

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

MISSISSAUGAS OF THE NEW CREDIT FIRST NATION

Complainant

-and-

CANADIAN HUMAN RIGHTS COMMISSION

Commission

-and-

ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous and Northern Affairs Canada)

Respondent

AFFIDAVIT OF CINDY BLACKSTOCK

I, **Cindy Blackstock**, of the City of Ottawa, in the Province of Ontario, **SOLEMNLY AFFIRM THAT:**

1. I am a member of the Gitksan Nation, a professor at McGill University's School of Social Work, and the Executive Director of the proposed intervener, the First Nations Child and Family Caring Society of Canada (the "Caring Society"). As such, I have personal knowledge of the



matters deposed to herein, save for those matters expressly stated to be on information and belief.

2. I have been the Executive Director of the Caring Society since 2002 and have worked in the field of child and family services for over 20 years. I obtained a doctorate in social work from the University of Toronto in 2009. I received a Master of Jurisprudence in children's law and policy from Loyola University Chicago in 2016. I have received honorary doctorates from Blue Quills First Nations University, the University of Western Ontario, the University of Saskatchewan, Thompson Rivers University, and the University of Northern British Columbia.

3. Prior to working at the Caring Society, I was the Executive Director of the Caring for First Nations Children Society in British Columbia (1999-2002), Assistant to the Social Development Director for the Squamish First Nation (1995-1999), and a senior social worker with the Province of British Columbia (1987-1995). I also worked concurrently at the Caring Society and the University of Alberta from 2011-2016.

4. Through my various positions and through my education, I have gained knowledge of the causes of disadvantage for First Nations children and families, the rights of Indigenous children and peoples, and the development of equality and human rights in Canada, particularly as they affect First Nations children and their families.

The Caring Society's Mandate

5. The Caring Society is a national non-profit organization committed to research, training, networking, policy, and public education and engagement, on behalf of First Nations child and family service agencies that serve the well-being of First Nations children, youth and families, including those living on reserve. The Caring Society believes First Nations communities are in the best position to design and implement their own solutions for child safety and well-being. As a national organization it is our role to provide quality resources for communities to draw upon and to assist them in developing community-focused solutions.

6. The Caring Society does not receive any funding from the federal government and is completely supported by a diversified funding plan and the support of First Nations child and family service agencies, our members and donors.

The Caring Society's National and International Work

7. As part of its research mandate, the Caring Society's First Nations Children's Action and Research Education Service (FNCARES) initiative is a partnership with the University of Alberta aiming to generate and distribute research related to First Nations children's services and children's engagement in reconciliation to inform best practices and policies benefiting First Nations children, youth, families and Nations.



8. The Caring Society also edits and publishes the First Peoples Child and Family Review online journal. The First Peoples journal is a free online resource used by many students and instructors, as well as people working in child welfare, including front line practitioners and policy makers.

9. The Caring Society has also developed, in partnership with a team of young leaders across Canada, Guidelines for the Engagement of Young People, which is a tool to assist organizations that are currently engaging with young people.

10. As part of our training mandate, the Caring Society is involved in the Touchstones of Hope program, which promotes grass roots involvement in the process of reconciliation to benefit children. Based on a four stage process of reconciliation, the Touchstone of Hope movement engages Aboriginal communities, mainstream child welfare and allied professionals and leaders in a process of redefining child welfare and agreeing on pragmatic plans to put community visions into action. We train Touchstone of Hope facilitators, who play a vital role in working with First Nations communities to define and implement their culturally specific visions of healthy children, youth and family.

11. With respect to our public engagement and policy activities, the Caring Society works closely with First Nations child-serving agencies, assisting them in working with local and national governments to address the needs of the community. For example, the Caring Society worked closely with the Attawapiskat First Nation and the family of Shannen Koostachin to promote Shannen's Dream.

12. Shannen's Dream is an initiative to promote and secure access to equitable and culturally based education for First Nations children and youth. As a young leader, Shannen Koostachin of Attawapiskat First Nation dreamt of safe and proper schools and culturally based education for First Nations children and youth. She worked tirelessly to try to convince the federal government to give First Nations children a proper education before her tragic death in 2010 at the age of 15 years old. The Caring Society promotes Shannen's Dream by calling on the federal government to implement the Shannen's Dream Motion 571, which was unanimously adopted by the House of Commons in 2012.

13. In addition to the foregoing, a key goal of the Caring Society is to ensure that First Nations child and family service agencies are aware of and included in international discussions relevant to First Nations children, youth and family. The Caring Society has prepared and presented submissions to the United Nations, including for the United Nations Committee on the Rights of the Child (the "UNCRC"), the United Nations Permanent Forum on Indigenous Issues, the Committee on Economic, Social and Cultural Rights and the Sub Group on Indigenous Child Rights. The Caring Society's Executive Director, Dr. Cindy Blackstock, has made presentations



in South Africa, New Zealand, Norway, Ireland, Taiwan, Australia and the United States, making important connections with Indigenous peoples and international child rights organizations. The Caring Society has also collaborated with the Child Welfare League of America and the National Indian Child Welfare Association in the United States to support the implementation of the Touchstone of Hope child welfare model in several States.

14. The Caring Society was also granted intervener status at the Supreme Court of Canada in *Moore v. British Columbia (Education)*, 2012 SCC 61. The Caring Society made submissions regarding the remedial role of human rights legislation in relation to historically disadvantaged groups, such as First Nations peoples; the inappropriateness of strictly requiring a formal comparator group analysis and the potential impact of such an analysis on the *sui generis* situation of First Nations peoples in the context of a human rights complaint; and the need for and appropriateness of a cross-jurisdictional analysis in assessing certain claims of discrimination.

