since 2005 there's been no other
2 increases. Under paragraph 22 you speak about
3 "significant Federal funding provided
4 by other Government departments for
5 programmes and benefits for families
6 and children on reserve".

7 How do you know that? What's your source for your
8 statement in there?

9 A. How do I know that? If you go to the
10 departmental performance reports, and estimates, you will
11 find documentation on the various programmes for various
12 departments. I also know from having worked with Health
13 Canada on many of these programmes that there are
14 resources out there for things like NNADA, National
15 Native Alcohol and Drug Abuse, mental health, fetal
16 alcohol spectrum disorder.

17 243. Q. So if I go to those departments reports I
18 will see that?

19 A. Yes.

20 244. Q. Is that what you did, what reports did you go
21 to to get that information?

22 A. I didn't specifically prepare this, I mean my
23 staff prepared this. But I do know these programmes
24 exist.

1 245. Q. So some of your staff came up with this list,
2 and you know that some of the programmes exist?

3 A. I know they all exist.

4 246. Q. Okay. And so you gave the direction to your
5 staff to come up with a list like this?

6 A. Yes.

7 247. Q. And what was the nature of your direction,
8 what did you ask them to look for?

9 A. Just to identify other programmes and
10 services out there that might relate to child welfare.

11 248. Q. And when did you do that?

12 A. Oh, probably in ---

13 249. Q. You swore the Affidavit December 20th?

14 A. Probably early December.

15 250. Q. Early December. And prior to early December
16 2009 did your directorate ever have occasion to look at
17 these other agencies, or pardon me, these other
18 programmes in the other Government departments and how
19 they impact on the services that you approve of or
20 provide?

21 A. In what way?

22 251. Q. Okay. You have listed all of these services
23 in your Affidavit, and I gather you're doing that because
24 you think that they relate in some way to child welfare

1 services?

2 A. I know they do.

3 252. Q. And so what I'm asking you is prior to early
4 December 2009, did you or your directorate have occasion
5 to look at these services to understand how the whole
6 approach of benefits for child welfare services on
7 reserves are made available? I'm sorry, maybe I can re-
8 phrase it. Prior to early December 2009 was there any
9 single document in your directorate or in your department
10 that you're aware of that had a list of these services as
11 relating to child welfare services?

12 A. I think these would have been listed in the
13 context of the evaluation that was done in 2007.

14 253. Q. Which evaluation?

15 A. The evaluation of the child and family
16 services programme.

17 254. Q. And I apologize, which evaluation conducted
18 by -- is there a report of this evaluation?

19 A. Yes, it's on the web site of our audit and
20 evaluation section.

21 255. Q. And what's it called, is there a ---

22 A. I think it's called the evaluation of First
23 Nations Child and Family Services Programme.

24 256. Q. And you think these services would be listed

1 in there, or ---

2 A. I don't recall exactly, but they would have
3 looked at what else is out there.

4 257. Q. On one of these items, the 22 (m), you
5 indicate here

6 "Children's Special Allowance, Canada
7 Revenue Agency",

8 but that's a benefit that's provided to families and
9 children on reserve. Isn't it true that your directorate
10 is looking at clawing back that amount from them?

11 A. No, that is not true.

12 258. Q. It's not true?

13 A. No. What we are doing is we are asked to
14 look at, under the transfer payment policy, there is a
15 section on staffing provisions. And that we have
16 responsibility as funders to ensure that there isn't an
17 anticipation of funding occurring. So Treasury Board
18 asked that we ensure that when they're providing funding,
19 that there is no duplication. So what we are doing is
20 looking at how can we address this such that First
21 Nations, if they are using it for other than our
22 maintenance costs, and account for it, then there is no
23 intent to claw that back.

24 259. Q. But isn't, and correct me if I'm wrong, the

1 purpose or intent of special allowance, isn't that meant
2 to be a net benefit for children?

3 A. I can't speak to that.

4 260. Q. Well, how do you determine if it's a
5 duplication?

6 A. Well, as part of the criteria, the children's
7 special allowance, it says one of the things is for
8 maintenance for the child for whom it is paid.

9 261. Q. Right?

10 A. So we pay maintenance. If there is a child
11 for whom that is paid, then we're also paying, then it
12 may be viewed as a duplication.

13 262. Q. But prior to the Federal Government giving
14 special allowance for children to families, presumably
15 families were already providing "maintenance" to their
16 children?

17 A. I don't know what you mean by that.

18 263. Q. Okay. So prior to the special allowance
19 being given to families, families cared for and provided
20 for their children, right?

