

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

And

CANADIAN HUMAN RIGHTS COMMISSION

Commission

And

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

Respondent

And

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

Interested Parties

AFFIDAVIT OF DUNCAN FARTHING-NICHOL
Affirmed March 13, 2025

Department of Justice Canada
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AFFIDAVIT OF DUNCAN FARTHING-NICHOL

I, **Duncan Farthing-Nichol**, federal public servant, of the Municipality of Dysart et al, in the Province of Ontario, **AFFIRM AS FOLLOWS:**

A. Introduction

1. I am employed by Indigenous Services Canada (ISC) as the Director of the Litigation Management Directorate within the Child and Family Services Reform Sector. I started work in the Litigation Management Directorate in June 2021 and have been in my current role since October 2022. I hold a Juris Doctor from Harvard Law School and a Bachelor of Arts from the University of Manitoba.
2. I am responsible for managing litigation related to the First Nations Child and Family Services Program (FNCFS Program) and *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c. 24. I played a significant role in national

negotiations on long-term reform of the FNCFS Program as well as in advancing the *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario (Ontario Final Agreement)* between Chiefs of Ontario (COO), Nishnawbe Aski Nation (NAN), and Canada.

3. In my capacity as Director, I have personal knowledge of the facts and matters deposed to in this affidavit regarding the FNCFS Program. Where my FNCFS Program information came from someone else, I identify the source of my information and I believe the information to be true. Unless stated otherwise, the facts and matters herein deposed by me regarding Jordan's Principle are based on information and belief from Julien Castonguay, acting Assistant Deputy Minister, Jordan's Principle, First Nations and Inuit Health Branch (FNIHB), ISC and Tasha Stefanis, Director General, Jordan's Principle, FNIHB, ISC, and I believe the information to be true. I am authorized to give evidence on behalf of Canada in response to this motion.
4. In preparing this affidavit evidence, I have reviewed the First Nations Child and Family Caring Society of Canada's (**Caring Society**) notice of motion dated January 14, 2025 and amended notice of motion dated January 27, 2025, the affidavit of Katherine Quintana-James affirmed February 13, 2025 (the **Quintana-James Affidavit**), the affidavit of Amber Potts affirmed March 3, 2025 and all documents referenced in this affidavit.
5. In this affidavit, I will summarize the steps that ISC has taken since the Canadian Human Rights Tribunal's decision in 2016 CHRT 2 (the **Merit Decision**) to consult and negotiate towards long-term reforms of the FNCFS Program and Jordan's Principle to eliminate the discrimination found by the Tribunal in this complaint and prevent its recurrence. My evidence is necessarily limited by the application of settlement privilege which, for clarity, Canada does not waive. My evidence is also necessarily limited in order to comply with the page limit.

B. Overview of results and incremental reforms following the Merit Decision

6. Since the Merit Decision, the FNCFS Program has undergone extensive incremental reforms, developed and implemented based on research and evidence, and in consultation with the Caring Society, the Assembly of First Nations (AFN), COO and NAN. Meanwhile, Canada has continued to scale up implementation of the interim model of Jordan's Principle in line with the orders of the Canadian Human Rights Tribunal (**Tribunal**) and based on input from the Caring Society, the AFN, COO, NAN and others. While not possible to detail all of this progress within the confines of this affidavit, some examples include:
 - a) substantial increases to funding for the FNCFS Program, from \$676.8 million in the 2015-16 fiscal year to over \$3.6 billion in the 2023-24 fiscal year, as the Program shifted from a protection focus to a focus on prevention and on the well-being of children, youth, young adults and families;
 - b) implementation of the actual costs orders set out in 2018 CHRT 4;
 - c) outside the Tribunal's orders, creation of the Community Well-Being and Jurisdiction Initiatives funding stream (through which approximately \$941 million flowed to First Nations from 2018-19 to 2022-23, including approximately \$394 million under 2021 CHRT 12 to First Nations not served by an FNCFS agency);
 - d) implementation of the consent order in 2021 CHRT 12 on prevention funding for First Nations not served by an FNCFS agency;
 - e) in advance of a final agreement on long-term reform of the FNCFS Program, implementation of a consent order on prevention funding and post-majority support services funding under the FNCFS Program;
 - f) in advance of a final agreement on long-term reform of the FNCFS Program and outside the Tribunal's orders, implementation of funding for First Nation Representative Services across the country;
 - g) substantial increases to access to Jordan's Principle, including \$8.8 billion announced since 2016 and support for 8.7 million products, services and supports for First Nations children;

- h) creation of the 2018 Standard Operating Procedures for Jordan's Principle requests; and
 - i) creation of a requirement on all ISC staff to complete at least 15 hours annually of mandatory Indigenous cultural competency training.
7. ISC's consultative efforts have also led to negotiations, resulting in:
- a) the December 31, 2021 Settlement Agreement in Principle (Compensation) to resolve compensation for the discrimination found in the Merit Decision and discrimination alleged in other proceedings. This Agreement in Principle resulted in a final \$23.34 billion First Nations-led settlement. The settlement was approved by both the Federal Court and the Tribunal in 2023.¹ The claims process for members of the Removed Child and the Removed Child Family Classes opened on March 10, 2025;
 - b) the December 31, 2021 *Agreement-in-Principle on Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle* (the **AIP**), between Canada, the Caring Society, the AFN, COO and NAN, which is further discussed below;
 - c) the draft *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program* (the **Draft Final Agreement**), conditionally approved by Canada, the AFN, COO and NAN on July 10, 2024, discussed further below;
 - d) the draft Ontario Final Agreement, conditionally approved by Canada, COO and NAN on February 7, 2025, and ratified by the NAN Chiefs and the Ontario Chiefs-in-Assembly on February 25 and 26, 2025 respectively; and
 - e) the *Trilateral Agreement in Respect of Reforming the 1965 Agreement* (**Trilateral Agreement**) between Canada, COO and NAN, which was ratified by the NAN Chiefs and the Ontario Chiefs-in-Assembly on February 25 and 26, 2025 respectively, and will come into effect on April 1, 2025.

¹ [*Moushoom v Canada \(Attorney General\)*](#), 2023 FC 1533; 2023 CHRT 44.

C. Overview of consultation activities

i. The Minister's early consultations

8. From autumn 2016 to March 2017, ISC engaged with First Nations leadership, communities, youth, agencies, service providers, provinces and Yukon on how to reform the FNCFS Program. Dr. Cynthia Wesley-Esquimaux, a Special Representative for the Minister of ISC (the **Minister**) who was appointed to lead this engagement process, released her [final summary report](#) in September 2017.
9. In January 2018, the Minister hosted an emergency national meeting with provincial and territorial governments, First Nations, Inuit and Métis leaders, Elders, youth, community service organizations and advocates to address the over-representation of Indigenous children in care and chart a path towards systemic reform. Celeste McKay Consulting Inc prepared a detailed report of the sessions on ISC's behalf, called [A Report on Children and Families Together: An Emergency Meeting on Indigenous Child and Family Services](#). The report included six points of action, one of which was to shift programming focus to prevention and early intervention.

ii. The National Advisory Committee (NAC)

10. In response to the Merit Decision, Canada, the Caring Society and the AFN agreed to re-establish the NAC as a joint committee comprised of representatives from the AFN, the Caring Society and ISC, and of First Nations child and family service experts appointed by the AFN and representing the AFN's ten regions. The NAC was mandated to provide technical advice on the design and implementation of reforms to the FNCFS Program. The NAC met eight times in 2016; six times a year between 2017 and 2020; at least twice in 2021; and five times in 2022. I am informed from a review of ISC's meeting notes, and verily believe, that discussion items included implementation of the Tribunal's orders, prevention, First Nation Representative Services, post-majority support services, a First Nations secretariat, an alternative dispute resolution mechanism, capital funding, the FNCFS Program's funding review, federal-provincial and federal-Yukon agreements, and departmental reform of ISC. The NAC also discussed the terms and conditions of the FNCFS Program.

11. The last NAC meeting was held in February 2024. I am informed from a review of ISC's meeting notes, and verily believe, that ISC officials were invited to participate as observers for part of the meeting, but were asked to leave while other members discussed a compensation update, a Phase 3 research update by the Institute for Fiscal Studies and Democracy (**IFSD**), FNCFS funding mechanisms, an update from the Expert Advisory Committee on ISC's departmental reform, and the 2023 AFN resolutions on the FNCFS Program and Jordan's Principle.

iii. **Jordan's Principle Action Table (JPAT)**

12. JPAT is a consultation sub-committee of the NAC. It is chaired by the AFN and includes First Nations representatives from across Canada. JPAT was created with the intent to co-develop a long-term approach to Jordan's Principle. Canada began to engage with JPAT in 2017. In 2018, the AFN, JPAT and ISC co-developed a paper entitled "Proposed Policy Options for the Long Term Implementation of Jordan's Principle" (the **Jordan's Principle Storyline**). This proposal included policy options for a long-term approach that supported First Nations control over Jordan's Principle. The AFN First Nations-in-Assembly supported the policy options via AFN Resolution 27/2018.

13. In 2022, the AFN initiated consultations with ISC to update the Jordan's Principle Storyline, which could serve as the basis of a future long-term approach. However, JPAT has not met regularly in the last few years. Following the AIP, discussed further below, the majority of discussions on long-term reform of Jordan's Principle and the FNCFS Program were re-directed to a dedicated long-term reform negotiation table involving Canada, the Caring Society, the AFN, COO and NAN.

iv. **NAN-Canada Remoteness Quotient Table**

14. In March 2017, NAN and ISC established the NAN-Canada Remoteness Quotient Table (the **RQ Table**) which was implemented through a consent order (2017 CHRT 7). The RQ Table developed the Remoteness Quotient Adjustment Factor to determine evidence-based funding adjustments to account for the increased costs to deliver child and family services in remote communities. Further details on the RQ Table's progress are below.

v. **Choose Life Table**

15. In 2017, Canada agreed to fund and participate in the Choose Life Implementation Working Group for the purpose of operationalizing the Choose Life initiative developed by NAN and Canada. The initiative is intended to support youth at risk of suicide in NAN communities in Ontario. As committed in the AIP, Canada and NAN established the Choose Life Table in 2022 to support discussions on a long-term approach to the Choose Life initiative. Canada continues to provide funding through Jordan's Principle for the Choose Life initiative while these discussions are ongoing. Despite the bifurcation of Jordan's Principle long-term reform discussions, discussed below, ISC and NAN agreed that discussions at the Choose Life Table would continue. The most recent meeting was held in mid-2024.

vi. **The Consultation Protocol**

16. In response to 2018 CHRT 4, Canada entered into a Consultation Protocol with the Caring Society, the AFN, COO, NAN and the Canadian Human Rights Commission (**Commission**) to guide Canada's consultations with those parties respecting the development and implementation of immediate relief measures in relation to the FNCFS Program and Jordan's Principle, with the expectation that the Consultation Protocol could eventually be applied and the process expanded upon for the purpose of mid- and long-term reform. Ultimately, discussion on long-term reforms flowed into negotiations towards the AIP and Draft Final Agreement, discussed further below. The Consultation Protocol was signed by all parties on March 2, 2018.

vii. **The Consultation Committee on Child Welfare (CCCW)**

17. In accordance with the Consultation Protocol, Canada, the Caring Society, the AFN, COO, NAN and the Commission (collectively the **Parties to the Complaint**) established the Consultation Committee on Child Welfare (CCCW) and finalized its Terms of Reference in August 2018.

