

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ODETTE JOHNSTON, SWORN:

CROSS-EXAMINATION BY MR. CHAMP:

1. Q. So, good morning, Ms Johnston, my name is Paul Champ, and I'm Counsel for the First Nations Child and Family Caring Society. And we're here today regarding a matter before the Canadian Human Rights Tribunal, File No. T-1340/7008, and the Complaint is brought by the Caring Society and the Assembly of First Nations against the Attorney General of Canada, more specifically the Department of Indian and Northern Affairs with respect to equitable or discriminatory funding of child prevention services on reserves across Canada. Intervenors in this complaint are the Chiefs of Ontario and Amnesty International Canada.

Ms Johnston, we're here today with respect to your Affidavit that was sworn on December the 20th, 2009.

Are you familiar with your Affidavit, Ms Johnston?

A. Yes, I am.

2. Q. And do you have a copy with you?

A. Yes, I do.

3. Q. And do you have a glass of water, I just want to make sure?

A. No, I don't.

MR. TARLTON: Perhaps again, just a very brief introduction. Jonathan Tarlton, on behalf of the

1 responding Attorney General of Canada. Just for the
2 purposes of the Record, I provided Ms Johnston with a
3 copy of her sworn Affidavit, Mr. Champ, before she took
4 the stand this morning.

5 BY MR. CHAMP:

6 4. Q. And just to confirm, the other Parties to
7 this proceeding, being the Assembly of First Nations, the
8 Canadian Human Rights Commission, the Chiefs of Ontario,
9 and Amnesty International Canada are not present for this
10 Cross-Examination.

11 So, Ms Johnston, I am going to refer you to your
12 Affidavit, and I'm going to ask you some questions about
13 that this morning?

14 A. Okay.

15 5. Q. I'll start off with, I see that you're the
16 director of the Social Programme Reform Directorate in
17 the Department of Indian Affairs and Northern
18 Development. How long have you had that position?

19 A. I've been the director for about two years
20 now.

21 6. Q. And how long have you been employed by the
22 Federal Government?

23 A. Over 27 years.

24 7. Q. And what positions have you had during your
25 career with the Federal Government?

1 A. Prior to being the director, I was manager,
2 First Nation Child Family Services. Prior to that I was
3 acting deputy director general for the Aboriginal Justice
4 Directorate of Justice Canada. And then senior policy
5 advisor prior to that with Justice Directorate. And I
6 was with Justice Canada for six years.

7 And prior to that I worked for Health Canada in a
8 number of different positions and in different
9 positions/different levels, but I was senior programme
10 manager, programme manager, acting director from time to
11 time, throughout 10 years at Health Canada. And I worked
12 specifically on First Nations and Inuit health
13 programmes.

14 8. Q. So just to summarize, if I can, so you worked
15 approximately 10 years for Health Canada, approximately
16 six years for Justice, and approximately 10 years for
17 Department of Indian Affairs?

18 A. No. Just over three years for Indian
19 Affairs.

20 9. Q. Okay. So 10 years for Health Canada, three
21 years for Indian Affairs, and then Justice for the
22 balance?

23 A. Six, for six years.

24 10. Q. And then where does the other ---

25 A. The other. I worked for the Department of

1 Finance for I think two years in human resources and then
2 National Defence for five years.

3 11. Q. So in short, you're the classic successful
4 Ottawa bureaucrat shifting between departments all the
5 time?

6 A. Actually, I've stayed longer than most, I
7 think.

8 12. Q. That's true, I think you're right. Okay. So
9 you've been in the Department of Indian Affairs for three
10 years, two years as the director of the Social Programme
11 Reform Directorate, and then one year, I gather then, as
12 manager of the First Nations Child and Welfare Services
13 Programme?

14 A. Yes, I was manager of Child and Family
15 Services Programme for the first year when I was with
16 INAC.

17 13. Q. So the topic or issue that we're going to be
18 talking about today is child welfare services on
19 reserves. That's something that you've had close
20 involvement with over the past three years, is that fair
21 to say?

22 A. Yes, I've managed and directed that programme
23 over three years.

24 14. Q. And by matter of coincidence only, I'm not
25 sure if you're aware, this is the third anniversary today

1 of the filing of the human rights complaint that we're
2 dealing with today.

3 Do you recall precisely when you joined the
4 department?

5 A. In the end of November, 2006.

6 15. Q. Okay. And may I ask you, Ms Johnston, what's
7 your educational background?

8 A. I have a bachelor of arts degree from the
9 University of Toronto.

10 16. Q. And do you have any particular experience in
11 child welfare services?

12 A. Not in direct child welfare services, no.

13 17. Q. And you've never run a child welfare agency
14 or anything like that?

15 A. No, I have not.

16 18. Q. And would you be able to explain a little bit
17 what your duties and responsibilities are now in your
18 present position as director of the Social Programme
19 Directorate?

20 A. I'm responsible for directing the budgets and
21 programmes of First Nation Child Family Services, early
22 childhood development and family violence prevention
23 programme.

24 19. Q. And with respect to the First Nations Child
25 Welfare Agencies, what exactly is your role in terms of

1 directing the budgets?

2 A. I don't direct their budgets. What we do is
3 determine at the national level the funding allocations
4 that go out to our regional offices to disburse to First
5 Nations recipients.

6 20. Q. And I understand some of the different
7 funding formulas and programmes, and we'll talk about
8 those in a bit more detail later on. But just so I
9 understand, maybe, the relationship between INAC, head
10 office, and the regional offices, what is your role in
11 terms of determining allocation, like what is your role
12 in headquarters versus or relative to the role of the
13 regional offices with respect to the review or approval
14 of funding for First Nations agencies? Like are the
15 individual agency reviews conducted in Ottawa or in the
16 regional offices?

17 A. Oh, they're conducted in the regional
18 offices.

19 21. Q. Okay. And when the regional offices conduct
20 those reviews what guidance or assistance or direction do
21 they get from headquarters?

22 A. We have in the programme manual established a
23 programme of compliance review directive, and the regions
24 follow the compliance review directive that is there.

25 22. Q. The compliance review directive?

1 A. Yes.

2 23. Q. So there's the First Nations national
3 programme manual, and I think the most recent one is May
4 '05, roughly. Does that sound right?

5 A. Yes, it's in the process of being updated.

6 24. Q. Okay. And the compliance review directive,
7 what's that?

8 A. That just provides general guidelines for the
9 regions in how they're doing their review of finances in
10 relation to the particular agency or recipient.

11 25. Q. And with respect to the review of agencies
12 and their funding, is it strictly a review of whether the
13 money is being spent as promised by the First Nation
14 agencies?

15 A. The funding that flows out, flows according
16 to the transfer payment policy of Treasury Board, and the
17 agencies have to identify what they're going to be doing
18 with that money. We do have terms and conditions for our
19 programme, and we have to be sure that we're not going
20 outside of what is in our terms and conditions, and that
21 the money is being spent on what it was intended for.

22 26. Q. And those terms and conditions are contained
23 in what document, would that primarily be the programme
24 manual?

25 A. Not the latest one, no.

1 27. Q. In the present one that's operating, that
2 would have the terms and conditions in it?

3 A. The present one, no, it does not.

4 28. Q. Where are the terms and conditions found?

5 A. They are in our Treasury Board submission.

6 29. Q. Your Treasury Board?

7 A. Submission.

8 30. Q. And what is that?

9 A. In order to obtain funding authority, we have
10 to do a submission to Treasury Board to identify the
11 terms and conditions that apply to a particular
12 programme.

13 31. Q. And how are those terms and conditions
14 conveyed or communicated to the First Nations agencies?

15 A. At the moment it's verbal. We will, however,
16 in terms of the reporting requirements, identify
17 reporting requirements which go out in the national
18 reporting guide and those are referenced in the funding
19 agreements.

20 32. Q. So you say these terms and conditions are
21 communicated verbally. What are those terms and
22 conditions?

23 A. They are quite detailed.

24 33. Q. What are the types, I appreciate you won't
25 recall every one specifically?

1 A. Well, it identifies that we have the
2 different processes for funding of First Nations Child
3 and Family Services, including funding under directive
4 20-1, under the Enhanced Prevention Focussed Approach,
5 refers to the Ontario 65 welfare agreement, the Alberta
6 agreement. It identifies maximum payable under a
7 particular agreement.

8 34. Q. The maximum payable under a particular
9 arrangement?

10 A. Yes.

11 35. Q. And how is that determined, in accordance
12 with the funding formulas, or just in accordance with the
13 funds that are available?

14 A. It's probably a combination of both. You
15 take a look at what it is that your maximum amounts are,
16 or maximum amount of funding that you do have. But also
17 in discussions with our regions, when we renew our terms
18 and conditions, we try to update them based on what
19 things have come up over the five years. They are
20 usually for five years, these terms and conditions. And
21 there may be adjustments made at that point.

22 36. Q. Afterwards. If you look back and say well,
23 they had higher needs, so in future we'll change the
24 funds available?

25 A. It's not the funds available, it's the

1 maximum amounts payable under a particular agreement.

2 So, for example, if you were to, and I'm just making up a
3 fictitious agency here.

4 37. Q. That's fine?

5 A. But if you were to have an agency and you
6 determined that the maximum amounts that you have paid
7 out under a particular agreement were \$3 million, and you
8 know that you're increasing resources, you're going to
9 possibly up that requirement.

10 38. Q. Okay. So Ms Johnston, I'm going to start
11 asking some questions more specifically tied to your
12 Affidavit. I'll just start first just with paragraph one
13 of your Affidavit.

14 You indicate that the information you provide in
15 the Affidavit

16 "relates to personal knowledge of
17 the matters, except where such matters
18 are based on information and belief, in
19 which case I verily believe them to be
20 true".

21 As we go through I may, at times, ask you the
22 source of your information and belief, and where you got
23 your information.

24 So turning to paragraph three, the first sentence
25 says

1 "Child welfare is an area of Provincial
2 jurisdiction".

3 What is your source of information and belief for that
4 statement?

5 MR. TARLTON: Mr. Champ, I'm not quite certain,
6 given some of the comments and objections that were made
7 on Tuesday last, by both yourself and Mr. Poulin, why
8 we're engaging in discussion of the source of information
9 and belief, but it's a statement in the Affidavit of a
10 matter of fact pertaining to a legal issue, and, as I
11 recall, both you and Mr. Poulin, when we attempted to ask
12 questions regarding that, took the position it was a
13 legal issue and something that would need to be dealt
14 with further. So I'm just curious why your position has
15 changed today.

16 MR. CHAMP: Actually, I think my position is
17 consistent, Mr. Tarlton, because on the previous day when
18 you were cross-examining, when your colleague, Mr.
19 Taylor, was cross-examining Ms Blackstock, Mr. Taylor was
20 putting to Ms Blackstock some questions that we thought
21 were of a legal nature. And we made an objection.

22 Here Ms Johnston has in her Affidavit provided
23 statements of law, and, in fact, we do have some
24 objection to that, so I'm going to ask her some questions
25 on it, or alternatively, if you would like, we're more

1 than prepared to not ask her questions, provided we have
2 some of those parts struck.

3 So that statement "Child welfare is an area of
4 Provincial jurisdiction", I do think that's an issue of
5 law that she really doesn't need to address in her
6 Affidavit. No doubt we will be addressing that in our
7 legal arguments to the Tribunal, and I would suggest to
8 you that perhaps we just agree that that sentence be
9 struck.

10 MR. TARLTON: Well, I will take your request
11 under advisement and I won't agree to it at this point in
12 time. You can continue to ask your questions, but I'll
13 reserve my right to reiterate my objection as the course
14 of your questions progress. Proceed.

A

15 BY MR. CHAMP:

16 39. Q. So now, Ms Johnston, what's the source of
17 your information and belief on that statement?

18 A. That -- can you repeat the question?

19 40. Q. "Child welfare is an area of
20 Provincial jurisdiction"?

21 A. Yes.

22 41. Q. Why do you think that to be the case?

23 A. Because Provinces do set legislation and
24 standards around child welfare.

25 42. Q. And is that, to your knowledge, is that

1 because the Federal Government delegates to them that
2 responsibility, or the Federal Government does not assume
3 that responsibility?

4 MR. TARLTON: With the greatest of respect, that
5 is a legal question. And I reiterate my objection, and
6 ask you to focus on the matters pertaining with facts in
7 her Affidavit.

O

8 MR. CHAMP: But with great respect, Mr. Tarlton,
9 she has made that statement in her Affidavit.

10 "Child welfare is an area of Provincial
11 jurisdiction".

12 I'm just not sure what I'd like to do with that. If it's
13 a statement that you're not prepared to withdraw, then I
14 suggest that I'm allowed to examine it.

15 MR. TARLTON: Are you stating on the Record that
16 it is your position that child welfare is not a matter of
17 Provincial jurisdiction and Provincial responsibility?

18 MR. CHAMP: We are, yes, we are stating it's a
19 delegated responsibility that the Federal Government
20 could assume through the doctrine of paramountcy, yes,
21 that's our position.

22 MR. TARLTON: Well, that's a legal issue and that
23 can be argued at a later date when this Motion, or
24 another Motion, if you choose to bring it, with respect
25 to determining that issue is wrong. But ultimately

1 you're asking a question that requires a legal opinion,
2 and would be ultimately a matter for determination by the
3 ultimate decision maker, be it the Tribunal or a Court.
4 You have her answer. I object to any further lines of
5 questioning. Please proceed onto your next topics.

O

6 BY MR. CHAMP:

7 43. Q. Well, I won't concede that point, but I'll
8 continue for now and we'll see if we have to return to
9 the matter. The next sentence that you have there, Ms
10 Johnston,

11 "The Government of Canada, as a matter
12 of policy, has decided to fund the
13 delivery of child welfare for Indian
14 children and families ordinarily resident
15 on reserve".

