Court File No. T-1621-19

**FEDERAL COURT**

BETWEEN:

**ATTORNEY GENERAL OF CANADA**

APPLICANT

-and-

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA, ASSEMBLY OF FIRST NATIONS, CANADIAN HUMAN RIGHTS COMMISSION, CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL and NISHNAWBE ASKI NATION**

RESPONDENTS

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**AFFIDAVIT OF SONY PERRON**

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I, Sony Perron, of the City of Gatineau, in the Province of Quebec, MAKE OATH AND SAY:

1. I am the Associate Deputy Minister of Indigenous Services Canada ("ISC"). I have been in my current position since December 18, 2017. Before that, I was the Senior Assistant Deputy Minister of the First Nations and Inuit Health Branch at Health Canada. I worked at Health Canada in various capacities over 16 years before joining ISC in 2017.

2. In my current capacity I work with the various sectors of ISC to implement the CHRT's orders in this matter. In my previous role, I was ultimately responsible for the First Nations and Inuit Health Branch's implementation of Jordan's Principle. As a result, I understand the two groups within ISC that are most immediately affected by the Tribunal's orders.

3. Unless otherwise stated, I have personal knowledge of everything I say in this affidavit. Where my information came from someone else, I identify the source of my information and I believe the information to be true.

4. I have reviewed the Canadian Human Rights Tribunal's ("Tribunal") Ruling and Order on compensation in 2019 CHRT 39 and have prepared an earlier affidavit dated October 3, 2019 in support of the Attorney General of Canada's ("Canada") application for a stay of the Tribunal's Order pending a judicial review. I understand from my review of the Order, that at anytime after December 10, 2019, the Tribunal could order a process for paying the compensation beginning immediately.

5. I have also reviewed the Motion filed by the First Nation Child and Family Caring Society of Canada (the "Caring Society") seeking an Order placing Canada's application for judicial review in abeyance pending the Tribunal making its order regarding the process for paying compensation, including the affidavit of Dr. Cindy Blackstock dated October 24, 2019.

*Canada's Challenge to the Compensation Ruling*

6. Canada has significant concerns regarding the reasonableness of the Compensation Ruling and, as set out in my earlier affidavit in support of our stay motion, is of the view that it should not be required to commence building a process for compensation before the judicial review is complete.

7. The fact that Canada might not agree with the Tribunal's Compensation Ruling does not undermine Canada's commitment to improving the lives of First Nations children and remedying the discriminatory practices that were at the heart of the claim before the Tribunal.

8. The decision to seek a stay pending the hearing of the judicial review was based not only on the potential for irreparable harm in implementing the Compensation Ruling, but on the practical reality that an election was called days after its release, leading to the implementation of the Caretaker Convention.

9. During this time, government departments, including ISC, are expected to operate in a way that preserves the authority and ability of the government

and Cabinet to make decisions on issues of significant importance after a new Cabinet is formed. The objective is to avoid a new government being bound by an irreversible decision. Without the ability to obtain a firm mandate from an elected government, ISC does not have the authority required to engage in discussions related to compensation. ISC will require full instructions from Cabinet on compensation.

*Prejudice in Holding the Judicial Review in Abeyance*

10. I believe that holding the judicial review in abeyance pending the Tribunal issuing an order on the compensation process would prejudice Canada's position. The nature of that prejudice is addressed in my October 3, 2019 affidavit filed in support of our stay motion at paragraphs 32- 45.

11. As detailed therein, the task of developing a process for the payment of individual compensation is a large, complex and expensive task from both a human resource and budgetary perspective. It is in the interest of justice to allow Canada to challenge the reasonableness of the Tribunal's Compensation Ruling before initiating a process that will engage a large number of people and significant expenditures of resources.

12. Allowing the judicial review to proceed would not impact the availability of services to First Nations children. There will be no interruption or suspension of essential services to these children. As detailed in my earlier affidavit of October 3, 2019, the systemic remedies that Canada has put in place since the Merits Decision was released are extensive and engineered to ensure that all First Nations children have access to the essential services and supports they need.

13. The increases to funding and available services ensure that immediate needs of First Nations children are met. I am not aware of any impacts on services for First Nation children that would result from having the

Compensation Ruling judicially reviewed prior to trying to commence discussions regarding the process for implementing that Ruling.

*Canada's Response to the Merits Decision and Subsequent Rulings*

14. Canada has taken significant steps to address the Tribunal's finding of systemic discrimination in the Merits Decision. The suggestion in paragraphs 15 and 16 of Dr. Blackstock's affidavit that Canada's response to the Merits Decision has been inadequate, is not a fair characterization of Canada's response.

15. Budget 2016 committed $634 million over 5 years beginning in 2016-17 to support both the immediate needs of First Nations children and to begin a process of reform to strengthen the First Nations Child and Family Services Program as articulated in Cassandra Lang's January 25, 2017 affidavit (without exhibits), attached as Exhibit "A".

16. The actions described in Budget 2016 also committed Canada to reforming the First Nations Child and Family Services (FNCFS) Program. The actions included investments that were informed by recommendations included in *Wen:De: The Journey Continues,* which was the final report emanating from National Policy Review on First Nations Child and Family Services research project on the development and costing of a new funding regime for First Nations child and family services programs.

17. *Wen:De* recommended that a new funding stream should be implemented for wellness, least disruptive measures and prevention, and costed these needs for agencies to be $34.7 million. Budget 2016 provided more than $153.5 million over five years, with $40 million ongoing to agencies in new funding for prevention activities. As such, Budget 2016 allowed for the implementation of prevention funding across the country, and additional funding for agency salaries and rent.

18. *Wen:De* was accepted by the Tribunal as a valuable resource to remedying the discrimination, and it is reasonable that the Department relied on these recommendations when determining what would be in the best interests of First Nations children and families when it was preparing Budget 2016.

19. After the release of the Merits Decision and Budget 2016, Canada began the work of implementing the Tribunal's rulings while addressing new concerns raised by the Parties. These efforts are itemized in Canada's October 31, 2016, response to the Tribunal (attached without exhibits as Exhibit "B"), Cassandra Lang's January 25, 2017, affidavit, and Paula Isaak's May 24, 2018 affidavit (attached without exhibits as Exhibit "C").

20. With respect to Dr. Blackstock's reference at paragraph 15 to Canada's continued use of impugned funding formulas, the reason the formula continues to be used is that ISC has not yet completed its work with the parties and other stakeholders on a comprehensive new funding methodology. However, ISC has made significant additional investments to increase the overall funding received by agencies and service providers. Pursuant to the Tribunals' orders, ISC is paying actual costs incurred by the agencies in prevention and other areas. These investments have improved agencies' ability to ensure the safety and well-being of First Nations children and their families.

21. Canada explained the funding process to the Tribunal in previous correspondence dated April 27, 2018, and June 8, 2018; attached to this affidavit at Exhibits "D" and "E" respectively. We explained that ISC provided agencies with an initial allocation of $535 million that was based on the methodology for Budget 2016 to ensure that funds were given to the agencies in a timely manner, but also that additional funding was provided in response to the Merits Decision.

22. Canada funded the Assembly of First Nations to conduct engagement to better define the needs of service providers. ISC also provided additional funding to small agencies to respond to the Tribunal's concerns that small agencies did not receive adequate funding.

23. ISC provided $3.475 million in October 2016, as detailed in Canada's October 31, 2016 update to the Tribunal, to agencies to identify their distinct needs and circumstances and to develop and implement culturally based visions and programs. These needs assessments were the basis for the research completed by the Institute of Fiscal Studies and Democracy (IFSD) in their Phase One report, which Canada has provided $1.6 million to support. With the launch of IFSD's second phase of research, Canada will have provided over $3.5 million in support to develop options to reform the funding model.

24. Canada worked to establish tri-partite tables in regions where they did not exist, such as in the Yukon, and continued to fund tri-partite tables, which include regional and local First Nations representation in each jurisdiction, with a focus on reforming the program.

25. With regards to Jordan's Principle, during the summer of 2016 Canada announced up to $382.5 million in funding over three years (2016/17 – 2018/19) for the Jordan's Principle – A Child-First Initiative (the "Initiative"). Over the three years, the definition of Jordan's Principle and eligibility criteria for Initiative funding expanded considerably, as a result of the definitional changes made by the Tribunal in its 2016 and 2017 Rulings following its Merits decision.

26. The complaint before the Tribunal as it pertained to Jordan's Principle was about ensuring that the situation of Jordan River Anderson, a First Nations child who died in hospital at 5 years old in 2005 after being caught up in a jurisdictional dispute between the federal government and the Manitoba

Government over the responsibility of his home care costs, was not repeated.

27. Since the release of the Merits Decision, Canada has focussed its efforts on implementing the Tribunal's orders on Jordan's Principle to ensure the services available to First Nations children are at least consistent with those available to other children in Canada regardless of where the child lives. In fact, Canada has applied a principle of substantive equality in considering requests, which often means going beyond the level of services provided by other governments in Canada. Canada is also considering cultural appropriateness and safeguarding the best interests of the child in its determination of Jordan's Principle requests.

28. Canada has revised its practices as the definition and scope of Jordan's Principle was expanded by the Tribunal in subsequent rulings following the Merits Decision. The principle adopted by the House of Commons and attached as Exhibit "F", was intended to prevent jurisdictional disputes between levels governments from delaying or preventing the provision of services to on reserve First Nations children. The application of Jordan's Principle now includes cases

    i. where there is no jurisdictional dispute between governments;

    ii. involving some children living both on and off reserve;

    iii. where the child is not suffering a serious medical condition, but is seeking services and products for any health, social or educational need; and

    iv. where the child is seeking funding for services and products that would not be provided to other Canadian children receiving publicly-funded services (through the application of the principle of substantive equality).

29. In January 2018, Canada held an Emergency Meeting on First Nations, Métis Nation, and Inuit Child and Family Services to address the severe over-representation of Indigenous children in child welfare systems. This meeting included leaders from the Assembly of First Nations, Inuit Tapiriit Kanatami, Métis National Council, regional Indigenous leadership, federal, provincial and territorial government representatives and youth delegates who had been in the foster care system as well as representatives of all Parties to the complaint and child and family services agencies. Canada committed to six points of action, including the development of Indigenous child and family services legislation.

30. Budget 2018 committed an additional $1.4 billion over 6 years and ongoing to address funding pressures facing First Nation Child and Family Services agencies, while increasing prevention resources for communities. Jordan's Principle funding has also increased, with $679 million budgeted from 2016-2019 and $1.2 billion committed from 2019-2022.

31. This included the introduction of a new funding stream called the Community Well-being and Jurisdiction Initiative (CWJI). The new CWJI funding stream grew out of the funding that Canada invested in community prevention and well-being activities. Budget 2018 provided First Nations communities with $105 million for 2018-2019 and increasing over a five year period. This new funding stream is designed to support First Nation communities directly, not agencies, to lead the development and delivery of prevention services and for First Nations communities to assert greater control over the well-being of their children and families. This funding supports the transfer of jurisdiction and resources out of the agency system, and puts the power in the hands of First Nations communities. The distribution of CWJI funding by jurisdiction was developed based on recommendations from the Consultation Committee on Child Welfare, a consultation forum in which the parties regularly consult on short, medium and long-term relief. Communities in each jurisdiction decided how funds

were to be distributed among their communities. These efforts have already been submitted to the Tribunal as evidence, and are detailed through: Paula Isaak's May 24, 2018 affidavit; Canada's June 8, 2018 correspondence to the Tribunal; Paula Isaak's June 21, 2018 (attached without exhibits as Exhibit "G") affidavit; and, Joanne Wilkinson's April 16, 2019, affidavit (attached without exhibits as Exhibit "H").

32. On June 21, 2019, Bill C-92, *An Act respecting First Nations, Inuit and Métis children, youth and families*, received Royal Assent. It is scheduled to come into force on January 1, 2020. The Act affirms the rights of First Nations, Inuit and Métis to exercise jurisdiction over child and family services, contributes to the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and establishes national principles such as best interests of the child, cultural continuity and substantive equality to help guide the provision of child and family services in relation to Indigenous children. This legislation, while not the result of an order from the Tribunal, demonstrates Canada's firm commitment to reform, including deconstructing the colonial system that created the discriminatory practices. Joanne Wilkinson detailed these efforts in her April 16, 2019, affidavit submitted to the Tribunal.

33. Additionally, in Budget 2019, an additional $1.2 billion over three years (2019/20 – 2021/22) was committed to further support Jordan's Principle. The Caring Society and other CHRT Parties provided input into the establishment and monitoring of the Initiative's public communications, operational procedures and data collection. Approximately forty million dollars annually is provided to mainly First Nations organizations across Canada to identify children in need and support their access to services through Jordan's Principle funding.

34. Finally, Canada understands that working with the parties, and with First Nations more broadly to advance these issues takes time and resources.

Canada has committed to remedying its past discriminatory practices, and both values and welcomes the participation of the Parties and First Nations in this process, as well as other stakeholders. To that end, Canada has also made funding available to the Respondent organizations to ensure that the views and expertise of other parties are taken into consideration at the Consultation Committee on Child Welfare and throughout this process.

*Conclusion*

35. All of these actions taken demonstrate Canada's commitment to reform its funding approaches in First Nations child and family services and Jordan's Principle. This work is ongoing as Canada strives to develop and implement funding programs that ensure the needs and best interests of First Nations children are met. Canada is asking that the Federal Court consider our arguments regarding the Compensation Decision before requiring Canada to engage in the lengthy and complex task of developing a process for paying compensation in cooperation with the parties and under the direction of the Tribunal.

36. I make this affidavit in support of the Attorney General's response to the Caring Society motion to hold our judicial review application in abeyance and for no other purpose.

SWORN BEFORE ME )
at the City of Gatineau, )
in the Province of Quebec )
)
This 8th day of November, 2019 )
) **Sony Perron**
)

# 296082-6

A COMMISSIONER, ETC.
Daniela Gasca

**This is Exhibit "A" referred to in**
**the Affidavit of SONY PERRON,**
**sworn before me this 8th day of November, 2019**

**A Commissioner, etc.**

Tribunal File No. T1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

and

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

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

Respondent

and

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA
and NISHNAWBE ASKI NATION

Interested Parties

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**AFFIDAVIT OF CASSANDRA LANG**

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I, Cassandra Lang, of Ottawa, Ontario, make oath/affirm as follows:

1. I am the Director, Children and Families, in the Children and Families Branch at Indigenous and Northern Affairs Canada (INAC). I lead the headquarters team responsible for implementation of national policy and program management for the First Nations Child and Family Services Program (the Program).

2. I have reviewed the Canadian Human Rights Tribunal's (Tribunal) ruling dated January 26, 2016 and the September 14, 2016 ruling with respect to remedy. I have also reviewed the September 30, 2016 and October 31, 2016 compliance reports filed by INAC in response to the September 14, 2016 order. In my capacity as Director, I oversaw the drafting of these compliance reports, which are attached as **Exhibits "1"** and **"2"** respectively. I have also reviewed the written submissions filed with the Tribunal by Canada on May 24, 2016 and July 6, 2016.

3. The compliance reports and submissions, along with this affidavit, detail Canada's efforts to comply with the Tribunal's orders on immediate relief made to date. These efforts are discussed in greater detail below.

**Funding Compliance**

4. The Budget 2016 investments of $634.8 million over five years represented a first step in addressing funding gaps in the Program. This year, $71.1 million in new funding was allocated to support the Program. As of December 2016, approximately 75% of this funding has flowed to agencies. The remaining 25% will be spent prior to March 31, 2017. Budget 2016 funding is allocated as set out on page 6 of Canada's September 30, 2016 compliance report. To date, an additional approximately $20 million has been allocated to agencies to respond to pressures identified in late 2015-16 and 2016-17. Examples of agency pressures include maintenance pressures, other deficits and payments resulting from the impacts of provincial reforms.

5. To respond to the Tribunal's September 14, 2016 orders to increase prevention services for families at risk, as well as adjust the funding approach for small agencies, INAC made further investments to the funding set out in paragraph 4 above. In the fourth quarter of the 2016-17 fiscal year, additional funding (that is, funding beyond Budget 2016 investments or funding for agencies pressures) for these two items total approximately $1.9 million. The funding will be ongoing and adjusted to reflect actual needs as they are identified by agencies.

6. INAC is engaging with all its partners across the country to further explore different models to respond to the increased need for prevention services. Examples raised by partners that INAC is considering include reimbursing or funding agencies based on actual costs (similar to what is done in the case of maintenance) and supporting communities in their efforts to provide prevention programming. INAC has also asked agencies, including small agencies, to provide the Department with further information about their actual needs and distinct circumstances, as outlined below.

7. On October 28, 2016, INAC offered First Nations delegated agencies funding to provide the Department with information about their actual needs and distinct circumstances. Agencies were invited to submit individual reports or to work together or through existing mechanisms (e.g., involvement in regional tripartite working tables) to provide this information. Attached as **Exhibit 3** is the October 28, 2016 letter to agencies.

8. To date, approximately 80 agencies in British Columbia, Alberta, Manitoba, Ontario, Quebec and the Atlantic provinces have begun the process of seeking funds to provide INAC with information on their needs, including areas identified by the Tribunal as needing reform. INAC has asked to receive the reports from agencies on their needs by the end of June 2017, however, some agencies have indicated that they will need more time to provide the information.

9. Investments of approximately $1.975 million have been allocated to regions for this fiscal year to support agencies to identify their actual needs and distinct circumstances, with additional funds being available should other agencies confirm they are interested in responding to INAC's request. These funds are in addition to the funds outlined in paragraph 4 above. Further, the letter sent by INAC provided agencies with a funding opportunity to implement a cultural vision for their programming (e.g., implementation of Touchstones of Hope, development of culturally based tools for communities). To date, a number of agencies in British Columbia have expressed an interest in doing this work and

approximately $1.5 million has been allocated to support this work. These funds are in addition to the funds outlined in paragraph 4.

10. Discussions are ongoing with agencies in other regions of the country about the funding opportunity to develop a cultural vision.

11. As ordered by the Tribunal on September 14, 2016, INAC has committed "to not reduce or further restrict funding" for agencies, as set out on page 2 of its October 31, 2016 compliance report.

**Engagement and Reform Activities – Update Since Canada's October 31, 2016 Compliance Report**

12. As set out in its September and October 2016 compliance reports, Canada has taken steps to comply with the Tribunal's orders. However, any further reform must be undertaken in collaboration with Canada's partners. This work is underway.

13. To that end, Canada continues to develop and implement a multi-pronged engagement process to gather information on agency needs and work collaboratively towards medium and long-term reform with our partners, including First Nations, their leadership and political organizations, the National Advisory Committee, First Nations child and family services agencies, provinces and Yukon, and youth who have aged out of care, to name a few.

14. This engagement approach includes appointing a Minister's Special Representative to gather advice and perspectives from a range of partners across the country. It also involves establishing the National Advisory Committee on First Nations Child and Family Services Program Reform (see Annex F to Canada's October 31, 2016 submission). Since the filing of the October 31, 2016 report, progress has been made in each of these areas. A brief update is provided below.

15. The Minister's Special Representative, Dr. Cynthia Wesley-Esquimaux, has been meeting and continues to meet with a broad range of partners, including: First Nations Child and Family Services agencies, First Nations leadership, community members and youth, community organizations and provincial/territorial governments. Through these meetings, the Minister's Special Representative is able to hear directly about promising practices in child welfare protection and prevention. Her Statement of Work is attached as **Exhibit 4**.

16. In addition to an announcement on October 27, 2016, the Minister's Special Representative was introduced in a letter to partners from the Minister on October 26, 2016, and through further communications as part of the regional visits. Dr. Wesley-Esquimaux's first official regional engagement visit was in British Columbia from November 21-30, 2016. During that visit, the Minister's Special Representative and senior officials from INAC met with representatives from First Nations leadership and communities, elder advisors, the province, the provincial advocate's office, First Nations Child and Family Services agencies, and youth advisory committees and networks.

17. A regional visit to Alberta took place on January 15-20, 2017 where she met with First Nation Chiefs, youth, community members, agency representatives and the provincial government.

18. Other visits are planned for: Ontario (January 23-26, 2017), New Brunswick, Nova Scotia and Prince Edward Island (February 6-10, 2017), Quebec (February 20-24, 2017), Saskatchewan (February 27-March 2, 2017), Yukon (March 6-8, 2017), Manitoba (March 13-17, 2017) and Newfoundland and Labrador (March 20-21, 2017). The Minister's Special Representative is also speaking to individuals who contact her to share their concerns and views. Individuals can contact the Minister's Special Representative through the department.

19. The input and perspectives shared to date are providing the Minister of INAC with a broad range of ideas and options to fully reform the Program in order to respond to the Tribunal's orders. As a result of these initial discussions, INAC is

undertaking discussions with partners and exploring putting agreements in place to support several pilot projects on prevention and new models for service delivery, including with Esketemc First Nation (also known as Alkali Lake), Shuswap Tribunal Council and Chippewas of the Thames. More community-based best practices/approaches will be identified, shared and further developed as they are raised by partners during the engagement process, either through discussions with the Minister's Special Representative, through regional or national engagement tables, or by individual communities or agencies.

**Regional Engagement and Reform Activities – Update Since October 31, 2016 Compliance Report**

20. Funding of approximately $2.44 million has been allocated to support regional engagement and reform activities. Regional tripartite meetings are being supported across the country. For example, there was a tripartite meeting in Saskatchewan on January 11, 2017 and in Manitoba on January 13, 2017 to discuss and plan for the Minister's Special Representative's regional visits with regional program stakeholders.

21. Funding is also being provided to Indigenous Regional Organizations and other key partners to undertake activities for engagement and to support input for reform, such as: reviewing existing regional reports (*e.g.*, studies and recommendations by regional organizations, provincial advocates and others which may set out specific suggestions for approaches to prevention or other areas of need for agencies or communities) and prioritizing and advising on how to implement the recommendations in these reports; drawing on Indigenous methodologies to engage with First Nations communities, families and others from across the region; and providing evidence-based advice to inform the reform process. For example, the Assembly of Manitoba Chiefs is receiving funding in Manitoba, and the First Nations of Québec and Labrador Health and Social Services Commission is being funded to coordinate engagement in Quebec.

**Ontario 1965 Agreement – Update Since Canada's October 31, 2016 Compliance Report**

22. INAC is working with the Province of Ontario and First Nations regarding the distribution of funding and planning for broader engagement on the reform and development of new options for the *1965 Agreement*. INAC worked with the provincial Ministry of Children and Youth Services and the Social Services Coordination Unit at the Chiefs of Ontario on a one-time way to fund immediate relief investments for Ontario for 2016-17 in the amount of approximately $5.8 million. The Chiefs of Ontario presented INAC and the province with the amount that each community would receive and Ontario disbursed the funds on behalf of Canada so that communities could fund prevention activities.

23. Building on these discussions, a technical tripartite meeting of directors of social services from INAC, the province of Ontario and Indigenous Regional Organizations took place in Ontario on January 13, 2017. At this meeting, the tripartite group identified the following items for further discussion: review of the *1965 Agreement*, Band Representatives, mental health, scoping an Ontario-specific study, remoteness and a framework for a long-term policy and funding approach. Following this meeting, Terms of Reference will be agreed to by Ontario, INAC and First Nations representatives to guide future collaborative efforts of this group and a follow-up meeting is planned for February 15, 2017.

24. In response to the Affidavit of Deputy Grand Chief Denise Stonefish concerning funding for mental health, Band Representatives and an Ontario Special Study, INAC is working in partnership with Ontario, provincial Indigenous Regional Organizations and individual First Nations to examine these issues, as set out in paragraph 23 above. The issue of funding for and the role of Band Representatives or equivalent capacity supports for regional representative organizations has also been raised by First Nations in other provinces and must be examined as part of the larger national engagement process as well. The issue of mental health must be examined in partnership with other federal departments,

including Health Canada, and the provinces/Yukon as it is a broader issue than the Program.

25. In response to the Affidavits from Nishnawbe Aski Nation on agency deficits, under the *1965 Agreement*, INAC has a reimbursement-based transfer-payment relationship with the province of Ontario and not with individual agencies. The agencies have a direct funding relationship with the Government of Ontario, per its responsibilities under the *Child and Family Services Act*. INAC reimburses the Government of Ontario for approximately 93% of provincially approved agency expenditures eligible under the *1965 Agreement*, including a 10% federal holdback pending audit of submitted expenses. The province of Ontario provides INAC with financial statements related to services eligible under the *1965 Agreement* for registered First Nations children in care normally resident on reserve.

26. INAC is working with these agencies, including as outlined in paragraph 7, to assist them to provide the Department with information about their actual needs. Also, as part of tripartite meetings between INAC, the province of Ontario and First Nations Indigenous Regional Organizations, discussions are underway about how to work together to better understand and respond to agency and community needs across the province of Ontario.

27. In addition, INAC has had preliminary discussions with the leadership of the Nishnawbe Aski Nation regarding their needs and proposals for a study on remoteness, which could include gathering remoteness data and/or developing a remoteness quotient that could be applied to meet the needs of agencies in remote regions. These discussions are ongoing.

**National Advisory Committee – Update Since Canada's October 31, 2016 Compliance Report**

28. Regarding its national engagement activities, INAC has worked closely with the Assembly of First Nations and the First Nations Child and Family and Caring

Society to establish the National Advisory Committee, recognizing the important role this body will play in advising the reform process. Following discussions over the past several months, meetings took place on December 6, 2016 and December 15, 2016 to agree on Terms of Reference for the Committee.