21 A. I still don't understand the question.

22 264. Q. Do you have children, Ms Johnston?

23 A. Yes, I do.

24 265. Q. Okay. You provide for them I would assume?

1 A. Yes.

2 266. Q. Okay. Don't worry, I won't go with Mr.
3 Taylor and won't ask you any questions about your own
4 childhood, but you get the special allowance, I gather,
5 you or your spouse?

6 A. No, I don't. No.

7 267. Q. Oh, it's clawed back because of the level of
8 income isn't it?

9 A. Yes.

10 268. Q. Well, I mean you get it, but then it's taxed?

11 A. No. No, it's based on income.

12 269. Q. Okay. And then is that the criteria that
13 INAC looks at about the income of families?

14 A. No. All we look at is is there a duplication
15 of maintenance being paid for for a particular child.

16 270. Q. So you don't know if the special allowance is
17 meant to provide -- okay. Before the special allowance
18 was introduced, obviously the purpose was to assist
19 families who have children so that they can provide for
20 children?

21 A. I mean I can't speak to the issue of ---

22 271. Q. You don't know what it's for? You don't know
23 what it's for?

24 A. Well, it's supposed to be for the

1 maintenance, care and advancement of the child for whom
2 it is paid, but I can't speak to the issue of why it's
3 paid. All I can say is that we are required to ensure
4 that it's not duplicating funding we're providing.

5 272. Q. Well, if you don't know why it's paid, how
6 can you tell if it's a duplication or not?

7 A. If it is addressing maintenance costs which
8 we are paying, then it is, that's a duplication.

9 273. Q. So you would know what it's for then?

10 A. Are you talking about children's special
11 allowance at large?

12 274. Q. Yes. How do you determine if it's a
13 duplication? And wouldn't you look at the purpose of the
14 special allowance?

15 A. No, we would look at -- I mean our concern is
16 not with why it's being paid for that particular child,
17 the concern is is it duplicating funding that we're
18 providing.

19 275. Q. But how can you determine that if you don't
20 know why it's being paid?

21 A. As I said, the elements for which it can be
22 paid includes maintenance, so.

23 276. Q. Okay. Getting back to an earlier answer that
24 you gave on this is you indicated that the department is

1 now clawing back this amount, correct, right now?

2 A. I'm saying our intent is that if they have
3 and use it for other purposes, and can demonstrate that
4 it's not being used for something that duplicates our
5 maintenance, the intent is not to claw it back.

6 277. Q. So the department is not clawing it back
7 anywhere right now?

8 A. No.

9 278. Q. But the department is looking potentially at
10 clawing back if the department in its own view sees it as
11 a duplication, correct?

12 A. Well, I will go back to the Treasury Board
13 policy which says that we cannot pay from two Federal
14 sources for the same thing.

15 279. Q. Right. So I'm just wondering, then, why you
16 put it in your Affidavit at 22, paragraph 22, if it's the
17 same thing, why are you -- it suggests to me when you put
18 it in there, that it's other Federal funding or some kind
19 of additional benefit. Is it the same thing or isn't it,
20 why did you put it in there?

21 A. Because it may not be the same thing. It's
22 funding from another source other than INAC.

23 280. Q. But if I understand paragraph 22 correctly,
24 I'm gathering or I'm inferring from that that you're

1 suggesting that there's other or additional services or
2 benefits provided to a child and families on reserves
3 from other Government departments other than INAC? Am I
4 understanding the purpose there?

5 A. Yes.

6 281. Q. And in there you list the special allowance?

7 A. Because we do not provide it.

8 282. Q. Right. But if there's a chance you're going
9 to claw it back, then it's not necessarily an additional
10 benefit, is it?

11 A. But I couldn't tell you on each and every
12 case whether that would or would not be the case.

13 283. Q. It is the case that some agencies are getting
14 letters from your department threatening them that it may
15 be clawed back?

16 A. I'm not aware of that.

17 284. Q. You indicated that you are aware that it's
18 being reviewed in some way by your department, is that
19 correct?

20 A. Yes.

21 285. Q. By your programme, I gather?

22 A. Yes.

23 286. Q. Someone in your office I presume?

24 A. Yes.

1 287. Q. And who is that?

2 A. I mean it's no one person. It's going to
3 change because my staff change. But it is something that
4 we will have to discuss eventually with Treasury Board.

5 288. Q. So someone in your office is reviewing it,
6 you're just not sure who?

7 A. Well, it will differ from week to week,
8 depending on potentially who I have there.

9 289. Q. Okay. And has it been communicated to First
10 Nation agencies that your department is reviewing it?