16 And when you say as a matter of policy, what do you mean
17 by that?

18 A. That there isn't -- I think that all the
19 funding decisions in the Government generally you do from
20 a policy perspective unless there's legislation that
21 specifically applies and directs you.

22 44. Q. Are you saying that there's no obligation on
23 the Federal Government of Canada to provide funding for
24 child welfare services? Is that what you're saying?

25 MR. TARLTON: With respect, I don't believe that

1 was her answer, I think she referred to legislation did
2 not apply with respect to these decisions.

3 BY MR. CHAMP:

4 45. Q. And maybe I missed, I didn't hear her say
5 legislation, but I'm happy if that's -- I can understand
6 what your answer is. So just if you disagree with the
7 premise of one of my questions at any time, Ms Johnston,
8 feel free to correct me, that's perfectly fine, and maybe
9 in many cases I'm sure it's my own misunderstanding or
10 failing.

11 So right here just on that, as a matter of
12 policy, can you clarify for me what you mean by that,
13 whether it's purely discretionary if the Government can,
14 or you think there's some obligation, or what you meant
15 by that statement?

16 A. What I mean by that statement is we have to
17 get policy authority for programmes from our Cabinet and
18 so in order to fund this we have to have that authority,
19 and it's a policy authority.

20 46. Q. And to your understanding there's no
21 obligation on Canada to provide the funding?

22 A. Not to my knowledge.

23 47. Q. And in the next sentence you say
24 "As a result Indian Affairs is authorized
25 to provide funding to the Provincially

1 mandated providers of child welfare
2 services who provide these services to
3 Indian children ordinarily resident on
4 reserves in the Province".

5 Who are they authorized by, who is Indian Affairs
6 authorized by?

7 A. By Cabinet.

8 48. Q. And what is the instrument by which Cabinet
9 authorizes Indian Affairs to provide that funding?

10 A. We have to do submissions to Cabinet, and
11 then Cabinet has records of decisions on their policy
12 authorities.

13 49. Q. So there's, I forget what they call it, MCs
14 or Memorandum of Cabinet, those are the decisions coming
15 out saying that you can provide the funding?

16 A. Documents come out as a result of that, yes.

17 50. Q. And how frequently does the department have
18 to make those submissions to Cabinet?

19 A. Whenever you have a change in policy or,
20 generally speaking, your terms and conditions apply for
21 about a five year period at which time you have to go
22 back for renewal of the programme.

23 51. Q. And when you say

24 "Provincially mandated providers
25 shall offer services",

1 I take it that you're saying that child welfare agencies
2 providing services on reserves must follow Provincial
3 child welfare legislation?

4 A. They have to be delegated by the Province,
5 the particular Province.

6 52. Q. The agency has to have the delegated power of
7 a particular Province?

8 A. Whoever is delivering the child welfare has
9 to be delegated by the Province.

10 53. Q. Right. So it's the Provinces that regulate
11 how they provide the child services, what child services
12 they provide, it's the Provinces that regulate that
13 rather than INAC, correct?

14 A. Provinces delegate to the authorities or to
15 the agencies. We do have, however, some limitations with
16 respect to mandates of the particular departments and we
17 have to stay within our mandate and particular
18 authorities that are obtained. And we cannot cross over
19 into someone else's authority, for example, Health
20 Canada.

21 54. Q. Can you just elaborate on that, I'm not sure
22 if I understood your answer? So the Provinces authorize
23 or regulate the First Nations child welfare agencies with
24 respect to their provision of child welfare services?

25 A. Yes.

1 55. Q. And then what role does INAC have in that?

2 A. We can only fund what is within our
3 particular authority and mandate.

4 56. Q. Right. So if there's a particular Provincial
5 requirement that's outside INAC's mandate, then it might
6 not necessarily be funded?

7 A. That's correct.

8 57. Q. In paragraph four of your Affidavit you say
9 "Indian Affairs also provides funding
10 to the Yukon Government for the provision
11 of child welfare services to all Indian
12 children and families ordinarily resident
13 in the Yukon Territory".

14 Are there any reserves in the Yukon?

15 A. I don't know.

16 58. Q. Okay. And in paragraphs three and four you
17 don't make any reference to the Northwest Territories.
18 Is there any reason for that?

19 A. They're in six.

20 59. Q. Oh, you're right, sorry, you got me. And who
21 regulates child welfare services in the Northwest
22 Territories?

23 A. I don't know.

24 60. Q. Does the Minister of Indian Affairs have any
25 role in child welfare services in terms of authorizing,

1 you know, apprehensions or transfers of children or
2 anything like that, to your knowledge?

3 A. Not that I'm aware of.

4 61. Q. So you had indicated before that there may,
5 in some cases, be a particular service that might be
6 required by a Province that is not necessarily funded by
7 INAC. How are those kinds of situations reconciled?

8 A. The agencies will be asked to deal with
9 Health Canada, whether it be the First Nation, or the
10 non-insured health benefits, as an example.

11 62. Q. And you'd agree with me, the Provinces are
12 not necessarily satisfied with this situation, is that
13 fair to say?

14 A. I couldn't say.

15 63. Q. So, Ms Johnston, I just handed your Counsel
16 and yourself a letter to the Honourable Chuck Strahl,
17 he's the Minister of Indian Affairs, and it's signed by
18 Mary Polak who is the British Columbia Minister of
19 Children and Family Development and George Abbott who is
20 the Minister of Aboriginal Relations and Reconciliation.

21 I'll give you just a couple of minutes maybe to read the
22 letter, and then I'll ask you some questions.

23 So you've reviewed the letter, Ms Johnston?

24 A. Yes, I have.

25 64. Q. So from what I understand, and I think the

1 thrust of this letter, and I'd ask if you agree with me,
2 is that British Columbia is not satisfied with the
3 present funding arrangement for child welfare services on
4 reserves in BC, is that fair to say?

5 MR. TARLTON: Well, perhaps you might first -- I
6 realize you've shown a copy of the letter to her this
7 morning. You might lay a foundation as to whether she's
8 seen it before, or what her knowledge or information and
9 belief about it is, outside of having the opportunity to
10 read it for approximately two minutes.

11 BY MR. CHAMP:

12 65. Q. All right. Are you familiar with this
13 letter, Ms Johnston?

14 A. I may have seen this.

15 66. Q. The issues addressed in this letter, that
16 would fall under your responsibility in the department, I
17 gather?

18 A. In conjunction with our regional offices.

19 67. Q. In conjunction with the regional offices.
20 And it has to do with the issue of the adequacy of
21 funding for child welfare services on reserves in BC, is
22 that fair to say?

23 In the third paragraph it states at the first
24 sentence

25 "We would, therefore, urge you to work

1 with your Federal Cabinet colleagues to
2 ensure equity in the funding of services
3 for First Nations children and families
4 throughout Canada. This is a fundamental
5 issue of equity, and there's no
6 justification for differential treatment
7 of children on reserve to those living
8 off reserve".

9 So that paragraph, among others, suggests to me that the
10 Government of British Columbia has some concerns for the
11 adequacy or equity of funding for child welfare services
12 on reserve, is that fair to say?

13 MR. TARLTON: Well, I'm going to stop you there
14 because my understanding was the Cross-Examination on
15 these Affidavits is in aid of a Motion to determine the
16 jurisdiction of the Commission. You've asked a question
17 where you specifically reference adequacy of the
18 services. And again, I'll take you back to Tuesday when
19 we were cross-examining Dr. Blackstock, and again, I
20 believe that Mr. Poulin objected and said that the issue
21 on this Motion is to deal with jurisdiction and not
22 adequacy.

23 So again, having taken the position earlier this
24 week that questions relating to the adequacy of resources
25 is outside the scope of this Motion, you're purporting to

1 ask that very question to Ms Johnston this morning. And
2 that, clearly from the tone of your question, is the
3 purpose for it. So it's not relevant in my submission
4 and I would ask you either to withdraw the question or
5 re-state it focussing on the issue that is before the
6 Tribunal on this Motion and these Affidavits filed in
7 support of it.

8 MR. CHAMP: Thank you for that, Mr. Tarlton.
9 Just to be clear, I did not ask her if the funding was
10 adequate or not, or if the funding was ---

11 MR. TARLTON: You did not, but you're referring
12 ---

13 MR. CHAMP: If you'd just allow me to complete my
14 statement, thank you, Mr. Tarlton.

15 MR. TARLTON: I'm sorry.

16 MR. CHAMP: Thank you. So, just for the Record,
17 the question that I asked was whether she was aware that
18 British Columbia, the Government of British Columbia, is
19 dissatisfied with the funding arrangement and does not
20 believe that, and has raised questions or concerns about
21 the equity of the funding. The purpose of our questions
22 -- well, first of all, your client's Affidavit does deal
23 with this issue in some detail throughout, which I'll
24 address as we get there, but the point that we intend to
25 make, both in the Motion, and, to some extent, I believe,

1 through our Cross-Examination, has to do with the issue
2 of whether the role of the Department of Indian Affairs
3 in the delivery of child welfare services on reserve is
4 strictly one of funding.

5 And it's our position that there is a greater
6 role of INAC that INAC is more closely involved in the
7 monitoring and supervision and delivery of services and
8 it's our understanding your client maintains that it's
9 strictly an issue of Provincial jurisdiction regulating
10 the delivery of those services.

11 We intend, through some Cross-Examination
12 including on this issue, we believe to demonstrate that
13 it's not strictly one of funding, that the department has
14 a greater role in the monitoring and delivery of services
15 which services are delivered or not, and whether that is
16 consistent or not with the Provincial Statutory
17 requirements. If that's of some assistance to you,
18 that's the object or direction where I'm going with my
19 questions so I may have questions that get into funding
20 and adequacy of funding, but I will not be asking your
21 client to say, you know, do you agree this is adequate or
22 not? We're not seeking to establish whether funding is
23 adequate or not, we are only seeking to get at the
24 function of the funding, and supervision, and monitoring,
25 as it relates to the delivery of services by First Nation

1 agencies on reserve.

2 MR. TARLTON: Thank you, I appreciate the
3 clarification, and, indeed, I'm hopeful that the
4 questions will be focussed on those issues. In reviewing
5 the letter I don't -- it will be ultimately, I suppose, a
6 matter for argument, but I don't see those particular
7 issues you intend to address the focus of the letter or
8 the paragraph you were just referring Ms Johnston to, but
9 again, I'll see how the questioning progresses and if I
10 need to, I'll make the further objection.

11 MR. CHAMP: Mr. Tarlton, I want to make another
12 point on the Record, just on that, in terms of going
13 forward which might be helpful for you, but at this stage
14 I'd prefer to make this point on the Record without the
15 presence of the witness. Would you have any objection to
16 us asking the witness just to leave for a moment so I can
17 make a couple more points on the Record?

18 MR. TARLTON: Okay, we'll go off the Record.

19 (OFF RECORD DISCUSSION)

20 MR. CHAMP: Mr. Tarlton, one of the points that
21 we will be making in our arguments is that the Provinces
22 who are required to, who are to regulate the delivery of
23 services, take the position that the services that they
24 believe are required to meet Statutory requirements
25 cannot be done based on the funding that's provided, and

1 that's one of the points that we wish to address with Ms
2 Johnston.

3 It's our view that if it's purely regulated by
4 the Province, then it will be the Province that decides
5 what services should be delivered or not delivered. We
6 don't think that's the case, and that's the point that we
7 wish to address. So that's where I'm going to be going
8 with my questions. I'm hopeful that we don't have, you
9 know, objections every other question, but obviously
10 these two issues sit side by side and I appreciate where
11 you're coming from, but I just want to make it clear
12 again on the Record that we intend to ask questions on
13 this topic or around this topic of the connection or
14 relationship between the Statutory requirements and what
15 the Federal Government provides.

16 MR. TARLTON: Oh, I appreciate your clarifying
17 it, and to the degree that you want to ask her questions
18 about funding and what the Federal Government funds, and
19 its programmes or policies, that's one thing, but if
20 you're going to get into having earlier on objected to Ms
21 Johnston's evidence regarding what I would respectfully
22 submit is a completely innocuous statement regarding
23 areas of Provincial jurisdiction, I don't think then you
24 can come and say we reserve the right to question about
25 Provincial areas of jurisdiction and put to her the

1 comments or submissions of the Province.

2 I suppose if you would like to do that, you
3 should put a representative of the Province up to discuss
4 that matter. But my understanding of what we're here for
5 and what the Motion is, is to determine the jurisdiction
6 of the Commission, and if we're going to start and get
7 into ---

8 MR. CHAMP: The Tribunal.

9 MR. TARLTON: Sorry, the Tribunal. But if we're
10 going to get into a discussion about whether the Province
11 thinks funding is adequate in respect of this programme,
12 or this service, vis-a-vis the Federal Government, I
13 think we're into the merits and that's not what this
14 Motion is for, and that's not what this Affidavit is for.

15 So I will continue to object if I feel that we are
16 crossing into the merits, and I appreciate your attempt
17 to re-state this, and I will listen to your questions
18 carefully and try not to object unless I feel it is
19 appropriate. But I will continue to do so because I
20 think we are crossing into the merits.

21 MR. CHAMP: I would caution you, Mr. Tarlton,
22 that when the Cross-Examination of Ms Blackstock took
23 place the other day, we had very few objections,
24 primarily because we were in a completely novel process
25 now. The Tribunal, I'm thinking, you would be up to

1 speed on this now, has now embarked on something that is
2 not before the Cross-Examinations outside of the Tribunal
3 process.

4 I appreciate that both you and Mr. Taylor are
5 more familiar with the Court process, but I would urge
6 you again to recognize this is not a Court process, this
7 is a process under the Canadian Human Rights Act. There
8 are different rules of evidence, there are different
9 requirements, there are different types of evidence
10 that's admissible, and this process that we're in right
11 now I think is going to be quite difficult if you object
12 to every second question. But I'll leave it at that, and
13 we'll see where we get today.