29. The Terms of Reference specify that the Committee includes a national chair, three representatives from the federal government, one representative from the Assembly of First Nations, one representative from the First Nations Child and Family Caring Society, 10 First Nations child and family services agency directors (one from each of the Assembly of First Nation's regions), one First Nations youth representative and one First Nations Elder representative.

30. In response to the Affidavit of Jonathan Thompson concerning the expertise of this Committee and its role in the engagement process, the Terms of Reference for the National Advisory Committee have been approved. The Committee will play an important role in providing an avenue for expert advice on agency funding needs and all of the other issues set out in the Terms of Reference. The first meeting will be on January 24 and 25, 2017. The Terms of Reference are attached as **Exhibit 5**.

31. INAC has provided funding of approximately $440,000 to the Assembly of First Nations for staff and supports to provide policy advice and do research, outreach and communications on social policy issues, including First Nations child and family services, as well as participate in the Committee. INAC has also provided funding of approximately $118,000 to the Assembly of First Nations to conduct research and carry out a survey of service providers to determine the range of services provided, the optimal level of service, the costs associated with providing equitable services and to develop a funding formula or economic model for First Nations family and child services. In addition, INAC has allocated approximately $149,000 to support the First Nations Family and Caring Society to support their participation in the Committee and related processes. The funding agreement has not yet been signed by the organization.

**National Engagement Activities – Update Since Canada's October 31, 2016 Compliance Report**

32. As part of national engagement activities, INAC is engaging with its partners to design a National Youth Summit. The current concept for the Summit is to focus on hearing directly from youth who have been in care about their experiences and perspectives on what needs to change. A planning meeting for the Summit, involving approximately 30 youth from across the country, is being planned for February 13 and 14, 2017.

33. The Minister of INAC will also be meeting with provincial/territorial child advocates on January 25 or 26, 2017. In addition, INAC is also working with Employment and Social Development Canada and the provinces and territories to share information through a Federal/Provincial/Territorial Working Group on Indigenous Children and Youth and Care, and to prepare for the meeting of federal/provincial/territorial Ministers Responsible for Social Services, scheduled for February 2 and 3, 2017. The Minister will attend this meeting to discuss the issue of Indigenous Children and Youth in Care with National Indigenous Organizations and provincial/territorial Ministers Responsible for Social Services. All of these discussions are in support of reform of First Nations child and family services.

**Response to Specific Issues Raised in the Affidavits of Complainants or Interested Parties**

34. In response to the Affidavit of Raymond Shingoose regarding agency funding needs at Yorkton Tribal Council Child and Family Services Inc., INAC confirms that funding in the amount of $973,054 was provided to the agency for 2016-17 in respect of immediate relief investments. This amount was calculated according to the national methodology previously described by INAC in its submissions. Mr. Shingoose notes that there continues to be a cumulative deficit of $1.2 million and states that it is inadequate meet the agency's needs, particularly in respect of prevention. The offer that INAC has made to First Nations delegated agencies

(referenced in paragraph 7) would provide Yorkton with an opportunity to clarify and share further information about its actual needs and distinct circumstances in support of these activities. INAC commits to ongoing work with its partners, including Yorkton Tribal Council Child and Family Services Inc., to gather information about agency needs in Saskatchewan through tripartite and other regional engagement activities (as outlined in paragraphs 20 and 21 above).

35. In response to the Affidavits of John Loxley and Jonathan Thompson expressing their concerns about INAC's ability to analyze the information received on agency needs, INAC will be seeking expert assistance in the interpretation of this information. INAC is also gathering information about agency needs through engagement in the regional tripartite tables and the National Advisory Committee.

36. In response to the Affidavit of Dr. Cindy Blackstock regarding agency deficits at Mi'kmaw Family and Children's Services of Nova Scotia (paragraph 32), INAC provided the agency with $400,000 in immediate relief as per Budget 2016 calculations, as well as an additional $5.1 million to respond to their estimate of the funding required to cover pressures, including funding needs related to provincial legislative changes. Attached as **Exhibits 6 and 7** are copies of the agency's estimate of their needs and INAC's agreement with the agency to fund those needs.

37. In response to the Affidavit of John Loxley regarding funding calculations for Gitxsan in British Columbia, the funding amount of $1,356,388 (represents existing plus new funding at full implementation) was reached by inserting data for the agency into the funding calculation sheet . This total is then adjusted because of agency size and the phasing in of new funds over five years. With the adjustments that take place because of agency size, the total is $1,291,968, at full implementation of Budget 2016 funding. To determine funding for year one (2016-17), new funding of $215,347 (which is 40% of the allocation of new funding at full implementation of $538,369) was added to the 2015-16 funding amount ($737,384), resulting in an allocation of $952,731. Based on discussions

at the regional level with Agency Executive Directors, additional funds were allocated to the agency, resulting in a 2016-17 budget of $1,164,934. This amount is listed on the "immediate relief methodology" document distributed by the British Columbia region. Attached as **Exhibit 8** is a copy of this immediate relief methodology document.

38. In response to paragraph 4 of Dr. Blackstock's second Affidavit alleging that a particular document (attached as Exhibit A to her affidavit) had not been included in INAC's September 30, 2016 compliance report , this document was submitted as part of its October 31, 2016 compliance report (Annex G, page 78), as it was a product of a regional discussion.

39. In response to paragraph 40 of Dr. Blackstock's first Affidavit referencing a motion in the House of Commons calling for an investment of $155 million in new funding for the delivery of child welfare services for First Nations children, Canada has invested an additional approximately $95 million in funding for 2016-17. As outlined in paragraph 7, INAC is also seeking information from agencies about their actual needs and distinct circumstances to inform the reform of funding for the Program.

**Medium and Long-Term Relief**

40. In relation to immediate relief, INAC's Budget 2016 and additional investments have increased to approximately $95 million for 2016-17 to respond to the Tribunal's orders to meet agency and other organizations' needs. With these new funds, all regions are now and will continue to be supported with prevention-based funding.

41. Longer-term reform will involve exploring the development of national standards and legislation, and models where First Nations assume jurisdiction over child and family services. INAC is also engaging with all its partners to gather evidence on how to address other gaps, such as capital needs, legal fees and remoteness. Engagement activities to inform agency funding reform will continue through

2017, including through the work of such partners as the National Advisory Committee. INAC requires input from its partners to make decisions on these funding items that will result in long-term improvements to support First Nation children, families and communities. In addition, INAC will be funding some community-based best practices on prevention and community wellness activities.

SWORN TO/AFFIRMED before me at Gatineau, Province of Quebec, this 25 day of January, 2017

Kim Piché
A Commissioner for Taking Affidavits

Cassandra Lang

Commissioner of Oaths
KIMBERLEY PICHÉ
# 215786
for Quebec, with jurisdiction across Canada and all countries

**This is Exhibit "B" referred to in**
**the Affidavit of SONY PERRON,**
**sworn before me this 8th day of November, 2019**

**A Commissioner, etc.**

**OCTOBER 31, 2016 RESPONSE OF INDIGENOUS AND NORTHERN AFFAIRS CANADA TO THE CANADIAN HUMAN RIGHTS TRIBUNAL ORDER OF SEPTEMBER 14, 2016**

The Government of Canada is renewing its relationship with Indigenous peoples and is working in close partnership with First Nations to support the health and well-being of Indigenous children, families and communities across the country.

The government is working hard to reform the services the Tribunal found are discriminatory. Budget 2016 funding was a first step. Canada has started working with its partners to reform the First Nations Child and Family Services Program on reserve and to implement further improvements to Jordan's Principle.

The following is Canada's response to the September 14, 2016 ruling of the Canadian Human Rights Tribunal (the Tribunal) concerning INAC's First Nations Child and Family Services Program and Jordan's Principle.

In that ruling, the Tribunal ordered INAC to serve and file information about how it developed its five year plan for investing in the First Nations Child and Family Services program and copies of correspondence with the province of Ontario. INAC complied with this order on September 30, 2016.

The Tribunal further ordered INAC to take seven additional immediate measures, and to provide a compliance report on a series of other matters by October 31, 2016. A response to these orders is outlined below.

**Part A: Response to the Panels order at Para 157: *For clarity, the Panel orders INAC to update its policies, procedures and agreements to comply with the Panel's findings in the Decision.***

INAC has begun a comprehensive reform of the First Nations Child and Family Services (FNCFS) program in order to ensure the program meets the needs of First Nations children, families and communities. As part of this process, INAC is reviewing and updating its guiding policies, procedures and agreements to comply with the Tribunal's findings in the January 2016 Merits Decision.

The Tribunal's general order to reform the First Nations Child and Family Services Program and the 1965 Agreement in compliance with the Merits Decision will be achieved in the longer term, with certain interim measures being put in place until that time (September 14, 2016, paragraph 137).

As an interim approach, INAC made updates to the funding agreements and associated reporting requirements in all jurisdictions to reflect the distribution of immediate relief investments to support front-line service providers and prevention-based funding. INAC is also in the process of updating its National Manual for Social Programs. Changes are being made to the First Nations Child and Family Services section, along with a note indicating that this section will be fully revised following the reform and engagement process.

## Part B: Response to the Panel's Order on Reporting

### *a. How INAC has complied with the immediate measures ordered above in section A of the Tribunals September 14, 2016 ruling*

#### *1. INAC will not decrease or further restrict funding for First Nations child and family services or children's services covered by Jordan's Principle*

INAC is not decreasing or further restricting funding for First Nations child and family services or children's services covered by Jordan's Principle.

In its five-year plan for investing in child and family services on reserve, the amount of funding for INAC's First Nations Child and Family Services Program increases each year until year five. As part of the engagement and reform process, INAC has started and will continue national and regional discussions develop a longer-term funding plan.

#### *2. INAC will determine budgets for each individual FNCFS Agency based on an evaluation of its distinct needs and circumstances, including an appropriate evaluation of how remoteness may affect the FNCFS Agency's ability to provide services*

INAC's current calculations, as part of the five-year plan, have been done at the regional level, as outlined in section to A (2) and Annex C of the September 30, 2016 response to the Tribunal.

To comply with this order, INAC has directly asked each agency to cost out and provide information about their distinct needs and circumstances.

On October 28, 2016, INAC sent a letter to delegated First Nations Child and Family Services agencies requesting this information (**Annex A**). INAC is also working with the provinces/Yukon to gather feedback from communities served directly by the province/territory or other service providers.

This request invites agencies to provide INAC with information about what they need. This input could include: the range of service needs needed by First Nations children and families in their communities (including the percentage of families at risk or in need of prevention); the context in which agencies provide these services (e.g., what other community services available); their ability to provide prevention services and programs and culturally responsive programs; operational support for staff; options for meeting the particular needs of operating a small agency; the scope and range of legal fees agencies pay in support of First Nations children in care; capital/building repair needs; and specific effects of remoteness in an agency's ability to provide services (e.g., travel and response times).

INAC has offered to provide each agency with $25,000 to support their work in defining their needs.

Understanding that not all agencies may respond to this request for information (due to capacity issues or because they are providing the information to INAC through other means, including tripartite discussions), INAC will continue to gather information on agency needs and circumstances, including specific issues related to remoteness, throughout the engagement process. This will include technical

discussions about funding at tripartite tables with INAC, provinces/Yukon territory and First Nations. All of this information will be used by INAC to better understand the needs and circumstances of agencies and to inform the reform of the FNCFS program, including how agency funding is calculated.

The letter to agencies also provides them with an opportunity to seek financial support from INAC to develop and implement a culturally-based vision for their programming and services. Culturally-based visions for child welfare services are rooted in community-based understandings of healthy children, families and communities, and recognize the unique cultures and context of Indigenous communities. In addition to the $25,000 to determine individual agency needs and circumstances, up to $75,000 is available to each agency to support the development of this work.

> ***3. In determining funding for FNCFS Agencies, INAC is to establish the assumptions of 6% of children in care and 20% of families in need of services as minimum standards only. INAC will not reduce funding to FNCFS Agencies because the number of children in care they serve is below 6% or where the number of families in need of services is below 20%***

The Tribunal has ordered INAC not to reduce funding to FNCFS agencies serving a population with less than 6% of First Nations children in care (7% in Manitoba) and not to reduce funding to agencies with less than 20% of families in need. INAC has complied and will continue to comply with that order. Note that 7% is used in Manitoba because at the time of signing the federal-provincial cost sharing agreement in 2010, a higher proportion of First Nation children were being admitted into care.

As can be seen in INAC's methodology notes (provided as Annex B of Canada's May 24, 2016 submission to the Tribunal) and agency-by-agency formulas (provided as Annex C of Canada's September 30, 2016 submission to the Tribunal), 6% and 20% have been established as minimum standards for funding calculations. INAC is taking steps so that its funding methodology is focused on service levels and the actual needs of First Nations children and families, which vary over time.

In Ontario, funding for child and family services agencies is determined by the Government of Ontario. Under the Ontario 1965 Agreement INAC reimburses the province for approximately 93% of the cost of child and family services provided to First Nation people ordinarily resident on reserve (see Annex B of the May 24, 2016 submission to the Tribunal for Ontario description). Minimum standards of 6% and 20% do not factor into the funding model of the province.

> ***4. In determining funding for FNCFS Agencies that have more than 6% of children in care and/or that serve more than 20% of families, INAC is ordered to determine funding for those agencies based on an assessment of the actual levels of children in care and families in need of services***

INAC is seeking input from First Nations Child and Family Services agencies as to their actual needs in order to determine funding, as set out in question two above. This includes asking each agency to provide information on their actual needs and distinct circumstances, including the percentage of families in need of services. INAC

understands that it may be difficult for agencies to provide information on the percentage of families in need of services, given that definitions and understandings of families at risk and in need of prevention services vary broadly. INAC is open to hearing that using any percentage as a basis on which to fund families at risk may not be the appropriate approach.

With regard to the percentage of First Nations children in care, INAC's funding calculations in its five-year plan were based on the actual numbers of First Nations children in care where the percentage exceeded the 6% threshold. The 2014/15 "Children-in-Care" counts from the FNCFS Information Management System were used to determine the actual percentages. At the time of the calculations, 26 FNCFS agencies were identified as having more than 6% of First Nations children in care. Should these percentages change in the coming year and before reform is complete, funding calculations will be adjusted to reflect the most recent data. They will not be adjusted below 6%.

With regard to the percentage of families in need of services, INAC has used 20% to estimate the percentage of families at-risk or in need of prevention services. Given data is not available on the actual percentage of families in need and there is no established way to define the percentage of families in need or at-risk, no changes have been made to INAC's funding calculations for the percentage of families at-risk in its five-year plan.

However, as an interim measure, as of January, 2017, INAC will prioritize additional prevention funding to support families for those service providers with more than 6% of First Nations children in care, as it is likely that they are under pressure to support additional families in need. When data indicates that a service provider has more than 6% of First Nations children in care, INAC will adjust the 20% assumption of families in need of prevention services and the associated funding upwards on a proportional basis.

In addition, as part of the engagement and reform process, INAC will review the information provided by FNCFS agencies in response to its October 28 letter, and continue national and regional discussions, to gather information in order to be able to fund prevention according to community needs.

> ***5. In determining funding for FNCFS Agencies, INAC is to cease the practice of formulaically reducing funding for agencies that serve fewer than 251 eligible children. Rather, funding must be determined on an assessment of the actual service level needs of each FNCFS Agency, regardless of population level.***

While reform is underway, and understanding current pressures on small agencies, as an interim measure, as of January 2017, INAC will set a child population of 300 as the lowest threshold for scaling. Three hundred (300) was selected as the new threshold, as it is the next level up from the 251 ordered by the Tribunal in INAC's current scale, which is outlined below:

| Child Pop. (0-18) | Core Adjustment |
|---|---|
| 100 | 12.50% |
| 200 | 25.00% |

| | |
|---|---|
| 300 | 37.50% |
| 400 | 50.00% |
| 500 | 62.50% |
| 600 | 75.00% |
| 700 | 87.50% |
| 800 | 100% |

Under the new approach, all agencies serving a 0-18 child population of fewer than 300 would have their core funding stream scaled at 37.5%, whereas previously agencies serving 200 children or less were scaled at 25% and agencies serving 100 children or less were scaled at 12.5%. This is a temporary measure until the actual service needs are determined with each FNCFS agency as part of the engagement and reform process. This change currently affects approximately 10 agencies nationally.

As part of the engagement and reform process, INAC will review the information provided by FNCFS agencies in response to its October 28 letter, and continue national and regional discussions, in order to be able to fund small agencies based on need and to consider alternatives to using population thresholds to determine agency funding.

***6. INAC is to cease the practice of requiring FNCFS Agencies to recover cost overruns related to maintenance from their prevention and/or operations funding streams***

INAC understands and agrees with the importance of agencies having dedicated funding to support prevention work with families and communities. INAC has complied with the Tribunal's order to cease the practice of requiring FNCFS agencies to recover costs related to maintenance from their prevention and/operations funding streams.

To ensure all service providers know about this commitment and are no longer recovering costs, INAC formally re-communicated this decision through an email to regional offices on October 24, 2016 and asked that it be shared with all FNCFS agencies (**Annex B**).

Should INAC be made aware that there are cost overruns or pressures related to maintenance funding for an agency, INAC will provide additional funds to cover these costs.

INAC will continue work with its partners to monitor trends, including cost overruns and pressures, as part of its ongoing work to ensure the appropriate level of funding is provided to FNCFS agencies.

***7. INAC is to immediately apply Jordan's Principle to all First Nations children (not only to those resident on reserve)***

Canada has applied Jordan's Principle as ordered, and identified almost 900 children to receive services and supports to date.

Jordan's Principle applies to all First Nations children. It is intended to resolve jurisdictional disputes involving the care of First Nations children, and includes disputes between departments within the federal government as well as those

between the federal government and provinces/territories. Implementing Jordan's Principle is not just about resolving disputes between provinces/territories and the federal government, but also about working collaboratively with provinces and the Yukon to help ensure First Nations children get the care and support they need. Should a dispute occur between levels of government, the federal government will work with the province/territory to help ensure all First Nations children have access to needed services consistent with what is available to other children in that province/territory.

Provinces and territories have the responsibility to deliver health and social services to all residents living within their respective jurisdictions. Historically, there have been gaps in programming for First Nations children on reserve, particularly for First Nations children living with a disability or critical short-term health or social service need. Recognizing that First Nations families on reserve may face greater difficulties in accessing Federal/Provincial/Territorial (FPT) services and supports, Canada's implementation of Jordan's Principle includes proactive measures that include a focus on the most vulnerable First Nations children.

Specifically, these proactive measures would target First Nations children with a disability or a critical short-term health or social service need living on reserve, or who ordinarily reside on reserve, to help ensure these First Nations children get the care and support they need, comparable to what other Canadian children in the same jurisdiction would receive. To that end, Canada has committed up to $382.5 million over three years to better meet the needs of these First Nations children. This funding includes a Service Access Resolution fund, to ensure resources are available to support these children, as well as the funding to implement an Enhanced Service Coordination function.

Enhanced Service Coordination is a proactive model of care that will help facilitate access for all First Nations children to FPT services on and off reserve by helping First Nations children and their families navigate systems, which are often complicated, and by coordinating service delivery. The federal government will work through various agencies to deliver Enhanced Service Coordination. Regional offices are working with partners to identify external service delivery organizations in all jurisdictions by the end of December 2016, and to have the Enhanced Service Coordination function in place by April 1, 2017. These agencies will, among other things, assess client needs; facilitate early interventions; develop integrated care plans; connect First Nations children, and their families, to necessary services; and help remove the stress of navigating service systems. In the meantime, regional Focal Points are performing this coordination function. Additionally, Canada is working with First Nations and provincial and territorial partners to collaboratively develop policy and program options for further improvements to our collective approach to Jordan's Principle. To initiate this work, Canada has begun tripartite meetings in regions to discuss ways to continue to improve the implementation of Jordan's Principle.

Canada is also working to find solutions to address any identified, unmet needs for First Nations children living off reserve. Health Canada has sent a directive to existing Regional Focal Points, in both INAC and Health Canada, to reinforce their role in facilitating access for off-reserve First Nations children and their families to needed federal, provincial and territorial health and social services.

INAC has also updated its website, which provides information about what families can do if they believe they have encountered a potential Jordan's Principle case, including contact information for Health Canada and INAC regional offices as well as for the INAC public enquiries 1-800 number, which families can call to report a potential Jordan's Principle case.

***b. How it is immediately addressing funding for legal fees***

INAC understands agencies need funding for legal fees in order to support the rights and needs of First Nations children in care. As part of the five-year plan, INAC's FNCFS program provides an initial allocation of funds for legal fees and costs as an eligible expense as part of operations funding. Total amounts range by province/Yukon and according to provincial standards, agency size and level of delegation in the case of British Columbia (see Annex C of Canada's September 30 Submission to the Tribunal for agency-by-agency breakdowns).

As an interim measure, if an agency experiences funding pressures related to specific legal fees for a child in a given fiscal year, INAC reviews requests to provide additional funds to cover these requirements on a case-by-case basis. To ensure all partners understand and are implementing this commitment, INAC formally re-communicated this decision through an email to regional offices on October 24, 2016 and asked that it be shared with all FNCFS agencies (**Annex B**).

As part of the engagement and reform process, INAC will review the information provided by FNCFS agencies in response to its October 28 letter, and continue national and regional discussions to better understand agency needs for legal fees.

This will include gathering information about the types and range of legal costs that agencies incur, as well as how the provinces/Yukon support agency legal fees to ensure federal funding meets current needs and gaps.

***c. How it is immediately addressing the costs of building repairs where a FNCFS Agency has received a notice to the effect that repairs must be done to comply with applicable fire, safety and building codes and regulations, or where there is other evidence of non-compliance with applicable fire, safety and building codes and regulations***

Current FNCFS program authorities are able to cover expenses related to rent, mortgage payments and minor capital expenditures. Minor capital expenditures include maintenance and repairs/upgrades/ renovations to facilities, including those that may be needed to comply with applicable building codes and regulations. Should an agency require funds for minor expenditures outside of its existing budget, the Department would work with the agency, on a case-by-case basis, to collaboratively address it.

Generally, responsibility for costs related to building repairs, including compliance with building codes and regulations are the responsibility of the landlord/owner of the building. INAC does not own FNCFS agency buildings, and INAC's FNCFS funding cannot be used for the purchase of buildings.

As part of the engagement and reform process, INAC will review the information provided by FNCFS agencies in response to its October 28 letter, and continue

national and regional discussions to develop a longer-term response to infrastructure needs.

***d. How it determined funding for each FNCFS Agency for the child service purchase amount and the receipt, assessment and investigation of child protection reports***

Regarding determining funding for the child service purchase amount, INAC heard, from tripartite discussions with provinces/Yukon and First Nations partners as well as concerns raised by witnesses who testified before the Tribunal, that the FNCFS program's funding of $100 for the child service purchase amount was not sufficient to meet needs. Based on discussions with regional offices about the range of child service purchase amounts used across the country, as an interim measure, INAC increased the child service purchase amount to $175.

INAC recognizes that applying a nationally consistent amount may not meet the needs of individual agencies. Therefore, as part of the engagement and reform process, INAC will review the information provided by FNCFS agencies in response to its October 28 letter, and continue national and regional discussions, to define a child service purchase amount based on need.

Regarding intake and investigation ("receipt, assessment and investigation"), INAC proactively amended its calculations to respond to possible agency needs in this area, understanding that intake and investigation are not required services under provincial standards in all regions.

In Alberta, funding calculations reflect a change in provincial service delivery and include a specific budget allocation for intake and for assessment and investigation. For both, a ratio of 1 worker to 800 children (0-18 population) was applied as a result of INAC discussions with the INAC regional office and their discussions with provincial officials. The salary amounts were estimated based on salary amounts for similar positions.

In other regions, where intake and investigation is not generally a requirement under provincial standards, a single budget item was added to support intake and investigation. This was done to allow agency service providers to use operations funding to support intake and investigation services. INAC estimated the ratio of intake and investigation workers to children by using the ratios applied to other positions in the region (e.g., the ratio of other support workers). Exceptions apply in the following regions:

- Prince Edward Island – the Mi'kmaq Confederacy of PEI (MCPEI) provides prevention services and purchases protection services (including intake and investigation) from the province
- Manitoba – INAC provided increased funds for direct service workers to support intake and investigation
- British Columbia – C3 and C4 delegated Aboriginal agencies do not provide protection services, therefore, a line item for intake and investigation was not added. A line item for intake and investigation was applied to C6 Aboriginal Agencies, which provide both prevention and protection services.

As part of the engagement and reform process, INAC will review the information provided by FNCFS agencies in response to its October 28 letter, and continue national and regional discussions to determine funding for intake and investigation services based on need.

***e. How much it is allocating for each "growth and future cost driver" and to detail how it arrived at its corresponding allocations for each FNCFS Agency, including for Ontario***

INAC's budget does not allocate costs according to the individual factors that form part of growth and future cost drivers (e.g., rates for keeping children out of the parental home, growth in salaries). For the 2016-2017 fiscal year, growth and cost driver funds (see Table 2 of Canada's May 24, 2016 submission to the Tribunal) will be managed centrally for addressing cost pressures and agency needs as they arise, including for Ontario. As part of reform, INAC will work with partners to determine individual agency-by-agency needs and how to best address future cost pressures and rising costs.

Further information about how INAC arrived at its regionally-based calculations for "growth and future cost drivers" can be found in Section A (3) of Canada's September 30, 2016 submission to the Tribunal.

