CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

and

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous Services Canada)

Respondent

and

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA, NISHNAWBE ASKI NATION and FIRST NATIONS LEADERSHIP COUNCIL

Interested Parties

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TABLE OF CONTENTS

PART I - OVERVIEW

1.   Following this Panel's *Merits Decision* in 2016, these proceedings - and the parties' relationships - have evolved. Canada and the First Nations Parties[1] have focused their sights forward, negotiating for long-term reforms intended to eliminate the discrimination identified by this Panel and prevent its recurrence; to advance the holistic well-being of First Nations children and families, as well as their connection to their lands, cultures, languages, and communities; and to develop a renewed relationship based upon a recognition of rights, respect, cooperation and partnership.

2.   This Panel's thoughtful rulings have played a critical role in this evolution, guiding the parties towards a First Nations-led settlement with Canada for life-changing compensation to hundreds of thousands of marginalized First Nations youths and families;[2] foundational change in Indigenous Services Canada (ISC)'s application and administration of Jordan's Principle, aimed at filling gaps in essential government services and ending systemic discrimination against First Nations children;[3] and most recently, a historic $47.8 billion final settlement agreement towards long-term reform of ISC's First Nations Child and Family Services (FNCFS) Program, subject to First Nations' ratification and Tribunal approval.[4]

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[1] Throughout this factum, "First Nations Parties" collectively refers to the Assembly of First Nations (the AFN), the Chiefs of Ontario (the COO) and the Nishnawbe Aski Nation (the NAN).

[2] *Moushoom v Canada (Attorney General),* 2023 FC 1533 **[Moushoom]** at paras 1, 4 and 33; *First Nations Child & Family Caring Society of Canada et al. v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)* 2023 CHRT 44 **[2023 CHRT 44]** at paras 4, 25 and 222.

[3] Affidavit of Dr. Valerie Gideon, affirmed March 14, 2024 at para 33 and forward [**Dr. Valerie Gideon Affidavit**].

[4] Assembly of First Nations, Press Release "Assembly of First Nations (AFN) Launches National Dialogue with Chiefs on Historic Agreement on Long-Term Reform of the First Nations Child and Family Services Program" (31 July 2024), online: <https://afn.ca/all-news/press-releases/assembly-of-first-nations-afn-launches-national-dialogue-with-chiefs-on-historic-agreement-on-long-term-reform-of-the-first-nations-child-and-family-services-program-2/> [**AFN July 30, 2024 Press Release -Long Term Reform**].

3.   Canada and the First Nations Parties expect to engage in further negotiations towards an agreement on long-term reform of Jordan's Principle in the coming months. In the meantime, ISC endeavours to embody reconciliatory principles in its administration of Jordan's Principle, while acknowledging that operational challenges exist due to the volume of requests and the unintended negative consequences of the Back-to-Basics Approach.[5]

4.   The First Nations Child and Family Caring Society of Canada (Caring Society) has raised fair and well-grounded concerns about timeline compliance and backlogs. However, ISC has significant concerns about the adverse consequences of the Caring Society's proposed orders, and accordingly has proposed its own pragmatic interim solutions to these challenges through its cross-motion. ISC's proposals were developed with the benefit of ISC's eight years of practical experience administering Jordan's Principle throughout the country, to ensure they can be implemented with the lowest risk of unintended adverse consequences to First Nations children.

5.   In addition, ISC is generally supportive of a number of the interim solutions proposed by the Assembly of First Nations (AFN), including in subparagraphs 80(b), (c) and (e) of their factum dated July 30, 2024. Together, ISC and the AFN have proposed viable operational solutions to ensure that First Nations children continue to receive products, services and supports through Jordan's Principle in a timely manner, consistent with and supported by existing government structures.

6.   The operational issues raised by these motions are highly complex and well beyond any one party's individual expertise. They are more properly resolved through discussion and collaboration. ISC remains concerned that any remedial order could add to the challenges ISC is attempting to resolve. Some of the issues, including payment processing timelines and the asserted need for a

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[5] The Back-to-Basics Approach is set out in the Dr. Valerie Gideon Affidavit at paras 16–20 and Exhibit B.

complaints mechanism, are so complex they can only be resolved through collaboration and dialogue. ISC has continually proposed collaboration with the parties, in lieu of these adversarial proceedings. Although multiple mechanisms exist to engage in such dialogue, the Caring Society has abandoned negotiations in favour of litigation and seeks to impose its own untested approach.

7.   Ultimately, ISC seeks the requisite tools and flexibility to ensure it can continue to support Jordan's Principle moving forward, in a manner that is in keeping with substantive equality. This requires the Panel's support of Canada's long-term approach to reconciliation with First Nations peoples and First Nations self-determination, by ordering interim remedies that can be implemented through ISC's partnerships with the First Nations Parties and First Nations themselves. These interim remedies should be capable of jointly agreed adjustments as needed, without the Tribunal's continual involvement, as Canada and the First Nations Parties work together towards long-term reforms.

PART II - REPLY SUBMISSIONS

A. A long-term solution must be negotiated with First Nations and those who represent them

8.   ISC's long-term vision of Jordan's Principle is to move from the current request-driven, federal decision-making based approach to a more systematic and holistic, community-based approach to continuity of care for First Nations children, with specific operational parameters and increased First Nations' self-determination and control. This vision is better aligned with the pathway to self-determination than the current federal model.[6]

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[6] Affidavit of Candice St-Aubin, affirmed March 14, 2024 [**Candice St-Aubin Affidavit**] at paras 70 and 72; Transcript of the Cross Examination of Dr. Valerie Gideon on April 2, 2024 [**Dr. Valerie Gideon Transcript**] at pp 157–59 (Appendix 1).

9.   As evident in Canada's cross-motion, the time is now for Canada to negotiate a long-term approach that addresses the significant increase and uptake in Jordan's Principle requests, amongst other matters. Ultimately, this should be negotiated with First Nations and those who represent them. Canada is prepared to negotiate on Jordan's Principle reforms until March 31, 2025, under its current mandate.[7]

10.   During the upcoming negotiation process, ISC will remain accountable for determining Jordan's Principle requests in accordance with substantive equality. Accountability is assured through the formal appeals process and ultimately through the Federal Court's oversight of Jordan's Principle decisions.[8] The Caring Society's alternative approach of making individual Jordan's Principle decisions the subject of non-compliance proceedings before this Panel is not an efficient or sustainable approach. The Federal Court is more than capable of ensuring Jordan's Principle decisions adhere to the principles of substantive equality.

11.   Absent a negotiated nation-to-nation approach to address the issues that have led to the existing operational concerns, it is almost certain that the Panel's remedial jurisdiction over this complaint will continue indefinitely. Each First Nation is unique, with its own individual set of needs and circumstances including language and culture, that must be considered in their own right. Not every First Nation will necessarily agree with all positions taken by the parties or the Tribunal. However, a negotiated resolution will allow the parties to work together on a path forward, and in turn will provide ISC with sufficient latitude and flexibility to consider each First Nations' particular needs and circumstances.

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[7] Amended Affidavit of Craig Gideon, affirmed March 22, 2024 at para 18.
[8] Dr. Valerie Gideon Affidavit at paras 47–64; Candice St-Aubin Affidavit at paras 24–29; *Federal Courts Act*, RSC, 1985, c F-7 [***Federal Courts Act***] at ss 18 and 18.1

12.   While the Caring Society has regretfully abandoned negotiations, Canada and the First Nations Parties have made very significant progress towards a $47.8 billion negotiated final settlement agreement on long-term reform of the FNCFS program, subject to First Nations' ratification and Tribunal approval.[9]

B. The Caring Society's proposed orders should be rejected

1. The Caring Society's approach is untested

13.   The Caring Society does not represent First Nations, nor does it have expertise on public administration. In contrast, ISC's proposed solutions are based on eight years of practical experience and empirical data in the public administration of Jordan's Principle.

14.   Further, the Caring Society has provided no evidence as to how their own proposals will alleviate any of the current operational challenges.[10] To the contrary, ISC's evidence is that many of the Caring Society's proposals will cause adverse consequences to First Nations children, as further detailed below.

2. The Caring Society's approach expands the public service at First Nations children's expense

15.   The Caring Society's proposals risk serious unintended consequences. Their requested orders are focused on growing and micro-managing the public service.[11] Yet it is clear that in the

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[9] AFN July 30, 2024 Press Release -Long Term Reform.

[10] The Caring Society recently took the same approach before the Federal Court in the context of the Compensation Settlement. In explaining why the Federal Court rejected all of the Caring Society's proposed orders, Justice Aylen stated:

> …While the Caring Society is critical of the absence of expert evidence before this Court on this issue, the same criticism could be levied at the Caring Society, who advocates for the Court to impose a particular approach without themselves providing any evidence that their approach is, in fact, trauma-informed and the better approach to take.

See Unreported Reasons in *Moushoom v Canada (Attorney General)*, June 26, 2024 [**Unreported Reasons in *Moushoom***] at paras 26–27, 42–43 (Appendix 4).

[11] Caring Society Notice of Motion [**Caring Society NOM**], including Schedule A.

long-term, continued growth of the public service to administer Jordan's Principle is not the answer.[12]

16.   As stated by Dr. Gideon during her cross-examination, to meet existing Tribunal timelines based on current demands, ISC would likely need to double the amount of full time equivalent staff, if not more. Some of the potential negative consequences of doing so include:

    a. investing in the public service instead of investing in First Nations capacity;

    b. competing with First Nations to recruit staff; and

    c. competing with First Nations to recruit contractors and service providers, leading to bidding wars and increased fees for services needed by First Nations children.[13]

17.   In addition, continued expansion of the public service for Jordan's Principle administration may shift funds and services away from existing First Nations programs, prioritize federal decision-making over First Nations decision-making, and fail to allow supports for First Nations children to be provided through core programming or community level service delivery.[14] This is not in the best interests of First Nations children.

3. The Caring Society's approach to automation is not based on substantive equality

18.   The Caring Society advocates for entirely automated submission and approval of all requests valued at $500 or less,[15] which does not further substantive equality[16] and is not feasible

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[12] Candice St-Aubin Affidavit at paras 71–72; Dr. Valerie Gideon Transcript at pp 157–60 (Appendix 1).
[13] Dr. Valerie Gideon Transcript at pp 159–60 (Appendix 1).
[14] Candice St-Aubin Affidavit at paras 70–71.
[15] Caring Society Factum, dated August 8, 2024 at para 38; Caring Society NOM, Schedule A, pp 2–3 and 5, items 2.3 and 3.3.
[16] *Ontario (Attorney General) v G.*, 2020 SCC 38 **[Ontario]** at paras 43–44; *Fraser v Canada (Attorney General)*, 2020 SCC 28 **[Fraser]** para 42.

for all situations.[17] This proposal entirely removes ISC's ability to conduct case by case assessments, as required by this Tribunal.[18] ISC is concerned that automated determination in this manner may lead to adverse consequences for children. For example, it provides no ability for ISC to discuss potential solutions where the requester is not sure of the child's specific needs. It also takes away ISC's ability to verify that requests concern a child's health, social and educational needs, including the unique needs of First Nations Two-Spirit and LGBTQQIA children and youth, and those with disabilities.

19.   ISC is exploring automated determinations in order to achieve greater timeline compliance,[19] while at the same time taking into account that community-based supports are better suited to determining First Nations children's needs. The ability to implement automated determinations also requires the development of clear parameters and standard operating procedures. Automated decision making is not something that can be effectively imposed on ISC through adjudication.

4. <u>The Caring Society's approach provides no flexibility to address regional and community-specific needs</u>

20.   There are over 630 First Nations communities in Canada, representing more than 50 Nations, in addition to numerous First Nations organizations and partnerships.[20] Each individual First Nation has its own priorities, challenges and needs. Therefore, Jordan's Principle operational requirements may be different from community to community, requiring a more nuanced and less 'one size fits all' approach. This will ensure that products, services and supports provided through

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[17] Candice St-Aubin Affidavit at para 68.
[18] *First Nations Child & Family Caring Society of Canada et al. v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2017 CHRT 14 [**2017 CHRT 14**] at para 69.
[19] Candice St-Aubin Affidavit at para 68; 2017 CHRT 14 at para 69; 2020 CHRT 20 at para 214.
[20] CIRNAC website: First Nations (rcaanc-cirnac.gc.ca).

Jordan's Principle are culturally appropriate, and the best interests of the child are safeguarded according to the needs of each community.

21.   None of these individual First Nations communities are named parties to the underlying complaint, and none have interested party status before this Tribunal. However, there are many ways for ISC to work with regional partners and First Nations outside of these proceedings, including through JPOC. New regional forums could also be created to allow for more in-depth discussions with regional partners.

22.   The Caring Society's approach to litigation over dialogue is a barrier to ISC using these existing dialogic mechanisms, at the expense of First Nations. This top-down approach may prevent ongoing improvements to Jordan's Principle, such as ISC's collaboration with the Assembly of Manitoba Chiefs (AMC) on a historic memorandum of understanding with Canada on Jordan's Principle Implementation, signed on June 27, 2024. This recent agreement is in support of enhancing Jordan's Principle implementation and advancing self-determination. Key elements include provisions to support First Nations self-determination by advocating for AMC-member First Nations to lead the implementation of Jordan's Principle. The MOU specifically prioritizes capacity building and a long-term vision with a focus on enhancing First Nations' capacity to address health, social and educational needs without jurisdictional delays and denials.[21]

23.   The recent intervention by the First Nations Leadership Council (FNLC) also demonstrates ISC's need for operational flexibility to develop approaches to Jordan's Principle administration

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[21] Assembly of Manitoba Chiefs, Press Release "AMC and Canada Sign Historic Memorandum of Understanding on Jordan's Principle Implementation" (27 June 2024) online: < https://manitobachiefs.com/press_releases/amc-and-canada-sign-historic-mou-on-jp-implementation/>

that will address local and regional issues independently, and as they arise. Jordan's Principle will continue to evolve over time and ISC must adapt as the needs of First Nations children change.

24.   Any remedy ordered by the Tribunal will impact all First Nations communities in Canada, even those whose unique circumstances are not reflected in the evidence before the Tribunal. These proceedings are national in scope and application. If the Tribunal imposes 'one size fits all' orders regarding Jordan's Principle, as proposed by the Caring Society, it could inhibit ISC's ability to meet the ongoing and future needs of local and regional First Nations communities.

    5. The Caring Society's approach requires that Jordan's Principle duplicate available services and supports, at the expense of First Nations children

25.   Jordan's Principle is intended to address "all inequalities and gaps in federal programs for First Nations children".[22] It was never intended to duplicate existing services. Yet requests for existing federal supports are now being redirected into Jordan's Principle, largely due to the approach taken in Back-to-Basics.[23]

26.   While it may be more convenient for a requester to access a service through Jordan's Principle rather than an existing program, this is done at the expense of those First Nations children who require a product, service or support to fill a gap. Requests for duplicative services contribute to the backlogs by increasing the overall volume of requests, and are particularly concerning when they are inappropriately self-identified as urgent. As a result of the Back-to-Basics approach, requests for duplicative services and misclassified urgent requests may take priority over those requests that are necessary to fill gaps in the interests of substantive equality.

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[22] *First Nations Child & Family Caring Society of Canada et al. v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada),* 2020 CHRT 36 **[2020 CHRT 36]** at paras 12–13; 2020 CHRT 20 at para 92.
[23] Dr. Valerie Gideon Affidavit at paras 27–28.

27.   ISC's list of potentially mischaracterized urgent requests[24] is illustrative of the duplication problem, listing hundreds of requests for services that may already be available under existing federal programs. Yet the Caring Society takes the position that all of these requests may be objectively urgent and appropriate Jordan's Principle requests.[25] These include:

Urgently Requested Product, Service or Support	Existing Program under which requested item may already be available
Dental services[26]	ISC's Non-Insured Health Benefits for First Nations and Inuit: Dental Benefits Guide for First Nations and Inuit: Non-Insured Health Benefits program (sac-isc.gc.ca)
Vision care, including eye glasses and contact lenses[27]	ISC's Non-Insured Health Benefits for First Nations and Inuit: Vision care benefits for First Nations and Inuit (sac-isc.gc.ca)
Mental health supports, including counselling[28]	ISC's Non-Insured Health Benefits for First Nations and Inuit: Guide to mental health counselling benefits for First Nations and Inuit (sac-isc.gc.ca)
Medical supplies and equipment[29]	ISC's Non-Insured Health Benefits for First Nations and Inuit: Medical supplies and equipment benefits for First Nations and Inuit (sac-isc.gc.ca)
Medical transportation[30]	ISC's Non-Insured Health Benefits for First Nations and Inuit: Medical transportation benefits for First Nations and Inuit (sac-isc.gc.ca)

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[24] Dr. Valerie Gideon Affidavit at Exhibit C.
[25] Caring Society Factum, dated August 8, 2024 at para 11; Caring Society Factum, dated April 19, 2024 at paras 46–58.
[26] Dr. Valerie Gideon Affidavit, Exhibit C, pdf pages 99–104, 163.
[27] Dr. Valerie Gideon Affidavit, Exhibit C, pdf page 64, 94–96, 119, 121, 125-126, 141, 154, 161, 163, 174, 183.
[28] Dr. Valerie Gideon Affidavit, Exhibit C, pdf page 96, 144.
[29] Dr. Valerie Gideon Affidavit, Exhibit C, pdf page 144.
[30] Dr. Valerie Gideon Affidavit, Exhibit C, pdf page 64.

28. Instead of working with ISC to ensure that requesters understand and access existing programs and services – including available assistance in palliative care[31] - the Caring Society advocates for duplication of existing services through Jordan's Principle.

29. Of particular concern, the Caring Society advocates to build emergency management expectations into Jordan's Principle,[32] even when emergency response services are already available.[33] This is not a safe approach, as Jordan's Principle is not an emergency management system. The Caring Society's approach does First Nations children a disservice, by diverting them away from available and accessible emergency response supports. Those organizations with expertise in emergency management and who can offer existing and immediate services, including fire, paramedic and police, provincial/territorial emergency management and non-governmental organizations, are far better placed to manage First Nations children's standard needs during a state of emergency.

30. Of course, Jordan's Principle must and will continue to fill any gaps in accordance with substantive equality during states of emergency.[34] But duplicating available supports at the expense of those children who have unaddressed needs is neither efficient nor in First Nations children's best interests.

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[31] Non-Insured Health Benefits program updates (sac-isc.gc.ca).
[32] Caring Society Factum, dated April 19, 2024 at paras 94–95.
[33] Caring Society Factum, dated August 8, 2024 at para 1; Affidavit of Dr. Cindy Blackstock, affirmed January 12, 2024 [**Cindy Blackstock Affidavit**] at paras 136–40; Affidavit of Brittany Mathews, affirmed January 12, 2024 [**Ms. Matthew's Affidavit**] at paras 29-42.
[34] Candice St-Aubin Affidavit at paras 69, 76 and following.

6. <u>The Caring Society's approach to urgency will increase the number of misclassified urgent requests and duplication of services</u>

31.   When everything is urgent, nothing is urgent. As noted in Canada's factum dated May 24, 2024,[35] the Caring Society's presumption of urgency will result in *all* requests being considered urgent, notwithstanding the individual circumstances. ISC is concerned that this approach is untested and could very well lead to further complications and delays in the provision of products, services and supports that are truly urgently required for First Nations children and their families. It is already clear that the current number of miscategorized, self-identified urgent requests is unsustainable. The Caring Society's approach will further exacerbate this issue.

32.   Further, the criteria proposed by both the Caring Society and the FNLC to make presumptions of urgency in certain community circumstances, including public emergencies due to wildfires and opioid epidemics, only serve to expand the number of potentially misclassified urgent requests. Given the FNLC's statement that all BC First Nations have been in a state of emergency since 2016,[36] *all* requests from BC communities would be urgent – notwithstanding the particular individual needs or circumstances.

33.   The criteria suggested by the Caring Society, and supported by FNLC, lack the necessary connection to the child's actual individual needs and circumstances. The Caring Society and the FNLC both advocate that all requests to Jordan's Principle be considered urgent during states of emergency, *even though a province, territory or non-governmental organization (NGO) is already providing emergency supports*.[37] This would lead to ISC duplicating available emergency management services, thereby increasing backlogs and increasing ISC's inability to identify and

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[35] See paras 69–71.
[36] First Nations Leadership Council Factum, dated July 16, 2024 at para 34 [**FNLC Factum**].
[37] Caring Society Factum, dated August 8, 2024 at para 1; FNLC Factum at paras 35–37.

prioritize objectively urgent requests. Moreover, ISC's duplication of existing emergency supports would detract from its ability to address, pursuant to principles of substantive equality, essential requests from those First Nations children who cannot otherwise access a needed support.

7. <u>The Caring's Society's approach to the *Financial Administration Act* is not based on the evidence</u>

34.   There is no evidence that the application of the *Financial Administration Act* results in denial of, or delays in providing, products, services or supports pursuant to a request made under Jordan's Principle.[38] ISC reiterates its position as described in paragraph 74 to 77 of its May 24 factum.

35.   At paragraphs 40-45 of its June 7, 2024 Reply, the Caring Society takes further issue with ISC's position that it is required to apply the *Financial Administration Act,* including the requirement for itemized receipts, and confirmation from requestors that certain purchases were made. These requirements do not amount to a denial of, or delay in providing, a product, service or support pursuant to a request made under Jordan's Principle. The *Canadian Human Rights Act* does not relieve the public service from its obligation to account to all Canadians for public expenditures. Nor should it.

36.   In response to the FNLC's submissions at paragraph 48, ISC fully agrees that the *United Nations Declaration on the Rights of Indigenous Peoples* (*Declaration*) can be relevant as an

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[38] The Caring Society relies on the affidavit of Cindy Blackstock in support including a letter found at Exhibit 37. This letter alleges that ISC Alberta Region was relying on the Financial Administration Act to deny Group Requests, however, there is no information in this letter linking any specific denial of a Group Request to the Financial Administration Act. ISC has not commented on the specific details as the Blood Tribe is not a party to these proceedings, and ISC is otherwise bound by the *Privacy Act*. However, given there is no link between the conclusion reached in the letter and the denial of a Group Request, the letter does not support the Caring Society's position.

interpretive aid.[39] However, neither the *Declaration* nor the *United Nations Declaration Act*[40] have the effect of displacing existing statutory language, including the language in the *Financial Administration Act*. In any event, the *Financial Administration Act* is not contrary to the *Declaration*.

8.   Any Complaints Mechanism should not be imposed, but negotiated

37.   Canada reiterates its position at paragraph 73 of its May 24 factum, highlighting that if a complaints mechanism is to be developed, broader First Nations collaboration is required. The imposition of an untested complaints mechanism risks serious negative consequences. Therefore, this issue should be tabled for discussion before JPOC and/or as part of the discussions to take place on long-term reform.

38.   The Caring Society's position that the Tribunal must impose a complaints mechanism, even where all parties excluding the Caring Society wish to negotiate the issue,[41] does not reflect the collaborative approach needed to achieve effective outcomes. In fact, it deprives the parties of the opportunity to identify a jointly acceptable, flexible and collaborative approach that takes all views into account.

39.   In the interim, requestors are not without recourse if a timely response has not been provided. It is open to all requestors to contact the National Call Centre to follow up on the status of any requests made under Jordan's Principle. ISC will also continue to work with its First Nations partners should they raise concerns about delayed responses. Further, ISC has been actively

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[39] *United Nations Declaration on the Rights of Indigenous Peoples* [***Declaration***]**,** Schedule to *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14 [***UNDA***]; see also *Dickson v Vuntut Gwitchin First Nation,* 2024 SCC 10.
[40] *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14.
[41] Caring Society Factum, dated August 8, 2024 at para 64.

exploring an interim complaints mechanism at JPOC, including the potential for an online complaints form, pending long-term reform negotiations. ISC is open to discussing this and any other proposed interim solutions with the parties, as part of the proposed mediation process.

40.   The main concern remains that the imposition of a new mechanism, without collaboration, could have unintended consequences that might otherwise contribute to the existing backlog and delay in Jordan's Principle administration, while adding further levels of bureaucracy.

   9. <u>The Panel should exercise caution regarding the Caring Society's incomplete reply hearsay evidence</u>

41.   ISC's approach has been to focus on First Nations children by proposing practical solutions informed by principles of substantive equality, the need for culturally appropriate services, and the best interests of First Nations children, as opposed to quibbling over the weight to be afforded to specific pieces of evidence. For this reason, ISC chose not to cross-examine the Caring Society's affiants and has not generally engaged in the Caring Society's arguments respecting hearsay evidence, or the reliability and credibility of evidence.

42.   However, it is important to note that the Panel should exercise caution regarding the Caring Society's reply evidence regarding specific Jordan's Principle requests. As with its evidence in chief, the Caring Society's reply evidence is incomplete and does not reflect the steps taken by ISC to respond.[42] ISC was able to clarify the factual circumstances respecting the requests listed in the Caring Society's evidence in chief through the Affidavit of Candice St-Aubin and its attached Exhibit A.[43] However, there was no opportunity for ISC to provide clarifying evidence respecting the Caring Society's reply affidavits.

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[42] Candice St-Aubin Affidavit at para 20.
[43] Candice St-Aubin Affidavit at paras 20–39.

43.   The Panel does not have a full and complete view of the facts around the requests listed in the Caring Society's reply evidence. The Caring Society's reply hearsay allegations respecting the deaths of two young children in Pikangikum First Nation, in particular, is deeply troubling.[44] ISC had no procedural opportunity to provide responding affidavit evidence. Although Ms. St-Aubin was cross-examined for a full day, the Caring Society did not ask a single question of her respecting the Pikangikum request, giving her no opportunity to clarify the record.[45]

10. Better cooperation is required

44.   In the course of the related Compensation Settlement proceedings, Justice Aylen noted the detrimental effects of an unnecessarily adversarial approach between parties to the Compensation Settlement, including the Caring Society, the Settlement Implementation Committee (SIC) and the Administrator. She found it is not in the Class Members' best interests for the animosity to continue. She noted that the Caring Society's concerns likely could have been resolved through respectful dialogue instead of one party trying to dictate how things must be done.[46]

45.   The operational concerns raised by the Caring Society in this proceeding are also better resolved through cooperation between the parties and stakeholders. Multiple mechanisms exist to engage in respectful dialogue, including the Jordan's Principle Operations Committee (JPOC), of which the Caring Society and the First Nations Parties are members.[47] These forums allow input

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[44] Reply Affidavit of Dr. Cindy Blackstock, affirmed March 27, 2024 [**Cindy Blackstock Reply Affidavit**] at paras 13–30, and in particular para 26.
[45] Transcript of the Cross Examination of Candice St-Aubin on April 3, 2024 Morning Session (Appendix 2) and April 3, 2024 Afternoon Session (Appendix 3).
[46] Unreported Reasons in *Moushoom* at paras 26–27 and 43 (Appendix 4).
[47] Ms. Mathews Affidavit at paras 6–7, and Exhibit 1.

not just from the parties to this complaint, but also from other regional partners involved in delivering Jordan's Principle.

46.   Dialogue requires compromise and cooperation. Instead, the Caring Society has abandoned negotiations, litigated, and debated the weight to be given to select pieces of evidence. It is evident and regretful that the Caring Society's relationship with ISC is deteriorating.

47.   Better cooperation from the Caring Society is needed to address the important needs of First Nations children. The evidence otherwise reflects that ISC and the First Nations Parties are working well together and progressing towards negotiated reforms.

11. Conclusion on the Caring Society's approach

48.   The Caring Society's proposed approach should be rejected in its entirety, in favour of ISC's co-development request and experience-based proposals. ISC's evidence is that the Caring Society's proposed solutions will cause adverse consequences at First Nations children's expense.[48]

49.   ISC previously tried following the Caring Society's approach when it negotiated and adopted the Back-to-Basics approach with the Caring Society.[49] The unintended consequences of doing so are clear. The implementation of the Back-to-Basics Approach contributed to a 900% increase in the number of requests identified as urgent, a high number of requests that were likely misclassified as urgent, and the complete inability for ISC to reassign misclassified requests to a lower level of urgency.[50]

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[48] Dr. Valerie Gideon Affidavit at paras 21-26, 28, 38, 60-61, and 64; Candice St-Aubin Affidavit at paras 21, 46-48, 55, 59, 62-63, 65, 71, and 80; see also Dr. Valerie Gideon Transcript at pp 159–60 (Appendix 1).
[49] AFN Factum, dated May 17, 2024 at para 30.
[50] Dr. Valerie Gideon Affidavit at paras 21–25; Dr. Valerie Gideon Transcript at pp 159–60 (Appendix 1).

50.   Instead of focusing on litigating, directing approaches, and debating whose evidence is more credible and complete, the parties should focus on finding practical solutions. This is the proper focus when children's bests interests are at stake.

C. Response to the FNLC's submissions

51.   ISC is grateful to the FNLC for bringing their regional perspective to these proceedings. In response to FNLC's assertion that First Nations in British Columbia are disproportionately affected by backlogs or denials, the evidence before the Panel does not include region-specific analysis to compare and provide the full national context. Fluctuations in regional backlogs over time may be a result of surges in request volumes. As noted in ISC's evidence, efforts are underway to address the backlog across the country, including ISC's call volume initiatives,[51] surge team supports[52] and technology initiatives.[53] ISC considers it useful and beneficial to engage in further dialogue with the FNLC on these matters.

1. Use of surge teams during states of emergency should be rejected

52.   The FNLC's proposal that ISC use surge teams during states of emergency[54] is not feasible or sustainable. As noted above, during states of emergency, a number of local, provincial, territorial and federal agencies and NGOs are deployed to provide direct and coordinated services to community members for a range of products, services, and supports. Using surge teams to address

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[51] Candice St-Aubin Affidavit at paras 49–56.
[52] Candice St-Aubin Affidavit at paras 60–62.
[53] Candice St-Aubin Affidavit at paras 66–68.
[54] FNLC Factum at para 38.

all requests during states of emergency, whether or not there is a connection between the state of emergency and the request, shifts surge teams away from dealing with the backlog generally.

53.   To date, ISC has mobilized surge teams to assist with backlogs, facilitate determinations and provide ongoing support to regional offices.[55] While surge teams are among the tools available to ISC, they are an interim measure[56] and are not a long-term solution. ISC is currently working on developing broader system and technological tools to enable faster determinations.[57] For this reason, ISC needs to have flexibility in how surge teams are used to address the existing backlog.

> 2.   Federal resourcing for First Nations administering Jordan's Principle is outside the scope of these motions

54.   The FNLC has gone beyond the limitations of their participation, as ordered by this Tribunal.[58] The FNLC's request for an order requiring Canada "to provide sufficient and sustainable resources to First Nations and First Nations organizations for the administration of Jordan's Principle…"[59] goes well beyond the relief requested by the Caring Society, which was limited to a request that Canada provide a report on resourcing.[60]

55.   This proposed order is outside the FNLC's role as a late interested party, which is "limited to the issues currently before the Tribunal by way of the motions at issue."[61] The Caring Society's support for this order, indicated in their factum of August 8, 2024, is similarly beyond the scope of

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[55] Candice St-Aubin Affidavit at paras 60–63.
[56] Candice St-Aubin Affidavit at para 62.
[57] Candice St-Aubin Affidavit at para 62.
[58] July 2, 2024 Letter Decision on the First Nations Leadership Council Motion for Proposed Interested Party Status.
[59] FNLC Factum at paras 60–61.
[60] Caring Society NOM at p 5, para 11.
[61] July 2, 2024 Letter Decision on the First Nations Leadership Council Motion for Proposed Interested Party Status at p 1.

their motion.[62] As a new issue being raised for the first time by the late interested party, the Panel should show restraint and this issue ought not be considered.

56.   ISC is prejudiced by this late request, as it had no opportunity to provide relevant evidence on the funding being provided through its 599 existing contribution agreements.[63] Nor has any party provided evidence on how much funding might be sufficient in each particular circumstance.

57.   The Panel has no evidence on which to ground such an order, which was not requested in the Caring Society's notice of motion. As a result, this issue should not be considered and this requested order should be denied.

D. Proposed interim solutions that should be adopted

58.   Notwithstanding the significant concerns around the Caring Society's approach, the Caring Society has raised fair and well-grounded concerns about timeline compliance and backlogs. ISC acknowledges that operational issues exist with respect to its administration of Jordan's Principle requests. To remedy these challenges, ISC has developed viable solutions with a low risk of unintended consequences, designed to improve request administration pending long-term negotiated reforms.

59.   Canada agrees with the AFN that any remedy granted through these proceedings should be interim in nature and ought not to place any limitations on potential reforms to be discussed and

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[62] Caring Society Factum, dated August 8, 2024 at para 46.
[63] Dr. Valerie Gideon Affidavit at para 78.

negotiated.[64] This is the best way to advance reconciliation and self-determination, while ensuring that the needs of First Nations children continue to be met.

1. Tribunal-assisted mediation

60. ISC confirmed its strong support for mediation in its e-mail to the Tribunal of August 19, 2024 and subsequent letter dated August 22, 2024. This position has not changed, nor has ISC's view that the best interim solution is to assign a Tribunal member who is not otherwise seized of these proceedings to work with the parties to find mutual solutions to address the backlog.[65] This is preferable to an adjudicated remedial order, which risks further unintended adverse consequences.

61. It is clear that all parties to this complaint share a common goal towards eliminating discrimination and achieving substantive equality for First Nations children. However, the parties' views diverge with respect to the proposed solutions needed to adapt to the intake and processing of Jordan's Principle requests.

62. The operational issues raised by these motions are highly complex. The issues require significant expertise and background knowledge that go far beyond the evidence filed in these proceedings. They are well beyond any one party's individual expertise, and are more properly resolved through discussion and collaboration. ISC remains concerned that any remedial order that fails to recognize this complexity runs the risk of exacerbating the existing backlog, adding to the challenges ISC is attempting to resolve.

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[64] AFN Factum, dated July 30, 2024 at paras 50 and 76–78.
[65] The reason the mediator cannot be a panel member is to ensure that free and frank discussions can occur between the parties. This also ensures that no party attempts to argue their case before the mediator and/or takes positions with a view to influencing the adjudication should mediation not be successful. As a result, all parties are able to focus their efforts on finding solutions to the issues raised while carefully considering and addressing each party's concerns.

63.   ISC has not sought an order seeking Tribunal-assisted mediation because mediation is a voluntary process. While the Caring Society proposed "mediation-arbitration" on November 1, 2023 in a case management conference, that process differs significantly from Tribunal-assisted mediation, including the arbitrator's ability to render a potentially binding decision on all parties. The Caring Society's proposal for mediation-arbitration fails to recognize the importance of working together to identify a mutually agreeable resolution, without each party advocating to the mediator-arbitrator in the event the mediation fails.

64.   A review of the parties' factums supports a mutually negotiated solution. Such a negotiated resolution is consistent with the courts' consistent direction regarding the preferred approach to reconciliation and represents the best path forward.[66]

2. Definition of urgent requests

65.   In order to ensure that Canada is able to continue to address the needs of First Nations children, the only practical solution is to eliminate self-identification of urgency, and make changes to the definition of "urgent" so that objective criteria can be applied by ISC focal points and call center staff. The requirement in Back-to-Basics that ISC must accept the requestor's identification of a request as urgent has had clear adverse consequences. As stated by Dr. Gideon:

> When I was part of the development of the back-to-basics, I did not envision that requesters – so many requesters would identify their requests as urgent, and I did not envision that the type of requests that we are now seeing as – categorized as urgent would be part of what we would be dealing with. So now that I see the impacts of the implementation of back-to-basics, I am concerned that cases that I would identify as urgent are not being treated as urgent or as timely because of the level and the volume of urgent crisis that people are now having to deal with.[67]

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[66] *Ontario (Attorney General) v Restoule*, 2024 SCC 27 at para 292.
[67] Dr. Valerie Gideon Transcript at p 123, lines 3–15 (Appendix 1).

66.   What is key to addressing the existing backlog is that any definition of "urgent" embraces the spirit and intent of the Tribunals order in 2017 CHRT 35, wherein objectively urgent requests receive swift attention. ISC agrees with the Panel Chair and the AFN that when setting timelines for processing Jordan's Principle requests, "urgent meant urgent".[68] ISC also agrees with the AFN that high priority, objectively urgent requests involve life-threatening, life-limiting or life-altering needs.[69]

67.   As noted in Canada's factum dated May 24, triaging self-identified urgent requests is not feasible, given the current volume of urgent requests and the 12-hour timeline.[70] The answer is not to create categories of urgency, thus adding a further layer of complexity and decision-making to request administration. Instead, ISC must be able to easily identify and prioritize objectively urgent requests.

68.   The Caring Society's position that any co-development must take place within 30 days, as opposed to 60 days, is disrespectful to the other parties who each have consultative processes they must follow. Rushing the co-development of urgency criteria, particularly without the assistance of a mediator, will not result in a good outcome. This is an important and complex issue that the parties need to get right.

69.   In support of a careful and negotiated interim approach to resolve this issue, Canada proposes the following definition of "urgent" requests that will ensure that truly urgent requests – those involving life-threatening, life-limiting, or life-altering needs - can be properly addressed as

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[68] Dr. Valerie Gideon Transcript at p 123, lines 15–20; AFN Factum, dated July 30, 2024 at para 20.
[69] AFN Factum, dated July 30, 2024 at para 23.
[70] AGC Factum, dated May 24, 2024 at paras 67 and 71.

proposed by the AFN. This is intended only as a starting point for discussion and co-development, which will allow the parties to work together to make any necessary adjustments to reflect the individual circumstances of First Nations across Canada:

> *The objective of this interim definition is to ensure that requests which involve the following circumstances are prioritized immediately:*
>
> *A First Nations child/children may require urgent product, service and/or support from Jordan's Principle related to, but not limited to:*
> * *end-of-life and/or palliative care;*
> * *suicidal ideation;*
> * *risk of irremediable harm;*
>
> *AND*
>
> *the products, services or supports requested through Jordan's Principle for First Nations children are linked to the child's specific urgent circumstances.*
>
> *Irremediable harm should be further defined in order to differentiate which circumstances or situations need to be prioritized as urgent and which should be reclassified as non-urgent. This would lead to a more comprehensive process for determination.*
>
> *Canada intends to work with the parties to co-develop the definition of urgent and non-urgent requests. Jordan's Principle urgent funding support is not intended to replace or divert from other specialized or skilled services available to First Nations children (i.e. emergency services, child and family welfare, social work, clinical care and ongoing income assistance).*

70.   This proposed interim definition is offered only for co-development purposes, towards resolving the backlog issues in the short term. Consistent with the principles of reconciliation, ISC will continue to work with the First Nations parties to find the best possible solutions to long-term administration of Jordan's Principle.

   3.   Timelines

71.   For non-urgent requests, ISC requested in its cross-motion that the timeline be changed to "without unreasonable delay." However, ISC acknowledges the AFN's preference that a fixed period of time be used instead. ISC is prepared to consider and discuss an alternative fixed period,

while maintaining its request that any fixed period that is ordered must be subject to change by way of agreement between ISC and the First Nations Parties.

72.   ISC agrees that timeliness and responsiveness are key values to be respected and implemented in Jordan's Principle administration, including for non-urgent requests. However, in determining timelines for non-urgent requests, the specifics and nature of requested products, supports and services should also be taken into consideration.

73.   Further, due to the complexity, scale and scope of group requests – whether urgent or non-urgent – ISC requires sufficient time to review proposals to avoid duplication or diversion of funding. This will ensure that funding through Jordan's Principle group requests remains prioritized for direct services and supports to First Nations children.

74.   ISC would be pleased to discuss these points and others in the context of a mediation, as well as long-term reform discussions. This willingness to sincerely consider other parties' concerns highlights the need for a cooperative approach between the parties, involving compromise and a genuine openness to addressing concerns as partners.

4.   Backlogs

75.   ISC has proposed a straight-forward, practical way in which to address the existing backlog while simultaneously allowing for mediation and long-term reforms to unfold. ISC maintains its position in its May 24, 2024, factum that the most appropriate temporary, interim approach to backlogs, with the least risk of unintended adverse consequences, are those initiatives identified by ISC. ISC's proposed solutions take into account the unique government operating environment, while at the same time recognizing the issues raised by the Caring Society, pending necessary long-

term reforms. In contrast, the Caring Society has filed thousands of pages of submissions and evidence regarding backlogs, however, these submissions do not include viable operational solutions and otherwise distract the parties from focusing on solutions to the issues at hand.

76.   ISC's initiatives are described in Canada's May 24 factum at paragraphs 37-39, and represent practical solutions that can be, and are already in the process of being, implemented in the interim. These operational initiatives, also described in ISC affidavit evidence, include:

    a. properly identifying 'urgent' requests;[71]

    b. reduction of the redirection from existing programs and services to Jordan's Principle;[72]

    c. ISC's call volume initiatives;[73]

    d.   surge team support;[74]

    e. technology initiatives.[75]

77.   In addition to these operational initiatives, ISC continues to learn from experience and, for example, make adjustments to the practices and procedures within its National Call Centre. Since the government operating environment differs significantly from that of a private entity, many of the solutions proposed by the Caring Society will simply not work and risk compounding the existing backlog, thereby contributing to the problems.

78.   While all parties may not fully agree with ISC's proposed solutions as described in its Notice of Cross-Motion and accompanying factums, the expectation is that ISC will work with all parties

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[71] Dr. Valerie Gideon Affidavit at paras 16–26.
[72] Dr. Valerie Gideon Affidavit at paras 27–28.
[73] Candice St-Aubin Affidavit at paras 49–56.
[74] Candice St-Aubin Affidavit at paras 60–62.
[75] Candice St-Aubin Affidavit at paras 66–68.

through JPOC, any mediation process, and, of course in long-term reform negotiations to find the best possible solutions to the issues.

5. Payment reimbursement

79.   In order to increase the efficiency of the reimbursement process, ISC must work directly with the First Nations Parties to find solutions. This will also require that First Nations support ISC in its efforts to ensure that the necessary information is obtained from requesters in a timely manner. This includes supporting invoices, and the establishment of practices and procedures to ensure that the necessary information can be provided and transmitted in a form that can be readily processed by Canada's financial systems.

80.   ISC does not favour imposing a specific timeline. As a reminder, with regard to both First Nations children and their families, it may be an option for ISC to make a direct payment for any requested product, service and support that may be required. With respect to First Nations service providers, ISC agrees that any long-term agreement on Jordan's Principle should address invoice processing issues, possibly by reducing reliance on federally-driven processes and increasing First Nations service providers' capacity.

6. Referrals

81.   For greater clarity, ISC is seeking orders confirming that when ISC is the government department of first contact, ISC may refer requestors to an already approved, existing and applicable Jordan's Principle group request being administered by a First Nation or First Nation community organization, or an applicable First Nation or First Nation community organization engaged in the administration of Jordan's Principle.[76] For requests deemed urgent (in accordance with objective

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[76] Dr. Valerie Gideon Affidavit at paras 27–28.

criteria to be co-developed by the parties), ISC would not refer requestors without first taking into account whether or not referral would enable faster access to the requested support. An ability to refer requestors in these circumstances would assist in reducing the backlog and would reduce much duplication, objectives that will ultimately benefit First Nations children.

82.   Allowing referrals in these specific circumstances would help ensure that First Nations children are receiving support at their community level, something that is in their best interests. Such referrals would assist in connecting First Nations children with local First Nations supports and reduce the existing backlog of requests.

83.   In reference to paragraphs 40-41 of the FNLC's factum dated July 16, 2024, ISC is not repeating previous arguments made before this Tribunal. ISC's requested orders do not pertain to intergovernmental or intragovernmental referrals, although Canada is pleased to note the Caring Society's view that "[r]eferrals to existing services are … consistent with the Tribunal's Order in 2017 CHRT 35".[77]

84.   Rather, the issue to be addressed is an unintended consequence of Back-to-Basics. ISC has observed requests being redirected to Jordan's Principle instead of existing applicable First Nations led services. This redirection of requests to Jordan's Principle and away from existing community based services has further contributed to the backlog and diverted First Nations children from community led supports, resulting in a duplication of services. The foregoing is an example of how positive intentions can have adverse unintended consequences (i.e. backlogs), and why ongoing dialogue consistent with reconciliation and focused on solving these types of issues remains the best approach moving forward.

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[77] Caring Society Factum, dated June 7, 2024 at para 25.

7. <u>An order in favour of First Nations and First Nations service providers administering or supporting Jordan's Principle requests would advance reconciliation</u>

85.   The uncontroverted evidence is that Canada has heard from First Nations service providers that they do not want to be bound by the timelines in 2017 CHRT 35, and are unwilling to assume responsibility for the administration of Jordan's Principle without the ability to redesign the service delivery model.[78]

86.   When negotiating contribution agreements and implementing a long-term vision, ISC seeks to reassure willing First Nations that they will not be held to the 2017 CHRT 35 timelines and will have the ability to redesign the service delivery model. This is a step towards self-determination, not an attempt to contract out of human rights obligations.[79] An order from this Tribunal, assuring willing First Nations of those points, would be a positive step towards allowing the necessary negotiations and advancing reconciliation.

PART III – ORDERS SOUGHT

87.   ISC seeks Tribunal-assisted mediation to discuss and collaborate with all parties on a potential consent order.

88.   Absent mediation, or in the meantime, and in support of reconciliation, to support the wellbeing of First Nations children, and to respect First Nations self-determination, ISC seeks the following orders from the Tribunal. These orders are designed to reduce the backlog, ensure that urgent requests can be properly identified and prioritized, facilitate requestors' access to applicable community-based supports that are better suited to determining First Nations children's needs,

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[78] Candice St-Aubin Affidavit at para 80.
[79] Caring Society Factum, dated August 8, 2024 at para 53.

facilitate greater First Nations' control over Jordan's Principle moving forward and provide ISC with needed flexibility to address operational challenges as they arise. ISC requests:

a. An order requiring that Canada, the First Nations Parties and the Caring Society seek to co-develop objective criteria, within sixty (60) days of the order, to be used to identify urgent Jordan's Principle requests, or alternatively order interim relief clarifying the Panel's previous orders on urgency and providing a pathway for the parties to engage on developing objective criteria for urgency, as proposed by the AFN.

b. An order extending the timelines set out in the Tribunal's order in 2017 CHRT 35, subparagraph 135(2)(A)(ii) and (ii.1):

    i. for individual requests:

        1. from 12 hours to 48 hours for urgent individual requests, or such other timeline as Canada and the First Nations Parties may from time to time agree;

        2. from 48 hours to without unreasonable delay for all other individual requests, or such other timeline as Canada and the First Nations Parties may from time to time agree; and

    ii. for group requests:

        1. from 48 hours to one week for urgent group requests, or such other timeline as Canada and the First Nations Parties may from time to time agree; and

2. from one week to without unreasonable delay for all other group requests, or such other timeline as Canada and the First Nations Parties may from time to time agree;

or alternatively order other interim relief in relation to adjusting the timelines for non-urgent Jordan's Principle requests and providing a pathway for the parties to engage on timelines, as requested by the AFN.

c. An order that, when ISC is the government department of first contact, Canada may refer requestors:

i. to an existing and applicable Jordan's Principle group request that has already been approved and that is being administered by a First Nation or First Nation community organization pursuant to a contribution agreement with Canada; or

ii. to an applicable First Nation or First Nation community organization engaged in the administration of Jordan's Principle pursuant to a contribution agreement with Canada;

iii. however, where a request is deemed urgent in accordance with the objective criteria identified by Canada, the First Nations Parties and the Caring Society, ISC will first take into account whether or not referring the requestor will enable faster access to the requested product, service or support.

d. For greater clarity, an order that where Canada enters into a contribution agreement with any First Nation or First Nation community organization to administer Jordan's Principle, whether through a group request or otherwise, that First Nation
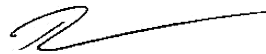
or First Nation community organization is not bound by the procedural terms of any of the Tribunal's Jordan's Principle orders that are directed at Canada, as supported by the AFN.

e. An order dismissing the Caring Society's non-compliance motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Winnipeg, in the Province of Manitoba, this 29th day of August, 2024.

Deputy Attorney General of Canada

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PART IV – LIST OF AUTHORITIES

	Statutes and Regulations
1.	*Federal Courts Act*, RSC, 1985, c F-7, ss 18
2.	*Privacy Act*, RSC, 1985, c P-21
3.	*United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14.
	Case Law
4.	*Dickson v Vuntut Gwitchin First Nation*, 2024 SCC 10
5.	*Fraser v. Canada (Attorney General)*, 2020 SCC 28
6.	*First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2017 CHRT 14
7.	*First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2017 CHRT 35
8.	*First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2020 CHRT 20
9.	*First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2020 CHRT 36
10.	*First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2021 CHRT 41
11.	*First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2023 CHRT 44
12.	*Ontario (Attorney General) v. G.*, 2020 SCC 38
	Online Materials
13.	Assembly of Manitoba Chiefs, Press Release "AMC and Canada Sign Historic Memorandum of Understanding on Jordan's Principle Implementation" (27 June 2024), accessed online: <https://manitobachiefs.com/press_releases/amc-and-canada-sign-historic-mou-on-jp-implementation/>
14.	Assembly of First Nations, Press Release "Assembly of First Nations (AFN) Launches National Dialogue with Chiefs on Historic Agreement on Long-Term Reform of the First Nations Child and Family Services Program" (31 July 2024),

	accessed online < https://afn.ca/all-news/press-releases/assembly-of-first-nations-afn-launches-national-dialogue-with-chiefs-on-historic-agreement-on-long-term-reform-of-the-first-nations-child-and-family-services-program-2/>
15.	CIRNAC website: First Nations (rcaanc-cirnac.gc.ca)
16.	ISC's Non-Insured Health Benefits for First Nations and Inuit: Dental Benefits Guide for First Nations and Inuit: Non-Insured Health Benefits program (sac-isc.gc.ca)
17.	ISC's Non-Insured Health Benefits for First Nations and Inuit: Vision care benefits for First Nations and Inuit (sac-isc.gc.ca)
18.	ISC's Non-Insured Health Benefits for First Nations and Inuit: Guide to mental health counselling benefits for First Nations and Inuit (sac-isc.gc.ca)
19.	ISC's Non-Insured Health Benefits for First Nations and Inuit: Medical supplies and equipment benefits for First Nations and Inuit (sac-isc.gc.ca)
20.	ISC's Non-Insured Health Benefits for First Nations and Inuit: Medical transportation benefits for First Nations and Inuit (sac-isc.gc.ca)
21.	Non-Insured Health Benefits program updates (sac-isc.gc.ca)

PART V – LIST OF APPENDICES

	Appendices
1.	Transcript of Cross-Examination of Valerie Gideon dated April 2, 2024
2.	Transcript of Cross-Examination of Candice St Aubin dated April 3, 2024 (morning session)
3.	Transcript of Cross-Examination of Candice St Aubin dated April 3, 2024 (afternoon session)
4.	Unreported Reasons in *Moushoom v Canada (Attorney General)*, June 26, 2024

1

Tribunal File No. T-1340/7008
CANADIAN HUMAN RIGHTS TRIBUNAL
BETWEEN:
FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA
and ASSEMBLY OF FIRST NATIONS
Complainants
- and -
CANADIAN HUMAN RIGHTS COMMISSION
Commission
- and -
ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous Services Canada)
Respondent
- and -
CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA
and NISHNAWBE ASKI NATION
Interested Parties

---This is a Motion Hearing, taken in the above-
noted matter via Zoom videoconference, on the 2nd
day of April, 2024.

B E F O R E: Sophie Marchildon, Chair
Edward Lustig, Member

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 4    & Kevin Droz, Esq.            & Caring Society
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11    & Brian Smith, Esq.
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21                               Nishnawbe Aski Nation
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24
25       TRANSCRIBED BY:  Linda Blue, Transcriptionist
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1   I N D E X

2

3   DESCRIPTION   PAGE NUMBER

4   DR. VALERIE GIDEON, AFFIRMED

5   EXAMINATION BY UNIDENTIFIED SPEAKER

12

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14

15   **The following list of undertakings is meant as a

16   guide only for the assistance of counsel and no

17   other purpose.**

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19   INDEX OF UNDERTAKINGS

20   The questions/requests undertaken are noted by U/T

21   and appear on the following pages: 55/9, 57/8,

22   143/15.

23

24

25

1   I N D E X   O F   E X H I B I T S

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25   Job No. ON6657378

1   TRANSCRIPTIONIST'S NOTE: Due to poor audio quality,

2   this transcript contains more [indiscernible]

3   annotations than would be usual.

4   ---UPON COMMENCING:

5   MS. DUBOIS: Today is April 2nd,

6   2024. We are hearing the matter of the First

7   Nations Child and Family Caring Society of Canada

8   and the Assembly of First Nations and the Canadian

9   Human Rights Commission v. the Attorney General of

10   Canada, with the interested parties: Chiefs of

11   Ontario, Nishnawbe Aski Nation, and Amnesty

12   International. And we are here for the motion

13   hearing on the [indiscernible].

14   UNIDENTIFIED SPEAKER: Okay

15   [indiscernible] witnesses --

16   MS. DUBOIS: And can I call for

17   appearances, please, starting with the complainants?

18   MR. TAYLOR: Good morning. It is

19   David Taylor, Sarah Clarke, Kevin Droz, Family

20   Caring Society. We are joined this morning by Dr.

21   Cindy Blackstock [indiscernible].

22   MS. ANDERSON: Good morning. Dayna

23   Anderson, Kevin Staska, and Samantha Gergely

24   appearing for the Attorney General.

25   MR. WUTTKE: Good morning. It's

1   Stewart Wuttke and Lacey Kassis for the Assembly of

2   First Nations.

3   MS. DUBOIS: And for the respondents?

4   THE CHAIR: No, the --

5   MS. ANDERSON: It's the Attorney

6   General.

7   THE CHAIR: [Indiscernible] good

8   morning. It's --

9   MS. WALSH: Sorry. Sorry to

10   interrupt, Member Marchildon.

11   THE CHAIR: Yes?

12   MS. WALSH: It's Jessica Walsh and

13   Brian Smith for the Canadian Human Rights

14   Commission.

15   MR. BASKATAWANG: And I guess to

16   continue, Darian Baskatawang for the Chiefs of

17   Ontario.

18   MS. DUBOIS: I'm sorry, there is

19   feedback --

20   THE CHAIR: Yes.

21   MS. DUBOIS: It always tests out

22   better.

23   THE CHAIR: We also have some

24   [indiscernible] Ms. Dubois [indiscernible] we also

25   have some [indiscernible] while we are resolving

1   this, other counsel that are present can just go

2   ahead and state their names. Thank you.

3   MR. HYER: Good morning. It's

4   Michael Hyer for the Nishnawbe Aski Nation.

5   THE CHAIR: Anybody else? Okay. We

6   will try to resolve the echo. That might be

7   challenging, especially for the affiants.

8   MS. DUBOIS: I think that is better.

9   No, it's not. It's worse.

10   ---DISCUSSION RE TECHNICAL ISSUES

11   THE CHAIR: Good morning again. I

12   think it seems a little better. Do you think -- I

13   don't hear a second echo. Before we begin, we would

14   like to acknowledge that the tribunal is holding

15   this hearing on the traditional and unceded

16   territory of the Algonquin Peoples, so we honour

17   them.

18   We are proceeding in the Caring

19   Society's motion on Jordan's Principles

20   implementation. And today we will hear from

21   affiants who have provided firm declarations. And

22   we would like to pause and tell the parties that we

23   appreciate the motion but also the cross-motion. So

24   the motion brings important issues before us and the

25   cross-motion shows a real effort to bring possible

1 solutions forward. So we are here to listen. And I

2 personally have a lot of questions and -- but if the

3 affiants need any breaks, feel free to ask.

4   Because this is a tribunal process,

5 we would like to re-affirm the affiants if nobody

6 objects. So we are ready to begin if you are. And

7 I know that there is a clerical point that needs to

8 be addressed, and I would also ask counsel to lead

9 the affiant in general questions for introduction

10 and then we will go from there. And we will have

11 Ms. Dubois affirm the applicant. Thank you.

12   DR. VALERIE GIDEON, AFFIRMED.

13   THE CHAIR: Thank you, Dr. Gideon,

14 for being here in your busy schedule. If at any

15 point you need a break, just let me know. I'm here

16 to make sure that you are -- this is not traumatic

17 for you, so just tell me to let us -- let me know

18 and we will take a break. So I will ask counsel to

19 start with the clerical clarification.

20   UNIDENTIFIED SPEAKER: So the

21 clerical issue is in the affidavit of Candice St-

22 Aubin, so on her affidavit.

23   THE CHAIR: Oh, yes.

24   UNIDENTIFIED SPEAKER: So we would

25 need a chance to deal with that tomorrow.

1   THE CHAIR: Oh, perfect. Thank you.

2   I don't know who can ask general questions, just to

3   lead Dr. Gideon.

4   UNIDENTIFIED SPEAKER: Sure, just --

5   [Indiscernible].

6   THE CHAIR: Pardon me?

7   UNIDENTIFIED SPEAKER: Just be for

8   the [indiscernible].

9   THE CHAIR: Yes, yes. Thank you.

10   EXAMINATION BY UNIDENTIFIED SPEAKER:

11   Q. Good morning, Dr. Gideon. Can

12   you please cover your [indiscernible].

13   A. I'm deputy minister of Crown-

14   Indigenous Relations and Northern Affairs. I'm also

15   the president of FedNor --

16   Q. Okay.

17   A. -- which is a regional economic

18   development agency for Northern Ontario.

19   Q. And prior to that, what was your

20   occupation?

21   A. I was the associate deputy

22   minister for Indigenous Services Canada from

23   September 2020 until November 25, 2023. And I was

24   the president of FedNor since October of 2022.

25   Q. Okay. And can you speak just a

1   little bit to your involvement with Jordan's

2   Principle?

3   A. My involvement with Jordan's

4   Principle I think substantively began in 2017 when I

5   returned from my second maternity leave. I was the

6   assistant deputy minister of regional operations at

7   the First Nations and Inuit health branch, which was

8   part of Health Canada, and then transitioned into

9   Indigenous Services Canada when it was established.

10   I continued in the First Nations and Inuit health

11   branch until September of 2020, when I became the

12   associate deputy minister. So I would say between

13   2017 and November 2023 in my various

14   responsibilities I did touch upon Jordan's Principle

15   at various points.

16   UNIDENTIFIED SPEAKER: Okay. Thank

17   you very much.

18   THE CHAIR: Thank you. Yes. Are you

19   ready?

20   MR. TAYLOR: I'm ready. Thanks,

21   Member Marchildon. I appreciate it.

22   THE CHAIR: Thank you.

23   EXAMINATION BY MR. TAYLOR:

24   Q. Good morning, Dr. Gideon.

25   A. Good morning.

1   Q.   So my friend has covered off my

2   first couple of questions. But just to confirm,

3   that since November 25th, you've now been deputy

4   minister [indiscernible] Crown-Indigenous Relations

5   in Northern Affairs Canada?

6   A.   That's correct.

7   Q.   And I'm right in understanding

8   then that as a result you no longer attend meetings

9   of the Jordon's Principle Operations Committee?

10   A.   Correct.

11   Q.   And you also no longer attend

12   meetings of the Jordan's Principle Action Table?

13   A.   That's correct.

14   Q.   Do you recall the last meeting

15   you attended of either JPOC or JPAT?

16   A.   I don't.

17   Q.   And you'd also no longer attend

18   meetings of the Expert Advisory Committee that was

19   provided for in this Tribunal's March 2022 consent

20   order?

21   A.   [Indiscernible].

22   Q.   And you're no longer a member of

23   the committee dealing with Indigenous cultural

24   competency training for ISC executives and staff.

25   You talk about that at paragraph 34 of the Tri-Chair

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 1          Committee.

 2                         A.   That's correct.

 3                         Q.   And your successor as associate

 4     deputy minister at ISC is that Michelle Kovacevic?

 5                         A.   That's correct.

 6                         Q.   And can you confirm that prior to

 7     becoming associate deputy minister at ISC she was

 8     the senior assistant deputy minister at the

 9     department of finance, or a senior assistant

10     deputy --

11                         A.   I would say 'a'.

12                         Q.   [Indiscernible] of course.  Now,

13     just in paragraph 4 of your affidavit, you talk

14     about having affirmed affidavits in this proceeding

15     on April 15, 2019 and April 30, 2020.  Do you

16     remember affirming any other affidavits in this

17     proceeding?  It's the second line there.

18                         A.   Sorry, do -- do I recall --

19                         Q.   Sorry, do you recall having

20     affirmed other affidavits in this proceeding?

21                         A.   I have affirmed other affidavits

22     in this proceeding, yes.

23                         Q.   This is not a memory test here.

24                         A.   Yes, sorry, yeah.

25                         Q.   Let's run through them, at least
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1   as I understand them. So there was a May 24, 2018

2   affidavit that dealt with Jordan's Principle?

3   A.   Yes.

4   Q.   And that was a reporting

5   affidavit. And there is a May 24, 2018 affidavit on

6   mental health, also a reporting --

7   A.   Yes.

8   Q.   -- affidavit. And a June 21,

9   2018 affidavit that was in reply on that reporting

10   route and it's -- do you remember that?

11   A.   I remember that, yes.

12   Q.   And a December 21, 2018 affidavit

13   about essentially the [indiscernible] on First

14   Nations children without Indian Act status that's --

15   A.   Right.

16   Q.   -- the SJ's case.

17   A.   Yes.

18   Q.   March 4th, 2022 on the consent

19   measures that [indiscernible] slowdown of the long-

20   term report of the [indiscernible].

21   A.   Yes. Yeah.

22   Q.   July 6, 2022, supporting Canada

23   and the FN's joint motion on the final settlement

24   agreement about compensation?

25   A.   Uh-hmm.

1   Q.   And then June 30, 2023,

2   supporting Canada's, the FN's, and Caring Society's

3   joint motion on approval of the compensation

4   settlement?

5   A.   Yes.

6   Q.   And so you remember those seven

7   additional affidavits?

8   A.   I have not re-read them all, but

9   yes.

10   Q.   No, no, that's fine. And is

11   there a reason that those other affidavits weren't

12   noted in your affidavit today in March --

13   A.   No particular reason.

14   Q.   Paragraph four of your affidavit

15   says that (as read):

16   "This affidavit is intended to

17   supplement my earlier evidence."

18   Is it fair for me to say that it's

19   supplementing those seven affidavits as well?

20   A.   Some of them are less relevant.

21   Q.   Right. But they've all kind of

22   stand as your pantheon of evidence of --

23   A.   My experience.

24   Q.   -- the tribunal.

25   A.   Yes.

1   Q.   I should just say there's a small

2   housekeeping matter halfway [indiscernible] you

3   should have two volumes in front of you. One is a

4   brief that's titled "FNCFCSE exhibits dated April

5   2, 2024, Cross-Examination of Valerie Gideon." And

6   the other one is a cerlox -- it's got a covered

7   page with "IFSD" on it and "Data Assessment and

8   Framing of Analysis of Substantive Equality to the

9   Application of Jordan's Principle."

10   I've discussed this with my friend,

11   just for Member Marchildon's benefit, Member

12   Lustig's benefit, the version of the IFSD data

13   assessment from 2022 that was exhibited in Dr.

14   Blackstock's January affidavit was unfortunately a

15   miss-version, it's the draft of the analysis, and so

16   we've provided this, which is the final from IFSD's

17   website. I'll have a few questions for Dr. Gideon

18   about it, but I propose when we get to the end,

19   we'll mark it, and it'll be a tribunal record that

20   way, just for convenience to everybody and so we

21   have the right -- the best form of the evidence in

22   front of the tribunal.

23   So if you take the other -- the one

24   with the tabs, the other brief, so tab 'A' in this,

25   we -- do you recognize this as a printout, ISC's

1   Jordan's Principle website?

2   A. Yes, I do.

3   Q. And this looks similar to the

4   site when you were -- as it was when you were

5   associate deputy minister at ISC?

6   A. I believe so, yes.

7   Q. And if you just turn over to page

8   4, and unfortunately there are no page numbers, but

9   it is the one with the box in the top left-hand

10   there and the 4.48 million.

11   A. Yes.

12   Q. So this figure notes the number

13   of requests approved between July 2016 and January

14   31, 2024 as being 4.48 million, product services and

15   supports. And you understand that's accurate?

16   A. Yes, that's in the

17   [indiscernible].

18   Q. Yeah. And that's, in fairness to

19   you, that's what you say at paragraph six --

20   A.   Uh-hmm.

21   Q. -- of your affidavit as well.

22   You say (as read):

23   "Between July 2016 and January

24   31, 2024, more than 4.4 million

25   product, services, and supports have

1   been approved."

2   So a little bit closer to 4.5, that's

3   fair?

4   A. Yes.

5   Q. Now, I just have a few questions

6   about the figures in --

7   THE CHAIR: I'm sorry, just to

8   interrupt, I was wondering if we have an electronic

9   version of this that could be sent to Member Lustig.

10   MR. TAYLOR: I should say, sorry, the

11   -- my colleague, Mr. Droz, circulated about 50 PDF

12   [indiscernible] documents, so Ms. Dubois was on

13   that --

14   THE CHAIR: Okay.

15   MR. TAYLOR: So I'm hoping that made

16   its way to Member Lustig, but if not --

17   THE CHAIR: Okay.

18   MR. TAYLOR: -- I could pause and --

19   MS. DUBOIS: I will forward that.

20   THE CHAIR: Member Lustig, do you

21   have it?

22   MR. LUSTIG: Yes, I do.

23   THE CHAIR: Okay. Thank you. That's

24   all I wanted to know. Thank you.

25   MR. TAYLOR: Thank you. So we tried

 1   to save a few trees, and so there is just a few for

 2   the [indiscernible].

 3   BY MR. TAYLOR:

 4   Q. So there is a table under

 5   paragraph six in your affidavit.

 6   A. Yeah.

 7   Q. And it's titled "Growth in

 8   Request Volume" And so I just wanted to check a few

 9   things on the figures. So if you flip to tab 'B' in

10   that exhibit brief, so we'll just -- kind of for

11   this portion, if you can have the table and then tab

12   'B'.

13   And this is an excerpt from -- in the

14   records, it's Exhibit 3 to Dr. Blackstock's first

15   affidavit of this motion, and it's analysis of

16   Jordan's Principle administrative data, data tables.

17   You would agree this is colloquially referred to as

18   the deep dive? So the first table that we have

19   here, which is Table 1 -- sorry, my colleague

20   reminds me if you could just say, yes, that's

21   colloquially referred to --

22   A. Yes.

23   Q. Yeah. Sorry about that, just for

24   the benefit of the transcriptionist. Now, in the

25   first table, it's title "Region Approved Requests by

1   Request-Type, Region, and Fiscal Year." Now, do you

2   see -- if you just kind of have both tables

3   together, do you see that in the first line of your

4   affidavit table it says that there were 14,765

5   requests approved, representing 140,332 project --

6   products, that that number is the same as the one in

7   the deep-dive table?

8   A.   Yes.

9   Q.   Now, for the next three, '19-'20,

10   '20-'21, and '21-'22, which is all that the deep-

11   dive table covers, do you agree that just looking

12   between the two it's slightly lower in your

13   affidavit than each of the three --

14   A.   In my affidavit, it's slightly

15   lower, yes. Correct.

16   Q.   And do you know why that would

17   be?

18   A.   Can't see it, but I'd have to

19   look at all the notations. I can't see offhand why

20   the numbers would be slightly lower.

21   Q.   And in your view, I'm not asking

22   you to kind of dig into anything you don't have with

23   you, so between the deep dive and the affidavit and

24   how it was produced, which of the two versions

25   should the tribunal take as being authoritative?

1   A.   Again, I think I'd have to see

2   what the difference is so that I would be able to

3   answer that question authoritatively.

4   Q.   So you're not sure.

5   A.   Sometimes it depends on the date

6   of extraction out of the GC Case system. They're

7   noted here under quick note eight, but they're not

8   noted in my affidavit, so I'd have to check that.

9   Q.   And would it be fair to say

10   though that your affidavit would have been extracted

11   more recently?

12   A.   That's probably fair to say.

13   Q.   And so would the more recent

14   number be the more accurate one in your view?

15   A.   [Indiscernible].

16   Q.   And just not to try -- I'll try

17   not to belabour this, but just looking at Table 5,

18   which is the next one over, and that's --

19   A.   Actually, David, if you don't

20   mind --

21   Q.   Yeah.

22   A.   -- I am just taking a quick look

23   here, that the -- you're pointing me to the

24   individual requests, or you're pointing me to --

25   Q.   Oh, I'm sorry --

1   A. -- the individual

2   [indiscernible] --

3   Q. -- the total at the bottom, yes.

4   A. -- 27, yes.

5   Q. So just for the benefit of

6   viewers at home, so 2018-'19 is 140,332, which is

7   the same.

8   A. Uh-hmm.

9   Q. But then just taking '19-'20 as

10   an example, it's 350,078 in the deep-dive table, and

11   the amount of 347,616 in your affidavit chart.

12   A. Mmm.

13   Q. Okay. Again, not to belabour it,

14   but the other -- the the next two tables, which are

15   Table 5 and Table 18, and that's back in the Exhibit

16   3, but Table 5 is approved requests, and this is

17   broken down to request type. But just looking at

18   the total at the bottom, would you agree with me

19   then, again, that the total for '18-'19 is the same,

20   14,765, but we have a slightly lower totals for '19-

21   '20 through '21-'22 than what is in your affidavit?

22   A. Let me check. And you're on

23   Table 18?

24   Q. Table 5 for now.

25   A. Oh, no, Table 5. Oh, I'm

```
 1              sorry, yeah.

 2                         Q.   Just and if you look in your

 3         table, that's the -- kind of the first line of

 4         figures provided in that third column, which is the

 5         -- I take it that's the number of requests that were

 6         reviewed?

 7                         A.   Sorry, you'll have to repeat.

 8         I'm trying to follow along --

 9                         Q.   No, it's all right.  I'll --

10         there is a lot of numbers here.

11                         A.   Yes.

12                         Q.   So in your affidavit, you have

13         the total number of requests approved in the middle-

14         ish column here is 14,765.  That was -- that's your

15         affidavit's evidence of the total number of requests

16         approved in '18-'19.

17                         A.   Yes.

18                         Q.   And then in the deep-dive table,

19         that number is the same in Table 5.  When you look

20         under '18-'19, all the way at the bottom, the total

21         is 14,765?

22                         A.   14,765, yes.

23                         Q.   Now, if we go down to the next

24         row, 24,590 is the number in your affidavit, but

25         then in the deep dive it's 24,588 [indiscernible]
```

1   that's only two, so it's pretty close.

2   A.   Yes.

3   Q.   And then 34,278 in your affidavit

4   versus 34,299 in the table. And then in your

5   affidavit, 51,144, and then in the table, 51,192.

6   So, again, figures are relatively close.

7   A.   Quite, quite close.

8   Q.   But the affidavit is a bit lower.

9   So just to confirm again that you agree that the --

10   there is a discrepancy in those figures.

11   A.   There is a small discrepancy,

12   yes.

13   Q.   And then just on Table 18, which

14   is the approved funds, and that's the last kind of

15   line of text, if you will, in that column we've been

16   looking at in your affidavit, just if you can take a

17   look and let me know if you agree that, again,

18   slightly lower in your affidavit in that total line

19   at the bottom of Table 18 than what is in the deep

20   dive one.

21   A.   [Indiscernible].

22   Q.   So [indiscernible].

23   A.   There is a small discrepancy, or

24   not a discrepancy, but difference.

25   Q.   And do you know, was the same

1   source used for the deep dive as was used for this

2   table in your affidavit?

3   A.   I don't -- I can't recall.

4   Q.   Did you prepare this table

5   yourself then?

6   A.   I didn't.

7   Q.   And do you know who did?

8   A.   I think [indiscernible] I don't

9   have access to that data.

10   Q.   In your new job, right, of

11   course.

12   A.   That's correct.

13   Q.   I'm sure that's good IT

14   information management policy, et cetera. Okay. So

15   you can set aside the exhibit brief there for now.

16   I'll move on to another topic. Okay. So I'm just

17   looking -- flipping back at your affidavit. So

18   paragraph 7 of your affidavit is just over -- 7

19   starts on page 3, which goes over onto page 4. No,

20   I'm sorry, it's on page 3.

21   A.   Uh-hmm.

22   Q.   So at the start of the paragraph,

23   you say (as read):

24   "The growth volume of requests

25   may be related to the impacts during

1   and after the Covid-19 pandemic,

2   increases in the cost of living, and

3   public safety emergencies such as

4   wildfires."

5   And then over the page, you talked

6   about the party's awareness of raising efforts. And

7   I'm going to have more questions for you in a bit on

8   back-to-basics, but would you include the success of

9   for back-to-basic measures as a factor leading to

10   increased number of cases?

11   A. I would.

12   Q. And when you talk about the

13   increase here at paragraph seven being related to

14   Covid impacts, cost of living, public safety

15   emergencies, is that -- is there any specific

16   internal analysis that that's based on?

17   A. I am sure that that relates to

18   what they saw in the deep dives, as well as the

19   experience that regional focal points would be

20   reporting in their regular check-ins with the

21   department, the headquarter chief. And I would say

22   that, you know, being -- just to add to the Covid

23   impacts, it's also the catchup with respect to

24   education, healthcare services, things that were put

25   on hold during Covid. So we would know that that's

1   also something that's been reported in national news

2   as a phenomenon across the country, not just

3   specific to First Nations [indiscernible].

4   Q.   So is it fair to say that the

5   statement at paragraph seven is -- essentially, it's

6   a reflection of the general sense within this --

7   senior management said about what is driving demand?

8   A.   Correct.

9   Q.   Now, in the Covid -- on the Covid

10   factor, you noted essentially a distinction between

11   -- maybe I'll call it public health-related Covid

12   concerns and then, you know, maybe social

13   disadvantage that's driven by Covid, whether it's a

14   gap in services. Is that a fair characterization of

15   your remark there?

16   A.   Sorry, distinguishing by public

17   health --

18   Q.   Sure. So more, you know,

19   isolation related or, you know, there is a

20   situation, you know, because someone's got Covid in

21   the home, as opposed to, you know, service

22   interruptions that were, you know [indiscernible]

23   during Covid?

24   A.   I don't recall seeing a lot of,

25   you know, public health-related requests relating to

1   Covid per se, but I would say things, like, you

2   know, the medical transportation and the rise in

3   medical transportation would be an indication of

4   people that are now able to access regular

5   appointments, screening services, and things that

6   they were not able to access in the same way during

7   Covid.

8   Q.   Right.   And I think that where

9   I'm going to go next, just the second book, the IFSD

10   report, seems to me, and this is a little bit of

11   sort of editorializing, so you let me know if you

12   agree, but I think IFSD would agree with that.   So

13   if we go to 63, at least -- so when I say "agree

14   with that," I mean the kind of more limited nature

15   of the public health-related requests.   And in the

16   bottom of 63 here, there is a heading that says

17   "Figure 57."

18   A.   Yes.

19   Q.   And then the text under that is

20   (as read):

21   "In 2019-'20, roughly 1 percent

22   of requests reflect the Covid-19

23   [indiscernible] approximately 10

24   percent in 2020-2021."

25   So you'd agree where that, about that

1   and kind of 1 to 10 percent, it would have been kind

2   of Covid-19 flagged?

3   A.   I mean, I didn't look at their

4   data analysis that's out, but I -- it sounds -- it

5   -- it looks like it's aligned with my experience,

6   not just in the context of [indiscernible] but

7   [indiscernible] Covid-19 response for Indigenous

8   Services Canada. We did have separate sources of

9   funds that were available on a needs basis for

10   public health for First Nations across the country,

11   as well as for other [indiscernible] but they're not

12   public health specific.

13   Q.   And so that would be an example

14   then where, you know, the presence of the government

15   [indiscernible] Jordon's Principle take centre stage

16   in terms of responding to that [indiscernible]

17   A.   I would say that the government

18   -- if the government had not been as responsive with

19   respect to those measures, we likely would have seen

20   more pressure on Jordan's Principle.

21   Q.   Have you reviewed, and I know I

22   saw you flipping through it before we started today,

23   but have you reviewed IFSD's data analysis more

24   generally?

25   A.   I -- I remember reviewing it in

```
 1        the context of our negotiations table at the time

 2        when it was presented.

 3                      Q.   And would you have reviewed it,

 4        aside from that, in your role as associate deputy at

 5        ISC, or is that [indiscernible] the Jordan's

 6        Principle team taking that on?

 7                      A.   I would have reviewed it in the

 8        context of my role in the negotiations.

 9                      Q.   Okay.  So just looking at, sorry,

10        pages 21 and 22 of the report, couple of questions

11        for you about some analysis that they've done here.

12        So if you look -- I'm just going to put two

13        statements that they made to you and and just see if

14        you agree.  Page 21, in the -- call it the first

15        full paragraph, the second sentence here is (as

16        read):

17                           "Counting how many children

18                        receive approved requests for

19                        products or services does not explain

20                        why the requests were being made and

21                        what gaps/shortfalls Jordan's

22                        Principle is covering."

23                        Do you agree with that?

24                      A.   If you don't mind, I'm just going

25        to re-read it myself.
```

1   Q.   Yeah.   Please take your time.

2   A.   Absolutely. It would only be one

3   element, but it would give us that insight. It's

4   not a post analysis.

5   Q.   And then over the page on 22, in

6   the second paragraph, which is, again, the first

7   full paragraph, IFSD says (as read):

8   "What is known about Jordan's

9   Principle is that requests and

10   expenditures are increasing. What is

11   known" — [the following sentence] — "

12   is that there are shortfalls. Where

13   and why those shortfalls exist should

14   be better understood to development

15   an approach to respond to and correct

16   matters substantive equality that

17   Jordan's Principle is intended to

18   address."

19   Would you agree with that as well?

20   A.   I agree.

21   Q.   Do you agree that volume alone

22   doesn't help us determine causes underlying the

23   change of the volume?

24   A.   Correct.

25   Q.   And so would you agree that there

1   is more to the story then, that Covid-19, cost of

2   living, public safety emergencies, and the success

3   of back-to-basics?

4   A.   There could be other factors.

5   Those are the ones that stand out.

6   Q.   And you'd agree that more work

7   needs to be done to better understand the increase

8   in volume?

9   A.   I agree.

10   Q.   We're going to talk about

11   backlogs in a minute, but I just want to ask you a

12   few questions about paragraphs 48 to 50 of your

13   affidavit. This is kind of in the more operational

14   section of it, so how [indiscernible] mechanics of

15   how Jordan's Principle is working now in terms of

16   approvals. So paragraph 48, I think it's fair to

17   say you talk about there's thresholds, essentially,

18   for what focal points could approve. And on

19   individual requests, they could make approvals up to

20   100,000, and group requests up to half a million; is

21   that right?

22   A.   Correct.

23   Q.   And then 49 talks about past

24   that, so $101,000, $501,000 and up, goes to

25   something called the National Review Team, that's

1   right?

2   A.   Correct.

3   Q.   And then 50 talks about who is on

4   the National Review Team, which is, you know,

5   regional directors, regional executives, and

6   regional directors general. And so the question I

7   have is, where a focal point had something of 101 --

8   or $101,000 or $501,000, it exceeded the threshold,

9   can they go to their own regional director, you

10   know, regional director general, regional executive

11   for approval, or does it have to go to this

12   Committee [indiscernible].

13   A.   So I'd have to -- I would -- I

14   would say that wherever possible, the direct

15   relationship between the focal point and the

16   regional office would be encouraged, but it would

17   also depend on availability, or in that particular

18   context.

19   Q.   And when we're talking about this

20   team, because I've also seen it referred to as the

21   National Review Committee, is it multiple people who

22   have to get together to consider these above

23   threshold requests, or is it, like, the case that,

24   you know, one level of delegation at the focal point

25   and then at the executive level you could one

1   decision-maker making the decision, or do they have

2   to gather at [indiscernible]

3   A.   So these -- the delegation of

4   escalation sort of occurred in the context of my

5   transition, so I would encourage that question to be

6   posted to Candice St-Aubin to make sure that I'm not

7   misrepresenting the operations.

8   Q.   That's fair. I'll put in

9   [indiscernible], thank you. So these thresholds

10   would have all been introduced in that kind of Q3 --

11   A.   We had a threshold for the -- the

12   value of group requests going to the regional

13   executive within that region, so that existed years

14   prior. I believe it is, like, actually in one of my

15   affidavits from either 2018-2019. I think the

16   difference is that the escalation decisions were

17   being made by national senior managers, so either

18   the assistant deputy minister of regional

19   operations, which was my first position when I

20   became involved in Jordan's Principle

21   implementation, and I had created that model, to --

22   or a delegated authority that could be the chief

23   nursing officer, the executive director of Jordan's

24   Principle.

25   But because of the volume increases,

1   there was a decision encouraged and made to have

2   more senior decision-makers available to render

3   those escalation decisions and then those were then

4   -- those then involved regional executives. But

5   regional executives were involved sooner than that

6   because they were also involved in decisions with

7   respect to the eligibility of individuals and

8   requests. So there was some forms of delegations

9   that were made in an incremental measure until this

10   approach came in, which is why I'd prefer that

11   Candace answer the details of those because they

12   have evolved over time and I have not been connected

13   enough to the operational details to be able to

14   [indiscernible] a hundred percent.

15   Q. No, and that's fair enough. But

16   I guess -- oh, just to kind of pause and go back on

17   one piece of what you were noting, so you used the

18   term "escalation." And so is it a fair statement to

19   say that one of the reasons, or even a main reason,

20   that somebody might have escalated in the early

21   years of Jordan's Principle was a focal point was

22   looking at it and saying, I'm going to recommend a

23   denial, and focal points didn't have denial

24   authority so that would go up to be looked at; is

25   that right?

1   A.   We removed it because we were

2   concerned that they -- the focal points level of

3   delegation was not senior enough to be able to make

4   a decision that could potentially have harmful

5   impacts to the child.

6   Q.   And these escalations would be,

7   to the extent that escalation is the right --

8   actually, it is, it's paragraph 49, you use the word

9   "escalate," but these escalations would be a bit

10   different in that these would be approvals. So the

11   focal point is looking at this and saying, I'd like

12   to approve it --

13   A.   Correct.

14   Q.   -- and would be going up for

15   confirmation by [indiscernible].

16   A.   That's right. That's right.

17   Because of the financial value.

18   Q.   And is that financial value

19   decision about kind of where to draw the line,

20   100,000, 500,000, is that decided within ISC, or is

21   that something that treasury board or financing --

22   A.   That's decided within ISC.

23   Q.   And do you know, at least I don't

24   know if this is pushing the limits of your time at

25   ISC, but do you know if these thresholds were

1   discussed with JPOC?

2   A.   I don't know precisely.

3   Q.   Would they be public knowledge in

4   terms of, you know, would service coordinators know

5   if they're bringing up a request forward for

6      $105,000?

7   A.   I don't know whether service

8   coordinators would have been informed. There is no

9   reason why they couldn't.

10   Q.   So just to move on to the

11   backlogs, so at -- back in the exhibit brief, that's

12   the tabbed volume you've got --

13   A.   Sorry, which tab?

14   Q.   Oh, tab 'C', please.

15   A.   Tab 'C'.

16   Q.   And this is Exhibit 5 to Dr.

17   Blackstock's first affidavit in this -- from this

18   [indiscernible] and it's just excerpts because the

19   full document is --

20   A.   Is it the departmental plan?

21   Q.   -- quite long.

22   A.   [Indiscernible].

23   Q.   Exactly. Exactly.

24   A.   Okay.

25   Q.   So if we look over at page 4, or

1   3 and 4, so if you flip over just before the green

2   sheet there --

3   A. Okay.

4   Q. -- see the key risks for the

5   health service area?

6   A. Yes.

7   Q. And just over on the next page

8   here, and this is the last paragraph above the

9   heading there at the bottom of page 4, it says (as

10   read):

11   "Finally, there is also a risk

12   that the increase in volume with

13   incoming requests for health and

14   social programs may affect the

15   department's ability to process them

16   and make decisions within the

17   compliance timelines for Jordan's

18   Principle ordered by the Canadian

19   Human Rights Tribunal in 2017. To

20   mitigate this, continuous monitoring

21   and assessment of requests trends is

22   being conducted to increase

23   efficiency and effectiveness of

24   service provision and seek off-cycle

25   resources when we need to meet our

1   legal obligations."

2   So you see that there?

3   A. Yes.

4   Q. And so would you agree that the

5   government was aware of the risk of backlogs

6   developing when this was put forward in this

7   departmental plan?

8   A. Yes. This is '23-'24?

9   Q. '23-'24.

10   A. Yes.

11   Q. And I'm right, that would have

12   been about this time-ish last year?

13   A. So we generally start developing

14   the departmental plans in the fall. They're

15   reviewed at a deputy level around the holiday

16   period, right, so Christmas holiday period.

17   Q. And they --

18   A. And then they're reviewed in

19   January and February until they're tabled.

20   Q. Tabled. And they're tabled as

21   part of the the IFSD's process, is my understanding?

22   A. That's correct.

23   Q. Okay. So would it be fair to say

24   then that this kind of concern around backlogs would

25   have been flagged as early as the end of '22?

1   A.   The end of the calendar year,

2   yes. Yeah, yeah. Or, no, sorry, the end of 2023

3   would be -- '22, yes. I'm sorry.

4   Q.   Yeah, because this would have

5   been --

6   A.   I'm trying to --

7   Q.   No, no --

8   A.   Yes.

9   Q.   -- the fiscal --

10   A.   We just did '24-'25.

11   Q.   Yeah.

12   A.   I'm good. Yes --

13   Q.   Yeah, the fiscal calendar --

14   A.   -- the end of the calendar year

15   2022.

16   Q.   Or the Q3 of '22-'23 fiscal would

17   be another way of saying it. And so you'd agree

18   that Q3 range would be somewhere -- Q3 of fiscal

19   '22-'23 would be somewhere in the range of when this

20   would have been --

21   A.   Yes.

22   Q.   -- identified?

23   A.   End of '22.

24   Q.   And would you agree that that

25   issue wasn't raised directly with the Caring Society

1   in that time frame?

2   A.   Was raised directly by --

3   Q.   Was not raised directly by ISC

4   with the Caring Society in that time frame?

5   A.   I wouldn't know. I'm not part of

6   all the conversations the department had with the

7   Caring Society.

8   Q.   Do you have any reason to dispute

9   the Caring Society's version of events that JPOC

10   didn't find out about the backlogs until August of

11   2023?

12   A.   I have no reason to dispute it,

13   no.

14   Q.   The next tab in this brief is tab

15   'D', which is I think -- I'm going to call it this

16   minister's briefing book for parliamentary

17   committee, titled "Appearance Before the Standing

18   Committee on Indigenous and Northern Affairs,

19   Finance on the '23-'24 [indiscernible] Estimates

20   Based on 2023." So this would be kind of a later

21   step in that process that the departmental

22   [indiscernible] was part of? Say yes or no.

23   A.   Yes. And I have been

24   [indiscernible].

25   Q.   Yes. It was one of my next

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 1         questions.  You've anticipated it.  So this, again,

 2         it's just excerpts because the whole document is 192

 3         pages.

 4                        A.   Uh-hmm.

 5                        Q.   And so what you've got is the

 6         content that -- I'll just, again, confirm you were

 7         there to go over it.  Page 3, you're listed as part

 8         of the second panel [indiscernible] from 4:30 to

 9         5:30, Associate Deputy Minister Valerie Gideon.

10                        A.   Yes.

11                        Q.   And then over the page, this is,

12         you know, skipping through the document, is what is

13         referred to in the table of contents as a hot issue

14         sheet for Jordan's Principle.  And so you remember

15         this appearance?

16                        A.   So I'm just looking at the page

17         after I'm listed.

18                        Q.   Yes, that's right.

19                        A.   You're asking me to look at --

20         it's on a different tab.

21                        Q.   No, no.

22                        A.   Okay.  Same --

23                        Q.   It's all in the same in tab.

24                        A.   Okay.

25                        Q.   It's just that it's skipping
```

1   ahead in the document --

2   A.   Okay.

3   Q.   -- if you will. If we were on a

4   computer, we'd be scrolling down.

5   A.   Yeah.

6   Q.   So just before I ask a question

7   about this text, so you -- do you remember this

8   committee appearance in May of 2023, to the extent

9   any of them stand out in your memory?

10   A.   I'd have to look at a bit of the

11   [indiscernible] notes to just rejig my memory.

12   Like, I've done a number of different appearances.

13   Q.   But if the briefing binder says

14   that you were attending --

15   A.   Oh, no, of course. Of course.

16   It's just --

17   Q.   -- you did attend?

18   A.   -- if you're asking me to

19   distinguish between this one --

20   Q.   No, no.

21   A.   -- or the other one or the other

22   one. I understand.

23   Q.   Because the meeting --

24   A.   I'm trying to situate my mind to

25   it --

1   Q.   Because of beauty of

2   parliamentary privilege, I can't actually ask you

3   about anything you said at the committee, so it's

4   all good. But I just have questions about the

5   binder first.

6   A.   Uh-hmm.

7   Q.   And so I was just wondering if

8   you're aware that these binders get posted online

9   pursuant to subsections 74(a) of the Access to

10   Information --

11   A.   I am aware of that, yes.

12   Q.   So this is a document you'd be

13   familiar with in terms of --

14   A.   I would have reviewed it.

15   Q.   [Indiscernible] okay. Thank you.

16   Okay. So looking now at the heading "The Hot Issue

17   Sheet," just under issue five of the tab, and so the

18   text that under the heading, it says -- this is the

19   first paragraph here. It says (as read):

20   "Jordan's Principle is a legal

21   obligation of the Government of

22   Canada to ensure all First Nations

23   children living in Canada can access

24   the products, services, and supports

25   they need, when they need them.

1   Funding is demand driven and can help

2   with a wide range of health, social,

3   and educational needs unmet through

4   other programming at the federal or

5   provincial or territorial and/or

6   local levels."

7   And would you agree that's an

8   accurate summary of Jordan's Principle?

9   A. I do.

10   Q. And do you agree that the

11   [indiscernible] of Jordan's Principle is on First

12   Nation's children and their wellbeing and best

13   interests?

14   A. I agree.

15   Q. Now, the excerpt, this kind of

16   hot issues sheet excerpt, is about seven pages long,

17   and, you know, feel free to flip through it, but my

18   question about it is kind of more of a higher level.

19   Did you recall in preparing, you know, preparing for

20   this appearance whether issues related to the actual

21   or possible backlogs in Jordan's Principle requests

22   were raised at that time?

23   A. I [indiscernible].

24   Q. When did you become aware

25   yourself the backlogs were in fact a problem

1   [indiscernible].

2   A.   I honestly can't recall the

3   precise moment. I mean, we were having very regular

4   discussions as part of the negotiations

5   [indiscernible] but I tried to think about -- trying

6   to pinpoint by my memory, but I can't.

7   Q.   Do you have even a season in

8   mind?

9   A.   I mean, I -- we were often

10   talking about providing updates to the

11   accountability workplan during that process. And I

12   remember certainly becoming aware of the increased

13   volumes and the challenges that regional staff were

14   having with respect to the processing. There were

15   also discussions about the national call centre at

16   the time and making improvements to the national

17   call centre. So it was in the context of those

18   conversations.

19   Q.   That's fine. It's not a memory

20   test, so it's -- that's all right. And then just a

21   last question or series questions about the whole

22   backlog, just kind of at a conceptual level. So

23   when we talk about a backlog, what we're talking

24   about is requests that are made on behalf of

25   children who need a product, service or support, but

1   they're stuck in one part of ISC's process. Agree

2   with that?

3   A.   I do, yeah.

4   Q.   And there could be, at least as I

5   -- I've kind of conceded that there is three places

6   they could be stuck. They could be stuck in the

7   intake where they haven't been looked at or opened

8   yet; is that fair?

9   A.   That's fair.

10   Q.   Or they could be stuck after

11   they've been escalated for review, the

12   [indiscernible] --

13   A.   Uh-hmm.

14   Q.   -- or they're waiting for

15   determination there.

16   A.   Yes.

17   Q.   And then they could be stuck, if

18   they're a denial, in the appeal process if they're

19   waiting for a determination by the appeal

20   [indiscernible].

21   A.   [Indiscernible].

22   Q.   And you'd agree the backlog

23   requests could include urgent requests for a child?

24   A.   I agree.

25   Q.   You've got a calculator in front

1   of you. Your choice whether you want to use it or

2   not. There is a little bit of math in this part,

3   which is about paragraph 12 of your affidavit,

4   because I want you to have access to the calculator

5   so you don't have to just rely on what I'm saying.

6   But I've done the math. I checked it again this

7   morning before we started, so I just want to see --

8   well, I've kind of corrected a couple of things

9   here, and we'll see if you agree with this

10   [indiscernible] so this paragraph 12, it deals with

11   essentially, you know — try to put a colloquial term

12   on it — have the portion of groups to individual

13   funding versus requests; is that a fair statement?

14   A. Should we read it

15   [indiscernible]?

16   Q. Yeah. Sure.

17   A. Yes, the proportionate funding

18   that has been approved that relates to group versus

19   individual requests.

20   Q. Yes, I think that's fair. One

21   second. Did we lose Member Lustig?

22   THE CHAIR: No. He's just shut his

23   camera off.

24   BY MR. TAYLOR:

25   Q. Sorry. Sorry, about that Dr.

1   Gideon. I got distracted for a moment. So you said

2   this is the individual versus group requests in

3   terms of the number of requests for the amount of

4   funding for each category; is that fair?

5   A. It's -- it's the amount of

6   funding, not the number of requests. It's the

7   amount of funding directed to group requests that

8   would of course be out of the total amount of

9   funding for approved requests.

10   Q. And just in terms of how this

11   table works that's under paragraph 12 here, we have

12   -- the first kind of line of figures I can say would

13   be -- that would be the number of requests that were

14   made for each category. So it would be 13 -- in the

15   kind of the box here, just looking at '18-'19,

16   individual requests, it says 13,776, then it says 93

17   percent, representing 51.4 million. So that would

18   be, just to kind of put it in words as opposed to a

19   table, in '18-'19, there were 13,776 individual

20   requests and there was 51.4 million in funding

21   associated with those 13,776 requests; is that about

22   right?

23   A. Yes.

24   Q. Okay. So your table provides the

25   percentages for the individual requests and the

1   group requests kind of relative to each other. You

2   know, essentially, you've got 93 percent for

3   individual, 7 percent for the group, and then 100

4   percent for a total in the first line; do you see

5   that?

6   A. Yes.

7   Q. And then it doesn't do the same

8   exercise for the proportion of funding. You note in

9   the kind of the header paragraph over the table, it

10   says (as read):

11   "[M]ajority of Jordan's

12   Principle funding approved by ISC is

13   used for group requests, which

14   accounts for approximately 80 percent

15   of total funding provided by ISC

16   through Jordan's Principle."

17   So I've done the exercise, and this

18   where the calculator comes in, of just kind of

19   tracking those percentages across the table. So in

20   the first line here, you've got, you know, just

21   looking at the group requests, about $259.9 million

22   in funding that was for group requests, and that's

23   how the total of 311.3 million -- are you following

24   me?

25   A. Yes. Yes, I'm following you.

1   Q.   Good. There is so much --

2   A.   Yes, 260 --

3   Q.   Yes.

4   A.   -- versus 311.

5   Q.   Yeah. And when I ran those

6 numbers, that was 83 percent.

7   A.   Okay.

8   Q.   Now, the next line, it's just shy

9 of 303 million and then just shy of 402 million.

10 And when I ran those numbers, that was 75 percent.

11   A.   Seventy-five.

12   Q.   And then we have just over 361

13 and just shy of 505 for 2022 -- sorry, sorry, 2020-

14 2021. And by my math, that was about 72 percent.

15 And then over the page, you've got just shy of 321

16 million for 2021-'22, and then just shy of 523

17 million for '21-'22. By my math, that was about 61

18 percent. Do you agree?

19   A.   Yes, I am sure. It looks right.

20   Q.   And then 2022-'23, I've got 638.8

21 million for requests and then 1,869 or 1.09-ish

22 billion. And I've got 59 percent there for that

23 portion. Doesn't seem objectionable?

24   A.   No.

25   Q.   No? And then the last line, 79.8

1   million for group requests funding approved in the

2   first three quarters of '23-'24, and then 1,241

3   million, i.e., a little bit less than 1.25 billion,

4   and I've got about 64 percent for that. So just to

5   go through those percentages, that was 83 percent

6   for '18-'19, 75 percent for '19-'20, 72 percent for

7   2021, or '20-'21, 61 percent for '21-'22, 59 percent

8   for '22-'23, and 64 percent for '23-'24. So you

9   agree that those numbers are right, that's -- except

10   for the first year, that's all less than 80 percent?

11   A.   In terms of a range it would have

12   been at here, to say between 60 and 80.

13   Q.   Thank you. And if you tally the

14   whole thing, which I won't ask you to do, but it

15   comes out to about 65 percent, but the folks can

16   check that [indiscernible] now, did you check the

17   math in this table before you affirmed the

18   affidavit?

19   A.   I didn't.

20   Q.   And a question about resource

21   things. So when you have teams of focal points that

22   are handling requests, do you have within -- and

23   that happens at the regional level; I'm right about

24   that, the focal points? And we're moving on from

25   the numbers.

1   A.   Yes, yes.

2   Q.   The calculator --

3   A.   Sorry, yes.

4   Q.   -- can go away, so just to change

5   gears a bit. So you got a focal point whose -- so

6   you've got focal points for -- in a region and

7   they're assigned. Are they assigned exclusively to

8   deal with individual requests versus group requests,

9   or do they deal with both?

10   A.   I can't confirm how all the

11   regional offices designate. I know there has been a

12   lot of shifts and they do it based on volume as

13   well, availability, search capacity. There are many

14   factors.

15   Q.   And do you know if ISC has done

16   any analysis of how the how the FTD's are

17   [indiscernible] these full-time equivalents are used

18   at the regional level between individual --

19   A.   They have definitely done some

20   analysis with respect to FTD and structuring and

21   need, but I don't know if they've done it on a basis

22   of delegation between group and individual. I do

23   know that some regional offices have designated

24   focal points for group requests, or had, but, again,

25   I can't speak to what's happened [indiscernible].

1   Q.   Okay.

2   A.   Yes.

3   Q.   Just one moment. Okay. Moving

4   on to another theme. So this is -- this -- these

5   questions deal with the, essentially -- which your

6   update kind of characterize as the change in

7   Jordan's Principle requests having to deal with

8   socioeconomic supports.

9   A.   Yes.

10   Q.   And so we're looking at paragraph

11   13 of your affidavit, which is just under that table

12   we were looking at. And so here you say, that's the

13   first line (as read):

14   "The range of approved expenses

15   has shifted notably from Jordan's

16   Principle's initial trend of requests

17   related to health and education, to

18   socioeconomic supports like groceries

19   and rent payments, mortgage payments,

20   requests for new homes and

21   renovations, as well as items such as

22   personal vehicles and recreational

23   requests such as sports camp fees."

24   Do you see that?

25   A.   Yes.

1   Q. And then at paragraph 14, just

2   kind of partway through the paragraph, you say that

3   (as read):

4   "Jordan's Principle has been

5   approving a range of socioeconomic

6   supports such as rent, groceries,

7   utilities for periods of 6 to 12

8   months or longer."

9   Do you see that?

10   A. Yes.

11   Q. And would you agree that some

12   supports in this regard have only been approved for

13   up to three months?

14   A. I would agree, yes, that there

15   hasn't [indiscernible].

16   Q. And did you look at Mr. Craig

17   Gideon's (ph) affidavit prior to today?

18   A. I did [indiscernible] I read,

19   yes.

20   Q. And did you note in his evidence

21   that it says as of January 2024 ISC had imposed a

22   three-month time frame for housing and rental

23   supports?

24   A. I -- I am not familiar with that

25   sort of imposition of the three-month rule.

1   Q.   Do you know if ISC tracks whether

2   these kinds of -- this kind of family socioeconomic

3   support requests, if those come from

4   [indiscernible].

5   A.   We do.

6   MR. TAYLOR: I'm wondering if we

7   could have those relative percentages for 2022 and

8   2023, so that would be the proportion of the

9   socioeconomic, you know, requests family of services

10   that would be coming from [indiscernible] versus

11   [indiscernible] requests [indiscernible]

12 U/T   MS. ANDERSON: I'll see what the team

13   can put together, but yes.

14   BY MR. TAYLOR:

15   Q.   Okay.   So if we go back to the

16   tabbed book now.   This is tab 'D'.   We're back to

17   the deep-dive tables again.   So we can look to tab

18   30, or, sorry — tab – Table 34.

19   A.   Okay.

20   Q.   And you see it says (as read):

21   "Adjudicated requests and their

22   corresponding [indiscernible] by

23   request type, category, and final

24   decision."

25   This would be year '21-'22.   Do you

1   see that?

2   A.   Yes.

3   Q.   Now, looking down in the total

4   kind of row or row of rows, for lack of a better

5   descriptor of it, the top three here are education,

6   medical transportation, and Allied Health?

7   A.   That's correct.

8   Q.   And just in terms of the

9   percentages through, which is the second column, if

10   I'm reading this table right -- do you agree that

11   that second column is the approved -- the percentage

12   of approved requests of the total?

13   A.   Yes.

14   Q.   So 22 percent for education, 19

15   percent for medical transportation, and 8 percent

16   for Allied Health. Do you agree with that?

17   A.   I would agree that those are the

18   numbers, yes.

19   Q.   And do you know, and you may not,

20   but do you know if the top three categories in terms

21   of percentages of approvals per category of services

22   would be for the first three-quarters of '23-'24?

23   A.   For the first three quarters, I

24   don't, but I would say that the information that

25   I've received is that medical transportation,

```
 1        education, socioeconomic supports — I just don't

 2        have the percentages — are quite, you know,

 3        significant --

 4                          Q.   And it's not --

 5                          A.   -- in terms of their prominence.

 6                          MR. TAYLOR:   -- a memory or a

 7        database test, so it's all okay.  Ms. Anderson, I'm

 8        wondering if we could have the top three categories

 9        of approved requests for the first three quarters of

10        '23-'24, and for '22-'23?

11   U/T                    MS. ANDERSON:  Yes, I will see if

12        those are available.

13                          BY MR. TAYLOR:

14                          Q.   And if you could just go -- I

15        guess it's not really over the page, it's the next -

16        - I believe I'll need you to flip it over.  There is

17        Table 55 is on that one.  And the title here is

18        "Healthy Development -- Healthy Child Development

19        Related Requests and Their Associated Reach by

20        Request Type, Subcategory, and Final Decision."  And

21        is it fair to say that this table is essentially

22        breaking down the kinds of items for approvals that

23        would be within that category about child

24        development?

25                          A.   Yes.
```

1   Q.   And so just if you can kind of

2   have the brief opened to both pages. If you can

3   look at 34, the fourth line here was healthy child

4   development. That's just under Allied Health, and

5   that's 8 percent.

6   A.   Yes.

7   Q.   And then the healthy child

8   development here on 55. So this Table 55 would kind

9   of be the breakdown [indiscernible] percent; is that

10   right?

11   A.   Yes.

12   Q.   And so looking at the items here

13   just for the individual [indiscernible] for either

14   individual or total, do you agree with me that the

15   kinds of items that are in this Table 55 when we're

16   talking random [indiscernible] groceries, clothing,

17   shoes and accessories, community programs related to

18   healthy child development, are those the kinds of

19   things you're talking about when you're saying, or

20   when you're referring to socioeconomic supports in

21   your affidavit?

22   A.   Yes, I would say that's fair.

23   Q.   And just staying with 55 for a

24   moment, so the total here at the bottom, it says --

25   under approved, it says just shy of 4,100

1   [indiscernible] denied, it says just over a

2   thousand. And there is this figure here, 80

3   percent, which is the third number on the bottom

4   line near the total. Is that 80 percent approval?

5   A. I'm sorry, are you looking at

6   individual requests --

7   Q. Just in the total.

8   A. The total line? The total line

9   for everything.

10   Q. Yeah.

11   A. Okay. I see. Okay. At the

12   bottom, 80 percent.

13   Q. And then it says "denied," and it

14   says, "19.7," so we'll call it 20 percent.

15   A. That's right.

16   Q. So it would be about 80 percent

17   approved and 20 percent denied for that

18   socioeconomic category in '21-'22?

19   A. That's how I read it.

20   Q. So if we go back to paragraph 14

21   and 15 of your affidavit, so you have -- in 14, at

22   the bottom there, you note that the first three

23   quarters of '23-'24 was 21,000 requests.

24   A. Uh-hmm.

25   Q. And then you have about 1,200

1   denials noted in paragraph 15. Do you see that?

2   A. Yes.

3   Q. And so would you agree with me

4   that, you know, 1,200 out of 21,000 is about 5

5   percent?

6   A. Yes.

7   Q. And so would it be fair --

8   A. By my math, yes.

9   Q. [Indiscernible] that the

10   calculator is still there. So is it fair to say

11   then that the denial rate of the socioeconomic

12   support requests would have been 20 percent in '22-

13   '22, and we're looking at 5 percent denial rate in

14   the first three quarters of '23-'24?

15   A. I'd say the denial rates have

16   overall been significantly reduced over the last two

17   years.

18   Q. And that would be following back-

19   to-basics.

20   A. That would be following back-to-

21   basics.

22   Q. So in your affidavit, you're

23   citing, you know, post-pandemic conditions as

24   something that could be causing more requests to

25   come in.

1   A.   In this category.

2   Q.   In this category. But is it also

3   possible that, you know, we've seen a general

4   increase in requests across the board with Jordan's

5   Principle; is that fair? There are more requests

6   coming across, a bit large --

7   A.   Yes.

8   Q.   -- and then there's also been a

9   decrease in the denial rate for this category?

10   A.   Correct.

11   Q.   And so that could be another

12   reason for --

13   A.   Could be [indiscernible].

14   Q.   Based on your recollection of the

15   IFSD data analysis, do you remember them looking at

16   requests for data to socioeconomic conditions as

17   part of the report?

18   A.   I remember -- I'd have to go back

19   to the categories that they used.

20   Q.   Yeah, they --

21   A.   But they -- but they looked at

22   all of the data.

23   Q.   And we will. It's just --

24   A.   It would have included this.

25   Q.   It's just a general question --

1   A.   Yeah.

2   Q.   -- you know, to be fair to you,

3   to see what your recollection is. And just before

4   we look at that, would you agree with me that

5   requests connected to poverty and socioeconomic

6   conditions, some -- that's the gap that Jordan's

7   Principle that's always been known as a category?

8   Your issues is more than there is more of those

9   requests now, but it's something that has always

10   been a driver of Jordan's Principle requests?

11   A.   Yeah. I mean, I'm trying to

12   remember the early years. I would say that we

13   started to see them more in the Northern context

14   initially, or in a territorial context. Like, there

15   weren't -- it wasn't as prominent, I would say,

16   across all regions, that's why...

17   Q.   So page 56 of the IFSD report,

18   that's the second cerlox here. And so if I was to

19   say 55 talks about IFSD's needs cluster analysis,

20   and so they kind of -- just looking at the first

21   paragraph under that heading (as read):

22   "IFSD developed a set of needs-

23   based categories from the GC Case

24   need variable only available after

25   2021."

1   A.   Uh-hmm.

2   Q.   (As read):

3   "The categories were developed

4   by clustering related indicators from

5   the original 265 defined in GC Case."

6   Then they give a list, et cetera.

7   And so were you aware of that kind of needs

8   clustering analysis that IFSD was doing?

9   A.   Yes.

10   Q.   And then over the page, they say,

11   and this is the second paragraph just above the

12   chart (as read):

13   "Among the IFSD needs clusters,

14   health and mental health had the

15   largest number of requests (nearly

16   24,000), followed by education

17   (nearly 13,000), and poverty (nearly

18   12,500)."

19   A.   Yes.

20   Q.   And so is it fair to say that, at

21   least in IFSD's analysis, based on the data going

22   forward to 2024, that poverty requests are in the

23   top three [indiscernible].

24   A.   That is from their analysis, yes.

25   Q.   And you'd agree with me that a

1   child's wellbeing is impacted by living in poverty?

2   A.   Yes.

3   Q.   So a few more questions now on

4   paragraph 15 of your affidavit, which is addressing

5   the denial to Jordan's Principle not being an income

6   supplement.

7   A.   Uh-hmm.

8   Q.   And so you note that 28 percent

9   of the 1,271 were denied for that reason, that

10   Jordan's Principle is not an income supplement; is

11   that right?

12   A.   That's what I say, yes.

13   Q.   And, you know, by my math, that's

14   about 355 requests denied for that reason.

15   A.   Yes.

16   Q.   And so in the situation of those

17   355 kids, where if they still have unmet needs due

18   to poverty at the end of the 3 month or 6 month or

19   12-month term that ISC is approving them for under

20   Jordan's Principle, would you agree with me the need

21   is just as important at the end of that interim

22   period as it was during the interim period?

23   A.   It would depend on whether the

24   family has navigated to a public program such as

25   income assistance on reserve or a social assistance

```
 1        program with interprovincial [indiscernible]

 2        context, or the circumstances of the family may have

 3        changed as well.

