

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N :

**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 Aboriginal Affairs and Northern Development)**

Respondent

- and -

**CHIEFS OF ONTARIO and
AMNESTY INTERNATIONAL CANADA**

Interested Parties

AFFIDAVIT OF CINDY BLACKSTOCK

I, Dr Cindy Blackstock, of the City of Ottawa, in the Province of Ontario, make oath and say as follows:

1. I am the Executive Director of the First Nations Child and Family Caring Society of Canada ("Caring Society), as I was upon the filing of the within complaint, and as such I have knowledge of the matters to which I hereinafter depose.

2. I understand that the Department of Aboriginal Affairs and Northern Development has brought a motion to exclude the expert testimony of Professor

Frederic Wien and Professor John Loxley on the grounds they are not objective or impartial because they have an association with me. I believe the curriculum vitae of these two leading and distinguished academics should be sufficient evidence of their integrity and objectivity. However, I would like to provide some further assistance to the Tribunal on these issues.

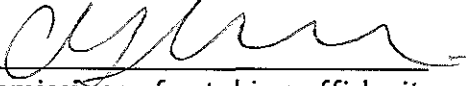
3. I acknowledge that I have been honored to work with Professor Wien and Professor Loxley in the past on a few research and academic studies and papers. However, the vast majority of their academic work was produced without my involvement. I myself have a PhD in Social Work from the University of Toronto and am an Associate Professor with the University of Alberta. I know Professor Wien and Professor Loxley from their academic work as I have similar research interests. They are widely recognized as the leading experts with knowledge and experience directly relevant to Aboriginal child welfare issues in Canada.

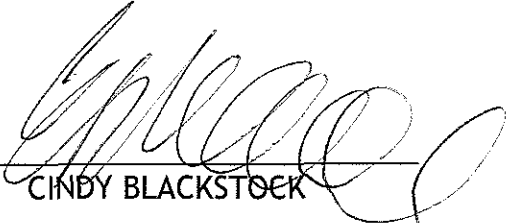
4. I also worked with Professor Wien and Professor Loxley as we were all part of the research team for the Wen:de reports. The Wen:de studies were commissioned by the Respondent in 2004. The National Advisory Committee (“NAC”) that guided and approved the Wen:de research was co-chaired by the Respondent and the Assembly of First Nations and had 22 members, including eight from the Respondent, one from Health Canada and another from Human Resources and Skills Development Canada. There was also a Project Management Team (“PMT”) that guided the research more closely, consisting of one representative of First Nations child and family service agencies, two representatives of the Respondent and two representatives of the Assembly of First Nations. In addition, there was an Operational Funding Formula Team which reported to the PMT and NAC. This team had 12 members, six of whom were from the Respondent. I attach as **Exhibit “A”** the Final Terms of Reference for the National Advisory Committee and the “Operational Funding Formula Design Team.”


5. I attended a meeting with officials from AANDC and other central agencies on or around May 24, 2006 to present the studies by the Wen:de research team, including

the work by Professor Loxley and Professor Wien. We asked if the Department or other government officials invited by the Respondent had any concerns with the research or its findings. We did not receive any negative feedback at the time of the meeting or at any point thereafter, and indeed we were informed that the *Wen:de* reports would provide guidance in addressing the flaws in the funding formula.

6. I make this affidavit in connection with the preliminary motion by the Respondent to strike the expert reports filed by the Canadian Human Rights Commission.

SWORN before me at the City of)
Ottawa, in the Province of Ontario,)
on this 20th day of September, 2012)
)
_____)
Commissioner for taking affidavits, etc.)


_____)
CINDY BLACKSTOCK

This is Exhibit A referred to in the
affidavit of Dr. Cindy Backstock
sworn before me, this 20th
day of September, 2012

A COMMISSIONER FOR TAKING AFFIDAVITS

FINAL TERMS OF REFERENCE
Joint AFN/INAC National Advisory Committee On the
Implementation of the
First Nations Child and Family Services Policy Review

Purpose:

The purpose of this document is to articulate the mandate, membership and operation of the National Advisory Committee on the Implementation of the First Nations Child and Family Services Policy Review.