***f. How new funding is immediately addressing the adverse effects identified with respect to the 1965 Agreement, especially in terms of mental health services and Band Representatives***

INAC is working with the province of Ontario and First Nations leadership and other partners to review INAC support for child and family services through the 1965 Agreement. Related issues with respect to First Nations children's mental health and funding for Band Representatives are being examined as part of this review process and also as part of the longer-term engagement and reform process involving national and regional discussions. A working group has been initiated in Ontario to begin engagement toward mid- and long-term reform.

INAC's immediate relief investments, including those allocated to Ontario, were a first step in Canada's reform of the FNCFS program.

INAC, the province of Ontario and the Chiefs of Ontario, as a representative of First Nations, have negotiated the distribution of this year's immediate relief for prevention funding, as outlined below in response to (h).

***g. How it determined funding for remote FNCFS Agencies that allows them to meet the actual needs of the communities they serve, taking into account such things as travel to provide or access services, the higher cost of living and service delivery in remote communities and the ability of remote FNCFS Agencies to recruit and retain staff***

INAC determined the specific funding calculations for remote agencies in Manitoba (2010), Saskatchewan (2008) and Quebec (2009) through tripartite table discussions when the Enhanced Prevention Focused Approach was first implemented in each of these provinces. INAC does not currently provide funding for remoteness in other regions, as the Department did not have sufficient data and information on which to base calculations for funding.

As part of the engagement and reform process, INAC will review the information provided by FNCFS agencies in response to its October 28 letter, and continue national and regional discussions to address the needs of remote agencies. This plan will consider the various needs of remote communities, including: the unique needs of northern communities; the compounded needs of small, remote agencies; challenges related to travel and access to other services; the higher cost of living and service delivery; and difficulties recruiting and retaining staff.

***h. How immediate relief funding is being distributed in Ontario***

In its September 30, 2016 response to the Tribunal, INAC provided copies of previously referred to correspondence with the province of Ontario, as well as an update on a September 22, 2016 meeting of INAC, the province of Ontario and the Chiefs of Ontario. All three parties discussed ways to flow the immediate relief investments as quickly as possible for prevention, and all parties have agreed that the 1965 Agreement is the most efficient mechanism to distribute funding at this time. The $5.8 million in funding will be distributed, according to a formula agreed to by INAC, the province of Ontario and the Chiefs of Ontario, by November 2016. Following a letter from the Chiefs of Ontario, INAC and the province of Ontario sent letters confirming the agreement on process for flowing immediate relief funding attached as **Annex C and Annex D**.

With respect to the Mohawk Council of Akwesasne specifically, there is a direct funding agreement between the First Nation and INAC's Ontario Regional office. The First Nation has received their funding for 2016 immediate relief.

With respect to the immediate relief funding related to "growth and future cost drivers" for Ontario, see section B (3) above.

***i. How it has complied with the order to immediately implement the full meaning and scope of Jordan's Principle, including:***

**i. confirmation that it is applying the principle to all First Nations children (not just to those resident on reserve)**

See response in Part B, section 7.

Jordan's Principle applies to all First Nations children. Canada's response includes the introduction of Enhanced Service Coordination, a proactive model of care that will help facilitate access for all First Nations children to Federal/Provincial/Territorial services on and off reserve by helping First Nations children and their families navigate the systems, and by coordinating service delivery. External service delivery organizations will be identified, through engagement with First Nations, by December 2016 and service coordinators in place for April 2017. In the meantime, regional Focal Points are performing this coordination function. Canada is also working with First Nations and provincial and territorial partners to collaboratively develop policy and program options for a long-term approach to Jordan's Principle. To initiate this work, Canada has begun tripartite meetings in regions to discuss the implementation of Jordan's Principle.

Regional Focal Points will continue to work with provinces and territories and other partners to help ensure that solutions are found to address any identified unmet needs for First Nations children living off reserve as well. Health Canada sent a

directive to Focal Points to reinforce their role in facilitating access for off-reserve First Nations children and their families to needed federal, provincial and territorial health and social services.

INAC has also updated its website, which provides information about what families can do if they believe they have encountered a potential Jordan's Principle case, including contact information for Health Canada and INAC regional offices as well as for the INAC public enquiries 1-800 number, which families can call to report a potential Jordan's Principle case.

**ii. an explanation as to why it formulated the application of the principle to children with "disabilities and those who present with a discrete, short-term issue for which there is a critical need for health and social supports"**

Canada has focused its response to Jordan's Principle on First Nations children with a disability (e.g., cerebral palsy) or critical short-term health or social need (e.g., broken leg requiring wheelchair) living on reserve, or ordinarily resident on reserve, as these First Nations children are the most vulnerable to potential jurisdictional disputes or service gaps, and typically require the greatest amount of care, often from more than one service provider. These services have historically been more difficult to acquire on reserve because of factors like remoteness or the absence of appropriately trained medical professionals. Further, Canada's response focuses on health and social supports, as these supports are most likely to be subject to a jurisdictional or programming gap, particularly in relation to comparable provincial or Yukon Territory normative standards.

Through the work of both the Regional Focal Points and the Enhanced Service Coordination Function, Canada's response proactively identifies gaps in services for vulnerable First Nations children rather than waiting for a jurisdictional dispute to arise. This approach is intended to help ensure access to needed services, thereby reducing the likelihood of jurisdictional disputes arising, and helping these First Nations children get the care they require. In addition to First Nations children with a disability, Canada's approach includes First Nations children who present with a short-term condition for which there is a critical need for health and/or social services, allowing Canada the flexibility to help ensure that no First Nations children are denied, or experience a delay in, service that they would be eligible for within their provincial or territorial system. Canada will continue to exercise due diligence and flexibility on a case-by-case basis when assessing the eligibility of First Nations children vis-à-vis residency.

Since the July 5, 2016 announcement, regional Focal Points have proactively reached out to First Nations communities, with an initial emphasis on areas with known gaps such as respite care, to identify and support First Nations children with unmet needs. Canada has also provided support to First Nations children for such things as medical transportation, and facilitated and coordinated access to treatment programs, day programs, and allied health or social services.

Canada is also undertaking a strategy for further improvement in the implementation of Jordan's Principle. This will include engagement with stakeholders to examine the

components of Jordan's Principle, including the possible need to reform existing federal programs.

**iii. details as to what action it has taken to comply with the "government of first contact" provision in the order**

In cases that have come forward where the need could not be met through existing programs in an efficient and effective manner, or where there was a gap or jurisdictional dispute, Canada has provided funding to ensure that First Nations children receive services without delay, in accordance with the normative standard of care in their province of residence.

The purpose of Jordan's Principle is to address disputes to help ensure that First Nations children get the services they need. Provinces and territories generally provide services to all residents of the province without discrimination. However, if there is an issue between Canada and a province/territory over which level of government should provide or pay for a service for First Nations children, Jordan's Principle provides a mechanism to ensure that jurisdictional issues do not get in the way of First Nations children accessing services that are usually available to children in accordance with the normative standard of care in their province or territory of residence.

Canada has also taken a more proactive approach in its response to the Tribunal's January decision. The Service Access Resolution fund provides resources to pay for services in cases where a child living on reserve cannot access those services through existing provincial or federal programs. An essential component of Canada's response is the Enhanced Service Coordination function, which will work with regional Focal Points to help ensure that First Nations children are referred to the appropriate point of first contact.

The people in these roles will facilitate quick assessment to ensure the necessary services are identified and provided. This approach will guide First Nations children, and their families, through provincial/territorial and federal systems to ensure the first point of contact is the government agency best able to meet their needs. This approach should help to avoid jurisdictional disputes and help ensure that First Nations children get equitable services in a timely manner.

In the cases that have come forward thus far, Canada has provided funding for First Nations children resident, or ordinarily resident, on reserve to get the health or social supports they require, and has worked with provinces to ensure First Nations children off reserve are getting the services or supports they need.

**iv. clarification as to what process will be followed to manage Jordan's Principle cases, how urgent cases will be addressed, and what accountability and transparency measures have been built into that process to ensure compliance with the order**

Any potential Jordan's Principle case can be brought to the attention of the regional Focal Points, either through contact with regional INAC or Health Canada offices (listed on the INAC website at https://www.aadnc-aandc.gc.ca/eng/1100100033694/1100100033695) or the Health Canada website http://www.hc-

sc.gc.ca/contact/fniah-spnia/fnih-spni/rd-dr-eng.php) or through the number (1-800-567-9604) listed on the Jordan's Principle website.

Once any potential case is identified, INAC and Health Canada Focal Points work closely with the province/territory to meet the identified health and social needs of any First Nations child. In cases where a gap in available services or supports is identified, Focal Points will work with the national INAC and Health Canada team to ensure that the necessary service or support is provided through existing programs that the family/service coordinator may have been unaware of, the Jordan's Principle Service Access Resolution fund, or engagement with the province/territory.

Urgent requests for services or supports that cannot be met through existing programming are reviewed by regional Focal Points and then brought to the national office of INAC or HC for immediate decision. The review process is done quickly to prevent any delays in accessing needed services or supports. For non-urgent requests, a Review Committee at Health Canada, consisting of six health and social program experts and professionals, discusses each case. The Committee meets once every week to discuss the nature of case and how best to expeditiously resolve it. The outcomes of decisions are communicated to the regional Focal Point, who then informs the requester.

Complex cases, such as those that may be considered "exceptional" (e.g., fall beyond normative provincial standards), as well as requests for funding for groups of First Nations children to access services such as respite care or allied services, which cannot be provided under current program resources, are considered by the Health Canada/INAC Director General's Operations Committee and brought forward for approval by the ADM chairs of the INAC/Health Canada ADM Oversight Committee.

Once the proactive Enhanced Service Coordination function is fully implemented, it will help First Nations children access the appropriate existing services and supports. It may also help set up or undertake individual assessments, arrange appointments and develop case management plans (in the interim this is being managed through Focal Points, and service agencies supporting First Nations children and their families).

As of October 4, 2016, almost 900 First Nations children, representing various provinces, have been identified to receive services and supports through Canada's efforts to identify the most vulnerable First Nations children in need. The bulk of these children will receive support for respite care, but funding has also been provided for supports such as specialized medical equipment and supplies; medical transportation; specialized day programs; and addiction treatment programs. Together, these amount to a total of approximately $10.2 million.

Canada is committed to reporting annually on the implementation of Jordan's Principle, and to collecting data on the types of services and supports required by First Nations children, to help support future program reforms. Canada has implemented an appeals mechanism for children and their families, should they disagree with a funding decision.

Communications regarding Jordan's Principle are a high priority for INAC and HC. Canada has updated INAC's website to reflect the new approach to Jordan's Principle (https://www.aadnc-aandc.gc.ca/eng/1334329827982/1334329861879), and has issued a directive to all Regional Focal Points regarding how this approach should be implemented. Moving forward, both departments are collaborating on the development of information products to be made available in plain language for families and communities on how to access the services and supports. Enhanced Service Coordinators, once identified and in place, will also be responsible for developing information products for families and communities regarding their role and functions.

**v. clarification as to how it will ensure that First Nations, CCI Parties and FNCFS Agencies are part of the consultation process with the provinces/territories, and in other elements of the implementation of Jordan's Principle**

Canada is working with First Nations organizations, provinces and territories on a longer-term approach to Jordan's Principle, and is collaborating with those same stakeholders to implement and refine the current approach.

INAC and HC have taken steps to establish an engagement working group that will oversee the engagement process for the longer-term approach to Jordan's Principle. This engagement working group will be co-chaired by Health Canada and the Assembly of First Nations and will be responsible for developing a more detailed engagement strategy that ensures the appropriate parties are included in discussions on Jordan's Principle.

INAC and Health Canada regions have already begun work to engage their First Nations partner organizations, and provincial/Yukon Territory governments on establishing the Service Coordination Function and other aspects of Canada's proactive approach to Jordan's Principle to meet the needs of First Nations children. Health Canada has also developed an initial engagement strategy, to support the work being undertaken by the co-led Health Canada-Assembly of First Nations engagement working group.

**vi. providing all First Nations and FNCFS Agencies with the names and contact information of the Jordan's Principle focal points in all regions and informing them of any changes of such**

Canada provided a list of Focal Points to all First Nations and FNCFS agencies, on October 28, 2016, and will provide updates to the list as appropriate (**Annex E**).

***j. If it is providing funding for the Aboriginal component of the Canadian Incidence Study, including whether that component of the study will include data collection specific to remote and northern First Nations communities***

INAC is working with the Public Health Agency of Canada to support the First Nations component of the Canadian Incidence Study (CIS) of Reported Child Abuse and Neglect.

INAC will contribute funding to the First Nations component of the CIS over three years, starting in 2016-2017, through an Interdepartmental Letter of Agreement. The

Public Health Agency of Canada will also fund the study, and provide planning, implementation and methodological support to the CIS to increase the utility of the study.

The plan for data collection, agency recruitment, framing and interpreting findings and all other aspects of the First Nations component of the CIS will be led by a First Nations Advisory Committee. This Committee is composed of First Nations child welfare experts and people with Aboriginal child welfare practice and policy experience. Efforts to collect data on remote and northern First Nations communities will be made, however, there are some specific challenges in collecting CIS data, including that participation in the study is voluntary (i.e., not all agencies who are contacted may choose to participate) and there are costs and capacity constraints in reaching northern and remote agencies (i.e., some do not have pre-existing data collection capacity and many agencies tend to be small, meaning it will be difficult to sample sufficient numbers to get meaningful results).

**Part C: Response to the Panels request for additional information:**

***a. A list of the First Nations, FNCFS agencies, provincial and territorial authorities, partners, experts or any other persons it has consulted with so far in response to the findings in the Decision and Jordan's Principle, along with its consultation plan moving forward. The list of any past consultations from January to September 2016 should include the agenda and summary of the discussions***

INAC's draft engagement plan on FNCFS is attached as **Annex F**. The engagement plan includes the appointment of a Minister's Special Representative, Dr. Cynthia Wesley-Esquimaux. She will visit each region in the country and meet with a broad range of stakeholders. Discussions with partners are ongoing to further define the engagement plan.

A summary of regional discussions, with departmental officials, on the FNCFS program that have taken place since January 2016 is outlined below; a formal agenda and a summary is available for some but not all of the meetings (it is noted below where no further information is provided in the attachment). It should be noted that these meetings do not constitute formal consultations nor were they specifically focused on INAC's response to the Tribunal. Meetings have been on child and family services generally, including funding for immediate relief and program reform.

(It should also be noted that INAC made its best efforts to collect information on the meetings that have taken place with departmental officials, but there may have been additional discussions or correspondence on this matter during this time period that are not itemized below).

Relevant attachments for regional meetings, in addition to the descriptions below, are included as **Annex G**.

In Ontario:

- May 5, 2016. INAC Regional Director General of Ontario met with provincial Assistant Deputy Ministers of Ministry of Indigenous Relations and Reconciliation

- May 25, 2016. INAC Director of Education and Social Programs Directorate, Ontario Region, met with Province of Ontario's Deputy Minister of Ministry of Indigenous Relations and Reconciliation, the A/Deputy Minister Ministry of Children and Youth Services, the Deputy Minister of the Ministry of Community and Social Services, and the Deputy Minister of the Ministry of

- May 31, 2016. INAC Regional Director General of Ontario met with Chiefs of Ontario

- July 15, 2016. INAC regional and headquarter officials met with MBQ First Nation

- September 22, 2016. INAC Regional Director General of Ontario and the Director General of Child and Family Services met with Ontario (Ministry of Indigenous Relations and Reconciliation and Ministry of Children and Youth Services) and Regional Chief Day, Chiefs of Ontario

In Manitoba:

- February 12, 2016. Meeting with FNCFS Regional Advisory Committee (RAC). RAC is the regional tripartite table

- March 16-17, 2016. Regional Advisory Committee's FNCFS all agency meeting

- March 31, 2016. Northern FNCFS Authority's Agency Relations meeting. Provided CHRT update (no attachment)

- April 6, 2016. Northern FNCFS Authority's Collaborative Working Group meeting; provided CHRT update (no attachment)

- May 2, 2016. Meeting with Southern First Nations Network of Care, included update on CHRT (no attachment)

- May 17, 2016. Meeting with Awasis Agency of Manitoba, included discussion of Budget 2016 adjustments and way forward (no attachment)

- June 23, 2016. Meeting with FNCFS agency finance directors, included discussion of Budget 2016 and immediate relief details (no attachment)

- June 27, 2016. Regional Advisory Committee meeting

- July 22, 2016. Federal/Provincial update meeting, included discussion of CHRT, regional approach and Budget 2016 (no attachment)

- July 25, 2016. Regional Advisory Committee meeting, including Regional Engagement Strategy.

- August 11, 2016. Regional Advisory Committee meeting on regional engagement strategy (minutes not yet finalized, no attachment)

In Quebec:

- April 25, 2016. Meeting with First Nations of Quebec and Labrador Health and Social Services Commission ("the Commission") and INAC on CHRT, Jordan's Principle and additional funding (no attachment)

- May 3, 2016. Regional Roundtable meeting. INAC presented to FNCFS agencies, the Commission, and Quebec's *ministère de la Santé et Services Sociaux* (MSSS) on CHRT, Jordan's Principle and additional funding

- July, 2016. Health Canada meeting with regional partners including INAC, Commission, and MSSS on Jordan's Principle - Child First Initiative (no attachment)

- August 29, 2016. Meeting with the Commission and INAC regarding child and family services engagement (no attachment)

- Week of September 21, 2016. Health Canada meeting with First Nations Health Directors on Jordan's Principle - Child First Initiative (no attachment)

- September 22, 2016. Meeting with Health Canada and INAC (Quebec Region), discussions on syncing programs, Jordan's Principle - Child First Initiative (no attachment)

- September 28, 2016. Meeting with Health Canada, INAC, MSSS. Presentation to MSSS on Jordan's Principle - Child First Initiative

- September 30, 2016. Meeting with Health Canada, INAC (Quebec Region), and Tshakapesh, an institute that serves the Innus of the Basse Côte Nord with learning programs and services (no attachment)

- October 4, 2016. Meeting with MSSS and INAC to discuss child and family services engagement and Jordan's Principle - Child First Initiative (no attachment)

- October 6, 2016. Meeting with Health Canada, INAC (Quebec Region), and *Commission de l'éducation des Premières Nations* (CEPN) (no attachment)

In British Columbia:

- May 12, 2016. Meeting with the Transition Funding Working Group, which is made up of the executive of the Directors Forum and INAC. Discussion focused on the distribution of immediate funding remedies and Jordan's Principle. Most FNCFS agencies were present.

- June 15 -16, 2016. Meeting with Ministry of Children and Family Development (MCFD), INAC BC Region and INAC Headquarters on quarterly bi-lateral accountability framework Committee meeting in Vancouver, BC (no attachment)

- July 14, 2016. Meeting with Ministry of Children and Family Development (MCFD), Northwest Inter-Nation Child and Family Services (Delegated Aboriginal Agency) and INAC for their Joint Advisory Committee meeting in Terrace, BC (no attachment)

- August 23, 2016. Meeting with Ministry of Children and Family Development (MCFD), Splatsin Stsmamlt Services, and INAC for a Child and Family Services Operational meeting in Enderby, BC (no attachment)

- September 8, 2016. Meeting with the Transition Funding Working Group, similar discussion to above (no attachment)

- September 29, 2016. Meeting with Ministry of Children and Family Development (MCFD), Knucwentwecw Child and Family Services, INAC Treaties and Aboriginal Government- Negotiations West (TAG-NW), and INAC BC Region for a Treaty table working group meeting in Vancouver, BC (no attachment)

- September 29, 2016. Meeting with Tripartite Working Group (INAC, First Nations Leadership Council, and Ministry of Child and Family Development (MCFD) to begin tripartite relationship on objectives relating to improvement of the Child and Family Services Program in British Columbia. (no attachment)

- October 4, 2016. Meeting with Ministry of Children and Family Development (MCFD), Southern Stl'atl'imx Health Council and INAC BC Region for an information meeting in Vancouver, BC (no attachment)

- INAC has attended, and will continue to attend the remainder of the 2016-2017 Regional Caucus Sessions being held by the First Nations Health Council in British Columbia. This year's sessions include discussions related to the social determinants of health, including First Nation child and family services and child well-being more generally. INAC will continue to work with the First Nations Health Council in support of engagement in British Columbia (no attachment)

In <u>Newfoundland and Labrador:</u>

- June 14, 2016. Meeting with Innu Round Table Secretariat (Director and Representative), INAC, and NL province in Goose Bay, NL. Discussions included prevention services and development of Innu proposal

- June 15, 2016. Meeting with INAC and Miawpukek First Nation in Goose Bay, NL to discuss immediate relief funding and prevention proposal

- June 16, 2016. Meeting with Province of Newfoundland and Labrador in St-John’s NL to discuss child and family services (no attachment)

- October 5-6, 2016. Meeting with Innu Round Table Secretariat (Director and Representative), INAC, and NL province in St-John’s, NL. For October 6,

2016, meeting also included Health Canada, Public Safety, and representatives and Chiefs from both Natuashish and Sheshatshiu communities

In New Brunswick:

- February 10, 2016. Aggregation Working Group meeting with INAC, NB Province, consultant for First Nations, and the Directors from the three-agency model (Mi'kmaq Agency, Maliseet Agency, Elsipogtog Agency) representing the 10 First Nation organizations. Meeting was held in Fredericton, NB. Discussion was on transition to the aggregated model and status update of each agency to meet community-based needs for service delivery (no attachment)

- May 25, 2016. Aggregation Working Group meeting with INAC, NB Province, consultant for First Nations, and the Directors from the three-agency model (Mi'kmaq Agency, Maliseet Agency, Elsipogtog Agency) representing the 10 First Nation organizations. Meeting was held in Fredericton, NB. Discussion was on transition to the aggregated model and status update of each agency to meet community-based needs for service delivery.

- July 20, 2016. Aggregation Working Group meeting with INAC, NB Province, consultant for First Nations, and the Directors from the three-agency model (Mi'kmaq Agency, Maliseet Agency, Elsipogtog Agency) representing the 10 First Nation organizations. Meeting was held in Fredericton, NB. Discussion was on transition to the aggregated model and status update of each agency to meet community-based needs for service delivery

- October 3, 2016. Aggregation Working Group meeting with INAC, NB Province, consultant for First Nations, and the Directors from the three-agency model (Mi'kmaq Agency, Maliseet Agency, Elsipogtog Agency) representing the 10 First Nation organizations. Meeting was held in Fredericton, NB. Discussion was on transition to the aggregated model and status update of each agency to meet community-based needs for service delivery

In Alberta:

- April 29, 2016. Letter to all Alberta First Nations Chief and Council regarding Canadian Human Rights Tribunal Decision and Budget 2016

- May 2, 2016. Meeting with Alberta FNCFS agencies. Cover letter provided to all Alberta FNCFS agencies regarding Budget 2016 and CHRT ruling; presentation provided on Budget 2016 and immediate relief

- August 23, 2016. Meeting with INAC Alberta Region Regional Director General and Alberta Grand Chiefs on child and family services and CFS engagement (no attachment)

In Nova Scotia:

- May 26, 2016. Tripartite meeting with INAC regional office and HQ, Nova Scotia province, and Mi'kmaw Family and Children Services Agency in Dartmouth, NS. Meetings focused on the provincial legislative changes and the impacts on the agency's operations and the revised budget the agency had to submit to INAC for additional funding support (which was approved). Immediate relief was also addressed. Note: Mi'kmaw Family and Children Services Agency holds the tripartite meeting minutes (no attachment)

- August 9, 2016. Tripartite meeting with INAC regional office and HQ, Nova Scotia province, and Mi'kmaw Family and Children Services Agency in Eskasoni, NS. Meetings focused on the provincial legislative changes and the impacts on the agency's operations and the revised budget the agency had to submit to INAC for additional funding support (which was approved). Immediate relief was also addressed. Note: Mi'kmaw Family and Children Services Agency holds the tripartite meeting minutes (no attachment)

In Yukon:

- April 13, 2016. Manager from INAC's Yukon Regional Office met with the of Director Family and Children's Services Branch, Government of Yukon to discuss the additional funding for new or enhanced CFS prevention programs (no attachment)

- Week of August 8, 2016. Follow up meeting with a Manager from INAC's Yukon Regional Office, the Government of Yukon's Director of Family and Children's Services Branch, Assistant Deputy Minister, Corporate Services and Manager, Cost Recovery (no attachment)

- October 14, 2016. Meetings with various representatives and regional INAC staff on opportunities for prevention pilot projects; CFS Agency-level data sharing; funding support/cost sharing for Case Management Systems, and options for regional engagement (no attachment)

In Saskatchewan:

- Discussions are forthcoming.

In Prince Edward Island:

- Discussions are forthcoming.

Other:

Discussions with the First Nations Family Caring Society and the Assembly of First Nations on the Tribunal Decision are outlined below. Much of the focus of the discussions has been on establishing the National Advisory Committee (and its Terms of Reference) as a forum to provide advice on the engagement process and the reform of the program.

- February 11, 2016. Face-to-face meeting
- April 29, 2016. Face-to-face meeting
- May 12, 2016. Teleconference call
- May 25, 2016. Teleconference call
- June 7, 2016. Face-to-face meeting
- July 28, 2016. Face-to-face meeting
- August 5, 2016. Teleconference call

The First Nations Family Caring Society has also communicated with the Minister's Office on a range of issues related to the Tribunal decision, both through correspondence and in-person meetings. These communications are not captured here.

A two-day in-person meeting with the Minister's Special Representative, appointed by the Minister of Indigenous and Northern Affairs to lead the engagement process, took place on September 14 and 15 (**Annex H**).