11 A. Yes.

12 290. Q. So they're aware that you're reviewing it
13 with the possibility of reducing maintenance funding in
14 an equal amount?

15 A. No, we say it is not our intent to this. If
16 the agency wants to use that for some other purpose,
17 other than the maintenance over and above what we're
18 providing, then our goal is not to claw that back.

19 291. Q. And what role are you playing in that review?

20 A. I will be reviewing anything that goes
21 forward for discussion with First Nations and also with
22 Treasury Board.

23 292. Q. And how will it be determined whether it's a
24 duplication or not?

1 A. I cannot tell you at this point. It is a
2 difficult issue, but our intent is not to.

3 293. Q. To take \$200.00 away from a vulnerable child,
4 that's not your intent?

5 A. I mean it may end up being used for
6 maintenance, that is one of the objectives of children's
7 special allowance.

8 294. Q. Would you agree with me, at least on this,
9 it's a possibility that in future your department may
10 reduce the maintenance funds that it provides to agencies
11 by an equal amount of the children's special allowance,
12 that's something that's being looked at?

13 A. If there was a duplication of what it is
14 being used for, then that is something that may have to
15 happen. But if they can use it for something else, then
16 we will not do that.

17 295. Q. So yes, it's a possibility?

18 A. It's always a possibility.

19 296. Q. With respect to any of these other items,
20 from (a) to (l), what other items are you looking at as a
21 possibility of reducing maintenance budget for?

22 A. We don't reduce. Why this list is here is to
23 indicate other programmes that might provide the
24 particular programme or service.

1 297. Q. Right. But if it's a particular programme or
2 service that you're regarding or characterize in some way
3 like child welfare services?

4 A. These aren't characterized as child welfare
5 services. These are services that may support.

6 298. Q. Right. And are these list of services, are
7 they available in every Province?

8 A. I couldn't tell you the specifics of how they
9 operate.

10 299. Q. Are they available to every First Nation
11 Band?

12 A. Again, I couldn't tell you.

13 MR. CHAMP: Sorry, I went a little over, I think
14 maybe it's time for a break for lunch.

15 MR. TARLTON: Okay, thank you.

16 (LUNCHEON RECESS)

17 BY MR. CHAMP:

18 300. Q. So we're back on the Record after lunch, it's
19 about 1:50 p.m. for further Cross-Examination on the
20 Affidavit of Odette Johnston.

21 So Ms Johnston, I asked you some questions this
22 morning concerning the letter from the Minister of
23 Children and Family Development and the Minister of
24 Aboriginal Relations and Reconciliation from BC to Mr.

1 Strahl. So, in fairness to you, in terms of trying to
2 refresh your memory, I'll give you the response from Mr.
3 Strahl. And I'll just give you a moment to review it.

4 Oh, sorry. So I think you had indicated this
5 morning that you thought you might be generally familiar
6 with the other letter to Mr. Strahl. Do you have any
7 familiarity with this letter from Mr. Strahl?

8 A. No.

9 301. Q. Okay. Now I'm just curious, Ms Johnston,
10 given your role, you're the senior Government official in
11 INAC dealing with the programme, the First Nations Child
12 and Family Service Programme?

13 A. I'm the director of the programme, I report
14 to a Director General who also is responsible for this
15 programme.

16 302. Q. Okay. And I'm just wondering to whom within
17 your department would letters like this go, letters from
18 Provinces?

19 A. Generally they would go to the regional
20 office for preparing a response.

21 303. Q. They wouldn't come to HQ?

22 A. They might be sent to us for review, but not
23 always.

24 304. Q. So would this be the level of response that

1 would be prepared by a regional office, like would this
2 be the kind of letter that the regional office would
3 prepare for Mr. Strahl?

4 A. Yes.

5 305. Q. And it might be that the regional office just
6 prepared it and sent it to Mr. Strahl's ministerial
7 office and he sent it out without it ever going to your
8 director?

9 A. That's possible.

10 306. Q. That's possible?

11 A. Yes.

12 307. Q. And do you in any way view it as your role or
13 your directorate's role to keep abreast of these kinds of
14 disputes or concerns raised by Provincial Governments
15 with respect to child welfare services?

16 A. We generally are involved in letters of this
17 type. We may play a support role to regions on them.
18 But I know, I can honestly say I have not seen this
19 particular response.