Background:

The Assembly of First Nations and DIAND, in partnership with First Nations and First Nations Child Family Services Agencies jointly carried out a review of DIAND's national policies with respect to First Nation Child and Family Services (FNCFS) during the time period of March 1, 1999 – June 30, 2000. This review was undertaken consistent with Canada's commitment to work with First Nations in a spirit of partnership under the auspices of the *Agenda for Action* for First Nations. The intent of the Policy Review was to identify possible improvements to current policy regarding the development and operation of FNCFS agencies that provide necessary, culturally sensitive and statutory child and family services.

The Joint Review Process resulted in 17 recommendations for the Minister of DIAND on changes needed to the current DIAND policy governing the FNCFS program. A proposed Action Plan for the implementation of the recommendations also resulted and were part of the report to the Minister and AFN National Chief.

The implementation phase of the project will commence effective March 1, 2001. The National Implementation Advisory Committee will develop a work plan, identify activities to address each recommendation and will set clear timeframes to guide the completion of each task. The committee will act as an advisory body in assisting in the implementation of the seventeen recommendations.

A new policy to replace current Directive 20-1 (chapter 5) must be developed in a joint process that includes all stakeholders and ensures funding support for that process according to the developed action plan.

It is recognized that a national framework is needed that includes fundamental principles of supporting FNCFS agencies, that is sensitive to provincial/territorial variances, and has

mechanisms to ensure communication, accountability and dispute resolution. This will include evaluation of the roles and capacity of all parties.

The Objectives of the Original Study were to:

- *To identify and record areas of concern raised by First Nations and DIAND across Canada including, but not limited to, those areas of concern, with respect to required changes to DIAND's national policy.*
- *To prepare a Report that presented an analysis of the issues, outlined the responses of the parties to the review of issues and made agreed upon recommendations for changes to DIAND's national policies.*
- *Recommend an Action Plan, which identified concerns, a plan of action to address the concerns, as well as time frames for action.*

Guiding Principles of the NPR and the Implementation Process:

1. *That the best interests and wellbeing of First Nations children, families and communities will be the paramount consideration guiding the implementation process.*
2. *The objective of the FNCFS Agencies is to protect and defend the well being of children, in particular, the protection of children from abuse and neglect.*
3. *The involvement of community, parents, and extended family is a corner stone of effective and culturally sensitive, Child and Family Service delivery.*
4. *The well being of children is the primary responsibility and obligation of the parents, the extended family and the community.*
5. *First Nations have an interest in the well being of all of their band members, regardless of where they live.*
6. *FNCFS programs should be based on First Nation values, customs, traditions, culture and governance.*
7. *FNCFS programs should be responsive to community needs and realities.*
8. *The Agencies through its financial and program administration shall be accountable to members of the First Nation(s), First Nation's leadership, and, when appropriate, the provincial and federal governments.*

9. *FNCFS agencies should have access to effective First Nation models for design and delivery of Child and Family Services and mechanisms for sharing information on effective practices.*
10. *This implementation process will in no way reduce current funding levels or numbers of arrangements for First Nations Child and Family Services agencies.*
11. *That the implementation be conducted jointly by AFN, FN, CFS Directors, Health Canada and DIAND,*
12. *That the program funding be guided by the commitment of First Nations and the Government of Canada to ensure parity between First Nations child and family services and provincial/territorial child and family services.*

Implementation of the NPR Final Recommendations:

The Mandate:

DIAND will provide funding to enable the implementation of the NPR recommendations. Also to facilitate the involvement of the AFN, FNCFS Agency Director representatives and DIAND who will jointly agree on a work plan to carry out the implementation process along with the resources required to support activities as identified.

DIAND Headquarters and Regions will appoint technical representatives, who will participate in the implementation process. FNCFS agencies across Canada, and the AFN, will also appoint technical representatives to participate in the implementation process. All parties will make every effort to ensure that their representatives remain consistent throughout this process.

The AFN, Agency Directors and DIAND through membership on the National Implementation Advisory Committee will mutually agree upon a work plan and long term implementation strategy.

A Project Management Team will oversee and provide support to the committee with the development and implementation of the work plan as determined by the National Implementation Advisory Committee.

Time Frame

The FNCFS NPR implementation process will commence on March 1, 2001. The projected completion time for the NPR implementation activities shall be no later than March 31, 2002 for those identified as short term. The date of completion for those implementation activities identified as long term will be no later than March 31, 2005.