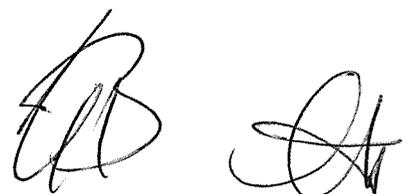
15. The Caring Society was also granted intervener status at the Federal Court of Appeal in *Canada (Attorney General) v Pictou Landing Band Council et al* (Court File No. A-158-13) by the January 29, 2014 order of Mr. Justice Stratas. The Caring Society made submissions regarding: (i) the proper interpretation and scope of Jordan's Principle; (ii) the inappropriateness of narrowly construing Jordan's Principle, and the potential impact of such an approach on First Nations children living primarily on reserve; and (iii) the impact of narrowly construing Jordan's Principle on Canada's obligations under the United Nations Convention on the Rights of the Child (the "CRC"). Canada discontinued its appeal on July 11, 2014.

Jordan's Principle

16. Jordan's Principle is named after Jordan River Anderson, a five-year-old child from Norway House Cree Nation in Manitoba who died in a Winnipeg hospital in 2005. Although cleared by doctors to return home, Jordan's illness meant he was unable to live at home without in-home care. The governments of Canada and Manitoba disagreed as to which government entity should pay for Jordan's in-home care, given his on-reserve First Nations status. As a result of this disagreement, Jordan remained in a hospital room until he died at the age of five, never having the opportunity to live in a family home.

17. In memory of Jordan, and in keeping with the non-discrimination provisions of the Charter of Rights and Freedoms, as well as the "CRC", I worked with Jordan's family, Norway House Cree Nation ("Norway House") the Assembly of Manitoba Chiefs ("AMC") and the Assembly of First Nations ("AFN"), to develop and promote Jordan's Principle.

18. Indeed, Jordan's Principle was inspired by Jordan and his fight against his illness, as well as by the significant advocacy undertaken by Jordan's family, Norway House and AMC during



Jordan's life and after he passed away. Recognizing the significant work done by Jordan's family, community and others to advocate for a child first policy to resolve these disputes, Dr. Blackstock drafted the language now known as "Jordan's Principle" and the Caring Society hosts the Jordan's Principle website (www.jordansprinciple.ca).

19. Jordan's Principle is a child first principle ensuring First Nations children can access public services on the same terms as all other Canadian children. It states that where a government service is available to all other children and a jurisdictional dispute arises between Canada and the province/ territory, or between departments in the same government, regarding payment for services to a First Nations child, the government of first contact pays for the services and can seek reimbursement from the other level of government/ department after the child has received the service.

20. Throughout the winter of 2006 and the spring of 2007, I met with Jean Crowder, then Member of Parliament for Nanaimo-Cowichan, who prepared Private Members Motion 296 and introduced it to the House of Commons. The motion stated as follows:

In the opinion of the House, the government should immediately adopt a child-first principle, based on Jordan's Principle, to resolve jurisdictional disputes involving the care of First Nations children.

21. On December 12, 2007, I attended at the House of Commons with Jordan's family to witness the vote on Motion 296 by Members of Parliament. Motion (296) passed unanimously and was followed by all Members of Parliament giving a standing ovation to the Anderson family and other families from Norway House attending at the vote in the House of Commons who experienced similar government jurisdictional disputes regarding services for their children.

22. It is the Caring Society's position that the federal government has not implemented Jordan's Principle pursuant to Parliament's intentions and the language of Motion 296. As a result, First Nations children living on reserve continue to be unjustly denied public services available to all other Canadian children or, at the very least, are required to meet additional eligibility criteria or procedural requirements prior to receiving the service. In particular, Canada has tried to narrow Jordan's Principle by applying it only to children with complex medical needs with multiple service providers. The Caring Society raised its concerns at the Standing Committee on Aboriginal Affairs and Northern Development on December 8, 2010. A copy of these submissions is attached to my affidavit as **Exhibit "A"**.

23. The Canadian Paediatric Society ("CPS") urged all levels of government to implement Jordan's Principle, without delay, to work in partnership with First Nations communities on its implementation, and to provide First Nations children and youth with the care they are entitled.



A copy of the CPS 2012 Status Report on Canadian Public Policy and Child and Youth Health is attached to my affidavit as **Exhibit “B”**.

24. Jordan’s Principle was also adopted by the Manitoba Legislature on June 4, 2015. A copy of Resolution No. 8 is attached to my affidavit as **Exhibit “C”**.

25. On April 4, 2016, the Canadian Nurses Association urged the federal government to take action on recommendations to implement Jordan’s Principle. A copy of a letter from Anne Sutherland Boal, Chief Executive Officer of the Canadian Nurses Association, to Prime Minister Trudeau, dated April 4, 2016 and on which I was copied, is attached to my affidavit as **Exhibit “D”**.

26. On July 13, 2016, the Assembly of First Nations adopted a resolution calling on the federal government to take immediate and concrete action to implement Jordan’s Principle. A true copy of Resolution No. 62/2016 is attached to my affidavit as **Exhibit “E”**.

27. I have published peer-reviewed articles regarding Jordan’s Principle on three occasions in the Canadian Paediatric Society’s Journal *Paediatrics & Child Health*

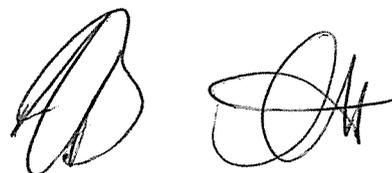
(i) Jordan’s principle and the United Nations Convention on the Rights of the Child (“CRC”)

28. The Caring Society works actively to promote the CRC, particularly as it applies to First Nations children in Canada. A true copy of the CRC is attached to my affidavit as **Exhibit “F”**.