 4                         Q.  So they've got a job or there

 5        have been different means to support themselves --

 6                         A.  It could have been a temporary

 7        measure as well.

 8                         Q.  Yeah, yeah.  And I think that's

 9        what you're talking about, I believe, at the bottom

10        of page 6.  You say (as read):

11                             "This is because while Jordan's

12                             Principle need-to-use as a bridge or

13                             temporary relief measure to address

14                             immediate risk factors to children,

15                             it is not intended nor structured to

16                             [indiscernible] income assistance

17                             program -- "

18                         A.  That's correct.

19                         Q.  So would it be fair to say that

20        what you're saying in this paragraph is that Jordan

21        Principle shouldn't be used to lift a ceiling that's

22        imposed by a federal or provincial income assistance

23        program?

24                         A.  Lift a ceiling?

25                         Q.  So they've -- if they've
```

1   essentially, you know, they've defined an amount for

2   a monthly benefit, or if there is an income

3   [indiscernible] eligibility threshold, that those,

4   you know, those eligibility requirements through the

5   provincial or federal assistance programs, those

6   shouldn't be disturbed by Jordan's Principle?

7   A.   Jordan's Principle would not

8   replace those programs.

9   Q.   Now, if those programs though

10   were insufficient, would Jordan's Principle have a

11   role to play in that regard?

12   A.   I would say that we would do it

13   more at a systemic level in terms of looking at, for

14   example, programs within a federal responsibility to

15   see if there are gaps in those programs, and we

16   would put forward business cases in those contexts.

17   Q.   But business cases would take

18   some time to work their way through the system.

19   A.   It would, yes.

20   Q.   And so for the 355 families, if

21   they still had need, they'd have to wait for the

22   business cases to come to fruition?

23   A.   They would access to the appeal

24   mechanism.

25   Q.   And would the appeal body be able

1   to overturn --

2   A.   Uh-hmm.

3   Q. -- the [indiscernible] the reason

4   was that it wasn't an income assistance program?

5   A.   It could, yes, depending on if

6   they -- reassessment of the information of that

7   particular case, they could.

8   Q.   So the 3 or 6 or 12 month, you

9   know, time level, that's -- is that something that's

10   within ISC's authorities for Jordan's Principle, or

11   is that a policy measure that ISC has adopted

12   itself?

13   A.   I don't understand the difference

14   between those two options, I'm sorry.

15   Q.   We may have to come back to that

16   during housing, but just at a general level, there

17   are some reasons for Jordan's Principle denials that

18   are, would you agree, where there is a denial

19   because there is no authority for that kind of

20   expenditure --

21   A.   Correct. And then there are

22   reasons where Indigenous Services Canada has put a

23   measure in place in order to ensure that it is not

24   displacing public programs.

25   Q.   And so this would be an example

1   of the latter kind. So essentially, Indigenous

2   Services, as a policy measure, is saying, our policy

3   is 3 or 6 or 12 months, is the limit for this kind

4   of support versus when it comes to expenditures on

5   major capital, so talk about where there is saying

6   there is no authority in the initiative for that?

7   A.   I would say that's correct.

8   Q.   And so would you agree with me

9   that, like, I'll call them again ceilings, or might

10   be a better adjective for them, but the existing

11   government programs, whether federal or provincial,

12   which sets certain measures, i.e., the amount of a

13   benefit or, you know, eligibility based on income or

14   assets, that those would be examples of a normative

15   standard?

16   A.   The public programs would be

17   examples of a normative standard, yes.

18   Q.   And so Jordan's Principle does

19   though go past normative standard ceilings in other

20   cases, like, the number of days [indiscernible]

21   therapy a child with a developmental delay might be

22   eligible for?

23   A.   Yes, but I believe it's the same

24   thing with socioeconomic supports where that's why

25   we are actually approving bridging measures until

1   families are able to access supports through public

2   programs.

3   Q.   But where those public programs

4   are insufficient to meet the need, those cases

5   should still be eligible for support under Jordan's

6   Principle?

7   A.   They should be assessed on a

8   case-by-case basis, yes.

9   Q.   I mentioned housing, so we'll go

10   to housing next. I just want to see how you're

11   doing. It's 10:10. Are you all right --

12   A.   I'm fine, as you're speaking.

13   MR. TAYLOR: And, Member Marchildon,

14   you're all right?

15   THE CHAIR: I'm doing great. I was

16   wondering if you have done -- has the department

17   done any systemic analysis on the other programs and

18   how they would bridge gaps for children? And if

19   this has been done, can I -- can we obtain a copy of

20   this?

21   THE WITNESS: So there was a systemic

22   analysis that was initiated. I'm trying to remember

23   the time frame, if it was in the beginning of 2023

24   or earlier in 2022. I'm not sure if it is complete,

25   but it is something that certainly Candace St-Aubin

1   could speak to. She would have more knowledge of

2   the current level of readiness for sharing it.

3   But I would say that every time we

4   have put forward a business case for an existing

5   program, like, as part of a budget process, we do

6   take a look at indicators of need that we have

7   access to, so that could be, you know, obviously

8   demographic, cost of living pressures. But we also

9   -- I've also encouraged everyone to look at the

10   Jordan's Principle data or the Inuit Child First

11   Initiative data as well, to include that within the

12   budget submissions or the policy submissions that we

13   are making. So we are also doing it on a case-by-

14   case basis when we are putting forward budget

15   requirements.

16   THE CHAIR: Thank you.

17   BY MR. TAYLOR:

18   Q. And just to close the loop on

19   that, on the Chair's question, and so those business

20   cases would then leave ISC and go to central

21   agencies for consideration?

22   A. That's correct.

23   Q. So on housing, you may remember,

24   we were in the same building, different room, you

25   came for cross-examination on your April 15, 2019,

1   affidavit, and that we talked about the threshold

2   for approvals related to housing improvements. Do

3   you recall that?

4   A. The 5,000 and 5,000.

5   Q. Yeah, 5,000 and 5,000, exactly.

6   A. Yes.

7   Q. So you've got that 5,000 and

8   5,000 excerpt at tab 'E' of your exhibit brief

9   there. And so just for your reference, that's page

10   41, and that's (as read):

11   "So we do lack

12   authority [indiscernible] some degree

13   of major capital requests that are

14   associated with a specific need of a

15   child or [indiscernible] a home, for

16   instance."

17   And then down the page, I ask you (as

18   read):

19   "Is there a threshold for

20   either?"

21   And then you say (as read):

22   "Five thousand."

23   Then I say (as read):

24   "Five thousand minor or five

25   thousand [indiscernible] major?"

1   You said (as read):

2   "Five thousand dollars minor

3   and five thousand [indiscernible]

4   major."

5   Then we continue. Now, I just wanted

6   to ask you about this next document, so this is

7   under tab 'F', which is the last point on that

8   Exhibit 'E' before the green sheet. We talked about

9   whether there was a cap, that's at the bottom of 44

10   -- sorry, I'm now under tab 'E' again, so that --

11   A. Oh, tab 'E', yes.

12   Q. It's the [indiscernible] point on

13   that second page there -- the third page, rather.

14   So I asked you if there is a cap in terms -- on the

15   major side. You said there is not a cap, you have

16   an obligation, and you suggest from a public service

17   stewardship [indiscernible] to look at

18   [indiscernible] do you remember that examination and

19   those answers?

20   A. I -- I did re-read it just before

21   the hearing started.

22   Q. Did that refresh your memory?

23   A. It did.

24   Q. So just under tab 'F' now, there

25   is a document. It is titled "Jordan's Principle and

1   [indiscernible] Child First Initiative Operational

2   Bulletin, Operational Bulletin 004, Direction on

3   Housing and Major Renovation Requests to Jordan's

4   Principle Guidance." And is this the type of

5   document that you'd be familiar with?

6   A.   I have not seen this one before,

7   which, I mean, it's three days before I went to

8   another department, so that wouldn't be unusual. I

9   do know that the team has been providing some

10   operational bulletins to help clarify, guidance

11   essentially, to focal points.

12   Q.   And this would be something that

13   would be applicable for all decision-makers within

14   Jordan's Principle from focal points down -- from

15   focal points all the way up to the Appeal's

16   Committee?

17   A.   I'm not sure if the Appeal's

18   Committee would receive this. I -- you would have

19   to ask Candace St-Aubin that question.

20   Q.   Ask her that. But based on the

21   texts and -- the text under the direction here, it

22   says (as read):

23   "When ISC receives the Jordan's

24   Principle requests for the purchase

25   of a new house, a new build, and/or

1   for major renovations on and off

2   reserve, it should be [indiscernible]

3   committee."

4   The next paragraph (as read):

5   "Requests for major

6   renovations, new builds, and/or,

7   funding to purchase a new home are

8   not eligible under Jordan's

9   Principle."

10   And so in the words there, "not

11   eligible under Jordan's Principle," is that analysis

12   that's based on Jordan's Principle authorities?

13   A. Yes.

14   Q. And that would be what Treasury

15   Board sets for ISC or finance?

16   A. Yes. Yes. Now, I mean,

17   sometimes it relates to the policy authority that is

18   then approved at the Treasury Board level.

19   Q. And policy authority would come

20   from...

21   A. Cabinet.

22   Q. Cabinet. And then in the box

23   here, it notes again (as read):

24   "The purchase of a house and

25   major renovations fall outside of

1   Jordan's Principle scope."

2   And then it says (as read):

3   "On a case-by-case basis,

4   Jordan's Principle will consider

5   [indiscernible] requests for minor

6   renovations/modifications to an

7   existing home to ensure the home

8   meets the child or children's

9   specific mobility health and/or

10   medical needs."

11   And there is a list of examples, wheelchair ramp,

12   stair glide, and safety yard enclosures or

13   modifications for space for additional

14   [indiscernible] do you see that?

15   A.   Yes, I do.

16   Q.   And so is it fair to say then

17   that the Jordan's Principle policy today about

18   housing-related requests is that where they're over

19         $5,000 and where they're outside those kinds of

20   examples in the bulleted list that they'll be

21   denied?

22   A.   I -- I can't confirm that the

23         $5,000 threshold still applies. I -- I -- honestly,

24   I cannot [indiscernible] 100 percent because I know

25   that there has been shifts since the CHRT 41 as

1   well, so I would just defer that question to

2   Candace --

3   Q.   Either it's the 5,000 or it's

4   higher. Your understanding is that if you're in the

5   territory of, you know --

6   A.   Minor versus major, there is a

7   distinction.

8   Q.   Yeah. And that if you're in the

9   territory of major work, you need to be in this

10   category of wheelchair ramp --

11   A.   [Indiscernible].

12   Q.   -- stair glades, et cetera, to be

13   approved. But if you're not in that category,

14   you'll be denied.

15   A.   These are examples though, right.

16   It's not a closed list.

17   Q.   Right. But they do say a

18   purchase of a house, has major renovations, fall

19   outside of Jordan's Principle, so...

20   A.   They do.

21   Q.   And that's a decision, again,

22   that's based on authorities --

23   A.   That's correct.

24   Q.   -- as opposed to the tribunal's

25   orders.

1   A.   That's correct.

2   Q.   Some questions now about back-to-

3   basics for you. And you got back-to-basics under

4   tab 'G', in case you want to refer to it right away,

5   but I'm actually going to tab 'H' first. And so

6   just to kind of landmark you where you are in your

7   affidavit, we're at paragraph 18 of your affidavit

8   where you talk about Jordan's -- sorry, you talk

9   about back-to-basics being "meant to reduce any

10   administrative burden on family seeking support

11   through Jordan's Principle," and that's in that --

12   in the kind of first and second line of your

13   affidavit there. Do you see that?

14   A.   Uh-hmm.

15   Q.   Now, if we look at tab 'H', this

16   is an excerpt from Exhibit 61 to It's Dr.

17   Blackstock's first affidavit, which is the executive

18   summary of the long-term reform, AIP.

19   A.   Uh-hmm.

20   Q.   And it's a document that was

21   posted online.

22   A.   Yes.

23   Q.   And you're familiar with it?

24   A.   Yes.

25   Q.   And so looking at the fourth page

1   here in the tab, which is, I don't know, there is

2   kind of a heading that says "Funding Review" at the

3   bottom of the page.

4   A.   Yes.

5   Q.   And then there is a series of

6   bullets further up the page. And so call it the

7   third bullet on the page, it says (as read):

8   "Implement back-to-basics

9   approach and culture change to

10   determination of Jordan's Principle

11   requests."

12   Do you see that?

13   A.   Yes, I do.

14   Q.   And so do you agree that culture

15   change was also one of the goals of back-to-basics

16   addition to reducing administrative burdens on

17   families?

18   A.   I do.

19   Q.   And I think we've already

20   discussed this, but you'd agree the introduction of

21   back-to-basics led to a higher rate of approvals

22   within ISC?

23   A.   I agree.

24   Q.   Now, bearing in mind our

25   discussion about, you know, authority-based

1   limitations and policy-based limitations, would you

2   agree that back-to-basics is only going to apply to

3   change the culture in areas where ISC has

4   authorities to make approvals?

5   A.   I would say that it is also about

6   ensuring a cultural humility throughout the entire

7   interaction with a requestor or a family member

8   whether or not a request is approved.

9   Q.   But if there is no authority to

10   approve the request, even with the most cultural

11   humility, ISC won't be able to approve that request?

12   A.   That's correct.

13   Q.   Now, in paragraph 18 of your

14   affidavit, you also say -- it's kind of a little bit

15   -- on the next line, you say the [indiscernible]

16   because I don't want to add any words

17   [indiscernible] so maybe I'll just take it back.

18   You say (as read):

19   "...which replaced the SOPs,

20   was meant to reduce any

21   administrative burden on families

22   seeking support through Jordan's

23   Principle --"

24   And maybe just add as well this culture change

25   objective of it, then you say (as read):

1   "-- until the parties agree to

2   a final settlement on a long-term

3   approach through Jordan's Principle."

4   Does this mean you're contemplating

5   individual requests not forming a part of Jordan's

6   Principle once there is a long-term reform approach

7   in place?

8   A.   I've always said that I think

9   because of the off-reserve component and the rising

10   number of off-reserve requests, which isn't captured

11   in IFSD's report but is captured in the deep dive of

12   2021-'22 administrative data, where 52 percent of

13   individual requests came from off-reserve

14   individuals. Although, I fully respect and support

15   First Nations wanting to serve their members off-

16   reserve, I think realistically it will be a

17   challenge to be able to make all of those service

18   delivery connections. So I believe, this is my

19   opinion, that the federal government will need to

20   continue, or someone that is designated would need

21   to continue to be able to receive individual

22   requests, particularly because of individuals that

23   are living away from their community.

24   Q.   And for those places in Jordan's

25   Principle where individual requests were made an

1   important component, would you agree back-to-basics

2   is a solid foundation for how to respond to those

3   individual requests?

4   A. I do.

5   Q. I have some questions for you

6   about urgent requests, and that's the next topic you

7   deal with in your affidavit.

8   A. I do.

9   Q. Paragraphs 19 and 20. So would

10   you agree that before back-to-basics was introduced

11   there were a number of urgent cases that were missed

12   or weren't addressed as urgent?

13   A. I wouldn't agree with that. I --

14   I would need to see the source of that information.

15   Q. Would you agree at least that the

16   Caring Society's position and discussions with ISC

17   was that there were urgent cases being missed or

18   misclassified?

19   A. There were. Whether they were

20   many, that would be the point where I would need to

21   see the source of where [indiscernible].

22   Q. So there have been -- there were

23   at least -- it was at least something --

24   A. There were some examples, yes.

25   Q. Yeah. Now, a question here about

1   the figures in your table here under '21-'22. So

2   this is another example of the GC Case generated

3   table. This is determined request by urgency with

4   an individual.

5   A.   So the source of our data is GC

6   Case. It doesn't mean though that the team would

7   not have reviewed the numbers.

8   Q.   Right. But you didn't extract

9   these from GC Case yourself because your login

10   credentials --

11   A.   I do not have access --

12   Q.   -- don't go that far.

13   A.   -- to GC Case, no.

14   Q.   Do you know when they compiled

15   the urgent determined requests column, do you know

16   if they included time-sensitive requests within what

17   was urgent requests?

18   A.   I don't. I don't, but I've not

19   seen that noted anywhere in the information that I

20   received in terms of that [indiscernible].

21   Q.   And then just if we go back

22   to -- back to basics. It's tab 'G', on page 3.

23   A.   Yes.

24   Q.   This might [indiscernible] I put

25   to you.

1   A.   This is from [indiscernible]

2   Q.   Yes [indiscernible]

3   A.   [Indiscernible]

4   Q.   [Indiscernible]

5   A.   Yes.

6   Q.   In the first bullet here under

7   "proper and timely identification of urgent cases,"

8   (as read):

9   "Focal points and call centre

10   staff will ask all service requesters

11   if they feel the case is urgent or

12   time sensitive."

13   And so do you know if ISC's, you

14   know, method of tracking what focal points are

15   clicking distinguishes between urgency and time

16   sensitivity?

17   A.   I've seen some distinctions in

18   some of the case files, but I can't confirm whether

19   or not it's done within the GC Case system.

20   Q.   Okay. And going back to your

21   affidavit again, paragraphs 21 and 22 make some

22   assertions about relative proportions between urgent

23   and non-urgent requests. For instance, in 22 it

24   says (as read):

25   "As of the third quarter of

1   '23-'24 fiscal year, urgent requests

2   accounted for 25 percent of all

3   requests determined through the

4   initiative, up from 1 percent."

5   A. Yes, that's the proportionality

6   of urgency versus total requests.

7   Q. And based on the text in 22 and

8   the heading of the table which is "Determined

9   Requests by Urgency," it might be obvious, but I

10   just want to make sure I'm right, that the

11   statements made here are about the requests that

12   were determined as opposed to requests that were

13   received?

14   A. Yes.

15   Q. And so you'd agree with me that

16   the cases that are, you know, in one of those

17   backlog points that we talked about before final

18   determination wouldn't be included --

19   A. They wouldn't be here.

20   Q. -- in relative proportions? So

21   the relative proportions, if we were looking at the

22   volume of requests that came in, could be different

23   than what's [indiscernible].

24   A. Could be, uh-hmm.

25   Q. So just to confirm, you said that

1   they could be?

2   A.   It could be, yes.   I'm sorry, I

3   said it, but I had an ice cube in my mouth.

4   Q.   Just to make sure, again, for the

5   making of the transcription, for the

6   transcriptionist.   And do you agree with me that the

7   data in your table at paragraph 21 doesn't tell us

8   anything about how many of the cases in 2022-'23 or

9   in the first three quarters of '23-'24 became urgent

10   while they were waiting for determination?

11   A.   No, the table does not tell you

12   that, no.

13   Q.   So at paragraph 24, you have --

14   describe an urgent case review exercise, and you say

15   there in 24 (as read):

16   "From a sample of 31,258 urgent

17   requests between January 1, 2022 and

18   December 31, 2023, ISC identified

19   5,800 (18.5 percent) requests which

20   were likely misclassified as "urgent

21   following the implementation of the

22   back-to-basics approach."

23   So I take it you didn't do this

24   review yourself?

25   A.   I didn't.

1   Q.   Do you know who did?

2   A.   The team, the data team. I mean,

3   I'm sure Ming (ph), for example, would have been

4   involved in it, so...

5   Q.   I'm sorry --

6   A.   It's the -- one of our data

7   analysts.

8   Q.   Oh, data analysts. Do you know

9   how many people would have been involved --

10   A.   I don't.

11   Q.   Do you know how long they worked

12   on it?

13   A.   No.

14   Q.   Do you know what instructions

15   they were given?

16   A.   In terms of how to extract the

17   data?

18   Q.   In terms of --

19   A.   I didn't see the requests myself,

20   no.

21   Q.   Do you know what criteria they

22   used to make the determination whether something was

23   misclassified or not?

24   A.   I think they looked at the actual

25   item itself as an example of an item that would

1   likely not be tied to an urgent need.

2   Q.   Do you know that because you

3   talked about that with them?

4   A.   I did exchange with the team in

5   preparation for the cross-examination.

6   Q.   But that was after the affidavit

7   was prepared?

8   A.   That was after the affidavit was

9   prepared, yes.

10   Q.   And you didn't check any of the

11   work that was done?

12   A.   I did not myself, no.

13   Q.   So you've taken these results at

14   face value?

15   A.   I have, but I have worked with

16   that team [indiscernible] prior data analysis and

17   deep dives that they have done.

18   Q.   So it's the same team that did

19   deep dives or in terms of [indiscernible] but just

20   in terms of how the exercise was done --

21   A.   Correct.

22   Q.   -- you're [indiscernible].

23   A.   That's right.

24   Q.   And would you agree, you may not

25   know, but would you agree that the sample and its

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 1        identification of misclassified cases isn't

 2        something that has been directly raised with the

 3        Caring Society before your affidavit?

 4                        A.   Sorry, can you repeat the

 5        question?

 6                        Q.   Just that this exercise that has

 7        been done here, the 31,000 requests, that's not

 8        something that was addressed with the Caring Society

 9        before your affidavit, that that was the first

10        time --

11                        A.   I can't confirm if they spoke to

12        the Caring Society about that.

13                        Q.   There is a little discrepancy I'm

14        hoping you can help me with, or at least give me a

15        reaction to.  So the sample is said to be 31,258

16        urgent requests, but when we look at Table 21, the

17        total urgent requests  --

18                        A.   Sorry, Table 21 where?

19                        Q.   Oh, I'm sorry, paragraph 21 --

20                        A.   Paragraph 21.

21                        Q.   -- the table under paragraph 21,

22        sorry.

23                        A.   Okay.

24                        Q.   Yeah.  My brain was editing those

25        two things together.  So the table that says that
```

1   there was 7,000-ish in '22-'23 and just shy of

2   21,000 in '23-'24, which is about 28,000 requests.

3   And so there is about 3,000 more requests in the

4   sample than there were from, at least in the

5   determined requests in the table. I was wondering

6   if you know how there are 3,000 more requests than

7   the maximum table --

8   A.   Which number are you looking at

9   in the table again?

10   Q.   Sure. So if you look at the

11   second column there, urgent determined requests, and

12   then if you look down at '22-'23 fiscal, you see

13   7,026.

14   A.   So the sample was not by fiscal

15   year. It started by January 1, 2022, and it went to

16   December 31, 2023.

17   Q.   Right. But January 1st would

18   have been Q4 of '22, right?

19   A.   January 1st of 2023 --

20   Q.   Sorry, January -- so there is the

21   sample of January 1, 2022 to December 31, 2023 --

22   A.   So it's -- it's a whole calendar,

23   plus another calendar year.

24   Q.   Yes, exactly. And so what I'm

25   trying to figure out is if we go to your table under

1   21, which is done by fiscal as opposed to calendar,

2   so you've got -- I guess we'll go back to January 1,

3   2022, would have been in fiscal year '21-'22; is

4   that right?

5   A. January 2022 would have been in

6   fiscal year 2022-'23.

7   Q. Would be '21 because the fiscal

8   year started April 1st.

9   A. Yes.

10   Q. And so if it's January 1st of

11   that calendar year, it is the fiscal year before?

12   A. Yes, but I was just trying to

13   repeat --

14   Q. Oh.

15   A. -- trying to repeat to --

16   Q. Oh.

17   A. -- make sure that I understood

18   your question.

19   Q. I'll take another running start

20   at it.

21   A. Okay.

22   Q. So January 1st, 2022 --

23   A. Yes.

24   Q. -- would fall within fiscal year

25   2021-2022.

1   A.   Correct.

2   Q.   And there were 693 requests

3   total --

4   A.   Determined, yes.

5   Q.   -- in that fiscal year. And so

6   if we added those to the 7,026 in '22-'23 fiscal,

7   which would cover April 1st to March 31st, up to

8   '23, that takes us to about, give or take, you know,

9   8,000. And then if you take the first three

10   quarters of '23-'24, which takes us conveniently up

11   to December 31st [indiscernible].

12   A.   I see what you're saying.

13   Q.   -- sample, that's, you know, -ish

14   21,000. So we're looking at 28 or 29,000 total

15   approved determiners of requests in that time

16   period, but then your sample has 31,000 in there, so

17   just the number -- the sample being bigger than the

18   total.

19   A.   It's likely because of the date

20   of determination would have been different than the

21   date in which they put the amount into the system,

22   but -- so the team can clarify methodology --

23   Q.   Okay.

24   A.   There would be a difference in

25   terms of when they would have been submitted to when

1   they would have been determined in some cases, but,

2   again, I'd have to -- we'd have to ask the team

3   specifically the answer to that question.

4   Q.   Is another possibility that some

5   of these urgent requests might have been in the

6   backlog, things that hadn't been determined yet?

7   A.   Well, they wouldn't -- they would

8   have been done through intake. The intake process

9   would have been done because they would be in the

10   system.

11   Q.   Right. So is --

12   A.   So the only place they would have

13   had to be if they were in a backlog would have been

14   an escalation because the appeals process does not

15   have a backlog.

16   Q.   It could have been an escalation

17   or it could have been focal point cue because there

18   would be -- a focal point might have intake done at

19   the national call centre and/or be waiting --

20   A.   If they're waiting for a

21   determination outside of escalation, you mean?

22   Q.   Yes, exactly.

23   A.   I guess it's possible, but I

24   would say that that -- that would -- I mean, I

25   suppose that's possible. I don't know. We'd have

1   to really ask the team for that clarification.

2   Q.   But one possible explanation for

3   the discrepancy is that the delta, you know, two or

4   three thousand, give or take, would be cases that

5   were, you know, in the works --

6   A.   Were in the system --

7   Q.   -- but not decided.

8   A.   -- but they were not determined.

9   Q.   Right. So there could have been

10   when the data was pulled -- it doesn't say when the

11   data was pulled. Do you know when the data was

12   pulled?

13   A.   I don't know the exact date, no.

14   Q.   But prior to March 15th, would

15   you say is fair? So there could have been --

16   A.   Prior to the affidavit.

17   Q.   -- two or three thousand urgent

18   requests pending at that time.

19   A.   Possible, I think, but then I

20   don't know for sure. Like I say, I think it would

21   be good to ask the team for that clarification.

22   Q.   So paragraph 25, which is the

23   next one over the page, you say in the second

24   sentence (as read):

25   "Miscategorized urgent requests

1   pose a significant challenge to the

2   overall administration of Jordan's

3   Principle, as they may be prioritized

4   over other urgently needed requests."

5   And so would you agree that some kind

6   of auditing and case sampling of urgent requests

7   could have assisted in identifying this trend

8   earlier so that it could have been raised for a

9   discussion with the parties?

10   A.   I do recall that the team was

11   speaking about the rising number of urgent requests

12   and their concern that it was creating a burden for

13   focal points and not enabling them to actually do

14   the effective triaging. So I do recall those

15   conversations happening, but I can't pinpoint the

16   exact timeline.

17   Q.   And do you recall the Caring

18   Society calling on ISC for that kind of auditing of

19   urgent cases?

20   A.   Yes.

21   Q.   And do you know, like, what --

22   and I just take -- I take it from your earlier

23   answer about the discussions that you're not aware

24   of that being done, other than the paragraph 24

25   exercise?

1   A.   I'm trying to reflect on the last

2   workplan, accountability workplan, update that I

3   saw. It just dates back too many months for me to

4   say, but I know that we were providing regular

5   updates to the Caring Society with respect to the

6   accountability workplan.

7   Q.   Now, paragraph 26 of your

8   affidavit, you say, in Canada's view -- it's just at

9   the start of the paragraph there (as read):

10   "In Canada's view, the Caring

11   Society's proposed additions to

12   objective criteria for urgent

13   requests, set out on pages 2 and 3 of

14   their Notice of Motion, do not

15   necessarily assist in identifying

16   objective criteria for whether or not

17   a given request is urgent."

18   And do you remember that those

19   criteria were having recently experienced the death

20   of a caregiver or biological parent or sibling or

21   reasonably anticipated experience such as that in

22   the first one, then the second one being affected by

23   a state of emergency?

24   A.   Yes, in the Notice of Motion?

25   Q.   Yeah.

1   A.   Yes.

2   Q.   And you say in your affidavit

3   that that's Canada's view that these aren't

4   necessarily helpful. Is that your view also?

5   A.   I think the back-to-basics

6   approach is based on requesters identifying whether

7   or not an urgent -- a request is urgent, and we do

8   not provide them with criteria that they need to

9   abide by. So they don't have to indicate the

10   rationale as to why they feel that their request is

11   urgent.

12   Q.   But my questions was about the

13   Caring Society's criteria that they're proposing

14   from your proposing in the Notion of Motion. And do

15   you agree that a recent death of a caregiver or

16   biological parent or sibling or one that's

17   reasonably anticipated to occur or being impacted by

18   a state of emergency, that those would be good

19   indicators for urgency?

20   A.   I would say that these are

21   contributing factors but they're not able to be

22   implemented within the back-to-basics approach.

23   Q.   And just in terms of a few other

24   indicators of urgency, would you agree a request for

25   formula for an infant would or could be urgent?

1   A. Sorry, a request for...

2   Q. For formula for an infant could

3   be urgent?

4   A. Yes, if they didn't have any

5   other source of nourishment.

6   Q. And if there was a request that

7   dealt with a need for an insulin pump, could that be

8   urgent?

9   A. Yes.

10   Q. And if there is a request related

11   to loss of housing, could that be urgent?

12   A. Yes, depending on the case.

13   Q. One last question on urgency

14   here. Do you know if ISC has done an exercise

15   that's similar to the -- I'll call it the paragraph

16   24 exercise of your affidavit about

17   misclassification of non-urgent requests, so pulling

18   a sample from, you know, the non-urgent request

19   determination group to look at those items to see

20   what they were about, to see if they were ones that

21   looked like they might have been urgent?

22   A. I don't know that. But I would

23   say that the purpose of the exercise was to

24   demonstrate the increased number of urgent requests

25   at the 900 percent mark and the fact that this

1   causes a pressure that can then cause risk with

2   respect to urgent cases that should be triaged

3   versus cases that have been identified as urgent but

4   there is no immediate risk to the child. There was

5   a purpose behind it.

6   Q. And that purpose identified

7   about, ballpark, 20 percent of cases as kind of came

8   to that pressure; is that right?

9   A. I had looked at the 20 percent --

10   Q. Sorry. I'm rounding.

11   A. Okay.

12   Q. So just in paragraph 24, and

13   we'll go back, it says ISC identified 5,800, taken

14   this 31,258 --

15   A. Within the 31,000.

16   Q. So 18.5 percent.

17   A. Yes.

18   Q. And so that's the 18.5 percent of

19   cases which [indiscernible].

20   A. Again, this was just examples.

21   They're not definitive. They would have to be

22   examined within each specific case [indiscernible]

23   MR. TAYLOR: Moving on to another

24   theme, and maybe I'll just pause and see — we've

25   been going for an hour here — if you're all right?

1   Chair?

2   THE CHAIR: We could take a break,

3   but I had a question for you. I was wondering if

4   you were going to cover the process between, you

5   know -- because if we go back to paragraphs 19 and

6   20 — let me just go back there — are you going to

7   ask her further questions on paragraphs 19 and 20?

8   MR. TAYLOR: I don't have any noted

9   at this point, but if you have any questions, I'd be

10   happy to pause a beat here and...

11   THE CHAIR: Yeah. Well, I'll get

12   into it when we get back, I guess.

13   MR. TAYLOR: At the end, okay.

14   THE CHAIR: So we'll take a 20-

15   minutes break.

16   MR. TAYLOR: Just if it's helpful,

17   I'm about two-thirds of the way through.

18   THE CHAIR: Okay.

19   MR. TAYLOR: So I'm happy to continue

20   [indiscernible] if we want to barrel along

21   [indiscernible].

22   THE CHAIR: Are you okay, Dr. Gideon,

23   to continue a little bit?

24   THE WITNESS: Oh, I'm fine. I'm

25   fine.

1   THE CHAIR: It's been a long time.

2   You're fine?

3   THE WITNESS: No, no, I'm good.

4   THE CHAIR: You're doing great.

5   Okay. Thank you. We'll continue.

6   BY MR. TAYLOR:

7   Q. Okay. So my question now has to

8   do about re-direction from -- re-direction of

9   essentially of individuals from regular programs or

10   from group requests or individual requests, which is

11   an aim you talk about at ISC in your affidavit.

12   Paragraph 27 is where we're going to start under

13   this heading. And so you that ISC's administration

14   of Jordan's Principle may make it a preferred and

15   accessible option for requests for services that

16   might otherwise be available under other government

17   programs. We talked a little bit about that in the

18   context of income support. Do you see that?

19   A. Yes. Right. At paragraph 27?

20   Q. Yeah. So it's the --

21   A. Yes.

22   Q. -- the back-to-basics approach --

23   yeah --

24   A. Yes, I just wanted to review that

25   sentence, so --

1   Q.   Oh, of course. Of course. Take

2   your time. So aside from procedural concerns in

3   terms of, you know, back -- that would be the back-

4   to-basics approach, easier procedure to go through

5   for a family to make an individual request, would

6   you agree that gaps in other programs could drive

7   the public's view that Jordan's Principle is a more

8   accessible option for requesting services?

9   A.   I would agree with that, but I

10   would also say that programs generally have rules,

11   frequency limits, who you can use as a provider and

12   how much that provider would be paid. They don't

13   customize, generally speaking, the type of supports

14   or services for each individual.

15   Q.   But in terms of the level of

16   service or the kind of service that's received, and

17   that's something that would remain within Indigenous

18   Services' discretion to tailor. For instance, if

19   service provider 'A' were to charge a rate that was

20   three times higher than, you know, the going rate,

21   that's something Indigenous Services would consider

22   in dealing with that request?

23   A.   We attempted to make those kind

24   of threshold measures in the standard operating

25   procedures and we met resistance from the parties in

1   A.   Absolutely.

2   Q.   So going beyond the, essentially,

3   the more personalized nature of requests that ISC

4   might be seeing, you'd agree that there are gaps out

5   there for services, products -- products and

6   supports that kids aren't able to access?

7   A.   I would agree that some of the

8   noted programs would not provide the level of

9   support that Jordan's Principle provides. And I

10   would just re-emphasize that there is a significant

11   proportion of those requests that are coming from

12   individuals that are not in our numbers or context

13   that are not served by Indigenous Services Canada

14   programs necessarily. So I'm just trying to ensure

15   that people understand that we can't make an

16   automatic assumption that those programs are all ISC

17   programs.

18   Q.   Right. And may be provincial or

19   territorial programs?

20   A.   Or local, absolutely, or even

21   community programs.

22   Q.   And that's about 52 percent, I

23   think, was the --

24   A.   Well, that was '21 and '22, but I

25   think it would be good to continue to update those

1   numbers so we can see what the proportionality

2   was --

3   Q. I'll certainly be asking your --

4   A. Yes.

5   Q. -- former colleagues about that.

6   A. Yes.

7   Q. Just looking back at the IFSD

8   cerlox, that's the other book, and at page 71, under

9   the -- under Table 5, partway through the fourth

10   line. So IFSD says here (as read):

11   "Jordan's Principle is a final

12   recourse to close gaps because other

13   program and policies areas are

14   complete. Such an approach should be

15   consistent with substantive equality.

16   Rather depending on Jordan's

17   Principle to close gaps, equalize

18   points of departure, substantive

19   equality is built-in to the programs

20   that programs that are intended to

21   support First Nations children."

22   And is that a goal statement that you

23   agree with?

24   A. I don't agree with it because I

25   don't believe that Jordan's Principle is a final

1   recourse in all of requests that they are receiving.

2   I think there are times where Jordan's Principle is

3   becoming the first and not the final recourse.

4   Q. But in terms of the intended

5   destination of where Jordan's Principle should be

6   headed, is that where Jordan's Principle should be

7   as opposed to -- I guess I'm asking more about the

8   future state as opposed to --

9   A. Future state, yes. I wouldn't

10   say that's the current state.

11   Q. Now, in terms of the page 72, the

12   bottom of the first paragraph, you talk about the

13   (as read):

14   "The approach would identify

15   the underlying gaps in other programs

16   to be remedied, with Jordan's

17   Principle than working as intended as

18   a recourse in exceptional

19   circumstances."

20   So that, again --

21   A. I'm sorry, I'm just trying to

22   find the sentence. So you're at the last paragraph

23   of page 72?

24   Q. No, I'm sorry, first paragraph,

25   just under --

1   A.   First paragraph, so you're at

2   "re-aligning Jordan's Principle to the legal rule"?

3   Q.   Yes.   So if you go to kind of the

4   fourth-last line, it's the sentence starting "the

5   approach."

6   A.   "The approach would" -- okay.

7   Q.   It says (as read):

8   "The approach would identify

9   the underlying gaps in other programs

10   to be remedied, with Jordan's

11   Principle then working as intended as

12   a recourse in exceptional

13   circumstances."

14   You would agree with that as a goal

15   statement --

16   A.   I would agree with that as a goal

17   statement, yes.

18   Q.   So at paragraph 28 of your

19   affidavit, this is just at the start, you say (as

20   read):

21   Since the government of first

22   contact must pay for the services

23   (without engaging in administrative

24   case conferencing), ISC cannot

25   redirect requesters to existing

1   services available in First Nation

2   communities or to existing approved

3   group requests which are being

4   administered by First Nations

5   partners and community organizations

6   through a contribution agreement with

7   ISC. As a result, in some cases,

8   Jordan's Principle is duplicating

9   funding which it has" — sorry, I've

10   just lost my place here — "already

11   provided for an approved group

12   request or existing service."

13   You see that?

14   A. Yes, I do.

15   Q. So if we just go back to the

16   exhibit brief again, and this time now to tab 'I'.

17   And so this is 2017 CHRT-35, not a legal quiz, just

18   a helpful place to note a particular point.

19   A. Sorry, tab?

20   Q. Tab 'I'.

21   A. Tab 'I'. I heard 5. Yes.

22   Q. And now if you look at paragraph

23   3(b)(iv)(ph), which is just at the top of page 2

24   there.

25   A. Yes.

1   Q. And so this paragraph, just

2   looking back, you know, the header, it says (as

3   read):

4   "The Caring Scoiety, the AFN,

5   Health Canada and INAC officials

6   reached an agreement in October 2017.

7   The agreement was based on the

8   following principles...."

9   And just kind of to turn the clock

10   back to October 2017, you would have been assistant

11   deputy minister for regional operations at ISC at

12   the time?

13   A. Yes.

14   Q. And do you recall this agreement?

15   A. This is the amended consent

16   order?

17   Q. Correct.

18   A. Yes.

19   Q. And so at sub, or sub (5), we'll

20   call it (v), it says (as read):

21   "In cases where service is

22   available, Canada can consult, within

23   the specified timeline for the type

24   of case involved, with a First

25   Nation's child's family, with a First

1   Nation community, or with service

2   providers, in order to fund the

3   service."

4   Do you see that?

5   A. Yes, I do.

6   Q. And would following a procedure

7   like that address, at least in part, your concern

8   about duplication?

9   A. It wouldn't because the timeline

10   would not allow us to have the ability to ever do

11   that, but...

12   Q. But in a case where you had a 48-

13   hour timeline and a well-known program, is that not

14   something that could be sorted out?

15   A. I mean, I think that people

16   understand Jordan's Principle as you pay first, and

17   that's what people are expecting when they're

18   calling Jordan's Principle.

19   Q. But if there was --

20   A. They're not expecting to be re-

21   directed.

22   Q. But if there was an effective,

23   you know -- I think I heard the term "warm handoff"

24   in the, you know, the call-centre world, looking at

25   that, but if there is an effective handoff mechanism

1   between an individual request coming in and an

2   already approved request, so let's say in a

3   community there is funding for a speech therapist

4   and in that community someone calls in and requests,

5   you know, a given level of speech therapy, if there

6   is an affective way to get that child on a speech

7   therapist's roster for the next visit, that that

8   would solve the duplication concern, wouldn't it?

9   A.   There is -- that is a lot of

10   "ifs" in a 48-hour turnaround.

11   Q.   In terms of the bridge funding,

12   would that be another possible measure to address

13   the concern --

14   A.   And we do do bridge funding.

15   Q.   So it's not the case that there

16   is no ability to re-direct, it's not just within the

17   48-hour time frame.

18   A.   But I would say that the bridge

19   funding that we provide, for example, is something

20   that we need to specify timelines and -- in order to

21   be able to do that. It's not something that would

22   be ongoing.

23   Q.   Correct. It would be -- should

24   be a bridge towards that already approved request,

25   so it might be the first session, or whatever the

1   frequency is in this scenario, would be covered by

2   the bridge funding. And then from that point

3   forward, it would be part of the [indiscernible]

4   request; is that right?

5   A.   But the requester would have to

6   agree. Often requesters -- my experience has been

7   that requesters don't always agree to access

8   programs that are already there [indiscernible].

9   Q.   But that's not something that

10   comes from that 2017 agreement, is it?

11   A.   No, it's something that comes

12   from now years of operationalizing that amended

13   consent order.

14   THE CHAIR: Excuse me. I have a

15   question. Pardon. I understand that within the,

16   for example, the 48-hour window or the 12-hour

17   window there is -- your evidence is that there is

18   not a lot of time to refer to -- I can appreciate

19   that. What if the request is recurring, is there an

20   analysis that is done after the first approval, for

21   example, to see if there are other services that are

22   available in the community or at another level where

23   the requester could actually continue receiving

24   services? Is this analysis done?

25   I can understand the one-time

1   request, but let's look at, for example, recurring

2   requests. And I've read this over the years that

3   some requests are recurring, and we can understand

4   the need for recurring requests. So my question to

5   you is, after the first approval, is there somebody

6   on the team -- is there a team looking into, okay,

7   we've approved this request, but they are likely

8   going to come back to us for further approvals, so

9   is there anything available in the community or at

10   another level that we could refer them to? Is this

11   analysis done?

12   THE WITNESS: So I've seen examples

13   of that. I've seen examples of First Nations also

14   coming forward with [indiscernible] requests to

15   address a gap that they are seeing in terms of

16   repeated individual requests, so I've seen it from

17   the -- the department side, where they have looked

18   at, okay, we are seeing a demand here, let's try to

19   put something together with a First Nation community

20   or an organization if it doesn't already exist.

21   I've seen that happen.

22   I'll just give one quick example.

23   Like, I remember the Council of Yukon First Nations

24   a few years ago actually created a hot lunch

25   program. I think it was a hot lunch program. It

1   was a lunch program for schools across because they

2   were seeing a need. So there is some of that

3   analysis that happens. Likely, however, when you

4   look at the number of volume of requests that are

5   being seen now, the capacity is not there to do that

6   every time you receive a request. But is that an

7   objective that I would say that it would be in

8   everyone's best interest to work towards? Yes.

9   THE CHAIR: Thank you.

10   BY MR. TAYLOR:

11   Q. Just looking at another tool,

12   I'll just bring you to paragraphs 39 and 40 of your

13   affidavit. It's where you're talking about the call

14   centre. So 39, partway through the paragraph (as

15   read):

16   "Since requests can involve

17   multiple components, call agents

18   often engage in lengthy conversations

19   to help callers identify the child's

20   needs, including providing

21   information on the available supports

22   in their region and general

23   information about Jordan's

24   Principal."

25   And in 40 (as read):

 1   "Call agents also assist

 2   callers by referring them to other

 3   resources when the request is for

 4   someone over the age of majority."

 5   Would you agree with me that when

 6   done within timelines, and I understand your

 7   evidence about the challenge of that, that referrals

 8   through the call centre is another procedure that

 9   could address the concern of duplication?

10   A.   Not sure if it would address the

11   concern with respect to duplication, if you're

12   looking at it at a more systemic level than

13   individual level, but absolutely. If that

14   conversation can occur, and if the requester is in

15   favour of sharing their information or with

16   themselves proactively be willing to contact these

17   other service delivery organizations, then, yes,

18   that would help to address [indiscernible].

19   Q.   And then paragraph 78 of your

20   affidavit, this is just looking forward where you're

21   talking about service coordinators --

22   A.   Sorry, 78?

23   Q.   Seventy-eight, yeah, on page 20.

24   It's the second sentence. You say (as read):

25   "Generally speaking, the

1   service coordination function

2   supports families as they navigate

3   systems, linking them to existing

4   resources, and informing regional

5   focal points of identified service

6   gaps to help facilitate access to

7   support children."

8   And so would you agree with me that

9   this is another procedure that can address concerns

10   of duplication.

11   A.   If they have the capacity and the

12   time, which judging by the volume of requests that

13   we have been seeing, they likely don't.

14   Q.   Just going back to the statement

15   though that was made in your affidavit, and this

16   would be paragraph 28, you say in the second line

17   (as read):

18   "ISC cannot redirect requesters

19   to existing services available in

20   First Nations communities..."

21   So it's not a matter of total

22   inability. There are procedures in place that

23   requests can be redirected --

24   A.   I think it's the word of

25   "redirect." When we say "redirect," we mean we

1   cannot say, you will not approve this because there

2   is funding already available that you are eligible

3   for, for this service. We cannot do that. We can

4   refer, but referring does not mean that the -- we do

5   not then have an obligation to pay for the service

6   if the requester is not amenable to that referral.

7   Q.   The requester and then also the

8   other, in the case of provincial/territorial

9   government, they'd have to agree they were eligible

10   of childhood service [indiscernible].

11   A.   Correct.

12   Q.   And but just in terms of the, you

13   know, the not able, would you agree with me though

14   that in terms of the tribunal timeline, that

15   agreement reached in 2017, would it -- if the

16   redirection happens before the 48-hour timeline,

17   that's not something that's prohibited for ISC?

18   A.   We can't redirect. We can refer.

19   We can't say to the requester, we will not approve

20   or consider your request because this is -- this is

21   how we've interpreted administrative case

22   conferencing, that it would be to say to the

23   requester, we will not approve this because it's a

24   duplication of funding. Nobody would use those

25   words, but let's just say for the sake of it. We

1   would not say to a requester, we are not going to

2   approve that because your community is already

3   funded for this.

4   Q.   But just, again, going back to

5   tab 'I', that roman number (v) (as read):

6   "In cases where a services is

7   available, Canada can consult, within

8   the specified timeline for the type

9   of case involved, with First Nation's

10   child's family --"

11   So that's the step with family you're noting --

12   A.   Correct.

13   Q.   (As read):

14   -- " with the community, or

15   with service providers, in order to

16   fund the service."

17   So those -- within the 48-hour time

18   frame, those consultations, but they're not

19   [indiscernible] by this agreement.

20   A.   Consultation, but then it's

21   agreement. There would need to be agreement

22   reached.

23   Q.   Some questions for you over at

24   paragraph 33. This is where you're talking, again,

25   about some of the structural components of the

```
1        department.  Big heading here: "Jordan's Principle

2        Operations."

3                        A.  Yes.

4                        Q.  So in 33 you talk about (as

5        read):

6                            "ICS's has made — [looking at

7                        the quote here] — fundamental,

8                        foundational change towards the

9                        ending of systemic discrimination

10                       against First Nation children."

11                       In the next sentence over the page,

12       you note (as read):

13                           "[Having] established an entire

14                       operational sector within ISC to

15                       administer and support Jordan's

16                       Principle delivery, including an

17                       arms-length appeal mechanism to

18                       ensure that requests are deal with

19                       fairly and in keeping with the

20                       tribunal's orders."

21                       So would you agree with me that the

22       new operational sector at ISC and the arms-length

23       appeal mechanism are key components of what you're

24       calling the fundamental, foundational change ISC has

25       made?
```

1   A.   It's part of it, yes, for sure.

2   Q.   Is it an important part of it?

3   A.   Yes.

4   Q.   Is it an essential part of it?

5   A.   Yes.

6   Q.   Now, just -- I was going to ask a

7   few questions about appeals, but just because re-

8   review, at least as I understand it, comes before

9   appeals, we'll just go there for a second.

10   A.   And, sorry, which paragraph --

11   Q.   Oh, we're on 52 to 53.

12   A.   Fifty-two then fifty-three, yeah.

13   Q.   Well, we're going to come back to

14   the [indiscernible] on appeals, but just to deal

15   with re-reviews because those are next in time.

16   A.   Yes.

17   Q.   And so I was wondering if ISC has

18   any statistics that it tracks on re-reviews.

19   A.   Oh, my goodness. I haven't seen

20   any recently. We would -- this is something that we

21   should ask either Candice or the team.

22   Q.   Okay. So I'll now talk about

23   the appeal process. I said we were going back, but

24   we're actually go forward. So paragraph 54.

25   THE CHAIR: Mr. Taylor, is it okay if

1   I interject? Because I think if we're going to get

2   into the appeals process, I would like to ask my

3   questions, so --

4   MR. TAYLOR: No problem with me.

5   (QUESTIONS BY THE PANEL)

6   THE CHAIR: You've testified earlier

7   that some intake officers do not have the level of

8   authority to approve some cases and that it could be

9   dangerous if they don't possess the authority and

10   it's not escalated. I was wondering if we could go

11   back to paragraph 19 and 20. I just want some

12   clarification here just to make sure that I

13   understand. Are you there?

14   A. Yeah.

15   THE CHAIR: Yes. Okay.

16   A. Yes, I am there.

17   THE CHAIR: Okay. So you say in your

18   affidavit (as read):

19   "The back-to basics approach

20   changed how ISC intake officers

21   identify requests as urgent or non-

22   urgent. Under the SOPs," [which was

23   previous -- prior to back-to-basics]

24   "urgency was based on the initial

25   assessment by the regional focal

1   point, and urgent requests were

2   defined as a child requires urgent

3   assistance, is in palliative care, or

4   a risk of irremediable harm is

5   reasonably foreseeable."

6   Do you see this as linked to the

7   tribunal's orders?

8   A. So, yes.

9   THE CHAIR: These types of criteria

10   that you mention in paragraph 19.

11   A. Yes, we worked on those criteria

12   that were part of the standard operating procedures

13   with the parties at that time. The differentiation

14   now is just that the intake officer is not making

15   the assessment as to whether or not a request is

16   urgent or not, the requester is. And the intake

17   officer is not questioning, or is not suppose to

18   question, whether or not that request is actually

19   urgent, so would not be asking for the explanation

20   as to which criteria it would meet.

21   THE CHAIR: Okay. So following this,

22   paragraph 20 you say that (as read):

23   "Pursuant to the back-to-basics

24   approach, the parties view the

25   requester as best positioned to judge

1   the urgency of a request. The intake

2   officer is required to accept the

3   requester's identification of the

4   request as urgent or not, and is not

5   permitted to reassign the request to

6   a lower level of urgency. However,

7   ISC may raise the level of urgency if

8   they determine a request designated

9   by the requester as non-urgent is

10   actually urgent."

11   I have questions about the first

12   part. You said that no -- earlier, you -- your

13   evidence says that you've -- you are not providing

14   any criteria to the requesters and they self-

15   identify if the request is urgent. And you've also

16   provided some examples. And I appreciate that also

17   counsel for the Caring Society has said that we

18   don't have all the context for the requests that are

19   labelled as miscategorized.

20   However, I'm wondering if -- is

21   there not a danger in treating all the requests as

22   urgent when some might not be urgent? And in your

23   view, is this what -- well, you can't answer what

24   the tribunal intended, but this happened after the

25   tribunal orders of the -- for the timelines.

1   A.   Yes, I believe there is a risk.

2   I believe that when we developed -- or I'll speak to

3   myself. When I was part of the development of the

4   back-to-basics, I did not envision that requesters

5   -- so many requesters would identify their requests

6   as urgent, and I did not envision that the type of

7   requests that we are now seeing as -- categorized as

8   urgent would be part of what we would be dealing

9   with. So now that I see the impacts of the

10   implementation of back-to-basics, I am concerned

11   that cases that I would identify as urgent are not

12   being treated as urgent or as timely because of the

13   level and the volume of urgent crisis that people

14   are now having to deal with.

15   THE CHAIR: Yes. And just for a

16   clarification point, when the tribunal set the

17   timelines, urgent meant urgent. I just wanted to

18   clarify this, and this might help for -- if you have

19   other questions to ask. And just bear with me for a

20   second.

21   In your Exhibit 'C', attached to your

22   affidavit, it is mentioned that (as read):

23   "Urgent requests include but

24   are not limited to cases which:

25   involve end of life, palliative care,

1   mention suicide, relate to physical

2   safety concerns, concern access to

3   basic necessities, and have a risk of

4   entering the child welfare system."

5   And this is not an exhaustive list,

6   but those are examples. So this would also be in

7   the back-to-basics approach?

8   A. That's correct.

9   THE CHAIR: Okay. Thank you for now.

10   BY MR. TAYLOR:

11   Q. Actually, thanks, Chair. That

12   was -- actually, a question arising from your

13   questions was, if we were to look at tab 'G' at the

14   exhibit bundle.

15   A. Exhibit bundle.

16   Q. We dealt with this first bullet

17   which was (as read):

18   "Focal points and call centre

19   staff will ask all service requesters

20   if they feel the case is urgent or

21   time sensitive using a plain-language

22   approach to ensure the requester

23   understands the question and

24   providing examples of an urgent

25   request (as listed below)."

1   And then if we go down to the fourth

2   bullet (as read):

3   "Examples of urgency include

4   all cases involving end-of-

5   life/palliative care, mention of

6   suicide, physical safety concerns, no

7   access to basic necessities, risk of

8   child entering child welfare system,

9   et cetera, and that the age and

10   vulnerability of children should be

11   considered in determining urgency."

12   And so would you agree that that's --

13   an additional component of base-to-basics is that

14   the focal point is to be giving the requesters

15   examples in bullet number four?

16   A. I would say that the majority of

17   intake though is happening through e-mail requests,

18   right, where -- like, my understanding is that these

19   requests are being labelled by requesters as urgent

20   regardless of whether or not that conversation has

21   occurred with a focal point or not or there has been

22   an e-mail exchange.

23   Q. And in terms of the work the team

24   did on it, the 18.5 percent of cases that they

25   misclassified based on just the service, would you

1   acknowledge that there needs to be more information

2   about that kind of request and what exactly it

3   relates to, to know whether that is a true

4   misclassification --

5   A. Correct.

6   Q. -- or not? And would you agree

7   as well that in the backlog context where -- my

8   understanding is that there is certainly at least

9   thousands of requests that are in backlog.

10   A. Yes.

11   Q. And then in that context where

12   determinations are taking a long time, there are

13   things that can either become urgent or things that

14   are time sensitive? For example, if there is a

15   cultural activity or [indiscernible] on a particular

16   day, and if the approval doesn't happen because it's

17   sort of in the cue and the family doesn't have the

18   means to essentially to fund that activity or

19   support themselves, that the -- it will be a missed

20   opportunity for the child as a result.

21   A. I would say that's time

22   sensitive. I wouldn't say it's urgent unless it

23   related to a particular other circumstance of the

24   family.

25   Q. But certainly the back-to-basics,

1   at least the language in the first point here, is

2   that there is particular attention to both urgency

3   and time sensitivity in terms of not wanting to have

4   essentially requests that become [indiscernible]

5   because they can't be dealt with due to processing

6   times; is that a fair statement?

7   A.   If a deadline has past for that

8   particular activity, in that particular

9   circumstance, then, yes.

10   Q.   And would you agree that that --

11   in terms of the operation of Jordan's Principle, you

12   know, some way of ensuring that opportunities aren't

13   missed due to processing timelines is important?

14   A.   As part of what would be assessed

15   to triage requests, yes.

16   MR. TAYLOR: I've got about three or

17   four themes left, but maybe now would be an

18   opportunity to take a break?

19   THE CHAIR: Yes.   We will take 20

20   minutes break.   Dr. Gideon, you've done this before,

21   so I would ask you that you will not discuss your

22   evidence with anyone until we're done, I guess,

23   maybe later today, unless counsel raises questions

24   and asks you to confer with your counsel or the

25   team.   But unless this occurs, please do not discuss

1   your evidence. So we'll take 20 minutes, so we'll

2   be back at 11:30.

3   ---OFF THE RECORD

4   ---UPON RESUMING:

5   ---QUESTIONS BY THE PANEL:

6   THE CHAIR: Okay. Thank you for

7   coming back. Dr. Gideon, in the section of the

8   payment process at paragraph 65 of your affidavit,

9   you mentioned (as read):

10   When a request is approved, ISC

11   has a variety of mechanisms to

12   process payments. Most individual

13   requests are processed based on a

14   reimbursement model: after a request

15   is approved, the requestor will

16   submit an invoice and direct deposit

17   information to receive payment for

18   the approved item. ISC has also set

19   up accounts with approved vendors

20   that will bill ISC directly for the

21   services provided."

22   If we deal with that, are you -- did

23   you hear what I said?

24   A. Yes.

25   THE CHAIR: Oh.

1   A.   Apparently, I was just -- I was

2   going to put my mic on. They asked [indiscernible].

3   THE CHAIR: Okay.

4   A.   It's all --

5   THE CHAIR: When I'm asking a

6   question, please don't talk to the witness. Okay.

7   So I was wondering where -- let me rephrase this.

8   Why are the requests approved? Why is this process

9   a reimbursement process? Where does that come from,

10   is it your authorities of Financial Administration

11   Act? Where does that come from?

12   A.   So if someone says I need a

13   service for 'X', we will say, yes, you are approved

14   for that service. If they have paid for the service

15   already, then we would reimburse them. If they

16   haven't paid for the service already and we don't

17   have an arrangement with a vendor or can't put one

18   in place between the time and they have the ability

19   to pay and be reimbursed, then that's a vehicle, but

20   we can do advanced payment, or we can, as we noted,

21   create sort of a direct billing arrangement with

22   particular providers.

23   The other option that we can do, but

24   that's more one time, not recurring payments, is we

25   can use acquisition cards. And there is a specific

1   threshold limit of $10,000 for an item or $20,000

2   for travel that those cards can be used for, and

3   they're considered advanced payments. So we try to

4   create a variety of mechanisms to try to meet the,

5   you know, the -- the broad range of requests that we

6   receive. Those are for individual requests.

7   For group requests, we set up

8   [indiscernible] agreements with generally First

9   Nations organizations. And we will negotiate the

10   payment schedule with them on the basis of what it

11   is that they need. So we can give money upfront

12   when the agreement is signed and then we can do

13   future payments. It will depend on the activity

14   that they are undertaking and what their needs are.

15   THE CHAIR: Okay. Thank you. Would

16   you agree with me that if a family is poor, and

17   that's been recognized earlier in your evidence that

18   we are -- you are dealing with families that are

19   poor, that could be extremely difficult for them to

20   even advance for 3 days, 7 days and wait for

21   reimbursement, even if it takes the 14 days that

22   you've mentioned? Would you agree that poverty can

23   make this very difficult for a family?

24   A. I would agree with that. That's

25   why we've set up some advanced payment options,

1   including gift cards in some contexts, but there are

2   value limits to those things. The best is for us to

3   set up a direct arrangement for -- if it's the

4   landlord, we can issue a payment to the landlord.

5   If it's the grocery store and they will take a

6   direct billing from us -- could be Home Depot,

7   right. We've set up arrangements with Home Depot.

8   Like, that is the preferred mechanism for supporting

9   a family that is living in poverty.

10   THE CHAIR: Okay. Thank you. And

11   just a moment, I'll look at my notes. At paragraph

12   28 of your affidavit, you mention (as read):

13   "Since the government of first

14   contact must pay for the services

15   (without engaging in administrative

16   case conferencing), ISC cannot

17   redirect requestors to existing

18   services available in First Nations

19   communities, or to existing approved

20   group requests which are being

21   administered by First Nations

22   partners and community organizations

23   through a contribution agreement with

24   ISC."

25   And you've just referred to this earlier. (As

1   read):

2   "As a result, in some cases,

3   Jordan's Principle is duplicating

4   funding which it has already provided

5   for an approved group request or

6   existing service."

7   So the removal -- for the panel, the

8   removal of administrative conferencing was to avoid

9   the constant back and forth before a request has

10   been approved. So I'm not asking a question now to

11   you. I am asking you to reflect, maybe over the

12   lunch hour, if there is a lunch hour if we're not

13   done, what would be in your view the ideal solution

14   here for the issues that you're raising in -- at

15   paragraph 28 and that you've already testified to.

16   I'm just interested, in your view, what are some

17   areas of solutions that could address this. So I'm

18   just putting it out there right now.

19   A. Okay. We'll go back to it.

20   THE CHAIR: Yes. Thank you.

21   MR. TAYLOR: If it's all right,

22   Chair, I might come back to that at the end before I

23   close my [indiscernible].

24   THE CHAIR: Absolutely.

25   MR. TAYLOR: -- just in case there is

1   any follow-ups.

2   THE CHAIR: Yes.

3   MR. TAYLOR: Okay. I'm all right to

4   continue, Chair?

5   THE CHAIR: Yes.

6   MR. TAYLOR: Thank you.

7   BY MR. TAYLOR:

8   Q. So I have just a couple of, you

9   know, points before getting into appeals. Just

10   briefly again on urgency — I don't think you need to

11   turn it up, but if you want to, it's tab 'G' in the

12   book on back-to-basics — we talked about some of the

13   examples of urgency in terms of end-of-life context,

14   physical safety concerns, mention of suicide, et

15   cetera. If a request was coming in, whether it's on

16   the phone or by e-mail, and there is no mention from

17   the requester of urgency, under back-to-basics, the

18   focal points or the intake officer is still supposed

19   to be applying [indiscernible] themselves to it; is

20   that right?

21   A. Yes.

22   Q. And then just a further question

23   along the lines of 2017, CHRT-35 that we were

24   talking about, and that [indiscernible] agreement in

25   terms of how Jordon's Principle requests could play

1   out, are you familiar that there was a provision in

2   that order where the government or department of

3   first contact can seek reimbursement from another

4   government or department?

5   A.   Yes, I am aware.

6   Q.   And are you aware of any efforts

7   to seek reimbursement from provincial or territorial

8   governments for services provided through Jordan's

9   Principle covered -- that are covered by them or

10 that would be covered by a provincial program or

11 service?

12   A.   We have no authority within

13 Indigenous Service Canada to do that because we

14 don't manage the [indiscernible] to provinces and

15 territories for [indiscernible] social programs, so

16 they're done though the department of finance. The

17 other issue is that how can you seek a reimburse for

18 a service from a government that never approved that

19 service?

20   Q.   That would be an operational

21 problem to be solved by someone else in the

22 government, is your evidence, in terms of finance

23 or...

24   A.   Well, it -- it -- they have

25 financial administration laws as well, right, so

1   most of them would not have retroactive

2   reimbursement capacity for requests that they would

3   never have known about, never approved, and would

4   not necessarily meet their cycle of funding,

5   depending on whether or not they have a matching

6   fiscal year. So those are just examples of

7   operational issues that we would run into, as well

8   as the sharing of personal information that would be

9   required in order for them to then consider that

10   request. We can't unilaterally send a list of

11   individuals, their names, their personal

12   information, what we paid for, and say to a

13   provincial government, now you have to reimburse us.

14   Q.   But in the scenario, and this is

15   potentially a political question, so tell me if it

16   is, but in the scenario where, you know, officer --

17   there's support being paid for educational

18   assistance in the provincial school system, you

19   know, there could be an over [indiscernible] the

20   federal government in terms of looking at the tally,

21   well, this is been money extended under Jordan's

22   Principle for educational assistance in your school

23   system in this year, and discussions at that level

24   about sorting that out in terms of [indiscernible]

25   paid back.

1   A.   We have approached in certain

2   circumstances service providers to see if there is

3   another way in which we could organize the service

4   from a group request perspective, but you wouldn't

5   be able to, as a federal department, ask a school

6   board, a provincial school board, to reimburse you

7   for services. Like, there would be no mechanism for

8   that to occur.

9   Q.   So there would have to be -- the

10   mechanism, wherever it's addressed, would have to be

11   addressed somewhere else in government.

12   A.   Absolutely.

13   Q.   And just going now on to, at

14   least for me at long last, appeals. I believe it's

15   [indiscernible] a little bit. We talked about re-

16   reviews.

17   A.   Pardon me? I'm sorry, I didn't

18   -- my affidavit?

19   Q.   Yeah, I'm back to paragraph 54

20   now of --

21   A.   Okay. Thank you.

22   Q.   -- in your affidavit. Now, just

23   on, I guess, on a structural point, in paragraph 56

24   of the affidavit, you talk about a request for

25   proposals process launched in February of 2024 to a

1   Standing Committee's membership. This is after you

2   left, yes, so I was just wondering if you were

3   involved in this RFP process?

4   A. I'm not.

5   Q. And so this is second-hand

6   information for you?

7   A. Yes.

8   Q. Okay. Do you know who told you

9   that?

10   A. Well, I received it from the team

11   in terms of part of the measures that they're taking

12   into account in order to ensure that they can

13   address what is likely to be arising [indiscernible]

14   requests. It's just part of the background

15   information I received to prepare for this.

16   Q. And just going back to the

17   exhibit cerlox here, tab 'A' is that Jordan's

18   Principle website we looked at at the start.

19   A. Yes.

20   Q. And over the page -- and I should

21   just maybe note for the record, the very last page

22   of the printout it says "date modified: March 6,

23   2024." And maybe you could just confirm my

24   understanding, on government websites, that's, you

25   know, essentially the date that the page was last

1   brought up to date?

2   A.   That's what I understand it to

3   be, yes.

4   Q.   So we can at least agree this to

5   be current --

6   A.   Yes.

7   Q.   -- as the start of last month.

8   A.   Yes.

9   Q.   So it says under the first

10   heading on page 2, "Updates on Jordan's Principle,

11   Jordan's Principle External Appeal's Committee," and

12   says kind of partway down the line, it says (as

13   read):

14   "The call is now closed. Thank

15   you to all those who expressed an

16   interest. ISC will communicate the

17   results of the process to those who

18   applied once the evaluation of the

19   proposals is finished."

20   Now, if there is an ongoing process,

21   that would be out-of-date information in terms of

22   the request date --

23   A.   If it had been issued, yes.

24   Q.   Right.

25   A.   It would be out of date. That

1   would be referring to the former, I understand.

2   Q.   And you'd agree if the process is

3   ongoing, it would be important to publicize that on

4   the update section of the webpage?

5   A.   I would agree that that would be

6   one mechanism to reach people, yes.

7   Q.   And just in terms of how the

8   Appeal's Committee operates, do you know if there

9   are, and we talked about this a little bit before,

10   so just let me know if we're heading into territory

11   where the transition could be [indiscernible] as

12   kind of events [indiscernible] taken [indiscernible]

13   department, but are there materials provided at the

14   Appeal's Committee about parameters for the

15   recommendations, if we looked at that operational

16   bulletin number four?

17   A.   Like, relating to housing you

18   mean, specifically --

19   Q.   I think that was on housing, but

20   just in general in terms of the -- are the decision-

21   makers given parameters as to how much they can

22   decide cases?

23   A.   They're -- they're given case

24   review forms. I mean, I can't speak to how they

25   were onboarded and the information, I'm sure, that

1   was shared with them with respect to the Canadian

2   Human Rights [indiscernible] which would be the

3   parameters.

4   Q.   But there would be certain

5   appeals and denials that they couldn't overturn, for

6   instance, like, on the housing item --

7   A.   Based on authorities --

8   Q.   Based on authorities.

9   A.   So I can't speak to specifically

10   what they've been provided.

11   Q.   Okay.   And in terms of the other

12   category of -- I'm trying to find a non-advocacy way

13   of describing this, but the denials that are

14   opposed, not because of authority, but because of

15   the -- of a policy decision -- like, we talked about

16   the income supports where it was, you know, that the

17   policy decision is 3 months to 6 months to 12 months

18   and where there is an individual need, that would

19   resolved with the appeal process; is that a fair

20   characterization of that kind of approach?

21   A.   Well, it's possible that it could

22   also happen through the escalation process,

23   depending on what the circumstance is, if there is a

24   circumstance that shifted in the family.   I mean, I

25   can't -- I can't say that it would be impossible for

1   the escalation team to also look at that particular

2   situation, depending on new information being

3   submitted.

4   Q.   In terms of the appeal, the

5   appeal decision-makers' ability to intervene in

6   those cases, they'd have to have an appeal before

7   them to do that; is that right?

8   A.   I believe so, but I

9   [indiscernible] should be [indiscernible] there's

10   any exceptional measures where that has occurred.

11   I'm not aware of it.

12   Q.   And just in terms of looking at

13   some of the numbers here, paragraph 63, you note

14   that in '22-'23, there were 1,258 appeals determined

15   under the new appeals process and then 625 appeals

16   determined in the first three-quarters of '23-'24.

17   A.   Uh-hmm.

18   Q.   And then if we turn all the way

19   back to paragraph 6 of your affidavit, you've got

20   just shy of 6,000 requests denied and then -- or

21   just shy of 3,700 requests denied for '23-'24. I

22   should say that just shy of 6,000 is for '22-'23.

23   So more appeals than -- or more cases -- more

24   denials than not done through the appeals process at

25   this time?

1   A.   Sorry, more denials than

2   appeals --

3   Q.   Sorry, most appeals -- I'm sorry,

4   most requests that are denied don't proceed to

5   appeal at this point in time. I just wonder if you

6   agree --

7   A.   I don't have the percentage

8   points on the requests for appeal, but I'm sure that

9   would be available.

10   Q.   So it would be able to compare

11   the number of appeals determined in 63 --

12   A.   Right, to the overall --

13   Q.   -- to the number of requests

14   denied to determine that --

15   A.   That's right.

16   Q.   -- proportion. Okay. And am I

17   right in understanding that requesters can't make

18   submissions directedly to the Appeals Committee,

19   that goes through the secretariat?

20   A.   I can't speak to what's occurred

21   since -- in the last several months.

22   Q.   And at paragraph 63, you note

23   that there is -- 59 percent of the determinations

24   were overturned on recommendation of the Appeals

25   Committee in '22-'23 and 46 percent of

1   determinations overturned in '23-'24. Do you know,

2   for the ones where there was no -- essentially no

3   overturning of the decisions, so the ones where the

4   decision was maintained, do you know if ISC tracks

5   any data about the kinds of requests that are in

6   those buckets, the denials that are upheld?

7   A. Well, I can say that when I was

8   part of the appeals process that information was

9   tracked, so my assumption is that the team would

10   continue to look at the type of requests that had

11   been made and whether or not they were overturned on

12   appeal.

13   MR. TAYLOR: Ms. Anderson, I wonder

14   if we could have that data for '22-'23 and '23-'24,

15   if it exists, the category breakdown of the appeals

16   cases and what happened, if they were overturned or

17   upheld?

18   U/T   MS. ANDERSON: Yeah. We will

19   [indiscernible].

20   MR. TAYLOR: Thanks.

21   BY MR. TAYLOR:

22   Q. So paragraph 61, just going back

23   a few paragraphs, you say (as read):

24   "The Appeals Committee provides

25   a clear avenue for complaint

1   resolution."

2   Do you agree though that that would

3   only apply to complaints that are arising after the

4   requests have been determined?

5   A. I'm just going to go back to that

6   paragraph.

7   Q. Sure.

8   A. So 61?

9   Q. Sixty-one, yeah, the first

10   sentence there.

11   A. So your question? Could you just

12   repeat the question just to make sure --

13   Q. No problem. What you say in 61

14   is the (as read):

15   "The Appeals Committee provides

16   a clear avenue for complaint

17   resolution."

18   My question is, if you agree that

19   that statement, there is a clear avenue for

20   complaints resolution, only applies in the context

21   of the Appeals Committee for post-determination

22   complaints? So if you --

23   A. The Appeals Committee for

24   requests that they receive.

25   Q. Yeah.

1   A.   Yes.

2   Q.   Which would be requests that have

3   been determined by ISC.

4   A.   Yes.

5   Q.   And so would you agree then that

6   the Appeals Committee can't help resolve the

7   complaints that happen before a determination is

8   received like a failure to how to --

9   A.   I don't see how they would have

10   received the information.

11   Q.   And if there was a problem or a

12   complaint with an approved request like a failure to

13   make a timely payment to a supplier or a failure to

14   make a timely reimbursement to the recipient, the

15   Appeals Committee couldn't help with that kind of --

16   A.   I don't see how they would

17   receive the information.

18   Q.   Now, if we could go back to the

19   brief of documents there to tab 'H', again, that is

20   the agreement of principle summary that was Exhibit

21   61 at [indiscernible] affidavit.

22   A.   Is it the website for the

23   [indiscernible].

24   Q.   Yeah, the summary that was posted

25   online.

1   A.   Yes.

2   Q.   So if you don't mind turning over

3   to page 2, where it says "Jordan's Principle."

4   A.   Uh-hmm.

5   Q.   And do you see it says (as read):

6   "Canada will take urgent steps

7   to implement the measure set out in

8   the workplan to improve outcomes

9   under Jordan's Principle"?

10   And was that the accountability

11   workplan you were referring to earlier in your

12   evidence?

13   A.   That's what I was referring to,

14   yes.

15   Q.   And do you see (as read):

16   "...the workplan to improve

17   outcomes under Jordan's Principle

18   based on its compliance with the

19   Tribunal's orders."

20   Is how that's described in the

21   document there. And do you see under the second

22   bullet is says (as read):

23   "Develop and implement

24   Indigenous Services Canada internal

25   quality assurance measures including:

Motion Hearing
April 2, 2024

1 training on various topics, the

2 complaint mechanism, and an

3 independent office to ensure

4 compliance?"

5 Do you see that?

6 A. I do.

7 Q. And would you agree that the

8 complaint mechanism and the independent office to

9 ensure compliance that was discussed there would be

10 something that was separate from the Appeals

11 Committee?

12 A. Yes.

13 Q. Couple of questions for you about

14 training. So we'll stay with that tab 'H' point and

15 actually the point that we just noted, which is (as

16 read):

17 "Develop and implement

18 Indigenous Canada internal quality

19 assurance measures including training

20 on various topics..."

21 And so would you agree with me that

22 training is an important quality assurance

23 mechanism?

24 A. Yes.

25 Q. And if we look back to paragraph

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1   34 of your affidavit, you note that executives --

2   ISC executives, have to take -- I'll just try and

3   find the [indiscernible] so the second sentence

4   here. I'll just wait for you to --

5   A. I have it.

6   Q. Yeah. So the second sentence (as

7   read):

8   "To that end, all ISC

9   executives are tasked with advancing

10   anti-racism, diversity, equity,

11   inclusion and accessibility in the

12   public service by meeting all

13   obligations of the tribunal orders

14   related to First Nations Child and

15   Family Services and Jordan's

16   Principle. All ISC staff are

17   expected to undertake no less than 15

18   hours of mandatory annual Indigenous

19   cultural competency training."

20   And am I right that that's essential

21   work that came out of that Tri-Chaired Committee

22   that you, along with Dr. Blackstock [indiscernible].

23   A. Yes.

24   Q. And am I right that that work has

25   now been referred -- rolled into the expert Advisory

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1        Committee that was made after the March 2022 consent

2        order?

3                      A.   Yes.

4                      Q.   And is it fair to say that in

5        addition to training, another factor that is going

6        to inform ISK's implementation of Jordan's Principle

7        is the breadth of its authorities?

8                      A.   Sorry, can you repeat the

9        question?

10                     Q.   The breadth's of its authority,

11       so the authorities that are set for Jordan's

12       Principle in terms of what Jordan's Principle can

13       and cannot --

14                     A.   That this would be part of the

15       training?

16                     Q.   No, that this would be part of

17       the implementation.  So training is one part of

18       how --

19                     A.   Right.

20                     Q.   -- the department is

21       implementing.  And then another part of how or what

22       the department is implementing is what's in its

23       authorities for Jordan's Principle.

24                     A.   Yes.

25                     Q.   And those are set outside of
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1   this, those authorities?

2   A.   Well, not entirely, no.

3   Q.   But they would be authorities

4   that are received from the Ministry of Finance

5   treasury board?

6   A.   Yes.

7   Q.   Or Cabinet.

8   A.   Yes.

9   Q.   And do you know if those entities

10   have the same training as ISC?

11   A.   They do not have the mandatory 15

12   hours, as far as I'm aware.

13   Q.   And do their executives have the

14   same tasking with the advancing anti-racism,

15   diversity, equity, inclusion, et cetera?

16   A.   They do because of the clerk's

17   calls to action, and so all deputy heads across the

18   federal public service have the same requirements

19   from the clerk on a year-to-year basis.

20   Q.   So --

21   A.   And so it trickles down to all of

22   the executives, and it is a mandatory element, and

23   then departments define it in a different way

24   depending on their mandate and how they implement

25   it.

1   Q.   And [indiscernible] on that

2   mandate from the clerk would be through the mandate

3   of their department, or their articulation, the

4   expression that that mandate would find, would be

5   shaped by their department's mandate?

6   A.   Yes.

7   Q.   Some questions for you about

8   operational meetings that happened over the years.

9   Do you remember participating in the Consultation

10   Committee for Child Welfare?

11   A.   I do.

12   Q.   And the Jordan's Principle

13   Operations Committee?

14   A.   I do.

15   Q.   And do you recall those meetings

16   largely starting after the tribunal's orders in

17   November 2017 on Jordan's Principle on the one hand,

18   and then February of 2018 on the FNCFS program on

19   the other hand?

20   A.   I do.

21   Q.   And do you remember those

22   meetings continuing regularly while the parties

23   sought guidance from the tribunal in areas where no

24   agreement could be reached? Just as an example,

25   whether Jordan's Principle applied to First Nations

1   children without Indian Act status, whether there

2   was an obligation to fund major capital or

3   compensation?

4   A.   I would say yes, but I would say

5   that when we evolved into negotiations, we put the

6   Consultation Committee on Child Welfare in

7   particular on pause.

8   Q.   But in the time when -- before

9   the committee was put on pause, even if there were

10   matters pending before the tribunal, the parties

11   were still meeting at that point?

12   A.   Yes. Compensation would have

13   been an example of a matter that was pending

14   decision by the tribunal that came out in September

15   '21.

16   Q.   And major capital spending for

17   some time --

18   A.   And major capital, yes.

19   Q.   And a status of the --

20   A.   Yes.

21   Q.   -- Indian status question. And

22   the same would have been true of JPOC, the JPOC

23   [indiscernible].

24   A.   JPOC [indiscernible] yeah.

25   Q.   And so if we just go to tab 'J'

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1         in this bundle?

2                         A.   Oh, this is your bundle?

3                         Q.   Yes, your on it, sorry --

4                         A.   Yes?  Okay.  I just wanted to

5         check.

6                         Q.   -- not the -- not your affidavit.

7         It's the document [indiscernible].

8                         A.   [Indiscernible].

9                         Q.   So paragraph 7, at the bottom of

10        the second page here --

11                        A.   Uh-hmm.

12                        Q.   -- and it says in the second

13        sentence (as read):

14                             "When gaps are identified,

15                             concerns are raised or disagreements

16                             are expressed, Canada would ask the

17                             parties to further engage with Canada

18                             through e-mails to myself or

19                             discussions with the Jordan's

20                             Principle Oversight Committee, or the

21                             Protocol Constitution Committee as an

22                             alternative [indiscernible] once

23                             again, it was my sincere attempt to

24                             practically respond and address

25                             issues with respect to
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1   implementation."

2   Do you still think those discussion-

3   based values are important in implementing the

4   tribunal's orders?

5   A. [Indiscernible].

6   Q. And if you like, we'll go over

7   the tab to 'K', which is an excerpt from your April

8   15, 2019 affidavit, turn over the page to paragraph

9   57. Here the second sentence says (as read):

10   "I have made every effort to

11   work with the parties and collaborate

12   on the policy and operations of

13   Jordan's Principle and addressing

14   gaps in First Nations children's

15   mental health. Whenever possible, I

16   have sought to create and foster an

17   open and transparent dialogue to

18   respond to issues promptly and

19   effectively so that the government's

20   activities and commitments on

21   Jordan's Principle are reflected in

22   the parties' understanding

23   [indiscernible] our regional First

24   Nations [indiscernible]"

25   Do you see that?

1   A.   I do.

2   Q.   And is it fair to say you still

3   think that open and transparent dialogue is an

4   important part of upholding the government's

5   implementation of Jordan's Principles?

6   A.   Subject to cabinet

7   [indiscernible] I do.

8   Q.   And --

9   A.   And solicitor-client privilege.

10   Q.   Yes, yes.

11   A.   Sorry, I'm sorry solicitor-client

12   privilege, I do.

13   Q.   Don't worry. I wasn't going to

14   go there. Are you aware that Jordan's Principle

15   Operations Committee hasn't met since the Caring

16   Society filed its non-compliance motion?

17   A.   I am aware because I read through

18   the affidavit materials of the Caring Society.

19   Q.   Do you find it surprising that it

20   hasn't met since the motion was filed?

21   A.   I don't have an opinion about it,

22   honestly. I wouldn't say that I was surprised

23   [indiscernible].

24   Q.   And are you aware that ISC has

25   filed a cross-motion asking to extend the timelines

1   for determining requests and decide criteria for

2   urgent requests or [indiscernible] criteria --

3   A.   Indigenous Services Canada?

4   Q.   Yes.

5   A.   Yes, I am aware of the motion.

6   Q.   And are you aware that those

7   timeline extensions weren't canvassed with the

8   Caring Society before the motion was filed?

9   A.   I'm not aware.

10   Q.   And were you aware that those

11   timeline extensions weren't canvassed with the

12   Jordan's Principle Operations Committee members?

13   A.   I'm not aware [indiscernible].

14   MR. TAYLOR: One moment. Madam

15   Chair, I have one topic left, other than asking Dr.

16   Gideon if she has an answer to your earlier question

17   kind of about the ideal scenario. I wonder if I

18   might have -- actually, maybe it might be easier, if

19   you're ready to answer the question about the ideal

20   scenario, that we hear your answer on that and then

21   just have a quick five-minutes to confer with my

22   colleagues and then I'll cover my last topic and

23   that'll be it for us.

24   THE CHAIR: Yes. I don't know if she

25   is ready to answer --

1   THE WITNESS: Sure.

2   THE CHAIR: You are? Okay.

3   THE WITNESS: Sure. I mean, I'll

4   just go back to 2018 when we did the work with the

5   Assembly of First Nations and other parties on

6   looking at what a long-term approach to Jordan's

7   Principal could be. You know, I did believe very

8   much in that work. We had undertaken work in

9   discussing with First Nations -- I mean, I wasn't

10   always directly involved in it, but certainly I

11   received regular briefings from the team about that

12   work, and it -- it was about a year -- about a year

13   duration in time.

14   We presented the work with the

15   Assembly of First Nations at the Jordan's Principle

16   Nation Summit in September of 2018, and it involved

17   multiple components. Like, one of the components

18   was to [indiscernible] all First Nations communities

19   to have an amount of funding where they could

20   address gaps in terms of access to services that

21   they were experiencing based on their needs. That

22   was based on what the Manitoba region had done early

23   on in their circle of care model, where they had

24   provided a certain amount to all communities to just

25   essentially, initially, look at Allied Health

1   Services home community care services and so forth

2   and then it expanded from there.

3   It also involved a component of

4   establishing First Nations service provider networks

5   so that First Nations could get into the provision

6   of services in areas where they wouldn't have

7   necessarily had the opportunity to do that in the

8   past. Now, some of that has just naturally emerged

9   now through group requests. So an example is the

10   Manitoba First Nations Education Resource

11   Consortium. There is a couple of appeal members

12   actually that work for them.

13   And, you know, what they have done is

14   they have ramped up their capacity to have speech

15   therapists and educational assistance and so forth.

16   And they deploy them to schools across the region so

17   that they're trying to proactively address the

18   needs. And it supplements what individual First

19   Nation schools and communities would have access to

20   through their own funding. So these are examples of

21   those types of models.

22   And of course, you know, I think that

23   if First Nations organizations or communities had

24   the ability themselves to approve Jordan's Principle

25   requests that wouldn't necessarily fit in terms of a

1   particular program, or if it was an off-reserve

2   First Nation member, for example, that they can't

3   directly serve but would have a need for services, I

4   think the extent to which First Nations could

5   participate in the determination of requests is

6   something that would, first of all, alleviate,

7   obviously the volume of requests that would come to

8   the federal government, but it would also be more

9   aligned in the pathway to self-determination.

10   I think you will have seen in the

11   data that we went from 46 FTEs to 400 and almost 500

12   FTEs in order to meet the compliance time frames

13   that now are at, like, closer to 30 percent. We

14   would need to double that amount of FTEs, if not

15   more than that, and so we are essentially creating a

16   mini federal department with a heavy, heavy public

17   service capacity. And I'm not sure if that is the

18   right investment to make versus making the

19   investment in First Nations capacity that could then

20   benefit more than just Jordan's Principle but also

21   other aspects of the community.

22   I also worry that we are going to

23   increasingly be competing with First Nations to

24   recruit, not just public servants, but also

25   contractors and service providers. And you are --

1   you are seeing it in some of the remote pockets of

2   the country where, you know, there is just a limited

3   number of people that can deliver mental health

4   services and so there is a bidding war and people

5   are just increasing the amount of fees that they are

6   paying for these counsellors so that they will come.

7   And I'm worried about all of those

8   unintended consequences that were not things that

9   certainly I envisioned, and I took full

10   responsibility for the fact that these things

11   emerged, you know, when I had a senior decision-

12   making role. But, again, we were -- we were really

13   focussing on compliance with the orders. And we

14   were doing this other work with the Assembly of

15   First Nations, but unfortunately it never

16   materialized as we had anticipated in 2018.

17   So I still believe that that

18   foundational work that was done at that time is

19   something that could be considered in terms of

20   having a different models of delivery. It doesn't

21   mean the federal government would not have a

22   responsibility for the delivery, but the federal

23   government would not have the sole responsibility.

24   We would work together as a partnership.

25   THE CHAIR: Thank you very much.

1   BY MR. TAYLOR:

2   Q.   Just before I take my few

3   minutes, would it be a fair summary to say — I'm

4   just trying to aggregate kind of some of those

5   concepts under kind of a rubric — that much like,

6   you know, the Covid response, where there was a

7   robust response from government that was trying to

8   [indiscernible] First Nations communities and there

9   was a corresponding, or you didn't see a

10   corresponding increase in Jordan's Principle

11   requests, that the solution on the weight on the

12   department of these, you know, requests that that

13   be, you know, triaged and communicated and dealt

14   with is, you know, effectively, whatever the need

15   [indiscernible] providing, whether it's a

16   partnership, you know, closing gaps, whatever it is,

17   it is essentially more equitable services at the

18   community level on reserve and then some capacity to

19   assist officer [indiscernible] backstop by the

20   federal government to the Assembly of First Nations,

21   that -- does that encapsulate things or sort of a

22   summary --

23   A.   The only thing that's missing

24   there in that summary, I believe, David, is that

25   we're not moving -- like, we have to also have a

1   mechanism where individuals and families will accept

2   a program or a service. Right now, they are

3   expecting or seeking a very customized approach to

4   their own particular circumstance. And when a

5   community implements a program, it typically will do

6   it the way another government will, which whereby

7   they will set up an approach that is available to

8   all community members in a certain way and they

9   won't necessarily have the capacity to address

10   individual family needs in that time frame in that

11   type of customized way. So there is an evolution

12   that would be required in management of those

13   expectations.

14   Q. And would you agree as part of,

15   you know, for lack of a better term, a backstop

16   which might be [indiscernible] affidavit but I don't

17   want to put words in mouth, so I'll say it's not,

18   but in light of the, you know -- as part of the

19   federal backstop, if you had certain standards in a

20   community that were tied to the grounds of the Act

21   of, you know, disability or natural ethnic origin or

22   those other protected grounds in the Act, where the

23   needs might be on what the community was essentially

24   set up to provide, that there would be a role of the

25   federal government there under Jordan's Principle to

1   meet those needs?

2   A.   As long as we could find a way to

3   not disincentivize people from accessing local

4   services that are available to them and that would

5   meet their -- a large majority of their needs,

6   right.   So I think it's more rooted into the

7   language of exceptional circumstances, but actually

8   being true to what those exceptional circumstances

9   are.

10   Q.   And in terms of defining or

11   finding that path, would you agree a discussion with

12   the parties would be an important part of that path?

13   A.   This is why I was so strongly

14   advocating for a final settlement agreement on

15   Jordan's Principle to be done in the time frame that

16   we initially agreed to under the agreement in

17   principle.

18   MR. TAYLOR: If I might have the five

19   minutes and then --

20   THE CHAIR: Yes.

21   MR. TAYLOR: -- one last topic

22   [indiscernible].

23   THE CHAIR: Yes, of course.   Please

24   don't go far.   Five minutes goes by very fast, so we

25   will adjourn for five minutes.   I'll state here

1   [indiscernible] questions in -- I'm also putting the

2   parties on notice that we've been doing this for 12

3   years, so there must be a better way than to deal

4   with motions, have requested orders, other orders.

5   If I looked at -- I looked at the motion and the

6   cross-motion and I can already tell that regardless

7   of what could be ordered there will be more -- there

8   will be more issues. Because if we can't even agree

9   on the term "urgent," then issues are bound to

10   happen again.

11   And just an example that happened in

12   2016, for example, the Government of Canada came

13   back after orders when we said immediately. And I'm

14   saying this for new counsel, that we had said

15   immediately. And counsel came back and said, well,

16   in our dictionary, immediately means in this current

17   time period. So this is something that I could

18   never have even anticipated.

19   So these things happened in this case

20   and I think -- I'm just -- I know this is a cross-

21   examination, but surely there is a better way moving

22   forward. And I will ask -- I personally will ask

23   every single party to dream, to dream the best

24   scenario that they've ever dreamed of and to review

25   their requested orders, thinking we need solutions

1   now and we also need solutions in the long term.

2   So when I ask the question, it's not

3   only for you, it will be for everybody, and this is

4   a personal request that I'm asking. After 12 years,

5   we want to protect children, we want to get out of

6   bureaucracy, and we want to make sure that they have

7   those standards of equality and that we're moving

8   forward in a positive way. And especially, that

9   we're respecting self-governments of First Nations

10   and what they want.

11   So I'm just -- I know it's a lot to

12   unload here, but I think at some point after 12

13   years this needs to be said and this is what

14   informed my question, and my question will come

15   back. You'll have an opportunity to address this.

16   And you can speak to it if the best timing is at the

17   arguments or in your written submissions later on,

18   but just start dreaming and bring those dreams to

19   me, please. That's what I'm asking. So you can

20   take our break now.   Thank you.

21   MR. TAYLOR: Thank you, Chair.

22   ---OFF THE RECORD

23   ---UPON RESUMING:

24   MR. TAYLOR: Thank you much for the

25   indulgence.

1   BY MR. TAYLOR:

2   Q.   One last question kind of under

3   that rubric we talked about in terms of, you know,

4   gap closing and finding other pathways to service

5   this.   Would you agree that the Spirit Bear plan

6   that was past by assemblies -- Chiefs of Assembly in

7   2017 spoke to a lot of those themes and elements as

8   well?

9   A.   I would agree.

10   Q.   My last questions are about

11   forecasts expanding on Jordan's Principle.   And so

12   here we're ending somewhat in a similar place where

13   your last cross-examination five years ago ended,

14   which was questions [indiscernible] about what might

15   happen if this commitment to meet its obligations

16   under Jordan's Principal wasn't maintained.   And

17   just to refresh your memory, to the extent it's not,

18   you know -- that conversation from five years ago --

19   A.   Uh-hmm.

20   Q.   -- is not right at the forefront,

21   if you look under tab 'E' in the [indiscernible]

22   compendium of documents there and -- you have an

23   excerpt from -- at that cross-examination

24   transcript.   And just over the page on 125, your

25   answer to the question (as read):

1   "Remember last day you were

2   saying.

3   "That's sort of the point I'm

4   making, is that the obligations we

5   have in Jordan's Principle

6   [indiscernible] to continue to meet

7   the orders, to continue to consult

8   with parties [indiscernible] beyond

9   tribunal [indiscernible]

10   jurisdictions and that

11   [indiscernible] it's an ongoing

12   obligation that we have.

13   And then [indiscernible] asks

14   you (as read):

15   "What if that commitment isn't

16   maintained, then what?"

17   And then you answer (as read):

18   "So I'm not a lawyer, so I

19   can't speak to if there is

20   [indiscernible] sense any of the

21   legal order, but the advice I have

22   received is that this is an ongoing

23   legal obligation of Canada."

24   Do you see that?

25   A.   I do. I do.

1   Q.   And if you look at exhibit -- I'm

2   sorry, if we go over to tab 'J'. This would be a

3   more effective way to do it, tab 'J'. This is back

4   to your May 2018 affidavit. And if you flip through

5   a few pages, you should come to one that says this

6   is Exhibit 8.

7   A.   You want me to go to the exhibit?

8   Q.   Yeah, no, if you don't mind. And

9   then just the first -- I guess it's the -- we'll get

10   into the exhibit. It's the third page. It's -- now

11   we're going to go on a landscape orientation of the

12   page, and it's title "Draft Record of Discussion

13   January 12, 2018." This is a meeting of -- I

14   believe this is a meeting of JPOC, just looking at

15   the --

16   A.   Yes. That would be --

17   Q.   Yeah. And I think that's how

18   it's billed in the -- just in fairness to you,

19   that's how it's billed in the affidavit.

20   A.   Yes.

21   Q.   No need to turn to it, but just

22   to note paragraph 27 refers to it as the agenda and

23   records of discussion of January 12, 2018, JPOC

24   Committee. And the first entry there says (as

25   read):

1   "Welcome and introduction, V.

2   Gideon."

3   And that would be you?

4   A.   Uh-hmm.

5   Q.   And then your first -- the first

6   bullet point says (as read):

7   "Jordan's Principle will not

8   sunset annually the legal

9   principles."

10   Is that right, or do you see that?

11   Sorry, just -- it's just over the page. It's the

12   first page of the draft record discussion --

13   A.   Oh, the first page.

14   Q.   -- of discussion, sorry.

15   A.   Yes, I see that. Yes.

16   Q.   And that reflects what has been

17   your view for quite some time now, that Jordon's

18   Principle --

19   A.   It has been, yeah.

20   Q.   -- will not sunset?

21   A.   And I have spoken quite publicly

22   about that.

23   Q.   Just look at exhibit -- sorry, if

24   you look at tab 'C', which is back to the

25   departmental plan.

1   A.   Yes.

2   Q.   And there is a green sheet there.

3   If you just go over the green sheet?

4   A.   Uh-hmm.

5   Q.   And so there is an excerpt there.

6   It's partway down the page. It says (as read):

7   "Spending is expected to

8   decrease by 23,000 [indiscernible]."

9   Which would be -- you agree that 22.5

10   million?

11   A.   It is.

12   Q.   (As read):

13   "-- between '23-'24 and '25-'26

14   planned spending."

15   A.   Uh-hmm.

16   Q.   (As read):

17   "So this is primarily due to,"

18   and then the fourth bullet, "is a

19   sunset [indiscernible] the continued

20   implementation of Jordan's Principle

21   at the end of '24-'25."

22   And then over the page, at the

23   bottom, it says (as read):

24   "Decisions on the renewal of

25   the sunset initiatives will be taken

1   in the future by ISC and reflected in

2   future estimates."

3   And so would you agree that whether

4   the federal government's implication of Jordan's

5   Principle sunset or not -- sunsets or not remains

6   dependent on the decisions made putting together

7   budget 2024?

8   A. I -- the policy authority and its

9   status as a legal principle doesn't change. It's a

10   question of how much funding would be provided to

11   the department to continue to meet the obligations.

12   And there has been such a significant fluctuation

13   that we are constantly adjusting forecasts and

14   sending in off-cycle funding decisions, say that

15   that is no different than not-insured health

16   benefits, which has been a program that existed for

17   decades.

18   Throughout my entire career, I have

19   seen annual requests for additional resources for

20   that program because it is needs based, so it's not

21   funded through a fixed envelope of funding with a

22   fixed escalator because we would have to constantly

23   also ask for funding to make that adjustment. So we

24   -- receiving your funding on the basis of

25   supplementary estimates based on those funding

1   decisions.

2   Q. So would it be fair to say though

3   that there is continuous decision-making required on

4   funding from the the government's part in order to

5   keep Jordan's Principle [indiscernible].

6   A. Based on the rising trend in

7   requests, demand, value of the funding that is

8   required to operate, so it -- it is a more

9   responsive model.

10   MR. TAYLOR: Those are all my

11   questions, Dr. Gideon. Thanks very much. I wonder

12   if we might be able to mark the [indiscernible]

13   tabbed book of documents as Exhibit 1 to the cross-

14   examination, and if we could mark the IFSD report as

15   Exhibit 2?

16   THE CHAIR: Yes. Ms. Dubois.

17   MS. DUBOIS: [Indiscernible].

18   THE CHAIR: Yes.

19   MS. DUBOIS: [Indiscernible].

20   THE CHAIR: She has asked if they're

21   good. I said, yes. We will enter it.

22   MS. DUBOIS: Yes. So the ISD report

23   is entered in as an exhibit, and the tabbed book of

24   exhibits as well.

25   EXHIBIT NO. 1: Book of Documents

1   (tabbed).

2   EXHIBIT NO. 2: IFSD Report.

3   MR. TAYLOR: Thank you very much.

4   THE CHAIR: I think at this point

5   we'll break for lunch. Would an hour be sufficient,

6   or do you need a little bit more? Let's say if we

7   came back at 1:30. Okay. Have a good lunch. Thank

8   you. And thank you both for the questions and for

9   your answers. You've done a great job. Thank you.

10   ---OFF THE RECORD

11   ---UPON RESUMING:

12   THE CHAIR: Good afternoon. I hope

13   that everybody had a good lunch. I just wanted to

14   clarify that my earlier comments were not in any way

15   to be construed in a way that the panel looks

16   forward to let go of jurisdiction or is tired of

17   this case. That is not at all why we -- I said

18   that.   It's more thinking forward in terms of

19   shifting the proceeding.

20   So we will get back to it, but I just

21   wanted to clarify that's not how this should be

22   construed. So we left this morning the Caring

23   Society had completed their questions. So we will

24   now be at the AFN's turn. And I wanted to know if

25   you're ready to proceed.

1   MR. WUTTKE: Yes, we are ready to

2   proceed.

3   THE CHAIR: Please go ahead. Thank

4   you.

5   CROSS-EXAMINATION BY MR. WUTTKE:

6   Q. Yes. Good afternoon, Dr. Gideon.

7   Stuart Wattke from the Assembly of First Nations. I

8   just have a couple -- a number of follow-up

9   questions — I don't think it will be too long — with

10   respect to the evidence you provided this morning.

11   I'd like to start off by asking a question about the

12   AIP, the agreement in principle. You're familiar

13   with that agreement?

14   A. I am.

15   Q. Or the document? And are you

16   aware that the agreement initially called for a

17   final settlement agreement to be negotiated on both

18   CFS and Jordan's Principle by December 31, 2022?

19   A. I am.

20   Q. And are you aware that the

21   deadline to reach the final settlement agreement was

22   extended by the consent of all the parties to March

23   31, 2023?

24   A. I am.

25   Q. And are you also aware that some

1   of the parties felt that as we got closer to the

2   revised deadline that it may not be achievable?

3   A.   Yes, I am aware.

4   Q.   And are you aware that the

5   Assembly of First Nations and the Caring Society

6   proposed a joint path forward in March 2023?

7   A.   I am.

8   Q.   And did the joint path forward

9   call for the bifurcation of both Child and Family

10   Services reforms and Jordan's Principle?

11   A.   It did.

12   Q.   And did the joint path foreword

13   build in a time frame for concluding an agreement on

14   Child and Family Services for March 31, 2024?

15   A.   I'd have to read that again, but

16   it does sound like that's the correct timeline from

17   my memory. I just don't have it in front of me.

18   Q.   Thank you. And with respect to a

19   final settlement agreement on Jordan's Principle,

20   the joint path forward called for an agreement by

21   March 31, 2025?

22   A.   2025, yes.

23   Q.   I was wondering, can you let us

24   know, was it Canada's understanding that under the

25   joint path forward that issues surrounding Jordan's

1   Principle will be discussed at a later date?

2   A.   Yes.

3   Q.   And what is the current status of

4   the joint path forward?

5   A.   I -- I'm sorry, I've not been in

6   the negotiations now for several months, so I can't

7   speak to the current status.

8   Q.   Okay. Turning to back-to-basics,

9   this was a type of policy that was jointly developed

10   by the Caring Society and Canada, with some feedback

11   from the parties; is that correct?

12   A.   That's a good -- fair way of

13   characterizing it, yes.

14   Q.   So in your view, is back-to-

15   basics a negotiated document resulting from back-

16   and-forth compromises?

17   A.   Yes.

18   Q.   And is it your view that more

19   services are now being provided under back-to-basics

20   than what the tribunal initially ordered?

21   A.   I just -- it's difficult to be

22   definitive on that question because I think that

23   base-to-basics has supported a greater number of

24   requests coming forward, so on that basis I would

25   say yes, but I just don't want to construe it in the

1   fact that we were -- like, I think the basis for the

2   decision-making has remained the same, it's more the

3   processing of those requests which has then

4   generated a greater number of requests.

5   Q.   Okay.   Turning to paragraph 24 of

6   your affidavit?

7   A.   Uh-hmm.

8   Q.   You provide a list of services

9   that back-to-basics does cover.

10   A.   Paragraph 21?

11   Q.   Twenty-four.

12   A.   Oh, I'm sorry.

13   Q.   So in this paragraph, you're

14   really talking about misclassification of urgent,

15   but you list a number of services like modeling

16   headshots.   Is that something that came up through a

17   tribunal order?

18   A.   I don't think that when the

19   tribunal issued the order we had a full

20   understanding of the scope of requests that we would

21   be receiving.

22   Q.   Toys?

23   A.   Again, I would -- I would say

24   though in my experience we received requests for

25   toys for children, for example, that had autistic

1   disorders and things for calming purposes. Like, I

2   do recall toys emerging sooner than headshots in

3   terms of the spectrum of requests being received.

4   Q.   And what about gaming consoles?

5   A.   I would say that that's something

6   that would have been more generally received in

7   later years than in the earlier years.

8   Q.   So would it be fair to

9   characterize that many of the services being

10   provided today, essentially with respect to social-

11   type services, but even in respect to cultural

12   services, are things that resulted from back-to-

13   basics?

14   A.   I would say that to the extent

15   that we are requesting less documentation and that

16   we are making an assumption at the outset that

17   substantive equality applies, with those two factors

18   being considered, my answer would be yes.

19   Q.   Thank you. Now, is it also your

20   understanding that back-to-basics intended to adopt

21   a time frame set out in the tribunal orders as far

22   as approvals?

23   A.   Back-to-basics intended to...

24   Q.   To adopt the time frames set out

25   in the tribunal order --

1   A.   It was about being in compliance

2   with the time frames, yes.

3   Q.   Okay. Perfect. Moving to

4   paragraph 13 of your affidavit, here you talk about

5   some of the social type of requests, socioeconomic

6   supports like groceries, rent, mortgage payments,

7   requests for new homes, renovations. Again, with

8   respect to some of these requests, would you agree

9   that the tribunal did not make any definitive orders

10   on a number of these types of services?

11   A.   The tribunal's orders would have

12   been silent on the nature of these types of

13   requests?

14   Q.   But these are covered under back-

15   to-basics?

16   A.   They would be eligible, again,

17   depending on whether or not they addressed

18   substantive equality, which we're making an

19   assumption of that all requests are based on

20   substantive equality, so then it would be best

21   interests of the child, cultural appropriateness,

22   and they would need to have a letter of support from

23   either a professional or community worker, knowledge

24   keeper elder.

25   Q.   Okay. Thank you. You also

1   mentioned that when you -- you once explored with an

2   AFN innovative ways where First Nations may be

3   involved in the delivery of Jordan's Principle. Can

4   you provide more context of that?

5   A.   Sure. I mean, I think soon after

6   the merit decision of 2016 the department, at the

7   time it was through Health Canada, but began working

8   with the Assembly of First Nations to look at a

9   longer-term approach of the implementation of

10   Jordan's Principle. Jordan's Principle Action Table

11   was struck as a result of that exercise. There were

12   a number of regional engagement sessions that

13   unfolded and even community visits that unfolded in

14   order to be able to map out what that longer term

15   approach would be. It generated a policy document,

16   which was completed by the AFN in 2018. It was

17   developed or presented to the Consultation Committee

18   later on also on child welfare.   And as I noted, it

19   was presented at the first national summit of

20   Jordan's Principle, which took place in Winnipeg in

21   September 2018, and I do believe that there are two

22   assembly resolutions, or at least one, that would

23   speak to this, but I don't have the timeline or the

24   content in front of me.

25   Q.   Thank you. And in that

1   situation, say for -- this is an example. Say there

2   was a billion dollars that ISC has identified for a

3   fiscal year for Jordan's Principle. And under that

4   proposal, could potentially 800 million could be

5   paid out upfront to First Nations to administrate

6   Jordan's Principle and approve applications through

7   a processes that we later agreed to with Canada.

8   Was that your understanding of one of the scenarios?

9   A.   That would be my understanding of

10   one of the scenarios.

11   Q.   Thank you. And under that

12   process, First Nations would be able to easily or

13   more readily be able to interface with community

14   members on Jordan's Principle requests; that was the

15   idea?

16   A.   That was the idea.

17   Q.   Thank you. And not getting into

18   any settlement privilege, but would it be safe to

19   say that not everybody agreed to this concept?

20   A.   Yes.

21   MR. WUTTKE: Just checking my notes.

22   Give me a couple of seconds. The AFN has no further

23   questions.

24   THE CHAIR: Thank you. I was advised

25   that the Commission didn't have any questions. Is

1   that still the case?

2   MS. WALSH: Yes. Thank you, Member

3   Marchildon, that is still the case.

4   THE CHAIR: Okay. Thank you. And

5   for Chiefs of Ontario?

6   MR. BASKATAWANG: There are no

7   questions. Thank you.

8   THE CHAIR: Thank you. Just

9   reconfirming. And the same was said of -- for NAN.

10   Is that still the case?

11   MR. HYER: Apologies to the panel.

12   Can you hear me?

13   THE CHAIR: Yes.

14   MR. HYER: Yes, so no questions for

15   Nishnawbe Aski Nation. Thank you.

16   THE CHAIR: Thank you. For Canada,

17   would you need a break before you ask your

18   questions?

19   MS. ANDERSON: We don't have any re-

20   direct. Thank you.

21   THE CHAIR: No re-direct. Okay.

22   Thank you very much. Thank you very much. You may

23   step away.

24   (WITNESS STANDS DOWN)

25   THE CHAIR: It is earlier than I

1   anticipated, so would you be ready for the second

2   affiant, or is --

3   UNIDENTIFIED SPEAKER: She is

4   actually prepared to sit tomorrow at 9:00 a.m., if

5   that's -- I think she is out in Tunney's Pasture at

6   the moment.

7   THE CHAIR: Okay. There is no

8   problem.

9   UNIDENTIFIED SPEAKER: Okay.

10   THE CHAIR: We can adjourn until

11   tomorrow at 9:00 a.m.

12   UNIDENTIFIED SPEAKER: Perfect.

13   Thank you.

14   THE CHAIR: Thank you. Thank you,

15   everyone.