Role of the National Implementation Advisory Committee

Membership:

The National Advisory Committee on the Implementation of the FNCFS NPR will be composed of the following members: (2) national co-chairs, eight (8) representatives of DIAND and eight (8) FNCFS Agency Directors. The National Implementation Advisory Committee will also include one (1) Elder and (1) youth representative in attendance.

Responsibilities of the National Implementation Advisory Committee:

The Committee will be responsible for:

1. Developing and providing approval of a work plan for the work of the committee
2. Providing strategic direction and making recommendations to DIAND/AFN regarding implementation of the seventeen recommendations resulting from the First Nations Child and Family Services National Policy Review.
3. The Committee will be co-chaired by the AFN National FNCFS Coordinator and the DIAND FNCFS National Coordinator
4. The Committee will oversee the processes for decision making, and recording decisions, understandings and minutes of meetings
5. There will be an alternative dispute resolution process should an impasse result in the recommendations going forward to DIAND/AFN for the National Implementation Advisory Committee as the recommendations are instituted
6. The committee will identify the structure and the terms of reference of sub-groups if any are required.
7. The Committee will oversee the design of an information package about the NPR Implementation activities and its objectives and disseminate these to appropriate First Nations, DIAND and Provinces/Territories constituents and staff respectively;
8. The Committee will make recommendations regarding implementation activities and follow up as appropriate;
9. The Committee will oversee the design of and carry out consultation processes with First Nations Organizations, DIAND regions and headquarters groups, and Provincial / Territorial officials as required

10. The Committee will ensure there is sharing of information nationally with First Nations who may or may not have contributed to the study but may be impacted by the implementation of the recommendations of the study
11. The Committee will ensure Provincial Territorial Organizations (PTO's) who contributed to the political analysis of the study are kept abreast of the issues related to FNCFS implementation activities along with their relationship to the broader reform issues
12. The committee will facilitate, in a formal way, information sharing opportunities as they are required.
13. The Committee will establish the Guiding Principles and Terms of Reference for the provincial/regional tables and provide an advisory and support role to the tables while in the process of development.
14. If required consultants will be made available to assist the National Implementation Advisory Committee to carry out some of the implementation activities and/or consultation required as part of the implementation process. The process for identifying and engaging consultants shall be determined by the Project Management Team PMT upon recommendation(s) from the FNCFS National Coordinators representing AFN and DIAND.

Role of the Project Management Team

The Membership

The Project Management Team will be comprised of the AFN FNCFS Coordinator, INAC FNCFS Coordinator, AFN Director of Social Development, INAC Director of Social Services and Justice, and a FNCFS Director's representative.

The Responsibilities:

The responsibilities of the Project Management Team (PMT) will be:

1. Oversight and support of the National Advisory Committee with the development and implementation of the FNCFS recommendations work plan.
2. Overseeing and supporting the development and approval of the guiding principles and terms of reference for the regional tables as recommended by the NPR.
3. Overseeing and supporting the overall work of the committee as the work plan is implemented and by ensuring progress continues.

4. Ensuring that there is general First Nation and federal support for the initiative as implementation progresses.
5. Ensuring that communication is maintained between the higher level management regimes of AFN and DIAND to ensure continued support for the First Nations Child and Family Services National Policy Review.
6. Provide all other support and assistance to the Committee as the need arises.

**ADDENDUM TO THE FINAL TERMS OF REFERENCE FOR THE JOINT
AFN/INAC NATIONAL ADVISORY COMMITTEE (NAC) ON THE
IMPLEMENTATION OF THE FNCFS POLICY REVIEW**

This addendum outlines a change in the Final Terms of Reference for the Joint AFN/INAC National Advisory Committee.

With reference to #3 under the "Responsibilities of the National Implementation Advisory Committee", the NAC will be co-chaired by the Assembly of First Nations' Director of Social Development and Indian and Northern Affairs Canada's Director General of Social Policy and Programs Branch, effective September 29, 2003.

With reference to membership of the National Advisory Committee, membership is expanded to include one representative each from Human Resources Development Canada (Headquarters) and Health Canada (Headquarters).

Approved by the Project Management Team on September 29, 2003.

Approved by the Joint National Advisory Committee at the NAC meeting on October 27, 2003.