18. Between May 2018 and October 2021, the CCCW formally met approximately 23 times. I am informed from a review of ISC's meeting notes, and verily believe, that discussions included implementation of the CHRT's orders and reforms, the development of recipient guides for the claims process, the process for administering claims for actual costs under the FNCFS Program, recipient communications, revised terms and conditions for the FNCFS Program, compensation, training for ISC staff, Ontario-specific implementation issues, and the retention of experts to undertake studies to inform long-term reform of the FNCFS Program.
19. In addition to formal meetings, there has been regular email communication between ISC and the other members of the CCCW, including to share data on claims for actual costs and to seek feedback on draft communications for recipients.
20. The CCCW stopped meeting following adoption of the AIP, which provided a new confidential negotiation process towards long-term FNCFS Program reform (discussed further below).

viii. The Jordan's Principle Operations Committee (JPOC)

21. JPOC became operational in November 2018, initially reporting to the CCCW. JPOC is comprised of First Nations regional representatives and representatives from the Caring Society, the AFN, COO, NAN and ISC. It is not a decision-making body, but a venue to consult on and discuss the operational implementation of Jordan's Principle. JPOC's mandate includes providing input and advice on Canada's implementation of Jordan's Principle.
22. JPOC meetings were initially scheduled about every six weeks, with strong attendance from all members. Following the Caring Society's December 2023 non-compliance motion regarding Jordan's Principle, operational matters became the subject of litigation and were no longer discussed at JPOC. JPOC meetings were then scheduled on an *ad hoc* basis. Since May 2024, there have been four JPOC meetings, with the most recent meeting taking place on February 25, 2025.

23. ISC routinely shares data analyses with JPOC, including monthly compliance reports and annual deep dive analyses on Jordan's Principle. These reports contain details on approvals, expenditures and the types of products, services and supports funded through Jordan's Principle.

ix. **The Expert Advisory Committee (EAC)**

24. Canada, the Caring Society, the AFN, COO and NAN agreed in the AIP that reform of ISC and any successor departments would be required to address systemic discrimination and the "old mindset" identified by the Tribunal to prevent the recurrence of discrimination. ISC and the other parties agreed to jointly establish the EAC to support the design and implementation of an independent third-party evaluation that would identify and provide recommendations to redress internal departmental processes, procedures, and practices that contribute to the discrimination identified by the Tribunal. Recommendations from the independent third-party evaluation would lead to the development of a workplan for the implementation of departmental reforms to prevent the recurrence of discrimination. The EAC would also provide advice on departmental policies, including ISC's mandatory cultural competency training and performance commitments for employees within ISC.

25. The AFN, the Caring Society and Canada sought a consent order on this commitment, which was ordered in 2022 CHRT 8. Canada, the Caring Society and the AFN worked together to identify experts from across the country. The Committee has nine core members. Eight leading experts across various fields, including individuals with lived experiences, were identified as members and subsequently contracted by ISC to carry out the EAC's work. The EAC later confirmed the nomination of a youth member, who joined the EAC in spring 2024. ISC acts as the Secretariat to the EAC to provide administrative support.

26. The EAC began to meet in April 2022. The EAC is co-chaired by the Caring Society, the AFN and ISC and has two *ex officio* members representing NAN and COO.

27. The EAC has had twelve formal meetings since April 2022, with the last formal meeting held in April 2024. In addition, there have been numerous sub-working group and *ad hoc* meetings.

28. ISC has worked in a collaborative manner with its co-chairs and the EAC members to develop an evaluation framework, a monograph (200-page literature review and synthesis report), a draft statement of work for the third-party evaluators, draft terms of reference, and a draft confidentiality agreement.
29. The EAC's terms of reference have not been ratified due to a difference of opinion between ISC, the Caring Society and the EAC members. The EAC members have sought a broad mandate, including the ability to make recommendations outside of and in advance of the third-party evaluation. There is also a disagreement related to confidentiality requirements to support information-sharing and open dialogue between the co-chairs and EAC members.
30. In the Draft Final Agreement, Canada, the AFN, COO, and NAN proposed terms of reference for the EAC with a focus on the third-party evaluation and on mandatory cultural competency training and performance commitments for ISC employees. This was in keeping with the original intent of the EAC.
31. To date, the third-party evaluation has not been launched and there are no formal EAC meetings scheduled. The EAC members, however, have been meeting without notifying or inviting ISC. ISC is currently pursuing efforts to advance the work with the EAC while managing the differing opinions on the EAC's mandate.

D. Overview of negotiations

i. The AIP

32. With the assistance of the late Honourable Murray Sinclair, in fall 2021, Canada, the Caring Society, the AFN, COO and NAN (collectively the **AIP Parties**) negotiated a detailed outline of a reformed FNCFS Program, high-level principles and process for long-term reform of Jordan's Principle, and commitments from Canada towards immediate reforms. These were captured in the AIP. While the AIP itself is confidential and subject to settlement privilege, publicly available information on the AIP, including a publicly available summary, was previously filed with the Tribunal in Exhibit 61 of the January 12, 2024 Affidavit of Cindy Blackstock.

33. As part of the AIP negotiations, ISC committed to immediate reforms of the FNCFS Program and measures related to Jordan's Principle. Those reforms and measures, which were incorporated into 2022 CHRT 8 on consent, include:
 - a) FNCFS Program funding for prevention and post-majority support services, which began to flow in the 2022-23 fiscal year;
 - b) funding for Jordan's Principle research, including a data assessment and a needs assessment from IFSD;
 - c) funding for IFSD's FNCFS Program Phase 3 and non-agency First Nations research;
 - d) creation of the EAC; and
 - e) consultation with the Parties on mandatory cultural competency training and performance commitments for employees within ISC.
34. Though not part of 2022 CHRT 8, ISC also began in the 2022-2023 fiscal year to implement the AIP's commitment to fund First Nation Representatives Services across the country, rather than just in Ontario.
35. In the 2023-2024 fiscal year, outside the FNCFS Program, ISC began distributing to First Nations the \$2 billion over five years committed in the AIP and announced in Budget 2022 to support the purchase, construction, and renovation of housing units in their communities. That time-limited funding assists First Nations in addressing housing as a cause of children coming into care and remaining in care.
36. Regarding Jordan's Principle, the AIP Parties agreed to discuss options for First Nations to take on a larger role in approving and delivering products, services and supports under Jordan's Principle. The AIP Parties also agreed that, following a needs assessment and feedback from First Nations and service providers, they would negotiate towards a long-term approach to Jordan's Principle.
37. The AIP established the foundation for long-term reform of both the FNCFS Program and Jordan's Principle. Based on this foundation, the AIP Parties engaged in negotiations starting in 2022 towards long-term reform of both Jordan's Principle and the FNCFS Program in accordance with the AIP approach.

38. The AIP Parties negotiated over the course of many months, generally meeting weekly or twice weekly. The AIP Parties also held a number of full-day and multi-day in-person negotiation sessions, such as in April 2022, August 2022 and March 2023.

ii. **The Caring Society and the AFN’s “Joint Path Forward”**

39. On March 15, 2023, the AFN and the Caring Society proposed the *Joint Path Forward* to guide ongoing negotiations under the AIP. In it, they proposed bifurcation of the long-term reform negotiations so that negotiations on the FNCFS Program would be completed first, while negotiations on Jordan’s Principle would be deferred to a later date.

40. In October 2023, ISC secured a revised negotiation mandate so that it could continue negotiations in accordance with the AFN and the Caring Society’s wishes.

41. On December 19, 2023, the Caring Society filed a non-compliance motion with respect to Canada’s implementation of the Tribunal’s Jordan’s Principle orders. The motion did not call into question Canada’s compliance with the orders on the FNCFS Program. Canada took the position that, given the bifurcation of the negotiations, the Caring Society could continue as a full participating party in the negotiations on the FNCFS Program.

42. Despite this, the Caring Society progressively withdrew from those negotiations. Ultimately, on February 13, 2024, the Caring Society advised ISC, the AFN, COO and NAN that it would not participate in the ongoing negotiations on the FNCFS Program, but nonetheless expected to continue to be engaged to discuss specific topics.

43. Canada, the AFN, COO and NAN remained actively and intensively engaged in negotiations towards long-term reform of the FNCFS Program, and repeatedly invited the Caring Society to participate in the negotiations. For example, in a letter dated February 29, 2024 and in response to the Caring Society’s concerns over limited resources, Canada, the AFN, COO, and NAN offered to provide a forward negotiation agenda to the Caring Society so that the Caring Society could focus its resources by identifying topics on which it would like to share its views. On March 19, 2024, the Caring Society attended an in-person negotiation session with the other AIP Parties, where it presented its positions, also published on its website, on two topics it had identified in the forward agenda.

44. Also in the February 29, 2024 letter, Canada, the AFN, COO and NAN invited the Caring Society to return as a full participant in the negotiations. However, the Caring Society would not agree to adhere to the negotiations' confidentiality, stating that it would make public its positions on long-term reform of the FNCFS Program.
45. In a March 25, 2024 letter to the Caring Society, Canada reiterated its commitment to completing a final agreement on the long-term reform of the FNCFS Program based on the parameters set out in the *Joint Path Forward*. Canada explained that because of the bifurcation of discussions on Jordan's Principle from those on the FNCFS Program, Canada did not see an impediment to the Caring Society's full participation in negotiations. Canada raised issue with the Caring Society's continued assertion that it would publicly post its positions, noting that information or positions that Canada provided to the Caring Society could be discerned by inference from the Caring Society's public statements, which would breach the confidential nature of the discussions. Canada repeated that it remained interested in an approach to sharing information with the Caring Society while abiding by its obligations to maintain settlement privilege.
46. On April 5, 2024, COO shared a draft of the Draft Final Agreement with the Caring Society on behalf of Canada, the AFN, COO and NAN, following the Caring Society's agreement to maintain settlement privilege with respect to the draft. The Caring Society returned its comments on the draft on April 22 and April 25, 2024. Canada provided a response to the Caring Society's comments on the draft on June 29, 2024.

iii. **The Draft Final Agreement**

47. On July 11, 2024, Canada, the AFN, COO, and NAN announced the Draft Final Agreement had been reached. The Draft Final Agreement, negotiated based on the AIP's evidence-informed vision for reform, was subject to approval by First Nations and the Tribunal.