16   ---WHEREUPON THE HEARING WAS ADJOURNED

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184

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&
& 1:3,4,4,7,11 1:14,15

0
004 73:2

1

1 4:4 18:19 27:21 28:1 84:4 85:17 89:15,21 90:2 172:13,25
1,200 59:25 60:4
1,241 51:2
1,258 141:14
1,271 64:9
1,869 50:21
1.09 50:21
1.25 51:3
10 3:7 27:23 28:1
10,000 130:1
100 49:3 75:24
100,000 31:20 35:20
101 32:7
101,000 31:24 32:8
105,000 36:6
10:10 69:11
11:30 128:2
12 47:3,10 48:11 54:7 64:19 67:8

68:3 111:16 140:17 164:2 165:4,12 168:13,23
12,500 63:18
120 3:8
125 166:24
128 3:9
13 48:14 53:11 179:4
13,000 63:17
13,776 48:16,19 48:21
1340/7008 1:1
14 54:1 59:20 59:21 130:21
14,765 19:4 21:20 22:14,21 22:22
140,332 19:5 21:6
143/15 3:22
15 12:15 59:21 60:1 64:4 70:25 148:17 150:11 154:8
15th 93:14
172 4:4,5
174 3:10
18 21:15,19,23 22:16,20 23:13 23:19 48:15,19 51:6 77:7 79:13

18.5 85:19 98:16,18 125:24
182 3:11
19 19:9 21:6,9 21:19,20 22:16 22:20 25:1 27:22 28:2,7 31:1 48:15,19 51:6,6 56:14 81:9 99:5,7 120:11 121:10
19.7 59:14
192 41:2
1:30 173:7
1st 89:17,19 90:8,10,22 91:7

2

2 1:1 4:5 15:5 95:13 107:23 138:10 146:3 172:15 173:2
20 19:9,10 21:9 21:21 27:21 51:6,7 59:14 59:17 60:12 81:9 98:7,9 99:6,7,14 114:23 120:11 121:22 127:19 128:1
20,000 130:1
2016 16:13,23 164:12 180:6

2017 10:4,13 37:19 107:17 108:6,10 111:10 116:15 133:23 151:17 166:7
2018 13:1,5,9 13:12 21:6 151:18 157:4 157:16 160:16 168:4,13,23 180:16,21
2018-2019 33:15
2019 12:15 27:21 70:25 154:8
2020 9:23 10:11 12:15 50:13
2020-2021 27:24
2021 50:14,16 51:7 62:25 80:12
2021-2022 90:25
2022 9:24 11:19 13:18,22 15:13 39:15 50:13,20 55:7 69:24 85:8,17 89:15,21 90:3 90:5,6,22 149:1 174:18

2023 9:23	82:1 83:21,23	**24,000** 63:16	174:18,23
10:13 14:1	84:7 89:1,12	**24,588** 22:25	175:14,21
39:2 40:11,20	89:18 90:3	**24,590** 22:24	**31,000** 88:7
42:8 55:8	91:6 103:24	**25** 9:23 39:10	91:16 98:15
69:23 85:18	141:14,22	84:2 93:22	**31,258** 85:16
89:16,19,21	142:25 143:14	170:13,21	88:15 98:14
174:23 175:6	**22.5** 170:9	**259.9** 49:21	**311** 50:4
2024 1:1 5:6	**22nd** 184:12	**25th** 11:3	**311.3** 49:23
15:5 16:14,24	**23** 38:8,9 39:16	**26** 95:7 170:13	**31st** 91:7,11
54:21 63:22	39:19 40:19	**260** 50:2	**321** 50:15
136:25 137:23	50:20 51:2,8,8	**265** 63:5	**33** 117:24
171:7 175:14	56:22 57:10,10	**27** 21:4 100:12	118:4
184:12	59:23 60:14	100:19 168:22	**34** 11:25 55:18
2025 175:21,22	84:1 85:8,9	**28** 64:8 91:14	58:3 148:1
21 13:8,12	89:1,2,12 90:6	106:18 115:16	**34,278** 23:3
19:10,10 21:21	91:6,8,10	131:12 132:15	**34,299** 23:4
29:10,14 50:17	141:14,16,21	**28,000** 89:2	**347,616** 21:11
51:7,7 55:25	141:22 142:25	**29,000** 91:14	**35** 107:17
59:18 82:1	143:1,14,14	**29092** 184:15	133:23
83:21 85:7	170:13	**2nd** 1:1 5:5	**350,078** 21:10
88:16,18,19,20	**23,000** 170:8		**355** 64:14,17
88:21 90:1,3,7	**24** 13:1,5 38:8	**3**	66:20
103:24 152:15	38:9 39:10		**361** 50:12
177:10	40:19 51:2,8	**3** 18:14 21:16	**39** 113:12,14
21,000 59:23	56:22 57:10	24:19,20 37:1	
60:4 89:2	59:23 60:14	41:7 64:18	**4**
91:14	84:1 85:9,13	67:8 68:3	
22 19:10 21:21	85:15 89:2	82:22 95:13	**4** 12:13 16:8
29:10 30:5	91:10 94:24	107:23 130:20	24:19 36:25
38:25 39:3,16	97:16 98:12	140:17	37:1,9
39:19,23 50:16	141:16,21	**3,000** 89:3,6	**4,100** 58:25
50:17 51:7,8	143:1,14	**3,700** 141:21	**4.4** 16:24
55:25 56:14	170:13,21	**30** 12:15 14:1	**4.48** 16:10,14
57:10 59:18	177:5	55:18 159:13	**4.5** 17:2
60:12,13 80:12		**303** 50:9	**40** 113:12,25
		31 16:14,24	**400** 159:11
		85:18 89:16,21	

402	50:9

402 50:9
41 71:10 75:25
44 72:9
46 142:25
159:11
48 31:12,16
109:12 110:10
110:17 111:16
116:16 117:17
49 31:23 35:8
4:30 41:8
4th 13:18

5

5 20:17 21:15
21:16,24,25
22:19 36:16
60:4,13 104:9
107:21 108:19
5,000 71:4,4,5,5
71:7,8 75:19
75:23 76:3
5,800 85:19
98:13
50 17:11 31:12
32:3
500 159:11
500,000 35:20
501,000 31:24
32:8
505 50:13
51,144 23:5
51,192 23:5
51.4 48:17,20
52 80:12
103:22 119:11

523 50:16
53 119:11
54 119:24
136:19
55 57:17 58:8,8
58:15,23 62:19
55/9 3:21
56 62:17
136:23
57 27:17 154:9
57/8 3:21
59 50:22 51:7
142:23
5:30 41:9

6

6 13:22 54:7
64:18 65:10
67:8 68:3
137:22 140:17
141:19
6,000 141:20,22
60 51:12
61 50:17 51:7
77:16 143:22
144:8,13
145:21
625 141:15
63 27:13,16
141:13 142:11
142:22
638.8 50:20
64 51:4,8
65 51:15 128:8
693 91:2

7

7 24:18,18 49:3
130:20 153:9
7,000 89:1
7,026 89:13
91:6
71 104:8
72 50:14 51:6
105:11,23
74 43:9
75 50:10 51:6
78 114:19,22
79.8 50:25

8

8 56:15 58:5
168:6
8,000 91:9
80 49:14 51:10
51:12 59:2,4
59:12,16
800 181:4
83 50:6 51:5

9

9 3:6
900 97:25
93 48:16 49:2
9:00 183:4,11

a

a.m. 183:4,11
abide 96:9
ability 37:15
109:10 110:16
129:18 141:5
158:24 184:10

able 20:2 27:4
27:6 34:13
35:3 66:25
69:1 79:11
80:17,21 96:21
102:4 103:6
110:21 116:13
136:5 142:10
172:12 180:14
181:12,13
above 1:1
32:22 37:8
63:11
absolutely 30:2
103:1,20
114:13 132:24
136:12
accept 122:2
162:1
access 24:9
27:4,6 43:9,23
47:4 66:23
69:1 70:7
82:11 103:6
111:7 115:6
124:2 125:7
157:20 158:19
accessibility
148:11
accessible
100:15 101:8
accessing 163:3
accessories
58:17

account 137:12	147:15 156:18	**adjustment**	**affairs** 9:14
accountability	158:12 163:7	171:23	11:5 40:18
45:11 95:2,6	183:4	**administer**	**affect** 37:14
146:10	**add** 25:22	118:15	**affected** 95:22
accounted 84:2	79:16,24	**administered**	**affective** 110:6
accounts 49:14	**added** 91:6	107:4 131:21	**affiant** 8:9
128:19	**addition** 78:16	**administrate**	183:2
accurate 16:15	149:5	181:5	**affiants** 7:7,21
20:14 44:8	**additional** 14:7	**administration**	8:3,5
achievable	75:13 125:13	94:2 100:13	**affidavit** 8:21
175:2	171:19	129:10 134:25	8:22 12:13
acknowledge	**additions** 95:11	**administrative**	13:2,5,5,8,9,12
7:14 126:1	**address** 30:18	18:16 77:10	14:12,14,16
acquisition	65:13 109:7	78:16 79:21	15:14 16:21
129:25	110:12 112:15	80:12 106:23	18:5,15 19:4
act 13:14	114:9,10,18	116:21 131:15	19:13,14,23
129:11 152:1	115:9 132:17	132:8	20:8,10 21:11
162:20,22	137:13 153:24	**adopt** 178:20	21:21 22:12,24
action 11:12	157:20 158:17	178:24	23:3,5,8,16,18
150:17 180:10	162:9 165:15	**adopted** 67:11	24:2,17,18
activities	**addressed** 8:8	**advance** 130:20	31:13 36:17
154:20	81:12 88:8	**advanced**	47:3 51:18
activity 126:15	136:10,11	129:20 130:3	53:11 54:17
126:18 127:8	179:17	130:25	58:21 59:21
130:13	**addressing**	**advancing**	60:22 64:4
actual 44:20	64:4 154:13	148:9 150:14	71:1 77:7,7,13
86:24	**adjective** 68:10	**advice** 167:21	77:17 79:14
actually 20:19	**adjourn** 163:25	**advised** 181:24	81:7 83:21
33:14 35:8	183:10	**advisory** 11:18	87:6,8 88:3,9
43:2 68:25	**adjourned** 3:11	148:25	93:16 95:8
77:5 94:13	183:16	**advocacy**	96:2 97:16
102:7 111:23	**adjudicated**	140:12	100:11 106:19
112:24 119:24	55:21	**advocating**	113:13 114:20
121:18 122:10	**adjusting**	163:14	115:15 120:18
124:11,12	171:13		123:22 128:8

131:12 136:18
136:22,24
141:19 145:21
148:1 153:6
154:8 155:18
162:16 168:4
168:19 177:6
179:4
affidavit's
22:15
affidavits 12:14
12:16,20,21
14:7,11,19
33:15
affirm 8:5,11
affirmed 3:4
8:12 12:14,20
12:21 51:17
affirming
12:16
afn 108:4 180:2
180:16 181:22
afn's 173:24
afternoon
173:12 174:6
age 114:4 125:9
agencies 70:21
agency 9:18
agenda 168:22
agents 113:17
114:1
aggregate
161:4
ago 112:24
166:13,18

agree 18:17
19:11 21:18
23:9,17 27:12
27:12,13,25
29:14,23 30:19
30:20,21,25
31:6,9 38:4
39:17,24 44:7
44:10,14 46:1
46:22,24 47:9
50:18 51:9
54:11,14 56:10
56:16,17 58:14
60:3 62:4
63:25 64:20
67:18 68:8
78:14,20,23
79:2 80:1 81:1
81:10,13,15
84:15 85:6
87:24,25 94:5
96:15,24 101:6
101:9 102:15
103:4,7 104:23
104:24 106:14
106:16 111:6,7
114:5 115:8
116:9,13
118:21 125:12
126:6 127:10
130:16,22,24
138:4 139:2,5
142:6 144:2,18
145:5 147:7,21
162:14 163:11

164:8 166:5,9
170:9 171:3
179:8
agreed 163:16
181:7,19
agreement
13:24 107:6
108:6,7,14
111:10 116:15
117:19,21,21
130:12 131:23
133:24 145:20
151:24 163:14
163:16 174:12
174:13,16,17
174:21 175:13
175:19,20
agreements
130:8
ahead 7:2 42:1
174:3
aid 102:11
aim 100:11
aip 77:18
174:12
ajority 49:11
algonquin 7:16
aligned 28:5
159:9
aligning 106:2
alleviate 159:6
allied 56:6,16
58:4 157:25
allow 109:10

alternative
153:22
amenable
116:6
amended
108:15 111:12
amnesty 1:1
5:11
amount 21:11
48:3,5,7,8 66:1
68:12 91:21
157:19,24
159:14 160:5
analysis 15:8
15:15 18:15
25:16 28:4,23
29:11 30:4
52:16,20 61:15
62:19 63:8,21
63:24 69:17,22
74:11 87:16
111:20,24
112:11 113:3
analysts 86:7,8
anderson 1:13
5:22,23 6:5
55:12 57:7,11
143:13,18
182:19
annotations 5:3
annual 148:18
171:19
annually 169:8
answer 20:3
34:11 92:3

94:23 122:23
156:16,19,20
156:25 166:25
167:17 178:18
answers 72:19
173:9
anti 148:10
150:14
anticipated
41:1 95:21
96:17 160:16
164:18 183:1
anybody 7:5
apologies
182:11
apparently
129:1
appeal 46:18
46:19 66:23,25
118:17,23
119:23 140:19
141:4,5,6
142:5,8 143:12
158:11
appeal's 73:15
73:17 138:11
139:8,14
appeals 92:14
119:7,9,14
120:2 133:9
136:14 140:5
141:14,15,15
141:23,24
142:2,3,11,18
142:24 143:8

143:15,24
144:15,21,23
145:6,15
147:10
appear 3:21
appearance
40:17 41:15
42:8 44:20
appearances
5:17 42:12
appearing 5:24
applicable
73:13
applicant 8:11
application
15:9
applications
181:6
applied 138:18
151:25
applies 75:23
144:20 178:17
apply 79:2
144:3
applying
133:19
appointments
27:5
appreciate 7:23
10:21 111:18
122:16
approach
30:15 34:10
78:9 80:3,6
85:22 96:6,22

100:22 101:4
104:14 105:14
106:5,6,8
120:19 121:24
124:7,22
140:20 157:6
162:3,7 180:9
180:15
approached
136:1
appropriaten...
179:21
approval 14:3
32:11 59:4
111:20 112:5
126:16
approvals
31:16,19 35:10
56:21 57:22
71:2 78:21
79:4 112:8
178:22
approve 31:18
35:12 79:10,11
116:1,19,23
117:2 120:8
158:24 181:6
approved
16:13 17:1
18:25 19:5
21:16 22:13,16
23:14 29:18
47:18 48:9
49:12 51:1
53:14 54:12

56:11,12 57:9
58:25 59:17
74:18 76:13
79:8 91:15
107:2,11 110:2
110:24 112:7
128:10,15,18
128:19 129:8
129:13 131:19
132:5,10
134:18 135:3
145:12
approving 54:5
64:19 68:25
approximately
27:23 49:14
april 1:1 5:5
12:15,15 15:4
70:25 90:8
91:7 154:7
184:12
area 37:5
areas 79:3
104:13 132:17
151:23 158:6
arguments
165:17
arising 124:12
137:13 144:3
arms 118:17,22
arrangement
129:17,21
131:3
arrangements
131:7

articulation 151:3
aside 24:15 29:4 101:2
asked 72:14 129:2 172:20
aski 1:1,21 5:11 7:4 182:15
asking 19:21 41:19 42:18 104:3 105:7 121:19 129:5 132:10,11 155:25 156:15 165:4,19 174:11
asks 127:24 167:13
aspects 159:21
assemblies 166:6
assembly 1:1,7 5:8 6:1 157:5 157:15 160:14 161:20 166:6 174:7 175:5 180:8,22
assertions 83:22
assessed 69:7 127:14
assessment 15:7,13 37:21 120:25 121:15

assets 68:14
assigned 52:7,7
assist 95:15 114:1 161:19
assistance 3:16 64:25,25 65:16 65:22 66:5 67:4 121:3 135:18,22 158:15
assistant 10:6 12:8,9 33:18 108:10
assisted 94:7
associate 9:21 10:12 12:3,7 16:5 29:4 41:9
associated 48:21 57:19 71:14
assumption 103:16 143:9 178:16 179:19
assurance 146:25 147:19 147:22
attached 123:21
attempt 153:23
attempted 101:23
attend 11:8,11 11:17 42:17
attended 11:15

attending 42:14
attention 127:2
attorney 1:1 5:9,24 6:5
aubin 8:22 33:6 69:25 73:19
audio 5:1 184:5 184:10
auditing 94:6 94:18
august 40:10
authoritative 19:25
authoritatively 20:3
authorities 67:10 74:12 76:22 79:4 102:16 129:10 140:7,8 149:7 149:11,23 150:1,3
authority 33:22 34:24 67:19 68:6 71:12 74:17,19 78:25 79:9 120:8,9 134:12 140:14 149:10 171:8
autistic 177:25
automatic 103:16
availability 32:17 52:13

available 28:9 34:2 57:12 62:24 100:16 107:1 108:22 111:22 112:9 113:21 115:19 116:2 117:7 131:18 142:9 162:7 163:4
avenue 143:25 144:16,19
avoid 132:8
aware 38:5 43:8,11 44:24 45:12 63:7 94:23 134:5,6 141:11 150:12 155:14,17,24 156:5,6,9,10,13 174:16,20,25 175:3,4
awareness 25:6

b

b 1:1 4:1 18:9 18:12 107:23
back 21:15 24:17 25:8,9 31:3 34:16 36:11 55:15,16 59:20 60:18,20 61:18 67:15 77:2,3,9 78:8 78:15,21 79:2 79:17 81:1,10 82:21,22 83:20

85:22 90:2
95:3 96:5,22
98:13 99:5,6
99:12 100:22
101:3,3 104:7
107:15 108:2
108:10 112:8
115:14 117:4
119:13,23
120:11,19,23
121:23 123:4
123:10 124:7
126:25 128:2,7
132:9,19,22
133:12,17
135:25 136:19
137:16 141:19
143:22 144:5
145:18 147:25
157:4 164:13
164:15 165:15
168:3 169:24
173:7,20 176:8
176:14,15,19
177:9 178:12
178:20,23
179:14
background
137:14
backlog 45:22
45:23 46:22
84:17 92:6,13
92:15 126:7,9
backlogs 31:11
36:11 38:5,24

40:10 44:21,25
backstop
161:19 162:15
162:19
ballpark 98:7
barrel 99:20
base 125:13
176:23
based 25:16
40:20 52:12
61:14 62:23
63:21 68:13
73:20 74:12
76:22 78:25
79:1 84:7 96:6
102:25,25
108:7 120:24
125:25 128:13
140:7,8 146:18
154:3 157:21
157:22 171:20
171:25 172:6
179:19
basic 25:9
124:3 125:7
basics 25:8
31:3 60:19,21
77:3,3,9 78:8
78:15,21 79:2
81:1,10 82:22
85:22 96:5,22
100:22 101:4
120:19,23
121:23 123:4
123:10 124:7

125:13 126:25
133:12,17
176:8,15,19,23
177:9 178:13
178:20,23
179:15
basis 28:9
52:21 69:8
70:14 75:3
130:10 150:19
171:24 176:24
177:1
baskatawang
1:17 6:15,16
182:6
bear 123:19
166:5
bearing 78:24
beat 99:10
beauty 43:1
becoming 12:7
45:12 105:3
began 10:4
180:7
beginning
69:23
behalf 45:24
belabour 20:17
21:13
believe 16:6
33:14 57:16
65:9 68:23
80:18 104:25
123:1,2 136:14
141:8 157:7

160:17 161:24
168:14 180:21
benefit 15:11
15:12 18:24
21:5 66:2
68:13 159:20
benefits 171:16
best 15:21
44:12 113:8
121:25 131:2
164:23 165:16
179:20 184:9
better 6:22 7:8
7:12 30:14
31:7 56:4
68:10 162:15
164:3,21
beyond 103:2
167:8
bidding 160:4
bifurcation
175:9
big 118:1
bigger 91:17
bill 128:20
billed 168:18
168:19
billing 129:21
131:6
billion 50:22
51:3 181:2
binder 42:13
43:5
binders 43:8

biological 95:20 96:16

bit 10:1 17:2 23:8 25:7 27:10 35:9 42:10 47:2 51:3 52:5 61:6 79:14 99:23 100:17 102:12 136:15 139:9 173:6

blackstock 5:21 148:22

blackstock's 15:14 18:14 36:17 77:17

blue 1:25 184:3 184:17

board 35:21 61:4 74:15,18 136:6,6 150:5

body 66:25

book 4:4 27:9 40:16 55:16 104:8 133:12 172:13,23,25

bottom 21:3,18 22:20 23:19 27:16 37:9 58:24 59:3,12 59:22 65:9 72:9 78:3 105:12 153:9 170:23

bound 164:9

box 16:9 48:15 74:22

brain 88:24

branch 10:7,11

breadth 149:7

breadth's 149:10

break 8:15,18 99:2,15 127:18 127:20 165:20 173:5 182:17

breakdown 58:9 143:15

breaking 57:22

breaks 8:3

brian 1:11 6:13

bridge 65:12 69:18 110:11 110:14,18,24 111:2

bridging 68:25

brief 15:4,24 18:10 24:15 36:11 40:14 58:2 71:8 107:16 145:19

briefing 40:16 42:13

briefings 157:11

briefly 133:10

bring 7:25 102:10 113:12 165:18

bringing 36:5

brings 7:24

broad 130:5

broken 21:17

brought 138:1

buckets 143:6

budget 70:5,12 70:14 171:7

build 73:25 175:13

building 70:24

builds 74:6

built 104:19

bullet 78:7 83:6 124:16 125:2 125:15 146:22 169:6 170:18

bulleted 75:20

bulletin 73:2,2 139:16

bulletins 73:10

bullets 78:6

bundle 124:14 124:15 153:1,2

burden 77:10 79:21 94:12

burdens 78:16

bureaucracy 165:6

business 66:16 66:17,22 70:4 70:19

busy 8:14

c

c 1:1 36:14,15 123:21 169:24

cabinet 74:21 74:22 150:7 155:6

calculator 46:25 47:4 49:18 52:2 60:10

calendar 39:1 39:13,14 89:22 89:23 90:1,11

call 5:16 26:11 29:14 40:15 45:15,17 59:14 68:9 78:6 83:9 92:19 97:15 108:20 109:24 113:13,17 114:1,8 124:18 138:14 175:9

called 31:25 174:16 175:20

callers 113:19 114:2

calling 94:18 109:18 118:24

calls 110:4 150:17

calming 178:1

camera 47:23

camp 53:23

canada 1:1,1,1 1:1 5:7,10 9:22

10:8,9 11:5
13:22 28:8
43:22,23 67:22
103:13 108:5
108:22 117:7
134:13 146:6
146:24 147:18
153:16,17
156:3 164:12
167:23 176:10
180:7 181:7
182:16 184:16
canada's 14:2
95:8,10 96:3
175:24
canadian 1:1,1
5:8 6:13 37:18
140:1
candace 34:11
69:25 73:19
76:2
candice 8:21
33:6 119:21
canvassed
156:7,11
cap 72:9,14,15
capacity 52:13
113:5 115:11
135:2 158:14
159:17,19
161:18 162:9
capital 68:5
71:13 152:2,16
152:18

captured 80:10
80:11
cards 129:25
130:2 131:1
care 121:3
123:25 125:5
157:23 158:1
career 171:18
caregiver 95:20
96:15
caring 1:1,4 5:7
5:20 7:18 14:2
39:25 40:4,7,9
81:16 88:3,8
88:12 94:17
95:5,10 96:13
108:4 122:17
155:15,18
156:8 173:22
175:5 176:10
case 13:16 20:6
32:23 62:23
63:5 67:7 69:8
69:8 70:4,13
70:14 75:3,3
77:4 82:2,6,9
82:13 83:11,18
83:19 85:14
94:6 97:12
98:22 106:24
108:24 109:12
110:15 116:8
116:21 117:9
124:20 131:16
132:25 139:23

164:19 173:17
182:1,3,10
cases 25:10
66:16,17,22
68:20 69:4
70:20 81:11,17
83:7 84:16
85:8 88:1 92:1
93:4 94:19
98:2,3,7,19
107:7 108:21
117:6 120:8
123:11,24
125:4,24 132:2
139:22 141:6
141:23 143:16
catchup 25:23
categories
56:20 57:8
61:19 62:23
63:3
categorized
123:7
category 48:4
48:14 55:23
56:21 57:23
59:18 61:1,2,9
62:7 76:10,13
140:12 143:15
cause 98:1
causes 30:22
98:1
causing 60:24
ceiling 65:21,24

ceilings 68:9,19
central 70:20
centre 28:15
45:15,17 83:9
92:19 109:24
113:14 114:8
124:18
cerlox 15:6
62:18 104:8
137:17
certain 68:12
102:13 136:1
140:4 157:24
162:8,19
certainly 45:12
69:25 104:3
126:8,25
157:10 160:9
certificate
184:1
certify 184:3
cetera 24:14
63:6 76:12
125:9 133:15
150:15
cfs 174:18
chair 1:1 6:4,7
6:11,20,23 7:5
7:11 8:13,23
9:1,6,9 10:18
10:22 11:25
17:7,14,17,20
17:23 47:22
69:15 70:16
99:1,2,11,14,18

99:22 100:1,4
111:14 113:9
119:25 120:6
120:15,17
121:9,21
123:15 124:9
124:11 127:19
128:6,25 129:3
129:5 130:15
131:10 132:20
132:22,24
133:2,4,5
156:15,24
157:2 160:25
163:20,23
165:21 172:16
172:18,20
173:4,12 174:3
181:24 182:4,8
182:13,16,21
182:25 183:7
183:10,14
chair's 70:19
chaired 148:21
challenge 80:17
94:1 114:7
challenges
45:13
challenging 7:7
chance 8:25
change 30:23
52:4 53:6 78:9
78:15 79:3,24
118:8,24 171:9

changed 65:3
120:20
characterizati...
26:14 140:20
characterize
53:6 178:9
characterizing
176:13
charge 101:19
102:5,6
chart 21:11
63:12
check 18:8 20:8
21:22 25:20
51:16,16 87:10
153:5
checked 47:6
checking
181:21
chief 25:21
33:22
chiefs 1:1,18
5:10 6:16
166:6 182:5
child 1:1,3 5:7
35:5 46:23
57:18,23 58:3
58:7,18 68:21
70:10 71:15
73:1 75:8 98:4
110:6 121:2
124:4 125:8,8
126:20 148:14
151:10 152:6
175:9,14

179:21 180:18
child's 64:1
108:25 113:19
117:10
childhood
116:10
children 13:14
29:17 43:23
44:12 45:25
65:14 69:18
104:21 115:7
118:10 125:10
152:1 165:5
177:25
children's 75:8
154:14
choice 47:1
choose 102:4
christmas
38:16
chrt 75:25
107:17 133:23
cindy 5:21
circle 157:23
circulated
17:11
circumstance
126:23 127:9
140:23,24
162:4
circumstances
65:2 105:19
106:13 136:2
163:7,8

citing 60:23
clarification
8:19 93:1,21
120:12 123:16
clarify 73:10
91:22 123:18
173:14,21
clarke 1:3 5:19
clear 143:25
144:16,19
clerical 8:7,19
8:21
clerk 150:19
151:2
clerk's 150:16
clicking 83:15
client 155:9,11
clock 108:9
close 23:1,6,7
70:18 104:12
104:17 132:23
closed 76:16
138:14
closer 17:2
159:13 175:1
closing 161:16
166:4
clothing 58:16
cluster 62:19
clustering 63:4
63:8
clusters 63:13
collaborate
154:11

colleague 17:11 18:19

colleagues 104:5 156:22

colloquial 47:11

colloquially 18:17,21

column 22:4,14 23:15 56:9,11 82:15 89:11

come 55:3 60:25 66:22 67:15 74:19 112:8 119:13 129:9,11 132:22 159:7 160:6 165:14 168:5

comes 49:18 51:15 68:4 111:10,11 119:8

coming 55:10 61:6 103:11 110:1 112:14 128:7 133:15 176:24

commencing 5:4

comments 173:14

commission 1:1 1:1,10 5:9 6:14 181:25

commitment 166:15 167:15

commitments 154:20

committee 11:9 11:18,23 12:1 32:12,21 40:17 40:18 42:8 43:3 73:16,18 74:3 138:11 139:8,14 142:18,25 143:24 144:15 144:21,23 145:6,15 147:11 148:21 149:1 151:10 151:13 152:6,9 153:20,21 155:15 156:12 168:24 180:17

committee's 137:1

communicate 138:16

communicated 161:13

communities 107:2 115:20 131:19 157:18 157:24 158:19 158:23 161:8

community 58:17 80:23 103:21 107:5

109:1 110:3,4 111:22 112:9 112:19 117:2 117:14 131:22 158:1 159:21 161:18 162:5,8 162:20,23 179:23 180:13 181:13

compare 142:10

compendium 166:22

compensation 13:24 14:3 152:3,12

competency 11:24 148:19

competing 159:23

compiled 82:14

complainant 1:2,6

complainants 1:1 5:17

complaint 143:25 144:16 145:12 147:2,8

complaints 144:3,20,22 145:7

complete 69:24 104:14

completed 173:23 180:16

compliance 37:17 146:18 147:4,9 155:16 159:12 160:13 179:1

component 80:9 81:1 125:13 158:3

components 113:17 117:25 118:23 157:17 157:17

compromises 176:16

computer 42:4

conceded 46:5

concept 181:19

concepts 161:5

conceptual 45:22

concern 38:24 94:12 109:7 110:8,13 114:9 114:11 124:2

concerned 35:2 123:10

concerns 26:12 101:2 115:9 124:2 125:6 133:14 153:15

concluding 175:13

conditions 60:23 61:16 62:6

conducted 37:22

confer 127:24 156:21

conferencing 106:24 116:22 131:16 132:8

confirm 11:2 12:6 23:9 41:6 52:10 75:22 83:18 84:25 88:11 137:23

confirmation 35:15

connected 34:12 62:5

connections 80:18

consent 11:19 13:18 108:15 111:13 149:1 174:22

consequences 160:8

consider 32:22 75:4 101:21 116:20 135:9

consideration 70:21

considered 125:11 130:3 160:19 178:18

consistent 104:15

consoles 178:4

consortium 158:11

constant 132:9

constantly 171:13,22

constitution 153:21

construe 176:25

construed 173:15,22

consult 108:22 117:7 167:7

consultation 117:20 151:9 152:6 180:17

consultations 117:18

contact 106:22 114:16 131:14 134:3

contains 5:2

contemplating 80:4

content 41:6 180:24

contents 41:13 184:6

context 28:6 29:1,8 32:18 33:4 45:17 62:13,14 65:2 100:18 103:12 122:18 126:7

126:11 133:13 144:20 180:4

contexts 66:16 131:1

continue 6:16 72:5 80:20,21 99:19,23 100:5 103:25 111:23 133:4 143:10 167:6,7 171:11

continued 10:10 170:19

continuing 151:22

continuous 37:20 172:3

contractors 159:25

contributing 96:21

contribution 107:6 131:23

contributor 102:20

convenience 15:20

conveniently 91:10

conversation 114:14 125:20 166:18

conversations 40:6 45:18 94:15 113:18

coordination 115:1

coordinators 36:4,8 114:21

copy 69:19

correct 11:6,10 11:13 12:2,5 19:15 24:12 26:8 30:15,24 31:22 32:2 35:13 38:22 56:7 61:10 65:18 67:21 68:7 70:22 76:23 77:1 79:12 87:21 91:1 108:17 110:23 116:11 117:12 124:8 126:5 175:16 176:11 184:9

corrected 47:8

corresponding 55:22 161:9,10

cost 25:2,14 31:1 70:8

council 112:23

counsel 3:16 7:1 8:8,18 122:17 127:23 127:24 164:14 164:15

counsellors 160:6

counting 29:17
country 26:2
  28:10 160:2
couple 11:2
  29:10 47:8
  133:8 147:13
  158:11 174:8
  181:22
course 12:12
  24:11 42:15,15
  48:8 101:1,1
  158:22 163:23
cover 9:12 91:7
  99:4 156:22
  177:9
covered 11:1
  15:6 111:1
  134:9,9,10
  179:14
covering 29:22
covers 19:11
covid 25:1,14
  25:22,25 26:9
  26:9,11,13,20
  26:23 27:1,7
  27:22 28:2,7
  31:1 161:6
craig 54:16
create 129:21
  130:4 154:16
created 33:21
  112:24
creating 94:12
  159:15

credentials
  82:10
crisis 123:13
criteria 86:21
  95:12,16,19
  96:8,13 121:9
  121:11,20
  122:14 156:1,2
cross 3:7,10
  7:23,25 15:5
  70:25 87:5
  155:25 164:6
  164:20 166:13
  166:23 172:13
  174:5
crown 9:13
  11:4
cube 85:3
cue 92:17
  126:17
cultural 11:23
  79:6,10 126:15
  148:19 178:11
  179:21
culture 78:9,14
  79:3,24
current 70:2
  105:10 138:5
  164:16 176:3,7
customize
  101:13
customized
  162:3,11
cycle 37:24
  135:4 171:14

d

d 3:1 4:1 40:15
  55:16
danger 122:21
dangerous
  120:9
darian 1:17
  6:16
data 15:7,12
  18:16,16 24:9
  28:4,23 61:15
  61:16,22 63:21
  70:10,11 80:12
  82:5 85:7 86:2
  86:6,8,17
  87:16 93:10,11
  93:11 143:5,14
  159:11
database 57:7
date 20:5 91:19
  91:21 93:13
  137:22,25
  138:1,21,22,25
  176:1
dated 15:4
  184:12
dates 95:3
david 1:2 5:19
  20:19 161:24
day 1:1 126:16
  167:1
dayna 1:13
  5:22
days 68:20 73:7
  130:20,20,21

deadline 127:7
  174:21 175:2
deal 8:25 52:8
  52:9 53:5,7
  81:7 118:18
  119:14 123:14
  128:22 164:3
dealing 11:23
  101:22 123:8
  130:18
deals 47:10
dealt 13:2 97:7
  124:16 127:5
  161:13
death 95:19
  96:15
decades 171:17
december
  13:12 85:18
  89:16,21 91:11
  174:18
decide 139:22
  156:1
decided 35:20
  35:22 93:7
decision 33:1,1
  34:1,2 35:4,19
  55:24 57:20
  73:13 76:21
  139:20 140:15
  140:17 141:5
  143:4 152:14
  160:11 172:3
  177:2 180:6

decisions 33:16
34:3,6 37:16
143:3 170:24
171:6,14 172:1
declarations
7:21
decrease 61:9
170:8
deep 18:18 19:7
19:10,23 21:10
22:18,25 23:19
24:1 25:18
55:17 80:11
87:17,19
defer 76:1
define 150:23
defined 63:5
66:1 121:2
defining 163:10
definitely 52:19
definitive 98:21
176:22 179:9
degree 71:12
delay 68:21
delegated
33:22
delegation
32:24 33:3
35:3 52:22
delegations
34:8
deliver 160:3
delivery 80:18
114:17 118:16
160:20,22

180:3
delta 93:3
demand 26:7
44:1 112:18
172:7
demographic
70:8
demonstrate
97:24
denial 34:23,23
46:18 60:11,13
60:15 61:9
64:5 67:18
denials 60:1
67:17 140:5,13
141:24 142:1
143:6
denied 59:1,13
59:17 64:9,14
75:21 76:14
141:20,21
142:4,14
department
12:9 25:21
40:6 69:16
73:8 112:17
118:1 134:2,4
134:16 136:5
139:13 149:20
149:22 151:3
159:16 161:12
171:11 180:6
department's
37:15 151:5

departmental
36:20 38:7,14
40:21 169:25
departments
150:23
departure
104:18
depend 32:17
64:23 130:13
dependent
171:6
depending 67:5
97:12 104:16
135:5 140:23
141:2 150:24
179:17
depends 20:5
deploy 158:16
deposit 128:16
depot 131:6,7
deputy 9:13,21
10:6,12 11:3
12:4,7,8,10
16:5 29:4
33:18 38:15
41:9 108:11
150:17
describe 85:14
described
146:20
describing
140:13
description 3:3
4:3

descriptor 56:5
designate 52:11
designated
52:23 80:20
122:8
destination
105:5
details 34:11
34:13
determination
46:15,19 78:10
84:18 85:10
86:22 91:20
92:21 97:19
144:21 145:7
159:5,9
determinations
126:12 142:23
143:1
determine
30:22 122:8
142:14
determined
82:3,15 84:3,8
84:12 89:5,11
91:4 92:1,6
93:8 141:14,16
142:11 144:4
145:3
determiners
91:15
determining
125:11 156:1
develop 146:23
147:17

developed
62:22 63:3
123:2 176:9
180:17
developing
38:6,13
development
9:18 30:14
57:18,18,24
58:4,8,18
123:3
developmental
68:21
dialogue
154:17 155:3
dictionary
164:16
difference 20:2
23:24 33:16
67:13 91:24
different 35:10
41:20 42:12
65:5 70:24
84:22 91:20
150:23 160:20
171:15
differentiation
121:13
difficult 130:19
130:23 176:21
dig 19:22
digital 184:5,10
direct 32:14
110:16 128:16
129:21 131:3,6

182:20,21
directed 48:7
109:21
directedly
142:18
direction 73:2
73:21 100:8,8
directly 39:25
40:2,3 88:2
128:20 157:10
159:3
director 32:9
32:10 33:23
directors 32:5
32:6
disability
162:21
disadvantage
26:13
disagreements
153:15
discrepancy
23:10,11,23,24
88:13 93:3
discretion
101:18
discrimination
118:9
discuss 127:21
127:25
discussed 15:10
36:1 78:20
147:9 176:1
discussing
157:9

discussion 7:10
78:25 94:9
102:3 154:2
163:11 168:12
168:23 169:12
169:14
discussions
45:4,15 81:16
94:23 135:23
153:19
disincentivize
163:3
disorders 178:1
displacing
67:24
dispute 40:8,12
distinction
26:10 76:7
distinctions
83:17
distinguish
42:19
distinguishes
83:15
distinguishing
26:16
distracted 48:1
disturbed 66:6
dive 18:18 19:7
19:11,23 21:10
22:18,25 23:20
24:1 55:17
80:11
diversity
148:10 150:15

dives 25:18
87:17,19
document 4:4
36:19 41:2,12
42:1 43:12
72:6,25 73:5
77:20 146:21
153:7 174:15
176:15 180:15
documentation
178:15
documents
17:12 145:19
166:22 172:13
172:25
doing 63:8
69:11,15 70:13
100:4 160:14
164:2
dollars 72:2
181:2
double 159:14
dr 3:4 5:20
8:12,13 9:3,11
10:24 15:13,17
18:14 36:16
47:25 77:16
99:22 127:20
128:7 148:22
156:15 172:11
174:6
draft 15:15
168:12 169:12
draw 35:19

dream 164:23 164:23
dreamed 164:24
dreaming 165:18
dreams 165:18
drive 101:6
driven 26:13 44:1
driver 62:10
driving 26:7
droz 1:4 5:19 17:11
dubois 5:5,16 6:3,18,21,24 7:8 8:11 17:12 17:19 172:16 172:17,19,22
due 5:1 64:17 127:5,13 170:17
duplicating 107:8 132:3
duplication 109:8 110:8 114:9,11 115:10 116:24
duration 157:13

e

e 1:1,1,1,1 3:1 4:1,1 71:8 72:8 72:10,11 125:17,22

133:16 153:18 166:21
earlier 14:17 69:24 94:8,22 120:6 122:12 130:17 131:25 146:11 156:16 173:14 178:7 182:25
early 34:20 38:25 62:12 157:22
easier 101:4 156:18
easily 181:12
echo 7:6,13
economic 9:17
editing 88:24
editorializing 27:11
education 25:24 53:17 56:5,14 57:1 63:16 158:10
educational 44:3 135:17,22 158:15
edward 1:1
effective 94:14 109:22,25 168:3
effectively 154:19 161:14
effectiveness 37:23

efficiency 37:23
effort 7:25 154:10
efforts 25:6 134:6
eight 20:7 114:23
either 11:15 33:15,17 58:13 71:20 76:3 119:21 126:13 179:23
elder 179:24
electronic 17:8
element 30:3 150:22
elements 166:7
eligibility 34:7 66:3,4 68:13
eligible 68:22 69:5 74:8,11 102:23,24 116:2,9 179:16
emerged 158:8 160:11
emergencies 25:3,15 31:2
emergency 95:23 96:18
emerging 178:2
emphasize 103:10
enabling 94:13

encapsulate 161:21
enclosures 75:12
encourage 33:5
encouraged 32:16 34:1 70:9
ended 166:13
engage 113:18 153:17
engagement 180:12
engaging 106:23 131:15
ensure 43:22 67:23 75:7 103:14 118:18 124:22 137:12 147:3,9
ensuring 79:6 127:12
enter 172:21
entered 172:23
entering 124:4 125:8
entire 79:6 118:13 171:18
entirely 150:2
entities 150:9
entry 168:24
envelope 171:21
envision 123:4 123:6

envisioned 160:9

equality 15:8 30:16 104:15 104:19 165:7 178:17 179:18 179:20

equalize 104:17

equitable 161:17

equity 148:10 150:15

equivalents 52:17

escalate 35:9

escalated 34:20 46:11 120:10

escalation 33:4 33:16 34:3,18 35:7 92:14,16 92:21 140:22 141:1

escalations 35:6,9

escalator 171:22

especially 7:7 165:8

esq 1:3,4,6,7,10 1:11,13,14,15 1:17,20

essential 119:4 148:20

essentially 13:13 26:5,10

31:17 47:11 49:2 53:5 57:21 66:1 68:1 73:11 100:9 103:2 126:18 127:4 137:25 143:2 157:25 159:15 161:17 162:23 178:10

established 10:9 118:13

establishing 102:1,8 158:4

estimates 40:19 171:2,25

et 24:14 63:6 76:12 125:9 133:14 150:15

ethnic 162:21

evaluation 138:18

events 40:9 139:12

everybody 15:20 165:3 173:13 181:19

everyone's 113:8

evidence 14:17 14:22 15:21 22:15 54:20 102:19 111:17 114:7 122:13 127:22 128:1

130:17 134:22 146:12 174:10

evolution 162:11

evolved 34:12 152:5

exact 93:13 94:16

exactly 36:23 36:23 71:5 89:24 92:22 126:2

examination 3:5,7,10 9:10 10:23 15:5 70:25 72:18 87:5 164:21 166:13,23 172:14 174:5

examined 98:22

example 21:10 28:13 66:14 67:25 82:2 86:3,25 102:12 110:19 111:16 111:21 112:1 112:22 126:14 151:24 152:13 158:9 159:2 164:11,12 177:25 181:1

examples 68:14 68:17 75:11,20 76:15 81:24

98:20 112:12 112:13 122:16 124:6,24 125:3 125:15 133:13 135:6 158:20

exceeded 32:8

except 51:9

exceptional 105:18 106:12 141:10 163:7,8

excerpt 18:13 44:15,16 71:8 77:16 154:7 166:23 170:5

excerpts 36:18 41:2

exchange 87:4 125:22

exclusively 52:7

excuse 111:14

executive 32:10 32:25 33:13,23 77:17

executives 11:24 32:5 34:4,5 148:1,2 148:9 150:13 150:22

exercise 49:8 49:17 85:14 87:20 88:6 94:25 97:14,16 97:23 180:11

exhaustive 124:5

exhibit 18:10
18:14 21:15
24:15 36:11,16
71:8 72:8
77:16 107:16
123:21 124:14
124:15 137:17
145:20 168:1,6
168:7,10
169:23 172:13
172:15,23,25
173:2

exhibited 15:13

exhibits 15:4
172:24

exist 30:13
112:20

existed 33:13
171:16

existing 68:10
70:4 75:7
106:25 107:2
107:12 115:3
115:19 131:17
131:19 132:6

exists 143:15

expanded
158:2

expanding
166:11

expectations
162:13

expected
148:17 170:7

expecting
109:17,20
162:3

expenditure
67:20

expenditures
30:10 68:4

expenses 53:14

experience
14:23 25:19
28:5 95:21
111:6 177:24

experienced
95:19

experiencing
157:21

expert 11:18
148:25

explain 29:19

explanation
93:2 121:19

explored 180:1

expressed
138:15 153:16

expression
151:4

extend 155:25

extended
135:21 174:22

extensions
156:7,11

extent 35:7
42:8 159:4

166:17 178:14

external 138:11

extract 82:8
86:16

extracted 20:10

extraction 20:6

extremely
130:19

f

f 1:1 4:1 72:7
72:24

face 87:14

facilitate 115:6

fact 44:25
97:25 160:10
177:1

factor 25:9
26:10 149:5

factors 31:4
52:14 65:14
96:21 178:17

failure 145:8
145:12,13

fair 14:18 17:3
20:9,12 26:4
26:14 31:16
33:8 34:15,18
38:23 46:8,9
47:13,20 48:4
57:21 58:22
60:7,10 61:5
62:2 63:20
65:19 75:16
93:15 102:15
127:6 140:19

149:4 155:2
161:3 172:2
176:12 178:8

fairly 118:19

fairness 16:18
168:18

fall 38:14 74:25
76:18 90:24

familiar 43:13
54:24 73:5
77:23 134:1
174:12

families 66:20
69:1 78:17
79:21 102:3
115:2 130:18
162:1

family 1:1 5:7
5:19 55:2,9
64:24 65:2
77:10 79:7
101:5 108:25
117:10,11
126:17,24
130:16,23
131:9 140:24
148:15 162:10
175:9,14

famous 102:12

far 82:12
150:12 163:24
178:21

fast 163:24

favour 114:15

february 38:19 136:25 151:18
federal 44:4 65:22 66:5,14 68:11 80:19 135:20 136:5 150:18 159:8 159:16 160:21 160:22 161:20 162:19,25 171:4
fednor 9:15,24
fee 102:6
feedback 6:19 176:10
feel 8:3 44:17 83:11 96:10 124:20
fees 53:23 160:5
felt 102:3 175:1
fifty 119:12,12
figure 16:12 27:17 59:2 89:25
figures 17:6 18:9 22:4 23:6 23:10 48:12 82:1
file 1:1
filed 155:16,20 155:25 156:8
files 83:18
final 13:23 15:16 55:23

57:20 80:2 84:17 104:11 104:25 105:3 163:14 174:17 174:21 175:19
finally 37:11
finance 12:9 40:19 74:15 134:16,22 150:4
financial 35:17 35:18 129:10 134:25
financing 35:21
find 40:10 105:22 140:12 148:3 151:4 155:19 163:2
finding 163:11 166:4
fine 14:10 45:19 69:12 99:24,25 100:2
finished 138:19
firm 7:21
first 1:1,1,3,7 5:6,8 6:2 10:7 10:10 11:2 13:13 18:14,18 18:25 19:3 22:3 26:3 28:10 29:14 30:6 33:19 36:17 43:5,19 43:22 44:11

48:12 49:4,20 51:2,10 53:13 56:22,23 57:9 59:22 60:14 62:20 70:10 73:1 77:5,12 77:17 80:15 83:6 85:9 88:9 91:9 95:22 104:21 105:3 105:12,24 106:1,21 107:1 107:4 108:24 108:25 109:16 110:25 111:20 112:5,13,19,23 115:20 117:9 118:10 122:11 124:16 127:1 130:8 131:13 131:18,21 134:3 138:9 141:16 144:9 148:14 151:25 154:14,23 157:5,9,15,18 158:4,5,10,18 158:23 159:2,4 159:6,19,23 160:15 161:8 161:20 165:9 168:9,24 169:5 169:5,12,13 174:7 175:5 180:2,8,19

181:5,12
fiscal 19:1 39:9 39:13,16,18 84:1 89:12,14 90:1,3,6,7,11 90:24 91:5,6 135:6 181:3
fit 158:25
five 43:17 50:11 71:22,24 71:24 72:2,3 156:21 163:18 163:24,25 166:13,18
fixed 171:21,22
flagged 28:2 38:25
flip 18:9 37:1 44:17 57:16 168:4
flipping 24:17 28:22
fluctuation 171:12
fn's 13:23 14:2
fncfcse 15:4
fncfs 151:18
focal 25:19 31:18 32:7,15 32:24 34:21,23 35:2,11 51:21 51:24 52:5,6 52:24 73:11,14 73:15 83:9,14 92:17,18 94:13

115:5 120:25
124:18 125:14
125:21 133:18
focussing
160:13
folks 51:15
follow 22:8
133:1 174:8
followed 63:16
following 3:15
3:21 30:11
49:23,25 60:18
60:20 85:21
108:8 109:6
121:21
forecasts
166:11 171:13
forefront
166:20
foregoing
184:4,8
foreseeable
121:5
foreword
175:12
form 15:21
former 104:5
139:1
forming 80:5
forms 34:8
139:24
formula 96:25
97:2
forth 132:9
158:1,15

176:16
forward 8:1
17:19 36:5
38:6 63:22
66:16 70:4,14
111:3 112:14
114:20 119:24
164:22 165:8
173:16,18
175:6,8,20,25
176:4,24
foster 154:16
foundation
81:2
foundational
118:8,24
160:18
four 14:14
125:15 127:17
139:16 177:11
fourth 58:3
77:25 104:9
106:4 125:1
170:18
frame 40:1,4
54:22 69:23
110:17 117:18
162:10 163:15
175:13 178:21
frames 159:12
178:24 179:2
framing 15:8
free 8:3 44:17
frequency
101:11 111:1

friend 11:1
15:10
front 15:3,22
46:25 175:17
180:24
fruition 66:22
ftd 52:20
ftd's 52:16
ftes 159:11,12
159:14
full 29:15 30:7
36:19 52:17
160:9 177:19
fully 80:14
function 115:1
fund 109:2
117:16 126:18
152:2
fundamental
118:7,24
funded 117:3
171:21
funding 44:1
47:13,17 48:4
48:6,7,9,20
49:8,12,15,22
51:1 74:7 78:2
107:9 110:3,11
110:14,19
111:2 116:2,24
132:4 135:4
157:19 158:20
171:10,14,21
171:23,24,25
172:4,7

funds 23:14
28:9
further 3:9
78:6 99:7
112:8 133:22
153:17 181:22
future 105:8,9
130:13 171:1,2

g

g 77:4 82:22
124:13 133:11
gaming 178:4
gap 26:14 62:6
112:15 166:4
gaps 29:21
66:15 69:18
101:6 102:22
103:4 104:12
104:17 105:15
106:9 115:6
153:14 154:14
157:20 161:16
gather 33:2
gc 20:6 62:23
63:5 82:2,5,9
82:13 83:19
gears 52:5
general 1:1 5:9
5:24 6:6 8:9
9:2 26:6 32:6
32:10 61:3,25
67:16 113:22
139:20
generalizing
102:2

generally 28:24 38:13 101:10 101:13 114:25 130:8 178:6

generated 82:2 177:4 180:15

gergely 1:15 5:23

getting 133:9 181:17

gideon 3:4 8:12 8:13 9:3,11 10:24 15:5,17 41:9 48:1 99:22 127:20 128:7 156:16 169:2 172:11 174:6

gideon's 54:17

gift 131:1

give 30:3 63:6 88:14 91:8 93:4 112:22 130:11 181:22

given 86:15 95:17 110:5 139:21,23

giving 125:14

glades 76:12

glide 75:12

go 7:1 8:10 22:23 27:9,13 32:9,11 34:16 34:24 41:7 51:5 52:4

55:15 57:14 59:20 61:18 68:19 69:9 70:20 82:12,21 89:25 90:2 98:13 99:5,6 101:4 106:3 107:15 119:9 119:24 120:10 125:1 132:19 144:5 145:18 152:25 154:6 155:14 157:4 163:24 168:2,7 168:11 170:3 173:16 174:3

goal 104:22 106:14,16

goals 78:15

goes 24:19 31:24 142:19 163:24

going 25:7 27:9 29:12,24 31:10 33:12 34:22 35:14 40:15 63:21 77:5 79:2 83:20 98:25 99:4,6 100:12 101:20 103:2 112:8 115:14 117:1,4 119:6,13,23 120:1 129:2 136:13 137:16

143:22 144:5 149:5 155:13 159:22 168:11

good 5:18,22 5:25 6:7 7:3,11 9:11 10:24,25 24:13 39:12 43:4 50:1 93:21 96:18 100:3 103:25 172:21 173:7 173:12,13 174:6 176:12

goodness 119:19

government 28:14,17,18 38:5 43:21 68:11 80:19 100:16 102:16 106:21 116:9 131:13 134:2,4 134:18,22 135:13,20 136:11 137:24 159:8 160:21 160:23 161:7 161:20 162:6 162:25 164:12

government's 154:19 155:4 171:4 172:4

governments 134:8 165:9

great 69:15 100:4 173:9

greater 176:23 177:4

green 37:1 72:8 170:2,3

groceries 53:18 54:6 58:16 179:6

grocery 131:5

grounds 162:20 162:22

group 31:20 33:12 47:18 48:2,7 49:1,3 49:13,21,22 51:1 52:8,22 52:24 97:19 100:10 107:3 107:11 130:7 131:20 132:5 136:4 158:9

groups 47:12

growth 18:7 24:24

guess 6:15 34:16 57:15 90:2 92:23 99:12 105:7 127:22 136:23 168:9

guidance 73:4 73:10 151:23

guide 3:16

h

h 4:1 77:5,15
145:19 147:14
half 31:20
halfway 15:2
hand 16:9
137:5 151:17
151:19
handling 51:22
handoff 109:23
109:25
happen 112:21
126:16 140:22
145:7 164:10
166:15
happened
52:25 122:24
143:16 151:8
164:11,19
happening
94:15 125:17
happens 51:23
113:3 116:16
happy 99:10,19
harm 121:4
harmful 35:4
headed 105:6
header 49:9
108:2
heading 27:16
37:9 43:16,18
62:21 78:2
84:8 100:13
118:1 138:10
139:10

headquarter
25:21
heads 150:17
headshots
177:16 178:2
health 10:7,8
10:10 13:6
26:11,17,25
27:15 28:10,12
37:5,13 44:2
53:17 56:6,16
58:4 63:14,14
75:9 108:5
154:15 157:25
160:3 171:15
180:7
healthcare
25:24
healthy 57:18
57:18 58:3,7
58:18
hear 7:13,20
128:23 156:20
182:12
heard 107:21
109:23
hearing 1:1 5:6
5:13 7:15
72:21 183:16
heavy 159:16
159:16
help 30:22 44:1
73:10 88:14
113:19 114:18
115:6 123:18

145:6,15
helpful 96:4
99:16 107:18
higher 44:18
76:4 78:21
101:20
hmm 13:25
16:20 21:8
24:21 41:4
43:6 46:13
59:24 63:1
64:7 67:2
77:14,19 84:24
141:17 146:4
153:11 166:19
169:4 170:4,15
177:7
hold 25:25
holding 7:14
holiday 38:15
38:16
home 21:6
26:21 71:15
74:7 75:7,7
131:6,7 158:1
homes 53:20
179:7
honestly 45:2
75:23 155:22
honour 7:16
hope 173:12
hoping 17:15
88:14
hot 41:13 43:16
44:16 112:24

112:25
hour 98:25
109:13 110:10
110:17 111:16
111:16 116:16
117:17 132:12
132:12 173:5
hours 148:18
150:12
house 73:25
74:24 76:18
housekeeping
15:2
housing 54:22
67:16 69:9,10
70:23 71:2
73:3 75:18
97:11 139:17
139:19 140:6
human 1:1,1
5:9 6:13 37:19
140:2
humility 79:6
79:11
hundred 34:14
hyer 1:20 7:3,4
182:11,14

i

i.e. 51:3 68:12
ice 85:3
ics's 118:6
idea 181:15,16
ideal 132:13
156:17,19

identification 83:7 88:1 122:3

identified 39:22 85:18 98:3,6,13 115:5 153:14 181:2

identify 105:14 106:8 113:19 120:21 122:15 123:5,11

identifying 94:7 95:15 96:6

ifs 110:10

ifsd 4:5 15:7,12 27:9,12 30:7 61:15 62:17,22 63:8,13 104:7 104:10 172:14 173:2

ifsd's 15:16 28:23 38:21 62:19 63:21 80:11

immediate 65:14 98:4

immediately 164:13,15,16

impacted 64:1 96:17

impacts 24:25 25:14,23 35:5 123:9

implement 78:8 146:7,23 147:17 150:24

implementati... 7:20 33:21 85:21 123:10 149:6,17 154:1 155:5 170:20 180:9

implemented 96:22

implementing 149:21,22 154:3

implements 162:5

implication 171:4

important 7:24 64:21 81:1 119:2 127:13 139:3 147:22 154:3 155:4 163:12

imposed 54:21 65:22

imposition 54:25

impossible 140:25

improve 146:8 146:16

improvements 45:16 71:2

inability 115:22

inac 108:5

include 25:8 46:23 70:11 123:23 125:3

included 61:24 82:16 84:18

including 113:20 118:16 131:1 146:25 147:19

inclusion 148:11 150:15

income 64:5,10 64:25 65:16,22 66:2 67:4 68:13 100:18 140:16

incoming 37:13

increase 25:13 31:7 37:12,22 61:4 161:10

increased 25:10 45:12 97:24

increases 25:2 33:25

increasing 30:10 160:5

increasingly 159:23

incremental 34:9

independent 147:3,8

index 3:19

indian 13:14 152:1,21

indicate 96:9

indication 27:3

indicators 63:4 70:6 96:19,24

indigenous 1:1 9:14,22 10:9 11:4,23 28:7 40:18 67:22 68:1 101:17,21 103:13 134:13 146:24 147:18 148:18 156:3

indiscernible 5:2,13,15,21 6:7,24,24,25 9:5,8,12 11:4 11:21 12:12 13:13,19,20 15:2 16:17 17:12 18:2 20:15 21:2 22:25 23:21,22 24:8 26:3,22 27:23 28:6,7 28:11,15,16 29:5 31:14 32:12 33:2,9 34:14 35:15 36:18,22 40:19 40:22,24 41:8

42:11 43:15
44:11,23 45:1
45:5 46:12,20
46:21 47:10,15
51:16 52:17,25
54:15,18 55:4
55:10,11,11,22
58:9,13,16
59:1 60:9
61:13 63:23
65:1,16 66:3
67:3 68:20
71:12,15,25
72:3,12,17,18
73:1 74:2 75:5
75:14,24 76:11
79:15,17 81:21
82:20,24 83:1
83:2,3,4 84:23
87:16,19,22
91:11 98:19,22
99:20,21 111:3
111:8 112:14
114:18 116:10
117:19 119:14
126:15 127:4
129:2 130:8
132:23 133:19
133:24 134:14
134:15 135:19
135:24 136:15
137:13 139:11
139:12,12
140:2 141:9,9
143:19 145:21

145:23 148:3
148:22 151:1
152:23,24
153:7,8,22
154:5,23,24
155:7,23 156:2
156:13 157:18
161:8,15,19
162:16 163:22
164:1 166:14
166:21 167:6,8
167:9,11,13,20
170:8,19 172:5
172:12,17,19
individual
20:24 21:1
31:19 47:12,19
48:2,16,19,25
49:3 52:8,18
52:22 58:13,14
59:6 80:5,13
80:21,25 81:3
82:4 100:10
101:5,14 110:1
112:16 114:13
128:12 130:6
140:18 158:18
162:10
individuals
34:7 80:14,22
100:9 102:23
103:12 135:11
162:1
indulgence
165:25

infant 96:25
97:2
inform 149:6
information
24:14 43:10
56:24 67:6
81:14 82:19
113:21,23
114:15 126:1
128:17 135:8
135:12 137:6
137:15 138:21
139:25 141:2
143:8 145:10
145:17
informed 36:8
165:14
informing
115:4
initial 53:16
120:24
initially 62:14
157:25 163:16
174:16 176:20
initiated 69:22
initiative 68:6
70:11 73:1
84:4
initiatives
170:25
innovative
180:2
ins 25:20
insight 30:3

instance 71:16
83:23 101:18
102:11,24
140:6
instructions
86:14
insufficient
66:10 69:4
insulin 97:7
insured 171:15
intake 46:7
92:8,8,18
120:7,20
121:14,16
122:1 125:17
133:18
intended 14:16
30:17 65:15
104:20 105:4
105:17 106:11
122:24 178:20
178:23
interaction
79:7
interest 113:8
138:16
interested 1:1
1:17,20 5:10
132:16
interests 44:13
179:21
interface
181:13
interim 64:21
64:22

interject 120:1
internal 25:16
  146:24 147:18
international
  1:1 5:12
interpreted
  116:21
interprovincial
  65:1
interrupt 6:10
  17:8
interruptions
  26:22
intervene 141:5
introduced
  33:10 81:10
introduction
  3:6 8:9 78:20
  169:1
inuit 10:7,10
  70:10
investment
  159:18,19
invoice 128:16
involve 102:14
  113:16 123:25
involved 33:20
  34:4,5,6 86:4,9
  108:24 117:9
  137:3 157:10
  157:16 158:3
  180:3
involvement
  10:1,3

involving 125:4
irremediable
  121:4
isc 11:24 12:4,7
  16:5 29:5
  35:20,22,25
  40:3 49:12,15
  52:15 54:21
  55:1 64:19
  67:11 70:20
  73:23 74:15
  78:22 79:3,11
  81:16 85:18
  94:18 97:14
  98:13 100:11
  103:3,16
  106:24 107:7
  108:11 115:18
  116:17 118:14
  118:22,24
  119:17 120:20
  122:7 128:10
  128:18,20
  131:16,24
  138:16 143:4
  145:3 148:2,8
  148:16 150:10
  155:24 171:1
  181:2
isc's 15:25 46:1
  67:10 83:13
  100:13
isd 172:22
ish 22:14 38:12
  50:21 89:1

91:13
isk's 149:6
isolation 26:19
issue 8:21
  39:25 41:13
  43:16,17 131:4
  134:17
issued 138:23
  177:19
issues 7:10,24
  44:16,20 62:8
  132:14 135:7
  153:25 154:18
  164:8,9 175:25
it'll 15:19
item 86:25,25
  128:18 130:1
  140:6
items 53:21
  57:22 58:12,15
  97:19
iv 107:23

j

j 152:25 168:2
  168:3
january 15:14
  16:13,23 38:19
  54:21 85:17
  89:15,17,19,20
  89:21 90:2,5
  90:10,22
  168:13,23
jessica 1:10
  6:12

job 4:25 24:10
  65:4 173:9
joined 5:20
joint 13:23
  14:3 175:6,8
  175:12,20,25
  176:4
jointly 176:9
jordan 65:20
jordan's 7:19
  10:1,3,14
  11:12 13:2
  15:9 16:1
  18:16 28:20
  29:5 30:8,17
  31:15 33:20,23
  34:21 37:17
  41:14 43:20
  44:8,11,21
  49:11,16 53:7
  53:15 54:4
  61:4 62:6,10
  64:5,10,20
  65:11 66:6,7
  66:10 67:10,17
  68:18 69:5
  70:10 72:25
  73:3,14,23
  74:8,11,12
  75:1,4,17
  76:19 77:8
  78:10 79:22
  80:3,5,24 94:2
  100:14 101:7
  102:18 103:9

104:11,16,25
105:2,5,6,16
106:2,10 107:8
109:16,18
113:23 118:1
118:15 127:11
134:8 135:21
137:17 138:10
138:11 146:3,9
146:17 149:6
149:11,12,23
151:12,17,25
153:19 154:13
154:21 155:5
155:14 156:12
157:6,15
158:24 159:20
161:10 162:25
163:15 166:11
166:16 167:5
169:7 170:20
171:4 172:5
174:18 175:10
175:19,25
180:3,10,10,20
181:3,6,14
jordan's 29:21
77:11 132:3
148:15
jordon's 11:9
28:15 133:25
169:17
jpat 11:15
jpoc 11:15 36:1
40:9 152:22,22

152:24 168:14
168:23
judge 121:25
judging 115:12
july 13:22
16:13,23
june 13:8 14:1
jurisdiction
173:16
jurisdictions
167:10

k

k 154:7
kassis 1:7 6:1
keep 172:5
keeper 179:24
keeping 118:19
kevin 1:4,14
5:19,23
key 37:4 118:23
kids 64:17
103:6
kind 14:21
18:10 19:2,22
22:3 23:14
27:14 28:1,1
31:13 33:10
34:16 35:19
38:24 40:20
44:15,18 45:22
46:5 47:8
48:12,15,18
49:1,9,18 53:6
54:2 55:2 56:4
58:1,8 62:20

63:7 67:19
68:1,3 77:6,12
78:2 79:14
94:5,18 98:7
101:16,23
106:3 108:9
126:2 138:12
139:12 140:20
145:15 156:17
161:4,5 166:2
kinds 55:2
57:22 58:15,18
75:19 102:22
143:5
know 8:7,15,17
9:2 17:24
19:16 23:17,25
24:7 25:22,25
26:12,18,19,20
26:21,22,25
27:2,11 28:14
28:21 32:4,10
32:24 35:23,24
35:25 36:2,4,4
36:7 40:5
41:12 44:17,19
47:11 49:2,20
52:11,15,21,23
55:1,9 56:19
56:20 57:2
60:4,23 61:3
62:2 64:13
66:1,4 67:9
68:13 70:7
73:9 75:24

76:5 78:1,25
82:14,15 83:13
83:14 84:16
86:1,8,11,14,21
87:2,25 89:6
91:8,13 92:25
93:3,5,11,13,20
94:21 95:4
97:14,18,22
99:5 101:3,20
102:13 108:2
109:23,24
110:5 116:13
126:3 127:12
130:5 133:9
135:16,19
137:8,25 139:8
139:10 140:16
143:1,4 150:9
156:24 157:7
158:13,22
160:2,11 161:6
161:12,13,14
161:16 162:15
162:18,21
164:20 165:11
166:3,18
173:24 175:24
knowledge
36:3 70:1
179:23
known 30:8,11
62:7 109:13
135:3

kovacevic 12:4

l

labelled 122:19
  125:19
lacey 1:7 6:1
lack 56:4 71:11
  162:15
landlord 131:4
  131:4
landmark 77:6
landscape
  168:11
language
  124:21 127:1
  163:7
large 61:6
  163:5
largely 151:16
largest 63:15
launched
  136:25
laws 134:25
lawyer 167:18
lawyers 102:12
lead 8:8 9:3
leading 25:9
  102:17
leave 10:5
  70:20
led 78:21
left 16:9 127:17
  137:2 156:15
  173:22
legal 38:1
  43:20 102:11

106:2 107:17
  167:21,23
  169:8 171:9
  184:16
length 118:17
  118:22
lengthy 113:18
letter 179:22
level 32:24,25
  35:2 38:15
  44:18 45:22
  51:23 52:18
  66:13 67:9,16
  70:2 74:18
  101:15 102:25
  103:8 110:5
  111:22 112:10
  114:12,13
  120:7 122:6,7
  123:13 135:23
  161:18
levels 44:6
  102:1
life 123:25
  125:5 133:13
lift 65:21,24
light 162:18
likely 28:19
  85:20 87:1
  91:19 112:7
  113:3 115:13
  137:13
limit 68:3 130:1
limitations
  79:1,1

limited 27:14
  123:24 160:2
limits 35:24
  101:11 131:2
linda 1:25
  184:3,17
line 12:17 19:3
  22:3 23:15,18
  35:19 48:12
  49:4,20 50:8
  50:25 53:13
  58:3 59:4,8,8
  77:12 79:15
  104:10 106:4
  115:16 138:12
lines 133:23
linked 121:6
linking 115:3
list 3:15 63:6
  75:11,20 76:16
  124:5 135:10
  177:8,15
listed 41:7,17
  124:25
listen 8:1
little 7:12 10:1
  17:2 27:10
  47:2 51:3
  79:14 88:13
  99:23 100:17
  136:15 139:9
  173:6
living 25:2,14
  31:2 43:23
  64:1 70:8

80:23 131:9
local 44:6
  103:20 163:3
login 82:9
long 13:19
  36:21 44:16
  77:18 80:2,6
  86:11 100:1
  126:12 136:14
  157:6 163:2
  165:1 174:9
longer 11:8,11
  11:17,22 54:8
  180:9,14
look 19:19
  20:22 22:2,19
  23:17 28:3
  29:12 36:25
  41:19 42:10
  54:16 55:17
  58:3 62:4 70:6
  70:9 72:17
  77:15 88:16
  89:10,12 97:19
  107:22 112:1
  113:4 124:13
  131:11 141:1
  143:10 147:25
  157:25 166:21
  168:1 169:23
  169:24 180:8
looked 34:24
  46:7 61:21
  86:24 97:21
  98:9 112:17

137:18 139:15
164:5,5
looking 19:11
20:17 21:17
23:16 24:17
29:9 34:22
35:11 41:16
43:16 48:15
49:21 53:10,12
56:3 58:12
59:5 60:13
61:15 62:20
66:13 77:25
84:21 89:8
91:14 104:7
108:2 109:24
112:6 113:11
114:12,20
118:6 135:20
141:12 157:6
168:14
looks 16:3 28:5
50:19 173:15
loop 70:18
lose 47:21
loss 97:11
lost 107:10
lot 8:2 22:10
26:24 52:12
102:7 110:9
111:18 165:11
166:7
lower 19:12,15
19:20 21:20
23:8,18 122:6

lunch 112:24
112:25 113:1
132:12,12
173:5,7,13
lustig 1:1 17:9
17:16,20,22
47:21
lustig's 15:12

m

m 49:11
madam 156:14
made 17:15
29:13,20 33:17
34:1,9 45:24
48:14 80:25
84:11 115:15
118:6,25
143:11 149:1
154:10 171:6
mail 125:17,22
133:16
mails 153:18
main 34:19
maintained
143:4 166:16
167:16
major 68:5
71:13,25 72:4
72:15 73:3
74:1,5,25 76:6
76:9,18 152:2
152:16,18
majority 114:4
125:16 163:5

make 8:16
31:19 33:6
35:3 37:16
79:4 80:17
83:21 84:10
85:4 86:22
90:17 100:14
101:5,23
103:15 120:12
130:23 142:17
144:12 145:13
145:14 159:18
165:6 171:23
179:9
maker 33:1
makers 34:2
73:13 139:21
141:5
making 33:1
45:16 70:13
85:5 121:14
159:18 160:12
167:4 172:3
177:2 178:16
179:18
manage 134:14
management
24:14 26:7
162:12
managers
33:17
mandate
150:24 151:2,2
151:4,5

mandatory
148:18 150:11
150:22
manitoba
157:22 158:10
map 180:14
march 11:19
13:18 14:12
91:7 93:14
137:22 149:1
174:22 175:6
175:14,21
marchildon 1:1
6:10 10:21
69:13 182:3
marchildon's
15:11
mark 15:19
97:25 172:12
172:14
market 102:14
102:17
matching 135:5
materialized
160:16
materials
139:13 155:18
maternity 10:5
math 47:2,6
50:14,17 51:17
60:8 64:13
matter 1:1 5:6
15:2 115:21
152:13

matters 30:16
152:10
maximum 89:7
mean 27:14
28:3 45:3,9
62:11 73:7
74:16 80:4
82:6 86:2
92:21,24
102:10 109:15
115:25 116:4
139:18,24
140:24 157:3,9
160:21 180:5
means 65:5
126:18 164:16
meant 3:15
77:9 79:20
123:17
measure 34:9
65:7,13 67:11
67:23 68:2
110:12 146:7
measures 13:19
25:9 28:19
68:12,25
101:24 137:11
141:10 146:25
147:19
mechanics
31:14
mechanism
66:24 109:25
118:17,23
131:8 136:7,10

139:6 147:2,8
147:23 162:1
mechanisms
128:11 130:4
medical 27:2,3
56:6,15,25
75:10
meet 37:25
69:4 121:20
130:4 135:4
159:12 163:1,5
166:15 167:6
171:11
meeting 11:14
42:23 148:12
152:11 168:13
168:14
meetings 11:8
11:12,18 151:8
151:15,22
meets 75:8
member 1:1
6:10 10:21
11:22 15:11,11
17:9,16,20
47:21 69:13
79:7 159:2
182:2
members 80:15
156:12 158:11
162:8 181:14
membership
137:1
memory 12:23
42:9,11 45:6

45:19 57:6
72:22 166:17
175:17
mental 13:6
63:14 154:15
160:3
mention 121:10
124:1 125:5
131:12 133:14
133:16
mentioned 69:9
123:22 128:9
130:22 180:1
merit 180:6
met 101:25
155:15,20
method 83:14
methodology
91:22
mic 129:2
michael 1:20
7:4
michelle 12:4
middle 22:13
million 16:10
16:14,24 31:20
48:17,20 49:21
49:23 50:9,9
50:16,17,21
51:1,3 170:10
181:4
mind 20:20
29:24 42:24
45:8 78:24
146:2 168:8

ming 86:3
mini 159:16
minister 1:1
9:13,22 10:6
10:12 11:4
12:4,7,8 16:5
33:18 41:9
108:11
minister's
40:16
ministry 150:4
minor 71:24
72:2 75:5 76:6
minute 31:11
minutes 99:15
127:20 128:1
156:21 161:3
163:19,24,25
miscategorized
93:25 122:19
misclassificat...
97:17 126:4
177:14
misclassified
81:18 85:20
86:23 88:1
125:25
misrepresenti...
33:7
missed 81:11
81:17 126:19
127:13
missing 161:23
mitigate 37:20

mmm 21:12	**mortgage**	**national** 26:1	103:14 135:4
mobility 75:9	53:19 179:6	31:25 32:4,21	158:7,25 162:9
model 33:21	**motion** 1:1 5:12	33:17 45:15,16	**necessities**
128:14 157:23	7:19,23,23,24	92:19 180:19	124:3 125:7
172:9	7:25 13:23	**nations** 1:1,1,3	**need** 8:3,15,25
modeling	14:3 18:15	1:8 5:7,8 6:2	37:25 43:25,25
177:15	95:14,24 96:14	10:7,10 13:14	45:25 52:21
models 158:21	155:16,20,25	26:3 28:10	57:16 62:24
160:20	156:5,8 164:5	43:22 80:15	64:20 65:12
modifications	164:6	104:21 107:4	66:21 69:4
75:6,13	**motions** 164:4	112:13,23	70:6 71:14
modified	**mouth** 85:3	115:20 130:9	76:9 80:19,20
137:22	162:17	131:18,21	81:14,20 87:1
moment 45:3	**move** 24:16	148:14 151:25	96:8 97:7
48:1 53:3	36:10	154:14,24	110:20 112:4
58:24 131:11	**moving** 51:24	157:5,9,15,18	113:2 117:21
156:14 183:6	53:3 98:23	158:4,5,10,23	129:12 130:11
money 130:11	161:25 164:21	159:4,19,23	133:10 140:18
135:21	165:7 179:3	160:15 161:8	159:3,14
monitoring	**multiple** 32:21	161:20 165:9	161:14 164:25
37:20	113:17 157:17	174:7 175:5	165:1 168:21
month 54:22,25	**n**	180:2,8 181:5	173:6 179:22
64:18,18,19		181:12	182:17
67:8 138:7	**n** 1:1 3:1 4:1	**natural** 162:21	**needed** 94:4
monthly 66:2	**names** 7:2	**naturally** 158:8	**needs** 8:7 28:9
months 54:8,13	135:11	**nature** 27:14	31:7 44:3
68:3 95:3	**nan** 182:9	103:3 179:12	62:19,22 63:7
140:17,17,17	**nation** 1:1,21	**navigate** 115:2	63:13 64:17
142:21 176:6	5:11 7:4 107:1	**navigated**	75:10 113:20
morning 5:18	109:1 112:19	64:24	126:1 130:14
5:20,22,25 6:8	118:10 157:16	**near** 59:4	157:21 158:18
7:3,11 9:11	158:19 159:2	**nearly** 63:15,17	162:10,23
10:24,25 47:7	182:15	63:17	163:1,5 165:13
173:22 174:10	**nation's** 44:12	**necessarily**	171:20
	108:25 117:9	95:15 96:4	

negotiate 130:9
negotiated
   174:17 176:15
negotiations
   29:1,8 45:4
   152:5 176:6
networks 158:4
never 134:18
   135:3,3 160:15
   164:18
new 24:10
   53:20 73:25,25
   74:6,7 118:22
   141:2,15
   164:14 179:7
news 26:1
nishnawbe 1:1
   1:21 5:11 7:4
   182:15
non 83:23
   97:17,18
   120:21 122:9
   140:12 155:16
normative
   68:14,17,19
northern 9:14
   9:18 11:5
   40:18 62:13
notably 53:15
notations 19:19
note 5:1 20:7
   49:8 54:20
   59:22 64:8
   107:18 118:12
   137:21 141:13

142:22 148:1
168:22
noted 1:1 3:20
   14:12 20:7,8
   26:10 60:1
   82:19 99:8
   103:8 129:20
   147:15 180:18
notes 16:12
   42:11 74:23
   131:11 181:21
notice 95:14,24
   164:2
noting 34:17
   117:11
notion 96:14
nourishment
   97:5
november 9:23
   10:13 11:3
   151:17
number 3:3 4:3
   4:3 16:12 19:6
   20:14 22:5,13
   22:15,19,24
   25:10 42:12
   48:3,6,13 59:3
   63:15 68:20
   80:10 81:11
   89:8 91:17
   94:11 97:24
   113:4 117:5
   125:15 139:16
   142:11,13
   160:3 174:8

176:23 177:4
177:15 179:10
180:12
numbers 16:8
   19:20 22:10
   50:6,10 51:9
   51:25 56:18
   82:7 103:12
   104:1 141:13
nursing 33:23

o

o 1:1 4:1
objectionable
   50:23
objective 79:25
   95:12,16 113:7
objects 8:6
obligation
   43:21 72:16
   116:5 152:2
   167:12,23
obligations
   38:1 148:13
   166:15 167:4
   171:11
obtain 69:19
obvious 84:9
obviously 70:7
   102:2 159:7
occupation
   9:20
occur 96:17
   114:14 136:8
occurred 33:4
   125:21 141:10

142:20
occurs 127:25
october 9:24
   108:6,10
offhand 19:19
office 32:16
   147:3,8
officer 33:23
   121:14,17
   122:2 133:18
   135:16 161:19
officers 120:7
   120:20
offices 52:11,23
officials 108:5
oh 8:23 9:1
   20:25 21:25,25
   34:16 36:14
   42:15 72:11
   86:8 88:19
   90:14,16 99:24
   101:1 119:11
   119:19 128:25
   153:2 169:13
   177:12
okay 5:14 7:5
   9:16,25 10:16
   17:14,17,23
   21:13 24:14,16
   29:9 36:24
   37:3 38:23
   41:22,24 42:2
   43:15,16 48:24
   50:7 53:1,3
   55:15,19 57:7

59:11,11 83:20
88:23 90:21
91:23 98:11
99:13,18,22
100:5,7 106:6
112:6,18
119:22,25
120:15,17
121:21 124:9
128:6 129:3,6
130:15 131:10
132:19 133:3
136:21 137:8
140:11 142:16
153:4 157:2
173:7 176:8
177:5 179:3,25
182:4,21 183:7
183:9
on6657378
4:25
onboarded
139:25
once 80:6
138:18 153:22
180:1
ones 31:5 97:20
143:2,3
ongoing 110:22
138:20 139:3
167:11,22
online 43:8
77:21 145:25
ontario 1:1,18
5:11 6:17 9:18

182:5
open 154:17
155:3
opened 46:7
58:2
operate 172:8
operates 139:8
operating
101:24 121:12
operation
127:11
operational
31:13 34:13
73:1,2,10
118:14,22
134:20 135:7
139:15 151:8
operationaliz...
111:12
operations 10:6
11:9 33:7,19
108:11 118:2
151:13 154:12
155:15 156:12
opinion 80:19
155:21
opportunities
127:12
opportunity
126:20 127:18
158:7 165:15
opposed 26:21
48:18 76:24
84:12 90:1
105:7,8 140:14

option 100:15
101:8 129:23
options 67:14
130:25
order 11:20
67:23 108:16
109:2 110:20
111:13 117:15
134:2 135:9
137:12 149:2
159:12 167:21
172:4 177:17
177:19 178:25
180:14
ordered 37:18
164:7 176:20
orders 76:25
118:20 121:7
122:25 146:19
148:13 151:16
154:4 160:13
164:4,4,13,25
167:7 178:21
179:9,11
organization
112:20
organizations
107:5 114:17
130:9 131:22
158:23
organize 136:3
orientation
168:11
origin 162:21

original 63:5
outcomes 146:8
146:17
outset 178:16
outside 74:25
75:19 76:19
92:21 149:25
overall 60:16
94:2 142:12
oversight
153:20
overturn 67:1
140:5
overturned
142:24 143:1
143:11,16
overturning
143:3
own 32:9
158:20 162:4

p

p 1:1,1
page 3:3 4:3
15:7 16:7,8
24:19,19,20
25:5 29:14
30:5 36:25
37:7,9 41:7,11
41:16 50:15
57:15 62:17
63:10 65:10
71:9,17 72:13
72:13 77:25
78:3,6,7 82:22
93:23 104:8

105:11,23
107:23 114:23
118:11 137:20
137:21,25
138:10 146:3
153:10 154:8
166:24 168:10
168:12 169:11
169:12,13
170:6,22
pages 3:21
29:10 41:3
44:16 58:2
95:13 168:5
paid 101:12
129:14,16
135:12,17,25
181:5
palliative 121:3
123:25 125:5
pandemic 25:1
60:23
panel 3:8,9
41:8 120:5
128:5 132:7
173:15 182:11
pantheon 14:22
paragraph
11:25 12:13
14:14 16:19
18:5 24:18,22
25:13 26:5
29:15 30:6,7
31:16 35:8
37:8 43:19

47:3,10 48:11
49:9 53:10
54:1,2 59:20
60:1 62:21
63:11 64:4
65:20 74:4
77:7 79:13
85:7,13 88:19
88:20,21 93:22
94:24 95:7,9
97:15 98:12
100:12,19
105:12,22,24
106:1,18
107:22 108:1
113:14 114:19
115:16 117:24
119:10,24
120:11 121:10
121:22 128:8
131:11 132:15
136:19,23
141:13,19
142:22 143:22
144:6 147:25
153:9 154:8
168:22 177:5
177:10,13
179:4
paragraphs
31:12 81:9
83:21 99:5,7
113:12 143:23
parameters
139:14,21

140:3
pardon 9:6
111:15 136:17
parent 95:20
96:16
parliamentary
40:16 43:2
part 10:8 38:21
40:5,22 41:7
45:4 46:1 47:2
61:17 70:5
80:5 109:7
111:3 119:1,2
119:4 121:12
122:12 123:3,8
127:14 137:11
137:14 143:8
149:14,16,17
149:21 155:4
162:14,18
163:12 172:4
participate
159:5
participating
151:9
particular
14:13 32:17
67:7 107:18
126:15,23
127:2,8,8
129:22 141:1
152:7 159:1
162:4
particularly
80:22

parties 1:1 5:10
7:22 80:1 94:9
101:25 102:2
121:13,24
151:22 152:10
153:17 154:11
154:22 157:5
163:12 164:2
167:8 174:22
175:1 176:11
partners 107:5
131:22
partnership
160:24 161:16
parts 102:15
partway 54:2
104:9 113:14
138:12 170:6
party 1:17,20
164:23
party's 25:6
past 31:23
68:19 127:7
158:8 166:6
pasture 183:5
path 163:11,12
175:6,8,12,20
175:25 176:4
pathway 159:9
pathways
166:4
pause 7:22
17:18 34:16
98:24 99:10
152:7,9

pay 106:22
109:16 116:5
129:19 131:14
paying 160:6
payment 128:8
128:17 129:20
130:10,25
131:4 145:13
payments
53:19,19 102:8
102:10 128:12
129:24 130:3
130:13 179:6
pdf 17:11
pending 93:18
152:10,13
people 27:4
32:21 86:9
103:15 109:15
109:17 123:13
139:6 160:3,4
163:3
peoples 7:16
percent 27:21
27:24 28:1
34:14 48:17
49:2,3,4,14
50:6,10,14,18
50:22 51:4,5,6
51:6,7,7,8,10
51:15 56:14,15
56:15 58:5,9
59:3,4,12,14,16
59:17 60:5,12
60:13 64:8

75:24 80:12
84:2,4 85:19
97:25 98:7,9
98:16,18
103:22 125:24
142:23,25
159:13
percentage
56:11 142:7
percentages
48:25 49:19
51:5 55:7 56:9
56:21 57:2
perfect 9:1
179:3 183:12
period 38:16,16
64:22,22 91:16
164:17
periods 54:7
permitted
122:5
personal 53:22
135:8,11 165:4
personalized
103:3
personally 8:2
164:22
perspective
136:4
ph 54:17 86:3
107:23
phenomenon
26:2
phone 133:16

physical 124:1
125:6 133:14
piece 34:17
pinpoint 45:6
94:15
place 67:23
80:7 92:12
107:10,18
115:22 129:18
166:12 180:20
places 46:5
80:24
plain 124:21
plan 36:20 38:7
166:5 169:25
planned 170:14
plans 38:14
play 66:11
133:25
please 5:17
9:12 30:1
36:14 127:25
129:6 163:23
165:19 174:3
plus 89:23
pockets 160:1
point 8:7,15
32:7,15,24
34:21 35:11
52:5 72:7,12
81:20 92:17,18
99:9 102:13
107:18 111:2
121:1 123:16
125:14,21

127:1 136:23
142:5 147:14
147:15 152:11
165:12 167:3
169:6 173:4
pointing 20:23
20:24
points 10:15
25:19 31:18
34:23 35:2
51:21,24 52:6
52:24 73:11,14
73:15 83:9,14
84:17 94:13
104:18 115:5
124:18 133:9
133:18 142:8
policies 104:13
policy 24:14
67:11 68:2,2
70:12 74:17,19
75:17 79:1
140:15,17
154:12 171:8
176:9 180:15
political 135:15
poor 5:1
130:16,19
portion 18:11
47:12 50:23
pose 94:1
position 33:19
81:16
positioned
121:25

positive 165:8
possess 120:9
possibility 92:4
possible 7:25
32:14 44:21
61:3 92:23,25
93:2,19 110:12
140:21 154:15
post 30:4 60:23
144:21
posted 33:6
43:8 77:21
145:24
potentially
35:4 135:15
181:4
poverty 62:5
63:17,22 64:1
64:18 130:22
131:9
practically
153:24
precise 45:3
precisely 36:2
prefer 34:10
preferred
100:14 131:8
preparation
87:5
prepare 24:4
137:15
prepared 87:7
87:9 183:4
preparing
44:19,19

presence 28:14
present 7:1
presented 29:2
157:14 180:17
180:19
president 9:15
9:24
pressure 28:20
98:1,8 102:17
pressures 70:8
pretty 23:1
previous
120:23
primarily
170:17
principal
113:24 157:7
166:16
principle 10:2
10:4,14 11:9
11:12 13:2
15:9 16:1
18:16 28:15,20
29:6,22 30:9
30:17 31:15
33:20,24 34:21
37:18 41:14
43:20 44:8,11
44:21 49:12,16
53:7 54:4 61:5
62:7,10 64:5
64:10,20 65:12
65:21 66:6,7
66:10 67:10,17
68:18 69:6

70:10 72:25
73:4,14,24
74:9,11,12
75:1,4,17
76:19 77:11
78:10 79:23
80:3,6,25 94:3
100:14 101:7
102:18 103:9
104:11,17,25
105:2,5,6,17
106:2,11 107:8
109:16,18
118:1,16
127:11 132:3
133:25 134:9
135:22 137:18
138:10,11
145:20 146:3,9
146:17 148:16
149:6,12,12,23
151:12,17,25
153:20 154:13
154:21 155:14
156:12 157:15
158:24 159:20
161:10 162:25
163:15,17
166:11 167:5
169:7,18
170:20 171:5,9
172:5 174:12
174:18 175:10
175:19 176:1
180:3,10,10,20

181:3,6,14
principle's
53:16
principles 7:19
108:8 155:5
169:9
printout 15:25
137:22
prior 9:19 12:6
33:14 54:17
87:16 93:14,16
120:23
prioritized
94:3
privilege 43:2
155:9,12
181:18
proactively
114:16 158:17
probably 20:12
problem 44:25
120:4 134:21
144:13 145:11
183:8
procedural
101:2
procedure
101:4 109:6
114:8 115:9
procedures
101:25 115:22
121:12
proceed 142:4
173:25 174:2

proceeding 7:18 12:14,17 12:20,22 173:19

proceedings 184:4

process 8:4 37:15 38:21 40:21 45:11 46:1,18 70:5 92:8,14 99:4 119:23 120:2 128:8,12 129:8 129:9 136:25 137:3 138:17 138:20 139:2 140:19,22 141:15,24 143:8 181:12

processed 128:13

processes 181:7

processing 45:14 127:5,13 177:3

produced 19:24

product 16:14 16:25 45:25

products 19:6 29:19 43:24 103:5,5

profession 102:10

professional 179:23

program 64:24 65:1,17,23 67:4 70:5 104:13 109:13 112:25,25 113:1 134:10 151:18 159:1 162:2,5 171:16 171:20

programming 44:4

programs 37:14 58:17 66:5,8,9,14,15 67:24 68:11,16 69:2,3,17 100:9,17 101:6 101:10 102:24 103:8,14,16,17 103:19,21 104:19,20 105:15 106:9 111:8 134:15

prohibited 116:17

project 19:5

prominence 57:5

prominent 62:15

promptly 154:18

proper 83:7

proportion 49:8 55:8 103:11 142:16

proportionality 84:5 104:1

proportionate 47:17

proportions 83:22 84:20,21

proposal 181:4

proposals 136:25 138:19

propose 15:18

proposed 95:11 175:6

proposing 96:13,14

protect 165:5

protected 162:22

protocol 153:21

provide 96:8 103:8 110:19 162:24 177:8 180:4

provided 7:21 11:19 15:16 22:4 49:15 107:11 122:16 128:21 132:4 134:8 139:13 140:10 157:24 171:10 174:10

176:19 178:10

provider 101:11,12,19 102:4,5,6 158:4

providers 109:2 117:15 129:22 136:2 159:25

provides 48:24 103:9 143:24 144:15

providing 45:10 73:9 95:4 113:20 122:13 124:24 161:15

provinces 134:14

provincial 44:5 65:22 66:5 68:11 103:18 116:8 134:7,10 135:13,18 136:6

provision 37:24 134:1 158:5

public 25:3,14 26:11,16,25 27:15 28:10,12 31:2 36:3 64:24 67:24 68:16 69:1,3 72:16 148:12 150:18 159:16

159:24
public's 101:7
publicize 139:3
publicly 169:21
pulled 93:10,11
   93:12
pulling 97:17
pump 97:7
purchase 73:24
   74:7,24 76:18
purpose 3:17
   97:23 98:5,6
purposes 178:1
pursuant 43:9
   121:23
pushing 35:24
put 25:24 29:12
   33:8 38:6
   47:11 48:18
   55:13 66:16
   67:22 70:4
   82:24 91:21
   112:19 129:2
   129:17 152:5,9
   162:17
putting 70:14
   132:18 164:1
   171:6

q

q3 33:10 39:16
   39:18,18
q4 89:18
quality 5:1
   146:25 147:18
   147:22

quarter 83:25
quarters 51:2
   56:22,23 57:9
   59:23 60:14
   85:9 91:10
   141:16
question 20:3
   32:6 33:5 42:6
   44:18 45:21
   51:20 61:25
   70:19 73:19
   76:1 81:25
   88:5 90:18
   92:3 97:13
   99:3 100:7
   111:15 112:4
   121:18 124:12
   124:23 129:6
   132:10 133:22
   135:15 144:11
   144:12,18
   149:9 152:21
   156:16,19
   165:2,14,14
   166:2,25
   171:10 174:11
   176:22
questioning
   121:17
questions 3:8,9
   3:20 8:2,9 9:2
   11:2 15:17
   17:5 25:7
   29:10 31:12
   41:1 43:4

45:21 53:5
64:3 77:2 81:5
96:12 99:7,9
117:23 119:7
120:3,5 122:11
123:19 124:13
127:23 128:5
147:13 151:7
164:1 166:10
166:14 172:11
173:8,23 174:9
181:23,25
182:7,14,18
quick 20:7,22
   112:22 156:21
quite 23:7,7
   36:21 57:2
   169:17,21
quiz 107:17
quote 118:7

r

r 1:1,1
racism 148:10
   150:14
raise 122:7
raised 39:25
   40:2,3 44:22
   88:2 94:8
   153:15
raises 127:23
raising 25:6
   132:14
ramp 75:11
   76:10

ramped 158:14
ran 50:5,10
random 58:16
range 39:18,19
   44:2 51:11
   53:14 54:5
   130:5
rate 60:11,13
   61:9 78:21
   101:19,20
rates 60:15
   102:11,13,14
rather 72:13
   104:16
rationale 96:10
reach 57:19
   139:6 174:21
reached 108:6
   116:15 117:22
   151:24
reaction 88:15
read 14:8,15
   16:22 24:23
   27:20 29:16,25
   30:7 37:10
   43:19 47:14
   49:10 53:13
   54:3,18 55:20
   59:19 62:21
   63:2,12 65:10
   71:10,18,21,23
   72:1,20 73:22
   74:4,23 75:2
   78:7 79:18,25
   83:8,24 85:15

93:24 95:9
104:10 105:13
106:7,20 108:3
108:20 112:2
113:15,25
114:24 115:17
117:5,13 118:5
118:12 120:18
121:22 123:22
124:17 125:2
128:9 131:12
132:1 138:13
143:23 144:14
146:5,15,22
147:16 148:7
153:13 154:9
155:17 166:25
167:14,17
168:25 169:6
170:6,12,16,23
175:15
readily 181:13
readiness 70:2
reading 56:10
ready 8:6 10:19
10:20 156:19
156:25 173:25
174:1 183:1
real 7:25
realistically
80:16
really 57:15
93:1 160:12
177:14

reason 14:11
14:13 34:19
36:9 40:8,12
61:12 64:9,14
67:3
reasonably
95:21 96:17
121:5
reasons 34:19
67:17,22
reassessment
67:6
reassign 122:5
recall 11:14
12:18,19 24:3
26:24 44:19
45:2 71:3
94:10,14,17
108:14 151:15
178:2
receive 29:18
73:18 80:21
113:6 128:17
130:6 144:24
145:17
received 56:25
82:20 84:13
101:16 137:10
137:15 145:8
145:10 150:4
157:11 167:22
177:24 178:3,6
receives 73:23
receiving 105:1
111:23 171:24

177:21
recent 20:13
96:15
recently 20:11
95:19 119:20
recipient
145:14
recognize
15:25
recognized
130:17
recollection
61:14 62:3
recommend
34:22
recommendat...
142:24
recommendat...
139:15
reconfirming
182:9
record 15:19
128:3 137:21
165:22 168:12
169:12 173:10
recorded 184:5
recording
184:5,10
recordings
184:6
records 18:14
168:23
recourse
104:12 105:1,3
105:18 106:12

recreational
53:22
recruit 159:24
recurring
111:19 112:1,3
112:4 129:24
redirect 106:25
115:18,25,25
116:18 131:17
redirected
115:23
redirection
116:16
reduce 77:9
79:20
reduced 60:16
reducing 78:16
refer 77:4
111:18 112:10
116:4,18
reference 71:9
referral 116:6
referrals 114:7
referred 18:17
18:21 32:20
41:13 131:25
148:25
referring 58:20
114:2 116:4
139:1 146:11
146:13
refers 168:22
reflect 27:22
95:1 132:11

reflected 154:21 171:1
reflecting 102:16
reflection 26:6
reflects 169:16
reform 77:18 80:6
reforms 175:10
refresh 72:22 166:17
regard 54:12 66:11
regardless 125:20 164:6
region 18:25 19:1 33:13 52:6 113:22 157:22 158:16
regional 9:17 10:6 25:19 32:5,5,6,9,10 32:10,16 33:12 33:18 34:4,5 45:13 51:23 52:11,18,23 108:11 115:4 120:25 154:23 180:12
regions 62:16
regular 25:20 27:4 45:3 95:4 100:9 157:11
regularly 151:22

reimburse 129:15 134:17 135:13 136:6
reimbursed 129:19
reimbursement 128:14 129:9 130:21 134:3,7 135:2 145:14
rejig 42:11
relate 124:1
related 24:25 25:13 26:11,19 26:25 27:15 44:20 53:17 57:19 58:17 63:4 71:2 75:18 97:10 126:23 148:14
relates 25:17 47:18 74:17 126:3
relating 26:25 139:17
relations 9:14 11:4
relationship 32:15
relative 49:1 55:7 83:22 84:20,21
relatively 23:6
relevant 14:20
relief 65:13

rely 47:5
remain 101:17
remained 177:2
remains 171:5
remark 26:15
remedied 105:16 106:10
remember 12:16 13:10,11 14:6 28:25 41:14 42:7 45:12 61:15,18 62:12 69:22 70:23 72:18 95:18 112:23 151:9,21 167:1
reminds 18:20
remote 160:1
removal 132:7 132:8
removed 35:1
render 34:2
renewal 170:24
renovation 73:3
renovations 53:21 74:1,6 74:25 75:6 76:18 179:7
rent 53:19 54:6 179:6
rental 54:22
repeat 22:7 88:4 90:13,15 144:12 149:8

repeated 112:16
rephrase 129:7
replace 66:8
replaced 79:19
reply 13:9
report 4:5 13:20 27:10 29:10 61:17 62:17 80:11 172:14,22 173:2
reported 26:1
reporting 13:4 13:6,9 25:20
representing 1:1 19:5 48:17
request 18:8 19:1 21:17 36:5 55:23 57:20 79:8,10 79:11 82:3 95:17 96:7,10 96:24 97:1,6 97:10,18 101:5 101:22 107:12 110:1,2,24 111:4,19 112:1 112:7 113:6 114:3 116:20 121:15,18 122:1,4,5,8,15 124:25 126:2 128:10,14 132:5,9 133:15

135:10 136:4
136:24 138:22
145:12 165:4
requested
164:4,25
requester
111:5,23
114:14 116:6,7
116:19,23
117:1 121:16
121:25 122:9
124:22 133:17
requester's
122:3
requesters
83:10 96:6
106:25 111:6,7
115:18 122:14
123:4,5 124:19
125:14,19
142:17
requesting
101:8 178:15
requestor 79:7
128:15
requestors
131:17
requests 3:20
16:13 18:25
19:5 20:24
21:16 22:5,13
22:15 24:24
26:25 27:15,22
29:18,20 30:9
31:19,20 32:23

33:12 34:8
37:13,21 44:21
45:24 46:23,23
47:13,19 48:2
48:3,6,7,9,13
48:16,20,21,25
49:1,13,21,22
50:21 51:1,22
52:8,8,24 53:7
53:16,20,23
55:3,9,11,21
56:12 57:9,19
59:6,23 60:12
60:24 61:4,5
61:16 62:5,9
62:10 63:15,22
64:14 71:13
73:3,24 74:5
75:5,18 78:11
80:5,10,13,22
80:25 81:3,6
82:15,16,17
83:23 84:1,3,6
84:9,11,12,22
85:17,19 86:19
88:7,16,17
89:2,3,5,6,11
91:2,15 92:5
93:18,25 94:4
94:6,11 95:13
97:17,24
100:10,10,15
102:18 103:3
103:11 105:1
107:3 110:4

112:2,3,4,14,16
113:4,16
115:12,23
118:18 120:21
121:1 122:18
122:21 123:5,7
123:23 125:17
125:19 126:9
127:4,15
128:13 129:8
130:5,6,7
131:20 133:25
135:2 137:14
141:20,21
142:4,8,13
143:5,10 144:4
144:24 145:2
156:1,2 158:9
158:25 159:5,7
161:11,12
171:19 172:7
176:24 177:3,4
177:20,24
178:3 179:5,7
179:8,13,19
181:14
required 122:2
135:9 162:12
172:3,8
requirements
66:4 70:15
150:18
requires 121:2
reserve 64:25
74:2 80:9,10

80:13,16 159:1
161:18
residence
102:25
resistance
101:25
resolution
144:1,17,20
resolutions
180:22
resolve 7:6
145:6
resolved
140:19
resolving 6:25
resource 51:20
158:10
resources
37:25 114:3
115:4 171:19
respect 25:23
28:19 34:7
45:14 52:20
80:14 95:5
98:2 114:11
140:1 153:25
174:10 175:18
178:10,11
179:8
respecting
165:9
respond 30:15
81:2 153:24
154:18

respondent 1:1 1:13

respondents 6:3

responding 28:16

response 28:7 161:6,7

responsibilities 10:14

responsibility 66:14 160:10 160:22,23

responsive 28:18 172:9

result 11:8 107:7 126:20 132:2 180:11

resulted 178:12

resulting 176:15

results 87:13 138:17

resuming 128:4 165:23 173:11

retroactive 135:1

returned 10:5

review 31:25 32:4,21 46:11 78:2 85:14,24 100:24 119:8 139:24 164:24

reviewed 22:6 28:21,23 29:3

29:7 38:15,18 43:14 82:7

reviewing 28:25

reviews 119:15 119:18 136:16

revised 175:2

rfp 137:3

right 11:7 13:15 14:21 15:21 22:9 24:10 27:8 31:21 32:1 34:25 35:7,16 35:16 38:11,16 41:18 45:20 48:22 50:19 51:9,23 56:10 58:10 59:15 64:11 69:11,14 76:15,17 77:4 82:8 84:10 87:23 89:17,18 90:4 92:11 93:9 98:8,25 100:19 103:18 111:4 125:18 131:7 132:18 132:21 133:3 133:20 134:25 138:24 141:7 142:12,15,17 148:20,24 149:19 159:18 162:2 163:6

166:20 169:10

rights 1:1,1 5:9 6:13 37:19 140:2

rise 27:2

rising 80:9 94:11 172:6

risk 37:11 38:5 65:14 98:1,4 121:4 123:1 124:3 125:7

risks 37:4

robust 161:7

role 29:4,8 66:11 160:12 162:24

rolled 148:25

roman 117:5

room 70:24

rooted 163:6

roster 110:7

roughly 27:21

rounding 98:10

route 13:10

row 22:24 56:4 56:4

rows 56:4

rubric 161:5 166:3

rule 54:25 106:2

rules 101:10 102:1

run 12:25 135:7

running 90:19

s

s 1:1 4:1

safe 181:18

safety 25:3,14 31:2 75:12 124:2 125:6 133:14

sake 102:3 116:25

samantha 1:15 5:23

sample 85:16 87:25 88:15 89:4,14,21 91:13,16,17 97:18

sampling 94:6

sarah 1:3 5:19

save 18:1

saw 25:18 28:22 95:3

saying 34:22 35:11 39:17 47:5 58:19 65:20 68:2,5 91:12 164:14 167:2

says 14:15 19:4 27:16 30:7 37:9 42:13 43:18,19 48:16 48:16 49:10 54:21 55:20 58:24,25 59:1

59:13,14 73:22
75:2 78:2,7
83:24 88:25
98:13 104:10
106:7 108:2,20
122:13 129:12
137:22 138:9
138:12,12
146:3,5,22
153:12 154:9
168:5,24 169:6
170:6,23
scenario 111:1
135:14,16
156:17,20
164:24
scenarios 181:8
181:10
schedule 8:14
130:10
school 135:18
135:22 136:5,6
schools 113:1
158:16,19
scoiety 108:4
scope 75:1
177:20
screening 27:5
scrolling 42:4
se 27:1
search 52:13
season 45:7
second 7:13
10:5 12:17
27:9 29:15

30:6 41:8
47:21 56:9,11
62:18 63:11
72:13 77:12
89:11 93:23
95:22 114:24
115:16 119:9
123:20 137:5
146:21 148:3,6
153:10,12
154:9 183:1
seconds 181:22
secretariat
142:19
section 31:14
128:7 139:4
sector 118:14
118:22
see 19:2,3,18,19
20:1 29:13
37:4 38:2 47:7
47:9 49:4
53:24 54:9
55:12,20 56:1
57:11 59:11
60:1 62:3,13
66:15 69:10
75:14 77:13
78:12 81:14,21
86:19 89:12
91:12 97:19,20
98:24 100:18
102:22 104:1
107:13 109:4
111:21 121:6

123:9 136:2
145:9,16 146:5
146:15,21
147:5 154:25
161:9 167:24
169:10,15
seeing 26:24
103:4 112:15
112:18 113:2
115:13 123:7
160:1
seek 37:24
134:3,7,17
seeking 77:10
79:22 162:3
seem 50:23
seems 7:12
27:10
seen 28:19
32:20 61:3
73:6 82:19
83:17 112:12
112:13,16,21
113:5 119:19
159:10 171:19
self 122:14
159:9 165:9
send 135:10
sending 171:14
senior 12:8,9
26:7 33:17
34:2 35:3
160:11
sense 26:6
167:20

sensitive 82:16
83:12 124:21
126:14,22
sensitivity
83:16 127:3
sent 17:9
sentence 29:15
30:11 93:24
100:25 105:22
106:4 114:24
118:11 144:10
148:3,6 153:13
154:9
separate 28:8
147:10
september 9:23
10:11 152:14
157:16 180:21
series 45:21
78:5
servants
159:24
serve 80:15
159:3
served 103:13
service 26:21
36:4,7 37:5,24
45:25 72:16
80:17 83:10
101:16,16,19
107:12 108:21
109:1,3 114:17
114:21 115:1,5
116:3,5,10
117:15,16

124:19 125:25
129:13,14,14
129:16 132:6
134:11,13,18
134:19 136:2,3
148:12 150:18
158:4 159:17
159:25 162:2
166:4
services 1:1
9:22 10:9
16:14,25 25:24
26:14 27:5
28:8 29:19
43:24 55:9
56:21 67:22
68:2 100:15
101:8,14,18,21
103:5,13
106:22 107:1
111:21,24
115:19 117:6
128:21 131:14
131:18 134:8
136:7 146:24
148:15 156:3
157:20 158:1,1
158:6 159:3
160:4 161:17
163:4 175:10
175:14 176:19
177:8,15 178:9
178:11,12
179:10

session 110:25
sessions 180:12
set 24:15 62:22
95:13 102:13
123:16 128:18
130:7,25 131:3
131:7 146:7
149:11,25
162:7,24
178:21,24
sets 68:12
74:15
settlement
13:23 14:4
80:2 163:14
174:17,21
175:19 181:18
seven 14:6,19
25:13 26:5
44:16
seventy 50:11
114:23
several 142:21
176:6
shaped 151:5
shared 140:1
sharing 70:2
114:15 135:8
sheet 37:2
41:14 43:17
44:16 72:8
170:2,3
shifted 53:15
140:24

shifting 173:19
shifts 52:12
75:25
shoes 58:17
shortfalls 29:21
30:12,13
shows 7:25
shut 47:22
shy 50:8,9,13
50:15,16 58:25
89:1 141:20,21
141:22
sibling 95:20
96:16
side 72:15
112:17
signature
184:15
signed 130:12
significance
102:20
significant 57:3
94:1 103:10
171:12
significantly
60:16
silent 179:12
similar 16:3
97:15 166:12
sincere 153:23
single 164:23
sit 183:4
site 16:4
situate 42:24

situation 26:20
64:16 141:2
181:1
six 16:19 18:5
sixty 144:9
sj's 13:16
skill 184:9
skipping 41:12
41:25
slightly 19:12
19:14,20 21:20
23:18
slowdown
13:19
small 15:1
23:11,23
smith 1:11 6:13
social 26:12
37:14 44:2
64:25 134:15
178:10 179:5
society 1:1,4
5:7,20 39:25
40:4,7 88:3,8
88:12 94:18
95:5 122:17
155:16,18
156:8 173:23
175:5 176:10
society's 7:19
14:2 40:9
81:16 95:11
96:13
socioeconomic
53:8,18 54:5

55:2,9 57:1
58:20 59:18
60:11 61:16
62:5 68:24
179:5
sole 160:23
solicitor 155:9
155:11
solid 81:2
solution 132:13
161:11
solutions 8:1
132:17 164:25
165:1 184:16
solve 110:8
solved 134:21
somebody
34:20 112:5
someone's
26:20
somewhat
166:12
soon 180:5
sooner 34:5
178:2
sophie 1:1
sops 79:19
120:22
sorry 6:9,9,18
12:18,19,24
17:7,10 18:19
18:23 20:25
22:1,7 24:20
26:16 29:9
36:13 39:2,3