20 308. Q. I don't think there's anything in it that's
21 necessarily inconsistent with what you were saying this
22 morning, I think it's very consistent with what you were
23 saying. Just indicating that there's insufficient
24 funding right now for the BC Enhanced Prevention Services

1 Model and accountability framework, and it will be under
2 consideration for the next fiscal year, which is to say
3 when there's perhaps more money available. Does that
4 sound accurate?

5 MR. TARLTON: Well, with respect, I don't think
6 that's what the letter says.

7 THE WITNESS: No.

8 MR. CHAMP: Okay. In the third paragraph it says
9 "I appreciate", and this is from Mr. Strahl,
10 "I appreciate and share your concerns
11 for the equitable treatment of children
12 on reserve to those living off reserve.
13 While the British Columbia Enhanced
14 Prevention Services Model and
15 accountability framework will not be
16 funded at this time, it is still under
17 consideration for the next fiscal year".

18 MR. TARLTON: I know, but your previous question
19 said insufficient funding. That's not what that
20 paragraph you just read out says from Mr. Strahl. Again,
21 as I said earlier, the letter speaks for itself, and
22 you'll obviously be making some representations about it
23 and if you want to just put it into the Record, and Ms
24 Johnston has stated her degree of knowledge of

1 familiarity with it.

2 BY MR. CHAMP:

3 309. Q. Okay. In terms of your personal knowledge,
4 Ms Johnston, do you know why the BC Enhanced Prevention
5 Services Model and accountability framework will not be
6 funded at this time?

7 A. We don't have additional resources to
8 provide.

9 310. Q. Okay. And is it still under consideration
10 for the next fiscal year to your personal knowledge?

11 A. It definitely is under consideration.

12 MR. CHAMP: Okay. Are you okay if we mark that?

13 MR. TARLTON: That's fine.

14 MR. CHAMP: We'll have that marked as Exhibit 2,
15 Madam Reporter.

16 EXHIBIT NO. 2: Letter from the Minister of
17 Indian Affairs and Northern Development, Mr.
18 Strahl, dated January 21, 2010.

19 BY MR. CHAMP:

20 311. Q. And so from my questions on those letters, Ms
21 Johnston, I take it that it could well be that there's
22 other letters of complaint or concern from other
23 Provinces that you might not be aware of?

24 A. That's correct.

1 312. Q. So, for example, I had mentioned to you this
2 morning, and I'm not sure if you had a chance to -- I
3 didn't ask you to look into it, but I'm not sure if you
4 looked into it over the break, about the report issued
5 two days ago by the New Brunswick child advocate?

6 A. And the question being?

7 313. Q. Well, I think this morning you'd indicated
8 you weren't aware of it?

9 A. Weren't aware of?

10 314. Q. The report issued two days ago by the New
11 Brunswick children's advocate?

12 A. No, I'm aware of the report.

13 315. Q. Oh, you are okay, sorry, I misunderstood your
14 answer this morning?

15 A. Yes.

16 316. Q. So you are aware of this report?

17 A. Yes.

18 317. Q. Yes, okay. And do you know what are the
19 concerns raised by New Brunswick's children's advocate in
20 that report with respect to child welfare services on
21 reserves?

22 A. I have not personally gone through that
23 report. It was just filed yesterday. As a department
24 we're still in the process of reviewing the

1 recommendations.

2 318. Q. As I understand the report, it says something
3 to the effect that New Brunswick refuses to sign the
4 latest tripartite agreement because they do not believe
5 it is consistent with responsible child welfare
6 practices?

7 A. As I said, I haven't read it, so I don't
8 know.

9 319. Q. And who will be reviewing that in your
10 directorate?

11 A. One of my officers will be, in conjunction
12 with the region.

13 320. Q. And just typically, Ms Johnston, how do those
14 kinds of concerns impact or influence how you do your
15 work, how you provide your service, how do you typically
16 respond?

17 A. Well, you don't necessarily file formal
18 responses to a report or review what happens out there.
19 We are required, when it comes to a review, but not
20 necessarily for one that happens in every jurisdiction.

21 321. Q. And I'm just wondering again about how a
22 letter impacts or influences the programme that you
23 deliver, and how does it affect or impact or influence
24 what you're doing?

1 A. Well, it will definitely be reviewed and
2 taken into consideration, and any discussions, we may
3 have future discussions with First Nations and the
4 Province.

5 322. Q. The letter from Minister Strahl speaks about
6 or refers to Jordan's Principle. You have some knowledge
7 of Jordan's Principle?

8 A. Yes, I do.

9 323. Q. And in his letter he says that
10 "The Government of Canada's response
11 to Jordan's Principle focusses on
12 cases involving the jurisdictional
13 dispute between the Governments of
14 Canada and British Columbia for First
15 Nations children ordinarily resident
16 on reserve who have severe disabilities
17 and who require services from multiple
18 service providers".

