

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

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

Respondent

- and -

CHIEFS OF ONTARIO,
AMNESTY INTERNATIONAL CANADA and
NISHNAWBE ASKI NATION

Interested Parties

AFFIDAVIT OF JOHN LOXLEY

I, John Loxley, of the City of Winnipeg in the Province of Manitoba, solemnly affirm and say as follows:

1. I hold a Doctorate in Economics and am a Professor of Economics at the University of Manitoba. I have been part of the University of Manitoba's faculty since 1977.

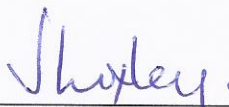
2. For thirteen years, I was Head of the Department of Economics at the University of Manitoba. I have also been the Research Coordinator of the University of Manitoba's Global Political Economy Program since 2002.
3. From June 2014 to May 2016, I was the Executive Director of the Premier of Manitoba's Advisory Council on Education, Poverty and Citizenship.
4. I am a Fellow of the Royal Society of Canada.
5. I received the Canadian Association of University Teachers' Distinguished Academic Award in May 2008.
6. I received the Galbraith Prize in Economics and Social Justice, awarded by the Progressive Economists' Forum, in May 2010.
7. Since 2002, I have been the Principal Investigator of three large Social Sciences and Humanities Research Council research grants, the last two of which were on the theme of Inner-City and Aboriginal Poverty.
8. I have served as an Economic Advisor to the Assembly of Manitoba Chiefs, the Assembly of First Nations, and several governments, including the Government of Manitoba, often on budgetary matters.
9. I was an Economic Advisor to the Royal Commission on Aboriginal Peoples from 1992 to 1995.
10. In 2004, I was a consultant to the First Nations Child and Family Caring Society regarding a new funding formula for First Nations child welfare agencies in Canada. In this capacity, I was a co-author of the three Wen:de reports, which were produced through this exercise.
11. I am the co-author, with Fred Wien, Cindy Blackstock, and Nico Trocme, of "Keeping First Nations Children at Home: Few Federal Policy Changes could make a big Difference", published in *First Peoples Child and Family Review* in 2007.
12. I am the co-author, with Mariana Puzyreva, of "The Costs of Implementing the Recommendations of the Truth and Reconciliation Commission on Child Welfare and

Early Childhood Education, published by the Truth and Reconciliation Commission of Canada in January 2016.

13. I provided an expert report to the Canadian Human Rights Tribunal in the context of this complaint in September 2013.
14. I have applied the knowledge and experience I have gained through the professional and academic history described above in writing my second report in the context of this complaint, which is attached to my affidavit as **Exhibit "A"**.
15. I understand that, as an expert, I have a duty to assist the Tribunal, and that I am not to be an advocate for any party. The report attached to my affidavit as **Exhibit "A"** is made in conformity with that duty.
16. I make this affidavit in good faith and for no other or improper purpose.



AFFIRMED BEFORE ME)
at Winnipeg, Manitoba on)
January 5, 2017)
)
)
)
)
)
A Commissioner for taking affidavits, etc.)

Phillip Gramer, a
Notary Public in and for
the Province of Manitoba.



JOHN LOXLEY

**EXHIBIT "A" TO THE AFFIDAVIT OF
JOHN LOXLEY, AFFIRMED
BEFORE ME IN THE CITY OF
WINNIPEG
ON JANUARY 5, 2017**



Phillip Cramer, a
Notary Public in and for
the Province of Manitoba.

Report on Government of Canada's Response to the Canadian Human Rights Tribunal Orders Regarding Discrimination in its First Nations Child and Family Services (FNCFS) Program

By
Dr John Loxley¹

Department of Economics
University of Manitoba
December 2016

1. Terms of Reference

In November 2016 I was engaged by the First Nations Child and Family Caring Society (FNCFCS) to 'Conduct analysis of the financial and other information forwarded by the Government of Canada to ascertain whether or not it fully meets that requested in the orders of the Canadian Human Rights Tribunal' with regard to the findings of discrimination against First Nation children in the government's FNCFS program.

2. Statement of Expertise

I am a Professor of Economics and for thirteen years was Head of the Department of Economics at the University of Manitoba. I have also been the Research Coordinator of the Global Political Economy Program at the university since 2002.

From June 2014 to May 2016 I was the Executive Director, Premier's Advisory Council on Education, Poverty and Citizenship, Manitoba (Half-time).

I am a Fellow of the Royal Society of Canada.

I received the Canadian Association of University Teachers (CAUT) Distinguished Academic Award, May 2008

I received the Galbraith Prize in Economics and Social Justice, awarded by the Progressive Economists' Forum, May, 2010.

Since 2002 I have been the Principal Investigator of three large SSHRC research grants, the last two on the theme of Inner-City and Aboriginal Poverty.

I have served as an Economic Advisor to the Assembly of Manitoba Chiefs, the Assembly of First Nations and several governments, including the Manitoba Government, often on budgetary

¹ With research assistance provided by Marina Puzyreva

matters.

I was an Economic Advisor to the Royal Commission on Aboriginal Peoples 1992 – 95.