14 MR. TARLTON: Very good.

15 MR. CHAMP: Thank you, Mr. Tarlton.

16 MR. TARLTON: Okay.

17 BY MR. CHAMP:

18 68. Q. Can you please go get your witness? Thank
19 you, Ms Johnston, Paul Champ again, on the Record. One
20 of the issues raised in this letter has to do with the
21 British Columbia First Nations Enhanced Prevention
22 Services Model and accountability framework. Can you
23 explain what that is?

24 A. That is a document that was created through a
25 tripartite process with the First Nation agencies, INAC

1 and the Province outlining how they intended to implement
2 prevention in that particular Province for First Nations
3 on reserve.

4 69. Q. And what is its relationship to Directive 20-
5 1?

6 A. It outlines the plans on a go forward basis,
7 if additional funds are found to support First Nations
8 and moving forward.

9 70. Q. Ms Johnston, may I ask you just to speak up a
10 little bit, even I'm having a hard time hearing and maybe
11 the people in the back just at the other desks may also
12 have a hard time hearing you.

13 Just on that, it's my understanding that this
14 advanced prevention services model, that this is a
15 different kind of formula, it's what's meant to replace
16 Directive 20-1 for the delivery of child welfare services
17 in BC, is that fair to say?

18 A. For those First Nation agencies who wish to
19 opt into that approach, yes, it will replace Directive
20 20-1.

21 71. Q. But as I understand this letter, even those
22 who might wish to opt into that approach, they can't
23 right now because the Department of Indian Affairs is
24 saying that they're not prepared to fund it, is that fair
25 to say? Is that the fact, regardless of this letter?

1 MR. TARLTON: I'm sorry, just to help me out with
2 your question, where in the paragraph, or the letter does
3 it say that, what you just said about ---

4 MR. CHAMP: In the second last paragraph on page
5 one it says

6 "In early September 2008 the British
7 Columbia First Nations Enhanced
8 Prevention Services Model and
9 Accountability Framework was submitted
10 to your department. Regrettably since
11 then we have been advised that no funding
12 is available for the foreseeable future
13 for British Columbia's First Nations
14 children, youth and families".

15 It's our understanding that the reason why this model is
16 not being implemented is because there's not funding
17 available for it.

18 MR. TARLTON: Well, then, perhaps you should put
19 your understanding to Ms Johnston and ask her if that's
20 her knowledge or information or belief.

21 MR. CHAMP: Is there an objection, Mr. Tarlton?

22 MR. TARLTON: Well, no ---

23 MR. CHAMP: I'm just trying to understand.

24 MR. TARLTON: --- I'm just trying to clarify
25 because the question, as I originally heard it ---

1 MR. CHAMP: Right.

2 MR. TARLTON: --- is different from the wording
3 in the paragraph, and if you're asking her to comment on
4 that same paragraph.

5 MR. CHAMP: Well, I wasn't initially, that wasn't
6 my question, and I think I've been quite fair to the
7 witness in saying that if she believes the premise of one
8 of my questions is inaccurate or wrong, that she should
9 ask me about it. And I did start that question saying
10 regardless of this letter, and started asking questions
11 more generally about the Directive 20-1 and the proposed
12 Enhanced Prevention Services Model for British Columbia.
13 So that's what I'm asking about, Mr. Tarlton.

14 Mr. Tarlton, I'd say this will be a very long
15 day, and I'm not sure if you intend to be here on Monday
16 for further Cross-Examination, but I think it would be a
17 bit more expeditious if we could reduce the number of
18 objections.

19 MR. TARLTON: Well, I will attempt to do that,
20 Mr. Champ, but I reserve the right if I think the
21 question is being worded improperly, if you're asking the
22 witness to speculate, or if you're not laying the proper
23 evidenciary foundation to raise an objection. I would
24 ask you to re-phrase it, which is what I'm asking you to
25 do.

1 MR. CHAMP: Okay. Well, sir, wording my
2 questions improperly, what legal basis do you mean my
3 questions are worded improperly?

4 MR. TARLTON: Well, I think you're ---

5 MR. CHAMP: I think that as the Counsel
6 conducting Cross-Examination, I have the right to phrase
7 the questions the way I wish. If you have a proper
8 objection on the basis of relevance, I don't know, calls
9 for an opinion on a legal question, those are fair and
10 valid objections. I've got no problems with that. But
11 just saying that you don't like the way I phrase my
12 questions, I'm not sure if I understand the legal basis
13 for that. Can you enlighten me?

14 MR. TARLTON: Well, I think to be fair to the
15 witness, you should put the question -- if you're asking
16 her questions about what the Government of British
17 Columbia is representing to the Minister of Indian
18 Affairs in the letter, it would be helpful, and you're
19 referring to a specific paragraph, use the language in
20 the paragraph as the basis of your question. That way I
21 can follow it, and likewise, Ms Johnston can understand
22 it better. But the question, as I heard you originally
23 ask, had nothing to do with the language in that
24 paragraph, and I'm just ---

25 BY MR. CHAMP:

1 72. Q. Well, thank you for your advice and
2 assistance on how I should conduct my Cross-Examinations,
3 Mr. Tarlton. When I require further assistance, I'll
4 ask.

5 So Ms Johnston, going back to the point that I
6 was asking you about, so right now Directive 20-1 is the
7 funding model that applies to First Nations agencies
8 delivering child welfare services in British Columbia,
9 correct?

10 A. Yes, it is.

11 73. Q. Okay. And the proposed Enhanced Prevention
12 Services Model is not being implemented in British
13 Columbia for child welfare services, correct?

14 A. Yes.

15 74. Q. Why is that the case?

16 A. They have asked for additional resources and
17 we are not able to provide it at this time.

18 75. Q. So the Enhanced Prevention Services Model,
19 which was negotiated through a tripartite process, would
20 result in more funds and that's not available right now,
21 is that right?

22 A. That's correct.

23 MR. CHAMP: Mr. Tarlton, may we enter this as an
24 exhibit to this Cross-Examination?

25 MR. TARLTON: You could properly enter it for

1 identification. I think Ms Johnston said she may have
2 seen it, but certainly it can be, perhaps, entered and
3 perhaps subject to some further confirmation, I mean
4 formally, I just ---

5 MR. CHAMP: That's fine.

6 MR. TARLTON: But certainly.

7 MR. CHAMP: That's fine. It's a letter to the
8 Minister of the British Columbia Cabinet to Minister of
9 the Federal Cabinet, and I'm sure you can have an
10 opportunity to confirm the authenticity of it.

11 MR. TARLTON: Sure, thank you.

12 **EXHIBIT NO. 1:** Letter from the Province of
13 British Columbia to The Honourable Chuck Strahl,
14 Minister of Indian Affairs and Northern
15 Development.

16 MR. CHAMP: Mr. Tarlton, just to confirm, we'll
17 number these exhibits to the Cross-Examination of Ms
18 Johnston just from one upwards, is that fair?

19 MR. TARLTON: If you'd like to do that, that's
20 fine.

21 BY MR. CHAMP:

22 76. Q. Okay, thank you. So Ms Johnston, just on the
23 Northwest Territories, you would approve budgets and so
24 forth?

25 A. No.

1 77. Q. No. For the Northwest Territories, you don't
2 have any role in that?

3 A. No.

4 78. Q. And why is that?

5 A. Because the funding flows through the
6 Department of Finance through the Territorial financing
7 agreements.

8 79. Q. So First Nations agencies in the Northwest
9 Territories -- okay, sorry. So INAC has no role in that
10 whatsoever?

11 A. No.

12 80. Q. Does Finance consult with INAC or with your
13 directorate in terms of establishing or determining what
14 would be an adequate or proper level of funding with the
15 Northwest Territories?

16 A. They don't consult with us, that's all I
17 know.

18 81. Q. Okay. At paragraph seven of your Affidavit
19 you say that

20 "In 1990 Indian Affairs received
21 authority to create a national
22 funding programme for child welfare
23 services called the First Nations
24 Child and Family Services Programme".

25 I gather, Ms Johnston, over the past couple of years

1 you've become familiar with the history of the programme
2 since it was established in 1990?

3 A. With some of it.

4 82. Q. Some of it. Like, for example, the National
5 Joint Policy Review conducted in 2000, you're familiar
6 with that?

7 A. Parts of it.

8 83. Q. Parts of it. And can you tell us what you
9 know about in terms of why that review was conducted?

10 A. Exactly, I don't know.

11 84. Q. Okay. And the Wen-de reports, are you
12 familiar with those documents?

13 A. Familiar, but not in depth knowledge.

14 85. Q. And do you know what the purpose of those
15 reports, or why they were created?

16 A. All I know is that they flowed from the
17 National Policy Review.

18 86. Q. Okay. In paragraph seven, the next sentence,
19 you say

20 "Where it applies, the FNCFS funding
21 programme includes funding formula
22 Directive 21, chapter five, and
23 commencing in 2007 the newer Enhanced
24 Prevention Focussed Approach, both of
25 which define how Federal Government

1 funding is to be provided to Provincially
2 mandated providers of child welfare
3 services for the delivery of child
4 welfare services on reserve".

5 So just going back to the questions I was asking before
6 with respect to BC, the Enhanced Prevention Focussed
7 Approach, that's the model that was developed for BC,
8 that tripartite process?

9 A. That's correct.

10 87. Q. And so there's some Provinces that do have
11 the benefit of that Enhanced Prevention Focussed
12 Approach, correct?

13 A. That's correct.

14 88. Q. And which Provinces are those?

15 A. We began with Alberta in 2007. Then in 2008
16 it was Nova Scotia and Saskatchewan. In 2009, Quebec and
17 PEI.

18 89. Q. Okay. And you're aware that the Auditor
19 General of Canada had reviewed both of these funding
20 models, Directive 21 and the Enhanced Funding Model, in
21 her review of your programme in 2008?

22 A. Yes.

23 90. Q. And the Auditor General had concerns with
24 respect to both models, correct? If you're not sure,
25 that's fine?

1 A. Yes, I am not sure.

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

6 A. I can't recall off the top what exactly those
7 recommendations were.

8 92. Q. And I appreciate that report was released in
9 '08, so you'd only been a year in at that point at the
10 department. But are you aware of any steps that INAC or
11 your programme is taking to address any of the concerns
12 raised by the Auditor General's report? Like does it
13 ever come up with new policies or recommendations, or, I
14 don't know, things that you are working on or planning
15 where the driver is, you know, people refer to the
16 Auditor General's report?

17 A. Specifically, no. I mean any direction we're
18 taking will take that into consideration, but it's not
19 necessarily the driver for change.

20 93. Q. So there are some things that you're doing
21 where that is taken into consideration?

22 A. Yes.

23 94. Q. Can you give me examples?

24 A. I'm trying to remember. I think she asked
25 that we have a better grasp of the results that are being

1 achieved as a result of the funding that is being
2 provided. And we're working on developing an information
3 management system to assist in that regard.

4 95. Q. I'll move to the next paragraph, paragraph
5 eight.

6 "Indian Affairs does not deliver child
7 welfare services on or off reserve in
8 Canada".

9 So, Ms Johnston, can you just tell me what role does
10 Indian Affairs play in the delivery of child welfare
11 reserves?

12 A. We provide funding for recipients to deliver
13 child welfare services.

14 96. Q. Your programme or your department also
15 ensures that the child welfare services agencies meet
16 Provincial standards and requirements?

17 A. Part of our terms and conditions is that
18 whoever is delivering has to be doing it in accordance
19 with Provincial legislation and standards.

20 97. Q. Who determines if they are meeting Provincial
21 standards and requirements?

22 A. The Provinces are responsible for delegating
23 to the agencies, so.

24 98. Q. Yes, they delegate the authority or power to
25 deliver child welfare services to the agencies, but who

1 determines, is it the Federal Government or the
2 Provincial Government that determines if those agencies
3 are meeting the Provincial standards or requirements?

4 A. It's up to the Provinces to determine that.

5 99. Q. And so, given that meeting those standards
6 and requirements are a condition of funding, how does
7 INAC determine if those agencies are, in fact, meeting
8 those Provincial standards and requirements? Because
9 that's your role, right, isn't that your -- that's
10 getting right to the heart of your job, is that right?

11 A. Not mine specifically, but with our regions
12 who deal with the funding agreements for the recipients,
13 part of it is to ensure that you have the proper
14 delegation instrument from the Province.

15 100. Q. And that's it, though, doesn't it go further,
16 like once the agency has the delegation, obviously,
17 they've got the delegation, but in terms of their ongoing
18 operations and delivery of actual services, who
19 determines if they are meeting the Provincial
20 requirements and standards? Or is that all, pardon me,
21 before I ask, sorry, I'll withdraw the question.

22 So are you saying that provided a First Nation
23 agency can say we've got the delegation from the
24 Province, that's all that's required to meet the
25 standards and requirements of INAC?

1 A. Well, I mean when we're reviewing funding of
2 bills, we are responsible for ensuring due diligence of
3 the recipients, and when we are reviewing bills,
4 particularly for children in care, part of that will be,
5 in particular jurisdictions, that a facility has to be
6 licensed in order for that to be covered.

7 101. Q. So, for example, a particular file, whether
8 it has a license or not, you would look at that, and if
9 the agency funded a foster home that didn't have a
10 license immediately when they place the child, your
11 department wouldn't fund that, is that right?

12 A. We would question it, go back to the
13 recipient and ask, and also get in touch with the
14 Province to ask what the status of that particular
15 recipient is, and what's happening.

16 102. Q. But if the Province, then, approved the
17 placement, because sometimes Provinces, they'll do
18 retroactive licensing and so forth. If the Province
19 approves it, would INAC question something like that?

20 A. If, I mean it's going to depend on what
21 exists in that particular jurisdiction, and there are
22 differing situations. There may be circumstances where
23 the standards say it has to be in process, in which case
24 we would accept that.