47:25,25 50:13
50:13 52:3
55:18 59:5
67:14 72:10
77:8 85:2 86:5
88:4,18,19,22
89:20 97:1
98:10 105:21
105:24 107:9
107:19 114:22
119:10 136:17
142:1,3,3
149:8 153:3
155:11,11
168:2 169:11
169:14,23
176:5 177:12
sort 27:11 33:4
54:25 126:17
129:21 161:21
167:3
sorted 109:14
sorting 135:24
sought 151:23
154:16
sound 175:16
sounds 28:4
source 24:1
81:14,21 82:5
97:5
sources 28:8
space 75:13
speak 9:25
52:25 70:1
123:2 139:24

140:9 142:20
165:16 167:19
176:7 180:23
speaker 3:5
5:14 8:20,24
9:4,7,10 10:16
183:3,9,12
speaking 69:12
94:11 101:13
114:25
specific 25:15
26:3 28:12
71:14 75:9
98:22 129:25
specifically
92:3 139:18
140:9
specified
108:23 117:8
specify 110:20
spectrum 178:3
speech 110:3,5
110:6 158:14
spending
152:16 170:7
170:14
spirit 166:5
spoke 88:11
166:7
spoken 169:21
sports 53:23
st 8:21 33:6
69:25 73:19
staff 11:24
45:13 83:10

124:19 148:16
stage 28:15
stair 75:12
76:12
stand 14:22
31:5 42:9
standard 68:15
68:17,19
101:24 121:12
standards
162:19 165:7
standing 40:17
137:1
stands 182:24
start 8:19
24:22 38:13
90:19 95:9
100:12 106:19
137:18 138:7
165:18 174:11
started 28:22
47:7 62:13
72:21 89:15
90:8
starting 5:17
106:4 151:16
starts 24:19
staska 1:14
5:23
state 7:2 95:23
96:18 105:8,9
105:10 163:25
statement 26:5
34:18 47:13
104:22 106:15

106:17 115:14
127:6 144:19
statements
29:13 84:11
statistics
119:18
status 13:14
152:1,19,21
171:9 176:3,7
stay 147:14
staying 58:23
step 40:21
117:11 182:23
steps 146:6
stewardship
72:17
stewart 1:6 6:1
store 131:5
story 31:1
strongly 163:13
struck 180:11
structural
117:25 136:23
structured
65:15
structuring
52:20
stuart 174:7
stuck 46:1,6,6
46:10,17
sub 108:19,19
subcategory
57:20
subject 155:6

submissions
70:12,12
142:18 165:17
submit 128:16
submitted
91:25 141:3
subsections
43:9
substantive
15:8 30:16
104:15,18
178:17 179:18
179:20
substantively
10:4
success 25:8
31:2
successor 12:3
sufficient 173:5
suggest 72:16
suicide 124:1
125:6 133:14
summary 44:8
77:18 145:20
145:24 161:3
161:22,24
summit 157:16
180:19
sunset 169:8,20
170:19,25
171:5
sunsets 171:5
supplement
14:17 64:6,10

supplementary
171:25
supplementing
14:19
supplements
158:18
supplier 145:13
support 45:25
55:3 60:12
65:5 68:4 69:5
77:10 79:22
80:14 100:18
102:7,7 103:9
104:21 115:7
118:15 126:19
135:17 179:22
supported
176:23
supporting
13:22 14:2
131:8
supports 16:15
16:25 43:24
53:8,18 54:6
54:12,23 57:1
58:20 68:24
69:1 101:13
103:6 113:21
115:2 140:16
179:6
suppose 92:25
121:17
supposed
133:18

sure 8:16 9:4
20:4 24:13
25:17 26:18
33:6 47:16
50:19 69:24
73:17 84:10
85:4 86:3
89:10 90:17
93:20 114:10
119:1 120:12
139:25 142:8
144:7,12 157:1
157:3 159:17
165:6 180:5
surely 164:21
surprised
155:22
surprising
155:19
surrounding
175:25
system 20:6
66:18 83:19
91:21 92:10
93:6 124:4
125:8 135:18
135:23
systemic 66:13
69:17,21
114:12 118:9
systems 115:3

t

t 1:1 3:20 4:1
55:12 57:11
143:18

tab 15:24 18:9
18:11 36:13,14
36:15 40:14,14
41:20,23 43:17
55:16,17,18
71:8 72:7,10
72:11,24 77:4
77:5,15 78:1
82:22 107:16
107:19,20,21
117:5 124:13
133:11 137:17
145:19 147:14
152:25 154:7
166:21 168:2,3
169:24
tabbed 4:4
36:12 55:16
172:13,23
173:1
table 11:12
18:4,11,18,19
18:25 19:4,7
19:11 20:17
21:10,15,15,16
21:23,24,25
22:3,18,19
23:4,5,13,19
24:2,4 29:1
41:13 48:11,19
48:24 49:9,19
51:17 53:11
55:18 56:10
57:17,21 58:8
58:15 82:1,3

84:8 85:7,11
88:16,18,21,25
89:5,7,9,25
104:9 180:10
tabled 38:19,20
38:20
tables 18:16
19:2 21:14
55:17
tabs 15:24
tailor 101:18
take 8:18 15:23
19:25 22:5
23:16 28:15
30:1 66:17
70:6 79:17
85:23 90:19
91:8,9 93:4
94:22,22 99:2
99:14 101:1
127:18,19
128:1 131:5
146:6 148:2
161:2 165:20
taken 1:1 87:13
98:13 139:12
170:25 184:10
takes 91:8,10
130:21
talk 11:25
12:13 25:12
31:10,17 45:23
68:5 77:8,8
100:11 105:12
118:4 119:22

129:6 136:24
179:4
talked 25:5
71:1 72:8
84:17 87:3
100:17 133:12
136:15 139:9
140:15 166:3
talking 32:19
45:10,23 58:16
58:19 65:9
102:21 113:13
114:21 117:24
133:24 177:14
talks 31:23
32:3 62:19
tally 51:13
135:20
tasked 148:9
tasking 150:14
taylor 1:2 3:7
5:18,19 10:20
10:23 17:10,15
17:18,25 18:3
47:24 55:6,14
57:6,13 69:13
70:17 98:23
99:8,13,16,19
100:6 113:10
119:25 120:4
124:10 127:16
132:21,25
133:3,6,7
143:13,20,21
156:14 161:1

163:18,21
165:21,24
166:1 172:10
173:3
team 29:6
31:25 32:4,20
55:12 73:9
82:6 86:2,2
87:4,16,18
91:22 92:2
93:1,21 94:10
112:6,6 119:21
125:23 127:25
137:10 141:1
143:9 157:11
teams 51:21
technical 7:10
tell 7:22 8:17
85:7,11 135:15
164:6
temporary 65:6
65:13
term 13:20
34:18 47:11
64:19 77:18
80:2,6 109:23
157:6 162:15
164:9 165:1
180:9,14
terms 28:16
31:15 36:4
43:13 48:3,10
51:11 56:8,20
57:5 66:13
72:14 82:20

86:16,18 87:19
87:20 91:25
96:23 101:3,15
102:1,9 105:4
105:11 110:11
112:15 116:12
116:14 125:23
127:3,11
133:13,25
134:22 135:20
135:24 137:11
138:21 139:7
139:20 140:11
141:4,12
149:12 157:20
158:25 160:19
163:10 166:3
173:18 178:3
territorial 44:5
62:14 103:19
116:8 134:7
territories
134:15
territory 7:16
76:5,9 139:10
test 12:23
45:20 57:7
testified 120:6
132:15
tests 6:21
text 23:15
27:19 42:7
43:18 73:21
84:7

texts 73:21
thank 7:2 8:11
8:13 9:1,9
10:16,18,22
17:23,24,25
33:9 43:15
51:13 70:16
100:5 113:9
124:9 128:6
130:15 131:10
132:20 133:6
136:21 138:14
160:25 165:20
165:21,24
173:3,7,8,9
174:3 175:18
178:19 179:25
180:25 181:11
181:17,24
182:2,4,7,8,15
182:16,20,22
182:22 183:13
183:14,14
thanks 10:20
124:11 143:20
172:11
theme 53:4
98:24
themes 127:17
166:7
therapist 110:3
therapist's
110:7
therapists
158:15

therapy 68:21
110:5
thing 51:14
68:24 161:23
things 18:9
25:24 27:1,5
47:8 51:21
58:19 88:25
92:6 126:13,13
131:2 160:8,10
161:21 164:19
178:1,12
think 7:8,12,12
10:4 20:1 24:8
27:8,12 31:16
33:15 40:15
45:5 47:20
65:8 78:19
80:8,16 86:24
93:19,20 96:5
103:23,25
105:2 109:15
109:23 112:25
115:24 120:1
133:10 139:19
154:2 155:3
158:22 159:4
159:10 163:6
164:20 165:12
168:17 173:4
174:9 176:22
177:1,18 180:5
183:5
thinking
164:25 173:18

third 22:4 59:3
72:13 78:7
83:25 168:10
thirds 99:17
thousand 59:2
71:22,24,25
72:2,3 93:4,17
thousands
126:9
three 19:9,13
46:5 51:2
54:13,22,25
56:5,20,22,23
57:8,9 59:22
60:14 63:23
73:7 85:9 91:9
93:4,17 101:20
119:12 127:16
141:16
threshold 32:8
32:23 33:11
66:3 71:1,19
75:23 101:24
102:8,9 130:1
thresholds
31:17 33:9
35:25
tied 87:1
162:20
time 29:1 30:1
34:12 35:24
38:12 40:1,4
44:22 45:16
52:17 54:22
66:18 67:9

69:23 70:3
82:16 83:12,15
88:10 91:15
93:18 100:1
101:2 107:16
108:12 110:17
111:18,25
113:6 115:12
117:17 119:15
121:13 124:21
126:12,14,21
127:3 129:18
129:24 141:25
142:5 152:8,17
157:13 159:12
160:18 162:10
163:15 164:17
169:17 175:13
178:21,24
179:2 180:7
timeline 94:16
108:23 109:9
109:13 116:14
116:16 117:8
156:7,11
175:16 180:23
timelines 37:17
110:20 114:6
122:25 123:17
127:13 155:25
timely 83:7
123:12 145:13
145:14
times 101:20
105:2 127:6

timing 165:16
tired 173:16
title 18:25
57:17 168:12
titled 15:4 18:7
40:17 72:25
today 5:5 7:20
14:12 28:22
54:17 75:17
102:17 127:23
178:10
together 19:3
32:22 55:13
88:25 112:19
160:24 171:6
told 137:8
tomorrow 8:25
183:4,11
took 160:9
180:20
tool 113:11
top 16:9 56:5
56:20 57:8
63:23 107:23
topic 24:16
81:6 156:15,22
163:21
topics 147:1,20
total 21:3,18,19
22:13,15,20
23:18 48:8
49:4,15,23
56:3,12 58:14
58:24 59:4,7,8
59:8 84:6

88:17 91:3,14
91:18 115:21
totals 21:20
touch 10:14
towards 110:24
113:8 118:8
toys 177:22,25
178:2
tracked 143:9
tracking 49:19
83:14
tracks 55:1
119:18 143:4
traditional
7:15
training 11:24
147:1,14,19,22
148:19 149:5
149:15,17
150:10
transcribed
1:25 184:7
transcriber
184:3,18
transcriber's
184:1
transcript 5:2
166:24 184:9
transcription
85:5
transcriptionist
1:25 18:24
85:6
transcriptioni...
5:1

transition 33:5
139:11
transitioned
10:8
transparent
154:17 155:3
transportation
27:2,3 56:6,15
56:25
traumatic 8:16
travel 130:2
treasury 35:21
74:14,18 150:5
treated 123:12
treating 122:21
trees 18:1
trend 53:16
94:7 172:6
trends 37:21
tri 11:25
148:21
triage 127:15
triaged 98:2
161:13
triaging 94:14
tribunal 1:1,1
7:14 8:4 14:24
15:19,22 19:25
37:19 116:14
122:24,25
123:16 148:13
151:23 152:10
152:14 167:9
176:20 177:17
177:19 178:21

178:25 179:9
tribunal's
11:19 76:24
118:20 121:7
146:19 151:16
154:4 179:11
trickles 150:21
tried 17:25
45:5
true 126:3
152:22 163:8
184:8
try 7:6 20:16
20:16 47:11
112:18 130:3,4
148:2
trying 22:8
39:6 42:24
45:5 62:11
69:22 89:25
90:12,15 95:1
103:14 105:21
140:12 158:17
161:4,7
tunney's 183:5
turn 16:7 108:9
133:11 141:18
154:8 168:21
173:24
turnaround
110:10
turning 146:2
176:8 177:5
twenty 177:11

two 15:3 19:12
19:24 21:14
23:1 29:12
60:16 67:14
88:25 93:3,17
99:17 119:12
178:17 180:21
type 19:1 21:17
55:23 57:20
73:4 101:13
108:23 117:8
123:6 143:10
162:11 176:9
178:11 179:5
types 102:8
121:9 158:21
179:10,12
typically 162:5

u

u 3:20 55:12
57:11 143:18
uh 13:25 16:20
21:8 24:21
41:4 43:6
46:13 59:24
63:1 64:7 67:2
77:14,19 84:24
141:17 146:4
153:11 166:19
169:4 170:4,15
177:7
unceded 7:15
under 18:4
20:7 22:20
27:19 43:17,18

48:11 53:11
58:4,25 62:21
64:19 69:5
72:7,10,24
73:21 74:8,11
77:3 82:1 83:6
88:21 89:25
100:12,16
104:8,9 105:25
120:22 133:17
135:21 138:9
141:15 146:9
146:17,21
161:5 162:25
163:16 166:2
166:16,21
175:24 176:19
179:14 181:3
181:11
underlying
30:22 105:15
106:9
understand
13:1 16:15
31:7 42:22
67:13 103:15
109:16 111:15
111:25 112:3
114:6 119:8
120:13 138:2
139:1
understanding
11:7 38:21
76:4 125:18
126:8 137:24

142:17 154:22
175:24 177:20
178:20 181:8,9
understands
124:23
understood
30:14 90:17
undertake
148:17
undertaken
3:20 157:8
undertaking
130:14
undertakings
3:15,19
unfolded
180:13,13
unfortunately
15:14 16:8
160:15
unidentified
3:5 5:14 8:20
8:24 9:4,7,10
10:16 183:3,9
183:12
unilaterally
135:10
unintended
160:8
unload 165:12
unmet 44:3
64:17
unusual 73:8
update 53:6
95:2 103:25

139:4

updates 45:10
95:5 138:10

upfront 130:11
181:5

upheld 143:6
143:17

upholding
155:4

ups 133:1

urgency 82:3
83:15 84:6,9
96:19,24 97:13
120:24 122:1,6
122:7 125:3,11
127:2 133:10
133:13,17

urgent 46:23
81:6,11,12,17
82:15,17 83:7
83:11,22,23
84:1 85:9,14
85:16,20 87:1
88:16,17 89:11
92:5 93:17,25
94:6,11,19
95:12,17 96:7
96:7,11,25
97:3,8,11,17,18
97:21,24 98:2
98:3 120:21,22
121:1,2,16,19
122:4,9,10,15
122:22,22
123:6,8,11,12

123:13,17,17
123:23 124:20
124:24 125:19
126:13,22
146:6 156:2
164:9 177:14

urgently 94:4

use 35:8 47:1
65:12 101:11
102:5 116:24
129:25

used 24:1,1
34:17 49:13
52:17 61:19
65:21 86:22
130:2

using 124:21

usual 5:3

utilities 54:7

v

v 5:9 108:20
117:5 169:1

valerie 3:4 8:12
15:5 41:9

value 33:12
35:17,18 87:14
131:2 172:7

values 154:3

variable 62:24

variety 128:11
130:4

various 10:13
10:15 147:1,20

vehicle 129:19

vehicles 53:22

vendor 129:17

vendors 128:19

veritext 184:16

version 15:12
15:15 17:9
40:9

versions 19:24

versus 23:4
47:13,18 48:2
50:4 52:8
55:10 68:4
76:6 84:6 98:3
159:18

videoconfere...
1:1

view 19:21
20:14 95:8,10
96:3,4 101:7
121:24 122:23
132:13,16
169:17 176:14
176:18

viewers 21:6

visit 110:7

visits 180:13

volume 18:8
24:24 30:21,23
31:8 33:25
36:12 37:12
52:12 84:22
113:4 115:12
123:13 159:7

volumes 15:3
45:13

vulnerability
125:10

w

wait 66:21
130:20 148:4

waiting 46:14
46:19 85:10
92:19,20

walsh 1:10 6:9
6:12,12 182:2

want 31:11
47:1,4,7 69:10
77:4 79:16
84:10 99:20
120:11 133:11
162:17 165:5,5
165:6,10 168:7
176:25

wanted 17:24
18:8 72:5
100:24 102:5
123:17 153:4
173:13,21,24

wanting 80:15
127:3

war 160:4

warm 109:23

wattke 174:7

way 15:20
17:16 22:20
27:6 39:17
66:18 73:15
99:17 110:6
127:12 136:3
140:12 141:18

150:23 162:6,8
162:11 163:2
164:3,21 165:8
168:3 173:14
173:15 176:12
ways 180:2
we've 15:16
23:15 61:3
78:19 98:24
112:7 116:21
130:25 131:7
164:2
webpage 139:4
website 15:17
16:1 137:18
145:22
websites
137:24
weight 161:11
welcome 169:1
welfare 124:4
125:8 151:10
152:6 180:18
wellbeing
44:12 64:1
went 73:7
89:15 159:11
wheelchair
75:11 76:10
wide 44:2
wildfires 25:4
willing 114:16
window 111:16
111:17

winnipeg
180:20
witness 3:6
69:21 99:24
100:3 112:12
129:6 157:1,3
182:24
witnesses 5:15
wonder 142:5
143:13 156:17
172:11
wondering
17:8 43:7 55:6
57:8 69:16
89:5 99:3
119:17 120:10
122:20 129:7
137:2 175:23
word 35:8
115:24
words 48:18
74:10 79:16
116:25 162:17
work 31:6
66:18 76:9
87:11 113:8
125:23 148:21
148:24 154:11
157:4,8,8,12,14
158:12 160:14
160:18,24
worked 86:11
87:15 121:11
worker 179:23

working 31:15
105:17 106:11
180:7
workplan
45:11 95:2,2,6
146:8,11,16
works 48:11
93:5
world 109:24
worried 160:7
worry 155:13
159:22
worse 7:9
written 165:17
wuttke 1:6 3:10
5:25 6:1 174:1
174:5 181:21

x

x 3:1 4:1,1
129:13

y

yard 75:12
yeah 12:24
13:21 16:18
18:6,23 20:21
22:1 30:1 39:2
39:2,4,11,13
42:5 46:3
47:16 50:5
59:10 61:20
62:1,11 65:8,8
71:5 76:8
81:25 88:24
95:25 99:11

100:20,23
114:23 119:12
120:14 136:19
143:18 144:9
144:25 145:24
148:6 152:24
168:8,17
169:19
year 19:1 38:12
39:1,14 51:10
55:25 84:1
89:15,23 90:3
90:6,8,11,11,24
91:5 135:6,23
150:19,19
157:12,12
181:3
years 33:13
34:21 60:17
62:12 111:12
112:2,24 151:8
164:3 165:4,13
166:13,18
178:7,7
yukon 112:23

z

zoom 1:1

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Tribunal File No. T-1340/7008
CANADIAN HUMAN RIGHTS TRIBUNAL
BETWEEN:
FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and
ASSEMBLY OF FIRST NATIONS

Complainants
- and -
CANADIAN HUMAN RIGHTS COMMISSION

Commission
- and -
ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous Services Canada)

Respondent
- and -
CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA
and NISHNAWBE ASKI NATION

Interested Parties

---This is the morning session of the Motion Hearing, taken in
the above-noted matter via Zoom videoconference, on the 3rd
day of April, 2024.

B E F O R E: Sophie Marchildon, Chair
Edward Lustig, Member

2

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 1  A P P E A R A N C E S:
 2  David Taylor              For the Complainant,
 3  & Sarah Clarke              First Nations Child
 4  & Kevin Droz                & Caring Society
 5
 6  Stewart Wuttke            For the Complainant,
 7  & Lacey Kassis              Assembly of First
 8                              Nations
 9
10  Jessica Walsh             For the Commission
11  & Brian Smith
12
13  Dayna Anderson            For the Respondent
14  & Kevin Staska
15  & Samantha Gergely
16
17  Darian Baskatawang        For Interested Party,
18                              Chiefs of Ontario
19
20  Michael Hyer              For Interested Party,
21                              Nishnawbe Aski Nation
22
23
24
25   TRANSCRIBED BY:  Beryl Capicciotti, Transcriptionist
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1   I N D E X

2   Page

3

4 CANDICE ST-AUBIN, RE-AFFIRMED

5   EXAMINATION IN-CHIEF BY MS. ANDERSON............6

6   CROSS-EXAMINATION BY MR. TAYLOR.................7

7

8

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10   I N D E X   O F   E X H I B I T S

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13 (none)

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16

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1   TRANSCRIPTIONIST'S NOTE: Due to poor audio quality,

2   this transcript contains more [indiscernible]

3   annotations than would be usual.

4   --- UPON COMMENCING:

5   REGISTRY OFFICER: Today is April 3rd,

6   2024. This is day 2 of the motion hearing of the

7   First Nations Child and Family Caring Society of

8   Canada and the Assembly of First Nations and the

9   Canadian Human Rights Commission and the Attorney

10   General of Canada, and the interested parties, Chiefs

11   of Ontario, Amnesty International and Nishnawbe Aski

12   Nation. And I would like to call for appearances,

13   please, starting with the complainant and then the

14   respondent.

15   MR. TAYLOR: Good morning. For the First

16   Nation Child and Family Caring Society of Canada it's

17   David Taylor, Sarah Clarke, Kevin Droz, and with us

18   this morning as well we have Dr. [indiscernible] and

19   Bernie Mathis (ph).

20   MS. ANDERSON: Good morning. For the

21   Attorney General of Canada, Dayna Anderson, Kevin

22   Staska and Samantha Gergely.

23   MR. WUTTKE: Good morning. Stewart

24   Wuttke and Lacey Kassis for the Complainant, Assembly

25   First Nations.

1   MR. BASKATAWANG: For the Chiefs of

2   Ontario, Darian Baskatawang.

3   JESSICA WALSH: Good morning. For the

4   Canadian Human Rights Commission, Jessica Walsh and

5   Brian Smith.

6   MR. HYER: Good morning.

7   THE CHAIR: Okay. Then on behalf of the

8   Nishnawbe Aski Nation, please?

9   MR. HYER: Good morning all. Michael

10   Hyer for Nishnawbe Aski Nation.

11   THE CHAIR: Thank you. Good morning

12   everyone. Day 2, today we're going to hear from

13   another witness, affiant, witness for people that are

14   not lawyers. Before we start, Ms. Dubois is going to

15   affirm you again just for these proceedings. So thank

16   you for coming and I want to let you know that if at

17   any point you're tired or you need a break, just let

18   me know. That's my job to make sure that you are

19   comfortable. Okay.

20   CANDICE ST-AUBIN: RE-AFFIRMED

21   REGISTRY OFFICER: Can you state your

22   full name for the record?

23   THE WITNESS: Candice St-Aubin.

24   THE CHAIR: Thank you. I don't know if

25   you still have your clerical point to address, and I

1   would ask like I asked yesterday that you would lead

2   the witness in a few introductory questions and then

3   it will be the Caring Society's turn.

4   MS. ANDERSON: Absolutely. I just

5   wondered if the Caring Society might have preliminary

6   housekeeping matters?

7   THE CHAIR: I have asked that they wait.

8   Thank you.

9   MS. ANDERSON: In terms of housekeeping

10 for the correction to the affidavit, the corrected

11 evidence is something that is subject to the

12 confidentiality order. So I've spoken with my friends

13 at the Caring Society and we're proposing that rather

14 than going in camera we can perhaps just present an

15 updated supplementary affidavit to correct the

16 evidence on the record. For now, all of the parties

17 are aware of what the change is. Would that meet with

18 your satisfaction?

19   THE CHAIR: Absolutely. Thank you.

20   MS. ANDERSON: Thank you.

21 EXAMINATION BY MS. ANDERSON:

22   Q. Good morning, Ms. St-Aubin. Can you

23 please state your current position?

24   A. I am the Senior Assistant Deputy

25 Minister of the First Nations and Inuit Health Branch.

1   Q.   Okay. And what do you do in that

2   position?

3   A.   We have a mandate that we support and

4   provide for the health and well-being of First

5   Nations, Inuit and [indiscernible].

6   Q.   And how long have you been in that

7   position?

8   A.   It has been 11 months.

9   Q.   And what did you do prior to that?

10   A.   Prior to that, I was the vice-

11   president of the Health Promotion [indiscernible]

12   Branch of the Public Health [indiscernible] of Canada.

13   Q.   And what is your education

14   background?

15   A.   I have a master's degree in Canadian

16   studies that focuses on Indigenous issues as well as a

17   bachelor's degree in psychology and a diploma of

18   educational completion in early learning childcare.

19   MS. ANDERSON: Thank you. Those are my

20   questions.

21   THE CHAIR: Thank you. Mr. Taylor or Ms.

22   Clarke.

23   MR. TAYLOR: Thanks very much, Madam

24   Chair.

25   CROSS-EXAMINATION BY MR. TAYLOR:

1   Q. Good morning, Ms. St-Aubin.

2   A. Good morning.

3   Q. So I'm going to ask you some

4   questions today. My name is David Taylor. I'm one of

5   the Caring Society's counsel on this matter. You've

6   got some documents in front of you which we'll be

7   going to to ask questions. There's a few of them and

8   many of them look the same, so if there's any point

9   where you're not sure what I'm referring to, just stop

10 me and I'll clarify. And like the Chair said, if

11 there's a point where you need a break, just let me

12 know and we'll do that.

13   So my friend has asked a couple of my

14 preliminary questions about your professional

15 background, but just to confirm, so you joined

16 Indigenous Services as Assistant Deputy Minister, that

17 would have been in April 2023?

18   A. Yes.

19   Q. That's --

20   A. That's okay, I think it's end of

21 April, beginning of May.

22   Q. Okay. And you said 11 months?

23   A. Yes.

24   Q. So it's about that time. So it's

25 been a bit less than a year?

1   A.   Yes.

2   Q.   And then you noted you were at Public

3   Health Agency Canada prior to that, and prior to that,

4   I believe you were the Director General at ISC?

5   A.   I was briefly, yes.

6   Q.   And that was about from September

7   2020 to February 2021?

8   A.   Yes, right before I was appointed as

9   [indiscernible].

10   Q.   And was that the role related to

11   Jordan's Principle?

12   A.   It was the role leading the education

13   branch.

14   Q.   Okay. So just moving on to --

15   actually moving on to starting with my substantive

16   questions, so I wanted to ask you some questions about

17   the backlogs in Jordan's Principle to start today, but

18   I'm wondering if we can start on a conceptual level as

19   opposed to actual details of how many cases are where

20   right now. So there's a few kind of key contexts

21   about backlogs that I'm hoping we can kind of see if

22   we agree on and then we'll kind of move into some more

23   detailed questions after that.

24   And so in terms of thinking about the

25   places in the Jordan's Principle process where one

1   could find backlogs, would you agree that at one point

2   where there could be a backlog is at the initial stage

3   when a case comes in which is the email intake stage?

4   A. Yes.

5   Q. So that would be an email that's

6   essentially unopened in an inbox and it's waiting to

7   be processed?

8   A. It could be, yes.

9   Q. And then a second possible backlog

10   point would be after the email has been opened and

11   intake has been completed and the request is then

12   waiting with a focal point to make a recommendation

13   about what to do with it?

14   A. I assume, yes, it could be. But

15   sorry, just to clarify, you mean to make

16   determinations?

17   Q. Yes. So essentially my understanding

18   of how the process works is someone will email, they

19   will do an intake email, and then it goes to a focal

20   point for a determination?

21   A. Correct.

22   Q. And so the focal point will have to,

23   you know, look at the intake, complete an intake, make

24   a recommendation, either approve it or send it for

25   escalation, and so while it's waiting for that to

1   happen would be another possible backlog point?

2   A.   If they're waiting for information or

3   back and forth with the requester.

4   Q.   Or if there's a queue? For instance,

5   you know, if there is --

6   A.   There could be. I don't necessarily

7   see that queue but --

8   Q.   No, just a conceptual --

9   A.   Okay.

10   Q.   So if I have a focal point and I've

11   arrived on Wednesday morning to work, I could have,

12   you know, 20 cases --

13   A.   Waiting.

14   Q.   -- waiting for me. Twenty is not the

15   important number, a given number of cases. Now, I

16   understand if the focal point approves the request,

17   then it moves on for payment, but if the focal point

18   isn't able to approve the request, it would then be

19   escalated; is that right?

20   A.   Not necessarily. It's just dependent

21   on the rationale. If there's a denial, then that's

22   communicated back, but if there is something that is

23   beyond a dollar value or for a variety of reasons, it

24   can be escalated forward.

25   Q.   And are focal points able to deny

```
 1    requests?
 2               A.   As far as I'm aware.   However, that
 3    said, I think again it depends on regions.   So focal
 4    points, if they're making a determination, I would
 5    assume it's a recommendation for a denial.   That's the
 6    determination process.
 7               Q.   Are you aware or is it your
 8    understanding that at least some point in the Jordan's
 9    Principle evolution of how the requests were made that
10    denial authorities were within regional executives or
11    other folks above the focal points?
12               A.   I'm not aware.   That's just -- I
13    don't have the hearings quite yet at that level of
14    detail.
15               Q.   So Dr. Gideon's evidence on that
16    would be placed in her affidavit?
17               A.   Yeah, but if she's speaking more to
18    that, I'm not comfortable [indiscernible].
19               Q.   No, that's fine.   So in the event
20    that in the escalation pathway that's the kind of the
21    next stop on the requests journey after the focal
22    point looks at it, would you agree that a third
23    possible backlog point could be while it's waiting for
24    consideration by the National Review Team?
25               A.   Yes, yes, I'm just [indiscernible].
```

1   Q.   Yes, and then if the National Review

2   Team were to deny the request and someone wanted to

3   appeal the request, then a fourth possible backlog

4   point could be, you know, waiting for the appeal

5   [indiscernible] to consider the request?

6   A.   Today the information I have is there

7   no backlog.

8   Q.   Yes.

9   A.   But I suppose it's possible for sure.

10   Q.   Yeah, and I'm just looking at

11   possible points right now. Yeah, and we'll get into

12   kind of where the things are at kind of at this point.

13   I'm just now trying to set up, if you think of it as,

14   you know, the appeal train as one of the stops on the

15   route. And then if there's an approval, then there

16   could be a potential backlog point waiting for

17   payment?

18   A.   Yes, that's possible.

19   Q.   Now, that's kind of my conceptual

20   questions. And so if you have your affidavit handy?

21   A.   Yes, I do.

22   Q.   Okay. Great. So if you could look

23   at paragraph 10, please? It starts on page 3. So

24   paragraph 10, just at the bottom of the page reads:

25   "Backlogs in email correspondence and

1   requests awaiting determination vary at

2   any given time and across regions.

3   Overall, approximately 55% of backlogged

4   correspondence in Jordan's Principle

5   general request inboxes are new requests,

6   while approximately 45% are other

7   correspondence related to existing

8   requests."

9   So this ratio of kind of 55 percent

10   backlog correspondence to 45 percent other

11   correspondence, is that something that was calculated

12   in preparing your affidavit?

13   A.   That was something that was discussed

14   with the team about where the percentage breakdown is

15   because it's again a complexity of back-and-forth on

16   the type whether they're new requests versus an

17   existing one that we're having --

18   Q.   And so that --

19   A.   These are approximate.

20   Q.   Approximate, and the word

21   "approximate" is right there in the second line.

22   A.   Yes.

23   Q.   So that would be a statistic that I

24   would submit that your team would have provided to

25   you?

    1   A.   Yes.

    2   Q.   And do you know how they calculated

    3   it?

    4   A.   I don't have that level of detail.

    5   Q.   So you're not sure if it was the

    6   matter of okay, well, based on the stuff we've opened,

    7   it's been 55/45, or if there was some other

    8   [indiscernible] that they have?

    9   A.   Yeah, I wouldn't -- I wouldn't be

    10   able to speak to that unfortunately because I don't

    11   have the documents.

    12   Q.   And do you know when they last

    13   calculated that ratio?

    14   A.   I don't.

    15   Q.   So I have a couple of questions about

    16   the overall volume. And so your affidavit doesn't

    17   really give much in the way of statistics about what

    18   we're looking at for numbers right now, and so I think

    19   you're aware of what was, I guess, checked, that we

    20   sent a request to your counsel last week about some

    21   more precise numbers? Were you aware of that?

    22   A.   Yes, I was made aware.

    23   Q.   So if you've got the Volume 1 brief,

    24   this is the Cerlox?

    25   A.   This one?

```
 1                    Q.   Yes, it should have Volume 1
 2    [indiscernible].
 3                    A.   Yes.
 4                    Q.   And so just to confirm, that's the
 5    email from me to your counsel under tab A that's just
 6    making that request:
 7                         "As discussed last week, please
 8                    find the correspondence seeking
 9                    information regarding stated backlog for
10                    Jordan's Principle requests at different
11                    points in time."
12                    And then if you turn over the tab to tab
13    B, there's a document entitled [indiscernible] backlog
14    as of March 27, 2024.  Do you see that?
15                    A.   Yes.
16                    Q.   And is this a document you've seen
17    before?
18                    A.   Yes.
19                    Q.   And did you review this document
20    prior to coming today for cross-examination?
21                    A.   Yes, briefly.
22                    Q.   So I have a few kind of general
23    questions about the document, but just because we've
24    been talking about the emails, I wanted to ask a few
25    specific questions about those.  So if you don't mind
```

1   flipping to page 3 of the document? So if you look in

2   the second or I guess the full paragraph here under

3   "Intake Pending", where it says "Intake Pending A"?

4   A.   Okay.

5   Q.   And then about halfway down this

6   paragraph there's a sentence that starts, "Email

7   account is restricted." Do you see that?

8   A.   Yes.

9   Q.   So the sentence reads:

10   "Email account is restricted to

11   specify inbox folders used by regions to

12   sort and triage emails pending intake

13   into the Jordan's Principle's case

14   management system to minimize the risk of

15   any emails not directly associated with

16   new requests like follow-ups and invoices

17   and general inquiries."

18   And I'm wondering if it would be fair to

19   say that the statistics in this report kind of avoid

20   the 55/45 split problem because they're now targeting

21   more specific inboxes as opposed to looking generally

22   at what is in the correspondence basket?

23   A.   Yeah, I think it's fair to say that

24   when this was completed it was a moment in time where

25   that information had come based on the affidavit.

1   It's much more [indiscernible].

2   Q.   Right. And so then when we turn over

3   to page to Table 2, we're looking at the estimated

4   intake pending backlog by region for emails, these

5   numbers we don't have to split them 55/45 because the

6   data tends to be a little bit more precise for this

7   one? Would you agree with that?

8   A.   Could you just rephrase that? Sorry,

9   I'm trying to --

10   Q.   For sure. So just to take a step

11   back, in your affidavit there's this kind of

12   discussion about a 55/45 split because it could be a

13   new request or it could be an email that's updating an

14   old request. And in this document on page 3, they're

15   telling us that they've targeted specific inbox

16   folders to sort and triage the emails to avoid

17   including emails that aren't associated?

18   A.   Correct.

19   Q.   And so if we're looking at kind of --

20   we don't even need to do this 55/45 on Table 2 because

21   they've kind of come up with an alternate method for

22   that? Like we're not looking at --

23   A.   Well, they seem to have done it only

24   in three of their --

25   Q.   No, I'll have a question about that.

1   A.   Okay.

2   Q.   Just the figures that we have. Like

3   when they're saying 5,000, it's not okay that's 25 --

4   A.   For these particular issues, no.

5   Q.   This is 5,000 emails?

6   A.   Right.

7   Q.   Do you agree with that?

8   A.   With my limited familiarity and

9   ongoing discussion on it, I would say it looks like

10   that, yes.

11   Q.   Okay. Just that helps, it means

12   we're reading the document --

13   A.   Yes.

14   Q.   Okay. Now, that was my next

15   question. You noted that there were some with no

16   information. Do you know why there is no data

17   available for Alberta, Northern Ontario, Quebec and

18   Saskatchewan?

19   A.   Only just based on the abstracts

20   below that there was data on emails not available at

21   the time of the report [indiscernible].

22   Q.   Now, my email, if you flip back to

23   tab A, my email admittedly came in at 4:56 p.m. which

24   is, you know, close to the close of business, a few

25   minutes away, and if you look at tab E of the

1   documents dated March 27th, is it possible that those

2   regions hadn't responded by the time this was

3   prepared?

4   A.   Again, I'm not aware of this, of what

5   happened with the production of this request.

6   Q.   That's fair enough.

7   MR. TAYLOR: Ms. Anderson, I'm wondering

8   if we can have the estimated intake pending backlog by

9   region for all the regions including the five that

10   aren't provided.   It doesn't have to be as of March

11   27th.   I'm guessing based on the method it's kind of

12   hard to go back in time and say how many emails that

13   you had on this date.   So at the point of time

14   [indiscernible], it's just to have the big picture

15   would be helpful.

16   MS. ANDERSON: Sorry, so just under

17   estimated intake for all regions?

18   MR. TAYLOR: For all regions.   Again,

19   that's for Table 2, just for Table 2, because the

20   other tables have more complete information, but if we

21   can get those the other five regions -- sorry, I guess

22   I should say for each of the regions including those

23   five regions, that would be appreciated.

24   MR. TAYLOR: Yes, we'll [indiscernible].

25   BY MR. TAYLOR:

1   Q.   Okay.   So I'll take a couple of steps

2   back staying with this document, though, just more

3   generally.

4   A.   Okay.

5   Q.   And so if we look at page 2 -- sorry,

6   page 3, am I right to think that the methodology in

7   the report essentially distinguishes between cases

8   that have intake pending, so they are the emails that

9   in the inbox [indiscernible], and then cases that are

10   in progress, requests that are in progress? Those are

11   kind of dealt with separately, but intake pending

12   under A, and then requests for progress.

13   A.   Yes, that's one of the

14   [indiscernible].

15   Q.   And back to kind of my -- I could

16   have set this up more strongly perhaps but analogy of

17   my stops on the O-train, you know, line of different

18   spots where there could be a backlog, would you agree

19   with me that the intake pending cases that are

20   referred to in A, that would correspond to the first

21   backlog point we discussed which was getting the

22   emails opened, so the requests, get them into the

23   system?

24   A.   Yes, so it says -- yes, based on the

25   definition that's been provided in the document, that

1   appears to be how they --

2   Q.   And if we look at the second

3   category, would you agree with me that that's kind of

4   the second O-train stop which is those cases that are

5   in the process of getting from the focal point to make

6   the recommendation?

7   A.   Yes, there appears to be those that

8   have been entered into the case management system that

9   are waiting on a decision.

10   Q.   Now, in terms of, you know, one of

11   the kind of steps in the process that the Caring

12   Society has been concerned about, would you agree that

13   it's fair to say the Caring Society has been concerned

14   about when cases are triaged or whether cases are

15   triaged for urgency?

16   A.   Yes.

17   Q.   And so would you agree with me that

18   if you're a case that's in the intake pending

19   category, you wouldn't get at the triage urgency

20   because the email hasn't been opened?

21   A.   I'm not sure it's simply a clear yes

22   or no just because I'm not fully clear on when the

23   email is sent in if there is an option to flag if it's

24   urgent.

25   Q.   Right.

1   A.   So it's hard for me to say yes or no.

2   Q.   Right.

3   A.   I could see that it could be both.

4   Q.   But if it's -- assuming -- we'll just

5   assume for the sake of the question --

6   A.   No, just to clarify, and this again

7   part of how it's viewed here, these items, it doesn't

8   say if they've been opened. It says that it just has

9   not been entered. So if the individual opens it and

10   sees it and says, okay, this has been deemed as a

11   non-urgent, then perhaps, but this would be out of the

12   individual region, individual case. So it's hard for

13   me just to say fully yes or no on that. Sorry.

14   Q.   No, that's fair enough. I don't know

15   how familiar you are with the Outlook software but are

16   you familiar that all Outlook has automatic sorting to

17   inboxes as well?

18   A.   I don't know.

19   Q.   I just want to get your evidence.

20   A.   Yeah, for sure.

21   Q.   I don't want to put you

22   [indiscernible]. But in terms of the cases that would

23   be in the system but waiting for a determination from

24   a focal point, those would have been triaged for

25   urgency if they've been through the intake process at

```
 1    that point?

 2                    A.   Ideally, yes.

 3                    Q.   So looking at the tables in the

 4    document going over to page 5 and 6, and just again

 5    kind of going back to the idea of the O-train stops,

 6    so we talked about the intake pending kind of being

 7    the first stop where there could be a backlog and that

 8    would be Table 2 that's represented in that data?  Do

 9    you agree with that?

10                    A.   So these are the ones that are --

11                    Q.   Yeah, I just want to clarify, I'm

12    asking and not telling.  So the evidence is yours

13    here, so I just want to see if you agree with how I'm

14    reading the document.  So my interpretation of Table 2

15    is that these are statistics that the data team has

16    pulled about the kind of cases that are awaiting kind

17    of getting through that first stage, would you agree

18    with that?

19                    A.   Correct, yes.

20                    Q.   And then if we look at Table 3, that

21    would be kind of the second stop on the O-train line

22    being the ones that are, you know, in the focal point

23    process but haven't yet been determined, would you

24    agree with that?

25                    A.   Mm-hmm.
```

1   Q.   And then Table 4, this is the third

2   potential stop which would be they are with the

3   National Review Team, they've been escalated but not

4   decided yet, would you agree with that?

5   A.   Yes.

6   Q.   And then you mentioned earlier that

7   there were no appeal backlogs, and that's the fourth

8   point that there's no --

9   A.   Just that I'm not aware of but --

10   Q.   Well --

11   A.   -- I think it probably changes day-

12   to-day.

13   Q.   Just in fairness to you, this is as

14   of March 27th. You know, page 1 is telling us no

15   requests in the appeal backlog considering the 30-day

16   service level standard. So if there are cases

17   pending, they've been pending for less than 30 days as

18   I'm reading that, so just in fairness to you there.

19   And then we don't have data on backlog, is that fair?

20   We just know it's 43 percent based on page 1 in our --

21   A.   Correct. I don't see any further

22   details.

23   Q.   So if we go back to page 4, there's a

24   heading here called "Considerations". Now, this is

25   the only spot I think today we're going to have a

1 little bit of math, so just bear with me and let me

2 know if you're not following. So if you could take

3 out Dr. Gideon's affidavit which we went through with

4 her yesterday, it has Valerie Gideon in the front,

5 that's the right spot.

6   And if you go to page 3 an there's a

7 table there under paragraph 6, so you see that?

8   A. Yes, I do.

9   Q. And have you seen this table before?

10   A. Briefly when I [indiscernible].

11   Q. I just want to spend a minute on it

12 just so we're on the same page about how it works. So

13 the way I read this table is if you look at the column

14 here under "Requests Approved", there are a bunch of

15 rows and those rows correspond with the fiscal year.

16 Am I right about that?

17   A. Yes.

18   Q. And essentially, each row is giving

19 kind of three datapoints about each fiscal year. So

20 you've got -- just looking at '18 and '19 fiscal on

21 top, you've got 14,765, and I'm taking given it's

22 requests that's how many requests came in, individual

23 requests, in '18, '19? Would you agree with that?

24   A. That was the requests approved?

25   Q. I'm sorry, it's requests. Thank you

1   for correcting that.

2   A. Yes.

3   Q. Yes, yes. And now the table says

4   representing 140,332 product services and supports,

5   which would be essentially if you took -- my

6   understanding, and just confirm if I'm right about

7   this, you know, you could have a case that has one

8   request, you could have a case that has ten requests,

9   and so between those two you have a total of 11. And

10   so this 140,332, am I right that that's essentially --

11   that's the bucket that was approved for all cases in

12   2018/19?

13   A. Yes, based on [indiscernible].

14   Q. Yes, and then the last little point

15   there is the 311.3 million which is -- I'm taking that

16   as kind of the funds expended in '18, '19 on those

17   products, services and supports?

18   A. I think that's a fair assumption. I

19   don't know.

20   Q. Okay. So, give me one moment here,

21   [indiscernible] we're going to turn back to the

22   considerations here. So the first bullet says the

23   backlog volumes presented in this report are at the

24   request level, not at the cases or requestor level.

25   For example, it is possible that one requestor might

1   have three cases and each case might have three items

2   requested, the backlog associated with this request

3   would appear as nine requests, not three cases or one

4   requester. Do you recall that?

5   A.   Mm-hmm.

6   Q.   And so when we're looking at this

7   kind of number nine, the nine requests, that would be,

8   you know, thinking about it in the terms we were just

9   discussing with the table, that bigger number, the

10 total of the product services and supports requested,

11 would you agree with that?

12   A.   Yes, that's how I understood.

13   Q.   So if we look at Table 3, that's the

14 estimated requests backlog by region as of March 27,

15 2024, so when we're looking at these numbers, do you

16 see at the bottom there where it says National and

17 then there is -- on the left-hand side there is

18 34,116, and then on the right-hand side 75,397?

19   A.   Mm-hmm, yes.

20   Q.   So am I right based on the

21 considerations when we're looking at those raw

22 numbers, you know, just a bit more than 34,000 and

23 almost 75,500, that that's the total of all requests

24 and product services and supports that would be kind

25 of in the queue and it's not the number of cases or

1   the number of requestors?

2   A.   Yes, that's the range of requests,

3   individual --

4   Q.   The individual. So kind of all the

5   points, you know, somebody might come in and have four

6   things they're asking for, and someone might have

7   seven, so that's the total number that are being asked

8   for?

9   A.   That's how I understand it.

10   Q.   That's helpful. Thank you. Am I

11 right that this number includes -- this number of

12 total requests of product services and supports at the

13 bottom there, the national, that that includes both

14 individual and group cases?

15   A.   I'm not sure. I don't know.

16   MR. TAYLOR: Ms. Anderson, if it's

17 possible, could we have confirmation of whether that

18 number is both individual and group cases or if it's

19 just one of them? And if it is both individual and

20 group cases, I guess part B of the request would be if

21 it's possible to break them down between individual

22 and group. And then if it is, have the breakdown

23 between the two?

24   MS. ANDERSON: And just to confirm, which

25 table is that?

1   MR. TAYLOR: It's Table 3 which is

2   estimated requests and progress backlog by region as

3   of March 27, 2024, and so I'm just wondering if Part 1

4   would be your request, 2A, would be -- you know, are

5   these figures in the national, is it individual and

6   group or only individual or only group. And then if

7   it is blended, if it's individual, is it possible to

8   separate them.

9   And if it's not possible -- sorry, if

10 it's not possible to separate them, we'll kind of stop

11 there. And if it is possible to separate, if we could

12 have the separated numbers? And again with that, the

13 extent the method that would allow us to go back to

14 March 27th, it would just be [indiscernible], a

15 calculation of that.

16   MS. ANDERSON: Sure, yes. We'll check in

17 with [indiscernible] if they can do that.

18   MR. TAYLOR: And I should just say, you

19 know, for everybody's purposes, I understand that the

20 data system may not be built to extract it this way.

21 If it's not, that's fine. We're not asking for any

22 [indiscernible].

23   BY MR. TAYLOR:

24   Q. Okay. So if we can just -- if you

25 can have kind of before you both Table 3 from the

1   report from the data team together and then the table

2   from Dr. Gideon's affidavit? So if we look at '23,

3   '24 at the bottom, so at the bottom it says there were

4   -- in the first three quarters of '23, '24, so that

5   would be the first nine months of the fiscal year, am

6   I right, from April to December?

7   A.   Yes.

8   Q.   So it says there was 100,520 requests

9   approved, representing 1,593,787 product services and

10   supports. And so if we're looking kind of at the

11   analogue of that kind of almost 1.6 million figure in

12   Table 3, would you agree with me that we're kind of

13   comparing apples to apples with the 34,000 and 75,000

14   number at the bottom, that that's kind of the

15   corresponding -- those two numbers, 1.6 million

16   product services and supports approved in the first

17   nine months of the fiscal is the same kind of number

18   as, you know, 35,000 to 75,000 in the queue?

19   A.   I'm not sure I understand your

20   question.

21   Q.   Sorry, I'll --

22   A.   Just because this is in Valerie

23   Gideon's, it has already been approved.

24   Q.   Yes.

25   A.   But these are still pending.

1   Q.   So they are in a different -- they

2   are at different points --

3   A.   On the O-train.

4   Q.   -- on the O-train, but they are the

5   same, you know, passengers if you will. That these

6   are -- these are essentially the aggregate of all the

7   items that have been asked for that were approved in

8   '23, '24?

9   A.   Okay. Correct. Thank you.

10   Q.   And then this is the aggregate of all

11   those, you know, items that have been asked for that

12   are in the queue?

13   A.   So it's the same type of thing, yes.

14   Thank you for that clarification.

15   Q.   So, and this is the math component

16   here. So if we're looking at having approved about

17   1.6 million requests in nine months, would it follow

18   if I said that we have to be approving somewhere

19   around 180,000 requests per month to get to 1.6

20   million in nine months?

21   A.   I don't think that we can average it

22   out over months because of the level of volume coming

23   in at different paces throughout the year. There's

24   times in the year where we get a lot more like prior

25   to school starting or certainly around holiday season.

1   Q. But if we're kind of operating more

2 at the [indiscernible] numbers, if you're going to

3 approve, just in my books, 1.6 million is a lot of

4 requests, then at any given time you're likely to have

5 a lot of requests heading towards approval; is that

6 right?

7   A. Yes.

8   Q. And so would it be fair to say or

9 would you agree that having roughly 35,000 to 70,000

10 requests pending at any given time would be

11 proportional to the volume of requests and approvals

12 we're seeing right now?

13   A. I think again I can't really speak to

14 that.

15   Q. Subject to the caveats about peaks

16 and valleys?

17   A. Yeah, and we have surge teams as well

18 that come in to help triage, to help reduce backlogs

19 and those that are pending decision.

20   Q. But would it be fair to say just

21 taking a more abstract level, if you've got a lot of

22 approvals in a year, you're likely to have a lot of

23 cases in the system in a year?

24   A. Yes, that's -- yes, I agree with you.

25   Q. Okay. We can put those on the side

1   for now. I'd like to move on to talk about the

2   timelines, the timelines for approving requests under

3   the tribunal's order. So you're aware then that the

4   tribunal has essentially set four timelines for

5   processing or approving requests? You're aware that

6   for individual cases, it's 12 hours for an urgent case

7   and 48 hours for non-urgent cases?

8   A. Yes.

9   Q. And for a group request, 48 hours for

10   an urgent case and a week for a non-urgent case?

11   A. Yes.

12   Q. So if we can look at your affidavit

13   which I'm going to take a moment to find here, so

14   paragraph 11, please? You say in -- and I'm just

15   picking it up in the second line here, the second

16   sentence:

17   "ISC's timeline compliance rate has

18   been negatively affected by the increase

19   in volume of requests (both urgent and

20   non-urgent) and increase in the rate of

21   urgent requests."

22   Do you see that?

23   A. Yes, I do.

24   Q. And is your comment regarding the

25   term here, the negative impact of the increased rate

1   of urgent requests, is that about -- that negative

2   impact, is it about its ability to meet the HRT

3   timeline for urgent requests, or are you talking about

4   a negative impact on timelines overall?

5   A.   I would say it's the negative impact

6   overall on timeline compliance.

7   Q.   Can you help me understand, is there

8   anything special about urgent requests that may take

9   longer to determine?

10   A.   I don't think it's the fact that it's

11   urgent that takes longer. I think it depends on the

12   complexity of the request but also the amount of

13   information that we have at the time. So if we need

14   more information about where to send it, what else do

15   you need, for example, additional supports if we can

16   help, that requires a phone call and sometimes back

17   with the requester.

18   Q.   And those same factors would not

19   arise on a non-urgent case?

20   A.   They do arise even with non-urgent.

21   We always want to make sure is there any need for

22   additional supports in the interim if you're waiting

23   for a decision to be made. Often just speaking with a

24   person may -- there may come other needs that are not

25   necessarily [indiscernible] the comfort level or maybe

1   trust with the person that they're speaking with,

2   [indiscernible] the staff member.

3   Q.   So you would agree with me that the

4   characteristics are common to both urgent and non-

5   urgent?

6   A.   I think that's fair to say, yes.

7   Q.   And so the issue in kind of dealing

8   with urgency, is it more of a sequencing, you know,

9   which cases get considered first, as opposed to how

10   long they take to consider?

11   A.   So urgency -- urgent cases always get

12   considered first.

13   Q.   Yes, yes.

14   A.   Sorry --

15   Q.   But in terms of let's say you had,

16   let's say there's ten cases and if there is, you know,

17   four that are urgent and six that aren't urgent, you

18   know, if two of those cases were not urgent as opposed

19   to urgent, like the basket of ten cases would take,

20   you know, all things being equal, the same time to

21   work through?

22   A.   So these are all a mix of urgent and

23   non-urgent?

24   Q.   Yes.

25   A.   I don't -- I'm sorry, I apologize, I

1 don't understand exactly your question, I feel

2 [indiscernible].

3   Q. No, of course you do, but I guess

4 what I'm wondering is if you had a queue of ten cases

5 to work through and if the point -- the point you made

6 about urgency was that, you know, there's follow-ups

7 to be made and there's documents that need to be

8 confirmed about and then I had asked if that was

9 common to both kinds of cases.

10   A. Mm-hmm.

11   Q. It's my understanding it is common to

12 both cases. So it's more a question about the order

13 in which those ten cases are processed, would you

14 agree it doesn't necessarily affect the total time it

15 takes to process the ten cases?

16   A. Okay. Thank you for that. Yeah.

17 No, you're correct because again we will only focus

18 our energies, all resources on those urgent cases and

19 then move through the system for the other. I don't

20 know if that's --

21   Q. So for the last non-urgent case in

22 the queue, whether there's nine urgent cases or two

23 urgent cases in front of them, the resources to kind

24 of deal with those ten cases will work through them at

25 the same amount of time?

1   A.   I would -- well, I would say

2   historically I think that would just change from

3   region to region. So if the department did

4   [indiscernible] to free up those folks to just focus

5   on [indiscernible], other people could look at the

6   non-urgents.

7   Q.   Right. So you have to have targeted

8   teams on urgent?

9   A.   Yes, we did.

10   Q.   So if we look at paragraph 11 again a

11   little bit further down the paragraph, so you cite in

12   kind of the third last line here, you say the number

13   of -- this is with respect to the first -- sorry, for

14   the third -- I'm sorry, I'll take it back to the

15   beginning sentence. You say:

16   "For example, between the first

17   quarter of the 2022-23 fiscal year and

18   the third quarter of the 2023-24 fiscal

19   year, the number of determined requests

20   increased from 21,918 to 34,877 and the

21   rate of urgent requests increased from 2%

22   to 26%."

23   And then you say:

24   "During that same timeframe, ISC's

25   compliance rate decreased from 41%

1   percent to 29%."

2   And so just another kind of calculation

3   or basis of calculation question, did you calculate

4   these figures yourself?

5   A. No, I did not. I relied on my data

6   team.

7   Q. And do you know when your data team

8   calculated the rates of urgency, the two percent and

9   the 26 percent, were time sensitive requests included

10   in the calculation of what was urgent?

11   A. I cannot say. I don't know.

12   Q. And do you know if anyone on your

13   data team tracks information on non-urgent requests

14   that become urgent because of the passage of time?

15   A. Again, I don't have [indiscernible].

16   Q. And would you know, the 41 percent to

17   29 percent increase that is there, is that for

18   individual requests or group requests for urgent or

19   non-urgent? You talk about there are those four

20   different kind of standards. Is that applicable to

21   any one of those four?

22   A. I don't -- again, I don't have access

23   to that level of detail [indiscernible].

24   Q. Now, looking at paragraph 12, the

25   next one down, you say that:

1   "....ISC determines the majority of

2   requests without unreasonable delay. For

3   the first three quarters of the 2023-24

4   fiscal year, 62% of all requests were

5   determined in a 15-day timeframe, while

6   70% of all requests were determined

7   within 30 days."

8   Do you see that?

9   A.   Mm-hmm, yes.

10   Q.   Do you know when they're starting the

11   clock on that, like when does the day count start?

12   A.   So when does the clock start when the

13   request begins to process --

14   Q.   Yes.

15   A.   -- for lack of a better word?

16   Q.   The purpose of this, you know, how

17   old the request is --

18   A.   Right. So it's when the file is

19   completely entered into the case management system

20   with the relevant information [indiscernible].

21   Q.   And that would be the end of the

22   intake process?

23   A.   Yes.

24   Q.   And so if a file is in the email

25   queue, the time that's spent in the email queue is

1   accounted for, is that [indiscernible] standard?

2   A.   As far as I know, it's not, however,

3   [indiscernible]. Like that's the information

4   [indiscernible].

5   Q.   I said I was done with the backlog

6   points, but I skipped over a point when we were

7   discussing the table. So if you could just give me a

8   moment? Okay. So if we can go back to page 2, and

9   that's in Volume 1 there of your exhibits brief.

10   A.   Okay.

11   Q.   That's the March 27th document that

12   your data team prepared.

13   A.   Page 2?

14   Q.   I'm sorry, it's actually going to be

15   page 4. This is the considerations. So we looked

16   earlier at this first bullet here, the backlog volumes

17   presented in this report are at the request level, not

18   at the cases or requests levels, for example, it's

19   possible one requester might have three cases, each

20   case might have three items, and the backlog

21   associated it appears as nine, but that's

22   [indiscernible]. This is kind of [indiscernible] of

23   everything that's being asked for as opposed to who is

24   doing the asking.

25   Now, I just want to ask you a few

1   questions about Table 2 and I wanted to know if you

2   know whether that caveat applies to email intake

3   backlog as well.

4   A.   Based on what I'm reading here, my

5   assumption is that, no, it does not because if it's

6   emails specific as opposed to requests.

7   Q.   So you wouldn't know, not having kind

8   of done the intake on the email, how many requests the

9   intake -- how many requests the email would take?

10   A.   Correct.

11   Q.   That was [indiscernible].

12   A.   Yes, the numbers are the emails, not

13   the requests.

14   Q.   That was my assumption. It's just

15   helpful to have it that it's your understanding as

16   well. Okay. If we go over to -- actually, no, I'm

17   sorry, going over to paragraph 13 of your affidavit,

18   and have that Exhibit 3 beside it again. So here you

19   say that the tribunal's timelines are -- I'm sorry?

20   A.   Where, 13?

21   Q.   Paragraph 13.

22   A.   Thirteen, okay.

23   Q.   So here you say the tribunal's

24   timelines imposed in 2017 were not based on objective

25   evidence such as standardized child welfare service

1   timelines or standard claims processing industry

2   timelines. I'm wondering, did you review the

3   proceedings that led up to the May 2017 order that set

4   the timelines?

5   A. I read the orders themselves, not the

6   proceedings.

7   Q. So you didn't read kind of the

8   evidence or the --

9   A. Correct.

10   Q. -- exchanges and cross-examinations

11   that led up to them?

12   A. Correct.

13   Q. So if you can go to tab C back to the

14   exhibits brief again, the one that has Volume 1 on the

15   front of it.

16   A. Okay. Thank you.

17   Q. Fair enough. I'll put that helpful

18   nomenclature. I'll try to remember that. So this is

19   a transcript of the cross-examination of Robin

20   Buckland (ph) from February 6th, 2017, and I'm right

21   that Ms. Buckland -- or I should say is Ms. Buckland

22   somebody you know?

23   A. Yes, she's the director general of

24   the branch. Yes.

25   Q. And my understanding, if you're aware

1   of this, I know you weren't at the department at the

2   time, she has been in that director general role for

3   quite some time?

4   A.   Yes. As far as I'm aware, yes.

5   Q.   Certainly her -- I don't think I have

6   that part in the transcript, but her evidence was at

7   the time she was an executive director at Health

8   Canada at the time, at least that was the evidence

9   before the tribunal. Does Ms. Buckland report to you

10   now?

11   A.   She does.

12   Q.   And if you look at page 67, you can

13   see I ask her a question, I say, "Okay,

14   [indiscernible] you mentioned when it's urgent, you

15   try and deal with that in short order?" And she

16   answers, "Right." And then I ask, "Can you give me a

17   sense of the timeframe on that?" And she says, "We

18   try to deal with it within the first 12 hours." Do

19   you see that?

20   A.   Yes.

21   Q.   So were you aware that Ms. Buckland's

22   evidence at the time was that was Health Canada's

23   practice to try and deal with these urgent cases

24   within 12 hours?

25   A.   No, I'm not aware.

1   Q.   And then looking over the page to

2   page 69 -- and feel free to take your time and read

3   the document. Just let me know. So I'm looking at

4   question 186 here, and so it says:

5   "So urgent short order, the first 12

6   hours is the timeframe, and for the

7   remaining cases that aren't urgent, what

8   is the typical timeline?"

9   And the answer is:

10   "So our service standards are five

11   days to process and obtain approval for a

12   case coming in. If it is above the non-

13   urgent standard, for example, we try to

14   get that processed within about seven

15   days."

16   So were you aware that her evidence in

17   2017 was that the non-urgent standard was five to

18   seven days?

19   A.   I wasn't aware, but I'm also not

20   aware of these service standards being written

21   somewhere in a policy document or something that would

22   have been followed maybe by Health Canada at the time.

23   So this is....

24   Q.   [Indiscernible].

25   A.   That's what her evidence was, yes.

1   Q.   Okay.   Now, you said you reviewed the

2   ruling preparing for today.   So did you see in the

3   ruling that the 48-hour timeline for non-urgent

4   requests was based on the evidence that it was

5   possible [indiscernible] to adjudicate cases within 12

6   hours?

7   A.   Yes, I think that was

8   [indiscernible].

9   Q.   So I want to look now back to

10   paragraph 13 of your affidavit.   So you're talking

11   here about the timelines weren't based on objective

12   evidence such as standardized child welfare service

13   timelines or standard claims processing industry

14   timelines.   Now, would you agree that in its cross-

15   motion -- this is the relief Canada is seeking in this

16   proceeding -- Canada is asking to move the timeframe

17   to [indiscernible] urgent individual requests from 12

18   hours to 48 hours?

19   A.   Yes.

20   Q.   And for urgent requests from 48 hours

21   to one week?

22   A.   Yes.

23   Q.   And do you know what those proposed

24   timelines were set at with reference to standardized

25   child welfare service timelines?

1   A.   Those proposed timelines were in

2   reference to a larger systems change that Canada is

3   seeking relief from, including the definition of

4   "urgent" that's co-developed by partners. So this

5   would be one piece of a bigger system change.

6   Q.   But in looking at that bigger system

7   change you would like to make, was the reference point

8   for those timelines the standardized child welfare

9   timelines?

10   A.   It was looking at the standard claims

11   processing [indiscernible] as one potential

12   [indiscernible].

13   Q.   The benchmark?

14   A.   Yes.

15   Q.   So for lack of a better word,

16   benchmarking to NIHB as opposed to child welfare

17   standards. Now, there is a second volume, it's got

18   Volume 2 written on the front, so this is -- just to

19   kind of let you know what it is, it's a brief we put

20   together of excerpts from the various child welfare

21   protection standards in the provinces, I suppose the

22   provinces and one territory.

23   We've got B.C. at tab 1, Alberta at tab

24   2, Saskatchewan at tab 3, Manitoba at tab 4, and so

25   on, and it keeps going to tab 10. So are you aware of

1   the child welfare service timelines generally being

2   found in protection standards in child protection

3   manual? No?

4   A.   No.

5   Q.   No? That's not in your bailiwick?

6   A.   No, it's not.

7   Q.   Would it be fair to say that

8   standards or manuals for child protection workers give

9   them their guidance and direction on the timing they

10   should be applying in their job?

11   A.   I would assume, but, again, I'm not

12   familiar with the system.

13   Q.   So when you're referring in paragraph

14   13 to those standardized child welfare service

15   timelines, that was just a general content and not

16   anything specific?

17   A.   It was more around just the use of

18   standards within and timelines within the system

19   related to children.

20   Q.   Were you aware that the majority of

21   child protection standards for a response on urgent

22   referrals which they call immediate harm sometimes is

23   24 hours?

24   A.   No.

25   Q.   So just to go through a few of these

1   also I think for illustrative purposes, I understand

2   that you're not so familiar with these documents, if

3   you look at the first tab, this is the B.C. policy for

4   child protection response timelines. If you go over

5   to page 2, there's kind of a big square around the

6   heading that says "Standards". And so if you look at

7   3.1(5), complete a screening assessment report as

8   follows; immediately if the child appears to be in a

9   life threatening or dangerous situation; in all other

10   cases, within 24 hours of receiving the report. Do

11   you see that?

12   A. Yes, I do.

13   Q. And then if we were to flip to tab 2,

14   if you go over a couple of pages to page 10 of 14 at

15   the top right of the page, then under the heading

16   "Investigation Required", it was that the intake

17   provides reasonable and probable grounds to believe

18   that the child or youth need intervention services and

19   brief services or emergency care will not be

20   sufficient in alleviating the need [indiscernible] for

21   assessment, whether the assessment requires an

22   immediate response, a one-day response, or a standard

23   response. And then it says an immediate response is

24   under a sub list here:

25   "An immediate response is to be

1   initiated within an hour of the

2   notification of the need for assessment;

3   for a one-day response, it is to be

4   initiated within 24 hours; and a standard

5   response is to be initiated within five

6   days of the notification of the need for

7   assessment."

8   A.   Mm-hmm.

9   Q.   Do you see that?

10   A.   Yes, I do.

11   Q.   Then we'll go to tab 3, this is for

12   Saskatchewan. Don't worry, I'm not going to read the

13   whole book.

14   A.   Okay.

15   Q.   Over to page 43 in the bottom right,

16   there's a heading, do you see it, it says "When a

17   report is received, the following procedures apply"?

18   A.   Yes.

19   Q.   So number one is the time to report,

20   the caseworker will complete the SDMN intake

21   assessment and screener narrative to assist in

22   determining whether the information in the report

23   meets the criteria for abuse and neglect pursuant to

24   section 11 of the Child and Family Services Act to

25   determine how quickly to respond. They have screened

1   in for investigation and immediate response within the

2   same working day or within 24 hours of receiving a

3   referral, for a non-immediate response within five

4   calendar days a screening decision is required. Do

5   you see that?

6   A. Yes, I do.

7   Q. Then over to tab 4 which is Manitoba,

8   and here we're looking at intake, 1.1.1, and if we

9   look at page 4 of 6 at the bottom left, the response

10   at the bottom of the page there, number 9, do you see

11   that?

12   A. Yes.

13   Q. "The intake response time upon

14   receiving a referral for services and identifying and

15   presenting issues, the intake worker responds

16   immediately within 24 hours when a child may be at

17   high risk of need of protection, within 48 hours when

18   a child is at medium risk of being in need of

19   protection, within five working days when a child

20   appears to be at low risk of being in need of

21   protection, ten working days when there are no

22   apparent child protection needs."

23   Do you see that?

24   A. Yes.

25   Q. The last one with Ontario, page

1   [indiscernible] which is the third page of the tab,

2   it's the table under standard number one, intake

3   receiving a referral, determining the appropriate

4   response. It says when a child -- it's in the

5   paragraph under the bulleted list here, when a child

6   protection investigation, the most appropriate

7   response, the decision about when the investigation is

8   to be initiated is made by the worker receiving the

9   referral.

10   The response time is determined by the

11   level of urgency at the assessed level of present or

12   imminent threat to the safety of the child, an

13   investigation is initiated. And then sub (1), within

14   12 hours for families in the community as well as

15   families based in institutional or community care

16   [indiscernible] investigation, there is an imminent

17   risk or imminent threat to the safety of the child or

18   physical evidence is at the risk of being lost due to

19   delay; within seven days for family-based

20   investigations for [indiscernible]; or within 48 hours

21   for [indiscernible] institutional investigations where

22   safety threats are identified. Do you see that?

23   A. Yes, I do.

24   Q. And just for the purpose of

25   completeness, I won't go to anything specific, we've

1   got Quebec, the steps taken by the QIP, I take it they

2   talk about [indiscernible]?

3   A.   [Indiscernible].

4   Q.   So here in English, I believe that's

5   director of protection?

6   A.   Yes.

7   Q.   And then under tab 7 we've got the

8   Newfoundland and Labrador Department of Children and

9   Senior Social Developments Policies and Procedures

10   Manual, there's some excerpts there. Do you see that?

11   A.   Mm-hmm.

12   Q.   At tab 8 we've got the P.E.I.

13   document here, the Child Protection Act, subject

14   intake. Do you see that?

15   A.   Yes.

16   Q.   And then under tab 9 we've got New

17   Brunswick's Child Victims of Abuse and Neglect

18   Protocols, do you see that?

19   A.   I do.

20   Q.   And then under tab 10 we've got the

21   Child and Family Services Act for Yukon. Do you see

22   that?

23   A.   Yes.

24   Q.   So would you agree with me, just

25   having reviewed that, that we can generally take it

1   that depending on the urgency involved, when we're

2   looking from the child welfare service perspective,

3   immediacy response is looking at either immediately or

4   after the first 24 hours?

5   A.   To initiate. Yes, to open and

6   initiate a response within -- that's what we see here.

7   Q.   Well, if you're looking at

8   initiations with other cases, like for instance

9   Alberta, they're talking about essentially the

10   evaluation -- sorry, tab 2, page 10. So they're

11   evaluating and then they're saying when they have to

12   deploy the response. So you've got to do it within an

13   hour for an immediate response, within one day for --

14   within 24 hours for a one-day response, the standard

15   response is five days. Do you see that there?

16   A.   Yes.

17   Q.   So do you agree that kind of the

18   active standard in the child welfare world is 24

19   hours?

20   A.   Yes.

21   Q.   Immediately is 24 hours depending on

22   the level of harm we're talking about?

23   A.   Correct.

24   Q.   And would you agree with me that not

25   only what we just now talked about without reasonable

1   delay as being the service standard?

2   A.   Having listened just to that one

3   little part?

4   Q.   Just what we looked at.

5   A.   Yeah, I don't know enough about the

6   documents, just the --

7   Q.   Fair enough, just the parts we looked

8   through about those [indiscernible] responses.   We

9   weren't talking on the kind of no immediate concerns,

10   we were looking at the five- to ten-day range; is that

11   fair?

12   A.   [Indiscernible].

13   Q.   So we can set Volume 2 aside and we

14   can go back to Volume 1, please.   Can you look at tab

15   E?   This is a document entitled "Guideline on Service

16   [indiscernible]."   Is this a guideline you're familiar

17   with?

18   A.   No.   I mean, not in detail.

19   Q.   Right.   But you know this is

20   [indiscernible] document, right?

21   A.   Sorry.   Yes, sorry.   Yes.

22   Q.   You have to [indiscernible].

23   A.   Apologies.

24   Q.   Okay.   That's fine.   Do you know if

25   this guideline applies to ISC?

1   A.   This policy applies to the whole

2   government and all departments.

3   Q.   So if we look over to page 2, we've

4   got the table of contents here.

5   A.   Yes.

6   Q.   Do you see item number 2 says "Client

7   Centred Services [indiscernible] and Delivery"?

8   A.   Yes.

9   Q.   And then this, I should say, just

10   excerpts [indiscernible].

11   A.   It's similar.

12   Q.   Favour the trees, that sort of thing.

13   A.   Yes.

14   Q.   And do you see on the next page here

15   where it says 65 of 233 at the bottom, that is a

16   heading at the top that says "2.7 Service Standards"?

17   A.   Yes.

18   Q.   So would you agree that the Treasury

19   Board guidelines and advice on service standards

20   should inform ISC's approach on this cross-motion?

21   A.   Yes.

22   Q.   We'll go over two pages --

23   A.   Do you mean in the changes to the

24   system?

25   Q.   Yes.

1   A.   Yes, sorry.

2   Q.   Sorry, not on the litigation, the

3 cross-motion --

4   A.   Okay.

5   Q.   The changes that Indigenous Services

6 Canada is seeking in the cross-motion. If we can go

7 over two pages to where it says 67 out of 233 at the

8 bottom?

9   A.   Yes.

10   Q.   Do you see the heading we have on the

11 page that says "Service Canada [indiscernible]"?

12   A.   Yes.

13   Q.   Do you see the first bullet which

14 says:

15   "Service standard: A clear and

16   measurable statement on the level of

17   service a client will expect, for

18   example, answer calls within 20 seconds

19   or process applications within five

20   business days."

21   A.   Yes.

22   Q.   And I take it those are illustrative

23 examples, it's not saying all calls in 24 hours?

24   A.   Mm-hmm.

25   Q.   It's just an illustrative clarity,

1   right?

2   A.   Yes.

3   Q.   Would you agree that the service

4   standard ISC is proposing for non-urgent cases

5   "without unreasonable delay" isn't clear?

6   A.   I think the challenge is that the

7   proposals we're making on our cross-motion is based on

8   a model that was imposed upon a tribunal order. These

9   service standards, from my interpretation of the

10   policy, is ones where we determined the program in

11   partnership with the co-development partners where we

12   can work together to set standards that meet their

13   needs and our needs. So it's a little -- it's not

14   quite the same.

15   Ideally, we always want to hit our

16   compliance timelines. We are challenged in doing

17   that, I agree, but I don't know if I would say that

18   these service standards can correlate to what we're

19   trying to modify, an existing model that just clearly

20   isn't working as well as anybody would like it to.

21   Q.   That wasn't my question, and we'll

22   talk about the challenges. My question was, is

23   without unreasonable delay, is that a clear service

24   standard?

25   A.   It's not referenced as a standard.

1   That was just my interpretation.

2   Q.   If we were to take you to the service

3   standards, the time that's mentioned Indigenous

4   Services should be processing [indiscernible] for

5   requests, would you agree that that would be --

6   A.   Without unreasonable delay? Sorry.

7   Q.   I guess I'll back up a second. Would

8   you agree with me that setting a time within which a

9   request should be processed that that would be a

10   service standard? Like put the tribunal's orders

11   aside, just the concept of cases should be dealt with

12   within X amount of time, that that's a service

13   standard?

14   A.   In my opinion, yes, it is. Yes.

15   Q.   And so would you agree that if we're

16   looking at it as the public service standard, saying

17   "without unreasonable delay" isn't particularly clear?

18   A.   I would never use that as a standard

19   per se, yes.

20   Q.   And would you agree it's not

21   measurable either?

22   A.   I agree.

23   Q.   Now, at the bottom of the page just

24   under the heading it says -- so we're back at page

25   [indiscernible].

1   A.   Yes.

2   Q.   Do you see where it says

3   "Characteristics of a Good Service Standard"? Now, if

4   we turn over the page in this document which is

5   printed [indiscernible], so this is a list of a number

6   of characteristics and one of them is measurable,

7   which is the third bullet, it says service standards

8   are quantifiable and linked to monitoring activities.

9   Would you agree with me "without unreasonable delay"

10   is not a particularly quantifiable standard?

11   A.   Yes, I agree.

12   Q.   And do you see where it says

13   "ambitious but realistic", "Service standards are

14   sufficiently challenging with the service providers

15   [indiscernible] yet are realistic compared to

16   capacity"? Do you agree that "without unreasonable

17   delay" is the standard that's generally expected of

18   government by the public?

19   A.   I don't know.

20   Q.   What do you think the public

21   expectation is when they make a service request of

22   government?

23   A.   Our perspective, that's certainly

24   what we try to achieve as the public service is to

25   meet it as quickly as possible.

1   Q.   So you're saying that the general

2   expectation would be higher than --

3   A.   We always try to do [indiscernible].

4   Q.   So you would agree that the standard

5   here "without unreasonable delay", that's not a

6   particularly ambitious standard?

7   A.   Yeah, and I don't know -- did you

8   already point to where it was a standard, written as a

9   standard, or just the word --

10   Q.   If we take any program --

11   A.   Right, yes.

12   Q.   So just in the abstract

13   [indiscernible].

14   A.   I'm sorry, just because you went to

15   the cross, are we still talking about the cross-motion

16   or my affidavit?

17   Q.   We are. We're talking about the

18   whole --

19   A.   The whole package? Okay. Thank you.

20   Q.   It's our cross-examination about all

21   the points that -- if we can take it as the exercise

22   is to set a service standard.

23   A.   Right.

24   Q.   ISC's service standard. It's not --

25   the tribunal order is not a Treasury Board developed

1   -- I guess it's developed for government guideline

2   service standard per a legal order that's been made,

3   but if we're taking the exercise as a service standard

4   setting exercise --

5   A. Correct.

6   Q. -- the questions I'm asking about

7   this guideline or timing is more where it should be

8   headed. And so your evidence was that the public's

9   expectation is higher than without unreasonable delay,

10   and then as a public service your effort is to do

11   things as quickly as possible. And so when we're

12   looking at, you know, under the heading,

13   "Characteristics of a Good Service Standard" --

14   A. Right.

15   Q. -- and ambition, "without

16   unreasonable delay" is not particularly ambitious is

17   my question.

18   A. Correct, I would agree with that.

19   Q. Now, in terms of thinking about other

20   parts of that hallmark of a good service standard

21   which is realistic in terms of capacity -- and I've

22   heard some of your earlier answers some of your

23   concerns around that, would you agree that if we're

24   assessing ISC's capacity to meet the service standard,

25   any service standard, then we should be looking at

1   more than just staffing?

2   A.   As part of our way forward, the work

3   we're doing on operability, like the [indiscernible],

4   yes.

5   Q.   So, but also just in terms of

6   thinking about, you know, the ability to meet,

7   staffing is one way to meet the service standard, do

8   you agree with that?

9   A.   An attempt to meet the service

10   standard is how I would --

11   Q.   [Indiscernible].

12   A.   Yes.

13   Q.   Would other initiatives to ease

14   pressures on ISC's request system, would that be

15   another tool other than staffing, doing things in a

16   different way?

17   A.   Well, certainly [indiscernible] the

18   way forward around the digital and [indiscernible] and

19   making things more online for folks to be able to look

20   at their requests, yes.

21   Q.   But as a general perspective, if

22   you've got a basket of eggs to work through and your

23   goal is to work through them in a certain time, if you

24   can change the way the system works so that there are

25   fewer eggs in the basket, that's another way of

1   helping meet a service standard, would you agree with

2   that?

3   A.   Yes.

4   Q.   And so for instance, if there was an

5   initiative to ease pressures on ISC's request system

6   under Jordan's Principle by funding more comprehensive

7   community-based programs, that would need to be

8   considered in assessing ISC's capacity to meet the

9   service standard?

10   A.   It's hard to say exactly if funding

11   more programming would alleviate Jordan's Principle

12   because -- the requests and the backlog because we're

13   not able to really triage them into the programs where

14   they would be a better fit just by the way the orders

15   are laid out. So it's hard to assume that it might

16   because I don't know if folks will not still use the

17   Jordan's Principle avenue as opposed to going through

18   the existing because there are existing programs

19   [indiscernible]. I can't really make that assumption.

20   Q.   Is your view that the existing

21   programming in the community is sufficient to meet all

22   the needs that are out there?

23   A.   I can't speak for all existing

24   community programming, but my opinion is we always

25   like to have more robust programming where the

1   leadership is [indiscernible].

2   Q.   And if those programs are working

3   well and if folks are going there as opposed to

4   Jordan's Principle, that would be a measure to ease

5   the burden of the requests [indiscernible]; is that

6   right?

7   A.   I think it's one of many if folks

8   know that they exist. Many don't even know that

9   programming does exist within their communities and if

10   there are in urban centres et cetera. I think there

11   are a bunch of things that could hopefully support

12   moms and babies.

13   Q.   And if there was another initiative

14   such as, you know, closing gaps in federal programs,

15   that might also inform if perhaps they needed to --

16   A.   I think that there's always a good

17   opportunity to close gaps in federal programming.

18   Q.   And if those gaps are closed, that's

19   something that could be important to what the

20   capacity --

21   A.   Again, I can't speak necessarily to

22   that because I don't know what type of programming the

23   gaps would need to be closed in, is it the capacity of

24   the community, is it leadership, is it direct

25   community-based programming? There's a range of

1   programs that are being offered, so.

2   Q.   Let's take medical transportation.

3   You're going to be the expert on this because I'm not,

4   or at least more of an expert than me. My

5   understanding is that there might be certain

6   thresholds within medical transportation, right, or

7   any NIHB program where there's a threshold, there's a

8   need for -- benefit, I should say, not program. But

9   if there's a need that surpasses that threshold, then

10   Jordan's Principle might be a recourse

11   [indiscernible]; is that right?

12   A.   I can't speak -- I'm not an actual

13   expert on medical transportation. So I do know that

14   we do have the ability to fund medical transportation

15   through Jordan's Principle and that -- and I've seen

16   medical transportation, but I don't know if first they

17   go to NIHB. I'd have to look at it case-by-case

18   specifically, but I know that it is an eligible --

19   Q.   I'm grasping for an example.

20   A.   Sorry.

21   Q.   I don't want to get into the weeds on

22   any one particular area, so I may try this another

23   way. You were Director General of Education for a

24   time?

25   A.   Briefly.

1   Q.   And there were a number of programs

2   that you managed under your portfolio; is that right?

3   A.   Yeah, three or four.

4   Q.   Three or four. And some of those

5   programs would have had limits to them in terms of

6   coverage or what they could do?

7   A.   Yes.

8   Q.   And if those limits were exceeded in

9   terms of if something wasn't covered or it was more

10   than what was covered, and there was a First Nations

11   child involved, the Jordan's Principle may be a

12   backstop for that?

13   A.   If the community chose or the

14   individual chose to go that way, they would go through

15   the Jordan's Principle, yes.

16   Q.   Yes, and so if the coverage was

17   expanded or the limits were raised, that would be a

18   possible avenue for that individual not having to go

19   and make the request?

20   A.   Again, it would go case-by-case as to

21   whether or not they're covered. Sometimes they are

22   not necessarily eligible for the programming in let's

23   say, you know, education on reserve versus Jordan's

24   Principle is a much broader eligibility and

25   [indiscernible] than some of the programs

1 [indiscernible].

2   Q. But again if those were -- if those

3 things, you know, if folks who weren't covered on day

4 one and there was a business case made, based on

5 Jordan's Principle, they could say, hey, we've got a

6 lot of people who are, you know, making the request,

7 so let's expand, that's a possible way of resolving

8 that kind of --

9   A. Yeah, potentially. I wouldn't

10 necessarily see them, though, because they would

11 probably go directly to those who are using the

12 Jordan's Principle at the time.

13   Q. So I guess I'm trying to take three

14 steps back. Thinking about going back to the

15 guidelines, you know, when we talk about if the

16 service standard is sufficiently challenging, the

17 service provider is realistic in terms of capacity,

18 I'm wondering if you would agree with me that in

19 evaluating ISC's capacity, the need for a service

20 standard, it's a multi-faceted exercise?

21   It's not just, you know, how many focal

22 points do we have working and how many cases can they

23 process in a day. It's also the things that surround

24 Jordan's Principle like what are the factors that are

25 leading those cases to get to their desks in the first

1   place. I'm trying --

2   A. The whole --

3   Q. The whole environment has to be

4   looked at in order to --

5   A. I would agree with that. I would

6   agree that Jordan's Principle is currently individual

7   solutions based as opposed to broader system

8   [indiscernible].

9   Q. The third point on this page here is

10   that -- actually now going up the list to the second

11   bullet, based on consultations, service standards are

12   developed and reviewed in consultation with clients,

13   managers, staff and other partners and service

14   delivery to ensure that they are able [indiscernible]

15   and match the organization's mandate and capacity.

16   And then there's a note about the services fee added,

17   but I'm not sure it applies, but there it notes the

18   service fee as required mandatory consultation

19   [indiscernible] service standard. But that's not a

20   legal question [indiscernible], I don't want to go

21   there. It's not a legal test.

22   What I would like to ask you about,

23   though, is whether you would agree that ISC has not to

24   this point at least engaged in consultations about the

25   full-service standard changes?

1   A.   We have only gone with what folks

2   have come to us, communities have said that they can't

3   meet the service standards [indiscernible].

4   Q.   But is the proposal going from 12

5   hours to 48 hours on individual urgent cases, from 48

6   hours to a week for urgent group cases, and from 48

7   hours for non-urgent cases simply to without

8   unreasonable delay, that proposal hasn't gone through

9   a consultation process at any time?

10   A.   No, it's based on discussions

11   internally and with partners proactively, they are

12   also challenged to meet the timelines.

13   Q.   And those proactive conversations

14   would be informing what you have put in -- or what

15   Canada has put in --

16   A.   They were all taken into

17   consideration, but it's only a small portion of the

18   broader.

19   Q.   But it was a broader consultation or

20   a consultation kind of received up here as, you know,

21   clients, manager, staff, other partners, that hasn't

22   been undertaken on these proposals?

23   A.   No, it has not.

24   Q.   And in terms of some of the concepts

25   we were talking about, about kind of the full

1   [indiscernible] with a broader picture around

2   capacity, in those consultations, ISC's capacity would

3   have to be considered in that broader sense we just

4   talked about in terms of the whole environment around

5   the request?

6   A.   To engage this around the system in

7   its entirety?

8   Q.   In terms of thinking through, you

9   know, the point of the consultation and what is a good

10   service standard, that it should be a comprehensive

11   consultation; is that right?

12   A.   Can I just clarify, are you asking me

13   as a hypothetical if we were to consult?

14   Q.   Yes, yes.

15   A.   I would agree to the entire program,

16   or we would create a program I think to better address

17   the qualities, beyond just the current system, like is

18   that -- are you --

19   Q.   No, no, I think that's, you know, the

20   question I'm trying to ask is whether, you know, the

21   consultation should be essentially focused only on how

22   fast focal points can work, or if it's a broader

23   picture that should be talked about when we're looking

24   at service standards.

25   A.   Mm-hmm.

1   Q.   And I think the answer you're giving

2   is that there is actually a broader consultation you

3   want to do?

4   A.   No, we don't want to do any

5   consultation currently because it's court ordered. So

6   the consultation that you're presenting here is just

7   policy.

8   So in policy, if we were to change, we

9   could consult and we should ideally love to consult

10   everything if it were my world, but that's not

11   necessarily how government works. So it's an

12   immediate look at at least some key catalysts that we

13   know have been informed such as how do we define

14   urgent, and co-develop that with partners. You know,

15   the service [indiscernible] are challenging and the

16   communities are also trying to do it on the ground

17   with us. So I mean, again, so I'm not saying that --

18   I don't -- our cross motion doesn't a consultation

19   process.

20   Q.   Is it your view that the service

21   standards apply to communities as well?

22   A.   My view is if we're asking

23   communities to -- communities who want to take it on,

24   because it's court ordered, they are also bound by

25   those timelines and we try to provide them with

1   capacity supports to meet them, but they are

2   challenged as well. But there is communities who want

3   to take it on, so we want to support that as well.

4   They are [indiscernible] to be a part of the process.

5   Q. Now, looking at the bottom of page 69

6   which is -- I think it should just be the next page

7   over. You should already have it open. It says there

8   are some best practices when developing service

9   standards including -- and the first -- the second

10   bullet there is for timeless in service standards

11   using number of weeks, business days or hours as

12   appropriate. Do you see that?

13   A. Yes.

14   Q. And would you agree that "without

15   unreasonable delay", the standard time that is

16   proposed on this motion doesn't meet any of those

17   metrics?

18   A. I'm just -- can I just check the

19   cross-motion, the cross-motion that you're saying

20   where it's written? Can you --

21   Q. Do you have a copy of that with you?

22   A. I think so. I apologize.

23   Q. Your counsel has got it. I don't

24   think I had it [indiscernible].

25   A. Sorry, no, it's good, it's good.

1   Q.   3A and 3B, page 2 and page 3.

2   A.   Yeah, I'm just looking for -- okay,

3   sorry, this is for the group requests [indiscernible]

4   without unreasonable delay. Okay. Sorry, thank you.

5   I just wanted to clarify if there was hours in there,

6   too. Yeah, that would be a challenging one. I agree

7   it's not ideal but....

8   Q.   The reason is it's proposing a non-

9   ideal timeline on this?

10   A.   That was my own personal reflection

11   on it just as somebody who looks at programs.

12   Q.   That's fair. Now, just under 2.8

13   which is Review Service Standards, do you see that

14   there?

15   A.   Yes.

16   Q.   Now, I know you said your view is

17   that this -- so this isn't an exercise, the guidelines

18   applies to people who are in a legal process, but if

19   you think of it at a conceptual level, what Canada is

20   really asking the tribunal to allow is [indiscernible]

21   the service standard that's ordered?

22   A.   Okay. Correct, yes.

23   Q.   And do you see over on page 72, there

24   is a kind of a table, question and answer?

25   A.   Yes.

1   Q.   You see that? And then the third

2   question is titled -- the fourth question which is the

3   last one on the page, that are the service standards

4   based on consultations with various stakeholders and

5   similar to the one we were just looking at, service

6   standards [indiscernible] and updated [indiscernible]

7   service delivery. Do you see that?

8   A.   Yes.

9   Q.   Do you see this cross-motion as a

10   good forum for that kind of consultation?

11   A.   I see this cross-motion as an

12   immediate measure, remedial measure to try and allow

13   for better meeting of community needs but not as a --

14   Q.   Not as a consultation?

15   A.   As a new program in development.

16   Q.   And the last question on this

17   document, so page 75, it says the last paragraph here

18   just above the heading "Performance Results",

19   "To determine whether the variants

20   between the service [indiscernible] are

21   temporary or [indiscernible] may be

22   necessary to scan the environment

23   internally and externally to determine

24   possible reasons that affect the

25   attainment of service standards."

1   So would you agree that in light of that

2   guidance as well that kind of looking at the whole

3   board when it comes to performance and service

4   standards, it's something that's a good idea, the

5   broader environment that we kind of talked about at

6   times along the way?

7   A.   The bigger, the bigger --

8   Q.   The bigger picture.

9   A.   Can you just repeat your question?

10   Q.   Sure, sure. So --

11   A.   No, I've read that.

12   Q.   The guidance here, it's just to say

13   that, again, if you're considering the tribunal's

14   timelines, the [indiscernible] tribunal's timelines,

15   it would be consistent -- irrespective of whether the

16   guidelines apply to this or not, it would be

17   consistent with the guidelines if we take this broader

18   perspective approach [indiscernible] the service

19   standard?

20   A.   I'm only hesitating because I thought

21   that was already -- we already do that to work with

22   partners, with [indiscernible]. So it's not just in

23   relation to Jordan's Principle, but something we're

24   looking at more broadly across all of our programming.

25   Q.   So you're saying it would potentially

1   be consistent not just with the guideline, but just --

2   A.   Good practice.   Yes, for example, the

3   First Nations Health Council and the First Nations

4   Health Authority are doing work in the area of social

5   determinants and looking at the broader systems as

6   well.   So that's -- I'm just not -- because I don't

7   think it's necessary just to Jordan's principle, but I

8   think it's something that is happening currently.

9   Q.   So as a general --

10   A.   As a general practice, it's something

11   that First Nations are taking on as well and looking

12   at the bigger system to meet their needs and certainly

13   through [indiscernible] and other areas as well.

14   Q.   So if you can just go back to your

15   affidavit again?   So if you look at paragraph 13 again

16   -- we've spent a bit of time on here now, we've made

17   it through the first sentence.   So we're looking --

18   A.   Sorry.   Thank you.

19   Q.   I'm the one that brought all the

20   documents out, so that's fine.   Looking at the second

21   sentence, it says:

22   "Given the significant evolution

23   and expansion in the number and

24   complexity of requests stemming from the

25   Tribunal's orders in relation to Jordan's

1   Principal, the initial timelines are not

2   realistic."

3   And I just want to focus on what you say

4   here about the evolution and expansion and the number

5   and complexity of requests coming forward. Would you

6   agree that those requests coming forward reflect a

7   real need for the community?

8   A. I -- I would certainly know that for

9   the ones that I have seen the sample of cases where

10   there's certainly urgent needs for food supports and

11   rent supports et cetera are needs in the community,

12   yes.

13   Q. And so the next paragraph, paragraph

14   14, you say:

15   "It is unlikely that the current

16   Jordan's Principle's operational model,

17   as per the Tribunal orders, can be

18   managed solely by a continuous increase

19   in human resources."

20   And then you give a summary of some of

21   the points that you're talking about, that should be

22   part of Canada's kind of long-term view, and I'll have

23   a number of questions on that a bit later. But just

24   as kind of a conduct about this exercise of kind of

25   delaying the timelines, that won't actually accelerate

1   the speed that Canada is making the decisions, but

2   [indiscernible] would remain the same. And I'm not

3   saying whether there should be more or less FTEs, but

4   a change in the timeline won't speed up the speed at

5   which decisions are being made?

6   A. Just again I really think that when I

7   think about the change in timelines, it was part of

8   the bigger whole of motion including, you know, could

9   it all have been urgent definitions. It's just a way

10   to manage the [indiscernible] area as well as the

11   timelines, as well as being able to bring in

12   [indiscernible] that are within communities,

13   [indiscernible], that would alleviate a bigger

14   pressure within the system which I assume would then

15   allow for quicker [indiscernible].

16   Q. I'm just wondering how you're doing.

17   A. I'm okay.

18   THE CHAIR: Sure.

19   MR. TAYLOR: We've gone an hour and 20

20   minutes. I've kind of got a short item and then maybe

21   we can take the morning break at that point.

22   THE CHAIR: Sure.

23   BY MR. TAYLOR:

24   Q. That would be fine with you?

25   A. Sure.

1   Q.   So I have some questions now about

2   the next tab in Volume 1 of the exhibit documents, so

3   tab E.   This is the document titled "Child

4   [indiscernible] Impact Assessment", this was developed

5   by the Department of Justice Canada in July 2023.   Is

6   this a [indiscernible] tool that you're aware of?

7   A.   I heard that one was being developed

8   but I hadn't seen it come to fruition.

9   Q.   And I'm right in understanding you

10   were an executive general or a director general with

11   the Department of Justice at some point in the mid

12   2010s for two years?

13   A.   We're a decade ago, yeah.

14   Q.   Yes. So this wasn't a

15   [indiscernible] that existed back then?

16   A.   We were doing -- we weren't doing

17   this in the programs that I was working on.

18   Q.   I guess I should ask do you know

19   whether or not it was?

20   A.   I don't know if it was. I was

21   working with the community on restorative justice.

22   Q.   So it would be fair to say that maybe

23   it was, maybe it wasn't?

24   A.   It may be, yes.

25   Q.   But it wasn't --

1   A.   To be fair, not in that particular

2   [indiscernible].

3   Q.   So you mentioned you were aware of

4   the tool but you haven't -- this isn't the tool you

5   used?

6   A.   No, I haven't used it.

7   Q.   Just if we turn the page over, it's

8   referred to as [indiscernible] Impact Assessment,

9   Tools to Assist Officials in Assessing the Potential

10 Impact of the Proposed Initiative on Children. So

11 just with your kind of awareness of this existing, is

12 that consistent with your awareness of what this tool

13 was supposed to do when it was around?

14   A.   Its intention was to be able to

15 [indiscernible].

16   Q.   And then you see at page 4 it says at

17 the top of the page under "How to Use", it says online

18 training is available to support officials for

19 conducting a CRIA -- I take it that's a Child Risk

20 Impact Assessment -- for the first time. The training

21 is approximately two-and-a-half hours to complete with

22 step-by-step guidance on how to use the CRIA tool.

23   Then just down the page it says there are

24 two stages. There's an initial screening and then

25 what they call old CRIA stage if it is determined that

1   it's warranted. And then it says at the paragraph

2   here at the bottom that the full CRIA should be

3   conducted at the initial screening [indiscernible] its

4   possible impact on children and on their rights

5   regardless of whether those impacts are direct or

6   indirect. Do you see that?

7   A. Yes.

8   Q. Is that generally consistent with

9   your understanding of this tool?

10   A. Yes, yes.

11   Q. Now, you mentioned you hadn't seen

12   this one before. Do you know if ISC has done any CRIA

13   in relation to Jordan's Principle?

14   A. I'm not sure. I can't speak to that.

15   Q. And would you know that if it had

16   been done?

17   A. Not necessarily, no, because training

18   happens all over, and I do know that children -- the

19   best interest of the child is something that we use

20   just overall in our [indiscernible] and stuff with

21   executives, but further training with specifically

22   with Jordan's Principles, [indiscernible].

23   Q. And would you agree with me if done

24   using this tool might identify further solutions or

25   recommendations to assist in complying with the

```
 1   Tribunal's orders?
 2              A.  I can't -- I'm not sure.
 3              MR. TAYLOR:  Would this be a convenient
 4   point for the morning break?
 5              THE CHAIR:  Yes.  Before we leave, I
 6   wanted to know if you're aware that the Tribunal
 7   repeatedly said -- cautioned Canada not to divide the
 8   findings from the orders, that the orders had to be
 9   read with the findings in our decisions.  Are you
10   aware of that?
11              THE WITNESS:  No, I apologize, I wasn't
12   aware.  I mean, just as my learning progresses in this
13   role, I'm picking up slowly more and more information.
14              THE CHAIR:  No need to apologize, I'm
15   just asking.
16              THE WITNESS:  No, I read the orders on my
17   own -- sorry.
18              THE CHAIR:  It's okay.  Thank you.  And
19   aware you aware that the Tribunal's orders, especially
20   for reform in 2016, also address a lack of
21   coordination amongst Federal programs?  Are you aware
22   of that?
23              THE WITNESS:  Yes, I have heard that.
24              THE CHAIR:  Okay.  And are you aware that
25   there was a link between Jordan's Principle and the
```

1   lack of coordination in Federal programs in that the

2   Tribunal asked to reform according to the findings in

3   2016's -- in the Ramara decision?

4   THE WITNESS: Yes, and I believe that

5   there was some work happening and certainly I believe

6   it was there with the inclusion of the national expert

7   [indiscernible] as part of that reform for ISC. Is

8   that the same?

9   THE CHAIR: I was just asking if you were

10   aware that we had made some findings about lack of

11   coordination --

12   THE WITNESS: Yes, just programming --

13   THE CHAIR: -- in Federal programs.

14   THE WITNESS: Yes.

15   THE CHAIR: And how it impacted Jordan's

16   Principle as well and that we had made orders to

17   reform the entire systems according to the findings in

18   our decision.

19   THE WITNESS: Yes.

20   THE CHAIR: And that we've cautioned to

21   make sure that the orders are read with the findings,

22   I was wondering if you were --

23   THE WITNESS: I am not.

24   THE CHAIR: Okay.

25   THE WITNESS: I knew that there was

1   discussion or mention of the need to reform the

2   system, like the programming systems, but I wasn't

3   aware of the second part that you mentioned about the

4   findings of the order.

5   THE CHAIR: Yes, I would urge you --

6   THE WITNESS: Yes.

7   THE CHAIR: So we're going to take a

8   break. Before we go to the break, I'm just asking you

9   to refrain from discussing your evidence with anyone

10   until you're free to go at maybe the end of the day,

11   maybe before then, I don't know. So I would

12   appreciate that and we'll take -- we'll be back at

13   10:45. Thank you.

14   --- BRIEF RECESS

15   THE CHAIR: Ms. St-Aubin, are you still

16   good?

17   THE WITNESS: Yes.

18   THE CHAIR: Have you had a chance to take

19   a break?

20   THE WITNESS: Thank you.

21   THE CHAIR: Okay. When we broke, I

22   forgot to also say that I wanted to ask you if you are

23   aware that some of the Tribunal orders were cease and

24   desist the discriminatory practice according to the

25   findings in the decision, and that included the lack

1   of coordination in Federal programs that pertained to

2   children.

3   THE WITNESS: No, and thank you for that.

4   I just also want to correct, when you said was I aware

5   of the orders and the findings, I thought you meant

6   the orders in the transcripts when we were talking

7   about the transcripts previously from 2016, I think it

8   was, or what Robin Buckland was. So when I reviewed

9   the orders, the findings were in there as well with my

10 package that I read. So I misspoke when I said I

11 hadn't read them together. I thought you meant the

12 transcripts of the proceedings.

13   THE CHAIR: Okay.

14   THE WITNESS: Sorry about that. But,

15 yes, I do recall [indiscernible].

16   THE CHAIR: And on another topic, and

17 then I'll let you ask your questions, would you agree

18 with me that even ideally if all programs were First

19 Nations community-driven, designed and also delivered,

20 there will still need -- there will still be a need

21 for them to develop -- some of them to develop

22 capacity, and that some might not want to transition

23 right away and that there is also an in-between

24 solution that would be required?

25   THE WITNESS: Yes, thank you for that. I

1 completely agree. I think that there's levels of

2 readiness and want to take it on, and I think Canada

3 still needs to be very much in it in Jordan's

4 Principle and to support those who do want to take it

5 on through capacity building. Certainly, if we have a

6 system that works, then they can then -- because our

7 whole mandate is to transfer assistance and we want

8 them to be able to succeed in it, too.   So, yes,

9 there's a continuum of readiness and where each

10 community sees themselves part of in the way that we

11 feel they should be a part.

12   THE CHAIR: Okay. And are you aware that

13 in some of our findings we found that even when First

14 Nations Communities were really ready to go forward,

15 they were told "no" or "wait" by Canada? Are you

16 aware of that, that is part of our finding?

17   THE WITNESS: It was -- yes, it was part

18 of the findings at the time. My wonder is, though,

19 when we make these types of way-forward approaches, we

20 are in a far different place now certainly with the

21 efforts that have gone into reconciliation and the

22 desire and the want and the need to continue to

23 co-develop and be true partners in it.

24   My aspirations are that communities want

25 to come and take on, and we've seen that they have

1 come to us. But yes, I know at that time that was

2 [indiscernible].

3   THE CHAIR: Thank you.

4   MR. TAYLOR: Thank you.

5   BY MR. TAYLOR:

6   Q. So Ms. St-Aubin, I have some

7 questions now about the Caring Society's interventions

8 in cases, and so for these questions it would be

9 helpful if you had Dr. Blackstock's first affidavit of

10 January 2024. I think I gave you -- you may have it

11 in the Cerlox, but I believe I gave you -- it's the

12 one with the staples along the side there. Yes, so

13 one should be the affidavit of Ms. Matthews and the

14 other one --

15   A. Yes.

16   Q. -- of Ms. Blackstock. And you don't

17 have the exhibits [indiscernible] in the bottom of the

18 affidavit, but I believe your counsel has the full one

19 if there's anything you want with that. Now, looking

20 at your affidavit just to start, [indiscernible] your

21 evidence.

22   A. Okay.

23   Q. So paragraph 15 of your affidavit,

24 the last sentence -- sorry, you say:

25   "Canada recognizes that the Caring

1   Society's interventions have brought

2   administrative and timeline issues to

3   ISC's attention and have assisted

4   families and children."

5   So you say it's Canada's view. Is that

6   your view, too?

7   A. Yes, that is.

8   Q. And would you agree that in addition

9   to bringing administrative and timeline issues

10   forward, the Caring Society also brings systemic

11   issues to light that need to be addressed in Canada's

12   implementation of Jordan's Principle?

13   A. Can you give me an example, when you

14   talk about systemic, is this the [indiscernible]

15   nature of other programs --

16   Q. No, more so issues in Canada's

17   approach to Jordan's Principle that are affecting more

18   than one case. There might be a common

19   [indiscernible] or common issue that needs to be

20   resolved.

21   A. Okay.

22   Q. So rather than it being, you know,

23   that there is a bunch of one-offs that are happening,

24   the Caring Society is also talking about the broader

25   trends and areas raised should be --

1   A.   Yes, I think that's fair. Yes.

2   Q.   Now, if we go down the page to

3   paragraph 19 of your affidavit, here you're responding

4   to paragraphs 169 to 171 of Dr. Blackstock's first

5   affidavit and paragraph 23 of Ms. Matthews' affidavit

6   and you're talking about a meeting on December 1st in

7   this paragraph. Now, you're saying -- and you

8   attended that December 1st meeting?

9   A.   Yes.

10   Q.   And you're saying in this paragraph

11   -- this is a helpful summary -- that your view is the

12   meeting was coverage for Jordan's Principle requests

13   over the holidays?

14   A.   Well, that was a part of the

15   conversation, but I can't recall the rest of it other

16   than certainly concerns over, you know, the

17   implementation [indiscernible].

18   Q.   So maybe just to try and refresh your

19   memory, if we can go to paragraphs 169 to 171 of Dr.

20   Blackstock's affidavit, and those are on page 54.

21   They start on page 54, but really I'll just be asking

22   you questions about paragraph 169 on page 54.

23   A.   Okay.

24   Q.   So Dr. Blackstock says here:

25   "On December 1, 2023, I met with

1   senior ISC representatives to discuss how

2   families, service coordinators, and First

3   Nations community representatives contact

4   the Caring Society about the difficulties

5   they have faced in accessing Jordan's

6   Principle and come to the Caring Society

7   for assistance in navigating Jordan's

8   Principle."

9   And so you would have been one of those

10   senior ISC representatives?

11   A.   Yes.

12   Q.   And then in the second sentence Dr.

13   Blackstock says:

14   "During that meeting, ISC made a

15   commitment to me that they would identify

16   a staff contact person at ISC to whom the

17   Caring Society could direct folks who

18   reach out to the Caring Society in this

19   way such that their difficulties could be

20   resolved in a Tribunal-compliant manner.

21   In essence, that commitment was for ISC

22   to establish a role akin to that which

23   the Caring Society has been playing in

24   escalating and aiding to resolve Jordan's

25   Principle implementation and non-

1   compliance issues."

2   So do you remember that being discussed

3   about having a specific person within ISC to deal

4   with, you know, essentially bringing forward

5   problematic cases that were [indiscernible]?

6   A.   I don't recall the identification of

7   a specific staff contact. I did remember discussions

8   around setting up a triage or a targeted team similar

9   to that we did with the Indian residential schools

10   process that happened a few years back, and it was a

11   smaller group of four or five as opposed to a

12   particular staff name. Although that's not to say it

13   wasn't raised, I just don't recall [indiscernible].

14   Q.   But your recollection is that at that

15   meeting perhaps holiday coverage was discussed --

16   A.   Yes.

17   Q.   -- but that the topic would have been

18   this idea of some kind of a function within ISC to

19   help with [indiscernible]?

20   A.   Yeah, for sure [indiscernible].

21   Q.   And you've mentioned a team of four

22   or five people. Has anything been done with this idea

23   since that meeting?

24   A.   Yeah, we're still looking at

25   solutions to how we triage and bigger assistance

1   changes that I laid out in my affidavit.

2   Q.   But those changes would still be in

3   the final consideration stage?

4   A.   They're underway. We're already

5   looking at [indiscernible] and I did bring in a

6   dedicated senior executive to look at that, including

7   addressing some of the bigger First Nations who want

8   to take on an increasing role where it's permissible.

9   So it's starting [indiscernible].

10   Q.   But specific to the -- I don't want

11   to in any way belittle the cases but you know there is

12   the expression the squeaky wheel gets the grease. You

13   know, there is issues that come to the fore because

14   they've contacted the service coordinator or the

15   Caring Society, and for whatever reason they are not

16   -- those concerns are [indiscernible] to the fore

17   through [indiscernible]. That senior executive you

18   were mentioning that they tasked with dealing with

19   those --

20   A.   No. Well, that was supposed to be

21   the intention. However, the individual was pulled

22   over into a dedicated transfer or discussions with

23   [indiscernible] on Jordan's Principle in the region.

24   There is still work underway within my ADF colleague

25   who does regional operations to look at solutions akin

1   to the triaging a smaller group [indiscernible].

2   Q.   And are you aware of the Caring

3   Society's relatively new practice of sending batches

4   of non-urgent cases to ISC once a week?