I was a Consultant to the First Nations Child and Family Caring Society, Ottawa, on a new funding formula for First Nations child welfare agencies in Canada, from October 2004 and was a co-author of the Wen:de reports which came out of this exercise; namely:

Wien, Loxley and Blackstock, *Bridging Econometrics with First Nations Child and Family Service Agency Practice*. First Nations Child and Family Service Agency Funding Formula Research Project, First Nations Child and Family Caring Society of Canada, Ottawa. Available at www.fncfcs.com. 2004.

Blackstock, Prakash, Loxley and Wien *Wen:de: We are coming to the light of day. Stage Two*. First Nations Child and Family Service Agency Funding Formula Research Project, First Nations Child and Family Caring Society of Canada, Ottawa. Available at www.fncfcs.com. 2005, and

Loxley, DeRiviere, Prakash, Blackstock, Wien and Prokop, *Wen'De: de - We are Coming to the Light of Day: Phase 3 Report*. First Nations Child and Family Service Agency Funding Formula Research Project, First Nations Child and Family Caring Society of Canada, Ottawa, Available at www.fncfcs.com. 2005.

I provided an expert report to the Canadian Human Rights Tribunal in September 2013.

I co-authored 'Keeping First Nations Children at Home: Few Federal Policy Changes could make a big Difference', with Fred Wien, Cindy Blackstock and Nico Trocme, *First Peoples Child and Family Review*, Volume 3, No. 1, 2007.

I am the author of 'The Costs of Implementing the Recommendations of the Truth and Reconciliation Commission on Child Welfare and Early Childhood Education', with Marina Puzyreva, Truth and Reconciliation Commission of Canada, January 2016.

I believe I have the necessary background, therefore, to comment on the federal government's response to the orders of the CHRT.

3. Methodology

The methodology adopted was to consult the ruling by the CHRT on January 26th 2016, its subsequent orders to Indigenous and Northern Affairs Canada (INAC), known at the time of the hearing as Aboriginal Affairs and Northern Development Canada (AANDC), with respect to implementing the ruling and INAC's responses to these orders. Because both the Tribunal and INAC refer to submissions made by the complainants and intervenors, namely, the First Nations Child and Family Caring Society (FNCFCS), the Assembly of First Nations (AFN), the Chiefs of

Ontario (COO) and the Nishnawbe Aski Nation (NAN), documents submitted by these organizations were also studied. The full listing of documents reviewed is to be found in Appendix 1, CHRT documents in black, INAC documents in blue and other documents in red and are referred to in the text by the number they have been assigned there.

4. Background

In its January 2016 ruling, the CHRT found sufficient evidence to establish a prima facie case of discrimination against First Nation children under section 5 of the Canada Human Rights Act. Specifically, it found that First Nations children and families living on reserve and in the Yukon are denied equal child and family services and/or are differentiated adversely in the provision of child and family services (2016- CHRT 2 (1), Section 456, p. 160).

5. CHRT Order

a) Finding the complaint to be substantiated, the Panel made the following orders:

- AANDC is ordered to cease its discriminatory practices and reform the FNCFS Program and 1965 Agreement to reflect the findings in the decision; and,

- AANDC is ordered to cease applying a narrow definition of Jordan's Principle and take measures to immediately implement its full meaning and scope (2016, CHRT 2, Section 481)

b) Stating that it had outstanding questions about how best to implement these orders in the immediate, mid-term and long-term, the Panel proposed a three step process: First, it would address expeditiously the requests for immediate relief (i.e. the requests for immediate reforms to the FNCFS Program and the 1965 Agreement; and for increased funding). The order on Jordan's Principle also called for immediate action. Second, the Panel would then deal with the requests for mid to long-term relief (i.e. to redesign the FNCFS Program and 1965 Agreement; implement training and on-going monitoring). The third step concerned possible compensation for the children adversely affected by underfunding, but this will not be dealt with in this report (CHRT, February 5, 2016).

c) What follows tracks the performance of the Federal government in implementing these orders as the orders evolved over time, by interpreting the financial information provided by INAC, beginning first with those dealing with the response of INAC to the Tribunal's concerns about the FNCFS Program and dealing then with those concerning Jordan's Principle.

6. The Federal Response to the Tribunal's Findings Concerning the FNCFS Program

On March 10, 2016, the Department of Justice responded to the Tribunal's request for clarification regarding immediate relief remedies, accepting the ruling and offering to consider a number of immediate relief measures, such as adjustments to inadequacies in Operations and Prevention funding, increases in the per child amount for services, extension of the EPFA across

the country, additional maintenance funding, cash for intake and investigation services, more money for agencies with more than 6% children in care (CIC), beginning an engagement process with the National Advisory committee and Regional Tables to work on medium to long term reform. The government agreed not to reduce funding to the FNCFS Program. It also expressed support for the Canadian Incidence Study. It agreed to review the 1965 Ontario Welfare Agreement in the medium to long term.

The government promised more details on immediate relief in the Budget announcement of March 22, 2016.