48. The reforms contained within the Draft Final Agreement more than doubled the financial commitment Canada had made in the AIP. The Draft Final Agreement would have legally bound Canada to provide \$47.8 billion in stable and predictable funding over ten years for a fully reformed FNCFS Program. The Draft Final Agreement was intended to be a comprehensive settlement and record of the necessary steps and actions, and the embodiment of the best efforts of Canada, the AFN, COO and NAN, to eliminate the discrimination found by the Tribunal in relation to the FNCFS Program and prevent its recurrence. It articulated a comprehensive, prevention-focused funding approach aimed at empowering First Nations to decide on and deliver services to children and families in their communities.

iv. **First Nations engagement on the Draft Final Agreement**

49. On July 11, 2024, the AFN provided First Nations with the Draft Final Agreement and undertook regional engagement sessions with First Nations leaders. The AFN planned a Special Chiefs Assembly for September 2024 to enable First Nations to vote on the Draft Final Agreement. On August 27, 2024, the AFN announced that it was postponing the September 2024 Special Chiefs Assembly to October 16-18, 2024, to allow Chiefs more time to consider the Draft Final Agreement.
50. ISC officials participated in approximately 27 engagement sessions across the country from July to October 2024. Other engagement sessions also took place, to which ISC was not invited.
51. Canada supported the AFN, COO and NAN in their engagement with First Nations by providing information materials to participants, such as a deck on the Draft Final Agreement and information sheets on the funding components of the reformed FNCFS Program. ISC representatives, including myself, attended the sessions and gave presentations on the Draft Final Agreement, focused on clarifying implementation details. Counsel from Justice Canada also attended the engagement sessions to assist ISC representatives in responding to legal questions that arose.
52. ISC provided funding to facilitate participation in the engagement sessions to ensure First Nations, First Nation regional organizations and others were informed about the Draft Final Agreement and had the opportunity to ask questions and provide feedback.

53. Following the AFN's engagement sessions, ISC attended follow-up in-person and virtual meetings with First Nations organizations; engaged with individual First Nations that contacted ISC directly; provided regional funding profiles; and provided detailed financial breakdowns for 2025-26 to each individual First Nation to ensure they had an understanding of their estimated FNCFS Program funding under the Draft Final Agreement in advance of the October 2024 Special Chiefs Assembly.
54. In September 2024, the AFN, with the consent of COO and NAN, proposed revisions to the Draft Final Agreement to Canada as a result of concerns raised during the engagement sessions. ISC agreed to the revisions. On October 9, 2024, the AFN released an amended Draft Final Agreement. The amended Draft Final Agreement made a number of improvements, including broadening the composition of the Reform Implementation Committee to ensure regional representation, requiring that the President of the Dispute Resolution Tribunal be a First Nations person with judicial or adjudication experience, and revising the definition of "FNCFS Service Provider" such that First Nations were not defined as service providers.

v. **The Caring Society's interventions in opposition to the Draft Final Agreement**

55. Despite its refusal to participate in the negotiations towards the Draft Final Agreement, the Caring Society wrote multiple opinions critiquing the Draft Final Agreement, including:
 - [FSA Report Card](#) (August 2, 2024)
 - [Final Agreement Myths and Realities](#) (August 9, 2024)
 - [Letting Canada off the Hook](#) (August 12, 2024)
 - [Proposed Amendments to the Final Agreement](#) (September 24, 2024)
56. I am advised by Lisa Legault, Director General, Program and Partnerships Branch, Child and Family Services Reform Sector, ISC, and do verily believe, that she attended engagement sessions on the Draft Final Agreement at which the Caring Society was also present, although I was not personally present at those sessions. I am further advised by Ms. Legault, and do verily believe, that in those engagement sessions, the Caring Society urged First Nations to vote against the Draft Final Agreement.

57. On August 7, 2024, the Caring Society wrote to the Minister to express concerns related to the Draft Final Agreement (filed as Exhibit A of the Quintana-James Affidavit). The Caring Society proposed a meeting with Canada, the AFN, COO, and NAN, with the assistance of a mediator, to discuss its proposed amendments to the amended Draft Final Agreement. The Caring Society followed up with a counsel-to-counsel letter on September 12, 2024, proposing a two-day meeting with Canada, the AFN, COO and NAN to discuss amendments to the amended Draft Final Agreement. The Caring Society then made a request to all Parties to the Complaint on September 19, 2024, to reconvene the CCCW for a non-confidential meeting to discuss the Caring Society's proposed changes to the amended Draft Final Agreement (Exhibit B of the Quintana-James Affidavit contains both communications).
58. On October 2, 2024, COO responded to the Caring Society on behalf of itself, the AFN, NAN and Canada. A copy of this letter is filed as Exhibit C of the Quintana-James Affidavit. COO advised that, in the view of parties to the Draft Final Agreement, the CCCW consultation process had been superseded by the AIP negotiation process, and that Canada, the AFN, COO and NAN had made repeated efforts to re-engage the Caring Society in that negotiation process. COO reiterated that the parties to the Draft Final Agreement remained willing to meet with the Caring Society for confidential discussions on the Draft Final Agreement.
59. On October 17, 2024, the Minister responded to the Caring Society's August 7, 2024 letter. A copy of the Minister's letter is filed as Exhibit A of the Quintana-James Affidavit. The Minister recognized the Caring Society's contributions in advancing reform of the FNCFS Program through the incremental progress that had been made over many years. The Minister stated that the Caring Society's proposed changes to the amended Draft Final Agreement - including retaining claims-based interim funding approaches and having the Tribunal retain its oversight of the FNCFS Program - were incompatible with the objective of developing long-term solutions for comprehensive reform. She also noted that the amended Draft Final Agreement was built on the AIP's framework to which all AIP Parties had agreed, including the Caring Society.

vi. **First Nations' votes on the amended Draft Final Agreement**

60. The Chiefs of COO and NAN ratified the amended Draft Final Agreement during their assemblies on October 9 and 10, 2024, respectively.
61. On October 17, 2024, after two days of discussions at the AFN's Special Chiefs Assembly in Calgary, Alberta, the First Nations-in-Assembly voted to reject the amended Draft Final Agreement. The vote was 147 in favour and 267 opposed, with one abstention.
62. On October 18, the First Nations-in-Assembly adopted two resolutions – 60/2024 and 61/2024 - calling for Canada to renegotiate the Draft Final Agreement through a public negotiation process that would include the Caring Society and the National Children's Chiefs Commission (NCCC), a newly constituted body to be composed of First Nations leadership. Resolution 61/2024 lists substantive elements required by the Chiefs in a new agreement, some of which go beyond the AIP's framework for reform and the scope of the complaint that underlies these proceedings. The Caring Society filed a copy of these resolutions with the Tribunal on January 3, 2025, and they were subsequently filed in evidence as Exhibit E to the March 3, 2025 Affidavit of Amber Potts.
63. On December 5, 2024, the First Nations-in-Assembly adopted Resolution 90/2024, a copy of which was filed as Exhibit D to the Quintana-James Affidavit. The Resolution stated in part that the First Nations-in-Assembly:
 - a) confirm that the \$47.8 billion is only the floor for negotiations on long-term reform of the FNCFS Program; and
 - b) direct that Canada obtain a new negotiation mandate within thirty days of the resolution.

vii. **Subsequent correspondence with the AFN, the Caring Society and the NCCC**

64. Following the First Nations-in-Assembly's rejection of the amended Draft Final Agreement, the Caring Society, the AFN and the NCCC wrote to Canada, expressly seeking that Canada obtain a new negotiation mandate to achieve long-term reform on the terms approved by the First Nations-in-Assembly. As noted above, these terms are well outside the framework of the AIP, including, for example, indefinite Tribunal oversight. This correspondence includes:

- a) An October 29, 2024 letter from the National Chief of the AFN to the Minister, expressing thanks for the "...good work that we have achieved together on this file" and calling on Canada "to obtain a new negotiation mandate aligned with the resolutions and provide the resources to advance the work". A copy of this letter is filed as Exhibit F to the Affidavit of Amber Potts and is dated October 25, 2024, although the version received by ISC is dated October 29, 2024.
- b) An October 29, 2024 letter from the Caring Society's counsel to Canada's counsel, filed as Exhibit E to the Quintana-James Affidavit, stating "The Caring Society has done extensive work and is ready to engage in a new approach to negotiations set out by the rights holders in Resolutions 02 and 04, with the support of the Children's Chiefs Commission...these discussions would not be covered by settlement privilege".
- c) A November 12, 2024 letter from the President of the Caring Society to the Minister, attached hereto and marked as Exhibit "A", discussing the AFN resolutions "to reset the negotiations".
- d) A December 9, 2024 letter from the Caring Society's counsel to counsel for Canada, the AFN, COO and NAN, filed as Exhibit F to the Quintana-James Affidavit, stating the Caring Society is committed to "...achieve a negotiated settlement..."; welcoming "...the calls from leadership to reject portions of the Agreement in Principle...and the establishment of a new negotiation approach..."; and calling on Canada to "...obtain a new negotiation mandate within thirty (30) days".

- e) A January 8, 2025 letter from the Caring Society's counsel to Canada's counsel, filed as Exhibit H to the Quintana-James Affidavit, "...calling on Canada to immediately obtain a new mandate and return to the negotiation table...". This was followed by a January 9, 2025 email from the Caring Society's counsel to Canada's counsel, seeking a copy of the draft agreement under discussion between Canada, COO and NAN. Canada's counsel responded on January 10 and January 14, 2025, advising that the draft agreement with COO and NAN was confidential and subject to settlement privilege, and that Canada has made every effort to work with the Parties to the Complaint to reform the FNCFS Program and reach a comprehensive, fair and equitable resolution to the complaint, informed by experts, outside of the litigation. Copies of Canada's January 10 and 14 communications are filed as Exhibit I to the Quintana-James Affidavit.
- f) A January 22, 2025 letter from counsel for the NCCC to Canada's counsel, attached hereto and marked as Exhibit "B", advising that the NCCC was established "...with the mandate to oversee and move forward with further negotiations" and "is the new interface through which Canada will deal with AFN in relation to all matters concerning the LTR Agreements". In response, Canada's counsel wrote to the AFN's counsel on January 24, 2025, seeking clarification as to whether the NCCC's counsel now represents the AFN. The AFN's counsel responded on January 28, 2025, confirming that they remain counsel of record for the AFN and were awaiting instructions respecting long-term reforms, but that the NCCC's counsel does not represent the AFN. Canada's counsel then responded to the NCCC's counsel on February 14, 2025, advising that because the NCCC's counsel does not represent the AFN, Canada is unable to meet with them. Due to page limits, I have not attached copies of the January 24, January 28 and February 14, 2025 letters as exhibits.