19 So that last part there,

20 "Who have severe disabilities and
21 require services from multiple
22 providers",

23 is it your understanding that Jordan's Principle is
24 narrowed to that group?

1 A. What the Federal response is, is to look at
2 children that were like Jordan, who have multiple
3 disabilities requiring multiple service providers. There
4 has to be a dispute between the Federal Government and
5 the Province over the particular case. We look at
6 normative standards of care that would be provided to the
7 child off reserve in a similar geographical location.
8 And I'm forgetting the other aspect.

9 But in looking at this, in the discussions we
10 have had with a number of Provincial departments, we use
11 that as our starting point. And we've almost developed a
12 two pronged approach, one which looks a little bit more
13 narrowly, and then the second phase is to look at gaps in
14 services.

15 324. Q. I'm sorry, what do you look at more narrowly?

16 A. That we would look more narrowly initially on
17 trying to address those children who were more than
18 likely to have the disputes and be more amean from a
19 critical perspective.

20 325. Q. You would agree with me, or you understand
21 that there are some who believe that Jordan's Principle
22 applies a bit more broadly than it applies to any kind of
23 education, child welfare, or other kind of service that
24 should be available to a First Nations child on reserve,

1 and it should be applied equitably and if there's a
2 dispute between the Provincial and Federal Government
3 about providing that service, then the department should
4 provide the service? You're aware that some people view
5 Jordan's Principle as a bit more broadly?

6 A. I'm aware, yes, that there are differing
7 perspectives on it.

8 326. Q. Okay. And, for example, you're aware that
9 there was a Motion put to the House of Commons concerning
10 Jordan's Principle?

11 A. Yes.

12 327. Q. And in your view was that Motion the broader
13 view of Jordan's Principle, or the more narrow view of
14 Jordan's Principle?

15 MR. TARLTON: I'm not sure what her opinion as to
16 a Motion by the House of Commons, and again, I think we
17 can all read the Motion. That would I think, again,
18 raise the legal question for the Tribunal or a Court to
19 determine. I don't think her opinion is relevant.

O

20 MR. CHAMP: I don't agree with your objection,
21 but I'll ask a different question.

22 MR. TARLTON: Sure.

23 BY MR. CHAMP:

24 328. Q. You spoke to this issue, did you not, Ms

1 Johnston, when you appeared before the Standing Committee
2 on Aboriginal Affairs on October 20th, 2009?

3 A. Yes.

4 329. Q. And can you tell us what you told the
5 Committee about that issue, about the broader or narrower
6 version of Jordan's Principle?

7 A. I don't recall exactly what I said.

8 330. Q. Generally?

9 A. I know that I talked about the fact that we
10 deal with cases as they arise. And that we had not been
11 informed of many cases.

12 331. Q. Many cases involving children with complex
13 medical needs?

14 A. Cases period.

15 332. Q. And weren't you asked questions about why the
16 department was taking the position that it only applies
17 to children with severe disabilities?

18 A. I don't recall that.

19 333. Q. And do you recall making an answer that the
20 department was narrowing the Jordan Principle to only
21 children in Jordan's circumstances to honour Jordan's
22 memory?

23 A. No, I don't recall that.

24 334. Q. You don't remember making any kind of

1 statement about to honour Jordan's memory?

2 A. I don't recall.

3 335. Q. You don't recall. When you appeared before
4 the Standing Committee on the 20th, I gather you would
5 have had speaking notes and briefing notes?

6 A. No.

7 336. Q. No. You spoke off the top of your head that
8 day with all the knowledge that you have on the subject?

9 A. We would have had some briefing material,
10 perhaps communication lines.

11 337. Q. Okay. So when I said speaking notes, I kind
12 of meant, I know each department call them a little bit
13 different, so speaking note, briefing note,
14 communications line, media points, media lines, talking
15 points. Did you have any of those materials that might
16 fall under those kinds of categories as you understand
17 them as a Federal Government employee of 26 years of
18 experience?

19 A. I think we may have.

20 338. Q. You had paper in your hand when you went to
21 the Committee, I gather?

22 A. Yes.

23 339. Q. Okay. I'll just assume that the words on
24 those papers had something to do with Jordan's Principle?

1 A. I mean there would have been a number of
2 different issues on child welfare.

3 340. Q. You also spoke about the Auditor General's
4 report to some extent when you appeared before the
5 Committee?