5   A.   Am I aware of? Sorry?

6   Q.   So I'll take two steps back. So the

7   Caring Society -- it would be fair to say that the

8   Caring Society for some time has been raising, you

9   know, on a case-by-case basis the problems that came

10 to their attention with ISC?

11   A.   Yes, I have been included on those.

12   Q.   And are you aware or do you

13 understand that in May 2023 -- since May 2023, urgent

14 cases were being kind of raised as they came up, but

15 the non-urgent cases are being kind of gathered and

16 sent once a week?

17   A.   I may have seen one come through, in

18 all honesty, but I wasn't sure of their cadence or

19 rhythm were a part of a standard practice.

20   Q.   But the idea that there are kind of

21 batches of cases being sent is something you are

22 generally aware of?

23   A.   Not to that degree, no. I've seen it

24 happen once, but not that it was repeating.

25   Q.   So you've seen at least one batch?

1   A.   Yes, yes.

2   Q.   And when you saw that email, did you

3   see any kind of charts attached to the email?

4   A.   No, I didn't. I just saw it come

5   through [indiscernible].

6   Q.   Are you aware that someone on your

7   team responds from time to time to advise how things

8   are going?

9   A.   I wasn't aware of that.

10   Q.   Is it fair to say that when the

11 Caring Society brings a case to your team's attention

12 that sometimes it's resolved almost immediately? I

13 think sometimes the case is raised and then a

14 determination is made the next day?

15   A.   Potentially. Unless -- I don't know

16 exactly the case. I'm not directly involved in those.

17   Q.   I'm not asking for anything you don't

18 know.

19   A.   Okay. So, yes.

20   Q.   Just the general level or sense. I

21 mean, you gave some pretty detailed evidence in your

22 affidavit about the cases and there is this chart --

23   A.   It tends to happen quickly

24 afterwards, but I don't -- like the number of cases

25 that have happened, et cetera, I don't know.

1   Q.   But as a general statement, sometimes

2   it's quickly?

3   A.   Yes.

4   Q.   You would agree with that?

5   A.   Yes, yes.

6   Q.   And would you agree with me that

7   other times it might take weeks to be resolved?

8   A.   If more information is needed, it

9   could take [indiscernible].

10   Q.   And would you be aware that there's

11   approximately 40 outstanding cases right now that the

12   Caring Society is raising?

13   A.   I'm not aware of that.

14   Q.   I'll just ask you a few questions

15   about the list, the list of cases in the affidavit.

16   So this is over at paragraph 20. So in preparing

17   these responses, just I'm looking at the heading here,

18   "D", products and services, product supports and

19   services Jordan's Principle in the Caring Society's

20   individual [indiscernible], did you look at the

21   records yourself and files in this paragraph in your

22   affidavit?

23   A.   I reviewed a synopsis of the

24   responses and the actions taken on them, but the

25   actual cases themselves, I did not spend an excessive

1   amount of time going through them page by page.

2   Q. So would it be fair to say starting

3   at paragraph 20 over to 29, that's another section of

4   your affidavit that talks about the individual cases,

5   that's all second-hand knowledge?

6   A. Well, it's what I was made aware of

7   in the synopsis that I read, yes, not [indiscernible].

8   Q. And was there a team of people

9   contributing knowledge to this part of the affidavit?

10   A. It would have been the regional

11   offices working with Jordan's Principle who fed into

12   the synopsis and then our national [indiscernible].

13   Q. So in some cases it could be third-

14   hand information, the regions are gathering

15   information, giving them to a central point

16   [indiscernible], is that fair to say?

17   A. I think it's -- no, I think that is

18   all still people with first-hand knowledge that just

19   sends the document to my EA.

20   Q. There may be people with first-hand

21   knowledge at the bottom of the chain, but by the time

22   it comes to you, it's third-hand?

23   A. Potentially. I can't answer how many

24   hands have touched any of these documents.

25   Q. So paragraph 20 you say in the second

1   sentence:

2   "Some of the information found in

3   those illustrative cases are either

4   incomplete and/or do not reflect the

5   steps taken by ISC to respond to those

6   specific Jordan's Principle requests."

7   Do you see that?

8   A.   Yes.

9   Q.   And would you agree with me that the

10   Caring Society can only provide information it has

11   access to?

12   A.   Correct.

13   Q.   And you'd agree with me the Caring

14   Society has no ability to go into ISC's files to find

15   out additional information?

16   A.   Correct.

17   Q.   So in paragraph 22 of your affidavit

18   you talk about a number of cases raised in Dr.

19   Blackstock's and Ms. Matthews' affidavits. Now, in

20   those paragraphs you are consistently noting the

21   amount of money that was provided to families; is that

22   right?

23   A.   Yes.

24   Q.   And is there something in particular

25   the Tribunal should take from the amount of money that

1 the families received?

2   A. No, the amount is moot. It's more

3 about the fact that these requests were provided, that

4 the funding was provided.

5   Q. So given the amount, is there a

6 reason you included it?

7   A. I have no specific reason why it was

8 included other than that was providing information.

9   Q. Did you ask for it to be included?

10   A. No, but it was all of it. I wanted

11 like the full information [indiscernible] products and

12 supports and that was just part of it.

13   Q. So then you've reviewed the

14 paragraphs of Dr. Blackstock's and Ms. Matthews'

15 affidavit in response --

16   A. Only briefly. I haven't memorized

17 them or anything but --

18   Q. But just speaking now at a level of

19 generality, would you agree with me it's fair to say

20 that concerns that Dr. Blackstock and Ms. Matthews are

21 raising have more to do with the difficulty families

22 encounter in getting to the approval or getting

23 reimbursement after the fact?

24   A. Yeah, I think it varies from case to

25 case. What I will say, though, with regards to the

1   information and certainly the role of the Caring

2   Society is that often they will have more information

3   than we have access to that actually facilitates it

4   happening faster which is why we appreciate when they

5   do come to us with more information.

6   Q.   So you would say there is a vehicle

7   then for additional provision of [indiscernible] on a

8   case, that helps [indiscernible]?

9   A.   Certainly because there's a level of

10   comfort, as anybody can appreciate, from First Nations

11   families and children than reaching out to the

12   Government of Canada. So if there is an avenue for

13   them either by the community or by the service

14   coordinator or the Caring Society as it were.

15   Q.   So I just want to look at a few

16   examples and I'm going to look at those examples not

17   based on your affidavit because there's some

18   information in there that's subject to a

19   confidentiality order. So we're just going to turn to

20   the other ones --

21   A.   Okay.

22   Q.   -- which are not subject to a

23   confidentiality order. So if we can turn to Ms.

24   Matthews' affidavit, and I'd like to go to paragraph

25   94. Now, just as kind of a programming note here,

1   there are additional reports in the affidavit whose

2   initials are redacted in your affidavit.

3   So I'm just going to ask my question with

4   reference to the initials. So I'll read you the

5   paragraph [indiscernible] and then I'll talk about the

6   person or the individual just to kind of help you out

7   with where I'm coming from.

8   So in paragraph 84, this case comes up

9   again at 87 and 88, Ms. Matthews is talking about

10 someone the Caring Society assisted, and these

11 paragraphs tell us that this person had an approval in

12 November 2023, it came to the Caring Society in

13 December 2023. So you see that kind of in the fourth

14 line there. And then told they told the Caring

15 Society they were experiencing pressures, they were

16 having to arranged upfront payment for the approved

17 items. Is that fair based on the paragraphs that

18 [indiscernible]? Take your time to read it.

19   A. Yes, thank you.

20   Q. And my understanding based on these

21 paragraphs is that the reimbursement ultimately

22 followed in January 2024; is that right?

23   A. Yes.

24   Q. That's about two months after

25 approval.

1   A.   That's the payment issuance?

2   Q.   The payment issuance, yes.

3   A.   Okay.

4   Q.   There was an approval

5   [indiscernible] --

6   A.   Right.

7   Q.   Approval in November, early in

8   January [indiscernible].

9   A.   [Indiscernible].

10   Q.   And so would you agree the concern

11   for this individual wasn't the approval itself, but

12   the time it was taking to be reimbursed?

13   A.   For the payment, yes, that's how I --

14   yes.

15   Q.   So you would agree that's a fair

16   characterization of the concern as reflected in Ms.

17   Matthews' affidavit? They weren't saying they had not

18   received --

19   A.   The later reimbursement, yes.

20   Q.   Or the long approval that's -- sorry,

21   I was talking while you were talking. So you agree

22   with my characterization the concern there was delayed

23   payment?

24   A.   Yeah, delayed reimbursement.

25   Q.   Thank you. Now, looking at 106, if

1   you can just turn over a couple of pages here, that's

2   at page 27, this is another individual the Caring

3   Society assisted. Take some time and -- actually, if

4   you can read 106 to 111 if you don't mind just so

5   you're familiar with the case. Again, I'm not wanting

6   to tread into anything that's protected by

7   confidentiality, I'll just examine around it. It's

8   just easier I think [indiscernible] and don't rush.

9   There's all kinds of time. So would you

10   agree with me, having reviewed those, that this is a

11   case where an individual contacted the Caring Society

12   in September of 2023? You see that at 106. Then they

13   were talking -- this is 107 -- about a request they

14   made in April of 2023 and they hadn't had a

15   determination yet, would you agree? Again, as it's

16   told here?

17   A. Yes, as it's here.

18   Q. And then the Caring Society called it

19   up to ISC in early October, that's at 109, and the

20   request was approved two days later?

21   MS. ANDERSON: I'm so sorry to interrupt.

22   I just wonder if it would [indiscernible] which was an

23   email exchange just to refresh her memory.

24   BY MR. TAYLOR:

25   Q. Sure, if she would like, that's fine.

1   A.   I think it would be -- yeah, because

2   there's a couple of letters that are referenced in

3   there.

4   Q.   Sure, that's fine.

5   A.   So I --

6   Q.   That's fine. I mean, I guess where

7   I'm going with it is just -- and maybe after you've

8   read your email, you can confirm my characterization

9   that the concern here is the timeliness of ISC's

10 determination process, as opposed to what was or

11 wasn't [indiscernible]. Feel free to look at the

12 email. That's fine. Your counsel [indiscernible].

13   A.   It's just in the email where ISC

14 offered to change the request to urgent but

15 [indiscernible] jump the queue.

16   Q.   I think that's fair to say what

17 you're hoping people are doing with their requests.

18   A.   Well, I think that's where the staff

19 more proactively, I guess, right, do you feel that

20 this is urgent. And I only flag that just because you

21 mentioned here back in the affidavit that the

22 requestor had flagged that it was impacting the

23 child's communication abilities.

24   Q.   Right. There may have been some

25 issue about --

1   A.   So that's -- so that's -- but I think

2   that's a relevant point though to draw is that because

3   this is why we would want to raise them.

4   Q.   Right.

5   A.   Not just [indiscernible]. It reminds

6   me of the conversation that we were just having or the

7   questions you were asking about how do you use the

8   bucket of ten eggs --

9   Q.   Yes.

10   A.   -- in the urgent versus non-urgent.

11   Q.   And certainly just irrespective of a

12   family member's position on urgency basis, they

13   consider something more quickly if they want to? The

14   Focal Point can take it upon themselves and say I'll

15   move this to the front of the queue?

16   A.   And they have --

17   Q.   Yes.

18   A.   -- escalated. There is that, oh, we

19   weren't aware of a certain level of information, then

20   they will want to escalate.

21   Q.   But taking a couple of steps back,

22   the concern here, you would agree, is that

23   irrespective of the reasons, its timeliness concern,

24   it's not a concern about what was approved, for how

25   long?

1   A. Oh, yes, yes, which is, you know,

2   compliance of timelines.

3   Q. Yes, exactly.

4   A. Yes, okay. Thank you for that.

5   Q. There is some detail provided about,

6   you know, items and amounts et cetera, and just again

7   to go through the processing --

8   A. So that issue, yes.

9   Q. So you would agree that the complaint

10 here is both processing as opposed to what kind of a

11 process?

12   A. Yes, that's certainly how it is

13 captured in there.

14   Q. My last example we can go to, if we

15 can just go over to Dr. Blackstock's affidavit, and if

16 we could go to page 28? There's a couple of emails in

17 this section as well. I don't know if Ms. Anderson

18 wants to give you the --

19   MR. TAYLOR: Just for reference, Ms.

20 Anderson, it's 38A to D.

21   MS. ANDERSON: Did you say page 28?

22   MR. TAYLOR: Page 28, yes. It's

23 paragraph 85 is where it starts.

24   BY MR. TAYLOR:

25   Q. I'm wondering if you might be

1   familiar with this respondent [indiscernible] and it

2   identifies concerns about [indiscernible].

3   A.   Just on the periphery, and I know

4   that there was a bunch of requests that were made if

5   my memory serves me correctly and --

6   Q.   Yeah, there was a number of requests.

7   A.   There was a few. There were some

8   approved and then one [indiscernible].

9   Q.   Yes, there was [indiscernible],

10   that's a fair statement. But I guess the question I

11   have is the thrust of this request, just kind of going

12   off your recollection, and feel free to review what

13   you would like, is that there was, you know, capital

14   work that needed to be done so that the family could

15   access safe drinking water and that was denied because

16   the authorities [indiscernible]; is that right?

17   A.   Yes.

18   Q.   So do you agree when you're listing

19   -- any items you're listing for this individual that

20   were approved don't actually address the reason that

21   the individual is asking for the Caring Society's

22   help?

23   A.   From what I can recall, there was a

24   204 on water as well as [indiscernible], the other

25   things, as an immediate [indiscernible].

1   Q.   But if the home didn't have access to

2   safe drinking water [indiscernible]?

3   A.   [Indiscernible].

4   Q.   So we can go as far as a temporary

5   solution, it's not [indiscernible] which is there is

6   no drinking water in the home? Is that yes?

7   A.   Well, that it was providing clean

8   drinking water [indiscernible].

9   Q.   But not all [indiscernible]?

10   A.   I'm not sure about what happened

11   after we provided the drinking water, where it is in

12   the process. I'm not sure if this one has been raised

13   for appeals or review.

14   Q.   No, and I'm not trying to

15   [indiscernible] to avoid [indiscernible], just the

16   focus on the claim to the Caring Society was the

17   [indiscernible] capital work to access clean drinking

18   water and that was denied [indiscernible]? Is that a

19   fair characterization of this one?

20   A.   Yes, the [indiscernible].

21   Q.   And so the complaint here didn't have

22   to be about what was approved which is what you put in

23   your affidavit, as opposed to what was denied; that's

24   fair?

25   A.   Yeah, that's the....

1   Q.   And just as a general point, and we

2   may have already covered this, would you agree with me

3   that just as important as the kind of product services

4   or support that they received or how much it costs,

5   it's also important whether the need, that request was

6   met in a timely way?

7   A.   That is -- yes, that is the

8   [indiscernible] order.

9   Q.   That's not in the order. There's a

10   need [indiscernible] is met in a timely manner, would

11   you agree with that?

12   A.   Yes.

13   Q.   And would you agree with me that

14   having timely approvals and having timely payment

15   arrangements are key parts of meeting these in a

16   timely way?

17   A.   Yes, in fact, we strive to do so as

18   much as we possibly can, but, naturally, there's

19   always whole bunch of challenges [indiscernible].

20   Q.   And just kind of a couple of more

21   questions on the scope of the department's authority,

22   there's another case, just back over to Ms. Matthews'

23   affidavit at paragraph 65, and this is a case about an

24   accessible modular home. Are you familiar with this

25   case?

1   A.   Yes, I am.

2   Q.   [Indiscernible].

3   A.   Yes, I am aware of the request that

4   came in [indiscernible].

5   Q.   And in paragraph 66, Ms. Matthews

6   notes the request was denied on July 18th about five

7   months after it was made; is that fair?

8   A.   Sorry, what is the date?

9   Q.   I'm sorry, if you look at -- no, I

10   think I'm putting two things together. So if you look

11   in paragraph 65, you will see the request was made at

12   the end of February?

13   A.   Yes, February 28th.

14   Q.   And then you see in 66 it's denied in

15   July. That's about a five-month period; is that fair?

16   A.   Yeah, is it possible to see the

17   exhibit? There was one where there was --

18   Q.   There is a second --

19   A.   It had gone to appeal.

20   Q.   Yes, I mean, this particular case is

21   now reported in the report, but there was a second

22   one. Maybe it would be helpful --

23   A.   But there was some timeline delay in

24   that because it did go -- like, there was a process

25   that was followed. It was overturned in appeal, but

1   then the requester pulled their request and submitted

2   a new one for emergency.

3   Q.   Yes, I mean, again, this is one

4   that's before the Federal Court --

5   A.   Sorry, yes.

6   Q.   -- general body -- my general

7   position [indiscernible]. So this is the case, or

8   just to confirm your understanding of the case. I

9   don't want to give the evidence about it.

10   A.   Yeah.

11   Q.   Do you recall that there was in this

12   case an approval for a renovation, and if you don't,

13   maybe it would be helpful to look at the emails and

14   see if those refresh your memory.

15   MS. ANDERSON: I wonder if it might be

16   helpful just to reference the paragraphs in her own

17   affidavit in reference to that.

18   MR. TAYLOR: That's fine.

19   BY MR. TAYLOR:

20   Q.   Again, I'm just trying to avoid -- so

21   this would be paragraph -- if you go to your own

22   affidavit and maybe just refresh your memory if you

23   can off the confidential version. This is all

24   described in paragraphs I would say 26, 27, 28, and

25   then you note the approvals that were made in 29. So

1   if you look at 26 to 29 --

2   A.   If it's okay if it's not the redacted

3   version?

4   Q.   I think that's fine.

5   A.   Okay. I wasn't sure if you wanted me

6   just to look into the redacted one.

7   Q.   No, I was just looking for myself to

8   see what is redacted, but, again, this is the context

9   we're examining around it [indiscernible] as opposed

10   to turn the cameras off.

11   A.   Again, that's the one I was thinking

12   of.

13   Q.   So you've had a chance to refresh

14   your memory there?

15   A.   Yeah, I don't remember exactly what

16   the [indiscernible] that were being sought, though. I

17   don't have that level of granularity at my fingertips

18   unfortunately but....

19   Q.   That's okay. I don't want to go to

20   -- I don't want to make this a memory test.

21   A.   No, no, that's good. Yes, thank you.

22   Q.   So just I guess the thrust of my

23   question here is that there was an approval for some

24   major adaptations. There's perhaps some documentation

25   around that elsewhere, but you will accept this is

1   consistent with your understanding of the case that

2   the mom's position is that those would have ended up

3   meeting the needs of her son? I'm just wondering if

4   that's consistent or you don't know?

5   A.   I don't, I don't.

6   Q.   And other [indiscernible] that you

7   have noted actually the dollar value in your

8   affidavit, which I won't say out loud given that it's

9   under redaction, but do you recall that the solution

10   that was denied cost about $70 more than the one that

11   was approved?

12   A.   Again, it's not [indiscernible].

13   Q.   And just the main thrust of the

14   questions here is that the reason for the denial in

15   this case was essentially purchasing a modular home is

16   outside of the authority of Jordan's Principle?

17   A.   Yes.

18   Q.   So if you look at paragraph 31 of

19   your affidavit now, we'll move on from that example

20   and we are now also moving away from the hearing where

21   there is confidentiality in place, so it will probably

22   be a little more efficient, hopefully more helpful.

23   In paragraph 31 on page 9 of your affidavit, do you

24   see it?

25   A.   I do.

1   Q.   So here you are addressing concerns

2   raised by Ojibways of Onigaming First Nation of

3   Ontario.   Are you aware of this case?

4   A.   Not in great detail. My colleague,

5   as I mentioned prior, was the Assistant Deputy

6   Minister of Regional Operations has taken more of

7   [indiscernible].

8   Q.   At a general level, are you aware

9   this request was for an acute crisis centre in the

10   community?

11   A.   Again, I don't have a level of detail

12   beyond knowing that there was some issues raised and

13   that we did [indiscernible].

14   Q.   But the issues raised, are you aware

15   the general level the capital of the building --

16   A.   The building, yes.

17   Q.   And this is authority of the 2021

18   [indiscernible] CHR's '21 order; is that right?

19   A.   My understanding of the order, and

20   again I don't know the full details of the case, but I

21   think it's -- I'm not sure if it was --

22   Q.   I'm only asking if --

23   A.   I don't know. I know the order in

24   relation to repairing the existing infrastructure for

25   provisional services [indiscernible].

1   Q. No, I don't want to [indiscernible].

2   That's okay. Now, you say in the paragraph here, and

3   I think you just mentioned that in some of your

4   answer, is -- sorry, let me just find myself in the

5   paragraph here. It's about the fourth last line you

6   say:

7   "....a team from ISC including the

8   Assistant Deputy Minister and Regional

9   Directors travelled to Onigaming to meet

10   directly with their leadership."

11   And so you wouldn't have any knowledge of

12   the content of this conversation?

13   A. No, I was not there.

14   Q. And so essentially again is 31 based

15   on what folks are telling you?

16   A. Yes, our Deputy Minister who

17   [indiscernible] and capital infrastructure is within

18   her mandate specific.

19   Q. So you wouldn't be aware that part of

20   the discussions with Onigaming would have involved,

21   you know, mapping square foot by square foot the

22   approved Jordan's Principles services on the

23   [indiscernible]?

24   A. I don't have any details beyond that

25   there was a commitment to meet and discuss.

1   Q.   So if we can look at Volume 1 of the

2   brief, this is at tab F, please. You see on this

3   email, it's an email from Chief Copenace to Dr.

4   Blackstock. Are you familiar with Chief Copenace?

5   A.   Just by name.

6   Q.   Just by name, [indiscernible] First

7   Nation?

8   A.   Yeah, because -- yes.

9   Q.   Fair enough. So you're aware that

10   that was [indiscernible]?

11   A.   Yes, yes.

12   Q.   Now, we sent a copy of this email to

13   your counsel yesterday afternoon. Did you have a

14   chance to review it before coming today?

15   A.   Like briefly.

16   Q.   Briefly.

17   A.   Like literally on the way in.

18   Q.   It's a short email, so feel free to

19   take that out to read it.

20   A.   Yes. Okay.

21   Q.   So do you see in the first paragraph

22   the Chief says while I'm grateful [indiscernible] and

23   Ontario, we still have no commitment from Canada with

24   respect to infrastructure that we applied for

25   [indiscernible] state of emergency suicide and

1   potential wellness. So is that consistent with your

2   understanding that there still hasn't been a solution

3   to this yet?

4   A.   Again, I have no level of knowledge

5   on those discussions [indiscernible].

6   Q.   If that's what Chief Copenace has to

7   say, would you have any reason to disagree with him?

8   A.   I'd have no reason to disagree with

9   -- although there is other -- like I don't know --

10   there's conversations with him that I'm a little bit

11   aware of that aren't necessarily what my understanding

12   is, so I --

13   Q.   Fair enough, [indiscernible].

14   A.   Yes.

15   Q.   Paragraph 37 of your affidavit which

16   is just over the page on page 10, here you're

17   referring to correspondence from Surrounded by Cedar

18   Child and Family Services included in Dr. Blackstock's

19   affidavit. And you say in the second line partway

20   through:

21   "British Columbia region has no

22   record of the temporary housing request.

23   In 2023, the region received three

24   requests from the organization,

25   none of which related to temporary

 1   housing."

 2   Do you see that?

 3   A.   Yes.

 4   Q.   And am I right you didn't check this

 5   correspondence yourself?

 6   A.   I didn't check?

 7   Q.   You didn't look into this region box

 8   to see if there was any outstanding requests from

 9   Surrounded by Cedar?

10   A.   No, that would have been done by the

11   region.

12   Q.   By the regional [indiscernible]. And

13   the regional [indiscernible] would have done that.

14   Okay. I'd like to move onto another related topic, I

15   think, which is the idea of the complaints mechanism

16   for Jordan's Principle. So I'll go about two pages

17   forward in your affidavit to paragraph 47 which is on

18   page 13. So in paragraph 47 do you see in the first

19   line you say:

20   "....the Caring Society's proposal

21   for a complaints mechanism is duplicative

22   and conflicts with the appeals process

23   already established by way of agreement

24   with the parties."

25   Do you see that?

```
 1              A.   Yes.

 2              Q.   Do you agree that the appeals process

 3   can only address complaints that arise after that

 4   people have made?

 5              A.   That's my understanding of what it

 6   would be but --

 7              Q.   So you don't have any --

 8              A.   -- that's my interpretation.

 9              Q.   So you don't have any understanding

10   if it does anything else than --

11              A.   My interpretation in this context is

12   once a decision is made, then that's [indiscernible].

13              Q.   So based on that understanding

14   [indiscernible] requests after they've been made,

15   would you agree with me then that something like that

16   is not dealing with problems that arise before they

17   get [indiscernible]?

18              A.   I think, though, I can't say that

19   because we've used the appeals decision as a lessons

20   learned opportunity to adjust and of course correct,

21   you know, as much as possible.

22              Q.   Fair enough, and it's likely a good

23   practice.  But in terms of if I'm, you know, Family A,

24   and I've got a reimbursement that I've been waiting on

25   which is something that arises after [indiscernible]
```

1   has happened which isn't something that would go

2   through the appeals mechanism we just talked about, or

3   if I'm Family B and I've been waiting for four or five

4   months for a determination, I'm not calling the

5   appeals committee to say where is --

6   A. No, I understand.

7   Q. Would you agree with that?

8   A. Yeah, that would not go to the

9   appeals.

10   Q. So do you agree then that looking at

11   that sentence, that wouldn't be duplicated what the

12   appeals process is doing, having a function to deal

13   with --

14   A. Right. In that context, yes, that's

15   correct. That's how I interpret it.

16   Q. So if can look now -- we're going to

17   jump to a new book we haven't touched yet, and this is

18   the Cerlox, it has on the cover, NCSF exhibits

19   [indiscernible], cross-examination of Valerie Gideon.

20   Do you see that?

21   A. Yes.

22   Q. So if you go to tab H of that brief,

23   you see a document that's titled "Executive Summary

24   [indiscernible] Agreement in Principle on Long Term

25   Reform". Do you see that?

```
 1              A.   Yes.

 2              Q.   Have you seen this document before?

 3              A.   Not in this format but I have seen --

 4              Q.   [Indiscernible]?

 5              A.   Possibly.  The format is

 6  [indiscernible].

 7              Q.   But the idea that there is --

 8              A.   A summary.

 9              Q.   -- [indiscernible].

10              A.   Correct.

11              UNKNOWN SPEAKER:  Excuse me for a second.

12  I don't think [indiscernible] has that document.

13              MR. TAYLOR:  It's the PDF that Mr. Droz

14  sent around yesterday morning I think about 8:50.

15              UNKNOWN SPEAKER:  Okay, yes.

16              BY MR. TAYLOR:

17              Q.   So if we turn to Jordan's Principle

18  which is on -- this one unfortunately doesn't have

19  page numbers, but it's on the third page, you see the

20  heading "Jordan's Principle"?

21              A.   Yes.

22              Q.   So it says Canada will take urgent

23  steps to implement the measures set out in

24  [indiscernible] with Jordan's Principle

25  [indiscernible] tribunal orders [indiscernible].  So
```

1   is that consistent with your awareness that there was

2   a [indiscernible] that was reached as part of the

3   process?

4   A.   As an appendix to [indiscernible],

5   yes.

6   Q.   And do you see in the second bullet

7   under that heading, Develop and Implement Indigenous

8   Services Canada [indiscernible] Quality Assurance

9   Measures Including Training on Various Topics,

10   Complaint Mechanism and an independent office to

11   ensure [indiscernible]. Do you see that?

12   A.   Yes.

13   Q.   Is your position that that this

14   commitment on this front was only to set up the

15   [indiscernible]?

16   A.   I can't speak to the intent when this

17   was done. It was pre my time and I'm not involved

18   with the negotiations and conversations, but I can't

19   speak to what the vision was for that.

20   Q.   Based on our exchange just now about

21   the --

22   A.   [Indiscernible].

23   Q.   Based on what we were talking about,

24   though, about what the appeals process does in terms

25   of [indiscernible], would you agree with me that

1   funding described as [indiscernible] for ensuring

2   compliance would be nothing more than just an appeals

3   function?

4   A.   Again, I'm sorry, can you....

5   Q.   Sure, I'm happy to take another run

6   at it.   So in this commitment which is summarized in

7   the document --

8   A.   Yes.

9   Q.   -- we're talking about having a

10   complaint mechanism and [indiscernible], and I think

11   we've reviewed in some of the questioning that the

12   appeals committee [indiscernible] have a limited role

13   and that it's [indiscernible], considering denials and

14   whether they were proper.   I think you made the point

15   that it can also [indiscernible] lessons learned for

16   future cases.

17   A.   Correct.

18   Q.   Do you remember that exchange?

19   A.   Yes, yes, yes, I do.

20   Q.   And would you agree that if we're

21   thinking about [indiscernible], one of the functions

22   goes beyond those [indiscernible]?

23   A.   Yes.

24   Q.   So again going back to 47, there

25   isn't duplication with the appeal process

1   [indiscernible] with those other functions?

2   A.   Yes, when this was written --

3   Q.   When you affirmed?

4   A.   Affirmed, thank you. When I affirmed

5   it, certainly my thought with regards to complaints

6   was around the appeal type or escalation, et cetera.

7   Q.   And not necessarily the kind of thing

8   the Caring Society --

9   A.   No, [indiscernible].

10   Q.   Now, if we can go over to tab -- so

11   we'll put the Dr. Gideon book aside. I might come

12   back to one or two more [indiscernible], if you can go

13   back to Volume 1, please? So this is Exhibit -- or

14   sorry, tab G in Volume 1 which is a record of the

15   decision of a JPOC meeting that happened on May 9th.

16   Do you see the second bullet in the first

17   kind of -- the first row? The second bullet says,

18   "Based on feedback [indiscernible] First Nations

19   [indiscernible] based on performance of the

20   [indiscernible] Jordan's Principle". Were you aware

21   of that?

22   A.   No, I don't [indiscernible].

23   Q.   And Ms. Wilson reports to you?

24   A.   Yes, she's the Director General.

25   Q.   And do you know if JPOC's attendance

1   was submitted to the parties to the complaint or is it

2   a broader group?

3   A.   I think it's a broader group

4   including other organizations.

5   Q.   Just to see if it's consistent with

6   your understanding, page 7 tab G, [indiscernible].

7   A.   Yes.

8   Q.   Do you recognize that --

9   A.   Yes.

10   Q.   -- this is Ottawa, so I'm assuming

11   they've got a bunch of acronyms --

12   A.   Yes.

13   Q.   Do you recognize the parenthetical

14   acronyms after [indiscernible]?

15   A.   Yes.

16   Q.   And looking at for instance --

17   A.   [Indiscernible], yes.

18   Q.   So just turning back to the second

19   bullet here, it says at the end, it says, well, based

20   on performance standards [indiscernible] Jordan's

21   Principle, we included an invite. So are you aware

22   was the work plan then distributed to the folks who

23   came to this meeting?

24   A.   I don't know. I wasn't there.

25   Q.   So now if we go to page 2, the

1   following page, once again [indiscernible], the

2   meeting was focused on preliminary discussions

3   regarding [indiscernible] complaints [indiscernible]

4   for Jordan's Principle. And would you agree that by

5   May of 2023 the external appeals committee was already

6   in place?

7   A.   Yes.

8   Q.   So would you also agree that the

9   complaints mechanism [indiscernible] discussion in May

10 2023, JPOC [indiscernible] the complaints committee or

11 at least --

12   A.   Well, certainly based on how you

13 characterized it within this context, yes, I would

14 assume it would be something separate from.

15   Q.   A separate entity or, as you said, a

16 more -- a broader [indiscernible] --

17   A.   Than just has already been

18 determined, yes.

19   Q.   And then on page 3, do you see

20 there's a bulleted list that goes through a series of

21 functions for a complaint mechanism? It's sort of the

22 second bullet here says a complaint mechanism must be

23 established [indiscernible], and then it's got sub-

24 bullets, ensures requesters and their families will

25 not fear reprisal [indiscernible].

1   And then I think that power dynamic which

2   you were referencing sort of the level of comfort

3   families might have, clearly outline how and where to

4   submit a complaint, access and navigate,

5   [indiscernible] around the individual submitting the

6   complaint, [indiscernible] complaint or concern, does

7   not result in another administrative burden on the

8   child and family, that's Jordan's Principle, and

9   [indiscernible] to address systemic issues found in

10   [indiscernible] when accessing Jordan's Principle.

11   And so would you agree these are good

12   starting points for building a complaints mechanism?

13   A.   Yes.

14   Q.   Now, we can put this one aside.   I

15   have one more question about JPOC which you may or may

16   not have the answer to.   Turn to paragraph 48 of your

17   affidavit which is just one down from where we were

18   before?

19   A.   Yes.

20   Q.   And so here you're noting two reports

21   that were taken, 48(a), there's the Jordan's Principle

22   Monthly Report, and the Jordan's Principle Monthly

23   Compliance Report.   Are you aware of whether these are

24   primarily shared with the Caring Society through JPOC?

25   A.   I don't if it's primarily through

1   JPOC.

2   Q.   So you're not aware of how the

3   reports are shared with the Caring Society?

4   A.   Other than publishing them and

5   sharing them after the fact, no.

6   Q.   So they're sent, but you're not sure

7   how?

8   A.   I don't know the machinations.

9   Q.   Are you aware the two most recent

10   JPOC meetings have been cancelled due to

11   [indiscernible]?

12   A.   Yes.

13   Q.   And do you know whether the reports

14   have been distributed despite JPOC --

15   A.   I'm not sure.

16   MR. TAYLOR: Ms. Anderson, I'm wondering

17   if we could have the monthly reports noted, the

18   quarterly (a) and quarterly (b) actually numbered

19   2023, so that would be the Jordan's Principle Monthly

20   Report for November, December, January, and then the

21   Jordan's Principle Monthly Compliance Report -- sorry,

22   I said January. January, February, March, and then

23   the Jordan's Principle Monthly Compliance Report for

24   November to March as well, please?

25   MS. ANDERSON: Sorry, could you just

1 | clarify again which months?

2 | MR. TAYLOR: No, for some reason I

3 | thought it was February, [indiscernible]. So I'll

4 | take another run at this. So if we could please have

5 | as a request for information in 48(a), there's the

6 | Jordan's Principle Monthly Report that's noted, if we

7 | could have that in addition for November 2023 up to

8 | March of 2024, assuming that March of 2024 has been

9 | prepared at this point.

10 | And if we could have Jordan's Principle

11 | Monthly Compliance Report for the period covering as

12 | well November 2023 to March 2024, again, assuming the

13 | March report is prepared. I don't know if there's a

14 | delay for March respectfully or how that works, but

15 | just whatever would have been sent monthly in those

16 | months, if we could have that.

17 | MS. ANDERSON: Yes.

18 | MR. TAYLOR: Okay. Thank you.

19 | BY MR. TAYLOR:

20 | Q. I'll move onto another of them now.

21 | So we're going to talk a bit about escalations,

22 | reviews and appeals. Again, I'll just stick with --

23 | actually, now we're going to turn to Dr. Gideon's

24 | affidavit, please. And do take your time to look at

25 | these paragraphs, please.

1   If you look at paragraph 48 which is on

2   page 15, so at paragraph 48 there's some thresholds

3   that are set out for focal point level approval and

4   those are 100,000 for individual requests and then

5   500,000 for other requests. Do you see that?

6   A. Yes, number 48. Yes.

7   Q. Yeah, in the last sentence.

8   A. Right.

9   Q. And then go down to 49, you'll see in

10   that paragraph Dr. Gideon is telling us that

11   [indiscernible], that when an individual or group

12   request exceeds these amounts, the regional focal

13   point escalates the request to the National Review

14   Team. And I'm wondering if you know essentially

15   whether this escalation to the National Review Team is

16   the only avenue, then then I'll give you a little more

17   of a specific question.

18   And I'm wondering in terms of how the

19   authorities are structured from a practical

20   perspective, so if a focal point has a request that's

21   over 100,000 for an individual or 500,000 for a group,

22   can they go to their regional director or their

23   regional director general to get an approval, or do

24   they have to go to this kind of broader team of people

25   on the National Review Team to get that approval?

1   A.   So while in my time here, I've only

2   known it to work in this specific fashion where there

3   is a formal process. I can't speak to where there has

4   been a chance when it would be special circumstances.

5   I think that there is flexibility for a unique and

6   immediate circumstance to address the issue. But off

7   the top of my head, I can't think of a specific

8   example where that would have been applied, but again

9   I can't [indiscernible].

10   Q.   So is it fair to say that your

11   general understanding of how these kind of thresholds

12   worked with past 100,000 or 500,000 threshold, the

13   delegation or the authority has to be exercised

14   collectively? It's the national team that's doing it

15   as opposed to individual executives?

16   A.   Yes, however, I do believe that there

17   is --

18   Q.   Subject to flexibility --

19   A.   There is subject to flexibility along

20   with the course of this process. Certainly in, you

21   know, the urgency of the needs of the best interest of

22   the child situation, [indiscernible], it's critical.

23   So while we lay out processes, I think it would be

24   incumbent upon us to have flexibilities for those

25   situations.

1   Q. And you can't recall any particular

2   examples?

3   A. Not off the top of my head, no, again

4   but....

5   Q. But the typical path [indiscernible]

6   or the non-exceptional path would be for it to proceed

7   with an individual [indiscernible] to the team?

8   A. [Indiscernible].

9   Q. Okay. Now, I asked Dr. Gideon and

10   she suggested I ask you, given the timing of her time

11   at the department, do you know when these particular

12   financial thresholds were introduced?

13   A. There was a series of new thresholds

14   that were introduced I want to say in January of 2024,

15   and I can't recall, and I apologize, if it's specific

16   to products and services or if it's [indiscernible]

17   acquisition purpose. But there was a change

18   [indiscernible] changes with regards to the threshold

19   just in this calendar year.

20   Q. I also remember reading something

21   about January 2024 [indiscernible]. Okay. Do you

22   know kind of apart from the January 2024 change

23   [indiscernible] you arrived at the department, do you

24   know if these thresholds had been communicated out to

25   the community?

1   A.   I'm sorry, I can't speak to that.

2   Q.   You would agree with me it would be

3 important for, for instance, the service coordinator

4 to know that they made a request for 95,000 to a focal

5 point for an individual and if it was for 105,000, it

6 would go to the national institute?

7   A.   I would assume. I can only make

8 assumptions at this point because I don't know the

9 level of communications that happens between the

10 regional office and [indiscernible].

11   Q.   Irrespective of whether --

12   A.   Yeah, yeah.

13   Q.   That would be kind of important

14 information for them to know in terms of the structure

15 of [indiscernible]?

16   A.   I think so, yes.

17   Q.   Do you know if these thresholds were

18 discussed with JPOC?

19   A.   I'm not sure.

20   Q.   And do you know if they were

21 determined on the best interest of the child framework

22 or was it more to do with ISC's financial --

23   A.   I can't speak to the level. I don't

24 recall how we came up with these numbers.

25   Q.   That's fair. I'd like to ask you a

1   few questions about re-reviews.

2   A.   Okay.

3   Q.   Are you aware of what re-reviews are

4   as a technique under the Jordan's Principle?

5   A.   I've only been a part of one myself

6   that I've seen so it's --

7   Q.   You know it's a mechanism essentially

8   outside the appeal process to take a second look at

9   something that's been denied?

10   A.   Yes, yes.

11   Q.   But you didn't read it as something

12   that can happen before or during the appeal stage?

13   A.   I think -- yeah, I think it's a part

14   of [indiscernible].

15   Q.   And I started to get into this

16   yesterday, this is another one where she suggested

17   asking you, but do you know if ISC has any statistics

18   on re-reviews?

19   A.   I'm not sure on that detail. Just

20   because -- when I think about re-reviews happening,

21   [indiscernible] so I'm not sure how or when they would

22   track that.

23   Q.   Would you agree that if there were

24   lessons, particular lessons learned coming out of

25   re-reviews in terms of practices to address or points

1   of confusion and that might be resulting in escalation

2   that that would be an important thing to have

3   broadcast to the focal points?

4   A.   I think we always have opportunities

5   to learn to do better.

6   MR. TAYLOR: Ms. Anderson, I'm wondering

7   -- I'm not asking for the creation of anything new

8   here.   So I guess the first part of this would be are

9   there any statistics or reports that have been

10 tabulated on re-reviews and whether those cover who is

11 asked or how many there have been in what region, et

12 cetera, and if they exist, if we could have a copy of

13 the most recent version of that.

14   MS. ANDERSON: Yes, we'll check.

15   BY MR. TAYLOR:

16   Q.   Now, I'd like to ask you a few

17 questions about the appeals committee.   In this case,

18 we began where I asked Dr. Gideon [indiscernible].

19 Now, do you know, does ISC give the appeals any

20 parameters in terms of certain kinds of categories of

21 requests that can't [indiscernible]?

22   A.   I'm not sure of the full scope of the

23 information that they would have received once they

24 have come in.   I apologize, I didn't study the appeals

25 committee and [indiscernible].

```
 1                    Q.   Fair enough.

 2                    A.   But they are arm's length, so we try

 3   not to [indiscernible] the government.

 4                    Q.   If we can go back to Dr. Gideon's

 5   book -- or it's not her book, it's a book

 6   [indiscernible] of documents, and take a look, please,

 7   at tab F?  This is a document entitled "Jordan's

 8   Principle [indiscernible] Operational Bulletin,

 9   Operational Bulletin 004, Direction on

10   [indiscernible]."  Is this a document you're familiar

11   with?

12                    A.   I know that there are bulletins, but

13   I don't recall seeing this one specifically.

14                    Q.   And who would be the person within

15   SBB [indiscernible] a bulletin [indiscernible]?

16                    A.   It would be the Director General of

17   Jordan's Principle.

18                    Q.   That would be Ms. Wilson-Clarke?

19                    A.   I'm making the assumption, yes.

20                    Q.   So you know whether this is an

21   example of a document that was provided as a guideline

22   [indiscernible]?

23                    A.   Again, [indiscernible].

24                    Q.   [Indiscernible]?

25                    A.   No, I don't know.
```

1   Q. Not knowing, it's your evidence and I

2   only want your evidence. I don't want you to

3   speculate.

4   MR. TAYLOR: So Ms. Anderson, I wonder if

5   we could have two -- I have two requests for

6   information. One would be if this operational

7   bulletin 004 was provided to the expert review

8   committee, and then the second would be -- I assume

9   there are others given that this is 004, if we could

10   please have a copy of all the operational bulletins as

11   well, of course [indiscernible] any bulletins

12   [indiscernible].

13   MS. ANDERSON: Sorry, so are you asking

14   for all operational bulletins from all topics?

15   MR. TAYLOR: Well, whatever is currently

16   in force, assuming that it's effective November

17   2022/23 so if there is an operational bulletin 01, 02,

18   03, if I can receive those. And I don't know how high

19   they would go in terms of how active they've been in

20   the last few months in creating these, but if there's

21   [indiscernible] operational bulletins, have those

22   [indiscernible].

23   MS. ANDERSON: We'll look for those and

24   [indiscernible].

25   BY MR. TAYLOR:

1   Q.   So if we can set this one aside for

2   now, we have -- somewhere in the paper in front of

3   you, there's a loose email, and it should say at the

4   top October 19th, 2023. My questions here, they are

5   illustrative [indiscernible] but please do view it,

6   whatever you need [indiscernible]. I just want, just

7   looking at the top, it's from Ms. Matthews

8   [indiscernible]. So again, that's your Director

9   General for Jordan's Principle?

10   A.   Yes.

11   Q.   And she reports to you?

12   A.   Yes, she does.

13   Q.   So it says [indiscernible] before I

14   ask any questions, [indiscernible] given how these

15   [indiscernible] the oldest email is the first email in

16   the chain, and this is the email that the first

17   paragraph says, "I'm writing to request" -- "I'm

18   writing to request in writing an appeal for this

19   decision." Then if you [indiscernible], do you see

20   that? Then the next one up, so you've got to go back

21   over the page now, and it's from [indiscernible]

22   Jordan's Principle [indiscernible].

23   A.   Yes, regional, Ontario regional

24   [indiscernible].

25   Q.   And then there's an acting senior

1   program officer down at the bottom here. Do you see

2   that email?

3   A. Yes.

4   Q. And do you see in the second

5   paragraph:

6   "As we've already confirmed in

7   writing, we would like to appeal. Please

8   let me know if you would like to submit

9   any additional documents or letters of

10   support or if you would like

11   [indiscernible] the documentation

12   [indiscernible]."

13   Do you see that?

14   A. Yes, I do.

15   Q. Is this kind of email exchange, is

16   this consistent with your understanding of how appeals

17   [indiscernible] can be commenced?

18   A. I'm not sure.

19   Q. So you wouldn't know how --

20   A. I wouldn't know what the trigger is

21   beyond submission in writing, you know, depending on

22   if they do need to supply more information, et cetera.

23   I don't know about the formal triaging into the

24   system.

25   Q. That's fair enough. If you can just

1 pick back up -- just keep it at hand for a moment, the

2 loose email, but I just want to pick back up Dr.

3 Gideon's affidavit and ask you a question about

4 something in there. Go to page 17, please, paragraph

5 58. Now, you see about the middle of the paragraph:

6   "The Appeals Secretariat, agreed upon

7   by the parties, serves as an advocacy

8   office to support families in bringing

9   appeals forward."

10   Can you confirm my understanding, you

11 know, or reject my understanding or tell me you don't

12 have an understanding about -- my understanding at

13 least is the Appeals Secretariat does not work

14 directly with families to build their case to overturn

15 [indiscernible] appeal. Is that consistent with your

16 understanding of the work they do?

17   A. That the committee does not work

18 directly with the families?

19   Q. No, the secretariat. So my

20 understanding is, you know, you initiate an appeal, it

21 goes to the Appeal Secretariat, and then from there it

22 will go to the committee, and at the end of this

23 paragraph it's saying that the Appeal Secretariat is

24 serving as an advocacy office to support families in

25 bringing appeals forward.

1   So I'm wondering [indiscernible] that the

2   team within the secretariat, so the people before the

3   committee, aren't looking at decisions, you know, for

4   grounds to overturn them, helping the family build a

5   case?

6   A.   They work with the [indiscernible].

7   Q.   And my understanding, there

8   [indiscernible] in that documentation?

9   A.   I can't speak to their core functions

10   but I assume that they [indiscernible].

11   Q.   And if there was any evidence that

12   they were analyzing documents or building a case on

13   behalf of the family, would that be found in the

14   documents that are given to the Expert Review

15   Committee?

16   A.   I'm not going to -- I would have to

17   -- I am not part of the formal process for the

18   appeals.

19   Q.   Okay. Now, if we just go back to the

20   loose email up here again, we're going back to that

21   paragraph [indiscernible], you know, let me know if

22   there's any additional documents [indiscernible]

23   documentation provided and then she says

24   [indiscernible] the secretariat. Would you agree with

25   me that the acting senior program officer here isn't

1   suggesting [indiscernible] to help [indiscernible]?

2   A.   No, that she'll just put into the

3   system.

4   Q.   And I asked Dr. Gideon and she

5   suggested that I follow up with you. Am I right to

6   understand that requesters can't make submissions

7   directly to [indiscernible]?

8   A.   That's my understanding.

9   Q.   Now, if we go to the next email, and

10   again, this is going to be back over the page just how

11   it's printed out. This is now an email from this

12   requester now back to the generic account, and if you

13   look under the salutation there:

14   "It is difficult to know what to

15   include or add to the application as I am

16   uncertain why it was denied. I recognize

17   the response stated that it was denied

18   because of the [indiscernible] of the

19   email. The previous approvals provided

20   by Jordan's Principle is to help

21   alleviate financial hardship and assist

22   in providing temporary bridge funding in

23   order for the family to [indiscernible]

24   and work with the existing services or

25   community supports to navigate their

1   current needs."

2   Then the quotation ends. And I'm

3   wondering, in your role, do you see denial letters on

4   Jordan's Principle files?

5   A. Very rarely once it has been

6   escalated to my level.

7   Q. And would this - would the rare

8   [indiscernible], looking at them, is this kind of

9   familiar language to you about --

10   A. Again, I can't speak to it. I have

11   not seen any that have been escalated to this level,

12   so I can't speak to this.

13   Q. And do you see underneath that there

14   is the requester's note in concern to the response and

15   they're saying we put an application [indiscernible]

16   the families of this community and we're just

17   wondering why this family was singled out

18   [indiscernible], how do I explain to them that they

19   are not approved [indiscernible], I would like to know

20   if Jordan's Principle or [indiscernible] both existing

21   services [indiscernible] in this community the family

22   is not accessing. I do not have this information that

23   this family is working closely with them to get as

24   much help as available. Unfortunately

25   [indiscernible].

1   Now, I'm not asking you [indiscernible],

2   so I'm taking it that you aren't familiar with this

3   underlying case?

4   A.   No.

5   Q.   So just on the face of the exchange

6   here, is it fair to say that the requester is

7   communicating here is that there is not a rationale

8   provided kind of answering the questions that she has?

9   A.   It's challenging for me to make -- to

10   comment on that because I'm only seeing a snapshot and

11   I don't have the full email where this quote is taken

12   from.

13   Q.   Okay. Fair enough, fair enough. If

14   we can go back to the tabbed book as opposed to Dr.

15   Gideon's cross-examination, this is the one

16   [indiscernible] on the front.

17   A.   Okay.

18   Q.   So if you go back to tab H, this is

19   the [indiscernible] summary we were looking at

20   earlier.

21   A.   Right.

22   Q.   You see over on [indiscernible] from

23   Jordan's Principle, the one that's got [indiscernible]

24   partly down the page? So at the top, the second

25   bullet says increased specificity and personalization

1   in denial rationales with prompt communication to the

2   requester. Do you see that?

3   A. Yes.

4   Q. And so at least again on the face of

5   the email would you agree with me the requester is

6   communicating some concerns about specificity and

7   personalization in the denial rationale? That's the

8   nature of the concern that they communicated to the

9   acting [indiscernible]?

10   A. There is a few concerns, and again, I

11   only see this much.

12   Q. Yes.

13   A. So is it just to that or is it the

14   full rationale, I'm not sure.

15   Q. No, I'm just asking on the face of

16   the documents. That's a very fair response. Okay. I

17   have some questions about the call centre. So have

18   you called the call centre yourself?

19   A. I was going to call the call centre

20   in all honesty, but then I actually was nervous that I

21   would take time away from folks who actually needed to

22   use it in an urgent matter. So then I was like -- so

23   I was going to call at 3:00 a.m. to test it and then I

24   thought there's going to be somebody who is going to

25   need it and I'm going to end up -- that was my own

1   nervousness about stopping --

2   Q.   And I think that's --

3   A.   -- somebody.

4   Q.   No, that's helpful context.

5   A.   Yes.

6   Q.   I just wanted to know if you had

7   personal knowledge of how [indiscernible]. So am I

8   right in understanding that, as of now, the first

9   prompt at the start of call-in tree after you have

10   selected your language [indiscernible]?

11   A.   I can't speak to what it says beyond

12   what I've been told that it says.

13   Q.   But have you been told that there's

14   been a change to the call tree?

15   A.   Yes, to make it more streamlined and

16   accessible to people who have identified as urgent

17   matters.

18   Q.   And are you aware that the Caring

19   Society had been calling for that change since January

20   2023?

21   A.   I know that I was made aware of it

22   certainly when I spoke with Ms. Blackstock

23   [indiscernible].

24   Q.   Do you know why it took almost 14

25   months for that change?

1   A.   I can't speak to that.

2   THE REGISTRAR: Excuse me. Please close

3   the phone. I don't know whose phone is ringing.

4   Thank you. No, it's okay. It's better this way.

5   Thank you.

6   BY MR. TAYLOR:

7   Q.   So I'll take you to it if it would be

8   helpful, but just as a general point, I understand

9   from reviewing Dr. Gideon's affidavit one of the

10   things the call centre does is intake?

11   A.   Yes.

12   Q.   And from that point, they may be

13   handed off to a focal point queue and that's where

14   there would be a determination made. Is there a

15   reason there can't be a focal point available as part

16   of the call centre team for new requests on the spot?

17   A.   Well, during work hours we send it to

18   the regions because that could expedite access to

19   services more quickly because that is on the ground.

20   Q.   And then versus the National Call

21   Centre which is --

22   A.   It tends to more [indiscernible].

23   Q.   And are there afterhours contacts in

24   the regions [indiscernible]?

25   A.   There is a designated determination

1 officer [indiscernible].

2   Q. Now, at paragraph 50 of your

3 affidavit, in the third sentence you're saying the

4 call back features -- you're discussing the callback

5 feature of the call centre you're saying the callback

6 feature is now an automated process and the caller

7 must meet the callback request requirements in order

8 to have call placed into a callback queue. Am I right

9 in understanding that at a technical level there is

10 different callback queues for urgent requests and non-

11 urgent requests?

12   A. We're creating one like underway

13 right now, but, yes, there is the press "1" for an

14 urgent request.

15   Q. And if you end up as opposed to

16 getting a live agent, you would press "1" or press

17 "2", do you end up in different queues for a callback

18 depending on what number you press?

19   A. Obstensibly that's how it's supposed

20 to work. If the information [indiscernible] they are

21 placed in an urgent queue or [indiscernible].

22   Q. For the callback. Now, if you press

23 "2" and then you leave your information, it would be

24 less of a callback; is that right or is that fair to

25 say?

1   A.   That's fair to say.

2   Q.   And is it your understanding that

3   once a caller leaves their number in the callback

4   automated process, they can't call again to that

5   number?

6   A.   I'm not sure about how that works,

7   the technology on that.

8   Q.   Do you know if there's any

9   functionality in the callback function that allows for

10   an identification of a shift in urgency? So if it has

11   been, say, some days since the call was placed and

12   then things become urgent in the meantime for the

13   caller to escalate that?

14   A.   I'm not sure if it exists. That's

15   certainly something that we need to look into going

16   forward as part of our changes to the Call Centre if

17   it doesn't already exist.

18   Q.   Now, in paragraph 52 of your

19   affidavit just a few down, you're saying as of October

20   5th, 2023, other changes were made, and then you talk

21   at (b) about the Quality Assurance Team?

22   A.   Yes.

23   Q.   So one of the things that this -- I

24   see here under (i), one of the things this team does

25   is they conduct call audits; is that right?

1   A.   They are supposed to be doing that,

2   yes, [indiscernible].

3   Q.   And have the audits been shared with

4   JPOC?

5   A.   I'm not sure.

6   Q.   And do you know if any changes have

7   been made as a result of such call audits?

8   A.   Again, I am not sure.

9   Q.   And who would be the person on your

10   team who would know about that?

11   A.   I would always defer to the Director

12   General of Jordan's Principle.

13   Q.   And --

14   A.   She has a better handle about the

15   operation.

16   Q.   Is it fair to say that the Director

17   General is the most knowledge person within Jordan's

18   Principle operation?

19   A.   Not necessarily, no. I think that

20   the regional executives as well have a higher level of

21   understanding of the day-to-day operations or sort of

22   the larger branch authority. I think it just depends

23   on the nature of the question.

24   Q.   Within headquarters would you say it

25   would be fair to say that Ms. Wilson-Clark would have

1   the best --

2   A.   Again, not necessarily because

3   there's -- the nature in which my branch functions is

4   that the Director General has varying oversights

5   including operations but there are leads responsible

6   as well as there is the Director General of Strategic

7   Policy who also has a strong knowledge of Jordan's

8   Principle from the negotiation standpoint and how it

9   goes through JPOC et cetera.

10   Q.   And would Ms. Wilson-Clarke would be

11   kind of a level closer to those leads than you are, or

12   do they report to you?

13   A.   One reports to me and one reports to

14   her.

15   Q.   Now at paragraph 54 over the page,

16   you say here that ISC is planning to consolidate

17   regional focal points to the Call Centre's toll-free

18   number; is that right?

19   A.   Yes, with the focal point ones.

20   Q.   And does that mean requesters won't

21   be able to reach out to their local focal points by

22   phone anymore?

23   A.   Well, they still can, but it's going

24   to be calling into a single 1-800 number. That's my

25   understanding what we're seeking to do which will

1 alleviate some of the stop-and-go, stop-and-go. We

2 can triage and have a live agent and simple transfers,

3 as opposed to if you press "1", you sit in a queue or

4 possibly get a voicemail. If there's a live agent

5 available or a live focal point, we can do a one

6 transfer.

7   Q. But you would have to be -- you would

8 have to have I guess a system that got you to a live

9 agent as opposed to [indiscernible]?

10   A. Well, those are the things we want to

11 make [indiscernible].

12   Q. So would the design be that you would

13 end up on hold until you get a live agent?

14   A. Again, this is what we're exploring.

15 No one ever wants to be on hold. Having just worked

16 through the 988 system that Canada launched, no one

17 ever wants to be on hold if it's an urgent issue

18 essentially.

19   Q. Well, would you agree that it will

20 possibly be less direct than if dealing with the

21 person and calling a certain number to have to access

22 that --

23   A. No, the idea is that it's going to be

24 more direct, that you'll have a faster access to a

25 person. I think when you dial a number, someone will

1   pick up.

2   Q.   Sorry, maybe I'll just make my

3   question a bit more clear. So in the case where let's

4   say there is a follow-up that's required?

5   A.   Okay.

6   Q.   The requester [indiscernible] I have

7   a question about the kind of document, and if you had

8   some level that engages a focal point, you are no

9   longer to get that focal point, you then now go to the

10   1-800 now and say, hey, don't talk to [indiscernible].

11   Is that consistent with what I'm understanding you're

12   meaning [indiscernible]? I think you're talking

13   about, you know, the person calling the first time.

14   A.   Right, yes.

15   Q.   Getting assistance. My question is

16   about the person who is in the process of trying to

17   get back to person that they talked to.

18   A.   Okay. No, thank you, that's a good

19   point of clarification. Certainly what we'll need to

20   do, sort of work through our partners, and you had

21   mentioned JPOC and operations and the regions, is how

22   do we address those types of things. As I said, this

23   is still underway, under development.

24   Ideally, by the end of this calendar year

25   it needs to be up and live in my personal view. So

1   these are the issues that we're going to go through

2   with our partners and certainly our technology folks

3   because we do want to ensure streamless access to

4   individuals especially those without a case in the

5   system.

6   Q.   What would be the factor that would

7   make it take until the end of the year to reach that?

8   A.   This is just my limited understanding

9   of how IT systems work. You asked me about it. It's

10   far more complex when it's using a phone line, so.

11   Q.   Right. And who would have a more

12   direct understanding of that?

13   A.   We are working through our IT units

14   within our CFRDO branch, our chief finances and

15   results [indiscernible].

16   Q.   The chief financial results

17   [indiscernible], it's that acronym?

18   A.   Big acronyms, yes.

19   Q.   Now, when that change happens, do you

20   agree that it's going to be important to have a plan

21   to communicate that change to families and requesters?

22   A.   Very much. Yes, very much, and all

23   partners, too.

24   Q.   And is this part of your projected

25   plan for [indiscernible] the backlogs in the region as

1   well?

2   A.   One component of it ideally.

3   Q.   How are you doing?

4   A.   I'm good. I'm getting a little

5   hungry, but I'm good.

6   MR. TAYLOR: Madam Chair, I'm about to

7   move to a new topic. I can keep going for a bit or we

8   could break for lunch. I'm in your hands. I would

9   say I'm about 75 percent of the way through. So I

10   wouldn't be able to finish before lunch. So would you

11   like me to go for a bit now and less time after lunch,

12   or have lunch now and have more after lunch?

13   THE CHAIR: I think we'll have lunch now.

14   So for an hour, is that sufficient for everyone? So

15   back at 1:15. Thank you.

16   --- LUNCHEON RECESS

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156

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004 136:9 137:7,9
01 137:17
02 137:17
03 137:18

1

1 15:23 16:1 25:14,20 30:3 41:9 43:14 47:23 52:13 55:14 80:2 90:25 116:1 124:13,14 148:13,16 152:3
1,593,787 31:9
1-800 151:24 153:10
1.1.1 51:8
1.6 31:11,15 32:17,19 33:3
10 13:23,24 47:25 49:14 53:20 54:10 117:16
100,000 130:4 130:21 131:12
100,520 31:8
105,000 133:5

106 102:25 103:4,12
107 103:13
109 103:19
10:45 85:13
11 7:8 8:22 27:9 34:14 38:10 50:24
111 103:4
12 34:6 39:24 44:18,24 45:5 46:5,17 52:14 70:4
13 42:17,20,21 46:10 48:14 77:15 118:18
1340/7008 1:1
14 49:14 78:14 146:24
14,765 26:21
140,332 27:4,10
15 40:5 88:23 130:2
169 90:4,19,22
17 140:4
171 90:4,19
18 26:20,23 27:16
180,000 32:19
186 45:4
18th 110:6
19 26:20,23 27:16 90:3
19th 138:4

1:15 155:15
1st 90:6,8

2

2 1:1 4:6 5:12 18:3,20 20:19 20:19 21:5 24:8,14 38:21 41:8,13 42:1 47:18,24 49:5 49:13 54:10 55:13 56:3,6 74:1 125:25 148:17,23
2.7 56:16
2.8 74:12
20 11:12 57:18 79:19 96:16 97:3,25
2010s 80:12
2016 83:20 86:7
2016's 84:3
2017 42:24 43:3,20 45:17
2018/19 27:12
2020 9:7
2021 9:7 114:17
2022-23 38:17
2022/23 137:17
2023 8:17 80:5 90:25 94:13,13 101:12,13 103:12,14 117:23 126:5

126:10 128:19 129:7,12 138:4 146:20 149:20
2023-24 38:18 40:3
2024 1:1 4:6 16:14 28:15 30:3 88:10 101:22 129:8,8 129:12 132:14 132:21,22 156:12
204 107:24
21 114:18
21,918 38:20
22 98:17
22nd 156:12
23 31:2,4 32:8 90:5
233 56:15 57:7
24 31:3,4 32:8 48:23 49:10 50:4 51:2,16 54:4,14,18,21 57:23
25 19:3
26 38:22 39:9 111:24 112:1
27 16:14 28:14 30:3 103:2 111:24
27th 20:1,11 25:14 30:14 41:11

28 106:16,21,22
111:24
28th 110:13
29 39:1,17 97:3
111:25 112:1
29086 156:16
2a 30:4

3

3 13:23 17:1
18:14 21:6
24:20 26:6
28:13 30:1,25
31:12 42:18
47:24 50:11
74:1 126:19
3.1 49:7
30 25:15,17
40:7
31 113:18,23
115:14
311.3 27:15
34,000 28:22
31:13
34,116 28:18
34,877 38:20
35,000 31:18
33:9
37 117:15
38a 106:20
3:00 145:23
3a 74:1
3b 74:1
3rd 1:1 4:5

4

4 25:1,23 41:15
47:24 51:7,9
81:16
40 96:11
41 38:25 39:16
43 25:20 50:15
45 14:6,10
47 118:17,18
123:24
48 34:7,9 46:3
46:18,20 51:17
52:20 70:5,5,6
127:16,21
129:5 130:1,2
130:6
49 130:9
4:56 19:23

5

5 24:4 49:7
5,000 19:3,5
50 148:2
500,000 130:5
130:21 131:12
52 149:18
54 90:20,21,22
151:15
55 14:3,9
55/45 15:7
17:20 18:5,12
18:20
58 140:5
5th 149:20

6

6 3:5 24:4 26:7
51:9
62 40:4
65 56:15
109:23 110:11
66 110:5,14
67 44:12 57:7
69 45:2 73:5
6th 43:20

7

7 3:6 53:7
125:6
70 40:6 113:10
70,000 33:9
72 74:23
75 75:17 155:9
75,000 31:13,18
75,397 28:18
75,500 28:23

8

8 53:12
84 101:8
85 106:23
87 101:9
88 101:9
8:50 121:14

9

9 51:10 53:16
113:23
94 100:25
95,000 133:4
988 152:16

9th 124:15

a

a.m. 145:23
abilities 104:23
ability 35:2
63:6 66:14
98:14 156:9
able 11:18,25
15:10 63:19
64:13 69:14
79:11 81:14
87:8 151:21
155:10
above 1:1
12:11 45:12
75:18
absolutely 6:4
6:19
abstract 33:21
61:12
abstracts 19:19
abuse 50:23
53:17
accelerate
78:25
accept 112:25
access 39:22
98:11 100:3
107:15 108:1
108:17 127:4
147:18 152:21
152:24 154:3
accessible
109:24 146:16

accessing 91:5 127:10 143:22
account 17:7 17:10 142:12
accounted 41:1
achieve 60:24
acquisition 132:17
acronym 154:17
acronyms 125:11,14 154:18
act 50:24 53:13 53:21
acting 138:25 141:25 145:9
actions 96:24
active 54:18 137:19
activities 60:8
actual 9:19 66:12 96:25
actually 9:15 41:14 42:16 69:10 72:2 78:25 100:3 103:3 107:20 113:7 128:18 129:23 145:20 145:21
acute 114:9
adaptations 112:24

add 142:15
added 69:16
addition 89:8 129:7
additional 35:15,22 98:15 100:7 101:1 139:9 141:22
address 5:25 71:16 83:20 107:20 119:3 127:9 131:6 134:25 153:22
addressed 89:11
addressing 93:7 114:1
adf 93:24
adjudicate 46:5
adjust 119:20
administrative 89:2,9 127:7
admittedly 19:23
advice 56:19
advise 95:7
advocacy 140:7 140:24
affect 37:14 75:24
affected 34:18
affecting 89:17
affiant 5:13
affidavit 6:10 6:15 12:16

13:20 14:12 15:16 17:25 18:11 26:3 31:2 34:12 42:17 46:10 61:16 77:15 88:9,13,18,20 88:23 90:3,5,5 90:20 93:1 95:22 96:15,22 97:4,9 98:17 99:15 100:17 100:24 101:1,2 102:17 104:21 106:15 108:23 109:23 111:17 111:22 113:8 113:19,23 117:15,19 118:17 127:17 129:24 140:3 147:9 148:3 149:19
affidavits 98:19
affirm 5:15
affirmed 3:4 5:20 124:3,4,4
afterhours 147:23
afternoon 116:13
agency 9:3
agent 148:16 152:2,4,9,13

aggregate 32:6 32:10
ago 80:13
agree 9:22 10:1 12:22 18:7 19:7 21:18 22:3,12,17 24:9,13,17,24 25:4 26:23 28:11 31:12 33:9,24 36:3 37:14 46:14 53:24 54:17,24 56:18 58:3,17 59:5,8,15,20,22 60:9,11,16 61:4 62:18,23 63:8 64:1 68:18 69:5,6 69:23 71:15 73:14 74:6 76:1 78:6 82:23 86:17 87:1 89:8 96:4 96:6 98:9,13 99:19 102:10 102:15,21 103:10,15 105:22 106:9 107:18 109:2 109:11,13 119:2,15 120:7 120:10 122:25 123:20 126:4,8 127:11 133:2

134:23 141:24
145:5 152:19
154:20
agreed 140:6
agreement
118:23 120:24
aiding 91:24
akin 91:22
93:25
alberta 19:17
47:23 54:9
alleviate 64:11
79:13 142:21
152:1
alleviating
49:20
allow 30:13
74:20 75:12
79:15
allows 149:9
alternate 18:21
ambition 62:15
ambitious
60:13 61:6
62:16
amnesty 1:1
4:11
amount 35:12
37:25 59:12
97:1 98:21,25
99:2,5
amounts 106:6
130:12
analogue 31:11

analogy 21:16
analyzing
141:12
anderson 1:13
3:5 4:20,21 6:4
6:9,20,21 7:19
20:7,16 29:16
29:24 30:16
103:21 106:17
106:20,21
111:15 128:16
128:25 129:17
135:6,14 137:4
137:13,23
annotations 4:3
answer 45:9
57:18 72:1
74:24 97:23
115:4 127:16
answering
144:8
answers 44:16
62:22
anybody 58:20
100:10
anymore
151:22
apart 132:22
apologies 55:23
apologize 36:25
73:22 83:11,14
132:15 135:24
apparent 51:22
appeal 13:3,4
13:14 25:7,15

110:19,25
123:25 124:6
134:8,12
138:18 139:7
140:15,20,21
140:23
appeals 108:13
118:22 119:2
119:19 120:2,5
120:9,12
122:24 123:2
123:12 126:5
129:22 135:17
135:19,24
139:16 140:6,9
140:13,25
141:18
appear 28:3
appearances
4:12
appears 22:1,7
41:21 49:8
51:20
appendix 122:4
apples 31:13,13
applicable
39:20
application
142:15 143:15
applications
57:19
applied 116:24
131:8
applies 42:2
55:25 56:1

69:17 74:18
apply 50:17
72:21 76:16
applying 48:10
appointed 9:8
appreciate
85:12 100:4,10
appreciated
20:23
approach
56:20 76:18
89:17
approaches
87:19
appropriate
52:3,6 73:12
approval 13:15
33:5 45:11
99:22 101:11
101:25 102:4,7
102:11,20
111:12 112:23
130:3,23,25
approvals
33:11,22
109:14 111:25
142:19
approve 10:24
11:18 33:3
approved
26:14,24 27:11
31:9,16,23
32:7,16 101:16
103:20 105:24
107:8,20

108:22 113:11 115:22 143:19
approves 11:16
approving 32:18 34:2,5
approximate 14:19,20,21
approximately 14:3,6 81:21 96:11
april 1:1 4:5 8:17,21 31:6 103:14 156:12
area 66:22 77:4 79:10
areas 77:13 89:25
arises 119:25
arm's 136:2
arranged 101:16
arrangements 109:15
arrived 11:11 132:23
aside 55:13 59:11 124:11 127:14 138:1
asked 6:1,7 8:13 29:7 32:7 32:11 37:8 41:23 84:2 132:9 135:11 135:18 142:4 154:9

aski 1:1,21 4:11 5:8,10
asking 24:12 29:6 30:21 41:24 46:16 62:6 71:12 72:22 74:20 83:15 84:9 85:8 90:21 95:17 105:7 107:21 114:22 134:17 135:7 137:13 144:1 145:15
aspirations 87:24
assembly 1:1,7 4:8,24
assessed 52:11
assessing 62:24 64:8 81:9
assessment 49:7,21,21 50:2,7,21 80:4 81:8,20
assist 50:21 81:9 82:25 142:21
assistance 87:7 91:7 92:25 153:15
assistant 6:24 8:16 114:5 115:8

assisted 89:3 101:10 103:3
associated 17:15 18:17 28:2 41:21
assume 10:14 12:5 23:5 48:11 64:15 79:14 126:14 133:7 137:8 141:10
assuming 23:4 125:10 129:8 129:12 137:16
assumption 27:18 42:5,14 64:19 136:19
assumptions 133:8
assurance 122:8 149:21
attached 95:3
attainment 75:25
attempt 63:9
attendance 124:25
attended 90:8
attention 89:3 94:10 95:11
attorney 1:1 4:9,21
aubin 3:4 5:20 5:23 6:22 8:1 85:15 88:6

audio 4:1 156:5 156:10
audits 149:25 150:3,7
authorities 12:10 107:16 130:19
authority 77:4 109:21 113:16 114:17 131:13 150:22
automated 148:6 149:4
automatic 23:16
available 19:17 19:20 81:18 143:24 147:15 152:5
avenue 64:17 67:18 100:12 130:16
average 32:21
avoid 17:19 18:16 108:15 111:20
awaiting 14:1 24:16
aware 6:17 12:2,7,12 15:19,21,22 20:4 25:9 34:3 34:5 43:25 44:4,21,25 45:16,19,20

47:25 48:20
80:6 81:3 83:6
83:10,12,19,19
83:21,24 84:10
85:3,23 86:4
87:12,16 94:2
94:5,12,22
95:6,9 96:10
96:13 97:6
105:19 110:3
114:3,8,14
115:19 116:9
117:11 124:20
125:21 127:23
128:2,9 134:3
146:18,21
awareness
81:11,12 122:1

b

b 1:1 3:10
16:13 29:20
120:3 128:18
149:21
b.c. 47:23 49:3
babies 65:12
bachelor's 7:17
back 11:3,22
14:15 18:11
19:22 20:12
21:2,15 24:5
25:23 27:21
30:13 35:16
38:14 41:8
43:13 46:9
55:14 59:7,24

68:14,14 77:14
80:15 85:12
92:10 94:6
104:21 105:21
109:22 123:24
124:12,13
125:18 136:4
138:20 140:1,2
141:19,20
142:10,12
144:14,18
148:4 153:17
155:15
background
7:14 8:15
backlog 10:2,9
11:1 12:23
13:3,7,16
14:10 16:9,13
18:4 20:8
21:18,21 24:7
25:15,19 27:23
28:2,14 30:2
41:5,16,20
42:3 64:12
backlogged
14:3
backlogs 9:17
9:21 10:1
13:25 25:7
33:18 154:25
backstop 67:12
bailiwick 48:5
based 15:6
17:25 19:19

20:11 21:24
25:20 27:13
28:20 42:4,24
46:4,11 52:15
52:19 58:7
64:7 65:25
68:4 69:7,11
70:10 75:4
100:17 101:17
101:20 115:14
119:13 122:20
122:23 124:18
124:19 125:19
126:12
basis 39:3 94:9
105:12
baskatawang
1:17 5:1,2
basket 17:22
36:19 63:22,25
batch 94:25
batches 94:3,21
bear 26:1
began 135:18
beginning 8:21
38:15
begins 40:13
behalf 5:7
141:13
believe 9:4
49:17 53:4
84:4,5 88:11
88:18 131:16
belittle 93:11

benchmark
47:13
benchmarking
47:16
benefit 66:8
bernie 4:19
beryl 1:25
156:3,18
best 73:8 82:19
131:21 133:21
151:1 156:9
better 40:15
47:15 64:14
71:16 75:13
135:5 147:4
150:14
beyond 11:23
71:17 114:12
115:24 123:22
139:21 146:11
big 20:14 49:5
154:18
bigger 28:9
47:5,6 76:7,7,8
77:12 79:8,13
92:25 93:7
bit 8:25 18:6
26:1 28:22
38:11 77:16
78:23 117:10
129:21 153:3
155:7,11
blackstock
88:16 90:24
91:13 99:20

116:4 146:22
blackstock's
88:9 90:4,20
98:19 99:14
106:15 117:18
blended 30:7
board 56:19
61:25 76:3
body 111:6
book 50:13
120:17 124:11
136:5,5,5
144:14
books 33:3
bottom 13:24
28:16 29:13
31:3,3,14
50:15 51:9,10
56:15 57:8
59:23 73:5
82:2 88:17
97:21 139:1
bound 72:24
box 118:7
branch 6:25
7:12 9:13
43:24 150:22
151:3 154:14
break 5:17 8:11
29:21 79:21
83:4 85:8,8,19
155:8
breakdown
14:14 29:22

brian 1:11 5:5
bridge 142:22
brief 15:23
41:9 43:14
47:19 49:19
85:14 116:2
120:22
briefly 9:5
16:21 26:10
66:25 99:16
116:15,16
bring 79:11
93:5
bringing 89:9
92:4 140:8,25
brings 89:10
95:11
british 117:21
broadcast
135:3
broader 67:24
69:7 70:18,19
71:1,3,22 72:2
76:5,17 77:5
89:24 125:2,3
126:16 130:24
broadly 76:24
broke 85:21
brought 77:19
89:1
brunswick's
53:17
bucket 27:11
105:8

buckland 43:20
43:21,21 44:9
86:8
buckland's
44:21
build 140:14
141:4
building 87:5
114:15,16
127:12 141:12
built 30:20
bullet 27:22
41:16 57:13
60:7 69:11
73:10 122:6
124:16,17
125:19 126:22
144:25
bulleted 52:5
126:20
bulletin 136:8
136:9,15 137:7
137:17
bulletins
136:12 137:10
137:11,14,21
bullets 126:24
bunch 26:14
65:11 89:23
107:4 109:19
125:11
burden 65:5
127:7
business 19:24
57:20 68:4

73:11

c

c 1:1 43:13
cadence 94:18
calculate 39:3
calculated
14:11 15:2,13
39:8
calculation
30:15 39:2,3
39:10
calendar 51:4
132:19 153:24
call 4:12 35:16
48:22 81:25
145:17,18,19
145:19,23
146:9,14
147:10,16,20
148:4,5,8
149:4,11,16,25
150:7 151:17
callback 148:4
148:5,7,8,10,17
148:22,24
149:3,9
called 25:24
103:18 145:18
caller 148:6
149:3,13
calling 120:4
146:19 151:24
152:21 153:13
calls 57:18,23

camera 6:14
cameras 112:10
canada 1:1,1,1
1:1 4:8,10,16
4:21 7:12 9:3
44:8 45:22
46:15,16 47:2
57:6,11 70:15
74:19 79:1
80:5 83:7 87:2
87:15 88:25
100:12 116:23
121:22 122:8
152:16 156:17
canada's 44:22
78:22 89:5,11
89:16
canadian 1:1,1
4:9 5:4 7:15
cancelled
128:10
candice 3:4
5:20,23
capacity 60:16
62:21,24 64:8
65:20,23 68:17
68:19 69:15
71:2,2 73:1
86:22 87:5
capicciotti 1:25
156:3,18
capital 107:13
108:17 114:15
115:17

captured
106:13
care 49:19
52:15
caring 1:1,4 4:7
4:16 6:3,5,13
8:5 22:11,13
88:7,25 89:10
89:24 91:4,6
91:17,18,23
93:15 94:2,7,8
95:11 96:12,19
98:10,13 100:1
100:14 101:10
101:12,14
103:2,11,18
107:21 108:16
118:20 124:8
127:24 128:3
146:18
case 10:3 17:13
22:8,18 23:12
27:7,8 28:1
34:6,10,10
35:19 37:21
40:19 41:20
45:12 66:17,17
67:20,20 68:4
89:18 94:9,9
95:11,13,16
99:24,25 100:8
101:8 103:5,11
109:22,23,25
110:20 111:7,8
111:12 113:1

113:15 114:3
114:20 135:17
140:14 141:5
141:12 144:3
153:3 154:4
cases 9:19
11:12,15 21:7
21:9,19 22:4
22:14,14 23:22
24:16 25:16
27:11,24 28:1
28:3,25 29:14
29:18,20 33:23
34:6,7 36:9,11
36:16,18,19
37:4,9,12,13,15
37:18,22,23,24
41:18,19 44:23
45:7 46:5
49:10 54:8
58:4 59:11
68:22,25 70:5
70:6,7 78:9
88:8 92:5
93:11 94:4,14
94:15,21 95:22
95:24 96:11,15
96:25 97:4,13
98:3,18 123:16
caseworker
50:20
catalysts 72:12
categories
135:20

category 22:3
22:19
cautioned 83:7
84:20
caveat 42:2
caveats 33:15
cease 85:23
cedar 117:17
118:9
central 97:15
centre 114:9
145:17,18,19
147:10,16,21
148:5 149:16
centre's 151:17
centred 56:7
centres 65:10
cerlox 15:24
88:11 120:18
certain 63:23
66:5 105:19
135:20 152:21
certainly 32:25
44:5 60:23
63:17 77:12
78:8,10 84:5
87:5,20 90:16
100:1,9 105:11
106:12 124:5
126:12 131:20
146:22 149:15
153:19 154:2
certificate
156:1

certify 156:3
cetera 65:10
  78:11 95:25
  106:6 124:6
  135:12 139:22
  151:9
cfrdo 154:14
chain 97:21
  138:16
chair 1:1 5:7,11
  5:24 6:7,19
  7:21,24 8:10
  79:18,22 83:5
  83:14,18,24
  84:9,13,15,20
  84:24 85:5,7
  85:15,18,21
  86:13,16 87:12
  88:3 155:6,13
challenge 58:6
challenged
  58:16 70:12
  73:2
challenges
  58:22 109:19
challenging
  60:14 68:16
  72:15 74:6
  144:9
chance 85:18
  112:13 116:14
  131:4
change 6:17
  38:2 47:2,5,7
  63:24 72:8

79:4,7 104:14
132:17,22
146:14,19,25
154:19,21
changes 25:11
  56:23 57:5
  69:25 93:1,2
  132:18 149:16
  149:20 150:6
characteristics
  36:4 60:3,6
  62:13
characterizati...
  102:16,22
  104:8 108:19
characterized
  126:13
chart 95:22
charts 95:3
check 30:16
  73:18 118:4,6
  135:14
checked 15:19
chief 3:5 116:3
  116:4,22 117:6
  154:14,16
chiefs 1:1,18
  4:10 5:1
child 1:1,3 4:7
  4:16 42:25
  46:12,25 47:8
  47:16,20 48:1
  48:2,8,14,21
  49:4,8,18
  50:24 51:16,18

51:19,22 52:4
52:5,12,17
53:13,17,21
54:2,18 67:11
80:3 81:19
82:19 117:18
127:8 131:22
133:21
child's 104:23
childcare 7:18
children 48:19
  53:8 81:10
  82:4,18 86:2
  89:4 100:11
chose 67:13,14
chr's 114:18
circumstance
  131:6
circumstances
  131:4
cite 38:11
claim 108:16
claims 43:1
  46:13 47:10
clarification
  32:14 153:19
clarify 8:10
  10:15 23:6
  24:11 71:12
  74:5 129:1
clarity 57:25
clark 150:25
clarke 1:3 4:17
  7:22 136:18
  151:10

clean 108:7,17
clear 22:21,22
  57:15 58:5,23
  59:17 153:3
clearly 58:19
  127:3
clerical 5:25
client 56:6
  57:17
clients 69:12
  70:21
clock 40:11,12
close 19:24,24
  65:17 147:2
closed 65:18,23
closely 143:23
closer 151:11
closing 65:14
colleague 93:24
  114:4
collectively
  131:14
columbia
  117:21
column 26:13
come 17:25
  18:21 29:5
  33:18 35:24
  70:2 80:8
  87:25 88:1
  91:6 93:13
  94:17 95:4
  100:5 124:11
  135:24

comes 10:3
76:3 97:22
101:8
comfort 35:25
100:10 127:2
comfortable
5:19 12:18
coming 5:16
16:20 32:22
45:12 78:5,6
101:7 116:14
134:24
commenced
139:17
commencing
4:4
comment 34:24
144:10
commission 1:1
1:1,10 4:9 5:4
commitment
91:15,21
115:25 116:23
122:14 123:6
committee
120:5 123:12
126:5,10
135:17,25
137:8 140:17
140:22 141:3
141:15
common 36:4
37:9,11 89:18
89:19

communicate
154:21
communicated
11:22 132:24
145:8
communicating
144:7 145:6
communication
104:23 145:1
communicati...
133:9
communities
65:9 70:2
72:16,21,23,23
73:2 79:12
87:14,24
community
52:14,15 64:7
64:21,24 65:24
65:25 67:13
75:13 78:7,11
80:21 86:19
87:10 91:3
100:13 114:10
132:25 142:25
143:16,21
compared
60:15
comparing
31:13
complainant
1:2,6 4:13,24
complainants
1:1

complaint
106:9 108:21
122:10 123:10
125:1 126:21
126:22 127:4,6
127:6
complaints
118:15,21
119:3 124:5
126:3,9,10
127:12
complete 10:23
20:20 49:7
50:20 81:21
completed
10:11 17:24
completely
40:19 87:1
completeness
52:25
completion
7:18
complex
154:10
complexity
14:15 35:12
77:24 78:5
compliance
34:17 35:6
38:25 58:16
92:1 106:2
123:2 127:23
128:21,23
129:11

compliant
91:20
complying
82:25
component
32:15 155:2
comprehensive
64:6 71:10
concept 59:11
concepts 70:24
conceptual
9:18 11:8
13:19 74:19
concern 102:10
102:16,22
104:9 105:22
105:23,24
127:6 143:14
145:8
concerned
22:12,13
concerns 55:9
62:23 90:16
93:16 99:20
107:2 114:1
145:6,10
conduct 78:24
149:25
conducted 82:3
conducting
81:19
confidential
111:23
confidentiality
6:12 100:19,23

103:7 113:21
confirm 8:15
16:4 27:6
29:24 104:8
111:8 140:10
confirmation
29:17
confirmed 37:8
139:6
conflicts
118:22
confusion
135:1
consider 13:5
36:10 105:13
consideration
12:24 70:17
93:3
considerations
25:24 27:22
28:21 41:15
considered
36:9,12 64:8
71:3
considering
25:15 76:13
123:13
consistent
76:15,17 77:1
81:12 82:8
113:1,4 117:1
122:1 125:5
139:16 140:15
153:11

consistently
98:20
consolidate
151:16
consult 71:13
72:9,9
consultation
69:12,18 70:9
70:19,20 71:9
71:11,21 72:2
72:5,6,18
75:10,14
consultations
69:11,24 71:2
75:4
contact 91:3,16
92:7
contacted
93:14 103:11
contacts 147:23
contains 4:2
content 48:15
115:12
contents 56:4
156:6
context 112:8
119:11 120:14
126:13 146:4
contexts 9:20
continue 87:22
continuous
78:18
continuum
87:9

contributing
97:9
convenient
83:3
conversation
90:15 105:6
115:12
conversations
70:13 117:10
122:18
coordination
83:21 84:1,11
86:1
coordinator
93:14 100:14
133:3
coordinators
91:2
copenace 116:3
116:4 117:6
copy 73:21
116:12 135:12
137:10
core 141:9
correct 6:15
10:21 18:18
24:19 25:21
32:9 37:17
42:10 43:9,12
54:23 62:5,18
74:22 86:4
98:12,16
119:20 120:15
121:10 123:17
156:8

corrected 6:10
correcting 27:1
correction 6:10
correctly 107:5
correlate 58:18
correspond
21:20 26:15
corresponden...
13:25 14:4,7
14:10,11 16:8
17:22 117:17
118:5
corresponding
31:15
cost 113:10
costs 109:4
council 77:3
counsel 8:5
15:20 16:5
73:23 88:18
104:12 116:13
count 40:11
couple 8:13
15:15 21:1
49:14 103:1
104:2 105:21
106:16 109:20
course 37:3
119:20 131:20
137:11
court 72:5,24
111:4
cover 120:18
135:10

coverage 67:6 67:16 90:12 92:15

covered 67:9 67:10,21 68:3 109:2

covering 129:11

create 71:16

creating 137:20 148:12

creation 135:7

cria 81:19,22 81:25 82:2,12

crisis 114:9

criteria 50:23

critical 131:22

cross 3:6 7:25 16:20 43:10,19 46:14 56:20 57:3,6 58:7 61:15,15,20 72:18 73:19,19 75:9,11 120:19 144:15

current 6:23 71:17 78:15 143:1

currently 69:6 72:5 77:8 137:15

d

d 3:1,10 96:18 106:20

dangerous 49:9

darian 1:17 5:2

data 18:6 19:16 19:20 24:8,15 25:19 30:20 31:1 39:5,7,13 41:12

datapoints 26:19

date 20:13 110:8

dated 20:1 156:12

david 1:2 4:17 8:4

day 1:1 4:6 5:12 25:11,12 25:15 40:5,11 49:22 50:3 51:2 54:13,14 55:10 68:3,23 85:10 95:14 150:21,21 156:12

dayna 1:13 4:21

days 25:17 40:7 45:11,15,18 50:6 51:4,19 51:21 52:19 54:15 57:20 73:11 103:20 149:11

deal 37:24 44:15,18,23

92:3 120:12

dealing 36:7 93:18 119:16 152:20

dealt 21:11 59:11

decade 80:13

december 31:6 90:6,8,25 101:13 128:20

decided 25:4

decision 22:9 33:19 35:23 51:4 52:7 84:3 84:18 85:25 119:12,19 124:15 138:19

decisions 79:1 79:5 83:9 141:3

decreased 38:25

dedicated 93:6 93:22

deemed 23:10

defer 150:11

define 72:13

definition 21:25 47:3

definitions 79:9

degree 7:15,17 94:23

delay 40:2 52:19 55:1 58:5,23 59:6

59:17 60:9,17 61:5 62:9,16 70:8 73:15 74:4 110:23 129:14

delayed 102:22 102:24

delaying 78:25

delegation 131:13

delivered 86:19

delivery 56:7 69:14 75:7

denial 11:21 12:5,10 113:14 143:3 145:1,7

denials 123:13

denied 107:15 108:18,23 110:6,14 113:10 134:9 142:16,17

deny 11:25 13:2

department 38:3 44:1 53:8 80:5,11 132:11 132:23

department's 109:21

departments 56:2

dependent 11:20

depending 54:1 54:21 139:21 148:18
depends 12:3 35:11 150:22
deploy 54:12
deputy 6:24 8:16 114:5 115:8,16
described 111:24 123:1
description 3:12
design 152:12
designated 147:25
designed 86:19
desire 87:22
desist 85:24
desks 68:25
despite 128:14
detail 12:14 15:4 39:23 55:18 106:5 114:4,11 134:19
detailed 9:23 95:21
details 9:19 25:22 114:20 115:24
determinants 77:5
determination 10:20 12:4,6

14:1 23:23 95:14 103:15 104:10 120:4 147:14,25
determinations 10:16
determine 35:9 50:25 75:19,23
determined 24:23 38:19 40:5,6 52:10 58:10 81:25 126:18 133:21
determines 40:1
determining 50:22 52:3
develop 72:14 86:21,21 87:23 122:7
developed 47:4 61:25 62:1 69:12 80:4,7
developing 73:8
development 58:11 75:15 153:23
developments 53:9
dial 152:25
different 16:10 21:17 32:1,2 32:23 39:20 63:16 87:20

148:10,17
difficult 142:14
difficulties 91:4 91:19
difficulty 99:21
digital 63:18 156:5,10
diploma 7:17
direct 65:24 82:5 91:17 152:20,24 154:12
direction 48:9 136:9
directly 17:15 68:11 95:16 115:10 140:14 140:18 142:7
director 9:4 43:23 44:2,7 53:5 66:23 80:10 124:24 130:22,23 136:16 138:8 150:11,16 151:4,6
directors 115:9
disagree 117:7 117:8
discriminatory 85:24
discuss 91:1 115:25
discussed 14:13 16:7 21:21

92:2,15 133:18
discussing 28:9 41:7 85:9 148:4
discussion 18:12 19:9 85:1 126:9
discussions 70:10 92:7 93:22 115:20 117:5 126:2
distinguishes 21:7
distributed 125:22 128:14
divide 83:7
document 16:13,16,19,23 17:1 18:14 19:12 21:2,25 24:4,14 41:11 45:3,21 53:13 55:15,20 60:4 75:17 80:3 97:19 120:23 121:2,12 123:7 136:7,10,21 153:7
documentation 112:24 139:11 141:8,23
documents 8:6 15:11 20:1 37:7 49:2 55:6 77:20 80:2

97:24 136:6 139:9 141:12 141:14,22 145:16

doing 41:24 58:16 63:3,15 77:4 79:16 80:16,16 104:17 120:12 131:14 150:1 155:3

dollar 11:23 113:7

dr 4:18 12:15 26:3 31:2 88:9 90:4,19,24 91:12 98:18 99:14,20 106:15 116:3 117:18 124:11 129:23 130:10 132:9 135:18 136:4 140:2 142:4 144:14 147:9

draw 105:2

drinking 107:15 108:2,6 108:8,11,17

driven 86:19

droz 1:4 4:17 121:13

dubois 5:14

due 4:1 52:18 128:10

duplicated 120:11

duplication 123:25

duplicative 118:21

dynamic 127:1

e

e 1:1,1,1,1 3:1 3:10,10 19:25 55:15 80:3

ea 97:19

earlier 25:6 41:16 62:22 144:20

early 7:18 102:7 103:19

ease 63:13 64:5 65:4

easier 103:8

education 7:13 9:12 66:23 67:23

educational 7:18

edward 1:1

effective 137:16

efficient 113:22

effort 62:10

efforts 87:21

eggs 63:22,25 105:8

either 10:24 54:3 59:21

98:3 100:13

eligibility 67:24

eligible 66:18 67:22

email 10:3,5,10 10:18,19 13:25 16:5 17:6,10 18:13 19:22,23 22:20,23 40:24 40:25 42:2,8,9 95:2,3 103:23 104:8,12,13 116:3,3,12,18 138:3,15,15,16 139:2,15 140:2 141:20 142:9 142:11,19 144:11 145:5

emails 16:24 17:12,15 18:4 18:16,17 19:5 19:20 20:12 21:8,22 42:6 42:12 106:16 111:13

emergency 49:19 111:2 116:25

encounter 99:22

ended 113:2

ends 143:2

energies 37:18

engage 71:6

engaged 69:24

engages 153:8

english 53:4

ensure 69:14 122:11 154:3

ensures 126:24

ensuring 123:1

entered 22:8 23:9 40:19

entire 71:15 84:17

entirety 71:7

entitled 16:13 55:15 136:7

entity 126:15

environment 69:3 71:4 75:22 76:5

equal 36:20

escalate 105:20 149:13

escalated 11:19 11:24 25:3 105:18 143:6 143:11

escalates 130:13

escalating 91:24

escalation 10:25 12:20 124:6 130:15 135:1

escalations 129:21

especially 83:19 154:4
essence 91:21
essentially 10:6 10:17 21:7 26:18 27:5,10 32:6 34:4 54:9 71:21 92:4 113:15 115:14 130:14 134:7 152:18
establish 91:22
established 118:23 126:23
estimated 18:3 20:8,17 28:14 30:2
et 65:10 78:11 95:25 106:6 124:6 135:11 139:22 151:9
evaluating 54:11 68:19
evaluation 54:10
event 12:19
everybody's 30:19
evidence 6:11 6:16 12:15 23:19 24:12 42:25 43:8 44:6,8,22 45:16,25 46:4 46:12 52:18

62:8 85:9 88:21 95:21 111:9 137:1,2 141:11
evolution 12:9 77:22 78:4
exactly 37:1 64:10 95:16 106:3 112:15
examination 3:5,6 6:21 7:25 16:20 43:19 61:20 120:19 144:15
examinations 43:10
examine 103:7
examining 112:9
example 27:25 35:15 38:16 41:18 45:13 57:18 66:19 77:2 89:13 106:14 113:19 131:8 136:21
examples 57:23 100:16,16 132:2
exceeded 67:8
exceeds 130:12
exceptional 132:6
excerpts 47:20 53:10 56:10

excessive 96:25
exchange 103:23 122:20 123:18 139:15 144:5
exchanges 43:10
excuse 121:11 147:2
executive 44:7 80:10 93:6,17 120:23
executives 12:10 82:21 131:15 150:20
exercise 61:21 62:3,4 68:20 74:17 78:24
exercised 131:13
exhibit 42:18 80:2 110:17 124:13
exhibits 41:9 43:14 88:17 120:18
exist 65:8,9 135:12 149:17
existed 80:15
existing 14:7 14:17 58:19 64:18,18,20,23 81:11 114:24 142:24 143:20

exists 149:14
expand 68:7
expanded 67:17
expansion 77:23 78:4
expect 57:17
expectation 60:21 61:2 62:9
expected 60:17
expedite 147:18
expended 27:16
experiencing 101:15
expert 66:3,4 66:13 84:6 137:7 141:14
explain 143:18
exploring 152:14
expression 93:12
extent 30:13
external 126:5
externally 75:23
extract 30:20

f

f 1:1 3:10 116:2 136:7
face 144:5 145:4,15

faced 91:5
faceted 68:20
facilitates
  100:3
fact 35:10 99:3
  99:23 109:17
  128:5
factor 154:6
factors 35:18
  68:24
fair 17:18,23
  20:6 22:13
  23:14 25:19
  27:18 33:8,20
  36:6 43:17
  48:7 55:7,11
  74:12 80:22
  81:1 90:1 94:7
  95:10 97:2,16
  99:19 101:17
  102:15 104:16
  107:10 108:19
  108:24 110:7
  110:15 116:9
  117:13 119:22
  131:10 133:25
  136:1 139:25
  144:6,13,13
  145:16 148:24
  149:1 150:16
  150:25
fairness 25:13
  25:18
familiar 23:15
  23:16 48:12

49:2 55:16
103:5 107:1
109:24 116:4
136:10 143:9
144:2
familiarity
  19:8
families 52:14
  52:15 89:4
  91:2 98:21
  99:1,21 100:11
  126:24 127:3
  140:8,14,18,24
  143:16 154:21
family 1:1 4:7
  4:16 50:24
  52:19 53:21
  105:12 107:14
  117:18 119:23
  120:3 127:8
  141:4,13
  142:23 143:17
  143:21,23
far 12:2 41:2
  44:4 87:20
  108:4 154:10
fashion 131:2
fast 71:22
faster 100:4
  152:24
favour 56:12
fear 126:25
feature 148:5,6
features 148:4

february 9:7
  43:20 110:12
  110:13 128:22
  129:3
fed 97:11
federal 65:14
  65:17 83:21
  84:1,13 86:1
  111:4
fee 69:16,18
feedback
  124:18
feel 37:1 45:2
  87:11 104:11
  104:19 107:12
  116:18
fewer 63:25
figure 31:11
figures 19:2
  30:5 39:4
file 1:1 40:18
  40:24
files 96:21
  98:14 143:4
final 93:3
finances 154:14
financial
  132:12 133:22
  142:21 154:16
find 10:1 16:8
  34:13 98:14
  115:4
finding 87:16
findings 83:8,9
  84:2,10,17,21

85:4,25 86:5,9
87:13,18
fine 12:19
  30:21 55:24
  77:20 79:24
  103:25 104:4,6
  104:12 111:18
  112:4
fingertips
  112:17
finish 155:10
first 1:1,1,3,7
  4:7,8,15,25
  6:25 7:4 21:20
  24:7,17 27:22
  31:4,5,16 36:9
  36:12 38:13,16
  40:3 41:16
  44:18 45:5
  49:3 54:4
  57:13 66:16
  67:10 68:25
  73:9 77:3,3,11
  77:17 81:20
  86:18 87:13
  88:9 90:4 91:2
  93:7 97:18,20
  100:10 114:2
  116:6,21
  118:18 124:16
  124:17,18
  135:8 138:15
  138:16 146:8
  153:13

fiscal 26:15,19 26:20 31:5,17 38:17,18 40:4
fit 64:14
five 20:9,21,23 45:10,17 50:5 51:3,19 54:15 55:10 57:19 92:11,22 110:6 110:15 120:3
flag 22:23 104:20
flagged 104:22
flexibilities 131:24
flexibility 131:5,18,19
flip 19:22 49:13
flipping 17:1
focal 10:12,19 10:22 11:10,16 11:17,25 12:3 12:11,21 22:5 23:24 24:22 68:21 71:22 105:14 130:3 130:12,20 133:4 135:3 147:13,15 151:17,19,21 152:5 153:8,9
focus 37:17 38:4 78:3 108:16

focused 71:21 126:2
focuses 7:16
folders 17:11 18:16
folks 12:11 38:4 63:19 64:16 65:3,7 68:3 70:1 91:17 115:15 125:22 145:21 154:2
follow 17:16 32:17 37:6 142:5 153:4
followed 45:22 101:22 110:25
following 26:2 50:17 126:1
follows 49:8
food 78:10
foot 115:21,21
force 137:16
fore 93:13,16
foregoing 156:4,8
forgot 85:22
formal 131:3 139:23 141:17
format 121:3,5
forth 11:3 14:15
forum 75:10
forward 11:24 63:2,18 78:5,6

87:14,19 89:10 92:4 118:17 140:9,25 149:16
found 48:2 87:13 98:2 127:9 141:13
four 29:5 34:4 36:17 39:19,21 67:3,4 92:11 92:21 120:3
fourth 13:3 25:7 75:2 101:13 115:5
framework 133:21
free 38:4 45:2 85:10 104:11 107:12 116:18 151:17
friend 8:13
friends 6:12
front 8:6 26:4 37:23 43:15 47:18 105:15 122:14 138:2 144:16
fruition 80:8
ftes 79:3
full 5:22 17:2 69:25 70:25 82:2 88:18 99:11 114:20 135:22 144:11 145:14

fully 22:22 23:13
function 92:18 120:12 123:3 149:9
functionality 149:9
functions 123:21 124:1 126:21 141:9 151:3
fund 66:14
funding 64:6 64:10 99:4 123:1 142:22
funds 27:16
further 25:21 38:11 82:21,24
future 123:16

g

g 124:14 125:6
gaps 65:14,17 65:18,23
gathered 94:15
gathering 97:14
general 1:1 4:10,21 9:4 14:5 16:22 17:17 43:23 44:2 48:15 61:1 63:21 66:23 77:9,10 80:10,10 95:20 96:1 109:1

111:6,6 114:8
114:15 124:24
130:23 131:11
136:16 138:9
147:8 150:12
150:17 151:4,6

generality
99:19

generally 17:21
21:3 48:1
53:25 60:17
82:8 94:22

generic 142:12

gergely 1:15
4:22

getting 21:21
22:5 24:17
99:22,22
148:16 153:15
155:4

gideon 26:4
120:19 124:11
130:10 132:9
135:18 142:4

gideon's 12:15
26:3 31:2,23
129:23 136:4
140:3 144:15
147:9

give 15:17
27:20 41:7
44:16 48:8
78:20 89:13
106:18 111:9
130:16 135:19

given 11:15
14:2 26:21
33:4,10 77:22
99:5 113:8
132:10 137:9
138:14 141:14

giving 26:18
72:1 97:15

go 20:12 25:23
26:6 30:13
41:8 42:16
43:13 48:25
49:4,14 50:11
52:25 55:14
56:22 57:6
66:17 67:14,14
67:18,20 68:11
69:20 77:14
85:8,10 87:14
90:2,19 98:14
100:24 106:7
106:14,15,16
108:4 110:24
111:21 112:19
118:16 120:1,8
120:22 124:10
124:12 125:25
130:9,22,24
133:6 136:4
137:19 138:20
140:4,22
141:19 142:9
144:14,18
152:1,1 153:9
154:1 155:11

goal 63:23

goes 10:19
123:22 126:20
140:21 151:9

going 5:12,14
6:14 8:3,7 24:4
24:5 25:25
27:21 33:2
34:13 41:14
42:17 47:25
50:12 64:17
65:3 66:3
68:14 69:10
70:4 85:7 95:8
97:1 100:16,19
101:3 104:7
107:11 120:16
123:24 129:21
129:23 141:16
141:20 142:10
145:19,23,24
145:24,25
149:15 151:23
152:23 154:1
154:20 155:7

good 4:15,20
4:23 5:3,6,9,11
6:22 8:1,2 60:3
62:13,20 65:16
71:9 73:25,25
75:10 76:4
77:2 85:16
112:21 119:22
127:11 153:18
155:4,5

government
56:2 60:18,22
62:1 72:11
100:12 136:3

granularity
112:17

grasping 66:19

grateful 116:22

grease 93:12

great 13:22
114:4

ground 72:16
147:19

grounds 49:17
141:4

group 29:14,18
29:20,22 30:6
30:6 34:9
39:18 70:6
74:3 92:11
94:1 125:2,3
130:11,21

guess 15:19
17:2 20:21
29:20 37:3
59:7 62:1
68:13 80:18
104:6,19
107:10 112:22
135:8 152:8

guessing 20:11

guidance 48:9
76:2,12 81:22

guideline 55:15
55:16,25 62:1

62:7 77:1
136:21
guidelines
56:19 68:15
74:17 76:16,17

h

h 3:10 120:22
144:18
half 81:21
halfway 17:5
hallmark 62:20
hand 28:17,18
97:5,14,18,20
97:22 140:1
handed 147:13
handle 150:14
hands 97:24
155:8
handy 13:20
happen 11:1
94:24 95:23
134:12
happened 20:5
92:10 95:25
108:10 120:1
124:15
happening 77:8
84:5 89:23
100:4 134:20
happens 82:18
133:9 154:19
happy 123:5
hard 20:12
23:1,12 64:10
64:15

hardship
142:21
harm 48:22
54:22
head 131:7
132:3
headed 62:8
heading 25:24
33:5 49:6,15
50:16 56:16
57:10 59:24
62:12 75:18
96:17 121:20
122:7
headquarters
150:24
health 6:25 7:4
7:11,12 9:3
44:7,22 45:22
77:3,4
hear 5:12
heard 62:22
80:7 83:23
hearing 1:1 4:6
113:20
hearings 12:13
help 33:18,18
35:7,16 92:19
101:6 107:22
142:1,20
143:24
helpful 20:15
29:10 42:15
43:17 88:9
90:11 110:22

111:13,16
113:22 146:4
147:8
helping 64:1
141:4
helps 19:11
100:8
hesitating
76:20
hey 68:5
153:10
high 51:17
137:18
higher 61:2
62:9 150:20
historically
38:2
hit 58:15
hmm 24:25
28:5,19 37:10
40:9 50:8
53:11 57:24
71:25
hold 152:13,15
152:17
holiday 32:25
92:15
holidays 90:13
home 108:1,6
109:24 113:15
honesty 94:18
145:20
hopefully 65:11
113:22

hoping 9:21
104:17
hour 46:3 50:1
54:13 79:19
155:14
hours 34:6,7,9
44:18,24 45:6
46:6,18,18,20
48:23 49:10
50:4 51:2,16
51:17 52:14,20
54:4,14,19,21
57:23 70:5,5,6
70:7 73:11
74:5 81:21
147:17
housekeeping
6:6,9
housing 117:22
118:1
hrt 35:2
human 1:1,1
4:9 5:4 78:19
hungry 155:5
hyer 1:20 5:6,9
5:10
hypothetical
71:13

i

idea 24:5 76:4
92:18,22 94:20
118:15 121:7
152:23
ideal 74:7,9

ideally 24:2
58:15 72:9
86:18 153:24
155:2
identification
92:6 149:10
identified
52:22 146:16
identifies 107:2
identify 82:24
91:15
identifying
51:14
illustrative
49:1 57:22,25
98:3 138:5
immediacy
54:3
immediate
48:22 49:22,23
49:25 51:1,3
54:13 55:9
72:12 75:12
107:25 131:6
immediately
49:8 51:16
54:3,21 95:12
imminent
52:12,16,17
impact 34:25
35:2,4,5 80:4
81:8,10,20
82:4
impacted 84:15

impacting
104:22
impacts 82:5
implement
121:23 122:7
implementati...
89:12 90:17
91:25
important
11:15 65:19
109:3,5 133:3
133:13 135:2
154:20
imposed 42:24
58:8
inbox 10:6
17:11 18:15
21:9
inboxes 14:5
17:21 23:17
include 142:15
included 39:9
85:25 94:11
99:6,8,9
117:18 125:21
includes 29:11
29:13
including 18:17
20:9,22 47:3
73:9 79:8 93:6
115:7 122:9
125:4 151:5
inclusion 84:6
incomplete
98:4

increase 34:18
34:20 39:17
78:18
increased
34:25 38:20,21
144:25
increasing 93:8
incumbent
131:24
independent
122:10
indian 92:9
indigenous 1:1
7:16 8:16 57:5
59:3 122:7
indirect 82:6
indiscernible
4:2,18 7:5,11
7:12 9:9 12:18
12:25 13:5
15:8 16:2,13
18:1 19:21
20:14,24 21:9
21:14 23:22
26:10 27:13,21
30:14,17,22
33:2 35:25
36:2 37:2 38:4
38:5 39:15,23
40:20 41:1,3,4
41:22,22 42:11
44:14 45:24
46:5,8,17
47:11,12 49:20
52:1,16,20,21

53:2,3 55:8,12
55:16,20,22
56:7,10 57:11
59:4,25 60:5
60:15 61:3,13
63:3,11,17,18
64:19 65:1,5
66:11 67:25
68:1 69:8,14
69:19,20 70:3
71:1 72:15
73:4,24 74:3
74:20 75:6,6
75:20,21 76:14
76:18,22 77:13
79:2,10,12,13
79:15 80:4,6
80:15 81:2,8
81:15 82:3,20
82:22 84:7
86:15 88:2,17
88:20 89:14,19
90:17 92:5,13
92:19,20 93:5
93:9,16,17,23
94:1 95:5 96:9
96:20 97:7,12
97:16 99:11
100:7,8 101:5
101:18 102:5,8
102:9 103:8,22
104:11,12,15
105:5 107:1,2
107:8,9,16,24
107:25 108:2,3