**Jordan's Principle**

**(**Relevant attachments for regional meetings, in addition to the descriptions below, are included as **Annex I)**

Headquarters

- May 9, 2016. Assistant Deputy Ministers for HC and INAC sent a joint letter to Provinces and Territories with respect to Canada's acceptance of the January 26, 2016 decision and the need to engage in the reform of the First Nations Child and Family Services Program and in implementing Jordan's Principle.

- June 9, 2016. Assistant Deputy Ministers for HC and INAC met with Interlocutor for First Nations and Métis Relations, Government of Saskatchewan, to discuss the engagement process and how it aligns with other federal priorities for Indigenous People. This meeting was an opportunity to discuss how INAC and Health Canada are working in partnership with other government departments and various stakeholders on Jordan's Principle and Child and Family Services.

- July 6, 2016. Assistant Deputy Ministers for HC and INAC sent a letter to Provinces and Territories to inform them of the news release that provided further details on the revised application of Jordan's Principle. The letter also emphasized the need to engage to discuss next steps.

In the Atlantic:

- July 5, 2016. Primary Care Update – Presentation to Health Directors.

- July 5-6, 2016. Meeting of APC Regional Health Directors.

- July 7, 2016. Presented to Atlantic Health Directors Meeting, and All Chiefs Forum.

- August 4, 2016. Health Canada's Atlantic Regional Executive followed up with info package.

- August 24, 2016. Met with Chief, First Nation Co-Chair, Assembly of First Nations Health Partners, to agree on next steps.

- August 29, 2016. (Nova Scotia) Presented Jordan's Principle-Child First Initiative to the Health Committee of the Canada-NS-Mi'kmaq Tripartite Forum. Included provincial representatives from Aboriginal Affairs and Health.

- September 1, 2016. Presented to Atlantic First Nations Health Partnership's (AFNHP) Public Health and Primary Care Committee (no attachment) and (September 15) NIHB Committee.

- September 9, 2016. Convened special Atlantic First Nations Health Partnership teleconference to present Jordan's Principle-Child First Initiative and Service Coordination function.

- September 15, 2016. Presentation to the Non-Insured Health Benefits Committee on Jordan's Principle.

- September 20, 2016. Held regular Atlantic First Nations Health Partnership f-2-f meeting including an agenda item on Jordan's Principle-Child First Initiative focusing on making a decision on Service Coordination implementation in region.

- September 28, 2016. Presented Jordan's Principle-Child First Initiative to Atlantic All Chiefs and Councils meeting.

- October 6, 2016. Health Canada (Newfoundland) presented JP-CFI to Innu Round Table including provincial officials from Aboriginal Affairs, Child and Family Service, and Health.

- October 12, 2016 – Health Canada (PEI) presented JP-CFI at Canada-PEI-Mi'kmaq Health Policy and Planning Forum and the Child and Family Services Policy and Planning Forum. Provincial Child and Family Services, Health, and Aboriginal Affairs officials in attendance.

In Quebec:

- April 25, 2016. Bilateral meeting on Jordan's Principle – Child First Initiative between INAC and First Nations of Quebec and Labrador Health and Social Services Commission. (no attachment)

- May 2, 2016. Regional Roundtable meeting with First Nations Child and Family Service agencies, the Commission, and Quebec's ministère de la Santé et Services Sociaux (MSSS) on Canadian Human Rights Tribunal, Jordan's Principle and formula funding. (no attachment)

- July 11, 2016. FNIHB-QC Regional Executive connected with INAC-QC Regional Director on engagement strategy. (no attachment)

- July 19, 2016. FNIHB-QC Regional Executive held discussions with the First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC) Director General and INAC-HQ Regional Director. (no attachment)

- July 27, 2016. FNIHB-QC Regional Executive had call with INAC-QC Regional Director and the Ministère de la Santé et des Services Sociaux (MSSS) Associate Deputy Minister to present the new approach and engagement strategy. INAC-QC connected with the Secrétariat aux affaires autochtones Associate Deputy Minister during the same week. (no attachment)

- August, 2016:
    - Connected with regional partners (INAC, First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC or "la Commission"), Ministère de la Santé et des Services sociaux, Province). (no attachment)
    - Bilateral discussions on Jordan's Principle engagement. (no attachment)

- September 19, 2016. Bilateral discussion between FNIHB-QC Regional Executive and the FNQLHSSC Director General about engagement, service coordination and the role the FNQLHSSC want to play. (no attachment)

- September 21, 2016. FNIHB-QC Regional Executive presented the initiative and associated funding to First Nations Health Directors Network of Quebec. (no attachment)

- September 22, 2016. Meeting between FNIHB-QC and INAC-QC staff to discuss programs involved with Jordan's Principle. (no attachment)

- September 22, 2016. INAC/Health Canada/Province presentation on Jordan's Principle – Child First Initiative. (JP overview presentation)

- September 28, 2016. Meeting with Ministère de la Santé et des Services sociaux, Health Canada, and INAC (Quebec Region) on Jordan's Principle and regional needs. (JP overview presentation)

- September 30, 2016. Meeting with Ministère de la Santé et des Services sociaux and INAC to discuss child and family services engagement and Jordan's Principle. (JP overview presentation)

- September 30, 2016. Meeting with FNIHB-QC, INAC-QC and Tshakapesh, an institute that serves the Innus of the Basse Côte Nord with learning programs and services. (no attachment)

- October 4, 2016. Meeting with Ministère de la Santé et des Services sociaux and INAC to discuss child and family services engagement and Jordan's Principle – Child First Initiative. (no attachment)

- October 6, 2016. Meeting with Health Canada, INAC (Quebec Region), and *Commission en Éducation des Premières Nations* (CEPN) (no attachment)

- October 11, 2016.Discussion between Regional Executive (Health Canada) and First Nations of Quebec and Labrador Health and Social Services Commission on the role it wants to play, the use of regional funding and next steps (no attachment)

- October 12, 2016. Discussion between FNIHB-QC Regional Executive and the FNQLHSSC Board of Directors about the use of funding and deployment of the strategy in the region.

- October 26, 2016. First tripartite meeting between the partners to create a Coordination Committee. (no attachment)

In Ontario:

- July 7, 2016. First Nations and Inuit Health Branch presented to Chiefs of Ontario (COO), Social, Health, Education & Justice (SHE&J) Committee on Jordan's Principle. (JP overview presentation)

- July 22, 2016. First Nations and Inuit Health Branch presented to Chiefs of Ontario Health Coordination Unit (HCU) on Jordan's Principle. (no attachment)

- August 16, 2106. Discussion on Jordan's Principle at INAC-HC Joint Workplan meeting; identified areas for ongoing collaboration. (no attachment)

- September 7, 2016. First Nations and Inuit Health Branch presented to Trilateral First Nations Health Senior Officials Committee (TFNHSOC) Mental Health & Addictions Working Group (MHAWAG) on Jordan's Principle-Child First Initiative and identified gap in medical transportation to treatment facilities not on provincial Drug and Alcohol Registry of Treatment list. (no attachment)

  October 6, 2016. First Nations and Inuit Health Branch presented to Independent First Nations (IFN) on Jordan's Principle – Child First Initiative and requested input/feedback on methods to obtaining/evaluating what type and level unmet needs.

- October 6, 2016. Discussion with province, Ministry of Health and Long Term Care, on future collaboration between their Jordan's Principle projects and federal Jordan's Principle. Further discussion scheduled for late October. (no attachment)

- October 18, 2016. First Nations and Inuit Health Branch to present to Chiefs of Ontario Health Coordination Unit to discuss Service Coordinator and options for implementation.
  *SHE(J) is a committee made up of Social, Health, Education Directors of the PTO's/Independent First Nations. The justice director from COO also participates. The group networks and shares information on common issues, including but not limited to children/youth issues, gaps in services, and research such as the Regional Health Survey and First Nations Regional Early Childhood, Education and Employment Survey. The province and First Nations and Inuit Health Branch are invited to participate at these meetings and share information on their initiatives. The committee has proven to be a successful venue to make recommendations that are supported by technicians for all units to the Chiefs and to formulate and relay common messages to all government departments.

  Chiefs of Ontario Health Coordination Unit is comprised of a representative (Health Director) from each of the five First Nation Provincial/Territorial Organizations in Ontario and staff from Chiefs of Ontario. They are the leading First Nations engagement partner for First Nations and Inuit Health Branch Ontario.

  Trilateral First Nations Health Senior Officials Committee (TFNHSOC) and the Mental Health and Addictions Working Group (MHAWAG) are comprised of Health Canada, INAC, the provincial ministries of Health and Long Term Care and the ministry of Child and Youth Services as well as members of the Chiefs of Ontario Health Coordination Unit.

  IFN is an organization made up of the 12 independent First Nations in Ontario

In <u>Manitoba:</u>

- June 27, 2016. Meeting of First Nations Child and Family Services Regional Advisory Committee. Jordan's Principle – Child First Initiative was discussed. (no attachment)

- July, 2016:
  - Meeting of Regional Advisory discussed Jordan's Principle – Child First Initiative - Assembly of Manitoba Chiefs, Southern Chiefs, province (no attachment)

- July & August 2016. Health Canada conducted an Environmental Scan through the Home Care Program which was sent to all 63 communities to identify children with needs. 80% of communities responded. (no attachment)

- August 1, 2016. Health Canada met with Dakota Plains by teleconference to discuss Jordan's Principle. (no attachment)

- September 16, 2016. INAC invited to participate in Health Canada meeting with Specialized Services for Children and Youth. Provincially funded organization.

- September 26, 2016. Meeting with multi-sectoral working group on Jordan's Principle (Terms of Reference Officials Working Group) includes First Nation, provincial and federal partners. Initial engagement discussion and how to coordinate service delivery between all partners. (no attachment)

- September 2016. The First Nations Child and Family Services program engagement discussions and planning at the regional advisory committee have included Jordan's Principle – Child First Initiative. INAC has received a proposal from the Assembly of Manitoba Chiefs to lead the First Nations Child and Family Services regional engagement activities, Jordan's Principle – Child First Initiative engagement activities are recognized in this proposal. The proposal highlights the need to have ongoing communications between the two engagement processes to ensure linkage are identified and addressed. (no attachment)

- September/October 2016. Health Canada engagement meetings at First Nations community level: (no attachments)
    - Manto Sipi – September 13, 2016
    - Wuskwi Siphk – September 21, 2016
    - Pinaymootang – September 12, 2016
    - Waywayseecapo – October 4, 2016
    - Poplar River – October 6, 2016
    - Four Arrows Regional Health - October 12, 2016
    - West Region Tribal Health – October 25, 2016
    - Tootinawaziibeeng – October 27, 2016
    - Lake St. Martin – October 28, 2016

- September 23, 2016. Health Canada engagement with First Nations and Inuit Health Branch Children and Youth Advisory Committee. (no attachment)

- September 26, 2016. Meeting with multi-sectoral working group on Jordan's Principle (Terms of Reference Officials Working Group) includes First Nation, provincial and federal partners. Initial engagement discussion and how to coordinate service delivery between all partners. (no attachment)

- October 18-20, 2016 - Regional meeting with Health Directors, Public Health, Home & Community Care Nurses (one day to focus on JP-CFI initiatives).

In Saskatchewan

** All session in Saskatchewan used the Jordan's Principle presentation, and the Fact Sheet attached in Annex I.*

- August 10, 2016. Regional Executive (Health Canada) met Federation of Sovereign Indigenous Nations (FSIN) Vice Chief, Health and Social Development Secretariat regarding new approach, and Region's proposal to fund Early Childhood Intervention Program agencies to coordinate Jordan's Principle – Child First Initiative in Saskatchewan (response was generally positive). Federation of Sovereign Indigenous Nations proposed reinstituting former tripartite Joint Working Group to address implementation of new approach.

- August 12, 2016. First Nations and Inuit Health Branch and INAC met with provincial reps from Interlocutor of First Nations and Metis Relations, and Ministries of Health, Social Services, and Education re: new approach. Two provincial leads were identified for Jordan's Principle – Child First Initiative and provincial reps agreed to seek mandate to participate in former tripartite Joint Working Group. Provincial reps expressed support for using established agencies to deliver Enhanced Service Coordination.

- August 30, 3016. First Nations and Inuit Health Branch presented to Senior Technical Advisory Group (STAG, health directors) who created committee of Health Directors/ Federation of Sovereign Indigenous Nations staff to engage in bilateral discussions with First Nations and Inuit Health Branch (with intention of engaging Province and INAC to reinstitute tripartite Joint Working Group). Health Directors need more detailed discussion re: Enhanced Service Coordination before endorsing Early Childhood Intervention Program agencies to fulfill those roles.

- August 2016. First Nations and Inuit Health Branch presented to First Nations Indian Child and Family Service (ICFS) directors who proposed to have Indian Child and Family Service reps on new First Nations Jordan's Principle – Child First Initiative committee and bilateral implementation discussions with First Nations and Inuit Health Branch -Saskatchewan.

- September 12, 2016. Kinistin. Attended the Parent and Child Fall Celebration with information.

- September 13 and 14, 2016. Saskatchewan Indian Institute of Technologies Home Visiting class. Spend an hour discussing services.

- September 21, 2016. Yorkton Tribal Council with Parkland, Southeast Cornerstone and Regina Early Childhood Intervention Program.

- September 22, 2016. Peter Ballantyne Cree Nation Pelican Narrows.

- September 29, 2016. Ministries of Education and Social Services, the Office of the Provincial Interlocutor and Government Relations, and Executive Council.

In Alberta:

- July 7, 2016. All Chiefs sent communication re: Jordan's Principle – Child First Initiative funding announcement.

- July 20, 2016. Discussion with provincial Assistant Deputy Minister's: Justice, Health, Education, Aboriginal Relations, Human Services. (no attachment)

- August 8, 2016. Director of Nursing sent out communication to all Health staff (Health Directors, Nurse Managers).

- August 11, 2016. Regional Executive (Health Canada) met with the Treaty 7 organization and Health Directors.

- August 23, 2016. Health Canada and INAC met with the three Grand Chiefs (Treaty 6, 7, and 8). (no attachment)

- August 24, 2016. Regional Executive (Health Canada) met with the Treaty 6 organization.

- September 6, 2016. Regional Executive (Health Canada) met with the Treaty 8 organization.

- September 12, 2016. Regional Collaborative Service Delivery Meeting.

- September 27, 2016. Discussion at Mental Health/Addictions Health Co-Management Subcommittee meeting.

- September 28, 2016. Further meetings with Treaty 8 Chief Executive Officer and Health Director and Treaty 8 Health Commission meeting.

- September 2016. Discussion at Non-Insured Health Benefits Health Co-Management Subcommittee meeting.

- October 5, 2016. Meeting with Alberta Assistant Deputy Minister of Human Services and other provincial partners to discuss and understand provincial “normative standard”:

- October 5, 2016. Presentation and dialogue at Health Co-Management Co-Chairs Subcommittee meeting.

- October 6, 2016. Presentation and dialogue at regional Child and Family Services Engagement Process: Senior Officials Steering Committee.

- October 11, 2016. First Nations and Inuit Health Branch and INAC presentation and dialogue at Regional Middle Managers Committee.

- October 11, 2016. Discussion at Health Co-Management Children &Youth Subcommittee meeting.

- October 13, 2016. In Camera Dialogue at Health Co-Management Meeting regarding Enhanced Service Coordination function.

- October 26, 2016. (Deferred from October 14, 2016) Presentation and dialogue at a Special Health Co-Management meeting.

In British Columbia:

- June 15-16, 2016. Quarterly Bilateral Accountability Framework meeting between Ministry of Child and Family Development, and INAC discussed Jordan's Principle – Child First Initiative. (no attachment)

- September 29, 2016. Ministry of Child and Family Development, *Knucwentwecw* Society, and INAC discuss Jordan's Principle– Child First Initiative. (no attachment)

- September 28, 2016. First Nations Health Authority (FNHA): conference call to discuss initial steps that begin to link FNHA with INAC and subsequently Health Canada regarding role that FNHA has in administration of Jordan's Principle – Child First Initiative. (no attachment)

- October 4, 2016. Ministry of Child and Family Development, *Stl'atl'imx* Health Council, and INAC – overview of Jordan's Principle– Child First Initiative. (no attachment)

- Dates To Be Determined: Tripartite Working Group ( INAC, Ministry of Children and Family Development and First Nations Leadership Council) has identified in its DRAFT Action Framework a commitment to work together to ensure full implementation of Jordan's Principle in BC. (no attachment)

In Yukon:

- September 16, 2016: Jordan's Principle – Child First Initiative information shared by Health Canada with all territories at an Assistant Deputy Minister level meeting. (no attachment)

- September 26, 2016: Health Canada's Northern Regional Executive and INAC's Regional Director General met with Government of Yukon and Council for Yukon First Nations to discuss next steps with respect to the implementation of Jordan's Principle – Child First Initiative. Discussions will be ongoing. (no attachment)

***b. A response indicating its views on the request that it reimburse costs for travel to access physician-prescribed special needs services and assessments, special needs rehabilitative and support services and respite care, and support for families in crisis as part of immediate relief investments in Ontario***

INAC is working with the province of Ontario and First Nations leadership and other partners to review INAC's support for child and family services through the 1965 Agreement. Discussions to-date have focused on the flow of immediate relief investments, where an agreement was reached with INAC, the province of Ontario and the Chiefs of Ontario that investments should focus on prevention.

Future discussions will include examining the available supports provided by the province under its *Child and Family Services Act* and the needs of First Nations children on reserve.

**c. A response indicating its views on dealing with the infrastructure needs of FNCFS Agencies as part of immediate relief investments in Ontario**

INAC is working with the province of Ontario and First Nations leadership and other partners to review INAC's support for child and family services through the 1965 Agreement. Discussions to-date with the province of Ontario and First Nations leadership have focused on immediate relief investments. Future work will include a review of the impact of the 1975 expiry of federal cost-sharing for infrastructure within the 1965 Agreement with Ontario. As noted above, in Section 2 C, as part of the engagement and reform process, INAC will review the information provided by FNCFS agencies in response to its October 28 letter, and continue national and regional discussions, to develop a longer-term response to infrastructure needs.

**d. A response indicating its views on the request to expand the eligibility requirements of the 1965 Agreement as part of immediate relief investments in Ontario**

On the issue of children 'entitled to be registered,' INAC would clarify that the Department's Ontario Region, as part of determining payment under the 1965 Agreement, includes children who may not be registered but who may be entitled to be registered. This is intended to address the requirements of clause 1 (1) (b) of the 1965 Agreement. While this issue does not appear to have any impact on services provided to First Nation children by provincially-funded agencies, INAC will further explore these issues as part of the engagement and reform process.

INAC is working with the province of Ontario and First Nations leadership and other partners to fully review INAC's support for child and family services through the 1965 Agreement.

**e. A response indicating its views on the request that it conduct a special study on the application of the 1965 Agreement in Ontario**

INAC's view is that part of the reform process needs to determine "the adequacy of the *1965 Agreement* in achieving comparability of services; culturally appropriate services that account for historical disadvantage; and, ensuring the best interest of the child are paramount" (September 14, 2016 ruling, paragraph 103), as outlined in the findings of the Tribunal. INAC is working with the province of Ontario and First Nations leadership and other partners to look specifically at INAC's support for child and family services through the application of the 1965 Agreement, with discussions to-date focusing on immediate relief investments for 2016-17.

**f. A response indicating if it is agreeable to providing funds for the CCI Parties' participation in the upcoming in-person case management meeting and any subsequent meetings**

INAC will reimburse travel costs, according to Treasury Board standards, for client participants who work with an organization outside of Ottawa to travel to Ottawa to attend in-person case management meetings.

**This is Exhibit "C" referred to in**
**the Affidavit of SONY PERRON,**
**sworn before me this 8th day of November, 2019**

**A Commissioner, etc.**

Tribunal File No. T-1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

and

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

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

Respondent

and

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA and
NISHNAWBE ASKI NATION

Interested Parties

**Affidavit of Paula Isaak**

I, Paula Isaak, the Assistant Deputy Minister of the Education and Social Development Programs and Partnerships, AFFIRM THAT:

1. I am the Assistant Deputy Minister of the Education and Social Development Programs and Partnerships ("ESDPP") of the Department of Indigenous Services Canada ("ISC"). I have been in this position since 2015. I report directly to the Deputy Minister of ISC. I am responsible for policies, program design and partnerships related to First Nations child and family services, First Nation education programs, and social programs. Regional offices across Canada deliver these programs, and report formally through the Assistant Deputy Minister of Regional Operations.

2. In my capacity as Assistant Deputy Minister of ESDPP, I have read the February 1, 2018 ruling ("Ruling") of the Canada Human Rights Tribunal ("the Tribunal"), and have personal knowledge of Canada's efforts to comply with the Tribunal's orders.

3. On February 1, 2018, Canada released a statement from Minister Philpott stating that Canada is committed to fully complying with all of the Orders made by the Tribunal. Attached to this Affidavit as **Exhibit "A"** is the ministerial statement. In my capacity as the Assistant Deputy Minister of ESDPP, I am committed to implementing the Orders made by the Tribunal, in consultation with the Parties.

4. On February 27, 2018, Canada committed to spend $1.4 billion over 6 years, starting in 2017-18, to address funding pressures facing First Nations child and family service agencies, while also increasing prevention resources for communities so that children are safe and families can stay together. Attached as **Exhibit "B"** are relevant pages from the 2018 budget on funding for the First Nations Child and Family Services program.

**Modifications to the Orders**

5. At paragraph 445 of the Ruling, the Tribunal encouraged the Parties to seek any clarification or modification of the Orders. Canada consulted with the parties on proposed modifications to the orders, and reached consensus on those related to Band Representatives, mental health and analyzing agency needs. The list below sums up the actions taken:

   a) On February 13, 2018, after receiving a joint submission by the Parties on proposed language, the Tribunal amended the Orders on Band Representatives and mental health in Ontario. Schedule A: Annex to Ruling 2018 CHRT 4 is attached as **Exhibit "C"**.

   b) In March and April of 2018, Canada consulted with the Parties on additional proposed modifications.

   c) On April 9, 2018, based on the results of these consultations and an agreement on how to approach the orders related to analyzing agency needs, Canada submitted new proposed timelines to the Tribunal for paragraphs 421, 408, 409, 419, 441 and part of 421. The timelines were based on a proposal from the Institute of Fiscal Studies and Democracy ("IFSD") to do a cost analysis of agency needs, who were selected to do the work based on the recommendation of the Parties. **Exhibit "D"** includes a copy of this letter and its attachments. This letter also included that the IFSD's research would be subject to the Tri-Council Policy Statement on Ethical Conduct for Research involving humans and "Ownership, Control, Access and Possession" (OCAP) principles.

   d) On April 19, 2018 the Tribunal advised the parties that it was amending its Orders regarding paragraphs 408, 409, 419, part of 421 and 444 to reflect the Parties' amendments proposal and plan. Attached as **Exhibit "E"** is a copy of the Tribunal's correspondence on that matter.

e) In its April 9, 2018 letter to the Tribunal, Canada had also proposed revised language for additional paragraphs regarding the alternative system and timelines for the payment of actual costs (410, 416, 420, 411, 417 and part of 421).

f) The Tribunal has not yet made an order on these proposals, and on April 19 directed Canada to provide a response to questions concerning the proposed amendments to these orders. On April 27, 2018 Canada provided a response to that direction. Attached as **Exhibit "F"** is a copy of the response. Following Canada's response, both the Nishnawbe Aski Nation ("NAN") and the Caring Society have raised further questions, and the Tribunal has given Canada until June 8, 2018 to respond.