25 103. Q. So the standards would have to be in the

1 process?

2 A. No, no, no, what I'm saying is that the
3 licensing for the standards says it has to be there or in
4 process.

5 104. Q. Do you know in what way the Province reviews
6 the child welfare services delivered by the First Nations
7 agencies?

8 A. I don't know the particular process, no.

9 105. Q. But you suggested there that there might be
10 examples where INAC would liaise with the Province over a
11 particular issue?

12 A. Yes.

13 106. Q. And are there other examples like that that
14 you can provide?

15 A. If, in the process of doing a particular
16 review, the recipient didn't have any information to be
17 able to substantiate the documentation, then we would
18 call the region or the Province in to ask them to check
19 on what is happening in this particular area.

20 107. Q. The documentation didn't appear, what kind of
21 documentation? It's my understanding sometimes with the
22 monitoring or review, your department will actually go
23 right in and look at specific children's files, is that
24 your understanding?

25 A. What we ask for is to ensure proper due

1 diligence and accountability for the funds, we need to
2 ensure that it is for the child on reserve status, so we
3 will ask for information that verifies that.

4 108. Q. And that's it, that's all you, it's a child
5 who has status and is on reserve?

6 A. Living on reserve.

7 109. Q. And is in care, and that's the only things
8 that you look for?

9 A. Well, I mean we will need to know if they are
10 referred to a particular facility, that, in fact, they've
11 gone to a particular facility, not for the purpose of
12 verifying the facility, but that, in fact, this is a
13 justified payment.

14 110. Q. Just to justify payment, and that's the only
15 issue. Ms. Johnston, I'm turning to paragraph nine of
16 your Affidavit, where you speak about the level of
17 funding from the programme. You state that

18 "The funding provided under the Indian
19 Affairs funding programme has grown from
20 \$193 million in '96/'97, to approximately
21 \$523 million in 2008/2009".

22 Do you know why, what's the main driver behind that
23 increase?

24 A. I think there's a number of factors around
25 that. One is the numbers of agencies have increased

1 substantially. The numbers of children in care have
2 increased, as has the population.

3 111. Q. So the number of new children -- pardon me,
4 the number of children in care has increased. That's a
5 big reason why it's increased?

6 A. It's one of the reasons.

7 112. Q. What's the main reason, what's the biggest
8 reason?

9 A. I couldn't tell you what the biggest reason
10 was.

11 113. Q. And what's your source of information and
12 belief for that statement in paragraph nine?

13 A. I believe these are the figures reported in
14 our ---

15 MR. TARLTON: Sorry, I didn't catch that.

16 MR. CHAMP: I just asked her where she ---

17 MR. TARLTON: No, no, your question, it was her
18 answer I missed.

19 THE WITNESS: Yes. I think these are the figures
20 we include in our departmental performance reports to
21 Parliament.

22 BY MR. CHAMP:

23 114. Q. Would there be one report that includes both
24 of those, or ---

25 A. No.

1 115. Q. --- do you have to go back and get the older
2 report?

3 A. You'd have to go back.

4 116. Q. And did you do that, go back and get the
5 older report for '96/'97, or did someone do that for you?

6 A. I didn't. I would have staff that would have
7 done that.

8 117. Q. And did you direct one of your staff to do
9 that?

10 A. This particular statement is one that's
11 appeared in previous documents, it just gets updated as
12 the time goes on.

13 118. Q. And I'm just trying, when you put this up,
14 when you put your Affidavit together, I'm just -- what
15 document did you draw it from specifically this time
16 around?

17 A. I worked with my staff on this Affidavit, so
18 a lot of the factual information, specific information
19 when it comes to numbers, comes from my staff.

20 119. Q. Okay. And the increases in funding, under
21 Directive 20-1 anyway, there's the operations and
22 maintenance funding. Would you say that this increase is
23 primarily under operations or primarily under
24 maintenance?

25 A. I couldn't say per se.

1 120. Q. And can you just remind me, what's the
2 difference between operations and maintenance funding,
3 under Directive 20-1?

4 A. Operations is for salaries, rent, legal
5 costs, some prevention for agency use. Maintenance is
6 for the costs for children in care.

7 121. Q. And how are those amounts under each of those
8 categories determined for agencies? How does Directive
9 20-1 work?

10 A. Well, Directive 20-1 determines a specific
11 amount for operations. There are different factors that
12 come into play. Like the size of the population served,
13 community served. I can't recall all of the factors, but
14 remoteness comes into it. With respect to maintenance,
15 maintenance is the reimbursement of actual expenditures.

16 122. Q. So if I understand it correctly, say you've
17 got two Bands, Band A and Band B, they've each got 2,000
18 members. And let's say they've got the same number of
19 children, they're in a same sort of relatively equal,
20 remote location. Those two Bands would get the same
21 amount of operations funding?

22 A. Oh, I couldn't tell you exactly.

23 123. Q. Okay. Well, assuming all factors are the
24 same, Band A and Band B would receive the same
25 maintenance, or pardon me, the same ---

1 MR. TARLTON: Operations.

2 BY MR. CHAMP:

3 124. Q. Operations funding?

4 A. I don't know the formula in that level of
5 detail to be able to say.

6 125. Q. Okay. So Band A and Band B each with 2,000
7 members, and Band A has 200 children in care, and Band B
8 only has 10 children in care, Band A would get more money
9 under maintenance, right?

10 A. Well, maintenance is driven by the numbers of
11 children in care, yes.

12 126. Q. So 200 children in care?

13 A. It's based on the actual expenditures for
14 those children in care.

15 127. Q. Right, so ---

16 A. You could potentially have less children in
17 care, but higher costs.

18 128. Q. Less children in care?

19 A. Because it depends on the type of care that's
20 being provided.

21 129. Q. Right. I hear you, okay. And it depends on
22 the relative costs for that particular location, that you
23 might have higher costs?

24 A. Yes.

25 130. Q. Putting a child in care?

1 A. Yes.

2 131. Q. And the Directive 20-1, or the funding
3 models, they're that specific or particular that, you
4 know, if going rates for foster homes are higher in this
5 area versus that area it has that sort of particularity?

6 A. Yes, I mean maintenance are reimbursed based
7 on actuals. Part of the costs are for the rates set by
8 the Provinces, so there are differing rates from Province
9 to Province. But generally institutional care is higher,
10 the homes are higher than foster care, but the rates will
11 differ from Province to Province.

12 132. Q. So going to that example again, if Band A has
13 200 children in care and Band B has got the 10 children
14 in care, does the department increase the funding for
15 prevention services for Band A?

16 A. Under Directive 20-1 the operation formula is
17 as it is. I don't know the specifics of how the
18 prevention is determined, but there is a portion for
19 prevention.

20 133. Q. But the formula is fixed such that even
21 though there might be increased need for prevention,
22 there's no increased funding, is that fair to say?

23 A. I don't know the specifics to be able to make
24 that ---

25 134. Q. Okay. So getting back to your job as the

1 director of social programme reform directorate, you
2 review -- tell me what you review again?

3 A. I direct staff and budgets, and we determine
4 national allocations and tools for regions on the various
5 programmes that I have.

6 135. Q. It's my understanding that you sign off on
7 the annual sort of reports for each First Nations agency
8 that's directly funded by INAC, is that right?

9 A. No, I don't.

10 136. Q. Okay. And who does that?

11 A. I don't know specifically. It's handled with
12 the regions. And I don't know, in each region it may be
13 different as to who has the financial authority on those.

14 137. Q. And when you say that your directorate made a
15 budget allocation, based on what, do you look at the
16 directives or the programmes, or is it just based on
17 what's coming down from Treasury Board, that's how you
18 determine the budget allocations?

19 A. I think what is looked at is what occurred in
20 the past year, whether there is any additional resources
21 that come into play. Again, I have finance, more finance
22 types who work on those particular formulas for me.

23 138. Q. And how does Directive 20-1, how does it play
24 into your sort of daily work? I'm just trying to
25 understand on what occasion would you have to actually

1 deal with Directive 20-1?

2 A. I would have to deal with it more from a
3 national policy perspective. And if we were to make big
4 changes to that, we would have to look at our terms and
5 conditions, see whether there's any changes required
6 there, whether it would have to go back to Cabinet, or to
7 Treasury Board to request approval.

8 139. Q. To make more Treasury Board submissions?

9 A. Yes.

10 140. Q. And you're responsible to play a role in
11 preparing those Treasury Board submissions?

12 A. Yes.

13 141. Q. And those Treasury Board submissions have
14 terms and conditions contained in them?

15 A. They may have, not always.

16 142. Q. And who would actually draft the Treasury
17 Board submissions, or determine what should be there in
18 terms of terms and conditions and an increase or
19 whatever?

20 A. Usually you have to have a Memorandum to
21 Cabinet prior to that, and that will dictate where you go
22 in terms of your Treasury Board submission.

23 143. Q. So the MC would come first before your
24 Treasury Board submission?

25 A. Usually, yes.

1 MR. TARLTON: Excuse me, Mr. Champ, would it be
2 an appropriate time to take the morning break?

3 MR. CHAMP: I think it would be a perfect time,
4 that's fine.

5 MR. TARLTON: Very good, thank you.

6 (SHORT RECESS)

7 BY MR. CHAMP:

8 144. Q. So back on the Record after the morning
9 break. Again, for the Cross-Examination of the Affidavit
10 of Ms Odette Johnston dated or sworn December 23rd, 2009.

11 Ms Johnston, I want to ask you a couple of
12 questions on -- I already asked you a few questions
13 before, but I'd just like to ask you again about the
14 Auditor General's report. Did you play any role to
15 responding to the Auditor General's report?

16 A. Yes, I did. I worked with my staff and
17 senior management on drafting the response to the report.

18 145. Q. So you worked with the staff, and what role
19 did you play specifically?

20 A. I would have reviewed documents, provided
21 recommendations, and ensured completion of the response.

22 146. Q. I'm sorry, Ms Johnston, can you speak up?

23 A. Ensured completion of the response. I don't
24 have a loud voice.

25 147. Q. I know, I appreciate that. It's too bad we

1 didn't have public here today because then we could have
2 turned on these mikes and we all could have heard that.
3 So you reviewed documents, and sorry, what was the last
4 part?

5 A. Ensured completion of the response.

6 148. Q. So the time line, made sure the deliverable
7 was made?

8 A. Yes.

9 149. Q. So you were on peoples backs to make sure
10 they got their sections done in time?

11 A. Yes.

12 150. Q. Okay. But in terms of content, you didn't
13 necessarily play any role in content, is that so?

14 A. Well, I think all throughout the department,
15 through various levels, senior management and myself,
16 would have reviewed responses and provided
17 recommendations.

18 151. Q. And why did the department feel that they had
19 to respond to the report?

20 A. I think it's a requirement to respond to
21 reports.

22 152. Q. And did any other bodies, any other
23 Parliamentary bodies, look at that report?

24 A. Public Accounts Committee.

25 153. Q. The Parliamentary Standing Committee on

1 Public Accounts?

2 A. Yes.

3 154. Q. And what was their process, what did they do,
4 do you know?

5 A. They requested that the department appear
6 before it. And following that appearance, made
7 recommendations.

8 155. Q. They directed the department to come up with
9 an action plan?

10 A. I don't recall that specific wording.

11 156. Q. What did they recommend?

12 A. They had a number of recommendations and
13 asked us to respond to them. And we drafted responses
14 which had to be approved by Cabinet and filed our
15 response.

16 157. Q. And what were the nature of their
17 recommendations that you had to respond to? What were
18 the kind of recommendations or concerns that they had?

19 A. One of the recommendations had to do with
20 defining culturally appropriate, what was culturally
21 appropriate principles. Determining full costs of the
22 programme.

23 158. Q. Sorry, what's that?

24 A. Determining full costs of the programme. To
25 look at Directive 20-1. To do comparative analysis.

1 159. Q. Comparative analysis of what, comparing what?

2 A. Of CHFSHs on the reserve with similar
3 agencies off reserve.

4 160. Q. And has the department started doing that?

5 A. We're in the process of responding on that.

6 161. Q. In the process of responding to that specific
7 recommendation?

8 A. To the Parliamentary Committee. We were
9 asked to provide an update and are in the process of
10 doing that.

11 162. Q. So how is the department going to act on
12 those recommendations, other than responding to the
13 committee, but I mean the actual substantive
14 recommendations? Are there any that the department is
15 going to act on?

16 A. Well, we did already respond to Public
17 Accounts Committee in writing on some of the
18 recommendations that have already been implemented. And
19 we're in the process of reviewing some of the
20 recommendations.

21 163. Q. So no decision yet, no other recommendations
22 have been acted on yet?

23 A. A couple of them have, and they were reported
24 back to the Public Accounts Committee.

25 164. Q. And do you know which ones those were, which

1 recommendations were acted upon?

2 A. The one on culturally appropriate principles,
3 and an update on where we were at with the Auditor
4 General recommendations.

5 165. Q. There's another standing committee who has
6 also been concerned or interested in the Auditor
7 General's report?

8 A. Yes, the Standing Committee on Aboriginal
9 Affairs.

10 166. Q. And what interest has that committee
11 expressed, what have they done?

12 A. They asked to meet with senior officials of
13 the department to speak to what was happening by the
14 department, and that meeting occurred, I think it was in
15 October.

16 167. Q. October 2009?

17 A. Yes.

18 168. Q. And was it a meeting or one of the Standing
19 Committee Hearings?

20 A. I don't really know the terminology for
21 whether those are Hearings, or, but we did appear before
22 that Standing Committee.

23 169. Q. When you say we, did you appear?

24 A. Yes, I did.

25 170. Q. And what did you speak about?

1 A. I responded to some questions that were
2 raised. My Assistant Deputy Minister and my Director
3 General also appeared, so we responded to various
4 questions. I don't recall exactly which ones.