6 A. As I said, I don't recall.

7 341. Q. You did say this morning in your testimony
8 that there were two recommendations, at least that you
9 were aware of, from the Auditor General's report that the
10 department was responding to. Well, first, number one is
11 that you were preparing a response to it, and that was
12 one action that came out from the report. And the second
13 thing was providing a response, or taking action on
14 culturally appropriate services?

15 A. That wasn't in relation to the Auditor
16 General, that was to Public Accounts Committee.

17 342. Q. To the Public Accounts, but the Public
18 Accounts Committee was convened because they were
19 reviewing the recommendations of the Auditor General's
20 report, right?

21 A. But, in terms of response, it's to two
22 different bodies.

23 343. Q. Okay. Fair enough. Fair enough. You got me
24 on that one. On culturally appropriate services, what is

1 the department doing to respond to the concerns raised by
2 the Standing Committee on Public Accounts?

3 A. What we are saying is that we're not defining
4 it, or that we are respecting First Nations, each First
5 Nations is going to have to have an interpretation of
6 what is culturally appropriate. That we will have
7 guiding principles, if you will, and that in the enhanced
8 framework, Enhanced Prevention Focussed Approach and
9 framework documents, those are usually inputted by First
10 Nations as principles.

11 344. Q. So the department is developing some guiding
12 principles?

13 A. No.

14 345. Q. Oh, sorry?

15 A. What we're saying is that we will respect
16 those principles and respect the fact that there's going
17 to be unique approaches for each jurisdiction or each
18 First Nation as it may be.

19 346. Q. And how does that respond to the concerns
20 raised by the Committee, is it just the Committee was
21 asking the department to define what it means?

22 A. I don't recall the specific recommendation
23 and how it was worded.

24 347. Q. What's your general understanding of it? You

1 testified that the Standing Committee said something
2 about culturally and appropriate services?

3 A. Yes.

4 348. Q. What is your understanding of what their
5 concern was, what were they saying, generally?

6 A. They were asking for one definition.

7 349. Q. And the department replied we don't have one
8 definition, and we'll leave it to the Bands to come up
9 with their own definition?

10 A. We said we were respecting the ARCAT
11 principles around culturally appropriate in that each
12 First Nation will have differences when it comes to
13 what's culturally appropriate.

14 350. Q. Turning back to your Affidavit for a moment,
15 paragraph 22. So (a) to (d) in paragraph 22, these are
16 all programmes provided by your department, correct?

17 A. Funded by our department, yes.

18 351. Q. Funded by your department. Do you know if
19 these services or programmes are available to all First
20 Nations? Okay, I'll leave it at that. Are you aware if
21 they're available to all First Nations, just the Indian
22 Affairs ones?

23 A. Not all of them would be.

24 352. Q. Would any of them be available to all First

1 Nations?

2 A. Income assistance, and I think assisted
3 living would be.

4 353. Q. Yes, income assistance. But the other ones
5 like the family violence prevention programme, that one
6 is not available to all First Nations, correct?

7 A. Well, I mean it's going to differ region to
8 region, it is a proposal within the regions. I think
9 there is about half the communities who access prevention
10 programming under family violence, and the other aspect
11 of that programme is shelter services. And those shelter
12 services are open to all of First Nations.

13 354. Q. All of these programmes listed here, are you
14 aware of whether all of these are going to be funded in
15 the next fiscal year, are they all still going to be
16 available?

17 A. Your guess is as good as mine.

18 355. Q. Well, I'm not in your department, so no, your
19 guess is probably better than mine I think?

20 A. As far as I know.

21 356. Q. It's my understanding that a number of them
22 are sunset programmes and they end as of March 31. Are
23 you aware of that?

24 A. I don't think so. I can't recall, I think

1 income assistance and assisted living, their terms and
2 conditions were, I think, renewed for another year, for
3 two years. So I think it's not next year it's the year
4 after. And all programmes have usually a five year time
5 limit for their terms and conditions at which time you
6 can go back through Memorandum to Cabinet and Treasury
7 Board submission.

8 357. Q. And just so we're clear, I wasn't restricting
9 my question to just (a) to (d) there, I was thinking,
10 like the Indian Affairs programmes, I was also referring
11 to the other ones, the Health Canada programmes and the
12 HRSDC programmes?

13 A. Yes, I don't know.

14 358. Q. You have no idea, so some of them or all of
15 them might be ending on March 31, but you would not know?