108:5,8,9,15,15
108:17,18,20
109:8,10,19
110:2,4 111:7
112:9,16 113:6
113:12 114:7
114:13,18,25
115:1,17,23
116:6,10,22,25
117:5,13
118:12,13
119:12,14,17
119:25 120:19
120:24 121:4,6
121:9,12,24,25
121:25 122:2,4
122:8,11,15,22
122:25 123:1
123:10,12,13
123:15,21,22
124:1,9,12,18
124:19,20,22
125:6,14,17,20
126:1,3,3,9,10
126:16,23,25
127:5,6,9,10
128:11 129:3
130:11 131:9
131:22 132:5,7
132:8,16,18,21
132:23 133:10
133:15 134:14
134:21 135:18
135:21,25
136:3,6,8,10,15

136:15,22,23
136:24 137:11
137:12,21,22
137:24 138:5,6
138:8,13,14,15
138:19,21,22
138:24 139:11
139:12,17
140:15 141:1,6
141:8,10,21,22
141:24 142:1,1
142:7,18,23
143:8,15,18,19
143:20,21,25
144:1,16,19,22
144:23 145:9
146:7,10,23
147:22,24
148:1,20,21
150:2 152:9,11
153:6,10,12
154:15,17,25
individual 23:9
23:12,12 26:22
29:3,4,14,18,19
29:21 30:5,6,7
34:6 39:18
46:17 67:14,18
69:6 70:5
93:21 96:20
97:4 101:6
102:11 103:2
103:11 107:19
107:21 127:5
130:4,11,21

131:15 132:7
133:5
individuals
154:4
industry 43:1
46:13
inform 56:20
65:15
information
11:2 13:6 16:9
17:25 19:16
20:20 35:13,14
39:13 40:20
41:3 50:22
83:13 96:8
97:14,15 98:2
98:10,15 99:8
99:11 100:1,2
100:5,18
105:19 129:5
133:14 135:23
137:6 139:22
143:22 148:20
148:23
informed 72:13
informing
70:14
infrastructure
114:24 115:17
116:24
initial 10:2
78:1 81:24
82:3
initials 101:2,4

initiate 54:5,6
140:20
initiated 50:1,4
50:5 52:8,13
initiations 54:8
initiative 64:5
65:13 81:10
initiatives
63:13
inquiries 17:17
instance 11:4
54:8 64:4
125:16 133:3
institute 133:6
institutional
52:15,21
intake 10:3,11
10:19,23,23
17:3,3,12 18:4
20:8,17 21:8
21:11,19 22:18
23:25 24:6
40:22 42:2,8,9
49:16 50:20
51:8,13,15
52:2 53:14
147:10
intent 122:16
intention 81:14
93:21
interest 82:19
131:21 133:21
interested 1:1
1:17,20 4:10

interim 35:22
internally 70:11 75:23
international 1:1 4:11
interpret 120:15
interpretation 24:14 58:9 59:1 119:8,11
interrupt 103:21
intervention 49:18
interventions 88:7 89:1
introduced 132:12,14
introductory 6:2
inuit 6:25 7:5
investigation 49:16 51:1 52:6,7,13,16
investigations 52:20,21
invite 125:21
invoices 17:16
involved 54:1 67:11 95:16 115:20 122:17
irrespective 76:15 105:11 105:23 133:11

isc 9:4 40:1 55:25 58:4 69:23 82:12 84:7 91:1,10 91:14,16,21 92:3,18 94:4 94:10 98:5 103:19 104:13 115:7 134:17 135:19 151:16
isc's 34:17 38:24 56:20 61:24 62:24 63:14 64:5,8 68:19 71:2 89:3 98:14 104:9 133:22
issuance 102:1 102:2
issue 36:7 89:19 104:25 106:8 131:6 152:17
issues 7:16 19:4 51:15 89:2,9 89:11,16 92:1 93:13 114:12 114:14 127:9 154:1
item 56:6 79:20
items 23:7 28:1 32:7,11 41:20 101:17 106:6 107:19

j

january 88:10 101:22 102:8 128:20,22,22 132:14,21,22 146:19
jessica 1:10 5:3 5:4
job 5:18 48:10
joined 8:15
jordan's 9:11 9:17,25 12:8 14:4 16:10 17:13 64:6,11 64:17 65:4 66:10,15 67:11 67:15,23 68:5 68:12,24 69:6 76:23 77:7,25 78:16 82:13,22 83:25 84:15 87:3 89:12,17 90:12 91:5,7 93:23 96:19 97:11 113:16 115:22 118:16 121:17,20,24 124:20 125:20 126:4 127:8,10 127:21,22 128:19,21,23 129:6,10 134:4 136:7,17 138:9 138:22 142:20 143:4,20

144:23 150:12 150:17 151:7
jordan's 91:24 98:6
journey 12:21
jpoc 124:15 126:10 127:15 127:24 128:1 128:10,14 133:18 150:4 151:9 153:21
jpoc's 124:25
july 80:5 110:6 110:15
jump 104:15 120:17
justice 80:5,11 80:21

k

kassis 1:7 4:24
keep 140:1 155:7
keeps 47:25
kevin 1:4,14 4:17,21
key 9:20 72:12 109:15
kind 9:20,21,22 12:20 13:12,12 13:19 14:9 16:22 17:19 18:11,19,21 20:11 21:11,15 22:3,11 24:5,6 24:16,16,21

26:19 27:16
28:7,24 29:4
30:10,25 31:10
31:11,12,14,17
33:1 36:7
37:23 38:12
39:2,20 41:22
42:7 43:7
47:19 49:5
54:17 55:9
68:8 70:20,25
74:24 75:10
76:2,5 78:22
78:24,24 79:20
81:11 92:18
94:14,15,20
95:3 100:25
101:6,13
106:10 107:11
109:3,20 124:7
124:17 130:24
131:11 132:22
133:13 139:15
143:8 144:8
151:11 153:7
kinds 37:9
103:9 135:20
knew 84:25
know 5:16,18
5:24 8:12
10:23 11:5,12
13:4,14 15:2
15:12 19:16,24
21:17 22:10
23:14,18 24:22

25:14,20 26:2
27:7,19 28:8
28:22 29:5,15
30:4,19 31:18
32:5,11 36:8
36:16,18,20
37:6,20 39:7
39:11,12,16
40:10,16 41:2
42:1,2,7 43:22
44:1 45:3
46:23 47:19
55:5,19,24
58:17 60:19
61:7 62:12
63:6 64:16
65:8,8,14,22
66:13,16,18
67:23 68:3,6
68:15,21 70:20
71:9,19,20
72:13,14 74:16
78:8 79:8
80:18,20 82:12
82:15,18 83:6
85:11 88:1
89:22 90:16
92:4 93:11,13
94:9 95:15,18
95:25 106:1,6
106:17 107:3
107:13 113:4
114:20,23,23
115:21 117:9
119:21,23

124:25 125:24
128:8,13
129:13 130:14
131:21 132:11
132:22,24
133:4,8,14,17
133:20 134:7
134:17 135:19
136:12,20,25
137:18 139:8
139:19,20,21
139:23 140:11
140:20 141:3
141:21,21
142:14 143:19
146:6,21,24
147:3 149:8
150:6,10
153:13
knowing
114:12 137:1
knowledge
97:5,9,18,21
115:11 117:4
146:7 150:17
151:7
known 131:2

l

labrador 53:8
lacey 1:7 4:24
lack 40:15
47:15 83:20
84:1,10 85:25
laid 64:15 93:1

language 143:9
146:10
larger 47:2
150:22
launched
152:16
lawyers 5:14
lay 131:23
lead 6:1
leadership 65:1
65:24 115:10
leading 9:12
68:25
leads 151:5,11
learn 135:5
learned 119:20
123:15 134:24
learning 7:18
83:12
leave 83:5
148:23
leaves 149:3
led 43:3,11
left 28:17 51:9
legal 62:2
69:20,21 74:18
156:17
length 136:2
lessons 119:19
123:15 134:24
134:24
letters 104:2
139:9 143:3
level 9:18 12:13
15:4 25:16

27:24,24 32:22
33:21 35:25
39:23 41:17
52:11,11 54:22
57:16 74:19
95:20 99:18
100:9 105:19
112:17 114:8
114:11,15
117:4 127:2
130:3 133:9,23
143:6,11 148:9
150:20 151:11
153:8
levels 41:18
87:1
life 49:9
light 76:1 89:11
likely 33:4,22
119:22
limited 19:8
123:12 154:8
limits 67:5,8,17
line 14:21
21:17 24:21
34:15 38:12
101:14 115:5
117:19 118:19
154:10
link 83:25
linked 60:8
list 49:24 52:5
60:5 69:10
96:15,15
126:20

listened 55:2
listing 107:18
107:19
literally 116:17
litigation 57:2
little 18:6 26:1
27:14 38:11
55:3 58:13
113:22 117:10
130:16 155:4
live 148:16
152:2,4,5,8,13
153:25
local 151:21
long 7:6 36:10
78:22 102:20
105:25 120:24
longer 35:9,11
153:9
look 8:8 10:23
13:22 17:1
19:25 21:5
22:2 24:20
26:13 28:13
31:2 34:12
38:5,10 44:12
46:9 49:3,6
51:9 55:14
56:3 63:19
66:17 72:12
77:15 93:6,25
96:20 100:15
100:16 104:11
110:9,10
111:13 112:1,6

113:18 116:1
118:7 120:16
129:24 130:1
134:8 136:6
137:23 142:13
149:15
looked 41:15
55:4,7 69:4
looking 13:10
15:18 17:21
18:3,19,22
24:3 26:20
28:6,15,21
31:10 32:16
39:24 45:1,3
47:6,10 51:8
54:2,3,7 55:10
59:16 62:12,25
71:23 73:5
74:2 75:5 76:2
76:24 77:5,11
77:17,20 88:19
92:24 93:5
96:17 102:25
112:7 120:10
125:16 138:7
141:3 143:8
144:19
looks 12:22
19:9 74:11
loose 138:3
140:2 141:20
lost 52:18
lot 32:24 33:3,5
33:21,22 68:6

loud 113:8
love 72:9
low 51:20
lunch 155:8,10
155:11,12,12
155:13
luncheon
155:16
lustig 1:1

m

machinations
128:8
madam 7:23
155:6
made 12:9
15:22 35:23
37:5,7 52:8
62:2 68:4
77:16 79:5
84:10,16 91:14
95:14 97:6
103:14 107:4
110:7,11
111:25 119:4
119:12,14
123:14 133:4
146:21 147:14
149:20 150:7
main 113:13
major 112:24
majority 40:1
48:20
make 5:18
10:12,15,23
22:5 35:21

47:7 60:21
64:19 67:19
84:21 87:19
112:20 133:7
142:6 144:9
146:15 152:11
153:2 154:7
making 12:4
16:6 58:7
63:19 68:6
79:1 136:19
manage 79:10
managed 67:2
78:18
management
17:14 22:8
40:19
manager 70:21
managers
69:13
mandate 7:3
69:15 87:7
115:18
mandatory
69:18
manitoba
47:24 51:7
manner 91:20
109:10
manual 48:3
53:10
manuals 48:8
mapping
115:21

march 16:14
20:1,10 25:14
28:14 30:3,14
41:11 128:22
128:24 129:8,8
129:12,13,14
marchildon 1:1
master's 7:15
match 69:15
math 26:1
32:15
mathis 4:19
matter 1:1 8:5
15:6 145:22
matters 6:6
146:17
matthews
88:13 90:5
98:19 99:14,20
100:24 101:9
102:17 109:22
110:5 138:7
mean 10:15
55:18 56:23
72:17 83:12
95:21 104:6
110:20 111:3
151:20
meaning
153:12
means 19:11
meant 86:5,11
measurable
57:16 59:21
60:6

measure 65:4
75:12,12
measures
121:23 122:9
mechanism
118:15,21
120:2 122:10
123:10 126:9
126:21,22
127:12 134:7
medical 66:2,6
66:13,14,16
medium 51:18
meet 6:17 35:2
58:12 60:25
62:24 63:6,7,9
64:1,8,21 70:3
70:12 73:1,16
77:12 115:9,25
148:7
meeting 75:13
90:6,8,12
91:14 92:15,23
109:15 113:3
124:15 125:23
126:2
meetings
128:10
meets 50:23
member 1:1
36:2
member's
105:12
memorized
99:16

memory 90:19
103:23 107:5
111:14,22
112:14,20
mention 85:1
mentioned 25:6
44:14 59:3
81:3 82:11
85:3 92:21
104:21 114:5
115:3 153:21
mentioning
93:18
met 90:25
109:6,10
method 18:21
20:11 30:13
methodology
21:6
metrics 73:17
michael 1:20
5:9
mid 80:11
middle 140:5
million 27:15
31:11,15 32:17
32:20 33:3
mind 16:25
103:4
minimize 17:14
minister 1:1
6:25 8:16
114:6 115:8,16
minute 26:11

minutes 19:25 79:20	137:20 146:25	97:12 130:13 130:15,25	65:23 66:8,9 68:19 78:7
misspoke 86:10	**moot** 99:2	131:14 133:6	83:14 85:1
mix 36:22	**morning** 1:1	147:20	86:20,20 87:22
mm 24:25 28:5	4:15,18,20,23	**nations** 1:1,1,3	89:11 109:5,10
28:19 37:10	5:3,6,9,11 6:22	1:8 4:7,8,25	138:6 139:22
40:9 50:8	8:1,2 11:11	6:25 7:5 67:10	145:25 149:15
53:11 57:24	79:21 83:4	77:3,3,11	153:19
71:25	121:14	86:19 87:14	**needed** 65:15
model 58:8,19	**motion** 1:1 4:6	91:3 93:7	96:8 107:14
78:16	46:15 56:20	100:10 124:18	145:21
modify 58:19	57:3,6 58:7	**naturally**	**needs** 35:24
modular	61:15 72:18	109:18	51:22 58:13,13
109:24 113:15	73:16,19,19	**nature** 89:15	64:22 75:13
mom's 113:2	75:9,11 79:8	145:8 150:23	77:12 78:10,11
moment 17:24	**move** 9:22 34:1	151:3	87:3 89:19
27:20 34:13	37:19 46:16	**navigate** 127:4	113:3 131:21
41:8 140:1	105:15 113:19	142:25	143:1 153:25
moms 65:12	118:14 129:20	**navigating** 91:7	**negative** 34:25
money 98:21	155:7	**ncsf** 120:18	35:1,4,5
98:25	**moves** 11:17	**necessarily**	**negatively**
monitoring	**moving** 9:14,15	11:6,20 35:25	34:18
60:8	113:20	37:14 65:21	**neglect** 50:23
month 32:19	**multi** 68:20	67:22 68:10	53:17
110:15		72:11 82:17	**negotiation**
monthly	**n**	117:11 124:7	151:8
127:22,22		150:19 151:2	**negotiations**
128:17,19,21	**n** 1:1 3:1,10	**necessary**	122:18
128:23 129:6	**name** 5:22 8:4	75:22 77:7	**nervous** 145:20
129:11,15	92:12 116:5,6	**need** 5:17 8:11	**nervousness**
months 7:8	**narrative** 50:21	18:20 35:13,15	146:1
8:22 31:5,17	**nation** 1:1,21	35:21 37:7	**never** 59:18
32:17,20,22	4:12,16 5:8,10	49:18,20 50:2	**new** 14:5,16
101:24 110:7	114:2 116:7	50:6 51:17,18	17:16 18:13
120:4 129:1,16	**national** 12:24	51:20 64:7	53:16 75:15
	13:1 25:3		
	28:16 29:13		
	30:5 84:6		

94:3 111:2
120:17 132:13
135:7 147:16
155:7
newfoundland
53:8
nihb 47:16 66:7
66:17
nine 28:3,7,7
31:5,17 32:17
32:20 37:22
41:21
nishnawbe 1:1
1:21 4:11 5:8
5:10
nomenclature
43:18
non 23:11 34:7
34:10,20 35:19
35:20 36:4,23
37:21 38:6
39:13,19 45:12
45:17 46:3
51:3 58:4 70:7
74:8 91:25
94:4,15 105:10
132:6 148:10
northern 19:17
note 4:1 69:16
100:25 111:25
143:14
noted 1:1 9:2
19:15 113:7
128:17 129:6

notes 69:17
110:6
notification
50:2,6
noting 98:20
127:20
november
101:12 102:7
128:20,24
129:7,12
137:16
number 3:12
3:12 11:15,15
28:7,9,25 29:1
29:7,11,11,18
31:14,17 38:12
38:19 50:19
51:10 52:2
56:6 60:5 67:1
73:11 77:23
78:4,23 95:24
98:18 107:6
130:6 148:18
149:3,5 151:18
151:24 152:21
152:25
numbered
128:18
numbers 15:18
15:21 18:5
28:15,22 30:12
31:15 33:2
42:12 121:19
133:24

o

o 1:1 3:10
21:17 22:4
24:5,21 32:3,4
objective 42:24
46:11
obstensibly
148:19
obtain 45:11
october 103:19
138:4 149:19
offered 66:1
104:14
office 122:10
133:10 140:8
140:24
officer 4:5 5:21
139:1 141:25
148:1
offices 97:11
officials 81:9
81:18
offs 89:23
oh 105:18
106:1
ojibways 114:2
okay 5:7,19 7:1
8:20,22 9:14
11:9 13:22
15:6 17:4 19:1
19:3,11,14
21:1,4 23:10
27:20 30:24
32:9 33:25
37:16 41:8,10

42:16,22 43:16
44:13 46:1
50:14 55:24
57:4 61:19
74:2,4,22
79:17 83:18,24
84:24 85:21
86:13 87:12
88:22 89:21
90:23 95:19
100:21 102:3
106:4 112:2,5
112:19 115:2
116:20 118:14
121:15 129:18
132:9,21 134:2
141:19 144:13
144:17 145:16
147:4 153:5,18
old 18:14 40:17
81:25
oldest 138:15
once 94:4,16,24
119:12 126:1
135:23 143:5
149:3
ones 24:10,22
58:10 78:9
100:20 151:19
ongoing 19:9
onigaming
114:2 115:9,20
online 63:19
81:17

ontario 1:1,18 4:11 5:2 19:17 51:25 114:3 116:23 138:23

open 54:5 73:7

opened 10:10 15:6 21:22 22:20 23:8

opens 23:9

operability 63:3

operating 33:1

operation 150:15,18

operational 78:16 136:8,9 137:6,10,14,17 137:21

operations 93:25 114:6 150:21 151:5 153:21

opinion 59:14 64:24

opportunities 135:4

opportunity 65:17 119:20

opposed 9:19 17:21 36:9,18 41:23 42:6 47:16 64:17 65:3 69:7 92:11 104:10 106:10 108:23

112:9 131:15 144:14 148:15 152:3,9

option 22:23

order 6:12 34:3 37:12 43:3 44:15 45:5 58:8 61:25 62:2 69:4 85:4 100:19,23 109:8,9 114:18 114:19,23 142:23 148:7

ordered 72:5 72:24 74:21

orders 43:5 59:10 64:14 77:25 78:17 83:1,8,8,16,19 84:16,21 85:23 86:5,6,9 121:25

organization 117:24

organization's 69:15

organizations 125:4

ottawa 125:10

outline 127:3

outlook 23:15 23:16

outside 113:16 134:8

outstanding 96:11 118:8

overall 14:3 15:16 35:4,6 82:20

oversights 151:4

overturn 140:14 141:4

overturned 110:25

own 74:10 83:17 111:16 111:21 145:25

p

p 1:1,1

p.e.i. 53:12

p.m. 19:23

paces 32:23

package 61:19 86:10

page 3:2,12 13:23,24 17:1 18:3,14 21:5,6 24:4 25:14,20 25:23 26:6,12 41:8,13,15 44:12 45:1,2 49:5,14,15 50:15 51:9,10 51:25 52:1 54:10 56:3,14 57:11 59:23,24 60:4 69:9 73:5 73:6 74:1,1,23

75:3,17 81:7 81:16,17,23 90:2,20,21,22 97:1,1 103:2 106:16,21,22 113:23 117:16 117:16 118:18 121:19,19 125:6,25 126:1 126:19 130:2 138:21 140:4 142:10 144:24 151:15

pages 49:14 56:22 57:7 103:1 118:16

paper 138:2

paragraph 13:23,24 17:2 17:6 26:7 34:14 38:10,11 39:24 42:17,21 46:10 48:13 52:5 75:17 77:15 78:13,13 82:1 88:23 90:3,5,7,10,22 96:16,21 97:3 97:25 98:17 100:24 101:5,8 106:23 109:23 110:5,11 111:21 113:18 113:23 115:2,5 116:21 117:15

118:17,18
127:16 130:1,2
130:10 138:17
139:5 140:4,5
140:23 141:21
148:2 149:18
151:15
paragraphs
90:4,19 98:20
99:14 101:11
101:17,21
111:16,24
129:25
parameters
135:20
parenthetical
125:13
part 23:7 29:20
30:3 44:6 55:3
63:2 73:4
78:22 79:7
84:7 85:3
87:10,11,16,17
90:14 94:19
97:9 99:12
115:19 122:2
134:5,13 135:8
141:17 147:15
149:16 154:24
particular 19:4
66:22 81:1
92:12 98:24
110:20 132:1
132:11 134:24

particularly
59:17 60:10
61:6 62:16
parties 1:1 4:10
6:16 118:24
125:1 140:7
partly 144:24
partners 47:4
58:11 69:13
70:11,21 72:14
76:22 87:23
153:20 154:2
154:23
partnership
58:11
parts 55:7
62:20 109:15
partway
117:19
party 1:17,20
passage 39:14
passengers
32:5
past 131:12
path 132:5,6
pathway 12:20
payment 11:17
13:17 101:16
102:1,2,13,23
109:14
pdf 121:13
peaks 33:15
pending 17:3,3
17:12 18:4
20:8 21:8,11

21:19 22:18
24:6 25:17,17
31:25 33:10,19
people 5:13
38:5 68:6
74:18 92:22
97:8,18,20
104:17 119:4
130:24 141:2
146:16
percent 14:9,10
25:20 39:1,8,9
39:16,17 155:9
percentage
14:14
performance
75:18 76:3
124:19 125:20
period 110:15
129:11
periphery
107:3
permissible
93:8
person 35:24
36:1 91:16
92:3 101:6,11
136:14 150:9
150:17 152:21
152:25 153:13
153:16,17
personal 74:10
146:7 153:25
personalization
144:25 145:7

perspective
54:2 60:23
63:21 76:18
130:20
pertained 86:1
ph 4:19 43:20
phone 35:16
147:3,3 151:22
154:10
physical 52:18
pick 140:1,2
153:1
picking 34:15
83:13
picture 20:14
71:1,23 76:8
piece 47:5
place 69:1
87:20 113:21
126:6
placed 12:16
148:8,21
149:11
places 9:25
plan 125:22
154:20,25
planning
151:16
playing 91:23
please 4:13 5:8
6:23 13:23
16:7 34:14
55:14 116:2
124:13 128:24
129:4,24,25

136:6 137:10
138:5 139:7
140:4 147:2
point 5:17,25
8:8,11 10:1,10
10:12,20,22
11:1,10,16,17
12:8,22,23
13:4,12,16
20:13 21:21
22:5 23:24
24:1,22 25:8
27:14 37:5,5
41:6 47:7 61:8
69:9,24 71:9
79:21 80:11
83:4 97:15
105:2,14 109:1
123:14 129:9
130:3,13,20
133:5,8 147:8
147:12,13,15
151:19 152:5
153:8,9,19
points 11:25
12:4,11 13:11
16:11 29:5
32:2 41:6
61:21 68:22
71:22 78:21
127:12 134:25
135:3 151:17
151:21
policies 53:9

policy 45:21
49:3 56:1
58:10 72:7,8
151:7
poor 4:1
portfolio 67:2
portion 70:17
position 6:23
7:2,7 105:12
111:7 113:2
122:13
possible 10:9
11:1 12:23
13:3,9,11,18
20:1 27:25
29:17,21 30:7
30:9,10,11
41:19 46:5
60:25 62:11
67:18 68:7
75:24 82:4
110:16 119:21
possibly 109:18
121:5 152:4,20
potential 13:16
25:2 47:11
81:9 117:1
potentially
68:9 76:25
95:15 97:23
power 127:1
practical
130:19
practice 44:23
77:2,10 85:24

94:3,19 119:23
practices 73:8
134:25
pre 122:17
precise 15:21
18:6
preliminary
6:5 8:14 126:2
prepared 20:3
41:12 129:9,13
preparing
14:12 46:2
96:16
present 6:14
52:11
presented
27:23 41:17
presenting
51:15 72:6
president 7:11
press 148:13,16
148:16,18,22
152:3
pressure 79:14
pressures
63:14 64:5
101:15
pretty 95:21
previous
142:19
previously 86:7
primarily
127:24,25
principal 78:1

principle 9:11
9:17,25 12:9
14:4 16:10
64:6,11,17
65:4 66:10,15
67:11,15,24
68:5,12,24
69:6 76:23
77:7 82:13
83:25 84:16
87:4 89:12,17
90:12 91:6,8
91:25 93:23
96:19 97:11
98:6 113:16
118:16 120:24
121:17,20,24
124:20 125:21
126:4 127:8,10
127:21,22
128:19,21,23
129:6,10 134:4
136:8,17 138:9
138:22 142:20
143:4,20
144:23 150:12
150:18 151:8
principle's
17:13 78:16
principles
82:22 115:22
printed 60:5
142:11
prior 7:9,10 9:3
9:3 16:20

32:24 114:5
proactive 70:13
proactively
  70:11 104:19
probable 49:17
probably 25:11
  68:11 113:21
problem 17:20
problematic
  92:5
problems 94:9
  119:16
procedures
  50:17 53:9
proceed 132:6
proceeding
  46:16
proceedings
  5:15 43:3,6
  86:12 156:4
process 9:25
  10:18 12:6
  22:5,11 23:25
  24:23 37:15
  40:13,22 45:11
  57:19 68:23
  70:9 72:19
  73:4 74:18
  92:10 104:10
  106:11 108:12
  110:24 118:22
  119:2 120:12
  122:3,24
  123:25 131:3
  131:20 134:8

141:17 148:6
  149:4 153:16
processed 10:7
  37:13 45:14
  59:9
processes
  131:23
processing 34:5
  43:1 46:13
  47:11 59:4
  106:7,10
product 27:4
  28:10,24 29:12
  31:9,16 96:18
  109:3
production
  20:5
products 27:17
  96:18 99:11
  132:16
professional
  8:14
program 58:10
  61:10 66:7,8
  71:15,16 75:15
  139:1 141:25
programming
  64:11,21,24,25
  65:9,17,22,25
  67:22 76:24
  84:12 85:2
  100:25
programs 64:7
  64:13,18 65:2
  65:14 66:1

67:1,5,25
  74:11 80:17
  83:21 84:1,13
  86:1,18 89:15
progress 21:10
  21:10,12 30:2
progresses
  83:12
projected
  154:24
promotion 7:11
prompt 145:1
  146:9
proper 123:14
proportional
  33:11
proposal 70:4,8
  118:20
proposals 58:7
  70:22
proposed 46:23
  47:1 73:16
  81:10
proposing 6:13
  58:4 74:8
protected
  103:6
protection
  47:21 48:2,2,8
  48:21 49:4
  51:17,19,21,22
  52:6 53:5,13
protocols 53:18
provide 7:4
  72:25 98:10

provided 14:24
  20:10 21:25
  98:21 99:3,4
  106:5 108:11
  136:21 137:7
  141:23 142:19
  144:8
provider 68:17
providers
  60:14
provides 49:17
providing 99:8
  108:7 142:22
provinces
  47:21,22
provision 100:7
provisional
  114:25
psychology
  7:17
public 7:12 9:2
  59:16 60:18,20
  60:24 62:10
public's 62:8
publishing
  128:4
pulled 24:16
  93:21 111:1
purchasing
  113:15
purpose 40:16
  52:24 132:17
purposes 30:19
  49:1

pursuant 50:23
put 23:21 33:25
43:17 47:19
59:10 70:14,15
108:22 124:11
127:14 142:2
143:15
putting 110:10

q

qip 53:1
qualities 71:17
quality 4:1
122:8 149:21
quantifiable
60:8,10
quarter 38:17
38:18
quarterly
128:18,18
quarters 31:4
40:3
quebec 19:17
53:1
question 18:25
19:15 23:5
31:20 37:1,12
39:3 44:13
45:4 58:21,22
62:17 69:20
71:20 74:24
75:2,2,16 76:9
101:3 107:10
112:23 127:15
130:17 140:3
150:23 153:3,7

153:15
questioning
123:11
questions 6:2
7:20 8:4,7,14
9:16,16,23
13:20 15:15
16:23,25 42:1
62:6 78:23
80:1 86:17
88:7,8 90:22
96:14 105:7
109:21 113:14
134:1 135:17
138:4,14 144:8
145:17
queue 11:4,7
28:25 31:18
32:12 37:4,22
40:25,25
104:15 105:15
147:13 148:8
148:21 152:3
queues 148:10
148:17
quicker 79:15
quickly 50:25
60:25 62:11
95:23 96:2
105:13 147:19
quite 12:13
44:3 58:14
quotation
143:2

quote 144:11

r

r 1:1,1
raise 105:3
raised 67:17
89:25 92:13
94:14 95:13
98:18 108:12
114:2,12,14
raising 94:8
96:12 99:21
ramara 84:3
range 29:2
55:10 65:25
rare 143:7
rarely 143:5
rate 34:17,20
34:25 38:21,25
rates 39:8
rather 6:13
89:22
ratio 14:9
15:13
rationale 11:21
144:7 145:7,14
rationales
145:1
raw 28:21
reach 91:18
151:21 154:7
reached 122:2
reaching
100:11
read 26:13 43:5
43:7 45:2

50:12 76:11
83:9,16 84:21
86:10,11 97:7
101:4,18 103:4
104:8 116:19
134:11
readiness 87:2
87:9
reading 19:12
24:14 25:18
42:4 132:20
reads 13:24
17:9
ready 87:14
real 78:7
realistic 60:13
60:15 62:21
68:17 78:2
really 15:17
33:13 64:13,19
74:20 79:6
87:14 90:21
reason 74:8
93:15 99:6,7
107:20 113:14
117:7,8 129:2
147:15
reasonable
49:17 54:25
reasons 11:23
75:24 105:23
recall 28:4
86:15 90:15
92:6,13 107:23
111:11 113:9

132:1,15
133:24 136:13
receive 137:18
received 50:17
70:20 99:1
102:18 109:4
117:23 135:23
receiving 49:10
51:2,14 52:3,8
recent 128:9
135:13
recess 85:14
155:16
recognize
125:8,13
142:16
recognizes
88:25
recollection
92:14 107:12
recommendat...
10:12,24 12:5
22:6
recommendat...
82:25
reconciliation
87:21
record 5:22
6:16 117:22
124:14
recorded 156:5
recording
156:5,10
recordings
156:6

records 96:21
recourse 66:10
redacted 101:2
112:2,6,8
redaction
113:9
reduce 33:18
reference 46:24
47:2,7 101:4
106:19 111:16
111:17
referenced
58:25 104:2
referencing
127:2
referral 51:3
51:14 52:3,9
referrals 48:22
referred 21:20
81:8
referring 8:9
48:13 117:17
reflect 78:6
98:4
reflected
102:16
reflection
74:10
reform 83:20
84:2,7,17 85:1
120:25
refrain 85:9
refresh 90:18
103:23 111:14
111:22 112:13

regarding 16:9
34:24 126:3
regardless 82:5
regards 99:25
124:5 132:18
region 18:4
20:9 23:12
28:14 30:2
38:3,3 93:23
117:21,23
118:7,11
135:11 154:25
regional 12:10
93:25 97:10
114:6 115:8
118:12,13
130:12,22,23
133:10 138:23
138:23 150:20
151:17
regions 12:3
14:2 17:11
20:2,9,17,18,21
20:22,23 97:14
147:18,24
153:21
registrar 147:2
registry 4:5
5:21
reimbursed
102:12
reimbursement
99:23 101:21
102:19,24
119:24

reject 140:11
related 9:10
14:7 48:19
117:25 118:14
relation 76:23
77:25 82:13
114:24
relatively 94:3
relevant 40:20
105:2
relied 39:5
relief 46:15
47:3
remain 79:2
remaining 45:7
remedial 75:12
remember
43:18 92:2,7
112:15 123:18
132:20
reminds 105:5
renovation
111:12
rent 78:11
repairing
114:24
repeat 76:9
repeatedly 83:7
repeating
94:24
rephrase 18:8
report 17:19
19:21 21:7
27:23 31:1
41:17 44:9

49:7,10 50:17
50:19,22
110:21 127:22
127:23 128:20
128:21,23
129:6,11,13
151:12
reported
110:21
reports 101:1
124:23 127:20
128:3,13,17
135:9 138:11
151:13,13
representatives
91:1,3,10
represented
24:8
representing
1:1 27:4 31:9
reprisal 126:25
request 10:11
11:16,18 13:2
13:3,5 14:5
15:20 16:6
18:13,14 20:5
27:8,24 28:2
29:20 30:4
34:9 35:12
40:13,17 41:17
59:9 60:21
63:14 64:5
67:19 68:6
71:5 103:13,20
104:14 107:11

109:5 110:3,6
110:11 111:1
114:9 117:22
129:5 130:12
130:13,20
133:4 138:17
138:18 148:7
148:14
requested 28:2
28:10
requester 11:3
28:4 35:17
41:19 111:1
142:12 144:6
145:2,5 153:6
requester's
143:14
requesters
126:24 142:6
151:20 154:21
requestor
27:24,25
104:22
requestors 29:1
requests 12:1,9
12:21 14:1,5,8
14:16 16:10
17:16 21:10,12
21:22 25:15
26:14,22,22,23
26:24,25 27:8
28:3,7,14,23
29:2,12 30:2
31:8 32:17,19
33:4,5,10,11

34:2,5,19,21
35:1,3,8 38:19
38:21 39:9,13
39:18,18 40:2
40:4,6 41:18
42:6,8,9,13
46:4,17,20
59:5 63:20
64:12 65:5
74:3 77:24
78:5,6 90:12
98:6 99:3
104:17 107:4,6
117:24 118:8
119:14 130:4,5
135:21 137:5
147:16 148:10
148:11
required 49:16
51:4 69:18
86:24 153:4
requirements
148:7
requires 35:16
49:21
reserve 67:23
residential 92:9
resolve 91:24
resolved 89:20
91:20 95:12
96:7
resolving 68:7
resources
37:18,23 78:19

respect 38:13
116:24
respectfully
129:14
respond 50:25
98:5
responded 20:2
respondent 1:1
1:13 4:14
107:1
responding
90:3
responds 51:15
95:7
response 48:21
49:4,22,22,23
49:23,25 50:3
50:5 51:1,3,9
51:13 52:4,7
52:10 54:3,6
54:12,13,14,15
99:15 142:17
143:14 145:16
responses 55:8
96:17,24
responsible
151:5
rest 90:15
restorative
80:21
restricted 17:7
17:10
result 127:7
150:7

resulting 135:1
results 75:18
154:15,16
review 12:24
13:1 16:19
25:3 43:2
74:13 107:12
108:13 116:14
130:13,15,25
137:7 141:14
reviewed 46:1
53:25 69:12
86:8 96:23
99:13 103:10
123:11
reviewing
147:9
reviews 129:22
134:1,3,18,20
134:25 135:10
rhythm 94:19
right 9:8,20
11:19 13:11
14:21 15:18
18:2 19:6 21:6
22:25 23:2
26:5,16 27:6
27:10 28:18,20
29:11 31:6
33:6,12 38:7
40:18 43:20
44:16 49:15
50:15 55:19,20
58:1 61:11,23
62:14 65:6

66:6,11 67:2
71:11 80:9
86:23 96:11
98:22 101:22
102:6 104:19
104:24 105:4
107:16 114:18
118:4 120:14
130:8 142:5
144:21 146:8
148:8,13,24
149:25 151:18
153:14 154:11
rights 1:1,1 4:9
5:4 82:4
ringing 147:3
risk 17:14
51:17,18,20
52:17,18 81:19
robin 43:19
86:8
robust 64:25
role 9:10,12
44:2 83:13
91:22 93:8
100:1 123:12
143:3
roughly 33:9
route 13:15
row 26:18
124:17
rows 26:15,15
ruling 46:2,3
run 123:5
129:4

rush 103:8

s

s 1:1 3:10
safe 107:15
108:2
safety 52:12,17
52:22
sake 23:5
salutation
142:13
samantha 1:15
4:22
sample 78:9
sarah 1:3 4:17
saskatchewan
19:18 47:24
50:12
satisfaction
6:18
saw 95:2,4
saying 19:3
54:11 57:23
59:16 61:1
72:17 73:19
76:25 79:3
90:7,10 102:17
140:23 143:15
148:3,5 149:19
says 17:3 21:24
23:8,10 27:3
27:22 28:16
31:3,8 44:17
45:4 49:6,23
50:16 52:4
56:6,15,16

57:7,11,14
59:24 60:2,7
60:12 73:7
75:17 77:21
81:16,17,23
82:1 90:24
91:13 116:22
121:22 124:17
125:19,19
126:22 138:13
138:17 141:23
144:25 146:11
146:12
sbb 136:15
scan 75:22
school 32:25
schools 92:9
scope 109:21
135:22
screened 50:25
screener 50:21
screening 49:7
51:4 81:24
82:3
sdmn 50:20
se 59:19
season 32:25
second 10:9
14:21 17:2
22:2,4 24:21
34:15,15 47:17
59:7 69:10
73:9 77:20
85:3 91:12
97:5,25 110:18

110:21 117:19 121:11 122:6 124:16,17 125:18 126:22 134:8 137:8 139:4 144:24

seconds 57:18

secretariat 140:6,13,19,21 140:23 141:2 141:24

section 50:24 97:3 106:17

see 9:21 11:7 16:14 17:7 23:3 24:13 25:21 26:7 28:16 34:22 40:8 44:13,19 46:2 49:11 50:9,16 51:5 51:10,23 52:22 53:10,14,18,21 54:6,15 56:6 56:14 57:10,13 60:2,12 68:10 73:12 74:13,23 75:1,7,9,11 81:16 82:6 95:3 98:7 101:13 103:12 110:11,14,16 111:14 112:8 113:24 116:2 116:21 118:2,8

118:18,25 120:20,23,25 121:19 122:6 122:11 124:16 125:5 126:19 130:5,9 138:19 139:1,4,13 140:5 143:3,13 144:22 145:2 145:11 149:24

seeing 33:12 136:13 144:10

seeking 16:8 46:15 47:3 57:6 151:25

seem 18:23

seen 16:16 26:9 66:15 78:9 80:8 82:11 87:25 94:17,23 94:25 121:2,3 134:6 143:11

sees 23:10 87:10

selected 146:10

send 10:24 35:14 147:17

sending 94:3

sends 97:19

senior 6:24 53:9 91:1,10 93:6,17 138:25 141:25

sense 44:17 71:3 95:20

sensitive 39:9

sent 15:20 22:23 94:16,21 116:12 121:14 128:6 129:15

sentence 17:6,9 34:16 38:15 77:17,21 88:24 91:12 98:1 120:11 130:7 148:3

separate 30:8 30:10,11 126:14,15

separated 30:12

separately 21:11

september 9:6 103:12

sequencing 36:8

series 126:20 132:13

serves 107:5 140:7

service 25:16 42:25 45:10,20 46:12,25 48:1 48:14 54:2 55:1,15 56:16 56:19 57:11,15 57:17 58:3,9 58:18,23 59:2 59:10,12,16

60:3,7,13,14,21 60:24 61:22,24 62:2,3,10,13,20 62:24,25 63:7 63:9 64:1,9 68:16,17,19 69:11,13,18,19 69:25 70:3 71:10,24 72:15 72:20 73:8,10 74:13,21 75:3 75:5,7,20,25 76:3,18 91:2 93:14 100:13 133:3

services 1:1 8:16 27:4,17 28:10,24 29:12 31:9,16 49:18 49:19 50:24 51:14 53:21 56:7 57:5 59:4 69:16 96:18,19 109:3 114:25 115:22 117:18 122:8 132:16 142:24 143:21 147:19

serving 140:24

session 1:1

set 13:13 21:16 34:4 43:3 46:24 55:13 58:12 61:22 121:23 122:14

130:3 138:1
setting 59:8
  62:4 92:8
seven 29:7
  45:14,18 52:19
shared 127:24
  128:3 150:3
sharing 128:5
she'll 142:2
shift 149:10
short 44:15
  45:5 79:20
  116:18
side 28:17,18
  33:25 88:12
signature
  156:16
significant
  77:22
similar 56:11
  75:5 92:8
simple 152:2
simply 22:21
  70:7
single 151:24
singled 143:17
sit 152:3
situation 49:9
  131:22
situations
  131:25
six 36:17
skill 156:9
skipped 41:6

slowly 83:13
small 70:17
smaller 92:11
  94:1
smith 1:11 5:5
snapshot
  144:10
social 53:9 77:4
society 1:1,4
  4:7,16 6:5,13
  22:12,13 89:10
  89:24 91:4,6
  91:17,18,23
  93:15 94:7,8
  95:11 96:12
  98:10,14 100:2
  100:14 101:10
  101:12,15
  103:3,11,18
  108:16 124:8
  127:24 128:3
  146:19
society's 6:3
  8:5 88:7 89:1
  94:3 96:19
  107:21 118:20
software 23:15
solely 78:18
solution 86:24
  108:5 113:9
  117:2
solutions 69:7
  82:24 92:25
  93:25 156:17

somebody 29:5
  43:22 74:11
  145:24 146:3
son 113:3
sophie 1:1
sorry 10:15
  18:8 20:16,21
  21:5 23:13
  26:25 30:9
  31:21 36:14,25
  38:13,14 41:14
  42:17,19 54:10
  55:21,21 57:1
  57:2 59:6
  61:14 66:20
  73:25 74:3,4
  77:18 83:17
  86:14 88:24
  94:5 102:20
  103:21 110:8,9
  111:5 115:4
  123:4 124:14
  128:21,25
  133:1 137:13
  153:2
sort 17:12
  18:16 56:12
  126:21 127:2
  150:21 153:20
sorting 23:16
sought 112:16
speak 15:10
  33:13 64:23
  65:21 66:12
  82:14 122:16

122:19 131:3
133:1,23 141:9
143:10,12
146:11 147:1
speaker 121:11
  121:15
speaking 12:17
  35:23 36:1
  99:18
special 35:8
  131:4
specific 16:25
  17:21 18:15
  42:6 48:16
  52:25 92:3,7
  93:10 98:6
  99:7 115:18
  130:17 131:2,7
  132:15
specifically
  66:18 82:21
  136:13
specificity
  144:25 145:6
specify 17:11
speculate 137:3
speed 79:1,4,4
spend 26:11
  96:25
spent 40:25
  77:16
split 17:20 18:5
  18:12
spoke 146:22

spoken 6:12
spot 25:25 26:5
  147:16
spots 21:18
square 49:5
  115:21,21
squeaky 93:12
st 3:4 5:20,23
  6:22 8:1 85:15
  88:6
staff 36:2 69:13
  70:21 91:16
  92:7,12 104:18
staffing 63:1,7
  63:15
stage 10:2,3
  24:17 81:25
  93:3 134:12
stages 81:24
stakeholders
  75:4
standard 25:16
  41:1 43:1
  45:13,17 46:13
  47:10 49:22
  50:4 52:2
  54:14,18 55:1
  57:15 58:4,24
  58:25 59:10,13
  59:16,18 60:3
  60:10,17 61:4
  61:6,8,9,22,24
  62:2,3,13,20,24
  62:25 63:7,10
  64:1,9 68:16

68:20 69:19,25
71:10 73:15
74:21 76:19
94:19
standardized
  42:25 46:12,24
  47:8 48:14
standards
  39:20 45:10,20
  47:17,21 48:2
  48:8,18,21
  49:6 56:16,19
  58:9,12,18
  59:3 60:7,13
  69:11 70:3
  71:24 72:21
  73:9,10 74:13
  75:3,6,25 76:4
  125:20
standpoint
  151:8
staples 88:12
start 5:14 9:17
  9:18 40:11,12
  88:20 90:21
  146:9
started 134:15
starting 4:13
  9:15 32:25
  40:10 93:9
  97:2 127:12
starts 13:23
  17:6 106:23
staska 1:14
  4:22

state 5:21 6:23
  116:25
stated 16:9
  142:17
statement
  57:16 96:1
  107:10
statistic 14:23
statistics 15:17
  17:19 24:15
  134:17 135:9
staying 21:2
stemming
  77:24
step 18:10
  81:22,22
steps 21:1
  22:11 53:1
  68:14 94:6
  98:5 105:21
  121:23
stewart 1:6
  4:23
stick 129:22
stop 8:9 12:21
  22:4 24:7,21
  25:2 30:10
  152:1,1
stopping 146:1
stops 13:14
  21:17 24:5
strategic 151:6
streamless
  154:3

streamlined
  146:15
strive 109:17
strong 151:7
strongly 21:16
structure
  133:14
structured
  130:19
studies 7:16
study 135:24
stuff 15:6 82:20
sub 49:24
  52:13 126:23
subject 6:11
  33:15 53:13
  100:18,22
  131:18,19
submission
  139:21
submissions
  142:6
submit 14:24
  127:4 139:8
submitted
  111:1 125:1
submitting
  127:5
substantive
  9:15
succeed 87:8
sufficient 49:20
  64:21 155:14
sufficiently
  60:14 68:16

suggested 132:10 134:16 142:5

suggesting 142:1

suicide 116:25

summarized 123:6

summary 78:20 90:11 120:23 121:8 144:19

supplementary 6:15

supply 139:22

support 7:3 65:11 73:3 81:18 87:4 109:4 139:10 140:8,24

supports 27:4 27:17 28:10,24 29:12 31:10,16 35:15,22 73:1 78:10,11 96:18 99:12 142:25

suppose 13:9 47:21

supposed 81:13 93:20 148:19 150:1

sure 5:18 8:9 13:9 15:5 18:10 22:21 23:20 29:15 30:16 31:19

35:21 69:17 76:10,10 79:18 79:22,25 82:14 83:2 84:21 92:20 94:18 103:25 104:4 108:10,12 112:5 114:21 123:5 128:6,15 133:19 134:19 134:21 135:22 139:18 145:14 149:6,14 150:5 150:8

surge 33:17

surpasses 66:9

surround 68:23

surrounded 117:17 118:9

synopsis 96:23 97:7,12

system 17:14 21:23 22:8 23:23 30:20 33:23 37:19 40:19 47:5,6 48:12,18 56:24 63:14,24 64:5 69:7 71:6,17 77:12 79:14 85:2 87:6 139:24 142:3 152:8,16 154:5

systemic 89:10 89:14 127:9

systems 47:2 77:5 84:17 85:2 154:9

t

t 1:1 3:10

tab 16:5,12,12 19:23,25 43:13 47:23,23,24,24 47:25 49:3,13 50:11 51:7 52:1 53:7,12 53:16,20 54:10 55:14 80:2,3 116:2 120:22 124:10,14 125:6 136:7 144:18

tabbed 144:14

table 18:3,20 20:19,19 24:8 24:14,20 25:1 26:7,9,13 27:3 28:9,13 29:25 30:1,25 31:1 31:12 41:7 42:1 52:2 56:4 74:24

tables 20:20 24:3

tabulated 135:10

take 18:10 21:1 26:2 34:13 35:8 36:10,19 38:14 42:9

45:2 53:1,25 57:22 59:2 61:10,21 66:2 68:13 72:23 73:3 76:17 79:21 81:19 85:7,12,18 87:2,4,25 93:8 94:6 96:7,9 98:25 101:18 103:3 105:14 116:19 121:22 123:5 129:4,24 134:8 136:6 145:21 147:7 154:7

taken 1:1 53:1 70:16 96:24 98:5 114:6 127:21 144:11 156:10

takes 35:11 37:15

talk 34:1 39:19 53:2 58:22 68:15 89:14 98:18 101:5 129:21 149:20 153:10

talked 24:6 54:25 71:4,23 76:5 120:2 153:17

talking 16:24 35:3 46:10

54:9,22 55:9
61:15,17 70:25
78:21 86:6
89:24 90:6
101:9 102:21
102:21 103:13
122:23 123:9
153:12
talks 97:4
targeted 18:15
38:7 92:8
targeting 17:20
tasked 93:18
taylor 1:2 3:6
4:15,17 7:21
7:23,25 8:4
20:7,18,24,25
29:16 30:1,18
30:23 79:19,23
83:3 88:4,5
103:24 106:19
106:22,24
111:18,19
121:13,16
128:16 129:2
129:18,19
135:6,15 137:4
137:15,25
147:6 155:6
team 12:24
13:2 14:14,24
24:15 25:3
31:1 39:6,7,13
41:12 92:8,21
95:7 97:8

115:7 130:14
130:15,24,25
131:14 132:7
141:2 147:16
149:21,24
150:10
team's 95:11
teams 33:17
38:8
technical 148:9
technique
134:4
technology
149:7 154:2
tell 101:11
140:11
telling 18:15
24:12 25:14
115:15 130:10
temporary
75:21 108:4
117:22,25
142:22
ten 27:8 36:16
36:19 37:4,13
37:15,24 51:21
55:10 105:8
tends 18:6
95:23 147:22
term 34:25
78:22 120:24
terms 6:9 9:24
22:10 23:22
28:8 36:15
62:19,21 63:5

67:5,9 68:17
70:24 71:4,8
119:23 122:24
130:18 133:14
134:25 135:20
137:19
territory 47:22
test 69:21
112:20 145:23
thank 5:11,15
5:24 6:8,19,20
7:19,21 26:25
29:10 32:9,14
37:16 43:16
61:19 74:4
77:18 83:18
85:13,20 86:3
86:25 88:3,4
101:19 102:25
106:4 112:21
124:4 129:18
147:4,5 153:18
155:15
thanks 7:23
thing 32:13
56:12 124:7
135:2
things 13:12
29:6 36:20
62:11 63:15,19
65:11 68:3,23
95:7 107:25
110:10 147:10
149:12,23,24
152:10 153:22

think 8:20 12:3
13:13 15:18
17:23 21:6
25:11,25 27:18
32:21 33:13
35:10,11 36:6
38:2 44:5 46:7
49:1 58:6
60:20 65:7,10
65:16 71:16,19
72:1 73:6,22
73:24 74:19
77:7,8 79:6,7
86:7 87:1,2
88:10 90:1
95:13 97:17,17
99:24 103:8
104:1,16,18
105:1 110:10
112:4 114:21
115:3 118:15
119:18 121:12
121:14 123:10
123:14 125:3
127:1 131:5,7
131:23 133:16
134:13,13,20
135:4 146:2
150:19,22
152:25 153:12
155:13
thinking 9:24
28:8 62:19
63:6 68:14
71:8 112:11

123:21
third 12:22
  25:1 38:12,14
  38:18 52:1
  60:7 69:9 75:1
  97:13,22
  121:19 148:3
thirteen 42:22
thought 76:20
  86:5,11 124:5
  129:3 145:24
threat 52:12,17
threatening
  49:9
threats 52:22
three 18:24
  26:19 28:1,1,3
  31:4 40:3
  41:19,20 67:3
  67:4 68:13
  117:23
threshold 66:7
  66:9 131:12
  132:18
thresholds 66:6
  130:2 131:11
  132:12,13,24
  133:17
thrust 107:11
  112:22 113:13
time 8:24 14:2
  16:11 17:24
  19:21 20:2,12
  20:13 33:4,10
  35:13 36:20

37:14,25 39:9
39:14 40:25
44:2,3,7,8,22
45:2,22 50:19
51:13 52:10
59:3,8,12
63:23 66:24
68:12 70:9
73:15 77:16
81:20 87:18
88:1 94:8 95:7
95:7 97:1,21
101:18 102:12
103:3,9 122:17
129:24 131:1
132:10 145:21
153:13 155:11
timeframe
  38:24 40:5
  44:17 45:6
  46:16
timeless 73:10
timeline 34:17
  35:3,6 45:8
  46:3 74:9 79:4
  89:2,9 110:23
timelines 34:2
  34:2,4 35:4
  42:19,24 43:1
  43:2,4 46:11
  46:13,14,24,25
  47:1,8,9 48:1
  48:15,18 49:4
  58:16 70:12
  72:25 76:14,14

78:1,25 79:7
79:11 106:2
timeliness
  104:9 105:23
timely 109:6,10
  109:14,14,16
times 32:24
  76:6 96:7
timing 48:9
  62:7 132:10
tired 5:17
titled 75:2 80:3
  120:23
today 4:5 5:12
  8:4 9:17 13:6
  16:20 25:25
  46:2 116:14
together 31:1
  47:20 58:12
  86:11 110:10
told 87:15
  101:14,14
  103:16 146:12
  146:13
toll 151:17
took 27:5
  146:24
tool 63:15 80:6
  81:4,4,12,22
  82:9,24
tools 81:9
top 26:21 49:15
  56:16 81:17
  131:7 132:3
  138:4,7 144:24

topic 86:16
  92:17 118:14
  155:7
topics 122:9
  137:14
total 27:9 28:10
  28:23 29:7,12
  37:14
touched 97:24
  120:17
towards 33:5
track 134:22
tracks 39:13
train 13:14
  21:17 22:4
  24:5,21 32:3,4
training 81:18
  81:20 82:17,21
  122:9
transcribed
  1:25 156:7
transcriber
  156:3,19
transcriber's
  156:1
transcript 4:2
  43:19 44:6
  156:9
transcriptionist
  1:25
transcriptioni...
  4:1
transcripts
  86:6,7,12

transfer 87:7
93:22 152:6
transfers 152:2
transition
86:22
transportation
66:2,6,13,14,16
travelled 115:9
tread 103:6
treasury 56:18
61:25
tree 146:9,14
trees 56:12
trends 89:25
triage 17:12
18:16 22:19
33:18 64:13
92:8,25 152:2
triaged 22:14
22:15 23:24
triaging 94:1
139:23
tribunal 1:1,1
34:4 44:9 58:8
61:25 74:20
78:17 83:6
84:2 85:23
91:20 98:25
121:25
tribunal's 34:3
42:19,23 59:10
76:13,14 77:25
83:1,19
trigger 139:20

true 87:23
156:8
trust 36:1
try 43:18 44:15
44:18,23 45:13
60:24 61:3
66:22 72:25
75:12 90:18
136:2
trying 13:13
18:9 58:19
68:13 69:1
71:20 72:16
108:14 111:20
153:16
turn 6:3 16:12
18:2 27:21
60:4 81:7
100:19,23
103:1 112:10
121:17 127:16
129:23
turning 125:18
twenty 11:14
two 27:9 29:23
31:15 36:18
37:22 39:8
56:22 57:7
80:12 81:21,24
94:6 101:24
103:20 110:10
118:16 124:12
127:20 128:9
137:5,5

type 14:16
32:13 65:22
124:6
types 87:19
153:22
typical 45:8
132:5

u

ultimately
101:21
uncertain
142:16
under 16:5
17:2 20:16
21:12 26:7,14
34:2 49:15,24
52:2,5 53:7,16
53:20 59:24
62:12 64:6
67:2 74:12
81:17 113:9
122:7 134:4
142:13 149:24
153:23
underlying
144:3
underneath
143:13
understand
11:16 29:9
30:19 31:19
35:7 37:1 49:1
94:13 120:6
142:6 147:8

understanding
10:17 12:8
27:6 37:11
42:15 43:25
66:5 80:9 82:9
101:20 111:8
113:1 114:19
117:2,11 119:5
119:9,13 125:6
131:11 139:16
140:10,11,12
140:12,16,20
141:7 142:8
146:8 148:9
149:2 150:21
151:25 153:11
154:8,12
understood
28:12
undertaken
70:22
underway 93:4
93:24 148:12
153:23
unfortunately
15:10 112:18
121:18 143:24
unique 131:5
units 154:13
unknown
121:11,15
unopened 10:6
unreasonable
40:2 58:5,23
59:6,17 60:9

60:16 61:5
62:9,16 70:8
73:15 74:4
updated 6:15
75:6
updating 18:13
upfront 101:16
ups 17:16 37:6
urban 65:10
urge 85:5
urgency 22:15
22:19 23:25
36:8,11 37:6
39:8 52:11
54:1 105:12
131:21 149:10
urgent 22:24
23:11 34:6,7
34:10,10,19,20
34:21 35:1,3,8
35:11,19,20
36:4,5,11,17,17
36:18,19,22,23
37:18,21,22,23
38:8,21 39:10
39:13,14,18,19
44:14,23 45:5
45:7,13,17
46:3,17,20
47:4 48:21
58:4 70:5,6,7
72:14 78:10
79:9 94:4,13
94:15 104:14
104:20 105:10

105:10 121:22
145:22 146:16
148:10,11,14
148:21 149:12
152:17
urgents 38:6
use 48:17 59:18
64:16 81:17,22
82:19 105:7
145:22
used 17:11 81:5
81:6 119:19
using 68:11
73:11 82:24
154:10
usual 4:3

v

valerie 26:4
31:22 120:19
valleys 33:16
value 11:23
113:7
variants 75:19
varies 99:24
variety 11:23
various 47:20
75:4 122:9
vary 14:1
varying 151:4
vehicle 100:6
veritext 156:17
version 111:23
112:3 135:13
versus 14:16
67:23 105:10

147:20
vice 7:10
victims 53:17
videoconfere...
1:1
view 64:20
72:20,22 74:16
78:22 89:5,6
90:11 138:5
153:25
viewed 23:7
vision 122:19
voicemail
152:4
volume 15:16
15:23 16:1
32:22 33:11
34:19 41:9
43:14 47:17,18
55:13,14 80:2
116:1 124:13
124:14
volumes 27:23
41:16

w

wait 6:7 87:15
waiting 10:6,12
10:25 11:2,13
11:14 12:23
13:4,16 22:9
23:23 35:22
119:24 120:3
walsh 1:10 5:3
5:4

want 5:16
23:19,21 24:11
24:13 26:11
35:21 41:25
46:9 58:15
66:21 69:20
72:3,4,23 73:2
73:3 78:3 86:4
86:22 87:2,4,7
87:22,24 88:19
93:7,10 100:15
105:3,13,20
111:9 112:19
112:20 115:1
132:14 137:2,2
138:6 140:2
152:10 154:3
wanted 9:16
13:2 16:24
42:1 74:5 83:6
85:22 99:10
112:5 146:6
wanting 103:5
wants 106:18
152:15,17
warranted 82:1
water 107:15
107:24 108:2,6
108:8,11,18
way 15:17
26:13 30:20
63:2,7,16,18,24
63:25 64:14
66:23 67:14
68:7 76:6 79:9

87:10,19 91:19
93:11 109:6,16
116:17 118:23
147:4 155:9
we've 15:6
16:23 47:23
52:25 53:7,12
53:16,20 56:3
68:5 77:16,16
79:19 84:20
87:25 119:19
123:11 139:6
wednesday
11:11
weeds 66:21
week 15:20
16:7 34:10
46:21 70:6
94:4,16
weeks 73:11
96:7
welfare 42:25
46:12,25 47:8
47:16,20 48:1
48:14 54:2,18
wellness 117:1
went 26:3
61:14
wheel 93:12
wilson 124:23
136:18 150:25
151:10
witness 5:13,13
5:23 6:2 83:11
83:16,23 84:4

84:12,14,19,23
84:25 85:6,17
85:20 86:3,14
86:25 87:17
wonder 87:18
103:22 111:15
137:4
wondered 6:5
wondering
9:18 17:18
20:7 30:3 37:4
43:2 68:18
79:16 84:22
106:25 113:3
128:16 130:14
130:18 135:6
141:1 143:3,17
word 14:20
40:15 47:15
61:9
work 11:11
36:21 37:5,24
58:12 63:2,22
63:23 71:22
76:21 77:4
84:5 93:24
107:14 108:17
125:22 131:2
140:13,16,17
141:6 142:24
147:17 148:20
153:20 154:9
worked 131:12
152:15

worker 51:15
52:8
workers 48:8
working 51:2
51:19,21 58:20
65:2 68:22
80:17,21 97:11
143:23 154:13
works 10:18
26:12 63:24
72:11 87:6
129:14 149:6
world 54:18
72:10
worry 50:12
writing 138:17
138:18,18
139:7,21
written 45:20
47:18 61:8
73:20 124:2
wuttke 1:6 4:23
4:24

x
x 3:1,10,10
59:12

y
yeah 12:17
13:10,11 15:9
17:23 23:20
24:11 33:17
37:16 55:5
61:7 67:3 68:9
74:2,6 80:13

92:20,24 99:24
102:24 104:1
107:6 108:25
110:16 111:10
112:15 116:8
120:8 130:7
133:12,12
134:13
year 8:25 26:15
26:19 31:5
32:23,24 33:22
33:23 38:17,19
40:4 132:19
153:24 154:7
years 80:12
92:10
yesterday 6:1
26:4 116:13
121:14 134:16
youth 49:18
yukon 53:21

z
zoom 1:1

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 1                              Tribunal File No. T-1340/7008

 2

 3               CANADIAN HUMAN RIGHTS TRIBUNAL

 4

 5      BETWEEN:

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

 7                                        Complainants

                              - and -

 8               CANADIAN HUMAN RIGHTS COMMISSION

                                           Commission

 9                            - and -

                 ATTORNEY GENERAL OF CANADA

10       (representing the Minister of Indigenous Services Canada)

                                           Respondent

11                            - and -

         CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA

12                     and NISHNAWBE ASKI NATION

                                        Interested Parties

13

                              --------

14

         ---This is the afternoon session of the Motion Hearing,

15

         taken in the above-noted matter via Zoom videoconference,

16

17       on the 3rd day of April, 2024.

18

19                            --------

20

21

22

23        B E F O R E:   Sophie Marchildon, Chair

24

25                            Edward Lustig, Member
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1   A P P E A R A N C E S:

2   David Taylor   For the Complainant,

3   & Sarah Clarke   First Nations Child

4   & Kevin Droz   & Caring Society

5

6   Stewart Wuttke   For the Complainant,

7   & Lacey Kassis   Assembly of First

8   Nations

9

10   Jessica Walsh   For the Commission

11   & Brian Smith

12

13   Dayna Anderson   For the Respondent

14   & Kevin Staska

15   & Samantha Gergely

16

17   Darian Baskatawang   For Interested Party,

18   Chiefs of Ontario

19

20   Michael Hyer   For Interested Party,

21   Nishnawbe Aski Nation

22

23

24

25   TRANSCRIBED BY: Shaina Jackson, Transcriptionist

1   I N D E X

2   Page

8

9

10

11

12   **The following list of undertakings, advisements,

13   and refusals is meant as a guide only for the

14   assistance of counsel and no other purpose.**

15

16   INDEX OF UNDERTAKINGS

17

18   The questions/requests undertaken are noted by U/T

19   And appear on the following pages: 89/11, 94/10,

20   97/1

21

22

23

24

25

1   INDEX OF EXHIBITS

2

3   NUMBER/DESCRIPTION   PAGE

4   EXHIBIT NO. 3: EXCERPTS FROM SASKATCHEWAN

5   CHILD PROTECTION SERVICES MANUAL REVISED

6   DECEMBER 2023   106

7   EXHIBIT NO. 4: EXCERPTS FROM MANITOBA

8   CFS MANUAL APPROVED JUNE 30, 2022   106

9   EXHIBIT NO. 5: UNITED NATIONS CONVENTION

10   ON THE RIGHTS OF THE CHILD   107

11   EXHIBIT NO. 6: E-MAIL EXCHANGES WITH DATE

12   RANGE SEPTEMBER 20, 2023, TO OCTOBER 19, 2023,

13   REGARDING AN APPEAL OF A DECISION   107

14

15

16   Job No. ON6657378

17

18

19

20

21   TRANSCRIPTIONIST'S NOTE: Due to poor audio quality,

22   this transcript contains more [indiscernible]

23   annotations than would be usual.

24

25

1   --- RECONVENED AFTER LUNCH RECESS

2   THE CHAIR: Good afternoon, everyone.

3   I hope that your lunch was nice. Mr. Taylor, are

4   you ready to continue?

5   MR. TAYLOR: Yes. Yes, Chair. Thank

6   you. Thanks very much.

7   THE CHAIR: Thank you.

8   CANDICE ST-AUBIN: PREVIOUSLY AFFIRMED

9   CROSS-EXAMINATION CONTINUED BY MR. TAYLOR:

10   1   Q.   Ms. St-Aubin, I have some

11   questions for you about -- about urgent cases or

12   about urgency as -- as a concept that is dealt with

13   in your Affidavit.

14   A.   Okay.

15   2   Q.   Actually -- actually, before I go

16   there, I have got a little note to myself. We both

17   got stopped on where the (indiscernible) point was

18   in the evidence. So just for the -- the record, to

19   clear that up, that's in Dr. Gideon's Affidavit.

20   A.   Oh, that's (indiscernible).

21   3   Q.   Yeah. And it's paragraph --

22   paragraph 68. And she's discussing there a

23   December 2023 adjustment of (indiscernible) such as

24   (indiscernible) threshold (indiscernible). So

25   (indiscernible). Just to (indiscernible) on that.

1   Now, on -- on urgency, just before I get into my

2   specific questions, a general question, did you

3   read Dr. Blackstock's Reply Affidavit that was

4   filed last week (indiscernible) for Dr. Giroux?

5   A.   I did. I didn't spend as much

6   time studying them, but I did do a cursory view of

7   the Affidavit itself. I don't have it.

8   4   Q.   No, no, and I -- I don't have --

9   A.   Okay.

10   5   Q.   -- questions about it. Just

11   whether (indiscernible). Okay. So looking at your

12   Affidavit at paragraph 46, here -- here, you say --

13   in the first sentence, you say: (as read)

14   However, other measures proposed by the

15   Caring Society could inadvertently

16   cause harm, risk, introduce further

17   delay, are duplicative or impractical,

18   or are not operationally feasible.

19   Have you (indiscernible) Caring Society

20   (indiscernible) harm to children or --

21   A.   Not directly, no. No.

22   6   Q.   And which specific measures the

23   Caring Society has proposed would harm children?

24   A.   Well, we just provide a -- just a

25   (indiscernible) example just around everything is

1   urgent. That's very hard to tell what is urgent

2   and (indiscernible) triage if -- if everything is

3   urgent.

4   7   Q.   Right. And that's -- that's the

5   next question, I guess -- I guess that I have for

6   you. So here you're -- you're saying that your

7   next sentence: (as read)

8   The Caring Society's proposal that all

9   requests be considered urgent would

10   further inhibit ISC's ability to ensure

11   that objectively urgent Jordan's

12   Principle requests, as opposed to

13   nonurgent ones are quickly identifiable

14   and prioritized accordingly.

15   Do you see that?

16   A.   Yes.

17   8   Q.   Now, if you take the volume 1

18   book, and if you go to -- could you please go to

19   tab H? And do you recognize this as the notice of

20   motion the Caring Society brought --

21   A.   Yes.

22   9   Q.   -- in December? And it's -- and

23   it's just the order in the schedule. So the --

24   the, you know, factual basis (indiscernible).

25   Could you please turn to point 1.1 in the schedule?

1   So you -- you want to turn through the -- the

2   portrait-oriented pages towards the

3   landscape-oriented page. It's the one that --

4   A.   This one?

5   10   Q.   Yeah. It's the first page of the

6   table with a schedule (indiscernible).

7   A.   Oh, yes.

8   11   Q.   And you see that in 1.1, it says:

9   (as read)

10   The proposed solution is adopt a

11   presumption that unless triaged

12   otherwise, all requests received

13   through the National Jordan's Principle

14   Contact Centre, Regional Contact

15   Centre, and other Jordan's Principle

16   request mechanisms, including

17   (indiscernible) or other

18   (indiscernible) are urgent.

19   Do you see that?

20   A.   Yes.

21   12   Q.   And so do you agree your statement

22   in paragraph 46 doesn't reference that what the

23   Caring Society is proposing is a presumption and

24   not a rule? What you're saying in 46, just to go

25   back to that paragraph, is the Caring Society's

1   proposal that all requests be considered urgent

2   would further inhibit ISC's ability to ensure that

3   objectively urgent (indiscernible) requests are

4   (indiscernible) are prioritized. So you're --

5   you're (indiscernible) triage (indiscernible).

6   A.   Oh, sorry. So you're -- so you're

7   adopting a -- a presumption as opposed to things

8   being considered urgent?

9   13   Q.   Correct. A presumption and not a

10   rule.

11   A.   Okay, yes. Yes, I --

12 14   Q.   And -- and you agree that that's

13   what's in 1.1?

14   A.   Yes.

15 15   Q.   It's a request for presumption?

16   So would you agree that it's not accurate, what's

17   in 46, that the Caring Society is proposing all

18   requests be considered urgent?

19   A.   I -- I suppose the problem for me

20   is I think if somebody presumes that they may

21   consider it urgent to act -- you would act on it

22   accordingly.

23 16   Q.   Yeah. But then when -- with the

24   words here in 1.1, "unless triaged otherwise,"

25   would you agree that that implies that if there is

1   reasons not to consider it urgent, that priority

2   could be downgraded?

3   A.   Yeah. I think, too, also a

4   clarification of the definition -- agreed-upon

5   definition (indiscernible) on what is urgent

6   (indiscernible).

7   17   Q.   Right. That -- that follows the

8   question.

9   A.   But that's --

10   18   Q.   The question --

11   A.   With that (indiscernible), that's

12   probably where I'm confusing that, but --

13   19   Q.   Sure. I -- I appreciate the

14   explanation of what -- what might have been

15   according to the wording, but --

16   A.   Yeah.

17   20   Q.   -- the wording that you're -- the

18   wording that your paragraph refers to effectively

19   about what is (indiscernible) -- I believe, you

20   know, your -- your explanation is the lack of

21   triage, but there is triage spoken to at 1.1.

22   Would you agree on that?

23   A.   Yes, that is mentioned

24   (indiscernible).

25   21   Q.   So would you agree that a -- a

1   fairer statement of the point might be that ISC

2   thinks that all cases should be considered

3   nonurgent until triaged otherwise, while the Caring

4   Society thinks that all cases should be considered

5   urgent until triaged otherwise?

6   A.   Canada doesn't say that they

7   should be -- they should be considered nonurgent.

8   I think --

9   22   Q.   But the starting -- the starting

10   presumption opening the case from Canada's view is

11   that you would need to see indicia urgency to move

12   it into the urgent category?

13   A.   In the absence of the request of

14   defining it as urgent, we need to look at it,

15   and -- and upgrade it to urgent.

16   23   Q.   Yes.   Okay.   Thank -- thank you.

17   Now, a further question I have, the same -- same

18   document in the volume 1 book, is that -- if you

19   can flip to 5.1.   That's on page 8 at the bottom.

20   And do you see here that the Caring Society is

21   proposing that an audit be conducted within 30 days

22   to determine, based on data, the number of Jordan's

23   Principle requests that are or are not urgent

24   and/or time sensitive?

25   A.   Are -- is -- are you at 5.4?

1   24   Q.   Oh, no, sorry, 5.1. This is

2   the -- the -- where it starts: (as read)

3   Within 30 days, (indiscernible) on

4   service requests. Contact centre

5   serving children and youth, including

6   those in urgent situations

7   (indiscernible) Canada's

8   (indiscernible).

9   Oh, I'm sorry. I think I have misread -- misread

10   the point here, but -- one moment. No, I'm sorry,

11   it's 5.2. I -- I apologize. (As read)

12   Within 30 days, conduct an audit and

13   consult on the results with the parties

14   in order to determine, based on data,

15   the number of Jordan's Principle

16   requests which are or are not urgent

17   and/or time sensitive.

18   Do you see that there?

19   A.   I do see that.

20   25   Q.   And have you followed up with

21   the -- with the Caring Society about the idea of

22   such an audit?

23   A.   No, I have not. Not personally.

24   26   Q.   Okay. And just more generally

25   on -- on urgent cases, I -- I understand that you

1   were, at the start of your career, an early

2   childhood educator?

3   A.   I was.

4   27   Q.   And so would you agree with me,

5   based on that experience, that time passes

6   differently for kids than it does for adults?

7   A.   Time passes differently for

8   everybody in their own individual ways. For some

9   children, it probably does.

10   28   Q.   To make -- I guess to make a -- a

11   maybe a finer point on it --

12   A.   Yeah.

13   29   Q.   -- that the -- the -- the

14   developmental change of a child in a given period

15   of time compared to an adult would be much

16   greater --

17   A.   Yes.

18   30   Q.   -- depending on the age of the

19   child?

20   A.   Yes, yeah.

21   31   Q.   And would you agree that, as a

22   result, delays that might not be major for an adult

23   could be very important for a child?

24   A.   I would agree.

25   32   Q.   And would you agree that delays

1   that might be not major for an adult could be life

2   altering for a child?

3   A.   In certain cases, for sure.

4   33   Q.   And would you agree that -- that

5   some urgent cases, delays for children could be

6   life threatening?

7   A.   As much as an adult as well, to be

8   fair.

9   34   Q.   I have a question for you about

10   (indiscernible). So this is now going to paragraph

11   57 in your Affidavit. You have a -- a little note

12   here about -- about some of the staff employed in

13   '22/'23, and then a table of full-time equivalent

14   staff over -- over time, and there's a -- there's a

15   footnote saying: (as read)

16   The total number of full-time

17   equivalent staff reported here support

18   both Jordan's Principle and the Inuit

19   Child First Initiative.

20   And I'm just wondering if you could confirm my

21   understanding that the Inuit Child First Initiative

22   was announced in the budget of 2019 and then

23   launched in '19/'20?

24   A.   I believe so, but I don't -- I --

25   I believe that's the budget it was announced in.

1   35   Q.   Right. But you would have to

2   check to know for sure?

3   A.   I always want to check with other

4   documents, but I don't (indiscernible).

5   36   Q.   So if that were the year, 1920,

6   the figures from 1920 onward would have staff for

7   both Inuit Child First Initiative and Jordan's

8   Principle (indiscernible)?

9   A.   I can't say for sure because we

10   were already doing some similar smaller cases in

11   (indiscernible), so I'm not sure if it became

12   formalized as a -- a new policy program as opposed

13   to us doing it --

14   37   Q.   So you -- you -- it could have

15   been all --

16   A.   (Indiscernible) -- yeah. Again,

17   I -- I'm not -- I don't -- it was before my time,

18   so --

19   38   Q.   The (indiscernible). It could

20   have reflected all (indiscernible)?

21   A.   It could have, but I -- I'm sorry,

22   I don't have that (indiscernible).

23   39   Q.   So at paragraph 59, you say, "The

24   Caring Society" -- this is the first line. (As

25   read)

1   The Caring Society's proposed solution

2   of appointing "sufficient staff" -- you

3   have that in quotes -- within 45 days

4   for urgent determination purposes, set

5   out on page 3 of their Notice of

6   Motion, is not feasible for a number of

7   reasons.

8   And then you go through four reasons below. And so

9   if we could just go back to the volume 1 book for a

10   moment here, back to tab H. And this time if you

11   would look at page 3, please. And so do you see --

12   do you see paragraph number 3 starts: (as read)

13   An order that Canada will, within 45

14   days --

15   A.   Yes.

16 40   Q.   And it says: (as read)

17   -- within 45 days of this Tribunal's

18   order, appoint sufficient persons in

19   each (indiscernible) region and

20   nationally who are responsible for

21   managing urgent Jordan's Principle

22   cases to ensure that the determinations

23   are made in a manner consistent with

24   the Tribunal's orders.

25   Do you see that?

1   A.   Yes, I do.

2   41   Q.   So would you agree this isn't a

3   request for staff (indiscernible), but it's asking

4   for case managers to deal with the volume of urgent

5   cases?

6   A.   I -- I don't -- I think that

7   it's -- it's identified as an urgent request once

8   the comment is made. That's when it starts being

9   managed by the case -- as opposed to -- does that

10   make sense? Like, I think there's case -- you

11   manage the case all the way through the process,

12   and it's not (indiscernible).

13   42   Q.   So that's your reading of the --

14   the verb "managing" there --

15   A.   Yeah, yeah.

16   43   Q.   -- is that it would be all -- all

17   focal points are managed?

18   A.   They all manage from the point

19   that they start entering it into the system, in my

20   mind.

21   44   Q.   If -- if you understood the

22   request rather as being (indiscernible) total

23   points that it -- but rather being different --

24   different kinds of focal points that pointed to

25   help coordinate bringing those urgent cases through

1   the system, would that change the nature of your

2   concerns and (indiscernible)?

3   A.   Well, again, it's the word

4   "sufficient." How many is that? It's hard to tell

5   because the case volume increases and -- and

6   fluctuates, and I'm not sure what that number would

7   be. I mean, that's where, when I went through why

8   it would be challenging to hire under the guise of

9   sufficiency, we work within these various

10   parameters when we do our hiring, including

11   allocated budgets that are provided through

12   parliament --

13   45   Q.   Sure.

14   A.   -- the parliamentary process.

15   46   Q.   So that reflects a few -- a few of

16   your concerns, and maybe we'll -- maybe we'll just

17   kind of separate them --

18   A.   Okay.

19   47   Q.   -- for a moment. So -- so we

20   consider this as, essentially, you know, you have

21   got a -- a -- you have got a -- you know, call it a

22   series of -- of, you know, point -- focal points on

23   urgent cases responsible for triage -- triaging and

24   (indiscernible), and that's their job to -- and

25   maybe I'll just start by confirming my

1   understanding of this, that focal points, in

2   general, could be dealing with urgent or nonurgent

3   cases?

4   A.   Yes.

5   48   Q.   And I think you had used evidence

6   this morning that, you know, there may be some

7   folks who are dedicated to urgency (indiscernible)?

8   A.   Surge.

9   49   Q.   Surge?

10   A.   Yes.

11   50   Q.   But as a general manager

12   (indiscernible), and so if we're -- if we're

13   conceiving up, you know, the -- the creation of

14   a -- a cadre of -- of focal points for --

15   specifically targeted towards, you know,

16   (indiscernible), so I take your -- your point on --

17   on the word -- on the adjective "sufficient." You

18   know, what is sufficient? That's -- that's your

19   concern in 59(a) --

20   A.   (Indiscernible).

21   51   Q.   -- of your Affidavit. So I'm just

22   going back to your -- to see there's no readily

23   available formula that can determine the number of

24   sufficient staff. You have a constant fluctuating

25   level and complexity of (indiscernible) requests.

1   Is that the kind of thing, you know, consulting

2   with your team, with Ms. Wilson-Clarke, she works

3   with consulting with the Caring Society JPOC, do

4   you think that, you know, a -- a level of effort

5   could be arrived at in terms of a place to start in

6   terms of how many folks like that we should have?

7   A.   I think that's something to take

8   back, for sure, to look at proactively, what makes

9   sense, and I'm -- and, also, just on the point with

10   regards to how I interpret it --

11   52   Q.   Mmhmm.

12   A.   -- with regards to managing

13   (indiscernible) on calls, right? That's -- that's

14   a request that has to be managed to make sure we're

15   finding a solution as opposed to just a case

16   manager. I think that those are conversations I

17   would hope should be happening at JPOC and at our

18   tables with all parties, yeah.

19   53   Q.   And those conversations help

20   determine a number, and then they would help

21   determine the second point, which is -- which is

22   budget in terms of --

23   A.   I'm not sure about determine. At

24   least inform, you know, and -- and to hear from

25   folks, too, what they're -- what they're feeling,

1   and then that would come to a determination.

2   54   Q.   Yeah.   And the determination would

3   be a -- a starting point to be informed by later

4   (indiscernible) --

5   A.   Well, and --

6   55   Q.   -- (indiscernible) --

7   A.   -- and --

8   56   Q.   -- (indiscernible)?

9   A.   Sorry.

10   57   Q.   No, no, that -- and I'll just --

11   I'll just repeat my question.   You know, that a

12   determination could be a starting point.   It could

13   be either too many or too few of these folks, and

14   then adjustments could be (indiscernible).   Would

15   you agree with that?

16   A.   We -- yeah, we would certainly

17   take it under advisement and work with the parties.

18   I don't think necessarily that that would determine

19   the funding level that we receive.

20   (Indiscernible).

21   58   Q.   And it -- it could be the case --

22   if we're conceiving this, again, as a cadre of

23   focal points -- you could be taking resources you

24   already have and repurposing them?

25   A.   I think that, again, we'd have to

1   start a conversation (indiscernible) that there is

2   (indiscernible) a wealth of programs, as well as

3   implementing the model.

4   59   Q.   If -- if you were repurposing

5   existing resources, would that engage that type of

6   concern about budgeting -- budget obligations?

7   A.   Oh, I -- yeah, I couldn't even

8   start to think what that would look like. You

9   know, that would -- that would really need to be a

10   (indiscernible) conversation to have with probably

11   the whole department, I would say, and -- and the

12   priorities, mandates, and (indiscernible) as well.

13   60   Q.   If you didn't have to hire any

14   people to have this kind of cadre of -- of focal

15   points, (indiscernible) kind of taking the lead or

16   helping the urgent cases along more strategically,

17   would that engage concerns for a higher level of

18   public servants (indiscernible) paragraph --

19   subparagraph (c)? (Indiscernible)?

20   A.   Oh, so the -- the only challenge

21   with that would need to be considered in this

22   prospectus to your previous points about

23   (indiscernible) systems and as the -- the -- the

24   representative of the Tribunal referenced around

25   Canada's obligation to look at federal programming.

1   So if we're moving from one to put into the other,

2   what happens to that one? So that would have to be

3   part of the discourse, I would think, with all

4   parties. If there is going to be shortfalls in one

5   area to cover another area in the (indiscernible)

6   resources, (indiscernible), you know, salaries,

7   and -- and regulating operating -- sorry, operating

8   budgets.

9   61   Q.   Okay. Have -- have you heard of

10   the adage -- this is a general term -- where it

11   works (indiscernible)?

12   A.   Still (indiscernible).

13   62   Q.   No, no, that's not -- that's not

14   at all --

15   A.   Is that the same adage?

16   63   Q.   No, no.

17   A.   Oh, sorry.

18   64   Q.   The idea that instead of --

19   instead of increasing the volume of your effort,

20   you increase the strategic nature of the effort.

21   So if you have -- let's say you have got 50 focal

22   points in your --

23   A.   Mmhmm.

24   65   Q.   -- region, and if you were going

25   to say, okay, well, we're going to have three of

1   you, and, in particular, we'll get down to kind of

2   stick handling these steps, you know, concentrate

3   on the urgent cases, and maybe some of you will

4   have some extra (indiscernible), et cetera, you

5   wouldn't necessarily need to hire new people to do

6   that?

7   A.   Yeah.   I think that also speaks to

8   the fact that this -- the government -- the public

9   service wasn't built to (indiscernible). We're --

10   we're not used to functioning in a way that

11   (indiscernible). We're doing our best to do so,

12   but as you have just said, there's some -- there's

13   some conversations that need to continue happening.

14   You know, in particular, the area of -- of the

15   human resourcing of it.

16   66   Q.   Okay. So just as a baseline

17   concept, if you don't have to hire anybody to do

18   something, do you avoid collective agreement and

19   Public Service Employment Act employment concerns?

20   A.   Not if it ever comes to the point

21   where people become overburdened or have to move

22   outside (indiscernible) in negotiation with unions.

23   (Indiscernible) those types of discussions as well.

24   67   Q.   Okay. Now, in terms of

25   training -- your concern on training new staff

1   again, if you were -- if you were repurposing or

2   optimizing, you know, existing resources, that

3   would be a -- a lesser strain on staff training in

4   terms of you're not starting from zero?

5   A.   Not necessarily because, again,

6   the staff have very specific training. We have

7   mandatory 15 hours of training. In particular, I

8   will stress the importance that they have to be

9   retrained and trained for cultural sensitivity and

10   awareness. And as you pointed out -- thank you for

11   this -- the -- the child rights assessment, those

12   types of new training, you know, so they're --

13   we're taking folks who have worked in lands and

14   economic development. They may not understand the

15   concept of what "best interests of the child" is.

16   68   Q.   So -- so my question wasn't about

17   land and economic development.

18   A.   No, but I was just saying

19   repurposing that staff.

20   69   Q.   If I could just ask the questions.

21   So we have -- we have focal points who work on

22   Jordan's Principle cases now. And the question I

23   have is about the repurposing -- repurposing or

24   optimizing (indiscernible) focal point resources.

25   We're not starting at zero with those folks, right?

1   They -- they have existing focal point training

2   that they could be applying in a new way if

3   they're -- if they're -- if the nature of their

4   role changes?

5   A.   I think I'm just confused as to

6   we're retraining them to work in Jordan's

7   Principle, but they aren't working in Jordan's

8   Principle?

9   70   Q.   So I'll --

10   A.   Sorry. I -- I just --

11 71   Q.   -- (indiscernible). No, it's --

12   it's fine. So in 59 you're criticizing the Caring

13   Society's solution, which is to have, you say,

14   sufficient staff. I say, you know, managing staff

15   or some management function for four reasons. We

16   have kind of gone through the first three about how

17   do you figure out how many? How do you have enough

18   money to pay for them? How do you get them hired?

19   And then the federal government or (indiscernible)

20   or whatever it is (indiscernible) last concern now,

21   which is -- the way I'm reading this concern -- and

22   tell me if this is unfair -- is if you have got

23   Johnny off the street who comes in to be a focal

24   point, it's going to take four to six weeks to

25   train that person to do the job. Is that correct?

1   A.   Yeah, yes.

2   72   Q.   So if we're not using Johnny off

3   the street, if we're using Jane focal point, she's

4   been at Jordan's Principle focal point and is now

5   taking on new or different roles, that concern

6   would apply the same way?

7   A.   Yeah, and thank you for that

8   clarification. I thought it was somebody new. So

9   we already are doing that. I have other regions

10   stepping in to support other regions that are --

11   have a greater backlog, as well as people from

12   national office working in the national office

13   context being triaged in to -- to look in those

14   areas that (indiscernible) requests

15   (indiscernible).

16   73   Q.   And -- and when you do that, you

17   are starting from zero on training? People

18   don't --

19   A.   No, but then other -- other work

20   gets pushed to the side while we do that.

21   74   Q.   Just on training?

22   A.   Oh, just on training? Yeah, yeah.

23   75   Q.   Sorry. I'm just focusing on

24   (indiscernible).

25   A.   Well, I -- not necessarily. Just

1   depending on what they were doing or how long it's

2   been since they had their training. I think the

3   training is continuous.

4   76   Q.   It's continuous, but it's not the

5   same as Johnny off the street? Johnny off the

6   street doesn't know what Jordan's Principle is --

7   A.   Yes.

8   77   Q.   -- necessarily.

9   A.   The -- the first training, yeah.

10   78   Q.   But there is --

11   A.   If they haven't worked in a

12   regional office, then they're like a Johnny off the

13   street --

14   79   Q.   Yes.

15   A.   -- even if they're working in --

16   in national headquarters.

17   80   Q.   So would you agree with me that

18   any -- any solution that's proposed involves, you

19   know, calling on anyone, or including your surge --

20   your surge strategies (indiscernible) training

21   (indiscernible)?

22   A.   Yeah. Yeah.

23   81   Q.   And that's not the Caring

24   Society's proposal?

25   A.   Uh --

1   82   Q.   It's not -- it's the -- the fact

2   that the Caring Society's proposal, depending on --

3   I think it's an order of degree on training, which

4   interpretation (indiscernible), it's not something

5   that makes it a unique challenge that the proposal

6   brings. It's a challenge that some of ISC's

7   current proposals would have as well?

8   A.   Will have a consideration, yes.

9   It's part of my bigger concern.

10 83   Q.   That's fine. Okay. Thank you.

11   Just more generally on training, and, in

12   particular, thanks for your evidence about, you

13   know, the nature of the ongoing training,

14   retraining process. That's helpful. Can you give

15   me a sense of the kinds of positions that would

16   require -- so there's kind of two ranges I'm seeing

17   in this paragraph 59(d). There is -- you know,

18   generally speaking, it requires training that takes

19   four to six weeks; however, some positions require

20   training of up to six months.

21   A.   Yeah.

22 84   Q.   So what -- what kind of positions

23   would we be in the four to six-week period, and

24   what kind of positions would be a six-month period

25   of training?

1   A.   And this is a generalization?

2   85   Q.   Exactly. Yeah, I'm not -- not

3   (indiscernible) --

4   A.   Because that's quite complex,

5   depending on where they are from region to region.

6   So for the four to six weeks, I would think, as a

7   general, it would be the initial intake. So make

8   sure there is cultural competency, things like

9   (indiscernible), et cetera. So (indiscernible)

10   and -- and are respectful in that nature.

11   Certainly the one-on-one and foundational

12   information on the CHRT orders and the application

13   of Jordan's Principle, and what is a -- you're

14   allowed to request, and what you can't. So ensure

15   that there is no, you know, overstepping, for lack

16   of a better word, for those -- for people who are

17   just doing the information inputting.

18   86   Q.   Right.

19   A.   But if you're somebody making

20   higher level decisions or even, let's say,

21   certainly on the financial side -- because I don't

22   know that side very well. That's not my

23   background -- that may take up to six months. It

24   may require a more in-depth understanding certainly

25   of the Act. If you're working in supporting of --

1   of different points of determination, et cetera,

2   and -- and the nuances around what is -- you know,

3   how to make those determinations is beyond just the

4   standard.

5 87   Q.   So -- so is it fair to say that as

6   the level of seniority increases, the amount of

7   training increases?

8   A.   I would say it's just not

9   seniority. I would say I look at it more as the

10   area of responsibility.

11 88   Q.   And where would a focal point fall

12   for four to six weeks?

13   A.   I -- I would say there is

14   certainly more than the -- the four to six weeks,

15   but I don't know to what degree, how much, and,

16   again, I also feel, and I -- I know that I have

17   seen this happen, where you want to ensure that

18   they return for additional training to maintain and

19   retain or upgrade cultural training and

20   responsiveness.

21 89   Q.   And in terms of how it rolls out,

22   do -- what do people do while training, or is it

23   a -- you know, they're in a classroom for six

24   months, and then they --

25   A.   Oh, I can't -- I can't speak to

1   that level of detail because, again, it depends on

2   what's available in the particular region that

3   they're in. Obviously, here, in Ottawa, I have a

4   very different viewpoint on what access would look

5   like to me as training. I can do it virtually with

6   relative ease. I could do it throughout the day.

7   There may be on -- virtual on-the-spot training. I

8   know there is as people come into it. Certainly

9   the CHRT 101 and Jordan's Principle 101. It's a

10   mix. But then as they're working through the call

11   centre, that is hands-on training. Yeah.

12 90   Q.   So if I can -- if I can try to use

13   an analogy, if you -- if you were to come work

14   at -- at -- in my law firm, you'd have a few days

15   at the start learning the software, et cetera, and

16   then a lot of the training beyond that is kind of

17   happening on the job over the first (indiscernible)

18   months, and then, you know, the general expectation

19   is once somebody has worked for, you know, three to

20   six months, they -- you know, they kind of

21   (indiscernible) works at that point, and it goes to

22   a -- you know, a -- a six-week period where they're

23   not touching files or doing anything. Do you know

24   which of those (indiscernible)?

25   A.   I think it's both. We do have a

1   training team, and I -- I don't have their tools

2   here and how they -- they do their methodology, but

3   part of it is a combination of -- it's virtual,

4   obviously, because it's across the country, looking

5   at information, and then walking through cases

6   together and -- and -- and doing that type of

7   situational learning, and then it's the hands on.

8   Naturally, there's (indiscernible) and come back

9   and do something over again. People are encouraged

10   to come back. It doesn't -- it doesn't have an end

11   date of training.

12   91   Q.   So it would be fair to say

13   training would be progressive, and it would be

14   continuous?

15   A.   I think it should be continuous

16   forever.

17   92   Q.   And -- and so it would be fair to

18   say that in the -- depending where you are in the

19   range, your four to six weeks or your six months,

20   you could be -- you could be -- or one could be

21   (indiscernible) during that training, right?

22   That's part of their experience?

23   A.   I can't speak to whether or not

24   they are live active cases, but I do know that they

25   use case examples. So, again, (indiscernible).

1 93   Q. And who -- who, on your team --

2   who would be in charge -- in charge of training on

3   your team?

4   A. There's a training unit, but I

5   don't know the name of the -- I don't know the name

6   of the individual, but it's -- it's a manager.

7 94   Q. Okay. And -- and do you know if

8   there's standardized training materials used for

9   onboarding new staff?

10   A. Yes, there is, yeah.

11 95   Q. This question is related, I

12   suppose, to the surge team support --

13   A. Yeah.

14 96   Q. -- which you kind of -- we touched

15   a little bit on in some of your answers.

16   A. Sure.

17 97   Q. And so at paragraph 61 of your

18   Affidavit, there is some statistics about the words

19   "surge team." So at 61, you're noting: (as read)

20   Between January 15th and March 8th,

21   2024, surge teams entered 3,379

22   requests for products, services, or

23   supports in the Jordan's Principle case

24   management system.

25   Is it the case that surge -- the surge team

1   initiative started on January 15th, 2024?

2   A.   There have been pockets of surge

3   happening amongst the region internally, but a

4   dedicated targeted whole department of surge, when

5   we sought out individuals, was around that time.

6   We had started having discussions around that, I

7   believe, in December, like -- because we were

8   trying to figure out (indiscernible).

9   (Indiscernible).

10   98   Q.   And -- and the surge would be

11   mainly addressing those -- those (indiscernible)?

12   A.   (Indiscernible).

13   99   Q.   Yeah. Yeah. And when abouts did

14   you become aware that there was a problem with the

15   intake in terms of those backlogged?

16   A.   I think that it's fair to say that

17   probably the backlog was there prior to my -- to my

18   arrival. It's probably not even been a year in the

19   department, but the issue of e-mail backlogs to

20   this -- to the degree where I knew that it was --

21   probably not (indiscernible). I want to say maybe

22   a couple of months ago. Like, it was once I

23   started diving more into this particular area of my

24   mandate.

25   100   Q.   Are you aware that it -- it was

1   raised at JPOC in August of 2023?

2   A.   I wasn't aware. I -- I don't

3   see -- necessarily see the information that comes

4   from there, but it was around that time where I --

5   I started looking more deeply into how it was --

6   how Jordan's Principle was rolling out on the

7   ground because I started to have conversations with

8   communities who were delivering it to their

9   (indiscernible).

10   101   Q.   Sometimes I like to try and

11   (indiscernible) to something. So -- but -- but

12   late summer, fall sounds about right?

13   A.   Yeah. So if I came in there --

14   I -- I arrived around, well, May, and -- you know,

15   around my birthday, and then I started having more

16   discussions certainly with Chief and Council and

17   leadership, and I think this raised -- I would say

18   even towards the fall because I remember it

19   was around Thanksgiving. August, September --

20   around September, a couple conversations with

21   specific Chiefs in Manitoba were -- they were just

22   flagging that they had heard, and they were really

23   struggling to get a sense of it, and that's where I

24   started to look into it a little bit more deeply

25   around the situation.

1   102   Q.   So is it fair to say that the

2   issue mainly came to your attention via -- via

3   contact with Chiefs then?

4   A.   Well, just to the -- to the

5   extent. I mean, I knew that the system itself

6   needed updating from an operational perspective,

7   and I know that, you know, the -- the need for,

8   obviously, more humans, like, more bodies, was

9   something that was being felt as well, but I think

10   to the point where it was causing delays in

11   payments was when it was raised. Yeah. I wanted

12   to go back. It was -- but more in particular to

13   that region, in Manitoba, and that's when I started

14   to -- to have conversations with the regional

15   office (indiscernible).

16   103   Q.   Just a general statement, would

17   you agree if something is important enough to be a

18   concern that's raised with JPOC, is that an

19   important enough concern to be (indiscernible)?

20   A.   I can't -- that's a -- that's a

21   determination I leave in the hands of my -- of

22   my -- of my officials. As I said, I was still

23   onboarding. I have a pretty massive mandate, and

24   this is, obviously, a very important one, you know,

25   I'm, obviously, very passionate about. But it

1   would have been, you know, something that would

2   have been raised around -- all around that same

3   timeframe. It would have been -- as soon as a

4   chief and I speak, then I --

5   104   Q.   Right.

6   A.   -- I take it to them.

7   105   Q.   I have a math question.

8   A.   Okay.

9   106   Q.   Please let me know if you can't

10   answer it. It's (indiscernible). Just let me know

11   that. In paragraph 61, I just am not 100 percent

12   sure how to interpret this -- these numbers. So

13   the -- the paragraph says that there were 3,379

14   requests entered, and then it says 2,334 of those

15   were decided. And then this may just be a typo,

16   but when I ran the numbers, I saw that it's 69

17   percent instead of 59 percent. I don't -- I

18   don't --

19   A.   Okay.

20 107   Q.   We know this is miscalculated.

21   I'm just wondering if you checked the numbers

22   before (indiscernible) --

23   A.   I did not.

24 108   Q.   -- (indiscernible).

25   A.   Yeah.

1   109   Q.   Now, the second sentence, this is

2   one where I kind of (indiscernible) etiology.   I

3   think I'm not understanding.   And so it says: (as

4   read)

5   Together, and in the same timeframe,

6   surge teams and regional focal points

7   entered 10,582 requests for products,

8   services, or supports in the Jordan's

9   Principle case management system.

10   And then it says: (as read)

11   62 percent of those items or 6,538 were

12   determined as of March 8th, 2024.

13   A.   Mmhmm.

14   110   Q.   And what I'm wondering is, like,

15   looking through, there is -- there is kind of two

16   sets of figures there.   There is the 3,379 and the

17   10,582?

18   A.   Okay.

19   111   Q.   Are those separate, or is the

20   first included in the --

21   A.   The first is included.

22   112   Q.   Okay, thank you.   That's -- that's

23   really helpful.   So at paragraph 62, you say at the

24   next paragraph down, the last sentence: (as read)

25   ISC also remains open to discussing

1   with the parties other possible interim

2   solutions to address the backlogs.

3   Have you -- have you attempted to convene any such

4   meetings with the Caring Society since the

5   (indiscernible)?

6   A.   Not personally, no.

7   113   Q.   Now, paragraph 63(a), here in

8   paragraph 63, you're commenting on the Caring

9   Society's backlog solutions. And at least would it

10   be fair to say that this Affidavit is the first

11   time that you had personally communicated any of

12   this to the Caring Society. Is that right?

13   A.   Through the Affidavit? Yes.

14   114   Q.   So in (a), you're saying -- I'm

15   just trying to summarize here. It's not possible

16   to identify the total backlog cases without

17   individually reviewing every single e-mail?

18   A.   Yes.

19   115   Q.   And you would agree with me,

20   though, that that problem has to do with kind of

21   the level of detail or review in terms of what's in

22   each e-mail. You -- you would be able to know kind

23   of inventory-wise, the volumes, like, just by

24   (indiscernible)? Kind of -- kind of like what your

25   team did --

```
 1                         A.    The true requests versus --

 2         the case versus the request.

 3    116                  Q.    Yeah.  But at least you'd be able

 4         to get a sense of the volume (indiscernible)?

 5                         A.    Mmhmm.

 6    117                  Q.    Sorry.  That's a yes?

 7                         A.    Yes, sorry.

 8    118                  Q.    Okay.  I have -- I have some

 9         questions for you now about staff retention.

10                         A.    Sure.

11    119                  Q.    This is -- we'll move over to

12         paragraph 65.  It's the next part of your

13         Affidavit.  And so is it fair to say, based on

14         the -- the percentages that you're giving, that the

15         staff turnover rate is about one in five?

16         Depending on the --

17                         A.    Yeah.  (Indiscernible).

18    120                  Q.    A little bit lower in '22/'23?

19                         A.    Yeah.  That seemed to be a -- a

20         lower year.

21    121                  Q.    Are you aware -- have you -- have

22         you seen the results of the 2022 public service

23         employee survey?

24                         A.    Yes, I have.

25    122                  Q.    And so where, in that survey, 42
```

1   percent of ISC employees surveyed planned on

2   leaving their position in the next two years?

3   A.   Okay.   That was -- that was in

4   2022, and it's one year behind, so it was in 2020.

5   The only caveat I would have with that is this

6   is -- Jordan's Principle is (indiscernible).

7   123   Q.   Yes.

8   A.   ISC is the whole department, and

9   when that year was taken was also during the

10   pandemic.   A lot of staff, at that time, were

11   socially isolated.   They had challenges.   They

12   wanted to move on.   It's extremely demanding in the

13   department.   So I don't use that as a barometer or

14   an indicator.

15   124   Q.   Right.

16   A.   Yeah.

17   125   Q.   So if we could actually --

18   maybe -- maybe the -- I think the easier way to ask

19   this question might be to look at tab I in volume

20   1.   And that's -- this is an excerpt from Dr.

21   Blackstock's Reply Affidavit.   There's an excerpt

22   here from the survey results, and -- and

23   acknowledging two points, I think.   First, is we're

24   not comparing apples to apples --

25   A.   Yeah.

1   126   Q.   -- with respect to Indigenous

2   services because we have said that (indiscernible).

3   But the other point being that the question is do

4   you intend to leave your position in the next two

5   years as opposed to (indiscernible) --

6   A.   Yeah.

7   127   Q.   -- turnover. But would you

8   agree -- agree with me that the -- the, you know,

9   overall -- when you're dealing with 42 percent,

10   which is just over on the -- it's under the

11   mobility and retention heading there. You can see

12   it at the top first kind of page of tables there.

13   A.   Yeah. Yes.

14   128   Q.   And you see -- you see 2022,

15   public service, 38 percent saying yes to the

16   question, do you intend to leave your current

17   position in the next two years? And then 42

18   percent of Indigenous Services Canada answered

19   "yes" to that question. Would you agree that those

20   are pretty comparable numbers?

21   A.   Again, I'm -- I'm not comfortable

22   comparing what is a -- an aggregate -- like, a -- a

23   specific --

24   129   Q.   Sorry.

25   A.   -- (indiscernible).

```
 1   130                 Q.   Setting aside 65, comparing the

 2        numbers to each other, compare the Indigenous

 3        Services Canada response --

 4                        A.   Here?

 5   131                 Q.   Yeah.

 6                        A.   Oh, sorry.  Apologies for that.

 7        Yeah, on a percentage perspective, they're close.

 8   132                 Q.   It would be comparable?

 9                        A.   Yeah.

10   133                 Q.   Now, just as another concept down

11        at 56(2), the same page here -- kind of the -- the

12        question 56(2) is, essentially, looking at where

13        people are going, and -- and, again, recognizing

14        we're talking about Indigenous Services Canada as a

15        whole, 34 percent of the Respondents there are

16        pursuing another position within the department or

17        agency.  And so is it possible, when we're looking

18        at the turnover, just as a destination, let's say

19        the frequency, but in 65 you're talking about

20        employee turnover in the various fiscal years, and

21        some of those folks are leaving for different

22        positions within ISC?

23                        A.   Certainly that's what it indicates

24        here, out of Jordan's Principle to another area.

25        Or, oh, just in general?
```

1   134   Q.   Just in general. I mean, they

2   would be leaving --

3   A.   Sure.

4   135   Q.   -- Jordan's Principle, but they

5   may not be leaving ISC entirely.

6   A.   That's correct, yeah.

7   136   Q.   And -- and would it capture -- if

8   there's a high employee turnover rate across

9   Jordan's Principle operations, if they went

10   somewhere else within the (indiscernible), would

11   that count as turnover as well? Like, if you were

12   having a -- they got a job as a focal point, and

13   then you went -- or they had a job as intake, and

14   then (indiscernible) focal point assuming that

15   there is a seniority difference between those --

16   those roles?

17   A.   That's not turnover, though.

18   That's still retention. For my purposes of 65, you

19   mean?

20   137   Q.   Okay. So that's excluded as -- so

21   you -- that would be retained (indiscernible)?

22   A.   Yeah. My -- so my understanding

23   of when there is a turnover is people leaving at

24   large, not to a promotion.

25   138   Q.   Not -- not -- so it's people

1   leaving the sector as opposed to people leaving

2   their position?

3   A.   Correct.

4   139   Q.   Okay. And did you -- did you

5   prepare these figures yourself?

6   A.   I did not.

7   140   Q.   And did you confirm that with the

8   person who prepared the figures that that's how

9   they did it?

10   A.   I can't remember.

11   141   Q.   Let's just (indiscernible) about

12   automated determinations or -- if I use that phrase

13   "automated determinations," does that mean

14   something to you? Like, the automated

15   determination of a request?

16   A.   In this -- determined

17   electronically or automatic? (Indiscernible).

18   142   Q.   You know what, it will probably be

19   best to just go to paragraph 68.

20   A.   Yeah.

21   143   Q.   So -- so here you say: (as read)

22   ISC is also exploring potential

23   automated determination under a certain

24   cost threshold.

25   Do you see that?

1   A.   What page?

2   144   Q.   Oh, I'm sorry. Page 19,

3   paragraph --

4   A.   Yeah.

5   145   Q.   -- 68. And so, you know, in

6   speaking about this, I think you have also referred

7   to it as -- as automated adjudication. Yes, you

8   refer to it in the last sentence as automated

9   adjudication. This is the idea that rather than

10   reviewing the file for its irrelative merits or

11   demerits, it's a -- it's an approval that's just

12   made as a matter of course. Is that right?

13   A.   And this came from -- I think one

14   of the ideas is that, at one point, the Caring

15   Society had flagged with me on a call, which made

16   sense where there was a -- (indiscernible)

17   threshold --

18   146   Q.   Yeah.

19   A.   -- does not require -- burden --

20   147   Q.   Yes.

21   A.   -- the -- the requestor, yes.

22   148   Q.   And would it -- would it be kind

23   of keeping with that memory that there is -- there

24   is a line, essentially, where a request costs more

25   to adjudicate than it does to approve?

1   A.   Oh, I -- I don't know that line.

2   149   Q.   Okay.

3   A.   But I did know -- I remember

4   having that request flagged, yeah.

5   150   Q.   But the -- the concept that there

6   may be a -- a benefit cost between the

7   transactional cost of deciding it versus the cost

8   of getting the service, is that a concept that

9   you're familiar with?

10   A.   Yeah, I don't think about it. I

11   just think about the -- the cost on time on the

12   requestor. That --

13   151   Q.   Oh, okay.

14   A.   -- might have been more where I

15   was thinking, but where we reduce costs

16   (indiscernible) human costs time.

17   152   Q.   Fair enough. Do you have a

18   general sense of how long it might take to

19   implement a measure like this, the automated

20   determinations?

21   A.   I don't have a clear timeline. I

22   think some of the challenges we have encountered --

23   well, no, some of the challenges we have

24   encountered is the parameters (indiscernible). It

25   could be explored at a place like JPOC. Like, how

1   many times was this requested? Is there -- is

2   there a certain number of times? What is the

3   amount that's the appropriate amount for

4   automatic -- automated -- sorry. I always say

5   "automatic," but --

6   153   Q.   (Indiscernible).

7   A.   Yeah. The threshold, yeah, yeah,

8   to -- to have that automatic threshold. So

9   these -- again, I think it has to be done

10   expeditiously, but in a way that's informed and

11   engages the parties and (indiscernible).

12 154   Q.   And you think conversations with

13   JPOC -- JPOC are one way of doing that?

14   A.   I think it could be. You know,

15   I'm open to exploring it. I think the team is open

16   to exploring along those lines.

17 155   Q.   And -- and you agree JPOC can't

18   have this conversation as it's not meeting?

19   A.   I am hoping that they can still

20   have those conversations when they resume meeting?

21 156   Q.   Did -- did you decide that they

22   shouldn't be meeting?

23   A.   No.

24 157   Q.   Do you know who did?

25   A.   No. I'm not a part of the --

1   unfortunately, I'm just not part of the

2   (indiscernible).

3   158   Q.   That's -- that's Ms. Wilson's

4   part -- part in that?

5   A.   Yeah. And there is -- there is a

6   few other folks that are there as well that

7   (indiscernible).

8   159   Q.   Now, in the last sentence here

9   that you note as -- it's not interpreting

10   (indiscernible), which is: (as read)

11   Automated adjudication may also not be

12   feasible in certain circumstances given

13   that Jordan's principle is needs based

14   and involves case-by-case assessments.

15   Do you see that?

16   A.   Mmhmm.

17   160   Q.   So is the concern here that the

18   wrong cases will be approved or the wrong cases

19   would be denied?