5 171. Q. I'll refer you back to your Affidavit, Ms
6 Johnston. Paragraph 12. This is where, in these few
7 paragraphs, you're describing the Directive 20-1 funding
8 formula, and model, and in paragraph 12 you describe the
9 operations category?

10 A. Yes.

11 172. Q. In the last sentence there you say
12 "The amount of funding provided to a
13 recipient for operations is formula
14 driven, based on an amount per First
15 Nations child on reserve under the age
16 of 19, plus an amount for Band, plus an
17 amount based on remoteness where
18 applicable".

19 And you would agree with me, there's no part of that
20 formula that relates to level of need of a particular
21 band, aside from those factors?

22 A. I couldn't say that.

23 173. Q. Because you don't know one way or the other,
24 or because you say yes, we do take into account the level
25 of need?

1 A. Could you repeat the question again?

2 174. Q. I was just asking whether the level of need
3 plays any role in the operations budget. So with the
4 maintenance budget it's tied specifically to the number
5 of children in care, but with operations, as I understand
6 it, it's not necessarily tied to how many children might
7 require preventative services, is that fair to say?

8 A. I don't know the format in that level of
9 detail, but I mean it does take into account an amount
10 per First Nation child on the reserve under the age of
11 19.

12 175. Q. Right, so the number of children who live on
13 the reserve, but if no children have any preventative
14 needs in Band A, they would get the same amount as Band B
15 where all the children are in a desperate state and
16 require prevention services, those two Bands would get
17 the same amount of money? Or the level of need in that
18 respect would make no difference to how much money they'd
19 get, correct? If you don't know, that's fine?

20 A. As I said, I don't know the formula in that
21 level of detail to be able to make that assessment.

22 176. Q. So you don't know?

23 A. No.

24 177. Q. Okay. At paragraph 15 you list all of the
25 Provinces that are still under Directive 20-1. You've

1 got Newfoundland, New Brunswick, Manitoba, and British
2 Columbia, as well as the Yukon.

3 Now we spoke a bit about British Columbia, I
4 believe, before, and we agreed that there's been an
5 agreement worked out to move British Columbia from
6 Directive 20-1 to the Enhanced Prevention Focussed
7 Approach, but that's not occurring right now until
8 there's more funding, correct?

9 A. To move to additional funding with
10 prevention, no.

11 178. Q. To move under the other funding model. And
12 it's my understanding that's the same case with Manitoba,
13 there's been an agreement made with Manitoba to move them
14 under the Enhanced Prevention Focussed Approach.
15 However, it's not being implemented right now because
16 there's not sufficient funding, correct?

17 A. When we have the discussions with the First
18 Nations and the Province we indicate that it is dependent
19 upon funding being approved by Cabinet.

20 179. Q. So that's a yes with Manitoba?

21 A. Yes.

22 180. Q. That there has been an agreement, but you
23 can't move them under the other formula until there's
24 more funding?

25 A. Yes.

1 181. Q. And just, while we're on this, there is also
2 agreements or tripartite agreements, with each Province,
3 I understand, with respect to 20-1, there would be an
4 agreement with the Province saying here's how we're going
5 to fund under Directive 20-1 for these particular First
6 Nation agencies?

7 A. That I don't know. And it will depend on
8 jurisdiction to jurisdiction. There may be tripartite
9 agreements in place that talk about the roles and
10 responsibilities of the various parties, but I don't know
11 specifically what is in place in the particular
12 jurisdictions.

13 182. Q. How about New Brunswick specifically, it's my
14 understanding that with New Brunswick there was a
15 tripartite agreement under 20-1 that was in negotiation
16 for awhile. Do you know anything about that, about the
17 current status of the tripartite agreement with New
18 Brunswick?

19 A. I don't know the specifics of that tripartite
20 agreement and whether it specifically had to do with 20-
21 1, or whether it was regarding First Nation Child Family
22 Services at large.

23 183. Q. Are you aware that the New Brunswick child
24 advocate just recently issued a report on that issue,
25 that New Brunswick has refused to sign the most recent

1 tripartite agreement?

2 A. I wasn't aware of that.

3 184. Q. You don't know about that. Would those kinds
4 of documents generally come to your attention?

5 A. Not necessarily.

6 185. Q. Okay. I think just in terms of as we're
7 going through I think I'm getting a better understanding
8 of your role with the department. It seems you're more
9 Treasury Board and Cabinet focussed up rather than down
10 to the Provinces and the First Nation agencies that are
11 delivering the services, is that fair to say?

12 A. No, not necessarily. When we discuss the new
13 approach in the various Provinces, it's my staff that
14 work with the regions and the First Nations in trying to
15 develop that approach.

16 186. Q. So, for example, the -- oh, sorry?

17 A. No, go ahead.

18 187. Q. So, for example, with the BC Enhanced
19 Prevention Services agreement would anyone in your office
20 have played a role in the negotiation of that agreement?

21 A. Yes. Yes, they would have.

22 188. Q. And who would that be? I don't need to know
23 the specific person necessarily, but what position, who
24 would do -- would you do that?

25 A. I participate in some of those discussions.

1 Usually it's at the beginning or close to finalizing
2 agreement on things. But I have staff, usually one to
3 two, that participate in that discussion, and from both a
4 policy and a financial perspective.

5 189. Q. And how many staff report to you?

6 A. Oh, that's a moving target right now.

7 190. Q. March 31 is coming up fast?

8 A. Yes. I think ---

9 191. Q. Well, just give me a ballpark?

10 A. About 13.

11 192. Q. About 13?

12 A. But that's not just for First Nation Child
13 Family Services.

14 193. Q. Oh, okay, so just for First Nations Child and
15 Family Services, how many staff do you have?

16 A. Probably about eight.

17 194. Q. And who would take the lead, then, on these
18 agreements with the Provinces, one of your staff?

19 A. Yes.

20 195. Q. So one of your staff would be going out to
21 wherever, Manitoba, or New Brunswick, or BC, to assist in
22 negotiating those agreements?

23 A. Yes.

24 196. Q. And then they would report back to you how it
25 went?

1 A. Yes.

2 197. Q. And right now you're just -- I mean I
3 appreciate it's 10 Provinces, but right now you're not
4 aware of what the status is with New Brunswick?

5 A. In terms of the tripartite discussions, that
6 agreement, that's separate from the enhanced prevention
7 per se.

8 198. Q. Okay. And so just to sort of summarize what
9 we were talking about a bit here, is that some Provinces
10 are under the prevention focussed approach, some are
11 under Directive 20-1, and then some Provinces that are
12 under Directive 20-1 are negotiating or have negotiated
13 with the Federal Government to move under the Enhanced
14 Prevention Focussed Approach?

15 A. That's correct.

16 199. Q. And ---

17 A. Also, we have, on top of that, the Ontario 65
18 Welfare Agreement which is separate from this.

19 200. Q. Yes, exactly, that's precisely where I was
20 going to go. But Ontario is under a completely different
21 arrangement?

22 A. Yes.

23 201. Q. It's the 1965 one?

24 A. Yes.

25 202. Q. And is there anything happening with that

1 arrangement, is there any changes happening to that
2 arrangement, or any negotiations?

3 A. We have not been involved in any discussions
4 on that at this point.

5 203. Q. And why are the Provinces moving from,
6 Provinces and First Nation agencies, moving from
7 Directive 20-1 to the Enhanced Prevention Focussed
8 Approach? Like that's the general goal, is it, is that
9 the objective to get them all from 20-1 to under the
10 prevention approach, is that right?

11 A. Yes.

12 204. Q. Because it's believed the Enhanced Prevention
13 Focussed Approach is a better model?

14 A. I mean our interest is to assist the agencies
15 in providing improved services for First Nations children
16 on reserves.

17 205. Q. And it's believed the Enhanced Prevention
18 Focussed Approach is a better model for meeting that goal
19 than 20-1?

20 A. I mean it does provide some increased
21 resources to the agencies.

22 206. Q. Okay. So that's a yes?

23 A. Yes.

24 207. Q. And if these kinds of discussions or reviews
25 are going on with respect to Provinces still under 20-1,

1 I'm wondering what kind of review or evaluation is going
2 on with respect to the Ontario agreement, is there any?

3 A. Not at the moment. I mean we work
4 jurisdiction by jurisdiction to try and reach agreement
5 on an Enhanced Prevention Focussed Approach, and the
6 region may have engaged in discussions with First
7 Nations, but we have not been involved to this point.

8 208. Q. And do you know what was the impetus for the
9 policy to develop the Enhanced Prevention Focussed
10 Approach?

11 A. The Alberta Government approached our
12 Minister and said we have a good model working here, we
13 think you should try it on a reserve and that was the
14 impetus.

15 209. Q. And the national joint policy review, did
16 that play any role in it at all?

17 A. I couldn't say.

18 210. Q. Is Ontario seeking some kind of enhanced
19 funding model, do you know? Maybe not necessarily that
20 one, but any kind of enhancement to their current
21 agreement?

22 A. I don't know.

23 211. Q. Going back to New Brunswick just for a
24 moment, you had indicated you weren't aware of any
25 concerns from New Brunswick?

1 A. Concerns about what?

2 212. Q. That the Province of New Brunswick is so
3 concerned that Directive 20-1 is out of step with current
4 social work practice, that it believes it would be
5 negligent to sign the current tripartite agreement
6 applied by INAC?

7 A. I'm not aware of that being phrased.

8 213. Q. Maybe not phrased that way, but the nature of
9 their concern with the tripartite agreement being in some
10 way inconsistent with social work practice?

11 A. I'm not familiar with that, no.

12 214. Q. Okay. You just spoke a moment ago about how
13 the Enhanced Prevention Focussed Approach was developed
14 with Alberta. In paragraph 16 you refer to that to some
15 extent, it appears. You refer to consultations. Can you
16 tell us what consultations mean, or basically, who came
17 up with the ultimate decision as to what the enhanced
18 funding approach would be?

19 A. Who came up with the ultimate decision?

20 215. Q. Well, who came up with the approach? Are you
21 saying that Alberta had an approach and they came to INAC
22 and said look, this is what we want, will you accept it
23 or adopt it? Was it developed by them?

24 A. No, I mean they came to us and said we have
25 this type of approach, would you consider implementing

1 something similar on reserves. And then the discussions
2 were had with INAC, both regionally and with my staff,
3 and then the First Nations agencies, and the Province to
4 sift through what we could potentially do within our
5 particular authority.

6 216. Q. In paragraph 17 you start talking about the
7 Enhanced Prevention Focussed Approach in a bit more
8 detail, and you speak about a multi-year business plan
9 that must set out strategies and performance measures.
10 And in your last sentence there you say

11 "The business plan must be supported
12 by the Province and be in accordance
13 with the Indian Affairs financial
14 accountability requirements".

15 What does INAC do if the Province does not support the
16 business plan?

17 A. It hasn't happened so far.

18 217. Q. Well, what -- sorry?

19 A. If there was such a concern raised there
20 would be discussion amongst the three parties.

21 218. Q. Okay. Well, what happens if a Province
22 approves a plan and it's not in line with INAC financial
23 accountability requirements?

24 A. I mean we would have to take a look at the
25 particular plan, and if there was something to do with

1 non-insured health benefits, for example, identified in
2 that plan, then we would have to say sorry, we can't do
3 that because that's not within our ability.

4 219. Q. And you say in here with respect to
5 performance measures are in the business plans, how are
6 those performance measures developed, are they set by the
7 First Nations service providers themselves?

8 A. Yes, they are.

9 220. Q. And does that mean that INAC has no
10 expectations with respect to those performance measures?

11 A. Well, I mean what is done first is the
12 framework documents which outline the overall approach
13 within that particular Province, and the business plans
14 flow from there. We want to see that there are targets
15 set, but it's up to the agency to determine what their
16 plan is going to be, so if they want to target that
17 they're going to reduce their children in care by one
18 percent, that's their target that they're setting.

19 221. Q. This business plan, there's a template from
20 your department, correct?

21 A. Yes.

22 222. Q. And so the First Nation agencies try to sort
23 of fit their different requirements or performance
24 measures and so forth, their strategies, within that
25 template, correct?

1 A. That's correct.

2 223. Q. And who is the last official to sign off on
3 one of those business plans for a First Nation agency?

4 A. Oh, it will depend on the situation. We, at
5 headquarters, will review up to four business plans to
6 make sure that they are following the template, and that
7 the various items identified are there to ensure due
8 diligence. Then it's within the region to put this into
9 funding agreements.

10 MR. CHAMP: Excuse me.

11 MR. TARLTON: Do you want to go off the Record
12 for a second?

13 MR. CHAMP: Yes, if we could just go off the
14 Record.

15 MR. TARLTON: Yes, sure.

16 (OFF RECORD DISCUSSION)

17 BY MR. CHAMP:

18 224. Q. In paragraph 18 in the last sentence you
19 speak about other jurisdictions, or other Provinces, with
20 whom or with which Indian Affairs is initiating
21 discussions to negotiate about moving their funding under
22 the Enhanced Prevention Focussed Approach, correct?

23 A. Yes.

24 225. Q. And we spoke a little bit about BC and
25 Manitoba as two Provinces that have basically kind of

1 gotten to the end of that process, but it will take a
2 little while for implementation when the funding comes
3 through, correct?

4 A. Yes.

5 226. Q. Pardon me?

6 A. Yes.

7 227. Q. Okay. And on this Enhanced Prevention
8 Focussed Approach, do you recall what the Auditor General
9 of Canada had to say about it?

10 A. She may have questioned why we were using the
11 six percent to children in care figure. However, overall
12 she said we were on the right track.