- g) A January 24, 2025 letter from the Chair of the NCCC to the Prime Minister, the Minister and others, attached hereto and marked as Exhibit “C”, seeking “...further negotiations” and “...a binding letter of commitment before March 24, 2025, to secure existing commitments and to chart a pathway forward”. The Minister responded by way of letter dated February 25, 2025, attached hereto and marked as Exhibit “D”, stating that Canada “remains committed to the implementation of the Canadian Human Rights Tribunal’s orders, and to ending the discrimination identified by the Tribunal and preventing its recurrence.” The Minister also stated that there has been confusion regarding the role of the NCCC and whether it speaks on behalf of the AFN. The Minister encouraged the NCCC to work directly with the AFN to clarify the situation as to “whether you and the committee are the body that Canada should be working with”.
 - h) A January 28, 2025 letter from the President and the Executive Director of the Caring Society to the Prime Minister, the Minister and others, attached hereto and marked as Exhibit “E”, expressing their “...interest in supporting the development of a letter of commitment on long-term reform of First Nations child and family services and Jordan’s Principle” to “...set the stage for negotiations”.
 - i) A February 21, 2025 letter from the Chair of the NCCC to the Prime Minister, the Minister and others, attached hereto and marked as Exhibit “F”, stating that the \$47.8 billion commitment by Canada in the Draft Final Agreement was “in the ballpark”; alleging that “Canada’s duty was to return to the negotiating table...”; and providing a chart of required expansions to the Draft Final Agreement that, in the NCCC’s view, are mostly “solvable with minimal discussion”.
 - j) A March 4, 2025 letter from the AFN National Chief to the Minister, attached hereto and marked as Exhibit “G”, urging Canada to seek a revised mandate to negotiate a final agreement on long-term reform of the FNCFS Program and confirming AFN’s support for the NCCC’s “work on advancing the mandates of the First Nations-in-Assembly in relation to negotiating final agreements on long-term reform of the FNCFS Program and Jordan’s Principle”.
65. In addition, legal counsel for the AIP Parties have exchanged correspondence that is subject to settlement privilege and cannot be shared as evidence.

viii. Negotiations towards long-term FNCFS Program reform in Ontario

66. On October 25, 2024, Ontario Regional Chief Abram Benedict wrote to the Minister to express interest in pursuing an Ontario-specific approach to long-term reform of the FNCFS Program, based on the terms of the amended Draft Final Agreement. Starting in early January 2025, Canada engaged in intensive negotiations with COO and NAN towards such an agreement.
67. On February 7, 2025, Canada, COO, and NAN reached a draft Ontario Final Agreement. As contemplated in the Ontario Final Agreement, Canada, COO, and NAN also concluded separately a draft Trilateral Agreement with respect to reform of the 1965 Canada-Ontario *Memorandum of Agreement Respecting Welfare Programs for Indians (the 1965 Agreement)*.
68. NAN First Nations approved the Ontario Final Agreement and the Trilateral Agreement on February 25, 2025. On February 26, 2025, Ontario First Nations-in-Assembly approved both agreements, with 76 First Nations in favour, four opposed and three abstaining. That same day, COO, NAN and Canada signed the Ontario Final Agreement and the Trilateral Agreement.

E. Research, studies and external consultations

69. To support both consultation and negotiations towards long-term reform of the FNCFS Program and Jordan's Principle, ISC has financially supported research and studies in a number of areas, generally set out below.

i. Alternative Funding Methodology for FNCFS Program

70. Further to 2018 CHRT 4 and as approved by the CCCW, ISC provided funding to the AFN to contract IFSD at the University of Ottawa. IFSD was tasked with conducting an analysis of existing agency needs assessments, as well as a cost analysis of agency needs, to inform the development of an alternative funding system for the FNCFS Program. The IFSD provided its Phase 1 report on December 15, 2018, and its Phase 2 report on July 31, 2020. The IFSD's Phase 1 and Phase 2 reports informed the revised funding methodology agreed to by all AIP Parties in the AIP.

71. During negotiations towards the AIP, Canada agreed to fund additional research to inform the development of the final long-term funding approaches for the FNCFS Program. Accordingly, Canada entered into the 2022 CHRT 8 consent order noted above, requiring that Canada fund two additional IFSD studies.
72. First, Canada funded the AFN to contract IFSD to undertake Phase 3 research to model the reformed methodology and provide additional recommendations and data tools for service providers and communities. The AFN shared an interim Phase 3 report, in draft form, with Canada on March 4, 2024. It included recommendations that the reformed FNCFS funding approach include a new 3% top-up to baseline funding to cover increasing maintenance costs and that the effectiveness of splitting prevention funding between FNCFS agencies and First Nations (as opposed to providing all prevention funding to FNCFS agencies) be assessed. Canada received a further draft Phase 3 report from IFSD on March 4, 2025.
73. Second, Canada funded the Caring Society to contract IFSD to undertake needs assessments for First Nations not affiliated with a FNCFS agency. The Caring Society shared this final report with Canada, AFN, COO, and NAN on April 7, 2024. The report presents a scenario in which ISC would provide per capita funding of \$3,123 for non-affiliated First Nations, based on “average per capita expenditure from [non-affiliated First Nations] questionnaire data” and another scenario in which ISC would provide per capita funding of \$3,859, based on “average per capita expenditure of integrated [health and social] service providers in Quebec from questionnaire data”.

ii. **Remoteness research**

74. As noted above, Canada entered into a consent order with NAN to establish the RQ Table and provide funding to NAN to conduct research and develop a remoteness quotient. The remoteness quotient was to account for the increased costs of delivering child and family services in remote communities.

75. Phase I and Phase II of the Remoteness Quotient reports were filed with the Tribunal on September 8, 2017 and March 29, 2019. In January 2020, Canada and NAN agreed to continue the RQ Table to discuss the Final Phase II RQ Report and how to address issues related to remoteness in Ontario. The RQ Table developed the Remoteness Quotient Adjustment Factor (RQAF), which was proposed as part of the Draft Final Agreement to adjust the FNCFS Program's funding to account for higher costs in remote communities across Canada. The Ontario Final Agreement will use the RQAF for that same purpose.

iii. Ontario Special Study

76. In 2017, ISC and the Government of Ontario co-funded the Ontario Special Study to review the 1965 Agreement that provides federal funding to Ontario for a suite of social services, including child and family services, to First Nations people on-reserve in Ontario. The Study was also to provide options for reform of the 1965 Agreement. The Ontario Special Study, released in 2020, recommended that Canada, Ontario and First Nation representatives begin exploratory discussions to develop proposed terms for a new or amended 1965 Agreement.

77. The AIP specified that COO and Canada would reach out to the Government of Ontario to advance discussions on a reformed 1965 Agreement. The Trilateral Agreement concluded between Canada, COO, and NAN on February 7, 2025 lays out principles for preliminary discussions with the Government of Ontario on reform of the 1965 Agreement and commits Canada to use best efforts to reach a reformed 1965 Agreement with the Government of Ontario by March 31, 2027.

iv. Jordan's Principle Research

78. ISC also provided funding to IFSD to undertake a data assessment and a needs assessment to support the AIP Parties' negotiations on long-term reform of Jordan's Principle. The data assessment, entitled *Data Assessment and Framing of an Analysis of Substantive Equality through the Application of Jordan's Principle*, is dated September 1, 2022 and was shared with the Tribunal by the Caring Society in November 2022.

79. ISC has funded the Caring Society to support IFSD's needs assessment. The IFSD needs assessment, the final report for which remains outstanding, is to include: recommendations for the development of a policy framework; review of existing programs and services; identification of gaps; costs of closing gaps to achieve formal equality and/or substantive equality across relevant program areas; recommendations for reforming the operationalization of Jordan's Principle; and financial analysis and costing of the baseline and any proposed reforms.

80. In addition, ISC has begun an internal assessment and mapping of Jordan's Principle requests to ISC federal programs through the Service Alignment Initiative, to better understand trends in and connections between ISC-funded community-based programs and Jordan's Principle requests. A preliminary analysis is expected in the summer of 2025.

v. **External consultations on Jordan's Principle**

81. Canada has committed to region-specific Jordan's Principle engagement and consultation work with First Nations partners outside of the Tribunal's orders. For example, in June 2024, Canada and the Assembly of Manitoba Chiefs signed a Memorandum of Understanding, committing to work together to enhance the implementation of Jordan's Principle in Manitoba, including by exploring First Nations-led delivery models. A working group was established in 2024 with representatives from Manitoba First Nations and Canada to guide this work. Terms of reference are being finalized.

82. Canada also supports and engages First Nations and service delivery organizations directly through regional consultation activities and through service coordinator gatherings related to operational matters. As part of regular operational practices, regional tables have been established with First Nations to support engagement, priority setting, planning and service delivery related to Canada's initiatives, including Jordan's Principle. The AFN has also previously hosted in-person service coordinator gatherings. Canada has participated in these and supports the continuation of these gatherings.

F. Funding to support the AIP Parties' participation in consultations and negotiations


83. Canada has provided millions of dollars in funding to the AIP Parties towards their consultation and negotiation activities, in accordance with the Consultation Protocol and later the AIP. Funds provided pursuant to the Consultation Protocol were intended to fund the AIP Parties' consultations with Canada on immediate relief, and ultimately, pending expansion of the Consultation Protocol, mid- and long-term relief. Funds that ISC provided under the AIP were intended to support the AIP Parties' negotiations with Canada towards a final agreement on long-term reform of the FNCFS Program and Jordan's Principle.
84. Through the Consultation Protocol, Canada agreed to fund the AIP Parties for the envisaged work through an agreed upon workplan. Expenses were to include disbursements for experts and legal counsel, excluding work on litigation.
85. ISC funded the AFN, COO and NAN's participation principally through annual plans and budgets submitted to ISC to support their consultation and negotiation activities. Until February 2025, ISC funded the Caring Society's participation in consultation and negotiations through uncapped reimbursement, without any annual plans or budgets. On February 6, 2025, the Deputy Minister of ISC wrote to all of the AIP parties, advising that it remains committed to fulfilling its consultation obligations, but effective immediately will no longer accept invoices for reimbursement and will instead follow the funding process set out in the Consultation Protocol. Per the Consultation Protocol, ISC will provide each party with a yearly budget forecast on an annual basis, setting out the allotment of funding for the coming year based on an agreed upon workplan. A copy of ISC's letter is attached hereto and marked as Exhibit "H". The Caring Society responded with a letter dated March 10, 2025, a copy of which is attached hereto as Exhibit "I". Also on March 10, 2025, the Caring Society filed an application for judicial review in Federal Court file T-814-25, challenging the Deputy Minister's decision.
86. From 2018-19 to 2024-25 (to December 16, 2024), the Caring Society received approximately \$7.6 million from Canada towards their consultation and negotiation activities. This includes approximately \$2.8 million to fund IFSD research contracts.

- 87. From 2018-19 to 2024-25, the AFN received approximately \$26.4 million from Canada towards consultation and negotiation activities, primarily related to the FNCFS Program, including:
 - a) \$10.3 million for Program reform and the CCCW;
 - b) \$6.5 million for engagement and the October 2024 Special Chiefs Assembly; and
 - c) \$8.8 million for IFSD research contracts.
- 88. From 2018-19 to 2024-25, COO received approximately \$5.4 million from Canada towards consultation and negotiation activities, primarily related to the FNCFS Program, including:
 - a) \$4.5 million for consultation, negotiation and engagement; and
 - b) \$0.9 million in 2018-19 for the Ontario Special Study.
- 89. From 2018-19 to 2024-25, NAN received approximately \$8.1 million from Canada towards consultation, policy and engagement activities, primarily related to the FNCFS Program.
- 90. ISC has also funded EAC members in the amount of \$0.5 million.
- 91. In addition to the amounts above, ISC has provided funding to the AFN, COO, NAN and other partners to support the implementation of Jordan’s Principle, including for their participation in the various committees noted above.