16 A. No, I don't know.

17 MR. CHAMP: I think I'm pretty close to done Mr.
18 Tarlton.

19 MR. TARLTON: Okay.

20 BY MR. CHAMP:

21 359. Q. Ms Johnston, your department's manual, First
22 Nations Child and Family Services national manual, says
23 in Section 1.3.2 the following ---

24 MR. TARLTON: Sorry, is this in the Affidavit?

1 MR. CHAMP: Yes, it is.

2 MR. TARLTON: Can you just refer me so I can
3 follow along?

4 MR. CHAMP: Yes.

5 MR. TARLTON: Thanks.

6 MR. CHAMP: It's in Volume II, Tab I.

7 MR. TARLTON: Which page?

8 MR. CHAMP: Page five.

9 MR. TARLTON: Thanks.

10 MR. CHAMP: In the programme objectives and
11 principles.

12 MR. TARLTON: Yes, thanks.

13 BY MR. CHAMP:

14 360. Q. So in the programme objectives and
15 principles, I'll just read it to you. It's not really
16 complicated. It states under programme objectives and
17 principles

18 "The primary objective of the FNCSF
19 programme is to support culturally
20 appropriate child and family services
21 for Indian children in families resident
22 on reserve, or ordinarily resident on
23 reserve in the best interests of the
24 child, in accordance with the legislation

1 and standards of the reference Province".

2 I gather you've heard that objective before?

3 A. Yes, it's not the latest objective.

4 361. Q. Is it shifting from that?

5 A. The wording is not exactly the same.

6 362. Q. Does it have the same meaning, though,

7 "The primary objective of the programme

8 is to support child and family services

9 for children and families on reserve in

10 the best interest of the child, in

11 accordance with legislation and standards

12 of the reference Province"?

13 A. I can't recall the exact wording, but I think

14 it now begins to ensure the safety of the child by

15 supporting culturally appropriate -- I can't remember the

16 exact wording.

17 363. Q. So the wording is a bit different, but it's

18 basically largely the same?

19 A. I can't say without looking at what it

20 currently is now.

21 364. Q. But that one has not been released yet, in

22 any event?

23 A. It's in our terms and conditions.

24 365. Q. So it's added something about the safety of

1 the child?

2 A. As I said, I can't say per se without looking
3 at both of them.

4 366. Q. You made some kind of reference, though, to
5 the safety of the child, so safety is in there, the
6 safety of the child is in there?

7 A. Yes.

8 367. Q. And do you think that the provision of child
9 and family services that ensure the safety of the child
10 should strictly be a financial consideration?

11 A. What I'm saying, it's our role in it relates
12 to financial and the Province has the role of ensuring
13 the standards.

14 368. Q. But if that's one of the objectives, the
15 safety of the child, you're saying from INAC's
16 perspective it's strictly a financial issue? Strictly a
17 financial consideration?

18 A. Our role as a department is to ensure that we
19 set out the objectives for the programme, that the funds
20 are there. You put the funding mechanisms in place and
21 you ensure that the objectives are met and that there is
22 due diligence in terms of financial accountability.

23 369. Q. But the objective ---

24 A. But the department is interested in the

1 outcomes, positive outcomes for those children.

2 370. Q. So they are interested in positive outcomes,
3 and is it strictly a fiscal consideration, though, about
4 whether those positive outcomes can be achieved from the
5 department's perspective?

6 A. Is it strictly financial? I mean we're
7 interested in ensuring the outcome is achieved. And if I
8 take, for example, the framework documents, in those
9 framework documents they identify what is going to be
10 done in the particular region around prevention, and
11 these are identified by the communities about what they
12 intend to do, and then we try to provide finances to help
13 them achieve that. So we are interested in the
14 achievement of those outcomes.

15 371. Q. I guess, Ms Johnston, is just when I look at,
16 for example, the BC example compared to the Alberta
17 example, BC still can't get that extra money to help
18 children at the same level of funding that Alberta is
19 getting, so it seems to be that the safety of the child
20 is strictly a fiscal consideration, at least in that
21 context, would you agree with me?

22 A. We don't have the resources to be able to
23 provide in that particular example. And we're pursuing
24 processes internally within Government to go through the

1 Government processes to try to obtain additional
2 resources.

3 372. Q. And how long do you anticipate those
4 processes will take, how long will the children have to
5 wait?

6 A. I can't tell you what -- I mean it's up to
7 Cabinet to determine where their resources will be going.
8 As public servants, we are making the cases that we can
9 for additional resources, but the decision is not ours.