29. The Caring Society follows and comments on Canada’s implementation of its obligations pursuant to the CRC through its publications and ongoing research. On January 28, 2011, the Caring Society presented the Shadow Report: Canada 3rd and 4th Periodic Report to the UNCRC, which addresses Canada’s failure to implement Jordan’s Principle pursuant to its obligations under the CRC. A copy of the report is attached to my affidavit as **Exhibit “G”**.

(ii) The Caring Society’s Human Right Complaint

30. The Caring Society and the AFN filed a joint complaint (the “Complaint”) with the Canadian Human Rights Commission (the “Commission”) on February 23, 2007. The Complaint alleged that the Government of Canada’s provision of First Nations child and family services on reserve was discriminatory on the basis of race and national ethnic origin contrary to the Canadian Human Rights Act (the “Act”). Specifically, the Complaint asserted that the child and family service program funded and controlled by what was formerly named Indian and Northern Affairs Canada (“INAC”, now called Aboriginal Affairs and Northern Development Canada (“AANDC”)) uses flawed and inequitable funding policies, practices and services resulting in



inequitable child welfare services and benefits for on-reserve First Nations children compared to those services received by children living off reserve, contrary to the *Act*.

31. The Complaint also alleged that the federal government's failure to fully and properly implement Jordan's Principle results in First Nations children being denied or delayed receipt of public services available to other children. This adverse treatment of First Nations is discriminatory, contrary to Section 5 the Act. A true copy of the Complaint is attached as **Exhibit "H"**.

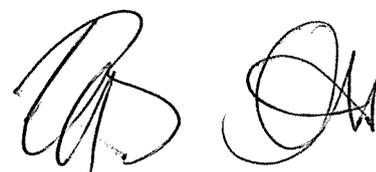
32. On March 14, 2011, the then-Chairperson of the Canadian Human Rights Tribunal (the "Tribunal") dismissed the Complaint on the basis that on-reserve First Nations children who receive child welfare services from the federal government cannot be compared to off-reserve children receiving the same services from provincial and territorial governments. The Chairperson concluded that since there was no "comparator group" of other individuals receiving the same services from the federal government, there could not possibly be discrimination.

33. The Caring Society, along with the AFN and the Commission, sought judicial review of the Chairperson's decision. On April 18, 2012, the Federal Court granted all three judicial review applications and remitted the Complaint to a differently constituted panel of the Tribunal.

34. Canada appealed the Federal Court's decision. The Federal Court of Appeal dismissed Canada's appeal on March 11, 2013.

35. The Tribunal began the hearing on the merits of the Complaint on February 25, 2013 and took the matter under reserve when closing arguments concluded on October 24, 2014. The Tribunal ruled in favour of the complainants on January 26, 2016 (2016 CHRT 2), finding that Canada's First Nations Child and Family Services Program ("FNCFS Program") and the federal approach to Jordan's Principle discriminated against First Nations children and families living on-reserve and in the Yukon, contrary to the *Act*. The Tribunal made an initial ruling regarding immediate relief measures on April 26, 2016 (2016 CHRT 10) and has had the matter of further immediate relief measures under reserve since July 6, 2016. The Tribunal will decide on long-term relief and compensation at a later date.

36. The Tribunal addressed Jordan's Principle in both its January 26, 2016 and April 26, 2016 reasons, finding that Canada's definition of Jordan's Principle was too narrow and ordering Canada to implement the full meaning and scope of Jordan's Principle. In the April 26, 2016 order (2016 CHRT 10), the Tribunal ordered Canada to apply Jordan's Principle across all children and across all jurisdictional disputes and that the government entity of first contact pays for the service without the need of a policy review or case conferencing approach.



Implications of the Present Case for First Nations Children and Families

37. The Caring Society has decided to seek interested party status in this case because the ruling may have a significant impact on the Caring Society, and the work it does on behalf of First Nations children and families and First Nations child and family services agencies, including its continued efforts to promote the full and proper implementation of Jordan's Principle.

38. I have read the Mississaugas of the New Credit First Nation's complaint, and am generally familiar with the issues in this case. In particular, I understand that one of the important issues that the Tribunal may address is the way in which the *Act* applies to cross-jurisdictional issues that may arise when a First Nations child must seek special education services off-reserve. This case will be the Tribunal's first occasion to address Jordan's Principle following its decision in the Caring Society's complaint concerning on-reserve First Nations child and family services.

39. The outcome of this case has implications for First Nations children and families across Ontario and across Canada. The Tribunal's conclusions will have an impact on the form of special education services delivered on-reserve in other locations, and the mechanisms through which decisions regarding those services will be made. The Caring Society has an interest in participating in this complaint as the nature of special education services provided on-reserve will have an impact on the environment in which the First Nations child and family services agencies the Caring Society represents will operate.

Submissions to be advanced by the Caring Society

40. The Caring Society is uniquely positioned to offer a useful and different perspective on the interpretation and application of Jordan's Principle. Indeed, through the support and advocacy of Jordan's family, Norway House, and AMC, I drafted Jordan's Principle and consulted with Ms. Crowder as she introduced Motion 296 to the House of Commons. Moreover, the Caring Society has an established involvement with the historical and social disadvantages experienced by First Nations peoples, and in particular First Nations children.

41. If granted interested party status in this case, the Caring Society would not seek to lead its own evidence or to tender documents for the Tribunal's consideration. The Caring Society's participation would be limited to cross-examining Canada's witnesses regarding Jordan's Principle, making written submissions regarding the evidence in the case as it applies to Jordan's Principle and the law as it applies to Jordan's Principle, and participating in oral arguments at the conclusion of the hearing.