G. Conclusion

- 92. I make this affidavit *bona fide* and in support of Canada’s position in response to the Caring Society’s amended notice of motion dated January 27, 2025.

AFFIRMED before me at the)
 City of Ottawa in the)
 Province of Ontario)
 this 13th day of March, 2025)
)
)



 Barrister and Solicitor in and
 for the Province of Ontario
 LSO #: 86635B



DUNCAN FARTHING-NICHOL



**First Nations Child &
Family Caring Society**

**Société de soutien
à l'enfance et à la famille
des Premières Nations**

fncaringsociety.com

This is **Exhibit A** to the Affidavit of
Duncan Farthing-Nichol, affirmed before me on
March 13, 2025

November 12, 2024

A Barrister and Solicitor in and
for the Province of Ontario
L.S.O.#: 66635B

Dear Minister Hajdu,

I confirm receipt of your correspondence dated October 17, 2024, and write to encourage Canada's full cooperation and participation in implementing First Nations rights holder's direction per First Nations-in-Assembly Resolutions, including Assembly of First Nations (AFN) Resolution 40/2022, *To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle*, Resolution 60/2024, *Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle*, and Resolution 61/2024, *Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services*. I would also like to use this opportunity to clarify some of the incorrect and incomplete statements in your letter.

We agree with Canada's deference to First Nations rights holders and remind Canada that the Rights holders are First Nations children, youth, families, and the Nations they belong to. On October 18, 2024, First Nations rights holders voted overwhelmingly in favour of AFN Resolutions 60/2024 and 61/2024 and directed to reset the negotiations on the draft Final Settlement Agreements on First Nations Child and Family Services and Jordan's Principle. Included in these resolutions, is express direction for a reset that includes the Caring Society in an open and transparent manner to ensure that discrimination against children, youth, and families stops and does not recur. We are ready and eager to implement the direction of First Nations leadership and we fully expect that Canada is as well. We reiterate our invitation to discuss our feedback and suggested amendments in a non-confidential setting, as aligned with First Nations-in-Assembly direction. I would also like to remind you of the Canadian Human Rights Tribunal's orders requiring Canada to consult with the Caring Society on long-term reforms. We believe this cooperation is crucial and can bring about positive change and a brighter future for First Nations children, youth and families.

Your October 17th letter makes several incorrect and incomplete statements about the Caring Society's positions and conduct, which deserve special correction. First, you suggest that the Caring Society's positions is for prevention funding to be solely directed to First Nations Child and Family Service Agencies, which is contrary to our proposed amendments that have been shared with your department and have been publicly available on our website. For the Caring Society, it's a "yes and" approach whereby First Nations are provided with sufficient capacity to deliver services if they choose, and Agencies receive adequate funding to discharge their responsibilities. Second, you imply that the Caring Society's suggestion of continuing reimbursement at

actual costs are out of alignment with the Tribunal's orders. However, to clarify, where there is insufficient evidence to project costing, such as with capital, post-majority services and tertiary prevention, it is entirely consistent with the Tribunal's orders to continue with actuals to ensure non-discrimination until such a time that sufficient data and evidence is available to project funding to ensure non-discrimination. Indeed, the draft Final Settlement Agreement (FSA) offered no evidence of how the fixed capital amounts were calculated and the calculations of other fixed amounts in Appendix 1 were also unclear or not provided.

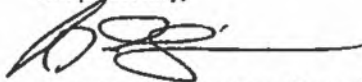
While the Agreement in Principle (AIP) was signed in good faith by the Caring Society, we were very disappointed to see Canada breach that negotiated agreement and backsliding in compliance with the Tribunal's orders. The Caring Society left the AIP to bring the non-compliance motion to remedy Canada's discrimination, which was causing serious and, in some cases, life-ending consequences for First Nations children. The AIP was not modified to reflect the direction of AFN Resolution 40/2022, which explicitly directed Parties to seek relief at the Tribunal if necessary. Moreover, the Caring Society repeatedly expressed its desire and readiness to participate in negotiating the draft FSA outside the AIP process, however this was continuously refused by Canada.

Finally, I remind you of the Indigenous Services Canada Act, which mandates your department to support First Nations with achieving their goals of self-determination, however, Canada must not offload or underfund as a means to undermine the promises of self-determination and self-government. For instance, several First Nations delivering Jordan's Principle services to their citizens have contacted the Caring Society to report serious financial deficits flowing from Canada's long reimbursement delays, causing significant reductions and delays in providing other services. First Nations-in-Assembly have provided clear direction that safeguards must be in place to forever protect First Nations children from discrimination.

The clarifications herein are made for the record; our primary message is that we remain steadfast in our commitment to ending the discrimination found by the Tribunal and prevent its recurrence. This commitment is unwavering, and we urge Canada to share this commitment and work with us towards this shared goal.

Please confirm Canada's commitment to implementing the direction provided by First Nations-in-Assembly through AFN Resolutions 60/2024 and 61/2024 and advise when Canada will be prepared to meet with the Caring Society to discuss how we can collaborate on a path to end the discrimination and prevent its recurrence.

Respectfully,



Raymond Shingoose, President
First Nations Child and Family Caring Society

AIRD BERLIS


Scott A. Smith*
 *Denotes Law Corporation
 Direct: 778.371.2243
 ssmith@airdberlis.com

January 22, 2025

This is **Exhibit B** to the Affidavit of
Duncan Farthing-Nichol, affirmed before me on
 March 13, 2025

Sent by E-mail

Justice Canada
 c/o Paul Vickery
 50 O'Connor Street, Suite 500
 Ottawa, ON K1A 0H8
 E-mail: paul.vickery@justice.gc.ca


 A Barrister and Solicitor in and
 for the Province of Ontario
 LSO# : 266558

Dear Mr. Vickery:

Subject: Request for Meeting to discuss Long-Term Reform Negotiations

Liam A. Smith and I have been appointed interim legal counsel to the National Children's Chiefs Commission ("NCCC"). I am writing to you in relation to the January 7, 2025 letter in which you advised that Canada does not currently have a mandate to negotiate a national long-term reform agreement.

The NCCC has recently been established by the First Nations-in-Assembly, which provided the NCCC with the mandate to oversee and move forward with further negotiations in relation to the national long-term reform of the First Nations Child and Family Services Program, federal child and family services, and Jordan's Principle (the "LTR Agreements") on behalf of the First Nations-in-Assembly. The NCCC is the new interface through which Canada will deal with AFN in relation to all matters concerning the LTR Agreements.

In that regard, the NCCC requests that we immediately schedule a meeting with you and your client to discuss the position set out in your January 7 letter, and the path to negotiating new LTR Agreements. As you know, the Canadian Human Rights Tribunal ("CHRT") ordered Canada to consult with, among other groups, the AFN and the First Nations Child and Family Caring Society of Canada on the LTR Agreements. The NCCC has been mandated to undertake this work on behalf the First Nations-in-Assembly in collaboration with the AFN.

In particular, First Nations-in-Assembly directed the establishment of the NCCC in October 2024, through AFN Resolution no. 60/2024. In December 2024, the First Nations-in-Assembly approved in principle the draft terms of reference for the NCCC in AFN Resolution no. 89/2024. Both resolutions were passed by an overwhelming majority of Chiefs and proxies at the Special Chiefs Assemblies. In particular, the First Nations-in-Assembly mandated the NCCC to provide strategic direction and oversight of the negotiations for long-term reform, reporting back to the First Nations-in-Assembly. The


purpose of those negotiations is to eliminate discrimination by Canada against First Nations children and families, ensure it never happens again, promote substantive equality, and uphold First Nations' rights to self-determination.

The NCCC is comprised of: (i) one regional representative, an alternate, and their technician(s) from each of the eleven AFN regions; (ii) one regional representative, an alternate, and their technician(s) for every region not represented by AFN; (iii) an Elder or Knowledge Keeper representative; and (iv) a youth representative. All regions except for Ontario have appointed their NCCC representatives through their regional processes, and the NCCC began to convene regular meetings in December 2024.

In keeping with the sovereign will of the First Nations-in-Assembly to establish the NCCC, dialogue between the NCCC and Canada will be essential to achieving needs-based long-term reform that will eliminate the discrimination identified by the CHRT and ensure the physical, spiritual, emotional and cognitive well-being of First Nations, children, youth and families for generations to come, consistent with the honour of the Crown.

We look forward to your prompt response and to scheduling a meeting as soon as possible.

Sincerely,



Scott A Smith*

Partner

*Denotes Law Corporation

c: Liam A. Smith, Co-Counsel for the NCCC

63116965.4

January 24, 2025

Sent by e-mail

Right Honourable Justin Trudeau
Prime Minister of Canada
80 Wellington St.
Ottawa, ON K1A 0A2
E-mail: pm@pm.gc.ca

Honourable Patty Hajdu
Minister of Indigenous Services Canada
10 rue Wellington
Gatineau, QC K1A 0H4
E-mail: ministresa-ministeris@sac-isc.gc.ca

Honourable Gary Anandasangaree
Minister of Crown Indigenous Relations
and Northern Affairs Canada
10 rue Wellington, Gatineau QC K1A 0H4
E-mail: gary.anandasangaree-p@rcaanc-cirnac.gc.ca

This is **Exhibit C** to the Affidavit of
Duncan Farthing-Nichol, affirmed before me on
March 13, 2025

A Barrister and Solicitor in and
for the Province of Ontario
L.S.O. #: 066558

Dear Prime Minister and Ministers Hajdu and Anandasangaree:

RE: Proposal to negotiate a letter of commitment in advance of March 24, 2025

I write in my capacity as Chair of the National Children's Chiefs Commission (the "NCCC") to propose that we work collaboratively over the next two months on a letter of commitment in relation to a national agreement on long-term reform of First Nations child and family services ("**LTR Agreement**") and a process to address Jordan's Principle. We believe that delivering justice for all First Nations children isn't just the right thing to do – it is the necessary thing to do for our children, for our Nations, and for Canada. Doing so is also consistent with the Canadian Human Rights Tribunal's ("**CHRT**") merits decision (*First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs, 2016 CHRT 2)*) and subsequent orders.

The Chiefs, sitting together as the First Nations-in-Assembly, voted overwhelmingly on behalf of rights holders to establish the NCCC and mandated it to oversee further negotiations in relation to the LTR Agreement and Jordan's Principle, all while working collaboratively with the Assembly of First Nations Executive.

The NCCC, which is supported by skilled First Nations technical experts from across Canada, is comprised of: (i) one regional representative, an alternate, and their technician(s) from each of the eleven AFN regions; and (ii) one regional representative, an alternate, and their technician(s) for every region not represented by AFN. All regions except for Ontario have appointed their NCCC representatives through their regional processes, and the NCCC began to convene regular meetings in December 2024. The Commissioners bring considerable expertise in child and family services, Jordan's Principle, governance, inter-governmental relations, and negotiations.

We were pleased to hear the Prime Minister's remarks during Special Chiefs Assembly in December 2024 confirming that the \$47.8B earmarked in the draft final settlement agreement is still there and that Canada remains committed to reaching an agreement. Similar sentiments were echoed by the Minister of Indigenous Services Canada. These remarks confirm our shared interest and duty to ensure that this generation of First Nation children grows up free of all forms of discrimination and is able to live the lives that they wish to have and that their ancestors prayed for.