13 MR. CHAMP: Okay. Ms Johnston, I'm just going to
14 give you a portion of the Affidavit of Cindy Blackstock.

15 Volume II of II. And you have the Auditor General's
16 report, I just want to pass it to you.

17 MR. TARLTON: Which exhibit number is it?

18 MR. CHAMP: Exhibit F.

19 MR. TARLTON: F.

20 BY MR. CHAMP:

21 228. Q. So I see in paragraph 4.63 here, and again,
22 just to be clear, we're referring to Exhibit G of the
23 Affidavit of Cindy Blackstock submitted on this Motion,
24 and Exhibit G is the Auditor General's report of 2008.
25 At 4.63 I think we see a little bit of what you were just

1 saying where the Auditor General speaks about the new
2 funding formula and acknowledging that it has led to some
3 increases and this should lead to better services for
4 First Nations children. Is that what you were speaking
5 about?

6 A. Yes.

7 229. Q. In general. And then we see at 4.64 the
8 Auditor General states

9 "However, we also found that the new
10 formula does not address the inequities
11 we have noted under the current formula.

12 It still assumes that a fixed percentage
13 of First Nations children and families
14 and all of the First Nations served by an
15 agency need child welfare services.

16 Consequently in our view the new formula
17 will not address differing needs among
18 First Nations. Pressures on INAC to fund
19 exceptions will likely continue to exist
20 in the new formula".

21 So just based on that, you agree with me the Auditor
22 General is not satisfied with the new formula?

23 MR. TARLTON: I suppose you're asking her to give
24 an opinion on a document which it speaks for itself.

25 MR. CHAMP: All right.

1 MR. TARLTON: And I don't see how it's dealing
2 with the issue of jurisdiction. You seem to be getting
3 back into the merits of the Hearing, so.

4 MR. CHAMP: Well, first, Mr. Tarlton, I agree
5 with you, it does speak for itself. There's no question
6 it speaks for itself. How it relates to jurisdiction is
7 that the First Nations agencies have no control
8 whatsoever on the funding that they're required to
9 provide specific services. That all independent bodies
10 who look at the issue believe that they cannot provide
11 services based on the funding that's provided and given
12 that there's only one party responsible who has control
13 over that, being INAC, it's our view that that has a role
14 in how the First Nations agencies can provide services,
15 or what services they provide.

16 MR. TARLTON: And that is a position I look
17 forward to hearing and responding to when we argue the
18 Motion in due course on its merits. But I'm just, I'm
19 trying to determine the -- your question was directed to
20 asking Ms Johnston whether or not she agreed with what
21 the Auditor General wrote in the paragraph following 4.63
22 and 4.64, and we both agree it speaks for itself.

23 I don't see the relevance or how that adds to the
24 position that you're going to make, but if you're going
25 to ask her a question specifically about control, then

1 please go ahead.

2 BY MR. CHAMP:

3 230. Q. Well, thanks for that, I'll ask my questions
4 on the topics I choose. Ms Johnston, what steps has INAC
5 taken to respond to that concern raised by the Auditor
6 General?

7 A. We have discussions as we're going forward
8 with various jurisdictions with the agencies and there is
9 a definite balancing act where you have agencies who have
10 less than six percent who are going to get increased
11 resources, who don't want to be penalized because they
12 have less children in care. So it's a balance that we
13 try to work with the agencies on.

14 I will say as well that in terms of what the
15 early results are from Alberta, that there are less
16 children in care. There has not been a requirement to
17 come back to headquarters to say that we don't have
18 enough money to support the agencies out there.

19 231. Q. There's been no reports back from Alberta
20 saying that you do not have sufficient funds to support
21 the agencies out there, that's your statement?

22 A. Yes.

23 232. Q. Well, I can guarantee you some of the Chiefs
24 in Alberta don't share that view. One service provided
25 by First Nations children is kinship and care. You

1 understand that concept, kinship and care?

2 A. Kinship care.

3 233. Q. Yes?

4 A. Yes.

5 234. Q. And you're aware that INAC did not provide
6 kinship and care funding until 2005 or there was a period
7 of time when INAC did not provide kinship and care
8 funding?

9 A. I know that when the authorities were renewed
10 in 2007 kinship care was added as something that was
11 eligible under our terms and conditions.

12 235. Q. Because prior at some point it was not
13 approved under your terms and conditions, correct?

14 A. And I should just add, it's kinship care
15 where it is under the particular Provincial legislation.

16 236. Q. Yes, and, in fact, previously was it not the
17 case that in some Provinces which approved kinship and
18 care, or there are some Provinces who, for quite some
19 time, approved kinship and care, but INAC would not
20 approve funding for it?

21 A. That I don't know specifically.

22 237. Q. So you can't explain why that is, why a
23 Province would approve kinship and care as a service, but
24 INAC would not fund it?

25 A. All I know is what happened from 2007 on.

1 238. Q. Indeed. So going back to your Affidavit,
2 paragraph 21. You list there five Provinces with
3 increased funding under the Enhanced Prevention Focussed
4 Approach. And you state

5 "Under the Enhanced Prevention Focussed
6 Approach Indian Affairs is committed to
7 provide the following increased funding
8 over and above the amount previously
9 provided under 20-1. Funding is spread
10 over a five year period".

11 So we see here there's approximately \$275 million in
12 increased funding over five years?

13 A. That's correct.

14 239. Q. And from that I gather that I can also infer
15 that the other five Provinces that are not listed here,
16 they have not received that same relative increase in
17 funding?

18 A. Not under the Enhanced Prevention Focussed
19 Approach, no.

20 240. Q. But not under any programme, they're still
21 under Directive 20-1, and got no increases, right?

22 A. There was increases for operation in 2005.

23 241. Q. Sorry what year, sorry?

24 A. 2005, 8.24 percent for operations.

25 242. Q. And since 2005 there's been no other

1 increases. Under paragraph 22 you speak about
2 "significant Federal funding provided
3 by other Government departments for
4 programmes and benefits for families
5 and children on reserve".

6 How do you know that? What's your source for your
7 statement in there?

8 A. How do I know that? If you go to the
9 departmental performance reports, and estimates, you will
10 find documentation on the various programmes for various
11 departments. I also know from having worked with Health
12 Canada on many of these programmes that there are
13 resources out there for things like NNADA, National
14 Native Alcohol and Drug Abuse, mental health, fetal
15 alcohol spectrum disorder.

16 243. Q. So if I go to those departments reports I
17 will see that?

18 A. Yes.

19 244. Q. Is that what you did, what reports did you go
20 to to get that information?

21 A. I didn't specifically prepare this, I mean my
22 staff prepared this. But I do know these programmes
23 exist.

24 245. Q. So some of your staff came up with this list,
25 and you know that some of the programmes exist?

1 A. I know they all exist.

2 246. Q. Okay. And so you gave the direction to your
3 staff to come up with a list like this?

4 A. Yes.

5 247. Q. And what was the nature of your direction,
6 what did you ask them to look for?

7 A. Just to identify other programmes and
8 services out there that might relate to child welfare.

9 248. Q. And when did you do that?

10 A. Oh, probably in ---

11 249. Q. You swore the Affidavit December 20th?

12 A. Probably early December.

13 250. Q. Early December. And prior to early December
14 2009 did your directorate ever have occasion to look at
15 these other agencies, or pardon me, these other
16 programmes in the other Government departments and how
17 they impact on the services that you approve of or
18 provide?

19 A. In what way?

20 251. Q. Okay. You have listed all of these services
21 in your Affidavit, and I gather you're doing that because
22 you think that they relate in some way to child welfare
23 services?

24 A. I know they do.

25 252. Q. And so what I'm asking you is prior to early

1 December 2009, did you or your directorate have occasion
2 to look at these services to understand how the whole
3 approach of benefits for child welfare services on
4 reserves are made available? I'm sorry, maybe I can re-
5 phrase it. Prior to early December 2009 was there any
6 single document in your directorate or in your department
7 that you're aware of that had a list of these services as
8 relating to child welfare services?

9 A. I think these would have been listed in the
10 context of the evaluation that was done in 2007.

11 253. Q. Which evaluation?

12 A. The evaluation of the child and family
13 services programme.

14 254. Q. And I apologize, which evaluation conducted
15 by -- is there a report of this evaluation?

16 A. Yes, it's on the web site of our audit and
17 evaluation section.

18 255. Q. And what's it called, is there a ---

19 A. I think it's called the evaluation of First
20 Nations Child and Family Services Programme.

21 256. Q. And you think these services would be listed
22 in there, or ---

23 A. I don't recall exactly, but they would have
24 looked at what else is out there.

25 257. Q. On one of these items, the 22 (m), you

1 indicate here

2 "Children's Special Allowance, Canada
3 Revenue Agency",

4 but that's a benefit that's provided to families and
5 children on reserve. Isn't it true that your directorate
6 is looking at clawing back that amount from them?

7 A. No, that is not true.

8 258. Q. It's not true?

9 A. No. What we are doing is we are asked to
10 look at, under the transfer payment policy, there is a
11 section on staffing provisions. And that we have
12 responsibility as funders to ensure that there isn't an
13 anticipation of funding occurring. So Treasury Board
14 asked that we ensure that when they're providing funding,
15 that there is no duplication. So what we are doing is
16 looking at how can we address this such that First
17 Nations, if they are using it for other than our
18 maintenance costs, and account for it, then there is no
19 intent to claw that back.

20 259. Q. But isn't, and correct me if I'm wrong, the
21 purpose or intent of special allowance, isn't that meant
22 to be a net benefit for children?

23 A. I can't speak to that.

24 260. Q. Well, how do you determine if it's a
25 duplication?

1 A. Well, as part of the criteria, the children's
2 special allowance, it says one of the things is for
3 maintenance for the child for whom it is paid.

4 261. Q. Right?

5 A. So we pay maintenance. If there is a child
6 for whom that is paid, then we're also paying, then it
7 may be viewed as a duplication.

8 262. Q. But prior to the Federal Government giving
9 special allowance for children to families, presumably
10 families were already providing "maintenance" to their
11 children?

12 A. I don't know what you mean by that.

13 263. Q. Okay. So prior to the special allowance
14 being given to families, families cared for and provided
15 for their children, right?

16 A. I still don't understand the question.

17 264. Q. Do you have children, Ms Johnston?

18 A. Yes, I do.

19 265. Q. Okay. You provide for them I would assume?

20 A. Yes.

21 266. Q. Okay. Don't worry, I won't go with Mr.
22 Taylor and won't ask you any questions about your own
23 childhood, but you get the special allowance, I gather,
24 you or your spouse?

25 A. No, I don't. No.

1 267. Q. Oh, it's clawed back because of the level of
2 income isn't it?

3 A. Yes.

4 268. Q. Well, I mean you get it, but then it's taxed?

5 A. No. No, it's based on income.

6 269. Q. Okay. And then is that the criteria that
7 INAC looks at about the income of families?

8 A. No. All we look at is is there a duplication
9 of maintenance being paid for for a particular child.

10 270. Q. So you don't know if the special allowance is
11 meant to provide -- okay. Before the special allowance
12 was introduced, obviously the purpose was to assist
13 families who have children so that they can provide for
14 children?

15 A. I mean I can't speak to the issue of ---

16 271. Q. You don't know what it's for? You don't know
17 what it's for?

18 A. Well, it's supposed to be for the
19 maintenance, care and advancement of the child for whom
20 it is paid, but I can't speak to the issue of why it's
21 paid. All I can say is that we are required to ensure
22 that it's not duplicating funding we're providing.

23 272. Q. Well, if you don't know why it's paid, how
24 can you tell if it's a duplication or not?

25 A. If it is addressing maintenance costs which

1 we are paying, then it is, that's a duplication.

2 273. Q. So you would know what it's for then?

3 A. Are you talking about children's special
4 allowance at large?

5 274. Q. Yes. How do you determine if it's a
6 duplication? And wouldn't you look at the purpose of the
7 special allowance?

8 A. No, we would look at -- I mean our concern is
9 not with why it's being paid for that particular child,
10 the concern is is it duplicating funding that we're
11 providing.

12 275. Q. But how can you determine that if you don't
13 know why it's being paid?

14 A. As I said, the elements for which it can be
15 paid includes maintenance, so.

16 276. Q. Okay. Getting back to an earlier answer that
17 you gave on this is you indicated that the department is
18 now clawing back this amount, correct, right now?

19 A. I'm saying our intent is that if they have
20 and use it for other purposes, and can demonstrate that
21 it's not being used for something that duplicates our
22 maintenance, the intent is not to claw it back.

23 277. Q. So the department is not clawing it back
24 anywhere right now?

25 A. No.

1 278. Q. But the department is looking potentially at
2 clawing back if the department in its own view sees it as
3 a duplication, correct?

4 A. Well, I will go back to the Treasury Board
5 policy which says that we cannot pay from two Federal
6 sources for the same thing.

7 279. Q. Right. So I'm just wondering, then, why you
8 put it in your Affidavit at 22, paragraph 22, if it's the
9 same thing, why are you -- it suggests to me when you put
10 it in there, that it's other Federal funding or some kind
11 of additional benefit. Is it the same thing or isn't it,
12 why did you put it in there?

13 A. Because it may not be the same thing. It's
14 funding from another source other than INAC.

15 280. Q. But if I understand paragraph 22 correctly,
16 I'm gathering or I'm inferring from that that you're
17 suggesting that there's other or additional services or
18 benefits provided to a child and families on reserves
19 from other Government departments other than INAC? Am I
20 understanding the purpose there?

21 A. Yes.

22 281. Q. And in there you list the special allowance?

23 A. Because we do not provide it.

24 282. Q. Right. But if there's a chance you're going
25 to claw it back, then it's not necessarily an additional

1 benefit, is it?

2 A. But I couldn't tell you on each and every
3 case whether that would or would not be the case.

4 283. Q. It is the case that some agencies are getting
5 letters from your department threatening them that it may
6 be clawed back?

7 A. I'm not aware of that.

8 284. Q. You indicated that you are aware that it's
9 being reviewed in some way by your department, is that
10 correct?

11 A. Yes.

12 285. Q. By your programme, I gather?

13 A. Yes.

14 286. Q. Someone in your office I presume?