42. The Caring Society would not repeat arguments already made by the Complainants or the Commission. Rather, if granted interested party status, the Caring Society would make useful

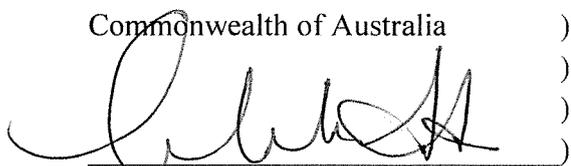


and different submissions regarding the interpretation and application of Jordan's Principle. These would include:

- a. the interpretation and application of a "child-first" principle in the context of special education services;
- b. the systemic measures required of Canada to implement the full meaning and scope of Jordan's Principle in the context of special education services; and
- c. the impact of narrowly construing Jordan's Principle on Canada's obligations under the United Nations Convention on the Rights of the Child with reference to the United Nations Committee on the Rights of the Child General Comment 11 regarding Indigenous children's rights and under the United Nations Declaration on the Rights of Indigenous Peoples.

43. As the only national organization specifically focused on serving First Nations children and families, the Caring Society is uniquely positioned to advance the foregoing arguments. The Caring Society's perspective on these issues is distinct from those of the other parties to this complaint and I am not aware of any proposed interested party planning to make similar submissions.

AFFIRMED BEFORE ME this)
6th day of September, 2016)
in the City of Sydney, in the State)
of New South Wales, in the)
Commonwealth of Australia)



Public Notary

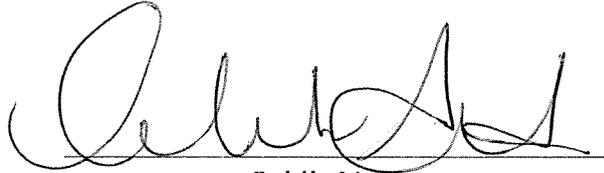


CINDY BLACKSTOCK

SOLICITOR NO: 28929

GEMMA SLACK-SMITH

This is **Exhibit "A"** to the affidavit of
Cindy Blackstock, sworn before me
in SIDNEY
this 6th day of September, 2016


Public Notary

Indian and Northern Affairs Canada(INAC): Delivering inequity to First Nations children and families receiving child welfare services

Submission to:

Standing Committee on Aboriginal Affairs and
Northern Development



Cindy Blackstock, PhD

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Ottawa, ON K2P 1X3

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613 230 5885

Testimony date: December 8, 2010

INTRODUCTION

“Circumstances are dire. Inadequate resources may force individual agencies to close down if their mandates are withdrawn, or not extended, by the provinces. This would result in the provinces taking over responsibility for child welfare, likely at a higher cost to Indian and Northern Affairs Canada (INAC)”

INAC internal document obtained under Access to Information (document number 2365)

For decades, the Department of Indian and Northern Affairs (INAC) has known that its systematic failure to properly resource and structure its First Nations child and family services program has contributed to growing numbers of First Nations children being removed from their families and First Nations agencies being unable to meet the statutory requirements to keep First Nations children and families safe (McDonald & Ladd, 2000; Department of Indian Affairs and Northern Development, n.d.; Auditor General of Canada, 2008; Standing Committee on Public Accounts, 2009). INAC’s failure to provide equity in First Nations child and family services has persisted despite there being overwhelming evidence of the inequity, the availability of solutions to address the problem, and the growing number of Parliamentary, Senate and expert reports linking the inequity to harm to vulnerable children and their families. INAC has consistently failed to treat First Nations children and families equitably regardless of whether the country was running a surplus budget or spending billions to stimulate the economy.

The Minister of Indian and Northern Affairs’ program for First Nations child and family services includes three key policy structures: 1) Directive 20-1 which his own documents say creates a “dire situation” 2) the flawed and inequitable enhanced approach and 3) the 45 year old Indian Welfare Agreement in Ontario that the Auditor General has also termed inequitable. Additionally, INAC is before the Canadian Human Rights Tribunal facing allegations that it racially discriminates against First Nations children and families receiving child welfare services by providing inequitable benefit. Instead of addressing the complaint with evidence on the merits, Canada has tried to derail a full and public hearing on this matter using legal loopholes and countless delay tactics. This very low standard of government accountability and public policy for children runs counter to Canadian values and Canada’s obligation to ensure the safety and wellbeing and equitable treatment of children pursuant to the United Nations Convention on the Rights of the Child and the Charter of Rights and Freedoms and should not be tolerated for First Nations children.

This submission briefly outlines INAC's three principle policies in First Nations child and family services and their impacts before providing recommendations to ensure the equitable treatment of First Nations children and families.

DIRECTIVE 20-1

“Lack of in-home family support for children at risk and inequitable access to services have been identified by First Nations Child and Family Services Agencies, and INAC, as important contributing factors to the over representation of Aboriginal children in the Canadian child welfare system... provincial governments have written to Ministers of INAC and intergovernmental affairs indicating that INAC is not providing sufficient funding to permit First Nations child and family services agencies to meet their statutory obligations under provincial legislation.”

*INAC internal document dated 2004 obtained under access to information
(Document number 2372)*

This “dire” and flawed INAC program policy for child and family services continues to impact the lives of First Nations children and families in British Columbia and New Brunswick. Repeated reports commissioned by the Department of Indian and Northern Affairs Canada have found that the Directive is flawed in structure and inequitable in the amount of funding provided (MacDonald & Ladd, 2000; Loxley, DeRiviere, Prakash, Blackstock, Wien, & Thomas Prokop, 2005). Directive 20-1 was also reviewed by the Auditor General of Canada (2008) and the Standing Committee on Public Accounts (2009) and both found that Directive 20-1 was inequitable and not based on the needs of First Nations children and families. INAC's own internal documents confirm that the impacts of the inequities in the Directive are “dire” for First Nations child and family service agencies and are linked to growing numbers of First Nations children going into care because their families are not receiving the family support and prevention services they need. INAC's fact sheet dated 2007 links the Directive to growing numbers of First Nations children in care and the inability of First Nations child and family service agencies to meet mandated responsibilities.