**Analysis of Needs Assessments and Cost Analysis Research**

6. At paragraphs 408, 409, 418, 419, and 421 of its Ruling, the Tribunal ordered Canada to analyze the needs assessments completed by First Nations agencies and to do a cost analysis of those needs, including the real needs of small First Nations agencies. The Tribunal also ordered Canada to provide a reliable data collection, analysis, reporting methodology, and ethical guidelines. With respect to these Orders, Canada reports as follows:

a) Following the release of the Ruling, Canada sent a letter to all agencies underscoring its commitment to improving how agency funding works, and to explain how it would be implementing the Orders. This letter also asked agencies who had not yet submitted their needs assessments to provide them to ISC as soon as possible to support this work. Attached to this affidavit as **Exhibit "G"** are the February 1, 2018 templates of letters that went to First Nations agencies, small agencies, and agencies in Ontario.

b) On January 22, 2018, Canada shared its preliminary analysis of the completed needs assessments with the Parties. This email and analysis are attached to this affidavit as **Exhibit "H"**.

c) On February 5, 2018, I sent a draft work plan to the Parties, including proposed activities and timelines, for the needs assessment research, as well as for the development of alternative funding system and accountability framework.

d) On February 12, 2018, on my behalf, Margaret Buist, Director General of the Children and Families Branch of ISC, sent draft statements of work to the Parties. These statements of work were to be used to guide the work of expert consultants on the analysis of the needs assessments and the broader cost analysis of agency needs, as well as for an assessment of agency information management and information technology ("IM/IT") needs.

e) Canada shared all of the completed needs assessments with the Parties via email on February 21, 2018.

f) On February 28, 2018, I sent an updated statement of work, based on comments from the Parties, for the needs assessment research and shared the Curriculum Vitae received from KPMG, who was invited to develop a proposal for this project based on their expertise doing similar work for the province of Ontario, their national reach and their ability to meet proposed timelines.

g) On March 2, 2018, I sent draft Ethical Research Guidelines to guide the needs assessment research and cost analysis of agency needs to the Parties.

h) On March 1 and 2, 2018, Foxwise Technologies, a company that was proposing to do the work on IM/IT needs, presented to the National Advisory Committee on First Nations Child and Family Services Program Reform (NAC).

i) Following discussions with the Parties and the NAC, ISC agreed to explore other experts/consultants for the needs assessment work, and to seek input on who and how to do an assessment of agency IM/IT needs.

j) On March 5, 2018, Canada submitted a progress report to the Tribunal with draft ethical research guidelines and a statement of work for the analysis of agency needs, which are attached as **Exhibit "I"**.

k) From March 8, 2018 to March 26, 2018, ISC met and corresponded with the First Nations Child and Family Caring Society (Caring Society), the Assembly of First Nations, and IFSD regarding the proposal that the IFSD undertake the needs assessment and cost analysis of agency needs research.

l) On March 28, 2018, a final proposal and updated timelines for completion were received from IFSD.

m) On April 3, 2018, Canada shared the IFSD proposal and timelines with the Parties.

n) On April 9, 2018, Canada shared the IFSD proposal and timelines with the Tribunal, as referenced in paragraph 5(c) and attached as **Exhibit "D"**.

o) Canada is providing funding for the IFSD research, through the Assembly of First Nations, in the amount of $2.091 million dollars.

p) On April 10, 2018, Kevin Page, President and CEO of IFSD, submitted a phase 1 report, which included reference to the fact that the data collected through the existing needs assessment exercise was insufficient to do a comprehensive cost analysis of agency needs. This report and its annexes are attached to this Affidavit as **Exhibit "J"**.

q) The IFSD's work is ongoing. Throughout May 2018, they are holding workshops with First Nations Child and Family Services ("FNCFS") agency representatives on budgeting and financing. These workshops are being held in Ottawa this month on: May 14-15, May 17-18, May 22-23, and May 24-25, 2018. All FNCFS agencies from

across Canada have been invited to participate. Phase 1 is expected to be completed at the end of July 2018.

7. Canada provided the Tribunal with a report on May 3, 2018. This report outlines Canada's approach to implementing the Ruling's Orders relating to analyzing agency needs assessments, developing an alternative funding system, and analyzing agency deficits. This report also reflects Canada's consultations with the Parties on the implementation of these orders. Attached to this affidavit as **Exhibit "K"** is a copy of the May 3, 2018 report.

**Development and Implementation of an Alternative Funding System**

8. At paragraphs 410, 416, and 420 of the Ruling, the Tribunal ordered Canada to develop an alternative system for funding prevention/least disruptive measures, intake and investigation, legal fees, building repair services, the child service purchase amount and for small agencies. Regarding the implementation of these orders, Canada reports as follows:

   a) As outlined above in paragraph 6(a), on February 1, 2018, Canada sent a letter explaining to First Nations child and family services agencies that ISC would pay their actual costs in all of the areas outlined in paragraph 8 above until an alternative system is in place.

   b) All agencies received their initial allocation of funding on or before April 1, 2018. Canada's approach to paying an agency's actual costs until an alternative system is put in place was outlined in Canada's April 27, 2018 letter to the Tribunal, which is referenced in paragraph 5(f) and attached as **Exhibit "F"**. If agencies do not have sufficient funding to meet their needs in any of the areas listed in paragraph 8 above, they can submit a claim to have their actual costs covered.

   c) In its May 3, 2018 report to the Tribunal, Canada committed to providing additional Budget 2018 funding to agencies by June 2018. At the May 10, 2018 meeting of the Consultation Committee, Canada began consultations with parties on how to allocate these funds across the country.

   d) As outlined in paragraph 6(o) above, Canada is providing funding to the IFSD, through the Assembly of First Nations, to do a cost analysis of agency needs. This cost analysis will inform the development of an alternative funding system for First Nations agencies.

   e) On April 9, 2018, Canada, in consultation with the Parties, proposed to the Tribunal that it would report on these Orders by October 12, 2018 and on the completion of the work by December 20, 2018. As outlined in paragraph 5(f), the Tribunal has asked Canada to respond to comments from the Parties on this and other proposed changes and has given Canada until June 8, 2018 to respond.

**Funding of Actual Costs, including Retroactive Reimbursements to January 26, 2016**

9. At paragraphs 411, 417, and 421, the Tribunal ordered Canada to provide funding to agencies on actual costs for prevention/least disruptive measures, building repairs, intake and investigation, legal fees, the child service purchase amount and for small agencies, retroactive to January 26, 2016 by April 2, 2018.

    a) As noted above in paragraph 6(a), on February 1, 2018, Canada sent letters to FNCFS agencies to communicate that ISC will immediately begin to cover the actual costs in prevention/least disruptive measures, building repairs, intake and investigations, legal fees, child service purchase amounts, and small First Nations agencies' costs, retroactive to January 26, 2016. Copies of the templates for these letters are attached as **Exhibit "G"**, as referenced in paragraph 6(a) of my affidavit.

    b) As outlined in its April 9, 2018 correspondence to the Tribunal, Canada has agreed to extend the Tribunal's ordered deadline of April 2, 2018 by nearly one year to March 31, 2019, to allow agencies time to gather information and submit claims.

    c) As of May 18, 2018, Canada has received 10 claims for reimbursement from agencies, totaling about $8.3 million dollars (note this includes one claim from an agency in Ontario for Band Representative Services). A summary of all claims received, including that it has taken on average between seven and nine business days to process them, is attached as **Exhibit "L"** of my affidavit.

10. Regarding paragraphs 412 and 413 of the Ruling, which ordered that Canada continue to provide funding based on actual costs for least disruptive measures/prevention, building repairs, intake and investigations, legal fees, child service purchase amounts, and small agencies to be reimbursed following the accountability framework and methodology agreed to by the parties or until another agreement is in place, Canada reports as follows:

    a) As mentioned in paragraph 3 of this affidavit, Canada released a ministerial statement on February 1, 2018 stating that Canada is committed to fully complying with the Orders.

    b) As mentioned in paragraph 4 of this affidavit, Canada made a $1.4 billion dollar budgetary commitment. See **Exhibit "B"** referenced in paragraph 4 of this affidavit for information from the 2018 budget on funding for the First Nations Child and Family Services program.

    c) As mentioned in paragraph 9 of this affidavit, Canada is reimbursing agencies actual costs in all of the areas ordered.

**Communication with Agencies**

11. In paragraph 430 of the Ruling, the Tribunal ordered Canada to communicate to FNCFS Agencies any immediate relief ordered by the Tribunal. Regarding the implementation of

communications with FNCFS agencies on matters pertaining to this Order, Canada reports as follows:

a) Following the February 1, 2018 letter to agencies, Regional Offices held calls or meetings with agencies regarding the implementation of paying retroactive actual costs. The larger group calls or meetings took place as follows:

   i. New Brunswick: February 13, 2018 and February 27, 2018

   ii. Newfoundland and Labrador: February 12, 2018 (Note: no request for meeting received from Miawpukek)

   iii. Nova Scotia: February 23, 2018

   iv. Prince Edward Island: February 27, 2018 (MCPEI joined with New Brunswick)

   v. Ontario: February 27, 2018, with follow up on March 28, 2018

   vi. Manitoba: February 26, 2018 and March 2, 2018 (Upcoming meeting with Southern Agency representatives May 1, 2018 and meeting with Northern Agency May 3, 2018)

   vii. Quebec: February 21, 2018 and February 27, 2018

   viii. Alberta: February 21, 2018, March 27, 2018 and March 28, 2018 (select agencies in March)

   ix. Saskatchewan: February 16, 2018 and February 27, 2018, April 26, 2018

   x. British Columbia: February 2, 2018 (call to each director), and March 6, 2018.

b) On March 2, 2018, I sent a draft Recipient Guide on retroactive payments to the Parties. It included that Canada is asking agencies to submit as many requests for reimbursement of retroactive expenses as possible by September 30, 2018. Should agencies require more time, including to March 31, 2019, Canada will provide it.

c) Canada received initial comments on the Recipient Guide from the Caring Society on March 14, 2018, and detailed comments on March 26, 2018.

d) On April 9, 2018, I shared the revised Recipient Guide and Ontario Guide with the Parties.

e) On April 18, 2018, further to consultation with the parties, Canada sent First Nations agencies the guides to assist with claiming retroactive expenses.

f) On April 30, 2018, an email was sent to small agencies clarifying that their deficits will be covered as part of retroactive payments.

g) Also on April 30, 2018, an email was sent to non-small agencies clarifying that deficits in the areas ordered by the Tribunal will be covered as part of retroactive payments.

h) On May 1, 2018, an email was sent to all agencies with deficits in prevention noting that they are eligible for reimbursement and offering support to make a claim.

i) Also on May 1, 2018 an email was sent to agencies with deficits in operations, noting that ISC would like to understand this deficit and noting areas eligible for retroactive reimbursement.

j) On May 1, 2018, I emailed the Parties the final version of the guides. The email is attached to this affidavit as **Exhibit "M"**. The most recent National Recipient Guide is attached as **Exhibit "N"**; and the Ontario Region Recipient Guide is attached as **Exhibit "O"**.

k) On May 17, 2018, these versions of the guides were sent to agencies, with a clarification noting that:

> "In keeping with the January 2016 and subsequent rulings of the Canadian Human Rights Tribunal on First Nations Child and Family Services, the Government of Canada is working with the parties to implement all of the Tribunal's orders. The Department is making changes to the program authorities to remove references to previous discriminatory funding approaches, and to reflect the most recent Tribunal orders. The Terms and Conditions and other guiding documents will continue to be revised as program reform takes place."

This was done to ensure agencies did not feel they were bound by outdated Terms and Conditions.

**Funding for Band Representatives in Ontario, Retroactively and until a further Order is made**

12. The Tribunal, at paragraphs 427 and 428 of the Ruling ordered Canada to fund Band Representative Services for Ontario First Nations at the actual cost of providing those services retroactively to January 26, 2016, and also ordered Canada not to deduct this funding from existing funding or prevention funding until such time as studies have been completed or a further order is made. Regarding the implementation of these Orders, Canada reports as follows:

a) The province of Ontario provides child and family services funding, programs and services. Canada is continuing to work through the Ontario Technical Table on Child and Family Well-Being, which includes representatives from First Nations, Canada and the province, to discuss the ongoing implementation of these Orders, as well as to begin discussions on how to fund Band Representatives on an ongoing basis.

b) On February 1, 2018, Canada sent a letter to First Nations and Tribal Councils in Ontario on the orders and to communicate that the Department will immediately begin to cover the actual costs of providing Band Representative services, including retroactively to January 2016. This letter is attached to this affidavit as **Exhibit "P".**

c) On February 14, 2018, Canada provided additional information and documentation to First Nations and Tribal Councils on retroactive payments and Band Representatives by email. Attachments included reimbursement forms, instructions, and declaration forms. This email is attached to this affidavit as **Exhibit "Q"**.

d) On February 28, 2018, Canada also provided additional information and documentation to First Nations agencies in Ontario on retroactive payments and Band Representatives by email. The documents provided included declaration forms, reimbursement forms, and instructions. This email is attached to this affidavit as **Exhibit "R"**.

e) As of May 18, 2018, Canada has received 23 claims for Band Representative Services, totaling about $6.3 million dollars (note this includes one claim from an agency in Ontario for Band Representative Services. Two of the requests were combined to cover mental health and Jordan's Principle. A summary of these claims is attached as **Exhibit "L"**, as outlined in paragraph 9(c) above. Note that amount referenced in paragraph 9(c) of $8.3 million and the amount referenced in paragraph 12(e) of $6.3 million total $14.6 million. Exhibit "L" references a total of $13.5 million, as the one claim from an agency for Band Representative Services is reported in both paragraphs 9(c) and 12(e).

**Assessing Agency Deficits**

13. At paragraph 429 of the Ruling, the Tribunal ordered Canada to identify which First Nation agencies, including the NAN agencies, referred to in the Ruling have child welfare or health services related deficits and to assess those deficits.

a) On May 3, 2018, Canada provided a copy of its deficit analysis to the Tribunal. This analysis included an agency deficit analysis. This analysis identified whether First Nations agencies had deficits, surpluses, or balanced positions for the 2016-2017 fiscal year.

b) On May 17, 2018, Canada met with NAN to discuss agency-specific deficits for NAN agencies, and agreed to continue to work together, including to support agencies to submit claims for deficits in the areas ordered by the Tribunal.

c) Canada is also working with First Nations agencies to address any deficits and develop a plan for any surpluses. For example, as outlined in paragraph 11 (f, g, h and i) Canada emailed agencies in April and May 2018, inviting them to submit retroactive claims for deficits.

**Remoteness Quotient Research**

14. As noted at paragraphs 343-346 of the Ruling, the Tribunal has received updates concerning the development and implementation of a remoteness quotient for three FNCFS Agencies that serve NAN communities, including a process for obtaining expert advice. Regarding the status of this joint endeavour, Canada reports as follows:

a) On September 8, 2017, NAN and ISC jointly submitted a progress report to the Tribunal on Phase I of the remoteness quotient research.

b) On March 8, 2018, NAN and ISC submitted a progress report to the Tribunal on a plan for Phase II of the remoteness quotient research, which is attached to this affidavit as **Exhibit "S"**.

c) On March 20, 2018, funds for Phase II were provided to NAN, in the amount of $471K. The remainder of the funds will be provided in fiscal year 2018-2019.

d) A draft of the Phase II report was provided to ISC in April 2018 and a final report will be provided in June 2018.

e) A meeting with NAN and the researchers was held on May 17, 2018 to review the draft of the Phase II report.

**Ontario Special Study**

15. Since October 2017 the Technical Table Child and Family Well-Being in Ontario has been in agreement to move forward on a special study of issues related to First Nations on-reserve child welfare services in Ontario. Regarding the current progress of the Ontario Special Study, Canada reports as follows:

a) On November 28, 2017, Canada and the Chiefs of Ontario submitted a joint progress report to the Tribunal regarding a call for proposals for the Ontario Special Study.

b) On January 31, 2018, a further progress report was submitted by Canada and the Chiefs of Ontario to the Tribunal regarding the beginning of the Ontario Special Study.

c) On April 5, 2018, a further progress report was submitted to the Tribunal along with the environmental scan report and information on the engagement phase of the study. This progress report is attached to this affidavit as **Exhibit "T"**.

d) The next progress report is scheduled from Canada and the Tribunal to the Tribunal for July 31, 2018.

**Reallocation**

16. Paragraphs 422 and 423 of the Ruling ordered Canada to stop reallocating funds from other social programs, especially housing, if it has the adverse effect of leading to apprehensions of children or other negative impacts; and to ensure that any immediate relief investment does not adversely impact Indigenous children, their families and communities. Regarding their implementation, Canada reports as follows:

a) On February 1, 2018, Ms. Buist sent an email to all Regional Directors General and Child and Family Services regional staff directing them to review the Ruling. This email is attached to this affidavit as **Exhibit "U"**.

b) On February 8, 2018, Paul Thoppil, Chief Financial Officer, and I sent a directive by email to all departmental Assistant Deputy Ministers and Regional Directors General to advise they could no longer reallocate social programs funding, including housing, to cover shortfalls. This email is attached to this affidavit as **Exhibit "V"**.

c) ISC developed a chart to evaluate past reallocations from other social programs. This chart confirmed social development programs have previously been in deficit positions and have received reallocations from other programs to cover those deficits. This chart is attached as **Exhibit "W"**.

d) Since February 15, 2018, as ordered by the Tribunal, Canada has not permanently reallocated funds from social programs, including housing.

e) ISC held a series of senior management discussions on the implementation of the these Orders:

   i. On April 5, 2018 a meeting was held with Regional Social Directors;

   ii. On April 6, 2018, a Regional Operations meeting was held with Regional Corporate Services Directors;

   iii. On April 19, 2018 a meeting was held with Regional Directors General; and

   iv. On May 1, 2018 a meeting was held of the Financial Management Committee, chaired by the Chief Financial Officer.

f) On May 14, 2018, the analysis and implementation of these Orders was discussed at a departmental meeting of the Senior Management Committee, which included Regional Directors General and Regional Executives.

**Development of a Consultation Protocol**

17. Paragraph 431 of the Ruling ordered Canada to enter into a consultation protocol with the Parties. Regarding the implementation of a consultation protocol, Canada reports as follows:

a) On February 8, 2018, the Caring Society submitted a progress report to the Tribunal.

b) On March 2, 2018, the AFN submitted a draft of the proposed Consultation Protocol to the Tribunal.

c) On March 22, 2018, the signing of the Consultation Protocol by all parties was completed. The correspondence from Stuart Wuttke, General Counsel for the

Assembly of First Nations enclosing the protocol is attached as **Exhibit "X"** and the signed Consultation Protocol is attached as **Exhibit "Y"**.

d) Also on March 22, 2018, an email was sent by Ms. Buist to all Regional Directors General and Regional Directors regarding the Consultation Protocol and directed those individuals to confirm they read and understood the document. Two information sheets prepared by the Caring Society were also included with this email. Ms. Buist's email is attached as **Exhibit "Z"**; the Consultation Protocol is **Exhibit "Y"**; and the Caring Society's information sheets are attached as **Exhibit "AA"**.

e) Draft terms of reference for a Consultation Committee have been circulated by the AFN for review and comments from the other Parties and Canada.

f) The Committee has agreed that the Caring Society and the AFN will chair the group, and the AFN will provide secretariat support. The Committee will meet at least four times a year.

g) On May 10, 2018, the first meeting of the Consultation Committee took place. The Consultation Committee Agenda is attached as **Exhibit "BB"** and the minutes as **Exhibit "CC"**. The Parties committed to provide input to the Assembly of First Nations by May 14, 2018 in order to finalize the Terms of Reference for the Committee. The final version has not yet been circulated.

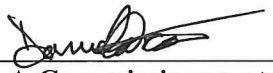
18. I also wish to emphasize that the government is committed to consulting with the Parties in the implementation of these orders. Canada recognizes the valuable input the Parties have provided to ensure Canada's implementation of the orders is done in a way that best meets the needs of First Nations children and families. Canada looks forward to continuing to use the Consultation Committee as a way to discuss issues with the Parties, including related to any questions they may have about the contents of this affidavit.

AFFIRMED TO before me at the City of
Gatineau, Province of Quebec,
May 24, 2018.

Commissioner for Oaths Barreau du Québec - 188739-4

**Paula Isaak**

**This is Exhibit "D" referred to in**
**the Affidavit of SONY PERRON,**
**sworn before me this 8th day of November, 2019**



**A Commissioner, etc.**

EXHIBIT F

Department of Justice Canada
Ministère de la Justice Canada

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Our File: / Notre dossier: AR-800702

Your file: / Votre dossier:

**Via Email: judy.dubois@tribunal.gc.ca**

April 27, 2018

Judy Dubois
Registry Officer
Canadian Human Rights Tribunal
160 Elgin Street - 11th Floor
Ottawa, ON K1A 1J4

Dear Ms. Dubois:

**Re: First Nations Child and Family Caring Society, et al. v Attorney General of Canada Tribunal File: T1340/7008**

Regarding the Tribunal's correspondence of April 19th, Canada would like to thank both it and the parties for working together to agree on amended language on paragraphs 421, 408, 409, 419 and 444 of the February 2018 decision (2018 CHRT 4). Our responses to the Panel's questions are set out below.

***A. What was the initial allocation provided to the Agencies on April 1, 2018, and how was it determined?***

The total initial allocation that was provided for Agencies on April 1, 2018 was $535,902,915.

This amount was based on the calculations that were done for Budget 2016 (Year 3 amounts), and was used to develop the Agency agreements for 2017/18. These agreements were developed starting in December 2017 in order to allow funds to continue to flow to agencies at the beginning of the year (April 1, 2018).

In addition to this initial allocation, we will be providing new funds to the agencies from Budget 2018. Budget 2018 included new investments to accelerate (or "ramp up") funding for agencies to year 5 Budget 2016 amounts, as recommended by the National Advisory Committee on First Nations Child and Family Services Program Reform, as well as to implement funding adjustments for small agencies and in the area of prevention on an ongoing basis. The amount of new funds going to the agencies in these two areas in 2018/19 will be $132.4 million: $50.5 million for the ramp up, $66.3 million to provide the full

Budget 2016 amount directly to service providers and $15.6 million to implement the funding adjustments. These funds will be provided by the end of June 2018.

In addition, where the funds received by agencies are not sufficient to meet their actual costs in the areas ordered by the Tribunal, the department will provide them with additional funds, in accordance with the Tribunal orders (see Question C for the process).

***B. Can you confirm the funds were transferred on April 1, 2018?***

Yes, Canada can confirm that the initial allocation was transferred to regions across the country on or before April 1, 2018. Funds were then transferred to agencies in accordance with their agreements; in some cases, agencies receive payments in installments throughout the year.

***C. Aside from what is explained in the paragraph above, what is the current process between April 1, 2018 and the extension of 8 months of the Panel's orders and requested by the parties, for agencies that need more funding than the initial allocation?***

On February 1, 2018, Canada wrote to inform the agencies of the February 1, 2018 Tribunal decision and to explain that we would be paying their actual costs in the areas ordered by the Tribunal, retroactively to January 2016. Since that time, we have provided tools to the agencies to support them to complete retroactive claims, and our regional offices have been working with agencies to support them to determine retroactive as well as actual cost needs moving forward. Due to the anticipated work involved in submitting information about costs (including retroactively), we have given agencies until March 31, 2019 to provide the department with this information. We have also informed agencies that should they require additional support to gather information about their needs (e.g., book keeping), we will cover the associated costs.

All agencies will be receiving additional funding, further to the initial allocation. As outlined above, through Budget 2018, agencies will be new funding in the amount of $132.4 million by the end of June 2018.

Should agencies need more funding than the initial allocation, and the subsequent Budget 2018 funding, in order to meet their actual costs in the areas ordered by the Tribunal, Canada will provide them with additional funds. The process for agencies to access these funds is to submit a claim to the departmental regional office. We have committed to paying actual costs within 15 days of the receipt of a completed eligible claim.

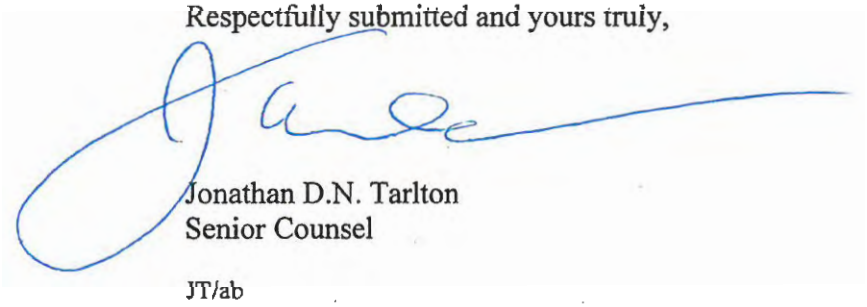
***D. In addition to the allocations transferred on April 1, 2018 and the commitment to fund deficiencies in the allocations when the they [sic] arise as provided for above, what process and funding is in place now to address the children's prevention needs today?***

The initial allocation provided to agencies includes funding for prevention, as Budget 2016 was developed to implement a prevention-based funding approach across the country.

The "ramp up" in funding through Budget 2108 will provide agencies with additional prevention (and other) funding.

In addition, as stated in Canada's February 1, 2018 letter to agencies, where the funds received by agencies are not sufficient to meet their actual costs in prevention, Canada will provide them with additional funds, in accordance with the Tribunal orders. We understand that regions are working with agencies now to plan (and cost) their actual needs in prevention.

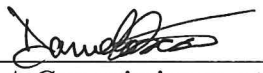
Respectfully submitted and yours truly,



Jonathan D.N. Tarlton
Senior Counsel

JT/ab
cc: David Taylor/Anne Levesque/Sarah Clarke/Stuart Wuttke/David Nahwegahbow/Daniel Poulin/Samar Musallam/Justin Safayeni/Maggie Wente/Krista Nerland/Julian N. Falconer/Akosua Matthews/Anthony Morgan/Robert Frater, Q.C./Patricia MacPhee/Kelly Peck

**This is Exhibit "E" referred to in**
**the Affidavit of SONY PERRON,**
**sworn before me this 8th day of November, 2019**



**A Commissioner, etc.**

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*Our File:* *Notre dossier:* AR-800702

*Your file:* *Votre dossier:*

**Via Email: Judy.Dubois@tribunal.gc.ca**

June 8, 2018

Judy Dubois
Registry Officer
Canadian Human Rights Tribunal
160 Elgin Street - 11th Floor
Ottawa, ON K1A 1J4

Dear Ms. Dubois:

**Re: First Nations Child and Family Caring Society, et al. v Attorney General of Canada Tribunal File: T1340/7008**

Both the First Nations Family and Caring Society (Caring Society) and Nishnawbe Aski Nation (NAN) gave comments on Canada's April 27, 2018 response to the Tribunal. This letter provides Canada's supplemental information pursuant to the Tribunal's direction made on May 9, 2018.

Canada would like to confirm that, throughout this period, we have continued to consult with the parties on the implementation of the orders, as previously reported in detail in the affidavit of Paula Isaak dated May 24, 2018. With regard to the specific points raised by the Caring Society and/or NAN, Canada would note:

### A. 1 ISC's continued reliance on the methodology for Budget 2016

The Caring Society has expressed concern about Indigenous Services Canada's (ISC)'s reliance on the Budget 2016 methodology to allocate funding. In our April 27, 2018 correspondence to the Tribunal, we explained that Canada provided agencies with an initial allocation of $535 million, and that this allocation was based on the methodology for Budget 2016 in order to allow the funds to continue to flow to agencies to meet their needs and the needs of the First Nations children and families they serve. **Annex A** provides information on how these funds were allocated, by agency.