7. Budget 2016

On April 6, the government submitted more information on immediate relief drawing mainly on the 2016 budget (8). This announced new spending of \$634.8 million over five years to the First Nations Child and Family Services Program for both increased prevention services and operational supports. New spending would be \$71.1 million in 2016-2017; \$98.6 million in 2017-2018; \$126.3 million in 2018-2019; \$162.0 million in 2019-2020; and \$176.8 million in 2020-2021, which is ongoing.

The \$71.1 million in immediate relief for 2016-2017 will include:

- \$54.2 million for immediate adjustments to Operations and Prevention; increases to the per child service purchase amounts; funding for intake and investigation services; upward adjustments for agencies with more than 6% of children in care; and funding for providing federal support to expand provincial case management systems on reserve.
- \$16.2 million for prevention funding in Ontario, British Columbia, New Brunswick, Newfoundland and Labrador and Yukon (non-EPFA jurisdictions)
- \$0.7 million to INAC resources for outreach, engagement and effective allocation of funding to service providers.

In addition, INAC committed to continuing to provide additional funding for maintenance funding where changes in provincial service requirements created budgetary pressures.

INAC will invite all parties to an information sharing session on its costing analysis for the immediate relief measures and will provide the relevant materials for this session.

- 8. CHRT 10, issued on April 26 2016** (9), acknowledged the progress being made by INAC in implementing the Tribunal ruling. It noted that INAC had agreed to a full-scale reform of its child welfare program, a review of the 1965 Agreement with Ontario, not to reduce or restrict funding to the FNCFS Program, to immediately re-establish the National Advisory Committee and to support the new iteration of the Canadian Incidence Study. It also acknowledged the provision for immediate relief in Budget 2016.

The Tribunal questioned, however, the amount of time being taken by INAC to implement the immediate relief measures called for in CHRT 2 (1, para 21). It then called for ongoing regular reporting of progress by INAC and ordered the immediate implementation of measures designed to address the deficiencies of Directive 20-1 and the EPFA budget models. Specifically, it called for a report to:

- include information on budget allocations for each FNCFS Agency and timelines for when those allocations will be rolled-out, including detailed calculations of the amounts received by each agency in 2015-2016;
- include the data relied upon to make those calculations;
- include the amounts each agency has or will receive in 2016-2017, along with a detailed calculation of any adjustments made as a result of immediate action taken to address the findings in the Decision (para 23).

9. On **May 24, INAC (13) responded to CHRT 10**, by submitting a narrative and financial report said to detail how the government is implementing immediate relief measures. This document contains three annexes,

13.a. Annex A First Nations Child and Family Services Program Service Provider Allocations - Information on Budget 2016 allocations for all FNCFS service providers, detailed information on the 15/16 and 16/17 allocations;

13.b. Annex B Information on the costing models used to make these calculations and

13.c. Annex C Information on Immediate Relief Funds.

This was significantly more information on budget methodology and allocations than had been made available since the January ruling.

- a) Annex A contains information on expenditures for each service provider by Province for Operations and Protection, Prevention and Maintenance from 2014/15 to 2016/17. It also outlines the value of new investments in the FNCFS program from 2016/17 to 2020/21. What it does not do is explain how these sums were arrived at, raising the question of the correspondence between these numbers and what is actually happening on the ground at agency level. Not knowing the underlying methodology also limits the use to which these numbers can be put.
- b) Annex A also contains discrepancies in the numbers that are not explained, such as a decrease in funding in BC for Operations and Protection from \$16 million in 2014/15 to \$12.6 million in 2016/17. In some years 'provincial funding' is included in the numbers (e.g. Saskatchewan and Alberta in 2015/16 and BC in 2014/15) but in others it is not (e.g. Saskatchewan and Alberta in 2016/17 and BC in 2015/16, and 2016/17). It is not clear what this represents, federal reimbursement of Provincial expenditures or provincial reimbursement of federal spending.

These discrepancies make it difficult to understand exactly what the numbers represent which makes it hard to evaluate them, but otherwise the Annex provides some of the kind of information called for by the Panel.