INAC had the solutions to address the problems with Directive 20-1 for at least 11 years but has consistently failed to ensure equity for First Nations children regardless of the financial situation of the country. The inequity for First Nations children has persisted across two different governing parties both of which had billions of surplus budgets and now the current government is spending billions on projects such as G-8 meetings, fighter jets, and signs pointing out where stimulus tax dollars are being spent but the damaging Directive continues to contribute to First Nations children in these two provinces going needlessly into child welfare care.

First Nations child and family service agencies in British Columbia have been advised that INAC plans on eliminating the current approach for funding maintenance in that province as of April of 2111 and

replacing it with reimbursement at actuals. This change, in the absence of any significant adjustments to the Directive or enhanced funding models, to support the operations of agencies serving less than 1000 Status Indian children on reserves will result in even more hardship for First Nations child and family service agencies in BC and may result in the closure of some.

It seems that INAC prioritizes implementing actions related to reducing federal costs, and thus the wellbeing of children, even when multiple expert reports, and its departmental records, indicate that MORE investment is needed to ensure child safety and wellbeing in these regions.

ENHANCED FUNDING APPROACH (AKA TRIPARTITE FUNDING)

“4.64 However, we also found that the new formula does not address the inequities we have noted under the current formula. It still assumes that a fixed percentage of First Nations children and families in all the First Nations served by an agency need child welfare services. Consequently, in our view, the new formula will not address differing needs among First Nations. Pressures on INAC to fund exceptions will likely continue to exist under the new formula.”

Auditor General of Canada (May, 2008)

The Enhanced Prevention Focused Approach is currently applied by INAC in Alberta, Saskatchewan, Manitoba and Quebec. INAC unilaterally developed the enhanced funding approach also known as the tripartite funding arrangement and then imposed it on First Nations as the EXCLUSIVE option to Directive 20-1. It is important to note that INAC continually implies First Nations have choice as part of the design of the tripartite approach, INAC’s own records indicate they have an inflexible national template to guide implementation in the regions and their documents emphasize that INAC is only mandated to DISCUSS the enhanced approach with provinces and First Nations not NEGOTIATE. Although the Auditor General of Canada found enhanced funding to be an improvement over Directive 20-1 it continued to be inequitable and incorporated some of the flaws of Directive 20-1 such as not basing funding on the actual needs of First Nations children and families.

INAC undertook an internal evaluation of the implementation of the Enhanced Funding Formula in Alberta and summarizes the findings in a presentation deck entitled “*Implementation Evaluation of the Enhanced Prevention Focused Approach (EPFA) in Alberta: preliminary findings, May 14, 2010.*” The findings are summarized on presentation slides 18 and 19 respectively and read as follows:

- *Overall the EPFA model is seen to be a move in the right direction with potential for positive outcomes.*
- *Considerable variability of results across agencies, some clearly making progress and others struggling.*
- *HR [human resource] shortages affect DFNA’s [Delegated First Nations Agencies] ability to fully implement*

- *Some DFNA's report wanting more support from INAC in IT [information technology] capacity and planning/implementation*
- *75% of DFNA interviewees reported not enough funds for full implementation (emphasis added)*
- *Scarcity of supportive programming for referrals affects ability to fully implement in some DFNA's*
- *Funding formula still variable in application and some issues need resolution*
- *Recognize this is a long term approach that takes time to implement, and needing time in initial stages to change community attitudes to child welfare program*
- *Attribution of results to EPFA challenging because of reporting and data gaps and confounding factors (e.g.: strong leadership/skills in director position; community capacity)*
- *INAC needs more information (business plans with baselines; reporting outcomes; provincial data) in order to fully assess results."*

Clearly, this evaluation demonstrates some significant shortcomings in the enhanced prevention based approach. INAC, however, continues to offer the enhanced approach with all of its flaws as the exclusive funding alternative. It does not appear that INAC has taken any meaningful steps to redress the flaws of the enhanced approach identified by the Auditor General in 2008.

The need for equity in child welfare services was echoed in a report by the Honourable Yvonne Fritz, Minister of Children and Youth Services in Alberta (2010) on Aboriginal child welfare which includes this statement:

"Repeated a number of times by different participants were the need for the following: (a) equity in funding; (b) same access to services; (c) cultural training and sensitivity to Aboriginal issues and concerns; and greater communication, collaboration and cooperation among all those who provide services to Aboriginal children in care."

There is a critical need to remedy the shortcomings of the enhanced approach in provinces where it is being implemented and for INAC to be open to alternatives to the enhanced approach in regions where enhanced is currently being provided and in regions where enhanced is being considered. Viable alternatives to enhanced include the Wen:de approach which was jointly developed by First Nations and the Department in 2005.

1965 INDIAN CHILD WELFARE AGREEMENT

This bilateral agreement between INAC and the Province of Ontario drives First Nations child and family service delivery on reserves in Ontario. It is now over 45 years old and has not kept pace with advances in First Nations child and family services nor has it invited First Nations to participate fully in the development of the policy. In 2000, a report commissioned by INAC on First Nations child and family services funding included a recommendation that INAC partner with First Nations child and family service agencies in Ontario to conduct a special review of the 1965 Indian Welfare Agreement in Ontario. Close to 11 years later, INAC has not implemented this recommendation. The Auditor General of Canada reviewed the 1965 Indian Child Welfare Agreement in Ontario as part of her omnibus review

of INAC's First Nations child and family services program in 2008 and she found it to be inequitable. There has been no apparent movement by INAC to conduct the review or redress the inequities identified by the Auditor General of Canada.