15 A. Yes.

16 287. Q. And who is that?

17 A. I mean it's no one person. It's going to
18 change because my staff change. But it is something that
19 we will have to discuss eventually with Treasury Board.

20 288. Q. So someone in your office is reviewing it,
21 you're just not sure who?

22 A. Well, it will differ from week to week,
23 depending on potentially who I have there.

24 289. Q. Okay. And has it been communicated to First
25 Nation agencies that your department is reviewing it?

1 A. Yes.

2 290. Q. So they're aware that you're reviewing it
3 with the possibility of reducing maintenance funding in
4 an equal amount?

5 A. No, we say it is not our intent to this. If
6 the agency wants to use that for some other purpose,
7 other than the maintenance over and above what we're
8 providing, then our goal is not to claw that back.

9 291. Q. And what role are you playing in that review?

10 A. I will be reviewing anything that goes
11 forward for discussion with First Nations and also with
12 Treasury Board.

13 292. Q. And how will it be determined whether it's a
14 duplication or not?

15 A. I cannot tell you at this point. It is a
16 difficult issue, but our intent is not to.

17 293. Q. To take \$200.00 away from a vulnerable child,
18 that's not your intent?

19 A. I mean it may end up being used for
20 maintenance, that is one of the objectives of children's
21 special allowance.

22 294. Q. Would you agree with me, at least on this,
23 it's a possibility that in future your department may
24 reduce the maintenance funds that it provides to agencies
25 by an equal amount of the children's special allowance,

1 that's something that's being looked at?

2 A. If there was a duplication of what it is
3 being used for, then that is something that may have to
4 happen. But if they can use it for something else, then
5 we will not do that.

6 295. Q. So yes, it's a possibility?

7 A. It's always a possibility.

8 296. Q. With respect to any of these other items,
9 from (a) to (l), what other items are you looking at as a
10 possibility of reducing maintenance budget for?

11 A. We don't reduce. Why this list is here is to
12 indicate other programmes that might provide the
13 particular programme or service.

14 297. Q. Right. But if it's a particular programme or
15 service that you're regarding or characterize in some way
16 like child welfare services?

17 A. These aren't characterized as child welfare
18 services. These are services that may support.

19 298. Q. Right. And are these list of services, are
20 they available in every Province?

21 A. I couldn't tell you the specifics of how they
22 operate.

23 299. Q. Are they available to every First Nation
24 Band?

25 A. Again, I couldn't tell you.

1 MR. CHAMP: Sorry, I went a little over, I think
2 maybe it's time for a break for lunch.

3 MR. TARLTON: Okay, thank you.

4 (LUNCHEON RECESS)

5 BY MR. CHAMP:

6 300. Q. So we're back on the Record after lunch, it's
7 about 1:50 p.m. for further Cross-Examination on the
8 Affidavit of Odette Johnston.

9 So Ms Johnston, I asked you some questions this
10 morning concerning the letter from the Minister of
11 Children and Family Development and the Minister of
12 Aboriginal Relations and Reconciliation from BC to Mr.
13 Strahl. So, in fairness to you, in terms of trying to
14 refresh your memory, I'll give you the response from Mr.
15 Strahl. And I'll just give you a moment to review it.

16 Oh, sorry. So I think you had indicated this
17 morning that you thought you might be generally familiar
18 with the other letter to Mr. Strahl. Do you have any
19 familiarity with this letter from Mr. Strahl?

20 A. No.

21 301. Q. Okay. Now I'm just curious, Ms Johnston,
22 given your role, you're the senior Government official in
23 INAC dealing with the programme, the First Nations Child
24 and Family Service Programme?

25 A. I'm the director of the programme, I report

1 to a Director General who also is responsible for this
2 programme.

3 302. Q. Okay. And I'm just wondering to whom within
4 your department would letters like this go, letters from
5 Provinces?

6 A. Generally they would go to the regional
7 office for preparing a response.

8 303. Q. They wouldn't come to HQ?

9 A. They might be sent to us for review, but not
10 always.

11 304. Q. So would this be the level of response that
12 would be prepared by a regional office, like would this
13 be the kind of letter that the regional office would
14 prepare for Mr. Strahl?

15 A. Yes.

16 305. Q. And it might be that the regional office just
17 prepared it and sent it to Mr. Strahl's ministerial
18 office and he sent it out without it ever going to your
19 director?

20 A. That's possible.

21 306. Q. That's possible?

22 A. Yes.

23 307. Q. And do you in any way view it as your role or
24 your directorate's role to keep abreast of these kinds of
25 disputes or concerns raised by Provincial Governments

1 with respect to child welfare services?

2 A. We generally are involved in letters of this
3 type. We may play a support role to regions on them.
4 But I know, I can honestly say I have not seen this
5 particular response.

6 308. Q. I don't think there's anything in it that's
7 necessarily inconsistent with what you were saying this
8 morning, I think it's very consistent with what you were
9 saying. Just indicating that there's insufficient
10 funding right now for the BC Enhanced Prevention Services
11 Model and accountability framework, and it will be under
12 consideration for the next fiscal year, which is to say
13 when there's perhaps more money available. Does that
14 sound accurate?

15 MR. TARLTON: Well, with respect, I don't think
16 that's what the letter says.

17 THE WITNESS: No.

18 MR. CHAMP: Okay. In the third paragraph it says
19 "I appreciate", and this is from Mr. Strahl,
20 "I appreciate and share your concerns
21 for the equitable treatment of children
22 on reserve to those living off reserve.
23 While the British Columbia Enhanced
24 Prevention Services Model and
25 accountability framework will not be

1 funded at this time, it is still under
2 consideration for the next fiscal year".

3 MR. TARLTON: I know, but your previous question
4 said insufficient funding. That's not what that
5 paragraph you just read out says from Mr. Strahl. Again,
6 as I said earlier, the letter speaks for itself, and
7 you'll obviously be making some representations about it
8 and if you want to just put it into the Record, and Ms
9 Johnston has stated her degree of knowledge of
10 familiarity with it.

11 BY MR. CHAMP:

12 309. Q. Okay. In terms of your personal knowledge,
13 Ms Johnston, do you know why the BC Enhanced Prevention
14 Services Model and accountability framework will not be
15 funded at this time?

16 A. We don't have additional resources to
17 provide.

18 310. Q. Okay. And is it still under consideration
19 for the next fiscal year to your personal knowledge?

20 A. It definitely is under consideration.

21 MR. CHAMP: Okay. Are you okay if we mark that?

22 MR. TARLTON: That's fine.

23 MR. CHAMP: We'll have that marked as Exhibit 2,
24 Madam Reporter.

25 **EXHIBIT NO. 2:** Letter from the Minister of

1 Indian Affairs and Northern Development, Mr.
2 Strahl, dated January 21, 2010.

3 BY MR. CHAMP:

4 311. Q. And so from my questions on those letters, Ms
5 Johnston, I take it that it could well be that there's
6 other letters of complaint or concern from other
7 Provinces that you might not be aware of?

8 A. That's correct.

9 312. Q. So, for example, I had mentioned to you this
10 morning, and I'm not sure if you had a chance to -- I
11 didn't ask you to look into it, but I'm not sure if you
12 looked into it over the break, about the report issued
13 two days ago by the New Brunswick child advocate?

14 A. And the question being?

15 313. Q. Well, I think this morning you'd indicated
16 you weren't aware of it?

17 A. Weren't aware of?

18 314. Q. The report issued two days ago by the New
19 Brunswick children's advocate?

20 A. No, I'm aware of the report.

21 315. Q. Oh, you are okay, sorry, I misunderstood your
22 answer this morning?

23 A. Yes.

24 316. Q. So you are aware of this report?

25 A. Yes.

1 317. Q. Yes, okay. And do you know what are the
2 concerns raised by New Brunswick's children's advocate in
3 that report with respect to child welfare services on
4 reserves?

5 A. I have not personally gone through that
6 report. It was just filed yesterday. As a department
7 we're still in the process of reviewing the
8 recommendations.

9 318. Q. As I understand the report, it says something
10 to the effect that New Brunswick refuses to sign the
11 latest tripartite agreement because they do not believe
12 it is consistent with responsible child welfare
13 practices?

14 A. As I said, I haven't read it, so I don't
15 know.

16 319. Q. And who will be reviewing that in your
17 directorate?

18 A. One of my officers will be, in conjunction
19 with the region.

20 320. Q. And just typically, Ms Johnston, how do those
21 kinds of concerns impact or influence how you do your
22 work, how you provide your service, how do you typically
23 respond?

24 A. Well, you don't necessarily file formal
25 responses to a report or review what happens out there.

1 We are required, when it comes to a review, but not
2 necessarily for one that happens in every jurisdiction.

3 321. Q. And I'm just wondering again about how a
4 letter impacts or influences the programme that you
5 deliver, and how does it affect or impact or influence
6 what you're doing?

7 A. Well, it will definitely be reviewed and
8 taken into consideration, and any discussions, we may
9 have future discussions with First Nations and the
10 Province.

11 322. Q. The letter from Minister Strahl speaks about
12 or refers to Jordan's Principle. You have some knowledge
13 of Jordan's Principle?

14 A. Yes, I do.

15 323. Q. And in his letter he says that
16 "The Government of Canada's response
17 to Jordan's Principle focusses on
18 cases involving the jurisdictional
19 dispute between the Governments of
20 Canada and British Columbia for First
21 Nations children ordinarily resident
22 on reserve who have severe disabilities
23 and who require services from multiple
24 service providers".

25 So that last part there,

1 "Who have severe disabilities and
2 require services from multiple
3 providers",
4 is it your understanding that Jordan's Principle is
5 narrowed to that group?

6 A. What the Federal response is, is to look at
7 children that were like Jordan, who have multiple
8 disabilities requiring multiple service providers. There
9 has to be a dispute between the Federal Government and
10 the Province over the particular case. We look at
11 normative standards of care that would be provided to the
12 child off reserve in a similar geographical location.
13 And I'm forgetting the other aspect.

14 But in looking at this, in the discussions we
15 have had with a number of Provincial departments, we use
16 that as our starting point. And we've almost developed a
17 two pronged approach, one which looks a little bit more
18 narrowly, and then the second phase is to look at gaps in
19 services.

20 324. Q. I'm sorry, what do you look at more narrowly?

21 A. That we would look more narrowly initially on
22 trying to address those children who were more than
23 likely to have the disputes and be more amean from a
24 critical perspective.

25 325. Q. You would agree with me, or you understand

1 that there are some who believe that Jordan's Principle
2 applies a bit more broadly than it applies to any kind of
3 education, child welfare, or other kind of service that
4 should be available to a First Nations child on reserve,
5 and it should be applied equitably and if there's a
6 dispute between the Provincial and Federal Government
7 about providing that service, then the department should
8 provide the service? You're aware that some people view
9 Jordan's Principle as a bit more broadly?

10 A. I'm aware, yes, that there are differing
11 perspectives on it.

12 326. Q. Okay. And, for example, you're aware that
13 there was a Motion put to the House of Commons concerning
14 Jordan's Principle?

15 A. Yes.

16 327. Q. And in your view was that Motion the broader
17 view of Jordan's Principle, or the more narrow view of
18 Jordan's Principle?

19 MR. TARLTON: I'm not sure what her opinion as to
20 a Motion by the House of Commons, and again, I think we
21 can all read the Motion. That would I think, again,
22 raise the legal question for the Tribunal or a Court to
23 determine. I don't think her opinion is relevant.

O

24 MR. CHAMP: I don't agree with your objection,
25 but I'll ask a different question.

1 MR. TARLTON: Sure.

2 BY MR. CHAMP:

3 328. Q. You spoke to this issue, did you not, Ms
4 Johnston, when you appeared before the Standing Committee
5 on Aboriginal Affairs on October 20th, 2009?

6 A. Yes.

7 329. Q. And can you tell us what you told the
8 Committee about that issue, about the broader or narrower
9 version of Jordan's Principle?

10 A. I don't recall exactly what I said.

11 330. Q. Generally?

12 A. I know that I talked about the fact that we
13 deal with cases as they arise. And that we had not been
14 informed of many cases.

15 331. Q. Many cases involving children with complex
16 medical needs?

17 A. Cases period.

18 332. Q. And weren't you asked questions about why the
19 department was taking the position that it only applies
20 to children with severe disabilities?

21 A. I don't recall that.

22 333. Q. And do you recall making an answer that the
23 department was narrowing the Jordan Principle to only
24 children in Jordan's circumstances to honour Jordan's
25 memory?

1 A. No, I don't recall that.

2 334. Q. You don't remember making any kind of
3 statement about to honour Jordan's memory?

4 A. I don't recall.

5 335. Q. You don't recall. When you appeared before
6 the Standing Committee on the 20th, I gather you would
7 have had speaking notes and briefing notes?

8 A. No.

9 336. Q. No. You spoke off the top of your head that
10 day with all the knowledge that you have on the subject?

11 A. We would have had some briefing material,
12 perhaps communication lines.

13 337. Q. Okay. So when I said speaking notes, I kind
14 of meant, I know each department call them a little bit
15 different, so speaking note, briefing note,
16 communications line, media points, media lines, talking
17 points. Did you have any of those materials that might
18 fall under those kinds of categories as you understand
19 them as a Federal Government employee of 26 years of
20 experience?

21 A. I think we may have.

22 338. Q. You had paper in your hand when you went to
23 the Committee, I gather?

24 A. Yes.

25 339. Q. Okay. I'll just assume that the words on

1 those papers had something to do with Jordan's Principle?

2 A. I mean there would have been a number of
3 different issues on child welfare.

4 340. Q. You also spoke about the Auditor General's
5 report to some extent when you appeared before the
6 Committee?