Canada's public statements in the wake of the AFN Special Chiefs Assembly in October 2024 suggest that the government has questions about: (i) the scale of funding required to satisfy the orders on First Nations child and family services; (ii) whether First Nations would consider a pathway that would, at some point in the future, end the CHRT's jurisdiction; and (iii) whether First Nations outside of Ontario are ready to proceed with a negotiated settlement.

In relation to the first issue, the NCCC is committed to an evidence-informed approach. Our experts have informed us that while there is a need for capacity building funds to ensure First Nations are set up for success and some expenditures such as capital, post-majority services, and band-representative services may need to continue at actuals for a limited time because there is insufficient evidence to project future costs, the overall funding envelope that is required to end discrimination in First Nations child and family services and ensure it never happens again is in the ballpark of what Canada previously proposed. This assumes a fair and equitable distribution among regions related to relevant factors such as the rates of over-representation of First Nations children in care, including in Ontario.

The NCCC is committed to maximizing the value of every dollar to deliver measurable outcomes for our First Nation children, youth, and families. We see important opportunities to re-allocate funding in the draft final settlement agreement in ways that will more directly benefit children and improve accountability to First Nations Leadership.

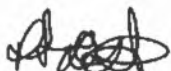
In relation to the second issue, the NCCC sees a pathway that would, at some point in the future, end the CHRT's jurisdiction.

In relation to readiness, the First Nations-in-Assembly passed clear resolutions directing a reset of negotiations. The NCCC is established and is supported by skilled First Nations technical experts from across Canada. We also benefit from the evidence-based research that has been completed that can inform the way forward. We are ready to discharge the sacred responsibilities we have been entrusted with by First Nations in our respective 11 regions.

The NCCC would like to meet with you, the AFN Executive, and the Caring Society at the earliest opportunity to gauge Canada's interest in entering into a binding letter of commitment before March 24, 2025, to secure existing commitments and to chart a pathway forward to resolve the CHRT proceeding on child and family services. We would

also welcome discussions to set a pathway to address current challenges and the long-term reform of Jordan's Principle. We will send more specific proposals on how we can address the outstanding issues next week to help inform our meeting.

Sincerely,



Chief Pauline Frost
Chair, NCCC

c: NCCC

AFN Executive

Dr. Cindy Blackstock, Executive Director, Caring Society

Pierre Poilievre, Leader of the Conservative Party

Michelle Ferreri, Shadow Minister for Families, Children, and Social Development

Marilyn Gladu, Shadow Minister for Civil Liberties

Larry Brock, Shadow Minister for Justice and Attorney General of Canada

Jagmeet Singh, Leader of the NDP

Niki Ashton, Critic for Indigenous Services

Charlie Angus, Deputy Critic, Crown-Indigenous Relations

Lori Idlout, Critic, Indigenous Services

Yves-François Blanchet, Leader of the Bloc Québécois

Scott A. Smith and Liam A. Smith, interim legal counsel to the NCCC

Jenica Atwin, Parliamentary Secretary for Minister of ISC

Jaime Battiste, Parliamentary Secretary for Minister of CIRNAC

Deliah Bernard, Indigenous affairs advisor office of the Prime Minister of Canada

Ministre des Services aux Autochtones et ministre
responsable de l'Agence fédérale de développement
économique pour le Nord de l'Ontario



Minister of Indigenous Services and Minister
responsible for the Federal Economic
Development Agency for Northern Ontario

Ottawa, Canada K1A 0H4

This is **Exhibit D** to the Affidavit of
Duncan Farthing-Nichol, affirmed before me on
March 13, 2025

February 25, 2025

Chief Pauline Frost
National Children's Chiefs Committee
Our Children Our Way Secretariat
200-100 Park Royal South
WEST VANCOUVER BC V7T 1A2

pauline.frost@vgfn.ca

A Barrister and Solicitor In and
for the Province of Ontario

LSO# : 866358

Dear Chief Frost:

Thank you for your correspondence of January 24, 2025, sent to the Right Honourable Justin Trudeau, Prime Minister, the Honourable Gary Anandasangaree, Minister of Crown-Indigenous Relations and Northern Affairs, and myself in relation to a national agreement on long-term reform of the First Nations Child and Family Services Program.

The Agreement-in-Principle on Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle signed by the Assembly of First Nations, Caring Society, Chiefs of Ontario, and Nishnawbe Aski Nation in December 2021, was an evidence-informed approach that provided a foundation for improving the lives of First Nation children and families across the country.

Canada remained committed to a First Nations-led approach to reforming the First Nations Child and Family Services Program, and developed a fully reformed Program in the Final Agreement with the rights holder Parties to the Canadian Human Rights Tribunal's complaint. The robust framework of reforms contained within the Final Agreement would have legally bound Canada to provide \$47.8 billion in stable and predictable funding over ten years for a fully reformed First Nations Child and Family Services Program that would have reduced the number of First Nation children in care and kept children connected to their families, communities, and cultures.

.../2

- 2 -

Canada remains committed to the implementation of the Canadian Human Rights Tribunal's orders, and to ending the discrimination identified by the Tribunal and preventing its recurrence.

There has been confusion regarding the role of the National Children's Chiefs Committee and whether you and the committee are the body that Canada should be working with, as the Assembly of First Nations has yet to clarify their role in relation to long-term reform of the First Nations Child and Family Services Program. Attached is the most recent correspondence from the Assembly of First Nations' counsel indicating that they are awaiting instructions on this issue. I would encourage the National Children's Chiefs Commission to work directly with officials from the Assembly of First Nations with respect to long-term reform of the First Nation Child and Family Services Program to clarify this situation.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'P. Hajdu', with a stylized flourish at the end.

The Honourable Patty Hajdu, P.C., M.P.

Encl.



First Nations Child &
Family Caring Society

Société de soutien
à l'enfance et à la famille
des Premières Nations

fncaringsociety.com


January 28, 2025

Right Honourable Justin Trudeau
Prime Minister of Canada
80 Wellington St.
Ottawa, ON K1A 0A2
E-mail: pm@pm.gc.ca

Honourable Patty Hajdu
Minister of Indigenous Services Canada
10 rue Wellington
Gatineau, QC K1A 0H4
E-mail: ministresa-ministeris@sac-isc.gc.ca

Honourable Gary Anandasangaree
Minister of Crown Indigenous Relations
and Northern Affairs Canada
10 rue Wellington, Gatineau QC K1A 0H4
E-mail: gary.anandasangaree-p@rcaanc-cirnac.gc.ca

This is **Exhibit E** to the Affidavit of
Duncan Farthing-Nichol, affirmed before me on
March 13, 2025


A Barrister and Solicitor in and
for the Province of Ontario
L.S.O.#: 86635B

Dear Prime Minister and Ministers Hajdu and Anandasangaree:

Subject: First Nations Child and Family Services and Jordan's Principle

Recognizing your commitment to the Truth and Reconciliation Commissions Calls to Action, numerous resolutions from First Nations rights holders which prioritize First Nations child and family services and Jordan's Principle, and correspondence from the National Children's Chiefs Commission (NCCC) inviting you to co-develop a letter of commitment to set the stage for negotiations to address the requirements set out in the Canadian Human Rights Tribunal (CHRT) decisions in *First Nations Child and Family Caring Society et al v. Attorney General of Canada T1340/7008*, we write to express our interest in supporting the development of a letter of commitment on long-term reform of First Nations child and family services and Jordan's Principle.

We currently stand at a pivotal moment to ending discrimination through long-term reform of First Nations child and family services and Jordan's Principle. The Caring Society remains deeply committed to reforming child and family services and we are dedicated to achieving long-lasting solutions that are in the best interests of First Nations children for generations to come.

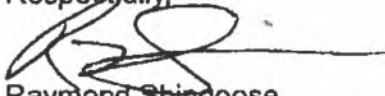
We are greatly encouraged by the direction First Nations-in-Assembly have provided, including clear direction to establish the National Children's Chiefs Commission to oversee negotiations on First Nations child and family services and Jordan's Principle in collaboration with Assembly of First Nations Executive Committee. First Nations leadership have entrusted the NCCC with the sacred work of ensuring an inclusive,

transparent, and evidence-based approach that will lead to better results for their children and families. First Nations across Canada are ready to begin negotiations and we hope Canada will take measures to do so as well.

Developed through First Nations-driven research with the Institute of Fiscal Studies and Democracy (IFSD), the groundwork has been laid and we have an evidence-informed approach to reforming First Nations child and family services and Jordan's Principle. The IFSD and First Nations have developed a vision for child and family services that includes a change in structure and resources to an outcome-based approach based on well-being for thriving First Nations children and transformation of organizational strategy, people, processes, and systems. First Nations rights holders have affirmed that the approach to child and family services must be one that is needs-based and prioritizes substantive equality, best interests of the child, culturally appropriate and distinct community circumstances. With these evidence-informed solutions and the support of skilled First Nation technicians and leaders across Canada, the Caring Society is confident that we can progress quickly to develop a reformed approach that is in the best interests of First Nations children and families.

Through good faith negotiations and respect for First Nations rights holders, we can chart a pathway forward to resolve the CHRT proceedings. While litigation remains an option, the Caring Society believes that negotiation is a preferred pathway. We invite your government to return to the negotiation table to achieve a national agreement on long-term reform of First Nations child and family services and a process to address Jordan's Principle. We are willing to make history together. This is a key moment for you to show your deep commitment to advancing reconciliation with First Nations so we welcome your response to our invitation to work on a letter of commitment to be completed by March 15, 2025 that will set a pathway to more detailed negotiations on long term reform.

Respectfully,



Raymond Shingoose
President, First Nations Child & Family Caring Society



Cindy Blackstock
Executive Director, First Nations Child & Family Caring Society

CC:
National Children's Chiefs Commission
AFN Executive

February 21, 2025

Sent by e-mail

Right Honourable Justin Trudeau
Prime Minister of Canada
80 Wellington St.
Ottawa, ON K1A 0A2
E-mail: pm@pm.gc.ca

Honourable Patty Hajdu
Minister of Indigenous Services Canada
10 rue Wellington
Gatineau, QC K1A 0H4
E-mail: ministresa-ministeris@sac-isc.gc.ca

Honourable Gary Anandasangaree
Minister of Crown Indigenous Relations
and Northern Affairs Canada
10 rue Wellington, Gatineau QC K1A 0H4
E-mail: gary.anandasangaree-p@rcaanc-cirnac.gc.ca

This is **Exhibit F** to the Affidavit of
Duncan Farthing-Nichol, affirmed before me on
March 13, 2025


A Barrister and Solicitor in and
for the Province of Ontario
LSI# 1866353

Dear Prime Minister and Ministers Hajdu and Anandasangaree:

RE: Follow-up to the NCCC's January 24, 2025 letter proposing to negotiate a letter of commitment in advance of March 24, 2025

I write in my capacity as Chair of the National Children's Chiefs Commission ("NCCC") to follow up with you in relation to the NCCC's January 24, 2025 letter proposing that we work collaboratively on a letter of commitment in relation to a national agreement on long-term reform of First Nations child and family services ("**LTR Agreement**") and a process to address Jordan's Principle.