FIRST NATIONS CHILD AND FAMILY SERVICES IN THE TERRITORIES

There are currently no First Nations child and family service agencies in the Yukon or Northwest Territories. The Minister of Indian Affairs transfers funds for child welfare to territorial authorities to deliver the services. First Nations have expressed a desire to enter into negotiations with Canada and the Territories to reassert authority for child welfare and to ensure adequate resourcing for the services. For example, the Carcross Tagish First Nation has created its own family act and as recently as November of 2010, but is reporting that INAC nor the Territory are prepared to negotiate proper funding for community controlled child welfare in the region.

INAC appears to have no plan to address the lack of First Nations child and family service agencies in the Territories despite the fact that First Nations children are dramatically over-represented in the Yukon Territory and the Northwest Territory.

JORDAN'S PRINCIPLE

Jordan's Principle says that where a government service is available to all other children and a jurisdictional dispute between Canada (including INAC) and the province/territory occurs regarding payment for services to a First Nations child, the government of first contact pays for the services and can later seek reimbursement from the other level of government. In this way, First Nations children can access public services on the same terms as other children while payment issues between levels of government get resolved. Parliament unanimously passed Motion 296 put forward by Member of Parliament, Jean Crowder, on December 12, 2007. Tragically, Canada (including INAC) has tried to narrow Jordan's Principle suggesting it need only be applied on an inefficient "case by case" basis for children with complex medical needs with multiple service providers. This narrowing is completely distasteful as Jordan's Principle is named after Jordan River Anderson who languished in hospital unnecessarily for over two years while INAC, Health Canada and the Province of Manitoba argued over payment for at home care services that would otherwise be provided to non-Aboriginal children. Jordan died in the hospital never having spent a day in a family home while government officials continued to argue over who should pay. The case by case resolution approach was in place for Jordan and resulted in devastating consequences for Jordan and his family.

INAC must fully implement Jordan's Principle across all government services immediately ensuring that First Nations children are in no way fettered or delayed access to services available to all other children. The narrowing of Jordan's Principle has the effect of perpetuating discrimination against First Nations children and families in other Government of Canada children's services.

THE CANADIAN HUMAN RIGHTS TRIBUNAL ON FIRST NATIONS CHILD AND FAMILY SERVICES

After INAC failed to implement the recommendations of two expert reports commissioned by INAC and conducted jointly with First Nations to redress the inequities in First Nations child and family services,

the Assembly of First Nations and the First Nations Child and Family Caring Society of Canada filed a historic complaint with the Canadian Human Rights Commission alleging that Canada is racially discriminating against First Nations children by providing less child welfare benefit on reserves than other children enjoy.

This is the first time in history that Canada has been held to account before a judicial body with the power to make orders for its current and systemic treatment of First Nations children. Canada has been trying to derail this important public hearing on the merits by raising legal loopholes. The most consistent legal loophole advanced by Canada is their idea that “funding is not a service. In this argument, Canada wrongly suggests that it only funds First Nations child and family services and First Nations child and family service agencies provide the service to the public so if there are any claims of discrimination by children they should be absorbed by the service provider not by Canada. This is splitting hairs as it is not possible for First Nations child and family service agencies to provide a service they are not funded for and the whole strategy smacks of government downloading of its responsibility for ensuring the non-discrimination of children. It is important to note that INAC has an entire program manual for First Nations child and family services that outlines a net of control over First Nations child and family services that includes INAC holding the right to read child in care files – far beyond what a solely funder-recipient relationship should entail.

Canada brought two motions before the Federal Court to try to derail a hearing on the merits and was unsuccessful on both occasions. Curiously, instead of appealing the Federal Court motion to the Federal Court of Appeal, Canada decided to bring a motion to dismiss on the same substantive grounds to the Canadian Human Rights Tribunal which is a lower level judicial body.

Important to this Committee, in May of 2010 Odette Johnston, INAC’s senior official on First Nations child and family services testified under oath before the Tribunal in support of Canada’s motion to dismiss the tribunal on the funding is not a service issue. Transcripts of her testimony are available in the public domain. Ms. Johnston offers the following comments in response to questions posed by Paul Champ, legal counsel, for the First Nations Child and Family Caring Society of Canada regarding the report by the Auditor General of Canada on First Nations child and family services completed in May of 2008:

Q (Paul Champ - Caring Society legal Counsel). Okay. And you're aware that the Auditor General of Canada had reviewed both of these funding models, Directive 21 and the Enhanced Funding Model, in her review of your programme in 2008?

A. (Ms. Johnston) Yes.

Q (Mr. Champ). And the Auditor General had concerns with respect to both models, correct? If you're not sure, that's fine?

A. (Ms. Johnston) Yes, I am not sure.

Q. (Mr. Champ) Okay. Do you know what types of recommendations the Auditor General made with respect to 3 those models and the delivery of child prevention 4 services on reserves generally?

A. (Ms. Johnston) I can't recall off the top what exactly those recommendations were.

Q. (Mr. Champ) And I appreciate that report was released in '08, so you'd only been a year in at that point at the department. But are you aware of any steps that INAC or your programme is taking to address any of the concerns raised by the Auditor General's report? Like does it ever come up with new policies or recommendations, or, I don't know, things that you are working on or planning where the driver is, you know, people refer to the Auditor General's report?

A. (Ms. Johnston) Specifically, no. I mean any direction we're taking will take that into consideration, but it's not necessarily the driver for change.