- c) Annex B is a Summary of Costing Analysis which provides a detailed breakdown of new investments for FNCFS service providers on a regional basis. The costing generally assumes 1,000 children 0-18 living within the catchment area of the agency, 6% children in care (CIC) and 20% multiple problem families, though each of these assumptions can be varied. Staffing is then plugged in; each agency is assumed to have an Executive Director, an HR person, and Admin Assistant, a Financial Manager and a Case Conference Coordinator. Other staff are provided for according to set ratios; in Quebec one Financial Support Staff person per 100 CIC, one Support Staff and one Supervisor per 6 direct service delivery staff, Intake and Investigation Staff in proportion to the number of multiple problem families and at least one Prevention Staff. These ratios appear to vary slightly from Province to Province. Hence, in Alberta, there is one Support Staff per 4 staff delivering services directly to children, one Intake and one Assessment person per 800 CIC. In Manitoba, it is assumed 7% of children are in care.
- d) In Quebec both salaries and travel are adjusted explicitly for remoteness, whereas a remoteness allowance is said to be built into the EPFA budgets of Saskatchewan and Manitoba (24, October 31, p.9). Allowance for remoteness was built into the budgets for specific agencies by INAC as part of the tripartite table discussions when the EPFA was first implemented in each of these provinces; Manitoba (2010), Saskatchewan (2008) and Quebec (2009).
- e) It appears though that there was no consistency in the allowance made for remoteness. In the case of Quebec, the 2015-16 FNCFS Funding Formula Template, Appendix B May 24 (13), makes explicit provision for increases in salaries and travel for remoteness of \$292,752 which is equal to 9.95% of total funding for an agency servicing 1,000 children. In Manitoba, however, funding of 5% of total salaries, benefits and operating costs are provided for remote agencies (INAC, September 30, Appendix B (20b), p. 17). No explanation is given in the documents for this discrepancy. Neither is it explained why provision for remoteness was not built into discussions with other EPFA recipients, such as Alberta. In the 2011 evaluation of the Alberta EPFA, however, lack of provision for remoteness was raised as a central issue and it was explained that 'First Nations and the Province did not flag remoteness during the discussion to develop the formula; therefore, it was not included' (Management Response to *Implementation Evaluation of the Enhanced Prevention Focused Approach in Alberta for the First Nations Child and Family Services Program* September 2010, INAC, p. viii)
- f) INAC states that it does not currently provide funding for remoteness in regions other than Quebec, Manitoba and Saskatchewan 'as the Department did not have sufficient data and information on which to base calculations for funding' (INAC, September 30, Appendix B (20b), p. 17).

- g) Administrative Overhead is assumed to be 15% of salaries and benefits (the latter assumed to be 20.45% of salaries) and off-hour emergency services are tied to 10% of total costs of service delivery staff. Provision is also made for audit, legal and insurance costs.
- h) The costing items per 1,000 children serviced by the agency are then presumably applied to the actual number of children serviced by each agency and the budget for each agency is then derived, but these calculations are not shown in Annex B.
- i) Based on my expertise, the main drivers of the costing model are the basic assumptions about CIC and per cent of problem families. Thereafter, differences between agencies in different provinces will be driven largely by salary differences as salaries directly or indirectly account for over 80% of the costing items.
- j) Annex C gives a breakdown of Immediate Relief funding in 2016/17 by agency by region. No explanation is given as to how these numbers were arrived at so I am unable to draw a conclusion on their adequacy.

10. CHRT 16

In its **September 14 ruling, 2016 CHRT 16 (19)**, the Tribunal again expressed concern at the slowness of INAC in implementing previous orders with regard to Immediate Relief measures and gave INAC until September 30th to provide the rationale, data and any other relevant ‘used to determine its five-year plan for investing in the FNCFS Program and in determining budgets for each FNCFS Agency, including its cost driver study and trend analysis documentation, how it arrived at financial projections beyond fiscal year 2016-2017, any steps taken to ensure comparability of staff salaries and benefit packages to provincial rates, the information used to determine the caseload ratios in Quebec and Manitoba and, generally, how it determined values for off-hour emergency services, staff travel, agency audits, insurance and legal services’ (C1a, p.47).

11. INAC responded to CHRT 16 on September 30th and October 31st (24 and Annexes 24A to 24I).

- a) In Annex C of the 30th September response (20c) INAC confirms that **individual agency funding** is arrived at by applying the population of children covered by each agency to the funding formula per 1,000 children. That step was missing from INAC’s May 24 (13) submission in Annex B. It is not clear, however, how data released by INAC on Operating Funds for 2016-17 and Allocations for Immediate Relief as in the Master List Allocation of 13a, fit into the 2016-17 data for individual agencies in 20c (INAC-CHRT September 30, 2016).

- b) As an example, for Gitxsan in BC in 20c Operating Funds and Protection total \$748,368 while Prevention is \$543,600 for a total of \$1,291,968. In 13a (May 24, INAC, Annex a) funding is said to be \$824,131 for Operations and Protection and \$340,803 for Prevention for a total of \$1,164,934. This is a significant and unexplained difference. In the costing data in 20c under a tab headed BC-2015, plugging Gitxsan's data into the model shows total funding (without maintenance) to be \$1,356,388, which is much higher than the other 2 numbers above. This seems to suggest that funding fell over the past two years, which is not likely. Clarification of these numbers is, therefore, required, and the link between data on operating funds, allocations for immediate relief and the costing templates should be made more explicit.
- c) Even if these discrepancies did not exist, the method of deriving budgets for individual agencies does not address Panel questions about specific items in the costing, such as provision for legal, remoteness, etc. That the costings are arrived at on a regional basis with no necessary relationship to agency needs highlights the necessity to go beyond budgetary formulae.
- d) INAC's response to the question of **identifying agency needs** reveals, however, an important cleavage between the complainants and intervenors and INAC. INAC's approach is to unilaterally offer agencies \$25,000 'to provide information about your agency's distinct needs and circumstances, the associated costs to meet these needs, and the factors that impact the way you deliver child and family services' and to provide this by June 2017 (24a, 28th October, 2016). Based on my past experience with INAC, it is unlikely that it has the capacity to process the information sought from individual agencies and to put it into a coherent policy framework. There is also the question of whether approaching individual agencies to determine their needs is the correct one given the isolated perspectives that agencies might have. Regional tables are already planning to examine budgetary requirements and it may be that the collective sharing of information and perspectives on the budget is a superior one in terms of more accurately determining needs. Agency needs are probably much better arrived at through the planned collective and consultative regional budget/costing exercises which can draw upon appropriate technical expertise. The money offered by INAC, which is probably quite inadequate for larger agencies, might be better invested in those exercises.
- e) On allowing more systematically for **remoteness**, INAC ties this to the information collecting exercise it has proposed. This is not an appropriate approach as addressing remoteness will require technical expertise not likely available in individual agencies and INAC. Also, there needs to be a consistent and defensible approach to providing for remoteness across the country. This goes beyond the scope of expertise of individual agencies.