Further to the National Advisory Committee's September 2017 recommendations (**Annex B**) on a funding approach moving forward, Budget 2018 provided additional funding for agencies. In 2018/19, an additional $174.8 million is being invested to support agencies and other service providers (the details on Budget 2018 provided to the parties are attached as **Annex C**). Of note is that $117.3 million of this funding will be distributed according to a new approach (i.e., not the

formula used to guide the allocation of Budget 2016 parties), and will be based on consultation with the parties.

Canada first consulted the Consultation Committee on different options for how to invest these funds on May 10, 2018 (Agenda and Options for $117M shared as **Annex D**). On May 28, 2018, Canada provided further information on the option that the Committee suggested they preferred (**Annex E**). This option includes details on how the funding could address the specific needs of remote agencies. Pending feedback of the Committee (requested by June 11, 2018), these funds will be distributed as soon as possible, and by the end of June 2018.

Canada is also continuing to support the work of the Institute of Fiscal Studies and Democracy (IFSD) to do a cost analysis of agency needs and to support the development of an alternative methodology or system for funding.

In the interim, should agencies require more funding in any of the areas ordered by the Tribunal, ISC will provide it. As of June 4, we have received 35 claims for the reimbursement of the actual costs of Band Representatives Services, Small Agencies and Prevention/Operations, totalling about $15.6 million (**Annex F**).

Canada is currently consulting the parties on its proposed approach to processing the funding of actual costs moving forward. In the interim, Canada will continue to pay claims as they are submitted, pending finalization of this process with the parties.

To date, as shown in **Annex F**, the average number of days to process a claim takes between 7 and 9 days. Canada will continue to process claims as quickly as possible; however, as outlined in Canada's April 9, 2018 letter to the Tribunal, we still request the Tribunal allow for up to a maximum of 15 business days to ensure Canada can comply with the order.

The proposed 15 day timeline allows for up to 5 days for Public Services and Procurement to issue a direct deposit, as their processing time varies depending on the volume of deposits being processed and individual banking timelines. Should Canada be informed of an urgent need requiring costs to be paid more quickly than the 15-day timeline, then we will address it.

Regarding the Caring Society's concerns on the Saskatoon Tribunal Council Health and Family Services (STC), the province revoked the STC's delegation as an agency on June 14, 2016. Canada has allowed the STC to submit claims for reimbursement during the period for which it was a delegated agency (January 26, 2016 – June 16, 2016). To support their prevention activities, Canada has paid the STC $2,406,348 and another $2,058,758 payment is in the process of being finalized. In addition, Canada has received requests for community prevention funding for the communities served by STC. We are working with them on their proposals now.

### A. 2 Small FNCFS Agencies

Canada has informed small agencies that, until an alternative system is in place, the department will cover all of their costs to meet the needs of the First Nations children and families they serve. They received special correspondence on February 1, 2018 (as attached to Canada's May 24

affidavit), and other specific correspondence about their deficits (as attached to Canada's May 3 report as Annex F).

We are in regular communication with small agencies through our regional offices about the process for submitting claims and how to best meet their needs. In addition, Canada is consulting the parties on the approach for paying actual costs moving forward (as noted above in section A. 1).

To date, Canada has processed seven claims from small agencies. Canada has, as part of its work with IFSD to develop its proposal, communicated the need for their research and analysis to include specific attention to the needs of small agencies.

### A. 3 Amount of Budget 2018 Funds

Regarding the Caring Society's comments on the amount of Budget 2018 funding, Canada has provided the Caring Society with its responses to questions concerning the plans for Budget 2018 funding (see Annex C as outlined above). With regard to growth costs specifically, lines 1 and 2 of the Budget 2018 table referenced earlier includes the current amount allocated for growth. Our approach to dealing with growth costs moving forward will be informed by the outcome of IFSD's cost analysis of agency needs.

### A. 4 Allocation of Budget 2018 Funds

As outlined above, Canada is consulting the parties on the allocation of new Budget 2018 agency funding. On May 10, 2018, Canada also consulted the parties on the community well-being and jurisdiction funding referenced in the Budget (**Annex G**). Further to that discussion, Canada shared details on the funds allocated, by region, for each of the models proposed (**Annex H**) the week of May 28, 2018. Canada asked to receive comments by June 11, 2018.

Currently, Canada has no plans to provide provinces with Budget 2018 funding, except in the case of Ontario where some of the funding may flow through the province as per the *1965 Agreement* with Ontario. Discussions are continuing, through the Ontario Technical Table on Child and Family Well-being, about how best to allocate the funding.

With regard to the $15.6 million referenced in Canada's Budget table, this funding will be going to agencies by the end of June 2018. The methodology for allocating this funding was described to the Tribunal in October 2016, and was an interim approach to provide increased support to small agencies and for prevention. Canada can confirm this is not for internal spending within ISC.

### A. 5 Budget 2018's provision for training within ISC

Budget 2018 also included funding for training for ISC staff. It is important to note that this funding is for staff in the Education and Social Development Programs and Partnerships directorate, not for the entire department. Canada provided an update for its training plans at the May 10, 2018 Consultation Committee meeting, which includes work underway to co-develop mandatory

distinctions-based cultural competency training (minutes in **Annex I**). Training will continue to be discussed at the Consultation Committee.

### A. 6 Uncertain nature of ISC's promise to request additional funding if needed

ISC has previously communicated that, should Budget 2018 funding be insufficient to respond to the Tribunal's orders, the Minister of Indigenous Services is committed to seeking more funding. Currently, work is underway to analyze agency financial positions (through the surplus deficit analysis), as well as to analyze agency needs (through IFSD). ISC is looking forward to working with partners to develop and implement an alternative funding system based on the results of this work.

Should additional funding be required in the interim or to implement the new system, ISC is committed to submitting an additional request for funding. The exact mechanism for doing so will depend on what is required and when (for example, if new authorities are required to meet particular needs, the department would need to develop proposals and recommendations for future discussion and decision-making).

We are committed, in this interim period, to continuing to work closely with agencies to better understand and address their needs, including in the areas ordered by the Tribunal and in other areas where they may be experiencing challenges. Regional officials within the department have ongoing contact and collaboration with agency service providers.

### B. Confirmation funds were transferred

As outlined in Annex A above, funds were allocated to the regions for the initial allocations for agencies on or before April 1, 2018. As outlined in the chart, additional funds were allocated in June 2018, and further funding will be provided as part of the "ramp up."

### C. 1 Process for Needing More funding than the Initial Allocation – Attestation Process

In response to the Caring Society's concern that the attestation provided to agencies made reference to the Terms and Conditions and did not contain the disclaimer that was put on the website, ISC has changed the guide (and the attestation form) to include this disclaimer, as submitted to the Tribunal as part of Canada's May 24 affidavit (Exhibits N and O).

Canada has also posted an interim version of the Terms and Conditions for the Program on its website, which no longer include reference to previous discriminatory funding models. We have also begun consulting with the parties on further revisions to the Program's Terms and Conditions to reflect the February 1, 2018 decision and to support the implementation of Budget 2018 funding. A draft of these Terms and Conditions was shared with the parties in advance of the May 10 Consultation Committee meeting (**Annex J**). In response to comments provided by the parties, a revised version was shared on May 28, 2018. Canada will continue to consult with the parties to

develop these Terms and Conditions. Moreover, Canada recognizes the Terms and Conditions currently under review to support the implementation of Budget 2018 funding are interim. They will be reviewed with the parties following the development of an alternative funding system. Canada committed to continuing to review the Terms and Conditions with the parties in **Annex K.**

### C. 2 Process for Calculating Surpluses and Deficits

In response to the comment about how agency deficits and surpluses were calculated, we reviewed financial statements. Where agencies reported their revenues and expenditures separately by funding source, we were able to separate and attribute either the deficit or surplus directly to the First Nations Child and Family Services (FNCFS) Program. However, in cases where FNCFS funding was mixed with other funding (e.g., provincial funding or the Child Special Allowance or CSA), we used a pro-rated formula to calculate the potential deficit/surplus. For example, if an agency reported $1.5M of total funding on one schedule and ISC's portion was $1M and therefore 67%, we only counted that portion in case of a deficit or surplus.

On the specific issue of the Saskatchewan Children's Special Allowances, 15 of the 16 Saskatchewan agencies reported separately on their CSA amounts; therefore, the CSA amounts were not taken into account when doing the assessment for these 15 agencies.

### Remoteness

On the specific issue of remoteness raised in NAN's May 7, 2018 letter, the options sent to the parties concerning the implementation of the ramp up funding for agencies and the plan to allocate the community funding both include funds dedicated to address the needs of remote agencies and communities. We have asked for comments on these proposals by June 11, 2018.

We trust that this information will be helpful to the Tribunal in finalizing its response to Canada's April 9 proposal regarding proposed modifications to the orders.

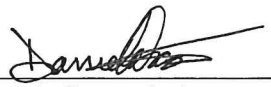
Respectfully submitted and yours truly,

Jonathan D.N. Tarlton
Senior Counsel
Civil Litigation and Advisory Services

JT/rv
Enclosures

cc: David Taylor/Anne Levesque/Sarah Clarke/Stuart Wuttke/David Nahwegahbow/ Brian Smith/ Daniel Poulin/Samar Musallam/Justin Safayeni/Maggie Wente/Krista Nerland/Julian N. Falconer/Akosua Matthews/Anthony Morgan/Robert Frater, Q.C./Patricia MacPhee/Kelly Peck

**This is Exhibit "F" referred to in**
**the Affidavit of SONY PERRON,**
**sworn before me this 8th day of November, 2019**



**A Commissioner, etc.**

HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

# HOUSE PUBLICATIONS

The ***Debates*** are the report—transcribed, edited, and corrected—of what is said in the House. The ***Journals*** are the official record of the decisions and other transactions of the House. The ***Order Paper and Notice Paper*** contains the listing of all items that may be brought forward on a particular sitting day, and notices for upcoming items.

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< December 12, 2007 >

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**Wednesday, December 12, 2007 (No. 36)**

# PRIVATE MEMBERS' BUSINESS

## DEFERRED RECORDED DIVISIONS

**M-296** — December 5, 2007 — Deferred recorded division on the motion of Ms. Crowder (Nanaimo—Cowichan), seconded by Ms. Wasylycia-Leis (Winnipeg North), — That, 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.

*Pursuant to Standing Order 86(3), jointly seconded by:*
*Ms. Savoie (Victoria) — May 8, 2007*
*Mr. Martin (Sault Ste. Marie) — May 9, 2007*

*Ms. Chow (Trinity—Spadina) — May 15, 2007*

*Ms. Wasylycia-Leis (Winnipeg North) — May 16, 2007*

*Recorded division — deferred until Wednesday, December 12, 2007, immediately before the time provided for Private Members' Business, pursuant to Standing Order 93(1).*

**C-411** — December 6, 2007 — Deferred recorded division on the motion of Ms. Bourgeois (Terrebonne—Blainville), seconded by Mr. Cardin (Sherbrooke), — That Bill C-411, An Act to amend the Special Import Measures Act (domestic prices), be now read a second time and referred to the Standing Committee on International Trade.

*Recorded division — deferred until Wednesday, December 12, 2007, immediately before the time provided for Private Members' Business, pursuant to Standing Order 93(1).*

**C-251** — December 7, 2007 — Deferred recorded division on the motion of Mr. Szabo (Mississauga South), seconded by Mr. Thibault (West Nova), — That Bill C-251, An Act to amend the Food and Drugs Act (warning labels regarding the consumption of alcohol), be now read a second time and referred to the Standing Committee on Health.

*Pursuant to Standing Order 86(3), jointly seconded by:*

*Ms. Wasylycia-Leis (Winnipeg North) — July 25, 2006*

*Ms. Savoie (Victoria) — April 17, 2007*

*Mr. Martin (Sault Ste. Marie) — April 20, 2007*

*Ms. Bell (Vancouver Island North) — April 23, 2007*

*Recorded division — deferred until Wednesday, December 12, 2007, immediately before the time provided for Private Members' Business, pursuant to Standing Order 93(1).*

# ITEMS IN THE ORDER OF PRECEDENCE

### No. 1

**C-394** — October 16, 2007 — Ms. Nash (Parkdale—High Park) — Second reading and reference to the Standing Committee on Citizenship and Immigration of Bill C-394, An Act to amend the Immigration and Refugee Protection Act (sponsorship of relative).

*Pursuant to Standing Order 86(3), jointly seconded by:*

*Ms. Black (New Westminster—Coquitlam) — February 8, 2007*

*Mr. Siksay (Burnaby—Douglas) — April 4, 2007*

*Ms. Savoie (Victoria) — April 17, 2007*

*Mr. Martin (Sault Ste. Marie) — April 20, 2007*

*Ms. Bell (Vancouver Island North) — April 23, 2007*

### No. 2

**C-484** — November 21, 2007 — Mr. Epp (Edmonton—Sherwood Park) — Second reading and reference to the Standing Committee on Justice and Human Rights of Bill C-484, An Act to amend the Criminal Code (injuring or causing the death of an unborn child while committing an offence).

### No. 3

**C-469** — October 25, 2007 — Mr. André (Berthier—Maskinongé) — Second reading and reference to the Standing Committee on Environment and Sustainable Development of Bill C-469, An Act to amend the Canadian Environmental Protection Act, 1999 (use of phosphorus).

### No. 4

**M-310** — October 16, 2007 — Mr. Telegdi (Kitchener—Waterloo) — That, in the opinion of the House, in order to show respect and to honour Canadian Forces and other Canadian government personnel who are killed while serving in overseas peacekeeping, peacemaking or humanitarian missions, the government should lower the flag on the Peace Tower to half-staff for the day following their demise as a remembrance of their important service to Canada and Canadians and that a moment of silence to be observed in the House, if the House is sitting on that same day.

### No. 5

**C-303** — November 21, 2007 — Ms. Savoie (Victoria) — Third reading of Bill C-303, An Act to establish criteria and conditions in respect of funding for early learning and child care programs in order to ensure the quality, accessibility, universality and accountability of those programs, and to appoint a council to advise the Minister of Human Resources and Skills Development on matters relating to early learning and child care.

*Pursuant to Standing Order 86(3), jointly seconded by:*

*Ms. Wasylycia-Leis (Winnipeg North) — July 25, 2006*

*Ms. Chow (Trinity—Spadina) — September 21, 2006*

*Debate — 1 hour remaining, pursuant to Standing Order 98(2).*

*Voting — not later than the expiry of the time provided for debate, pursuant to Standing Order 98(4).*

*Statement by Speaker regarding Royal Recommendation — see Debates of Wednesday, October 17, 2007.*

### No. 6

**M-411** — November 22, 2007 — Ms. Sgro (York West) — That, in the opinion of the House, the government should reaffirm that: (*a*) there is no death penalty in Canada; (*b*) it is the policy of the government to seek clemency, on humanitarian grounds, for Canadians sentenced to death in foreign countries; and (*c*) Canada will continue its leadership role in promoting the abolition of the death penalty internationally.

### No. 7

**C-219** — October 16, 2007 — Mr. Easter (Malpeque) — Second reading and reference to the Standing Committee on Finance of Bill C-219, An Act to amend the Income Tax Act (deduction for volunteer emergency service).

### No. 8

**M-414** — November 22, 2007 — Mr. Guimond (Montmorency—Charlevoix—Haute-Côte-Nord) — That, in the opinion of the House, the government should introduce a series of measures to assist businesses, communities and workers hard hit by the forestry crisis, including: (*a*) an economic diversification program aimed specifically at communities that depend heavily on the forest industry; (*b*) tax measures that encourage the development of processing activities in the region; (*c*) a government loan and loan guarantee program for business modernization; (*d*) a refundable tax credit for the research and development of new products; (*e*) the establishment of absolute reduction targets for greenhouse gas emissions, allowing businesses to sell emission credits on an exchange; (*f*) a program to support the production of energy and ethanol from forest waste; (*g*) improvements to the employment insurance plan; and (*h*) an income support program for older workers.

### No. 9

**M-322** — October 16, 2007 — Mr. Dion (Saint-Laurent—Cartierville) — That, in the opinion of the House, the government should immediately and fully restore the Court Challenges Program to enhance the access that every person in Canada, regardless of wealth, should have to the protection of their Canadian Charter of Rights and Freedoms.

*Designated a non-votable item, pursuant to Standing Order 92 — May 10, 2007.*

*Debate — limited to 1 hour, pursuant to Standing Order 96(1).*

### No. 10

**C-482** — November 20, 2007 — Ms. Picard (Drummond) — Second reading and reference to the Standing Committee on Official Languages of Bill C-482, An Act to amend the Official Languages Act (Charter of the French Language) and to make consequential amendments to other Acts.

*Motion may not be moved, pursuant to Standing Order 91.1(1).*

### No. 11

**M-400** — November 19, 2007 — Mrs. Barnes (London West) — That the House call on the government to reinstate women's equality as the goal of the Women's Program at Status of Women Canada.

### No. 12

**M-409** — November 21, 2007 — Mrs. Davidson (Sarnia—Lambton) — That, in the opinion of the House, the Minister of Health should regulate non-corrective, cosmetic contact lenses as medical devices under the Hazardous Product Act or the Food and Drugs Act.

### No. 13

**M-383** — October 22, 2007 — Ms. Thibault (Rimouski-Neigette—Témiscouata—Les Basques) — That, in the opinion of the House, the government should review the Old Age Security program with a view to: (*a*) reduce the program's operational costs by ceasing to pay benefits that subsequently have to be repaid; (*b*) allocate these savings first to single, divorced and widowed Guaranteed Income Savings recipients, specifically to people who did not have an opportunity to prepare for their retirement; (*c*) improve the Guaranteed Income Savings benefits for elderly single, divorced and widowed individuals; and (*d*) increase the other income threshold so that Guaranteed Income Savings recipients may receive the equivalent of 15 hours per week of work at minimum wage in their province of residence without penalty.

### No. 14

**M-410** — November 21, 2007 — Mr. Dryden (York Centre) — That, in the opinion of the House, the government, its Crown Corporations and divisions should divest from corporations conducting business in Sudan and Iran and should also divest from funds, stocks, bonds and other financial instruments invested in, or operating in, Sudan and Iran, except where such funds support humanitarian aid and humanitarian relief programs, or are used to fund Canadian embassies, consulates, and representative offices in these countries.

### No. 15

**C-454** — October 16, 2007 — Mr. Gaudet (Montcalm) — Second reading and reference to the Standing Committee on Industry, Science and Technology of Bill C-454, An Act to amend the Competition Act and to make consequential amendments to other Acts.

### No. 16

**M-183** — October 16, 2007 — Mr. Boshcoff (Thunder Bay—Rainy River) — That, in the opinion of the House, the government should implement a policy, which is consistent with North American Free Trade Agreement and World Trade Organization policies and guidelines, to mandate Canadian content levels for public transportation projects, and to ensure that public funds are used to provide the best value to Canadians by supporting domestic supplier and labour markets.

### No. 17

**C-253**† — November 28, 2007 — Mr. McTeague (Pickering—Scarborough East) — Resuming consideration at report stage of Bill C-253, An Act to amend the Income Tax Act (deductibility of RESP contributions), as reported by the Standing Committee on Finance with amendments.

Resuming debate on the motions in Group No. 1.

*Committee Report — presented on Wednesday, March 21, 2007, Sessional Paper No. 8510-391-190.*

*Report and third reading stages — limited to 2 sitting days, pursuant to Standing Order 98(2).*

*Report stage motions — see "Report Stage of Bills" in today's Notice Paper.*

*Report stage concurrence motion — question to be put immediately after the report stage motions are disposed of, pursuant to Standing Order 76.1(9).*

*Motion for third reading — may be made in the same sitting, pursuant to Standing Order 98(2).*

*Voting for report stage and third reading — at the expiry of the time provided for debate, pursuant to Standing Order 98(4).*

### No. 18

**C-415** — December 3, 2007 — *On or after Tuesday, January 29, 2008* — Resuming consideration of the motion of Mr. Silva (Davenport), seconded by Mr. Valley (Kenora), — That Bill C-415, An Act to amend the Canada Labour Code (replacement workers), be now read a second time and referred to the Standing Committee on Human Resources, Social Development and the Status of Persons with Disabilities.

*Debate — 1 hour remaining, pursuant to Standing Order 93(1).*

*Voting — at the expiry of the time provided for debate, pursuant to Standing Order 93(1).*

### No. 19

**C-343** — December 10, 2007 — Mr. Scheer (Regina—Qu'Appelle) — Consideration at report stage of Bill C-343, An Act to amend the Criminal Code (motor vehicle theft), as reported by the Standing Committee on Justice and Human Rights with amendments.

*Committee Report — presented on Monday, December 10, 2007, Sessional Paper No. 8510-392-29.*

*Report and third reading stages — limited to 2 sitting days, pursuant to Standing Order 98(2).*

*Motion for third reading — may be made in the same sitting, pursuant to Standing Order 98(2).*

### No. 20

**C-474** — December 11, 2007 — *On or after Thursday, February 7, 2008* — Resuming consideration of the motion of Mr. Godfrey (Don Valley West), seconded by Mr. Bagnell (Yukon), — That Bill C-474, An Act to require the development and implementation of a National Sustainable Development Strategy, the reporting of progress against a standard set of environmental indicators and the appointment of an independent Commissioner of the Environment and Sustainable Development accountable to Parliament, and to adopt specific goals with respect to sustainable development in Canada, and to make consequential amendments to another Act, be now read a second time and referred to the Standing Committee on Environment and Sustainable Development.

*Debate — 1 hour remaining, pursuant to Standing Order 93(1).*

*Voting — at the expiry of the time provided for debate, pursuant to Standing Order 93(1).*

## ITEMS OUTSIDE THE ORDER OF PRECEDENCE

*The complete list of items of Private Members' Business outside the order of precedence is available for consultation at the Table in the Chamber, at the Private Members' Business Office (613-992-9511) and on the Internet.*

# LIST FOR THE CONSIDERATION OF PRIVATE MEMBERS' BUSINESS

*The List for the consideration of Private Members' Business is also available for consultation at the Table in the Chamber, at the Private Members' Business Office (613-992-9511) and on the Internet.*

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† Subject to the provisions of Standing Order 94(2)(*c*)

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# PRIVATE MEMBERS' BUSINESS

## *[Private Members' Business]*

(1730)

[*English*]

## Aboriginal Affairs

The House resumed from December 5 consideration of the motion.

[Expand]

**The Deputy Speaker:**

It being 5:30 p.m. the House will now proceed to the taking of the deferred recorded division on Motion No. 296.

Call in the members.

(1755)

[*Translation*]

(The House divided on the motion, which was agreed to on the following division:)

*(Division No. 27)*

YEAS

Members

Abbott
Ablonczy
Albrecht
Alghabra
Allen
Allison
Ambrose
Anders
Anderson
André
Angus
Arthur
Asselin
Atamanenko
Bachand
Bagnell
Bains
Barbot
Barnes
Batters
Beaumier
Bélanger
Bell (Vancouver Island North)
Bell (North Vancouver)
Bellavance
Bennett
Benoit
Bevilacqua
Bevington
Bezan
Blackburn
Blaikie
Blais
Blaney
Bonin
Bonsant
Bouchard
Boucher
Bourgeois
Breitkreuz
Brison
Brown (Oakville)
Brown (Leeds—Grenville)
Brown (Barrie)
Bruinooge

Calkins
Cannan (Kelowna—Lake Country)
Cannis
Cannon (Pontiac)
Cardin
Carrie
Carrier
Casey
Casson
Chan
Charlton
Chong
Chow
Christopherson
Clement
Comuzzi
Cotler
Crête
Crowder
Cullen (Etobicoke North)
Cummins
Cuzner
Davidson
Davies
Day
Del Mastro
Demers
Deschamps
Devolin
Dewar
Dhaliwal
Dhalla
Doyle
Dryden
Duceppe
Dykstra
Easter
Emerson
Epp
Eyking
Faille
Fast
Finley
Fitzpatrick
Fletcher
Freeman
Gagnon
Galipeau
Gallant
Gaudet
Godfrey
Godin
Goldring
Goodale
Goodyear
Gourde
Gravel
Grewal
Guay
Guergis
Guimond
Hanger
Harris
Harvey
Hawn
Hearn
Hiebert
Hill
Holland
Hubbard
Ignatieff
Jaffer
Jean
Kadis
Kamp (Pitt Meadows—Maple Ridge—Mission)
Karetak-Lindell
Karygiannis
Keddy (South Shore—St. Margaret's)
Keeper
Kenney (Calgary Southeast)
Komarnicki

Kotto
Kramp (Prince Edward—Hastings)
Laforest
Laframboise
Lake
Lauzon
Lavallée
Layton
Lebel
Lee
Lemieux
Lessard
Lévesque
Lukiwski
Lunn
Lunney
Lussier
MacAulay
MacKenzie
Malhi
Malo
Maloney
Manning
Marleau
Marston
Martin (Esquimalt—Juan de Fuca)
Martin (Winnipeg Centre)
Mathyssen
Matthews
Mayes
McCallum
McDonough
McGuinty
McGuire
McKay (Scarborough—Guildwood)
McTeague
Ménard (Hochelaga)
Ménard (Marc-Aurèle-Fortin)
Menzies
Merrifield
Mills
Minna
Moore (Port Moody—Westwood—Port Coquitlam)
Moore (Fundy Royal)
Mulcair
Murphy (Charlottetown)
Nadeau
Nash
Neville
Nicholson
Norlock
O'Connor
Obhrai
Oda
Ouellet
Pacetti
Pallister
Paquette
Paradis
Patry
Pearson
Perron
Petit
Picard
Plamondon
Poilievre
Prentice
Preston
Priddy
Proulx
Rajotte
Ratansi
Redman
Regan
Reid
Richardson
Ritz
Rodriguez
Roy
Russell
Savage

Savoie
Scarpaleggia
Scheer
Schellenberger
Scott
Sgro
Shipley
Siksay
Simard
Simms
Skelton
Smith
Solberg
Sorenson
St-Cyr
St-Hilaire
St. Amand
St. Denis
Stanton
Steckle
Stoffer
Storseth
Strahl
Sweet
Szabo
Telegdi
Temelkovski
Thi Lac
Thibault (Rimouski-Neigette—Témiscouata—Les Basques)
Thibault (West Nova)
Thompson (New Brunswick Southwest)
Thompson (Wild Rose)
Tilson
Toews
Tonks
Trost
Turner
Tweed
Valley
Van Kesteren
Van Loan
Vellacott
Verner
Vincent
Wallace
Wappel
Warawa
Warkentin
Wasylycia-Leis
Watson
Wilfert
Williams
Wrzesnewskyj
Yelich
Zed

Total: -- 262

NAYS

Nil

PAIRED

Nil

[Expand]

The Speaker:

I declare the motion carried

**This is Exhibit "G" referred to in**
**the Affidavit of SONY PERRON,**
**sworn before me this 8th day of November, 2019**

A Commissioner, etc.