10 MR. CHAMP: And we appreciate the decision is not
11 yours, Ms Johnston. Those are all my questions.

12 RE-EXAMINATION BY MR. TARLTON:

13 373. Q. If I could just have a brief moment, I think
14 I may have just one. I just have, Ms Johnston, I believe
15 two questions or two matters that were raised in Cross-
16 Examination that I'd like to clarify.

17 This morning Mr. Champ asked you a number of
18 questions regarding paragraph 22 (m) of your Affidavit.
19 And with respect to the child special allowance, which
20 you noted is a programme benefit involving the Canada
21 Revenue Agency. My question is, regarding that
22 allowance, do you know if there's specific legislation
23 dealing with that allowance?

24 A. Yes, there is.

1 374. Q. Okay. I'm not going to ask you anything
2 further because we can look at the legislation and make
3 the determination, but I think that will clarify maybe
4 some of the questions that were asked this morning.

5 The other question I had, and this came up
6 shortly after we broke for lunch, and I think it involved
7 -- let me just have a moment, I thought I had it. We'll
8 just go off the Record for just a second.

9 (OFF RECORD DISCUSSION)

10 BY MR. TARLTON:

11 375. Q. I found it now. Again, it's in respect of
12 paragraph 22 of your Affidavit, and Mr. Champ had asked
13 you some questions I think in regards to the family
14 violence prevention programme?

15 A. Yes.

16 376. Q. He had asked you some questions about the
17 difference, whether there were differences from region to
18 region, and as I recall your evidence, you spoke of a
19 family violence component and shelter services, is that
20 not correct in my understanding?

21 A. Yes.

22 377. Q. My question, you had mentioned in response to
23 Mr. Champ's question regarding family violence that it is
24 a programme that is proposal driven?

1 A. Yes.

2 378. Q. Could you explain that or clarify what you
3 mean by that?

4 A. Well, all the communities could potentially
5 have access to that particular programme if they wish to
6 submit a proposal for consideration. It goes to the
7 regional office. And they may have a review committee,
8 and it will differ from jurisdiction to jurisdiction, but
9 they will review those proposals and determine who will
10 get funding in that particular region.

11 379. Q. And when you refer to communities, you're
12 meaning First Nation communities?

13 A. First Nation communities.

14 380. Q. And what is your understanding of who or what
15 mechanism in that community would initiate the proposal?
16 I mean we've heard evidence about the agency, are there
17 other actors or would those involved in the First Nations
18 group be involved in a proposal such as this?

19 A. Yes, you may have some CFS agencies, but by
20 and large they're probably more community based, it's the
21 Chief in Council who may decide to submit a proposal.

22 381. Q. And by that you mean the Chief in Council
23 under the Indian Act?

24 A. Yes.

1 382. Q. And any other authority?
2 A. Tribal Councils potentially could.
3 MR. TARLTON: Thank you, those are my questions.

4 --- WHEREUPON THE CROSS-EXAMINATION ADJOURNED AT THE HOUR
5 OF 2:28 IN THE AFTERNOON.
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22 THIS IS TO CERTIFY THAT the foregoing is a
23 true and accurate transcription from the
24 Record made by sound recording apparatus to

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the best of my skill and ability.

.....
Rhonna J. Levere, Court Monitor

Examination No. 10-0158.2

Court File No. T1340/7008

(Ottawa-Carleton)

THE CANADIAN HUMAN RIGHTS ACT

R.S.O., 1985, c. H-6 (as amended)

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

FIRST NATIONS CHILD AND FAMILLY CARING
SOCIETY OF CANADA AND ASSOCIATION OF FIRST NATIONS

COMPLAINANT

- and -

CANADIAN HUMAN RIGHTS COMMISSION

COMMISSION

- and -

5V5

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ATTORNEY GENERAL OF CANADA (Representing the Minister
of Indian Affairs and Northern Development)

RESPONDENT

- and -

CHIEFS OF ONTARIO AND AMNESTY INTERNATIONAL

INTERESTED PARTIES

CROSS-EXAMINATION OF ODETTE JOHNSTON on Affidavit sworn
December 20, 2009, pursuant to an appointment made on
consent of the parties to be reported by Cornell•Catana
Reporting Services, on February 26, 2010, commencing at the
hour of 10:05 in the forenoon.

APPEARANCES:

Paul Champ
Anne Levesque

for the Complainant
for the Complainant

Mitchell R. Taylor, Q.C.

for the Respondent

This Examination was taken down by sound recording
by Rhonna J. Levere at Ottawa, Ontario
(i)

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DATE TRANSCRIPT ORDERED: February 26, 2010

DATE TRANSCRIPT COMPLETED: March 1, 2010