- f) In addressing **the needs of agencies with more than 6% of CIC or more than 20% of families in need**, INAC again falls back on its data collection exercise, arguing that agency responses will clarify how these needs should be addressed (pp.3-4). As an interim measure however, agencies with more than 6% of CIC will be prioritized **for additional prevention funding** and the assumed 20% of families in need will be adjusted proportionately. It is not self-evident that amelioration should be confined to additional prevention funding only. The costing analysis in Annex C (30th September, 24C) ties items other than prevention spending, such as Financial Support Staff, Resource Support Workers and Intake /Investigation staff (in the Quebec model) directly to CIC or to the number of multiple problem families. Adjusting the number of these positions for higher proportions of CIC or multiple problem families might in turn increase support staff as well as administrative overheads which are tied to salary levels. Thus general operating funds would need to expand as well as prevention funding if these core ratios are exceeded. Providing for higher proportions of CIC or multiple problem families by adjusting the costing budget in this way reduces INAC discretion and adds more certainty to the provision of operating funding to help address the problem.
- g) INAC takes a similar approach to the problems faced by **small agencies**; an interim measure with effect from January 1, 2017 with further action being dependent on the outcome of the data collection exercise on agency needs. The immediate action is to set a child population of 300, as opposed to 251, as the lowest threshold for scaling. All agencies serving a 0-18 child population of fewer than 300 will receive core funding scaled at 37.5%, whereas previously those serving 200 children or less were scaled at 25% and agencies serving 100 children or less were scaled at 12.5% (pp. 4-5). While being a step in the right direction, the underlying problem of inadequate funding for small agencies and large step increases in funding for relatively small increases in the child population still remain. These problems were identified in the FNCFS Joint National Policy Review (2000, p.13) and reiterated in *Wen:de; The Journey Continues*, FNCFCSD, 2005, p.23. The solution proposed in *Wen:de* of adjusting funding smoothly for every increase in children of 25 above a minimum and up to a maximum threshold would seem to address both these problems.
- h) On the issue of **legal fees**, INAC's response is that some provision is made in core funding and this varies from Province to Province. It is then prepared to review requests for additional funds to cover legal requirements on a case-by-case basis. INAC is also relying on its data collection exercise to throw light on an appropriate level of funding for legal fees in future. This is not likely the way to resolve what is really a technical/professional issue revolving around the necessary number of hours for different types of legal work and the appropriate fee per hour.

- i) On the issue of immediately addressing the costs of **building repairs**, INAC once more defers this until data on agency needs is collected. Given the urgency of these repairs from a safety compliance point of view, the probable lack of awareness of many agencies of the facility condition index (a tool to measure urgency of repairs on a cost basis) and given the concerns about the efficacy of the data collection exercise, this approach is not likely to resolve the issue.
- j) INAC acknowledges that the **child service purchase amount** was inadequate and has raised it from \$100 per child to \$175 as an interim measure, pending receipt of agency needs from its data collection exercise. This seems to be an arbitrary increase, albeit no doubt a move in the right direction. Tying the ultimate resolution to the data collection exercise is once again questionable and it also ensures further delays. Furthermore, the adjustment to the per child amount of 75% should be put into the context of an increase in the cost of living of 72% since 1989 (<http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/econ46a-eng.htm>) the last date the per child amount was adjusted. There is, therefore, almost no increase in the real value of the per child amount.
- k) On the receipt, assessment and investigation of **child protection reports**, INAC outlines the different approaches in different Provinces and once more ties the ultimate resolution of the question to the receipt of data from the collection exercise commissioned in its October 28 letter to agencies, which will then be used in national and regional discussions. Once again, this is a questionable approach.
- l) On the question of **growth and future cost drivers**, INAC stresses that these are arrived at both centrally and regionally and not on an agency by agency basis in any Province. INAC refers to Table 2 in their May 24 submission (13). This table shows the amounts provided by INAC for Growth and Cost Drivers in the years 2016/17 to 2020/2021, amounting to \$7.37 million in 2016/17 and rising to \$58.7 million in 2020/21. The cost drivers are said to include child maintenance costs, agency operating costs, salaries and the ratio of children in care. There is no breakdown of these in this report or of the assumptions of cost growth in the various items. There is no way of knowing, therefore, how these numbers were arrived at.
- m) More explanation on these cost drivers was given in INAC's September 30th response (20, pp. 3-5). An annual increase of 3.05% is being used, derived from historical data provided in Annex D and E of the September 30th response. The three main cost items are maintenance, salaries and other expenses, with weights of 50%, 30% and 20% of total costs respectively. It is assumed that maintenance costs rise by 4.7% p.a. on average which, appears to cover both inflation and growth in number of CIC (see footnote to the table on page 4 of their response). Salaries are projected to grow at 3% p.a. apparently based on recent labour settlements and this seems to be entirely inflation and not due to any additional