Tribunal File No. T-1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

and

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

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

Respondent

and

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA and
NISHNAWBE ASKI NATION

Interested Parties

**Affidavit of Paula Isaak**

I, Paula Isaak, the Assistant Deputy Minister of the Education and Social Development Programs and Partnerships, AFFIRM THAT:

1. I am the Assistant Deputy Minister of the Education and Social Development Programs and Partnerships ("ESDPP") of the Department of Indigenous Services Canada ("ISC"). I have been in this position since 2015. I report directly to the Deputy Minister of ISC. I am responsible for policies, program design and partnerships related to First Nations child and family services, First Nation education programs, and social programs. Regional offices across Canada deliver these programs, and report formally through the Senior Assistant Deputy Minister of Regional Operations.

2. In my capacity as Assistant Deputy Minister of ESDPP, I have read the February 1, 2018 ruling ("Ruling") of the Canada Human Rights Tribunal ("the Tribunal"), and have personal knowledge of the federal government's ("Canada") efforts to comply with the Tribunal's orders.

I have also read the various affidavits, submissions and requests for information filed by the parties in response to my affidavit dated May 24, 2018. There is also a request for further orders to be issued on consent of the parties. In the paragraphs that follow, I will describe what is being done to address the concerns raised in the proposed consent orders. I wish to emphasize, that Canada is committed to a collaborative approach in the implementation of the Tribunal's orders and we continue to be willing to discuss with any of the parties through the Consultation Committee or directly.

3. On June 6, 2018, David Taylor, on behalf of the First Nations Child and Family Caring Society, sent a letter asking for additional information in relation to my May 24, 2018 affidavit and Valerie Gideon's May 24, 2018 affidavits. This letter is attached to this affidavit as **Exhibit "A"**. On June 7, 2018, Maggie Wente sent a letter on behalf of the Chiefs of Ontario requesting additional information from Canada. This letter is attached to this affidavit as **Exhibit "B"**.

4. Attached to this affidavit as **Exhibit "C-1 to C-9"** are the responses to my affidavit of May 24, 2018, which were provided to the parties on June 19, 2018.

**Proposed Consent Orders**

5. In response to the Caring Society's proposed list of draft consent orders, attached as Exhibit "D" to Affidavit #2 of Doreen Navarro, sworn June 7, 2018, Canada states that it has fully complied with the Ruling of February 1, 2018.

6. Canada offers the following reply to proposed draft orders 2(A), 2(B), and 2(C):

   a) Canada agrees that an agency does not have to be in an overall deficit position in order to have its actual costs reimbursed for prevention/least disruptive measures, building repairs, intake and investigation, and legal fees. Canada will continue to pay actual costs, and does not demand that the agency be in a deficit position overall before reimbursement is made.
   b) Canada can work with the parties to clarify this, including through our existing tools (e.g. recipient guide for the reimbursement of retroactive claims).
   c) Since the February 1, 2018 Ruling, Canada has been reimbursing agencies as ordered by the Tribunal, regardless of whether the agency was or is in an overall deficit position between January 2016 and March 2018. As of June 14, 2018, Canada has received 39 claims for the orders related to agencies and for Band Representative Services, totaling over 18 million dollars.

d) Canada has interpreted the Tribunal's February 1, 2018 order about actual costs to mean that it should reimburse agencies for actual costs incurred, i.e., an expenditure for which they do not already have a source of funds and therefore have incurred a cost.
e) Under the *Financial Administration Act,* Canada cannot reimburse expenses that have not been incurred. For example, Canada cannot pay for a legal expense that did not occur or for a prevention activity that did not happen. In addition, Canada cannot reimburse for a service already being paid for by another government or public entity, e.g., the Ontario government.
f) The above position - where public funds have already been provided for reimbursement of an expenditure, such that no "actual cost" was incurred - is consistent with the wording ISC has adopted in its reimbursement guides and forms.
g) Canada continues to be willing to discuss with any of the parties through the Consultation Committee or directly any issues related to the provision of actual costs.

7. Canada offers the following reply to proposed draft order 2(D):

a) Canada is willing to consult the parties either through the Consultation Committee or directly and interested stakeholders (e.g. the National Advisory Committee on First Nations Child and Family Services Program Reform) on the development of an appeals process.
b) Currently, Canada has created an escalation process for decisions on potential denials and has shared this process with the parties for feedback.

8. Canada offers the following reply in response to proposed draft orders 2(E) and 2(F):

a) In keeping with the February 1, 2018 Ruling and orders, Canada is paying small agencies' actual costs retroactive to January 2016 (when they did not have a source of funds and therefore had incurred costs). Canada is also paying all small agency costs moving forward until an alternative system is put in place.
b) Canada has increased funding through Budget 2018; provided retroactive payments; and is reimbursing actual costs for small agencies until such an alternative system is implemented.
c) Should a small agency feel it has unmet needs, Canada is encouraging them to contact the regional ISC office as soon as possible.
d) As previously mentioned in paragraph 5 above, Canada cannot reimburse agencies for costs that they have not actually incurred.

9. Canada offers the following information in response to proposed draft orders 2(G), 2(I), and 2(K):

a) Canada has already shared the approach it used to analyze and report on the surpluses and deficits with the parties and included this information in our May 3 submission. It is further clarified in Exhibit "C1".

b) Where federal funds were separated out in financial statements provided by agencies, we did not include other sources of funding in the calculation of a deficit or a surplus. Where an agency mixed their sources of funding, then a pro-rated approach was used.
c) Canada is willing to review the deficits/surplus analysis for agencies who did not report their sources of revenue. However, such agencies would be required to amend and resubmit their previous financial statements with specific sources of revenue identified.

10. Canada offers the following reply to proposed draft order 2(H):

a) ISC is willing to commit to working with Canada Revenue Agency and review how provinces and territories apply the Children's Special Allowances ("CSA") Act.
b) The CSA is a tax-free payment to child protection agencies and institutions to support the costs of "maintaining children in care." The monthly CSA payment is equal to the maximum Child Canada Benefit payment. Generally, the province/territory receives these funds on behalf of children for whom they are responsible, as they are deemed the legal guardian when children are in care, in order to defray costs.
c) It is important to note that in Manitoba there is litigation against the province regarding their use of the CSA which has been brought by six First Nations and Metis child and family services agencies (Animikii Ozoson Child and Family Services, Sandy Bay Child and Family Services, Peguis Child and Family Services, Southeast Child and Family Services, Michif Child and Family Services, and Metis Child, Family and Community Services).

11. Canada offers the following reply to proposed draft order 2(J):

a) Canada could consider reimbursing an agency's costs if that agency can show that it used funding it received from a First Nations or Tribal Council to pay for incurred expenses in any of the areas subject to the Tribunal's orders. For example, in a situation where a First Nation paid for an agency's prevention activities because the agency did not have sufficient federal funding to pay for the service itself.
b) If Canada were to reimburse an agency for an item or service that a First Nation or Tribal Council has paid for, then that agency will need to reach an agreement with the First Nation or Tribal Council regarding reimbursement of those funds.
c) Canada is committed to reviewing the specific situation of each agency to ensure that the Tribunal's orders are implemented in a way that assists agencies to achieve the best outcomes for First Nations children, families and communities.

12. Canada has already agreed that the Panel continue to retain jurisdiction over these orders until March 31, 2019 which is proposed in draft order 3(A), as per our correspondence dated April 9, 2018 and included in our May 3, 2018 submission.

13. In response to proposed draft order 3(B), Canada agrees to provide an update. Canada would like to move away from using the litigation process involving affidavits and cross-examinations to share information now that the Consultation Committee is in place.

14. I also wish to emphasize that the government is committed to consulting with the Parties on the implementation of these orders. Canada recognizes the valuable input the Parties have provided to ensure Canada's implementation of the orders is done in a way that best meets the needs of First Nations children and families. Canada looks forward to continuing to use the Consultation Committee as a way to discuss issues with the Parties, including related to any questions they may have about the contents of this affidavit.

AFFIRMED before me at the City of
Gatineau, Province of Quebec,
June 21, 2018.

Gilles Gareau, Barreau du Québec
# 1887394
A Commissioner for Taking Affidavits

P. Isaak
**Paula Isaak**

**This is Exhibit "H" referred to in**
**the Affidavit of SONY PERRON,**
**sworn before me this day of November, 2019**

_____

**A Commissioner, etc.**

Tribunal File No. T-1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

and

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

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

Respondent

And

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA and
NISHNAWBE ASKI NATION

Interested Parties

**Affidavit of Joanne Wilkinson**

I, Joanne Wilkinson, the Assistant Deputy Minister of Child and Family Services Reform Branch at the Department of Indigenous Services Canada (ISC), AFFIRM THAT:

1. I have been an Assistant Deputy Minister reporting to the Deputy Minister, since March 2018 responsible for child and family series reform and have been responsible for child and family services programming since October 2018. In that role, I have knowledge of the significant efforts Canada has made to comply with the orders made by the Tribunal in the February 1, 2018 ruling (the "2018 Ruling").

2. This affidavit provides information further to the May 24, 2018 affidavit of Paula Isaak in relation to how Canada continues to comply with the orders from February 1, 2018, in consultation with the Parties.

3. Canada has made significant investments in First Nations Child and Family Services (FNCFS) since the January 2016 Tribunal ruling. Prior to the Tribunal's orders, the FNCFS Program's total expenditures were $680.9 million (2015-2016).[1] Since that time, Canada's investments for the program have grown to approximately $1.2 billion in 2018-2019, almost double the program's investments. Over 98% of the funding is contribution funding going directly towards front line service delivery for First Nations children and families.

4. This growth in spending comes from the commitments made by Canada through Budget 2016 and Budget 2018 as well as additional funds the Department provided to address pressures for agencies. In February 2018, Canada committed to spend $1.4 billion over 6 years, starting in 2017-2018, to address funding pressures facing First Nations Child and Family Services agencies, while also increasing prevention resources for communities so that children can be safe and families can stay together. These new funds are on top of investments made through Budget 2016 of $634.8 million over five years and ongoing for the First Nations Child and Family Services (FNCFS) Program.

5. As reported in previous affidavits/submissions:
   a) In 2016-2017, as part of Budget 2016 and a first step, Canada allocated an additional $71.1 million to begin responding to the orders to meet the immediate needs of First Nations children and families. Canada also provided an additional approximately $20 million to respond to funding pressures faced by agencies. Canada also began responding to the September 2016 Tribunal orders with respect to small agencies and additional funding in prevention.[2]
   b) In 2017-2018, Canada continued to roll out year 2 of Budget 2016 investments of $98.6 million (Canada's May 24, 2016 submission). Canada also made available Budget 2018 investments (which started in 2017-2018) of approximately $70.3 million to begin responding to retroactive reimbursements of actuals (Canada's letter to the Tribunal June 8, 2018 Annex C).
   c) In 2018-2019, Canada worked with partners to implement Budget 2018 investments. This includes Canada's commitment to ramp up funds to Year 5 of Budget 2016's funding and investments in remoteness. Canada also included a new dedicated stream of funding for Community Well-being and Jurisdiction Initiatives.

[1] This includes both Vote 1 and Vote 10 expenditures
[2] Cassandra Lang Affidavit January 25, 2017

6. As of April 5, 2019, Canada has paid over $178.7 million towards funding actual and retroactive claims since February 2018.

7. Canada has also worked with the Parties to the complaint to set up a system for funding actual needs as ordered by the Tribunal. Canada has committed to continue paying actual needs until an alternative funding system is in place (for further details on these points, see below under "Development and Implementation of an Alternative Funding System and "Funding of Actual Costs, including Retroactive Reimbursements to January 26, 2016").

8. The Consultation Committee on Child Welfare ("CCCW") remains the primary forum for resolving issues relating to implementation of Tribunal orders. With the valuable input provided by the CCCW, ISC has been able to successfully implement several aspects of the Tribunal orders. The National Advisory Committee on First Nations Child and Family Services Reform ("NAC") has also provided advice and support with respect to the implementation of the orders. These forums have also been effective for information-sharing on ISC activities and providing status updates.

9. I can offer the following information with respect to the Tribunal's Orders from the Ruling on First Nations child and family services.

*Analysis of Needs Assessments and Cost Analysis Research*

10. At paragraphs 408, 409, 418, 419, and 421 of the Ruling, the Tribunal ordered Canada to analyze the needs assessments completed by First Nations agencies and to do a cost analysis of those needs, including the real needs of small First Nations agencies. The Tribunal also ordered Canada to provide a reliable data collection, analysis, reporting methodology, and ethical guidelines. With respect to these Orders, Canada reports as follows:

    a) As outlined in Canada's letter to the Tribunal on April 9, 2019 and its affidavit on May 3, 2018, ISC provided approximately $2 million in funding, through the Assembly of First Nations (AFN), for the Institute of Fiscal Studies and Democracy (IFSD) to conduct an analysis of existing agency needs assessments, as well as a cost analysis of agency needs to support the development of an alternative funding model for First Nations child and family services agencies
    b) On July 10, 2018 and September 19, 2018, IFSD provided an update on its research to the NAC. The AFN confirmed that these presentations would serve as the reports on Phase I and Phase II of the IFSD research.
    c) On November 16, 2018, the AFN shared the IFSD Draft Interim Report. This report was discussed at the November 19, 2018 Consultation Committee on Child Welfare ("CCCW") meeting.
    d) On November 26, 2018, IFSD presented its draft report to the NAC.
    e) On December 17, 2018, IFSD's final report was received. Throughout the process, IFSD posted monthly online updates to stakeholders on the

progress of the project. These reports can be viewed at the following link: http://www.ifsd.ca/en/monthly-updates.

f) Both the CCCW partners and the IFSD report indicated that more work is required. The final IFSD report and the need for future research were discussed at the January 17, 2019, February 12, 2019 and April 2, 2019 meetings of the CCCW as well as the February 20-21, 2019 meeting of the NAC.

g) Canada received IFSD's new proposal for future research, including the development of a funding model, on March 6, 2019. The proposed budget for the research is approximately $1.7 million. This proposal is under review by Canada and discussions have been underway with the CCCW.

h) Email exchanges were made between Dr. Blackstock and me regarding Canada's position on the final report and its expectations for future research. This email exchange was shared with the CCCW for the April 2, 2019 meeting and is attached to this affidavit as **Exhibit 1.**

i) As outlined in the email exchanges and discussions at the CCCW, Canada acknowledges the comprehensive survey work undertaken by IFSD with First Nations Child and Family Services agencies across the country. The report is a good starting point for providing valuable information on agencies' needs and key gaps, and is a helpful piece of research to be considered in moving towards a new funding methodology. However, it did not include a full analysis of existing program funding as it only focuses on 2017-2018 financial information of agencies. For example, Budget 2018 investments and actuals are not included in the analysis nor are there any comparisons with other systems/models. The report also did not propose options for a new funding methodology or a funding approach. More work is needed to reflect the impacts of Budget 2018 investments and the payment of actuals for First Nation agencies, and to ensure a comprehensive approach to developing a new funding methodology.

j) Some additional considerations that Canada also communicated include:
    i. An open and transparent contracting process, given the scale of funding and that this is an unanticipated new phase in the research;
    ii. An interest for Indigenous researchers to be included in the work;
    iii. ISC's concerns on the proposed timeline for the additional research resulting in the establishment of a new funding methodology being delayed to 2020;
    iv. Consideration on how the three studies (Ontario Special Study, Nishnawbe Aski Nation Remoteness Quotient, and IFSD) will need to be integrated into the new funding model for the Program;
    v. ISC's full participation in the research to ensure an effective transition for implementation of the new funding model;
    vi. How the research needs to be inclusive of First Nations, including those not served by FNCFS agencies, for example, over 80 First Nations in British Columbia are served by the provincial government.

k) The report has also been shared with senior officials, including the Deputy Minister of ISC. On March 26, 2019, the Deputy Minister, the Associate Deputy Minister, the acting Director General of the Program, and I met with IFSD to discuss the report's recommendations and the new proposal.
l) These discussions are ongoing. Canada continues to work with the Parties through the CCCW as well as members of the NAC on the work related to reform and the long-term funding methodology for the FNCFS Program.

*Development and Implementation of an Alternative Funding System*

11. At paragraphs 410, 416, and 420 of the Ruling, the Tribunal ordered Canada to develop an alternative system for funding prevention/least disruptive measures, intake and investigation, legal fees, building repair services, the child service purchase amount and for small agencies. As outlined above, further work is needed on the development of an alternative funding system. The IFSD submitted a new proposal for future research, including for the development of a funding model, on March 6, 2019. Canada is currently reviewing the proposal and trying to identify a source of funds with partners, including the CCCW and the NAC, on a long-term funding methodology. Although the approach for future research is still to be determined, Canada is of the view that forums such as the CCCW and the NAC are an effective approach in reaching a resolution and moving these issues forward.

12. Canada remains committed to continuing to pay on actuals until an alternative funding system is in place.

13. As addressed in the May 24, 2018 affidavit of Paula Isaak, all agencies received their initial allocation of funding on or before April 1, 2018. Where the initial allocation was not able to meet their needs in any of the areas ordered by the Tribunal, the agency was able to submit claims to have their actual costs covered (As per the 1965 Agreement, core funding for Ontario FNCFS agencies is flowed through the Ontario government).

14. In addition to the initial agency allocation, ISC provided funding from Budget 2018 (ramp-up funding) at the end of June 2018, to bring funding up to Year 5 Budget 2016 amounts. The Budget 2018 funding also enables funding adjustments for small agencies in the area of prevention on an ongoing basis. An email detailing the transfer of funds to regions on June 29, 2018 is attached to this affidavit as **Exhibit 2**. The email also reminds regional offices that if funding is not sufficient to meet agencies' needs, the agencies can submit a claim for retroactive reimbursement or payment on actuals (In Ontario region, immediate relief/prevention funding flows directly to Ontario First Nations).

15. Canada has also worked with partners to set up and implement a system for funding actual needs of agencies as ordered by the Tribunal. Since February 1, 2018 Canada has paid over $178.7 million in both actual costs and retroactive reimbursements, as of April 5, 2019. More information follows below under

"Funding of Actual Costs, including Retroactive Reimbursements to January 26, 2016".

16. Tools to support agencies in making claims have been developed and shared with recipients. These include National Recipient Guides on Retroactive Payments; Guides on Operations and Prevention; and an Ontario Region Recipient Guide.

17. Throughout summer and fall 2018, Canada worked with the Parties through the CCCW as well as with the NAC to integrate comments and feedback into these documents. This was an effective approach in getting advice to improve the documents before sending updated versions to the agencies. Canada intends to continue consulting partners in developing any additional tools in the future. For example, on November 9, 2018, ISC sent the updated recipient guides based on feedback provided by the Parties. ISC also shared the track versions to demonstrate where the changes were made. The November 9, 2018 email and attachments of the recipient guides are attached (as well as other documents shared with the Parties) to my affidavit as **Exhibit 3.** On March 29, 2019 ISC also sent the guides for 2019-2020 to the CCCW for review and feedback. The email and a copy of the guides for 2019-20 are attached to my affidavit as **Exhibit 4.**

18. On June 7, 2018, Paula Isaak sent an email to the CCCW with a proposed process to guide the payment of actuals moving forward, and a related escalation process. A copy of Paula Isaak's June 7, 2018 email and attachments is attached to my affidavit as **Exhibit 5.**

19. By June 13, 2018, additional instructions were provided to regions with respect to the escalation protocol for requests relating to the reimbursement of retroactive and 2018-2019 actual claims costs, as well as any other situation requiring escalation. A copy of the email and attachments is attached to my affidavit as **Exhibit 6**. Based on recommendations from the Parties, the documents were revised and provided to regions on September 6, 2018. A copy of the email and attachments is attached to my affidavit as **Exhibit 7**.

20. Based on communication with the Parties in September 2018, ISC has also created an interim appeals process for dealing with FNCFS-related claims. The documents that are related to the interim appeals process are attached to my affidavit as **Exhibit 8**. Canada will continue to work with partners to update and adjust this process moving forward.

21. Canada also consulted with the Parties to update the Programs Terms and Conditions, which has allowed for greater flexibility and has expanded on eligibility for expenditures, including those related to capital/building repairs. Information about the updated Terms and Conditions was provided to agencies on January 21, 2019. A copy of the email and attachments is attached to my affidavit as **Exhibit 9**. The Terms and Conditions are also available online on ISC's

website.[3] Communications with partners and additional related exhibits on this can be found below under "Consultation with Partners".

22. Canada has also worked with partners to develop reporting tools to track results related to prevention programming. The system benefits from our collective work to develop indicators and outcomes which are now included in the FNCFS Program's Terms and Conditions, and provides for an effective measurement of the positive impact of prevention activities. The following activities took place:

a) For 2018-2019, ISC developed an interim reporting tool to begin collecting information related to outcomes in the current Terms and Conditions. Documents related to program outcomes and indicators was shared with the Parties on July 3, 2018 and is attached to my affidavit (see #38 g or **Exhibit 24** as part of the attachments); the interim reporting tool for prevention was shared with the Parties on September 27, 2018 and is attached to my affidavit (See #38 u or **Exhibit 29** as part of the attachments); the interim prevention reporting tool for fiscal year 2018-2019 was shared with regions on October 30, 2018 for distribution to agencies and is attached as **Exhibit 10.** This was the minimum required to report on the new Budget 2018 funding.

b) FNCFS agencies and service providers have the opportunity to use the actuals funding process to hire temporary or permanent staff to help to support data collection and reporting activities.

c) Canada worked with partners to develop a more permanent online reporting system for prevention. The system was launched on April 1, 2019 for 2019-2020 and the information was shared with the CCCW on March 19, 2019. The email and attachments sharing this information is attached to my affidavit as **Exhibit 11**.

d) The enhancements of the new Data Management System (DMS) now allow for agencies to enter their prevention data online in a secure manner; reduces in the reporting burden on agencies and regions; collects accurate and robust data; and provides an online platform where agencies can access and assume ownership of their data. User Acceptance Testing was completed in February 2019 with participation from FNCFS agencies and ISC staff. This work is ongoing and ISC continues to support regions and agencies in using the new system.

23. For further information on the implementation of the orders between February 1, 2018 and May 24, 2018, see Paula Isaak's May 24, 2018 affidavit at page 5 and Exhibit F.

[3] Website link for English: https://www.aadnc-aandc.gc.ca/eng/1386520802043/1386520921574 and French: https://www.aadnc-aandc.gc.ca/fra/1386520802043/1386520921574

*Funding of Actual Costs, including Retroactive Reimbursements to January 26, 2016*

24. At paragraphs 411, 417, and 421 of the Ruling, the Tribunal ordered Canada to provide funding to agencies on actual costs for prevention/least disruptive measures, building repairs, intake and investigation, legal fees, the child service purchase amount and for small agencies, retroactive to January 26, 2016 by April 2, 2018.

25. On July 24, 2018, Canada sent correspondence to all agencies encouraging them to submit their claims for retroactive reimbursement and for payment on actuals in the areas of expenditures in prevention, intake and investigation, legal fees, building repairs, child service purchase, as well as small agency expenses, at their actual costs, as ordered by the Tribunal. The correspondence notes that should they have pressures not covered by their initial allocation, ramp-up funding, or actuals that they should contact their ISC regional office. The email was developed based on input from the Parties. The July 24, 2018 email is attached to my affidavit as **Exhibit 12.**

26. As of April 5, 2019, one hundred and ninety two (192) requests for retroactive reimbursement have been received. $106,128,730.59 has been paid and $50,569,334.60 is being processed (within 15 day timelines). Two hundred and thirty five (235) requests for payment of actual 2018-19 costs have been received. $72,601,171.77 has been paid and $48,645,390.43 is being processed. The claims being processed include over 50 new claims which were received near the end of the fiscal year for 2018-2019. Thirty seven (37) requests for payment of actual 2019-20 costs have been received and are being processed for payment in the 2019-2020 fiscal year. The information is provided as part of a weekly report to the parties (see #38e or **Exhibit 23** as part of the attachments).