7 A. As I said, I don't recall.

8 341. Q. You did say this morning in your testimony
9 that there were two recommendations, at least that you
10 were aware of, from the Auditor General's report that the
11 department was responding to. Well, first, number one is
12 that you were preparing a response to it, and that was
13 one action that came out from the report. And the second
14 thing was providing a response, or taking action on
15 culturally appropriate services?

16 A. That wasn't in relation to the Auditor
17 General, that was to Public Accounts Committee.

18 342. Q. To the Public Accounts, but the Public
19 Accounts Committee was convened because they were
20 reviewing the recommendations of the Auditor General's
21 report, right?

22 A. But, in terms of response, it's to two
23 different bodies.

24 343. Q. Okay. Fair enough. Fair enough. You got me
25 on that one. On culturally appropriate services, what is

1 the department doing to respond to the concerns raised by
2 the Standing Committee on Public Accounts?

3 A. What we are saying is that we're not defining
4 it, or that we are respecting First Nations, each First
5 Nations is going to have to have an interpretation of
6 what is culturally appropriate. That we will have
7 guiding principles, if you will, and that in the enhanced
8 framework, Enhanced Prevention Focussed Approach and
9 framework documents, those are usually inputted by First
10 Nations as principles.

11 344. Q. So the department is developing some guiding
12 principles?

13 A. No.

14 345. Q. Oh, sorry?

15 A. What we're saying is that we will respect
16 those principles and respect the fact that there's going
17 to be unique approaches for each jurisdiction or each
18 First Nation as it may be.

19 346. Q. And how does that respond to the concerns
20 raised by the Committee, is it just the Committee was
21 asking the department to define what it means?

22 A. I don't recall the specific recommendation
23 and how it was worded.

24 347. Q. What's your general understanding of it? You
25 testified that the Standing Committee said something

1 about culturally and appropriate services?

2 A. Yes.

3 348. Q. What is your understanding of what their
4 concern was, what were they saying, generally?

5 A. They were asking for one definition.

6 349. Q. And the department replied we don't have one
7 definition, and we'll leave it to the Bands to come up
8 with their own definition?

9 A. We said we were respecting the ARCAT
10 principles around culturally appropriate in that each
11 First Nation will have differences when it comes to
12 what's culturally appropriate.

13 350. Q. Turning back to your Affidavit for a moment,
14 paragraph 22. So (a) to (d) in paragraph 22, these are
15 all programmes provided by your department, correct?

16 A. Funded by our department, yes.

17 351. Q. Funded by your department. Do you know if
18 these services or programmes are available to all First
19 Nations? Okay, I'll leave it at that. Are you aware if
20 they're available to all First Nations, just the Indian
21 Affairs ones?

22 A. Not all of them would be.

23 352. Q. Would any of them be available to all First
24 Nations?

25 A. Income assistance, and I think assisted

1 living would be.

2 353. Q. Yes, income assistance. But the other ones
3 like the family violence prevention programme, that one
4 is not available to all First Nations, correct?

5 A. Well, I mean it's going to differ region to
6 region, it is a proposal within the regions. I think
7 there is about half the communities who access prevention
8 programming under family violence, and the other aspect
9 of that programme is shelter services. And those shelter
10 services are open to all of First Nations.

11 354. Q. All of these programmes listed here, are you
12 aware of whether all of these are going to be funded in
13 the next fiscal year, are they all still going to be
14 available?

15 A. Your guess is as good as mine.

16 355. Q. Well, I'm not in your department, so no, your
17 guess is probably better than mine I think?

18 A. As far as I know.

19 356. Q. It's my understanding that a number of them
20 are sunset programmes and they end as of March 31. Are
21 you aware of that?

22 A. I don't think so. I can't recall, I think
23 income assistance and assisted living, their terms and
24 conditions were, I think, renewed for another year, for
25 two years. So I think it's not next year it's the year

1 after. And all programmes have usually a five year time
2 limit for their terms and conditions at which time you
3 can go back through Memorandum to Cabinet and Treasury
4 Board submission.

5 357. Q. And just so we're clear, I wasn't restricting
6 my question to just (a) to (d) there, I was thinking,
7 like the Indian Affairs programmes, I was also referring
8 to the other ones, the Health Canada programmes and the
9 HRSDC programmes?

10 A. Yes, I don't know.

11 358. Q. You have no idea, so some of them or all of
12 them might be ending on March 31, but you would not know?

13 A. No, I don't know.

14 MR. CHAMP: I think I'm pretty close to done Mr.
15 Tarlton.

16 MR. TARLTON: Okay.

17 BY MR. CHAMP:

18 359. Q. Ms Johnston, your department's manual, First
19 Nations Child and Family Services national manual, says
20 in Section 1.3.2 the following ---

21 MR. TARLTON: Sorry, is this in the Affidavit?

22 MR. CHAMP: Yes, it is.

23 MR. TARLTON: Can you just refer me so I can
24 follow along?

25 MR. CHAMP: Yes.

1 MR. TARLTON: Thanks.

2 MR. CHAMP: It's in Volume II, Tab I.

3 MR. TARLTON: Which page?

4 MR. CHAMP: Page five.

5 MR. TARLTON: Thanks.

6 MR. CHAMP: In the programme objectives and
7 principles.

8 MR. TARLTON: Yes, thanks.

9 BY MR. CHAMP:

10 360. Q. So in the programme objectives and
11 principles, I'll just read it to you. It's not really
12 complicated. It states under programme objectives and
13 principles

14 "The primary objective of the FNCSF
15 programme is to support culturally
16 appropriate child and family services
17 for Indian children in families resident
18 on reserve, or ordinarily resident on
19 reserve in the best interests of the
20 child, in accordance with the legislation
21 and standards of the reference Province".

22 I gather you've heard that objective before?

23 A. Yes, it's not the latest objective.

24 361. Q. Is it shifting from that?

25 A. The wording is not exactly the same.

1 362. Q. Does it have the same meaning, though,
2 "The primary objective of the programme
3 is to support child and family services
4 for children and families on reserve in
5 the best interest of the child, in
6 accordance with legislation and standards
7 of the reference Province"?

8 A. I can't recall the exact wording, but I think
9 it now begins to ensure the safety of the child by
10 supporting culturally appropriate -- I can't remember the
11 exact wording.

12 363. Q. So the wording is a bit different, but it's
13 basically largely the same?

14 A. I can't say without looking at what it
15 currently is now.

16 364. Q. But that one has not been released yet, in
17 any event?

18 A. It's in our terms and conditions.

19 365. Q. So it's added something about the safety of
20 the child?

21 A. As I said, I can't say per se without looking
22 at both of them.

23 366. Q. You made some kind of reference, though, to
24 the safety of the child, so safety is in there, the
25 safety of the child is in there?

1 A. Yes.

2 367. Q. And do you think that the provision of child
3 and family services that ensure the safety of the child
4 should strictly be a financial consideration?

5 A. What I'm saying, it's our role in it relates
6 to financial and the Province has the role of ensuring
7 the standards.

8 368. Q. But if that's one of the objectives, the
9 safety of the child, you're saying from INAC's
10 perspective it's strictly a financial issue? Strictly a
11 financial consideration?

12 A. Our role as a department is to ensure that we
13 set out the objectives for the programme, that the funds
14 are there. You put the funding mechanisms in place and
15 you ensure that the objectives are met and that there is
16 due diligence in terms of financial accountability.

17 369. Q. But the objective ---

18 A. But the department is interested in the
19 outcomes, positive outcomes for those children.

20 370. Q. So they are interested in positive outcomes,
21 and is it strictly a fiscal consideration, though, about
22 whether those positive outcomes can be achieved from the
23 department's perspective?

24 A. Is it strictly financial? I mean we're
25 interested in ensuring the outcome is achieved. And if I

1 take, for example, the framework documents, in those
2 framework documents they identify what is going to be
3 done in the particular region around prevention, and
4 these are identified by the communities about what they
5 intend to do, and then we try to provide finances to help
6 them achieve that. So we are interested in the
7 achievement of those outcomes.

8 371. Q. I guess, Ms Johnston, is just when I look at,
9 for example, the BC example compared to the Alberta
10 example, BC still can't get that extra money to help
11 children at the same level of funding that Alberta is
12 getting, so it seems to be that the safety of the child
13 is strictly a fiscal consideration, at least in that
14 context, would you agree with me?

15 A. We don't have the resources to be able to
16 provide in that particular example. And we're pursuing
17 processes internally within Government to go through the
18 Government processes to try to obtain additional
19 resources.

20 372. Q. And how long do you anticipate those
21 processes will take, how long will the children have to
22 wait?

23 A. I can't tell you what -- I mean it's up to
24 Cabinet to determine where their resources will be going.

25 As public servants, we are making the cases that we can

1 for additional resources, but the decision is not ours.

2 MR. CHAMP: And we appreciate the decision is not
3 yours, Ms Johnston. Those are all my questions.

4 **RE-EXAMINATION BY MR. TARLTON:**

5 373. Q. If I could just have a brief moment, I think
6 I may have just one. I just have, Ms Johnston, I believe
7 two questions or two matters that were raised in Cross-
8 Examination that I'd like to clarify.

9 This morning Mr. Champ asked you a number of
10 questions regarding paragraph 22 (m) of your Affidavit.
11 And with respect to the child special allowance, which
12 you noted is a programme benefit involving the Canada
13 Revenue Agency. My question is, regarding that
14 allowance, do you know if there's specific legislation
15 dealing with that allowance?

16 A. Yes, there is.

17 374. Q. Okay. I'm not going to ask you anything
18 further because we can look at the legislation and make
19 the determination, but I think that will clarify maybe
20 some of the questions that were asked this morning.

21 The other question I had, and this came up
22 shortly after we broke for lunch, and I think it involved
23 -- let me just have a moment, I thought I had it. We'll
24 just go off the Record for just a second.

25 (OFF RECORD DISCUSSION)

1 BY MR. TARLTON:

2 375. Q. I found it now. Again, it's in respect of
3 paragraph 22 of your Affidavit, and Mr. Champ had asked
4 you some questions I think in regards to the family
5 violence prevention programme?

6 A. Yes.

7 376. Q. He had asked you some questions about the
8 difference, whether there were differences from region to
9 region, and as I recall your evidence, you spoke of a
10 family violence component and shelter services, is that
11 not correct in my understanding?

12 A. Yes.

13 377. Q. My question, you had mentioned in response to
14 Mr. Champ's question regarding family violence that it is
15 a programme that is proposal driven?

16 A. Yes.

17 378. Q. Could you explain that or clarify what you
18 mean by that?

19 A. Well, all the communities could potentially
20 have access to that particular programme if they wish to
21 submit a proposal for consideration. It goes to the
22 regional office. And they may have a review committee,
23 and it will differ from jurisdiction to jurisdiction, but
24 they will review those proposals and determine who will
25 get funding in that particular region.

1 379. Q. And when you refer to communities, you're
2 meaning First Nation communities?

3 A. First Nation communities.

4 380. Q. And what is your understanding of who or what
5 mechanism in that community would initiate the proposal?

6 I mean we've heard evidence about the agency, are there
7 other actors or would those involved in the First Nations
8 group be involved in a proposal such as this?

9 A. Yes, you may have some CFS agencies, but by
10 and large they're probably more community based, it's the
11 Chief in Council who may decide to submit a proposal.

12 381. Q. And by that you mean the Chief in Council
13 under the Indian Act?

14 A. Yes.

15 382. Q. And any other authority?

16 A. Tribal Councils potentially could.

17 MR. TARLTON: Thank you, those are my questions.

18 --- WHEREUPON THE CROSS-EXAMINATION ADJOURNED AT THE HOUR
19 OF 2:28 IN THE AFTERNOON.

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THIS IS TO CERTIFY THAT the foregoing is a true and accurate transcription from the Record made by sound recording apparatus to the best of my skill and ability.

.....
Rhonna J. Levere, Court Monitor

1

Examination No. 10-0158.2

Court File No. T1340/7008

(Ottawa-Carleton)

THE CANADIAN HUMAN RIGHTS ACT

R.S.O., 1985, c. H-6 (as amended)

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

FIRST NATIONS CHILD AND FAMILLY CARING
SOCIETY OF CANADA AND ASSOCIATION OF FIRST NATIONS

COMPLAINANT

- and -

CANADIAN HUMAN RIGHTS COMMISSION

COMMISSION

- and -

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

RESPONDENT

- and -

CHIEFS OF ONTARIO AND AMNESTY INTERNATIONAL

INTERESTED PARTIES

CROSS-EXAMINATION OF ODETTE JOHNSTON on Affidavit sworn
December 20, 2009, pursuant to an appointment made on
consent of the parties to be reported by Cornell Catana
Reporting Services, on February 26, 2010, commencing at the
hour of 10:05 in the forenoon.

APPEARANCES:

Paul Champ
Anne Levesque

for the Complainant
for the Complainant

Tel: (613) 231-4664
Mitchell R. Taylor, Q.C.

1-800-893-6272

Fax: (613) 231-4605
for the Respondent

This Examination was taken down by sound recording
by Rhonna J. Levere at Ottawa, Ontario
(i)

INDEX

NAME OF WITNESS: **ODETTE JOHNSTON**

CROSS-EXAMINATION BY MR. CHAMP: PAGES 2 THROUGH 106

RE-EXAMINATION BY MR. TARLTON: PAGES 106 THROUGH 109

NUMBER OF PAGES: 109

ADVISEMENTS, OBJECTIONS & UNDERTAKINGS

A	13
O	14, 15, 94

EXHIBITS

<u>EXHIBIT NO. 1:</u>	Letter from the Province of British Columbia to The Honourable Chuck Strahl, Minister of Indian Affairs and Northern Development.....	34
<u>EXHIBIT NO. 2:</u>	Letter from the Minister of Indian Affairs and Northern Development, Mr. Strahl, dated January 21, 2010.....	90

DATE TRANSCRIPT ORDERED: February 26, 2010

DATE TRANSCRIPT COMPLETED: March 1, 2010