employment. This seems reasonable after recent staff and salary adjustments by INAC in the funding formulae, e.g. see the Alberta costing analysis 1000 model which incorporates significant salary increases (24 Annex C) and for the former directive 20-1 agencies which received both salary increases and staff increments. Projected inflation on other, non-salary, non-maintenance costs is assumed to be 1.4%. The overall increase of 3.05% p.a. is arrived at by multiplying the separate weights by their respective inflation rates as follows; maintenance $0.50 \times 4.7\% = 2.35\%$; salaries $0.30 \times 3\% = 0.9\%$ and other costs $0.20 \times 1.4\% = 0.28\%$. These are then added together to arrive at $2.35\% + 0.9\% + 0.28\% = 3.53\%$ and from this is deducted 0.5% on account of increased spending on prevention and kinship care, leaving approximately 3.05% p.a.

n) There are four observations to be made on this methodology:

- 1) The resulting adjustment for cost drivers is a vast improvement on past practice and is in line with what complainants and intervenors have been requesting (p.4).
- 2) The weights used for each category of cost (50% for maintenance, 30% for salaries and 20% for other costs) are approximations, On past data maintenance would have been higher, at around 56.5%, and salaries and other lower at 26% and 17.4% respectively. Had these ratios been carried into the future, the cost escalator would have been $4.7\% \times 0.565 = 2.66$ for Maintenance, 0.78 for salaries and 0.24 for other, for a grand total of 3.68 versus INAC's proposed 3.53. These appear to be small differences but would lead to a \$67 million difference over 10 years and a \$164 million over 15 years on a base budget of \$650m. There is no explanation for why the maintenance share is expected to fall so much and to the extent that this assumption proves to be overly optimistic, there will be a funding shortfall overall.
- 3) The cost escalator for other costs at 1.4% is quite low and the Conference Board of Canada (CBC) expects it to be around 2% (Canadian Outlook, Economic Forecast, Summer 2016, http://www.conferenceboard.ca/temp/cde53d52-76e7-49b8-8f13-c79268afc926/8152_co_summer2016_.pdf), p. 96. BMO Capital Markets also expect inflation to be in the 1.9-2.0% p.a. range for 2017-2018, (<http://economics.bmocapitalmarkets.com/economics/forecast/ca/cdamodel.pdf0>). If the CBC and BMO are correct, this would add a further 0.12% to the escalator of 3.53 before projected savings due to prevention, kinship care etc. and again would raise inflation adjustments significantly over 10 to 15 years. Given these discrepancies, the assumption around the inflation rate certainly does need monitoring.

- 4) An adjustment downwards to the cost escalator of 0.5% from 3.53 to 3.03 is made on account of increased spending on prevention and kinship care. There is no explanation as to how this was arrived at. There may also be some double counting here as the assumed 50% share of maintenance in the costing budget to which this inflation factor is applied is already well below historic levels.

12. The Assumption about the Speed of Phasing is the Key to the Annual Expenditure Numbers

INAC explained that **the five year budget allocation** was arrived at by estimating what a full-year's implementation would cost in year 4 and then making assumptions about how quickly different agencies could reach full implementation, given program and staff constraints. These assumptions are critical but are not defined or differentiated between EPFA and non-EPFA regions and agencies.

13. Overall Interpretation of Financial Information Regarding INAC's Implementing CHRT Ruling and Subsequent Orders

a) There is no question that recent changes by INAC have had a significant impact on the FNCFS Program and the CHRT has had an enormous impact on the flow of information about that program. In particular, **it has accomplished the following:**

- 1) A significant increase in funding for operations and prevention across the country and provision for growth and inflation going forwards.
- 2) Guarantees about the level of overall funding, the level of maintenance funding, and the ratios of CIC and multiple problem families as minimum levels.
- 3) A commitment to fundamentally reform the program, including the 1965 Ontario Agreement.
- 4) Much greater transparency in the way in which the INAC budget as well as individual agency funding is constructed, including cost drivers.
- 5) An explanation of how the five year funding plan was put together
- 6) Commitments to review a number of outstanding budget items, such as legal fees, infrastructure funding, remoteness, small agencies etc.

b) On the other hand there are a number of **outstanding concerns** that INAC needs to address.

- 1) INAC is relying heavily on the data collection exercise on agency needs, announced on October 28, to help determine the receipt, assessment and investigation of child protection reports, remoteness allowances, small agency budgets, child service

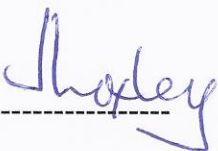
purchase amounts, legal fees and building repairs. It is unlikely this exercise can deliver coherent outcomes on these issues which might be better approached as a collective exercise by agencies working together and sharing information, experience and proposals. If, however, the exercise is to proceed, INAC should explain how it intends to conduct it, including how it proposes to find the appropriate technical expertise. Otherwise, rolling this into the Regional and National exercises might be a preferred way to proceed.