**TERMS OF REFERENCE
OPERATIONAL FUNDING FORMULA DESIGN TEAM**

**FIRST NATIONS CHILD AND FAMILY SERVICES
JOINT NATIONAL POLICY REVIEW**

Presented to the PMT on September 29, 2003

Ratified by the NAC on October 28, 2003

Purpose:

The purpose of this document is to articulate the mandate, membership and functions of the Operational Funding Formula Design Team (OFFDT), a sub-group of the First Nations Child and Family Services Joint National Advisory Committee.

Background:

The Assembly of First Nations (AFN) and the Department of Indian and Northern Affairs (DIAND), in partnership with First Nations and First Nations Child and Family Services Agencies jointly carried out a review of DIAND's national policies with respect to First Nations Child and Family Services (FNCFS) during the time period of March 1, 1999 to June 30, 2000. The intent of the Policy Review was to identify possible improvements to current policy regarding the development and operation of FNCFS agencies that provide necessary, culturally sensitive and statutory child and family services.

The Joint National Policy Review resulted in seventeen recommendations for the Minister of DIAND on changes needed to the current DIAND policy governing the FNCFS program.

The implementation phase of the project commenced in March of 2001. A joint National Advisory Committee was formed which acts as an advisory body to assist in the implementation of the seventeen recommendations.

A key finding of the NPR was that the current funding formula in Directive 20-1 is not flexible and is outdated. It was recommended that a new methodology for funding operations be investigated which considers factors such as work load/case analysis, national demographics and the impact on large and small agencies and economy of scale issues.

In September of 2002, the Joint National Advisory Committee recommended the formation of a small working group to identify methods to guide the implementation of flexible/block funding for child maintenance in the event that approval was given to establish this funding option. In addition, the Working Group was to identify and recommend alternative approaches to funding operations.

The sub-working group recommended to the NAC ~~that another working group, the~~ Operational Funding Formula Design Team (OFFDT), be created to further examine options regarding revisions to the operational formula.

Guiding Principles for the Operational Funding Formula Design Team (OFFDT):

1. The primary guiding principle in the work of the OFFDT is to promote the protection and wellbeing of children.
2. All FNCFS agencies should be treated fairly through the costing of all elements of the proposed formula in their particular context (region).
3. There should be parity between FNCFS agencies and the mainstream provincial agencies within their jurisdiction/region.
4. The proposed formula for funding operations must permit flexibility in organizational design and service delivery.
5. The proposed new formula must be responsive to different needs.
6. The proposed new formula should promote best practice in child welfare.
7. The implementation of the proposed new formula must be transparent and there should be accountability for elements, calculation and application of the formula.
8. The proposed new formula must be designed in a collaborative manner by First Nations and DIAND.

Mandate and Responsibilities of the OFFDT:

The primary mandate of the OFFDT is to examine various funding options for the operational formula. This includes identification of areas requiring further research and developing options for improvements, or alternatives, to the existing operational funding formula. This will be carried out through:

1. Clarification of assumptions/principles for the FNCFS Operations Formula. This would be based on the work already done by the NPR.
2. Identification and definition of each element required in the FNCFS Operations Formula. This will be done through examination of the existing formula, a literature review, and an examination of various other existing funding models.
3. Establish the values required for the FNCFS Operations Formula.

4. Clarification of interfaces with other federal government departments, other levels of government, organizations, etc.
5. Identify and recommend consultants to conduct research, if required. Work with the PMT to develop the contract proposals, as required.
6. To provide an advisory role and to work collaboratively with possible consultants where required.
7. The FNCFS regional tables will provide specific information to the OFFDT with regard to the design of options for funding operations.
8. The AFN Coordinator and the INAC Manager of FNCFS will ensure there is monthly communication between the OFFDT and regional tables.
9. Present options, with a recommended preferred option, for funding operations to the PMT and NAC.

The Project Management Team (PMT), on the recommendation of the OFFDT, will be the body responsible for putting in place any required contracts.

Timeframe:

The OFFDT will present an interim report at all NAC meetings held during the existence of the OFFDT.

It is anticipated that it will take 12 to 18 months to identify and complete the research, consult, design and test the proposed formula in all regions, and to have the preferred model ratified by the NAC. Once a proposed formula has been ratified by the NAC, INAC will respond to the recommendation.

Membership:

The OFFDT will be composed of the following members: five First Nation regional representatives; five INAC representatives, the AFN Coordinator and the DIAND Manager of FNCFS (or their delegates). Consultants and resource persons will participate on the OFFDT as required. The membership of the OFFDT may fluctuate depending upon the specific subject matter under discussion.