20   A.   That people will not always go to

21   the best first point of entry. So if they can --

22   so if it's needs based and somebody needs home

23   renovations versus groceries -- so I think it's

24   more than that. So it may not be feasible in

25   certain situations which will require

1   (indiscernible) price tag or different types of

2   authorities or areas or avenues to (indiscernible).

3   (Indiscernible) doesn't have a set of authorities.

4   We have to (indiscernible).

5   161   Q.   I'm not sure I'm following the

6   answer.

7   A.   Oh, sorry.

8   162   Q.   No, no, don't apologize. I'm just

9   wondering if you can -- maybe I need to break --

10   A.   Yeah.

11   163   Q.   -- it down a little bit. So the

12   concern is on feasibility (indiscernible) Jordan's

13   Principle requiring case-by-case assessments. And

14   is -- is your concern that the -- the wrong cases

15   will go to the wrong windows or something

16   different?

17   A.   That's a part of it, just because

18   they may need a much larger set of supports than

19   would be feasible through automated. So I think

20   about the (indiscernible) ones which are

21   (indiscernible) to determine, the groceries, rent

22   supports, those types of things. I think there is

23   a certain threshold: purchasing of diapers,

24   formula, et cetera. Immediate needs versus perhaps

25   more complex situations. Certainly with regards to

1   (indiscernible) orthodontics, or he talked about

2   medical travel. There are cards for that, but I

3   don't know how this would look like in this type of

4   automated determination. I don't know if it's

5   going to be all cases, but there are some where it

6   makes clear sense.

7   164   Q.   And -- and would you agree that

8   that -- that's a -- a possibility at -- at this --

9   I don't mean anything (indiscernible) by this term,

10   but possibly a case management concern as opposed

11   to -- as opposed to a (indiscernible) concern in

12   that there might be maintenance missed whereas if a

13   focal point was talking to them, they might be able

14   to identify it. Is that what you're -- what

15   you're --

16   A.   Well, yeah, and we do see that,

17   right? Once we actually have a -- a conversation,

18   we're able to say, well, what about this? Do you

19   need these services? What else do you need in

20   that -- in that situation? So I'll -- it's always

21   nice to have a -- a voice, which I understand is

22   always a challenge at times, but this is where I

23   think it's still part of the case by case, which is

24   why those conversations are important to have.

25   165   Q.   And in -- in your view -- in your

1   view, would it be possible to explore methods of

2   having, essentially, (indiscernible) --

3   (indiscernible) that the point of entry might be

4   (indiscernible) determination (indiscernible) by

5   follow-up to see if there are other services that

6   should be provided?

7   A.   Well, and certainly there's no

8   limit to how many times you can access Jordan's

9   Principle either, right? So, I mean, that's -- I

10   can't see --

11 166   Q.   Sure.

12   A.   -- it being one or the other, to

13   your point, if that answers your --

14 167   Q.   Yeah.

15   A.   Yeah.

16 168   Q.   That was helpful. Thank you. I

17   have got some questions for you about a new

18   document which I provided to you and to your

19   counsel and to the Chair, and I think it's been

20   circulated by e-mail to the parties

21   (indiscernible). Okay. So you have -- or

22   hopefully have before you the Convention on the

23   Rights of the Child document there that I

24   (indiscernible) --

25   A.   Yes.

1   169   Q.   -- earlier?   Okay.   Is this a

2   document that you recognize?

3   A.   Yes.

4   170   Q.   And I understand from paragraph 1

5   of your Affidavit that, in 2022, you were named

6   Canada's head of delegation (indiscernible) of the

7   Child.   Do you still hold that position?

8   A.   Oh, no, that was just the head of

9   delegation for that hearing.

10   171   Q.   Oh, for that hearing?   I see.

11   Okay.   So it's a point in time --

12   A.   Yeah.

13   172   Q.   -- that coincides with this point

14   in time?

15   A.   Yeah.   That was the result, I

16   think, (indiscernible) --

17   173   Q.   The result?

18   A.   -- (indiscernible).

19   174   Q.   And -- and so there was a -- you

20   know, Canada would have been through a process

21   that, I would assume, you were reporting -- as the

22   head of delegation, you were kind of providing a

23   report to the Committee?

24   A.   Yes.   I was the (indiscernible).

25   So the questions that came in, I would turn to

1   either one of the provinces or territories

2   (indiscernible).

3   175   Q.   And then the -- the -- the result

4   of your gathering with them (indiscernible)

5   questions. Is that right?

6   A.   Yeah. So we would appear before

7   the -- before the Commission or the Committee on

8   the Rights of the Child, and they would pose a

9   series of questions. We'd have a series of minutes

10   to prepare, and depending on who was

11   (indiscernible) department -- because it does cover

12   quite a range of issues, or the provinces and

13   territories, if they had jurisdiction over it, we

14   would -- you would have (indiscernible). So --

15   176   Q.   And -- and are -- are you aware

16   kind of the colloquial expression (indiscernible)

17   rights of the child? And do you have a sense of

18   what those four pillars are?

19   A.   Vaguely. It's been a while, but

20   yes.

21   177   Q.   If I said that they were

22   nondiscrimination --

23   A.   Yeah.

24   178   Q.   -- best interests, life, survival

25   and development, and the right to be heard, would

1   that sound about right?

2   A.   Yes.

3   179   Q.   And just looking at the -- the

4   document here, am I right this is the --

5   essentially, the title is concluding observations

6   on (indiscernible) reports of Canada, this is kind

7   of the -- the document back to Canada --

8   A.   Yes.

9   180   Q.   -- from the Committee?

10   A.   Yes.

11   181   Q.   If you could turn over, please, to

12   page 4. This is just a -- at paragraphs 17 and 18,

13   17(a) says that -- so 17, the header says: (as

14   read)

15   The committee is deeply concerned about

16   the following.

17   (A) says: (as read)

18   The discrimination against children and

19   marginalized (indiscernible) situation

20   (indiscernible) such as structural

21   discrimination against children who

22   belong to Indigenous groups, children

23   (indiscernible), especially with regard

24   to their access to education

25   (indiscernible) and adequate standards

1   of living.

2   And then at 18, the Committee says: (as read)

3   Taking note of targets 5.1 and 10.3

4   of the (indiscernible), the Committee

5   recommends (indiscernible) put an end

6   to structural discrimination against

7   children belonging to Indigenous groups

8   and children (indiscernible) and

9   address disparities and access to

10   services by all children including

11   those who are marginalized

12   (indiscernible) situations such as

13   Indigenous children and children with

14   disabilities, migrant children,

15   and children (indiscernible).

16   In -- in your view, is -- is implementing Jordan's

17   Principle, is that part of (indiscernible) to

18   this -- this recommendation or this concern for the

19   Committee?

20   A.   I think it's -- yeah, I think

21   it's -- it's one of the -- one of the components,

22   for sure. For sure.

23   182   Q.   And just going over to -- to page

24   11 (indiscernible). So 39: (as read)

25   (Indiscernible) 1.1, 1.2, and 1.3 of

1   the sustainable development goals, the

2   Committee recommends that the

3   (indiscernible) party (indiscernible)

4   ensure that all children and their

5   families living in poverty survive with

6   financial support, free accessible

7   services without discrimination.

8   And there is some discussion, in particular, I

9   think in Dr. Gideon's Affidavit about decreased --

10   or the importance -- I don't know if it's decreased

11   or not depending on where (indiscernible). But

12   the -- the -- there is a role (indiscernible)

13   requests. And do you agree that that role is

14   consistent with measures to ensure that First

15   Nations kids in poverty are adequately supported?

16   A.   We have seen an increase of a

17   (indiscernible), for sure.

18 183   Q.   And so Jordan's Principle

19   responding to those demands would be consistent

20   with -- with the recommendation of the Committee?

21   A.   Mmhmm. Yes, sorry.

22 184   Q.   And then the last point on this

23   one is page 12. Paragraph -- I should say the

24   bottom of page 11 was where paragraph

25   (indiscernible) starts. That's the -- the

1   header -- header lines there. (As read)

2   In line with the previous

3   recommendations, (indiscernible)

4   targets 4.1, 4.6, 4.8, 4.E and 4.C of

5   the sustainable development goals, the

6   Committee recommends that the

7   (indiscernible) party (indiscernible).

8   And the next page: (as read)

9   Coordinate with provincial and

10   territorial governments to guarantee

11   the right of the child and adolescents

12   to engage in play and accessible

13   recreational activities appropriate at

14   the age of the child.

15   And I'm right in understanding that one of the

16   things that Jordan's Principle can support is

17   recreational activities?

18   A.   Yes. That it can support?

19   185   Q.   Yes.

20   A.   Yes.

21   186   Q.   And do you agree that is another

22   example, essentially, of the --

23   A.   Well, the challenge is that --

24   187   Q.   -- (indiscernible) --

25   A.   -- we're -- we're not able to

1   coordinate with the provincial and territorial

2   government supports (indiscernible) orders. We're

3   not able to --

4   188   Q.   I -- I -- I suppose --

5   A.   -- redirect --

6   189   Q.   And not to (indiscernible)

7   discourse (indiscernible) with all of my closest

8   friends.

9   A.   Yeah.

10   190   Q.   For First Nations' children in --

11   in particular, (indiscernible) constitutional

12   (indiscernible)?

13   A.   For on reserve, specifically?

14   Okay.

15   191   Q.   (Indiscernible).

16   A.   Yeah, yeah, okay. No, no, that's

17   good. No, no.

18   192   Q.   But would you say for -- for --

19   for, you know -- well, for non-Indigenous Canadian

20   children, is it fair to say that the federal

21   government is less involved in their lives than

22   First Nations kids?

23   A.   Yes.

24   193   Q.   As a matter of access --

25   A.   Yes.

1   194   Q.   -- to services (indiscernible)?

2   A.   Yeah.

3   195   Q.   (Indiscernible) matter.

4   A.   Yeah.

5   196   Q.   But more so, unlike Jordan's

6   Principle where there is a direct role of providing

7   services or supporting services on and off reserve,

8   non-Indigenous children don't have that direct type

9   of relationship with the federal government?

10   A.   Oh, yeah, correct.

11   197   Q.   So I have a few questions that --

12   and it will be kind of my last -- last

13   (indiscernible) of questions here about the

14   long-term vision you're speaking to in your -- in

15   your Affidavit again. But just before going there,

16   I just want to pause for a moment. We have been

17   talking a lot about, you know, organizational

18   challenges for the department, as in ideas or

19   operational change to the Jordan's Principle.

20   And -- and I'm wondering if you would agree with me

21   that those are really, you know, kind of the

22   concerns and considerations about how adults are

23   (indiscernible). (Indiscernible) really having a

24   conversation about adults figuring out how Jordan's

25   Principle should work (indiscernible). Would you

1   agree with that?

2   A.   I think the challenge is how the

3   systems and the interoperability of systems much to

4   the point of -- of the Tribunal (indiscernible) as

5   well, that's where we feel challenged. This is,

6   again, my perspective come relatively -- you know,

7   still relatively new to the department, my whole

8   purpose is to try to not make it so complicated.

9   Why can't we see those system changes, and

10   what's -- what's become -- it's not just the

11   people. It's how do we change the structures in

12   which we're working within because it's not --

13   198   Q.   And adults -- adults are having

14   those conversations, right? They're -- that's --

15   that's the work that the adults have to do?

16   A.   Or send it back to the table, yes.

17   199   Q.   And just in terms of the, you

18   know, impact of Jordan's Principle on -- on kids,

19   you know, you have seen -- in your time, you have

20   seen cases or had access to case files where you

21   have to make a decision. Is that right?

22   A.   Yeah.

23   200   Q.   And -- and you have seen Jordan's

24   Principle make positive impacts for kids?

25   A.   Mmhmm. Yes, I have.

1   201   Q.   Have you seen cases where delays

2   have had negative impacts for kids?

3   A.   I have seen delays, certainly at

4   my level, that have just delayed change, I would

5   say, in the systems. Bigger systems. I don't

6   always see the individual requests per se, but the

7   bigger ones that are more systems oriented, I find

8   it just delays, unfortunately, the needed changes

9   (indiscernible).

10   202   Q.   And -- and if those -- if those

11   delays are happening, there are underlying --

12   A.   That will be --

13   203   Q.   -- (indiscernible) --

14   A.   -- that will -- yes, exactly.

15   204   Q.   And whatever the long-term vision

16   for Jordan's Principle, do you agree with me that

17   if it ever -- if it ever were to go away, that

18   would be a bad thing for First Nations kids?

19   A.   I think that if we could ever fix

20   systems where there wasn't a (indiscernible), it

21   would be such a -- these ad hoc requests that

22   communities were able to be fully healthy, and kids

23   were thriving, and it was a great place, and you

24   never even had to have it, that would be utopia.

25   Is that pragmatic or realistic? Certainly probably

1   not within my career. I think that would be --

2   Jordan's Principle needs to be here, and Canada

3   needs to be present to support communities,

4   regardless of level of readiness for folks to take

5   it on. Yeah.

6   205   Q.   And -- and that -- and that -- the

7   need for that presence is -- us purely related to

8   the needs of kids to be able to -- to grow up and

9   have the lives they want to have?

10   A.   To -- yeah, to -- to flourish.

11   206   Q.   And to live free of

12   discrimination? You, basically, said --

13   A.   Like -- yeah.

14   207   Q.   So -- so just asking you some

15   questions now about this -- this long-term vision.

16   And that starts -- I believe that starts around

17   paragraph 69 of your Affidavit. And this, I think,

18   reflects (indiscernible) comments (indiscernible)

19   that you were making when you say in this paragraph

20   here -- it's on page 19.

21   A.   (Indiscernible).

22   208   Q.   You say: (as read)

23   Jordan's Principle has evolved into a

24   critical stopgap measure for First

25   Nations families as they cope with

1   inconsistencies in core federal and

2   provincial/territorial programs and

3   services.

4   And I just -- can we do a word choice discussion

5   on -- on urgency? It's just a -- a word choice

6   question here. I want to ask about the word

7   "inconsistencies." In your view, would a more

8   accurate word be "shortfalls"? So "shortfalls in

9   core federal and provincial/territorial programs

10   and services"?

11   A.   I think "shortfalls" is probably

12   one of the inconsistencies, but also who is in and

13   who is out? Who is covered, and who is not

14   covered? We talked about how the recreation, was

15   it recreation just for the pure recreation? It was

16   actually for social development and -- and mental

17   health supports and wellbeing. That may not be the

18   case in, say, the provincial recreational program

19   they may have. It may just be for children for

20   this particular age as opposed to targeted or

21   directed supports.

22   209   Q.   Because they may have different

23   needs?

24   A.   They would have different needs,

25   or it may be an only specific -- yeah, exactly. So

1   that's the inconsistencies.

2   210   Q.   So whether you use the word

3   "inconsistency" or use the word "shortfall,"

4   underlying -- underlying that concept is unmanaged?

5   A.   Yeah, a difference, right? Two

6   different (indiscernible).

7   211   Q.   And do you agree with me that the

8   reason that Jordan's Principle has become such a

9   critical stopgap is because many core federal and

10   provincial/territorial programs are not meeting the

11   needs of First Nations' children?

12   A.   I -- I think there's probably a

13   bunch of needs. Though it would be one of them,

14   but also certainly fiscal climate, you know, the

15   economy, access to jobs, access to human -- health

16   human resources, mental health human resources. I

17   mean, there's a bunch of -- of systems that aren't

18   working as well.

19   212   Q.   And in terms of the economy open

20   (indiscernible) you have there, those items that

21   you --

22   A.   Yeah. Yeah.

23   213   Q.   -- just had economy health

24   resources, those are, again, also, you know, leads

25   that aren't materializing (indiscernible) --

1   A.   Yeah.

2   214   Q.   -- for First Nations?

3   A.   Yeah. Yeah. (Indiscernible).

4   215   Q.   Okay. Did you review or have you

5   reviewed IFST's data analysis work that it did in

6   2022?

7   A.   Very peripheral. When I first

8   came on, that was one of my required readings, so

9   I -- but that was a while ago now.

10   216   Q.   A few months ago. And are you

11   aware, just at a general level, that IFST

12   documented that -- that shortfalls in other

13   programs were a driver of Jordan's principle

14   requests coming forward?

15   A.   Yeah. I think there was -- there

16   was mention of the relationship.

17   217   Q.   Now, if we're looking at paragraph

18   70, at the bottom of page 19, so in -- in this --

19   in this paragraph, you're identifying in the last

20   sentence: (as read)

21   This new approach needs to include

22   specific operational parameters and

23   most importantly increased First

24   Nations' self-determination and

25   control.

1   And so is it fair to say you're saying these --

2   these two items: specific operational parameters

3   and increased self-determination and control are

4   two parts of what you're (indiscernible) systemic

5   (indiscernible) approach (indiscernible) Jordan's

6   Principle?

7   A.   Yes.

8   218   Q.   And would you agree that a third

9   part of this would be continued federal funding?

10   A.   Okay.   Yeah, well, obviously

11   Canada will continue to fund as required.   That

12   would be (indiscernible) to -- to continue.   That's

13   not a (indiscernible).

14   219   Q.   So it's a -- it's a -- you took

15   that for granted in your paragraph, that --

16   A.   Yeah.   I just -- yeah.   That -- I

17   just -- it needs to be.   And, if anything,

18   including capacity to support those communities,

19   those First Nations, to be able to exercise

20   self-determination and control in this area.

21   220   Q.   Now, in paragraph 71 you note:

22   (as read)

23   While the current approach is based on

24   Tribunal orders, a response solely

25   through operational growth does not

1   address gaps in products, services, and

2   supports or through core programming or

3   community level service delivery.

4   And -- and this, I think, goes to some of the --

5   the Chair's questions this morning. Are you aware

6   the Tribunal has ordered Canada, on several

7   occasions, to do gap analyses regarding its

8   services? (Indiscernible) idea.

9   A.   Yeah. So it was a part of the

10   broader ISC -- not modernization, I apologize, but

11   longer (indiscernible) for the department in its

12   existing programs, correct.

13   221   Q.   But that's -- and we'll go to --

14   we'll go to some of that right now just to kind of

15   be a little more on point on it. So if you go to

16   tab J in the volume 1 book. So this -- this is

17   a -- again, at the risk of getting too

18   (indiscernible) about that, (indiscernible). We

19   call this 2017 CHRT (indiscernible). Do you

20   recognize that kind of nomenclature as referring to

21   a particular Tribunal order?

22   A.   Yes.

23   222   Q.   And -- and would you recognize

24   that as kind of -- on -- on the Jordan's Principle

25   front, you know, the first order that kind of came

1   up (indiscernible) issue, first substantive order

2   that -- reporting order earlier that this is --

3   this is, essentially, the order which recognizes

4   the 48-hour timeline was set here (indiscernible).

5   You don't have the full --

6   A.   I thought it was 35.

7   (Indiscernible) 35 (indiscernible) outline the

8   timeline?

9   223   Q.   Yeah. 35. (Indiscernible)

10   timelines of 35.

11   A.   Oh, sorry. I --

12   224   Q.   No, no, no. It's -- yeah, I want

13   to (indiscernible) law school tab. I think we're

14   kind of in the -- in the ballpark of 2017 order, so

15   that kind of --

16   A.   Yes.

17   225   Q.   -- started the -- started us on

18   this -- on this path. Do you agree with that?

19   A.   Yes.

20   226   Q.   Now, in paragraph 106 -- 105 and

21   106. And so here, in 105, there is a -- there is

22   (indiscernible) about not having had an internal

23   understanding of what the gaps of federal funding

24   to First Nations' children are. And under panel

25   notes, October 26th (indiscernible) presentation in

1   the field. And there was a -- a -- just kind of

2   (indiscernible) paragraph there of the

3   implementation points. One of the points was

4   conducting a province-by-province (indiscernible)

5   analysis (indiscernible) Social Services for

6   children with disabilities. And then paragraph 106

7   says: (as read)

8   There are no timelines indicated for

9   when this analysis will be completed,

10   and based on the Panel's

11   (indiscernible) regarding Canada's

12   definition of Jordan's Principle, the

13   analysis will need (indiscernible)

14   children with disabilities. The

15   information that is collected must

16   reflect the actual number of children

17   (indiscernible) services. The actual

18   gaps in those services in order to be

19   reliable (indiscernible).

20   Do you see that?

21   A.   Yes, I do.

22   227   Q.   So -- so were you aware that, at

23   the same time, it was -- it was setting the

24   timelines including (indiscernible) that the --

25   that the pieces in place that we were talking

1   about, they were, at the same time, calling for

2   this analysis to happen in kind of a -- in a -- in

3   a broader way?

4   A.   Yeah.   I remember the reference to

5   the broader than on-reserve children with

6   disabilities, yeah.   (Indiscernible).

7   228   Q.   But there was, as early as 2017,

8   calls for the Panel to take on this kind of gap

9   analysis approach on a more expedited basis.   Would

10   you agree with that?

11   A.   Yes.

12   229   Q.   Okay.   And then if we go over

13   the page -- or over the tab, sorry, to 2021, see

14   chart 41.   And would you recognize that kind of

15   nomenclature as being about the -- the capital

16   orders that were addressed a couple years ago?   I

17   know that was before your time, so I just want to

18   check.

19   A.   This isn't right.

20   (Indiscernible).   Yeah, yes.

21   230   Q.   And I think people refer to it

22   sometimes as CHRT 41?

23   A.   CHRT 41, yes.

24   231   Q.   So that's -- you're familiar with

25   that?

1   A.   That, I am familiar with, yes.

2   232   Q.   And so if you go over a couple of

3   pages, there is a longer extract here from 36 to --

4   to 39. And just at 388, here the Panel is saying:

5   (as read)

6   The damaging effect of not applying a

7   substantial quality (indiscernible)

8   services offered to First Nations'

9   children and families results in

10   unnecessarily removing children from

11   their homes, families, and communities

12   as a result of factors such as poor

13   housing, poverty, substance abuse, and

14   (indiscernible). (Indiscernible) by

15   two -- identified two socioeconomic

16   (indiscernible).

17   Then in 389: (as read)

18   The Panel also addressed the issue of

19   federal department's work in silos and

20   causing adverse impacts to First

21   Nations' children with (indiscernible)

22   previous (indiscernible) that Canada

23   chose to create social programs, but

24   the branch (indiscernible) choice. The

25   (indiscernible) attached to

1   (indiscernible) social programs, and

2   one of those programs is the

3   (indiscernible) program.

4   And then -- and then they go on. And I note a few

5   lines down: (as read)

6   The Panel ordered Canada, in 2018, to

7   look into all its social programs to

8   avoid adverse impacts in the

9   (indiscernible) or (indiscernible)

10   impacts to children.

11   And then they -- then they go on. So, again, you

12   would agree this is another example of where the

13   Panel had called for a more comprehensive approach?

14   A.   Yes.

15   233   Q.   So when -- when we're talking

16   about, you know, paragraph 71, you know, in terms

17   of the current approach is based on Tribunal

18   orders, the state of response solely through

19   operational growth does not address gaps of

20   products, services, and supports to poor

21   programming and community level service delivery,

22   would you -- would you agree with me it's fair to

23   say the Panel is not calling for a response that's

24   solely through operational growth? They're calling

25   for gap closing as well? That's the direction

1   (indiscernible) in these orders?

2   A.   Yeah.   Yes.   That we're looking

3   for -- we're supposed to be looking into the gaps

4   and -- and doing some analysis on the gaps.   Yes.

5   234   Q.   And not just responding to

6   operational (indiscernible)?

7   A.   Correct.   I'm just (indiscernible)

8   for clarity though.

9   235   Q.   Yeah.

10   A.   The question was about 71 with

11   the -- while the (indiscernible) based on Tribunal

12   orders, a response solely operational

13   (indiscernible) does not affect the gaps.   So

14   that's a -- and that is about us breaking down the

15   silos?   I'm sorry.   Did I answer --

16   236   Q.   Well -- well --

17   A.   -- did I answer your question?

18   237   Q.   That's -- that's -- all right.

19   I don't --

20   A.   Is that --

21   238   Q.   -- I don't want to -- to confuse

22   you or get you to err in any way.   So what I'm --

23   what I'm talking about here is, in your last

24   sentence here, you say: (as read)

25   While the current approach is based on

1   Tribunal orders, a response solely

2   through operational growth does not

3   address gaps in products, services, and

4   supports through core programming

5   or community level service delivery.

6   And -- and I guess what I'm coming -- coming at

7   here is, you know, it's -- it's your take on the

8   Tribunal orders that this is being ordered to

9   proceed through operational growth (indiscernible)?

10   A.   I think it's beyond that, though,

11   and that's why I just asked the question because

12   the current federal (indiscernible) approach is --

13   doesn't allow us necessarily to hand over decision

14   making to the hands of First Nations' leadership

15   where it should be in regards to its requests,

16   right? So just being growing federal -- a federal

17   department, that's what that sentence was --

18   239   Q.   So your -- your --

19   A.   -- responding to. Like, not --

20   I --

21   240   Q.   So your interpretation, though, is

22   that the Tribunal -- the approach that's required

23   by the Tribunal orders this, this operational

24   growth approach, is what you're -- what you're

25   saying?

1   A.   Well, it said the -- well, the

2   approach that the Tribunal -- that the -- so

3   maintaining the current federal implementation

4   approach of how we're implementing Jordan's

5   Principle through the federal decision making power

6   is not necessarily -- does not address the gaps.

7   But that was --

8   241   Q.   And I guess -- I guess what I'm --

9   I guess what I'm asking maybe, to try and put it

10   another way, is would you agree with me that that's

11   not the only thing that the Tribunal has ordered

12   Canada to do?

13   A.   Has asked us to do? Yes. Thank

14   you.

15   242   Q.   I think this -- this goes to

16   another point you just -- you just noted. And this

17   is going back a couple of sentences. In the second

18   sentence, you say: (as read)

19   Responding only through growth in the

20   federal implementation of Jordan's

21   Principle could have unintended

22   consequences such as an inadvertently

23   shifting funds and services away from

24   First Nations' led programs thereby

25   creating a greater dependency on

1   Jordan's Principle.

2   And does follow what you're talking about, your

3   concern?

4   A.   Yeah. Taking it out of

5   other programs, yes.

6 243   Q.   And then you, I think, continue in

7   that vein in 73 where you say in the middle of the

8   paragraph, it's just further down that page: (as

9   read)

10   Due to the current Tribunal orders,

11   Canada is not permitted to redirect or

12   connect requestors to existing programs

13   or to their First Nations for more

14   fulsome supports. This approach does

15   not ensure or allow for individual

16   children to be connected locally to

17   services and supports from which they

18   may benefit. It also limits the

19   ability of the ISC and First Nations to

20   work together to address gaps

21   identified through Jordan's Principle,

22   which could instead be resolved through

23   existing or new programs where

24   appropriate.

25   And -- and, again, just I think it's -- it's fair

1   to say that it's not only thing that the Tribunal

2   has been asking Canada to do. Do you agree with me

3   about that? When you're talking about closing gaps

4   and creating new programs, the Tribunal has never

5   said Canada can't do that, have they? Or is it

6   your -- sorry. It is your (indiscernible) that the

7   Tribunal (indiscernible).

8   A.   Sorry. Yeah. So based on this is

9   that we have been directed also through an order of

10   the Tribunal to do a gaps analysis, for lack of a

11   better word, to capture it off here, which -- of

12   the programming.

13   244   Q.   And -- and those gaps should be

14   closed once identified. Is that a fair thing to

15   say?

16   A.   I think it's looking at engaging

17   with partners and how best to close those gaps in a

18   way that allows them to be in the driver's seat and

19   not (indiscernible).

20   245   Q.   And then -- and then a few

21   paragraphs later at 79, you say in the second

22   sentence here under "the Tribunal's orders": (as

23   read)

24   When ISC is the government department

25   of first contact, ISC is prohibited

1   from administrative case conferencing

2   or service navigation to existing First

3   Nations' service providers.

4   And -- and I was just wondering if you're familiar

5   with the idea that that navigation or that -- you

6   know, if I can call it the one hand -- one hand off

7   the call centre's effect, that could happen within

8   the 48-hour or 12-hour period or the one-week

9   period, depending on the request. Is that -- is

10   that your understanding, or have you not kind of

11   dealt in that level of --

12   A.   I haven't dealt in that level. I

13   don't have examples of where that happens. My

14   understanding, and this is my interpretation, for

15   sure, is that we need to, as first responder,

16   address this issue and not look for -- look back

17   into the community to (indiscernible) are there.

18   I -- again, not having, you know, triage cases --

19   do you understand?

20   246   Q.   Have you just got Dr. Gideon's

21   Exhibit 3 -- Exhibit 3 (indiscernible) to Dr.

22   Gideon, I should say. Go to tab I. If you open to

23   the -- there's the page -- the page that has the

24   number 2 on the top of it. It's at the tail end of

25   paragraph 3 which starts at the paragraph before,

1   and it talked about: (as read)

2   How Canada and INAC officials reached

3   an agreement in October 2017. The

4   agreement was based on the following

5   principles.

6   And then there is (b), case conferencing.

7   A.   I'm sorry, but --

8   247   Q.   If you're not following, that's --

9   that's all right.

10   A.   -- is this the correct one?

11   248   Q.   Yeah. Yeah. So just if you look

12   at --

13   A.   Page 2?

14   249   Q.   -- at paragraph 3 on the page

15   before?

16   A.   Oh, sorry. I thought I heard page

17   2. I apologize.

18   250   Q.   No. It -- because page 2 is

19   where --

20   A.   Yeah, okay.

21   251   Q.   I'm just trying to landmark

22   what's --

23   A.   Thank you.

24   252   Q.   -- in front of you.

25   A.   Thank you.

1 253   Q.   So paragraph 3 starts on page 1.

2   A.   Yeah.

3 254   Q.   And -- and then it has that --

4   paragraph 3 has that header about the agreement

5   between Caring Society and BFN, and then at the

6   time how Canada and INAC (indiscernible) the

7   configuration of the department in 2017 or

8   departments, I should say. And then on case

9   conferencing, one of the sub points of the

10   agreement was: (as read)

11   In cases where a service is available,

12   Canada can consult, within the

13   specified timeline, the type of case

14   involved with the First Nations'

15   child's family and the First Nations

16   community or with service providers in

17   order to provide a service.

18   Do you see that? And that's on -- that's on (d),

19   sorry, on the next -- on the next page.

20   A.   Oh. I see it, yeah.

21 255   Q.   And so would it be fair -- fair to

22   say that that's not a concept that's been on -- on

23   your -- at least your -- your radar as part of

24   responding to this situation?

25   A.   No. And -- no, it hasn't been. I

1   haven't seen one where that's (indiscernible).

2   256   Q.   And just in terms of other --

3   other strategies, are you aware that call agents of

4   the National Call Centre can provide requestors

5   with information on programs that exist in --

6   A.   Yes.

7   257   Q.   -- (indiscernible)?

8   A.   I do know they can provide

9   information.

10 258   Q.   And you're aware that service

11   coordinators can link requestors up to existing

12   programs in communities?

13   A.   I think that they can make them

14   aware, but I don't -- I don't know if they can

15   necessarily hand them off into a community program.

16   I -- that's just my level of awareness, though.

17 259   Q.   And are you aware that ISC

18   sometimes approves bridge funding under Jordan's

19   Principle to give support while a child transfers

20   to an existing service?

21   A.   I was not aware of that.

22 260   Q.   And I just wonder if you would

23   agree that there are a number of existing Tribunal

24   compliance mechanisms for avoiding the unintended

25   consequence that you're talking about here

1   1   undermining First Nations' programs. There's other

2   2   ways to do it?

3   3   A.   Can you --

4   4   261   Q.   So just that there are -- there

5   5   are ways of -- of implementing the Tribunal's

6   6   orders that are compliant, like hand-offs before

7   7   the timeline, like the National Call Centre,

8   8   service coordinators, bridge funding that would be

9   9   a way of avoiding the unintended consequence of

10   10   undermining First Nations' programming?

11   11   A.   I think that it goes back to -- I

12   12   don't -- I'm not sure if I'm understanding your --

13   13   sorry. I'm not sure if I'm understanding your

14   14   question. I apologize. Just the last part of it.

15   15   262   Q.   No.

16   16   A.   So for undermining First Nations'

17   17   control over the program?

18   18   263   Q.   Well, the --

19   19   A.   Sorry.

20   20   264   Q.   -- the unintended consequence that

21   21   you were -- you were talking about in -- I believe

22   22   it was 71, if you look on the fourth line, we talk

23   23   about -- you know, on the third line you talk

24   24   about: (as read)

25   25   Growth in the federal implementation of

1	1	Jordan's Principle could have
2	2	unintended consequences, such as
3	3	inadvertently shifting funds and
4	4	services away from the First
5	5	Nations led programs thereby creating a
6	6	greater dependency on Jordan's
7	7	Principle.
8	8	A. Okay. Sorry, yes.
9	9 265	Q. And so just the -- the strategies
10	10	that I was -- or I was calling them "strategies" --
11	11	that's my word -- of, you know, having hand-offs
12	12	within the Tribunal timelines or National Call
13	13	Centre agents getting information, service
14	14	coordinators establishing links or using bridge
15	15	funding to existing services, that those would all
16	16	be ways of avoiding the unattended consequence?
17	17	A. I think it would be part of, but
18	18	it goes a little bit back as well to your example
19	19	which I misinterpreted, but it leads to this where
20	20	we would take from one piece of the pie to pay for
21	21	another piece of the pie. So, you know, with
22	22	funding going into, let's say, an educational
23	23	system, like a K to 12 system as opposed to
24	24	funding -- like, if they need supports, it's hard
25	25	to know how much supports they need because they

1   may not have a line of sight because it's going

2   just direct to the (indiscernible). This goes back

3   to kind of the longer term approach for sure

4   breaking down those silos to ensure that there is

5   information shared so that those requests can go

6   into, let's say, the education narrative to support

7   the need for additional funding or resourcing as

8   appropriate because we're seeing it perhaps more in

9   the Jordan's Principle, but it doesn't necessarily

10   translate in the community level how much they need

11   on the ground to operate schools and support of the

12   children in school. That was the unintended

13   consequence of (indiscernible).

14   266   Q.   But those -- and those -- another

15   way of addressing those unintended consequences, I

16   think -- think, as you're saying, is to take a more

17   comprehensive look at --

18   A.   Yes, and that's happening right

19   now.

20   267   Q.   Okay. And I'll have -- in a

21   couple of questions --

22   A.   Sure.

23   268   Q.   -- I have will have some questions

24   about that. I'm just wondering if you would agree

25   with me that you haven't heard the Caring Society

1   advocating to respond to the existing -- to the

2   increased volume of requests only by growing the

3   size of the federal government's response team?

4   A.   Correct.

5   269   Q.   So the Caring Society has been

6   talking about other strategies as well?

7   A.   Yes, yeah.

8   270   Q.   And you're aware that the Caring

9   Society has been calling for a while for the

10   federal government to close gaps in the service

11   framework?

12   A.   Certainly since I have been here.

13   271   Q.   And -- and you're aware that one

14   of the solutions that the Caring Society has

15   advocated as well has been a greater community

16   level involvement of those services?

17   A.   Yes. I can -- I -- I have heard

18   Dr. Blackstock speak to that, yeah. Sorry. I'm --

19   MR. TAYLOR: I'm just noting, Chair, we

20   have been going for about an hour and 15. I -- I

21   am likely close to the end, but it might be a good

22   time for a -- for a -- the afternoon break,

23   given -- (indiscernible).

24   THE CHAIR: I don't think he will mind

25   if we take a break. We'll take 20 minutes. But 20

1   1   minutes -- we start in 20 minutes. Not 20 minutes

2   2   plus another 5, okay?

3   3   MR. TAYLOR: And just to -- just to

4   4   flag, I -- I think I likely have about 10 or 15

5   5   minutes left. If -- if I could have the Chair's

6   6   indulgence for a brief break just to confer with my

7   7   colleagues and check my notes before concluding,

8   8   but I --

9   9   THE CHAIR: Yes. Yes, of course.

10   10   MR. TAYLOR: -- think that will be

11   11   (indiscernible).

12   12   THE CHAIR: Okay.

13   13   REGISTRY OFFICER: So 25?

14   14   THE CHAIR: Yes.

15   15   --- RECESSED

16   16   --- RECONVENED

17   17   MR. TAYLOR: Ms. Anderson, just -- just

18   18   to start, (indiscernible) and I had talked a bit

19   19   about the call centre audits at the various points,

20   20   and there was -- the evidence was there had

21   21   certainly been some conducted at various points, a

22   22   random sampling of calls and such. And I'm just

23   23   wondering if we could have as a -- as a request if

24   24   there are any reports from those random sampling

25   25   audits, you know, ideally, if we could do the last

1	1		two quarters of '23/'24, understanding we're just
2	2		out of Q4, if -- Q2 and Q3 or what's possible,
3	3		that's fine too.
4	4		MS. ANDERSON: Yes. And I wonder
5	5		(indiscernible)?
6	6		MR. TAYLOR: Yes.
7	7		MS. ANDERSON: (Indiscernible). I
8	8		believe that was (indiscernible).
9	9		MR. TAYLOR: Quite possibly.
10	10		MS. ANDERSON: (Indiscernible).
11	11	U/T	Q. MR. TAYLOR: If we could go to
12	12		paragraph 52 (indiscernible).
13	13		A. Line 2.
14	14	272	Q. Yeah.
15	15		A. Yes.
16	16	273	Q. 52(b)(i), and it talks about: (as
17	17		read)
18	18		Conducts call audits and provides
19	19		timely coaching to call agents.
20	20		(Indiscernible).
21	21		A. Yeah, that's -- (indiscernible).
22	22	274	Q. Thank you very much. And -- and
23	23		just before we get back to the area we were
24	24		(indiscernible), Ms. St-Aubin, I was just wondering
25	25		if you have heard of the Spirit Bear Plan?

1   A.   Yes, I have heard of it.

2   275   Q.   And have you reviewed it?

3   A.   I reviewed it again as part of

4   my --

5   276   Q.   Onboarding?

6   A.   -- onboarding. Thank you.

7   277   Q.   (Indiscernible).

8   A.   Okay.

9   278   Q.   Now, if we can go back to your

10   Affidavit, please, at paragraph 77, back on page

11   21. Now, here you say that: (as read)

12   ISC is leading a project to

13   systematically identify the present

14   overlaps, gaps, and/or opportunities

15   for ISC funded community-based programs

16   to provide similar access to the most

17   frequent Jordan's Principle requests.

18   Do you see that?

19   A.   Yes.

20   279   Q.   And I think you might have alluded

21   to this earlier in your evidence is that it's

22   something (indiscernible) or something

23   (indiscernible)?

24   A.   (Indiscernible), yeah.

25   280   Q.   (Indiscernible). Who else is

1   involved in that project?

2   A.   So that would be certainly our

3   focus on the CFRDO, as you have --

4   281   Q.   Chief financial results --

5   A.   Financial.

6   282   Q.   -- delivery officer, I think is --

7   A.   Thank you.

8   283   Q.   -- the --

9   A.   Yes. As well as the region

10   supporting any information requested in the case

11   management systems for that IT part of that.

12   284   Q.   Right. And so when you say "ISC

13   is leading a project," it's -- it's an ISC project?

14   A.   Currently. And, I -- I mean, I

15   think it's still setting out the parameters, and I

16   don't know how far it has come to date, but I know

17   that it is underway, and I don't know if there is,

18   let's say, additional contractors that will be

19   sought or consultants at this point, but the CFRDO

20   is meeting.

21   285   Q.   Oh. So it's your call to the

22   CFRDO --

23   A.   Yeah.

24   286   Q.   -- (indiscernible)?

25   A.   They -- they are -- yeah, they

1   are --

2   287   Q.   And that's Philippe -- Philippe

3   Thompson?

4   A.   Yes.

5   288   Q.   I think --

6   A.   Yes.

7   289   Q.   -- that's correct. And -- and is

8   there a -- an expected completion date for that

9   project?

10   A.   I can't remember off the top of my

11   head, like, when it is going to be completed by. I

12   didn't (indiscernible) date. I --

13   290   Q.   No. And it's -- it's -- at least

14   my reading of your evidence is that it's -- it is

15   leading and that the results that are coming

16   (indiscernible), you know, in terms of timeframe,

17   next month, next quarter, next year?

18   A.   Oh, yeah, I don't have exact

19   timeframe. I think -- but it is, like I said, a

20   critical part of the (indiscernible).

21   291   Q.   But -- but you don't know when --

22   when that critical part is going to --

23   A.   No, I don't know when it is going

24   to (indiscernible).

25   292   Q.   So yesterday -- yesterday

1   Chairperson Marchildon asked Dr. Gideon in the

2   context of socioeconomic support and the issues of

3   poverty about whether the department had undertaken

4   a systemic analysis by the program split if they

5   could bridge gaps. She noted this is something

6   that -- Gideon noted this is something started in

7   2023 and you might be able to speak to this. Does

8   this sound like the project you're referring to?

9   A.   Yeah.   That seems to align with

10   that (indiscernible).

11   293   Q.   And do you know, are there -- are

12   there any analyses that have been produced to date

13   as part of this project?

14   A.   I'm not sure that there has -- has

15   been any that would have made it to my level.

16   That's not to say that others would not have

17   submitted feedback or see where else we need to go,

18   yeah.

19   MR. TAYLOR: Ms. Anderson, I'm

20   wondering if we could have two questions, I guess,

21   by request. One is if -- if there is an

22   anticipated completion date for this project? And

23   the second is if there is any, you know, interim

24   analyses that could be shared, if we could have

25   that produced? Nonetheless, (indiscernible) report

1   if one exists, but if there is a -- an internal

2   report that said what we learned so far or stage 1

3   or however it's (indiscernible), that would be very

4   helpful to see that.

5   MS. ANDERSON: Yes, subject to

6   privilege.

7   MR. TAYLOR: Obviously.

8   MS. ANDERSON: Yeah.

9   MR. TAYLOR: Thanks.

10   U/T   Q.   MR. TAYLOR: Now, if we back up a

11   paragraph to paragraph 76, still on the same page.

12   So here you're noting that: (as read)

13   Under the long-term vision, while

14   continuing to cover remaining gaps,

15   Canada's role would be more limited to

16   providing products, supports, and

17   services where the demands exceed the

18   resources and capacity of the First

19   Nation or where an eligible child does

20   not have a connection to community or

21   with the First Nation service delivery

22   organization.

23   Do you see that?

24   A.   Yes, I do.

25   294   Q.   Are you aware that the most recent

1   studies -- well, the question first. Are you

2   aware -- if I say the word "deep dive,"

3   (indiscernible), does that mean something to you?

4   A.   I know that we do deep dives as

5   part of our reporting processes, but beyond that, I

6   don't --

7   295   Q.   So if I said it's kind of an

8   annual more granular --

9   A.   Yeah. I don't have exact

10   knowledge of what's --

11   296   Q.   Right.

12   A.   -- in those dives.

13   297   Q.   But it's an exercise you're aware

14   of?

15   A.   Yes.

16   298   Q.   And are you aware that the most

17   recent deep-dive exercise found roughly half of

18   First Nations' children -- children accessing

19   supports, products, or services through Jordan's

20   Principle live off reserve?

21   A.   I am not aware of the exact

22   number, but I do know that a large portion do, but

23   I don't know the numbers.

24   MR. TAYLOR: And, Ms. Anderson, I'm

25   wondering if -- yesterday we had questions more

1   about the (indiscernible) proportion for certain

2   kind of services, but this is a more general

3   request. If it would be possible to have the

4   updated statistics for all requests between the

5   '22/'23, '23/'24, first three quarters for the

6   proportion of those having off or on reserve. We

7   saw in the -- in the deep dive we went through

8   yesterday with Dr. Gideon was the '21/'22 figure,

9   and so just specifically that kind of data points

10   for '22/'23, and then whatever we have got for

11   '23/'24, please.

12   MS. ANDERSON: So just extending the

13   timelines on the initial request?

14   MR. TAYLOR: Yeah. If we could have

15   it, you know, for '22/'23, '23/'24 as opposed to,

16   you know, '22 to -- I just want to extend the

17   period to the two calendar periods. And if it's

18   helpful for your data team, we would be looking at,

19   essentially, the kind of information that you have

20   provided in -- and I -- I don't have it now, but

21   it's the table in the deep dive that breaks it

22   down, you know, on -- on reserve, off reserve

23   (indiscernible).

24   MS. ANDERSON: Yes.

25   MR. TAYLOR: Thank you.

1   U/T   Q.   MR. TAYLOR: So thinking --

2   thinking about off reserve service requests, Ms.

3   St-Aubin, would you agree with me that there may be

4   serious practical challenges for First Nations who

5   are looking to offer programming off reserve, that

6   they be (indiscernible)?

7   A.   Yeah, there are challenges, for

8   sure, when they're trying to deliver services, all

9   services off reserve.

10   299   Q.   To their off reserve members?

11   A.   Yes.

12   300   Q.   And would you agree distance is

13   one such challenge? Members could be located

14   anywhere in the country?

15   A.   Yeah, across the country. Yeah,

16   sorry.

17   301   Q.   Yeah. And population

18   concentration might be another -- another

19   challenge? They might have pockets of members in

20   different places in the country?

21   A.   Yes. Dispersed, yeah.

22   302   Q.   So is it fair to say that you --

23   you agree that the individual request

24   (indiscernible) to Jordan's Principle will probably

25   have to play a significant part of any long-term

1   vision for Jordan's Principle to support First

2   Nation kids who are living off reserve?

3   A.   Yeah, our long-term vision does

4   not have us coming out of this role at all because

5   of just that point.

6   303   Q.   Yeah. Now, in terms of thinking

7   about the -- the broader vision with respect to

8   First Nations delivering the community level

9   services, would you agree with me there is a

10   difference between offloading a service for a First

11   Nation service provider and providing a properly

12   funding mechanism for local service delivery?

13   A.   Yeah, I think that it's -- it's

14   fair to go on an offload, and -- and I would

15   actually say that it's developed a new system that

16   would support that (indiscernible) specifically.

17   304   Q.   And -- and so you would agree what

18   Canada aims to do is provide properly funding

19   mechanisms for local service delivery?

20   A.   That or (indiscernible), yeah.

21   305   Q.   And you would agree with me that

22   there would need to be some confirmation or

23   understanding that resources available to First

24   Nations are sufficient in order for First Nations

25   to deliver the services in the way they want to

1   close those gaps?

2   A.   Correct. And health services and

3   education services would be no different.

4   306   Q.   And so I think we can agree it's

5   important to set First Nations communities up for

6   success?

7   A.   I agree with that.

8   307   Q.   And would you agree that setting

9   First Nations communities up for success includes

10   providing them sufficient information to exercise

11   (indiscernible)?

12   A.   I -- can you give me an example or

13   a specific context? Sorry.

14   308   Q.   Sure. So that might include

15   information about current volume or current

16   projected volume for different kinds of services or

17   different, you know, members from their community

18   who are using services?

19   A.   Oh, okay, yes. So, for sure, if

20   we're entering into that point in time where a

21   community comes to us and wants to take it on --

22   and it's happening now, actually. We have to talk

23   about what the demand is in -- in that particular

24   region and what we're saying is trends to help

25   inform how they want to proceed moving forward.

1   309   Q.   And it would include also

2   information about alternatives if the demand is

3   higher than expected?

4   A.   Yes, and what would work for them

5   because, again, there could be something that we

6   haven't even thought of that may be a better

7   solution.

8   310   Q.   And it would also include ensuring

9   that once funding is approved, that funding is

10   provided in a timely way to them?

11   A.   Oh, like, for them to deliver,

12   yes?

13   311   Q.   Yes. Now, you mentioned you --

14   you had reviewed briefly Dr. Blackstock's Reply

15   Affidavit. I was wondering if you noted the case

16   of the Keewatin Tribal Council that's noted there?

17   A.   Yes. KTC, yes.

18   312   Q.   Yeah. And you're aware that KTC

19   is currently in a bridge financing situation for 7

20   million? They were --

21   A.   Yes, I have seen the request for

22   additional funding come through.

23   313   Q.   And that's been a

24   (indiscernible) -- those kinds of requests will be

25   very important to deal with in a timely way, if

1   this model is --

2   A.   So that's a different model than

3   what's happening now. That is a contribution model

4   for third party organizations delivering the

5   current context. What I'm looking at in the

6   long-term vision is actually to not be in there.

7   So it could look like something very different.

8   But the funding would always -- we would need to

9   support them. And this is where -- I think I even

10   said where it goes beyond the -- the ability to

11   meet the needs, the Government of Canada would need

12   to step in and provide --

13   314   Q.   Right.

14   A.   -- those supports.

15   315   Q.   But -- but whether it's the

16   current contribution agreement model or the -- the

17   new model might be developed, getting the funds to

18   the First Nation (indiscernible) developed

19   (indiscernible) service and not be in a position to

20   bridge financing, so that's going to be an

21   important goal?

22   A.   Correct, yeah, to get out of that

23   space.

24   316   Q.   And so that's something that needs

25   to change. With these -- whatever circumstances

1   (indiscernible)?

2   A.   We need to -- we need to --

3   exactly. We need to work together on what makes

4   sense, even in this context.

5   317   Q.   And would you agree with me that

6   to introduce the -- the First Nation service

7   delivery mechanism is kind of a broader approach

8   that -- that you're looking -- ISC is going to need

9   to seek funding and authority from other parts of

10   the federal government?

11   A.   Oh. I can't -- I don't know. I'm

12   not sure because we haven't really entered into

13   those kind of conversations yet. This is something

14   we do want to take on. And if it's -- if it is

15   required, then that is my job to go and try to seek

16   that additional funding and any authorities

17   required.

18   318   Q.   So is -- is -- well, tell me if

19   you disagree with this characterization, but as --

20   as the --

21   A.   Yeah.

22   319   Q.   -- senior executive who is

23   responsible for -- for Jordan's Principle, are you

24   anticipating you might have to go to Cabinet or to

25   the department of finance to ask for changes in

1   order to do this?

2   A.   I think it would depend on the

3   type of change, but if that's something open, then,

4   yes, of course, I --

5   320   Q.   I'm just not asking for --

6   A.   Okay. Sorry.

7   321   Q.   -- context in terms of Cabinet

8   confidence.

9   A.   Oh, yeah, no, no, but it's --

10   322   Q.   But I'm asking --

11   A.   -- it's -- oh, sorry.

12   323   Q.   No, no, it's okay. I just noticed

13   that (indiscernible).

14   A.   (Indiscernible).

15   324   Q.   And I just wanted to --

16   UNKNOWN SPEAKER: When I hear

17   "Cabinet," my ears perk up.

18   325   Q.   MR. TAYLOR: Yeah. Not anything

19   that will happen once you get there. But it's a

20   place you may have to go?

21   A.   Oh, and that is always something

22   that we need to think through when we're having

23   these types of conversations, yeah.

24   326   Q.   And are you -- are you aware that

25   the '23/'24 departmental plan set out in the

1   Jordan's Principle funding (indiscernible) at the

2   end of this fiscal year?

3   A.   Yeah.   That's just part of the

4   normal budgetary processing.   It's every year.

5   (Indiscernible) a fixed amount, and we have to go

6   back and offset and request for additional funding

7   every year.

8   327   Q.   And so there would need --

9   there -- there needs to be funding after this

10   subset for this all to continue and for the new

11   vision to get into place?

12   A.   Yeah.   There is -- there is no

13   decrease.   Like, this is just, like, part of the

14   normal budgetary process.   We come back through

15   our -- our (indiscernible).

16   328   Q.   And that's because the needs of

17   the community are continuing and --

18   A.   Oh, yes.   Yes, correct.

19   329   Q.   -- and there needs to be a way to

20   meet them?

21   A.   Yes.

22   MR. TAYLOR: Chair, I wonder if I might

23   just have a couple of minutes indulgence just to

24   check my notes and check in with my colleagues?

25   THE CHAIR: Yes.   How -- how long do

1   you need?

2   MR. TAYLOR: No more than five. And it

3   may be a quicker five than yesterday.

4   THE CHAIR: Okay. So we'll break for

5   five minutes. Don't go very far, please.

6   MR. TAYLOR: Thank you.

7   --- RECESSED

8   --- RECONVENED

9   REGISTRY OFFICER: We're back on the

10   record.

11   THE CHAIR: I take it that you're ready

12   already?

13   MR. TAYLOR: Yes. That was a very

14   tight five minutes, Chair. Thanks very much.

15   THE CHAIR: Yes.

16   330   Q.   MR. TAYLOR: Ms. St-Aubin, merci

17   beaucoup. Thank you very much. Those are my

18   questions.

19   A.   Thank you for those questions.

20   THE CHAIR: Thank you very much. Would

21   you like to mark your documents as exhibits?

22   MR. TAYLOR: Thank -- thank you very

23   much for that. I had forgotten. So if it would be

24   possible to mark -- I think we have four items to

25   mark.

1   THE CHAIR: Yeah.

2   MR. TAYLOR: There would be the -- the

3   volume 1 of the cerlox which (indiscernible)

4   computer, and then there's the volume 2,

5   (indiscernible) standards, and then there's the --

6   the loose e-mails, and the -- the (indiscernible).

7   The (indiscernible) document that will be four.

8   (Indiscernible).

9   THE CHAIR: Yes. Can we mark them?

10   REGISTRY OFFICER: Yes.

11   MR. TAYLOR: And just for clarity

12   Ms. Chair, would those be 3, 4, 5, 6, or 1, 2, 3,

13   4?

14   REGISTRY OFFICER: Those would be 3, 4,

15   5, 6.

16   MR. TAYLOR: Thank you.

17   REGISTRY OFFICER: So the Caring

18   Society Exhibit 3, volume 1 is number 3.

19   EXHIBIT NO. 3: EXCERPTS FROM

20   SASKATCHEWAN CHILD PROTECTION

21   SERVICES MANUAL REVISED DECEMBER 2023

22   REGISTRY OFFICER: Caring Society

23   exhibit volume brief number 2 is Exhibit 4.

24   EXHIBIT NO. 4: EXCERPTS FROM

25   MANITOBA CFS MANUAL APPROVED JUNE 30,

1   2022

2   REGISTRY OFFICER: The -- sorry. I'll

3   just pull them up here. So the United Nations

4   Convention on the Rights of the Child is Exhibit

5   No. 5.

6   EXHIBIT NO. 5: UNITED NATIONS

7   CONVENTION ON THE RIGHTS OF THE CHILD

8   REGISTRY OFFICER: And the loose

9   e-mails, five pages starting with the e-mail dated

10   October 19, 2023, is Exhibit No. 6.

11   EXHIBIT NO. 6: E-MAIL EXCHANGES WITH

12   DATE RANGE SEPTEMBER 20, 2023, TO

13   OCTOBER 19, 2023, REGARDING AN APPEAL

14   OF A DECISION

15   THE CHAIR: Thank you. Mr. Wuttke for

16   the Assembly of First Nations or --

17   MS. KASSIS: Good afternoon.

18   Bonjour --

19   THE CHAIR: Bonjour.

20   MS. KASSIS: -- Madam Marchildon. My

21   name is Lacey Kassis, and I am appearing on behalf

22   of the Assembly of First Nations this afternoon.

23   Bonjour.

24   CROSS-EXAMINATION BY MS. KASSIS:

25   331   Q.   Bonjour, Madam St-Aubin. I'm

1   hoping that you can assist us with some questions

2   here just to move this matter forward. I don't

3   expect to take too much of your time. I know it's

4   been a long day for you this afternoon, so I thank

5   you. All right. Just getting started here. So in

6   addition to your Affidavit, Ms. St-Aubin, I'll also

7   make some references to the Amended Affidavit of

8   Craig Gideon that was affirmed on March 22nd, 2024;

9   the Affidavit of Brittany Mathews that was affirmed

10   on January 12th, 2024; Dr. Blackstock -- and Dr.

11   Blackstock's Affidavit that was affirmed on January

12   12th, 2024. Have you read Craig Gideon, Brittany

13   Mathews', and Dr. Blackstock's Affidavits?

14   A.   Yes, I have.

15 332   Q.   Great. And are you familiar with

16   the contents of those Affidavits?

17   A.   To a degree, yes, I am.

18 333   Q.   Okay. Ms. St-Aubin, the Caring

19   Society pointed you to Ms. Buckland's evidence

20   earlier this morning on timelines. Would you agree

21   that, at the time, in February 2017, there were

22   significantly less Jordan's Principles requests

23   when compared to today?

24   A.   Oh, yes, I agree.

25 334   Q.   Okay, thank you. Mr. Taylor also

1   took you to standards under various youth

2   protection acts and policies in volume 2 of their

3   exhibits, at the Caring Society's exhibits. Would

4   you agree that child protection issues are very

5   different than Jordan's Principle requests?

6   A.   Yes.

7   335   Q.   Great. So let's say, for

8   instance, you would agree that if a child is being

9   abused in the home, that quick intervention is

10   warranted in this circumstance, and that Jordan's

11   Principle would not be the appropriate pathway then

12   to address it?

13   A.   Correct.

14   336   Q.   Thank you. Now, turning to your

15   Affidavit, Ms. St-Aubin, at paragraph -- at

16   paragraph 6, you note that there has been an

17   increase of Jordan's Principles requests. That's

18   what the paragraph states. You note that the

19   increase can be attributed to social media posts

20   and a greater understanding of the program. Is

21   that an accurate reflection from your --

22   A.   Can you let me --

23   337   Q.   We can follow along.

24   A.   -- (indiscernible)?

25   338   Q.   So it's at paragraph 6 of your

1   Affidavit, Ms. St-Aubin. So I'll just give you a

2   couple moments there.

3   A.   Okay, thank you, yes.

4   339   Q.   Okay, great. So I'll proceed

5   then. You note that there has been an increase of

6   Jordan's Principle requests. Specifically, you

7   note that the increase can be attributed to social

8   media posts and a greater understanding of the

9   program. Is that an accurate reflection of your

10   evidence?

11   A.   Yes, it is.

12   340   Q.   Okay, thank you. Now, turning to

13   Exhibits F and G of Craig Gideon's Affidavit now.

14   And I'll give you a few moments. So Exhibits F and

15   G. There are two social media posts that are

16   included as exhibits. Would these be some examples

17   of such social media posts that you have come

18   across in administering Jordan's Principle?

19   A.   I certainly have seen the one

20   under G. Personally, I have seen that on my own

21   social media, and then the fact sheet, I -- I am

22   not sure I have seen this one specifically come

23   through my social media, but I have seen the fact

24   sheet just in -- in the office, in an office

25   context.

341   Q.   Okay, thank you. And with respect

to Exhibit G of Craig Gideon's Affidavit, the

social media post notes that the Wikwemikong Health

Authority was assisting band members with applying

for Jordan's Principle services. Are you aware of

other such Jordan's Principles drives that are

taking place in other parts of the country?

A.   The First Nations Health

Consortium in Alberta is another one that is very,

very active in supporting Canadian (indiscernible)

and has reached out even beyond Alberta

(indiscernible), for example.

342   Q.   Okay, thank you. Now, would it be

accurate to state that the complimentary work by

First Nations' organizations in assisting First

Nations' children and families accessing Jordan's

Principles services is, in fact, benefiting First

Nations' children?

A.   From what I have heard anecdotally

we do see quicker results in accessing services

that are being requested and more information being

shared because of a level of comfort versus having

to share with government employees, which I

understand.

343   Q.   Okay, thank you. Would it be

1   accurate to say that the number of Jordan's

2   Principles requests continue to increase every

3   year?

4   A.   I think that's an accurate

5   assumption.

6   344   Q.   Thank you. Can we expect that the

7   number of Jordan's Principle requests for 2023/2024

8   be higher than the previous fiscal year?

9   A.   Given the recent trajectories and

10   certainly since the pandemic, we are anticipating

11   that, yes, it will.

12   345   Q.   Okay, thank you. And are there

13   other factors contributing to the increase in

14   Jordan's Principle requests such as gaps in other

15   programs and services, accessibility of applying

16   through a service coordinator, et cetera?

17   A.   Are there other gaps in accessing?

18   346   Q.   Yes. Are you aware of any gaps --

19   A.   Yes.

20   347   Q.   -- in accessing services?

21   A.   The gaps in accessing services via

22   Jordan's Principle or via programs? I'm sorry,

23   I -- I just misunderstood your question.

24   348   Q.   Programs.

25   A.   Are there any gaps in accessing

1   services in programs that were received at -- I'm

2   just trying to take a -- I'm sorry. I apologize.

3   349   Q.   No, no, no. Please take your

4   time.

5   A.   I'm trying to think about examples

6   where something, where there are existing programs

7   and we're seeing requests for -- I think supports,

8   with regards to food security. And I know that

9   there is some work happening in that space. I

10   don't know that area enough, but that's certainly

11   something that I have seen as an increased gap

12   because it's not a formal federal program. And, of

13   course, rental -- rental supports and a lack of

14   access to accommodations. I don't know. I hope

15   that answers your question. I'm just trying to

16   think federally what --

17 350   Q.   No, no. Yeah, no, that's fine.

18   Thank you. So, now, turning back to your

19   Affidavit, Ms. St-Aubin, at paragraph 12

20   specifically, you note that: (as read)

21   For the first three quarters of the

22   2023 and '24 fiscal year, 62 percent of

23   requests were determined within 15

24   days, and 70 percent were determined

25   within 30 days. Further remaining 30

1   percent of requests not processed

2   within 30 days.

3   What is the current processing timeline?

4   A.   I don't have that information with

5   me, unfortunately, for that 30 -- that 30 percent.

6   351   Q.   Okay, thank you. Now, does ISC

7   track any adverse consequences or impacts on First

8   Nations' children for those services not processed

9   within the 30 days?

10   A.   I am -- unfortunately, I'm -- I'm

11   not aware, and I am unable to answer that.

12   352   Q.   Okay, thank you. The Caring

13   Society has highlighted a number of interventions

14   they made on behalf of Jordan's Principle

15   requestors. Are you aware that the AFN has made

16   similar interventions on behalf of requestors?

17   A.   No, I was not aware of that.

18   353   Q.   So, now, turning back to your

19   Affidavit again, Ms. St-Aubin, this is at paragraph

20   17 now. You note that: (as read)

21   The Caring Society's interventions

22   amounted to less than 0.167 of the

23   total amount of individual requests

24   processed.

25   Is -- is it your evidence that a crisis in Jordan's

1   Principle does not exist?

2   A.   I think it depends on what you

3   determine to be a crisis in Jordan's Principle. I

4   think that there are some -- some issues that we

5   need to work on and do better in regard to timeline

6   requirements and payment issues, but I'm not sure

7   that "crisis" -- that -- like, what are you

8   defining as a "crisis"?

9   354   Q.   I'm sorry. Thank you. I guess

10   what we're asking then is, you know, you're

11   suggesting that there is less than 1 percent of

12   cases or that the percentage is less than 1

13   percent, are you then suggesting that there is not

14   a significant problem that exists?

15   A.   I'm not suggesting that.

16   Actually --

17   355   Q.   Okay.

18   A.   -- I think that that number is

19   just specific to the Caring Society's

20   interventions, which we do appreciate having

21   because we all know better (indiscernible) issues,

22   but that just reflects that not the bigger issue

23   with Jordan's Principle.

24   356   Q.   Okay, thank you. Is it accurate

25   to -- to assume that some families who did not

1   contact the Caring Society or the AFN would face

2   similar hardships in not being able to contact

3   officials on the status of their applications

4   and/or encounter delays in accessing services for

5   urgent requests that would have adverse impacts on

6   First Nations' children?

7   A.   Again, I can't speak to that level

8   of detail. That would be something probably that

9   would fall within the regional level of

10   information. Unfortunately, I just don't have that

11   (indiscernible).

12   357   Q.   Okay, thank you. Now, turning

13   again to your Affidavit, Ms. St-Aubin, at paragraph

14   20 specifically, you state that: (as read)

15   Some of the Caring Society's examples

16   of problems individuals encounter are

17   either incomplete in the information

18   provided or do not reflect steps taken.

19   You further note at paragraph 22 steps taken to

20   address these concerns. Would these outstanding

21   requests and the examples reference cases

22   eventually be approved should the Caring Society

23   not have intervened on behalf of those families?

24   A.   I can't make that type of

25   assumption or hypothetical, I suppose, because

1   there were some partially approved, some in the

2   process of denials. So I can't presume that it

3   would not have already or have been through at a

4   point of approval. (Indiscernible).

5 358   Q.   Thank you. And now turning to

6   paragraph 96 of Dr. Blackstock's Affidavit, and

7   I'll give you a few moments. I'm so sorry. You

8   can disregard that. I have omitted that question

9   there. Pardon me. Okay. So, now, turning back to

10   your Affidavit, Ms. St-Aubin, specifically at

11   paragraph 46, you state that: (as read)

12   Measures proposed by the Caring Society

13   could cause harm to First Nations'

14   children. So, for example, requests

15   for an order that all Jordan's

16   Principle recipients can classify their

17   requests as urgent.

18   Please turn now to Exhibit 12A of the Mathews'

19   Affidavit, Ms. Brittany Mathews.

20   A.   Can I have a copy of the exhibits?

21   I don't have the exhibits.

22   UNKNOWN SPEAKER: What particular one?

23   MS. KASSIS: 12A. Thank you.

24 359   Q.   MS. KASSIS: Okay, thank you. So

25   this example relates to someone's attendance in a

1   pot lodge, and their request was marked as urgent.

2   From the e-mail string, would you agree that

3   first -- that the first e-mail request for

4   reimbursement was dated May 26th, 2023?

5   A. So I -- I am not a part of the

6   conversation. Like, this is prior to my -- or just

7   around the time I joined, so I don't have -- I

8   don't know where it is.

9   360   Q. It should be the last page, if you

10   wanted to check.

11   MR. TAYLOR: Madam Chair, just -- just

12   while the witness is -- is looking for the -- the

13   part of the document, I hesitate to couch this in

14   the nature of an objection. Maybe this is just a

15   request for guidance for at least the Chair and

16   (indiscernible) view on this, but urgency is a

17   place where the Caring Society (indiscernible)

18   interest on the motion. It's our understanding

19   that they're not supporting that portion of relief

20   sought. And there is certain case law in Alberta,

21   Ontario, even Nova Scotia that leading questions to

22   witnesses that are aligned in interest to the

23   party -- party cause concerns. And so just if

24   there's any guidance from the -- the Chair on

25   leading questions in areas where the evidence

1   disagrees with the Caring Society in terms of this

2   witness.

3   THE CHAIR: And you're -- you're

4   raising this in the context of cross-examination --

5   MR. TAYLOR: Exactly.

6   THE CHAIR: -- which is a broad right?

7   MR. TAYLOR: It's a broad -- a broad

8   right, although there is -- there is authority in

9   some jurisdictions that where a party is

10   cross-examining a party with whom they are related

11   or aligned in interest, which we have the

12   understanding -- understanding the AFN and Canada

13   are on the point -- point of urgency, that

14   caution -- that caution be warranted with respect

15   to the questioning in those circumstances.

16   And so like I said, I am hesitating to

17   couch it in the nature of an objection. I'm just

18   wondering if there is any guidance to the guidances

19   that the cross-examination proceed out of the

20   question as understood, but just to raise it as a

21   procedural point as the examination is continuing.

22   THE CHAIR: Well, you would have to

23   raise this authority, and I would have to confer

24   with my colleague.

25   MR. WUTTKE: Thank you for the

1   direction, Chair. I can also advise that the AFN

2   does not agree with Canada's definition of urgency.

3   We have our own views on urgency, that's apart from

4   what Canada and -- so --

5   THE CHAIR: Thank you. And in response

6   what Mr. Taylor has said? Do you have other views

7   to share?

8   MR. WUTTKE: Well, we do have -- I

9   mean, it will be in, of course, our written

10   submissions later on, but we definitely -- when it

11   comes to what Mr. Taylor is referencing as, you

12   know, case law, I haven't seen this case law --

13   case law. But I would argue that our views of what

14   is urgent and what should be cast as urgency will

15   not necessarily be what Canada views as urgency.

16   And will not be what the Caring Society views as

17   urgent either. We have -- we have our own views on

18   that subject matter. So I wouldn't couch it as us

19   supporting Canada's position. Clearly we're not

20   supporting Canada's position on that.

21   THE CHAIR: I understand. But just to

22   speak about the fact that he's saying that the

23   questions might be leading in a certain way, do you

24   have anything to add on this?

25   MR. WUTTKE: No, I don't. We are

1   entitled to cross-examination, and we are testing

2   the evidence of the (indiscernible).

3   THE CHAIR: Thank --

4   MR. TAYLOR: If it's helpful, Chair,

5   I -- I tried to couch this as a -- as a commentary

6   as opposed to objecting to a specific question of

7   (indiscernible). And so I'm -- I'm intent just to

8   simply raise the issue, and if -- if there is an

9   objection to a question, and I think I have taken

10   direction from the Chair and also from my friend,

11   with Mr. Wuttke's helpful clarification of the

12   AFN's position, and I'm content to -- to leave --

13   leave my comment as a comment, and if it turns into

14   an objection, I'll notify the Panel.

15   THE CHAIR: Okay, thank you. That's

16   helpful.

17   MS. KASSIS: Thank you, Mr. Taylor.

18   361   Q.   MS. KASSIS: All right. So

19   continuing on, would you like me to repeat that

20   first thought there, Ms. St-Aubin, or are you okay

21   to proceed?

22   A.   Yes. If you could just repeat it

23   just because I can't --

24   362   Q.   No problem.

25   A.   -- see the date you referenced.

1   I'll -- perhaps I'm looking at this wrong. I went

2   to the back, and there's a receipt.

3   363   Q.   All right.

4   A.   Is that the one you're

5   talking about, like, the (indiscernible) direct

6   deposit? I don't know if I have the right --

7   364   Q.   No. No. I was referring to

8   Exhibit 12A of Ms. Brittany Mathews' Affidavit.

9   A.   Okay.

10   365   Q.   It's page 21, if that's helpful.

11   A.   There's lots of pages today.

12   366   Q.   Yeah. (Indiscernible). All

13   right. So this example relates to someone's

14   attendance in a pot lodge, and the request was

15   marked as urgent. And from the e-mail -- e-mail

16   string, you would agree that the first e-mail

17   request for reimbursement was dated May 26th, 2023?

18   A.   Yes.

19   367   Q.   Okay, thank you. And, now, in

20   this case, a hotel was approved for one night, but

21   the client wanted to stay for an additional two

22   days as the ceremony was continuing. This raised

23   some questions by ISC personnel on May 30th, 2023.

24   The request was finally approved on June 2nd, 2023.

25   The e-mail string ends on August 3rd, 2023. Would

1   you agree that this request took too much time to

2   process?

3   A.   I think that, again, this is

4   just -- I was not a part of this conversation. I

5   think that I hadn't really been onboarded fully at

6   that point in time. I do know that there was many

7   steps, and it did take a long time. There was, I

8   think, a letter that was sent for an apology for

9   this taking as long as it did. (Indiscernible).

10   368   Q.   Okay, thank you. And, secondly,

11   in your view, was this matter truly urgent? Was

12   this an urgent request, in your opinion?

13   A.   I can't make that determination.

14   I don't have knowledge of the request, and, again,

15   it's not -- I don't (indiscernible).

16   369   Q.   And, finally, could another more

17   pressing and urgent request fall through the cracks

18   while you were dealing with the request

19   (indiscernible) Caring Society? Do you think that

20   that was a possibility or that could have been a

21   possibility?

22   A.   Again, requests were coming in --

23   because requests come in at such a large volume

24   over the course of -- certainly over the course of

25   this timeline. There -- there -- there may have

1   been. I can't speak to that with (indiscernible).

2   370   Q.   Okay, thank you. Now, turning to

3   Exhibit A of your Affidavit. I'll give you a few

4   moments. Would you agree that most of the 167

5   interventions by the Caring Society were deemed to

6   be not urgent by its officials?

7   A.   I think that's a fair statement,

8   yes.

9   371   Q.   And are you aware that the Spirit

10   Bear Plan contains many elements that are beyond

11   Child and Family Services and, therefore, fall

12   outside of the four corners of this complaint, and,

13   therefore, the Tribunal may not have jurisdiction

14   over it?

15   A.   Again, I can't speak in great

16   detail to the Spirit Bear, but that is my

17   recollection when I read the plan.

18   372   Q.   Okay, thank you. And at paragraph

19   65 in your Affidavit, you describe the rate of

20   staff overturn for a year. And what impacts to the

21   Jordan's Principle result from staff leaving these

22   positions?

23   A.   The results when staff leave

24   Jordan's Principle?

25   373   Q.   Correct, yeah.

1   A.   From an operational perspective,

2   it's a bit of a scramble to ensure that we can

3   continue to meet the timelines, but it has a -- I

4   would say an emotional impact, a mental health

5   impact on colleagues because they're very invested

6   in each other. They want to keep -- they know the

7   heart that goes into delivering.

8   374   Q.   And so how long does it take,

9   approximately, for a replacement employee to get up

10   to speed on the file? So if they undergo training,

11   how long would this training take before the new

12   employee is able to begin processing requests?

13   A.   I -- again, I think it depends on

14   the individual. Certainly, we go up to four to six

15   months, I would say, for training. The

16   determination is, do they have experience in

17   Jordan's Principle? Are they aware? Are they

18   Indigenous or work with Indigenous communities?

19   There's many factors. I take it -- it takes time.

20   I don't think it's a quick thing to learn because

21   of the complexities and the nature of the orders

22   and coming to understand them.

23   375   Q.   Thank you. And at paragraph 70 of

24   your Affidavit, you state that: (as read)

25   Jordan's Principle would benefit from

1   greater First Nations' control.

2   However, the current application of

3   back to basics has created prohibitions

4   to connecting individuals to community

5   level programs.

6   Can you provide more context to these statements?

7   A.   There has been -- since my time

8   coming into the branch, my role has been focused on

9   increased determination and (indiscernible) of

10   health services predominantly. And this is very

11   collaborative and codeveloped in the way that it's

12   a reciprocal partnership. And so on Jordan's

13   Principle, we feel a little bit more bound on how

14   much we bring leadership into this without being

15   seen as trying to advocate -- advocate our required

16   role, legal role. In addition, the ability just to

17   fund, let's say, for example, housing and providing

18   leadership in communities with housing dollars to

19   determine the means of their communities because

20   they -- they know the realities of the communities,

21   we're unable to redirect into -- into housing on

22   reserve (indiscernible) communities. So that's --

23   I would say that is probably my -- my largest

24   example of where we struggle to be able to -- to

25   redirect it to where there are resources being led

1   and determined by the (indiscernible) and

2   (indiscernible).

3   376   Q.   Thank you. With regards to

4   Canada's cross-appeal, it seeks a number of orders

5   allowing referrals to First Nations' administered

6   programs. Can you identify how ISC envisions this

7   operating and how long -- or, sorry, how it will

8   address the backlogs?

9   A.   How we envision it operating is

10   certainly in partnership with -- and this goes back

11   to the need to break down silos. Looking at where

12   ISC is already investing in systems in community

13   that folks may not be aware of. So based on a

14   request that comes in, we would be able to -- and

15   it is happening in pockets, but certainly in the

16   area such as housing, be able to connect the

17   decision makers in the community with housing

18   requests that come in and allow them to have a full

19   understanding of the suite of what's being

20   requested that we see that they may not see. And

21   I -- I talk a lot about infrastructure just

22   because, again, that is -- we try to transfer that

23   (indiscernible) and determination to

24   (indiscernible) communities. The other area is

25   also around aligning programming. So we have

1   education, and we're exploring this, actually, with

2   the -- with some of the requests of the Assembly of

3   Manitoba Chiefs taking on regional education

4   agreements. We are also exploring --

5   (indiscernible) Jordan's Principle because we do

6   see a lot of educational supports requests coming

7   in. So by aligning them together, it allows

8   decision makers -- First Nations' decision makers

9   to -- to best place those supports and try to

10   (indiscernible) perhaps (indiscernible). And it

11   also allows Canada to -- to come back to

12   parliamentarians through our -- our own internals

13   to seek additional funding because it's a better

14   systems approach, if that answers your question?

15   377   Q.   Yes, thank you. And what risks

16   has ISC identified with such an approach?

17   A.   The risk for such an approach is

18   being unable to meet the timeline, which we're

19   struggling to be compliant with timelines. I think

20   there is a fear, at the community level too, around

21   indemnification or potential litigation. And --

22   and so I think that's a little bit of a barrier,

23   although we're trying to -- what does that even

24   look like? Again, we're not even sure ourselves.

25   But that is certainly two -- two big flags that

1   have been raised on the part of -- of certain First

2   Nations' leadership that I have met with.

3   378   Q.   And, sorry, is it to your

4   knowledge that First Nations administering

5   education programs, do they come across the same, I

6   guess, fears or issues that you describe?

7   A.   Oh, I think with education it's

8   much clearer around -- certainly around the legal

9   risk that they take on assuming that. That doesn't

10   seem to be an issue. It's actually pretty --

11   pretty broadly covered. The only way that there

12   would be commonalities is always around capacity.

13   Just something that Canada would still need to be

14   (indiscernible) to ensure that communities have the

15   supports they need in place to be able to be

16   successful in implementing it.

17   379   Q.   Right. And -- thank you. Should

18   referrals to First Nations' administered programs

19   become possible, how does ISC propose to support

20   additional capacity needs for First Nations to

21   begin processing Jordan's Principles requests? So

22   if there is not capacity funding as you just

23   mentioned, funding for First Nations, how realistic

24   would it be for First Nations to take on a greater

25   role in processing Jordan's Principle requests?

1   A.   So currently even within -- and

2   I'm just taking my health transformation lens when

3   we're looking for how to transfer, there are always

4   mechanisms to return for capacity when it's going

5   to -- to promote and accelerate ISC's mandate of

6   transfer and meeting self-determination in the

7   community. Once a community -- community

8   approaches us to say we would like to take a

9   greater role on, we would like to take on these

10   programs, we would like to be able to take this

11   service, then we would need to say, how much is it

12   going to cost you? What does it look like? What

13   are the system needs? And then be able to come

14   back to Parliament with something like the

15   department of finance for an off cycle request,

16   which we -- we treat as one of our tools in regards

17   to accessing additional funding.

18   380   Q.   Thank you. And in relation to a

19   greater First Nations role, Jordan's Principle is

20   premised on the government or department of first

21   contact to pay for the service so that an

22   individual doesn't have to pursue multiple avenues

23   to access the supports they need. This would,

24   effectively, amount to administration --

25   administrative case conferencing. And how do you

1   envision that ISC overcome the correct prohibition

2   by CH -- CHRT orders on case conferencing?

3   A.   I -- I don't feel very

4   comfortable -- or I feel uncomfortable in

5   addressing the -- the case conferencing, but -- but

6   I would say, because it's the first point of

7   contact, some of the areas we're moving towards is

8   bringing a trilateral table so that the province

9   is -- the whole entire (indiscernible) is present

10   with First Nations leadership. So we try and do it

11   in a more homeostatic collaborative way. That

12   doesn't really address your case conferencing

13   issue. I apologize. I don't -- I'm probably a

14   little bit tired. I'm struggling a little bit with

15   that one.

16   381   Q.   Okay, thank you. And Mr. Taylor

17   asked you a question about First Nations citizens

18   living in different parts of Canada, for instance,

19   off reserve. Do you agree that First Nations have

20   long advocated and are capable of offering services

21   including Jordan's Principle to their citizens,

22   whether they be on or off reserve?

23   A.   Yes. We're doing it now already.

24   I've seen it in legal market development where I

25   came from at ESDC. We have their market agreements

1   where First Nations communities also provide

2   services to their -- their citizens who have to go

3   off reserve to access legal market (indiscernible).

4   382   Q.   Thank you. Canada's motion also

5   seeks to exempt First Nations from any procedural

6   orders of the Tribunal. Is it possible that a

7   complete exemption could potentially create a

8   double standard for access to services should First

9   Nations be able to offer services quicker than ISC?

10   A.   I can't -- I can't assume or

11   presume what could be the outcome. I would say,

12   though, and this is -- as part of the cross-motion,

13   and I have said this before, it's a hole, in my

14   mind, when we're seeking these types of changes to

15   the orders. I -- I look at it as all four of the

16   components and not just one on its own, and I'm

17   hoping that through conversations and negotiation

18   and co-development and -- and all of that great

19   complicated work that that would be

20   (indiscernible).

21   383   Q.   Thank you. And while the AFN

22   supports greater First Nations control over

23   Jordan's Principle, is Canada prepared to work with

24   the AFN, the Chiefs of Ontario, and NAN as

25   representative rights holders to further study this

1   matter and develop solutions for the Tribunal's

2   consideration?

3   A.   I -- I can't necessarily -- do you

4   mean within the contents of, like, JPOC, or as a

5   separate -- I -- I'm just trying to understand the

6   mechanism of what you're seeking a response to.

7   384   Q.   As parties to the table to the

8   long-term (indiscernible) negotiations?

9   A.   Oh. So I'm not a party to the

10   negotiations. That's a -- I think that's

11   indiscernible). I'm on the operational side. I

12   don't know if it's been discussed in the

13   (indiscernible) negotiations. I mean, Canada has

14   always had (indiscernible).

15   385   Q.   Okay, thank you. Those are all of

16   my questions this afternoon. Thank you. Merci

17   beaucoup.

18   THE CHAIR: Thank you very much. And

19   redirect? Do you need a break? Are you --

20   MS. ANDERSON: No. I think we're safe

21   to say no redirect today.

22   THE CHAIR: No redirect?

23   MS. ANDERSON: No.

24   THE CHAIR: Okay. Thank you very much.

25   So I -- I must thank you for this long day for you.

1   You have done great. It's not easy. So you're

2   dismissed. Thank you for being here.

3   THE WITNESS: Thank you for having me

4   here, and thank you very much for the very

5   thoughtful questions.

6   (Witness excused)

7   THE CHAIR: We have housekeeping

8   matters. So I know the Caring Society had a

9   housekeeping matter, so do you need a little break,

10   or we should just enter into this now?

11   MS. CLARKE: I'm happy to take a break,

12   if people want to take a break, but I'm also happy

13   to just carry on. Carry on?

14   THE CHAIR: Okay. Yes, that's fine.

15   Let's carry on.

16   (Housekeeping matters)

17   MS. CLARKE: Thank you, madam chair.

18   So as you may have discerned from my -- my

19   colleague, Mr. Taylor's, question previously, there

20   are multiple different positions for multiple

21   different parties on the various motions. And

22   we're mindful that the schedule set by the Tribunal

23   in relation to the Caring Society's motion was set

24   down before Canada filed its cross-motion.

25   So just as a -- as a matter of urgency

1   for this particular week, the Caring Society would

2   be requesting, from each of the parties, their

3   specific positions on both motions by the end of

4   this week, given the impending filing deadlines of

5   the factum that are coming up very quickly.

6   We don't actually know from our friends

7   at the AFN, from Chiefs of Ontario, and Nishnawbe

8   Aski Nation what position they are taking

9   specifically on Canada's cross-motion and what

10   position they are taking, specifically, on our --

11   on the Caring Society's motion. And so in

12   preparing for the factum, I think it's important

13   that we have that information. And I'm mindful

14   that the Tribunal has previously directed that that

15   information be brought forward, but due to the --

16   you know, the plethora of paper that has been

17   exchanged on the various motions, I don't think

18   they've ever been nailed down. So we would be

19   asking for some guidance from the Tribunal on that

20   by the end of this week.

21   THE CHAIR: Yes. Most of your -- your

22   friends are here. Would you benefit from having a

23   conversation? Some might not have instructions

24   right now.

25   MS. CLARKE: My understanding is that

1   not everyone has instructions today, and so I'm --

2   I'm mindful that I don't want to put people in a

3   position to ask to be changing our schedule --

4   THE CHAIR: Yes.

5   MS. CLARKE: -- without them having

6   instructions. I'm just mindful now that there are

7   no more witnesses to come forward. The evidence is

8   now in, aside from the requests for information.

9   I'm hoping that the parties can (indiscernible)

10   given that the -- the date for argument has come

11   quickly, and the urgency with which the Caring

12   Society feels that these issues need to be

13   addressed, that the parties can come to -- to --

14   back to the Tribunal by the end of this week with a

15   position.

16   THE CHAIR: Yes. Well, some of them

17   don't have instructions, so one of the responses

18   might be -- even if I direct that we have an answer

19   by the end of the week, I don't know if the answer

20   will be, we have not received our instructions yet.

21   So that's -- that's hopeful, but I'm -- I'm not

22   sure if that's doable.

23   MS. CLARKE: Maybe I can suggest this,

24   Madam Chair. Could we perhaps caucus with the

25   parties for the next 20 minutes and come back

1   before you? Perhaps, by then, we will have some

2   clarity that we could offer to you as -- as to next

3   steps.

4   THE CHAIR: Absolutely. I -- I wasn't

5   clear, but that was kind of the suggestion that I

6   was making.

7   MS. CLARKE: Okay.

8   THE CHAIR: So, yes, let's -- let's

9   break for about 20 minutes. Let me know if you

10   need more time. I would prefer if this can be

11   dealt with before we leave, but --

12   MS. CLARKE: Okay.

13   THE CHAIR: -- if not maybe by e-mail

14   tomorrow.

15   MS. CLARKE: Thank you.

16   THE CHAIR: Okay.

17   MS. CLARKE: Thank you so much.

18   THE CHAIR: So the -- the hearing is

19   adjourned, and we'll be back in 20 minutes for

20   case -- case management.

21   MS. CLARKE: Thank you.

22   --- ADJOURNED

23

24

25

1   TRANSCRIBER'S CERTIFICATE

2

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4   I, Shaina Jackson, Transcriber,

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13   Dated this 23rd day of April, 2024.

14

15   *Shaina Jackson*

16

17   VERITEXT LEGAL SOLUTIONS, CANADA

18   PER: Shaina Jackson,

19   Transcriber

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& 2:3,4,4,7,11 2:14,15	**106** 4:6,8 38:9 70:20,21 71:6	**12a** 117:18,23 122:8	**150** 48:5
0	**107** 3:5 4:10,13 38:20	**12th** 108:10,12	**151** 48:13
0.167 114:22	**108** 38:24	**13** 9:9 84:13 85:13 88:13 89:13	**152** 48:17
1	**109** 39:1	**130** 44:1	**153** 49:6

1 5:10 7:17 11:18 16:9 42:20 54:4 69:16 82:1 84:1 85:1 88:1 89:1 94:2 106:3,12,18 115:11,12
1.1 7:25 8:8 9:13,24 57:25
1.1. 10:21
1.2 57:25
1.3 57:25
10 8:5 84:10 85:10 88:4,10 89:10
10,582 39:7,17
10.3 57:3
100 35:25 38:11
101 32:9,9 36:10
102 37:1
103 37:16
104 38:5
105 38:7 70:20 70:21

11 8:8 57:24 58:24 84:11 85:11 88:11 89:11
110 39:14
111 39:19
112 39:22
113 40:7
114 40:14
115 40:19
116 41:3
117 41:6
118 41:8
119 41:11
12 8:21 58:23 80:8 84:12 85:12,23 88:12 89:12 113:19
120 41:18
121 41:21
122 41:25
123 42:7
124 42:15
125 42:17
126 43:1
127 43:7
128 43:14
129 43:24

130 44:1
131 44:5
132 44:8
133 44:10
134 3:6,7 45:1
1340/7008 1:1
135 45:4
136 45:7
137 45:20
138 45:25
139 46:4
14 9:12 84:14 85:14 88:14 89:14
140 46:7
141 46:11
142 46:18
143 46:21
144 47:2
145 47:5
146 47:18
147 47:20
148 47:22
149 48:2
15 9:15 25:7 84:15 85:15 87:20 88:4,15 89:15 113:23

150 48:5
151 48:13
152 48:17
153 49:6
154 49:12
155 49:17
156 49:21
157 49:24
158 50:3
159 50:8
15th 34:20 35:1
16 9:23 84:16 85:16 88:16 89:16
160 50:17
161 51:5
162 51:8
163 51:11
164 52:7
165 52:25
166 53:11
167 53:14 124:4
168 53:16
169 54:1
17 10:7 56:12 56:13,13 84:17 85:17 88:17 89:17 114:20
170 54:4
171 54:10
172 54:13
173 54:17
174 54:19

175 55:3	**198** 62:13	107:12,13	96:10,15,16
176 55:15	**199** 62:17	113:22 118:4	116:19
177 55:21	**2**	122:17,23,24	**220** 68:21
178 55:24	**2** 5:15 44:11,12	122:25	**221** 69:13
179 56:3	80:24 81:13,17	**2023/2024**	**222** 69:23
18 10:10 56:12	81:18 84:2	112:7	**223** 70:9
57:2 84:18	85:2 88:2 89:2	**2024** 1:17	**224** 70:12
85:18 88:18	89:13 106:4,12	34:21 35:1	**225** 70:17
89:18	106:23 109:2	39:12 108:8,10	**226** 70:20
180 56:9	**2,334** 38:14	108:12 138:13	**227** 71:22
181 56:11	**20** 4:12 10:17	**203** 63:13	**228** 72:7
182 57:23	14:23 84:20	**204** 63:15	**229** 72:12
183 58:18	85:20 87:25,25	**205** 64:6	**22nd** 108:8
184 58:22	88:1,1,20	**206** 64:11	**23** 11:16 14:13
185 59:19	89:20 107:12	**207** 64:14	41:18 84:23
186 59:21	116:14 136:25	**208** 64:22	85:23 88:23
187 59:24	137:9,19	**209** 65:22	89:1,23 96:5,5
188 60:4	**200** 62:23	**21** 10:25 84:21	96:10,11,15,15
189 60:6	**201** 63:1	85:21 88:21	103:25
19 4:12 10:13	**2017** 69:19	89:21 90:11	**230** 72:21
14:23 47:2	70:14 72:7	96:8 122:10	**231** 72:24
64:20 67:18	81:3 82:7	**210** 66:2	**232** 73:2
84:19 85:19	108:21	**211** 66:7	**233** 74:15
88:19 89:19	**2018** 74:6	**212** 66:19	**234** 75:5
107:10,13	**2019** 14:22	**213** 66:23	**235** 75:9
190 60:10	**202** 63:10	**214** 67:2	**236** 75:16
191 60:15	**2020** 42:4	**215** 67:4	**237** 75:18
192 60:18	**2021** 72:13	**216** 67:10	**238** 75:21
1920 15:5,6	**2022** 4:8 41:22	**217** 67:17	**239** 76:18
193 60:24	42:4 43:14	**218** 68:8	**23rd** 138:13
194 61:1	54:5 67:6	**219** 68:14	**24** 12:1 84:24
195 61:3	107:1	**22** 11:9 14:13	85:24 88:24
196 61:5	**2023** 4:6,12,12	41:18 84:22	89:1,24 96:5
197 61:11	5:23 36:1 93:7	85:22 88:22	96:11,15
	106:21 107:10	89:22 96:5,8	103:25 113:22

240 76:21	**26th** 70:25	**298** 95:16	**314** 101:13
241 77:8	118:4 122:17	**299** 97:10	**315** 101:15
242 77:15	**27** 13:4	**2nd** 122:24	**316** 101:24
243 78:6	**270** 87:8		**317** 102:5
244 79:13	**271** 87:13	**3**	**318** 102:18
245 79:20	**272** 89:14	**3** 4:4 5:21 16:5	**319** 102:22
246 80:20	**273** 89:16	16:11,12 80:21	**32** 13:25
247 81:8	**274** 89:22	80:21,25 81:14	**320** 103:5
248 81:11	**275** 90:2	82:1,4 84:3	**321** 103:7
249 81:14	**276** 90:5	85:3 88:3 89:3	**322** 103:10
25 12:20 84:25	**277** 90:7	106:12,12,14	**323** 103:12
85:25 88:13,25	**278** 90:9	106:18,18,19	**324** 103:15
89:25	**279** 90:20	**3,379** 34:21	**325** 103:18
250 81:18	**28** 13:10	38:13 39:16	**326** 103:24
251 81:21	**280** 90:25	**30** 4:8 11:21	**327** 104:8
252 81:24	**281** 91:4	12:3,12 13:18	**328** 104:16
253 82:1	**282** 91:6	106:25 113:25	**329** 104:19
254 82:3	**283** 91:8	113:25 114:2,5	**33** 14:4
255 82:21	**284** 91:12	114:5,9	**330** 105:16
256 83:2	**285** 91:21	**300** 97:12	**331** 107:25
257 83:7	**286** 91:24	**301** 97:17	**332** 108:15
258 83:10	**287** 92:2	**302** 97:22	**333** 108:18
259 83:17	**288** 92:5	**303** 98:6	**334** 108:25
26 12:24	**289** 92:7	**304** 98:17	**335** 109:7
260 83:22	**29** 13:13	**305** 98:21	**336** 109:14
261 84:4	**290** 92:13	**306** 99:4	**337** 109:23
262 84:15	**291** 92:21	**307** 99:8	**338** 109:25
263 84:18	**292** 92:25	**308** 99:14	**339** 110:4
264 84:20	**29213** 138:16	**309** 100:1	**34** 14:9 44:15
265 85:9	**293** 93:11	**30th** 122:23	**340** 110:12
266 86:14	**294** 94:25	**31** 13:21	**341** 111:1
267 86:20	**295** 95:7	**310** 100:8	**342** 111:13
268 86:23	**296** 95:11	**311** 100:13	**343** 111:25
269 87:5	**297** 95:13	**312** 100:18	**344** 112:6
		313 100:23	

74 27:21	**97** 34:17	**accessible** 58:6	**additional**
75 27:23	**97/1** 3:20	59:12	31:18 86:7
76 28:4 94:11	**98** 35:10	**accessing** 95:18	91:18 100:22
77 28:8 90:10	**99** 35:13	111:16,20	102:16 104:6
78 28:10		112:17,20,21	122:21 128:13
79 28:14 79:21	**a**	112:25 116:4	129:20 130:17
	ability 7:10 9:2	130:17	**address** 40:2
8	78:19 101:10	**accommodati...**	57:9 69:1
8 7:17 11:19	126:16 138:12	113:14	74:19 76:3
84:8 85:8 88:8	**able** 40:22 41:3	**accurate** 9:16	77:6 78:20
89:8	52:13,18 59:25	65:8 109:21	80:16 109:12
80 28:17	60:3 63:22	110:9 111:14	116:20 127:8
81 28:23	64:8 68:19	112:1,4 115:24	131:12
82 29:1	93:7 116:2	**acknowledging**	**addressed**
83 29:10	125:12 126:24	42:23	72:16 73:18
84 29:22	127:14,16	**act** 9:21,21	136:13
85 30:2	129:15 130:10	24:19 30:25	**addressing**
86 30:18	130:13 132:9	**active** 33:24	35:11 86:15
87 31:5	**abouts** 35:13	111:10	131:5
88 31:11	**above** 1:15	**activities** 59:13	**adequate** 56:25
89 31:21	**absence** 11:13	59:17	**adequately**
89/11 3:19	**absolutely**	**acts** 109:2	58:15
8th 34:20 39:12	137:4	**actual** 71:16,17	**adjective** 19:17
	abuse 73:13	**actually** 5:15	**adjourned**
9	**abused** 109:9	5:15 42:17	137:19,22
9 7:22 84:9	**accelerate**	52:17 65:16	**adjudicate**
85:9 88:9 89:9	130:5	98:15 99:22	47:25
90 32:12	**access** 32:4	101:6 115:16	**adjudication**
91 33:12	53:8 56:24	128:1 129:10	47:7,9 50:11
92 33:17	57:9 60:24	135:6	**adjustment**
93 34:1	62:20 66:15,15	**ad** 63:21	5:23
94 34:7	90:16 113:14	**adage** 23:10,15	**adjustments**
94/10 3:19	130:23 132:3,8	**add** 120:24	21:14
95 34:11	**accessibility**	**addition** 108:6	**administered**
96 34:14 117:6	112:15	126:16	127:5 129:18

administering
  110:18 129:4
administration
  130:24
administrative
  80:1 130:25
adolescents
  59:11
adopt 8:10
adopting 9:7
adult 13:15,22
  14:1,7
adults 13:6
  61:22,24 62:13
  62:13,15
adverse 73:20
  74:8 114:7
  116:5
advise 120:1
advisement
  21:17
advisements
  3:12
advocate
  126:15,15
advocated
  87:15 131:20
advocating
  87:1
affect 75:13
affidavit 5:13
  5:19 6:3,7,12
  14:11 19:21
  34:18 40:10,13
  41:13 42:21

54:5 58:9
61:15 64:17
90:10 100:15
108:6,7,9,11
109:15 110:1
110:13 111:2
113:19 114:19
116:13 117:6
117:10,19
122:8 124:3,19
125:24
affidavits
  108:13,16
affirmed 3:3
  5:8 108:8,9,11
afn 114:15
  116:1 119:12
  120:1 132:21
  132:24 135:7
afn's 121:12
afternoon 1:14
  5:2 87:22
  107:17,22
  108:4 133:16
age 13:18 59:14
  65:20
agency 44:17
agents 83:3
  85:13 89:19
aggregate
  43:22
ago 35:22 67:9
  67:10 72:16
agree 8:21 9:12
  9:16,25 10:22

10:25 13:4,21
13:24,25 14:4
17:2 21:15
28:17 37:17
40:19 43:8,8
43:19 49:17
52:7 58:13
59:21 61:20
62:1 63:16
66:7 68:8
70:18 72:10
74:12,22 77:10
79:2 83:23
86:24 97:3,12
97:23 98:9,17
98:21 99:4,7,8
102:5 108:20
108:24 109:4,8
118:2 120:2
122:16 123:1
124:4 131:19
agreed 10:4
agreement
  24:18 81:3,4
  82:4,10 101:16
agreements
  128:4 131:25
aims 98:18
alberta 111:9
  111:11 118:20
align 93:9
aligned 118:22
  119:11
aligning 127:25
  128:7

allocated 18:11
allow 76:13
  78:15 127:18
allowed 30:14
allowing 127:5
allows 79:18
  128:7,11
alluded 90:20
altering 14:2
alternatives
  100:2
amended 108:7
amnesty 1:11
amount 31:6
  49:3,3 104:5
  114:23 130:24
amounted
  114:22
analogy 32:13
analyses 69:7
  93:12,24
analysis 67:5
  71:5,9,13 72:2
  72:9 75:4
  79:10 93:4
anderson 2:13
  88:17 89:4,7
  89:10 93:19
  94:5,8 95:24
  96:12,24
  133:20,23
anecdotally
  111:19
annotations
  4:23

announced 14:22,25
annual 95:8
answer 38:10 51:6 75:15,17 114:11 136:18 136:19
answered 43:18
answers 34:15 53:13 113:15 128:14
anticipated 93:22
anticipating 102:24 112:10
anybody 24:17
apart 120:3
apologies 44:6
apologize 12:11 51:8 69:10 81:17 84:14 113:2 131:13
apology 123:8
appeal 4:13 107:13 127:4
appear 3:19 55:6
appearing 107:21
apples 42:24,24
application 30:12 126:2
applications 116:3

apply 27:6
applying 26:2 73:6 111:4 112:15
appoint 16:18
appointing 16:2
appreciate 10:13 115:20
approach 67:21 68:5,23 72:9 74:13,17 75:25 76:12,22 76:24 77:2,4 78:14 86:3 102:7 128:14 128:16,17
approaches 130:8
appropriate 49:3 59:13 78:24 86:8 109:11
approval 47:11 117:4
approve 47:25
approved 4:8 50:18 100:9 106:25 116:22 117:1 122:20 122:24
approves 83:18
approximately 125:9

april 1:17 138:13
area 23:5,5 24:14 31:10 35:23 44:24 68:20 89:23 113:10 127:16 127:24
areas 27:14 51:2 118:25 131:7
argue 120:13
argument 136:10
arrival 35:18
arrived 20:5 36:14
aside 44:1 136:8
asked 76:11 77:13 93:1 131:17
aski 1:12 2:21 135:8
asking 17:3 64:14 77:9 79:2 103:5,10 115:10 135:19
assembly 1:6 2:7 107:16,22 128:2
assessment 25:11
assessments 50:14 51:13

assist 108:1
assistance 3:14
assisting 111:4 111:15
assume 54:21 115:25 132:10
assuming 45:14 129:9
assumption 112:5 116:25
attached 73:25
attempted 40:3
attendance 117:25 122:14
attention 37:2
attorney 1:9
attributed 109:19 110:7
aubin 3:3 5:8 5:10 89:24 97:3 105:16 107:25 108:6 108:18 109:15 110:1 113:19 114:19 116:13 117:10 121:20
audio 4:21 138:7,12
audit 11:21 12:12,22
audits 88:19,25 89:18
august 36:1,19 122:25

authorities 51:2,3 102:16

authority 102:9 111:4 119:8,23

automated 46:12,13,14,23 47:7,8 48:19 49:4 50:11 51:19 52:4

automatic 46:17 49:4,5,8

available 19:23 32:2 82:11 98:23

avenues 51:2 130:22

avoid 24:18 74:8

avoiding 83:24 84:9 85:16

aware 35:14,25 36:2 41:21 55:15 67:11 69:5 71:22 83:3,10,14,17 83:21 87:8,13 94:25 95:2,13 95:16,21 100:18 103:24 111:5 112:18 114:11,15,17 124:9 125:17 127:13

awareness 25:10 83:16

b

b 1:23 81:6 89:16

back 8:25 16:9 16:10 19:22 20:8 33:8,10 37:12 56:7 62:16 77:17 80:16 84:11 85:18 86:2 89:23 90:9,10 94:10 104:6,14 105:9 113:18 114:18 117:9 122:2 126:3 127:10 128:11 130:14 136:14 136:25 137:19

background 30:23

backlog 27:11 35:17 40:9,16

backlogged 35:15

backlogs 35:19 40:2 127:8

bad 63:18

ballpark 70:14

band 111:4

barometer 42:13

barrier 128:22

based 11:22 12:14 13:5 41:13 50:13,22

68:23 71:10 74:17 75:11,25 79:8 81:4 90:15 127:13

baseline 24:16

basically 64:12

basics 126:3

basis 7:24 72:9

baskatawang 2:17

bear 89:25 124:10,16

beaucoup 105:17 133:17

behalf 107:21 114:14,16 116:23

believe 10:19 14:24,25 35:7 64:16 84:21 89:8

belong 56:22

belonging 57:7

benefit 48:6 78:18 125:25 135:22

benefiting 111:17

best 24:11 25:15 46:19 50:21 55:24 79:17 128:9 138:11

better 30:16 79:11 100:6

115:5,21 128:13

beyond 31:3 32:16 76:10 95:5 101:10 111:11 124:10

bfn 82:5

big 128:25

bigger 29:9 63:5,7 115:22

birthday 36:15

bit 34:15 36:24 41:18 51:11 85:18 88:18 125:2 126:13 128:22 131:14 131:14

blackstock 87:18 108:10

blackstock's 6:3 42:21 100:14 108:11 108:13 117:6

bodies 37:8

bonjour 107:18 107:19,23,25

book 7:18 11:18 16:9 69:16

bottom 11:19 58:24 67:18

bound 126:13

branch 73:24 126:8

break 51:9 87:22,25 88:6 105:4 127:11 133:19 134:9 134:11,12 137:9
breaking 75:14 86:4
breaks 96:21
brian 2:11
bridge 83:18 84:8 85:14 93:5 100:19 101:20
brief 88:6 106:23
briefly 100:14
bring 126:14
bringing 17:25 131:8
brings 29:6
brittany 108:9 108:12 117:19 122:8
broad 119:6,7 119:7
broader 69:10 72:3,5 98:7 102:7
broadly 129:11
brought 7:20 135:15
buckland's 108:19

budget 14:22 14:25 20:22 22:6
budgetary 104:4,14
budgeting 22:6
budgets 18:11 23:8
built 24:9
bunch 66:13,17
burden 47:19

c

c 2:1 22:19
cabinet 102:24 103:7,17
cadre 19:14 21:22 22:14
calendar 96:17
call 18:21 32:10 47:15 69:19 80:6,7 83:3,4 84:7 85:12 88:19 89:18,19 91:21
called 74:13
calling 28:19 72:1 74:23,24 85:10 87:9
calls 20:13 72:8 88:22
canada 1:6,9 1:10,11 11:6 16:13 43:18 44:3,14 54:20 56:6,7 64:2

68:11 69:6 73:22 74:6 77:12 78:11 79:2,5 81:2 82:6,12 98:18 101:11 119:12 120:4,15 128:11 129:13 131:18 132:23 133:13 134:24 138:17
canada's 11:10 12:7 22:25 54:6 71:11 94:15 120:2,19 120:20 127:4 132:4 135:9
canadian 1:3,8 60:19 111:10
candice 3:3 5:8
capable 131:20
capacity 68:18 94:18 129:12 129:20,22 130:4
capital 72:15
capture 45:7 79:11
cards 52:2
career 13:1 64:1
caring 1:6 2:4 6:15,19,23 7:8 7:20 8:23,25 9:17 11:3,20

12:21 15:24 16:1 20:3 26:12 28:23 29:2 40:4,8,12 47:14 82:5 86:25 87:5,8 87:14 106:17 106:22 108:18 109:3 114:12 114:21 115:19 116:1,15,22 117:12 118:17 119:1 120:16 123:19 124:5 134:8,23 135:1 135:11 136:11
carry 134:13 134:13,15
case 11:10 17:4 17:9,10,11 18:5 20:15 21:21 33:25 34:23,25 39:9 41:2 50:14,14 51:13,13 52:10 52:23,23 62:20 65:18 80:1 81:6 82:8,13 91:10 100:15 118:20 120:12 120:12,13 122:20 130:25 131:2,5,12 137:20,20

cases 5:11 11:2 11:4 12:25 14:3,5 15:10 16:22 17:5,25 18:23 19:3 22:16 24:3 25:22 33:5,24 40:16 50:18,18 51:14 52:5 62:20 63:1 80:18 82:11 115:12 116:21

cast 120:14

category 11:12

caucus 136:24

cause 6:16 117:13 118:23

causing 37:10 73:20

caution 119:14 119:14

caveat 42:5

centre 8:14,15 12:4 32:11 83:4 84:7 85:13 88:19

centre's 80:7

ceremony 122:22

cerlox 106:3

certain 14:3 46:23 49:2 50:12,25 51:23 96:1 118:20 120:23 129:1

certainly 21:16 30:11,21,24 31:14 32:8 36:16 44:23 51:25 53:7 63:3,25 66:14 87:12 88:21 91:2 110:19 112:10 113:10 123:24 125:14 127:10,15 128:25 129:8

certificate 138:1

certify 138:5

cetera 24:4 30:9 31:1 32:15 51:24 112:16

cfrdo 91:3,19 91:22

cfs 4:8 106:25

ch 131:2

chair 1:23 5:2,5 5:7 53:19 87:19,24 88:9 88:12,14 104:22,25 105:4,11,14,15 105:20 106:1,9 106:12 107:15 107:19 118:11 118:15,24 119:3,6,22 120:1,5,21

121:3,4,10,15 133:18,22,24 134:7,14,17 135:21 136:4 136:16,24 137:4,8,13,16 137:18

chair's 69:5 88:5

chairperson 93:1

challenge 22:20 29:5,6 52:22 59:23 62:2 97:13,19

challenged 62:5

challenges 42:11 48:22,23 61:18 97:4,7

challenging 18:8

change 13:14 18:1 61:19 62:11 63:4 101:25 103:3

changes 26:4 62:9 63:8 102:25 132:14

changing 136:3

characterizati... 102:19

charge 34:2,2

chart 72:14

check 15:2,3 72:18 88:7 104:24,24 118:10

checked 38:21

chief 36:16 38:4 91:4

chiefs 1:11 2:18 36:21 37:3 128:3 132:24 135:7

child 1:6 2:3 4:5,10 13:14 13:19,23 14:2 14:19,21 15:7 25:11,15 53:23 54:7 55:8,17 59:11,14 83:19 94:19 106:20 107:4,7 109:4 109:8 124:11

child's 82:15

childhood 13:2

children 6:20 6:23 12:5 13:9 14:5 56:18,21 56:22 57:7,8 57:10,13,13,14 57:15 58:4 60:10,20 61:8 65:19 66:11 70:24 71:6,14 71:16 72:5 73:9,10,21 74:10 78:16