27. As of April 5, 2019, seven claims have been denied: two for retroactive costs, four for 2018-19 costs, and one which was claimed in advance for proposed 2019-20 costs. These recipients have been notified of their right to appeal, and have been informed of the process for doing so. One request for appeal was made for $1,944,810 and a response (denial) was provided on March 15, 2019.

28. As previously addressed in Paula Isaak's affidavit of May 24, 2018, Canada agreed to extend the Tribunal's ordered deadline of April 2, 2018 by nearly one year to March 31, 2019 for payment on actual costs and retroactive reimbursements.

29. To continue to support this flexible approach for agencies and communities submitting claims, Canada has further extended its dates for submission of retroactive and actual claims costs. Correspondence was sent to agencies on March 29, 2019 to communicate the change. A sample of this correspondence (also shared with the CCCW) is attached as **Exhibit 13**. Retroactive claims for actual costs for Prevention and Operations and Band Representative Services for the period of January 26, 2016 to March 31, 2018 will now be accepted until

**December 31, 2019**. The deadline for current year actual costs claims (fiscal year 2018-2019) for Prevention and Operations and Band Representative Services is now **September 30, 2019**.

*Assessing Agency Deficits*

30. At paragraph 429 of the Ruling, the Tribunal ordered Canada to identify which First Nation agencies, including the NAN agencies, referred to in the Ruling have child welfare or health services related deficits and to assess those deficits.

31. For a detailed overview of actions taken to implement this order between February 1, 2018 and May 24, 2018, see page 9 of Paula Isaak's May 24, 2018 affidavit.

32. On May 3, 2018, Canada submitted a report to the Tribunal, including 2016-2017 agency deficit analysis and Stage 1 agency cost analysis report from IFSD.

33. As reiterated in Paula Isaak's May 24, 2018 affidavit, emails were sent to agencies in April and May 2018 inviting them to submit retroactive claims for deficits. Canada has been working with First Nations agencies to address any deficits and develop a plan for any surpluses.

34. On December 18, 2018, ISC HQ confirmed in writing with regional offices that agencies do not need to be in a deficit to claim costs on actuals. As outlined in the recipient guides, funding for prevention, legal services, child service purchase amounts, intake and investigation, building repairs, and all costs for small FNCFS agencies is based on the actual needs of the children and families served by FNCFS agency as reflected by expenditures in these categories. A copy of this email is attached to my affidavit as **Exhibit 14**.

35. Canada is also currently working on a deficits analysis for 2017-2018 fiscal year. Once the analysis is complete it will be shared with the Parties.

*Communication with Agencies*

36. In paragraph 430 of the Ruling, the Tribunal ordered Canada to communicate to FNCFS Agencies any immediate relief ordered by the Tribunal. Regarding the implementation of communications with FNCFS agencies on matters pertaining to this Order, Canada reports the following communications between ISC Headquarters and recipients:

    a) For a detailed overview of actions taken to implement this order between February 1, 2018 and May 24, 2018, see Paula Isaak's May 24, 2018 affidavit from pages 6-8, including Exhibits M, N, and O.
    b) Tools to support agencies in making claims have been developed and shared with recipients including National Recipient Guides on Retroactive

Payments and Payment of Actuals and Ontario Guides as outlined above. ISC headquarters and regional offices remain in ongoing communication with agencies to support them in submitting claims for reimbursement.

c) Following a review of FNCFS agencies, letters were sent to three agencies on July 5, 2018 confirming their classification as "small agencies," and advising of their resulting eligibility for retroactive and actual claims in all areas. Please note that these three agencies had previously been classified as large agencies at the time of the February 1, 2018 departmental mail out regarding the 2018 CHRT 4 ruling. A copy of these letters is attached to my affidavit as **Exhibit 15**.

d) On July 18, 2018, an email was sent to seven agencies serving a child population of 800-1000, informing the agencies that due to the updated program definition, they had been newly classified as "small agencies" and were therefore eligible to make claims for actual costs in all areas. A copy of the email is attached to my affidavit as **Exhibit 16.**

e) On July 24, 2018, an email developed with input from the Parties was sent to all FNCFS agencies encouraging them to submit claims and noting that if they had pressures not covered by their initial allocation, ramp-up, or actual costs, that they should contact their ISC regional office. A copy of this email is attached to my affidavit as **Exhibit 17.**

f) Also on July 24, 2018, letters were sent to three agencies who were in the process of receiving delegation from the province of Ontario at the time of the February 1, 2018, orders ("pre-designated") in Ontario indicating their eligibility for reimbursement of retroactive costs moving forward. On this date, letters were also sent to two agencies that were pre-designated during the retroactive period confirming their eligibility to make retroactive claims. A copy of these letters and attachments is attached to my affidavit as **Exhibit 18.**

g) On October 16, 2018, emails were sent to all small FNCFS agencies verifying that all salaries are eligible for actual funding to a level comparable to the provincial wages and benefits, both retroactively back to January 26, 2016, and going forward. A copy of this email is attached to my affidavit as **Exhibit 19.**

h) On October 18, 2018, emails were sent to all FNCFS agencies on the Children's Special Allowance Act (CSA) informing them that ISC does not include the CSA in calculations of funding under the stacking limits policy, and asking them to report CSA separately from other revenue sources in their financial statements. As an example, a copy of the email that was sent to Alberta region agencies is attached to my affidavit as **Exhibit 20.**

i) On November 9, 2018, updated recipient guides were sent to the regions and agencies. These include National Recipient Guides on Retroactive Payments; National Recipient Guide on the Payment of Actuals; Guides on Operations and Prevention; and multiple Ontario Region Recipient Guides. A copy of the email and updated recipient guides is attached to my affidavit as **Exhibit 3**.

j) On January 21, 2019, an email was sent to all FNCFS agencies noting the updated First Nations Child and Family Services Terms and Conditions, now in effect. A copy of the Terms and Conditions are attached to my affidavit as **Exhibit 9**.
k) On March 26, 2019, an email was sent to recipients with a request to share their information regarding claims with the Consultation Committee on Child Welfare and is attached to my affidavit as **Exhibit 21**.
l) On March 29, 2019, an email was sent to recipients with new deadlines for retroactive and 2018-2019 claims. A sample of this email is attached to my affidavit as **Exhibit 13**.

37. ISC Regions also have substantial and ongoing contact with recipients regarding their claims. As well, ISC Regions are engaged in ongoing consultations with agencies regarding the implementation of prevention reporting tools.

*Consultation with Partners*

38. Paragraph 431 of the Ruling ordered Canada to enter into a consultation protocol with the Parties. Regarding the implementation of a consultation protocol, Canada reports as follows:

a) For a detailed overview of actions taken to implement this order between February 1, 2018 and May 24, 2018, see Paula Isaak's May 24, 2018 affidavit at pages 11-12, including Exhibits X, Y, Z, AA, BB, and CC.
b) Terms of Reference for the Consultation Committee Child Welfare (CCCW) have been developed. Agreement was reached on outstanding issues the week of July 23, 2018 and the Terms of Reference were approved at the August 2, 2018 CCCW meeting.
c) To date, CCCW meetings have been held on the following dates:
    i. May 10, 2018;
    ii. June 22, 2018;
    iii. July 9, 2018;
    iv. July 20, 2018 (teleconference);
    v. August 2, 2018;
    vi. September 5, 2018;
    vii. October 23, 2018;
    viii. November 19, 2018;
    ix. December 11, 2018;
    x. January 17, 2019;
    xi. February 12, 2019; and
    xii. April 2, 2019.
d) Further to copies of minutes of previous meetings already submitted to the Tribunal, minutes for the January 17, 2019 (final copy) and February 12, 2019 (draft copy) CCCW meetings are attached to my affidavit as **Exhibit 22**.
e) As part of ongoing transparency and information-sharing, ISC regularly provides activity and data reporting to the Parties of the Tribunal process

to demonstrate ongoing implementation of the Tribunal orders as well as a status update on the reimbursement of actual expenditures to FNCFS service providers. ISC is sending weekly updates on CHRT implementation progress, including claims for reimbursement, to the CCCW. The most recent update of April 5, 2019 is attached as **Exhibit 23**.

f) On June 7, 2018, Paula Isaak sent an email to the CCCW with a proposed process to guide the payment of actuals moving forward, and a related escalation process. A copy of this email and attachments is attached to my affidavit as **Exhibit 5**.

g) On July 3, 2018, Margaret Buist sent an email on behalf of Paula Isaak to the Parties with the updated, revised FNCFS Terms and Conditions and other related attachments (e.g. program outcomes and indicators). Feedback from CCCW members requested by July 18, 2018. A copy of this email and attachments is attached to my affidavit as **Exhibit 24.**

h) On July 13, 2018, an email was sent on behalf of Paula Isaak to CCCW requesting feedback on draft text to be sent to agencies regarding funding issues that may exist after actuals and ramp-up allocations. A copy of the July 13, 2018 email is attached as **Exhibit 25**.

i) Between July 17-20, 2018, the Caring Society, the AFN, COO, and the Department exchanged emails regarding the FNCFS Terms and Conditions.

j) On July 20, 2018, Paula Isaak exchanged emails with the CCCW regarding the timelines for reporting on the revised outcomes and indicators for the FNCFS Program.

k) On July 24, 2018, Paula Isaak provided responses to additional questions from the Caring Society and COO on the Terms and Conditions and provided an updated outcomes and indicators document for the FNCFS Program. A copy of this email and attachments is attached to my affidavit as **Exhibit 26**.

l) Following up from discussions at the CCCW, letters were sent to pre-designated agencies in Ontario in accordance with paragraph 430 of the Ruling on July 24, 2018.

m) On July 25, 2018, Paula Isaak sent the draft recipient guide for actual costs to the CCCW. The message also included a response to comments from the Caring Society on the escalation protocol and the proposed process for paying actuals going forward; comments were requested by August 10, 2018.

n) On July 27, 2018, Paula Isaak sent an email to partners on compensation and timelines for determining data on number of children in care.

o) On August 2, 2018, a document about FNCFS Capital was shared at the CCCW.

p) On August 9, 2018, Margaret Buist sent an email to partners with follow-up to the August 2, 2018 CCCW meeting, including templates of letters sent to pre- designated agencies in Ontario.

q) On August 17, 2018, Paula Isaak sent an email to partners with: an overview of the escalation protocol; a revised National Recipient Guide on

the payment of actuals (incorporating partner comments); and responses to questions and comments from the Caring Society, as well as from COO on the payment of actuals. A copy of this email and attachments is attached to my affidavit as **Exhibit 27.**

r) On August 23, 2018, Paula Isaak sent an email to partners which included: the revised Ontario 2018-19 Draft Recipient Guide for Band Representative Services; the Ontario Guide for Prevention/Operations; and a draft letter to agencies asking them to separate out the Children's Special Allowance in their revenues, if possible. Comments were requested by August 31, 2018.

s) On August 30, 2018, Paula Isaak sent an email to partners including the following information: a CWJI guidelines document; a document outlining the status of CWJI consultations; and updated Terms and Conditions (including an overview of Treasury Board Secretariat comments). Comments on the CWJI documents requested by September 7, 2018.

t) On September 11, 2018, Paula Isaak emailed the partners the following documents:

   i. Two agency funding agreements (including the CHRT Notice of Acceptance of Requests (NAR) and the CHRT Text Deviation);
   ii. an interim appeals process flow chart;
   iii. an interim appeals process checklist;
   iv. a draft letter to small agencies on salary adjustments; and
   v. a chart to track documents shared and input received.

   A copy of the email and attachments are attached to my affidavit as **Exhibit 28.**

u) On September 27, 2018, Paula Isaak sent an email to the partners attaching the following documents (including revisions):

   i. a letter to agencies on the Children's Special Allowance;
   ii. a letter to small agencies regarding compensation for former employees;
   iii. a sample denial letter and additional information on the interim appeals process;
   iv. the interim prevention reporting tool; and
   v. the estimated number of children in care for the FNCFS program.

   A copy of this email and attachments are attached to my affidavit as **Exhibit 29**.

v) On October 5, 2018, I sent an email to partners informing them that Paula Isaak had been appointed President of the Canadian Northern Economic Development Agency, and that I would be assuming responsibility for the entire children and family services file, moving forward.

w) On November 6, 2018, I sent an email to partners as follow-up to the October 23, 2018 CCCW meeting confirming commitments made at the meeting. This email also introduced Odette Johnston as acting Director General for the Children and Families Branch of ISC. This email is attached to my affidavit as **Exhibit 30**.

x) On November 6, 2018, I sent an email to the Caring Society, responding to

questions on the weekly summary of agency claims.

y) On November 9, 2018, I sent the Parties an information package including revised recipient guides, CWJI guides, and a tracker with documents that have been shared to date. This information package is attached to my affidavit as **Exhibit 3.**

z) On November 20, 2018, the Deputy Minister and Associate Deputy Minister sent an email to all ISC staff, reporting on the implementation of CHRT orders, and emphasizing responsibilities regarding document preservation and provision in response to litigation.

aa) On December 3, 2018, I sent an email to the Parties with updated agreements and a response to Caring Society comments. A copy of the email and attachments is attached as **Exhibit 31.**

bb) On January 18, 2019, I sent an email to the Parties with the new FNCFS Program Terms and Conditions, including a response to outstanding comments/concerns received from the CCCW. A copy of the email and attachments is attached as **Exhibit 32.**

cc) On January 21, 2019, I re-sent email to the Parties to respond to questions on legislation that were asked by the CCCW on November 19, 2018.

dd) On March 19, 2019, I sent an email to the Parties regarding the new Data Management System for FNCFS agencies for reporting on prevention. A copy of this email and attachments is attached to my affidavit as **Exhibit 11.**

ee) On March 29, 2019 for me sent an email to the Parties on the extension of deadlines past March 31, 2019 for retroactive and actual claims (extension are now December 31, 2019 and September 30, 2019 respectively). A copy of this email is attached as **Exhibit 13**.

*Small Agencies*

39. Canada has complied with the Tribunal's order to reimburse small agencies for their actual costs. Since the February 2018 order, Canada has been funding small agencies' actual costs and has retroactively reimbursed those agencies for their actual costs back to January 26, 2016.

40. Since February 2018, Canada has paid over $35 million in actual costs and retroactive reimbursements for small agencies, including approximately $24 million for retroactive payments and approximately $11 million for actual payments.

41. Regions have supported agencies in their planning for actual needs. For example, in British Columbia region, ISC worked with all 20 small agencies to undertake a needs-based planning process to develop plans and implement the proposed activities in the communities they serve. Agency staff participated in workshops regarding legal, wage parity, prevention, renovations, and engagement exercises with their communities. Tools were developed in the region for the agencies to streamline the process of bringing information to their communities. ISC also

travelled to communities, as requested by the agency, to work with them and support the development of their prevention plans. Some examples of new and expanded programming that will be funded through the actuals process are: staff training (prevention, Indigenous teachings, crisis intervention, suicide prevention); cultural workers and elder supports; increased community liaison and community wellness workers; family preservation programming and counselling; supports for youth aging out of care; cultural permanency planning programs; foster parent cultural training programs; programs for children who witness violence; Indigenous trauma training programs; and increased staff, to ensure manageable caseloads and staff in remote communities.

42. As reiterated in Paula Isaak's May 24, 2018 affidavit, Canada communicated to small agencies clarifying that their deficits are covered as part of retroactive payments. Emails were also sent to all agencies, including small agencies, encouraging them to submit their claims and requesting them to contact the region should they feel they have unmet needs.

43. Subsequent to the February 1, 2018 orders to fund actual costs for small agencies, the definition of small agencies was revised to include those with a child population of less than 1000, thereby increasing the number of agencies eligible to claim actual costs in all areas.

44. Following a review of FNCFS agencies letters were sent to select agencies confirming their classification as "small agencies" and advising them on their eligibility for retroactive and actual claims in all areas. See above, "Communications with Agencies" under d) and e).

45. Based on discussions with the CCCW, Canada agreed to retroactively reimburse salary increases and benefits for small agency staff back to January 26, 2016 to bring them in line with provincial counterparts. On October 16, 2018, emails were sent to all small FNCFS agencies verifying that all salaries are eligible for actual funding to a level comparable to the provincial wages and benefits, both retroactively back to January 26, 2016, and going forward.

46. Canada cannot reimburse agencies for costs that have not been actually incurred. Funding for the FNCFS Program falls under the Contribution Program entitled "Contributions to provide women, children and families with Protection and Prevention Services". The Directive on Transfer Payments (which is issued under subsection 7(1) of the *Financial Administration Act*), states that "the total amount of contribution funding paid to a recipient under a funding agreement does not exceed the eligible expenditures actually incurred by the recipient in completing the recipient's initiative or project, or such portion of these expenditures as was to be funded under the agreement."[4]

[4] Directive on Transfer Payments https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14208&section=html

47. Canada's interpretation is consistent with the statutory provisions of the *Financial Administration Act*, which is the core legal framework that sets out the formal rules for the administration and management of the government.

*Building Repairs and Capital Needs*

48. Canada has complied with the Tribunal's order on building repairs. Since the February 2018 order, Canada has been funding actual costs of buildings repairs and has retroactively reimbursed agencies back to January 26, 2016.

49. Since February 2018, Canada has paid over $15.4 million in actual costs and retroactive reimbursements for building repairs, although there may be other capital-related costs included in prevention or small agency claims for which details are not included in the claims forms.

50. In consultation with the Parties, Canada has also updated its Terms and Conditions to allow for greater flexibility and expand on eligibility for expenditures, including related to capital/building repairs. A copy of the Terms in Conditions is attached to this affidavit as **Exhibit 9**.

*Remoteness Quotient Research Update*

51. As noted at paragraphs 343-346 of the Ruling, the Tribunal has received updates concerning the development and implementation of a remoteness quotient ("RQ") for three FNCFS Agencies that serve Nishnawbe Aski Nation ("NAN") communities, including a process for obtaining expert advice. Regarding the status of this endeavour, Canada reports as follows:

    a) For a detailed overview of actions taken to implement these orders between February 1, 2018 and May 24, 2018, see pages 9 and 10 of Paula Isaak's May 24, 2018 affidavit, including Exhibit S.
    b) On August 22, 2018, the Interim Remoteness Quotient Report was shared with the Assembly of First Nations for review by the Consultation Committee on Child Welfare and filed with the Tribunal by Falconers LLP on behalf of NAN and Canada.
    c) On June 19, 2018, Margaret Buist sent an email to NAN requesting further information on the methodology and approach being used for calculating the remoteness quotient.
    d) On June 22, 2018, the Revised Interim Report was received from the NAN consultant.
    e) On July 4, 2018, Margaret Buist sent an email to NAN with comments and questions to address the final report on the child welfare remoteness quotient.
    f) On July 25, 2018, NAN provided the first draft of the Final Report for Phase II of the Remoteness Quotient project to ISC.

g) On September 5, 2018, NAN and Canada provided a further update to the Tribunal, indicating that a final draft has been submitted and is being reviewed with the researchers.
h) On September 27, 2018, NAN and Canada provided an update to the Tribunal, indicating that a revised draft of the Final Report for Phase II of the Remoteness Quotient study was received from the researchers and is being reviewed.
i) On November 26, 2018, NAN and Canada provided an update to the Tribunal, indicating that a revised version of Phase II of the Remoteness Quotient Final Report was received from the researchers and is being reviewed.
j) On January 11, 2019, NAN and Canada provided an update to the Tribunal, indicating that some areas of the report require additional analysis and that a third-party reviewer was retained to support this work. This update is attached to my affidavit as **Exhibit 33**.
k) On January 31, 2019, NAN and Canada provided an update to the Tribunal, indicating that work is progressing slower than anticipated and that NAN and Canada were hoping to finalize the report by early March 2019.
l) On February 28, 2019, NAN and Canada provided an update to the Tribunal, indicating that the third party reviewer has completed their work, and that the Tribunal can expect a further update by March 29, 2019
m) On March 29, 2019, NAN filed the Final Remoteness Quotient Report with the Tribunal.

*Ontario Special Study*

52. Since October 2017 the Technical Table Child and Family Well-Being in Ontario has been in agreement to move forward on a special study of issues related to First Nations on-reserve child welfare services in Ontario. Regarding the current progress of the Ontario Special Study, Canada reports as follows:

a) For a detailed overview of actions taken to implement paragraphs 365-366 of the Ruling between February 1, 2018 and May 24, 2018, see Paula Isaak's May 24, 2018 affidavit at page 10 and Exhibit T.
b) On July 20, 2018, Canada and COO provided a progress report to the Tribunal on the Ontario Special Study.
c) On September 28, 2018, Canada and COO submitted an update to the Tribunal: the Ontario Technical Table has reviewed the draft submitted by Meyers Norris Penny, and does not consider the report to be complete at this time. COO and Canada continue to discuss the study and will provide a further update to the Tribunal in January 2019.
d) On January 2, 2019, Canada and COO submitted the scheduled update to the Tribunal on the Ontario Special Study. COO has retained a consultant to work with the Ontario Technical Table to address gaps in the existing report. The study is not considered to be complete at this time.

e) On April 1, 2019, Canada reported to the Tribunal on the status of the Ontario Special Study, and indicated that COO and ISC continue to work together and will report back to the panel by May 13, 2019.

*Long term reform – Enabling First Nations to exercise jurisdiction over child and family services*

53. Canada is also taking significant steps towards long-term reform in Indigenous child welfare. On February 28, 2019, Bill C-92, an Act respecting First Nations, Inuit and Métis children, youth and families, was introduced in Parliament. A copy of the announcements is attached to my affidavit as **Exhibit 34** and **Exhibit 35**. The Bill is currently making its way through the Parliamentary process and seeks to:
    a) affirm the jurisdiction of Indigenous peoples in relation to child and family services; and
    b) set out principles (best interests of the child, cultural continuity, and substantive equality) applicable, on a national level, to the provision of child and family services in relation to Indigenous children.

54. The active engagement and commitment of Indigenous partners at all levels was central to the co-development of this proposed legislation. This engagement included 65 engagement sessions with nearly 2000 participants, including many CCCW and NAC members.

55. In the fall of 2018, engagement also occurred through a Reference Group with representation from the Assembly of First Nations, Inuit Tapiriit Kanatami, the Métis National Council, and the Government of Canada. The Reference Group recommended the development of high-level federal legislation that would both affirm the inherent right of Indigenous peoples and also include broad principles to guide the delivery of Indigenous child and family services.

56. In-person engagement sessions were also conducted with Indigenous partners, provincial and territorial representatives on the proposed content of the Bill in January 2019. This included sessions with the CCCW and the NAC.

57. This Bill sets the stage for comprehensive reform and could be a powerful tool to support community-based prevention and the well-being of Indigenous children and families. The introduction of Bill C-92 represents an historic opportunity to break from the past and focus on the safety and well-being of children and youth.

58. To ensure a smooth transition and implementation of the Bill should it receive Royal Assent, ISC is exploring the co-development of distinction-based transition governance structures, with representation from Indigenous partners and Provinces and Territories. These governance structures, for example, could identify tools and processes to help increase the capacity of communities as they make progress toward assuming responsibility over child and family services. Such governance structures could also assess gaps and recommend mechanisms to

guide future funding methodologies.

59. Ultimately, the proposed legislation is a matter for Parliament. This work is consistent with paragraph 412 and 413 of the Tribunal's February 2018 ruling, which notes that in line with the spirit of UNDRIP, and reconciliation, the Panel's orders will remain in place until one of four things occur, the first of which is "Nation (Indigenous)-to-Nation (Canada) agreement respecting self-governance to provide its own child welfare services."

*Retention of Jurisdiction*

60. On October 30 and 31, 2018, Paula Isaak and Valerie Gideon were cross-examined before the Tribunal regarding their May 24, 2018 affidavits.

61. Following the cross-examinations on October 31, 2018, the Tribunal determined that Canada was no longer required to provide reporting affidavits.

62. Overall, Canada is in substantial compliance with all existing orders. A substantive amount of work has been completed to achieve compliance and significant resources have been devoted to satisfying the orders now, retroactively, and moving forward.

63. Canada is also moving forward on long-term reform initiatives such as the proposed legislation for enabling First Nations to exercise jurisdiction over child and family services. This is a critical element of the Government of Canada's six points of action to address the overrepresentation of Indigenous children and youth in care in Canada. More information on the progress on the six points of action is available on ISC's website: https://www.sac-isc.gc.ca/eng/1541188016680/1541188055649

64. As was addressed to the Tribunal previously, Canada would like to move away from using the cumbersome litigation process involving affidavits and cross-examinations and rather continue the collaborative process to share information with partners. This approach is consistent with the Attorney General's Directive on Civil Litigation Involving Indigenous Peoples, in which the core objective is "to advance an approach to litigation that promotes resolution and settlement, and seeks opportunities to narrow or avoid potential litigation".[5] Canada has dramatically increased investments and has made significant efforts in changing the program both for the immediate and long term. Canada has demonstrated that it has established a system that is able to respond to the needs of First Nations children and families. The Government also remains committed to continue consulting with the Parties on the implementation and monitoring of these orders.

[5] https://www.justice.gc.ca/eng/csj-sjc/ijr-dja/dclip-dlcpa/litigation-litiges.html

65. The Tribunal's adjudication of this matter has had a transformative impact on the lives of Indigenous children in Canada.

66. I swear this affidavit in support of Canada's submissions for no other or improper purpose.

AFFIRMED before me at the City of Ottawa, Province of Ontario, on April 16, 2019.

A Commissioner for Taking Affidavits

**Joanne Wilkinson**