Q. (Mr. Champ) So there is some things that you're doing where that is taken into consideration?

A. (Ms. Johnston) Yes

Q. (Mr. Champ) Can you give me examples?

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

(Johnston, 2010)

It is curious that the senior official at INAC on First Nations child and family services claims to be unaware if the Auditor General of Canada (2008) had concerns about INAC's funding for First Nations child and family services particularly as she headed the division in charge of preparing the responses to the Auditor General of Canada's report. Nonetheless, the lack of knowledge about the report and its associated recommendations does not bode well for First Nations children.

It is also concerning that of all the recommendations in the report, particularly the ones related to the inequities embodied in Directive 20-1, the enhanced approach and the 1965 Indian Welfare Agreement that INAC appears to have prioritized developing a management information system.

It is essential that INAC staff are fluent in the recommendations of expert and independent reports related to the First Nations child and family services program offered by the Department and are able to prioritize the recommendations likely to have the most significant benefit for First Nations children and families in order to ensure that current, and future, INAC program policies and directives avoid past mistakes and build on solid evidence.

Moreover, Parliamentarians should note that Canada is prioritizing a legal loophole over the substantive equity, safety and wellbeing of thousands of very vulnerable First Nations children and families. The question should be asked of INAC "why would INAC not want to answer an allegation of racial discrimination against First Nations children on the merits?" The fact that Canada is trying to escape a hearing on the merits using legal loopholes raises important moral

and public accountability concerns. Surely, if INAC was confident that it is providing equity for First Nations children and families served by its First Nations child and family services program then it should have no problem marshaling enough evidence to support its position.

The Canadian Human Rights Tribunal is now being followed by close to 6700 individuals and organizations registered with the I am a witness campaign (www.fnwitness.ca) making it the most formally watched legal case in Canadian history.

RECOMMENDATIONS:

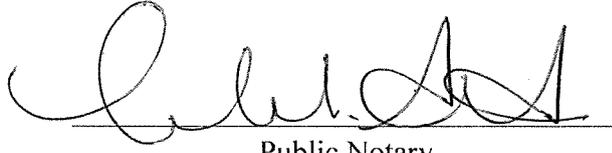
- 1) INAC must take immediate steps to fully redress the inequities and structural problems with the Directive 20-1, enhanced funding approach and the 1965 Indian Welfare Agreement that have been identified in expert reports and by the Auditor General of Canada in full partnership with First Nations. There is no acceptable rationalization for ongoing inequities affecting First Nations children given the range of solutions available to the Department to redress the problems and the wealth of the country.
- 2) INAC must support other funding and policy options proposed by First Nations for First Nations child and family services other than the enhanced approach, Directive 20-1 and the 1965 Indian Welfare Agreement which the Auditor General has found to be inequitable.
- 3) INAC must immediately resource a comprehensive review of the 1965 Indian Welfare Agreement in full partnership with First Nations and First Nations child and family service agencies in Ontario to determine whether the formula achieves culturally based equity for First Nations children and families in Ontario.
- 4) INAC must fully and immediately implement Jordan's Principle across all government services to ensure that no First Nations child is denied or fettered access to government services available to all other children. It must be systemically implemented avoiding the inefficient and ineffective case by case approach currently being advanced by INAC and other Federal Government departments.
- 5) INAC must develop in partnership with First Nations in the Northwest Territory and Yukon Territory strategic measures to support the full and proper operation of First Nations child and family service agencies in the territories including, but not limited to, supporting culturally based and community based child welfare and the provision of adequate and flexible financial resources.
- 6) INAC must not implement the plan to place BC First Nations child and family service agencies or agencies in New Brunswick on actual reimbursement for maintenance costs until a viable plan has been developed in partnership with First Nations that ensures the full and proper operation of agencies serving less than 1000 First Nations children on reserve also known as "small agencies". This plan should be reviewed by independent expert(s) selected in partnership with First Nations before implementation and should be evaluated over time to inform possible adjustments.

- 7) INAC must immediately provide training to INAC staff, particularly at the senior levels, so they are fully briefed on all reports, including the reports by the Auditor General of Canada, on INAC's First Nations child and family services program so they are in a better position to implement outstanding recommendations.
- 8) INAC must direct its legal counsel to allow the Canadian Human Rights Tribunal to decide the case on First Nations child and family services on the merits – not on legal loopholes.
- 9) In light of the particular vulnerability of First Nations children and families served by child welfare on reserves and the ongoing concerns regarding INAC's management of the First Nations child and family services program, INAC should be required to report regularly to The Standing Committee on Aboriginal Affairs and Northern Development on its implementation of the recommendations of the Auditor General of Canada's report on First Nations child and family services.

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This is **Exhibit "B"** to the affidavit of
Cindy Blackstock, sworn before me
in STONEY
this 6th day of September, 2016



Public Notary



2012 Edition

Are We Doing Enough?

A status report on Canadian public policy
and child and youth health



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Health Promotion

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Injury Prevention

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Background

Canada's children and youth are inheriting many of the challenges that face our world, and it is our collective responsibility to prepare them for a complex future. As families, communities and decision-makers there is much we can do to ease their way. This report highlights what governments need to do to support the health, safety and well-being of children and youth, to better protect them today and to prepare for tomorrow.

Legislative and regulatory actions can strengthen parents and families in their efforts to raise healthy, safe and competent children. There are many examples of how legislation and public policy have improved conditions for children and youth, such as seat belt and helmet laws. This report reviews current policy on several fronts, suggests improvements and brings critical issues to the forefront of the public policy agenda.

In this fourth edition of *Are We Doing Enough?*, the Canadian Paediatric Society (CPS) continues to assess key indicators of child and youth health at the provincial/territorial and federal levels. In addition to rating progress on these indicators, we outline specific actions to improve the legislative and public policy environments. These actions are based on clear need and on evidence that

government intervention is effective. We hope this approach will provide direction to help policy-makers act in the best interests of children and youth.