86:12 95:18,18
111:16,18
114:8 116:6
117:14
choice 65:4,5
73:24
chose 73:23
chrt 30:12 32:9
69:19 72:22,23
131:2
circulated
53:20
circumstance
109:10
circumstances
50:12 101:25
119:15
citizens 131:17
131:21 132:2
clarification
10:4 27:8
121:11
clarity 75:8
106:11 137:2
clarke 2:3 20:2
134:11,17
135:25 136:5
136:23 137:7
137:12,15,17
137:21
classify 117:16
classroom
31:23
clear 5:19
48:21 52:6

137:5
clearer 129:8
clearly 120:19
client 122:21
climate 66:14
close 44:7
79:17 87:10,21
99:1
closed 79:14
closest 60:7
closing 74:25
79:3
coaching 89:19
codeveloped
126:11
coincides 54:13
collaborative
126:11 131:11
colleague
119:24 134:19
colleagues 88:7
104:24 125:5
collected 71:15
collective 24:18
colloquial
55:16
combination
33:3
come 21:1 32:8
32:13 33:8,10
62:6 91:16
100:22 104:14
110:17,22
123:23 127:18
128:11 129:5

130:13 136:7
136:10,13,25
comes 24:20
26:23 36:3
99:21 120:11
127:14
comfort 111:22
comfortable
43:21 131:4
coming 67:14
76:6,6 92:15
98:4 123:22
125:22 126:8
128:6 135:5
comment 17:8
121:13,13
commentary
121:5
commenting
40:8
comments
64:18
commission 1:8
1:8 2:10 55:7
committee
54:23 55:7
56:9,15 57:2,4
57:19 58:2,20
59:6
commonalities
129:12
communicated
40:11
communities
36:8 63:22

64:3 68:18
73:11 83:12
99:5,9 125:18
126:18,19,20
126:22 127:24
129:14 132:1
community
69:3 74:21
76:5 80:17
82:16 83:15
86:10 87:15
90:15 94:20
98:8 99:17,21
104:17 126:4
127:12,17
128:20 130:7,7
130:7
comparable
43:20 44:8
compare 44:2
compared
13:15 108:23
comparing
42:24 43:22
44:1
competency
30:8
complainant
2:2,6
complainants
1:7
complaint
124:12
complete 132:7

completed 71:9 92:11

completion 92:8 93:22

complex 30:4 51:25

complexities 125:21

complexity 19:25

compliance 83:24

compliant 84:6 128:19

complicated 62:8 132:19

complimentary 111:14

components 57:21 132:16

comprehensive 74:13 86:17

computer 106:4

conceiving 19:13 21:22

concentrate 24:2

concentration 97:18

concept 5:12 24:17 25:15 44:10 48:5,8 66:4 82:22

concern 19:19 22:6 24:25 26:20,21 27:5 29:9 37:18,19 50:17 51:12,14 52:10,11 57:18 78:3

concerned 56:15

concerns 18:2 18:16 22:17 24:19 61:22 116:20 118:23

concluding 56:5 88:7

conduct 12:12

conducted 11:21 88:21

conducting 71:4

conducts 89:18

confer 88:6 119:23

conferencing 80:1 81:6 82:9 130:25 131:2,5 131:12

confidence 103:8

configuration 82:7

confirm 14:20 46:7

confirmation 98:22

confirming 18:25

confuse 75:21

confused 26:5

confusing 10:12

connect 78:12 127:16

connected 78:16

connecting 126:4

connection 94:20

consequence 83:25 84:9,20 85:16 86:13

consequences 77:22 85:2 86:15 114:7

consider 9:21 10:1 18:20

consideration 29:8 133:2

considerations 61:22

considered 7:9 9:1,8,18 11:2,4 11:7 22:21

consistent 16:23 58:14,19

consortium 111:9

constant 19:24

constitutional 60:11

consult 12:13 82:12

consultants 91:19

consulting 20:1 20:3

contact 8:14,14 12:4 37:3 79:25 116:1,2 130:21 131:7

contains 4:22 124:10

content 121:12

contents 108:16 133:4 138:8

context 27:13 93:2 99:13 101:5 102:4 103:7 110:25 119:4 126:6

continue 5:4 24:13 68:11,12 78:6 104:10 112:2 125:3

continued 3:4 5:9 68:9

continuing 94:14 104:17 119:21 121:19 122:22

continuous 28:3,4 33:14

33:15
contractors 91:18
contributing 112:13
contribution 101:3,16
control 67:25 68:3,20 84:17 126:1 132:22
convene 40:3
convention 4:9 53:22 107:4,7
conversation 22:1,10 49:18 52:17 61:24 118:6 123:4 135:23
conversations 20:16,19 24:13 36:7,20 37:14 49:12,20 52:24 62:14 102:13 103:23 132:17
coordinate 17:25 59:9 60:1
coordinator 112:16
coordinators 83:11 84:8 85:14
cope 64:25
copy 117:20

core 65:1,9 66:9 69:2 76:4
corners 124:12
correct 9:9 26:25 45:6 46:3 61:10 69:12 75:7 81:10 87:4 92:7 99:2 101:22 104:18 109:13 124:25 131:1 138:11
cost 46:24 48:6 48:7,7,11 130:12
costs 47:24 48:15,16
couch 118:13 119:17 120:18 121:5
council 36:16 100:16
counsel 3:14 53:19
count 45:11
country 33:4 97:14,15,20 111:7
couple 35:22 36:20 72:16 73:2 77:17 86:21 104:23 110:2
course 47:12 88:9 103:4

113:13 120:9 123:24,24
cover 23:5 55:11 94:14
covered 65:13 65:14 129:11
cracks 123:17
craig 108:8,12 110:13 111:2
create 73:23 132:7
created 126:3
creating 77:25 79:4 85:5
creation 19:13
crisis 114:25 115:3,7,8
critical 64:24 66:9 92:20,22
criticizing 26:12
cross 3:4,5 5:9 107:24 119:4 119:10,19 121:1 127:4 132:12 134:24 135:9
cultural 25:9 30:8 31:19
current 29:7 43:16 68:23 74:17 75:25 76:12 77:3 78:10 99:15,15 101:5,16 114:3

126:2
currently 91:14 100:19 130:1
cursory 6:6
cycle 130:15

d

d 3:1 29:17 82:18
damaging 73:6
darian 2:17
data 11:22 12:14 67:5 96:9,18
date 4:11 33:11 91:16 92:8,12 93:12,22 107:12 121:25 136:10
dated 107:9 118:4 122:17 138:13
david 2:2
day 1:17 32:6 108:4 133:25 138:13
dayna 2:13
days 11:21 12:3 12:12 16:3,14 16:17 32:14 113:24,25 114:2,9 122:22
deadlines 135:4
deal 17:4 100:25

dealing 19:2 43:9 123:18

dealt 5:12 80:11,12 137:11

december 4:6 5:23 7:22 35:7 106:21

decide 49:21

decided 38:15

deciding 48:7

decision 4:13 62:21 76:13 77:5 107:14 127:17 128:8,8

decisions 30:20

decrease 104:13

decreased 58:9 58:10

dedicated 19:7 35:4

deemed 124:5

deep 95:2,4,17 96:7,21

deeply 36:5,24 56:15

defining 11:14 115:8

definitely 120:10

definition 10:4 10:5 71:12 120:2

degree 29:3 31:15 35:20 108:17

delay 6:17

delayed 63:4

delays 13:22,25 14:5 37:10 63:1,3,8,11 116:4

delegation 54:6 54:9,22

deliver 97:8 98:25 100:11

delivering 36:8 98:8 101:4 125:7

delivery 69:3 74:21 76:5 91:6 94:21 98:12,19 102:7

demand 99:23 100:2

demanding 42:12

demands 58:19 94:17

demerits 47:11

denials 117:2

denied 50:19

department 22:11 35:4,19 42:8,13 44:16 55:11 61:18 62:7 69:11 76:17 79:24

82:7 93:3 102:25 130:15 130:20

department's 73:19

departmental 103:25

departments 82:8

depend 103:2

dependency 77:25 85:6

depending 13:18 28:1 29:2 30:5 33:18 41:16 55:10 58:11 80:9

depends 32:1 115:2 125:13

deposit 122:6

depth 30:24

describe 124:19 129:6

description 4:3

destination 44:18

detail 32:1 40:21 116:8 124:16

determination 16:4 21:1,2,12 31:1 37:21 46:15,23 52:4 53:4 67:24

68:3,20 123:13 125:16 126:9 127:23 130:6

determinations 16:22 31:3 46:12,13 48:20

determine 11:22 12:14 19:23 20:20,21 20:23 21:18 51:21 115:3 126:19

determined 39:12 46:16 113:23,24 127:1

develop 133:1

developed 98:15 101:17 101:18

development 25:14,17 55:25 58:1 59:5 65:16 131:24 132:18

developmental 13:14

diapers 51:23

difference 45:15 66:5 98:10

different 17:23 17:24 27:5 31:1 32:4 44:21 51:1,16

65:22,24 66:6 97:20 99:3,16 99:17 101:2,7 109:5 131:18 134:20,21

differently 13:6 13:7

digital 138:7,12

direct 61:6,8 86:2 122:5 136:18

directed 65:21 79:9 135:14

direction 74:25 120:1 121:10

directly 6:21

disabilities 57:14 71:6,14 72:6

disagree 102:19

disagrees 119:1

discerned 134:18

discourse 23:3 60:7

discrimination 56:18,21 57:6 58:7 64:12

discussed 133:12

discussing 5:22 39:25

discussion 58:8 65:4

discussions 24:23 35:6 36:16

dismissed 134:2

disparities 57:9

dispersed 97:21

disregard 117:8

distance 97:12

dive 95:2,17 96:7,21

dives 95:4,12

diving 35:23

doable 136:22

document 11:18 53:18,23 54:2 56:4,7 106:7 118:13

documented 67:12

documents 15:4 105:21

doing 15:10,13 24:11 27:9 28:1 30:17 32:23 33:6 49:13 75:4 131:23

dollars 126:18

double 132:8

downgraded 10:2

dr 5:19 6:3,4 42:20 58:9 80:20,21 87:18 93:1 96:8 100:14 108:10 108:10,13 117:6

driver 67:13

driver's 79:18

drives 111:6

droz 2:4

due 4:21 78:10 135:15

duplicative 6:17

e

e 1:23,23 2:1,1 3:1 4:11 35:19 40:17,22 53:20 106:6 107:9,9 107:11 118:2,3 122:15,15,16 122:25 137:13

earlier 54:1 70:2 90:21 108:20

early 13:1 72:7

ears 103:17

ease 32:6

easier 42:18

easy 134:1

economic 25:14 25:17

economy 66:15 66:19,23

education 56:24 86:6 99:3 128:1,3 129:5,7

educational 85:22 128:6

educator 13:2

edward 1:25

effect 73:6 80:7

effectively 10:18 130:24

effort 20:4 23:19,20

either 21:13 53:9 55:1 116:17 120:17

electronically 46:17

elements 124:10

eligible 94:19

emotional 125:4

employed 14:12

employee 41:23 44:20 45:8 125:9,12

employees 42:1 111:23

employment 24:19,19

encounter 116:4,16

encountered 48:22,24
encouraged 33:9
ends 122:25
engage 22:5,17 59:12
engages 49:11
engaging 79:16
ensure 7:10 9:2 16:22 30:14 31:17 58:4,14 78:15 86:4 125:2 129:14
ensuring 100:8
enter 134:10
entered 34:21 38:14 39:7 102:12
entering 17:19 99:20
entire 131:9
entirely 45:5
entitled 121:1
entry 50:21 53:3
envision 127:9 131:1
envisions 127:6
equivalent 14:13,17
err 75:22
esdc 131:25
especially 56:23

essentially 18:20 44:12 47:24 53:2 56:5 59:22 70:3 96:19
establishing 85:14
et 24:4 30:9 31:1 32:15 51:24 112:16
etiology 39:2
eventually 116:22
everybody 13:8
evidence 5:18 19:5 29:12 88:20 90:21 92:14 108:19 110:10 114:25 118:25 121:2 136:7
evolved 64:23
exact 92:18 95:9,21
exactly 30:2 63:14 65:25 102:3 119:5
examination 3:4,5 5:9 107:24 119:4 119:19,21 121:1
examining 119:10

example 6:25 59:22 74:12 85:18 99:12 111:12 117:14 117:25 122:13 126:17,24
examples 33:25 80:13 110:16 113:5 116:15 116:21
exceed 94:17
excerpt 42:20 42:21
excerpts 4:4,7 106:19,24
exchanged 135:17
exchanges 4:11 107:11
excluded 45:20
excused 3:6 134:6
executive 102:22
exempt 132:5
exemption 132:7
exercise 68:19 95:13,17 99:10
exhibit 4:4,7,9 4:11 80:21,21 106:18,19,23 106:23,24 107:4,6,10,11 111:2 117:18

122:8 124:3
exhibits 4:1 105:21 109:3,3 110:13,14,16 117:20,21
exist 83:5 115:1
existing 22:5 25:2 26:1 69:12 78:12,23 80:2 83:11,20 83:23 85:15 87:1 113:6
exists 94:1 115:14
expect 108:3 112:6
expectation 32:18
expected 92:8 100:3
expedited 72:9
expeditiously 49:10
experience 13:5 33:22 125:16
explanation 10:14,20
explore 53:1
explored 48:25
exploring 46:22 49:15,16 128:1,4
expression 55:16

extend 96:16
extending 96:12
extent 37:5
extra 24:4
extract 73:3
extremely 42:12

f

f 1:23 110:13 110:14
face 116:1
fact 24:8 29:1 110:21,23 111:17 120:22
factors 73:12 112:13 125:19
factual 7:24
factum 135:5 135:12
fair 14:8 31:5 33:12,17 35:16 37:1 40:10 41:13 48:17 60:20 68:1 74:22 78:25 79:14 82:21,21 97:22 98:14 124:7
fairer 11:1
fall 31:11 36:12 36:18 116:9 123:17 124:11
familiar 48:9 72:24 73:1

80:4 108:15
families 58:5 64:25 73:9,11 111:16 115:25 116:23
family 1:6 82:15 124:11
far 91:16 94:2 105:5
fear 128:20
fears 129:6
feasibility 51:12
feasible 6:18 16:6 50:12,24 51:19
february 108:21
federal 22:25 26:19 60:20 61:9 65:1,9 66:9 68:9 70:23 73:19 76:12,16,16 77:3,5,20 84:25 87:3,10 102:10 113:12
federally 113:16
feedback 93:17
feel 31:16 62:5 126:13 131:3,4
feeling 20:25
feels 136:12

felt 37:9
field 71:1
figure 26:17 35:8 96:8
figures 15:6 39:16 46:5,8
figuring 61:24
file 1:1 47:10 125:10
filed 6:4 134:24
files 32:23 62:20
filing 135:4
finally 122:24 123:16
finance 102:25 130:15
financial 30:21 58:6 91:4,5
financing 100:19 101:20
find 63:7
finding 20:15
fine 26:12 29:10 89:3 113:17 134:14
finer 13:11
firm 32:14
first 1:6,6 2:3,7 6:13 8:5 14:19 14:21 15:7,24 26:16 28:9 32:17 39:20,21 40:10 42:23 43:12 50:21

58:14 60:10,22 63:18 64:24 66:11 67:2,7 67:23 68:19 69:25 70:1,24 73:8,20 76:14 77:24 78:13,19 79:25 80:2,15 82:14,15 84:1 84:10,16 85:4 94:18,21 95:1 95:18 96:5 97:4 98:1,8,10 98:23,24 99:5 99:9 101:18 102:6 107:16 107:22 111:8 111:15,15,17 113:21 114:7 116:6 117:13 118:3,3 121:20 122:16 126:1 127:5 128:8 129:1,4,18,20 129:23,24 130:19,20 131:6,10,17,19 132:1,5,8,22
fiscal 44:20 66:14 104:2 112:8 113:22
five 41:15 105:2,3,5,14 107:9

fix 63:19
fixed 104:5
flag 88:4
flagged 47:15 48:4
flagging 36:22
flags 128:25
flip 11:19
flourish 64:10
fluctuates 18:6
fluctuating 19:24
focal 17:17,24 18:22 19:1,14 21:23 22:14 23:21 25:21,24 26:1,23 27:3,4 31:11 39:6 45:12,14 52:13
focus 91:3
focused 126:8
focusing 27:23
folks 19:7 20:6 20:25 21:13 25:13,25 44:21 50:6 64:4 127:13
follow 53:5 78:2 109:23
followed 12:20
following 3:12 3:19 51:5 56:16 81:4,8
follows 10:7

food 113:8
footnote 14:15
foregoing 138:6,10
forever 33:16
forgotten 105:23
formal 113:12
formalized 15:12
formula 19:23 51:24
forward 67:14 99:25 108:2 135:15 136:7
found 95:17
foundational 30:11
four 16:8 26:15 26:24 29:19,23 30:6 31:12,14 33:19 55:18 105:24 106:7 124:12 125:14 132:15
fourth 84:22
framework 87:11
free 58:6 64:11
frequency 44:19
frequent 90:17
friend 121:10
friends 60:8 135:6,22

front 69:25 81:24
full 14:13,16 70:5 127:18
fully 63:22 123:5
fulsome 78:14
function 26:15
functioning 24:10
fund 68:11 126:17
funded 90:15
funding 21:19 68:9 70:23 83:18 84:8 85:15,22,24 86:7 98:12,18 100:9,9,22 101:8 102:9,16 104:1,6,9 128:13 129:22 129:23 130:17
funds 77:23 85:3 101:17
further 6:16 7:10 9:2 11:17 78:8 113:25 116:19 132:25

g

g 110:13,15,20 111:2
gap 69:7 72:8 74:25 113:11

gaps 69:1 70:23 71:18 74:19 75:3,4,13 76:3 77:6 78:20 79:3,10,13,17 87:10 90:14 93:5 94:14 99:1 112:14,17 112:18,21,25
gathering 55:4
general 1:9 6:2 19:2,11 23:10 30:7 32:18 37:16 44:25 45:1 48:18 67:11 96:2
generalization 30:1
generally 12:24 29:11,18
gergely 2:15
getting 48:8 69:17 85:13 101:17 108:5
gideon 80:22 93:1,6 96:8 108:8,12
gideon's 5:19 58:9 80:20 110:13 111:2
giroux 6:4
give 29:14 83:19 99:12 110:1,14 117:7 124:3

given 13:14 50:12 87:23 112:9 135:4 136:10
giving 41:14
go 5:15 7:18,18 8:24 16:8,9 37:12 46:19 50:20 51:15 63:17 69:13,14 69:15 72:12 73:2 74:4,11 80:22 86:5 89:11 90:9 93:17 98:14 102:15,24 103:20 104:5 105:5 125:14 132:2
goal 101:21
goals 58:1 59:5
goes 32:21 69:4 77:15 84:11 85:18 86:2 101:10 125:7 127:10
going 14:10 19:22 23:4,24 23:25 26:24 44:13 52:5 57:23 61:15 77:17 85:22 86:1 87:20 92:11,22,23 101:20 102:8

130:4,12
good 5:2 60:17 87:21 107:17
government 24:8 26:19 60:2,21 61:9 79:24 87:10 101:11 102:10 111:23 130:20
government's 87:3
governments 59:10
granted 68:15
granular 95:8
great 63:23 108:15 109:7 110:4 124:15 132:18 134:1
greater 13:16 27:11 77:25 85:6 87:15 109:20 110:8 126:1 129:24 130:9,19 132:22
groceries 50:23 51:21
ground 36:7 86:11
groups 56:22 57:7
grow 64:8
growing 76:16 87:2

growth 68:25 74:19,24 76:2 76:9,24 77:19 84:25
guarantee 59:10
guess 7:5,5 13:10 76:6 77:8,8,9 93:20 115:9 129:6
guidance 118:15,24 119:18 135:19
guidances 119:18
guide 3:13
guise 18:8

h

h 7:19 16:10
half 95:17
hand 76:13 80:6,6 83:15 84:6 85:11
handling 24:2
hands 32:11 33:7 37:21 76:14
happen 31:17 72:2 80:7 103:19
happening 20:17 24:13 32:17 35:3 63:11 86:18 99:22 101:3

113:9 127:15
happens 23:2 80:13
happy 134:11 134:12
hard 7:1 18:4 85:24
hardships 116:2
harm 6:16,20 6:23 117:13
head 54:6,8,22 92:11
header 56:13 59:1,1 82:4
heading 43:11
headquarters 28:16
health 65:17 66:15,16,23 99:2 111:3,8 125:4 126:10 130:2
healthy 63:22
hear 20:24 103:16
heard 23:9 36:22 55:25 81:16 86:25 87:17 89:25 90:1 111:19
hearing 1:14 54:9,10 137:18
heart 125:7

help 17:25 20:19,20 99:24
helpful 29:14 39:23 53:16 94:4 96:18 121:4,11,16 122:10
helping 22:16
hesitate 118:13
hesitating 119:16
high 45:8
higher 22:17 30:20 100:3 112:8
highlighted 114:13
hire 18:8 22:13 24:5,17
hired 26:18
hiring 18:10
hoc 63:21
hold 54:7
holders 132:25
hole 132:13
home 50:22 109:9
homeostatic 131:11
homes 73:11
hope 5:3 20:17 113:14
hopeful 136:21
hopefully 53:22

hoping 49:19 108:1 132:17 136:9
hotel 122:20
hour 70:4 80:8 80:8 87:20
hours 25:7
housekeeping 3:7 134:7,9,16
housing 73:13 126:17,18,21 127:16,17
human 1:3,8 24:15 48:16 66:15,16,16
humans 37:8
hyer 2:20
hypothetical 116:25

i

idea 12:21 23:18 47:9 69:8 80:5
ideally 88:25
ideas 47:14 61:18
identifiable 7:13
identified 17:7 73:15 78:21 79:14 128:16
identify 40:16 52:14 90:13 127:6

identifying 67:19
ifst 67:11
ifst's 67:5
immediate 51:24
impact 62:18 125:4,5
impacts 62:24 63:2 73:20 74:8,10 114:7 116:5 124:20
impending 135:4
implement 48:19
implementati... 71:3 77:3,20 84:25
implementing 22:3 57:16 77:4 84:5 129:16
implies 9:25
importance 25:8 58:10
important 13:23 37:17,19 37:24 52:24 99:5 100:25 101:21 135:12
importantly 67:23
impractical 6:17

inac 81:2 82:6
inadvertently 6:15 77:22 85:3
include 67:21 99:14 100:1,8
included 39:20 39:21 110:16
includes 99:9
including 8:16 12:5 18:10 28:19 57:10 68:18 71:24 131:21
incomplete 116:17
inconsistencies 65:1,7,12 66:1
inconsistency 66:3
increase 23:20 58:16 109:17 109:19 110:5,7 112:2,13
increased 67:23 68:3 87:2 113:11 126:9
increases 18:5 31:6,7
increasing 23:19
indemnificati... 128:21

index 3:16 4:1
indicated 71:8
indicates 44:23
indicator 42:14
indicia 11:11
indigenous
  1:10 43:1,18
  44:2,14 56:22
  57:7,13 60:19
  61:8 125:18,18
indiscernible
  4:22 5:17,20
  5:23,24,24,25
  5:25 6:4,11,19
  6:20,25 7:2,24
  8:6,17,18 9:3,4
  9:5,5 10:5,6,11
  10:19,24 12:3
  12:7,8 14:10
  15:4,8,11,16,19
  15:20,22 16:19
  17:3,12,22
  18:2,24 19:7
  19:12,16,20,25
  20:13 21:4,6,8
  21:14,20 22:1
  22:2,10,12,15
  22:18,19,23
  23:5,6,11,12
  24:4,9,11,22,23
  25:24 26:11,19
  26:20 27:14,15
  27:24 28:20,21
  29:4 30:3,9,9
  32:17,21,24

33:8,21,25
35:8,9,11,12,21
36:9,11 37:15
37:19 38:10,22
38:24 39:2
40:5,24 41:4
41:17 42:6
43:2,5,25
45:10,14,21
46:11,17 47:16
48:16,24 49:6
49:11 50:2,7
50:10 51:1,2,3
51:4,12,20,21
52:1,9,11 53:2
53:3,4,4,21,24
54:6,16,18,24
55:2,4,11,14,16
56:6,19,20,23
56:25 57:4,5,8
57:12,15,17,24
57:25 58:3,3
58:11,12,17,25
59:3,7,7,24
60:2,6,7,11,12
60:15 61:1,3
61:13,23,23,25
62:4 63:9,13
63:20 64:18,18
64:21 66:6,20
66:25 67:3
68:4,5,5,12,13
69:8,11,18,18
69:19 70:1,4,7
70:7,9,13,22,25

71:2,4,5,11,13
71:17,19,24
72:6,20 73:7
73:14,14,16,21
73:22,24,25
74:1,3,9,9 75:1
75:6,7,11,13
76:9,12 79:6,7
79:19 80:17,21
82:6 83:1,7
86:2,13 87:23
88:11,18 89:5
89:7,8,10,12,20
89:21,24 90:7
90:22,23,24,25
91:24 92:12,16
92:20,24 93:10
93:25 94:3
95:3 96:1,23
97:6,24 98:16
98:20 99:11
100:24 101:18
101:19 102:1
103:13,14
104:1,5,15
106:3,5,6,7,8
109:24 111:10
111:12 115:21
116:11 117:4
118:16,17
121:2,7 122:5
122:12 123:9
123:15,19
124:1 126:9,22
127:1,2,23,24

128:5,10,10
129:14 131:9
132:3,20 133:8
133:11,13,14
136:9
individual 13:8
  34:6 63:6
  78:15 97:23
  114:23 125:14
  130:22
individually
  40:17
individuals
  35:5 116:16
  126:4
indulgence
  88:6 104:23
inform 20:24
  99:25
information
  30:12,17 33:5
  36:3 71:15
  83:5,9 85:13
  86:5 91:10
  96:19 99:10,15
  100:2 111:21
  114:4 116:10
  116:17 135:13
  135:15 136:8
informed 21:3
  49:10
infrastructure
  127:21
inhibit 7:10 9:2

initial 30:7
96:13
initiative 14:19
14:21 15:7
35:1
inputting 30:17
instance 109:8
131:18
instructions
135:23 136:1,6
136:17,20
intake 30:7
35:15 45:13
intend 43:4,16
intent 121:7
interest 118:18
118:22 119:11
interested 1:12
2:17,20
interests 25:15
55:24
interim 40:1
93:23
internal 70:22
94:1
internally 35:3
internals
128:12
international
1:11
interoperability
62:3
interpret 20:10
38:12

interpretation
29:4 76:21
80:14
interpreting
50:9
intervened
116:23
intervention
109:9
interventions
114:13,16,21
115:20 124:5
introduce 6:16
102:6
inuit 14:18,21
15:7
inventory
40:23
invested 125:5
investing
127:12
involved 60:21
82:14 91:1
involvement
87:16
involves 28:18
50:14
irrelative 47:10
isc 11:1 39:25
42:1,8 44:22
45:5 46:22
69:10 78:19
79:24,25 83:17
90:12,15 91:12
91:13 102:8

114:6 122:23
127:6,12
128:16 129:19
131:1 132:9
isc's 7:10 9:2
29:6 130:5
isolated 42:11
issue 35:19
37:2 70:1
73:18 80:16
115:22 121:8
129:10 131:13
issues 55:12
93:2 109:4
115:4,6,21
129:6 136:12
items 39:11
66:20 68:2
105:24

j

j 69:16
jackson 2:25
138:4,18
jane 27:3
january 34:20
35:1 108:10,11
jessica 2:10
job 4:16 18:24
26:25 32:17
45:12,13
102:15
jobs 66:15
johnny 26:23
27:2 28:5,5,12

joined 118:7
jordan's 7:11
8:13,15 11:22
12:15 14:18
15:7 16:21
25:22 26:6,7
27:4 28:6
30:13 32:9
34:23 36:6
39:8 42:6
44:24 45:4,9
50:13 51:12
53:8 57:16
58:18 59:16
61:5,19,24
62:18,23 63:16
64:2,23 66:8
67:13 68:5
69:24 71:12
77:4,20 78:1
78:21 83:18
85:1,6 86:9
90:17 95:19
97:24 98:1
102:23 104:1
108:22 109:5
109:10,17
110:6,18 111:5
111:6,16 112:1
112:7,14,22
114:14,25
115:3,23
117:15 124:21
124:24 125:17
125:25 126:12

128:5 129:21
129:25 130:19
131:21 132:23
jpoc 20:3,17
36:1 37:18
48:25 49:13,13
49:17 133:4
june 4:8 106:25
122:24
jurisdiction
55:13 124:13
jurisdictions
119:9

k

k 85:23
kassis 2:7 3:5
107:17,20,21
107:24 117:23
117:24 121:17
121:18
keep 125:6
keeping 47:23
keewatin
100:16
kevin 2:4,14
kids 13:6 58:15
60:22 62:18,24
63:2,18,22
64:8 98:2
kind 18:17 20:1
22:14,15 24:1
26:16 29:16,22
29:24 32:16,20
34:14 39:2,15
40:20,22,24,24

43:12 44:11
47:22 54:22
55:16 56:6
61:12,21 69:14
69:20,24,25
70:14,15 71:1
72:2,8,14
80:10 86:3
95:7 96:2,9,19
102:7,13 137:5
kinds 17:24
29:15 99:16
100:24
knew 35:20
37:5
know 7:24
10:20 15:2
18:20,21,22
19:6,13,15,18
20:1,4,24
21:11 22:9
23:6 24:2,14
25:2,12 26:14
28:6,19 29:13
29:17 30:15,22
31:2,15,16,23
32:8,18,19,20
32:22,23 33:24
34:5,5,7 36:14
37:7,7,24 38:1
38:9,10,20
40:22 43:8
46:18 47:5
48:1,3 49:14
49:24 52:3,4

54:20 58:10
60:19 61:17,21
62:6,18,19
66:14,24 69:25
72:17 74:16,16
76:7 80:6,18
83:8,14 84:23
85:11,21,25
88:25 91:16,16
91:17 92:16,21
92:23 93:11,23
95:4,22,23
96:15,16,22
99:17 102:11
108:3 113:8,10
113:14 115:10
115:21 118:8
120:12 122:6
123:6 125:6
126:20 133:12
134:8 135:6,16
136:19 137:9
knowledge
95:10 123:14
129:4
ktc 100:17,18

l

lacey 2:7
107:21
lack 10:20
30:15 79:10
113:13
land 25:17
landmark
81:21

lands 25:13
landscape 8:3
large 45:24
95:22 123:23
larger 51:18
largest 126:23
late 36:12
launched 14:23
law 32:14
70:13 118:20
120:12,12,13
lead 22:15
leadership
36:17 76:14
126:14,18
129:2 131:10
leading 90:12
91:13 92:15
118:21,25
120:23
leads 66:24
85:19
learn 125:20
learned 94:2
learning 32:15
33:7
leave 37:21
43:4,16 121:12
121:13 124:23
137:11
leaving 42:2
44:21 45:2,5
45:23 46:1,1
124:21

led 77:24 85:5 126:25
left 88:5
legal 126:16 129:8 131:24 132:3 138:17
lens 130:2
lesser 25:3
letter 123:8
level 19:25 20:4 21:19 22:17 30:20 31:6 32:1 40:21 63:4 64:4 67:11 69:3 74:21 76:5 80:11,12 83:16 86:10 87:16 93:15 98:8 111:22 116:7,9 126:5 128:20
life 14:1,6 55:24
likely 87:21 88:4
limit 53:8
limited 94:15
limits 78:18
line 15:24 47:24 48:1 59:2 84:22,23 86:1 89:13
lines 49:16 59:1 74:5

link 83:11
links 85:14
list 3:12
litigation 128:21
little 5:16 14:11 34:15 36:24 41:18 51:11 69:15 85:18 126:13 128:22 131:14,14 134:9
live 33:24 64:11 95:20
lives 60:21 64:9
living 57:1 58:5 98:2 131:18
local 98:12,19
locally 78:16
located 97:13
lodge 118:1 122:14
long 28:1 48:18 61:14 63:15 64:15 94:13 97:25 98:3 101:6 104:25 108:4 123:7,9 125:8,11 127:7 131:20 133:8 133:25
longer 69:11 73:3 86:3
look 11:14 16:11 20:8

22:8,25 27:13 31:9 32:4 36:24 42:19 52:3 74:7 80:16,16 81:11 84:22 86:17 101:7 128:24 130:12 132:15
looking 6:11 33:4 36:5 39:15 44:12,17 56:3 67:17 75:2,3 79:16 96:18 97:5 101:5 102:8 118:12 122:1 127:11 130:3
loose 106:6 107:8
lot 32:16 42:10 61:17 127:21 128:6
lots 122:11
lower 41:18,20
lunch 5:1,3
lustig 1:25

m

madam 107:20 107:25 118:11 134:17 136:24
made 16:23 17:8 47:12,15 93:15 114:14 114:15

mail 4:11 35:19 40:17,22 53:20 107:9,11 118:2 118:3 122:15 122:15,16,25 137:13
mails 106:6 107:9
maintain 31:18
maintaining 77:3
maintenance 52:12
major 13:22 14:1
make 13:10,10 17:10 20:14 30:7 31:3 62:8 62:21,24 83:13 108:7 116:24 123:13
makers 127:17 128:8,8
makes 20:8 29:5 52:6 102:3
making 30:19 64:19 76:14 77:5 137:6
manage 17:11 17:18
managed 17:9 17:17 20:14
management 26:15 34:24

39:9 52:10
91:11 137:20
manager 19:11
20:16 34:6
managers 17:4
managing
16:21 17:14
20:12 26:14
mandate 35:24
37:23 130:5
mandates
22:12
mandatory
25:7
manitoba 4:7
36:21 37:13
106:25 128:3
manner 16:23
manual 4:5,8
106:21,25
march 34:20
39:12 108:8
marchildon
1:23 93:1
107:20
marginalized
56:19 57:11
mark 105:21
105:24,25
106:9
marked 118:1
122:15
market 131:24
131:25 132:3

massive 37:23
materializing
66:25
materials 34:8
math 38:7
mathews 108:9
108:13 117:18
117:19 122:8
matter 1:15
47:12 60:24
61:3 108:2
120:18 123:11
133:1 134:9,25
matters 3:7
134:8,16
mean 18:7 37:5
45:1,19 46:13
52:9 53:9
66:17 91:14
95:3 120:9
133:4,13
means 126:19
meant 3:13
measure 48:19
64:24
measures 6:14
6:22 58:14
117:12
mechanism
98:12 102:7
133:6
mechanisms
8:16 83:24
98:19 130:4

media 109:19
110:8,15,17,21
110:23 111:3
medical 52:2
meet 101:11
104:20 125:3
128:18
meeting 49:18
49:20,22 66:10
91:20 130:6
meetings 40:4
member 1:25
members 97:10
97:13,19 99:17
111:4
memory 47:23
mental 65:16
66:16 125:4
mention 67:16
mentioned
10:23 100:13
129:23
merci 105:16
133:16
merits 47:10
met 129:2
methodology
33:2
methods 53:1
michael 2:20
middle 78:7
migrant 57:14
million 100:20
mind 17:20
87:24 132:14

mindful 134:22
135:13 136:2,6
minister 1:10
minutes 55:9
87:25 88:1,1,1
88:5 104:23
105:5,14
136:25 137:9
137:19
miscalculated
38:20
misinterpreted
85:19
misread 12:9,9
missed 52:12
misunderstood
112:23
mix 32:10
mmhmm 20:11
23:23 39:13
41:5 50:16
58:21 62:25
mobility 43:11
model 22:3
101:1,2,3,16,17
modernization
69:10
moment 12:10
16:10 18:19
61:16
moments 110:2
110:14 117:7
124:4
money 26:18

month 29:24
92:17
months 29:20
30:23 31:24
32:18,20 33:19
35:22 67:10
125:15
morning 19:6
69:5 108:20
motion 1:14
7:20 16:6
118:18 132:4
132:12 134:23
134:24 135:9
135:11
motions 134:21
135:3,17
move 11:11
24:21 41:11
42:12 108:2
moving 23:1
99:25 131:7
multiple
130:22 134:20
134:20

n

n 2:1 3:1
nailed 135:18
name 34:5,5
107:21
named 54:5
nan 132:24
narrative 86:6
nation 1:12
2:21 94:19,21

98:2,11 101:18
102:6 135:8
national 8:13
27:12,12 28:16
83:4 84:7
85:12
nationally
16:20
nations 1:6,6
2:3,8 4:9 58:15
60:10,22 63:18
64:25 66:11
67:2,24 68:19
70:24 73:8,21
76:14 77:24
78:13,19 80:3
82:14,15 84:1
84:10,16 85:5
95:18 97:4
98:8,24,24
99:5,9 107:3,6
107:16,22
111:8,15,16,18
114:8 116:6
117:13 126:1
127:5 128:8
129:2,4,18,20
129:23,24
130:19 131:10
131:17,19
132:1,5,9,22
naturally 33:8
nature 18:1
23:20 26:3
29:13 30:10

118:14 119:17
125:21
navigation 80:2
80:5
necessarily
21:18 24:5
25:5 27:25
28:8 36:3
76:13 77:6
83:15 86:9
120:15 133:3
need 11:11,14
22:9,21 24:5
24:13 37:7
51:9,18 52:19
52:19 64:7
71:13 80:15
85:24,25 86:7
86:10 93:17
98:22 101:8,11
102:2,2,3,8
103:22 104:8
105:1 115:5
127:11 129:13
129:15 130:11
130:23 133:19
134:9 136:12
137:10
needed 37:6
63:8
needs 50:13,22
50:22 51:24
64:2,3,8 65:23
65:24 66:11,13
67:21 68:17

101:11,24
104:9,16,19
129:20 130:13
negative 63:2
negotiation
24:22 132:17
negotiations
133:8,10,13
never 63:24
79:4
new 15:12 24:5
24:25 25:12
26:2 27:5,8
34:9 53:17
62:7 67:21
78:23 79:4
98:15 101:17
104:10 125:11
nice 5:3 52:21
night 122:20
nishnawbe
1:12 2:21
135:7
nomenclature
69:20 72:15
non 60:19 61:8
nondiscrimin...
55:22
nonurgent 7:13
11:3,7 19:2
normal 104:4
104:14
note 4:21 5:16
14:11 50:9
57:3 68:21

74:4 109:16,18
110:5,7 113:20
114:20 116:19
noted 1:15 3:18
77:16 93:5,6
100:15,16
notes 70:25
88:7 104:24
111:3
notice 7:19
16:5
noticed 103:12
notify 121:14
noting 34:19
87:19 94:12
nova 118:21
nuances 31:2
number 4:3
11:22 12:15
14:16 16:6,12
18:6 19:23
20:20 49:2
71:16 80:24
83:23 95:22
106:18,23
112:1,7 114:13
115:18 127:4
numbers 38:12
38:16,21 43:20
44:2 95:23

o

o 1:23
objecting 121:6
objection
118:14 119:17

121:9,14
objectively
7:11 9:3
obligation
22:25
obligations
22:6
observations
56:5
obviously 32:3
33:4 37:8,24
37:25 68:10
94:7
occasions 69:7
october 4:12
70:25 81:3
107:10,13
offer 97:5
132:9 137:2
offered 73:8
offering 131:20
office 27:12,12
28:12 37:15
110:24,24
officer 88:13
91:6 105:9
106:10,14,17
106:22 107:2,8
officials 37:22
81:2 116:3
124:6
offload 98:14
offloading
98:10

offs 84:6 85:11
offset 104:6
oh 5:20 8:7 9:6
12:1,9 22:7,20
23:17 27:22
31:25 44:6,25
47:2 48:1,13
51:7 54:8,10
61:10 70:11
81:16 82:20
91:21 92:18
99:19 100:11
102:11 103:9
103:11,21
104:18 108:24
129:7 133:9
okay 5:14 6:9
6:11 9:11
11:16 12:24
18:18 23:9,25
24:16,24 29:10
34:7 38:8,19
39:18,22 41:8
42:3 45:20
46:4 48:2,13
53:21 54:1,11
60:14,16 67:4
68:10 72:12
81:20 85:8
86:20 88:2,12
90:8 99:19
103:6,12 105:4
108:18,25
110:3,4,12
111:1,13,25

112:12 114:6
114:12 115:17
115:24 116:12
117:9,24
121:15,20
122:9,19
123:10 124:2
124:18 131:16
133:15,24
134:14 137:7
137:12,16
omitted 117:8
on6657378
4:16
onboarded
123:5
onboarding
34:9 37:23
90:5,6
once 17:7 32:19
35:22 52:17
79:14 100:9
103:19 130:7
ones 7:13 51:20
63:7
ongoing 29:13
ontario 1:11
2:18 118:21
132:24 135:7
onward 15:6
open 39:25
49:15,15 66:19
80:22 103:3
opening 11:10

operate 86:11
operating 23:7
 23:7 127:7,9
operational
 37:6 61:19
 67:22 68:2,25
 74:19,24 75:6
 75:12 76:2,9
 76:23 125:1
 133:11
operationally
 6:18
operations 45:9
opinion 123:12
opportunities
 90:14
opposed 7:12
 9:7 15:12 17:9
 20:15 43:5
 46:1 52:10,11
 65:20 85:23
 96:15 121:6
optimizing
 25:2,24
order 7:23
 12:14 16:13,18
 29:3 69:21,25
 70:1,2,3,14
 71:18 79:9
 82:17 98:24
 103:1 117:15
ordered 69:6
 74:6 76:8
 77:11

orders 16:24
 30:12 60:2
 68:24 72:16
 74:18 75:1,12
 76:1,8,23
 78:10 79:22
 84:6 125:21
 127:4 131:2
 132:6,15
organization
 94:22
organizational
 61:17
organizations
 101:4 111:15
oriented 8:2,3
 63:7
orthodontics
 52:1
ottawa 32:3
outcome
 132:11
outline 70:7
outside 24:22
 124:12
outstanding
 116:20
overall 43:9
overburdened
 24:21
overcome
 131:1
overlaps 90:14
overstepping
 30:15

overturn
 124:20
own 13:8
 110:20 120:3
 120:17 128:12
 132:16

p

p 2:1,1
page 3:2 4:3
 8:3,5 11:19
 16:5,11 43:12
 44:11 47:1,2
 56:12 57:23
 58:23,24 59:8
 64:20 67:18
 72:13 78:8
 80:23,23 81:13
 81:14,16,18
 82:1,19 90:10
 94:11 118:9
 122:10
pages 3:19 8:2
 73:3 107:9
 122:11
pandemic
 42:10 112:10
panel 70:24
 72:8 73:4,18
 74:6,13,23
 121:14
panel's 71:10
paper 135:16
paragraph
 5:21,22 6:12
 8:22,25 10:18

 14:10 15:23
 16:12 22:18
 29:17 34:17
 38:11,13 39:23
 39:24 40:7,8
 41:12 46:19
 47:3 54:4
 58:23,24 64:17
 64:19 67:17,19
 68:15,21 70:20
 71:2,6 74:16
 78:8 80:25,25
 81:14 82:1,4
 89:12 90:10
 94:11,11
 109:15,16,18
 109:25 113:19
 114:19 116:13
 116:19 117:6
 117:11 124:18
 125:23
paragraphs
 56:12 79:21
parameters
 18:10 48:24
 67:22 68:2
 91:15
pardon 117:9
parliament
 18:12 130:14
parliamentari...
 128:12
parliamentary
 18:14

part 23:3 29:9
  33:3,22 41:12
  49:25 50:1,4,4
  51:17 52:23
  57:17 68:9
  69:9 82:23
  84:14 85:17
  90:3 91:11
  92:20,22 93:13
  95:5 97:25
  104:3,13 118:5
  118:13 123:4
  129:1 132:12
partially 117:1
particular 24:1
  24:14 25:7
  29:12 32:2
  35:23 37:12
  58:8 60:11
  65:20 69:21
  99:23 117:22
  135:1
parties 1:12
  12:13 20:18
  21:17 23:4
  40:1 49:11
  53:20 133:7
  134:21 135:2
  136:9,13,25
partners 79:17
partnership
  126:12 127:10
parts 68:4
  102:9 111:7
  131:18

party 2:17,20
  58:3 59:7
  101:4 118:23
  118:23 119:9
  119:10 133:9
passes 13:5,7
passionate
  37:25
path 70:18
pathway
  109:11
pause 61:16
pay 26:18
  85:20 130:21
payment 115:6
payments
  37:11
people 22:14
  24:5,21 27:11
  27:17 30:16
  31:22 32:8
  33:9 44:13
  45:23,25 46:1
  50:20 62:11
  72:21 134:12
  136:2
percent 38:11
  38:17,17 39:11
  42:1 43:9,15
  43:18 44:15
  113:22,24
  114:1,5 115:11
  115:13
percentage
  44:7 115:12

percentages
  41:14
period 13:14
  29:23,24 32:22
  80:8,9 96:17
periods 96:17
peripheral 67:7
perk 103:17
permitted
  78:11
person 26:25
  46:8
personally
  12:23 40:6,11
  110:20
personnel
  122:23
persons 16:18
perspective
  37:6 44:7 62:6
  125:1
philippe 92:2,2
phrase 46:12
pie 85:20,21
piece 85:20,21
pieces 71:25
pillars 55:18
place 20:5
  48:25 63:23
  71:25 103:20
  104:11 111:7
  118:17 128:9
  129:15
places 97:20

plan 89:25
  103:25 124:10
  124:17
planned 42:1
play 59:12
  97:25
please 7:18,25
  16:11 38:9
  56:11 90:10
  96:11 105:5
  113:3 117:18
plethora
  135:16
plus 88:2
pockets 35:2
  97:19 127:15
point 5:17 7:25
  11:1 12:10
  13:11 17:18
  18:22 19:16
  20:9,21 21:3
  21:12 24:20
  25:24 26:1,24
  27:3,4 31:11
  32:21 37:10
  43:3 45:12,14
  47:14 50:21
  52:13 53:3,13
  54:11,13 58:22
  62:4 69:15
  77:16 91:19
  98:5 99:20
  117:4 119:13
  119:13,21
  123:6 131:6

pointed 17:24
25:10 108:19
points 17:17,23
17:24 18:22
19:1,14 21:23
22:15,22 23:22
25:21 31:1
39:6 42:23
71:3,3 82:9
88:19,21 96:9
policies 109:2
policy 15:12
poor 4:21
73:12 74:20
population
97:17
portion 95:22
118:19
portrait 8:2
pose 55:8
position 42:2
43:4,17 44:16
46:2 54:7
101:19 120:19
120:20 121:12
135:8,10 136:3
136:15
positions 29:15
29:19,22,24
44:22 124:22
134:20 135:3
positive 62:24
possibility 52:8
123:20,21

possible 40:1
40:15 44:17
53:1 89:2 96:3
105:24 129:19
132:6
possibly 52:10
89:9
post 111:3
posts 109:19
110:8,15,17
pot 118:1
122:14
potential 46:22
128:21
potentially
132:7
poverty 58:5,15
73:13 93:3
power 77:5
practical 97:4
pragmatic
63:25
predominantly
126:10
prefer 137:10
premised
130:20
prepare 46:5
55:10
prepared 46:8
132:23
preparing
135:12
presence 64:7

present 64:3
90:13 131:9
presentation
70:25
pressing
123:17
presume 117:2
132:11
presumes 9:20
presumption
8:11,23 9:7,9
9:15 11:10
pretty 37:23
43:20 129:10
129:11
previous 22:22
59:2 73:22
112:8
previously 3:3
5:8 134:19
135:14
price 51:1
principle 7:12
8:13,15 11:23
12:15 14:18
15:8 16:21
25:22 26:7,8
27:4 28:6
30:13 32:9
34:23 36:6
39:9 42:6
44:24 45:4,9
50:13 51:13
53:9 57:17
58:18 59:16

61:6,19,25
62:18,24 63:16
64:2,23 66:8
67:13 68:6
69:24 71:12
77:5,21 78:1
78:21 83:19
85:1,7 86:9
90:17 95:20
97:24 98:1
102:23 104:1
109:5,11 110:6
110:18 111:5
112:7,14,22
114:14 115:1,3
115:23 117:16
124:21,24
125:17,25
126:13 128:5
129:25 130:19
131:21 132:23
principles 81:5
108:22 109:17
111:6,17 112:2
129:21
prior 35:17
118:6
priorities 22:12
prioritized
7:14 9:4
priority 10:1
privilege 94:6
proactively
20:8

probably 10:12 13:9 22:10 35:17,18,21 46:18 63:25 65:11 66:12 97:24 116:8 126:23 131:13
problem 9:19 35:14 40:20 115:14 121:24
problems 116:16
procedural 119:21 132:5
proceed 76:9 99:25 110:4 119:19 121:21
proceedings 138:6
process 17:11 18:14 29:14 54:20 104:14 117:2 123:2
processed 114:1,8,24
processes 95:5
processing 104:4 114:3 125:12 129:21 129:25
produced 93:12,25
products 34:22 39:7 69:1 74:20 76:3

94:16 95:19
program 15:12 65:18 74:3 83:15 84:17 93:4 109:20 110:9 113:12
programming 22:25 69:2 74:21 76:4 79:12 84:10 97:5 127:25
programs 22:2 65:2,9 66:10 67:13 69:12 73:23 74:1,2,7 77:24 78:5,12 78:23 79:4 83:5,12 84:1 85:5 90:15 112:15,22,24 113:1,6 126:5 127:6 129:5,18 130:10
progressive 33:13
prohibited 79:25
prohibition 131:1
prohibitions 126:3
project 90:12 91:1,13,13 92:9 93:8,13 93:22

projected 99:16
promote 130:5
promotion 45:24
properly 98:11 98:18
proportion 96:1,6
proposal 7:8 9:1 28:24 29:2 29:5
proposals 29:7
propose 129:19
proposed 6:14 6:23 8:10 16:1 28:18 117:12
proposing 8:23 9:17 11:21
prospectus 22:22
protection 4:5 106:20 109:2,4
provide 6:24 82:17 83:4,8 90:16 98:18 101:12 126:6 132:1
provided 18:11 53:6,18 96:20 100:10 116:18
provider 98:11
providers 80:3 82:16

provides 89:18
providing 54:22 61:6 94:16 98:11 99:10 126:17
province 71:4,4 131:8
provinces 55:1 55:12
provincial 59:9 60:1 65:2,9,18 66:10
public 22:18 24:8,19 41:22 43:15
pull 107:3
purchasing 51:23
pure 65:15
purely 64:7
purpose 3:14 62:8
purposes 16:4 45:18
pursue 130:22
pursuing 44:16
pushed 27:20
put 23:1 57:5 77:9 136:2

q

q2 89:2
q3 89:2
q4 89:2
quality 4:21 73:7

quarter 92:17
quarters 89:1
  96:5 113:21
question 6:2
  7:5 10:8,10
  11:17 14:9
  21:11 25:16,22
  34:11 38:7
  42:19 43:3,16
  43:19 44:12
  65:6 75:10,17
  76:11 84:14
  95:1 112:23
  113:15 117:8
  119:20 121:6,9
  128:14 131:17
  134:19
questioning
  119:15
questions 3:18
  5:11 6:2,10
  25:20 41:9
  53:17 54:25
  55:5,9 61:11
  61:13 64:15
  69:5 86:21,23
  93:20 95:25
  105:18,19
  108:1 118:21
  118:25 120:23
  122:23 133:16
  134:5
quick 109:9
  125:20

quicker 105:3
  111:20 132:9
quickly 7:13
  135:5 136:11
quite 30:4
  55:12 89:9
quotes 16:3

r

r 1:23 2:1
radar 82:23
raise 119:20,23
  121:8
raised 36:1,17
  37:11,18 38:2
  122:22 129:1
raising 119:4
ran 38:16
random 88:22
  88:24
range 4:12
  33:19 55:12
  107:12
ranges 29:16
rate 41:15 45:8
  124:19
rather 17:22,23
  47:9
reached 81:2
  111:11
read 6:3,13 7:7
  8:9 12:2,11
  14:15 15:25
  16:12,16 34:19
  39:4,10,24
  46:21 50:10

56:14,17 57:2
57:24 59:1,8
64:22 67:20
68:22 71:7
73:5,17 74:5
75:24 77:18
78:9 79:23
81:1 82:10
84:24 89:17
90:11 94:12
108:12 113:20
114:20 116:14
117:11 124:17
125:24
readily 19:22
readiness 64:4
reading 17:13
  26:21 92:14
readings 67:8
ready 5:4
  105:11
realistic 63:25
  129:23
realities 126:20
really 22:9
  36:22 39:23
  61:21,23
  102:12 123:5
  131:12
reason 66:8
reasons 10:1
  16:7,8 26:15
receipt 122:2
receive 21:19

received 8:12
  113:1 136:20
recent 94:25
  95:17 112:9
recess 5:1
recessed 88:15
  105:7
recipients
  117:16
reciprocal
  126:12
recognize 7:19
  54:2 69:20,23
  72:14
recognizes 70:3
recognizing
  44:13
recollection
  124:17
recommendat...
  57:18 58:20
recommendat...
  59:3
recommends
  57:5 58:2 59:6
reconvened 5:1
  88:16 105:8
record 5:18
  105:10
recorded 138:7
recording
  138:7,12
recordings
  138:8

recreation
 65:14,15,15
recreational
 59:13,17 65:18
redirect 60:5
 78:11 126:21
 126:25 133:19
 133:21,22
reduce 48:15
refer 47:8
 72:21
reference 8:22
 72:4 116:21
referenced
 22:24 121:25
references
 108:7
referencing
 120:11
referrals 127:5
 129:18
referred 47:6
referring 69:20
 93:8 122:7
refers 10:18
reflect 71:16
 116:18
reflected 15:20
reflection
 109:21 110:9
reflects 18:15
 64:18 115:22
refusals 3:13
regard 56:23
 115:5

regarding 4:13
 69:7 71:11
 107:13
regardless 64:4
regards 20:10
 20:12 51:25
 76:15 113:8
 127:3 130:16
region 16:19
 23:24 30:5,5
 32:2 35:3
 37:13 91:9
 99:24
regional 8:14
 28:12 37:14
 39:6 116:9
 128:3
regions 27:9,10
registry 88:13
 105:9 106:10
 106:14,17,22
 107:2,8
regulating 23:7
reimbursement
 118:4 122:17
related 34:11
 64:7 119:10
relates 117:25
 122:13
relation 130:18
 134:23
relationship
 61:9 67:16
relative 32:6

relatively 62:6
 62:7
reliable 71:19
relief 118:19
remaining
 94:14 113:25
remains 39:25
remember
 36:18 46:10
 48:3 72:4
 92:10
removing
 73:10
renovations
 50:23
rent 51:21
rental 113:13
 113:13
repeat 21:11
 121:19,22
replacement
 125:9
reply 6:3 42:21
 100:14
report 54:23
 93:25 94:2
reported 14:17
reporting
 54:21 70:2
 95:5
reports 56:6
 88:24
representative
 22:24 132:25

representing
 1:10
repurposing
 21:24 22:4
 25:1,19,23,23
request 8:16
 9:15 11:13
 17:3,7,22
 20:14 30:14
 41:2 46:15
 47:24 48:4
 80:9 88:23
 93:21 96:3,13
 97:23 100:21
 104:6 118:1,3
 118:15 122:14
 122:17,24
 123:1,12,14,17
 123:18 127:14
 130:15
requested 49:1
 91:10 111:21
 127:20
requesting
 135:2
requestor
 47:21 48:12
requestors
 78:12 83:4,11
 114:15,16
requests 3:18
 7:9,12 8:12 9:1
 9:3,18 11:23
 12:4,16 19:25
 27:14 34:22

38:14 39:7
41:1 58:13
63:6,21 67:14
76:15 86:5
87:2 90:17
96:4 97:2
100:24 108:22
109:5,17 110:6
112:2,7,14
113:7,23 114:1
114:23 116:5
116:21 117:14
117:17 123:22
123:23 125:12
127:18 128:2,6
129:21,25
136:8
require 29:16
29:19 30:24
47:19 50:25
required 67:8
68:11 76:22
102:15,17
126:15
requirements
115:6
requires 29:18
requiring
51:13
reserve 60:13
61:7 72:5
95:20 96:6,22
96:22 97:2,5,9
97:10 98:2
126:22 131:19

131:22 132:3
resolved 78:22
resources
21:23 22:5
23:6 25:2,24
66:16,16,24
94:18 98:23
126:25
resourcing
24:15 86:7
respect 43:1
98:7 111:1
119:14
respectful
30:10
respond 87:1
respondent
1:10 2:13
respondents
44:15
responder
80:15
responding
58:19 75:5
76:19 77:19
82:24
response 44:3
68:24 74:18,23
75:12 76:1
87:3 120:5
133:6
responses
136:17
responsibility
31:10

responsible
16:20 18:23
102:23
responsiveness
31:20
result 13:22
54:15,17 55:3
73:12 124:21
results 12:13
41:22 42:22
73:9 91:4
92:15 111:20
124:23
resume 49:20
retain 31:19
retained 45:21
retention 41:9
43:11 45:18
retrained 25:9
retraining 26:6
29:14
return 31:18
130:4
review 40:21
67:4
reviewed 67:5
90:2,3 100:14
reviewing
40:17 47:10
revised 4:5
106:21
right 7:4 10:7
15:1 20:13
25:25 30:18
33:21 36:12

38:5 40:12
42:15 47:12
52:17 53:9
55:5,25 56:1,4
59:11,15 62:14
62:21 66:5
69:14 72:19
75:18 76:16
81:9 86:18
91:12 95:11
101:13 108:5
119:6,8 121:18
122:3,6,13
129:17 135:24
rights 1:3,8
4:10 25:11
53:23 55:8,17
107:4,7 132:25
risk 6:16 69:17
128:17 129:9
risks 128:15
role 26:4 58:12
58:13 61:6
94:15 98:4
126:8,16,16
129:25 130:9
130:19
roles 27:5
45:16
rolling 36:6
rolls 31:21
roughly 95:17
rule 8:24 9:10

s

s 2:1
safe 133:20
salaries 23:6
samantha 2:15
sampling 88:22
  88:24
sarah 2:3
saskatchewan
  4:4 106:20
saw 38:16 96:7
saying 7:6 8:24
  14:15 25:18
  40:14 43:15
  68:1 73:4
  76:25 86:16
  99:24 120:22
says 8:8 16:16
  38:13,14 39:3
  39:10 56:13,13
  56:17 57:2
  71:7
schedule 7:23
  7:25 8:6
  134:22 136:3
school 70:13
  86:12
schools 86:11
scotia 118:21
scramble 125:2
se 63:6
seat 79:18
second 20:21
  39:1 77:17
  79:21 93:23

secondly
  123:10
sector 46:1
security 113:8
see 7:15 8:8,19
  11:11,20 12:18
  12:19 16:11,12
  16:25 19:22
  36:3,3 43:11
  43:14,14 46:25
  50:15 52:16
  53:5,10 54:10
  62:9 63:6
  71:20 72:13
  82:18,20 90:18
  93:17 94:4,23
  111:20 121:25
  127:20,20
  128:6
seeing 29:16
  86:8 113:7
seek 102:9,15
  128:13
seeking 132:14
  133:6
seeks 127:4
  132:5
seem 129:10
seemed 41:19
seems 93:9
seen 31:17
  41:22 58:16
  62:19,20,23
  63:1,3 83:1
  100:21 110:19

  110:20,22,23
  113:11 120:12
  126:15 131:24
self 67:24 68:3
  68:20 130:6
send 62:16
senior 102:22
seniority 31:6,9
  45:15
sense 17:10
  20:9 29:15
  36:23 41:4
  47:16 48:18
  52:6 55:17
  102:4
sensitive 11:24
  12:17
sensitivity 25:9
sent 123:8
sentence 6:13
  7:7 39:1,24
  47:8 50:8
  67:20 75:24
  76:17 77:18
  79:22
sentences 77:17
separate 18:17
  39:19 133:5
september 4:12
  36:19,20
  107:12
series 18:22
  55:9,9
serious 97:4

servants 22:18
service 12:4
  24:9,19 41:22
  43:15 48:8
  69:3 74:21
  76:5 80:2,3
  82:11,16,17
  83:10,20 84:8
  85:13 87:10
  94:21 97:2
  98:10,11,12,19
  101:19 102:6
  112:16 130:11
  130:21
services 1:10
  4:5 34:22 39:8
  43:2,18 44:3
  44:14 52:19
  53:5 57:10
  58:7 61:1,7,7
  65:3,10 69:1,8
  71:5,17,18
  73:8 74:20
  76:3 77:23
  78:17 85:4,15
  87:16 94:17
  95:19 96:2
  97:8,9 98:9,25
  99:2,3,16,18
  106:21 111:5
  111:17,20
  112:15,20,21
  113:1 114:8
  116:4 124:11
  126:10 131:20

132:2,8,9
serving 12:5
session 1:14
set 16:4 51:3,18
  70:4 99:5
  103:25 134:22
  134:23
sets 39:16
setting 44:1
  71:23 91:15
  99:8
several 69:6
shaina 2:25
  138:4,18
share 111:23
  120:7
shared 86:5
  93:24 111:22
sheet 110:21,24
shifting 77:23
  85:3
shortfall 66:3
shortfalls 23:4
  65:8,8,11
  67:12
side 27:20
  30:21,22
  133:11
sight 86:1
signature
  138:16
significant
  97:25 115:14
significantly
  108:22

silos 73:19
  75:15 86:4
  127:11
similar 15:10
  90:16 114:16
  116:2
simply 121:8
single 40:17
situation 36:25
  52:20 56:19
  82:24 100:19
situational 33:7
situations 12:6
  50:25 51:25
  57:12
six 26:24 29:19
  29:20,23,24
  30:6,23 31:12
  31:14,23 32:20
  32:22 33:19,19
  125:14
size 87:3
skill 138:11
smaller 15:10
smith 2:11
social 65:16
  71:5 73:23
  74:1,7 109:19
  110:7,15,17,21
  110:23 111:3
socially 42:11
society 1:6 2:4
  6:15,19,23
  7:20 8:23 9:17
  11:4,20 12:21

15:24 20:3
  40:4,12 47:15
  82:5 86:25
  87:5,9,14
  106:18,22
  108:19 114:13
  116:1,22
  117:12 118:17
  119:1 120:16
  123:19 124:5
  134:8 135:1
  136:12
society's 7:8
  8:25 16:1
  26:13 28:24
  29:2 40:9
  109:3 114:21
  115:19 116:15
  134:23 135:11
socioeconomic
  73:15 93:2
software 32:15
solely 68:24
  74:18,24 75:12
  76:1
solution 8:10
  16:1 20:15
  26:13 28:18
  100:7
solutions 40:2
  40:9 87:14
  133:1 138:17
somebody 9:20
  27:8 30:19
  32:19 50:22

someone's
  117:25 122:13
soon 38:3
sophie 1:23
sorry 9:6 12:1
  12:9,10 15:21
  21:9 23:7,17
  26:10 27:23
  41:6,7 43:24
  44:6 47:2 49:4
  51:7 58:21
  70:11 72:13
  75:15 79:6,8
  81:7,16 82:19
  84:13,19 85:8
  87:18 97:16
  99:13 103:6,11
  107:2 112:22
  113:2 115:9
  117:7 127:7
  129:3
sought 35:5
  91:19 118:20
sound 56:1
  93:8
sounds 36:12
space 101:23
  113:9
speak 31:25
  33:23 38:4
  87:18 93:7
  116:7 120:22
  124:1,15
speaker 103:16
  117:22

speaking 29:18 47:6 61:14
speaks 24:7
specific 6:2,22 25:6 36:21 43:23 65:25 67:22 68:2 99:13 115:19 121:6 135:3
specifically 19:15 60:13 96:9 98:16 110:6,22 113:20 116:14 117:10 135:9 135:10
specified 82:13
speed 125:10
spend 6:5
spirit 89:25 124:9,16
split 93:4
spoken 10:21
spot 32:7
st 3:3 5:8,10 89:24 97:3 105:16 107:25 108:6,18 109:15 110:1 113:19 114:19 116:13 117:10 121:20
staff 14:12,14 14:17 15:6 16:2 17:3

19:24 24:25 25:3,6,19 26:14,14 34:9 41:9,15 42:10 124:20,21,23
stage 94:2
standard 31:4 132:8
standardized 34:8
standards 56:25 106:5 109:1
start 13:1 17:19 18:25 20:5 22:1,8 32:15 88:1,18
started 35:1,6 35:23 36:5,7 36:15,24 37:13 70:17,17 93:6 108:5
starting 11:9,9 21:3,12 25:4 25:25 27:17 107:9
starts 12:2 16:12 17:8 58:25 64:16,16 80:25 82:1
staska 2:14
state 74:18 111:14 116:14 117:11 125:24

statement 8:21 11:1 37:16 124:7
statements 126:6
states 109:18
statistics 34:18 96:4
status 116:3
stay 122:21
step 101:12
stepping 27:10
steps 24:2 116:18,19 123:7 137:3
stewart 2:6
stick 24:2
stopgap 64:24 66:9
stopped 5:17
strain 25:3
strategic 23:20
strategically 22:16
strategies 28:20 83:3 85:9,10 87:6
street 26:23 27:3 28:5,6,13
stress 25:8
string 118:2 122:16,25
structural 56:20 57:6

structures 62:11
struggle 126:24
struggling 36:23 128:19 131:14
studies 95:1
study 132:25
studying 6:6
sub 82:9
subject 94:5 120:18
submissions 120:10
submitted 93:17
subparagraph 22:19
subset 104:10
substance 73:13
substantial 73:7
substantive 70:1
success 99:6,9
successful 129:16
sufficiency 18:9
sufficient 16:2 16:18 18:4 19:17,18,24 26:14 98:24 99:10

suggest 136:23
suggesting
  115:11,13,15
suggestion
  137:5
suite 127:19
summarize
  40:15
summer 36:12
support 14:17
  27:10 34:12
  58:6 59:16,18
  64:3 68:18
  83:19 86:6,11
  93:2 98:1,16
  101:9 129:19
supported
  58:15
supporting
  30:25 61:7
  91:10 111:10
  118:19 120:19
  120:20
supports 34:23
  39:8 51:18,22
  60:2 65:17,21
  69:2 74:20
  76:4 78:14,17
  85:24,25 94:16
  95:19 101:14
  113:7,13 128:6
  128:9 129:15
  130:23 132:22
suppose 9:19
  34:12 60:4

116:25
supposed 75:3
sure 10:13 14:3
  15:2,9,11 18:6
  18:13 20:8,14
  20:23 30:8
  34:16 38:12
  41:10 45:3
  51:5 53:11
  57:22,22 58:17
  80:15 84:12,13
  86:3,22 93:14
  97:8 99:14,19
  102:12 110:22
  115:6 128:24
  136:22
surge 19:8,9
  28:19,20 34:12
  34:19,21,25,25
  35:2,4,10 39:6
survey 41:23
  41:25 42:22
surveyed 42:1
survival 55:24
survive 58:5
sustainable
  58:1 59:5
system 17:19
  18:1 34:24
  37:5 39:9 62:9
  85:23,23 98:15
  130:13
systematically
  90:13

systemic 68:4
  93:4
systems 22:23
  62:3,3 63:5,5,7
  63:20 66:17
  91:11 127:12
  128:14

t

t 1:1 3:18 89:11
  94:10 97:1
tab 7:19 16:10
  42:19 69:16
  70:13 72:13
  80:22
table 8:6 14:13
  62:16 96:21
  131:8 133:7
tables 20:18
  43:12
tag 51:1
tail 80:24
take 7:17 19:16
  20:7 21:17
  26:24 30:23
  38:6 48:18
  64:4 72:8 76:7
  85:20 86:16
  87:25,25 99:21
  102:14 105:11
  108:3 113:2,3
  123:7 125:8,11
  125:19 129:9
  129:24 130:8,9
  130:10 134:11
  134:12

taken 1:15 42:9
  116:18,19
  121:9 138:12
takes 29:18
  125:19
talk 84:22,23
  99:22 127:21
talked 52:1
  65:14 81:1
  88:18
talking 44:14
  44:19 52:13
  61:17 71:25
  74:15 75:23
  78:2 79:3
  83:25 84:21
  87:6 122:5
talks 89:16
targeted 19:15
  35:4 65:20
targets 57:3
  59:4
taylor 2:2 3:4
  5:3,5,9 87:19
  88:3,10,17
  89:6,9,11
  93:19 94:7,9
  94:10 95:24
  96:14,25 97:1
  103:18 104:22
  105:2,6,13,16
  105:22 106:2
  106:11,16
  108:25 118:11
  119:5,7 120:6

120:11 121:4
121:17 131:16
taylor's 134:19
team 20:2 33:1
  34:1,3,12,19,25
  40:25 49:15
  87:3 96:18
teams 34:21
  39:6
tell 7:1 18:4
  26:22 102:18
term 23:10
  52:9 61:14
  63:15 64:15
  86:3 94:13
  97:25 98:3
  101:6 133:8
terms 20:5,6,22
  24:24 25:4
  31:21 35:15
  40:21 62:17
  66:19 74:16
  83:2 92:16
  98:6 103:7
  119:1
territorial
  59:10 60:1
  65:2,9 66:10
territories 55:1
  55:13
testing 121:1
thank 5:5,7
  11:16,16 25:10
  27:7 29:10
  39:22 53:16

77:13 81:23,25
89:22 90:6
91:7 96:25
105:6,17,19,20
105:22,22
106:16 107:15
108:4,25
109:14 110:3
110:12 111:1
111:13,25
112:6,12
113:18 114:6
114:12 115:9
115:24 116:12
117:5,23,24
119:25 120:5
121:3,15,17
122:19 123:10
124:2,18
125:23 127:3
128:15 129:17
130:18 131:16
132:4,21
133:15,16,18
133:24,25
134:2,3,4,17
137:15,17,21
thanks 5:6
  29:12 94:9
  105:14
thanksgiving
  36:19
thing 20:1
  63:18 77:11
  79:1,14 125:20

things 9:7 30:8
  51:22 59:16
think 9:20 10:3
  11:8 12:9 17:6
  17:10 19:5
  20:4,7,16
  21:18,25 22:8
  23:3 24:7 26:5
  28:2 29:3 30:6
  32:25 33:15
  35:16 36:17
  37:9 39:3
  42:18,23 47:6
  47:13 48:10,11
  48:22 49:9,12
  49:14,15 50:23
  51:19,22 52:23
  53:19 54:16
  57:20,20 58:9
  62:2 63:19
  64:1,17 65:11
  66:12 67:15
  69:4 70:13
  72:21 76:10
  77:15 78:6,25
  79:16 83:13
  84:11 85:17
  86:16,16 87:24
  88:4,10 90:20
  91:6,15 92:5
  92:19 98:13
  99:4 101:9
  103:2,22
  105:24 112:4
  113:5,7,16

115:2,4,18
121:9 123:3,5
123:8,19 124:7
125:13,20
128:19,22
129:7 133:10
133:20 135:12
135:17
thinking 48:15
  97:1,2 98:6
thinks 11:2,4
third 68:8
  84:23 101:4
thompson 92:3
thought 27:8
  70:6 81:16
  100:6 121:20
thoughtful
  134:5
threatening
  14:6
three 23:25
  26:16 32:19
  96:5 113:21
threshold 5:24
  46:24 47:17
  49:7,8 51:23
thriving 63:23
tight 105:14
time 6:6 11:24
  12:17 13:5,7
  13:15 14:13,14
  14:16 15:17
  16:10 35:5
  36:4 40:11

42:10 48:11,16
54:11,14 62:19
71:23 72:1,17
82:6 87:22
99:20 108:3,21
113:4 118:7
123:1,6,7
125:19 126:7
137:10
timeframe 38:3
39:5 92:16,19
timeline 48:21
70:4,8 82:13
84:7 114:3
115:5 123:25
128:18
timelines 70:10
71:8,24 85:12
96:13 108:20
125:3 128:19
timely 89:19
100:10,25
times 49:1,2
52:22 53:8
tired 131:14
title 56:5
today 108:23
122:11 133:21
136:1
together 33:6
39:5 78:20
102:3 128:7
tomorrow
137:14

took 68:14
109:1 123:1
tools 33:1
130:16
top 43:12 80:24
92:10
total 14:16
17:22 40:16
114:23
touched 34:14
touching 32:23
towards 8:2
19:15 36:18
131:7
track 114:7
train 26:25
trained 25:9
training 24:25
24:25 25:3,6,7
25:12 26:1
27:17,21,22
28:2,3,9,20
29:3,11,13,18
29:20,25 31:7
31:18,19,22
32:5,7,11,16
33:1,11,13,21
34:2,4,8
125:10,11,15
trajectories
112:9
transactional
48:7
transcribed
2:25 138:9

transcriber
138:4,19
transcriber's
138:1
transcript 4:22
138:11
transcriptionist
2:25
transcriptioni...
4:21
transfer 127:22
130:3,6
transfers 83:19
transformation
130:2
translate 86:10
travel 52:2
treat 130:16
trends 99:24
triage 7:2 9:5
10:21,21 18:23
80:18
triaged 8:11
9:24 11:3,5
27:13
triaging 18:23
tribal 100:16
tribunal 1:1,3
22:24 62:4
68:24 69:6,21
74:17 75:11
76:1,8,22,23
77:2,11 78:10
79:1,4,7,10
83:23 85:12

124:13 132:6
134:22 135:14
135:19 136:14
tribunal's
16:17,24 79:22
84:5 133:1
tried 121:5
trilateral 131:8
true 41:1
138:10
truly 123:11
try 32:12 36:10
62:8 77:9
102:15 127:22
128:9 131:10
trying 35:8
40:15 81:21
97:8 113:2,5
113:15 126:15
128:23 133:5
turn 7:25 8:1
54:25 56:11
117:18
turning 109:14
110:12 113:18
114:18 116:12
117:5,9 124:2
turnover 41:15
43:7 44:18,20
45:8,11,17,23
turns 121:13
two 29:16
39:15 42:2,23
43:4,17 66:5
68:2,4 73:15

73:15 89:1
93:20 96:17
110:15 122:21
128:25,25
type 22:5 33:6
52:3 61:8
82:13 103:3
116:24
types 24:23
25:12 51:1,22
103:23 132:14
typo 38:15

u

u 3:18 89:11
94:10 97:1
uh 28:25
unable 114:11
126:21 128:18
unattended
85:16
uncomfortable
131:4
under 18:8
21:17 43:10
46:23 70:24
79:22 83:18
94:13 109:1
110:20
undergo
125:10
underlying
63:11 66:4,4
undermining
84:1,10,16

understand
12:25 25:14
52:21 54:4
80:19 111:24
120:21 125:22
133:5
understanding
14:21 19:1
30:24 39:3
45:22 59:15
70:23 80:10,14
84:12,13 89:1
98:23 109:20
110:8 118:18
119:12,12
127:19 135:25
understood
17:21 119:20
undertaken
3:18 93:3
undertakings
3:12,16
underway
91:17
unfair 26:22
unfortunately
50:1 63:8
114:5,10
116:10
unintended
77:21 83:24
84:9,20 85:2
86:12,15
unions 24:22

unique 29:5
unit 34:4
united 4:9
107:3,6
unknown
103:16 117:22
unmanaged
66:4
unnecessarily
73:10
updated 96:4
updating 37:6
upgrade 11:15
31:19
urgency 5:12
6:1 11:11 19:7
65:5 118:16
119:13 120:2,3
120:14,15
134:25 136:11
urgent 5:11 7:1
7:1,3,9,11 8:18
9:1,3,8,18,21
10:1,5 11:5,12
11:14,15,23
12:6,16,25
14:5 16:4,21
17:4,7,25
18:23 19:2
22:16 24:3
116:5 117:17
118:1 120:14
120:17 122:15
123:11,12,17
124:6

use 32:12 33:25
42:13 46:12
66:2,3
used 19:5 24:10
34:8
using 27:2,3
85:14 99:18
usual 4:23
utopia 63:24

v

vaguely 55:19
various 18:9
44:20 88:19,21
109:1 134:21
135:17
vein 78:7
verb 17:14
veritext 138:17
versus 41:1,2
48:7 50:23
51:24 111:22
videoconfere...
1:15
view 6:6 11:10
52:25 53:1
57:16 65:7
118:16 123:11
viewpoint 32:4
views 120:3,6
120:13,15,16
120:17
virtual 32:7
33:3
virtually 32:5

vision 61:14 63:15 64:15 94:13 98:1,3,7 101:6 104:11

voice 52:21

volume 7:17 11:18 16:9 17:4 18:5 23:19 41:4 42:19 69:16 87:2 99:15,16 106:3,4,18,23 109:2 123:23

volumes 40:23

w

walking 33:5

walsh 2:10

want 8:1 15:3 31:17 35:21 61:16 64:9 65:6 70:12 72:17 75:21 96:16 98:25 99:25 102:14 125:6 134:12 136:2

wanted 37:11 42:12 103:15 118:10 122:21

wants 99:21

warranted 109:10 119:14

way 17:11 24:10 26:2,21 27:6 42:18

49:10,13 72:3 75:22 77:10 79:18 84:9 86:15 98:25 100:10,25 104:19 120:23 126:11 129:11 131:11

ways 13:8 84:2 84:5 85:16

wealth 22:2

week 6:4 29:23 32:22 80:8 135:1,4,20 136:14,19

weeks 26:24 29:19 30:6 31:12,14 33:19

wellbeing 65:17

went 18:7 45:9 45:13 96:7 122:1

wikwemikong 111:3

wilson 20:2

wilson's 50:3

windows 51:15

wise 40:23

witness 3:6 118:12 119:2 134:3,6

witnesses 118:22 136:7

wonder 83:22 89:4 104:22

wondering 14:20 38:21 39:14 51:9 61:20 80:4 86:24 88:23 89:24 93:20 95:25 100:15 119:18

word 18:3 19:17 30:16 65:4,5,6,8 66:2 66:3 79:11 85:11 95:2

wording 10:15 10:17,18

words 9:24 34:18

work 18:9 21:17 25:21 26:6 27:19 32:13 61:25 62:15 67:5 73:19 78:20 100:4 102:3 111:14 113:9 115:5 125:18 132:19,23

worked 25:13 28:11 32:19

working 26:7 27:12 28:15 30:25 32:10 62:12 66:18

works 20:2 23:11 32:21

written 120:9

wrong 50:18,18 51:14,15 122:1

wuttke 2:6 107:15 119:25 120:8,25

wuttke's 121:11

x

x 3:1

y

yeah 5:21 8:5 9:23 10:3,16 13:12,20 15:16 17:15,15 20:18 21:2,16 22:7 24:7 27:1,7,22 27:22 28:9,22 28:22 29:21 30:2 32:11 34:10,13 35:13 35:13 36:13 37:11 38:25 41:3,17,19 42:16,25 43:6 43:13 44:5,7,9 45:6,22 46:20 47:4,18 48:4 48:10 49:7,7,7 50:5 51:10 52:16 53:14,15 54:12,15 55:6

55:23 57:20
60:9,16,16
61:2,4,10
62:22 64:5,10
64:13 65:25
66:5,22,22
67:1,3,3,15
68:10,16,16
69:9 70:9,12
72:4,6,20 75:2
75:9 78:4 79:8
81:11,11,20
82:2,20 87:7
87:18 89:14,21
90:24 91:23,25
92:18 93:9,18
94:8 95:9
96:14 97:7,15
97:15,17,21
98:3,6,13,20
100:18 101:22
102:21 103:9
103:18,23
104:3,12 106:1
113:17 122:12
124:25
year 15:5 35:18
41:20 42:4,9
92:17 104:2,4
104:7 112:3,8
113:22 124:20
years 42:2 43:5
43:17 44:20
72:16

yesterday
92:25,25 95:25
96:8 105:3
youth 12:5
109:1

z

zero 25:4,25
27:17
zoom 1:15

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Date: 20240626

Docket: T-402-19
T-141-20
T-1120-21

</div>

Ottawa, Ontario, June 26, 2024

PRESENT: The Honourable Madam Justice Aylen

<div align="center">

CLASS PROCEEDING

</div>

BETWEEN:

<div align="center">

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

</div>

<div align="right">

Plaintiffs

</div>

<div align="center">

and

</div>

<div align="center">

THE ATTORNEY GENERAL OF CANADA

</div>

<div align="right">

Defendant

T-141-20

</div>

BETWEEN:

<div align="center">

**ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN
OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON (by his
litigation guardian, Carolyn Buffalo), CAROLYN BUFFALO AND DICK EUGENE
JACKSON also known as RICHARD JACKSON**

</div>

<div align="right">

Plaintiffs

</div>

and

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

Defendant

T-1120-21

BETWEEN:

ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

<u>REASONS FOR ORDER</u>

(Claims Approval Process – Removed Child Class and Removed Child Family Class)

[1]   On June 19, 2024, the Court heard a motion brought by the Settlement Implementation Committee [SIC], on behalf of the Plaintiffs, for an order approving the proposed claims process for the Removed Child Class and the Removed Child Family Class, together with its associated draft claim forms [Claims Process]. The motion was brought on the consent of the Respondent and was, in part, opposed by the First Nations Child and Family Caring Society [Caring Society]. The Caring Society initially requested that the Court only approve the Claims Process if three additional orders were made imposing further obligations on the SIC. However, as detailed more fully below, the position of the Caring Society evolved as the hearing of the motion progressed,

with the Caring Society ultimately taking the position that it supported the approval of the Claims Process but sought directions from the Court as to whether the SIC should be compelled to submit additional items to the Court for approval.

[2]   At the conclusion of the hearing of the motion, I advised the parties that I would be issuing an order approving the Claims Process, with reasons to follow, but that I would reserve on the issue of the relief sought by the Caring Society. My Order approving the Claims Process was issued on June 20, 2024, and I am now providing herein my reasons for doing so together with my determination on the relief sought by the Caring Society.

[3]   By way of background, the Plaintiffs and the Defendant executed a Final Settlement Agreement in respect of the underlying class proceedings on April 19, 2023, which was amended by way of an Addendum dated October 10, 2023 [FSA], and approved by this Court on October 24, 2023, pursuant to Rule 334.29(1) of the *Federal Courts Rules*, SOR/98-106 [see *Moushoom c Canada (Procureur général)*, 2023 FC 1466]. My Reasons approving the settlement detail the nature of the class action proceeding and the key provisions of the FSA [see *Moushoom v Canada (Attorney General)*, 2023 FC 1533]. For the purpose of these Reasons, the capitalized terms set out herein shall have the same meanings as set out in the FSA.

[4]   Due to the complexity of this proceeding, the FSA did not prescribe the manner in which the claims processes for the nine classes would be administered. Rather, the FSA left the determination of the claims processes for future development by the SIC and approval by the Court. The SIC has brought this motion seeking approval of the first of many claims processes.

The Claims Process before the Court on this motion relates to the Removed Child Class and the Removed Child Family Class, though it is the first of a number of processes for the Court's consideration, with other processes for these classes to follow.

I.   Analysis

[5]   The legal test to be applied in approving a claims process is analogous to the test applied by the Court when approving a class action settlement—namely, whether the claims process is "fair, reasonable and in the best interests of the class as a whole" [see *Wenham v Canada (Attorney General)*, 2020 FC 588 at para 96, aff'd 2020 FCA 186, leave to appeal ref'd 2021 CanLII 49683 (SCC) [*Wenham*]; *Brazeau v Canada (Attorney General)*, 2020 ONSC 7229 at para 73]. The test for approving claims processes is not perfection [see *Wenham*, *supra* at para 51; *McLean v Canada*, 2019 FC 1075 at para 76 [*McLean*]; *Merlo v Canada*, 2017 FC 533 at para 18].

[6]   Like settlements, claims processes must be looked at as a whole. It is not open for this Court to rewrite the substantive terms of a claims process or assess the interests of the individual class members in isolation from the whole class [see *Tataskweyak Cree Nation v Canada (Attorney General)*, 2021 FC 1415 at para 62 [*Tataskweyak*]; *McLean*, *supra* at para 68]. Ultimately, when approving a claims process, this Court cannot modify or alter the claims process—it must approve it as is, or reject it [see *McLean v Canada (Attorney General)*, 2023 FC 1093 at para 37; *Tataskweyak Cree Nation*, *supra* at para 62].

A. *The Claims Process is approved*

[7]   In support of its request that the Court approve the Claims Process, the SIC has provided two affidavits from Dianne G. Corbiere, Class Counsel and counsel for the Assembly of First Nations [AFN]. Ms. Corbiere's evidence details: (a) the work that has been undertaken to develop the Claims Process over the last year; (b) the work that has gone into the preparation of the Indigenous Services Canada database [ISC Database]; (c) the piloting of the Claims Forms and financial literacy and options; (d) the engagement with First Nations on the Claims Process; and (d) the SIC's resolution endorsing the Claims Process.

[8]   The SIC has also provided an affidavit from Joelle Gott, the engagement lead for Deloitte LLP in its role as Administrator of the FSA. Ms. Gott's evidence details the Administrator's work since the Court's approval of the FSA, with a focus on the efforts undertaken to develop the Claims Process and the steps taken by the Administrator to meet its obligations under the FSA.

[9]   The Claims Process covers many topics including: (a) Claims Form completeness requirements; (b) adjudication on eligibility; (c) progressive disclosure; (d) the Administrator's communications with Claimants; (e) appeals to the Third-Party Assessor; (f) Claimants who are Class Members of more than one Class; (g) Claims periods and Claims Deadlines, together with Claims Deadline extensions; (h) Claims by representatives, including representatives claiming on behalf of minors, heirs, estates, Personal Representatives claiming on behalf of Living Persons Under Disability, representatives on behalf of deceased Removed Child Class Claimants, representatives of deceased approved Caregiving Parents and Caregiving Grandparents, public guardians and trustees and ISC estates; (i) assignment and garnishments of compensation; (j) non-

Class Counsel legal professionals; and (k) exceptional early payments of compensation funds to minors. While the Claims Process is detailed, it also recognizes that additional efforts remain ongoing and provides that the SIC will return to the Court to seek additional approvals in relation to other aspects of the claims process for the Removed Child Class and the Removed Child Family Class, such as in relation to the Incarcerated Class Members Process, caregiver Abuse and claims helpers.

[10] The evidence demonstrates that extensive efforts have been undertaken by the Administrator and the SIC over the last year to design and develop the Claims Process in a manner consistent with their respective obligations under the FSA. The SIC and the Administrator have consulted with a variety of stakeholders and experts including: (a) consultations and meetings with the Respondent and in particular, ISC; (b) consultations and meetings with the Caring Society; (c) regional consultations across Canada on the Claims Process with the AFN to present, answer questions and seek input on the proposed Claims Process and claims helper program; and (d) working with numerous experts to develop financial literacy information and investment vehicles for Claimants.

[11] The evidence demonstrates that, in addition to the SIC being First Nations-led, there has also been meaningful First Nations involvement at every stage of the development of the Claims Process. Counsel for the SIC has further advised that during these extensive consultations, not a single Class Member voiced opposition to the Claims Process.

[12] Having reviewed the Claims Process, I am satisfied that it meets the requirements of the FSA as a whole. Importantly, I find that it meets the requirements of Article 5.01(3) of the FSA in that, as designed, the Claims Process is expeditious, cost-effective, user-friendly, culturally sensitive, trauma-informed and non-traumatizing, with any necessary accommodations for persons with disabilities or vulnerabilities. Moreover, it meets the requirement of Article 6(2) of the FSA in that no member of the Removed Child Class will be required to submit to an interview, examination or other form of *viva voce* evidence taking.

[13] I am satisfied that the Claims Process is fair, reasonable and in the best interests of the Class as a whole. Accordingly, the Claims Process is approved.

B. ***The directions sought by the Caring Society will not be issued***

[14] Before turning to the specific directions sought by the Caring Society, I want to begin by clarifying their standing on this motion and their role in the implementation of the FSA.

[15] The Caring Society is not a party to this class proceeding and they do not represent the interests of the Representative Plaintiffs or any Class Member. The Caring Society has also not been granted intervener status in this proceeding by the Court. To the contrary, the Caring Society was expressly denied intervener status on the motion to approve the FSA. In her Order dated September 23, 2022, Case Management Judge Molgat stated:

> [19] Considering the first criteria set out in *Sport Maska*, the Caring Society is a non-profit organization—it is not a member of the class of individuals who suffered as a result of Canada's discrimination on whose behalf these proceedings were brought. Nor does the Caring Society act for class members. Yet it is essentially seeking to make submissions on behalf of the class (or a

sub-set of them) whose interests are already represented by Class
Counsel and the Representative Plaintiffs.

[20] The Court agrees with the reasoning of Justice Phelan in
McLean v Canada (Attorney General) and finds that the Caring
Society does not have a "direct interest" and that it may, at best, be
"indirectly affected" by the outcome of the Settlement Approval
Motion such that the first criteria of *Sport Maska* is not met (see
McLean v Canada (Attorney General), 2019 FC 515 at para 3).

[16]   Instead, the Caring Society's standing to make submissions on this motion is grounded in

Article 22.05(1) of the FSA, which provides:

The Caring Society will have standing to make submissions on any
applications brought for Court approval by the Settlement
Implementation Committee or the Parties pertaining to the
administration and implementation of this Agreement after the
Settlement Approval hearing, including approval of the Claims
Process and distribution protocol to the extent that issues impact the
rights of the following classes:

(a) Removed Child Class Members placed off-Reserve as of and
after January 1, 2006, and Removed Child Family Class Members
in relation to Children placed off-Reserve as of and after January 1,
2006, including deceased members of these classes;

(b) Kith Child Class Members and Kith Family Class Members,
including deceased members of these classes; and

(c) Jordan's Principle Class Members and Jordan's Principle Family
Class Members, including deceased members of these classes.

[17]   As such, the Caring Society has a contractual right to make submissions on any applications

brought by the parties, or the SIC, for approval before this Court pertaining to specific issues, as

they impact specific classes, related to the administration and the implementation of the FSA.

[18]   To be clear, Article 22.05(1) does not empower the Caring Society to bring its own motions

before this Court. Rather, their contractual rights are limited to participating in specific motions

brought by the parties, or the SIC. Accordingly, there is no basis in the FSA for the Caring Society to be seeking orders from this Court.

[19]   In their written representations, the Caring Society's support for approving the Claims Process was conditional on this Court issuing the following three orders:

A.   An order that the SIC submit a companion claims process for identifying and approving Removed Child Class Members who have not been identified on the ISC Database, but are otherwise eligible for compensation under the FSA, by September 1, 2024.

B.   An order that the SIC submit a safe, evidence-based and expert/clinically informed approach for Removed Child Class Members to identify Abuse in connection with their removal if they choose, including a safe and expert/clinically informed approach that may include the sharing of this information with the Administrator on behalf of the Removed Child Class Member by a trusted support person, by September 1, 2024.

C.   An order that the SIC submit a detailed description of the supports set out in Schedule 1 of the FSA, the status of the hiring and training of claims helpers and the status of the Caring Society's suggestions regarding increasing surge capacity and measures to ensure that existing services such as mental health, addictions, domestic violence, cultural and child welfare services have the capacity to support Class Members before the launch date, throughout the claims process and after the claims process, by September 1, 2024.

[20]   However, after the SIC raised objections in their written representations in reply as to the

Caring Society's standing to seek orders from the Court, and following similar concerns raised by

the Court at the commencement of the hearing, the Caring Society's position changed. The Caring

Society stated that it was no longer seeking orders, but rather was asking for directions or guidance

from the Court, which directions were conditional on their support for the approval of the Claims

Process. However, by the end of the hearing, when pushed to clarify their position, the Caring

Society stated that they did not want to delay the approval of the Claims Process and were simply

looking for guidance or direction from the Court on the issues that they had raised.

[21]   The Caring Society asserted that it was open to the Court to issue any directions it deems

appropriate pursuant to the powers vested by Article 1.14 of the FSA, which provides:

> Notwithstanding any other provision of this Agreement, the Court
> will maintain exclusive jurisdiction to supervise the implementation
> of this Agreement in accordance with its terms, including the
> adoption of protocols and statements of procedure, and the Parties
> attorn to the jurisdiction of the Court for that purpose. The Court
> may give any directions or make any orders that are necessary for
> the purposes of this Article.

[22]   I agree with the Caring Society that the Court retains an ongoing supervisory jurisdiction

over the implementation of the FSA which includes the ability to issue directions. However, I find

that it is not open to the Caring Society to independently apply to the Court for directions regarding

the implementation of the FSA. Nonetheless, I will go on to consider the three directions requested

by the Caring Society in the context of this motion.

[23]   Briefly, before doing so, it is important to comment on the interactions between the Caring

Society and the parties/the SIC in the administration of the FSA as it is apparent to the Court that

there is significant animosity between them which has resulted in a breakdown in communications. This animosity appears to be driven by a misapprehension of the role of the Caring Society in the administration of the FSA.

[24]   Article 5.01(1) provides that:

> The design and implementation of the distribution protocol <u>within the Claims Process will be within the sole discretion of the Plaintiffs, subject to the approval of the Court</u>. The Plaintiffs will establish the Claims Process and may seek input from the Caring Society, as well as from experts and First Nations stakeholders as the Plaintiffs deem in the best interests of the Class Members. The Plaintiffs will finalize the distribution protocol within the Claims Process in accordance with this Agreement, and will submit same for approval of the Court.

> [Emphasis added.]

[25]   The SIC, on behalf of the Plaintiffs, has sole discretion over the design and implementation of the Claims Process (subject to the Court's approval). The SIC may, but is not obligated to, seek input from the Caring Society over any aspect of the design and implementation of the Claims Process. The evidence before the Court is that the Caring Society has thus far been invited to participate in numerous meetings related to the Claims Process and has provided other written submissions.

[26]   It must be stressed, however, that what the SIC chooses to do with the submissions received from the Caring Society is up to the SIC. There is no obligation on the part of the SIC to implement any suggestions made by the Caring Society. Rather, the obligation of the SIC is to design and implement a Claims Process that complies with the FSA. It is also not open to the Caring Society to demand reports or evidence from the SIC. While the Caring Society may be frustrated by the

lack of responsiveness from the SIC to certain submissions or inquiries, the manner in which the Caring Society has provided their submissions may, in large measure, be responsible for the reception that their submissions have received, as it is not open to the Caring Society to dictate to the SIC what must be done by the SIC or how the SIC should do it.

[27]   It is evident to the Court that many of the concerns raised by the Caring Society, which resulted in the filing of extensive evidence on this motion and the cross-examination of two affiants, could have been addressed (and likely resolved) by better cooperation between the parties/SIC and the Caring Society. It is in none of the Class Members' best interests for the animosity between the Caring Society and the parties/SIC to continue, as the Caring Society undoubtedly has valuable insight to offer to the SIC to assist them with the design and implementation of the various claims processes. The Court expects that the dealings between the Caring Society and the parties/SIC will improve going forward.

(a)   Direction regarding a companion claims process

[28]   As stated above, the Caring Society seeks a direction that the SIC submit a companion claims process for identifying and approving Removed Child Class Members who have not been identified in the ISC Database, but are otherwise eligible for compensation under the FSA, by September 1, 2024.

[29]   After extensive questioning at the hearing, it became evident that the Caring Society's underlying concern is based on the fact that the SIC has not expressly confirmed to the Caring Society that a further claims process will be developed and submitted to the Court to ensure that

an eligible Removed Child Class Member whose name does not appear in the ISC Database will be eligible for compensation. While the Caring Society filed extensive evidence regarding the completeness of the ISC Database, it is not their position that the ISC Database should not be used to approve the claims of the Removed Child Class Members; rather, the Caring Society is concerned that there is a possibility that an eligible Removed Child Class Member may not appear on the ISC Database and thus, not receive compensation. At this point, this concern is speculative, as the ISC Database remains under construction and no Claimant has yet to have their name run through the ISC Database. However, this issue is on the SIC's radar.

[30]   By way of context, Article 5.01(10) of the FSA empowers the SIC to develop claims processes for the various classes in phases. The development of the claims process for some classes is more difficult, whereas for others, such as the Removed Child Class, it is more straightforward. By coming to the Court seeking approval of these processes in stages, the Administrator has an ability to ensure that settlement funds begin to flow as soon as possible to some Class Members while the claims process for others remains under development.

[31]   In the case of the Removed Child Class, Article 6.02(3) of the FSA provides that eligibility for compensation (and Enhancement Factors) "will be based on objective criteria and data primarily from ISC and Supporting Documentation as the case may be." Accordingly, the FSA, as approved by the Court, does not limit Removed Child Class eligibility to only those Claimants who appear in the ISC Database.

[32]   Article 4 of the Claims Process sets out how the Administrator will determine whether a Removed Child Class Claimant is eligible for compensation. As of the launch date of the Claims Process, all potential Removed Child Class Members may submit their applications. Those identified in the ISC Database will receive an eligibility decision. Those who are plainly not eligible (such as an individual claiming as a Removed Child Class Member verified to have been born in 1950) will receive a denial. Other Claimants who are not identified in the ISC Database but who are not plainly ineligible will receive an inconclusive eligibility letter from the Administrator. For those whose eligibility is inconclusive, the Administrator will continue to run the Claimant's name through the ISC Database against new additions thereto until such time as the construction of the ISC Database is complete (estimated to be the end of 2025). If a Claimant is later found in the ISC Database, they will receive an eligibility letter.

[33]   Article 4.7(B) of the Claims Process addresses the situation of a Claimant who has received an inconclusive eligibility letter and is never found in the ISC Database. Article 4.7(B) provides:

> A process is under development for Claimants who will have received an Inconclusive Eligibility Letter. This process will provide direction on next steps for Claimants who, by the time it is finalized, are still awaiting an Eligibility Decision.

[34]   By virtue of Article 4.7(B) of the Claims Process, I find that the SIC has committed to the Court that they will return with a further claims process to address claims made by eligible Removed Child Class Members whose names do not appear in the ISC Database. Whether or not there will be any such Claimants is a matter yet to be determined. However, in order for the SIC to comply with the FSA and, in particular, Article 6.02(3) thereof, there will have to be a process

implemented for an eligible Removed Child Class Member to receive compensation even if they do not appear in the ISC Database.

[35]   In that regard, I would note that at the time that I approved the FSA, Class Counsel advised the Court that a further claims process would be developed to ensure that eligible Removed Child Class Members who were not in the ISC Database would receive compensation. Paragraph 109 of the affidavit of Robert Kugler, sworn October 16, 2023, stated:

> For those claimants whose claims cannot be verified through the ISC Database, the plaintiffs and the Administrator are working on a process intended to be as simple as possible to enable the claimant to substantiate their eligibility for compensation. This process will recognize that class members' circumstances may require flexibility in the type of documentation necessary to support their claims, and the timelines for doing so, as guided by the principles in the FSA. This involves communication with the provinces and agencies which are underway.

[36]   As such, I am not satisfied that the Caring Society's requested direction is necessary, as the SIC is already obligated to return to the Court to submit a claims process for any eligible Removed Child Class Members not found in the ISC Database. With respect to the timing of this further claims process, I see no basis to require the SIC to return to the Court with such a process by September 1, 2024, or any other date in the near future. As noted above, the SIC is vested with the sole discretion to design the claims processes which are to be undertaken in stages. As such, it is in the SIC's discretion to determine when it is appropriate to return to the Court. Furthermore, no point is served in designing such a process prior to the conclusion of the construction of the ISC Database or the determination that there are, in fact, Claimants that require a further claims process and, if so, what identifiable characteristics such Claimants might have so as to guide the further claims process.

(b)   Direction regarding Abuse

[37]   As detailed above, the Caring Society requests that the Court direct the SIC to submit a "safe, evidence-based and expert/clinically informed approach for Removed Child Class Members to identify abuse in connection with their removal if they choose, including a safe and expert/clinically informed approach that may include the sharing of this information with the Administrator on behalf of the Removed Child Class Member by a trusted support person" by September 1, 2024.

[38]   By way of context, the FSA provides for direct compensation of Caregiving Parents or Caregiving Grandparents of a Removed Child Class Member under the Removed Child Family Class. However, Article 6.04(4) of the FSA provides that a Caregiving Parent or Caregiving Grandparent who has committed Abuse that has resulted in the Removed Child Class Member's removal is not eligible for compensation in relation to that Child. The FSA defines "Abuse" as "sexual abuse (including sexual assault, sexual harassment, sexual exploitation, sex trafficking and child pornography) or serious physical abuse causing bodily injury, but does not include neglect or emotional maltreatment."

[39]   Section 5.12 of the Claims Process addresses the issue of Abuse by a Caregiving Parent or Caregiving Grandparent. Subsection D provides that "[a] process is under development to address instances where a Claimant committed Abuse that resulted in the Associated Removed Child's removal." The Claims Process does not require a Removed Child Class Claimant to identify any abuser or to provide any particulars of any Abuse.

[40]   The evidence before the Court from the Administrator is that they engaged in consultation with the Parties and the Caring Society on the issue of Abuse. Specifically, Ms. Gott's affidavit, sworn April 12, 2024, states at paragraph 14(m):

> (i) We collaborated with the plaintiffs to research and consult regarding the process to confirm that a child's removal was not due to Abuse (as defined under the FSA) by the Claimant caregiver, including the options of self-declaration by Family Class Member (in Claims Form), voluntary report by Removed Child, Child Welfare Agency confirmation or records, with consideration given to a trauma-informed approach.

> (ii) The work on the Abuse portion of the Claims Process is ongoing. Given that the Claims of Caregiving Parents or Caregiving Grandparents will not be processed before approximately four years following the launch of the Claims Process, after the expiration of the Claims Deadline (Article 6.05 1) [*sic*] of FSA), we continue to work with the plaintiffs to develop a trauma-informed approach to Abuse determination – one of the most sensitive and potentially traumatizing implementation points in the Settlement Agreement.

[41]   When questioned at the hearing as to why the requested direction is required, the Caring Society asserted that the SIC had not provided the Court with any evidence to establish that the SIC's approach—which does not include an opportunity for Removed Child Class Members to voluntarily disclose Abuse—was trauma-informed based on consultations with experts. Moreover, the Caring Society asserted that it was possible that victims of Abuse could be more traumatized by waiting to address the issue of Abuse until later in the process, when the Removed Child Family Class Member determinations are made. While the Caring Society's written representations included a specific request that the Claims Form for the Removed Child Class Members be amended to include an opportunity for voluntary disclosure of Abuse, the Caring Society abandoned this request at the hearing.

[42]   I see no basis to interfere with the SIC's work in determining how best to address the issue of Abuse, which remains ongoing and which will ultimately result in a further claims process that will be put before the Court for approval. I am satisfied that the work being undertaken by the Administrator, in consultation with the SIC, the parties and the Caring Society, is consistent with the Administrator's obligations under the FSA and properly recognizes the sensitive and traumatic nature of this issue. While the Caring Society is critical of the absence of expert evidence before this Court on this issue, the same criticism could be levied at the Caring Society, who advocates for the Court to impose a particular approach without themselves providing any evidence that their approach is, in fact, trauma-informed and the better approach to take.

[43]   Again, as noted above, it is not the role of the Caring Society to dictate to the SIC and the Administrator how issues are to be addressed. The Caring Society has been given the opportunity to provide their submissions on this issue, which they have done, and it is up to the SIC to determine how to proceed (subject to Court approval). That said, I would note that the evidence before the Court is that, despite their participation in various consultations related to the issue of Abuse, the Caring Society did not raise with the SIC/Administrator the suggestion that the Claims Forms should be amended to permit the voluntary disclosure of Abuse by Removed Child Class Members. It should go without saying that it is not helpful to the development of the Claims Processes, for feedback to be provided for the first time only once the Claims Process is before the Court for approval.

[44]   Accordingly, the direction requested by the Caring Society will not be granted.

(c) **Direction regarding supports**

[45]   As detailed above, the Caring Society requests that the Court direct the SIC to submit a detailed description of the supports set out in Schedule 1 of the FSA, the status of the hiring and training of claims helpers and the status of the Caring Society's suggestions regarding increasing surge capacity and measures to ensure that existing services (such as mental health, addictions, domestic violence, cultural and child welfare services) have the capacity to support Class Members before the launch date, throughout the claims process and after the claims process, by September 1, 2024.

[46]   There is a dispute between the Caring Society and the SIC as to whether what the Caring Society seeks is an expansion, and thus a renegotiation, of the supports agreed to in the FSA. The Caring Society denies that it is seeking to change the landscape of the supports required under the FSA. Rather, they stressed at the hearing that their concern is with respect to the timing of the availability of the supports. The Caring Society asserts that the supports prescribed by the FSA must be available to Class Members <u>before, during and after</u> the Claims Process and, despite the Caring Society's engagement with the SIC on the issue of supports, the Caring Society asserts that it has not received clear and cogent evidence that the robust supports prescribed by the FSA will be available to Class Members in a timely manner. The Caring Society states that the direction they seek will provide a level of comfort by requiring the SIC to assure stakeholders that the required supports will be in place, given that no such assurances have been provided by the SIC to the Caring Society.

[47]   The Claims Process currently before the Court for approval does not prescribe supports for

Claimants. Rather, the requirement to provide supports to Claimants is addressed in the FSA. As

such, the Caring Society's requested direction does not have a direct nexus to the issue of whether

the Claims Process should be approved. Rather, the Caring Society is raising a concern with the

SIC's compliance with the FSA, which is not an issue properly before the Court on this motion.

[48]   As set out in Article 3.02(1)(j) of the FSA, one of the duties of the Administrator is to

provide:

> […] navigational supports to Class Members in the Claims Process
> as outlined out in Schedule I, Framework for Supports for Claimants
> in Compensation Process, including: (i) assistance with the filling
> out and submission of Claims Forms; (ii) assistance with obtaining
> Supporting Documentation; (iii) assistance with appeals to the
> Third-Party Assessor pursuant to this Agreement; (iv) reviewing
> Claims Forms, Supporting Documentation, and First Nations
> Council Confirmations; and (v) determining a Claimant's eligibility
> for compensation in the Class;

[49]   Article 9 of the FSA identifies certain supports that will provided to Class Members in the

Claims Process. Specifically, Article 9(1) states that:

> The Parties will agree to culturally sensitive health, information, and
> other supports to be provided to Class Members in the Claims
> Process, as well as funding for health care professionals to deliver
> support to Class Members who suffer or may suffer trauma for the
> duration of the Claims Process, consistent with Schedule I,
> Framework for Supports for Claimants in Compensation Process,
> and the responsibilities of the Administrator in providing
> navigational and other supports under Article 3.02.

[50]   Contrary to the assertion of the Caring Society, Article 9 does not impose an obligation on

the parties to have the required supports in place prior to the roll out of the Claims Process.

Notwithstanding, there are certain supports that have already been implemented, such as the Hope

for Wellness Help Line. As such, there is no issue at this stage of the settlement implementation of any non-compliance with the obligation to provide supports as prescribed by the FSA.

[51]   The evidence before the Court is that the Administrator and the SIC are working towards ensuring that all of the required supports are in place in time for the roll out of the Claims Process. While the Caring Society wants assurances that this will be done, and that the support providers will have the necessary training and capacity, there is no obligation on the SIC/Administrator to provide the Caring Society with those assurances. Moreover, there is also no obligation on the part of the SIC/Administrator to report to the Court at this time or to obtain the Court's approval of their planned supports. If there are any issues with the roll out of the required supports, the SIC confirmed at the hearing that they will advise the Court. In any event, the Court will be receiving a status report from the SIC in late October of 2024 as part of the SIC's annual reporting obligation as prescribed by Article 12.03(1)(l) and (m) of the FSA.

[52]   As such, I am not satisfied that the requested direction related to supports is necessary or appropriate.

II.   Conclusion

[53]   For all of these reasons, I am satisfied that the Claims Process is fair, reasonable and in the best interests of the Class as a whole, and that the directions sought by the Caring Society should not be issued.

<div align="right">
"Mandy Aylen"
Judge
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FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-402-19
STYLE OF CAUSE:	XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE v THE ATTORNEY GENERAL OF CANADA
DOCKET:	T-141-20
STYLE OF CAUSE:	ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON by his Litigation Guardian, Carolyn Buffalo, CAROLYN BUFFALO, and DICK EUGENE JACKSON also known as RICHARD JACKSON v THE ATTORNEY GENERAL OF CANADA
DOCKET:	T-1120-21
STYLE OF CAUSE:	ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JUNE 19, 2024
ORDER AND REASONS:	AYLEN J.
DATED:	JUNE 26, 2024

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