- 2) INAC should explain the apparent inconsistencies in the funding of individual agencies, such as Gitksan, and explain clearly which portions of their activities in the costing model will be affected by the flow of immediate relief funds.
- 3) INAC should be asked to justify its assumptions in its growth and future cost drivers about the weight attached to maintenance expenditures and the expected cost of living increase.
- 4) The increase in the child service purchase amount seems to be arbitrary and, after allowing for inflation, very minimal.
- 5) Given their importance, certainty is required about the assumptions INAC has made with respect to the phasing-in of expenditures by province over the next four years to ensure that planned expenditures match regional and agency capacities.

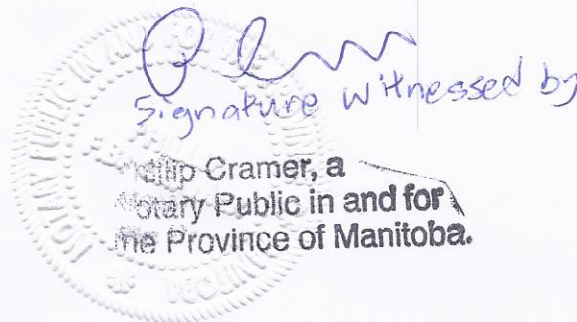
14. On Jordan's Principle

INAC's Response to-CHRT July 6, 2016 (17) Canada commits to spending up to \$382 million in new funding over three years, to be accessed by Health Canada and INAC to cover costs of services that are required to meet provincial normative standards of services for First Nations children living on-reserve with a disability or with a discrete, short-term issue for which there is a critical need for health and social supports. I am not able to identify the funding drivers or assumptions leading to this amount. It is not stated how that sum was arrived at.

January 5, 2017



John Loxley



Appendix1. Documents Consulted

1. CHRT to INAC January 26, 2016 – Tribunal Ruling_2016 CHRT 2

2. CHRT to INAC February 5, 2016 – CHRT letter to all parties re: CHRT order and case management process for remaining issues

3. CHRT to INAC February 10, 2016 - CHRT letter to all parties to request further clarification on immediate relief items

3.1. Caring Society response to Tribunal Immediate Relief Questions (February 18 2016)

3.2. COO response to Tribunal Immediate Relief Questions (February 18 2016)

3.3. AFN response to Tribunal Immediate Relief Questions (March 3 2016)

3.4. Commission's response to Tribunal Immediate Relief Questions (March 3 2016)

4. INAC-CHRT March 10, 2016 - The Department of Justice responds to the Tribunal's request for clarification regarding immediate relief remedies.

4.1. AFN's reply to Canada's March 10, 2016 Submissions March 31 2016)

4.2. Caring Society reply to Canada's March 10 responding submissions (March 31, 2016)

4.3. Commission's reply to Canada's March 10, 2016 response submissions (March 31, 2016)

4.4. COO's reply to Canada's March 10, 2016 Submissions (March 31 2016)

5. CHRT to INAC March 16, 2016 – CHRT letter to all parties re: AFN's extension of time request for filing of replies further to Federal Budget announcement

6. CHRT to INAC March 24, 2016 – CHRT letter to all parties re NAN status and respondent replies

7. CHRT to INAC April 1, 2016 – CHRT letter to all parties re: timeline for filing of all additional submissions

8. INAC-CHRT April 6, 2016 - The Government of Canada submits further recommendations to the Canadian Human Rights Tribunal regarding remedies.

8.1. AFN's further reply to Canada's April 6 2016 response submission (April 11 2016)

8.2. Caring Society's Further reply to Canada's April 6 2016 response submission (April 11 2016)

8.3. Commission's further reply to Canada's April 6, 2016 reply submission (April 11 2016)

8.4. COO further reply to Canada's April 6 2016 response submission (April 11 2016)

9. CHRT to INAC April 26, 2016 - The Canadian Human Rights Tribunal releases its immediate relief remedies, including the full implementation of Jordan's Principle.

10. CHRT to INAC May 5, 2016 – CHRT letter to all parties re: NAN interested party status (Tribunal ruling 2016 CHRT 11)

11. CHRT to INAC May 5, 2016 - Letter to parties enclosing ruling 2016 CHRT 11

12. INAC-CHRT May 10, 2016 - the Government of Canada responds to the Tribunal's order to immediately implement the full meaning and scope of Jordan's Principle

13. INAC-CHRT May 24, 2016 - The Government of Canada responds to the Tribunal's April 26, 2016 order to provide a narrative and financial report that details how the government is implementing immediate relief measures. Document refers to Annex A, B and C.

13.a. Annex A First Nations Child and Family Services Program Service Provider Allocations - Information on Budget 2016 allocations for all FNCFS service providers, detailed information on the 15/16 and 16/17 allocations

13.b. Annex B Information on the costing models used to make these calculations

13.c. Annex C Information on Immediate Relief Funds.