In our January 24 letter, the NCCC highlighted our views that: (i) the overall funding envelope which is required to end discrimination in First Nations child and family services and ensure it never happens again is in the ballpark of the \$47.8B that Canada previously proposed; (ii) there is a pathway that would, at some point in the future, end the Canadian Human Rights Tribunal's ("**CHRT**") jurisdiction; and (iii) the NCCC is ready, willing, and able to immediately proceed with completing negotiation of a national LTR Agreement.

We closed our letter by requesting a meeting with you, the AFN Executive, and the Caring Society at the earliest opportunity to discuss entering into a binding letter of commitment before March 24, 2025.

The purpose of this letter is to provide you with additional details about what is needed, from the NCCC's perspective, to finalize the LTR Agreement. In this regard, we have enclosed a table which outlines: (i) the ten high-level, outstanding issues with the LTR Agreement which must be addressed before the LTR Agreement is finalized; (ii) Canada's position on each outstanding issue, as set out in the draft LTR Agreement; (iii) the NCCC's proposal on how to resolve each outstanding issue; and (iv) the NCCC's view on whether

each outstanding issue can be readily resolved. The NCCC proposes to use the enclosed table to guide our discussions to develop a binding letter of commitment which secures existing commitments and charts a pathway forward to resolving the remaining outstanding issues in relation to the LTR Agreement.

The enclosed table confirms the NCCC's view that a national LTR Agreement is within reach, and merely requires Canada to return to the negotiation table to work with the NCCC, the AFN Executive, and the Caring Society in good faith to deliver the justice that all First Nation children and families deserve.

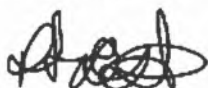
The honour of the Crown is paramount in these negotiations. Canada has constitutional and statutory duties, which have been affirmed by the Supreme Court of Canada and enshrined in an *Act respecting First Nations, Inuit and Métis children, youth and families* and the *United Nations Declaration on the Rights of Indigenous Peoples Act* to act honourably, negotiate in good faith, and avoid conduct that undermines reconciliation. This includes respecting the inherent right of self-determination as expressed through First Nations-in-Assembly. Canada cannot unilaterally impose solutions or adopt an intransigent approach, especially when addressing the systemic discrimination the CHRT has determined is occurring here.

Canada's recent conduct in this matter disregards the CHRT's orders, the principles of reconciliation, statutory duties, and the victims' right to participate in the design and implementation of an effective remedy. In particular, Canada's termination of consultations after the First Nations-in-Assembly declined to endorse the draft Final Settlement Agreement raises serious concerns. The First Nations-in-Assembly, exercising their inherent rights, identified legitimate shortcomings with that agreement. Canada's duty was to return to the negotiating table, not to unilaterally end the process.

The NCCC is deeply concerned that Canada's current approach risks perpetuating the injustices that the CHRT's orders, statutory duties, and reconciliation itself are meant to remedy. A return to good-faith negotiations, grounded in the honour of the Crown and a genuine commitment to collaboration, is urgently needed.

We have asked our officials to follow up with your offices to schedule a meeting between us as soon as possible.

Sincerely,



Chief Pauline Frost
Chair, NCCC

c: NCCC

AFN Executive

Dr. Cindy Blackstock, Executive Director, Caring Society

Mark Carney, Candidate for Liberal Leader and Prime Minister

Chrystia Freeland, Candidate for Liberal Leader and Prime Minister

Pierre Poilievre, Leader of the Conservative Party

Michelle Ferreri, Shadow Minister for Families, Children, and Social Development

Marilyn Gladue, Shadow Minister for Civil Liberties

Larry Brock, Shadow Minister for Justice and Attorney General of Canada

Jagmeet Singh, Leader of the NDP

Niki Ashton, Critic for Indigenous Services

Charlie Angus, Deputy Critic, Crown-Indigenous Relations

Lori Idlout, Critic, Indigenous Services

Yves-François Blanchet, Leader of the Bloc Québécois

Scott A. Smith and Liam A. Smith, interim legal counsel to the NCCC

Jenica Atwin, Parliamentary Secretary for Minister of ISC

Jaime Battiste, Parliamentary Secretary for Minister of CIRNAC

Deliah Bernard, Indigenous affairs advisor office of the Prime Minister of Canada

OFFICE OF THE NATIONAL CHIEF

Assembly of First Nations




BUREAU DU CHEF NATIONAL

Assemblée des Premières Nations

March 4, 2025

This is **Exhibit G** to the Affidavit of
Duncan Farthing-Nichol, affirmed before me on
 March 13, 2025

The Honourable Patty Hajdu, P.C., M.P.
 Minister of Indigenous Services
 10 Wellington Street
 Gatineau, QC K1A 0H4


 A Barrister and Solicitor in and
 for the Province of Ontario
 LS# #: 866358

Dear Minister:

On behalf of the Assembly of First Nations (AFN), I write to you again to urge the Government of Canada to seek a revised mandate to negotiate a Final Agreement regarding the long-term reform of the First Nations Child and Family Services (FNCFS) Program.

As you are aware, the First Nations-in-Assembly provided the AFN with several new mandates on long-term reform by way of resolution in October and December of 2024. These mandates direct a new process for pursuing reform, including a new governance and oversight structure. The resolutions additionally call for extensive engagements, revised negotiation processes, and funding principles to be embedded in the process and revised Draft Agreement. Through these resolutions, we once again call on Canada to obtain a new negotiation mandate aligned with the resolutions, and to provide resources to advance the work.

We also want to be clear that the AFN supports the National Children's Chiefs Commission (NCCC) in its work on advancing the mandates of the First Nations-in-Assembly in relation to negotiating Final Agreements on long-term reform of the FNCFS Program and Jordan's Principle. We therefore also call on Canada to duly consider the NCCC's recent correspondence and take the necessary measures to facilitate the NCCC's critical role in long-term reform, as directed by the Chiefs.

We must continue to collaboratively advance this necessary and critical work for the benefit of First Nations children and families. I trust you remain committed to these efforts and would appreciate an update on the Government of Canada's mandate at your earliest convenience.

Megwetch,

Woodhouse

Cindy Woodhouse Nepinak
National Chief

Cc: AFN Executive Committee
National Children's Chiefs Commission





Services aux Autochtones
Canada

Indigenous Services
Canada

Sous-ministre

Deputy Minister

Ottawa, Canada
K1A 0H4

February 6, 2025

This is **Exhibit H** to the Affidavit of
Duncan Farthing-Nichol, affirmed before me on
March 13, 2025

National Chief Cindy Woodhouse Nepinak
Assembly of First Nations
50 O'Connor Street, Suite 200
OTTAWA ON K1P 6L2
NationalChief@afn.ca

A Barrister and Solicitor in and
for the Province of Ontario

LSO #: 86635B

Raymond Shingoose
President, First Nations Child and Family Caring Society
350 Sparks Street, Suite 202
OTTAWA ON K1R 7S8
info@fncaringsociety.com

Regional Chief Abram Benedict
Chiefs of Ontario
468 Queen Street East, Suite 400
TORONTO ON M5A 1T7
Orc.benedict@coo.org

Grand Chief Alvin Fiddler
Nishnawbe Aski Nation
100 Back Street, Unit 200
THUNDER BAY ON P7J 1L2
afiddler@nan.ca

Dear Parties:

This letter is to inform you of how Indigenous Services Canada will be using the principles from the Consultation Protocol entered into by all parties on March 2, 2018 to ensure oversight in the payment of consultation-related activities.

Canada remains committed to fulfilling its consultation obligations pursuant to 2018 Canadian Human Rights Tribunal 4, and as outlined in the Consultation Protocol. Effective immediately, invoices for a Party's consultation related work, including legal fees, will no longer be accepted for reimbursement. As per paragraph 24 of the Consultation Protocol, Indigenous Services Canada will provide each party with a "yearly budget forecast on an annual basis setting out the allotment of funding for the

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- 2 -

coming year, based on an agreed upon workplan.” We would suggest that for the time being, the consultation workplan focus on matters pertaining to the implementation of the Tribunal's existing orders on the First Nations Child and Family Services Program. In line with Indigenous Services Canada's obligation for financial oversight, Parties may be asked to report on expenditures annually for the Department to ensure that expenditures are not related to litigation.

I invite you or your officials to contact Lisa Legault, Director General, Child and Family Services Reform Sector, via email at lisa.legault@sac-isc.gc.ca, and Liliana Gutierrez, Acting Director General, First Nations and Inuit Health Branch, via email at liliana.gutierrez@sac-isc.gc.ca to schedule a meeting to develop the consultation workplan.

Yours sincerely,



Gina Wilson



This is Exhibit I to the Affidavit of
Duncan Farthing-Nichol, affirmed before me on
March 13, 2025

March 10, 2025

Gina Wilson
Deputy Minister
Indigenous Services Canada
10 Wellington Street
Gatineau, QC K1A 0H4

A Barrister and Solicitor in and
for the Province of Ontario
LSO # 86635E

**Re: Funding for consultation regarding implementation of the Canadian Human Rights Tribunal's Orders,
pursuant to 2018 CHRT 4**

I am writing in response to your letter received at 7:23 PM Eastern Time on February 6, 2025 informing the Assembly of First Nations (AFN), Chiefs of Ontario (COO), Nishnawbe Aski Nation (NAN) and the First Nations Child and Family Caring Society of Canada (Caring Society) that ISC has unilaterally decided that "effective immediately" it will no longer accept invoices for consultation-related work for reimbursement. Without making any concrete proposal regarding how ISC will uphold its obligations under the Tribunal's orders, your letter requests that the parties contact the two Director Generals to establish a consultation workplan. Your letter also purports to limit consultation-related activities to the implementation of the Tribunal's existing orders on the First Nations Child and Family Services Program (FNCFS), despite the fact that the letter was sent in the midst of Tribunal-assisted mediation regarding the implementation of the Tribunal's orders on Jordan's Principle (Tribunal-assisted mediation is ongoing). Your letter also states that ISC may ask for unspecified annual reports related to ensuring that expenditures are not related to litigation.

Despite the Caring Society's surprise with Canada's unilateral decision changing ISC's practice, dating back to April 2018, of reimbursing the Caring Society's consultation related work, we are providing the workplan below to ensure that the parties' important work regarding the Tribunal-assisted mediation related to Jordan's Principle may continue uninterrupted.

In order to streamline matters, I request that you identify one official (and an alternate to contact during that employee's leave) in your office who has the authority to process and approve the Caring Society's invoices related to this workplan. Since ISC unilaterally changed what was an efficient payment process to a cumbersome one, whereby separate invoices had to be issued to the FNCFS Program and Jordan's Principle, there have been significant payment delays and concerns related to client-solicitor privilege as ISC demands more detail on Caring Society legal invoices. Before these measures were introduced, ISC payments were efficient and professionally managed. However, since October of 2024, ISC has been chronically late paying invoices, with some payments remaining outstanding for over 100 days. There are currently four outstanding invoices, three of which are over 65 days late and the remaining is over 35 days late.