The two-year interval between reports allows time for policy changes to take place, and in some areas improvements have been made. For example, provinces and territories continue to strengthen anti-smoking laws that protect kids. Legislation or policies have been introduced to improve the mental health status of children and youth, and to pull them out of poverty. But there is still much more to be done. Among the new key issues evaluated in this year's report are newborn hearing screening and an enhanced 18-month well-baby visit.

Are We Doing Enough? assesses public policy in four major areas:

- Disease prevention
- Health promotion
- Injury prevention
- Best interests of children and youth

Information in this report is current as of January 3, 2012 and was obtained from government documents, websites and personal correspondence.

Summary

The impact of the early years on a child's chances of success later in life is indisputable. Thanks to advances in our understanding of the relationship between early experience, brain development and outcomes, we now know that the first years of life offer unique opportunities for individual children, their families, and for society as a whole.¹ We have long known that protecting children's health and wellness improves their ability to contribute as adults. Now, mounting evidence from economists makes a forceful argument for investing early in child health and development as an important driver of economic growth.

The Canadian Paediatric Society works with many agencies and organizations to support the health and well-being of children and youth. Governments are key players: their legislative powers can help to safeguard many key aspects of child health and well-being, and to create a public environment that nurtures growth and development. Government-led health promotion strategies have substantial protective and preventive powers—to save lives, and to prevent injury, disability and disease.

The CPS is concerned that too few improvements have been made since the third edition of this report was published in 2009. In fact, Canada's children and youth may be losing ground on the public policy front. While the recent recession has, justifiably, focused government attention on the economy, we contend that children and youth remain our most powerful assets. More than that, they offer the best possible return on public investment toward ensuring a strong economy and a healthy nation.

Childhood vulnerability

Children's opportunities for health, emotional well-being and life success are determined in large part by their early development.² A deprived environment can leave a child with life-long deficits, while high-quality early learning and care help to stimulate cognitive and social development.

Research suggests that more than one-quarter of Canadian children may not be fully prepared to learn when they begin kindergarten. Over 27% fall short on at least one measure of physical, social, emotional or cognitive development.³ Intervening in high school may come too late: some children will never catch up.⁴ While disadvantaged children are more vulnerable, middle-class children are also at risk, making early vulnerability a widespread problem.⁵ In addition to the effects on individuals, such as poorer health and lower levels of school achievement, early vulnerability can also lead to societal issues like greater dependence on welfare and a higher likelihood of criminal behaviour.^{6,7} The quality of the labour market also suffers, with grave economic consequences. Clear links have been shown between average test scores in school and economic growth rates.⁸

Development before the age of six is a critical issue for everyone, including business and government leaders.⁹ Some economists are raising the alarm that our current rate of vulnerability will "dramatically deplete our future stock of human capital."¹⁰ Our standing among the world's richest countries lays bare these failures. Canada lags far behind most wealthy Western nations, ranked last in terms of support for family policy and early child development by both the Organization for Economic Co-operation

and Development (OECD) and the United Nations Children's Fund (UNICEF).¹¹ In a recent UNICEF report, Canada met only one of 10 benchmarks for protecting children in their most vulnerable and formative years.¹²

Compelling economic arguments

Economists agree that the most cost-effective human capital interventions occur among young children.¹³ Beyond the long-term benefit of children's future participation in the workforce, data is mounting on the value of early investments in children and youth.

Child poverty: Aside from its social implications, child poverty leads to higher health care costs and exacts an enormous toll on human potential and economic productivity. Not only does child poverty affect future prosperity, it costs taxpayers today as well. Estimates for British Columbia show that poverty costs that province between \$8 billion and \$9 billion annually, while a comprehensive program to reduce poverty would cost between \$3 billion and \$4 billion per year.¹⁴

Early learning and child care: Estimates of the return to society on dollars spent in the early childhood years vary, but they are significant—from \$4 to \$8 for every \$1 spent.¹⁵ One recent study showed that a provincially-funded early learning and child care program more than pays for itself by increasing tax revenues from working parents.¹⁶ Early childhood education and care enhances parental employability, helps to generate millions in tax revenues and reduces the need for expensive remedial programs later on.¹⁷

Mental illness: Mental illness is the second leading cause of disability and premature death in Canada. While its human costs may be nearly incalculable, estimates of the economic cost of mental illness range from \$14 billion to \$51 billion a year when lost productivity is included.¹⁸ Prevention and early intervention are known to be less expensive and more effective than later treatment.¹⁹ Early action

provides better health outcomes, increased contributions to society and the workforce, and cost-savings to the health care, justice and social service systems.²⁰

Further examples of the cost savings and effectiveness of government action are provided throughout this report. Of course, to understand the impact of specific policies and interventions, Canada needs a robust monitoring system with an ongoing flow of quality information on current early child development, key determinants of health and long-term developmental outcomes.²¹ The CPS calls on the federal and provincial/territorial governments to work together to develop a coordinated monitoring system that would fill in the gaps in data collection as well as helping to integrate research, best practice and knowledge exchange. Such a system is crucial to informing policies that affect the health and well-being of young children and youth, and is a key activity in a fully developed society.

The CPS also urges governments to invest in effective early child development and in interventions that optimize the health, well-being and educational achievement of all Canadian children, regardless of geography, socioeconomic status or culture.

Recent neuroscience has shown that children's early experiences are critical to future health, learning and behaviour. This connection is important not only for those of us who care about children and youth but for our nation's future. We don't promote prosperity and health if we don't nurture and support child development.

We strongly encourage all levels of government to consider the recommendations in this report, and to take an active role in reviewing legislation with an eye to keeping young citizens, and the economy they live in, healthy. We owe it to our children and youth to get this right.