13.1. Caring Society Submission re May 10 and 24 2016 Compliance Reports (June 8 2016)

13.2. COO response to May 10 and 24 2016 compliance reports (June 8 2016)

13.1. AFN Submissions in response to May 10 and 24 2016 compliance reports (June 24 2016)

13.2. Commission's response to May 10 and 24 2016 compliance reports (June 24 2016)

14. CHRT to INAC May 26, 2016 – CHRT letter to all parties in response to Attorney General of Canada's submissions May 10, 2016 and May 24, 2016 and inviting written responses to AGC's May 2016 submissions from all parties.

15. INAC-CHRT June 3, 2016 – Government of Canada replies to immediate relief submissions of NAN (we don't have the original submissions themselves of this interested party among the documents)

16. CHRT to INAC June 14, 2016 – CHRT letter to all parties re: reasons for postponement of in-person meeting

17. INAC-CHRT July 6, 2016 - The Government of Canada submits another compliance report to the Canadian Human Rights Tribunal.

18. CHRT to INAC September 9, 2016 – CHRT letter to all parties – confidential advance notice of anticipated release of ruling on immediate relief

19. CHRT to INAC September 14, 2016 - Canadian Human Rights Tribunal issues a second Compliance Order against the Government of Canada in the First Nations child welfare case

20. INAC-CHRT September 30, 2016- Indigenous and Northern Affairs Canada (INAC) submits its response to the Tribunal compliance order issued September 14, 2016. Document refers to Annexes A, B, C (Excel spreadsheets), D, E, F, G, H.

Annex A. In Alberta several meeting of all 17 agencies were held to examine EPFA funding model and to outline agency challenges and concerns

Annex B. In Manitoba a tripartite working group examined funding deficiencies identified by agencies including salary parity, costs associated with intake and the need for core funding for agencies serving more than one community.

20.c. Annex C. Set of Excel spreadsheets. Contain the information and the data used to calculate funding allocation for each agency in each province.

2015-16_COSTING_NEW_BRUNSWICK

2015-2016_COSTING_-_NOVA_SCOTIA

2015-2016_COSTING_-_PEI

2015-2016_COSTING_-_QUEBEC

2015-2016_COSTING_-_YUKON

2015-2016_COSTING_-NEWFOUNDLAND_AND_LABRADOR

BC_-_COSTING_ANALYSIS_2015-16

COSTING_-_SK_ANALYSIS_15-16

COSTING-_AB_ANALYSIS_15_16

COSTING-_MB_ANALYSIS_15_16

ONTARIO_REGION_PREVENTION_COSTING_PROPOSAL

20.d. Annex D Summary of the historical analysis of the cost drivers.
FNCFS_DETAILED_TREND_ANALYSIS_06-07_TO_12-13_

20.e. Annex E Trend analysis spreadsheet
ANNEX_E_HISTORICAL_DATA_AND_COST_DRIVERS_-
_DOCUMENTATION_FOR_TRIBUNAL_SEPTEMBER_2016

20.f. Annex F The letter referred to in INAC's May 24th Submission at paragraph 32 regarding funding for Band Representatives

20.g. Annex G INAC's June 2, 2016 letter referred to at paragraph 44 of Canada July 6, 2016 submission regarding the flow of immediate relief funding

20.h. Annex H Response to this letter (see 7.g.)

21. CHRT to INAC October 3, 2016 – CHRT letter to all parties re: case management meeting

22. INAC-CHRT October 3, 2016 - INAC filed its First Nations child and family services (CFS) funding methodology and costing analysis with the Canadian Human Rights Tribunal.

23. CHRT to INAC Oct 19, 2016 – CHRT letter to all parties re: case management meeting

24. INAC-CHRT October 31, 2016 – Response of Indigenous and Northern Affairs Canada to The Canadian Human Rights Tribunal Order of September 14, 2016. Refers to Annexes A-I

24.a. Annex A LETTER_TO_FNCFS_AGENCIES_-_DISTINCT_NEEDS__PROPSOAL_(OCTOBER_28__2016)

24.b. Annex B
EMAIL_TO_REGIONS_REGARDING_INFORMATION_TO_FNCFS_PROGRAM

24.c. Annex C RESPONSE_TO_COO_-_IMMEDIATE_RELIEF_-_OCTOBER_21_2016

24.d. Annex D NOBA_-_IMMEDIATE_RELIEF_-_LETTER_TO_PROVINCE_-_OCTOBER_21_2016

24.e. Annex E JP_FOCAL_POINTS_AND_COVER_EMAIL_

24.f. Annex F ENGAGEMENT_PLAN_APPROACH

24.g. Annex G COLLECTION_OF_MEETING_RECORDS_FOR_OCTOBER_31__2016_CHRT_SUBMISSION

24.h. Annex H RESPONSE_FOR_OCTOBER_31__2016_-_MSR_AGENDA

24.i. Annex I Relevant attachments for regional meetings related to Jordan's Principle implementation

25. INAC-CHRT October 31, 2016 Email to CHRT - October 31, 2016 - letter accompanying sending of the report to the Tribunal

26. LT from Taylor to Adzic - November 22 2016 (Notice of Motion - Immediate Relief)