Workplan Part One: Tribunal-assisted mediation regarding consultations under 2025 CHRT 6

On November 21, 2024, the Tribunal issued a letter decision granting a non-compliance motion brought by the Caring Society regarding Jordan's Principle in part and granting a cross-motion brought by Canada in part. The letter decision directed consultations between the parties in a manner of the parties' choosing to propose options for implementing a large number of remedial measures to address the issues identified in the decision. In December 2024, Canada advised that its preferred forum for addressing these issues was in Tribunal-assisted mediation with Member Harrington, who had been assigned by the Tribunal Chairperson to assist the parties in September 2024 in advance of the motion and cross-motion being argued.

The parties have met in twelve plenary sessions with the mediator since January 9, 2025, with more meetings scheduled for March and April 2025 and beyond. The Caring Society has also had six caucus sessions with the AFN, COO, NAN and the Canadian Human Rights Commission to discuss proposals and counterproposals related to the items under discussion.

The parties are presently discussing the following items pursuant to the Tribunal's orders:

1. Objective criteria to be used to identify urgent Jordan's Principle requests;
2. Definition of "no access to basic necessities" for the purposes of urgent Jordan's Principle requests;
3. Objective criteria and guidelines for cases involving caregivers and children fleeing from domestic violence (a category the Tribunal has included in the definition of urgent cases);
4. Guidelines for coordination between Jordan's Principle and other emergency services meant to support fire evacuation, including how to triage and respond to multifaceted requests that involve Jordan's Principle and other services;
5. Objective criteria to determine who is a "qualified professional" with relevant competence and training to identify urgent cases;
6. Guidelines on when the determination clock [for deciding requests] starts to run, in keeping with 2017 CHRT 14 and 2017 CHRT 35;
7. Interim practical and operational solutions supported by a rationale and available evidence to redress the hardship imposed on individuals and families (requestors) by reimbursement and payment delays;
8. Solutions to reduce and eventually eliminate the backlog that are efficient, effective and can work within government context; and
9. Options supported by rationale and available evidence in regards to timelines for non-urgent Jordan's Principle requests.

Canada has provided at least one round of proposals on all the items above except item #7 (payment timelines). Some of the items have involved multiple rounds of exchanges of proposals between the parties (items #1, #2, #3 and #5). At the present pace, discussions on these nine items can be anticipated to extend into the spring.

In addition to the items above, 2025 CHRT 6 also requires the parties to consult regarding:

10. Sufficiency of resources, including funding, for First Nations organizations receiving and/or determining and/or funding Jordan's Principle requests;
11. Development of an effective mechanism for referring First Nations children and families with Jordan's Principle requests to other services (including a culturally appropriate streamlined risk management system to ensure requestors referred to First Nations for Jordan's Principle services have their needs met in a timely manner and without barriers); and
12. Establishment of an interim independent, non-complex but effective, credible, national Jordan's Principle complaints mechanism.

The Caring Society counsel working on the Tribunal-assisted mediation and their associated hourly rates payable to the Caring Society for its non-profit purposes, are as follows:

Caring Society Counsel

a. Sarah Clarke (Clarke Child & Family Law):	\$505.00/hr
b. David Taylor (Conway Baxter Wilson LLP):	\$460.00/hr
c. Kiana Saint-Macary (Conway Baxter Wilson LLP):	\$235.00/hr
d. Conway Baxter Wilson Articling Student:	\$185.00/hr

The Caring Society has already incurred expenses of \$85,906.43¹ related to the Tribunal-assisted mediation in January 2025 and \$66,182.20² related to the Tribunal-assisted mediation in February 2025, for a total of \$152,088.63, payable to the Caring Society for its non-profit purposes. We are addressing these months together with this workplan, given that your letter was received prior to the billing related to work in January 2025 being complete, and as work was underway for February 2025.

¹ Caring Society: \$14,640.00; Clarke Child & Family Law: \$34,767.22; Conway Baxter Wilson LLP: \$36,499.21.

² Caring Society: \$13,910.00; Clarke Child & Family Law: \$27,481.69; Conway Baxter Wilson LLP: \$24,790.51.

This is broken down as follows:

	January Hours	February Hours	Total Hours
Caring Society Staff	54	63.5	117.5
Sarah Clarke	58.44	45.4	103.84
David Taylor	54.5	26.9	81.4
Kiana Saint-Macary	26.8	40.7	67.5
Articling Student	4.9	-	4.9

The amounts for January and February 2025 also include travel-related expenses for Ms. Clarke (\$1,418.43 in January 2025 and \$1,574.18 in February 2025).

Based on the progress to this point, the Caring Society projects monthly expenditure on Tribunal-assisted mediation (including time preparing and reviewing proposals, caucus sessions with the AFN, COO, NAN and Commission, plenary sessions with all parties and the mediator, and discussions with community experts) to be \$91,800. This figure is calculated as follows:

Item	Amount
Caring Society Staff Time	\$14,000
Clarke Child & Family Law Fees	\$31,500 (est. 55 hours for Ms. Clarke)
Conway Baxter Wilson LLP Fees	\$35,000 (est. 45 hours each for Mr. Taylor and Ms. Saint-Macary)
Travel	\$1,500 (Ms. Clarke, Toronto -> Ottawa)
Subtotal	\$82,000
12% provision for unexpected work volume/travel	\$9,800
Total	\$91,800.00

Given the pace of the Tribunal-assisted mediation, a provision should be made for a total of \$540,000.00 on account of future work, payable to the Caring Society for its non-profit purposes. This is additional to the \$152,088.63 attributable to work in January and February 2025, and which should be funded irrespective of these workplan discussions.

To satisfy any concerns on ISC's part regarding the funds going towards consultation and in order to enable ISC to keep track of expenditures in the mediation envelope, we propose to continue providing monthly invoice summaries to a single point of contact at ISC.

Workplan Part Two: Supporting Canada in its ongoing activities to fully implement the Tribunal's orders

The Consultation Protocol dated March 2, 2018 contains several provisions regarding the importance of supporting Canada in its ongoing activities to immediately implement the full meaning and scope of the Tribunal's orders, including:

- Article 2(c): The objectives of the parties in pursuing the consultations contemplated by this Protocol are as follows [...] To ensure that all the parties work in a cooperative fashion to assist Canada in ensuring that it ceases its discriminatory practices and reforms the FNCFS Program and 1965 Agreement to reflect the findings in the Decision, and ceases applying its narrow definition of Jordan's Principle and takes measures to immediately implement the full meaning and scope of Jordan's Principle;
- Article 8(a): The Parties agree to engage in good faith consultations with Canada on immediate relief measures, to the extent of their respective interests, mandates and constituencies. Without limiting the generality of the foregoing [...] The Caring Society will promote the interests of First Nations families and children as well as FNCFS Agencies;
- Article 9: The Complainants, Interested Parties and the Commission each agree to work with their respective constituencies to facilitate consultations on the development and implementation of immediate relief measures, to the extent possible given the urgency of these measures.
- Article 10: The other Parties will jointly review Canada's proposed policy changes, strategies, standards and communication materials to help ensure that Canada complies with the Tribunal's Decision and

Rulings, and that the policies are in keeping with the best interests of the child under the United Nations Convention on the Rights of the Child, including as interpreted by the UN Committee on the Rights of the Child in General Comment #11, and the United Nations *Declaration on the Rights of Indigenous Peoples*. Alternatively, the Parties can offer alternatives where Canada's proposed policies, strategies, standards and/or communication materials fall short of compliance or meeting the best interests of First Nations children and their families.

- Article 22: Canada will provide the Complainants and Interested Parties with sufficient and adequate funding to ensure that their organizations can fully participate in the implementation of the Consultation Protocol, and in the consultation process itself, which includes the involvement of their respective legal counsel.

For Caring Society staff, this work includes:

- i. Communicating with Jordan's Principle requesters experiencing delays, disruptions or denials related to requests for products, services or supports from ISC pursuant to Jordan's Principle CHRT orders (including misidentification of urgent requests, requests for supporting documents, determination delays and reimbursement delays, and escalations to headquarters);
- ii. Escalation of individual and, on occasion, group requests to ISC's attention;
- iii. Communication with requesters providing information on the Jordan's Principle appeals process;
- iv. Technical guidance to FNCFS Agencies and to First Nations regarding implementation of the Tribunal's orders;
- v. Participation in committees, including the Jordan's Principle Operations Committee; and
- vi. Seeking legal advice from counsel regarding application of the Tribunal's orders.

Caring Society counsel periodically provide advice regarding the items above.

If legal counsel are called upon, they provide advice at the following rates:

- a. Sarah Clarke (Clarke Child & Family Law): \$505/hr
- b. David Taylor (Conway Baxter Wilson LLP): \$460/hr

For 2025, the Caring Society has submitted invoices totaling \$42,770 (\$21,360 January; \$21,410 February), payable to the Caring Society for its non-profit purpose.³ The Caring Society staff hours are broken down as follows:

	January Hours	February Hours	Total Hours
Caring Society Staff	42	45	87

The Caring Society projects a need for monthly funding of \$19,500, payable to the Caring Society for its non-profit purpose, to support staff work related to the Consultation Protocol activities noted above related to First Nations families, First Nations service providers and FNCFS Agencies, which includes provision for an approximate average of 3.5 hours of legal advice per month.

Future Activities (consultations on long-term reform of the FNCFS Program and of Jordan's Principle)

This workplan does not address long-term reform regarding either the FNCFS Program or Jordan's Principle. As you know, the Tribunal is currently seized of a motion regarding Canada's refusal to engage in further consultations following the First Nations-in-Assembly's decision to reset negotiations on the Revised Final Settlement Agreement regarding the FNCFS Program in October 2024. ISC's refusal to negotiate is particularly puzzling given that paragraph 379 of the draft Final Settlement Agreement on FNCFS specifically provided for choice by First Nations-in-Assembly. Furthermore, the Tribunal issued directions in November 2024 and January 2025 regarding Canada's conduct respecting Jordan's Principle. The parties just received further research regarding FNCFS reform and completion of research to inform long-term reform for Jordan's Principle is expected soon.

The Caring Society proposes to revise this workplan upon the completion of the Jordan's Principle research or the Tribunal's decision on the motion noted above.

³ Per the description of work appended to the invoices, the January and February invoice total includes Tribunal-assisted mediation, such that some of this amount is reflected in the mediation-related information noted above.

Single Point of Contact

As indicated, the Caring Society requests one point of contact for funding related to consultation activities. The experience in 2024 regarding divided responsibilities was administratively challenging for the Caring Society and, it seemed from our experience, for ISC. Given that this correspondence has come from your office, it seems to us that it would be practical for an official in your office or in the office of Associate Deputy Minister Kovacevic to be responsible for discussions regarding the Caring Society's consultation funding.

I look forward to receiving a response by Friday, March 21, 2025.

Sincerely,



Cindy Blackstock, Ph.D.

Executive Director, First Nations Child & Family Caring Society

Copy to: Michelle Kovacevic, Associate Deputy Minister
Lisa Legault, Director General
Liliana Gutierrez, Acting Director General